

Agenda
Advisory Committee
on Rules of Civil Procedure

May 16, 2001
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
Rules 5 & 55; Lund v. Brown	Brent Johnson
Rule changes to facilitate electronic filing	Brent Johnson
Supreme Court forms	Brent Johnson
Changes to Rule 63A. Change of judge as a matter of right	Fran Wikstrom
Reschedule September 26 meeting	Fran Wikstrom

Meeting Schedule

September 26

October 24

November 28

December: No meeting

MINUTES

UTAH SUPREME COURT ADVISORY COMMITTEE ON THE RULES OF CIVIL PROCEDURE

**Wednesday, May 16, 2001
Administrative Office of the Courts**

Francis M. Wikstrom, Presiding

PRESENT: Francis M. Wikstrom, Honorable Ronald N. Boyce, Glenn C. Hanni; Leslie W. Slaugh, Thomas R. Lee, Mary Anne Q. Wood, Terrie T. McIntosh, R. Scott Waterfall, Virginia S. Smith, James R. Soper, Todd M. Shaughnessy, Honorable Darwin C. Hansen, Honorable K. L. McIff

STAFF: Brent Johnson, James T. Blanch, Marilyn M. Branch

EXCUSED: Thomas R. Karrenberg, Anthony B. Quinn

GUEST: Esther Chelsea-McCarty

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 March 28, 2001 meeting were reviewed and approved without amendment.

II. CHANGES TO RULE 63A. CHANGE OF JUDGE AS A MATTER OF RIGHT

Mr. Wikstrom explained a letter he had received from Douglas Mortensen, Robert Wallace, Richard Burbidge, and Michael Zundel requesting reconsideration of the Committee's decision rejecting proposed changes to Rule 63A. Mr. Wikstrom indicated that such reconsideration would be put off until further feedback is received from the litigation section of the Bar.

Judge Boyce and Thomas Lee expressed reservations about considering the issue any further and stated that they did not believe it would be useful to hear anecdotal complaints from a few individuals who might merely be dissatisfied with outcomes of isolated cases. Leslie Slaugh stated that he believed the Committee had already considered the issue at sufficient length, but he and Glenn Hanni believed there would not be harm in allowing Messrs. Mortensen, Wallace, Burbidge, and Zundel to explain their viewpoint.

The Committee decided it would consider hearing additional debate on the issue at the October meeting if the litigation section expresses sufficient interest in the issue by September.

III. RULES 5 & 55; LUND V. BROWN

Brent Johnson explained the proposed amendments to Rules 5 and 55 that Tim Shea had prepared and circulated to the Committee. The proposed amendments were designed to clarify an ambiguity in the present rules concerning notice requirements for defendants in default and to bring the rules clearly in line with the Utah Supreme Court's holding in Lund v. Brown.

Scott Waterfall moved to approve the proposed amendment to Rule 5. The motion was seconded, and it passed unanimously.

Concerning the proposed changes to Rule 55(a)(2), Mr. Wikstrom stated that he did not believe the general rule specifying the absence of further notice requirements for defendants in default for failure to appear should contain any exception for defendants served out of state. Mr. Wikstrom accordingly proposed to eliminate that exception. Leslie Slaugh agreed and stated that he believed the exception for defendants served by publication should be eliminated as well. Judge Boyce stated that eliminating the notice requirement for defendants served by publication could raise constitutional due process concerns in matters involving in personam jurisdiction.

Thomas Lee expressed concern that use of the term "personal service" in Rule 55(a)(2) could be ambiguous in light of the language in the newly amended Rule 4. He proposed that the new language in Rule 55 could simply read, "If the defendant has been defaulted for failure to appear and has been properly served under Rule 4" Judge McIff stated that phrase "unless otherwise ordered" should be inserted into the rule to give the court latitude to continue requiring notice in appropriate cases.

Leslie Slaugh noted that the above issues dovetail with concerns under Rule 58 about when the time frame for appeal begins running. Mr. Slaugh will consider potential corresponding amendments to Rule 58 in the fall.

Leslie Slaugh suggested revising proposed additional language in Rule 55(a)(1) to read simply "Unless otherwise ordered, if the defendant has been defaulted for failure to appear" Judge Boyce and James Soper favored retaining the language providing an exception for defendants served by publication.

In light of the number of concerns identified by the Committee, Mr. Wikstrom will ask Tim Shea to follow up with Leslie Slaugh and craft revised language to address the Committee's concerns regarding the amendments to Rule 55.

IV. RULE CHANGES TO FACILITATE ELECTRONIC FILING

Brent Johnson explained that Tim Shea desires two volunteers from the Committee to participate in reviewing the Rules of Civil Procedure and analyzing potential areas to address electronic filing. Todd Shaughnessy and Thomas Lee volunteered to work with Mr. Shea on these issues.

V. SUPREME COURT FORMS

Brent Johnson explained Tim Shea's April 16, 2001 letter requesting authorization from the Committee to move official court-approved forms to the Supreme Court's web page. Most members of the Committee expressed support for making the forms available on the web but were opposed to removing the forms from the hard-copy version of the Utah Court Rules. Upon motion by Leslie Slauch, seconded by Thomas Lee, the Committee unanimously adopted a recommendation approving the availability of the forms in electronic form but also retaining them in hard-copy format.

VI. OTHER BUSINESS

Francis Wikstrom announced that the September 26, 2001 meeting would be rescheduled for October 3, 2001, at 4:00 p.m.

VII. ADJOURNMENT

The meeting adjourned at 5:15 p.m. The next meeting of the Committee will be held at 4:00 p.m. on Wednesday, July 18, 2001, at the Administrative Office of the Courts.