

## **MINUTES**

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

**Wednesday, November 29, 2000  
Administrative Office of the Courts**

**Francis M. Wikstrom, Presiding**

**PRESENT:** Perrin R. Love, Todd M. Shaughnessy, Honorable Ronald N. Boyce, Terrie T. McIntosh, Thomas Lee, Glenn Hanni, Paula Carr, Honorable Anthony B. Quinn, Virginia Smith, Leslie Slauch, Tom Karrenburg

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

**EXCUSED:** Mary Anne Q. Wood

**GUEST:** Barbara L. Maw

#### **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 4, 2000 meeting were reviewed. The minutes were approved with one change to reflect that Judge Boyce's absence from the November 1 meeting was excused.

#### **II. MEETING SCHEDULE**

The Committee meetings for February, April, and May 2001 were rescheduled to February 21, April 18, and May 16, respectively.

#### **III. PROPOSED SMALL CLAIMS RULES & FORMS**

Chairman Wikstrom welcomed Barbara Maw to discuss the contents of a letter she had written to the Committee on November 28, 2000, regarding personal injury cases being tried in small claims court. Ms. Maw stated that she believed a problem had developed recently with complex personal injury cases being pursued in small claims court. Procedural issues relating to such a case were recently before the Utah Supreme Court in Kawamoto v. Fratto, 994 P.2d 187 (2000), in which Ms. Maw represented the petitioner. Ms. Maw summarized her letter and the Kawamoto holding and stated that in her view, the biggest current problem in small claims practice is that defendants in personal injury cases are being deprived of their right to jury trials in small claims court.

Mr. Wikstrom questioned whether it was within the authority of the Committee to address the issues raised by Ms. Maw. Leslie Slaugh stated that the problem is real and is not limited to personal injury cases, but he felt that the issue is a legislative problem that implicates the jurisdiction of the small claims court. Tim Shea confirmed that the Committee lacks the authority to alter the jurisdiction of the small claims court. Judge Boyce suggested that the appropriate approach would be for persons sharing Ms. Maw's concerns to seek a legislative change excluding specified categories of cases from small claims court.

The Committee then turned its attention to a rule-by-rule review of the small claims rules previously distributed by Peggy Gentles, with comments received from judges pro tem, boards of judges, clerks of court, and attorneys.

Rule 1 was approved without amendment, with the understanding that the forms referenced in the rule will include a form for an affidavit of impecuniosity.

Rules 2(a) and 2(b) were approved without amendment. With respect to Rule 2(c), the Committee discussed the possibility of permitting interpleader plaintiffs to retain the funds at issue until the conclusion of the case, rather than paying them into court. On motion duly made and seconded, the Committee amended the final sentence of Rule 2(c) to permit interpleader plaintiffs either to retain the subject funds or pay them into court during the case.

With respect to Rule 3(a), Peggy Gentles noted that the words "for service upon the defendant and pay for that service" should not have been stricken. With that observation, the Committee approved Rule 3(a) without amendment.

Rules 3(b) and 3(c) were approved without amendment.

Rules 4(a) and 4(f) were approved without amendment, following discussion concerning whether it is wise to permit defendants to transfer entire cases out of small claims court by seeking more than \$5,000 in their counter-affidavits. The Committee consensus was that the benefits of this approach, which attempts to keep together in the same forum all claims relating to the factual transactions at issue, outweigh its drawbacks.

Rule 5 was approved without amendment.

With respect to Rule 6(a), Barbara Maw stated that the rule should not explicitly prohibit discovery because parties presently conduct discovery in small claims cases anyway. She felt some mechanism for discovering the other side's evidence would be advisable. Judge Quinn defended the proposal not to allow discovery based on the economics of small claims matters. After weighing both sides of this issue, the Committee approved Rule 6(a) without amendment.

A motion was made to amend Rule 6(b) to provide that written motions and responses can be filed prior to trial but that no motions, whether oral or written, will be heard prior to trial. The motion was seconded. It passed unanimously.

With respect to Rule 6(c), Thomas Lee made a motion to change the word "postponement" to "continuance" in the third line for the sake of consistency. Judge Quinn

moved to change the thirty-day limitation on continuances to forty-five days. Both motions were seconded and passed unanimously. The Committee made two minor additional changes to Rule 6(c) for purposes of clarity and accuracy.

Rule 7(a) was approved without amendment. With respect to Rule 7(b), a motion was made to clarify that subpoenas are served by the clerk of the court, not the parties. The motion was seconded. It passed unanimously.

With respect to Rule 7(c), Barbara Maw stated her view that small claims judges should be required to allow parties to question their witnesses. Judge Quinn strongly disagreed, stating that efficiency requires that judges have the ability to control the procedure for receiving testimony. Leslie Slaugh stated that he believes the rule as drafted adequately satisfies both sides of the issue because it allows judges to permit parties or counsel to conduct questioning and directs judges to give parties a reasonable opportunity to present their positions. Perrin Love moved to amend the second sentence of Rule 7(c) to make the language parallel with the first and third sentences of the rule. Judge Quinn seconded the motion. The motion failed. Rule 7(c) was approved without amendment.

With respect to Rule 7(d), a motion was made to reorder the sentences and to substitute the word "judge" for the word "court." The motion was seconded. It passed unanimously.

Rule 7(e) was approved without amendment. Rule 7(f) was approved with a minor grammatical correction.

Rules 8(a) and 8(b) were approved without amendment, with the understanding that the term "with prejudice" will be defined in the instructions that will accompany the rules.

With respect to Rule 8(c), a motion was made to strike the last line of the rule, with the understanding that the judgment form included with the rules will contain language advising the losing party of the right to seek to set aside the judgment. The motion was seconded. It passed unanimously.

#### **IV. ADJOURNMENT**

The meeting adjourned at 6:00 p.m. The next meeting of the Committee will be held on Wednesday, January 24, 2001, at the Administrative Office of the Courts, at which time the remaining agenda items will be addressed.