

Agenda

Advisory Committee on Rules of Civil Procedure

October 4, 2000
4:00 to 6:00 p.m.

Administrative Office of the Courts
Scott M. Matheson Courthouse
450 South State Street
Council Room, Suite N31

Approval of minutes	Fran Wikstrom
Confirm Meeting Schedule	Fran Wikstrom
Simplified rules of procedure for small claims cases	Judge Quinn Peggy Gentles
Comments to Rule 3	Peggy Gentles
Rule 4. Service	Peggy Gentles
Rule 54(e). Prejudgment interest	Peggy Gentles
Rule 63A. Change of judge upon remand after appeal	Tom Karrenberg
Rule 6. Calculation of Time	James Blanch

Meeting Schedule

October 25
November 29 (5th Wednesday)
December: No meeting
January 24, 2001
February 28
March 28
April 25
May 23
September 26
October 24
November 28
December: No meeting

MINUTES

Utah Supreme Court Advisory Committee on the Rules of Civil Procedure

Wednesday, October 4, 2000
Administrative Office of the Courts

Francis M. Wikstrom, Presiding

PRESENT: Paula Carr, Thomas R. Karrenberg, Thomas Lee, Glenn C. Hanni, Honorable Ronald N. Boyce, Terrie T. McIntosh, Virginia S. Smith, James R. Soper, Honorable Darwin C. Hansen, Leslie W. Slaugh, Mary Anne Q. Wood

STAFF: Peggy Gentles, James Blanch

I. WELCOME AND APPROVAL OF MINUTES.

Committee Chairman Francis M. Wikstrom called the meeting to order at 4:00 p.m. The minutes of the May 24, 2000 meeting were reviewed. Glenn Hanni moved to approve the minutes. Tom Karrenberg seconded the motion, which passed unanimously.

II. SIMPLIFIED RULES OF PROCEDURE FOR SMALL CLAIMS CASES.

The Committee reviewed a summary of proposed changes to the rules for small claims cases, distributed by Peggy Gentles. Judge Hansen suggested that after the rules are reviewed and approved, they should be distributed for further review to the small claims judges.

The Committee reviewed the rules one by one. Mr. Wikstrom noted that the rules would apply to trials de novo in district courts as well as in the small claims actions themselves. James Soper suggested that specialized terms should be defined in plain English within the rule. Thomas Lee agreed.

Rule 1 was approved as proposed.

Regarding Rule 2, Leslie Slaugh proposed that the final sentence of the rule be amended to provide that costs will be awarded to the prevailing party unless otherwise ordered. He also proposed that this sentence be removed from Rule 2 and inserted as Rule 7(f). Glenn Hanni suggested that the rule should make clear that an affidavit of impecuniosity must be filed to obtain waiver of filing fees. These proposed changes were approved by the Committee. Mr. Wikstrom noted that the rule should make clear that plaintiffs in interpleader actions can get their filing fees back at the conclusion of the action. Mr. Karrenberg observed that this can be accomplished by specifying that "prevailing parties" include plaintiffs in interpleader actions.

Regarding Rule 3, a proposal was made to define “service of process” for the purpose of the rule. Judge Boyce noted that service by certified mail should be permitted, in keeping with recent amendments to the Utah Rules of Civil Procedure. Leslie Slaugh noted that as a practical matter, people would refer to the rules of civil procedure to find definitions of terms in the small claims rules, which permit service by mail. Thomas Lee proposed that the same definition in the civil rule be used in the small claims rule—i.e., with references to sheriff and constable deleted. Proposed changes were approved by the Committee.

Regarding Rule 4, Mr. Wikstrom stated that subsection (b) should clarify that fee waiver occurs when an affidavit of impecuniosity is filed. The Committee agreed. Judge Boyce questioned whether counter-affidavits in small claims cases should be allowed to include claims against third parties, who would be impleaded. James Soper and other members of the Committee expressed concern that this would complicate the procedure excessively.

The Committee discussed subsections (d) through (f), which provide that a counter-affidavit seeking more than \$5,000 becomes a regular district court case. The Committee agreed this was a good approach, but Leslie Slaugh stated he was concerned that there would be no pleadings in the civil case. Judge Boyce noted that the judges would have the power to correct this deficiency by requiring supplemental pleadings. Rules 4(d) through (f) were approved without amendment.

Rule 5 was approved as proposed.

Rule 6 was approved with one change providing that a continuance is a postponement of the trial date.

Rules 7(a) and 7(b) were approved as proposed.

The Committee deleted the word “immaterial” from Rule 7(d).

Rule 8 was approved with an amendment providing that a dismissal is presumptively with prejudice, but that the judge can order that the dismissal is without prejudice. A subpart (c) was also added requiring notification of dismissal by the prevailing party.

Rules 9 through 12 were approved as proposed.

Peggy Gentles will make all proposed changes and circulate the rules to judges for review.

III. COMMENTS TO RULE 3.

The Committee reviewed the comments received concerning the proposed deletion of the 10-day summons provision of Rule 3. Most comments objected to the proposed deletion. Some Committee members were persuaded by these comments. Thomas Lee suggested that the Committee needs greater information about whether the 10-day summons is being abused. He stated that the rule may be creating a great deal of confusion to defendants.

Paula Carr surveyed clerks of court regarding the number of answers that are filed each month that cannot be matched with complaints. She stated that it appears to be approximately 100 per month statewide. Mr. Lee and Ms. Smith stated that this likely reflects confusion by defendants who have been served with 10-day summonses. Mr. Karrenberg suggested that the Committee needs further information on the issue.

Mr. Wikstrom informally polled the Committee concerning their present position on whether the 10-day summons provision should be deleted. The Committee is split almost evenly on the issue.

Mr. Wikstrom inquired whether an alternative procedure could be developed to permit service on defendants in a preliminary without the necessity of preparing or serving actual complaints.

The Committee will consider the issue further at later meetings.

IV. CALCULATION OF TIME.

The Committee unanimously agreed to approve an amendment to Rule 6 stating that three-day periods for mailing are added after the calculation of time under Rule 6(a).

V. ADJOURNMENT.

The meeting adjourned at 6:00 p.m. The next meeting of the Committee will be held on Wednesday, November 1, 2000, at which the remaining agenda items will be discussed.