Agenda

Advisory Committee on Rules of Civil Procedure

March 28, 2018

4:00 to 6:00 p.m.

Scott M. Matheson Courthouse

450 South State Street

Judicial Council Room

Administrative Office of the Courts, Suite N31

Welcome and approval of minutes	Tab 1	Leslie Slaugh, Chair Pro Tem
Rule 109. Automatic temporary domestic orders. New.	Tab 2	Commissioner Michelle Blomquist
Rule 5, Orders served by the court, New CJA Rule 4-511, Mandatory email address, and Rule 10, conforming amendments.	Tab 3	Nancy Sylvester and others
Rule 4. Standards for electronic acceptance of service: Assignment of subcommittee.	Tab 4	Leslie Slaugh, Chair Pro Tem
Rule 26(a)(5). Pretrial Disclosures.	Tab 5	Judge Kent Holmberg
Rule 9. Pleading Special Matters.	Tab 6	Nancy Sylvester
Other business		Leslie Slaugh, Chair Pro Tem

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

Meeting Schedule:

April 25, 2018

May 23, 2018

June 27, 2018

September 26, 2018

October 24, 2018

November 28, 2018

Tab 1

UTAH SUPREME COURT ADVISORY COMMITTEE ON RULES OF CIVIL PROCEDURE

Meeting Minutes February 28, 2018

PRESENT: Chair Jonathan Hafen, Katy Strand, Paul Stancil, Leslie Slaugh, Susan Vogel, Barbara Townsend, Judge Clay Stucki, Judge Kate Toomey, Rod Andreason, Judge James Blanch, Judge Andrew Stone, Michael Petrogeorge, Timothy Pack, Judge Laura Scott, Judge Kent Holmberg, Judge Amber Mettler

EXCUSED: James Hunnicutt, Lauren DiFrancesco, Justin Toth, Lincoln Davies, Dawn Hautamaki, Trystan Smith

GUESTS: Cathy Dupont, Mark Olson, Charles Stormont, Commissioner Michelle Blomquist

STAFF: Nancy Sylvester

(1) Welcome, Approval of minutes.

Rod Andreason moved to approve the minutes with changes which were sent into Nancy Sylvester. Judge Kate Toomey seconded. The motion passed unanimously.

(2) RULE 73. ATTORNEY FEES.

Nancy Sylvester reminded the committee that they had discussed Rule 73 two meetings ago. The committee requested Mark Olson and Charles Stormont to meet and come to an agreement on what the rule language should look like. Mr. Olson and Mr. Stormont discussed where the fees were incurred and what was reasonable. They recognized that the overwhelming majority of cases filed are debt collections, and the majority of those result in defaults. They had built in a default rule for contested versus uncontested cases, with the option to object to the default for reasonableness. They believed this is a reasonable approach. Mr. Stormont stated that both plaintiffs and the defense bar support this proposal. Judge James Blanch said he supported the proposal because it is tied to the amount of effort, rather than the amount in controversy. He asked Mr. Olson if the defense bar will use this process rather than creating affidavits. Mr. Olson said he believed the collection bar will change their behavior to reflect the fee schedule.

Judge Laura Scott asked how many collection cases involve stipulated payment plans which are then not paid, resulting in a double attorney's fees? Mr. Olson said that if such payment plans are in place they will have to agree to reasonable attorney's fees. Judge Blanch said that would be outside the scope of this rule since people would be contracting for attorney's fees. Michael Petrogeorge echoed the same, saying that would be a settlement contract and outside the scope of the rule.

Mr. Petrogeoge also said under the new procedure, the complaint could not include the amount of the attorney's fees since the lawyers will not know if it is contested at filing. Timothy Pack

proposed no longer requiring the amount of fees in the complaint. Leslie Slaugh proposed that parties should claim that there will be attorney's fees under the rule, but not provide the specific amount.

Susan Vogel was concerned that responding to a complaint, even to say I admit I owe the debt, would create the $750 fee. Mr. Olson and Mr. Stormont responded that if there is an unopposed motion for judgment on the pleadings it would trigger the lower fees. Ms. Vogel expressed concerns that the summons says an answer is required, even though it is not. She also expressed her belief that a judge should review the basis for the fees. Judge Blanch said clerks will likely be approving the award of fees since there is such a high volume. Judge Andrew Stone said if they have questions about whether the case is contested or not, clerks will ask the judge to weigh in. Mr. Stormont said the ability to object indicates that the court can and will review these.

Mr. Petrogeorge thought the rule needed a clarifying amendment with respect to appearances and motions for summary judgment. Judge Stone said appearances should be clarified to reflect if there is evidence or argument at a hearing. Judge Scott said as amended by the committee, the rule continued to read that additional fees were permitted if the defendant were to appear at any hearing Judge Blanch questioned whether the rule should distinguish evidence at a hearing versus written evidence.

The committee made clarifying edits to the committee note.

Judge Toomey moved to approve the rule in the form below:

Rule 73. Attorney fees.

(a) Time in which to claim. Attorney fees must be claimed by filing a motion for attorney fees no later than 14 days after the judgment is entered, except as provided in part (f) of this Rule, or in accordance with Utah Code Section 75-3-718, and no objection to the fee has been made.

(b) Content of motion. The motion must:

(b)(1) specify the judgment and the statute, rule, contract, or other basis entitling the party to the award;

(b)(2) disclose, if the court orders, the terms of any agreement about fees for the services for which the claim is made;

(b)(3) specify factors showing the reasonableness of the fees, if applicable;

(b)(4) specify the amount of attorney fees claimed and any amount previously awarded; and

(b)(5) disclose if the attorney fees are for services rendered to an assignee or a debt collector, the terms of any agreement for sharing the fee and a statement that the attorney will not share the fee in violation of Rule of Professional Conduct 5.4.

(c) Supporting affidavit. The motion must be supported by an affidavit or declaration that reasonably describes the time spent and work performed, including for each item of work the name, position (such as attorney, paralegal, administrative assistant, etc.) and hourly rate of the persons who performed the work, and establishes that the claimed fee is reasonable.

(d) Liability for fees. The court may decide issues of liability for fees before receiving submissions on the value of services. If the court has established liability for fees, the party claiming them may file an affidavit and a proposed order. The court will enter an order for the claimed amount unless another party objects within 7 days after the affidavit and proposed order are filed.

(e) Fees claimed in complaint. If a party claims attorney fees under paragraph (f), the complaint must state the basis for attorney fees, cite the law or attach a copy of the contract authorizing the award, and state that the attorney will not share the fee in violation of Rule of Professional Conduct 5.4.

(f) Fees. Attorney fees awarded under this Rule may be augmented upon submission of a motion and supporting affidavit meeting the requirements of paragraphs (b) and (c) of this Rule within a reasonable time after the fees were incurred, except as provided in parts (f)(1), (f)(2) and (f)(3) of this Rule, and only where the augmented fees sought exceed those already awarded.

(f)(1) **Fees upon entry of uncontested judgment.** When a party seeks a judgment, the responding party does not contest entry of judgment by presenting at a hearing either evidence or argument, and the party seeking the judgment has complied with part (e) of this Rule, the request for judgment may include a request for attorney fees, and the clerk or the court shall allow any amount requested up to $350.00 for such attorney fees without a supporting affidavit.

(f)(2) **Fees upon entry of judgment after contested proceeding.** When a party seeks a judgment, the responding party contests the judgment by presenting at a hearing either evidence or argument, and the party seeking the judgment has established its right to attorney fees, the request for judgment may include a request for attorney fees, and the clerk or the court shall allow any amount requested up to $750 for such attorney fees without a supporting affidavit.

(f)(3) **Post Judgment Collections.** When a party has established its entitlement to attorney fees under any paragraph of this Rule, and subsequently:

(f)(3)(A) applies for any writ pursuant to Rules 64, 64A, 64B, 64C, 64D, *or* 64E*; or*

(f)(3)(B) files a motion pursuant to Rules 64(c)(2) or 58C or pursuant to Utah Code § 35A-4-314, a party may request as part of its application for the writ or motion that its judgment be augmented according the following schedule, and the clerk or the court shall allow such augmented attorney fees request without a supporting affidavit if it approves the writ or motion:

Action	Attorney Fees Allowed
Application for any writ under Rule 64, including 1st application for a writ under Rule 64D	75.00
Any subsequent application for a writ under Rule 64D to the same garnishee	25.00
Any motion filed with the court under Rule 64(c)(2), Utah Code Ann 35A-4-314, or Rule 58C	75.00
Any subsequent motion under Rule 64(c)(2), Utah Code Ann 35A-4-314, or Rule 58C filed within 6 months of the previous motion	25.00

(f)(4) **Fees in excess of the schedule.** If a party seeks attorney fees in excess of the amounts set forth in parts (f)(1), (f)(2), or (f)(3) of this Rule, the party shall comply with parts (a) through (c) of this Rule.

(f)(5) **Objections.** Nothing in this paragraph shall be deemed to eliminate any right a party may have to object to any claimed attorney fees.

Advisory Committee Notes.

To be added to the Advisory Committee Notes:

2018 Advisory Committee Notes

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. As such, the prior schedule of fees based on the amount of damages has been eliminated, and instead replaced by a single fee upon entry of an uncontested judgment that is intended to approximate the work required in the typical case. A second amount is provided where the case is contested and fees are allowed, again in an effort to estimate the typical cost of litigating such cases. Where additional work is required to collect on the judgment, the revised rule provides a default amount for writs and certain motions, and eliminates the "considerable additional efforts" limitation of the prior Rule. It also recognizes that defendants often change jobs, and thus provides for such default amounts to vary depending on whether a new garnishee is required to collect on the outstanding amount of the judgment.

Thus, the amended Rule attempts to match the scheduled amounts to the work required of attorneys, rather than tying the scheduled amounts solely to the damages claimed. But 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.

Judge Blanch seconded Judge Toomey's motion. The motion passed unanimously. Chairman Hafen and Nancy Sylvester will present the rule to the Supreme Court and recommend that it be circulated for comment.

(3) RULE 109. AUTOMATIC TEMPORARY DOMESTIC ORDERS. NEW.

Commissioner Blomquist proposed new Rule 109 on behalf of the Judicial Council's Standing Committee on Children and Family Law. The Board of District Court Judges had approved the language of this rule. The purpose of the rule is to impose a standard temporary order on parties to domestic actions, the idea of which is to avoid parties litigating the items in the order prior to final adjudication, thereby saving them time and money. Colorado has a similar rule and automatic order.

Judge Toomey questioned whether the language was redundant or clear enough. Paul Stancil was concerned about over inclusiveness. He said that prohibiting the transfer of property may be over-kill when looking at only custody issues. He suggested clarifying language for paragraph (a)(1). Mr. Pack wanted to know if this should apply at all in non-divorce cases. Judge Toomey suggested clarifying language for paragraph (a)(6) about that section applying only when there is a minor child. With respect to paragraph (a)(1), Judge Stone asked if there will be a difficulty enforcing the requirement of not annoying or bothering. He said there may be trivial complaints. Commissioner Blomquist believed that even if that was difficult to enforce, it may help behavior. Ms. Vogel and Mr. Andreason were concerned with the definition of travel being too broad. Judge Toomey proposed using mileage; Judge Stone proposed using overnights. Mr. Hafen proposed mirroring Utah Code section 30-3-36 and Ms. Sylvester proposed referring to the statute in the rule but then noted that the statute does not actually speak to miles.

Judge Stucki said that the rule is trying to get to unusual or non-customary or non-routine travel. Judge Blanch pointed out that the parties can customize this on short notice, so it won't be set in stone. Mr. Slaugh proposed both non-routine and overnight. With respect to paragraph (a)(10), Mr. Slaugh asked if the third party should be required to be an adult. He also expressed concerns about the obligation to remove the child. Commissioner Blomquist said this is really about a parent who has the other third parties around; the parent who is there has the duty. Mr. Petrogeorge proposed that the wording include "while exercising parent time." Ms. Vogel proposed "when the child is under their care" because there may not be parent time at the time this order is entered.

Mr. Slaugh was also concerned that the requirement for a hearing does not make sense for the entire time that this will be in force. Once the answer is filed perhaps it should be the normal motion period or 21 days after the answer is filed.

Judge Stone said that (a)(6) should address the situation when there is another protective order in place that could conflict with this automatic order. Mr. Andreason proposed adding the language, "Any separate order governing the parties or their minor children will control over conflicting provisions of this domestic injunction."

Mr. Slaugh pointed out that that the "until" in paragraph (d) was redundant: "(d) The domestic injunction remains in effect until the final decree is entered, the petition is dismissed, the parties agree otherwise in a writing signed by all parties, or *until* further order of the court."

Mr. Andreason asked how the petitioner will know about this injunction. Commissioner Blomquist proposed that it would be given to them when they file their petition. Mr. Slaugh asked whether the order had to be served. He said he would like it to be effective immediately upon filing of the petition. Ms. Vogel proposed including the injunction in the divorce petition so the person signing it would be agreeing to the injunction and it would be served on the other party with the petition. Mr. Slaugh proposed requiring all divorce petitions to include that the petitioner will be bound and that the summons would provide this notice. Judge Toomey said she thought this had overlap with other rules. Judge Scott suggested looking at Rule 26.3 as a guidepost.

The committee deferred discussion of the rule until the next month. Commissioner Blomquist would look at the committee's suggestions and come back with a new draft.

(5) ADJOURNMENT

The meeting adjourned at 6 p.m. The next meeting is scheduled for March 28, 2018 at 4 p.m.

Tab 2

Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

Richard H. Schwermer
State Court Administrator
Raymond H. Wahl
Deputy Court Administrator

MEMORANDUM

To: Civil Rules Committee
From: Nancy Sylvester
Date: February 22, 2018
Re: Rule 109

As a reminder, Rule 109 was drafted and vetted by the Judicial Council's Standing Committee on Children and Family Law. The rule would impose an automatic domestic injunction on the parties to various domestic actions.

At our last meeting, this committee made edits to the rule and then sent it back to the standing committee's Divorce Procedures Subcommittee with instructions to better organize the rule, to determine when the use of the term "motion" is appropriate, and to explore the questions you had about the travel provisions. The subcommittee made fairly extensive revisions to the rule, so I have included a clean copy for you to review, rather than a redlined version.

Rule 109. Automatic domestic injunctions.

(a) **Actions in which an automatic domestic injunction enters.** In an action for divorce, annulment, temporary separation, custody, parent time, support, or paternity, a domestic injunction automatically enters when the petition is filed. The domestic injunction contains the applicable provisions of this rule.

(b) **General provisions.**

(b)(1) In an action concerning the division of property, neither party may transfer, encumber, conceal, or dispose of any property of either party without the written consent of the other party or an order of the court, except in the usual course of business or to provide for the necessities of life.

(b)(2) Neither party may disturb the peace of the other party or harass, annoy, or bother the other party.

(b)(3) Neither party may commit domestic violence or abuse against the other party or a child.

(b)(4) Neither party may use the other party's name, likeness, image, or identification to obtain credit, open an account for service, or obtain a service.

(b)(5) Neither party may cancel or interfere with telephone, utility, or other services used by the other party.

(b)(6) Neither party may cancel, modify, terminate, change the beneficiary, or allow to lapse for voluntary nonpayment of premiums, any policy of health insurance, homeowner's or renter's insurance, automobile insurance, or life insurance, without the written consent of the other party or pursuant to further order of the court.

(c) **Provisions regarding a minor child.** The following provisions apply when a minor child is named in the petition:

(c)(1) Neither party may engage in non-routine travel with the child without the written consent of the other party or an order of the court unless the following information has been provided to the other party:

(c)(1)(A) an itinerary of travel dates and destinations;

(c)(1)(B) how to contact the child or traveling party; and

(c)(1)(C) the name and telephone number of an available third person who will know the child's location.

(c)(2) Neither party may do the following in the presence or hearing of the child:

(c)(2)(A) demean or disparage the other party whether the party believes it to be true or not;

(c)(2)(B) speak about the issues in the petition;

(c)(2)(C) attempt to influence a child's preference regarding custody or parent time; or

(c)(2)(D) say or do anything that would tend to diminish the love and affection of the child for the other party.

(c)(3) Neither party may make parent time arrangements through the child.

(c)(4) Each party has the duty when the child is under the party's care to use best efforts to prevent third parties from doing what the parties are prohibited from doing under this order or the party must remove the child from those third parties.

(d) **When the injunction is binding.** The domestic injunction is binding

(d)(1) on the petitioner upon filing the petition; and

(d)(2) on the respondent upon service on the respondent of the petition and summons or, upon acceptance of service by the respondent. A copy of the domestic injunction shall be served with the petition and summons or with the acceptance of service.

(e) **When the injunction terminates.** The domestic injunction remains in effect until the final decree is entered, the petition is dismissed, the parties agree otherwise in a writing signed by all parties, or further order of the court.

(f) **Modifying or dissolving the injunction.** A party may move to modify or dissolve the domestic injunction.

(f)(1) Prior to a responsive pleading being filed, the court shall hear a motion to modify or dissolve the injunction as expeditiously as possible but not later than 72 hours after the motion is filed. The moving party must serve the nonmoving party at least 48 hours before the hearing.

(f)(2) After a responsive pleading is filed, a motion to modify or to dissolve the domestic injunction is governed by Rule 7 or Rule 101, as applicable.

(g) **Separate conflicting order.** Any separate order governing the parties or their minor children will control over conflicting provisions of this domestic injunction.

(h) **Applicability.** This rule applies to all petitions, counterclaims, and cross-claims brought by parties other than the Office of Recovery Services.

Tab 3

Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

Richard H. Schwermer
State Court Administrator
Raymond H. Wahl
Deputy Court Administrator

MEMORANDUM

To: Civil Rules Committee
From: Nancy Sylvester
Date: March 23, 2018
Re: Rule 5 and orders served by the court

At the Civil Rules Committee's January meeting, the committee made edits to Rule 5, the idea of which is to have the court serve all orders, but not to sweep in too many minute entries or non-substantive or dispositive orders. Chairman Jonathan Hafen and I asked the committee to vet the proposed language with the committee's contacts and/or offer other suggestions on language. Dawn Hautamaki vetted the language with the clerks of court and their feedback is attached. Committee member Mike Petrogeorge also offered the following perspective:

> I would propose that the court be required to serve every "memorandum decision or order". Sometimes the courts include the order in the memorandum decision but sometimes courts issue a memorandum decision and in that decision require the prevailing party to prepare a separate order. I think all parties should be served with any substantive ruling whether or not it is styled as an order and adding the memorandum decision language would help strike the balance in avoiding minute entry and other mundane rulings.

Additionally, to address the concern of increased workload for court clerks and as a preliminary step before pro se e-filing, the committee proposed adopting a policy of requiring the provision of an email address to the court by all civil litigants.

Attached is proposed new CJA Rule 4-5111, as well as Civil Rule 10, to which I have made a conforming amendment. Both the Board of District Court Judges and the Board of Justice Court Judges have seen the proposals and weighed in; the Self-Help Center also provided feedback, as well as several staff members of the Administrative Office. The rules reflect the groups' and individuals' feedback.

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

(a) When service is required.

(a)(1) Papers that must be served. Except as otherwise provided in these rules or as otherwise directed by the court, the following papers must be served on every party:

(a)(1)(A) a judgment;

(a)(1)(B) a~~n~~ signed order ~~that states it must be served~~of the court other than a non-final oral directive memorialized in a minute entry;

(a)(1)(C) a pleading after the original complaint;

(a)(1)(D) a paper relating to disclosure or discovery;

(a)(1)(E) a paper filed with the court other than a motion that may be heard ex parte; and

(a)(1)(F) a written notice, appearance, demand, offer of judgment, or similar paper.

(a)(2) Serving parties in default. No service is required on a party who is in default except that:

(a)(2)(A) a party in default must be served as ordered by the court;

(a)(2)(B) a party in default for any reason other than for failure to appear must be served as provided in paragraph (a)(1);

(a)(2)(C) a party in default for any reason must be served with notice of any hearing to determine the amount of damages to be entered against the defaulting party;

(a)(2)(D) a party in default for any reason must be served with notice of entry of judgment under Rule 58A(g~~d~~); and

(a)(2)(E) a party in default for any reason must be served under Rule 4 with pleadings asserting new or additional claims for relief against the party.

(a)(3) Service in actions begun by seizing property. If an action is begun by seizing property and no person is or need be named as defendant, any service required before the filing of an answer, claim or appearance must be made upon the person who had custody or possession of the property when it was seized.

(b) How service is made.

(b)(1) Whom to serve. If a party is represented by an attorney, a paper served under this rule must be served upon the attorney unless the court orders service upon the party. Service must be made upon the attorney and the party if

(b)(1)(A) an attorney has filed a Notice of Limited Appearance under Rule 75 and the papers being served relate to a matter within the scope of the Notice; or

(b)(1)(B) a final judgment has been entered in the action and more than 90 days has elapsed from the date a paper was last served on the attorney.

(b)(2) When to serve. If a hearing is scheduled 7 days or less from the date of service, a party must serve a paper related to the hearing by the method most likely to be promptly received. Otherwise, a paper that is filed with the court must be served before or on the same day that it is filed.

(b)(3) Methods of service. A paper is served under this rule by:

(b)(3)(A) except in the juvenile court, submitting it for electronic filing, or the court submitting it to the electronic filing service provider~~,~~ if the person being served has an electronic filing account;

(b)(3)(B) emailing it to the email address provided by the person in compliance with Code of Judicial Administration Rule 4-511 and Civil Rule 10(a)(3) unless the person is exempted, or to

the email address on file with the Utah State Bar~~, if the person has agreed to accept service by email or has an electronic filing account~~;

(b)(3)(C) mailing it to the person's last known address;

(b)(3)(D) handing it to the person;

(b)(3)(E) leaving it at the person's office with a person in charge or, if no one is in charge, leaving it in a receptacle intended for receiving deliveries or in a conspicuous place;

(b)(3)(F) leaving it at the person's dwelling house or usual place of abode with a person of suitable age and discretion who resides there; or

(b)(3)(G) any other method agreed to in writing by the parties.

(b)(4) When service is effective. Service by mail or electronic means is complete upon sending.

(b)(5) Who serves. Unless otherwise directed by the court:

(b)(5)(A) every paper required to be served must be served by the party preparing it; and

(b)(5)(B) every ~~ruling, decision, or~~ memorandum decision or order of the court that is to be served under this rule shall be served by the court on the parties.~~every paper prepared by the court will be served by the court.~~

(c) Serving numerous defendants. If an action involves an unusually large number of defendants, the court, upon motion or its own initiative, may order that:

(c)(1) a defendant's pleadings and replies to them do not need to be served on the other defendants;

(c)(2) any cross-claim, counterclaim avoidance or affirmative defense in a defendant's pleadings and replies to them are deemed denied or avoided by all other parties;

(c)(3) filing a defendant's pleadings and serving them on the plaintiff constitutes notice of them to all other parties; and

(c)(4) a copy of the order must be served upon the parties.

(d) Certificate of service. A paper required by this rule to be served, including electronically filed papers, must include a signed certificate of service showing the name of the document served, the date and manner of service and on whom it was served. Except in the juvenile court, this paragraph does not apply to papers required to be served under paragraph (b)(5)(B**)** when service to all parties is made under paragraph (b)(3)(A).

(e) Filing. Except as provided in Rule 7(j) and Rule 26(f), all papers after the complaint that are required to be served must be filed with the court. Parties with an electronic filing account must file a paper electronically. A party without an electronic filing account may file a paper by delivering it to the clerk of the court or to a judge of the court. Filing is complete upon the earliest of acceptance by the electronic filing system, the clerk of court or the judge.

(f) Filing an affidavit or declaration. If a person files an affidavit or declaration, the filer may:

(f)(1) electronically file the original affidavit with a notary acknowledgment as provided by Utah Code Section 46-1-16(7);

(f)(2) electronically file a scanned image of the affidavit or declaration;

(f)(3) electronically file the affidavit or declaration with a conformed signature; or

(f)(4) if the filer does not have an electronic filing account, present the original affidavit or declaration to the clerk of the court, and the clerk will electronically file a scanned image and return the original to the filer.

The filer must keep an original affidavit or declaration of anyone other than the filer safe and available for inspection upon request until the action is concluded, including any appeal or until the time in which to appeal has expired.

Advisory Committee Notes

Rule 4-511. Mandatory email address.

Intent:

To require that all civil litigants provide a valid email address to the court for service by the court of court orders and court notices.

To provide for an exception.

Applicability:

This rule applies in the district, juvenile, and justice courts.

Statement of the Rule:

(1) Except as provided in Paragraph (3), on or after November 1, 2018, all civil litigants shall provide a valid email address to the court for service by the court of court orders and notices under Rule of Civil Procedure 5.

(2) A litigant who provides their email address pursuant to Rule of Civil Procedure 10(a)(3) will be deemed to have complied with this rule.

(3)(A) A self-represented party who certifies they are unable to use or access email on a regular basis is exempt from this requirement.

(3)(B) To request an exemption, the party shall submit to the Clerk of Court a written certification pursuant to paragraph (3)(A).

(4) Except as provided in paragraph (3), a civil litigant who fails to provide a valid email address in compliance with this rule or Rule of Civil Procedure 10(a)(3) may…[consequence?]

Rule 10. Form of pleadings and other papers.

(a) Caption; names of parties; other necessary information.

(a)(1) All pleadings and other papers filed with the court must contain a caption setting forth the name of the court, the title of the action, the file number, if known, the name of the pleading or other paper, and the name, if known, of the judge (and commissioner if applicable) to whom the case is assigned. A party filing a claim for relief, whether by original claim, counterclaim, cross-claim or third-party claim, must include in the caption the discovery tier for the case as determined under Rule 26.

(a)(2) In the complaint, the title of the action must include the names of all the parties, but other pleadings and papers need only state the name of the first party on each side with an indication that there are other parties. A party whose name is not known must be designated by any name and the words "whose true name is unknown." In an action in rem, unknown parties must be designated as "all unknown persons who claim any interest in the subject matter of the action."

(a)(3) Every pleading and other paper filed with the court must state in the top left hand corner of the first page the name, address, valid email address pursuant to Code of Judicial Administration Rule 4-511, telephone number and bar number of the attorney or party filing the paper, and, if filed by an attorney, the party for whom it is filed.

(a)(4) A party filing a claim for relief, whether by original claim, counterclaim, cross-claim or third-party claim, must also file a completed cover sheet substantially similar in form and content to the cover sheet approved by the Judicial Council. The clerk may destroy the coversheet after recording the information it contains.

(b) Paragraphs; separate statements. All statements of claim or defense must be made in numbered paragraphs. Each paragraph must be limited as far as practicable to a single set of circumstances; and a paragraph may be adopted by reference in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials must be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

(c) Adoption by reference; exhibits. Statements in a paper may be adopted by reference in a different part of the same or another paper. An exhibit to a paper is a part thereof for all purposes.

(d) Paper format. All pleadings and other papers, other than exhibits and court-approved forms, must be 8½ inches wide x 11 inches long, on white background, with a top margin of not less than 1½ inches and a right, left and bottom margin of not less than 1 inch . All text or images must be clearly legible, must be double spaced, except for matters customarily single spaced, must be on one side only and must not be smaller than 12-point size.

(e) Signature line. The name of the person signing must be typed or printed under that person’s signature. If a proposed document ready for signature by a court official is electronically filed, the order must not include the official’s signature line and must, at the end of the document, indicate that the signature appears at the top of the first page.

(f) Non-conforming papers. The clerk of the court may examine the pleadings and other papers filed with the court. If they are not prepared in conformity with paragraphs (a) - (e), the clerk must accept the filing but may require counsel to substitute properly prepared papers for nonconforming papers. The clerk or the court may waive the requirements of this rule for parties appearing pro se. For good cause shown, the court may relieve any party of any requirement of this rule.

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

(h) No improper content. The court may strike and disregard all or any part of a pleading or other paper that contains redundant, immaterial, impertinent or scandalous matter.

(i) Electronic papers.

(i)(1) Any reference in these rules to a writing, recording or image includes the electronic version thereof.

(i)(2) A paper electronically signed and filed is the original.

(i)(3) An electronic copy of a paper, recording or image may be filed as though it were the original. Proof of the original, if necessary, is governed by the Utah Rules of Evidence.

(i)(4) An electronic copy of a paper must conform to the format of the original.

(i)(5) An electronically filed paper may contain links to other papers filed simultaneously or already on file with the court and to electronically published authority.

Advisory Committee Notes

Utah State Courts

Nancy Sylvester <nancyjs@utcourts.gov>

Fwd: Rule 5 Proposed Language/Feedback Needed

2 messages

Dawn Hautamaki <dawnh@utcourts.gov>
To: Nancy Sylvester <nancyjs@utcourts.gov>

Hi Nancy,

I did send the info out to the CoCs for comment. I have only received a few comments back. All comments received are included below. Thanks!

Loni Page
to me

I haven't responded because I have nothing new to offer, nor anything particular helpful to say about something that I completely disagree with! You already know my stance on all of that but I'm while to implement though.

Thank you for keeping us in the know on these potential changes.

Mikelle Ostler
to me, Loni, Peggy, Keri, Christine, Tracy, Debbie, Alyson, Brooke, Chris, Gary, Lynn, Kristen, Kristene

Very interesting! Do *your* Judges sign the minutes for Juvenile cases? Our Bench asked us to start adding "Prepared and electronically submitted by the Judicial Assistant without judicial revi

I, for one, am okay with the court serving parties with copies of the orders signed by the Judge. It was a bit of a change of process initially with our child welfare orders but I think it makes sen

Mikelle Ostler
Clerk of Court
Fourth District Juvenile Court
801-318-4026

Ms. Hautamaki,

Thank you for the update and the insight regarding potential changes. Do Judges *sign* minute entries in District Court? I am wondering if that could be the distinction. Judges don't sign the minut has signed it. (Don't get me started.)

08-30-2017	Minutes - Judge: mnoonan - Approved: 09-01-2017	CW - Review: 08-30-2017 11:00 AM	9
08-30-2017	Other Legal	Review Order (Proposed)	9
08-30-2017	School Report	School Credit Report	9
08-24-2017	Court Reports	DCFS Therapist Letter	9

-Mikelle

Tracy Walker
to me

I think the wording changes are better than what we had when it said orders "issued" by the court.

Thanks Dawn!

Tracy J. Walker - Clerk of Court
Silver Summit, Tooele, West Jordan
8080 South Redwood Rd., Suite 1701
West Jordan, UT 84088
801.233.9771
tracyw@utcourts.gov

---------- Forwarded message ----------
From: **Lynn Wiseman** <lynnw@utcourts.gov>
Date: Mon, Feb 5, 2018 at 8:12 AM
Subject: Re: Rule 5 Proposed Language/Feedback Needed
To: Dawn Hautamaki <dawnh@utcourts.gov>

Hi Dawn :)

The only other thing I can think of to set things apart might be to work in (and I am still going to think on this, this is just off the top of my head) the idea that the court be responsible to serve o "initiated" by the parties.

(And now that I re-read that first line, I wonder if my thinking takes this a step backward from where the committee wants to be).

But that is my two cents :)

Lynn Wiseman
Clerk of Court
2nd District Juvenile Court
801-334-4779 (Office)
801-920-3640 (Cell)

lynnw@utcourts.gov

For eFiling questions, please contact vanessat@utcourts.gov and visit the website http://www.utcourts.gov/efiling/juvenile/.

On Mon, Feb 5, 2018 at 7:44 AM, Dawn Hautamaki <dawnh@utcourts.gov> wrote:

At our Rules of Civil Procedure Committee meeting on January 24, 2018 Rule 5 was again the hot topic. Some proposed language has been drafted and I have been asked to run it past the C draft it. The idea is to have the court serve all orders but they don't want to sweep in too many minute entries that don't matter as much as, say, an order on a motion to dismiss. The rule chan

The committee will be taking this up again at our meeting February 25th. **Nancy needs any language edits no later than February 21.**

Judge Stone will also be taking this to the Board of District Court Judges.

In addition, Nancy will be drafting some proposed language for the Policy and Planning Committee regarding requiring email addresses for litigants (or making it a rebuttable presumption?) tha have language suggestions on that, **please send those to me by February 21**.

> **Rule 4-503. Mandatory electronic filing.**
> Intent:
> To require that documents in district court civil cases be filed electronically.
> To provide for exceptions.
> Applicability:
> This rule applies in the district court.
> Statement of the Rule:
> (1) Except as provided in Paragraph (2), pleadings and other papers filed in civil cases in the district court on or after April 1, 2013 shall be electronically filed using the electronic filer's interf
> (2)(A) A self-represented party who is not a lawyer may file pleadings and other papers using any means of delivery permitted by the court.
> (2)(B) A lawyer whose request for a hardship exemption from this rule has been approved by the Judicial Council may file pleadings and other papers using any means of delivery permitted the exemption is necessary to the District Court Administrator.
> (2)(C) Pleadings and other papers in probate cases may be filed using any means of delivery permitted by the court until July 1, 2013, at which time they shall be electronically filed using th
> (3) The electronic filer shall be an attorney of record and shall use a unique and personal identifier that is provided by the filer's service provider.

Thanks! I look forward to your feedback.

--
Dawn Hautamaki
Clerk of Court
8th District & Juvenile Court
920 East Hwy 40
Vernal, UT 84078
(435) 781.9303 / office
(435) 790.0942 / cell

--
Dawn Hautamaki
Clerk of Court
8th District & Juvenile Court
920 East Hwy 40
Vernal, UT 84078
(435) 781.9303 / office
(435) 790.0942 / cell

Nancy Sylvester <nancyjs@utcourts.gov> Wed, Feb 21, 2018 at 2:40 PM
To: Dawn Hautamaki <dawnh@utcourts.gov>

Thanks, Dawn!
[Quoted text hidden]

--
Nancy J. Sylvester
Associate General Counsel
Administrative Office of the Courts
450 South State Street
P.O. Box 140241
Salt Lake City, Utah
84114-0241
Phone: (801) 578-3808
Fax: (801) 578-3843
nancyjs@utcourts.gov

Tab 4

Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

Richard H. Schwermer
State Court Administrator
Raymond H. Wahl
Deputy Court Administrator

MEMORANDUM

To: Civil Rules Committee
From: Nancy Sylvester
Date: March 23, 2018
Re: Rule 4 Acceptance of Service and Electronic Delivery of Documents

Rule 4 of the Utah Rules of Civil Procedure governs service of process. In some cases, personal service is not required if a party accepts "service of a summons and complaint by signing a document that acknowledges receipt of the summons and complaint." UTAH R. CIV. P. 4(d)(3)(B). "A person who accepts service of the summons and complaint retains all defenses and objections, except for adequacy of service. Service is effective on the date of the acceptance. Filing the acceptance of service with the court constitutes proof of service under Rule 4(e)." UTAH R. CIV. P. 4(d)(3)(D).

Acceptance of service replaced the waiver of service provisions previously found in the rule. Part of the reason for this was that the committee was approached by a process server who had come up with a way of serving the summons and complaint via a secure portal. The committee drafted the following note to the rule to convey that electronic delivery and signature was a method contemplated by the acceptance of service provisions: "Paragraph (d)(3) contemplates delivery and acceptance of the summons and complaint by various methods, including electronic delivery and signature."

Attached are several examples of electronic acceptance of service that the Board of District Court Judges has reviewed. Because there is now more than one company engaging in this method of service, the Board has requested that this committee study and work on establishing standards in Rule 4 with respect to electronic acceptance of service.

450 South State Street / P.O. Box 140241 / Salt Lake City, Utah 84114-0241 / Tel: 801-578-3808 / Fax: 801-578-3843 / email: nancyjs@utcourts.gov

Rule 4. Process.

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

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

(c) Contents of summons.

(c)(1) The summons must:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d)(2)(A) The summons and complaint may be served upon an individual other than one covered by paragraphs (d)(1)(B) or (d)(1)(C) by mail or commercial courier service in any state or judicial district of the United States provided the defendant signs a document indicating receipt.

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

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

(d)(3) Acceptance of service.

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

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

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

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

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

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

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

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

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

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

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

(d)(5) Other service.

(d)(5)(A) If the identity or whereabouts of the person to be served are unknown and cannot be ascertained through reasonable diligence, if service upon all of the individual parties is impracticable under the circumstances, or if there is good cause to believe that the person to be served is avoiding service, the party seeking service may file a motion to allow service by some other means. An affidavit or declaration supporting the motion must set forth the efforts made to identify, locate, and serve the party, or the circumstances that make it impracticable to serve all of the individual parties.

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

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

(e) Proof of service.

(e)(1)The person effecting service must file proof of service stating the date, place, and manner of service, including a copy of the summons. If service is made by a person other than by an attorney, sheriff, constable, United States Marshal, or by the sheriff's, constable's or marshal's deputy, the proof of service must be by affidavit or declaration under penalty of Utah Code Section 78B-5-705.

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

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

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

Advisory Committee Notes

Effective November 1, 2016

URCP 004

Advisory Committee Notes

Rule 4 constitutes a substantial change from prior practice. The rule modernizes and simplifies procedure relating to service of process. Although this rule and Rule 3 retain the ten-day summons procedure for commencement of actions, this rule endeavors to make practice under the ten-day summons provision more consistent with practice in actions commenced by the filing of a complaint. The rule retains portions of prior Rule 4, adopts portions of the present federal Rule 4, and adopts entirely new language in other areas. The rule eliminates the statement (appearing in paragraph (m) of the prior rule) that all writs and process may be served by any constable of the court. In the committee's view, this rule does not properly deal with the question of who may serve types of process other than the summons and complaint. In recommending the elimination of paragraph (m), the committee did not intend to change the law governing eligibility to serve such other process.

Paragraph (a). This paragraph eliminates the prior rule's reference to the issuance of summonses. See paragraph (b). Otherwise the paragraph is identical to the former paragraph (a).

Paragraph (b). This paragraph, a substantial change from the prior rule, requires that in an action commenced under Rule 3(a)(1), the summons, together with a copy of the complaint, must be served within 120 days of the filing of the complaint. The time period was borrowed from Rule 4(j), Federal Rules of Civil Procedure.

Paragraph (c). This paragraph makes minor revisions to the corresponding paragraph of the prior rule. In addition to data historically required to appear in the summons, the address of the court and information concerning the plaintiff or plaintiff's attorney are also required.

Paragraph (d). In prescribing the persons who may serve process, this paragraph eliminates the prior rule's distinction between in-state and out-of-state service. The paragraph is consistent with other changes in the rule designed to simplify and unify practice for in-state and out-of-state service. In order to be eligible to serve a summons or complaint, persons who are not sheriffs or other law enforcement personnel must be at least 18 years of age at the time of service. For eligibility to make service in a foreign country, see paragraph (d)(3). Subparagraph (d)(1)(A) presents the general rule for personal service on individuals who are not infants, incompetent, or incarcerated. Subparagraph (B) deals with service on infants and subparagraph (C) with service on incompetent persons. Subparagraphs (A), (B) and (C) are patterned after Rule 4(e), Federal Rules of Civil Procedure. Subparagraph (D) deals with service on persons who are incarcerated or committed to the custody of a state institution. Subparagraph (E) deals with service on business entities. Subparagraphs (F) through (I) change and modernize service on political subdivisions of the state. Subparagraphs (J) and (K) provide for service on the state and its departments, agencies, boards and commissions with only minor changes from the prior rule. Subparagraph (d)(2) adds a provision for service by mail or commercial courier service within any judicial district of the United States. The term "mail" refers to services provided by the United States Postal Service. The term "commercial courier service" refers to businesses that provide for the delivery of documents. Examples of "commercial courier service" include Federal Express and United Parcel Service. Methods of service by mail or commercial courier service must provide for a document indicating receipt. Subparagraphs (A) and (B) specify who must sign the document indicting receipt. For service under Subparagraph (d)(2) to be effective, the court must be clearly convinced that the proper person signed the document indicating receipt. Infants or incompetent persons may not be served by mail or commercial courier service. Subparagraph (C) details when service by mail or commercial courier service is complete.

Paragraph (d)(3). This paragraph provides several alternative means by which service must be made in foreign countries and provides for proof of such service.

Paragraph (d)(4). This paragraph replaces most of paragraph (f) of the prior rule. It is designed to permit alternative means of service where the identity or whereabouts of the person to be served is unknown, where personal service is impracticable, or where a party avoids personal service. Under the circumstances identified in the rule, this paragraph permits the court to fashion means of service reasonably calculated to apprise the parties of the pendency of the action. Use of this provision is not limited to actions traditionally considered in rem or quasi in rem. See Carlson v. Bos, 740 P.2d 1269, 1272 (Utah 1987). The present rule eliminates specific mention of service by telegraph or telephone (in paragraph (1) of the prior rule) since such service could be ordered under this paragraph if appropriate. The court's order of substituted service must specify the content of service and the event or events as of which service will be deemed complete. A copy of the order must itself be served so that the party served will be able to determine the sufficiency of service and the time as of which his or her response is due.

Paragraph (e). This paragraph replaces paragraph (g) in the prior rule. It requires proof of service to be filed "promptly" and in any event before a responsive pleading is due. The rule eliminates failure to file proof of service as a basis for challenging the validity of service. The rule contains specific requirements for proof of service depending upon who serves and what method of service is used. If the summons and complaint are served by mail or commercial courier service, subparagraph (1) requires the receipt signed by defendant or defendant's agent to be included in the proof of service.

Paragraph (f) adds an option for a plaintiff to request a defendant to waive service. This provision is similar to federal Rule (4)(d). The defendant is required to return the waiver of service within 20 days (30 days for a defendant outside the United

States) from the date the request for waiver is sent. The rule grants a defendant who waives service additional time to file a response to the complaint. A defendant who does not return the request for waiver of service will be assessed plaintiff's actual costs in effecting service under other provisions of this rule.

2016 Amendments

Paragraph (d)(3) contemplates delivery and acceptance of the summons and complaint by various methods, including electronic delivery and signature. Elimination of the express procedure for seeking waiver of service under paragraph (f) does not eliminate the parties' ability to agree to accept service under paragraph (d)(3).

UTAH COURT SERVICES

Reference No. 79745 SC

CASE NAME: [redacted] VS. [redacted]

ACCEPTANCE OF SERVICE

Attorney: **KIRK CULLIMORE JR.**

State of **UTAH**

County of **Davis**

I, **Phil Hansen**, being first duly sworn, state:

That on **Jul 03, 2017** I received the annexed **Summons & Complaint**

And being a person over the age of 21, a resident of this State, and not a party to the action, I served

[redacted] a true and correct copy thereof on **Aug 21, 2017** by
Acceptance of Service by Defendant
Through electronic confirmation of acceptance of service to IP address **104.129.200.66**

UPON SERVING THE SAME, I endorsed the date and place of service and my name on the copy served and showed the original to the person served.

Dated: **Aug 21, 2017**

Affiant: Lane Gleave
LANE GLEAVE #G102895

Self-Authentication Declaration

Pursuant to Utah Code § 78B-5-705, I declare under criminal penalty of the State of Utah that the foregoing is true and correct. So Executed on this **21st** day of **August, 2017**

Lane Gleave
Signature of Server

Acceptance of Electronic Method of Service

In accordance with the Utah Rules of Civil Procedure, Rule 4, paragraph (d)(3), I hereby acknowledge receipt of the aforementioned Summons & Complaint.

[redacted]

Service Fee:	$20.00
New Address / Mileage Fee:	$
Total Due:	**$20.00**

Utah Court Services LLC
PO Box 6175
Clearfield, UT 84089
(801)774-9273

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
DAVIS COUNTY, FARMINGTON DEPARTMENT

[redacted] Plaintiff vs. [redacted] Defendant	**SUMMONS (10 DAY)** 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) 447-3800. A copy of said complaint will be deposited with the clerk of said court at 800 West State Street, P. O. Box 769, FARMINGTON, UT 84025 which is where you are to file your answer to this summons.

DATED: 7/2/2017

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

REF NO. 79745

SIRVOSE

Please Scroll Down to See the Document then Return Here to Sign that You've Received It.

I understand that by signing this I am NOT agreeing or admitting to anything within this court document. I am only signing that I have received this documentation. I also declare that I am the intended person or entity that this document is meant to be served to. I understand that if I am NOT the intended party and sign, I may be subject to forgery, a third degree felony, punishable up to 5 years in prison. I also understand that if I am the intended party and I do not sign, serving in person will commence immediately.

Signature [redacted]

[redacted] e-signature ID: 350ff32cd0...
10/05/2017 16:51:58 UTC

Full Name [redacted]

[redacted]

IN THE [redacted] DISTRICT COURT, IN AND FOR [redacted], STATE OF [redacted]	
[redacted] **Petitioner,** **v.** [redacted] **Respondent.**	**SUMMONS** **Case No.:** [redacted] **Judge:** [redacted] **Commissioner:** [redacted]

THE STATE OF [redacted] TO:

[redacted]

You are hereby summoned and required to answer the attached Complaint for Divorce. Within **21 days** after service of this summons, you must file your written answer with the clerk of court at the following address: [redacted] You must also mail or otherwise deliver a copy of said answer to Petitioner'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 for Divorce. The Complaint for Divorce is currently on file with the clerk of court.

DATED this 3rd Day of October, 2017.

[redacted]

1

[redacted]

[redacted] E-Signature Audit Log

Document name: [redacted]

Document ID: 0b5fcfad53f54107fcbed46a4ff60f51907f7810

Document page count: 9

Email Accessed

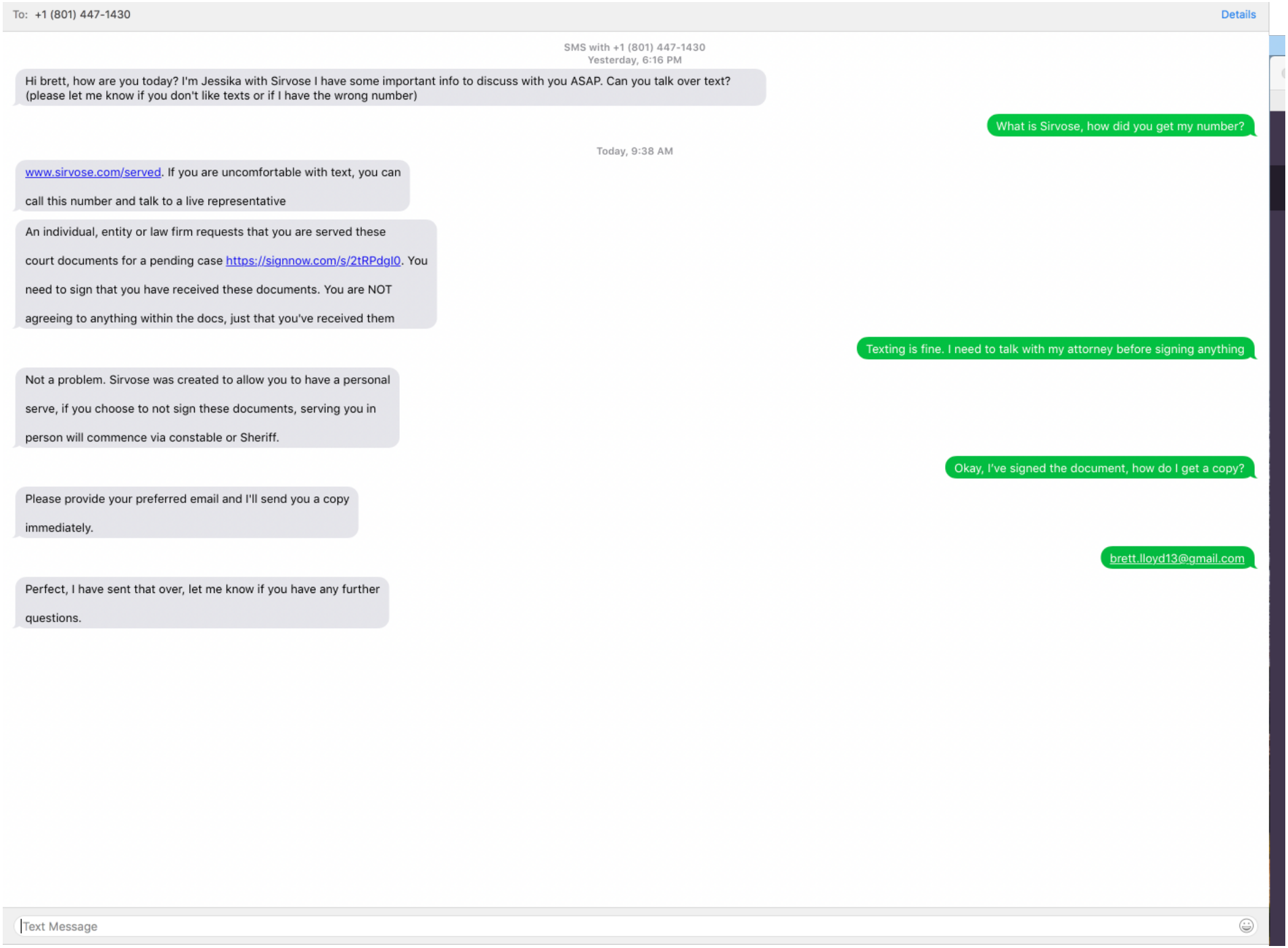
IP Address

[redacted]	Web Application	Uploaded Document	[redacted]	2017-10-05 04:58:42 pm UTC	2017-10-05 04:58:42 pm UTC
[redacted]	Web Application	Copied from Template	[redacted]	2017-10-05 04:58:44 pm UTC	2017-10-05 04:58:40 pm UTC
[redacted]	Web Application	Viewed the Document	[redacted]	2017-10-05 04:59:39 pm UTC	2017-10-05 04:59:39 pm UTC
[redacted]	Web Application	Signed the Document. Signature ID: [redacted]	[redacted]	2017-10-05 04:61:56 pm UTC	2017-10-05 04:60:34 pm UTC
[redacted]	Web Application	Added a Field:	[redacted]	2017-10-05 04:61:56 pm UTC	2017-10-05 04:60:34 pm UTC
[redacted]	Web Application	Document Saved:	[redacted]	2017-10-05 04:62:05 pm UTC	2017-10-05 04:61:57 pm UTC

SentDate	ApiVersion	NumSegments	ErrorCode	AccountSid	Sid	Direction	[redacted]	[redacted]
2017-10-05 15:45:18 UTC		2	0	AC4dda44089f62057eae4c17574e5dc076	SM8c3e4468643c4af89cac0ce4e78f1b10	outbound-api	[redacted]	
2017-10-05 15:39:25 UTC		1	0	AC4dda44089f62057eae4c17574e5dc076	SM6f6e1ddd5d5f4fd0ab46ceb48fd82dfc	outbound-api	[redacted]	
2017-10-05 15:39:19 UTC		1	0	AC4dda44089f62057eae4c17574e5dc076	SM72153733fb204bea8488bb95091575bc	outbound-api	[redacted]	
2017-10-05 09:28:48 UTC		1	0	AC4dda44089f62057eae4c17574e5dc076	SM6d2548b4d96640d192ccbef53e016902	outbound-api	[redacted]	
2017-10-04 21:28:21 UTC		2	0	AC4dda44089f62057eae4c17574e5dc076	SMbeb12b7ef2bb4278b3509d515c11501f	outbound-api	[redacted]	

Table 1

From	To	Body	Status
[redacted]	[redacted]	An individual, entity or law firm requests that you are served these court documents for a pending case https://sms.jessika.io/vB. You need to sign that you have received these documents. You are NOT agreeing to anything within the docs, just that you've received them	delivered
[redacted]	[redacted]	This is Jessika with Sirvose www.sirvose.com. If you are uncomfortable with text, you can call this number and talk to a live representative	delivered
[redacted]	[redacted]	[redacted] it's imperative that we talk today, feel free to give me a call.	delivered
[redacted]	[redacted]	[redacted]id you get my first text? It is very urgent that we talk today. Please call or text me back.	delivered
[redacted]	[redacted]	Hi [redacted] how are you today? I have some important info to discuss with you ASAP. Can you talk over text? (please let me know if you don't like texts or if I have the wrong number)	delivered


To: +1 (801) 447-1430
Details
SMS with +1 (801) 447-1430
Yesterday, 6:16 PM
Hi brett, how are you today? I'm Jessika with Sirvose I have some important info to discuss with you ASAP. Can you talk over text? (please let me know if you don't like texts or if I have the wrong number)
What is Sirvose, how did you get my number?
Today, 9:38 AM
www.sirvose.com/served. If you are uncomfortable with text, you can call this number and talk to a live representative
An individual, entity or law firm requests that you are served these court documents for a pending case https://signnow.com/s/2tRPdgI0. You need to sign that you have received these documents. You are NOT agreeing to anything within the docs, just that you've received them
Texting is fine. I need to talk with my attorney before signing anything
Not a problem. Sirvose was created to allow you to have a personal serve, if you choose to not sign these documents, serving you in person will commence via constable or Sheriff.
Okay, I've signed the document, how do I get a copy?
Please provide your preferred email and I'll send you a copy immediately.
brett.lloyd13@gmail.com
Perfect, I have sent that over, let me know if you have any further questions.
Text Message

Tab 5

Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

Richard H. Schwermer
State Court Administrator
Raymond H. Wahl
Deputy Court Administrator

MEMORANDUM

To: Civil Rules Committee
From: Nancy Sylvester
Date: November 9, 2017
Re: Rule 26

Judge Kent Holmberg contacted me about an issue with Rule 26. He said that Rule 26 has an apparent hole in it with respect to pretrial disclosures and witnesses. He proposed the following language:

(a)(5)Pretrial disclosures.

(a)(5)(A) A party shall, without waiting for a discovery request, serve on the other parties:

(a)(5)(A)(i) the name and, if not previously provided, the address and telephone number of each witness, unless solely for impeachment, separately identifying witnesses the party will call and witnesses the party may call;

(a)(5)(A)(ii) the name of witnesses whose testimony is expected to be presented by transcript of a deposition and a copy of the transcript with the proposed testimony designated; and

(a)(5)(A)(iii) a copy of each exhibit, including charts, summaries and demonstrative exhibits, unless solely for impeachment, separately identifying those which the party will offer and those which the party may offer.

(a)(5)(B) Disclosure required by paragraph (a)(5) shall be served on the other parties at least 28 days before trial. At least 14 days before trial, a party shall serve and file counter designations of deposition testimony, objections and grounds for the objections to the use of a deposition, to witnesses, and to the admissibility of exhibits. Other than objections under Rules 402 and 403 of the Utah Rules of Evidence, objections not listed are waived unless excused by the court for good cause.

Rule 26. General provisions governing disclosure and discovery.

(a) Disclosure. This rule applies unless changed or supplemented by a rule governing disclosure and discovery in a practice area.

(a)(1) Initial disclosures. Except in cases exempt under paragraph (a)(3), a party shall, without waiting for a discovery request, serve on the other parties:

(a)(1)(A) the name and, if known, the address and telephone number of:

(a)(1)(A)(i) each individual likely to have discoverable information supporting its claims or defenses, unless solely for impeachment, identifying the subjects of the information; and

(a)(1)(A)(ii) each fact witness the party may call in its case-in-chief and, except for an adverse party, a summary of the expected testimony;

(a)(1)(B) a copy of all documents, data compilations, electronically stored information, and tangible things in the possession or control of the party that the party may offer in its case-in-chief, except charts, summaries and demonstrative exhibits that have not yet been prepared and must be disclosed in accordance with paragraph (a)(5);

(a)(1)(C) a computation of any damages claimed and a copy of all discoverable documents or evidentiary material on which such computation is based, including materials about the nature and extent of injuries suffered;

(a)(1)(D) a copy of any agreement under which any person may be liable to satisfy part or all of a judgment or to indemnify or reimburse for payments made to satisfy the judgment; and

(a)(1)(E) a copy of all documents to which a party refers in its pleadings.

(a)(2) Timing of initial disclosures. The disclosures required by paragraph (a)(1) shall be served on the other parties:

(a)(2)(A) by the plaintiff within 14 days after filing of the first answer to the complaint; and

(a)(2)(B) by the defendant within 42 days after filing of the first answer to the complaint or within 28 days after that defendant's appearance, whichever is later.

(a)(3) Exemptions.

(a)(3)(A) Unless otherwise ordered by the court or agreed to by the parties, the requirements of paragraph (a)(1) do not apply to actions:

(a)(3)(A)(i) for judicial review of adjudicative proceedings or rule making proceedings of an administrative agency;

(a)(3)(A)(ii) governed by Rule 65B or Rule 65C;

(a)(3)(A)(iii) to enforce an arbitration award;

(a)(3)(A)(iv) for water rights general adjudication under Title 73, Chapter 4, Determination of Water Rights.

(a)(3)(B) In an exempt action, the matters subject to disclosure under paragraph (a)(1) are subject to discovery under paragraph (b).

(a)(4) Expert testimony.

(a)(4)(A) Disclosure of expert testimony. A party shall, without waiting for a discovery request, serve on the other parties the following information regarding any person who may be used at trial to present evidence under Rule 702 of the Utah Rules of Evidence and who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony: (i) the expert's name and

qualifications, including a list of all publications authored within the preceding 10 years, and a list of any other cases in which the expert has testified as an expert at trial or by deposition within the preceding four years, (ii) a brief summary of the opinions to which the witness is expected to testify, (iii) all data and other information that will be relied upon by the witness in forming those opinions, and (iv) the compensation to be paid for the witness's study and testimony.

(a)(4)(B) Limits on expert discovery. Further discovery may be obtained from an expert witness either by deposition or by written report. A deposition shall not exceed four hours and the party taking the deposition shall pay the expert's reasonable hourly fees for attendance at the deposition. A report shall be signed by the expert and shall contain a complete statement of all opinions the expert will offer at trial and the basis and reasons for them. Such an expert may not testify in a party's case-in-chief concerning any matter not fairly disclosed in the report. The party offering the expert shall pay the costs for the report.

(a)(4)(C) Timing for expert discovery.

(a)(4)(C)(i) The party who bears the burden of proof on the issue for which expert testimony is offered shall serve on the other parties the information required by paragraph (a)(4)(A) within seven days after the close of fact discovery. Within seven days thereafter, the party opposing the expert may serve notice electing either a deposition of the expert pursuant to paragraph (a)(4)(B) and Rule 30, or a written report pursuant to paragraph (a)(4)(B). The deposition shall occur, or the report shall be served on the other parties, within 28 days after the election is served on the other parties. If no election is served on the other parties, then no further discovery of the expert shall be permitted.

(a)(4)(C)(ii) The party who does not bear the burden of proof on the issue for which expert testimony is offered shall serve on the other parties the information required by paragraph (a)(4)(A) within seven days after the later of (A) the date on which the election under paragraph (a)(4)(C)(i) is due, or (B) receipt of the written report or the taking of the expert's deposition pursuant to paragraph (a)(4)(C)(i). Within seven days thereafter, the party opposing the expert may serve notice electing either a deposition of the expert pursuant to paragraph (a)(4)(B) and Rule 30, or a written report pursuant to paragraph (a)(4)(B). The deposition shall occur, or the report shall be served on the other parties, within 28 days after the election is served on the other parties. If no election is served on the other parties, then no further discovery of the expert shall be permitted.

(a)(4)(C)(iii) If the party who bears the burden of proof on an issue wants to designate rebuttal expert witnesses it shall serve on the other parties the information required by paragraph (a)(4)(A) within seven days after the later of (A) the date on which the election under paragraph (a)(4)(C)(ii) is due, or (B) receipt of the written report or the taking of the expert's deposition pursuant to paragraph (a)(4)(C)(ii). Within seven days thereafter, the party opposing the expert may serve notice electing either a deposition of the expert pursuant to paragraph (a)(4)(B) and Rule 30, or a written report pursuant to paragraph (a)(4)(B). The deposition shall occur, or the report shall be served on the other parties, within 28 days after the election is served on the other parties. If no election is served on the other parties, then no further discovery of the expert shall be permitted.

(a)(4)(D) Multiparty actions. In multiparty actions, all parties opposing the expert must agree on either a report or a deposition. If all parties opposing the expert do not agree, then further discovery of the expert may be obtained only by deposition pursuant to paragraph (a)(4)(B) and Rule 30.

(a)(4)(E) Summary of non-retained expert testimony. If a party intends to present evidence at trial under Rule 702 of the Utah Rules of Evidence from any person other than an expert witness who is retained or specially employed to provide testimony in the case or a person whose duties as an employee of the party regularly involve giving expert testimony, that party

must serve on the other parties a written summary of the facts and opinions to which the witness is expected to testify in accordance with the deadlines set forth in paragraph (a)(4)(C). A deposition of such a witness may not exceed four hours.

(a)(5) Pretrial disclosures.

(a)(5)(A) A party shall, without waiting for a discovery request, serve on the other parties:

(a)(5)(A)(i) the name and, if not previously provided, the address and telephone number of each witness, unless solely for impeachment, separately identifying witnesses the party will call and witnesses the party may call;

(a)(5)(A)(ii) the name of witnesses whose testimony is expected to be presented by transcript of a deposition and a copy of the transcript with the proposed testimony designated; and

(a)(5)(A)(iii) a copy of each exhibit, including charts, summaries and demonstrative exhibits, unless solely for impeachment, separately identifying those which the party will offer and those which the party may offer.

(a)(5)(B) Disclosure required by paragraph (a)(5) shall be served on the other parties at least 28 days before trial. At least 14 days before trial, a party shall serve and file counter designations of deposition testimony, objections and grounds for the objections to the use of a deposition, to witnesses, and to the admissibility of exhibits. Other than objections under Rules 402 and 403 of the Utah Rules of Evidence, objections not listed are waived unless excused by the court for good cause.

(b) Discovery scope.

(b)(1) In general. Parties may discover any matter, not privileged, which is relevant to the claim or defense of any party if the discovery satisfies the standards of proportionality set forth below. Privileged matters that are not discoverable or admissible in any proceeding of any kind or character include all information in any form provided during and created specifically as part of a request for an investigation, the investigation, findings, or conclusions of peer review, care review, or quality assurance processes of any organization of health care providers as defined in the Utah Health Care Malpractice Act for the purpose of evaluating care provided to reduce morbidity and mortality or to improve the quality of medical care, or for the purpose of peer review of the ethics, competence, or professional conduct of any health care provider.

(b)(2) Proportionality. Discovery and discovery requests are proportional if:

(b)(2)(A) the discovery is reasonable, considering the needs of the case, the amount in controversy, the complexity of the case, the parties' resources, the importance of the issues, and the importance of the discovery in resolving the issues;

(b)(2)(B) the likely benefits of the proposed discovery outweigh the burden or expense;

(b)(2)(C) the discovery is consistent with the overall case management and will further the just, speedy and inexpensive determination of the case;

(b)(2)(D) the discovery is not unreasonably cumulative or duplicative;

(b)(2)(E) the information cannot be obtained from another source that is more convenient, less burdensome or less expensive; and

(b)(2)(F) the party seeking discovery has not had sufficient opportunity to obtain the information by discovery or otherwise, taking into account the parties' relative access to the information.

(b)(3) Burden. The party seeking discovery always has the burden of showing proportionality and relevance. To ensure proportionality, the court may enter orders under Rule 37.

(b)(4) Electronically stored information. A party claiming that electronically stored information is not reasonably accessible because of undue burden or cost shall describe the source of the electronically stored information, the nature and extent of the burden, the nature of the information not provided, and any other information that will enable other parties to evaluate the claim.

(b)(5) Trial preparation materials. A party may obtain otherwise discoverable documents and tangible things prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials and that the party is unable without undue hardship to obtain substantially equivalent materials by other means. In ordering discovery of such materials, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.

(b)(6) Statement previously made about the action. A party may obtain without the showing required in paragraph (b)(5) a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement about the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order under Rule 37. A statement previously made is (A) a written statement signed or approved by the person making it, or (B) a stenographic, mechanical, electronic, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(b)(7) Trial preparation; experts.

(b)(7)(A) Trial-preparation protection for draft reports or disclosures. Paragraph (b)(5) protects drafts of any report or disclosure required under paragraph (a)(4), regardless of the form in which the draft is recorded.

(b)(7)(B) Trial-preparation protection for communications between a party's attorney and expert witnesses. Paragraph (b)(5) protects communications between the party's attorney and any witness required to provide disclosures under paragraph (a)(4), regardless of the form of the communications, except to the extent that the communications:

(b)(7)(B)(i) relate to compensation for the expert's study or testimony;

(b)(7)(B)(ii) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or

(b)(7)(B)(iii) identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

(b)(7)(C) Expert employed only for trial preparation. Ordinarily, a party may not, by interrogatories or otherwise, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare for trial and who is not expected to be called as a witness at trial. A party may do so only:

(b)(7)(C)(i) as provided in Rule 35(b); or

(b)(7)(C)(ii) on showing exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.

(b)(8) Claims of privilege or protection of trial preparation materials.

(b)(8)(A) Information withheld. If a party withholds discoverable information by claiming that it is privileged or prepared in anticipation of litigation or for trial, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced in a manner that, without revealing the information itself, will enable other parties to evaluate the claim.

(b)(8)(B) Information produced. If a party produces information that the party claims is privileged or prepared in anticipation of litigation or for trial, the producing party may notify any receiving party of the claim and the basis for it. After being notified, a receiving party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The producing party must preserve the information until the claim is resolved.

(c) Methods, sequence and timing of discovery; tiers; limits on standard discovery; extraordinary discovery.

(c)(1) Methods of discovery. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; requests for admission; and subpoenas other than for a court hearing or trial.

(c)(2) Sequence and timing of discovery. Methods of discovery may be used in any sequence, and the fact that a party is conducting discovery shall not delay any other party's discovery. Except for cases exempt under paragraph (a)(3), a party may not seek discovery from any source before that party's initial disclosure obligations are satisfied.

(c)(3) Definition of tiers for standard discovery. Actions claiming $50,000 or less in damages are permitted standard discovery as described for Tier 1. Actions claiming more than $50,000 and less than $300,000 in damages are permitted standard discovery as described for Tier 2. Actions claiming $300,000 or more in damages are permitted standard discovery as described for Tier 3. Absent an accompanying damage claim for more than $300,000, actions claiming non-monetary relief are permitted standard discovery as described for Tier 2.

(c)(4) Definition of damages. For purposes of determining standard discovery, the amount of damages includes the total of all monetary damages sought (without duplication for alternative theories) by all parties in all claims for relief in the original pleadings.

(c)(5) Limits on standard fact discovery. Standard fact discovery per side (plaintiffs collectively, defendants collectively, and third-party defendants collectively) in each tier is as follows. The days to complete standard fact discovery are calculated from the date the first defendant's first disclosure is due and do not include expert discovery under paragraphs(a)(4)(C) and (D).

Tier	Amount of Damages	Total Fact Deposition Hours	Rule 33 Interrogatories including all discrete subparts	Rule 34 Requests for Production	Rule 36 Requests for Admission	Days to Complete Standard Fact Discovery
1	$50,000 or less	3	0	5	5	120
2	More than $50,000 and less than $300,000 or non-monetary relief	15	10	10	10	180

3	$300,000 or more	30	20	20	20	210

(c)(6) Extraordinary discovery. To obtain discovery beyond the limits established in paragraph (c)(5), a party shall file:

(c)(6)(A) before the close of standard discovery and after reaching the limits of standard discovery imposed by these rules, a stipulated statement that extraordinary discovery is necessary and proportional under paragraph (b)(2) and that each party has reviewed and approved a discovery budget; or

(c)(6)(B) before the close of standard discovery and after reaching the limits of standard discovery imposed by these rules, a request for extraordinary discovery under Rule 37(a).

(d) Requirements for disclosure or response; disclosure or response by an organization; failure to disclose; initial and supplemental disclosures and responses.

(d)(1) A party shall make disclosures and responses to discovery based on the information then known or reasonably available to the party.

(d)(2) If the party providing disclosure or responding to discovery is a corporation, partnership, association, or governmental agency, the party shall act through one or more officers, directors, managing agents, or other persons, who shall make disclosures and responses to discovery based on the information then known or reasonably available to the party.

(d)(3) A party is not excused from making disclosures or responses because the party has not completed investigating the case or because the party challenges the sufficiency of another party's disclosures or responses or because another party has not made disclosures or responses.

(d)(4) If a party fails to disclose or to supplement timely a disclosure or response to discovery, that party may not use the undisclosed witness, document or material at any hearing or trial unless the failure is harmless or the party shows good cause for the failure.

(d)(5) If a party learns that a disclosure or response is incomplete or incorrect in some important way, the party must timely serve on the other parties the additional or correct information if it has not been made known to the other parties. The supplemental disclosure or response must state why the additional or correct information was not previously provided.

(e) Signing discovery requests, responses, and objections. Every disclosure, request for discovery, response to a request for discovery and objection to a request for discovery shall be in writing and signed by at least one attorney of record or by the party if the party is not represented. The signature of the attorney or party is a certification under Rule 11. If a request or response is not signed, the receiving party does not need to take any action with respect to it. If a certification is made in violation of the rule, the court, upon motion or upon its own initiative, may take any action authorized by Rule 11 or Rule 37(b).

(f) Filing. Except as required by these rules or ordered by the court, a party shall not file with the court a disclosure, a request for discovery or a response to a request for discovery, but shall file only the certificate of service stating that the disclosure, request for discovery or response has been served on the other parties and the date of service.

Advisory Committee Notes

Legislative Note

Tab 6

Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

Richard H. Schwermer
State Court Administrator
Raymond H. Wahl
Deputy Court Administrator

MEMORANDUM

To: Civil Rules Committee
From: Nancy Sylvester
Date: January 21, 2018
Re: Rule 9

Attorney Edward Havas contacted Jonathan Hafen about a potential amendment to Rule 9. He said, "I've experienced occasions in which I thought rule 9 was used in an abusive way by a defendant's counsel to name non-parties at fault on the verdict form late in the litigation, which I think is counter to the intent of the rule, if not its language." He submitted proposed language, which is attached to this memo.

Rule 9. Pleading special matters.

(a) Capacity or Authority to Sue; Legal Existence.

(1) In General. Except when required to show that the court has jurisdiction, a pleading need not allege:

(A) a party's capacity to sue or be sued;

(B) a party's authority to sue or be sued in a representative capacity; or

(C) the legal existence of an organized association of persons that is made a party.

(2) Raising Those Issues. To raise any of those issues, a party must do so by a specific denial, which must state any supporting facts that are peculiarly within the party's knowledge.

(b) Unknown parties.

(b)(1) Designation. When a party does not know the name of an opposing party, it may state that fact in the pleadings, and designate the opposing party in a pleading by any name. When the true name of the opposing party becomes known, the pleading must be amended.

(b)(2) Descriptions of interest in quiet title actions. If one or more parties in an action to quiet title are designated in the caption as “unknown,” the pleadings may describe the unknown persons as “all other persons unknown, claiming any right, title, estate or interest in, or lien upon the real property described in the pleading adverse to the complainant's ownership, or clouding its title.”

(c) Fraud, mistake, condition of the mind. In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person’s mind may be alleged generally.

(d) Conditions precedent. In pleading conditions precedent, it is sufficient to allege generally that all conditions precedent have been performed or have occurred. When denying that a condition precedent has been performed or has occurred, a party must do so with particularity.

(e) Official document or act. In pleading an official document or official act it is sufficient to allege that the document was legally issued or the act was legally done.

(f) Judgment. In pleading a judgment or decision of a domestic or foreign court, a judicial or quasi-judicial tribunal, or a board or officer, it is sufficient to plead the judgment or decision without showing jurisdiction to render it.

(g) Time and place. An allegation of time or place is material when testing the sufficiency of a pleading.

(h) Special damage. If an item of special damage is claimed, it must be specifically stated.

(i) Statute of limitations. In pleading the statute of limitations it is not necessary to state the facts showing the defense but it may be alleged generally that the cause of action is barred by the statute, referring to or describing the statute by section number, subsection designation, if any, or designating the provision relied on sufficiently to identify it.

(j) Private statutes; ordinances. In pleading a private statute, an ordinance, or a right derived from a statute or ordinance, it is sufficient to refer to the statute or ordinance by its title and the day of its passage or by its section number or other designation in any official publication of the statute or ordinance. The court will take judicial notice of the statute or ordinance.

(k) Libel and slander.

(k)(1) Pleading defamatory matter. In an action for libel or slander it is sufficient to allege generally that the defamatory matter out of which the action arose was published or spoken

concerning the plaintiff. If the allegation is denied, the party alleging the defamatory matter must establish at trial that it was published or spoken.

(k)(2) Pleading defense. The defendant may allege the truth of the matter charged as defamatory and any mitigating circumstances to reduce the amount of damages. Whether or not justification is proved, the defendant may give evidence of the mitigating circumstances.

(l) Allocation of fault.

(l)(1) A party seeking to allocate fault to a non-party under Title 78B, Chapter 5, Part 8 must file:

(l)(1)(A) a description of the factual and legal basis on which fault can be allocated; and

(l)(1)(B) information known or reasonably available to the party identifying the non-party, including name, address, telephone number and employer. If the identity of the non-party is unknown, the party must so state.

(l)(2) The information specified in paragraph (l)(1) must be included in the party's responsive pleading if then known or must be included in a supplemental notice filed within ~~a reasonable time~~ 60 days after the party discovers or reasonably should have discovered the factual and legal basis on which fault can be allocated. The court, upon motion and for good cause shown, may permit a party to file the information specified in paragraph (l)(1) after the expiration of any period permitted by this rule, but in no event later than 90 days before trial.

(l)(3) A party must not seek to allocate fault to another except by compliance with this rule.

Advisory Committee Notes