

Agenda

Advisory Committee on Rules of Civil Procedure

November 1, 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
Rule 4. Service	Peggy Gentles
Rule 54(e). Prejudgment interest	Peggy Gentles
Rule 63A. Change of judge upon remand after appeal	Tom Karrenberg
Rule 26(i) and 30(f). Filing Deposition Transcripts	Tim Shea
Jury Rule Amendments	Tim Shea
Rule 3. Commencement of action	Tim Shea

Meeting Schedule

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, November 1, 2000
Administrative Office of the Courts

Francis M. Wikstrom, Presiding

PRESENT: Cullen Battle, Glenn C. Hanni, Honorable Darwin C. Hansen, Terrie T. McIntosh, Mary Anne Q. Wood, Paula Carr, Thomas Lee, Thomas R. Karrenberg, Leslie W. Slaugh

STAFF: Tim Shea, Peggy Gentles, Marilyn Branch, James Blanch

EXCUSED: Virginia S. Smith

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 October 4, 2000 meeting were reviewed. Glenn Hanni moved to approve the minutes. Judge Hansen seconded the motion, which passed unanimously.

II. RULE 4. SERVICE.

Chairman Wikstrom stated that proposed amendments to Rule 4 need to be published for comment. Mr. Wikstrom observed, however, that the Committee needed to decide how to deal with the 10-day summons in Rule 3 before Rule 4 could be finalized.

Mr. Wikstrom expressed his opinion that the 10-day summons should be abolished because of the potential for abuse and the fact that the system does not provide for adequate monitoring of the process. Mr. Wikstrom stated his view that Rule 4, through its publication provision, already provides an adequate mechanism to address the concerns underlying the 10-day summons.

Mary Anne Wood stated that she believes the 10-day summons serves a desirable function in avoiding filing fees that Rule 4 does not serve. Mr. Karrenberg replied that the largest concern with the 10-day summons is that it appears to place the stamp of judicial authority on an ordinary collection effort. Thomas Lee agreed and stated that 10-day summonses are misleading to their recipients. Mr. Lee also suggested that if concerns over unnecessary filing fees are driving support for the rule, that concern could better be addressed by adjusting the filing fees.

Glenn Hanni stated that another problem with the rule is that it is cumbersome to check with the court clerk to determine whether a complaint has been filed—both for the defendant and for the clerk. Judge Hansen concurred with the view that the rule should be abolished but that the legislature should be encouraged to lower filing fees in ordinary collection cases.

Leslie Slaugh stated that he opposes eliminating the rule based only on the theoretical possibility of abuse. Thomas Lee replied that abuse is not merely a theoretical possibility but is exactly what the rule authorizes. Paula Carr confirmed that people who are confused by 10-day summonses do call the court on a regular basis.

Many Committee members expressed the view that the Committee should abolish the 10-day summons rule and go on record that the real problem is the filing fee and that the legislature should address it. Some Committee members stated that the rule should permit filing complaints for a nominal initial fee, with the requirement that the remaining fee be paid if the summons is successfully served and prior to further action in the case.

Cullen Battle and Glenn Hanni questioned whether it is appropriate for the Committee to make recommendations to the legislature.

Mr. Wikstrom noted that the elimination of the 10-day summons rule had already been published for comment. He noted timing considerations in favor of voting on the proposed rule.

Tom Karrenberg moved to recommend the elimination of the 10-day summons rule. Cullen Battle seconded the motion, which passed on a vote of 6-4.

Having voted on the 10-day summons issue in Rule 3, the Committee considered the publication of Rule 4 for comment. Thomas Lee moved that the Committee recommend publishing the revised Rule 4 for comment, with the correction of minor punctuation and grammatical errors. Cullen Battle seconded the motion, which passed unanimously. Peggy Gentles noted that the advisory committee note still needs to be changed to describe the amendment to Rule 4. Committee Staff will draft a short addition to the advisory committee note explaining areas of potential ambiguity under the rule. Cullen Battle will develop an official form for Rule 4 based on the form contained in the federal rule.

III. RULE 63A. CHANGE OF JUDGE UPON REMAND AFTER APPEAL.

Tom Karrenberg explained that some attorneys had suggested to him that there should be a rule requiring a case to be reassigned to another judge on remand after a reversal on appeal. Glenn Hanni agreed there should be such a rule. Leslie Slaugh agreed but suggested that the rule should make clear that remands to the same judge for additional findings should be permitted. Many members of the Committee felt that any such rule would have to be drafted with great care to avoid requiring reassignment in cases where there is value in remanding to the same judge.

Tom Karrenberg will look into the issue further and report back to the Committee at a future meeting.

IV. RULE 54(e). PREJUDGMENT INTEREST

Peggy Gentles explained the issue addressed in her March 14, 2000 memorandum to the Committee regarding how interest on judgments should be calculated. Ms. Gentles will study the issue further, but the consensus of the Committee is that no rule change is necessary. Rule 54(e) will be amended to make it gender neutral.

V. RULE 26(i) AND 30(f). FILING DEPOSITION TRANSCRIPTS.

Tim Shea described the concerns articulated in his March 2, 2000 memorandum to the Committee discussing storage concerns implicated by requiring that pro se deposition transcripts be filed with the Court. Paula Carr stated that she did not perceive this to be a significant problem. Many members of the Committee were concerned about entrusting non-lawyers with the responsibility of maintaining court records. The Committee recommended no change to the rule.

VI. JURY RULE AMENDMENTS.

Tim Shea explained his recent work on the Committee on Improving Jury Service. The recommendations of that committee are contained in the report that Mr. Shea had distributed to the Committee. Mr. Shea noted that there has been a great deal of change in judges' practice with respect to juries as a result of the report.

Mr. Shea noted that the report (pp. 47 - 54) recommends several changes to the rules of civil procedure. Mr. Shea encouraged Committee members to review and consider those proposals. The Committee will review the proposed changes in preparation for discussing them at a future meeting. To begin that process, Tim Shea explained the changes in detail, and the Committee began addressing concerns relating to them, which will be addressed further at future meetings.

VII. OTHER.

Chairman Wikstrom reminded the Committee that the federal rules have been amended recently, which amendments will go into effect in September unless changed. Thomas Lee will review these amendments and report at the next meeting whether the Committee should consider similar changes to the state rules.

VIII. ADJOURNMENT.

The meeting adjourned at 6:00 p.m. The next meeting of the Committee will be held on Wednesday, November 29, 2000, at the Administrative Office of the Courts.