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Dicta Editorial Board

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Amended Rules of Civil Procedure

DICTA

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Amended Rules of Civil Procedure

On December 28, 1944, at an en banc session of the Supreme Court the following amendments to the *Rules of Civil Procedure* were unanimously adopted to become effective February 28, 1945:

RULE 4

"(f) *Personal Service Outside the State.* Personal service outside the state may be made:

"1. In any action, upon a natural person over the age of 18 years who is a resident of this state by delivering a copy of the process, together with a copy of the pleading upon which it was issued, to the person served. (From Wyo. Comp. Stat. 1920, Secs. 5636, 5641.)

"2. In any action, upon a person domiciled in this state, other than a natural person, by delivering a copy of the process, together with a copy of the pleading upon which it was issued, in the manner provided by this rule for personal service in this state upon such person.

"3. In any action affecting specific property or status or in any other proceeding in rem, upon a natural person of any age, without regard to his residence, or upon any other person, without regard to its domicile, by delivering a copy of the pleading and process thereon, in the manner provided by this rule for personal service in this state upon such person. Service under this paragraph 3 upon a natural person under the age of 18 years may be made by delivering a copy of said pleading and process to such person and another copy thereof to the other person designated by subparagraph (e) (2) of this rule, wherever, within or without this state, such other person may be found. (From Code, Sec. 45.)

"4. No provision of this subdivision (f) shall be construed to limit the right to serve process in any other manner authorized by this rule.

"(g) * * *

"(2) * * *

"(iv) Non-residents of the state; persons who have departed from the state without intention of returning; persons who conceal themselves to avoid service of process; or persons whose whereabouts is unknown and who cannot be served by personal service in the state. (From Code Sec. 45 (b).)

“(h) *Publication.* The party desiring service of process by publication shall file a motion verified by the oath of such party or of some one in his behalf for an order of publication. It shall state the facts authorizing such service, and shall show the efforts, if any, that have been made to obtain personal service within this state and shall give the address, or last known address, of each person to be served or shall state that the same is unknown. The court shall hear the motion ex parte and, if satisfied that due diligence has been used to obtain personal service within this state, or that efforts to obtain the same would have been to no avail, shall order publication of the process in a newspaper published in the county in which the action is pending. Such publication shall be made for four weeks. Within 10 days after the order the clerk shall mail a copy of the process to each person whose address has been stated in the motion. Service shall be complete on the day of the last publication. If no newspaper be published in the county, the court shall designate one in some adjoining county. (From Supreme Court Rule 14A, Code Secs. 45, 46, 47 and 50.)”

RULE 98

“(c) *Venue for Tort, Contract and Other Actions.* Except as provided by subparagraphs (a) and (b) of this Rule, an action shall be tried in the county in which the defendants, or any of them, may reside at the commencement of the action, or in the county where the plaintiff resides when service is made on the defendant in such county; or if the defendant be a non-resident of this state, the same may be tried in any county in which the defendant may be found in this state, or in the county designated in the complaint, and if any defendant is about to depart from the state, such action may be tried in any county where plaintiff resides, or where defendant may be found and service had; provided, however, that an action on book account or for goods sold and delivered may also be tried in the county where the plaintiff resides or where the goods were sold; an action upon contract may also be tried in the county in which the contract was to be performed; an action upon note or bill of exchange may also be tried in the county where the same was made payable; and an action for tort may also be tried in the county where the tort was committed. (From Code, Sec. 29.)”

RULE 111

“(c) *How Obtained.* To obtain a writ of error a party shall within the time fixed by this rule docket the case in the supreme court either by filing a praecipe for a writ of error or by filing a record of the proceedings in the trial court prepared in compliance with Rule 112. *There shall also be filed with the record a designation of parties, which lists the names of the plaintiffs in error and of the defendants in error.* Where the record is not filed at the time of the docketing, the clerk of the

supreme court shall issue and transmit to the clerk of the trial court a writ of error commanding that a correct transcript of the record of the case be certified to the supreme court within 60 days from the receipt of such writ, or within such additional time as the supreme court may order. Where the record is filed at the time of the docketing, the clerk of the supreme court shall issue a writ of error and shall file the same with the record of the case. (Part new and part from Supreme Court Rule 19.)"

RULE 115

"(i) *Number of Copies to Be Filed and Served.* One original copy of every typewritten brief and typewritten abstract, and one original copy of every motion shall be filed. Two copies of each printed brief, abstract, or other printed paper, and one copy of each typewritten paper shall be served on all parties, and proof of service filed with the clerk. No such service shall be required upon a defendant in error who has not entered his appearance in the supreme court as stated in the summons to hear errors, but in lieu of such service one additional copy of each such paper shall be filed. (From Supreme Court Rules 38 and 46.)

NOTE

"For service see Rule 5. See also subdivisions (a) and (b) of this Rule 115."

THE COLORADO CONSTITUTION

On January 2 a luncheon was held at the Olin Hotel for the incoming General Assembly of Colorado. At that time it was addressed by William W. Grant, Edward L. Wood, Allen Moore, and Philip S. Van Cise on the necessity for a constitutional convention for Colorado.

Mr. Moore gave the history of the constitution; that it was adopted in 1876 and there had been no constitutional convention since that time, although there had been many amendments.

Mr. Wood stressed the judiciary. He advocated the abolition of the county courts and the incorporation of their work in the district court; a permanent chief justice rather than the rotation of the office each two years; that the judiciary be non-political and chosen by some selective method to insure tenure in office of competent non-political judges.

Mr. Van Cise advocated the short ballot with the election of not more than governor, lieutenant governor and auditor for state offices; the elimination of many county officers and their appointment by the county commissioners; a four-year term for state and county officers; four-year terms for members of the house and six-year terms for members of the senate, with a proportionate share of these being elected every two years.

All four recommended that the present legislature pass a joint resolution submitting to the people a call for a constitutional convention.