

# Agenda

## Advisory Committee on Rules of Civil Procedure

January 23, 2002  
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
Comments to Rules 3, 30 and 37	Tim Shea
Collection Rules	Tim Shea
Rule 4. Service in a foreign country	Tom Lee
Rule 47. Questions by jurors	Tim Shea
Rule 52. Findings by the court	Alicia Davis
Form 3. 10 day summons	Tim Shea
Integrate select rules of Code of Judicial Administration with URCP	Alicia Davis

### Meeting Schedule

March 27  
May 22  
September 25  
November 20 (3<sup>rd</sup> Wednesday)

# MINUTES

## UTAH SUPREME COURT ADVISORY COMMITTEE ON THE RULES OF CIVIL PROCEDURE

Wednesday, January 23, 2002  
Administrative Office of the Courts

Francis M. Wikstrom, Presiding

PRESENT: Francis M. Wikstrom, Honorable K. L. McIff, R. Scott Waterfall; Todd M. Shaughnessy; Leslie W. Slaugh, Thomas R. Karrenberg, Glenn C. Hanni, Terrie T. McIntosh, Paula Carr, Honorable Darwin C. Hansen, Mary Anne Q. Wood, Virginia Smith, Cullen Battle, Thomas R. Lee, James R. Soper, Deborah Threedy

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

EXCUSED: Magistrate Judge Ronald N. Boyce, Honorable Anthony B. Quinn

### 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 24, 2001 meeting were reviewed and approved with three amendments: the list of attendees was amended to reflect that Paula Carr was present at the October 24 meeting; the word “of” was inserted between the words “service” and “process” in the second to last line of the first full paragraph of page 2; and section III was amended to reflect the fact that the Committee’s enactment of the small claims rules at the October 24 meeting was to have immediate application.

### II. CHANGE TO FORM 2

Tim Shea advised the Committee of a proposal by Todd Shaughnessy to change the official Form 2—the 20-day summons—to include language stating that the complaint referenced in the summons is on file with the court. The change is to address a recent Court of Appeals decision stating that such language is necessary and that failure to include it renders a summons ineffective. A motion was made to amend Form 2 accordingly by inserting the phrase “which is on file with the clerk of the court” into the form. The motion was seconded, and it passed unanimously.

### III. COMMENTS TO RULES 3, 30, AND 37

Tim Shea reviewed with the Committee the comments received regarding proposed amendments to Rules 3, 30, and 37. Mr. Shea had previously summarized these comments in a December 5, 2001 memorandum to the Committee. Mr. Shea reminded the Committee that the

amendment to Rule 3 provided that filing fees for complaints are jurisdictional. The Supreme Court had adopted this amendment on its own motion. The Committee reviewed the comments received and discussed the merits of the proposed change. Leslie Slaugh proposed a revision to the new language indicating that affidavits of impecuniosity are still available and that a grace period should apply if a check for a filing fee bounces. Mr. Wikstrom observed that because the Supreme Court had adopted the rule on its own motion, the Committee may be limited in its power to accept or reject the change. Several members of the Committee proposed sending a letter to the Court outlining concerns about ways in which the change might have unintended adverse consequences in innocent situations. Judge Hansen suggested recommending an approach in which the fee would be jurisdictional but parties would have the ability, after the fact, to move the court for a retroactive enlargement of time within which to pay the fee. The Committee decided that Mr. Wikstrom would send a letter to the Court outlining the Committee's concern and inquiring whether the Court desired to consider proposals for alternative language from the Committee.

Tim Shea reminded the Committee that the proposed change to Rule 30 is to limit the length of depositions. The Committee considered the various comments that had been received concerning the change. A motion was made to adopt the change to Rule 30 as proposed. The motion was seconded, and it passed unanimously.

Tim Shea explained the technical change to Rule 37 and the comment received concerning that change. The Committee decided to approve the proposed change as made.

#### **IV. RULE 4: SERVICE IN A FOREIGN COUNTRY**

Thomas Lee explained that the current language of Rule 4 may have the unintended effect of permitting methods of service of process in foreign countries that fail to comply with the requirements of the Hague Convention. Mr. Lee proposed an amendment to Rule 4 expressly incorporating the Hague Convention and other internationally agreed-upon means of service into the rule. Mr. Lee pointed out that the proposed amendment would track the current language of the federal rule. The Committee discussed whether the rule change would impose heightened requirements for service on American citizens residing abroad. Leslie Slaugh moved to amend the rule as proposed. The motion was seconded. It passed unanimously.

#### **V. RULE 47: QUESTIONS BY JURORS**

Tim Shea explained a proposed amendment to Rule 47 submitted by the Committee on Improving Jury Service, as described in Mr. Shea's memorandum to the Committee dated December 19, 2001. The objective of the proposed change is to clarify expressly that a judge may, but need not, allow the jury to propose questions to witnesses. The proposed change also set forth a procedure for such questioning by the jury. Some members of the Committee suggested that jurors should not ask questions and that the judge should not be permitted to allow them to do so. Judge Hansen indicated that some of his colleagues had permitted the process and were in favor of it. However, Judge Hansen himself did not employ such a procedure because he feels that such an approach interferes with the lawyers' right to present their cases. Judge McIff stated that any such rule would have to be applied cautiously to prevent jurors from interfering with the presentations of the lawyers. Nevertheless, Judge McIff believes that jury questions can

be helpful in appropriate circumstances. In practice, Judge McIff had allowed questions from the jury and has involved lawyers in the discussion about what questions should be asked and how they should be asked. Thomas Lee questioned whether adopting the proposed rule change, with its detailed language, would constitute excessive micromanagement of an issue best left to the discretion of the judges. Mr. Lee felt that no change to the rule should be made in the absence of some evidence that there has been a problem in practice. Judge Hansen indicated that he felt the procedure outlined in the proposed rule made a good deal of sense for judges who wished to allow questions by jurors. Tom Karrenberg also felt it was wise to specify a particular procedure in the rule.

Considering the number of issues and various viewpoints involved, Mr. Wikstrom deferred further consideration of the issue until later meetings of the Committee.

## **VI. FORM 3. 10-DAY SUMMONS**

Paula Carr proposed a change to the official Form 3—the 10-day summons—to indicate that a complaint must be filed within a specified number of “business” days. Ms. Carr observed that such a change is desirable to prevent premature telephone inquiries about whether a complaint has been filed. Rather than mentioning business days, some Committee members favored an amendment specifying that a complaint must be filed within 20 “calendar days” after service of the summons, and providing simply that the defendant may call the clerk “thereafter” to inquire whether the complaint is on file. A motion was made and seconded to amend the form in this manner. It passed unanimously.

## **VII. RULE 52. FINDINGS BY THE COURT**

Alicia Davis explained a proposed amendment to Rule 52 requiring parties to object to specific findings of fact to preserve challenges on appeal based on the sufficiency of evidence. Many members of the Committee expressed concern that this would simply invite reargument of issues already decided by the Court. Others felt that the rule change would make the marshalling of evidence requirement even more onerous than it already is. Other Committee members noted that the rule could serve concerns of judicial economy in appropriate cases. Mr. Wikstrom deferred the issue for further consideration at future meetings.

## **VIII. INTEGRATE SELECT RULES OF CODE OF JUDICIAL ADMINISTRATION WITH URCP**

Alicia Davis reviewed and explained proposals that various committees have been considering to remove procedural rules from the Code of Judicial Administration. Ms. Davis explained that efforts are presently underway to reorganize the Code of Judicial Administration and potentially to incorporate various rules of practice into the Rules of Civil Procedure and other applicable sets of procedural rules. Input is needed from the committees on these rules to assist in the effort. Cullen Battle and Thomas Karrenberg will consider potential approaches to this endeavor and will raise them with the Committee on a future date.

## **IX. COLLECTION RULES**

Tim Shea reviewed with the Committee his December 3, 2001 memorandum discussing potential extensive revisions to Rules 64A through 64F, which govern collection issues. Leslie Slaugh suggested that Rule 69 should also be rewritten as part of this effort. Mr. Slaugh also suggested that certain collection procedures, such as prejudgment attachment, may be redundant or unnecessary.

Several Committee members expressed approval of the organizational structure of the collection rules contained in Mr. Shea's proposed revisions. Cullen Battle expressed concern, however, that the structure requires too much cross-referencing between rules governing various procedures. Mr. Wikstrom suggested it might be time to move away entirely from the archaic concepts embodied in the present collections rules and modernize the procedures and labels involved in collections practice. Mr. Shea noted that many of the questions and issues raised by Committee members went far beyond the considerations that led to the draft revisions of the collections rules in the first place. Glenn Hanni reminded the Committee that some prior efforts by the Committee to eliminate archaic concepts had been unsuccessful due to the rich body of existing law discussing such common-law concepts.

Many members of the Committee expressed interest in an even more dramatic rewriting of the collection rules than that contained in Mr. Shea's draft revisions to Rule 64.

Mr. Wikstrom deferred the issue of amending the collection rules for further consideration at future meetings.

## **X. ADJOURNMENT**

The meeting adjourned at 6:05 p.m. The next meeting of the Committee will be held at 4:00 p.m. on Wednesday, March 27, 2002, at the Administrative Office of the Courts.