Agenda
Advisory Committee
on Rules of Civil Procedure

March 28, 2007
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 4. Service by private investigators (HB 385). Rule 4. Signing for mail service.	Mel Ashton Tim Shea
Rule 11. Sanctions for uncivil materials.	Tim Shea
Rule 74. Court approval to withdraw before mediation.	Tim Shea
Rule 108. Motion for temporary order.	Tim Shea
Rule 8. False writing under penalty of law.	Tim Shea
Survey regarding discovery amendments.	Leslie Slaugh
Style amendments	Jonathan Hafen Judge Schofield
Rule 40. Assignment of cases for trial; continuance.	Frank Carney

Meeting Schedule

April 25, 2007
May 23, 2007
September 26, 2007
October 24, 2007
November 28, 2007

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

MINUTES

UTAH SUPREME COURT ADVISORY COMMITTEE ON THE RULES OF CIVIL PROCEDURE

Wednesday, January 24, 2007
Administrative Office of the Courts

Francis M. Wikstrom, Presiding

PRESENT: Francis M. Wikstrom, Honorable Anthony B. Quinn, Terrie T. McIntosh, Leslie W. Slaugh, James T. Blanch, Todd M. Shaughnessy, Honorable Anthony W. Schofield, Honorable David O. Nuffer, Jonathan Hafen, Thomas R. Lee, Judge R. Scott Waterfall, Barbara Townsend, Steven Marsden, Lori Woffinden

EXCUSED: Debora Threedy, Francis J. Carney, Honorable Lyle R. Anderson, Janet H. Smith, David W. Scofield, Cullen Battle

STAFF: Tim Shea, Matty Branch, Trystan B. Smith

I. APPROVAL OF MINUTES.

Mr. Wikstrom called the meeting to order at 4:00 p.m. Judge Nuffer noted a change to the November 29, 2006 minutes concerning Rule 26(b)(5)(B). Under subsection (B), "a party *may* produce material without reviewing the production for privilege." Judge Waterfall moved to approve the November 29, 2006 minutes with the change noted by Judge Nuffer. The committee unanimously approved the minutes with the suggested change.

II. REQUEST FROM SUPREME COURT: RESEARCH THE EFFECTS OF THE DISCOVERY AMENDMENTS.

The Utah Supreme Court requested the committee poll the members of the Bar concerning their impressions of the amendments to the discovery rules. Mr. Slaugh agreed to create an initial draft of questions for the poll. Mr. Wikstrom asked that the committee consider the contents of the poll at the next meeting.

III. RULE 45 SUBPOENA.

Mr. Shea brought Rule 45 back to the committee. Mr. Shea indicated the committee approved the e-discovery revisions, but did not approve the remaining revisions to Rule 45.

Judge Nuffer expressed concern that the "prior notice" language was insufficient. He shared with the committee the federal rule requirement of at least five (5) days notice prior to service of a subpoena on a nonparty. The committee again debated the need for additional notice time. However, the committee declined to adopt a specific prior notice time period.

Mr. Shea suggested revising Rule 45(b)(3) to state "other method of actual notice *before serving* the subpoena." Mr. Slaugh recommended revising the third sentence of Rule 45(e)(5) to state "[a]n order *compelling* compliance." The committee agreed with the suggested changes. Judge Waterfall moved to approve Rule 45 with the suggested changes. The committee unanimously approved the revisions to Rule 45. Mr. Shea indicated that Rule 45 with the committee's current revisions and the e-discovery revisions would be republished for comment.

IV. STYLE AMENDMENTS TO FRCP.

Mr. Hafen brought the proposed style amendments to the Federal Rules of Civil Procedure to the committee. He indicated the style amendments were designed to make the rules easier to understand, but were not intended to make substantive changes. He further noted the style amendments were recently submitted to the U.S. Supreme Court for approval. Mr. Hafen suggested the committee consider analyzing the style amendments to the federal rules to determine if the committee should make similar changes to the state rules.

Mr. Wikstrom asked the committee to review the preamble to the style amendments, pick three or four rules, and consider if the committee should make similar changes. Judge Quinn recommended the committee first consider revising the state rules which are identical or substantially similar to the federal rules. Judge Schofield volunteered to have an intern review the style amendments and compare which state rules were identical or substantially similar to the federal rules for the committee's consideration.

V. ADJOURNMENT.

The meeting adjourned at 4:55 p.m. The next meeting of the committee will be held at 4:00 p.m. on Wednesday, March 28, 2007, 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: Civil Procedures Committee
From: Tim Shea
Date: March 15, 2007
Re: Requests for rule changes

We've had five requests for rule changes from outside the committee.

(1) Mel Aston requests amendments to Rule 4 that would:

(a) add private investigators to the list of who may serve a summons and complaint;
(b) permit an investigator to show proof of service by an unsworn statement; and
(c) regulate service at gated communities, post office boxes, and by "nail and mail".

I've not drafted any amendments, but I've included the language suggested by Mr. Ashton. This is a companion piece to HB 385, which did not pass. Presumably, private investigators are over 18 so they do not need to be added to the list of who can serve a complaint and summons. Whether they should be permitted to file proof of service by an unsworn statement is a policy issue for the committee and Supreme Court. Whether to permit nail and mail or mailing to a post office box also are policy issues. I believe regulating access to gated communities to be outside the Court's authority, but whether to permit service on a guard would be a policy decision within the Court's authority.

(2) Emilie Bean also requests that Rule 4 be amended. She has not stated what the amendment should be. She argues that service by mail requires the signature of the defendant, which is seldom forthcoming. Presumably she wants either the signature requirement dropped or the limitation to the defendant dropped or both. Since in her case the defendant resides in a foreign country, service under the Hague Convention might be required in any event. I understand from my phone conversation with her that she wants to serve the defendant's mother since that is more likely to result in actual notice than service by publication. While she is to be commended for trying to give the defendant actual notice, it appears that a motion to permit substitute service on the mother would be more appropriate than changing the rule.

(3) The Supreme Court requests that the committee publish for comment a provision similar to URAP 24(k) to permit the court to strike improper matters and impose sanctions. I've added text suggested by a member of the Professionalism Committee into Rule 11. Such a paragraph might instead be drafted as part of Rule 10. The

committee may want to consider whether the process for sanctions should be the same as the process for sanctions for violating the traditional provisions of Rule 11.

(4) Gaile Canfield requests an amendment to Rule 74 that would require court approval for an attorney to withdraw from a case if a mediation is scheduled. I've included a possible amendment.

(5) A committee of the Judicial Council is working on uniform forms for temporary orders in domestic cases. As part of that process, they have identified two districts, 6 and 8, that continue to use orders to show cause rather than motions for a temporary order. The judges from both districts want to change to conform to the rest of the state, but they believe that the practice is so ingrained as to require a rule to dislodge it. There is no written request, but I have enclosed a proposed rule.

(6) Finally, this holdover from some time back: A proposal to create a second degree felony for a false writing submitted under penalty of perjury again went nowhere in the 2007 general session. In light of that, I've redrafted a proposal that we looked at last year. The concept is the same as the earlier draft, but the violation would be a Class B misdemeanor (§76-8-504) rather than a felony. We can proceed or not as the committee wishes. If not, sworn affidavits would continue to be required.

encl. Fax from Mel Ashton and amendments to Rule 4. HB 385.
Email from Emilie Bean
Letter from Matty Branch and amendments to Rule 11.
Letter from Gaile Canfield and amendments to Rule 74.
Proposed Rule 108.
Amendments to Rule 8.

A. A. & ASSOCIATES, INC.

A Professional Corporation

Confidential Investigative Services
PI License 100001

P.O. Box 964
Sandy, Utah 84091

Telephone: (801) 553-0774
Facsimile : (801) 553-0570

FAX COVER SHEET

Date: 02-05-07

Fax Number: 578-3843

To: Tim Shea

From: Mel Ashton

Subject: Rule 4 Changes

Pages: 2 Including Cover Sheet

Comments:

Tim,

We are proposing the changes to make Process Service more professional and accountable in Utah. The Private Investigators Association has introduced legislation through Representative Shurtliff for a few changes to Title 78-12a-2 This is HB 385

Thank for your Assistance

Mel Ashton

RULE 4 CHANGES

(d) By whom served. The summons and complaint may be served in the state or any other state or territory of the United States, by the sheriff of constable, or by the deputy of either, by the by the United States Marshall, or by the marshal's deputy, in this state by a private investigator licensed in accordance with Title 53, Chapter 9, Private Investigator Regulation Act or by a person in another state or territory who is authorized in law to served process in that state or territory, or by any other person 18 years of age or older at the time of service, and not a party to the action or a party's attorney.

(h) Manner of Proof. In a case commenced under Rule 3(a)(1), the party serving the process shall file proof of service with the court promptly, and in any event within the time during which the person served must respond to the process, and proof of service must be made within ten days after such service. Failure to file a proof of process service does not affect the validity of the service. In all cases commenced under Rule 3(a)(1) or Rule 3(a)(2) the proof shall be as follows:

(1) If served by a sheriff, constable, United States Marshal, or the deputy of any of them, or by a private investigator licensed in accordance with Title 53, Chapter 9, Private Investigator Regulation Act, by certificate with a statement as to date place and manner of service.

(2) If by any other person, by affidavit with a statement as to the date, place, and manner of service together with the affiant's age at the time of service.

Service at a Gated Community, Gated Residences, Apartments, Condominiums, and businesses.

a. IN THE INTEREST OF THE COURT, owners, managers, guards or persons in charge of all gated communities, gated private residences, apartments, condominiums or businesses shall provide the gate access code, unit/apartment number and or immediate access to the party(s) to be served to any law enforcement officer, constable, sheriff, deputy sheriff or licensed private investigator serving legal process in accordance with Utah Code Title 78-12a-2.

Where a private mail box service is used by a person or a business and the physical location is not known, the process shall be served to the attendant on duty at the private mail facility and he or she will place the process in the box of the person to be served.

Where it has been established by due diligence that the address of the person is their place of abode or the address is a known business address of a company and that they are avoiding the lawful service of process its service may be effected by affixing a copy of the service to the door of the actual place of business, dwelling place or usual place of abode within the state of the person to be served and by mailing a copy of the process to the person at the address of the residence by first class mail or at his or her actual place of business to include any location that the defendant through regular solicitation or advertisement has held out as its place of business and by mailing a copy of the process by first class mail, bearing the legend "personal and confidential" and not indicating on the outside thereof, by return address or otherwise that the communication is from an attorney or concerns any legal action against the person served.

LEGISLATIVE GENERAL COUNSEL
₵ Approved for Filing: E. Chelsea-McCarty ₵
₵ 01-30-07 7:01 AM ₵

PROCESS SERVER AMENDMENTS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: LaWanna Lou Shurtliff

Senate Sponsor: _____

LONG TITLE

General Description:

This bill adds subpoenas to the list of documents that private investigators may serve and makes it a class C misdemeanor to serve process without authority to do so.

Highlighted Provisions:

This bill:

- allows private investigators to serve subpoenas; and
- makes it a class C misdemeanor to serve court documents without authority.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78-12a-2, as last amended by Chapter 204, Laws of Utah 2003

78-12a-3, as enacted by Chapter 20, Laws of Utah 1990

78-12a-4, as enacted by Chapter 20, Laws of Utah 1990

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

Section 1. Section **78-12a-2** is amended to read:

78-12a-2. Process servers.

H.B. 385

(1) Persons who are not peace officers, constables, sheriffs, or lawfully appointed deputies of such officers, or authorized state investigators, or licensed private investigators may not serve any forms of civil or criminal process other than complaints, summonses, and subpoenas.

(2) The following persons may serve all process issued by the courts of this state except as otherwise limited by Subsection [~~(1)~~] (3):

(a) a peace officer employed by any political subdivision of the state acting within the scope and jurisdiction of his employment;

(b) a sheriff or appointed deputy sheriff employed by any county of the state;

(c) a constable serving in compliance with applicable law;

(d) an investigator employed by the state and authorized by law to serve civil process.

(3) Private investigators licensed in accordance with Title 53, Chapter 9, Private Investigator Regulation Act, may only serve the following forms of process:

(a) petitions;

(b) complaints;

(c) summonses;

(d) supplemental orders;

(e) orders to show cause;

(f) notices;

(g) small claims affidavits;

(h) small claims orders;

(i) writs of garnishment;

(j) garnishee orders; and

(k) subpoenas [~~duces tecum~~].

[~~(4) Other persons may serve process as prescribed by Subsection (1).~~]

[~~(5)~~] (4) A person serving process shall legibly document the date and time of service and his name and address on the return of service.

Section 2. Section **78-12a-3** is amended to read:

78-12a-3. Recoverable rates.

If the rates charged by [~~private~~] authorized process servers exceed the rates established by law for service of process by persons under Subsection 78-12a-2 (1), the excess charge may

be recovered as costs of an action only if the court determines the service and charge were justifiable under the circumstances.

Section 3. Section **78-12a-4** is amended to read:

78-12a-4. Violations of service of process authority.

(1) It is a class A misdemeanor for a person serving process to falsify a return of service.

(2) It is a class C misdemeanor for a person to bill falsely for process service.

(3) It is a class C misdemeanor for a person to serve process in the state when they are not authorized to do so under Subsection 78-12a-2(1).

Legislative Review Note
as of 1-29-07 2:53 PM

Office of Legislative Research and General Counsel

From: <eablaw12@aol.com>
To: <tims@email.utcourts.gov>
Date: 3/13/07 7:23PM
Subject: Rule 4 (d)(2) (1.46/3.50)

Dear Mr. Shea,

You may recall we had a bit of a hostile conversation on the telephone on Monday, March 12, 2007. I apologize for saying that the Rules Committee was probably asleep when they made the changes to Rule 4(d)(2). It probably wasn't a good conversation starter. It was born out of the tremendous frustration of trying to do the right thing and feeling hampered all the time by those that make rules but don't always have to live by them.

We have seen service by mail and the best of the choices for alternative service when someone cannot be served in person. Generally, service to a family member is far more likely to give actual notice to a party then service by publication. Service by publication is particularly concerning where Justice Parish stated in Jackson Const. Co., Inc. 100 P.3d 1211,1218 that service by publication was the "functional equivalent to rolling the summons, shoving it into a bottle, and throwing it into the ocean." In that context, Judges are seem to have become very nervous, with obvious justification, about granting service by publication.

When the rules limit service by mail to the requirement that the "defendant" sign for a receipt, it makes service by mail functionally useless. Assuming a "defendant" can actually even be located, if he or she doesn't want to be served all he or she has to do is refuse to sign for the certified mail or currier receipt. Perhaps I deal with a litigious bunch but I can't actually imagine a situation where the "defendant" would sign.

I have a circumstance right now where I need to be able to serve someone in Saudi Arabia at a reasonable expense. The opposing side is refusing to allow her Utah attorney to accept service because it has been more than 90 days since the last appealable order but the attorney has written letters to me discussing the contempt issues and is still doing work in the retirement divisions. She is a U.S. citizen that does not qualify under the Servicemembers Civil Relief Act. She has already misrepresented her work in Saudi and failed to answer discovery to frustrate the whole process. The chances of her signing a receipt are nil.

The matter I addressed with you on the telephone is another significant problem we deal with on a regular basis. We often have circumstances in adoptions where the biological father of a child has had no contact with the custodial parent or child for many years. At a minimum the resourses of the State are generally already in motion for attempts at collection of child support and for some reason it is also not unusual for there to be bench warrants for the parent's arrest. Even if we could find them when the State cannot, they are unlikely to sign a receipt. It is significant to us that we make our

best efforts to locate the parent because we are petitioning the court for the termination of his or her parental rights. I consider it an awesome responsibility to request that someone's parental rights be terminated. Service by mail to a relative is far more likely to give someone notice of our filing than the "message in a bottle" of publication.

I understand that Rule(d)(4)(A) allows for "some other means" of service but we find that judges are not very comfortable relying on such generalities particularly when it comes to something so fundamental as the termination of someone's parental rights.

I know that you said that the issues was debated in the committee and that they are unlikely to look at it again but there must be a way to express to the committee the practical problems of Rule 4(d)(2). I feel a tremendous responsibility to the law and the courts on this issue. We show no respect for the law when court actions are done behind a potential litigants back because we checked the box of the easiest, most convenient method of alternative service. When those parties later find out they are angry and frustrated that "the system" does not work. I have recently bill a client thousands of dollars to defend against a matter where there was service by publication. The only winners in that case have been Sandy Dolowitz and me. The clients' prize on both sides has been a bill.

I get the impression from the Rule that the committee believed that they were assuring that there was actual notice to a party by requiring the "defendant's" signature on the receipt. Where obtaining the signature is impractical or impossible, those parties are going to end up with the legal notice of service by publication but no actual notice at all.

If you have the ability to do so, please ask the committee to reconsider. It is not a matter of convenience for attorneys, it is a matter of the public receiving real notification of significant court matters. I'm sure the committee meant well, and on the surface it looks good to require a signature of a party, but it is going to result in many unhappy returns.

Emilie Bean

Supreme Court of Utah

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March 1, 2007

Francis M. Wikstrom, Esq.
Parsons Behle & Latimer
P. O. Box 45898
Salt Lake City, UT 84145-0898

Dear Fran:

In the recent case of Peters v. Pine Meadow Ranch Home Association, 2007 UT 2, the Supreme Court employed rule 24(k) of the Utah Rules of Appellate Procedure to strike petitioners' briefs and to assess attorney fees against petitioners' counsel. Rule 24(k) provides that "[a] ll briefs under this rule must be . . . free from burdensome, irrelevant, immaterial or scandalous matters. Briefs which are not in compliance may be disregarded or stricken, . . . and the court may assess attorney fees against the offending lawyer."

The Supreme Court's Advisory Committee on Professionalism has suggested to the court that language similar to that of rule 24(k) be incorporated into the Utah Rules of Civil Procedure and the Utah Rules of Criminal Procedure. The court reacted favorably to the Professionalism Committee's suggestion, and it requests that the Civil Procedures Committee and the Criminal Procedures Committee recommend language comparable to that of rule 24(k) for proposed inclusion in their rules. Enclosed for reference is a copy of the Peters opinion, rule 24(k) of the Utah Rules of Appellate Procedure, and sample language recommended by a member of the Professionalism Committee.

Thank you for your assistance with this request.

Sincerely,

Matty

Matty Branch

Enclosures
cc w/enclosures: Tim Shea

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

(a) Signature. Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(b) Representations to court. By presenting a pleading, written motion, or other paper to the court (whether by signing, filing, submitting, or later advocating), an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,

(b)(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(b)(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(b)(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(b)(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) Sanctions. If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(c)(1) How initiated.

(c)(1)(A) By motion. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 5, but shall not be filed with or

presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney fees incurred in presenting or opposing the motion. In appropriate circumstances, a law firm may be held jointly responsible for violations committed by its partners, members, and employees.

(c)(1)(B) On court's initiative. On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.

(c)(2) Nature of sanction; limitations. A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorney fees and other expenses incurred as a direct result of the violation.

(c)(2)(A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2).

(c)(2)(B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(c)(2)(3) Order. When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

(d) All pleadings, written motions and other papers must be free from burdensome, irrelevant, immaterial, scandalous and uncivil matters. All lawyers must likewise govern their conduct. Pleadings, written motions or other papers and attorney conduct that are not in compliance may be stricken or disregarded, and the court may assess fees against the offending lawyer.

~~(d)~~ (e) Inapplicability to discovery. Subdivisions (a) through (c) of this rule do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Rules 26 through 37.

GAILE CANFIELD
4174 Moss Oak Place
Sarasota, FL 34231

March 1, 2007

Administrative Office of the Courts
Matheson Courthouse
450 State Street
Salt Lake City, UT 84114

Attention: Tim M. Shea, Staff Attorney

RE: Rule 74, Utah Rules of Civil Procedure

Dear Mr. Shea:

Mediator and attorney Robert Wilde directed me to this office about proposing a change to the above referenced Rule 74

My husband, Harry Canfield for whom I am Guardian, and I were involved in litigation for nearly two years with my husband's nephew Leonard Canfield. This action took place in Box Elder County and Thomas Grisley represented us for a year and a half. Mr. Grisley had set a mediation date October 18, 2006. Mr. Grisley appeared on a renewed Motion to Compel on our behalf nine days prior to the scheduled mediation. We had no written agreement with Mr. Grisley for a fee schedule in the litigation case but he verbally quoted to me $10,000 to litigate. We have paid him over $20,000 and when I was in Salt Lake City for a deposition I told him that we could no longer send him thousands of dollars each month but would pay him on account. After the hearing on the Motion was held he called and asked me how much we owed him and questioned me about what happened to funds we had received for a property sale. This was not an appropriate question but I indicated we would continue paying his fees. Mr. Grisley the same day faxed us a Notice to Withdraw together with a letter and no explanation as to why he was withdrawing. The only reference Mr. Grisley made was that he was permitted to withdraw under Rule 74, Utah Rules of Civil Procedure, when there are no other motions before the court. I was stunned and left with no recourse except to postpone the mediation and locate another attorney to represent us. It was unethical for Mr. Grisley to take this action with his mediation scheduled. He caused subsequent mediation to be very difficult for me impacting the outcome. I had scheduled plane reservations and a hotel for a 3,000-mile trip to Utah. It was unconscionable for Mr. Grisley to take such action.

I Know all the above information is not going to change our situation but my position at this time is to inquire how a proposal may be made to change this Rule so that no other unsuspecting clients are so adversely affected. I spoke with Derek Brown, legal counsel for Senator Orin Hatch. He in turn spoke to several attorneys in Salt Lake City and Mr. Brown advised me that they were all in agreement that they were unaware such a law was in effect. Mr. Brown quoted a case wherein an attorney had represented a client for a period of time and the client discontinued paying fees altogether. There was a hearing to withdraw held before the assigned Judge and he ordered the attorney to continue representation since it had been for a considerable length of time and whether or not the attorney received compensation. It is professionally responsible for an attorney to notify the client giving a reason for withdrawal, continue representation for a period of time until new counsel can be located and a hearing held in the matter.

What must be done to amend Rule 74 in the Utah Rules of Civil Procedure? I will appreciate your response.

Sincerely,

Gaile Canfield

Gaile Canfield

GC/me
Certified Mail
Return Receipt Requested

Rule 74. Withdrawal of counsel.

(a) 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 hearing or trial has been set. If a motion is pending or a hearing, ~~or~~ trial or mediation has been set, 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, ~~or~~ trial or mediation.

(b) An attorney who has entered a limited appearance under Rule 75 shall withdraw from the case by filing and serving a notice of withdrawal upon the conclusion of the purpose or proceeding identified in the Notice of Limited Appearance. An attorney who seeks to withdraw before the conclusion of the purpose or proceeding shall proceed under subdivision (a).

(c) If an attorney withdraws other than under subdivision (b), 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.

(d) 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.

Rule 108. Motion for temporary order.

A party shall request a temporary order by motion for the relief sought and not by motion for an order to show cause.

Rule 108. Motion for temporary order. A party requesting relief other than enforcement of an existing order or sanctions for violating an order, shall file a motion for a temporary order and not a motion for an order to show cause.

Rule 108. Limit on order to show cause.

A court may issue an order to show cause only upon motion supported by affidavit or other evidence sufficient to show probable cause to believe a party has violated a court order. The court shall proceed in accordance with Utah Code Title 78, Chapter 32, Contempt.

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) False writing under penalty of law. Other than a deposition or a verified complaint, if a writing is required or permitted to be supported by the oath or affirmation of a person, the writing may be supported by the unsworn, dated and signed statement of the person declaring the matter to be true under penalty of law. The following form is sufficient: "I declare under penalty of law that the following is true and correct."

The discovery rules were significantly changed in 1999 to create a new model for discovery and case management in state court cases. The objective of the new model was to better manage litigation by planning. The purpose of this survey is to evaluate how well the rules have accomplished the goal.

Question	Strongly agree	Agree	Disagree	Strongly disagree	Has no effect	No opinion
1. The 1999 amendments to the discovery rules have simplified discovery.	☐	☐	☐	☐	☐	☐
2. The 1999 amendments to the discovery rules have promoted full disclosure of discoverable information.	☐	☐	☐	☐	☐	☐
3. The 1999 amendments to the discovery rules have made litigation significantly more expensive.	☐	☐	☐	☐	☐	☐
4. The 1999 amendments to the discovery rules promote the just, speedy, and inexpensive determination of lawsuits.	☐	☐	☐	☐	☐	☐
5. The requirement of an attorney planning meeting significantly improves the prompt resolution of lawsuits.	☐	☐	☐	☐	☐	☐
6. The requirement of an attorney planning meeting significantly reduces disagreements over discovery.	☐	☐	☐	☐	☐	☐
7. Attorneys generally treat the attorney planning conference as a meaningless procedural hurdle rather than as an opportunity to meaningfully discuss the issues and create a discovery plan suited to the particular case.	☐	☐	☐	☐	☐	☐
8. Initial disclosures often provide most of the information I would otherwise seek in discovery thus greatly reducing or eliminating the need for further discovery.	☐	☐	☐	☐	☐	☐
9. The requirement that the disclosure of expert witnesses be accompanied by a written report outlining the expert's anticipated testimony generally eliminates the need for further discovery regarding the expert's opinions.	☐	☐	☐	☐	☐	☐
10. The limitation on the number of interrogatories has reduced discovery abuse.	☐	☐	☐	☐	☐	☐
11. I am often required to seek judicial intervention in a setting an initial discovery plan.	☐	☐	☐	☐	☐	☐
12. Attorneys are generally willing to agree to appropriate variations from the default discovery limits and deadlines specified in the rules.	☐	☐	☐	☐	☐	☐
13. Judges are generally willing to order appropriate variations from the default discovery limits and deadlines.	☐	☐	☐	☐	☐	☐

Demographic information

14. Years in practice.

☐ 0-5
☐ 6-10
☐ 11-15
☐ 16-20
☐ 21 or more.

15. Type of practice.

☐ only represent plaintiffs in civil litigation
☐ generally represent defendants in civil litigation
☐ civil practice with approximately equal representation of plaintiffs and defendants
☐ primarily criminal law practice
☐ transactional law practice
☐ judge
☐ education
☐ corporate
☐ other

16. Number of lawyers in organization.

☐ 1-3
☐ 4-10
☐ 11-15
☐ 16-30
☐ 31 or more.

From: "Francis J. Carney" <fcarney@aklawfirm.com>
To: "Fran Wikstrom" <fwikstrom@pblutah.com>, "Tim Shea" <tims@email.utcourts.gov>
Date: 3/5/07 6:12PM
Subject: Rule 40 (0.50/3.50)
CC: "Battle, Cullen" <cbattle@fabianlaw.com>

Fran:

Does Rule 40 still make sense in view of the elimination of most of the Local Rules a couple of years ago?

40(a) says that "The district courts shall provide by rule for the placing of actions upon the trial calender (1) without request of the parties or (2) upon request of a party and notice to the other parties or (3) in such other manner as the courts may deem expedient. Precedence shall be given to actions entitled thereto by statute."

But I don't see that we have any such local rule anymore. Am I missing something?

FJC

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Rule 40. Assignment of cases for trial; continuance.

(a) Order and precedence. The district courts shall ~~provide by rule for the placing of~~ place actions upon the trial calendar ~~(1) without request of the parties or (2) upon request of a party and notice to the other parties or (3)~~ in ~~such other~~ a manner ~~as~~ the courts ~~may~~ deems expedient. Precedence shall be given to actions entitled thereto by statute.

(b) Postponement of the trial. Upon motion of a party, the court may in its discretion, and upon such terms as may be just, including the payment of costs occasioned by such postponement, postpone a trial or proceeding upon good cause shown. If the motion is made upon the ground of the absence of evidence, such motion shall also set forth the materiality of the evidence expected to be obtained and shall show that due diligence has been used to procure it. The court may also require the party seeking the continuance to state, upon affidavit or under oath, the evidence he expects to obtain, and if the adverse party thereupon admits that such evidence would be given, and that it may be considered as actually given on the trial, or offered and excluded as improper, the trial shall not be postponed upon that ground.

(c) Taking testimony of witnesses present. If required by the adverse party, the court shall, as a condition to such postponement, proceed to have the testimony of any witness present taken, in the same manner as if at the trial; and the testimony so taken may be read on the trial with the same effect, and subject to the same objections that may be made with respect to a deposition under the provisions of Rule 32(c)(3)(A) and (B).