

# Agenda

## Advisory Committee on Rules of Civil Procedure

January 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
Simplified rules of procedure for small claims cases	Judge Quinn Peggy Gentles
Jury Rule Amendments	Tim Shea
Rules 5 and 32 published for comment	Peggy Gentles
Garnishment Forms	Peggy Gentles
Rule 4. Service	Peggy Gentles
Proposed federal rules	Tom Lee

### Meeting Schedule

February 21  
March 28  
April 18  
May 16  
September 26  
October 24  
November 28  
December: No meeting

# **MINUTES**

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

**Wednesday, January 24, 2001  
Administrative Office of the Courts**

**Francis M. Wikstrom, Presiding**

**PRESENT:** Francis M. Wikstrom, Honorable K. L. McIff, Glenn C. Hanni, Paula Carr, Terrie T. McIntosh, W. Cullen Battle, Thomas R. Karrenberg, James R. Soper, Virginia S. Smith, Perrin R. Love, Leslie W. Slauch, R. Scott Waterfall

**STAFF:** Timothy M. Shea, Peggy Gentles, James T. Blanch, Marilyn M. Branch

**EXCUSED:** Honorable Ronald N. Boyce, Honorable Darwin C. Hansen, Mary Anne Q. Wood, Thomas R. Lee, 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 November 29, 2000 meeting were reviewed and approved without amendment.

### **II. JURY RULE AMENDMENTS**

Chairman Wikstrom directed the Committee's attention to the proposed changes to the rules concerning juries that Tim Shea had previously distributed to the Committee. Mr. Shea reminded the Committee that the proposals had come from an ad hoc committee studying the improvement of jury service. The Committee then turned its attention to the specifics of the proposed rule changes.

Regarding the proposed change to Rule 47(a), Scott Waterfall inquired whether it was advisable to require judges to inform counsel in advance that they will be permitted to address the prospective jurors. Glenn Hanni observed that it is useful for practitioners to know in advance if they will be required to make such statements.

Regarding the proposed changes to Rule 47(b), Tom Karrenberg suggested that the rule as drafted may not achieve its apparent objective of concealing from jurors which of them are alternates because the alternates would be segregated at the beginning of deliberations. Judge McIff, who had been a member of the committee that recommended the changes, stated that this would not be a particular problem because the real objective of the change is simply to encourage alternate jurors to pay closer attention during the trial.

The Committee then turned its attention to the proposed changes to Rule 47(f), concerning challenges for cause. Tim Shea noted that the change to subsection (6) is a controversial proposal for several reasons, including that it arguably reverses the presumption concerning the impartiality of jurors by suggesting that the judge must be affirmatively convinced of a juror's impartiality before that juror is permitted to serve. Mr. Shea explained that the conscious purpose of the Committee was to lower the threshold necessary to disqualify a juror for cause. Mr. Wikstrom expressed his support for the change, arguing that it addresses a real problem. Leslie Slaugh indicated that he supports the rule as well. Perrin Love expressed concern that the change appears to create a standard of "clear and convincing" evidence to show that jurors are qualified to serve, even though the comment to the rule purports not to create such an evidentiary standard. Judge McIff stated that he did not consider this to be a problem. Tim Shea proposed that an appropriate action for the Committee would be to approve the change as written and then watch the reaction of the bar and judges during the comment period. Judge McIff reminded the Committee that the ad hoc committee that proposed the changes had debated competing concerns over language carefully and thoroughly. Tom Karrenberg inquired whether the rule should require that challenges for cause be conducted on the record. Tim Shea responded that the ad hoc committee had decided not to include such a requirement expressly because there is a general provision in the rules that everything done by the judge is considered to be on the record.

Regarding the proposed changes to Rule 47(m), Tim Shea noted that rule would mandate judges to permit jurors to take notes in all cases. Mr. Shea observed that this was a non-controversial change that appeared to have universal support.

The Committee then considered proposed changes to Rule 51, concerning instructions to the jury. Tim Shea explained the proposed changes to Rule 51(a), permitting preliminary instructions, and the proposed additions to Rule 51(b), regarding interim instructions. Judge McIff directed the Committee's attention to the fact that objections to jury instructions will, under the new rule, be made outside the hearing of the jury. Glenn Hanni inquired whether this is intended to eliminate the practice of taking exceptions after the jury retires to deliberate. Mr. Wikstrom replied that this would not be the effect of the rule because the purpose of exceptions is merely make a record of objections that have previously been made to the judge during instructions conferences. Judge McIff confirmed that the rule was not intended to prohibit the taking of exceptions after the jury retires.

Chairman Wikstrom requested a vote on the proposed changes. A motion was made and seconded to approve the changes to the rules concerning juries pending input from the Committee on Criminal Procedure. The motion passed unanimously.

### **III. SIMPLIFIED RULES OF PROCEDURE FOR SMALL CLAIMS CASES**

The Committee then turned its attention to the comments that had been received concerning the proposed simplified rules of procedure for small claims cases. Peggy Gentles had previously circulated these comments to the Committee on January 17, 2001. Ms. Gentles noted that some concerns had been raised that plaintiffs should not be able to obtain default judgment under Rule 9 without making any showing at all. Chairman Wikstrom indicated concern over this issue as well. Glenn Hanni moved to amend Rule 9(a) and 9(b) to provide that a judgment

cannot exceed the amount requested in the plaintiff's affidavit. Judge McIff seconded the motion. It passed unanimously.

The Committee then proceeded to consider the comments received for the other rules. The Committee approved Rule 10 without amendment and Rules 11 and 12 with two minor changes for purposes of clarification.

Tom Karrenberg moved to approve Rules 10 through 12 for publication. Glenn Hanni seconded the motion. It passed unanimously.

The Committee then turned its attention to the comments received on the forms for the small claims rules. The Committee decided to remove the "Agent & Title" line from the form affidavit and order. A motion was made to eliminate line 3 from the form affidavit. The motion was seconded. It passed unanimously.

Regarding the instructions attached to the form affidavit, Terrie McIntosh inquired whether service by mail is advisable in small claims court. Leslie Slaugh suggested that perhaps the small claims rules should not permit service by mail. Mr. Wikstrom observed that as with the regular rules, service by mail will require judges in small claims court to be particularly careful in deciding whether to grant default judgments. After further discussion, the Committee concluded not to make any changes concerning service by mail.

Concerning page 4 of the instructions form, the Committee unanimously decided, on motion by Scott Waterfall, to change paragraph 2 to read that "you may not be able to re-file your claim."

Concerning page 5 of the instructions form, the Committee approved minor wording changes in paragraph 3. In paragraph 4, the Committee deleted the reference to "subpoena" in favor of simply stating that parties should have witnesses at trial.

Concerning page 6 of the instructions form, the Committee made minor wording changes to paragraph 5.

Concerning the small claims judgment form, the Committee decided to include a blank space in which to enter the current legal rate of interest.

Tom Karrenberg moved that the Committee approve the small claims forms, as amended. Cullen Battle seconded the motion, which passed unanimously.

A motion was made to strike subsection (k) from Rule 13 of the small claims rules. The motion was seconded. It passed unanimously.

#### **IV. RULES 5 AND 32 PUBLISHED FOR COMMENT**

Peggy Gentles reported that the changes to Rules 5 and 32 of the Rules of Civil Procedure had been published for comment and that no commentary had been received.

**V. ADJOURNMENT**

The meeting adjourned at 6:00 p.m. The next meeting of the Committee will be held on Wednesday, February 21, 2001, at the Administrative Office of the Courts, at which time the remaining agenda items will be addressed.