Agenda

Advisory Committee on Rules of Civil Procedure

March 22, 2006
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 63. Disqualification.	Brent Johnson Tim Shea
Rule 8. Declaration under penalty of perjury.	Tim Shea
Rule 37. Spoliation of evidence.	Fran Wikstrom
Unbundling impact on URCP Rules 5, 11, 74, 76.	Jonathan Hafen Deborah Threedy
Rule 74. Withdrawal of counsel.	Judge Anderson

Meeting Schedule

April 26, 2006
May 24, 2006
June 28, 2006
September 27, 2006
October 25, 2006
November 29, 2006 (5th Wednesday)

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

MINUTES

UTAH SUPREME COURT ADVISORY COMMITTEE ON THE RULES OF CIVIL PROCEDURE

Wednesday, February 22, 2006
Administrative Office of the Courts

Francis M. Wikstrom, Presiding

PRESENT: Francis M. Wikstrom, Francis J. Carney, James T. Blanch, Honorable David Nuffer, Virginia S. Smith, Paula Carr, Terrie T. McIntosh, Cullen Battle, David W. Scofield, Leslie W. Slaugh, R. Scott Waterfall, Todd M. Shaughnessy, Honorable Anthony B. Quinn, Janet H. Smith, Honorable Lyle R. Anderson

EXCUSED: Honorable Anthony W. Schofield, Thomas R. Karrenberg, Debora Threedy, Tom Lee, Leslie W. Slaugh, Jonathan Hafen

STAFF: Tim Shea, Trystan Smith, Matty Branch

GUEST: Colin King

Mr. Wikstrom called the meeting to order at 4:00 p.m., at which time he introduced Chief Justice Durham. Justice Durham recognized Paula Carr for nearly ten years of service on the committee. On behalf of the committee, Mr. Wikstrom also expressed his thanks for Ms. Carr's service.

I. APPROVAL OF MINUTES.

Mr. Scofield moved to approve the minutes with a minor grammatical change suggested by Ms. Carr. The committee unanimously approved the minutes.

II. RULE 37. SPOLIATION OF EVIDENCE.

Mr. Wikstrom introduced Colin King. Mr. King addressed a suggested addition to Rule 37 providing sanctions for spoliation of evidence. The addition would be included as subsection (g) to Rule 37. The addition would allow a trial court to sanction a party and/or instruct the jury regarding an adverse inference, if a party destroys, conceals, alters, tampers or fails to preserve or produce evidence required to be disclosed under Rules 26(a) and 26(e)(1). Mr. King indicated the sanction amendment is supported by both the plaintiff and defense bars.

Mr. King acknowledged that trial courts had inherent authority to address spoliation. However, he indicated there was a need for a supplementation of that authority, and also a need to give trial courts and practitioners guidance. Mr. King noted there was no recognized tort for spoliation. Mr. King also indicated that he was not aware of any other states that have included

a spoliation sanction under Rule 37, even though these state court's cite to Rule 37 as providing trial courts with this inherent authority.

Mr. King made the distinction between the Court's inherent authority to address pre-litigation spoliation and spoliation after filing. Mr. King indicated that similar amendments will be proposed to the Jury Instruction committee and Evidence committee. He further indicated that there is a current bill introduced in the House (Bill 421) making it a crime if someone intentionally or knowingly alters, tampers or destroys evidence in the context of a civil suit.

Mr. Carney expressed concern that the duty to disclose under Rule 26(a) is a duty to disclose documents or tangible items which **support** a party's claims. He therefore suggested broader language such as "when there is a duty to preserve." Mr. King agreed the current language was too narrow and suggested the committee delete the reference to Rule 26(a). Judge Quinn indicated a trial court may have sufficient inherent power to address the issue. Mr. Shaughnessy indicated that subsection (f) may provide the Court with a sufficient mechanism to address the issue. Mr. Wikstrom suggested a change to Rule 34 indicating that the documents should not be altered, tampered, or destroyed tied to an amendment to subsection (f). The committee indicated it did not want to go to the extent of codifying the trial court's inherent authority to sanction.

Judge Quinn expressed further concern that any change to Rule 37 needs to be specific. He expressed concern that counsel would use the rule as a sword to set up a spoliation argument. A number of committee members expressed concern about "satellite litigation" in cases regarding spoliation.

Mr. Wikstrom suggested the committee further examine the spoliation sanction, but proceed in parallel with the Evidence committee. For future discussion, the committee adopted Judge Nuffer's suggested changes to the proposed amendment to Rule 37.

III. RULE 63. DISQUALIFICATION.

Mr. Shea suggested an amendment to Rule 63(b)(2) which would require a judge facing a pending motion to disqualify to do nothing until the motion is acted on. Mr. Shea suggested the phrase "or proceedings" should be added to the second clause of the subsection. Judge Quinn indicated that there was a recent ethical opinion concerning the issue. The committee asked to review the ethical opinion before further considering the amendment.

Mr. Wikstrom asked that the committee reconsider the amendment at the next meeting.

IV. URCP 7(f)(2) REGARDING FINALITY OF JUDGMENTS.

Mr. Blanch brought Rule 7(f)(2) to the committee. He expressed concern that practitioners may be confused about when a final judgment has been rendered. He suggested that the committee may want to adopt a more precise practice, similar to the federal rules, rendering a ruling to a judgment.

Mr. Wikstrom gauged the committee's interest in a revision to the rule. The committee expressed little interest in a revision.

V. RULE 8. WRITING UNDER PENALTY OF PERJURY.

Mr. Shea proposed to the committee an addition to Rule 8 which would allow a party to substitute a declaration under penalty of perjury whenever an affidavit is required or permitted. This would be similar to federal practice under a specific federal statute. The committee discussed the fact that the current Utah perjury statute would not apply to a declaration since it would not be a statement "under oath or affirmation." Under Utah law, a false declaration would only be a misdemeanor "false statement."

Mr. Wikstrom suggested the committee revisit the need to amend Rule 8 if and when Utah's perjury statute is revised.

VI. ADJOURNMENT.

The meeting adjourned at 5:32 p.m. The next committee meeting will be held on Wednesday, March 22, 2006, at the Administrative Office of the Courts.

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Administrative Office of the Courts

Chief Justice Christine M. Durham
Utah Supreme Court
Chair, Utah Judicial Council

Daniel J. Becker
State Court Administrator
Myron K. March
Deputy Court Administrator

MEMORANDUM

To: **Tim Shea, Senior Counsel**

From: **Brent Johnson, General Counsel**

Re: **Rule 63, Utah Rules of Civil Procedure**

Date: **February 9, 2006**

I recently had a discussion with Judge Hilder about the disqualification process set forth in Rule 63(b) of the Utah Rules of Civil Procedure. It had been Judge Hilder's recollection that the rule required a judge to take no further action in a case after being presented with an affidavit of bias. As we reviewed the latest version of the rule, it appeared as if that language no longer exists. In the case of Barnard v. Murphy, 852 P.2d 1023 (Utah App. 1993), the Utah Court of Appeals referenced previous language in stating that a judge should proceed no further after receiving an affidavit. After this discussion with Judge Hilder, Judge Hilder suggested that the rule be amended to specifically state that the challenged judge should not proceed any further in the case until the affidavit is resolved. This would avoid any potential problems that might arise from a judge taking action after an affidavit is filed, with the judge subsequently being removed from the case. The rule would perhaps state ". . . without further hearing or proceedings in the case, . . . ," or similar language. The current language prohibits a hearing on the affidavit, but does not prohibit other action in the case. If you have any questions about this, please let me know.

Rule 63. Disability or disqualification of a judge.

(a) Substitute judge; Prior testimony. If the judge to whom an action has been assigned is unable to perform the duties required of the court under these rules, then any other judge of that district or any judge assigned pursuant to Judicial Council rule is authorized to perform those duties. The judge to whom the case is assigned may in the exercise of discretion rehear the evidence or some part of it.

(b) Disqualification.

(b)(1)(A) A party to any action or the party's attorney may file a motion to disqualify a judge. The motion shall be accompanied by a certificate that the motion is filed in good faith and shall be supported by an affidavit stating facts sufficient to show bias, prejudice or conflict of interest.

(b)(1)(B) The motion shall be filed after commencement of the action, but not later than 20 days after the last of the following:

(b)(1)(B)(i) assignment of the action or hearing to the judge;

(b)(1)(B)(ii) appearance of the party or the party's attorney; or

(b)(1)(B)(iii) the date on which the moving party learns or with the exercise of reasonable diligence should have learned of the grounds upon which the motion is based.

If the last event occurs fewer than 20 days prior to a hearing, the motion shall be filed as soon as practicable.

(b)(1)(C) Signing the motion or affidavit constitutes a certificate under Rule 11 and subjects the party or attorney to the procedures and sanctions of Rule 11. No party may file more than one motion to disqualify in an action.

(b)(2) The judge against whom the motion and affidavit are directed shall, without further hearing or proceedings, enter an order granting the motion or certifying the motion and affidavit to a reviewing judge. If the judge grants the motion, the order shall direct the presiding judge of the court or, if the court has no presiding judge, the presiding officer of the Judicial Council to assign another judge to the action or hearing. The presiding judge of the court, any judge of the district, any judge of a court of like jurisdiction, or the presiding officer of the Judicial Council may serve as the reviewing judge.

(b)(3)(A) If the reviewing judge finds that the motion and affidavit are timely filed, filed in good faith and legally sufficient, the reviewing judge shall assign another judge to the action or hearing or request the presiding judge or the presiding officer of the Judicial Council to do so.

(b)(3)(B) In determining issues of fact or of law, the reviewing judge may consider any part of the record of the action and may request of the judge who is the subject of the motion and affidavit an affidavit responsive to questions posed by the reviewing judge.

(b)(3)(C) The reviewing judge may deny a motion not filed in a timely manner.

Rule 8. General rules of pleadings.

(a) Claims for relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim or third-party claim, shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief; and (2) a demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded.

(b) Defenses; form of denials. A party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If he is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, he may make his denials as specific denials of designated averments or paragraphs, or he may generally deny all the averments except such designated averments or paragraphs as he expressly admits; but, when he does so intend to controvert all its averments, he may do so by general denial subject to the obligations set forth in Rule 11.

(c) Affirmative defenses. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleadings as if there had been a proper designation.

(d) Effect of failure to deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied

in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(e) Pleading to be concise and direct; consistency.

(e)(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

(e)(2) A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he has regardless of consistency and whether based on legal or on equitable grounds or on both. All statements shall be made subject to the obligations set forth in Rule 11.

(f) Construction of pleadings. All pleadings shall be so construed as to do substantial justice.

(g) Writing under penalty of perjury. Other than a deposition or a verified complaint, if a matter is required or permitted to be supported by the written oath or affirmation of a person, the matter may be supported by the unsworn, dated and signed writing of the person declaring the matter to be true under penalty of perjury. The following form is sufficient: "I declare under the penalties provided by Utah Code Section 76-8-504 that the foregoing is true and correct."

76-8-504. Written false statement.

A person is guilty of a class B misdemeanor if:

(1) He makes a written false statement which he does not believe to be true on or pursuant to a form bearing a notification authorized by law to the effect that false statements made therein are punishable; or

(2) With intent to deceive a public servant in the performance of his official function, he:

(a) Makes any written false statement which he does not believe to be true; or

(b) Knowingly creates a false impression in a written application for any pecuniary or other benefit by omitting information necessary to prevent statements therein from being misleading; or

(c) Submits or invites reliance on any writing which he knows to be lacking in authenticity; or

(d) Submits or invites reliance on any sample, specimen, map, boundary mark, or other object which he knows to be false.

(3) No person shall be guilty under this section if he retracts the falsification before it becomes manifest that the falsification was or would be exposed.

Rule 37. Failure to make or cooperate in discovery; sanctions.

(a) Motion for order compelling discovery. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(a)(1) Appropriate court. An application for an order to a party may be made to the court in which the action is pending, or, on matters relating to a deposition, to the court in the district where the deposition is being taken. An application for an order to a deponent who is not a party shall be made to the court in the district where the deposition is being taken.

(a)(2) Motion.

(a)(2)(A) If a party fails to make a disclosure required by Rule 26(a), any other party may move to compel disclosure and for appropriate sanctions. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the party not making the disclosure in an effort to secure the disclosure without court action.

(a)(2)(B) If a deponent fails to answer a question propounded or submitted under Rule 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.

(a)(3) Evasive or incomplete disclosure, answer, or response. For purposes of this subdivision an evasive or incomplete disclosure, answer, or response is to be treated as a failure to disclose, answer, or respond.

(a)(4) Expenses and sanctions.

(a)(4)(A) If the motion is granted, or if the disclosure or requested discovery is provided after the motion was filed, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney fees, unless the court finds that the motion was filed without the movant's first making a good faith effort to obtain the disclosure or discovery without court action, or that the opposing party's nondisclosure, response, or objection was substantially justified, or that other circumstances make an award of expenses unjust.

(a)(4)(B) If the motion is denied, the court may enter any protective order authorized under Rule 26(c) and shall, after opportunity for hearing, require the moving party or the attorney or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

(a)(4)(C) If the motion is granted in part and denied in part, the court may enter any protective order authorized under Rule 26(c) and may, after opportunity for hearing, apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(b) Failure to comply with order.

(b)(1) Sanctions by court in district where deposition is taken. If a deponent fails to be sworn or to answer a question after being directed to do so by the court in the district in which the deposition is being taken, the failure may be considered a contempt of that court.

(b)(2) Sanctions by court in which action is pending. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under Subdivision (a) of this rule or Rule 35, or if a party fails to obey an order entered under Rule 16(b), the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

(b)(2)(A) an order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(b)(2)(B) an order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;

(b)(2)(C) an order striking out pleadings or parts thereof, staying further proceedings until the order is obeyed, dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(b)(2)(D) in lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;

(b)(2)(E) where a party has failed to comply with an order under Rule 35(a), such orders as are listed in Paragraphs (A), (B), and (C) of this subdivision, unless the party failing to comply is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney or both of them to pay the reasonable expenses, including attorney fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(c) Expenses on failure to admit. If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the party requesting the admissions may apply to the court for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney fees. The court shall make the order unless it finds that (1) the request was held objectionable pursuant to Rule 36(a), or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to believe that he might prevail on the matter, or (4) there was other good reason for the failure to admit.

(d) Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails (1) to appear before the officer who is to take the deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories, or (3) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under Paragraphs (A), (B), and (C) of Subdivision (b)(2) of this rule. In lieu of any order or in addition thereto, the court shall require the party failing to act or the party's attorney or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Rule 26(c).

(e) Failure to participate in the framing of a discovery plan. If a party or attorney fails to participate in good faith in the framing of a discovery plan by agreement as is required by Rule 26(f), the court may, after opportunity for hearing, require such party or attorney to pay to any other party the reasonable expenses, including attorney fees, caused by the failure.

(f) Failure to disclose. If a party fails to disclose a witness, document or other material as required by Rule 26(a) or Rule 26(e)(1), or to amend a prior response to discovery as required by Rule 26(e)(2), that party shall not be permitted to use the witness, document or other material at any hearing unless the failure to disclose is harmless or the party shows good cause for the failure to disclose. In addition to or in lieu of this sanction, the court may order any other sanction, including payment of reasonable costs and attorney fees, any order permitted under subpart (b)(2)(A), (B) or (C) and informing the jury of the failure to disclose.

(g) Spoliation of evidence. If a party destroys, conceals, alters, tampers with, or fails to preserve and produce a document, tangible item, electronic data, or other evidence which existed and which was required or would have been required to be disclosed under Rule 26(a), Rule 26(e)(1), or in response to another party's discovery request, the court on motion may make such orders in regard to the party's action as are just, including any order authorized by Subdivision (b)(2)(A), (B), and (C) of this rule and an order requiring the party or the party's attorney or both to pay the other party's reasonable expenses and attorney fees caused by the party's action unless the court finds that the party's action was substantially justified or that other circumstances make an award of expenses unjust. The court may in addition instruct the jury regarding an adverse inference or effect of the spoliation of the evidence. This rule does not limit remedies otherwise available for similar actions occurring before commencement of an action and service of process.

Alternative. If a party fails to preserve evidence that would have been required to be disclosed under these rules, the court may make such orders as are just. The court may enter any order authorized by Subdivision (b)(2)(A), (B), or (C) of this rule. The court may order the party or the party's attorney to pay the other party's reasonable expenses and attorney fees caused by the party's failure. The court may instruct the jury that it may make an adverse inference of what the evidence would have shown. This rule does not limit the remedies available if a party fails to preserve evidence before service of the complaint and summons.

PROPOSED AMENDMENTS TO THE
UTAH RULES OF CIVIL PROCEDURE

Rule 5. Service and filing of pleadings and other papers.

(b) Service: How made and by whom.

(b)(1) Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party is ordered by the court. **If an attorney has entered a limited appearance pursuant to Rule 76, service shall be made (Alternative A - upon the attorney and the party for the duration of the limited appearance (Vermont)) (Alternative B – upon the attorney regarding proceedings or purposes within the scope of the limited appearance as specified in the Notice of Limited Appearance pursuant to Rule 76 and directly upon the party as to all other proceedings or purposes (Washington)) (Alternative C – upon the party only (Maine)).** Service upon the attorney or upon a party shall be made by delivering a copy or by mailing a copy to the last known address or, if no address is known, by leaving it with the clerk of the court.

Rule 11. Signing of pleadings, motions and other papers; representations to court; sanctions.

(c) Limited Representation. In undertaking limited representation in accordance with the applicable Utah Rules of Professional Conduct, an attorney who assists an otherwise self-represented person in drafting a pleading may rely on the person's representation of facts, unless the attorney has reason to believe that such representations are false or materially insufficient, in which instance the attorney shall make an independent reasonable inquiry into the facts. Pleadings filed by the otherwise self-represented party that have been prepared with the drafting assistance of an attorney shall include the attorney's name, address, telephone number and Utah Bar Number. In helping to draft the pleading, the assisting attorney certifies that the pleading complies with the requirements of subsection (b)(1)-(4) of this paragraph.

(d) [prior subsection (c)]

Rule 74. Withdrawal of counsel.

(a) If a motion is not pending and a certificate of readiness for trial has not been filed, an attorney may withdraw from the case by filing with the court and serving on all parties a notice of withdrawal. The notice of withdrawal shall include the address of the attorney's client and a statement that no motion is pending and no certificate of readiness for trial has been filed. If a motion is pending or a certificate of readiness for trial has been filed, an attorney may not withdraw except upon motion and order of the court. The motion to withdraw shall describe the nature of any pending motion and the date and purpose of any scheduled hearing. **(Alternative A - This paragraph shall not apply to a limited**

appearance filed under Rule 76 unless the attorney seeks to withdraw from the limited appearance itself. The limited appearance otherwise automatically terminates upon the conclusion of the purpose or proceeding identified in the Notice of Limited Appearance pursuant to Rule 76.) (Alternative B – An attorney who has entered a limited appearance pursuant to Rule 76 shall notify the Court and all parties when the purpose of the limited appearance has been accomplished and request leave to withdraw. Such withdrawal shall be granted as a matter of course. An attorney who seeks to withdraw before that purpose has been accomplished may do so only upon motion and order of the court.).

[New] Rule 76 Limited Appearance

(a) An attorney acting pursuant to an agreement with a client for limited representation that complies with the applicable Utah Rules of Professional Conduct may enter an appearance limited to one or more of the following purposes on behalf of a client who is otherwise self-represented and who has entered, or will enter, a general appearance:

(1) Filing a complaint or other pleading.

(2) Filing and/or arguing a specific motion or motions.

(3) Conducting one or more specific discovery procedures.

(4) Participating in a pretrial conference or an alternative dispute resolution proceeding.

(5) Acting as counsel for a particular hearing or trial.

(6) Acting as counsel for an appeal.

(7) With leave of Court, for a specific issue or a specific portion of a trial or hearing, or any other matter.

(b) An attorney who wishes to enter a limited appearance shall do so by filing with the clerk and serving pursuant to Rule 5 a written Notice of Limited Appearance as soon as practicable prior to commencement of the appearance. The purpose and scope of the appearance shall be specifically described in the notice, which shall indicate that the client is otherwise self-represented and has entered, or will forthwith enter, a general appearance. The attorney's name and a brief statement of the limited appearance shall be entered upon the docket. The Notice of Limited Appearance and all actions taken pursuant to it shall be subject to the obligations specified in Rule 11.

Rule 74. Withdrawal of counsel.

(a) ~~If a motion is not pending and a certificate of readiness for trial has not been filed, an~~ An attorney may withdraw from the case by filing with the court and serving on all parties a notice of withdrawal. The notice of withdrawal shall include the address of the attorney's client and a statement that no motion is pending, no hearing has been set and no certificate of readiness for trial has been filed. If a motion is pending, a hearing has been set or a certificate of readiness for trial has been filed, an attorney may not withdraw except upon motion and order of the court. The motion to withdraw shall describe the nature of any pending motion and the date and purpose of any scheduled hearing.

(b) If an attorney withdraws, dies, is suspended from the practice of law, is disbarred, or is removed from the case by the court, the opposing party shall serve a Notice to Appear or Appoint Counsel on the unrepresented party, informing the party of the responsibility to appear personally or appoint counsel. A copy of the Notice to Appear or Appoint Counsel must be filed with the court. No further proceedings shall be held in the case until 20 days after filing the Notice to Appear or Appoint Counsel unless the unrepresented party waives the time requirement or unless otherwise ordered by the court.

(c) Substitution of counsel. An attorney may replace the counsel of record by filing and serving a notice of substitution of counsel signed by former counsel, new counsel and the client. Court approval is not required if new counsel certifies in the notice of substitution that counsel will comply with the existing hearing schedule and deadlines.