

Agenda

Advisory Committee on Rules of Civil Procedure

October 24, 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
Change of judge after remand	Fran Wikstrom
Small Claims Rule 3	Tim Shea
URCP Rule 3. Payment of filing fee	Tim Shea
Rules 5 & 55. Service on defaulting party	Tim Shea
Rule 64D	Tim Shea

Meeting Schedule

October 24

November 28

December: No meeting

MINUTES

UTAH SUPREME COURT ADVISORY COMMITTEE ON THE RULES OF CIVIL PROCEDURE

Wednesday, October 24, 2001
Administrative Office of the Courts

Francis M. Wikstrom, Presiding

PRESENT: Francis M. Wikstrom, Honorable K. L. McIff, Honorable Anthony B. Quinn, Deborah Threedy, Leslie W. Slaugh, Glenn C. Hanni, Thomas R. Karrenberg, James R. Soper, Perrin Love, Terrie T. McIntosh, Thomas R. Lee, Mary Anne Q. Wood

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

EXCUSED: R. Scott Waterfall, Magistrate Judge Ronald N. Boyce

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 July 18, 2001 meeting were reviewed and approved.

II. CHANGE OF JUDGE AFTER REMAND

Mr. Wikstrom reminded the Committee that it had previously discussed whether to amend the rules to provide for a change of trial court judge after a reversal and remand on appeal. The Committee previously decided against changing the rule but indicated a willingness to reconsider the issue if the litigation section of the State Bar expressed continued interest in doing so. Since then, the litigation section of the State Bar solicited input from its membership on the issue and received none. In light of this, following brief discussion, the Committee determined not to consider the issue further at this time.

III. SMALL CLAIMS RULE 3

Tim Shea reported that the Supreme Court had, for the most part, approved the Committee's proposed new small claims rules as drafted. Since then, many persons have complained about certain provisions in Rule 3 that effectively eliminate the option of effective service by adult non-parties. These complaints are described in Tim Shea's memorandum to the Committee dated October 12, 2001.

Tim Shea proposed to solve this problem by amending Rule 3 to allow service by anyone "permitted by law" to serve process, which would encompass non-parties over the age of 18. Support for such a proposal comes from private process servers, court clerks, and others. Those

“permitted by law to serve process” are identified in Utah R. Civ. P. 4 and Utah Code Ann. §§ 78-12-2 and 78-27-58.

The Committee discussed various potential approaches to solving this problem. Mr. Wikstrom expresses concern about opening up service to any non-parties over the age of 18. He proposed language authorizing service by commercial process servers. The Committee as a whole remained committed to the goal of keeping the rule simple and not incorporating too many references to other sources in the rule. Tom Karrenberg agreed with Mr. Wikstrom that the problem could be corrected by inserting language authorizing service by commercial process servers. Deborah Threedy expressed concern that this could be too broad because anyone could potentially be considered a “commercial process server” if you paid him or her. Mr. Wikstrom proposed amended language for Rule 3 providing that service is complete upon “having the Affidavit delivered” by certain specified persons, including “persons regularly engaged in the business of service process.” Upon motion duly made and seconded, the Committee unanimously approved the proposed language amending Rule 3.

Mr. Wikstrom related to the Committee that the Supreme Court had been extremely appreciative of the work of the Committee and Judge Quinn’s subcommittee in putting together the Small Claims Rules.

IV. UTAH R. CIV. P. 3. PAYMENT OF FILING FEE

Tim Shea reported that the Supreme Court had initiated a change to Rule 3 on its own motion specifying that filing fees are jurisdictional. This change was made in response to a judicial opinion. This change is now out for comment. The comments will come to the Committee for consideration.

V. RULES 5 & 55 – SERVICE ON DEFAULTING PARTY

Tim Shea explained that for clarification purposes, he proposed removing certain notice provisions from Rule 55 and placing them in Rule 5. Mr. Shea explained that the remaining proposed changes included in his August 21, 2001 revisions were to clarify ambiguous provisions of Rules 5 and 55. The intention was to clarify the rules, not change policy. Mr. Shea explained that one substantive question is whether the rule should permit court clerks to sign default judgments or whether judges should be required to do so. Mr. Wikstrom proposed resolving this issue by revising the language in proposed Rule 55(b)(1)(C) to read simply, “the defendant has been served.” Thomas Lee moved to add the proposed language and to amend Rule 55(b)(1)(A) to read, “the default of the defendant is for failure to appear.” Tom Karrenberg seconded the motion. It passed unanimously.

Glenn Hanni moved to substitute the words “amount claimed” for “amount due” in Rule 55(b)(1). The motion was seconded. It passed unanimously.

Thomas Lee moved to approve Rule 55 as amended. The motion was seconded; it passed unanimously.

Concerning Rule 5, Leslie Slaugh proposed inserting language to require notice of entry of judgment to be sent to the attorney and to the party against whom default is entered. Mary

Anne Wood noted that this would be an *ex parte* contact with a represented party and that we should not create a rule that displaces the Rules of Professional Responsibility. Glenn Hanni stated his view that responsibility for such issues should remain with the lawyers. The Committee declined to require such notice to the party in default. Upon motion duly made and seconded, the Committee approved Rule 5 in the form proposed by Mr. Shea.

VI. RULE 64D

Mr. Shea explained the proposed amendments to Rule 64D attached to his October 12, 2001 memorandum to the Committee. The general intent of the amendment is to restate the current rule, in a simpler manner, without changing the substance of the rule. This is part of an overall goal of the Committee to modernize the language of the Rules.

Mr. Wikstrom suggested seeking guidance concerning the proposed amendment from attorneys who routinely use the garnishment procedure. The Committee agreed that this was a wise proposal. Tim Shea will circulate a non-redlined version of the rule reflecting the proposed amendments for the Committee to review. Tim Shea will also arrange for the production and circulation of additional materials explaining the process embodied in the proposed new rule. Mr. Wikstrom will ask Virginia Smith, Anne Milne, Richard Carling, Lawrence Peterson, and others to serve on a subcommittee headed by Tim Shea to provide input to the Committee concerning the proposed amended rule.

VII. SCHEDULING

The Committee will skip the meeting previously scheduled for November 28 and will follow up on the Rule 64D amendment at the January meeting.

VIII. ADJOURNMENT

The meeting adjourned at 5:35 p.m. The next meeting of the Committee will be held at 4:00 p.m. on Wednesday, January 23, 2002, at the Administrative Office of the Courts.