

Agenda

Committee on Resources for Self-represented Parties

June 8, 2018
12:00 to 2:00 p.m.

Administrative Office of the Courts
Scott M. Matheson Courthouse
450 South State Street
Judicial Council Room, Suite N31

Welcome and approval of minutes	Tab 1	Judge Barry Lawrence, Chair
Committee membership	Tab 2	Judge Barry Lawrence
Access to Justice Committee Update		Judge Barry Lawrence
Subcommittee Reports <ul style="list-style-type: none">• Education• Outreach• Rural Services• Self-Help Center/Non-lawyer Assistance/Court Updates Subcommittee	Tab 3	All
Proposal to amend Rules of Civil Procedure 3, 4, 7, 36 and forms	Tab 4	Nathanael Player
Other Business		All

[Committee Web Page](#)

Proposed Bimonthly Meeting Schedule: Matheson Courthouse, 12:00 to 2:00 p.m.
unless otherwise stated.

August 10, 2018
October 12, 2018
December 14, 2018

Tab 1

Minutes of the Utah Judicial Council's
Standing Committee on Resources for Self-represented Parties

March 30, 2018

Draft - Subject to approval

Members Present

Judge Barry Lawrence (chair), Judge Doug Thomas (remote), Monica Fjeldsted (remote), Nathanael Player, Carol Frank (remote), Jessica Van Buren, Susan Griffith (remote), Judge Brook Sessions, Chris Martinez, Sue Crismon, Lisa Collins, Kara Mann (ex officio), Virginia Sudbury (remote)

Members Excused

Shaunda McNeill, Carl Hernandez, Jacob Kent, Judge Elizabeth Knight, Kristin Godwin, Leslie Francis

Staff

Nancy Sylvester

Guests

Ericka Rickard (via video), Amy Sorensen

(1) Welcome and approval of minutes – Judge Barry Lawrence, Chair

Judge Lawrence welcomed committee members to the meeting and entertained a motion on the minutes. The minutes were approved by acclamation.

(2) Harvard's A2J Lab Presentation on reducing default in debt collection cases

Debt Collection Issues Discussion – Ericka Rickard

The committee has been discussing the high number of default debt collection cases in Utah. Ms. Rickard is currently running a research lab on this topic. Ms. Rickard is a former Access to Justice Coordinator for the Massachusetts Court system and is new in this research position. She is currently working at the Access to Justice Lab at Harvard Law seeking to bring evidence-based practice and empirical ideas into law. The lab also looks at unnecessary procedural hurdles that may “trip up” litigants in their case process. They look at areas that would allow the merits of the case to rise to the level of completion.

In the area of guardianship, the group is working on an experiment with the self-help center to provide information to folks with low literacy or difficulties in other areas in receiving the correct type of materials for their case.

In consumer debt, Massachusetts is also seeing a high level of debt collection case defaults. Researchers sent out letters to everyone in debt collection cases asking for them to come to court. Some of these letters were sent by the legal aid office, while others were sent out directly from the courts. Researchers looked at whether sending a letter would increase the volume or attendance to court hearings, or if other outreach processes would be more effective. Researchers did see a slightly higher volume of litigants attend court hearings. Those who were sent letters from legal aid were slightly higher in attendance than those who received letters from the courts.

Judge Thomas asked what information was provided in the letter, resources for legal services, information about the court system, etc. Ms. Rickard stated that in the original letter, letters were only sent when a lawyer would be available for the day program on site that could help litigants with their case. The letter was encouraging. In cases where filing was necessary, it provided information on how to file with the courts. The current letter is encouraging litigants to attend whether a lawyer is not present.

Nancy Sylvester asked what happens when litigants appear and begin to have attorney fees tacked on. She asked whether that had been a drawback for plaintiffs to come to court. Ms. Rickard stated that they have not seen much in terms of drawback in attendance but more “hallway” negotiations that take place, as well as fee negotiation. They have not seen increases in attorney fees at this point, however, the majority of the cases being tested are small claims cases that are able to be resolved in the same day.

Judge Lawrence stated that Utah has a debt collection calendar assigned to each judge for purposes of hearing coverage that day. If motions are pending, those cases are sent to the central calendar. Volunteer attorneys are present at those hearings but the issue lies in how to get defendants to those hearings. Judge Lawrence asked a) what would be the most effective kind of notice that could accompany a complaint, and b) what else we can do to get people in the community to understand we have resources to help folks? People don’t trust or understand the legal system. Is getting a notice in plain English enough?

Ms. Rickard stated that doubling the rate of response by sending out these letters is great but there are other upstream interventions that could certainly help and get better results. Consumer debt is not looked at as a big problem until legal actions has been taken; many other jurisdiction are looking at other means to address these in a different manner to get the word out there before legal action is in place.

Judge Lawrence stated that we may have a naive perspective on this problem. Someone who has other legal problems, someone who has thousands of dollars of judgment against them may not care about this issue. Does data show that providing additional notice help in the default rate in court?

Ms. Rickard stated that finding these small interventions to bring people into court and providing tools for intervention is really make a big difference in other court areas. People who are made aware of their cases are actually coming in, and getting representation seems to be making a difference in these types of cases.

Susan Crismon asked if the majority of debt collection cases are credit card debts. Ms. Rickard stated that in the jurisdiction she has worked, the majority of debt collection cases are debt buyer cases (banks, student loans, Midland Funding, cases being bought by someone else). Non-debt buyers are other forms of debt.

Judge Thomas sits in a rural area that does not have a debt collection calendar so pro bono attorneys are not showing up to these cases. They don't have that resource right now. Without that resource, debtor will often file an answer on their own. Typically that requires the plaintiff and their attorney to then file a summary judgment. They bring forth the appropriate affidavit to show the courts the evidence and then they make claims for additional attorney fees. Filing an answer can become expensive to the debtor.

Ms. Rickard said their research is looking more at people who show up. They are looking for ways to encourage finding ways to get people to show up for court and access legal services. But thinking about whether justice is being served or whether both parties are present are two different areas of study.

Judge Thomas asked whether there is good data that shows the outcome is better for the defendant when an answer is filed. His concern is that defendants are going to incur excess attorney fees but they don't have a valid defense.

Ms. Rickard stated that they have been studying two conditions: one is whether an answer was filed, and the other is whether the defendant appeared at the case management conference. One of the conditions of the original study was that the courts did not want there to be a perception that defendants fare better than the plaintiff. But in a separate project, the Lab has been able to show that the success rate in terms of settlement is about 80% with an attorney present.

Judge Lawrence stated that ideally what they would like is to have legal counsel when they file their answer. The proper advice may be to look at the issues first before responding to the litigation.

Nathanael Player said the Civil Rules Committee is looking at Rule 73, which deals with attorney fees. Ms. Sylvester explained that the amendments would provide that instead of having an attorney fee rate that is based on the amount of the judgment, it would be based on a set amount for uncontested cases and a set amount for contested cases. Garnishments and post-judgment actions would now have a schedule of fees.

Mr. Player said the rule creates a space for someone to file an answer without incurring additional attorney fees. The increased fees will be based on argument or evidence presented at a hearing. The rule will go to the Supreme Court next week for voting and then circulation for comment. It could be effective as soon as November 1, 2018.

Judge Sessions said in metropolitan areas when a defendant files answer it would be placed on a debt collection calendar, but that is not possible in rural areas. Mr. Player raised the possibility of doing appearances via video conferencing or Skype. Judge Thomas stated that video conferencing would make discussion and negotiation between two attorneys difficult to do when they are not in the same room. Video conferencing is done in courtrooms where parties are in different areas. The judge receives notification when the parties are ready to speak in front of the judge.

In the Harvard study, once an answer is filed, the case automatically is placed on the court management calendar and the case is heard in a timely manner.

Judge Lawrence would like to reach back out to Ms. Rickard for information regarding additional notice to go along with complaints. Ms. Rickard was thanked for her time and excused from the meeting.

(3) Debt Collection Issues Triaging: subcommittee discussions - Judge Barry Lawrence and Committee

Judge Lawrence would like to explore additional notice that goes along with the complaints. Mr. Player said that a form summons that contains additional notice has been sent to the Judicial Council. The form is in both English and Spanish and has been approved by the Forms Committee. Although the form won't be required yet, the next step may be to make it required in certain cases.

Jessica Van Burden talked about a generic motion form for when a defendant fails to respond to the motion for summary judgment. The form is a dual column approach with English on one side and Spanish, or another language, on the other side. Its primary goal is to alert people of the consequences for not complying with the notice.

Debt collectors are required to be given a 10 day summons. The language could be modified with additional plain language to better provide clarity of any possible consequence.

Judge Thomas stated that we may be better off staying with a form that has already been approved, rather than changing a rule. Ms. Sylvester stated that this committee can make recommendations to the Civil Rules Committee for review.

The form, which includes the language for a 10 day summons is ready to go but is “parked” because further discussion is needed to determine best use of the form. Ms. Van Buren said many self-represented litigants would not use the form because they are typically responding to a lawsuit. Judge Lawrence indicated that there is support internally to get rid of the 10 days summons language. Mr. Player indicated that the Forms Committee looked at the idea of removing the language from the form.

Judge Lawrence stated that most forms for up front notice/summons do contain notice on the top of the form, for example Rule 56 request for admissions. Ms. Van Buren will send the group the latest 10 day summons draft form.

Judge Thomas states that rural areas do not see as many 10 days summons as they do 20 days summons, even in collection cases. Judges do not really like 10 days summons as people tend to call in an attempt to delay the summons. This may be a rural vs. urban district difference.

Judge Lawrence asked about making a recommendation to remove the 10 day summons. Most judges and attorneys do not like it and most attorneys do not like it. But there are others who do like it because it does provide an opportunity to provide service without ballooning costs.

This committee will propose a rule to eliminate the 10 days summons, requiring certain language on certain pleadings and other documents. Judge Lawrence will work on the language for requests for admission and all dispositive motion as those are the ones that can really trip people up. Ms. Crismon stated it may be helpful to have a copy of the notice that Ms. Rickard has created to see if it could be appropriate to adopt into our practice.

By the next committee meeting, Judge Lawrence and Mr. Player will meet to write up a recommendation for changing the language of the 10 day notice and/or eliminating the 10 day notice. It would be helpful for the committee to have case studies from other states to see how they are handling summonses. Mr. Player will also get a copy of the notices that Ms. Rickard and her team uses.

Judge Lawrence asked if Judge Thomas would consider looking at how video conferencing may be helpful to him and his district. Judge Thomas stated that cases involving domestic relations would probably benefit the most from video conferencing with an attorney. Judge Thomas is concerned about how a person would access the

Wasatch Front resources. There are many options, including Lawyer of the Day, Self-Help Center, video conferencing from the existing debt collection calendars.

Discussion will continue at the next meeting. Judge Lawrence requested any and all proposals that fall within the jurisdiction of the committee.

(4) Subcommittee updates and projects – All

Judge Lawrence would like this committee to take more concrete roles in different subcommittee.

Education Subcommittee: This committee focuses on the education of the bar, the courts, and the law schools. Judge Lawrence is the chair.

Outreach Subcommittee: This committee focuses on outreaching to members of the community about the legal resources available. Susan Crismon has been assigned as the chair.

Rural Services Subcommittee: This committee focuses on the need for rural legal services. They are interested in hearing from rural people to see what the courts can do better in providing legal services. Susan Griffith has been assigned as the chair. Ms. Griffith will send out an email to the other committee members requesting their input.

Self Help Center: this committee will focus on providing access to justice statewide. Nathanael Player is assigned as the chair. Mr. Player will work with Amy Sorensen, who is co-chair of the Access to Justice Committee of the Bar.

Justice Lawrence reiterated the need for tangible suggestions of how we can better serve the self-represented parties community.

Ms. Sylvester requested everyone to meet with their subcommittee, at least by email, to discuss their projects and send any updates or reports to her by May 25th. This will help to keep everyone on track and get progress information more effectively.

(5) Other Business – All

Ms. Sylvester talked about a new rule being proposed by the Civil Rules Committee: Code of Judicial Administration Rule 4-511. She said a lot of people are not getting served with orders, which is causing trust and confidence issues. Many parties do not know they are required to serve court orders on the other parties. Rule 5 amendments would have the court serve every order and Rule 4-511 would require parties to provide a valid email address to the court so that those orders could be served electronically. Ms. Sylvester asked for feedback on the consequences of a party not providing an email

address. The committee suggested not making it too punitive but instead emphasizing the positive aspects of it.

(6) Adjournment

Judge Lawrence thanked the committee members for their attendance and participation.

The meeting adjourned at 1:55 p.m.

Tab 2

Subcommittee	Assignment	Members	Projects
Education	Educate and interact with members of the Bar and bench, including law schools.	Judge Barry Lawrence (chair), Nancy Sylvester, Kara Mann (ex officio), Judge Brook Sessions, Leslie Francis, Carl Hernandez.	
Outreach	Educate and interact with the community in furtherance of access to justice issues	Sue Crismon (chair), Virginia Sudbury, Shaunda McNeill.	
Rural Services	Educate and interact with the community in furtherance of access to justice issues unique to rural communities.	Susan Griffith (chair), Carol Frank, Kristin Godwin (Johnson), Jessica Van Buren, Jacob Kent, and Leti Bentley (ex officio), Judge Doug Thomas.	
Self-Help Center/Non-lawyer Assistance/Court Updates	Internal judicial and administrative issues such as self-help, forms, rules, etc.	Nathanael Player (chair), Jessica Van Buren, Nancy Sylvester, Chris Martinez, Kristin Godwin (Johnson), Lisa Collins, Monica Fjelsted.	

OUTREACH SUB-COMMITTEE

1. Local newspaper articles regarding available legal services. We could start with an overview of how to identify whether their problem has a legal solution and how to reach the self-help center and in future articles highlight specific services like the debt collection resources. Shaunda knows the editor of the Poplar grove paper and will reach out to them. There is also a little newspaper in Sugarhouse Sue will look into.
2. Materials for community partners (such as ecclesiastical leaders and 211) to provide to potential clients letting them know how to reach legal services. Perhaps magnets like “ask a nurse” did years ago with a phone number to the self-help center to get triaged to the appropriate legal provider. We could also hand out the self-help center cards and create flyers to supplement.
3. Meet with Nick, the Bar’s Access to Justice Director about next steps for Licensed Lawyer’s incorporation of non-profit resources for modest to low incomes.
4. Meet with Nathanael to get his input on how best to highlight the self-help center’s triage role and to avoid duplicative services.
5. Work with the Martin Luther King Commission and the Indian Walk-In-Center to reach diverse populations through community resources.

Report from the Rural Subcommittee

May 25, 2018

Should we do a needs assessment?

The reasons to do a needs assessment: We tend to assume that we know the needs without asking the questions. Where the Bar in general seems removed from most rural communities it could be very positive to actually ask people what services they see as most important.

The reasons not to do a needs assessment: It is time consuming to figure out the right questions to ask, how to get the assessment to people who will actually answer it, how to get enough people to respond that the data is meaningful. We don't have money or personnel to do it.

If we did it, how would we do it: We might consider asking attorneys, court clerks, and professionals in the community who work with the people we are trying to help. Their feedback might give us the insight we need. We could do it through a quick Survey Monkey type of format.

Debt collection in rural areas

Debt Collection in Vernal: Jessica Van Buren reported that Nathanael has been talking to Judge Petersen in Vernal about the possibility of trying some things to address the issue of debt collection defaults. Right now they are thinking of an Order to Show Cause "Why a Default Judgment Should Not Be Entered" calendar (we can probably come up with a pithier name). The idea is to have Harvard help us with notices for the calendar, and also build a system for having volunteer attorneys who consult with the defendants before the calendar to talk about their options, including settlement/payment plan, bankruptcy, defenses, etc. The consultation would be virtual, perhaps as part of the Self-Help Center's Lawyer of the Day, perhaps building off some of your experience with TLC's virtual clinic. The idea is also to have attorneys appear remotely at the hearings. Nothing is set in stone at this point, but we are very excited about exploring this in a small and rural district.

Response from Carol Frank: In speaking with the judges in our district, it appears they are not keen on the idea of an order to show cause hearing. Judge Bagley also indicated that this is going against the Rules of Civil Procedure.

Programs designed for rural areas

Virtual Clinic in Richfield: Jessica Van Buren reported that an idea is percolating to try to provide virtual clinics to people in remote areas, perhaps getting Bar Foundation money to pay attorneys to provide the service. The proposed test site for that is Richfield. This idea started after Nathanael visited the court there and heard from court staff and public library staff that they wished they had a clinic available to them. Once Legal Services stopped all their remote clinics, they were left with nothing.

Response from Carol Frank : I was made aware that the pro bono committee in Sevier County is working on this. Their notes from the last meeting included this:
"The Pro Bono Committee discussed the idea of creating a legal clinic at the Richfield Library. Nick mentioned that one of the Librarians there reached out to the State Courts to ask

about a clinic. The Committee commented that most individuals in the rural areas are low income and can't afford an attorney. A legal clinic would provide an opportunity for individuals to speak with an attorney and get directed on how to file using OCAP.

Response from Susan Griffith: ULS pulled out because the clinics were so poorly attended. They felt that clients could benefit more from using their daily intake system which allows clients to get some info and advice from an attorney or paralegal. They also have access to the Self-Help Center paired with the Attorney of the Day. Using these two programs people in remote areas can get help as the need arises, but it is by phone. Perhaps our committee could do more to publicize these services that are currently available.

Supporting Live Clinics in Rural Areas: Susan Griffith suggested that if we want to create an opportunity to personally meet with attorneys we could help the rural Districts with a "Tuesday Night Bar" (TNB) type of event once or twice a year. We could pair it with a free CLE event to encourage attorney participation.

Response from Carol Frank: The Committee also discussed the "Justice Bus" initiative, bringing attorneys from other more populated districts to offer brief legal advice to people in rural communities.

Domestic Violence Shelter Clinics: Timpanogos Legal Center is setting up clinics at shelters across the state. The clinic is designed to meet that unique shelter's needs. There are a variety of models. In Brigham City and Logan, TLC is working with the local Bar to set up monthly TNB clinics at the local shelters. All people are welcome to attend and the shelter will actively refer clients. TLC provides free CLE on victim issues to the volunteers. In Vernal, the shelter director directly refers clients to our TLC attorney and the client and attorney meet online. In Provo, TLC is initiating a monthly class on court-related issues for victims and then volunteer attorneys and TLC staff are available to do one-on-one interviews.

Bookmobile concept: About a year ago, Susan Griffith spoke with Grace Acosta, a Bar Commissioner, about her idea to pair an online clinic with the Bookmobiles that travel throughout the rural areas. There are many rural parents that use the Bookmobile regularly. The Bookmobile has a computer with internet access. We could potentially link an "Attorney of the Day" with the Bookmobile. As another option, we could put information about how to access legal resources in the Bookmobiles.

Response from Carol Frank: My Clerk of Court Keri Sargent is on the local Pro Bono Committee and since these questions came up, she indicated that it appears that committee and the Pro Se Committee are working towards the same goal. She suggested that I attend that committee meeting as well and the Pro Bono Committee.

Updates from the Self-Help Center/Non-Lawyer Assistance/Court Updates Subcommittee

- Nathanael Player presented at the Appellate Conference on May 3, discussing initiatives for unrepresented parties.
 - There was a discussion of the huge number of people representing themselves in Utah's courts.
 - Justice Himonas suggested that we call people without lawyers "unrepresented" instead of saying self-represented or *pro se* to more accurately describe the reality that many cannot afford attorneys.
 - The appellate judges considered reminding all policymaking committees of the need to consider the needs of the unrepresented.
 - There could be efforts to require all rule and policy changes to include an impact statement, requiring a consideration of how the rule affects the unrepresented and what efforts were made to address any negative impacts.
- Pro se domestic calendars, like the ones at Matheson, are coming to Farmington in June under Commissioner Morgan. The Legal Aid Society, through Chris Martinez, will provide *pro bono* legal assistance at these calendars – the Legal Aid Society is now operating in Tooele, Park City, West Jordan, and Ogden in addition to the new Farmington program. Thanks for all your work Chris!
- The Judicial Council approved the [form motion](#) we discussed at the last full committee meeting. It provides a plain language warning about the consequences of not responding to a motion in both English and Spanish. There does not appear to be another statewide court system using this – it is rather groundbreaking.
- Online Dispute Resolution is being piloted in West Valley for small claims cases. This should be starting in June. Fun fact: Judge McCullagh estimates that 80% of his small claims cases are for debt collection.
- Nathanael spoke with Judge Peterson in the 8th District about possibly piloting a new system with debt collection cases (there were 530 debt collection cases filed in Vernal in FY 2017 – 890 in all of the 8th District).
 - Judge Peterson already holds a consolidated debt collection calendar in Vernal
 - Judge Peterson was open to allowing volunteer attorneys to appear remotely, but is not able to align his calendar to match the debt collection calendar at Matheson (Wednesdays at 1:00 p.m.)
 - Judge Peterson thinks that having attorneys on his debt collection calendar would not be super helpful because most people have already defaulted – most of the proceedings on his calendar are for supplemental proceedings
 - Judge Peterson considered the possibility of having an order to show cause calendar for why default should not be entered in debt collection cases, with the court sending notice to defendants before default is entered – he would allow debt collection attorneys to appear remotely
 - Judge Peterson invited Nathanael to meet with the debt collection bar to discuss the Courts' concerns in debt collection cases

- Nathanael observed the *pro se* debt collection calendar that occurs at Matheson on Wednesdays at 1:00 p.m.
 - The attendance rate for defendants is about 20%
 - The bar has a paralegal, Molly, who staffs the program – she connects defendants with volunteer attorneys and ensures defendants sign waiver forms and limited scope agreements
 - Molly came to observe the domestic clinic staffed by the Self-Help Center where we come with printed dockets and printed pleadings and provide an update to volunteer attorneys on what is happening with a case
 - One of the volunteer attorneys mentioned that volunteers aren't always needed and are sometimes unenthusiastic about returning because there aren't enough people to help
- Nathanael discussed debt collection cases with a debt collection attorney, Brody Valerga. He said:
 - Debt collection attorneys like the 10 day summons because it saves them money. They try to serve people with the summons and complaint – they only serve about half of the people they are seeking. If they cannot find someone for service they usually give up and save themselves the filing fee;
 - Debt collection attorneys feel they are “highly regulated” and feel like the courts make it hard for debt collectors to collect on money they are owed
 - The *pro se* calendar at Matheson is helpful because it helps debtors to get advice about settling
 - It would be great if there were other calendars throughout the state and he could appear remotely
 - About 80% of his settlements are successful
 - His clients do not charge attorney fees or collection fees, but not all collection attorneys have this same orientation
- Nathanael spoke with Lester Perry, an experienced collection defense attorney. He said:
 - He had concerns that the volunteer attorneys at the *pro se* debt collection calendar were missing defenses and other protections for defendants
 - A study showed that 80% of debt collection cases had viable defenses (Nathanael is working to track down this study)
 - Defenses come from scrutinizing the fees debt collectors charge
 - He is unable to assist with this
- Nathanael spoke with Nick Stiles from the Utah Bar. Nick said:
 - There are efforts to consolidate the debt collection calendar at Matheson with a landlord-tenant calendar so volunteer attorneys can help with both issues
 - A 2-hour CLE is planned for June that will train attorneys on landlord tenant issues and debt collection issues
- Nathanael learned about a company that purports to help people with debt collection cases by threatening bankruptcy and then renegotiating the debt and payment terms – this functions more as a counseling service than actual litigation

- Nathanael attended the debtors' clinic sponsored by the University of Utah. JoLynn said:
 - Most of the questions are about bankruptcy, not debt collection
 - This is not their busiest clinic
 - The clinic is only available in SLC and cannot be virtual because of concerns around malpractice insurance.
- Nathanael met with Aaron Garrett of Nonprofit Legal Services. Aaron said:
 - His firm helps with a lot of family law cases and sees relatively few debt collection cases
 - In debt collection cases they ask if the client owes the debt and if they do then they negotiate a settlement
 - His firm charges low bono rates based on a sliding scale fee. They usually ask for of a retainer worth about 15 hours, which is about \$1,000
 - His model is effective and they make enough money to expand and to pay everyone a decent amount
- Nathanael spoke with Virginia Sudbury, Aaron Garrett and David McNeill about presenting at the Utah Bar's fall forum to discuss the need for alternative models of representation. David will provide a background on the Utah market and the unmet legal needs in our state; Virginia will discuss limited scope as one remedy to this problem and Aaron will discuss his firm's low bono as another model.
- Susan Griffith from TLC, JoLynn Spruance from the University of Utah's Pro Bono Initiative, Tatiana Christiansen from Utah Legal Services, Nick Stiles from the Utah Bar and Nathanael met to discuss legal clinics. This group is working on multiplying the impact of the numerous physical clinics happening on the Wasatch Front to explore whether providing video chats will be helpful in providing legal services to rural areas. The group is working on sorting out issues around malpractice insurance right now.
- Nancy Sylvester reports that the Civil Rules Committee recently sent two rules to the Supreme Court, which approved them for [comment](#) circulation.
 - **URCP0005. Service and filing of pleadings and other papers.** Amend. Paragraph (b)(3)(B) is amended to remove the requirement that a person must agree to accept service by email in order to be served by email. If a person provides an email address pursuant to [Rule 10\(a\)\(3\)](#) or [Rule 76](#), the person may be served Rule 5 papers at that address.
 - **URCP0109. Automatic injunction in certain domestic relations cases.** New. Provides that in certain domestic relations cases, an automatic injunction will enter upon the filing of the case. Its provisions address areas such as disposing of property, disturbing the peace of the other party, committing domestic violence, using the other party's identification to obtain credit, interfering with telephone or utility service, modifying insurance, and behavior around the minor children. The injunction is binding on the petitioner upon filing the initial petition and on the respondent after the filing of the initial petition and upon receipt of a signed copy of the injunction.
- The Civil Rules Committee will be taking up Rule 73 at its June meeting. The rule is now back from [comment](#) and received 17 comments.
 - **URCP073 Attorney Fees.** Amend. An overwhelming number of cases filed in the courts, especially debt collection cases, result in the entry of an uncontested judgment. The work required in most cases to obtain an uncontested judgment does not typically

depend on the amount at issue. The amendments eliminate the schedule of fees based on the amount of damages and replace it with a single fee upon entry of an uncontested judgment and a larger fee in contested cases. Where additional work is required to collect on the judgment, the amendments provide a default amount for writs and certain motions, and eliminate the “considerable additional efforts” limitation of the prior rule. The rule remains flexible so that when attorney fees exceed the scheduled amounts, a party remains free to file an affidavit requesting appropriate fees in accordance with the rule.

- The Civil Rules Committee will also receive a report from its [Rule 4](#) Subcommittee at the June meeting. That subcommittee has been coming up with recommendations for implementing standards for electronic acceptance of service.

Tab 3



Utah State Courts' Self-Help Center

P.O. Box 140220
Salt Lake City, UT 84114-0220

Nathanael Player, Director

801-238-7921

MEMORANDUM

To: Honorable Judge Barry Lawrence, Nancy Sylvester
From: Nathanael Player, Director, Self-Help Center
Date: May 25, 2018
Re: Notice for a summons, notice for motions and requests for admission and the 10 day summons

Request:

Draft proposed language with an explanation and support for: (1) better notice to accompany a summons, (2) better notice on dispositive motions and requests for admission and (3) a discussion about the ten day summons rule.

Recommendations:

1. Articulate goals for the Committee on Resources for Self-Represented Parties to provide focus and clarity to our efforts. This might involve a more careful study and articulation of the problems self-represented parties face in debt collection cases.
2. Propose an amendment to Utah Rule of Civil Procedure 3 to eliminate the ten day summons.
3. Propose an amendment to Utah Rule of Civil Procedure 4 to make the form summons mandatory for all cases.
4. Propose an amendment to Utah Rule of Civil Procedure 3 to require the court to send notice to defendants in debt collection cases upon the filing of a complaint.
5. Propose an amendment to Utah Rule of Civil Procedure 7 to make the form motion notice mandatory.
6. Propose an amendment to Utah Rule of Civil Procedure 36 to require warning language when requests for admission are issued.

Explanation:

Introduction

The standing committee of the Judicial Council on Resources for Self-Represented Parties is focusing on issues self-represented parties face in debt collection cases. The Committee is ordered, under Code of Judicial Administration 3-115, to study the needs of self-represented parties to ensure that court programs for self-represented litigants are integrated into statewide

The mission of the Utah judiciary is to provide the people an open, fair, efficient, and independent system for the advancement of justice under the law.

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and community planning for legal services to low-income and middle-income individuals and to recommend measures for improving how the legal system serves self-represented parties. This memorandum provides a brief background on debt collection cases, attempts to articulate some of the problems with these cases and then discusses the recommendations above.

Background on Debt Collection Cases

There were 57,898 filings for debt collection cases in fiscal year 2017, by far most voluminous category. Plaintiffs in debt collection cases were represented by an attorney 98% of the time while 98% of defendants were self-represented. There were 56,713 debt collection cases in which defendants did not have counsel. The default rate for debt collection cases in Utah for fiscal year 2017 was 66.75% (representing 39,714 cases).

There are several problems with how debt collection cases proceed in Utah regarding self-represented parties, including:

- High rates of default (it is not clear if this is because defendants are not being served¹ or defendants are being served but are not responding²),
- A lack of legal resources for defendants (that is, even if the default rate were reduced, there are not enough resources to assist people with the critical answer stage),³
- Confusing notice in the form of the 10 day summons (discussed below),
- Lack of clear notice for defendants at key procedural steps (discussed below),
- An apparent inability of many debtors to settle their debts before a case is filed in court,⁴
- Significant fees that are often double or triple the amount of the original debt.⁵

¹ See *Debt Deception How Debt Buyers Abuse the Legal System to Prey on Lower-Income New Yorkers*, p. 6; The Legal Aid Society, Neighborhood Economic Development Advocacy Project, MFY Legal Services, Urban Justice Center, Community development Project, May 2010 (finding that many defendants in New York were not being properly served and unaware they were being sued).

² Research suggests that defendants in debt collection cases suffer from feelings of shame and impotence, which leads to a failure to respond. See *The Importance of Doing Nothing: Everyday Problems and Responses of Inaction*, Transforming Lives: Law and Social Process, Pascoe Pleasence, Alexy Buck, Nigel Balmer, eds., 2007, 112-132.

Scholars also suggest that defendants have limited amounts of time and mental energy to devote to issues that are not immediately pressing, like finding food and employment. *Self-Help, Reimagined*, Indiana Law Journal, Vol. 92, No. 1, 2016, Greiner, Jimenez, Lupica; available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2633032.

³ Utah Legal Services provides some representation to defendants in debt collection cases, but their office only has four consumer attorneys for the whole state. There is a legal clinic that provides help to debtors, but it meets only once a month. There are *pro se* calendars for debt collection cases where volunteer attorneys are available to assist defendants – one operates in Bountiful and one operates in Salt Lake City. However, the attendance rate of defendants in these cases is 20% and defendants must file answer (for which there is little help available) in order to be able to appear on the calendar.

⁴ The Self-Help Center reports many calls from defendants in debt collection cases where defendants report that they cannot reach the collection agency or the attorney prosecuting their case and only learn about what is happening through court filings.

⁵ Utah Code §12-1-11 allows for a 40% collection fee, this is in addition to late fees, interest, court fees and attorney fees. Callers to the Self-Help Center in debt collection cases often express surprise and anger at the staggering amounts of debt they owe – often two or three times (sometimes more) the principal. Charles Stormont, an attorney who volunteered on the debt collection calendar in Matheson, reports that with attorney help the attorney fees can often be reduced through negotiation.

There could be other problems. These are only the problems we are aware of. A study of cases by a professor in Indiana found that debt collection cases there had default judgments but the statute of limitations had actually expired before the cases were filed; other cases showed a complete lack of a clear chain of ownership of the debt.⁶ A study in New York found that many people were not aware they were being sued, were not properly advised of the debt and were not properly served.⁷

It is within this context that the below recommendations are proffered.

Explanation and Rationale for Recommendations:

1. Articulate goals for the Committee on Resources for Self-Represented Parties to provide focus and clarity to our efforts. This might involve a more careful study and articulation of the problems self-represented parties face in these cases.

The Committee on Resources for Self-Represented parties needs to articulate goals for our work on debt collection cases. It makes sense the Committee is focusing on debt collection cases. Because of the high volume of cases and the large number of self-represented parties in these cases, even slight improvements to policies and procedures would have a significant impact. It is also possible that the interventions and adjustments we make will not have the outcomes we expect or desire. We have only been collectively studying this problem since December. At this point we have not stated what our goals are other than to try to make things better for self-represented parties in debt collection cases. If we do not articulate goals we will not be able to measure whether our efforts are effective. It seems like one of our goals is to increase the rate of participation in debt collection cases and to reduce the rate of default. We should say this.

Articulating goals could also help to sustain our efforts. If people have common goals to work toward that have some tangibility they are likely to feel invested and inclined to help.

There appears to be a tension on the committee between getting something done now to help people and moving slowly and carefully to fully understand these issues. This does not have to be a conflict. We can set short-term goals that are achievable soon and long-term goals that require more study. This would require a discussion of our processes and the best way to move forward with some milestones and plans for the future. A study could be helpful because, as noted, there could be other problems with debt collection cases that we are not aware of. Study possibilities include partnering with Harvard's Access to Justice Lab or asking the Judicial Council to study debt collection cases in more detail.

2. Propose an amendment to Utah Rule of Civil Procedure 3 to eliminate the ten day summons.

The Committee on Resources for Self-Represented Parties should propose the following revision to URCP 3(a) to eliminate the ten day summons:

⁶ See Fox, Judith *Do We Have a Debt Collection Crisis? Some Cautionary Tales of Debt Collection in Indiana*, (2012), Scholarly Works. Paper 110. Available at: http://scholarship.law.nd.edu/law_faculty_scholarship/110.

⁷ *Debt Deception How Debt Buyers Abuse the Legal System to Prey on Lower-Income New Yorkers*, p. 6; The Legal Aid Society, Neighborhood Economic Development Advocacy Project, MFY Legal Services, Urban Justice Center, Community development Project, May 2010.

(a) How commenced. A civil action is commenced ~~(4)~~ by filing a complaint with the court, ~~or~~ ~~(2) by service of a summons together with a copy of the complaint in accordance with Rule 4.~~ If the action is commenced by the service of a summons and a copy of the complaint, then the complaint, the summons and proof of service, must be filed within ten days of such service. If, in a case commenced under paragraph (a)(2) of this rule, the complaint, summons and proof of service are not filed within ten days of service, the action commenced shall be deemed dismissed and the court shall have no further jurisdiction thereof. If a check or other form of payment tendered as a filing fee is dishonored, the party shall pay the fee by cash or cashier's check within 10 days after notification by the court. Dishonor of a check or other form of payment does not affect the validity of the filing, but may be grounds for such sanctions as the court deems appropriate, which may include dismissal of the action and the award of costs and attorney fees.

This would also implicate a change to URCP 4 as follows:

~~(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.~~

Rule 3 History

The Supreme Court's Advisory Committee on the Utah Rules of Civil Procedure has considered disallowing the ten day summons before – twice that the State Law Library has record of.⁸ The Committee discussed the rule between 1994 - 1995 and between 1999 - 2001.

Meeting minutes in 1994 show that some time prior to 1994 the Committee voted to disallow the ten day summons and the Supreme Court rejected the proposal. The discussion from 1994 (and into 1995) centered on concerns about the ten day summons being used as a scare tactic by predatory lenders. Research at the time noted that most collection cases used the ten day summons. The Committee considered multiple alternatives including requiring plaintiff to tell the defendant when the lawsuit was actually filed, or if the complaint was *not* filed, and having the time to respond run from the date the complaint was filed. The Committee ultimately recommend changing URCP 4 to include notice about calling the court fourteen days after service – this appears to have been approved the Supreme Court.

In 1999 the Committee took up the issue again. It proposed to eliminate the ten day summons and issued rules for comment. The Committee discussed the comments, which appear to have been hostile to the proposal. The effort to disallow the ten day summons centered on concerns regarding abuse, including: process servers receiving money for a flat fee for service with creditors but charging mileage on the return of service, which was passed on to the defendant; attorneys waiting until the tenth day to file the complaint; attorneys serving a ten day summons without any intent to actually file a complaint; the use of legal processes without the ability for the court to supervise the issue; that the use of the ten day summons places the stamp of

⁸ The State Law Library has records of the Committee's meetings going back to October, 1990.

judicial authority on an ordinary collection effort; that the ten day summons is generally misleading; that it is cumbersome for both the clerk and the defendant to check whether a complaint has been filed; and that the rule authorizes abuse. The Committee voted to disallow the ten day summons on November 1, 2000. The minutes from the February 21, 2001 meeting of the Committee show that the Supreme Court rejected the Committee's recommendation. There is no explanation for the rejection in the minutes.⁹

Analysis

The ten day summons should be disallowed because it is confusing and unworkable. There is no reason to think the concerns noted by the Advisory Committee have been addressed. We do not have current information on some of the concerns raised in the Committee's discussions. It might be worthwhile to gather more information on abuse by process servers, how extensively the ten day summons is used and how many complaints are filed on the tenth day after service. However, the concerns regarding abuse, empty threats to file a lawsuit, the lack of court supervision over a court process and judicial sanction of abuse all remain. There is also no indication that the rule is any less cumbersome today – defendants still must call the court to inquire about their case and court staff must still take time to answer those questions. What has changed is the composition of the Supreme Court, the creation of the Self-Help Center and the Committee on Resources for Self-Represented Parties.

Due process under the U.S. Constitution requires “notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 US 306, 314 (1950). The Utah Supreme Court has previously ruled the ten day summons is constitutional. *Genuine Parts Co. v. Larson*, 555 P.2d 285 (1976). In that case, appellant argued the ten day summons provided two separate ways to initiate litigation with a different time for each and was thus discriminatory. The court rejected this argument, finding the rule authorizing the ten day summons to be equally beneficial or detrimental to every person and thus not discriminatory. There is no case law suggesting the court has heard a challenge to the ten day summons under the standard in *Mullane*. This constitutional standard is the floor, not the ceiling. The Utah State Courts' mission is to provide an open, fair efficient and independent system for the advancement of justice under the law. The ten day summons appears to advance efficiency within the court system, but arguably distances the Courts from the goal of providing a fair system.

The ten day summons is undeniably efficient. Under URCP 3, a plaintiff may start a lawsuit by first serving the defendant and – only if the defendant can be found - filing in court. One debt collection attorney reports that 50-60% of the people his office tries to serve cannot be located and so cases against them are never filed. If the ten day summons were not available, plaintiffs might have to pay more filing fees for cases where service of process cannot be completed, resulting in a waste of their clients' funds. Additionally, with the high volume of cases already being filed, adding 50% more debt collection filings could increase the courts' workload (but most cases are e-filed so the additional cost to the court would come in the form of sending additional notices of intent to dismiss in cases where the defendant cannot be located).

While helpful to plaintiffs, the ten day summons rule is arguably unfair – especially in debt collection cases where almost no one has an attorney. According to the National Assessment of Adult Literacy, only 15% of US born adults are proficient at completing complex and challenging

⁹ The composition of the Supreme Court is dramatically different now. Four of the five justices have been appointed since 2001. Justice Lee was on the Advisory Committee when it voted to disallow the ten day summons.

literacy tasks.¹⁰ Many parties to a lawsuit do not have the mental bandwidth to handle complex information or tasks.¹¹ The typical ten day summons includes, in bold capital letters on the right side of the page, the word “SUMMONS” (three sample ten day summonses are included as Attachment A). Beneath “SUMMONS” a typical ten day summons will say “(10 day).” The summons then explains that the defendant has 21 days to respond and that the complaint will be filed within ten days and that the defendant can call the court within 14 days to ask if the complaint has been filed. Thus there are three very different deadlines on the ten day summons: 10 days (which appears at least twice), 14 days and 21 days.¹² We cannot know, but it is plausible, given many people’s limited ability to process complex literacy tasks, that many defendants think they have only ten days to respond to a ten day summons. The number most prominent on the ten day summons is ten. This functionally means that defendants do not have a meaningful opportunity to respond to their complaints. Plaintiffs do not have to file the ten day summons until the tenth day after service. A shrewd attorney who wanted to obtain a default would wait to file the complaint until the tenth day to increase the likelihood that the defendant will not be able to file a response. Some courts will not accept an answer if there is no case to file it under. There are very legitimate reasons for the court to not accept an answer for which there is no case: there is no case to file it in so the answer becomes loose paper and becomes the responsibility of the court to ensure the answer is filed appropriately; it raises the question of how much responsibility the court has for the answer, and where the better part of neutrality lies for court staff, if the defendant is filing in the wrong court.¹³ Because a defendant is likely to think they have ten days to respond to a ten day summons and the plaintiff does not have to file the complaint with the court until the tenth day of service and some courts do not accept a filing without a case number, defendants functionally have, at best, one day to respond to their lawsuit. Even if the court were to accept the complaint, creating the sense that someone has only ten days cheats them of the 21 days they are entitled to under URCP 12(a). The ten day summons is confusing for multiple reasons. It is for others to determine if the ten day summons passes muster under the standard in *Mullane*, but a court that strives for fairness can do better. Given the fact that so many plaintiffs are represented and defendants are unrepresented and the rates of default are so high, efficiency should yield to fairness in order to advance justice.

There is actually little efficiency that is lost. The primary concern for plaintiff’s attorneys is likely to be that they need to be able to serve the complaint to know if the defendant can be reached for service. However, there is no reason why plaintiffs cannot try to have the defendant served with a final dun letter to: (1) communicate the severity of the situation and encourage settlement; and (2) verify the defendant’s address for service. Additionally, plaintiffs can always request alternative service under URCP 4(d)(5). In the age of Facebook, LinkedIn, Twitter and easily accessible credit bureau information, (and the ability to pull addresses from Utah Drivers Licenses), finding someone for service should rarely be impossible if a plaintiff is willing to do the work.

¹⁰ National Center for Education Statistics, National Assessment of Adult Literacy, https://nces.ed.gov/naal/kf_demographics.asp#1 (last visited May 25, 2018).

¹¹ *Self-Help, Reimagined*, Indiana Law Journal, Vol. 92, No. 1, 2016, Greiner, Jimenez, Lupica; available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2633032.

¹² Further adding to the confusion is the fact that the summons has two different instructions: file an answer and call the court.

¹³ I polled the clerks of court and asked about their practices in each district. As part of the discussion that ensued there are now plans to discuss standardizing the court practice regarding answers presented for a case that has not been filed.

The Supreme Court and the entire court system is different than it was the last time the Rules Committee attempted to disallow the ten day summons. However, all of the problems previously identified by the Committee are still there. The has come to disallow the ten day summons.

3. Propose an amendment to Utah Rule of Civil Procedure 4 to make the form summons mandatory for all cases.

The Committee on Resources for Self-Represented Parties should propose the following revision to URCP 4:

~~(c)(1) The summons must: be in a form that is substantially similar to the Summons approved by the Judicial Council, form number 1015GEJ or 1016GEJ. [The form is included as attachment B.]~~

~~(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~~

The court approved form includes numerous advantages for all litigants. If approved by the Rules Committee it could create a safe harbor, eliminating uncertainty about whether a summons is sufficient. It will also more meaningfully put people on notice that a lawsuit has been filed against them and increase participation by defendants. Increased participation is consistent with the Courts' policies because it means cases will be decided on the merits rather than technicalities¹⁴ and increases efficiency by reducing the need for a motion to set aside for a defendant who did not understand the summons. The form includes a plain language warning,¹⁵ clear instructions and guidance on where to find a form answer (which links to guidance on preparing an answer and to a form (also approved by the Council)) and where to find additional assistance. The notice is also available in English and Spanish, which brings the Utah State Courts more in compliance with Title VI of the Civil Rights Act.¹⁶ The summons is currently

¹⁴ See *Cheap-O-Rooter, Inc. v. Marmalade Square Condominium Hoomeowners Ass'n*, 2009 Ut App 329; ("It is well established that 60(b) motions should be liberally granted because of the equitable nature of the rule. Therefore, a district court should exercise its discretion in favor of granting relief so that controversies can be decided on the merits rather than on technicalities").

¹⁵ Forms approved by the Judicial Council go through at least three committees for approval: the style and format committee, which aims for consistency, includes non-attorneys and involves a plain language scrub; the full Forms Committee, which includes district, juvenile and justice court judges along with a clerk of court and a Legal Aid Society attorney; and finally the Judicial Council.

¹⁶ 1964 USC 200d requires recipients of Federal financial assistance to ensure meaningful access to their programs and activities by persons with limited English proficiency. The Department of Justice issued guidelines for when

available on the Courts' website and thus is easily accessible by all. The change is also consistent with the stated purpose in URCP 1 for a "just, speedy and inexpensive determination of every action." Being mindful of the challenges self-represented litigants face, there is every reason to approve this change. One drawback is that the form is longer at three pages. However, the added expense is arguably trivial considering it only adds one additional piece of paper, the meaningful information the form provides and the compliance with Title VI it brings.

If there is no appetite for moving to disallow the ten day summons then there is a proposed form for a ten day summons that could be included with the propose revision to URCP 4.

4. Propose an amendment to Utah Rule of Civil Procedure 3 to require the court to send notice to defendants in debt collection cases upon the filing of a complaint.

The Committee on Resources for Self-Represented Parties should propose the following addition the URCP 3:

(c) Court to send notice. Upon the filing of a complaint for Debt Collection the plaintiff shall provide the address for the defendants to the action and the court shall send a notice to the defendants. The notice shall advise the defendants that a complaint has been filed against them, that if they do not respond their income could be garnished or their property seized and provide information on legal resources.

Other jurisdictions have found that service is a problem in debt collection cases. The Federal Trade Commission conducted a series of roundtable discussions across the country and found many consumer advocates, judges and some local officials reported that proper service in debt collection cases was not being completed.¹⁷ The FTC concluded that efforts to improve service of process would benefit consumers given the high rates of default in collection cases. In response to concerns about service, courts in New York require notice for defendants.¹⁸ Other courts have similar rules for eviction cases. Sending notices to defendants has been shown to double the rate of response in collection cases.¹⁹ In Utah's Bankruptcy Court the clerk sends a notice to debtors when a complaint to a bankruptcy discharge is filed. The court instructs debtors to contact Utah Legal Services to see if they qualify for a free attorney.

The main objections to this recommendation will likely be regarding cost and effort by court staff. These concerns seem difficult to overcome given what we know now because we do not have good information on why people default. A deeper investigation into defaults in debt collection cases in the form of a study through the Judicial Council or in partnership with Harvard's A2J lab could be warranted.

translation of forms is required; under the rule, vital documents must be translated. Federal Register 41455, Vol. 67, No. 117 (Tuesday, June 18, 2002).

¹⁷ Fed. Trade Comm'n, *Repairing a Broken System: Protecting Consumers In Debt Collection Litigation and Arbitration*, 8-10 (2010), available at: <https://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-bureau-consumer-protection-staff-report-repairing-broken-system-protecting/debtcollectionreport.pdf> (last visited May 25, 2018).

¹⁸ N.Y. City Civ. Ct. Unif. Rules §208.6 (2009).

¹⁹ Greiner, D. James and Matthews, Andrea, *The Problem of Default, Part I* (June 21, 2015). Available at SSRN: <https://ssrn.com/abstract=2622140> or <http://dx.doi.org/10.2139/ssrn.2622140>. This study involved notices being sent from a free legal services provider.

Another objection could be that this singles out one case type for special treatment. There is already precedent for this under the rules. Compare URCP 26.1, requiring specific disclosures in domestic relations actions, URCP 26.2, requiring the same in personal injury actions and URCP 26.3, requiring the same in unlawful detainer actions.

5. Propose an amendment to Utah Rule of Civil Procedure 7 to make the form motion notice mandatory.

The Committee on Resources for Self-Represented Parties should propose the following addition the URCP 7:

(c) Name and content of motion.

(c)(1) The rules governing captions and other matters of form in pleadings apply to motions and other papers. The moving party must title the motion substantially as: “Motion [short phrase describing the relief requested].” The motion must include the supporting memorandum. The motion must include under appropriate headings and in the following order:

(c)(1)(A) a concise statement of the relief requested and the grounds for the relief requested; and

(c)(1)(B) one or more sections that include a concise statement of the relevant facts claimed by the moving party and argument citing authority for the relief requested.

(c)(2) If the moving party cites documents, interrogatory answers, deposition testimony, or other discovery materials, relevant portions of those materials must be attached to or submitted with the motion.

(c)(3) If the motion is for relief authorized by Rule 12(b) or 12(c), Rule 56 or Rule 65A, the motion may not exceed 25 pages, not counting the attachments, unless a longer motion is permitted by the court. Other motions may not exceed 15 pages, not counting the attachments, unless a longer motion is permitted by the court.

(c)(4) A notice accompanying the motion that is substantially similar to page three of the Motion approved by the Judicial Council, form number 1101GEJ. [Included as Attachment C.]

The arguments in favor of requiring clear notice with motions are similar to the arguments for a clearer summons. The issuance of a summons and complaint entails a significant potential consequence – a default judgment. The summons is supposed to allow someone to understand what is happening and to meaningfully participate in the lawsuit. There are other “default equivalents” that also carry the same weighty consequence of judgment. These all come in the form of motions. Requiring the notice on all motions reduces the likelihood of gamesmanship where attorneys develop creative new motions with alternative names that function the same as a motion for summary judgment or a motion for judgment on the pleadings. The advantages of the Council approved notice are thus the same as for the summons. People can meaningfully participate in their lawsuit and understand the significance of a motion, furthering a system that is just and speedy and avoiding the need for a motion to set aside. The notice is written in plain language and is available in English and Spanish.

6. Propose an amendment to Utah Rule of Civil Procedure 36 to disallow requests for admission in debt collection cases or, at a minimum, require warning language when requests for admission are issued.

The Committee on Resources for Self-Represented Parties should propose the following amendment to URCP 36:

(a) Request for admission. A party may serve upon any other party a written request to admit the truth of any discoverable matter set forth in the request, including the genuineness of any document. The matter must relate to statements or opinions of fact or of the application of law to fact. Each matter shall be separately stated and numbered. A copy of the document shall be served with the request unless it has already been furnished or made available for inspection and copying. The request shall ~~notify the responding party that the matters will be deemed admitted unless the party responds within 28 days after service of the request~~ include a warning notice substantially similar to . [See Attachment D. This has not been approved by anyone yet].

The reasons for including such a warning are the same as above. Requests for admission are another procedural trap were self-represented litigants do not know they need to respond or they will lose. A plain language warning with clear formatting and instructions could help litigants understand the significance of requests for admission and increase the likelihood of outcomes on the merits instead of on technicalities.

Conclusion:

The Committee on Resources for Self-Represented Parties is the primary organ within the Utah State Courts to identify deficiencies in our legal system. It is the Committee's responsibility to identify problems our processes create for self-represented parties and to propose improvements. Procedural traps that confuse parties and result in decisions based on technicalities instead of the merits are obvious areas for improvement. These recommended changes ask for nothing more.

ATTACHMENT A

Served for Jay Weaver
Private Investigator GTC, Inc.
PO Box 538 Sandy, UT 84091
801-571-7211
Date Served 01-28-17
Time Served 14:00
By CC

The Law Offices of Kirk A. Cullimore, L.L.C.
Kirk A. Cullimore #3640
Kirk A. Cullimore Jr. #14052
644 East Union Square, Sandy Utah 84070
Tele: (801) 571-6611, Fax: (801) 571-4888
litigation@cullimore.net

IN THE DISTRICT COURT, STATE OF UTAH
SALT LAKE COUNTY, WEST JORDAN DEPARTMENT

MIDSHORE MANOR, LTD Plaintiff	SUMMONS (10 DAY)
vs.	
ADRIENNE WHITNEY KEMPLE Defendant	Civil No. Judge:

THE STATE OF UTAH TO THE ABOVE-NAMED DEFENDANT (S):

You are hereby summoned and required to file with the clerk of the above court a written answer to a complaint to be filed in the above-entitled case, and to serve upon or mail to Kirk A. Cullimore, the Plaintiff's attorney, 644 EAST UNION SQUARE, SANDY, UTAH 84070, a copy of said answer within twenty-one (21) days after service of this summons upon you.

If you fail to do so, judgment by default will be taken against you for the relief demanded in said Complaint, which, within ten (10) days after service of this summons upon you, will be filed with the clerk of said court. In the event the complaint is not filed with the Court within ten (10) days of service upon you, an answer need not be filed. Information on this filing may be obtained from the clerk of the Court fourteen (14) days from the date of service at (801) 233-9700. A copy of said complaint will be deposited with the clerk of said court at 8080 S REDWOOD ROAD, WEST JORDAN, UT 84088 which is where you are to file your answer to this summons.

DATED: 1/25/2017

/s/ Kirk A. Cullimore
Kirk A. Cullimore
Attorneys for Plaintiff

REF NO. 67135-IO

Bradley J. Knell, USB # 8419
SUTTELL & HAMMER, P.S.
PO Box C-90006
Bellevue, WA 98009
Tel: (888) 788-8355
Fax: (425) 453-3239

Attorney for Plaintiff

THIRD JUDICIAL DISTRICT COURT
STATE OF UTAH, SALT LAKE COUNTY, SALT LAKE CITY DEPARTMENT
PO Box 1860 SALT LAKE CITY UT 84111

Bank of America, N.A.

Plaintiff,

vs.

Cheryl Dawn Biggs

Defendant.

SUMMONS (10 DAY)

Case No. _____

Judge: _____

THE STATE OF UTAH TO THE ABOVE-NAMED DEFENDANT:

You are summoned and required to answer the attached complaint. Within 21 days after service of this summons, you must file your written answer with the clerk of the court at the following address: PO Box 1860 SALT LAKE CITY UT 84111 and you must mail or deliver a copy to plaintiff's attorneys at the address listed above. If you fail to do so, judgment by default may be taken against you for the relief demanded in the complaint. Within 10 days after service of this summons on you, the complaint will be filed with the clerk of the court. If the complaint is not filed with the court within 10 days after service of this summons upon you, then you do not need to file an answer to the complaint. You may call the clerk of the court at (801)238-7321 at least 14 days after service of this summons upon you to determine if the complaint has been filed.

SUMMONS - 1

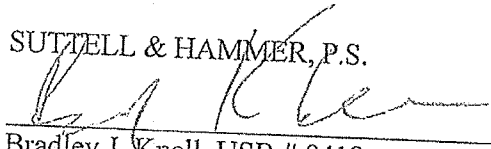
SUTTELL & HAMMER, P.S.
(FKA SUTTELL, HAMMER & WHITE, P.S.)
PO BOX C-90006; BELLEVUE, WA 98009
888-788-8355/425-453-3239 FAX

This is an action to recover an amount due to Plaintiff.

This communication is from a debt collector. This is an attempt to collect a debt. Any information obtained will be used for that purpose.

DATED this 13 day of NOV, 2017.

SUTTELL & HAMMER, P.S.


Bradley J. Knell, USB # 8419
Attorney for Plaintiff
s/h 573087.001

1282912

Quinn M. Kofford (6261)
P.O. Box 1425
American Fork, UT 84003
Telephone: 801-492-9505
Call this number first: 801-770-1120
Email: contact-info@koffordlaw.com
Attorney for Plaintiff

In the Fourth District Court of Utah
Fourth Judicial District, Utah County
American Fork Department
75 East 80 North, Suite 202, American Fork, UT 84003

Mountain Land Collections, Inc.

Plaintiff,

vs.

Brennan Moritz,

Defendant

Summons
(10 Day)

Civil Number:
Judge:

The State of Utah to the above-named Defendant:

You are hereby summoned and required to file an Answer to the attached Complaint, in writing. The Answer must be filed with the Clerk of the above-entitled court (located at 75 East 80 North, Suite 202, American Fork, UT 84003) within Twenty-one (21) days after service of this Summons upon you. A copy of that Answer must also be served upon or mailed to Quinn M. Kofford at the address noted above within Twenty-one (21) days after service of this Summons upon you. The Plaintiff will file the Complaint with the Clerk of the above court within Ten (10) days after service of this Summons upon you. If the Plaintiff does not file the Complaint within Ten (10) days after service, you need not submit an Answer. In order to determine whether the Complaint was filed within Ten (10) days, you may contact the Clerk of the above court at (801) 756-9654 at least Fourteen (14) days after service. A copy of the Complaint is attached hereto and served upon you. If you fail to file a written Answer within the requisite time, Judgment by Default will be taken against you for the relief prayed for in the Complaint.

DATED: this 26th day of July, 2017.

/s/ Quinn M. Kofford
Attorney for Plaintiff

ATTACHMENT B

Name

Address

City, State, Zip

Phone

Email

I am ☐ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Plaintiff/Petitioner's Attorney ☐ Defendant/Respondent's Attorney (Utah Bar #: _____)

In the District Court of Utah

_____ Judicial District _____ County

Court Address _____

<p>_____ Plaintiff/Petitioner</p> <p>V.</p> <p>_____ Defendant/Respondent</p>	<p>Summons (To be served in Utah)</p> <p>_____ Case Number</p> <p>_____ Judge</p> <p>_____ Commissioner (domestic cases)</p>
---	---

The State of Utah to _____ (party's name):

A lawsuit has been filed against you. You must respond in writing by the deadline for the court to consider your side. The written response is called an Answer.

Se ha presentado una demanda en su contra. Si desea que el juez considere su lado, deberá presentar una respuesta por escrito dentro del periodo de tiempo establecido. La respuesta por escrito es conocida como la Respuesta.

Deadline!

Your Answer must be filed with the court and served on the other party **within 21 days** of the date you were served with this Summons.

If you do not file and serve your Answer by the deadline, the other party can ask the court for a default judgment. A default judgment means the other party can get what they asked for, and you do not get the chance to tell your side of the story.

Read the complaint/petition

The Complaint or Petition has been filed with the court and explains what the other party is asking for in their lawsuit. Read it carefully.

Answer the complaint/petition

You must file your Answer in writing with the court **within 21 days** of the date you were served with this Summons. You can find an Answer form on the court's website:
www.utcourts.gov/howto/answer/.

Serve the Answer on the other party

You must mail or hand deliver a copy of your Answer to the other party (or their attorney or licensed paralegal practitioner, if they have one) at the address shown at the top left corner of the first page of this Summons.

Finding help

The court's Finding Legal Help web page (www.utcourts.gov/howto/legalassist/)

¡Fecha límite para contestar!

Su Respuesta debe ser presentada en el tribunal y también con la debida entrega formal a la otra parte **dentro de 21 días** a partir de la fecha en que usted recibió la entrega formal del Citatorio.

Si usted no presenta una respuesta ni hace la entrega formal dentro del plazo establecido, la otra parte podrá pedirle al juez que asiente un fallo por incumplimiento. Un fallo por incumplimiento significa que la otra parte recibe lo que pidió, y usted no tendrá la oportunidad de decir su versión de los hechos.

Lea la demanda o petición

La demanda o petición fue presentada en el tribunal y ésta explica lo que la otra parte pide. Léala cuidadosamente.

Cómo responder a la demanda o petición

Usted debe presentar su Respuesta por escrito en el tribunal **dentro de 21 días** a partir de la fecha en que usted recibió la entrega formal del Citatorio. En la página del tribunal www.utcourts.gov/howto/answer/ puede encontrar el formulario para la presentación de la Respuesta.

Entrega formal de la respuesta a la otra parte

Usted deberá enviar por correo o entregar personalmente una copia de su Respuesta a la otra parte (o a su abogado o asistente legal, si tiene) a la dirección localizada en la esquina izquierda superior de la primera hoja del citatorio.

Cómo encontrar ayuda legal

Para información sobre maneras de obtener ayuda legal, vea nuestra página de Internet

provides information about the ways you can get legal help, including the Self-Help Center, reduced-fee attorneys, limited legal help and free legal clinics.

Cómo encontrar ayuda legal. Algunas maneras de hablar con un abogado son por medio de una visita a un taller jurídico gratuito, o mediante el Centro de Ayuda. Estos talleres proveen información legal general y dan consejo legal breve. También hay ayuda legal a precios de descuento.

I declare under criminal penalty under the law of Utah that everything stated in this document is true.

Signed at _____ (city, and state or country).

Date

Signature ►

Printed Name

Name

Address

City, State, Zip

Phone

Email

I am ☐ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Plaintiff/Petitioner's Attorney ☐ Defendant/Respondent's Attorney (Utah Bar #:_____)

In the District Court of Utah

_____ Judicial District _____ County

Court Address _____

<p>_____ Plaintiff/Petitioner</p> <p>V.</p> <p>_____ Defendant/Respondent</p>	<p>Summons (To be served outside Utah)</p> <p>_____ Case Number</p> <p>_____ Judge</p> <p>_____ Commissioner (domestic cases)</p>
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The State of Utah to _____ (party's name):

A lawsuit has been filed against you. You must respond in writing by the deadline for the court to consider your side. The written response is called an Answer.

Se ha presentado una demanda en su contra. Si desea que el juez considere su lado, deberá presentar una respuesta por escrito dentro del periodo de tiempo establecido. La respuesta por escrito es conocida como la Respuesta.

Deadline!

Your Answer must be filed with the court and served on the other party **within 30 days** of the date you were served with this Summons.

If you do not file and serve your Answer by the deadline, the other party can ask the court for a default judgment. A default judgment means the other party can get what they asked for, and you do not get the chance to tell your side of the story.

Read the complaint/petition

The Complaint or Petition has been filed with the court and explains what the other party is asking for in their lawsuit. Read it carefully.

Answer the complaint/petition

You must file your Answer in writing with the court **within 30 days** of the date you were served with this Summons. You can find an Answer form on the court's website:
www.utcourts.gov/howto/answer/.

Serve the Answer on the other party

You must mail or hand deliver a copy of your Answer to the other party (or their attorney or licensed paralegal practitioner, if they have one) at the address shown at the top left corner of the first page of this Summons.

Finding help

The court's Finding Legal Help web page (www.utcourts.gov/howto/legalassist/)

¡Fecha límite para contestar!

Su Respuesta debe ser presentada en el tribunal y también con la debida entrega formal a la otra parte **dentro de 30 días** a partir de la fecha en que usted recibió la entrega formal del Citatorio.

Si usted no presenta una respuesta ni hace la entrega formal dentro del plazo establecido, la otra parte podrá pedirle al juez que asiente un fallo por incumplimiento. Un fallo por incumplimiento significa que la otra parte recibe lo que pidió, y usted no tendrá la oportunidad de decir su versión de los hechos.

Lea la demanda o petición

La demanda o petición fue presentada en el tribunal y ésta explica lo que la otra parte pide. Léala cuidadosamente.

Cómo responder a la demanda o petición

Usted debe presentar su Respuesta por escrito en el tribunal **dentro de 30 días** a partir de la fecha en que usted recibió la entrega formal del Citatorio. En la página del tribunal www.utcourts.gov/howto/answer/ puede encontrar el formulario para la presentación de la Respuesta.

Entrega formal de la respuesta a la otra parte

Usted deberá enviar por correo o entregar personalmente una copia de su Respuesta a la otra parte (o a su abogado o asistente legal, si tiene) a la dirección localizada en la esquina izquierda superior de la primera hoja del citatorio.

Cómo encontrar ayuda legal

Para información sobre maneras de obtener ayuda legal, vea nuestra página de Internet

provides information about the ways you can get legal help, including the Self-Help Center, reduced-fee attorneys, limited legal help and free legal clinics.

Cómo encontrar ayuda legal. Algunas maneras de hablar con un abogado son por medio de una visita a un taller jurídico gratuito, o mediante el Centro de Ayuda. Estos talleres proveen información legal general y dan consejo legal breve. También hay ayuda legal a precios de descuento.

I declare under criminal penalty under the law of Utah that everything stated in this document is true.

Signed at _____ (city, and state or country).

Date

Signature ►

Printed Name

ATTACHMENT C

☐ This is a private record

Name

Address

City, State, Zip

Phone

Email

I am ☐ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Plaintiff/Petitioner's Attorney ☐ Defendant/Respondent's Attorney (Utah Bar #: _____)

In the ☐ District ☐ Justice Court of Utah

_____ Judicial District _____ County

Court Address _____

	Motion to
_____ Plaintiff/Petitioner	_____ (name of motion)
v.	<input type="checkbox"/> Hearing Requested
_____ Defendant/Respondent	_____ Case Number
	_____ Judge
	_____ Commissioner (domestic cases)

1. I ask the court to enter an order as follows:
(Write **what** you want the court to order.)

2. I ask for this order because:
(Explain **why** you want the court order. Attach additional sheets if needed.)

3. ☐ The motion is supported by the law because:
(List any statutes, ordinances, rules or appellate opinions that support/oppose the motion. For example, Utah Code 15-1-201, or Utah Rules of Civil Procedure 67. Explain why they support the motion.)

4. ☐ I request a hearing.
☐ I do not request a hearing.

5. ☐ I have attached the following documents in support of this motion:

I declare under criminal penalty under the law of Utah that everything stated in this document is true.

Signed at _____ (city, and state or country).

Date

Signature ► _____

Printed Name _____

Notice to responding party

You have a limited amount of time to respond to this motion. In most cases, you must file a written response with the court and provide a copy to the other party:

- within 14 days of this motion being filed, if the motion will be decided by a judge, or
- at least 14 days before the hearing, if the motion will be decided by a commissioner.

In some situations a statute or court order may specify a different deadline.

If you do not respond to this motion or attend the hearing, the person who filed the motion may get what they requested.

See the court's Motions page for more information about the motions process, deadlines and forms:

www.utcourts.gov/howto/filing/motions

Finding help

The court's Finding Legal Help web page (www.utcourts.gov/howto/legalassist/) provides information about the ways you can get legal help, including the Self-Help Center, reduced-fee attorneys, limited legal help and free legal clinics.

Aviso para la parte que responde

Su tiempo para responder a esta moción es limitado. En la mayoría de casos deberá presentar una respuesta escrita con el tribunal y darle una copia de la misma a la otra parte:

- dentro de 14 días del día que se presenta la moción, si la misma será resuelta por un juez, o
- por lo menos 14 días antes de la audiencia, si la misma será resuelta por un comisionado.

En algunos casos debido a un estatuto o a una orden de un juez la fecha límite podrá ser distinta.

Si usted no responde a esta moción ni se presenta a la audiencia, la persona que presentó la moción podría recibir lo que pidió.

Vea la página del tribunal sobre Mociones para encontrar más información sobre el proceso de las mociones, las fechas límites y los formularios:

www.utcourts.gov/howto/filing/motions

Cómo encontrar ayuda legal

La página de la internet del tribunal Cómo encontrar ayuda legal (www.utcourts.gov/howto/legalassist/) tiene información sobre algunas maneras de encontrar ayuda legal, incluyendo el Centro de Ayuda de los Tribunales de Utah, abogados que ofrecen descuentos u ofrecen ayuda legal limitada, y talleres legales gratuitos.

Certificate of Service

I certify that I filed with the court and served a copy of this Motion on the following people.

Person's Name	Method of Service	Served at this Address	Served on this Date
	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> E-filed <input type="checkbox"/> Email (Person agreed to service by email.) <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		
	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> E-filed <input type="checkbox"/> Email (Person agreed to service by email.) <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		
	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> E-filed <input type="checkbox"/> Email (Person agreed to service by email.) <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		

Date

Signature ► _____

Printed Name _____

ATTACHMENT D

Notice to responding party

Read these Requests for Admission carefully. You have a limited amount of time to respond.

You must send a written response to the other party within 28 days

If you do not respond to these Requests for Admission **you could lose your case.**

Finding help

The court's Finding Legal Help web page (www.utcourts.gov/howto/legalassist/) provides information about the ways you can get legal help, including the Self-Help Center, reduced-fee attorneys, limited legal help and free legal clinics

Español

THIRD JUDICIAL DISTRICT COURT, STATE OF UTAH
SALT LAKE COUNTY, SALT LAKE DEPARTMENT

<p>[Name], Plaintiff, v. [Name], Defendant.</p>	<p>DECLARATION IN SUPPORT OF COLLECTION COSTS</p> <p>(U.C.A. § 12-1-11)</p> <p>Case No. _____</p> <p>Judge: _____</p>
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- Plaintiff debt collector seeks a “collection fee” pursuant to Utah Code Ann. 12-1-
11. Accordingly, plaintiff’s counsel, _____[Name]_____, states the following:
1. The plaintiff is a debt collection agency which is registered as such in the State of Utah. (Utah Code Ann. § 12-1-11(2)(c)).
 2. The written agreement between the creditor and the debtor creating the debt, and providing for the imposition of a collection fee under Section 12-1-11, is attached as Exhibit A. (Utah Code Ann. § 12-1-11(2)(d)). That agreement permits a collection fee of up to ____ %.
 3. The written agreement between the creditor and the debt collection agency reflecting the amount of the collection fee actually incurred is attached as Exhibit B. (Utah Code Ann. § 12-1-11(2)(b)). That agreement reflects an actual collection fee of ____ %.

4. The amount sought by plaintiff does not exceed the lesser of the actual amount the creditor is required to pay the debt collection agency or 40% of the principal amount owed to the creditor for the debt.
5. The imposition of this collection fee is not prohibited or otherwise restricted by any other federal or state law. (Utah Code Ann. § 12-1-11(2)(a)).
6. To the best of my knowledge, the principal amount prayed for in the complaint, and sought in the proposed judgment, does not contain collection fees.

I certify under criminal penalty of the State of Utah that the foregoing is true and correct to the best of my knowledge and belief. See U.C.A. § 78B-5-705.

DATED this ____ day of _____, 20__.

Name
Attorney for Plaintiff