

Agenda

Advisory Committee on Rules of Civil Procedure

July 18, 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
Consideration of comments. Recommendations to Supreme Court for final action.	Tim Shea
Small claims rules and forms. Consideration of comments. Recommendations to Supreme Court for final action.	Alicia Davis

Meeting Schedule

October 3
October 24
November 28
December: No meeting

MINUTES

UTAH SUPREME COURT ADVISORY COMMITTEE ON THE RULES OF CIVIL PROCEDURE

Thursday, July 18, 2001
Administrative Office of the Courts

Francis M. Wikstrom, Presiding

PRESENT: Francis M. Wikstrom, Honorable K. L. McIff, Mary Anne Q. Wood, R. Scott Waterfall, Honorable Anthony B. Quinn, Glenn C. Hanni, Honorable Ronald N. Boyce, Paula Carr, Terrie T. McIntosh, Todd M. Shaughnessy, Cullen Battle, Thomas R. Lee, Leslie W. Slauch

STAFF: Timothy M. Shea, James T. Blanch, Marilyn M. Branch, Alicia Davis

EXCUSED: Virginia S. Smith, James R. Soper, Honorable Darwin C. Hansen

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 16, 2001 meeting were reviewed and approved.

II. CONSIDERATION OF COMMENTS. RECOMMENDATIONS TO SUPREME COURT FOR FINAL ACTION

Tim Shea took the Committee through his May 25, 2001 memorandum concerning the rules and forms for which no comments were received following publication.

Terrie McIntosh noted a minor discrepancy between Rule 64D and its accompanying form regarding garnishment. The Committee agreed to amend the form to conform to the rule. No additional action was taken with respect to the rules on which no comment was received.

Tim Shea then explained comments that were received concerning the proposed amendments to Rule 4. In particular, the attorney general's office suggested that the waiver of service provisions should conform to the federal rule and that the service-by-mail provision should be abandoned. The attorney general provided a detailed explanation of the reasons for the comments.

Cullen Battle circulated a proposed amendment to Rule 4(d)(2)(B) designed to address the concerns raised by the attorney general. Mr. Battle's amendment would require service by mail to be addressed to the same persons upon whom personal service would be required, thus ensuring that the appropriate persons within the state government would receive the process, including the attorney general, with a corresponding signed receipt for each such person.

Todd Shaughnessy suggested that the problem could be addressed by simply exempting states from being subject to service by mail. Judge Quinn moved to exempt the state from service by mail, and Glenn Hanni seconded it. Thomas Lee desired further discussion on the rationale for the motion, and Judge Boyce noted that the complexity of the state bureaucracy justifies an exception. Todd Shaughnessy noted that exceptions and special requirements that apply when suing the state exist elsewhere in the law. Judge Quinn's motion passed unanimously.

Tim Shea then explained comments received concerning Forms 3A and 3B. The Committee agreed to include the court address on the Notice of Lawsuit/Request for Waiver form. The Committee otherwise decided to keep the proposed rule the same.

Tim Shea updated the Committee concerning the status of the ad hoc committee that is presently considering changes to the jury rules.

Scott Waterfall moved to submit the Committee's proposed amendments to the Utah Rules of Civil Procedure, as modified by the Committee in light of comments received from the bar, to the Supreme Court for consideration. The motion was seconded and passed unanimously.

III. SMALL CLAIMS RULES AND FORMS. CONSIDERATION OF COMMENTS. RECOMMENDATIONS TO THE SUPREME COURT FOR FINAL ACTION.

The Committee then considered comments that had been received with respect to the small claims rules. Going through Alicia Davis's May 24, 2001 memorandum setting forth proposed changes raised in the comments, Judge Quinn moved that the Committee approve the proposed changes in Rules 1, 2, 8, and 11. The motion was seconded, and it passed unanimously. With respect to Rule 4, Judge Quinn moved to approve the change with minor revisions. The motion was seconded, and it passed unanimously.

Concerning Rule 3, the Committee discussed whether to adopt the proposed change in subsection (b) permitting service of an affidavit up until the fourteenth day before trial. The Committee declined to change the time frame from thirty days to fourteen days. The Committee similarly decided not to adopt the proposed change in Rule 4(c).

After discussion, the Committee declined to adopt (a) the proposed changes concerning the rules governing counterclaims in excess of the jurisdictional amount; (b) the proposed changes to Rule 9 governing the requirements for default judgments; (c) the proposed changes in Rule 10 concerning the Court's discretion to set aside default judgments; or (d) the proposed language incorporating the requirements of the State's long-arm statute into the rules.

Concerning Rule 12, Alicia Davis explained that the impetus behind the proposed changes was to incorporate portions of the Code of Judicial Administration into the rules themselves. Cullen Battle stated that the detailed additions would be out of character considering the simple language of the rest of the Rules. Judge Boyce suggested that a simple reference note identifying the appropriate provisions of the Code of Judicial Administration might be an acceptable alternative to the proposed change. Tim Shea noted that the official form should take care of any issues raised in the proposed changes to Rule 12b, including requirements concerning the procedures in question. With the exception of adding a mailing

requirement at the end of subparagraph (b), the Committee declined to make any of the proposed changes to the rule.

The Committee then considered the suggestion under Rule 6 that some pretrial discovery be allowed in small claims cases. The Committee, after discussion, decided to leave the rule as is.

Thomas Lee made a motion to approve the small claims rules as amended and submit them to the Supreme Court for consideration. Leslie Slauch seconded the motion, and it passed unanimously.

Mr. Wikstrom thanked Judge Quinn and his committee for their work in developing the small claims rules.

IV. ADJOURNMENT

The meeting adjourned at 5:20 p.m. The next meeting of the Committee will be held at 4:00 p.m. on Wednesday, October 3, 2001, at the Administrative Office of the Courts.