

Agenda

Advisory Committee on Rules of Civil Procedure

March 24, 2021

4:00 to 6:00 p.m.

Via Webex

<i>Welcome and approval of minutes</i>	Tab 1	Jonathan Hafen, Chair
<i>Legislative standing agenda item</i> <ul style="list-style-type: none">• Updates on legislative session		Jonathan Hafen, Nancy Sylvester
<i>Online Dispute Resolution</i> <ul style="list-style-type: none">• Small claims rule amendments	Tab 2	Judge Brendan McCullagh, Judge Clay Stucki, Justin Toth, Judge Jon Carpenter
<i>Pandemic amendments</i> <ul style="list-style-type: none">• Rule 4 and certified mail	Tab 3	Nancy Sylvester
<i>Other business</i> <ul style="list-style-type: none">• Subcommittee to study criminal restitution issue in <i>State v. Billings</i>		Jonathan Hafen, Chair
<i>Consent agenda</i> <ul style="list-style-type: none">• Conforming amendment to Rule 12	Tab 4	Leslie Slaugh
<i>Tentative items for future agendas:</i> <ul style="list-style-type: none">• Family law rules and Rule 26 back from comment• ICWA (Bridget Koza)• Rule 12 and counterclaims in evictions (Susan Vogel, Judge Parker)• Expungements (Salt Lake County)• Rule 108, Rule 37, trial date setting (family law-Judge Holmberg, Jim Hunnicutt)• Expedited Procedures Rule (Nancy Sylvester, Susan Vogel, Leslie Slaugh)• Federal Rule 30 amendments (Judge Holmberg)• Federal Rule 41 amendments (Judge Mettler and Judge Jones)		---

2021 Meeting Schedule: 4th Wednesday at 4pm unless otherwise scheduled

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

Tab 1

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

Summary Minutes – February 24, 2021

**DUE TO THE COVID-19 PANDEMIC AND PUBLIC HEALTH EMERGENCY
THIS MEETING WAS CONDUCTED ELECTRONICALLY VIA WEBEX**

Committee members & staff	Present	Excused	Appeared by Phone
Jonathan Hafen, Chair	X		
Robert Adler	X		
Rod N. Andreason	X		
Paul Barron	X		
Judge James T. Blanch	X		
Lauren DiFrancesco	X		
Judge Kent Holmberg	X		
James Hunnicutt	X		
Trevor Lee			X
Judge Amber M. Mettler	X		
Brooke McKnight	X		
Ash McMurray			
Timothy Pack	X		
Bryan Pattison	X		
Michael Petrogeorge		X	
Judge Clay Stucki	X		
Judge Laura Scott	X		
Leslie W. Slauch	X		
Trystan B. Smith	X		
Heather M. Sneddon		X	
Paul Stancil		X	
Nick Stiles	X		
Judge Andrew H. Stone	X		
Justin T. Toth	X		
Susan Vogel	X		
Nancy Sylvester, Staff	X		
Kim Neville, Recording Secretary	X		

(1) WELCOME AND APPROVAL OF MINUTES

Jonathan Hafen welcomed the committee and asked for approval of the minutes as amended with comments from the minutes sub-committee. Rod Andreason moved to adopt the minutes as amended; Jim Hunnicutt seconded. The minutes were approved unanimously.

(2) RULES BACK FROM COMMENT

Nancy Sylvester presented a summary of the comments received on the proposed rules that were sent out for public comment (Rules 43, 5, 76, 6, 7, 37, and 45).

The Committee received public comments in support of the proposed changes to Rule 6, which extends the number of days allowed for a response from 3 to 7, when service is completed by mail. The Committee did receive one comment suggesting that the time frame would be more appropriate extended to 4 or 5 days (instead of 7). The consensus of the Committee, however, is that 7 days is appropriate as the proposed rule applies largely to pro se litigants who frequently report delays in service by mail. E-filers are unlikely to be affected.

The Committee also received comments to proposed Rule 7, with one comment requesting additional guidance as to how parties can address accusers in video proceedings. The consensus of the Committee is that the proposed rule change addressed these issues and struck an appropriate balance by affording certain deference to the trial court to manage its proceedings. Additional minor stylistic changes were provided by the commentator, which were adopted.

With respect to Rule 37, the Committee received one comment stating that the reference to Rule 43(b) was superfluous. Leslie Slaugh and Lauren DiFrancesco both spoke in favor of the original proposed language, as the proposed change allows the court to conduct proceedings by either telephone or videoconference. The proposed language clarifies that the court will utilize appropriate safeguards when remote hearings are conducted. The consensus of the Committee is that it was important to acknowledge the need for safeguards in both Rule 37 and Rule 43.

The same comment also addressed Rule 43, raising critique on several subparts. Specifically, the comment suggested that use of the word “shall” in Rule 43(a) be replaced with “must” with respect to the oath. Ms. Sylvester noted that the term “shall” is used in the correlating statute. Accordingly, the Committee prefers to track the language used by the legislature. The comment also expressed concerns about use of the term “practical” as being confusing. The Committee changed the term to “feasible” in order to better clarify this term. The comment also suggested breaking out the good cause and safeguard concepts into multiple sections; however, the Committee favors the succinct wording. The comment also indicated a preference for use of a plural form, along with minor criticisms as to the use of certain adjectives. The Committee considered each suggestion identified by the comments and deleted one superfluous “necessary.”

The consensus of the Committee is that the remaining terms are appropriate in light of prior discussions regarding the terms. The comment also raised a number of issues with respect to subsection (b). The Committee elected to replace the phrase “and other things,” with “electronic materials” for clarity. The Committee also adopted several of the comment’s proposed stylistic suggestions with regard to subsection (c).

The Committee received a set of comments from another member of bar with regard to Rules 5 and 6. The comment suggested that proposed Rule 5 address what should happen when an email is returned, and advise litigants of the need to regularly check spam filters. Mr. Slaugh noted that the court expects all e-filers to maintain a working email address with the courts and to assume responsibility for ensuring their technology is reliable. Ms. Sylvester also noted that Rule 76 addresses contact information changes. Judge Holmberg recommended that the Committee adopt wording similar to that used in Maine’s R. Civ. P. 5, which states:

If Electronic Service to the last known electronic mail address is returned as undeliverable, or the sender otherwise learns that it was not successfully delivered, service must then be made by regular mail. Service shall be complete upon the attempted Electronic Service for purposes of the sender meeting any time period.

This provision was included under sub-section (b) in a modified form. Per Ms. Vogel’s suggestion, the phrase “or the sender otherwise learns that it was not successfully delivered” was deleted and “if the person to be served has provided a mailing address” was added. These changes are for the benefit of pro se litigants, who frequently report that they have not been served.

The same comment also advocated for a shorter period of time for mailing days. The consensus of the Committee is that seven days is appropriate for the reasons previously stated.

The Committee received comments from two other members of the bar with respect to Rule 43, both of whom expressed concern about the use of remote testimony. These comments expressed concern that the court or counsel would not be able to reliably assess credibility through remote hearing. The Committee noted that a remote hearing is not required, but left to the judgement of the trial judge.

Copies of the revised rule changes, which incorporate the public comments that were received and considered, are attached as **Exhibit A**.

(3) PANDEMIC AMENDMENTS

Susan Vogel presented the proposed amendments to Rule 12 with respect to landlord-tenant claims. Under the current statute, a tenant has three days to respond to an eviction proceeding, while the landlord has 21 days to respond to a counterclaim. The proposed change would provide for equal response time, by requiring a three-day response to any counterclaim. This would also

allow the occupancy hearing to proceed within ten days as required by statute. Ms. Vogel noted that many pro se litigants and tenants express frustration with the process and what they perceive to be an inherent unfairness in the process. Ms. Vogel also reminded the Committee that 94% of the defendants in landlord-tenant cases are unrepresented; while only 8% of plaintiffs are unrepresented. The proposed language has been vetted with Utah Legal Services, which supports the change.

The proposed change would add the following phrase to Rule 12(a): “However, the plaintiff in an unlawful detainer action shall serve a reply to a counterclaim within three business days after service of the counterclaim.”

Judge Stone suggested that the language be limited to cases “affecting occupancy.” Judge Scott noted that trial courts have difficulty contacting defendants who have been evicted, which can create administrative problems when cases continue beyond an occupancy hearing. Judge Scott also noted that it is rare for a case to continue after an order of restitution is issued, other than for default proceedings. Judge Scott also suggested that the Committee may benefit from hearing from Judge Parker on the issue, as he currently oversees the landlord-tenant calendar in Third District.

Mr. Hunnicutt also suggested that it would be appropriate to hear from attorneys representing landlords to hear any counter-arguments. Judge Blanch also joined Judge Scott’s suggestion that the Committee reach out to Judge Parker before taking further action. Ms. Sylvester will contact Judge Parker on behalf of the Committee.

(3) FAMILY LAW AMENDMENTS

Jim Hunnicutt presented the proposed family law amendments, starting with Rule 108. The Committee has collected feedback in response to *Day v. Barnes*, 2018 UT 143. Judge Holmberg surveyed judges throughout the state, who have noted a sharp increase in the number of objections. Judge Holmberg also reported that the trial judges indicate widespread support for imposing a standard of review other than de novo. Judge Stone and Judge Holmberg indicated that many trial judges will conduct a hearing when an objection is made, and the manner in which the hearing proceeds (through evidence, proffer, or argument) is often conducted in consultation with the parties or counsel as to how the parties wish to proceed. Ms. Vogel expressed concern on behalf of pro se litigants, who often feel frustrated by the process and value the right to be heard through a full proceeding. Judge Blanch also commented on the standard of review, indicating that in practice, trial judges consider the commissioner’s ruling in evaluating the burden of persuasion, but often consider additional evidence that an objecting party may bring to the court’s attention.

The Committee decided to defer further discussion until the next meeting.

(4) ADJOURNMENT

The meeting adjourned at 6:02 p.m.

Tab 2

Utah Rules of Small Claims Procedure
Amended for Statewide ODR
Draft: March 19, 2021

Contents

Rule 1. General provisions.	2
Rule 2. Plaintiff beginning the case.....	5
Rule 2A. Defendant’s removal from district court.....	7
Rule 3. Service of the claim and ODR summons.	8
Rule 4. Responding to a Claim and Counter claims.....	9
Rule 4A. Defendant’s removal to district court.....	11
Rule 5. Requesting an Exemption from ODR.....	12
Rule 6. ODR Procedures and Facilitation.....	13
Rule 6A. ODR Settlement Agreements.....	15
Rule 6B. Unsuccessful Facilitation.....	17
Rule 6C. Pretrial Procedures.....	18
Rule 7. Trial.....	20
Rule 8. Dismissals.	21
Rule 9. Default judgment.	23
Rule 10. Set aside of default judgments and dismissals.....	24
Rule 11. Collection of judgments.	26
Rule 12. Appeals.	27
Rule 13. Representation.....	30

Rule 1. General provisions.

(a) These rules are the simplified rules of procedure and evidence for small claims cases required by the Utah Code.

(b) These rules govern a small claims case from its filing through any appeal pursued under Rule 12, including any case removed from the district court to a small claims court pursuant to Rule 2(a). These rules do not apply to an action removed from small claims court to the district court, as provided in Rule 4(a).

(c) If a particular form is required by court rules or statute, a party must file documents substantially similar to that required form.

(d) By filing a document, or presenting it in the small claims case, a party is certifying that to the best of the party's knowledge it is not being presented for an improper purpose and the legal and factual contentions are made in good faith. If the court determines that this certification has been violated, the court may impose an appropriate sanction upon the attorney or party. Any document filed with the court, with the exception of a Motion to Waive Fees, will be served on (delivered to) the other party or parties as required by these rules.

(e) The calculation of time periods under these ODR Rules is as provided in the Utah Rule of Civil Procedure 6.

Committee Note:

In an effort to improve access to justice, the Utah Supreme Court and the Utah Judicial Council undertook a multi-year pilot project in Online Dispute Resolution (ODR) for small claims cases. As a result of the pilot, the Court now fully endorses these ODR processes by incorporating them permanently into small claims cases throughout the state. The Supreme Court believes ODR will increase the participation rate of parties, assist the parties in resolving their disputes, and improve the quality and presentation of evidence at trial in those matters that cannot be resolved. In short, the Supreme Court

believes ODR will further the statutory goal of small claims: dispensing speedy justice between the parties.

With that in mind the Court adopts these 2021 wholesale amendment to the Small Claims Rules, incorporate the mechanisms of ODR into all small claims cases. Courts are joining the ODR platform on a rolling basis, as training and resources allow. During the rollout phase, ODR small claims cases will be governed by standing order of the Utah Supreme Court. Once all courts are using the ODR platform, these ODR rules will come into effect.

Upon taking effect these rules will apply in full to all cases filed after that date. For cases filed before a court location joined the ODR platform, rules 4A, and 7-13 will apply to those cases.

~~(a) These rules constitute the simplified rules of procedure and evidence in small claims cases required by the Utah Code and shall be referred to as the Rules of Small Claims Procedure. They are to be interpreted to carry out the statutory purpose of small claims cases, dispensing speedy justice between the parties.~~

~~(b) These rules apply to the initial trial and any appeal under Rule 12. These rules do not apply to an action transferred from justice court to the general civil calendar of the district court, except as set out in Rule 12.~~

~~(c) If the Supreme Court has approved a form for use in small claims actions, parties must file documents substantially similar in form to the approved form.~~

~~(d) By presenting a document, a party is certifying that to the best of the party's knowledge it is not being presented for an improper purpose and the legal and factual contentions are made in good faith. If the court determines that this certification has been violated, the court may impose an appropriate sanction upon the attorney or party.~~

Committee Note:

~~In *Simler v. Chiles*, 2016 UT 23, the Utah Supreme Court concluded that “the Utah Constitution guarantees the right to a jury trial in a small claims trial de novo.” By electing to file a complaint seeking a low damages award in district court, plaintiffs have always been able to obtain a jury trial, but defendants have had no corresponding option. These rules have been revised to include a mechanism for defendants to transfer their cases from justice court to the district court where a jury trial is available in the first instance pursuant to the Utah Rules of Civil Procedure. These rules now also provide a right to a jury trial in de novo appeals to the district court of a judgment in a small claims action tried without a jury.~~

Rule 2. Plaintiff beginning the case.

(a) A small claims case starts when the plaintiff files with the clerk of the court a “claim,” which is a declaration stating facts showing:

(i) the right to recover money from the defendant or

(ii) that the plaintiff is holding money claimed by two or more defendants

("interpleader").

(b) The plaintiff must include the plaintiff's email address and, if known, the defendant's email address in the claim. The plaintiff must pay the appropriate filing fee or file a Motion to Waive Fees when filing the claim.

(c) The plaintiff must file any request for exemption from ODR under Rule 5, at the same time as the claim.

(d) A plaintiff should register for the ODR system within 7 days of filing the claim or, if the plaintiff has filed a Rule 5 request and the exemption is denied, within 7 days from receiving the denial. The court shall notify the plaintiff by email if the plaintiff has not registered as described above, and shall dismiss the case without prejudice, if the plaintiff has not registered within 56 days of the email, or within 7 days of a defendant registering.

(e) In interpleader cases, the plaintiff is referred to as “stakeholder” and the defendants as “claimants.” The stakeholder shall place the money in trust with the court at the time of filing or acknowledge that the funds are being held safely and will be paid to the claimant(s) as the court directs.

~~(a) A case is begun by plaintiff filing with the clerk of the court either:~~

~~(a)(1) an affidavit stating facts showing the right to recover money from defendant; or~~

~~(a)(2) an interpleader affidavit showing that plaintiff is holding money claimed by two or more defendants.~~

~~(b) The affidavit qualifies as a complaint under the Utah Code.~~

~~(c) Unless waived upon filing an affidavit of impecuniosity, the appropriate filing fee must accompany the small claims affidavit.~~

~~(d) In an interpleader action, plaintiff must pay the money into the court at the time of filing the affidavit or acknowledge that it will pay the money to whomever the court directs.~~

~~Upon filing the affidavit, the clerk of the court shall schedule the trial and issue the summons for the defendant to appear.~~

98 Rule 2A. Defendant's removal from district court.

99 (a) A defendant removing a case from district court pursuant to 78A-8-102 ~~shall~~must
100 file with the clerk of the justice a small claims court with jurisdiction:

101 (1) a copy of the notice of removal filed in district court;

102 (2) the plaintiff's stipulation to proceed in small claims; and

103 (3) any counter affidavit showing a right to recover damages from the plaintiff.

104 (b) A party removing a case to small claims court must pay any required filing fee, or
105 file a Motion to Waive Fees, when the party files the notice of removal in the small
106 claims court. Unless waived upon filing an affidavit of impecuniosity, the appropriate
107 filing fee must accompany the notice of removal.

108 (c) Upon ~~filing the notice of~~ removal, the clerk of the small claims court ~~shall~~must
109 schedule the trial and issue notices, which the defendant ~~shall~~must serve upon the
110 plaintiff, along with a copy of any ~~counter affidavit~~ counterclaim.

112 Committee Note:

113 These removed cases are not subject to the pre-trial ODR requirements and will be
114 scheduled directly for trial. The number of these cases is negligible, and the parties
115 already have some familiarity with the other's claims.

Rule 3. Service of the ~~affidavit~~ claim and ODR summons.

(a) A plaintiff must use the ODR Summons in the form required by the Judicial Council's Form Committee when serving a claim under these rules.

(b) A plaintiff must serve the defendant(s) a copy of the claim and the ODR Summons, as provided in Rule 4 of the Utah Rules of Civil Procedure.

(c) Within 7 days of service of the claim and ODR Summons, the plaintiff must file proof of such service with the court.

(d) If the plaintiff fails to file proof of service within 14 days of service, the served defendant may file a Motion to Dismiss the case against them. If granted, that dismissal is without prejudice.

~~(a) Service of the small claims affidavit and summons shall be as provided in Utah Rule of Civil Procedure 4. The affidavit and summons must be served at least 30 calendar days before the trial date.~~

~~(b) Proof of service of the affidavit and summons must be filed as provided in Utah Rule of Civil Procedure 4 no later than 10 business days after service.~~

~~(c) Each party shall serve on all other parties a copy of all documents filed with the court. Each party shall serve on all other parties all documents as ordered by the court. Service of all papers other than the affidavit and counter affidavit may be by first class mail to the other party's last known address. The party mailing the papers shall file proof of mailing with the court no later than 10 business days after service. If the papers are returned to the party serving them as undeliverable, the party shall file the returned envelope with the court.~~

~~(d) The summons shall include language sufficient to notify defendant of the removal right provided in Rule 4A.~~

Rule 4. Responding to a Claim and Counter claims.

(a) Upon being served with the claim, a defendant must, within 14 days:

(1) Create or log into an existing ODR account and link the claim as instructed in the Summons; or

(2) File a request for exemption from participating in ODR pursuant to Rule 5.

(b) A defendant who is denied an exemption requested pursuant to Rule 5 must comply with subparagraph (a)(1) within 7 days of receiving the denial, or the time remaining under (a), whichever is longer.

(c) If a defendant fails to register or file a request an exemption, the plaintiff may file a motion asking the court to enter a default judgment in an amount not to exceed the amount requested in the claim.

(d) a defendant may file with the clerk of the court a declaration stating facts showing the right to recover money from plaintiff ("counterclaim").

(e) The defendant filing a counterclaim must pay the required fee or file a Motion to Waive Fees, at the time of filing.

(f) The defendant may raise and present evidence on any counterclaims during the facilitation phase without the need to formally file a counterclaim. The facilitation process may result in an agreement with the defendant becoming the judgment creditor. If the case proceeds to trial pursuant to rule 6B the defendant must file a counterclaim and pay the required fee or file a Motion to Waive Fees at least 7 days before trial. The defendant may serve the plaintiff through the email address provided by the plaintiff.

(g) Counterclaims for more than the monetary limit for small claims actions may not be filed under these rules. To seek such an award a defendant must file a Motion to Remove to District Court under Rule 4A.

Rule 4. Counter affidavit.

~~(a) Defendant may file with the clerk of the court a counter affidavit stating facts showing the right to recover money from plaintiff.~~

~~(b) Unless waived upon filing an affidavit of impecuniosity, the appropriate filing fee must accompany the counter affidavit.~~

~~(c) Except as provided in Rule 2A, any counter affidavit must be filed at least 15 calendar days before the trial. The clerk of the court will mail a copy of the counter affidavit to plaintiff at the address provided by plaintiff on the affidavit.~~

~~A counter affidavit for more than the monetary limit for small claims actions may not be filed under these rules.~~

179 **Rule 4A. Defendant's removal to district court.**

180 (a) To exercise the right to a jury trial, or to assert a counterclaim outside the
181 jurisdictional limits of small claims, a defendant ~~shall~~ must:

182 (1) within ~~15~~ 14 days of being served with the affidavit, file a notice of removal in the
183 district court;

184 (2) pay the required filing fee, or a Motion to Waive Fees in the district court ~~unless~~
185 ~~waived by the district court~~; and

186 (3) ~~file a copy of the notice of removal in the small claims court, with the number of~~
187 ~~the district court case, and proof of service~~ file in the small claims court a copy of the
188 notice of removal including the district court case number.

189 (b) Upon ~~filing~~ receiving the notice of removal, the clerk of the small claims court ~~shall~~
190 will close its case and the matter ~~shall~~ will continue in the district court under the Utah
191 Rules of Civil Procedure.

192 (c) ~~If a case is not removed to district court pursuant to this rule, the right to a jury trial~~
193 ~~in the first instance is waived and the matter, including any appeal, shall proceed~~
194 ~~according to these rules. If a defendant does not remove a case to the district court under~~
195 this rule, the defendant waives the right to a jury trial and the case, including appeals,
196 will proceed under these rules.

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Rule 5. ~~No answer required.~~ Requesting an Exemption from ODR

~~No answer is required to an Affidavit or Counter Affidavit. All allegations are deemed denied.~~

(a) A party must participate in the ODR process unless the court exempts the party because of undue hardship. Undue hardship exists when a party cannot access the online system or participate in the online process without substantial difficulty or expense.

(b) The court will provide to the requesting party the form necessary to request an exemption.

(c) The court will grant the request if the party shows participation would cause undue hardship.

(d) If the court exempts the plaintiff from participating in ODR, the court clerk will schedule a trial and issue a summons for the defendant to appear.

(e) If the court exempts the defendant from participating in ODR, the court clerk will schedule a trial and notify the parties of the date, time, and place of the trial.

Rule 6. ODR Procedures and Facilitation.

(a) Once both parties have registered for ODR, the case enters the facilitation phase. During this phase, the parties may communicate with each other through the ODR portal. A facilitator will also be assigned to the case from a roster maintained by the AOC. The purpose of this phase of the case is to see if the parties can reach an agreed upon resolution of the claim and/or counterclaim without either side having to appear at the court.

(b) The role of the facilitator is to guide the parties through ODR and to assist them in reaching a settlement. To advance these goals, the facilitator may provide information to a party regarding procedure and evaluate the Claim or any defenses.

(c) A facilitator will be assigned to the case no later than 7 days after at least 2 adverse parties have linked to an ODR claim. The facilitator will inform the parties of the processes to be followed, including the types of communications the parties may use.

(d) The facilitator will establish timelines for sharing information and a deadline for attempts to informally resolve the case. Unless the facilitator determines additional time will likely result in a settlement, these efforts at resolution should not exceed 14 days. The facilitator may adjust the timelines at any time during the process.

(e) A facilitator may communicate privately with any party at any time for the purposes of facilitating a resolution.

(f) The facilitator may request a party provide the facilitator and every other party:

(1) information and evidence about the merits of the case;

(2) information about the ability to pay;

(3) responses to another party's information; and

(4) the party's position on any proposed resolution of the claim.

240 | (g) All information provided under this paragraph is considered private and will not be
241 | disclosed beyond the facilitation phase without the approval of the party providing the
242 | information.

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Rule 6A. ODR Settlement Agreements

(a) Form of settlement agreements. The parties may prepare an online settlement agreement form or ask the facilitator to do so. While the parties are free to craft settlement agreements with such terms as they think are required, settlements usually take one of two forms: deferred judgments or entered (sometimes called confessed) judgments.

(b) Deferred judgment. A deferred judgment is when the court enters a settlement agreement in the record and the judgment is open until the money owed is paid. The settlement agreement must set forth the terms agreed to by the parties and must state that if the party owing the money fails to comply with the agreement, the party owed the money may file a Motion to Enforce the Settlement Agreement under Rule 10B. Once the money is paid in full, the party owed the money must, and the party owing the money may, file a satisfaction of judgment with the court under Rule 11.

(c) Entered (confessed) judgment. An entered or confessed judgment is when the parties elect to have the court enter a judgment at the time the settlement agreement is entered in the court record. The judgment is collectable as the parties determine, or under Rule 11.

(d) Settlement agreements requiring a party to do something. In order for the court to enter a judgment on an agreement that requires a party to do something other than paying money, such as returning tangible property or performing a service, the agreement must provide for an amount of money, not to exceed the jurisdictional limit of the court, that will be paid in the event the party fails to perform as agreed.

(e) No settlement agreement reached during ODR. Once a facilitator has notified the court that the parties are unable to reach a resolution and the matter is set for trial, the ODR portal will be unavailable to create an online settlement agreement. However, parties may always settle a claim without the use of a facilitator or the ODR process and

270 | file that with the court before trial, if the parties reach a settlement agreement before
271 | trial.

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Rule 6B. Unsuccessful Facilitation

(a) Once facilitation has begun, if the plaintiff fails to respond to any communication from the facilitator within 7 days, the facilitator may notify the defendant of the ability to file a Motion to Dismiss under Rule 8.

(c) If the facilitator determines that the parties are unable to reach a settlement, the facilitator will:

(1) terminate the facilitation process and notify the court to set a trial date;

(2) work with the parties to prepare a “trial prep document” to submit to the court that includes information provided during facilitation that are relevant to the dispute and agreed to by both parties;

(3) If the parties have prepared a “trial prep document,” submit it to the court in advance of trial; and

(4) advise a defendant of the necessity of filing and serving any counterclaims at least 7 days before trial.

(d) The court, upon receiving such notice, will:

(1) schedule a date for trial to be held between 14 and 35 days from the date the court receives the notice; and

(2) notify the parties of the date using the email address associated with the ODR account or other updated email address provided to the court.

Rule 6C. Pretrial Procedures.

(a) Whether a case is set for trial under Rule 5 or Rule 6B, the following pre-trial procedures govern.

~~(a)~~ There is no process for the court to order either party to provide information to the other party before trial. However, the parties are urged to exchange information prior to the trial.

~~(b)~~ Written motions and responses may be filed prior to trial. Motions may be made orally or in writing at the beginning of the trial. No motions will be heard prior to trial.

(d) If a party cannot attend the trial on the scheduled date, that party must contact the court clerk for alternative trial dates and discuss with the other party or parties, a mutually agreed upon (stipulated) date. If there is a stipulation, the party requesting a new date must file a Notice of Stipulated Continuance with the Court, and deliver that to the other party or parties.

(e) If a party cannot attend the trial on the scheduled date and cannot get a stipulation from the other party, or parties, for a new trial date, the clerk of the court may grant one Motion to Postpone the trial date (per side) if the motion is made at least 7 days before trial. The clerk will give notice to the other party and schedule a mutually acceptable date.

(f) Only the judge may grant a motion to postpone made less than 7 days before trial that seeks to postpone a case for more than 42 days, or is a second or subsequent motion to postpone by a party. The court may condition granting a motion to postpone on a party agreeing to pay the other party's costs incurred because of the postponement.

~~(c) One postponement of the trial date per side may be granted by the clerk of the court. To request a postponement, a party must file a motion for postponement with the court at least 5 business days before trial. The clerk will give notice to the other party. A postponement for more than 45 calendar days may be granted only by the judge. The~~

320 | ~~court may require the party requesting the postponement to pay the costs incurred by~~
321 | ~~the other party.~~

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Rule 7. Trial.

(a) All parties must bring to the trial all documents related to the controversy regardless of whose position they support.

(b) Parties may have witnesses testify at trial and bring documents. If a witness will not attend the trial voluntarily, a party must subpoena the witness. The clerk of the court or a party's attorney may issue a subpoena pursuant to Utah Rule of Civil Procedure 45. The party requesting the subpoena is responsible for service of the subpoena and payment of any fees. A subpoena must be served at least 7 days prior to trial.

(c) The judge will conduct the trial and question the witnesses. The trial will be conducted in such a way as to give all parties a reasonable opportunity to present their positions. The judge may also allow parties or their counsel to question witnesses.

(d) The judge may receive the type of evidence commonly relied upon by reasonably prudent persons in the conduct of their business affairs. The judge will not strictly apply the rules of evidence. The judge may allow hearsay that is probative, trustworthy and credible. Irrelevant or unduly repetitious evidence ~~shall~~ will be excluded.

(e) After trial, the judge ~~shall~~ will decide the case and enter a judgment. No written findings are required. The court clerk will serve all parties with a copy of the judgment.

(f) Costs will be awarded to the prevailing party or to the stakeholder in an interpleader action unless the judge otherwise orders.

344 **Rule 8. ~~Dismissal~~Dismissals.**

345 (a) The court must dismiss any claim if it determines that the court has no jurisdiction to
346 hear the claim.

347 (b) Prior to trial, if a party files a Motion to Dismiss their own claim, the court may
348 dismiss that claim. That dismissal is without prejudice (meaning it can be refiled) unless
349 the moving party requests it be with prejudice (meaning it cannot be refiled).

350 (c) Dismissal of a Plaintiff's claim: The court may dismiss a plaintiff's claim if:

351 (1) The plaintiff fails to register for ODR as required by Rule 2(d);

352 (2) The plaintiff fails to respond to the ODR facilitator for 7 days as outlined in Rule
353 6B(d);

354 (3) The plaintiff (except in interpleader cases) fails to appear at trial; or

355 (4) No proof of service has been received by the court within 127 days of filing.

356 (d) Dismissals under paragraph (c) are without prejudice. However, if the court finds
357 that the plaintiff, in a prior case regarding the same dispute had failed to register,
358 respond, or appear at trial, then the dismissal is with prejudice.

359 (e) **Interpleader cases.** If a stakeholder in an interpleader case fails to appear for trial,
360 the court will hear the claims of the competing claimants. If a claimant fails to appear,
361 the court can choose to not consider that claimant's interest in the amount in
362 controversy. If all claimants fail to appear, the court will dismiss the action without
363 prejudice. If a stakeholder had deposited funds in trust with the court, the clerk of the
364 court will transfer the money to the Unclaimed Property Division of the Office of the
365 State Treasurer.

366 (f) If a defendant who has filed a counterclaim fails to appear for trial, the court will
367 dismiss that defendant's counterclaim.

(g) The party moving for or benefitting from the dismissal must serve the Order of Dismissal on the other parties.

~~(a) Except in interpleader cases, if plaintiff fails to appear at the time set for trial, plaintiff's claim will be dismissed.~~

~~(b) If defendant has filed a counter affidavit and fails to appear at the time set for trial, defendant's claim will be dismissed.~~

~~(c) A party may move to dismiss its claim at any time before trial.~~

~~(d) Dismissal is without prejudice unless the judge otherwise orders. The appearing party shall serve the order of dismissal on the non-appearing party.~~

378 **Rule 9. Default judgment.**

379 (a) If a defendant fails to appear at the time set for trial, the court may grant the plaintiff
380 judgment in an amount not to exceed the amount requested in ~~plaintiff's affidavit~~the
381 claim.

382 (b) If a defendant has filed a ~~counter affidavit~~counterclaim and the plaintiff fails to
383 appear at trial, the court may grant defendant judgment in an amount not to exceed the
384 amount requested in defendant's ~~counter affidavit~~counterclaim.

385 (c) The party who appeared at trial and was granted a default judgment ~~shall~~must
386 immediately serve that judgment on the party, or parties, that did not appear.

387 (d) In an interpleader action, if a defendant fails to appear, a default judgment may be
388 entered against the non-appearing defendant.

389

390 Rule 10. Set aside of default judgments and dismissals.

391 (a) A party may request that a default judgment entered against the party or a dismissal
392 of the party's claim be set aside by filing a Motion to Set Aside within 14 days after
393 entry of the judgment or dismissal. If the court receives a timely Motion to Set Aside,
394 and there is good cause to grant the motion, the court must do so and reschedule the
395 trial. The court may require the moving party to pay the costs incurred by the other
396 party.

397 (b) If the court, considering the factors known or knowable to the moving party,
398 determines that a Motion to Set Aside filed more than 14 days after the entry of
399 judgment or dismissal is still filed within a reasonable time, the court will excuse the
400 late filing and consider the motion.

401 ~~(a) A party may request that the default judgment or dismissal be set aside by filing a~~
402 ~~motion to set aside within 15 calendar days after entry of the judgment or dismissal. If~~
403 ~~the court receives a timely motion to set aside the default judgment or dismissal and~~
404 ~~good cause is shown, the court may grant the motion and reschedule a trial. The court~~
405 ~~may require the moving party to pay the costs incurred by the other party.~~

406 ~~(b) The period for moving to set aside a default judgment or dismissal may be extended~~
407 ~~by the court for good cause if the motion is made in a reasonable time.~~

408

409

Rule 10B. Entry of judgment upon breach of settlement agreement.

(a) If a party fails to comply with the terms of a settlement agreement that did not result in a judgment signed by the court, then the party that is owed money in the agreement may file a Motion to Enter Judgment with the court for any money still owing.

(b) The party making the motion must provide the court with a copy of the settlement agreement form created under Rule 6A or otherwise, and a statement of any payments received since the date of the settlement agreement.

(c) Upon receiving a Motion to Enter Judgment, the court will notify the party owing the money that the party has 14 days to file an objection to the motion.

(d) The court will send that notice to the email address associated with the ODR account and any other updated email address provided to the court. If the party was exempted from ODR, and the court has no email address for the party, the court will mail notice to the party at their address in the court records.

(e) If an objection is filed, the court will set a hearing.

(f) If an objection is not filed, or if the motion is made in a reasonable time and the owing party does not appear at the hearing, the court will enter judgment in favor of the moving party for the amount remaining in the agreement.

(g) After a hearing, if the court determines that the owing party has violated the agreement, the court will enter judgment for the amount remaining in the agreement.

Rule 11. Collection of judgments.

(a) A judgment creditor, or the party owed the money, may collect a judgment from a judgment debtor, or the party owing the money, using the methods permitted under Utah law, including the Utah Rules of Civil Procedure. ~~Judgments may be collected under the Utah Rules of Civil Procedure.~~

(b) Within 7 days of the judgment debtor's full payment of the judgment, including any post-judgment costs and interest, the judgment creditor must file a Satisfaction of Judgment with the court. The court will enter the satisfaction upon the docket. ~~Upon payment in full of the judgment, including post judgment costs and interest, the judgment creditor shall file a satisfaction of judgment with the court. Upon receipt of a satisfaction of judgment from the judgment creditor, the clerk of the court shall enter the satisfaction upon the docket.~~

(c) The judgment debtor may file a satisfaction of judgment with the court accompanied by and proof of payment. If the judgment creditor fails to object within 10-14 business calendar days after notice, the court may enter satisfaction of the judgment. If the judgment creditor objects to the proposed satisfaction, the court shall will rule on the matter and may conduct a hearing.

(ed) If the judgment creditor is unavailable to accept payment of the judgment, the judgment debtor may pay the amount of the judgment into court and serve the creditor with notice of payment in the manner directed by the court as most likely to give the creditor actual notice, which may include publication. 28 calendar days ~~After 30 calendar days~~ after final notice, the debtor may file a satisfaction of judgment and the court may conduct a hearing. The court will hold the money in trust for the creditor for the period required by state law. If not claimed by the judgment creditor, the clerk of the court shall will transfer the money to the Unclaimed Property Division of the Office of the State Treasurer.

Rule 12. Appeals.

(a) Any party may appeal a final order or judgment within 28 calendar days after entry of judgment or order or after denial of a ~~m~~Motion to ~~s~~Set ~~a~~Aside the ~~j~~Judgment or ~~e~~Order, whichever is later. ~~If a party appeals the judgment in a small claims action that was tried without a jury and any party meets the requirements of Utah Rules of Civil Procedure Rule 38(b), the trial de novo in the district court shall be by a jury in accordance with Utah Rules of Civil Procedure Rules 38, 39, 47, 48, 49, 50, 51 and 52.~~

(1) To appeal from the final order of a justice court small claims case, the appealing party must file a Notice of Appeal in the justice court. The required fee or a Motion to Waive Fees must accompany the Notice of Appeal. Within 14 days after filing the notice of appeal, the justice court will transmit to the district court: the district court fees, or a copy of the Motion to Waive Fees; and copies of all the documents in the Justice court case, including the Notice of Appeal. Such transmittal will be in the manner directed by the district court or rule of the Judicial Council.

(2) To appeal from the final order of a district court small claims case, the appealing party must file the Notice of Appeal at that District Court location. The required fee or a Motion to Waive Fees must accompany the Notice of Appeal.

(b) Upon the receiving the Notice of Appeal, from the small claims court, the clerk of the district court will schedule the new trial and notify the parties. All proceedings on appeal will be held in accordance with these Small Claims Rules regarding trials and post-trial proceedings.

(c) The District court may, in its discretion, instruct the parties to engage in mediation, if available.

~~(b) To appeal, the appealing party must file a notice of appeal in the court issuing the judgment. Unless waived upon filing an affidavit of impecuniosity, the appropriate fee must accompany the notice of appeal.~~

~~(c) Upon the receipt of the notice of appeal, the clerk of the district court shall schedule the new trial and notify the parties. All proceedings on appeal will be held in accordance with these rules, except that the parties will not file an affidavit or counter affidavit and the district court may order parties to exchange information prior to trial.~~

(d) The district court ~~shall~~ will issue all orders governing the new trial. ~~The new trial of a justice court adjudication shall be heard in the district court nearest to and in the same county as the justice court from which the appeal is taken. The new trial of an adjudication by the small claims department of the district court shall be held at the same district court. The new trial of an adjudication by the small claims department of the district court must be held at the same district court location.~~

(e) A judgment debtor may stay the judgment during appeal by posting a supersedeas bond with the district court. The district court may also order a judgment stayed if a Motion to Stay Judgment is filed, and the judgment creditor has an opportunity to be heard. Any stay will ~~The stay shall~~ continue until entry of the final judgment or order of the district court.

~~(f) Within 10 business days after filing the notice of appeal, the justice court shall transmit to the district court the notice of appeal, the district court fees, a certified copy of the register of actions, and the original of all papers filed in the case.~~

~~(g)~~ Upon the entry of the judgment or final order of the district court, the clerk of the district court ~~shall~~ will transmit to the justice court that rendered the original judgment notice of the manner of disposition of the case.

~~(h)~~ The district court may dismiss the appeal and remand the case to the justice court if the appellant:

(1) fails to appear;

(2) fails to take any step necessary to prosecute the appeal; or

(3) requests the appeal be dismissed.

510 | (h) If a defendant elects to remove a small claims case to the district court ~~pursuant~~
511 | ~~under~~ to Rule 4A, the matter ~~shall~~ will be treated as if it were filed in the first instance in
512 | district court and the parties ~~shall~~ will be entitled to any appeal rights available to cases
513 | not brought in small claims.

514

515 |

516 **Rule 13. Representation.**

517 A party in a small claims action may be self-represented, represented by an attorney
518 admitted to practice law in Utah, represented by an employee, or, with the express
519 approval of the court, represented by any other person who is not compensated for the
520 representation.

521

522

Tab 3



Nancy Sylvester <>

Rule 4 Certified Mail

2 messages

Brian Jackson <> To: n

Wed, Feb 3, 2021 at 11:59 AM

Ms. Sylvester,

I hope all is well on your end. I e-mailed the following message to the Supreme Court Clerk's office on Rule 4 below to see if there were modifications for Covid. I was told there hadn't been to their knowledge and they referred me to you to suggest a modification:

I am just looking to see if there has been any special rule the Supreme Court has made under Rule 4 of the Utah Rules of Civil Procedure on service through certified mail. Apparently, due to Covid, USPS has been authorized to sign all certified mail instead of the recipient. I am just checking to see if that type of service has been addressed and is authorized under Rule 4.

Since I have been told it hasn't, I would recommend a modification to the rule. For better context, I sent a summons and complaint certified and restricted and the signature came back "Covid 19" but the agent box was checked. I don't know what to make of that. The rule indicates it must be signed by the recipient so I am now just assuming that certified mail is essentially obsolete at this point with the USPS procedures.

It is my understanding that several states such as the State of Missouri, made modifications to their rules to indicate that signature from the USPS is sufficient. However, it still doesn't address my "Covid-19" signature.

Thanks for your help in addressing this matter.

Respectfully yours,

--

Brian K. Jackson
Brian K. Jackson, LLC
Attorney at Law

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Nancy Sylvester

To: Brian Jackson

Cc: "Jonathan O. Hafen"

Wed, Feb 3, 2021 at 1:18 PM

2/3/2021

Utah State Courts Mail - Rule 4 Certified Mail

Thanks so much for your email, Brian. This is the first I've heard of this issue. Since it's a COVID issue, we may be able to fast track some kind of resolution to the Supreme Court. Are you available on February 24th around 4pm to briefly present on this to the Civil Rules Committee? Any research you have from other states will be helpful for the discussion.

[Quoted text hidden]

--

Nancy J. Sylvester

Rule 4. Process.

(a) Signing of summons. The summons must be signed and issued by the plaintiff or the plaintiff's attorney. Separate summonses may be signed and issued.

(b) Time of service. Unless the summons and complaint are accepted, a copy of the summons and complaint in an action commenced under Rule [3\(a\)\(1\)](#) must be served no later than 120 days after the complaint is filed, unless the court orders a different period under Rule 6. If the summons and complaint are not timely served, the action against the unserved defendant may be dismissed without prejudice on motion of any party or on the court's own initiative.

(c) Contents of summons.

(c)(1) The summons must:

(c)(1)(A) contain the name and address of the court, the names of the parties to the action, and the county in which it is brought;

(c)(1)(B) be directed to the defendant;

(c)(1)(C) state the name, address and telephone number of the plaintiff's attorney, if any, and otherwise the plaintiff's address and telephone number;

(c)(1)(D) state the time within which the defendant is required to answer the complaint in writing;

(c)(1)(E) notify the defendant that in case of failure to answer in writing, judgment by default will be entered against the defendant; and

(c)(1)(F) state either that the complaint is on file with the court or that the complaint will be filed with the court within 10 days after service.

(c)(2) If the action is commenced under Rule [3\(a\)\(2\)](#), the summons must also:

(c)(2)(A) state that the defendant need not answer if the complaint is not filed within 10 days after service; and

(c)(2)(B) state the telephone number of the clerk of the court where the defendant may call at least 14 days after service to determine if the complaint has been filed.

(c)(3) If service is by publication, the summons must also briefly state the subject matter and the sum of money or other relief demanded, and that the complaint is on file with the court.

(d) Methods of service. The summons and complaint may be served in any state or judicial district of the United States. Unless service is accepted, service of the summons and complaint must be by one of the following methods:

(d)(1) Personal service. The summons and complaint may be served by any person 18 years of age or older at the time of service and not a party to the action or a party's attorney. If the person to be served refuses to accept a copy of the summons and complaint, service is sufficient if the person serving them states the name of the process and offers to deliver them. Personal service must be made as follows:

(d)(1)(A) Upon any individual other than one covered by paragraphs (d)(1)(B), (d)(1)(C) or (d)(1)(D), by delivering a copy of the summons and complaint to the individual personally, or by leaving them at the individual's dwelling house or usual place of abode with a person of suitable age and discretion who resides there, or by delivering them to an agent authorized by appointment or by law to receive process;

(d)(1)(B) Upon a minor under 14 years old by delivering a copy of the summons and complaint to the minor and also to the minor's father, mother, or guardian or, if none can be found within the state, then to any person having the care and control of the minor, or with whom the minor resides, or by whom the minor is employed;

(d)(1)(C) Upon an individual judicially declared to be incapacitated, of unsound mind, or incapable of conducting the individual's own affairs, by delivering a copy of the summons and complaint to the individual and to the guardian or conservator of the individual if one has been appointed; the individual's legal representative if one has been appointed, and, in the absence of a guardian, conservator, or legal representative, to the person, if any, who has care, custody, or control of the individual;

(d)(1)(D) Upon an individual incarcerated or committed at a facility operated by the state or any of its political subdivisions, by delivering a copy of the summons and complaint to the person who has the care, custody, or control of the individual, or to that person's designee or to the guardian or conservator of the individual if one has been appointed. The person to whom the summons and complaint are delivered must promptly deliver them to the individual;

(d)(1)(E) Upon a corporation not otherwise provided for in this rule, a limited liability company, a partnership, or an unincorporated association subject to suit under a common name, by delivering a copy of the summons and complaint to an officer, a managing or general agent, or other agent authorized by appointment or law to receive process and by also mailing a copy of the summons and complaint to the defendant, if the agent is one authorized by statute to receive process and the statute so requires. If no officer or agent can be found within the state, and the defendant has, or advertises or holds itself out as having, a place of business within the state or elsewhere, or does business within this state or elsewhere, then upon the person in charge of the place of business;

(d)(1)(F) Upon an incorporated city or town, by delivering a copy of the summons and complaint as required by statute, or in the absence of a controlling statute, to the recorder;

(d)(1)(G) Upon a county, by delivering a copy of the summons and complaint as required by statute, or in the absence of a controlling statute, to the county clerk;

(d)(1)(H) Upon a school district or board of education, by delivering a copy of the summons and complaint as required by statute, or in the absence of a controlling statute, to the superintendent or administrator of the board;

(d)(1)(I) Upon an irrigation or drainage district, by delivering a copy of the summons and complaint as required by statute, or in the absence of a controlling statute, to the president or secretary of its board;

(d)(1)(J) Upon the state of Utah or its department or agency by delivering a copy of the summons and complaint to the attorney general and any other person or agency required by statute to be served; and

(d)(1)(K) Upon a public board, commission or body by delivering a copy of the summons and complaint as required by statute, or in the absence of a controlling statute, to any member of its governing board, or to its executive employee or secretary.

(d)(2) Service by mail or commercial courier service.

(d)(2)(A) The summons and complaint may be served upon an individual other than one covered by paragraphs (d)(1)(B) or (d)(1)(C) by mail or commercial courier service in any state

or judicial district of the United States **provided the defendant signs a document indicating receipt.**

(d)(2)(B) The summons and complaint may be served upon an entity covered by paragraphs (d)(1)(E) through (d)(1)(I) by mail or commercial courier service in any state or judicial district of the United States **provided defendant's agent authorized by appointment or by law to receive service of process signs a document indicating receipt.**

(d)(2)(C) Service by mail or commercial courier service shall be complete on the date the receipt is signed as provided by this rule.

(d)(3) Acceptance of service.

(d)(3)(A) Duty to avoid expenses. All parties have a duty to avoid unnecessary expenses of serving the summons and complaint.

(d)(3)(B) Acceptance of service by party. Unless the person to be served is a minor under 14 years old or an individual judicially declared to be incapacitated, of unsound mind, or incapable of conducting the individual's own affairs, a party may accept service of a summons and complaint by signing a document that acknowledges receipt of the summons and complaint.

(d)(3)(C) Acceptance of service by attorney for party. An attorney may accept service of a summons and complaint on behalf of the attorney's client by signing a document that acknowledges receipt of the summons and complaint.

(d)(3)(D) Effect of acceptance, proof of acceptance. A person who accepts service of the summons and complaint retains all defenses and objections, except for adequacy of service. Service is effective on the date of the acceptance. Filing the acceptance of service with the court constitutes proof of service under Rule 4(e).

(d)(4) Service in a foreign country. Service in a foreign country must be made as follows:

(d)(4)(A) by any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;

(d)(4)(B) if there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:

(d)(4)(B)(i) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction;

(d)(4)(B)(ii) as directed by the foreign authority in response to a letter of request issued by the court; or

(d)(4)(B)(iii) unless prohibited by the law of the foreign country, by delivering a copy of the summons and complaint to the individual personally or by any form of mail requiring a signed receipt, addressed and dispatched by the clerk of the court to the party to be served; or

(d)(4)(C) by other means not prohibited by international agreement as may be directed by the court.

(d)(5) Other service.

(d)(5)(A) If the identity or whereabouts of the person to be served are unknown and cannot be ascertained through reasonable diligence, if service upon all of the individual parties is

impracticable under the circumstances, or if there is good cause to believe that the person to be served is avoiding service, the party seeking service may file a motion to allow service by some other means. An affidavit or declaration supporting the motion must set forth the efforts made to identify, locate, and serve the party, or the circumstances that make it impracticable to serve all of the individual parties.

(d)(5)(B) If the motion is granted, the court will order service of the complaint and summons by means reasonably calculated, under all the circumstances, to apprise the named parties of the action. The court's order must specify the content of the process to be served and the event upon which service is complete. Unless service is by publication, a copy of the court's order must be served with the process specified by the court.

(d)(5)(C) If the summons is required to be published, the court, upon the request of the party applying for service by other means, must designate a newspaper of general circulation in the county in which publication is required.

(e) Proof of service.

(e)(1) The person effecting service must file proof of service stating the date, place, and manner of service, including a copy of the summons. If service is made by a person other than by an attorney, sheriff, constable, United States Marshal, or by the sheriff's, constable's or marshal's deputy, the proof of service must be by affidavit or unsworn declaration as described in Title 78B, Chapter 18a, Uniform Unsworn Declarations Act.

(e)(2) Proof of service in a foreign country must be made as prescribed in these rules for service within this state, or by the law of the foreign country, or by order of the court.

(e)(3) When service is made pursuant to paragraph(d)(4)(C), proof of service must include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court.

(e)(4) Failure to file proof of service does not affect the validity of the service. The court may allow proof of service to be amended.

Advisory Committee Notes

Effective May 8, 2018 pursuant to CJA Rule 11-105(5)

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USPS makes temporary change to Signature Confirmation due to COVID-19

By Andrew Newmark (<https://www.simplecertifiedmail.com/author/newmark/>) | April 7, 2020

In response to the COVID-19 virus, the USPS® has changed the Signature Confirmation process for Certified Mail® sent with Return Receipt (Electronic). Instead of the recipient signing their name on the tablet computer carried by the mail carrier, carriers will keep a safe distance, ask for the recipient's first initial and last name, enter the name in the signature field on the tablet and then leave the Certified Mail® item. When the Return Receipt (Electronic) is posted to your SimpleCertifiedMail.com account and/or emailed to you, you will likely see the name along with "COVID-19 SIGNATURE" or "C-19" on the signature line.

This temporary measure began on March 16, 2020 and remains in effect until further notice from the USPS®. For delivery of items to a mail room, the addressee will receive a text message or telephone call. Deliveries to premises or areas that are closed due to COVID-19 are suspended. The USPS® released a Media Statement covering a number of changes made in response to COVID-19 on April 2. You can read it here (<https://www.simplecertifiedmail.com/wp-content/uploads/USPS-Statement-on-COVID-19-Signatures-04-02-20.pdf>).

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From Our Blog

Automatic refunds are another unique way that

SimpleCertifiedMail.com takes care of its clients.

(<https://www.simplecertifiedmail.com/blog/product-tips/automatic-refunds/>)

March 4, 2021

How to Make it Easier to Track Certified Mail®

(<https://www.simplecertifiedmail.com/blog/product-tips/how-to-make-it-easier-to-track-certified-mail/>)

February 26, 2021

How SimpleCertified.com Production Reports help manage Certified Mail® costs

(<https://www.simplecertifiedmail.com/uncategorized/reports-manage-certified-mail-costs/>)

February 18, 2021

How the new Print Queue can improve workflow

(<https://www.simplecertifiedmail.com/blog/product-tips/new-print-queue/>)

November 3, 2020

New Alternate Address feature improves Proof of

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47

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from home
(<https://www.simplecertifiedmail.com/blog/product-tips/new-alternate-address-feature/>)

November 3, 2020

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⚠ COVID-19 alerts from Missouri courts:

⚠ Please read court-specific notices. To determine the status of a particular proceeding, please check the case's docket entries in Case.net, ask your attorney or contact the local clerk's office.

Order dated April 6, 2020, re: Signed Return Receipt of Certified or Registered Mail During the COVID-19 Pandemic



Supreme Court of Missouri en banc

April 6, 2020

Effective April 6, 2020

In re: Signed Return Receipt of Certified or Registered Mail During the COVID-19 Pandemic

ORDER

In response to the COVID-19 pandemic, the United States Postal Service has temporarily modified its customer signature procedures to permit postal service employees, instead of the addressee, to sign for certified or registered mail upon delivery. The Court hereby suspends any local or Supreme Court rule to the extent it requires a return receipt be signed by the addressee only. The signature of the permitted postal service employee is sufficient. This order does not affect any existing statutory requirements regarding signature of return receipts.

This suspension of court rules pertaining to the addressee signing return receipts for certified or registered mail shall remain in effect until further order from this Court.

Day - to - Day

GEORGE W. DRAPER III
Chief Justice

Tab 4

**Nancy Sylvester**

Rule 12(a) correction

Leslie Slaugh

Fri, Feb 26, 2021 at 4:35 PM

To: Nancy Sylvester , "Jonathan O. Hafen"

Effective November 1, 2015, Rule 7(a) changed the name of the pleading which responds to a counterclaim. Previously it was "a reply to a counterclaim." Now it is "an answer to a counterclaim."

Rule 12(a) still uses the pre-2015 label:

Rule 12. Defenses and objections.

- a. When presented. Unless otherwise provided by statute or order of the court, a defendant shall serve an answer within 21 days after the service of the summons and complaint is complete within the state and within 30 days after service of the summons and complaint is complete outside the state. A party served with a pleading stating a cross-claim shall serve an answer thereto within 21 days after the service. The plaintiff shall serve a reply to a counterclaim in the answer within 21 days after service of the answer or, if a reply is ordered by the court, within 21 days after service of the order, unless the order otherwise directs. . . .

I recommend that Rule 12(a) be amended to be consistent with Rule 7(a).

Mr. Leslie W. Slaugh

Howard, Lewis & Petersen, PC

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Rule 12. Defenses and objections.

(a) **When presented.** Unless otherwise provided by statute or order of the court, a defendant shall serve an answer within 21 days after the service of the summons and complaint is complete within the state and within 30 days after service of the summons and complaint is complete outside the state. A party served with a pleading stating a cross-claim shall serve an answer thereto within 21 days after the service. The plaintiff shall serve an answer ~~reply~~ to a counterclaim in the answer within 21 days after service of the answer or, if an answer ~~reply~~ is ordered by the court, within 21 days after service of the order, unless the order otherwise directs. The service of a motion under this rule alters these periods of time as follows, unless a different time is fixed by order of the court, but a motion directed to fewer than all of the claims in a pleading does not affect the time for responding to the remaining claims:

(1) If the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 14 days after notice of the court's action;

(2) If the court grants a motion for a more definite statement, the responsive pleading shall be served within 14 days after the service of the more definite statement.

(b) **How presented.** Every defense, in law or fact, to claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join an indispensable party. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion or by further pleading after the denial of

such motion or objection. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(c) **Motion for judgment on the pleadings.** After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(d) **Preliminary hearings.** The defenses specifically enumerated (1) - (7) in subdivision (b) of this rule, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this rule shall be heard and determined before trial on application of any party, unless the court orders that the hearings and determination thereof be deferred until the trial.

(e) **Motion for more definite statement.** If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 14 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

(f) **Motion to strike.** Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 21 days after the service of the pleading, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

(g) **Consolidation of defenses.** A party who makes a motion under this rule may join with it the other motions herein provided for and then available. If a party makes a motion under this rule and does not include therein all defenses and objections then available which this rule permits to be raised by motion, the party shall not thereafter make a motion based on any of the defenses or objections so omitted, except as provided in subdivision (h) of this rule.

(h) **Waiver of defenses.** A party waives all defenses and objections not presented either by motion or by answer or reply, except (1) that the defense of failure to state a claim upon which relief can be granted, the defense of failure to join an indispensable party, and the objection of failure to state a legal defense to a claim may also be made by a later pleading, if one is permitted, or by motion for judgment on the pleadings or at the trial on the merits, and except (2) that, whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action. The objection or defense, if made at the trial, shall be disposed of as provided in Rule 15(b) in the light of any evidence that may have been received.

(i) **Pleading after denial of a motion.** The filing of a responsive pleading after the denial of any motion made pursuant to these rules shall not be deemed a waiver of such motion.

(j) **Security for costs of a nonresident plaintiff.** When the plaintiff in an action resides out of this state, or is a foreign corporation, the defendant may file a motion to require the plaintiff to furnish security for costs and charges which may be awarded against such plaintiff. Upon hearing and determination by the court of the reasonable necessity therefor, the court shall order the plaintiff to file a \$300.00 undertaking with sufficient

85 sureties as security for payment of such costs and charges as may be awarded against
86 such plaintiff. No security shall be required of any officer, instrumentality, or agency of
87 the United States.

88 (k) **Effect of failure to file undertaking.** If the plaintiff fails to file the undertaking as
89 ordered within 30 days of the service of the order, the court shall, upon motion of the
90 defendant, enter an order dismissing the action.