

Reminder: The meeting date has been changed
from April 26 to April 19

Agenda
Advisory Committee
on Rules of Civil Procedure

April 19 , 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 Perrin Love Todd Shaughnessy
Rule 30. Minimum qualifications for preparing transcripts Rule 32. Format for deposition testimony offered in court	Tim Shea
Simplified rules of procedure for small claims cases	Judge Quinn Peggy Gentles
Rule 54(e). Prejudgment interest	Peggy Gentles
Rule 26(i) and 30(f). Filing Deposition Transcripts	Tim Shea
Rule 63A. Change of Judge upon Remand after Appeal	Tom Karrenberg
Rule 6. Calculation of Time	James Blanch

Meeting Schedule

May 24
September 27
October 25
November 29 (5th Wednesday)

MINUTES

Utah Supreme Court Advisory Committee on the Rules of Civil Procedure

**Wednesday, April 19, 2000
Administrative Office of the Courts**

Francis M. Wikstrom, Presiding

PRESENT: Paula Carr, Thomas R. Karrenberg, Thomas Lee, Honorable Anthony B. Quinn, Glenn C. Hanni, Honorable Ronald N. Boyce, W. Cullen Battle, Terrie T. McIntosh, Virginia S. Smith, James R. Soper, Todd M. Shaughnessy, Leslie W. Slauch, Mary Anne Q. Wood

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

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 22, 2000 meeting were reviewed. Cullen Battle moved to approve the minutes. The motion was seconded, and the minutes were approved without amendment.

II. RULE 4. SERVICE.

Cullen Battle distributed proposed stylistic changes to the draft amendments to Rule 4 that Peggy Gentles had prepared. Mr. Battle described each of his proposed stylistic changes and explained the reasoning behind each change.

Judge Boyce observed that language should be included in the rule to address situations in which defendants deliberately evade service. Judge Boyce proposed additional language to insert into the rule stating that the court can order service by alternative means if it appears the defendant is deliberately evading service. Leslie Slauch and Tom Karrenberg stated that the concept is adequately addressed in the current draft of the rule. The Committee concluded that additional language was unnecessary.

Mr. Wikstrom asked the Committee to begin by considering the structural issues raised by Cullen Battle, which involve a renumbering of the subsections of the rules. Thomas Lee moved to adopt the structure proposed by Cullen Battle. Tom Karrenberg seconded the motion, and it passed unanimously.

The Committee next considered specific issues regarding the language of the proposed rules. The Committee concluded that references to the place of service should refer to the United States and its territories and possessions. Mr. Wikstrom inquired whether it was necessary to

include specific references in the first subparagraph of section (d) to marshals, sheriffs, and other persons who can effect service. The Committee determined to keep the references.

The Committee then considered the alternative options for language permitting service by mail in subsection (d)(2), as drafted by Peggy Gentles. Thomas Lee stated that he preferred the approach contained in option two because the language is more consistent with the remainder of the rule. Cullen Battle moved to adopt option two. Judge Boyce seconded the motion, and it passed unanimously.

The Committee then considered Cullen Battle's proposed changes to the language of option two. Tom Karrenberg moved that language be added to subparagraph (2) requiring service on "the defendant's authorized agent for service of process." Todd Shaughnessy suggested that the language should track the language regarding defendant's agents contained in subparagraph (d)(1)(v), stating "defendant's agent authorized by appointment or by law to receive service of process." The Committee adopted the language proposed by Mr. Shaughnessy.

Mr. Wikstrom observed that the territorial references to the United States in option two should refer to its territories and possessions. Following discussion, the Committee unanimously concluded that the reference should be to "any judicial district of the United States." The Committee approved the language of paragraph two of option two with the above change.

The Committee considered and approved language clarifying the calculation of time as set forth in subparagraph 3 of option two.

With all of the above changes, Tom Karrenberg moved to amend Rule 4 to provide for service by mail. The motion was seconded and passed by the Committee.

Tim Shea assured the Committee that the numbering in the amended rule will be consistent and correct.

The Committee next considered Peggy Gentles' proposed changes to the language in subsection (g)(3) describing the requirements for service by publication. The staff will rework and streamline this language to prevent it from being redundant of subparagraph (c)(2).

The Committee next considered the proposal by Todd Shaughnessy and Peggy Gentles to shorten the language regarding proof of service in subparagraph (h) of the Rule. The Committee debated whether an affidavit must be filed and, if so, whether it must be signed by the lawyer. Staff will draft language in an effort to address the Committee's concerns.

The Committee unanimously approved the deletion of subparagraph (k) of the rule, which provided for endorsement of date and time of service on the process.

The Committee next considered whether the draft waiver-of-service provisions, which are similar to the federal rules, should be included in the state rule. Leslie Slauch stated that no one would ever use the waiver-of-service provision if service by mail is permitted. Thomas Lee disagreed, stating that retaining the option is a good idea. Tim Shea reminded the Committee that it was a request from the Sheriff's office to permit waiver of service that caused the Committee to

consider changes to Rule 4 in the first place. Leslie Slaugh moved to eliminate the waiver of service provision. The motion failed.

The Committee next considered the specific language to be included in the waiver-of-service provision. Cullen Battle agreed to review the proposed waiver-of-service provisions with an eye toward shortening them. The Committee agreed that the words "Unless service is waived in writing . . ." should be included at the beginning of subparagraph (d).

III. RULE 30. MINIMUM QUALIFICATIONS FOR PREPARING TRANSCRIPTS. RULE 32. FORMAT FOR DEPOSITION TESTIMONY OFFERED IN COURT.

Tim Shea explained the language he has drafted to implement the three changes regarding court reporter requirements discussed at the last meeting. This language was attached to Mr. Shea's memorandum to the Committee dated April 11, 2000.

Tom Karrenberg questioned whether the issues addressed in the proposed changes are sufficiently problematic to justify amending the rules. He also stated that the rule would open up problems regarding the ability of out-of-state court reporters to transcribe depositions. Mr. Karrenberg stated that in his experience, there has not been a problem with the quality of transcripts.

Judge Quinn stated that in his court, lawyers had merely been having their assistants prepare typed transcriptions of audiotapes. It has worked well in his court.

The Committee rejected the second and third proposed changes in Mr. Shea's memorandum regarding imposing neutrality or licensing requirements on individuals who transcribe electronic recordings.

The Committee also rejected the first proposed changes imposing licensing requirements on stenographers in depositions.

The Committee next considered Tim Shea's proposed addition to Rule 32 to require transcripts of those portions of deposition testimony offered in evidence.

Judge Boyce expressed opposition to the second sentence of the proposed subdivision (f), requiring deposition testimony to be presented in non-stenographic form. Judge Quinn moved to strike the second sentence of subparagraph (f). Glenn Hanni seconded the motion, which passed unanimously.

The Committee adopted the proposed addition to Rule 32, with the foregoing amendment.

IV. ADJOURNMENT.

Mr. Wikstrom adjourned the meeting at 6:10 p.m. The next meeting of the Committee will be held on Wednesday, May 24, 2000, at the Administrative Office of the Courts.