

# Revised Agenda

## Advisory Committee on Rules of Civil Procedure

January 26, 2005  
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 9. SB 10. Designation of persons charged with fault.	Paul Belnap Ralph Dewsnap John Lund
Rule 68. Offer of judgment.	Rep. LaVar Christensen
Report on meeting with Supreme Court.	Fran Wikstrom
Rule 62. Temporary stay in execution of judgment.	Frank Carney
Rule 38. Jury demand.	Frank Carney
Rule 5. Fax filing.	Tim Shea
Small Claims Rule 6. Pretrial.	Tim Shea
Small Claims Rule 9. Default judgment.	Tim Shea
E-filing rules.	Tim Shea

### Meeting Schedule

February 23, 2005  
March 23, 2005  
April 27, 2005  
May 25, 2005  
July 27, 2005  
September 28, 2005  
October 26, 2005  
November 16, 2005

Committee Web Page: <http://www.utcourts.gov/committees/civproc/>

1 Rule 9. Pleading special matters.

2 (a)(1) Capacity. It is not necessary to aver the capacity of a party to sue or be sued or the  
3 authority of a party to sue or be sued in a representative capacity or the legal existence of an  
4 organized association of persons that is made a party. A party may raise an issue as to the legal  
5 existence of any party or the capacity of any party to sue or be sued or the authority of a party to  
6 sue or be sued in a representative capacity by specific negative averment, which shall include  
7 facts within the pleader's knowledge. If raised as an issue, the party relying on such capacity,  
8 authority, or legal existence, shall establish the same on the trial.

9 (a)(2) Designation of unknown defendant. When a party does not know the name of an  
10 adverse party, he may state that fact in the pleadings, and thereupon such adverse party may be  
11 designated in any pleading or proceeding by any name; provided, that when the true name of  
12 such adverse party is ascertained, the pleading or proceeding must be amended accordingly.

13 (a)(3) Actions to quiet title; description of interest of unknown parties. In an action to quiet  
14 title wherein any of the parties are designated in the caption as "unknown," the pleadings may  
15 describe such unknown persons as "all other persons unknown, claiming any right, title, estate or  
16 interest in, or lien upon the real property described in the pleading adverse to the complainant's  
17 ownership, or clouding his title thereto."

18 (b) Fraud, mistake, condition of the mind. In all averments of fraud or mistake, the  
19 circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent,  
20 knowledge, and other condition of mind of a person may be averred generally.

21 (c) Conditions precedent. In pleading the performance or occurrence of conditions precedent,  
22 it is sufficient to aver generally that all conditions precedent have been performed or have  
23 occurred. A denial of performance or occurrence shall be made specifically and with  
24 particularity, and when so made the party pleading the performance or occurrence shall on the  
25 trial establish the facts showing such performance or occurrence.

26 (d) Official document or act. In pleading an official document or act it is sufficient to aver  
27 that the document was issued or the act done in compliance with law.

28 (e) Judgment. In pleading a judgment or decision of a domestic or foreign court, judicial or  
29 quasi judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision  
30 without setting forth matter showing jurisdiction to render it. A denial of jurisdiction shall be

31 made specifically and with particularity and when so made the party pleading the judgment or  
32 decision shall establish on the trial all controverted jurisdictional facts.

33 (f) Time and place. For the purpose of testing the sufficiency of a pleading, averments of  
34 time and place are material and shall be considered like all other averments of material matter.

35 (g) Special damage. When items of special damage are claimed, they shall be specifically  
36 stated.

37 (h) Statute of limitations. In pleading the statute of limitations it is not necessary to state the  
38 facts showing the defense but it may be alleged generally that the cause of action is barred by the  
39 provisions of the statute relied on, referring to or describing such statute specifically and  
40 definitely by section number, subsection designation, if any, or otherwise designating the  
41 provision relied upon sufficiently clearly to identify it. If such allegation is controverted, the  
42 party pleading the statute must establish, on the trial, the facts showing that the cause of action is  
43 so barred.

44 (i) Private statutes; ordinances. In pleading a private statute of this state, or an ordinance of  
45 any political subdivision thereof, or a right derived from such statute or ordinance, it is sufficient  
46 to refer to such statute or ordinance by its title and the day of its passage or by its section number  
47 or other designation in any official publication of the statutes or ordinances. The court shall  
48 thereupon take judicial notice thereof.

49 (j) Libel and slander.

50 (j)(1) Pleading defamatory matter. It is not necessary in an action for libel or slander to set  
51 forth any intrinsic facts showing the application to the plaintiff of the defamatory matter out of  
52 which the action arose; but it is sufficient to state generally that the same was published or  
53 spoken concerning the plaintiff. If such allegation is controverted, the party alleging such  
54 defamatory matter must establish, on the trial, that it was so published or spoken.

55 (j)(2) Pleading defense. In his answer to an action for libel or slander, the defendant may  
56 allege both the truth of the matter charged as defamatory and any mitigating circumstances to  
57 reduce the amount of damages, and, whether he proves the justification or not, he may give in  
58 evidence the mitigating circumstances.

59 (k) Renew judgment. A complaint alleging failure to pay a judgment shall describe the  
60 judgment with particularity or attach a copy of the judgment to the complaint.

61 (l) Allocation of fault.

62 (1)(1) A party seeking to allocate fault to another shall identify by name, address, telephone  
63 number, employer, and by any other information known or reasonably available to the party the  
64 persons to whom fault is sought to be allocated. A party seeking to allocate fault to another shall,  
65 for each person, set forth a good faith factual and legal basis for doing so.

66 (1)(2) The party shall include the identity and factual and legal basis in the party's answer or  
67 in a supplemental notice filed within 90 days after the answer. Upon motion, the court may  
68 permit a supplemental notice after the 90-day period if the party shows that the party could not  
69 have with reasonable diligence identified the person and the factual and legal basis within the  
70 time permitted by this rule.

71 (1)(3) A party may not seek to allocate fault to another except by compliance with this rule.  
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1 **LIABILITY REFORM ACT AMENDMENTS**

2 2005 GENERAL SESSION

3 STATE OF UTAH

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5 **LONG TITLE**

6 **General Description:**

7 This bill ~~specifies conditions for designating non-parties to be included on the verdict~~  
8 ~~form.limits the addition of parties to a lawsuit to within 90 days of the answer to a complaint.~~

9 **Highlighted Provisions:**

10 This bill:

- 11 ▶ provides for a ~~reasonable 90-day time period~~ to ~~designate non-parties sought to be~~  
12 ~~included on the verdict form~~ add defendants to a lawsuit;
- 13 ▶ requires that a party who makes a request to the court to ~~add additional~~ designate  
14 ~~non-parties for inclusion on the verdict form~~ also provide specific information about  
15 the ~~additional non-~~parties; and
- 16 ▶ allows the court to deny the request ~~if the provisions of this section are not complied~~  
17 ~~with simply because it was not filed timely.~~

18 **Monies Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **78-27-38**, as last amended by Chapter 95, Laws of Utah 1999

25 **78-27-41**, as last amended by Chapter 95, Laws of Utah 1999

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27 *Be it enacted by the Legislature of the state of Utah:*

28 Section 1. Section **78-27-38** is amended to read:

29 **78-27-38. Comparative negligence.**

30 (1) The fault of a person seeking recovery shall not alone bar recovery by that person.

31 (2) A person seeking recovery may recover from any defendant or group of defendants

32 whose fault, combined with the fault of persons immune from suit, exceeds the fault of the

33 person seeking recovery prior to any reallocation of fault made under Subsection 78-27-39(2).

34 (3) No defendant is liable to any person seeking recovery for any amount in excess of  
35 the proportion of fault attributed to that defendant under Section 78-27-39.

36 (4) (a) In determining the proportionate fault attributable to each defendant, the fact  
37 finder may, and when requested by a party shall, in accordance with the provisions of Section  
38 78-27-41, consider the conduct of any person [~~who~~] alleged to have contributed to the alleged  
39 injury regardless of whether the person is a person immune from suit or a defendant in the  
40 action and may allocate fault to each person seeking recovery, to each defendant, and to any  
41 other person whether joined as a party to the action or not and whose identity is known or  
42 unknown to the parties to the action, including a person immune from suit who contributed to  
43 the alleged injury. In the case of a motor vehicle accident involving an unidentified motor  
44 vehicle, the existence of the vehicle shall be proven by clear and convincing evidence which  
45 may consist solely of one person's testimony.

46 (b) Any fault allocated to a person immune from suit is considered only to accurately  
47 determine the fault of the person seeking recovery and a defendant and may not subject the  
48 person immune from suit to any liability, based on the allocation of fault, in this or any other  
49 action.

50 Section 2. Section **78-27-41** is amended to read:

51 **78-27-41. Joinder of defendants.**

52 (1) A person seeking recovery, or any defendant who is a party to the litigation, may  
53 join as a defendant, in accordance with the Utah Rules of Civil Procedure, any person other  
54 than a person immune from suit who [~~may~~] is alleged to have caused or contributed to the  
55 injury or damage for which recovery is sought, for the purpose of having determined their  
56 respective proportions of fault.

57 (2) A person immune from suit may not be named as a defendant, but fault may be  
58 allocated to a person immune from suit solely for the purpose of accurately determining the  
59 fault of the person seeking recovery and [~~a defendant~~] all defendants. A person immune from  
60 suit is not subject to any liability, based on the allocation of fault, in this or any other action.

61 (3) (a) A person immune from suit may intervene as a party under Rule 24, Utah Rules  
62 of Civil Procedure, regardless of whether or not money damages are sought.

63 (b) A person immune from suit who intervenes in an action may not be held liable for

64 any fault allocated to that person under Section 78-27-38.

65 (4) A party seeking to allocate fault to another person shall:

66 (a) identify in its answer those persons then known to that party [~~who may be at fault~~  
67 ~~and shall identify within a reasonable time~~] to whom it intends to seek allocation of fault;

68 (b) identify in a supplemental pleading within ~~90 days~~ a reasonable time after filing its  
69 answer or as specified by the court in an order any additional persons later discovered which  
70 that party alleges to have been at fault[-] and to whom it intends to seek allocation of fault; and

71 (c) include in the pleading in which the person is identified:

72 (i) all identifying information regarding that person known or reasonably available to  
73 the party, including but not limited to the full name, address, telephone number, and employer  
74 of the person to whom fault is sought to be allocated; and

75 (ii) a brief statement in accordance with the rules of civil procedure setting forth the  
76 good faith ~~factual and legal~~ basis for the requested allocation of fault to that person.

77 (5) ~~In extraordinary cases t~~The court, upon motion and for good cause shown, may  
78 permit the filing of a supplemental pleading after the expiration of ~~the 90 day~~any period set by  
79 the court.~~[, but in no event more than 180 days after the filing of the party's answer].~~

80 (6) A party seeking to allocate fault to another person who fails to comply with the  
81 provisions of this section shall be denied the request to allocate fault to that person.

Rule 68. Offer of judgment.

(a) Unless otherwise specified, an offer made under this rule by a party defending against a claim to allow judgment to be entered in accordance with the offer is an offer to resolve all claims between the parties to the date of the offer, including costs, interest and, if attorney fees are permitted by law or contract, attorney fees.

(b) If the adjusted award is not more favorable than the offer, the offeror is not liable for costs, prejudgment interest or attorney fees incurred by the offeree after the offer, and the offeree shall pay the offeror's costs incurred after the offer. The court may suspend the application of this rule to prevent manifest injustice.

(c) An offer made under this rule shall:

(c)(1) be in writing;

(c)(2) expressly refer to this rule;

(c)(3) be made more than 10 days before trial;

(c)(4) remain open for at least 10 days; and

(c)(5) be served on the offeree under Rule 5.

Acceptance of the offer shall be in writing and served on the offeror under Rule 5. Upon acceptance, either party may file the offer and acceptance with a proposed judgment under Rule 58A.

(d) "Adjusted award" means the amount awarded by the finder of fact and, unless excluded by the offer, the offeree's costs and interest incurred before the offer, and, if attorney fees are permitted by law or contract and not excluded by the offer, the offeree's reasonable attorney fees incurred before the offer. If the offeree's attorney fees are subject to a contingency fee agreement, the court shall determine a reasonable attorney fee for the period preceding the offer.