

# Agenda

## Advisory Committee on Rules of Civil Procedure

April 25, 2007  
4:00 to 6:00 p.m.

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

Approval of minutes.	Fran Wikstrom
Rules 10 & 12. Sanctions for uncivil materials.	Tom Lee Tim Shea
Rules 7 and 101. Motions.	Tim Shea
Style amendments	Jonathan Hafen Judge Schofield
Rule 40. Assignment of cases for trial; continuance.	Frank Carney

### Meeting Schedule

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

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

# MINUTES

## UTAH SUPREME COURT ADVISORY COMMITTEE ON THE RULES OF CIVIL PROCEDURE

Wednesday, March 28, 2007  
Administrative Office of the Courts

Tim Shea, Presiding

PRESENT: James T. Blanch, Terrie T. McIntosh, Leslie W. Slaugh, Honorable David O. Nuffer, Jonathan Hafen, Thomas R. Lee, Judge R. Scott Waterfall, Cullen Battle, Barbara Townsend, Steven Marsden, Honorable Anthony W. Schofield, Honorable Anthony B. Quinn

EXCUSED: Francis M. Wikstrom, Francis J. Carney, Todd M. Shaughnessy, David W. Scofield, Honorable Lyle R. Anderson, Janet H. Smith, Debora Threedy, Lori Woffinden, Matty Branch

STAFF: Tim Shea, Trystan B. Smith

### I. APPROVAL OF MINUTES.

Mr. Shea called the meeting to order at 4:00 p.m. Judge Quinn moved to approve the January 24, 2007 minutes as approved. The committee unanimously approved the minutes.

### II. RULE 4. SERVICE BY PRIVATE INVESTIGATORS (HB385); RULE 4. SIGNING FOR MAIL SERVICE.

Mr. Shea brought Rule 4 to the committee. Mr. Ashton a local private investigator requested the committee (1) specifically identify private investigators under Rule 4 as people who may serve a summons and complaint, (2) permit an investigator to show proof of service by an unsworn statement, (3) regulate service of process at gated communities, and post office boxes, and (4) allow service of process by the alternative "nail and mail" method.

Mr. Shea indicated the Legislature this session considered the requested changes, but chose not to adopt the changes. The committee after discussion did not feel it was necessary to adopt the requested changes.

The committee also considered and rejected the suggestion by a member of the bar that Rule 4 be amended to expand the manner in which service by mail is allowed. The committee felt the suggested change was unnecessary.

### **III. RULE 11. SANCTIONS FOR UNCIVIL MATERIALS.**

Mr. Shea brought Rule 11 to the committee. The Supreme Court requested the committee consider amending the Rules of Civil Procedure to include the language contained in Rule 24(k) of the Rules of Appellate Procedure regarding civility.

Mr. Shea suggested including language in Rule 11, which in summary would prohibit burdensome, irrelevant, immaterial, scandalous and uncivil matters from written submissions, and also allow a trial court to assess fees against the offending lawyer. Mr. Lee and Mr. Hafen suggested the proposed language may be too ambiguous, and undermine the remaining language of Rule 11. Mr. Lee suggested perhaps expanding the language of Rule 12(f).

The committee noted the trial court may have inherent authority to strike uncivil materials and sanction counsel, but there was no explicit language allowing it. The committee debated whether the language in Rule 24(k) should be included under a separate rule instead of as a part of an existing rule, perhaps Rule 11A.

Judge Nuffer suggested the proposed rule contemplates a more severe context than those matters currently addressed in Rule 11.

The committee noted the explicit language of Rule 24(k), and further noted that Rule 11 does not address oral representations.

The committee indicated its desire to draft a proposed Rule 11A incorporating the civility language.

The committee debated whether the language should speak not only to a “pleading written motions, and other papers,” but also oral arguments. The committee discussed whether the proposed rule should include a safe harbor provision similar to that in Rule 11. The committee also discussed granting trial courts the authority to *sua sponte* invoke the sanctions of the proposed rule.

The committee indicated their desire for Mr. Shea to draft a proposed Rule 11A.

### **IV. RULE 74. COURT APPROVAL TO WITHDRAW BEFORE MEDIATION.**

Mr. Shea brought Rule 74 to the committee. Mr. Shea noted a suggested change from a member of the public requiring lawyers to comply with the provisions of Rule 74 if a hearing, trial, or [mediation] is pending.

The committee considered the change, but felt the change was unnecessary.

### **V. RULE 108. MOTION FOR TEMPORARY ORDER.**

Mr. Shea drafted a proposed new rule, Rule 108, to the committee. Mr. Shea indicated a practice has developed in the domestic setting of parties filing a motion for an order to show cause to seek temporary orders. Mr. Shea indicated orders to show cause should be limited to circumstances where a party has violated a court order.

Mr. Slaugh indicated the issue is not only limited to domestic practices, but suggested the rule may be better suited in Rule 7. Judge Quinn indicated a rule change was unnecessary, but believed the matter should be addressed through training practitioners.

Judge Quinn moved that the committee table the adoption of the proposed Rule 108. After discussion, the committee rejected the motion.

Judge Nuffer moved that the committee include the proposed language in a revision to Rule 7, and that Mr. Shea create proposed language for the committee's consideration. The committee unanimously approved the motion.

#### **VI. RULE 8. FALSE WRITING UNDER PENALTY OF LAW.**

Mr. Shea brought Rule 8 to the committee. Mr. Shea indicated that recent legislation was passed penalizing the issuance of a false writing as a Class B Misdemeanor. After a brief discussion, the committee decided it no longer needed to address a change to Rule 8.

#### **VII. SURVEY REGARDING DISCOVERY AMENDMENTS.**

Mr. Slaugh presented a series of draft questions for the bar survey regarding the 1999 discovery rules amendments.

The committee discussed whether the survey should refer to the "1999" discovery rules amendments. The committee also discussed whether it should consider responses from bar members admitted after 1999. The committee agreed with the proposed survey name, and further agreed it should consider all responses. The committee thanked Mr. Slaugh for his work, and voted to adopt the survey.

#### **VIII. STYLE AMENDMENTS.**

Mr. Hafen brought the style amendments and the comparison to the federal rules prepared by Judge Schofield's law clerk to the committee.

Mr. Hafen questioned whether the committee should wait until the style amendments to the federal rules were adopted, before the committee addressed the amendments.

The committee decided to address the style amendments at the next meeting.

#### **IX. RULE 40. ASSIGNMENT OF CASES FOR TRIAL; CONTINUANCE.**

The committee agreed to address Rule 40 at the next meeting.

**X. ADJOURNMENT.**

The meeting adjourned at 5:40 p.m. The next meeting of the committee will be held at 4:00 p.m. on Wednesday, April 25, 2007, at the Administrative Office of the Courts.

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1 Rule 10. Form of pleadings and other papers.

2 (a) Caption; names of parties; other necessary information. All pleadings and other  
3 papers filed with the court shall contain a caption setting forth the name of the court, the  
4 title of the action, the file number, the name of the pleading or other paper, and the  
5 name, if known, of the judge (and commissioner if applicable) to whom the case is  
6 assigned. In the complaint, the title of the action shall include the names of all the  
7 parties, but other pleadings and papers need only state the name of the first party on  
8 each side with an indication that there are other parties. A party whose name is not  
9 known shall be designated by any name and the words "whose true name is unknown."  
10 In an action in rem, unknown parties shall be designated as "all unknown persons who  
11 claim any interest in the subject matter of the action." Every pleading and other paper  
12 filed with the court shall also state the name, address, telephone number and bar  
13 number of any attorney representing the party filing the paper, which information shall  
14 appear in the top left-hand corner of the first page. Every pleading shall state the name  
15 and address of the party for whom it is filed; this information shall appear in the lower  
16 left-hand corner of the last page of the pleading. The plaintiff shall file together with the  
17 complaint a completed cover sheet substantially similar in form and content to the cover  
18 sheet approved by the Judicial Council.

19 (b) Paragraphs; separate statements. All averments of claim or defense shall be  
20 made in numbered paragraphs, the contents of each of which shall be limited as far as  
21 practicable to a statement of a single set of circumstances; and a paragraph may be  
22 referred to by number in all succeeding pleadings. Each claim founded upon a separate  
23 transaction or occurrence and each defense other than denials shall be stated in a  
24 separate count or defense whenever a separation facilitates the clear presentation of  
25 the matters set forth.

26 (c) Adoption by reference; exhibits. Statements in a pleading may be adopted by  
27 reference in a different part of the same pleading or in another pleading, or in any  
28 motion. An exhibit to a pleading is a part thereof for all purposes.

29 (d) Paper quality, size, style and printing. All pleadings and other papers filed with  
30 the court, except printed documents or other exhibits, shall be typewritten, printed or  
31 photocopied in black type on good, white, unglazed paper of letter size (8 1/2" x 11"),

32 with a top margin of not less than 2 inches above any typed material, a left-hand margin  
33 of not less than 1 inch, a right-hand margin of not less than one-half inch, and a bottom  
34 margin of not less than one-half inch. All typing or printing shall be clearly legible, shall  
35 be double-spaced, except for matters customarily single-spaced or indented, and shall  
36 not be smaller than 12-point size. Typing or printing shall appear on one side of the  
37 page only.

38 (e) Signature line. Names shall be typed or printed under all signature lines, and all  
39 signatures shall be made in permanent black or blue ink.

40 (f) Enforcement by clerk; waiver for pro se parties. The clerk of the court shall  
41 examine all pleadings and other papers filed with the court. If they are not prepared in  
42 conformity with ~~this rule subdivisions (a) – (e)~~, the clerk shall accept the filing but may  
43 require counsel to substitute properly prepared papers for nonconforming papers. The  
44 clerk or the court may waive the requirements of this rule for parties appearing pro se.  
45 For good cause shown, the court may relieve any party of any requirement of this rule.

46 (g) Replacing lost pleadings or papers. If an original pleading or paper filed in any  
47 action or proceeding is lost, the court may, upon motion, with or without notice,  
48 authorize a copy thereof to be filed and used in lieu of the original.

49 (h) All pleadings and other papers filed with the court must be free from redundant,  
50 immaterial, impertinent, or scandalous matter. The court may strike and disregard any  
51 pleadings that are not in compliance with this subdivision under Rule 12(f). The court  
52 may strike and disregard any other papers that are not in compliance with this  
53 subdivision upon the court's own initiative at any time or by motion filed by a party  
54 before responding to the paper or, if no response is permitted, by motion filed within  
55 twenty days after the service of the paper.

56

1 Rule 12. Defenses and objections.

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

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

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

18 (b) How presented. Every defense, in law or fact, to claim for relief in any pleading,  
19 whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the  
20 responsive pleading thereto if one is required, except that the following defenses may at  
21 the option of the pleader be made by motion: (1) lack of jurisdiction over the subject  
22 matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of  
23 process, (5) insufficiency of service of process, (6) failure to state a claim upon which  
24 relief can be granted, (7) failure to join an indispensable party. A motion making any of  
25 these defenses shall be made before pleading if a further pleading is permitted. No  
26 defense or objection is waived by being joined with one or more other defenses or  
27 objections in a responsive pleading or motion or by further pleading after the denial of  
28 such motion or objection. If a pleading sets forth a claim for relief to which the adverse  
29 party is not required to serve a responsive pleading, the adverse party may assert at the  
30 trial any defense in law or fact to that claim for relief. If, on a motion asserting the  
31 defense numbered (6) to dismiss for failure of the pleading to state a claim upon which



32 relief can be granted, matters outside the pleading are presented to and not excluded  
33 by the court, the motion shall be treated as one for summary judgment and disposed of  
34 as provided in Rule 56, and all parties shall be given reasonable opportunity to present  
35 all material made pertinent to such a motion by Rule 56.

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

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

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

56 (f) Motion to strike. ~~Upon motion made by a party before responding to a pleading or,~~  
57 ~~if no responsive pleading is permitted by these rules, upon motion made by a party~~  
58 ~~within twenty days after the service of the pleading, the court may order stricken from~~  
59 ~~any pleading any insufficient defense or any redundant, immaterial, impertinent, or~~  
60 ~~scandalous matter. All pleadings filed with the court must be free from redundant,~~  
61 ~~immaterial, impertinent, or scandalous matter. The court may strike and disregard any~~  
62 ~~pleadings that are not in compliance with this subdivision upon the court's own initiative~~

63 at any time or by motion filed by a party before responding to the pleading or, if no  
64 response is permitted, by motion filed within twenty days after the service of the  
65 pleading.

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

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

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

84 (j) Security for costs of a nonresident plaintiff. When the plaintiff in an action resides  
85 out of this state, or is a foreign corporation, the defendant may file a motion to require  
86 the plaintiff to furnish security for costs and charges which may be awarded against  
87 such plaintiff. Upon hearing and determination by the court of the reasonable necessity  
88 therefor, the court shall order the plaintiff to file a \$300.00 undertaking with sufficient  
89 sureties as security for payment of such costs and charges as may be awarded against  
90 such plaintiff. No security shall be required of any officer, instrumentality, or agency of  
91 the United States.

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

95

1 Rule 7. Pleadings allowed; motions, memoranda, hearings, orders, objection to  
2 commissioner's order.

3 (a) Pleadings. There shall be a complaint and an answer; a reply to a counterclaim;  
4 an answer to a cross claim, if the answer contains a cross claim; a third party complaint,  
5 if a person who was not an original party is summoned under the provisions of Rule 14;  
6 and a third party answer, if a third party complaint is served. No other pleading shall be  
7 allowed, except that the court may order a reply to an answer or a third party answer.

8 (b)(1) Motions. An application to the court for an order shall be by motion which,  
9 unless made during a hearing or trial or in proceedings before a court commissioner,  
10 shall be made in accordance with this rule. A motion shall be in writing and state  
11 succinctly and with particularity the relief sought and the grounds for the relief sought.

12 (b)(2) Limit on order to show cause. A party requesting relief other than enforcement  
13 of an existing order or sanctions for violating an existing order, shall file a motion for the  
14 relief sought and not a motion for an order to show cause. The court shall issue an  
15 order to show cause upon motion supported by affidavit or other evidence sufficient to  
16 show probable cause to believe a party has violated a court order. The court shall  
17 proceed in accordance with Utah Code Title 78, Chapter 32, Contempt.

18 (c) Memoranda.

19 (c)(1) Memoranda required, exceptions, filing times. All motions, except uncontested  
20 or ex parte motions, shall be accompanied by a supporting memorandum. Within ten  
21 days after service of the motion and supporting memorandum, a party opposing the  
22 motion shall file a memorandum in opposition. Within five days after service of the  
23 memorandum in opposition, the moving party may file a reply memorandum, which shall  
24 be limited to rebuttal of matters raised in the memorandum in opposition. No other  
25 memoranda will be considered without leave of court. A party may attach a proposed  
26 order to its initial memorandum.

27 (c)(2) Length. Initial memoranda shall not exceed 10 pages of argument without  
28 leave of the court. Reply memoranda shall not exceed 5 pages of argument without  
29 leave of the court. The court may permit a party to file an over-length memorandum  
30 upon ex parte application and a showing of good cause.

31 (c)(3) Content.

32 (c)(3)(A) A memorandum supporting a motion for summary judgment shall contain a  
33 statement of material facts as to which the moving party contends no genuine issue  
34 exists. Each fact shall be separately stated and numbered and supported by citation to  
35 relevant materials, such as affidavits or discovery materials. Each fact set forth in the  
36 moving party's memorandum is deemed admitted for the purpose of summary judgment  
37 unless controverted by the responding party.

38 (c)(3)(B) A memorandum opposing a motion for summary judgment shall contain a  
39 verbatim restatement of each of the moving party's facts that is controverted, and may  
40 contain a separate statement of additional facts in dispute. For each of the moving  
41 party's facts that is controverted, the opposing party shall provide an explanation of the  
42 grounds for any dispute, supported by citation to relevant materials, such as affidavits or  
43 discovery materials. For any additional facts set forth in the opposing memorandum,  
44 each fact shall be separately stated and numbered and supported by citation to  
45 supporting materials, such as affidavits or discovery materials.

46 (c)(3)(C) A memorandum with more than 10 pages of argument shall contain a table  
47 of contents and a table of authorities with page references.

48 (c)(3)(D) A party may attach as exhibits to a memorandum relevant portions of  
49 documents cited in the memorandum, such as affidavits or discovery materials.

50 (d) Request to submit for decision. When briefing is complete, either party may file a  
51 "Request to Submit for Decision." The request to submit for decision shall state the date  
52 on which the motion was served, the date the opposing memorandum, if any, was  
53 served, the date the reply memorandum, if any, was served, and whether a hearing has  
54 been requested. If no party files a request, the motion will not be submitted for decision.

55 (e) Hearings. The court may hold a hearing on any motion. A party may request a  
56 hearing in the motion, in a memorandum or in the request to submit for decision. A  
57 request for hearing shall be separately identified in the caption of the document  
58 containing the request. The court shall grant a request for a hearing on a motion under  
59 Rule 56 or a motion that would dispose of the action or any claim or defense in the  
60 action unless the court finds that the motion or opposition to the motion is frivolous or  
61 the issue has been authoritatively decided.

62 (f) Orders.

63 (f)(1) An order includes every direction of the court, including a minute order entered  
64 in writing, not included in a judgment. An order for the payment of money may be  
65 enforced in the same manner as if it were a judgment. Except as otherwise provided by  
66 these rules, any order made without notice to the adverse party may be vacated or  
67 modified by the judge who made it with or without notice. Orders shall state whether  
68 they are entered upon trial, stipulation, motion or the court's initiative.

69 (f)(2) Unless the court approves the proposed order submitted with an initial  
70 memorandum, or unless otherwise directed by the court, the prevailing party shall,  
71 within fifteen days after the court's decision, serve upon the other parties a proposed  
72 order in conformity with the court's decision. Objections to the proposed order shall be  
73 filed within five days after service. The party preparing the order shall file the proposed  
74 order upon being served with an objection or upon expiration of the time to object.

75 (f)(3) Unless otherwise directed by the court, all orders shall be prepared as  
76 separate documents and shall not incorporate any matter by reference.

77 (g) Objection to court commissioner's recommendation. A recommendation of a  
78 court commissioner is the order of the court until modified by the court. A party may  
79 object to the recommendation by filing an objection in the same manner as filing a  
80 motion within ten days after the recommendation is made in open court or, if the court  
81 commissioner takes the matter under advisement, ten days after the minute entry of the  
82 recommendation is served. A party may respond to the objection in the same manner  
83 as responding to a motion.

84

1 Rule 101. Motion practice before court commissioners.

2 (a) Written motion required. An application to a court commissioner for an order shall  
3 be by motion which, unless made during a hearing, shall be made in accordance with  
4 this rule. A motion shall be in writing and state succinctly and with particularity the relief  
5 sought and the grounds for the relief sought.

6 (b) Time to file and serve. The moving party shall file the motion and attachments  
7 with the clerk of the court and obtain a hearing date and time. The moving party shall  
8 serve the responding party with the motion and attachments and notice of the hearing at  
9 least 14 calendar days before the hearing. A party may file and serve with the motion a  
10 memorandum supporting the motion. If service is more than 90 days after the date of  
11 entry of the most recent appealable order, service may not be made through counsel.

12 (c) Response; reply. The responding party shall file and serve the moving party with  
13 a response and attachments at least 5 business days before the hearing. A party may  
14 file and serve with the response a memorandum opposing the motion. The moving party  
15 may file and serve the responding party with a reply and attachments at least 3  
16 business days before the hearing. The reply is limited to responding to matters raised in  
17 the response.

18 (d) Attachments; objection to failure to attach.

19 (d)(1) As used in this rule "attachments" includes all records, forms, information and  
20 affidavits necessary to support the party's position. Attachments for motions and  
21 responses regarding alimony shall include income verification and a financial  
22 declaration. Attachments for motions and responses regarding child support and child  
23 custody shall include income verification, a financial declaration and a child support  
24 worksheet. A financial declaration shall be verified.

25 (d)(2) If attachments necessary to support the moving party's position are not served  
26 with the motion, the responding party may file and serve an objection to the defect with  
27 the response. If attachments necessary to support the responding party's position are  
28 not served with the response, the moving party may file and serve an objection to the  
29 defect with the reply. The defect shall be cured within 2 business days after notice of the  
30 defect or at least 2 business days before the hearing, whichever is earlier.

31 (e) Courtesy copy. Parties shall deliver to the court commissioner a courtesy copy of  
32 all papers filed with the clerk of the court within the time required for filing with the clerk.  
33 The courtesy copy shall state the name of the court commissioner and the date and  
34 time of the hearing.

35 (f) Late filings; sanctions. If a party files or serves papers beyond the time required in  
36 subsections (b) or (c), the court commissioner may hold or continue the hearing, reject  
37 the papers, impose costs and attorney fees caused by the failure and by the  
38 continuance, and impose other sanctions as appropriate.

39 (g) Counter motion. Opposing a motion is not sufficient to grant relief to the  
40 responding party. An application for an order may be raised by counter motion. This rule  
41 applies to counter motions except that a counter motion shall be filed and served with  
42 the response. The response to the counter motion shall be filed and served no later  
43 than the reply. The reply to the response to the counter motion shall be filed and served  
44 at least 2 business days before the hearing. A separate notice of hearing on counter  
45 motions is not required.

46 (h) Limit on hearing. The court commissioner shall not hold a hearing on a motion  
47 before the deadline for an appearance by the respondent under Rule 12.

48 (i) Limit on order to show cause. A party requesting relief other than enforcement of  
49 an existing order or sanctions for violating an existing order, shall file a motion for the  
50 relief sought and not a motion for an order to show cause. The court shall issue an  
51 order to show cause ~~only~~ upon motion supported by affidavit or other evidence sufficient  
52 to show probable cause to believe a party has violated a court order. The court  
53 commissioner shall proceed in accordance with Utah Code Title 78, Chapter 32,  
54 Contempt.

55 (j) Motions to judge. The following motions shall be to the judge to whom the case is  
56 assigned: motion for alternative service; motion to waive 90-day waiting period; motion  
57 to waive divorce education class; motion for leave to withdraw after a case has been  
58 certified as ready for trial; and motions in limine. A court may provide that other motions  
59 be to the judge.

60



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

Fran:

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

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

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

FJC

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