

1998

Joanna Banford and Amber Banford v. David Quinley, and Kaysville City Corporation, and Kaysville City Police Dept. : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

980300-CA

JOANNA BANFORD and AMBER)	
BANFORD, a minor, by and through her)	
her parent and natural guardian JOANNA)	
JOANNA BANFORD)	Case No.:980300-CA
)	
Plaintiffs and Appellants,)	
)	
v.)	
)	
DAVID QUINLEY, an individual, and)	
KAYSVILLE CITY CORPORATION, a)	
Utah political subdivision, and)	
KAYSVILLE CITY POLICE DEPT,)	
)	
Defendants and Appellees.)	

BRIEF OF APPELLANTS

APPEAL OF FINAL JUDGMENT OF THE SECOND JUDICIAL DISTRICT
COURT IN AND FOR DAVIS COUNTY, STATE OF UTAH
THE HONORABLE RODNEY PAGE PRESIDING

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The plaintiff/appellant, Joanna Banford, pursuant to Rule 24 (b) of the Utah Rules of Appellate Procedure, submits the following Appellant's Brief.

JURISDICTION

This Court has jurisdiction to decide this appeal pursuant to Utah Code Ann. §78-2a-3(2)(k). This is a final appeal from an Order of the Second Judicial District Court, in and for Davis County, Utah the Honorable Rodney Page presiding. That final judgment dismissed with prejudice the personal injury claim of Joanna Banford.

ISSUES PRESENTED FOR REVIEW

1. Did Banford fully comply with the notice of claim provisions of the Utah Governmental Immunity Act by serving the Notice of Claim upon Kaysville's City Finance Director?

2. Was the complaint filed timely as required by the Governmental Immunity Act?

STANDARD OF REVIEW

The issues on appeal involve legal conclusions by the trial court. Those legal conclusions will be given no deference by this Court and will be reviewed for legal correctness. T.R.F. v. Felan, 760 P.2d 138 (Utah Ct. App. 1989).

DETERMINATIVE STATUTORY AUTHORITY

The interpretations of the following statutory provisions are determinative of the issues on appeal. The

language of these designated statutes are set out in the Addendum to this Appellant's Brief, pursuant to Rule 24 (f) (2) of the Utah Rules of Appellate Procedure:

Utah Code Ann. § 63-30-13

Utah Code Ann. § 63-30-15

Utah Code Ann. § 63-37-1

Utah Code Ann. § 68-3-7

Utah Code Ann. § 10-1-104

Rule 6 of the Utah Rules of Civil Procedure

STATEMENT OF THE CASE

A. Nature of the case

This is a personal injury claim, alleging that the City of Kaysville is negligent through the doctrine of Respondeat Superior, and that such negligence was the proximate cause of Joanna Banford's and her daughter Amber's injuries, sustained in an automobile collision with David Quinley, a Kaysville City Police Officer, on February 18, 1995.

B. Course of Proceedings

The complaint was filed in the Second Judicial District Court on February 18, 1997. On June 19, 1997, Defendants Kaysville City Corp., David Quinley and Kaysville City Police Department, moved the court to dismiss the action for lack of jurisdiction pursuant to Utah Code Ann. §63-30-13 (1953), as amended. The court in its ruling on December 17, 1997 dismissed the appellant's complaint for failing to

comply with Utah Code Ann. §63-30-1, et. seq. (1953), as amended.

C. Disposition in the Trial Court

Honorable Rodney Page, Second District Court Judge, granted defendant/appellees Motion to Dismiss on December 17, 1997.

D. Statement of Facts

1. Joanna Banford was the driver of a vehicle involved in an accident on February 18, 1995 in Davis County with her daughter, Amber Banford, as a passenger. (R. 31-82 Pg. 1 ¶ 1)

2. The second vehicle in the collision was driven by David Quinley, a Kaysville City Police Officer, who was on duty at the time of the collision. Officer David Quinley ran a stop sign and collided with the plaintiff's vehicle. (R. 31-82 Pg. 1-2 ¶ 2)

3. The Banford's retained Kenneth L. Sondgeroth, attorney at law of Bullhead City, Arizona in late April/May 1995. (R. 31-82 Pg. 2 ¶ 3)

4. In early April 1995, Brian Jensen, a long time companion of Joanna Banford, attempted to assist in getting Ms. Banford's medical bills paid that were in excess of her own no-fault benefits. Through phone calls, Mr. Jensen spoke to Art Johnson, the mayor of Kaysville City, David Helquist, the Chief of Police of Kaysville City and finally

Dean Storey, Kaysville City Finance Director. Mr. Storey instructed Mr. Jensen to contact Reliance Insurance and shortly thereafter Clay Stephens, the adjuster for Reliance Insurance, contacted Ms. Banford by telephone. At the time of the conversations with Mr. Stephens, the Banfords did not have legal counsel. (R. 31-82, pg. 2 ¶4)

5. Clay Stephens kept in contact for some time after this initial conversation with Joanna Banford and told her to not worry about the bills and to concentrate on her medical recovery from the injuries sustained in the accident. He indicated to her that "their client was at fault" and that the matter could be settled. (R. 31-82, Pg. 2 ¶5)

6. Clay Stephens continued to contact Joanna Banford in an attempt to settle these matters despite being told plaintiff had retained counsel and, at one point, Clay Stephens stated there was no need for attorneys as this case could have been settled without attorneys getting involved. (R.31-82, Pg. 2 ¶6)

7. In subsequent telephone conversations with Joanna Banford, Mr. Stephens attempted to settle the case of Amber Banford and offered the sum of \$12,000.00, less \$3,000.00 no-fault medical benefits with the Banford's being responsible for all other outstanding medical bills and any

remaining funds would be put in a court approved trust account for the benefit of Amber. (R. 31-82, Pg. 2 ¶6)

8. On July 12, 1995, plaintiff by and through her attorney Kenneth L. Sondgeroth, sent a letter to "Kaysville City Corporation re: personal injury of Joanna Banford and Amber Banford; Date of accident: 2/18/95." This letter was directed to "To whom it may concern: We represent Joanna Banford and Amber Banford in their claim for personal injuries sustained in the automobile collision of February 18, 1995. David J. Quinley was driving a vehicle which you owned that was involved in the accident." The letter further went on to request the name of Kaysville City's insurance carrier and to notify their insurance carrier of the accident. (R. 31-82, Pg. 3 ¶ 7)

9. Pursuant to this letter of July 12, 1995, Dean G. Storey, Finance Director of Kaysville City, responded on July 25, 1995. The letter gave Mr. Sondgeroth the name and address of Kaysville City's insurance carrier, Reliance Insurance Company, the city attorney, and the insurance agent for Kaysville City. This letter closed with the line, "Please contact me as the city representative." (R. 31-82, Pg. 3 ¶8)

10. On November 16, 1995 Kenneth L. Sondgeroth wrote directly to Dean Storey, Kaysville City finance director. The main thrust of this letter was the contacts as outlined

above with Clay Stephens, the adjuster for Reliance. Also in this letter, Mr. Sondgeroth stated:

"As you are aware, my office represents both Joanna and Amber Banford in their claims that arose from a vehicle accident with a member of your police force. Clearly, as is evident from the police report, the police officer was grossly negligent and that my clients were nothing but innocent victims... Joanna Banford underwent radical surgery which, while relatively successful, still leaves her quite permanently disabled."

Mr. Sondgeroth's letter further went on:

"Mrs. Banford has incurred significant medical bills as a result of this accident. Some of the bills were paid by her own auto coverage, but significant portions were not . . . Mrs. Banford's injuries for her shattered knee are in excess of \$750,000.00.

Amber Banford was the minor who sustained head injuries in this accident. She continues to suffer from dizziness and other symptoms of head trauma. Mr. Stephens has already made an offer on her damages without knowing the full extent of damages she has incurred.

I know that the mayor of your city has spoken to my clients. He appeared concerned that they be treated well . . . I believe that your city has some influence on Reliance Insurance with respect to the party negotiating on your behalf." (R. 31-82, Pg. 3-4 ¶9)

11. On February 28, 1996, Letisa McKenzie sent a letter to Mr. Sondgeroth stating:

"Please be advised that I have taken over the handling of the above captioned matter. At your earliest convenience I request that you forward copies of your clients medical specials including bills and reports. If your clients are making claims for lost wages, I would also request that forwarding documentation as well. I look forward to working with you on this matter." See attached exhibit 7. (Emphasis added)

A similar follow-up letter was sent to Mr. Sondgeroth from Ms. McKenzie on April 2, 1996. (R. 31-82, Pg. 4 ¶10)

12. During this time period plaintiffs continued to receive medical care and treatment. The final reports were obtained from treating physicians and complete settlement brochures on the plaintiffs were prepared and submitted to Reliance Insurance in January, 1997. (R. 31-82, Pg. 4-5 ¶11)

13. The complaint in this case was filed February 18, 1997. (R. 31-82, Pg. 5 ¶13)

14. By way of letter of April 30, 1997, Reliance Insurance, by and through Letisa McKenzie, denied any and all claims of the plaintiff due to the failure to give notice as required under Utah's Governmental Immunity Act. That letter was followed by the defendants' motion to dismiss for lack of jurisdiction, filed by the defendants on June 19, 1997. (R. 31-82, Pg. 5 ¶14)

15. In the motion to dismiss for lack of jurisdiction, the defendants claimed that the notice to the governmental entity had not been filed in a timely manner and, even if said notice was sufficient under the statute, the complaint against the governmental entity was not filed in a timely manner. (R. 14-30 Pg. 3-7)

16. The plaintiffs filed a memorandum in opposition on July 18, 1997 (R. 31-82) with a reply being submitted by the defense on August 8, 1997. (R. 83-93) Oral argument was

then held and Judge Page wished for further clarification on conflicts between the three day mailing rule of URCP and one day notice of claim pursuant to UCA 63-37-1 (notice of claim deemed filed on same date it is mailed). The plaintiffs then filed a response memorandum to this October 17, 1997 letter on October 22, 1997. (R. 99-116)

17. On December 17, 1997 the trial court issued a ruling on defendants motion to dismiss. The trial court stated that the letter to Dean Storey, city finance director of Kaysville, "substantially complied with the notice requirements of section 63-30-11 of the Governmental Immunity Act." The trial court then went to the question on whether plaintiffs' complaint was filed in a timely manner. The trial court stated:

"The Court, therefore concludes that the Plaintiffs' complaint was not filed within the one year period as required by the Governmental Immunity Act, that does not resolve the case. Plaintiffs have raised an issue of estoppel as a result of the alleged actions of the insurance carrier for the city, and the court concludes that there are questions of fact and issues raised on that issue which preclude the court from granting defendants' motion to dismiss at this time." (R. 117-121)

18. On January 14, 1998 a motion for reconsideration was filed by plaintiffs that included affidavits from attorney Sondgeroth and Jean Ascivedo, Mr. Sondgeroth's secretary, concerning actual dates that the letter of November 16, 1997 was mailed to the city of Kaysville. (R. 141)

19. On January 27, 1998 defendants filed a motion to alter judgments or amend judgment and motion to strike affidavits of Sondgeroth and Ascivedo and accompanying memorandum. (R. 156-158) A reply was then filed February 9, 1998 by plaintiffs. (R. 174-181)

20. On April 24, 1998 the "Ruling on Plaintiff's Motion to Reconsider Court's Ruling on Motion to Dismiss" was issued by the court relying on Larsen vs. Park City, decided March 27, 1998 by the Utah Supreme Court, 339 UAR 17 published March 31, 1998. The trial court below stated that the Larsen case clarified the Governmental Immunity Act. Kaysville is a third class city and, under the statute, the city council of such a city must be given actual notice of the claim. To further clarify its ruling, this Court stated that, "no claim was filed with the governing body as required by statute and case law in the one year period and the claim is barred and the court was without jurisdiction." (R. 189-193)

21. The court further went on to state that there were no grounds for plaintiffs' claim of equitable estoppel or waiver of the notice requirements and that the complaint was dismissed with prejudice. (R. 189-193) Findings and Judgment were submitted by the defendant to the court for signature. That Judgment was signed on May 26, 1998 and docketed on June 2, 1998. (R. 194-196)

SUMMARY OF ARGUMENT

Banford has fully complied with the notice provisions of the Utah Governmental Immunity Act. The November 16, 1995 letter satisfies those notice requirements. The facts of this case, as well as Utah Case law, support that the individuals served are appropriate parties to serve under the statute and represent those with authority to administer, control, direct, and manage the affairs of the City of Kaysville. All purposes of the notice provisions of the Act have been satisfied in this case. The July 12, 1995 letter addressed to "Kaysville City Corporation", along with the notice of claim letter addressed to the Dean Storey, the Kaysville City Finance Director, allowed the appropriate governmental entities to investigate and evaluate the claim. The insurance adjuster for the city contacted the appellants, informal discovery had commenced, and settlement negotiations had begun. The trial court's order of Defendant's Motion to Dismiss, subverted the purposes of the Act.

Upon compliance with the notice provisions of the Utah Governmental Immunity Act, appellants did file their complaint within the statutory one year period provided in Utah Code Ann. § 63-30-15 (2). In computing the time under the Act, Rule 6 of the Utah Rules of Civil Procedure and Utah Code Ann. § 68-3-7 are the controlling authority.

ARGUMENT

POINT I

BANFORD FULLY COMPLIED WITH THE NOTICE OF CLAIM PROVISIONS OF THE UTAH GOVERNMENTAL IMMUNITY ACT

Before addressing the City's specific allegations of how Banford's notice of claim filing was defective, a review of the purpose of the notice requirements of the Governmental Immunity Act ("Act") is important. As stated by the Utah Supreme Court in Gallegos v. Midvale, 492 P.2d 1335 (1972), the notice requirements of the Act are designed "to alert the public authority so that a proper and timely investigation of the claim can be made." Id. at 1337. The City cannot argue that purpose was not accomplished in this case. In April 1995, Brian Jensen, a long time companion of Joanna Banford, attempted to assist Joanna in getting all of her bills paid that were above and beyond her own no-fault benefits. In doing so, Mr. Jensen made phone calls to the mayor of Kaysville, the Chief of Police and the City Finance Director. Shortly thereafter, Dean G. Storey, the City Finance Director contacted Mr. Jensen and instructed him to call Clay Stephens, the city insurance carrier's adjuster. Clay Stephens ended up contacting Mr. Jensen and indicated that "their client was at fault," and that the matter could be settled. On July 12, 1995, appellee, by and through her

attorney Kenneth L. Sondgeroth, sent a letter to "Kaysville City Corporation." This letter addressed to whom it may concern, identified appellees counsel and gave notice of the accident and injuries sustained as a result of that accident by Joanna and Amber Banford. Pursuant to that letter, Dean G. Storey, the Finance Director of Kaysville City, responded on July 25, 1995, divulging the name of the City's insurance carrier, the city attorney and the insurance agent. The responding letter closed with the line "Please contact me as the city representative." Clearly, the correspondence and the exchange of information including the July 12, 1995 letter to "Kaysville City Corporation" and the response by the City Finance Director is evidence of the Notice of Claim and the investigation conducted by the City. In Scarborough v. Granite School District, 531 P.2d 480 (Utah 1975), the Supreme Court stated that full compliance with the requirements of the notice of claim statute consists of:

. . . Prior to filing suite, a claim must be filed which (1) is in writing, (2) states the facts and the nature of the claim, (3) is signed by the claimant, (4) is directed and delivered to someone authorized to receive it, and (5) has been filed within the prescribed time.

Banford fully complied with those provisions both in the July 12, 1995 letter her then attorney Sondgeroth wrote to "Kaysville City Corporation", and in a November 16, 1995 letter written directly to Dean Storey, as the "city

representative", which clearly outlined the Banford's claims against the city. Each of those documents was in writing. Each stated the facts and nature of the Banford's claims. The Banford's attorney signed both letters. Both documents were mailed and received by Mr. Storey, who had previously represented on numerous occasions to Joanna Banford and her representatives that he was the "city's representative" and should be contacted as such.

Joanna Banford has fully complied with the notice of claim requirements of the Act. The trial court was correct in its ruling on December 17, 1997 denying the City's Motion to Dismiss, stating that the letter to Dean Storey, city finance director of Kaysville, "substantially complied with the notice requirements of section 63-30-11 of the Governmental Immunity Act".

**A. Banford Has Complied With The Act By
Serving The Notice Of Claim Upon Dean
Storey, City Finance Director.**

The City does not argue that Banford is guilty of no compliance with the notice of claim requirements of Utah Code Ann. §63-30-13. The City argues defective compliance with the notice of claim requirements because the Notice of Claim was not filed with the "governing body" of the City. Banford served her Notice of Claim upon Dean Storey, City Finance Director. The City argues that service on this individual

cannot be deemed service on the "governing body" of the political subdivision.

Utah Code Ann. §63-30-13 provides that a claim against a political subdivision is barred unless notice of claim "is filed with the governing body of the political subdivision within one year after the claim arises. . . ." Decisions of this Court and Utah statutes support that, under the circumstances of this case, Banford has satisfied the notice of claim requirements of Utah Code Ann. §63-30-13. Utah Code Ann. §68-3-2 provides, in pertinent part, as follows:

The rule of the common law that statutes in derogation thereof are to be strictly construed has no application to the statutes of this state. The statutes establish the laws of the state respecting the subjects to which they relate, and their provisions and all proceedings under them are to be liberally construed with a view to effect the objects of the statutes and to promote justice.

Nowhere in the Governmental Immunity Act is the term "governing body" of a political subdivision defined. The City attempts to use a definition of "governing body" set forth in the Utah Municipal Code, Utah Code Ann. §10-1-101 et seq. Utah Code Ann. §10-1-104, however, makes it clear that the definition of "governing body" is limited to "as used in this act". Nowhere in the Utah Municipal Code or in the Utah Governmental Immunity Act has the legislature stated that the definition of "governing body" in the Utah Municipal Act is

applied when construing the term "governing body" as it applies to the Utah Governmental Immunity Act. Certainly, if the legislature had intended for that definition to apply, it could easily have said so. The legislature could just as easily have defined "governing body" in the Governmental Immunity Act itself. The legislature has not done that. In that regard, this case is most similar to the decision of this Court in Brittain v. State of Utah, 882 P.2d 666 (Utah Ct. App. 1994).

In Brittain, the plaintiff pursued claims against the Utah Department of Employment Security and the Utah Division of Facilities, Construction, and Management. Brittain filed notices of claim under Utah Code Ann. §63-30-12 with the Attorney General and the Division of Risk Management. The State filed a motion to dismiss on the ground that Brittain had failed to file a notice of claim with either the Department of Employment Security or the Division of Facilities, Construction, and Management, as required by the Governmental Immunity Act. The statute provides that a notice of claim be filed with the Attorney General and "the agency concerned". Addressing that issue, this Court stated:

Because the term "agency concerned" is not clear on its face, we will interpret the notice requirement of section 63-30-12 in a manner consistent with the overall purpose of the Utah Governmental Immunity Act. As explained by the Utah Supreme Court "[i]t is necessary to consider the policy of the notice

requirement so that in any particular case the facts can be evaluated to determine if the intent of the statute has been accomplished." Stahl v. Utah Transit Authority, 618 P.2d 480, 482 (Utah 1980).

The primary purpose of a notice of claim requirement is to afford the responsible public authorities an opportunity to pursue a proper and timely investigation of the merits of a claim and to arrive at a timely settlement, if appropriate, thereby avoiding the expenditure of public revenue for costly and unnecessary litigation." (Citations omitted).

Id. at 668.

Like the term "governing body", the term "agency concerned" in Utah Code Ann. §63-30-12 is not defined in the statute. This Court turned to the commonly understood dictionary meaning, "interested" and concluded that the statutory notice of claim requirement was met by filing notice "with any one of potentially several agencies with a legitimate interest in plaintiff's claim and the legal proceedings which might result therefrom." Id. at 668.

In an important final paragraph, in language directly applicable to the facts of this case on appeal, this Court concluded:

Finally, we wish to reiterate that this is not a case where the notice of claim was defective in form or content. Recognizing the need for written notice to protect against the unreliability of memory, the notice of claim was preserved in writing, accurately recording Brittain's account of the

accident. This is also not a case where plaintiff either gave no notice or filed only one of two required notices . . . Finally, this is not a case where notice of claim was not filed within the one-year period. It is undisputed that plaintiff sent both notices well within one year from the date his claim arose.

Id. at 669

While there are some factual differences between this case and the Brittain case, the reasoning of that case controls these facts.

The major difference between this case and the Brittain case is that this case involves a claim against a political subdivision, as opposed to a claim against the State. The language of the Act requires that when pursuing a claim against a political subdivision, the notice of claim is to be filed "with the governing body of the political subdivision." As mentioned before, the term "governing body" is not defined in the Act. Common dictionary meaning of the word "govern" includes the terms "administer", "direct", "control", and "manage". Websters New World Dictionary, Second College Edition, p.604 (1979).

Just as a corporation can only act through individuals, service upon any "governing body" must be made upon an individual. In this case, service was made on Dean Storey, the City Finance Director. Certainly, service upon this individual and the city he claimed he represented constitutes service on those with power to administer, direct, control,

and manage the interests of the City and, specifically, with regard to this personal injury claim. In a letter dated July 25, 1995, to Banford's then attorney Mr. Sondgeroth, Mr. Storey states in the closing line "Please contact me as the city representative."

It is clear from that correspondence that Mr. Storey had been assigned responsibility for this claim by the City and was acting as their authorized agent. Banford was instructed to direct all correspondence to Mr. Storey, as agent for the political subdivisions.

The facts and circumstances of Banford's service of the Notice of Claim, coupled with the reasoning of this Court in Brittain, make it clear that Banford's Notice of Claim service satisfies the requirements of Utah Code Ann. §63-30-13. The trial court's denial of the City's Motion to Dismiss on December 17, 1997 should be reinstated and its granting of the Plaintiff's Motion to Reconsider Court's Ruling on Motion to Dismiss should be overruled.

POINT II

IF THE COURT FINDS THAT BANFORD'S NOVEMBER 16, 1995 CORRESPONDENCE CONSTITUTES NOTICE OF CLAIM, THE COMPLAINT WAS THEN FILED TIMELY AS REQUIRED BY THE GOVERNMENTAL IMMUNITY ACT.

- A. Banford's complaint was timely filed under U.C.A. 68-3-7 and rule 6 (e) of the Utah Rules of Civil Procedure.**

The statutes the defendant/appellee claim are dispositive as to the issue of whether the complaint was timely filed, are U.C.A. 63-30-14 and 63-30-15. Pursuant to § 63-30-14,

[w]ithin ninety days of the filing of a claim the governmental entity or its insurance carrier shall act thereon and notify the claimant in writing of its approval or denial. A claim shall be deemed to have been denied if at the end of the ninety-day period the governmental entity or its insurance carrier has failed to approve or deny the claim.

and U.C.A. 63-30-15 (2),

[t]he claimant shall begin the action within one year after denial of the claim or within one year after the denial period specified in this chapter has expired, regardless of whether or not the function giving rise to the claim is characterized as governmental¹.

The appellee here argues that if this court finds that the letter of November 16, 1995 is in compliance with the notice of claim to the city of Kaysville, the appellee failed to deny the claim within the ninety days as required by U.C.A. 63-30-14, therefore requiring the appellants to file their complaint by February 13, 1997. Although ninety days from the November 16, 1995 letter is February 13, 1996, the appellant argues that U.C.A. 63-30-14 must be read in conjunction with U.C.A. 68-3-7 along with rule 6 (e) of the Utah Rules of Civil Procedure. Pursuant to U.C.A. 68-3-7,

[t]he time in which any act provided by law is to be done is computed by excluding the first day and including the last, unless the

last is a holiday, and then it is also excluded.

Under rule 6 (e) of the Utah Rules of Civil Procedure,

[w]henEVER a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, three (3) days shall be added to the prescribed period.

Since the November 16, 1995 letter was mailed to the City of Kaysville Finance Director, the city of Kaysville was provided with an additional three days from the ninety-day date in which to deny the claim, under rule 6(e) of the Utah Rules of Civil Procedure. Since the letter was mailed on November 16, 1995, the ninety day period of denial would lapse on February 14, 1996, under U.C.A. 68-3-7, but the appellee would be given an additional three days within which to make its denial under URCP 6(e), extending the date to February 17, 1996. Thus, commencing the one-year period under U.C.A. 63-30-15 on February 17, 1996 and requiring that the complaint be filed on or before February 17, 1997.

Rule 6 (e) URCP is not a discretionary rule but mandates that three (3) days shall be added to a prescribed period. In Utah Chiropractic Associations Inc. v. Equitable Life Assurance Society of the United States, 579 P.2d 1327 (Utah 1978), the court ruled that a party had one (1) month and three (3) days from the date an order was mailed in which to file a Petition for Review of the Insurance

Commissioner's decision. The court cited rule 6 (e) word for word and thereafter added three (3) days time for the appellate filing. In Reagan Outdoor Advertising, Inc. v. Utah Department of Transportation, 589 P.2d 782 (Utah 1978) the court followed the decision in Utah Chiropractic Associations, Inc. and ruled that the under URCP 6 (e), three days would be added to the time in which the litigant would be required to act when the Commission's decision was served by mail. (See also, Mickleson v. Shelly, 542 P.2d 740 where the court stated "our rules of civil procedure provide that when notice is required and is given by mailing, three (3) extra days must be included in the required time.") (Emphasis added)

Finally in Disciplinary Action of McCune, 717 P.2D 701, 708 (Utah 1986) the court disallowed a claim by McCune that he had not received proper notice as this mailing time was not added to the notice of hearing. However, the court stated, "however, McCune did not object at the time of the hearing to the notice he received. He thereby waived his right to object, especially since he has shown no prejudice resulting from a shortened time period."

Rule 1 of the Utah Rules of Civil Procedure states that the rules " . . . shall be liberally construed to serve the just, speedy, and inexpensive determination of every action." Relying upon McCune, appellants have not waived

the additional three (3) days mailing period to the ninety (90) day period required for an answer from the defendants. By denying the appellants this time would cause prejudice and a great inequity against the appellants, allowing party's to use Rule 6 (e) as a discretionary double edged sword, accepted and rejected at their whim. As shown in this case, Rule 6 (e) could be used to extend the ninety day rule by allowing the city of Kaysville to argue they had an additional three days to deny the claim or, as better served to justify their position, choose not to add an additional three days and argue untimely filing. In any sense, the reasoning behind the purpose of Rule 6 (e), to avoid confusion in the litigation process, would be circumvented. Rule 6 (e) is not in conflict with 63-30-14, and is a rules standard all attorneys must be able to rely upon to create order amid the chaos of litigation. This court should rule that Rule 6 (e) had extended the appellees ninety-day denial date by three additional days making the date of denial February 17, 1996.

Since February 17, 1997 was a state and federal holiday, and the complaint was filed by the appellants on February 18, 1997, they had timely filed within the statutory time period.

B. Banford's complaint was timely filed even if the court finds that Rule 6(e) is inapplicable to this case.

The appellees argue and the lower court's decision was based upon U.C.A. 63-37-1, stating:

[a]ny report, claim, tax return, statement or other document or any payment required or authorized to be filed or made to the state of Utah, or to any political subdivision thereof, which is:

(1) Transmitted through the United States Mail, shall be deemed filed or made and received by the state or political subdivisions on the date shown by the post-office cancellation mark stamped upon the envelope or other appropriate wrapper containing it.

and U.C.A. 63-30-15 (2), which states in part, "[t]he claimant shall begin the action within one year after denial of the claim or within one year after the denial period specified in this chapter has expired . . ." (Emphasis added) Pursuant to these statutes, the appellees argue, and the lower court held, that U.C.A. 63-37-1 was the applicable statute governing the date of filing the letter of November 16, 1995. The Notice of Claim was deemed to be filed on November 16, 1995, requiring the appellants to file their complaint within ninety days and one year, or February 13, 1997.

To refute this argument, the appellants submitted affidavits from appellants' originally retained attorney, Kenneth L. Sondgeroth and Regina Acevedo, the secretary for the law office of Kenneth L. Sondgeroth. These affidavits were provided as evidence of Mr. Sondgeroth's office mailing

procedure. Pursuant to office procedure, the mail was picked up and delivered to his office in between the hours of 9:00 am and 10:00 am every day. Mr. Sondgeroth's affidavit also explained his practice for the typing and signing of letters to be mailed. Since Mr. Songeroth's mail was picked up in the morning, any letters dated for a specific day were signed by him at the end of each day and mailed the following morning. Ms. Acevedo's affidavit also explained the regular office procedure for mailing letters.

In appellee's Memorandum of Points and Authorities in Opposition to Plaintiff's Motion to Reconsider and in Support of Defendant's Motion to Alter Findings or Amend Judgment, they cite to Lister v. Utah Valley Community College, 881 P.2d 933 (Utah App. 1994) to strike the affidavits of Mr. Sondgeroth and Ms. Acevado. In Lister, the plaintiff sued the defendant for negligence. The defendant filed a motion to dismiss alleging failure to serve the notice of claim upon the Attorney General as mandated by U.C.A. s 63-30-12 and filed an affidavit of the lead secretary of the Litigation Division of the Utah Attorney Generals Office which established that no notice of claim had been served upon the Attorney General. The plaintiff responded by filing an affidavit from his attorney in which claimed that it was his standard office practice to mail notices of claims to the Attorney General's Office. He

provided no specific evidence that this notice was ever mailed to the Attorney General's office.

The appellees argument is that these affidavits established only office routine as to review the letter at the end of the day and place it in the outgoing mail box, which was then picked up the following morning. Under Lister, the appellees argue the affidavits are not competent because neither Sondgeroth nor his secretary testified that they had personal knowledge of the exact time they placed the letter in the mail. The appellees argue that it is just as likely that the letter could have been dictated and signed the day before or the morning and mailed in the morning pickup on the 16th.

Lister is distinguishable from the underlying facts in this appeal. In Lister, the Litigation Division of the Utah Attorney General's office, the office that maintains and controls all notices of claim received by the office, claimed that no notice of claim was ever received on behalf of Lister by the Utah Attorney General's office. The affidavits were then provided to prove that the notice of claim was actually mailed. The court in striking the affidavits, cited Utah Code Ann. § 63-37-1 stating "[I]n this case, there is no evidence concerning the postmark or the date of mailing. There is nothing from counsel or his secretary that state that a notice was in fact filed." Id.

at 935. Unlike in Lister, the appellant's notice of claim was in fact mailed and received by the Kaysville City Finance Director, Dean Storey. The affidavits were not provided to prove that the notice of claim was ever mailed, they are provided to prove the time of mailing. Therefore they are competent evidence of Sondgeroth's office mailing policy and should not have been stricken by the lower court.

If the court finds that the notice of claim letter dated November 16, 1995, was deemed filed on November 17, 1995, and that the appellees had until February 14, 1996 within which to deny the appellants claim (90 days after the mailing of the notice), the one year period provided for in §63-30-15 does not begin to run until February 15, 1996. Accordingly, the appellants then had until February 15, 1997 within which to file their complaint. Since February 15, 1997 was a Saturday, and February 17, 1997 was a state and federal holiday, the time within which the appellants had to file their complaint was extended until Tuesday, February 18, 1997, when the complaint was, in fact, filed.

CONCLUSION

Appellants complied with the applicable sections of the Utah Code by making and maintaining numerous contacts with official representatives of the Appellee. The Appellants in fact, timely filed a Notice of Claim.

The Appellants complied with the applicable sections of the Utah Code by timely filing their complaint, within one year from the date that any denial of their claim could be implied under the statute.

DATED this 2nd day of December, 1998.

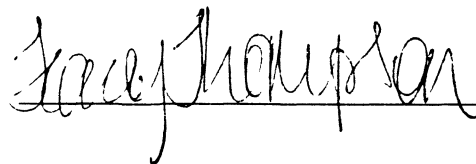
LEHMAN, JENSEN & DONAHUE, L.C.
Attorneys for Plaintiff

By: 
LEONARD E. MCGEE

CERTIFICATE OF HAND-DELIVERY

I hereby certify that APPELLANT'S MEMORANDUM OF POINTS AND AUTHORITIES was hand-delivered this 2nd day of December, 1998, to the following counsel of record:

Harry Souval
SNOW, CHRISTENSEN & MARTINEAU
Attorneys for Defendant/Appellee
Newhouse Building
10 Exchange Place, Eleventh Floor
P.O. Box 45000
Salt Lake City, Utah 84145



The Appellants complied with the applicable sections of the Utah Code by timely filing their complaint, within one year from the date that any denial of their claim could be implied under the statute.

DATED this 2nd day of December, 1998.


LEHMAN, JENSEN & DONAHUE, L.C.
Attorneys for Plaintiff

By: 
LEONARD E. MCGEE

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ADDENDUM

tation/Title

' ST § 68-3-2, Statutes in derogation of common law liberally construed--Rules of equity prevail

Utah Code § 68-3-2

**WEST'S UTAH CODE
TITLE 68. STATUTES
CHAPTER 3. CONSTRUCTION**

(Information regarding effective dates, repeals, etc. is provided subsequently in this document.)

Current through End of 1998 General Sess

68-3-2. Statutes in derogation of common law liberally construed--Rules of equity prevail

The rule of the common law that statutes in derogation thereof are to be strictly construed has no application to the statutes of this state. The statutes establish the laws of this state respecting the subjects to which they relate, and their provisions and all proceedings under them are to be liberally construed with a view to effect the objects of the statutes and to promote justice whenever there is any variance between the rules of equity and the rules of common law in reference to the same matter the rules of equity shall prevail.

Search this disc for cases citing this section

ion/Title

§ 63-30-13, Claim against political subdivision or its employee--Time for filing notice.

Code § 63-30-13

**WEST'S UTAH CODE
TITLE 63. STATE AFFAIRS IN GENERAL
CHAPTER 30. GOVERNMENTAL IMMUNITY ACT**

(Information regarding effective dates, repeals, etc. is provided subsequently in this document.)

Current through End of 1998 General Sess.

63-30-13. Claim against political subdivision or its employee--Time for filing notice.

Claim against a political subdivision, or against its employee for an act or omission occurring during the performance of employee's duties, within the scope of employment, or under color of authority, is barred unless notice of claim is filed with governing body of the political subdivision according to the requirements of Section 63-30-11 within one year after the claim or before the expiration of any extension of time granted under Section 63-30-11, regardless of whether or not the function giving rise to the claim is characterized as governmental.

Amended by Laws 1987, c. 75; Laws 1998, c. 164, § 3, eff. May 4, 1998.

this disc for cases citing this section.

itation/Title

UT § 63-30-14, Claim for injury--Approval or denial by governmental entity or insurance carrier within ninety days

Utah Code § 63-30-14

**WEST'S UTAH CODE
TITLE 63. STATE AFFAIRS IN GENERAL
CHAPTER 30. GOVERNMENTAL IMMUNITY ACT**

(Information regarding effective dates, repeals, etc. is provided subsequently in this document.)

Current through End of 1998 General Session

63-30-14. Claim for injury--Approval or denial by governmental entity or insurance carrier within ninety days

Within ninety days of the filing of a claim the governmental entity or its insurance carrier shall act thereon and notify the claimant in writing of its approval or denial. A claim shall be deemed to have been denied if at the end of the ninety-day period the governmental entity or its insurance carrier has failed to approve or deny the claim.

As enacted by Chapter 139, Laws of Utah 1965

Search this disc for cases citing this section.

.on/Title

§ 63-30-15, Denial of claim for injury--Authority and time for filing action against governmental entity

Code § 63-30-15

**WEST'S UTAH CODE
TITLE 63. STATE AFFAIRS IN GENERAL
CHAPTER 30. GOVERNMENTAL IMMUNITY ACT**

(Information regarding effective dates, repeals, etc. is provided subsequently in this document.)

Current through End of 1998 General Sess.

63-30-15. Denial of claim for injury--Authority and time for filing action against governmental entity

If the claim is denied, a claimant may institute an action in the district court against the governmental entity or an officer or employee of the entity.

The claimant shall begin the action within one year after denial of the claim or within one year after the denial period provided in this chapter has expired, regardless of whether or not the function giving rise to the claim is characterized as governmental.

Repealed by Chapter 75, Laws of Utah 1987

This section applies to cases citing this section.

tation/Title

' ST § 63-37-1, When postmark date deemed filing date--When mailing date deemed filing date

Utah Code § 63-37-1

WEST'S UTAH CODE
TITLE 63. STATE AFFAIRS IN GENERAL
CHAPTER 37. MAILING REPORTS, CLAIMS, RETURNS, STATEMENTS AND OTHER
DOCUMENTS TO STATE OR POLITICAL SUBDIVISIONS

(Information regarding effective dates, repeals, etc. is provided subsequently in this document.)

Current through End of 1998 General Session

63-37-1. When postmark date deemed filing date--When mailing date deemed filing date

Any report, claim, tax return, statement or other document or any payment required or authorized to be filed or made to the state of Utah, or to any political subdivision thereof, which is:

(1) Transmitted through the United States mail, shall be deemed filed or made and received by the state or political subdivisions on the date shown by the post-office cancellation mark stamped upon the envelope or other appropriate wrapper containing it.

(2) Mailed but not received by the state or political subdivisions where received and the cancellation mark is illegible, erroneous, or omitted, shall be deemed filed or made and received on the date it was mailed if the sender establishes by competent evidence that the report, claim, tax return, statement or other document or payment was deposited in the United States mail on or before the date for filing or paying; and in cases of such nonreceipt of any such report, tax return, statement, or other document required by law to be filed, the sender files with the state or political subdivision a duplicate within thirty days after written notification is given to the sender by the state or political subdivisions of its nonreceipt of such report, tax return, statement, or other document.

As enacted by Chapter 179, Laws of Utah 1967

Search this disc for cases citing this section.

ion/Title

§ 68-3-7, Time, how computed

ode § 68-3-7

**WEST'S UTAH CODE
TITLE 68. STATUTES
CHAPTER 3. CONSTRUCTION**

(Information regarding effective dates, repeals, etc. is provided subsequently in this document.)

Current through End of 1998 General Sess.

7. Time, how computed

time in which any act provided by law is to be done is computed by excluding the first day and including the last, unless is a holiday, and then it also is excluded.

his disc for cases citing this section.

History: C. 1953, 10-1-102, enacted by L.
1977, ch. 48, § 1.

Meaning of "this act." — See § 10-1-101
and notes thereto.

10-1-103. Construction.

The powers herein delegated to any municipality shall be liberally construed to permit the municipality to exercise the powers granted by this act except in cases clearly contrary to the intent of the law.

History: C. 1953, 10-1-103, enacted by L.
1977, ch. 48, § 1.

Meaning of "this act." — See § 10-1-101
and notes thereto

10-1-104. Definitions.

As used in this act:

(1) "Municipal" or "municipalities" means any city of the first class, city of the second class, city of the third class, or town in the state of Utah, but unless the context otherwise provides, the term or terms do not include counties, school districts, or any other special purpose governments.

(2) "Governing body" means collectively the legislative body and the executive of any municipality. Unless otherwise provided:

(a) In cities of the first and second class, the governing body is the city commission;

(b) In cities of the third class, the governing body is the city council;

(c) In towns the governing body is the town council.

(3) "City" shall include cities of the first class, cities of the second class or cities of the third class or may refer cumulatively to all such cities.

(4) "Town" means any town as defined in Section 10-2-301.

(5) "Recorder," unless clearly inapplicable, shall include and apply to town clerks.

(6) "Provisions of law" shall include other statutes of the state of Utah and ordinances, rules and regulations properly adopted by any municipality unless the construction is clearly contrary to the intent of state law.

(7) "Contiguous" means abutting directly on the existing boundary of the annexing municipality. "Directly" includes separation by a street, alley, public right-of-way, creek, river or the right-of-way of a railroad or other public service corporation, or by lands owned by the municipality, by some other political subdivision of the state or by the state.

(8) "Affected entities" means a county, municipality or other entity possessing taxation powers within a county, whose territory, service delivery or revenue will be directly and significantly affected by a proposed boundary change involving a municipality or other local entity.

(9) "Peninsula" means an area of unincorporated territory surrounded on more than one-half of its boundary distance, but not completely, by incorporated territory and situated so that the length of a line drawn across the unincorporated area from an incorporated area to an incorporated area on the opposite side shall be less than 25% of the total aggregate boundaries of the unincorporated area.

(10) "Island" means unincorporated territory completely surrounded by incorporated area of one or more municipalities.

(11) "Urban development" means a housing subdivision involving more than 15 residential units with an average of less than one acre per

Service by mail, additional time after,
U.R.C.P. 6(e).

Third-party practice, U.R.C.P. 14.

NOTES TO DECISIONS

Filed depositions.

Service upon attorney.

—Presumption of authorization.

When service required.

—Default judgment.

—Appeal.

Cited.

Filed depositions.

Sealed pretrial depositions filed with a court are presumptively public under the Utah Public and Private Writings Act (former § 78-26-1 et seq.; see now Title 63, Chapter 2) and can be kept secret only on a showing of good cause. *Carter v. Utah Power & Light Co.*, 800 P.2d 1095 (Utah 1990).

Service upon attorney.

—Presumption of authorization.

Where defendant engaged attorney only to file motion but never so notified court or attorney, appearance of attorney to file motion raised presumption that he represented defendant in full action. Where defendant presented no clear and convincing evidence to refute presumption, notice given to attorney of date set for trial was good notice to defendant. *Blake v. Blake*, 17 Utah 2d 369, 412 P.2d 454 (1966).

When service required.

—Default judgment.

Plaintiff was under no duty to notify defen-

dants of default judgment entered against them. *Central Bank & Trust Co. v. Jensen*, 656 P.2d 1009 (Utah 1982) (decided before 1985 addition of reference to Rule 55).

Plaintiffs' failure to mail a copy of the default judgment to defendants did not invalidate the default judgment when defendants received the notice of default in time to move to set aside the judgment. *Lincoln Benefit Life Ins. Co. v. D.T. Southern Properties*, 838 P.2d 672 (Utah Ct. App. 1992).

—Appeal.

Under former Rule 73(h), time for appeal from default judgment in city court runs from date of notice of entry of such judgment, rather than from the date of judgment. *Buckner v. Main Realty & Ins. Co.*, 4 Utah 2d 124, 288 P.2d 786 (1955) (but see Rule 58A(d)).

Cited in *Remington-Rand, Inc. v. O'Neil*, 4 Utah 2d 270, 293 P.2d 416 (1956); *Pillsbury Mills, Inc. v. Nephi Processing Plant, Inc.*, 7 Utah 2d 286, 323 P.2d 266 (1958); *Dehm v. Dehm*, 545 P.2d 525 (Utah 1976); *Triple I Supply, Inc. v. Sunset Rail, Inc.*, 652 P.2d 1298 (Utah 1982); *Sperry v. Smith*, 694 P.2d 581 (Utah 1984); *Williams v. State*, 716 P.2d 806 (Utah 1986); *Walker v. Carlson*, 740 P.2d 1372 (Utah Ct. App. 1987); *Maverik Country Stores, Inc. v. Industrial Comm'n*, 860 P.2d 944 (Utah Ct. App. 1993).

COLLATERAL REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d Attorneys at Law § 6; 61A Am. Jur. 2d Pleading §§ 350 to 352.

C.J.S. — 7 C.J.S. Attorney and Client § 15; 71 C.J.S. Pleading §§ 408, 409, 411, 413.

A.L.R. — Construction of phrase "usual

place of abode," or similar terms referring to abode, residence, or domicile, as used in statutes relating to service of process, 32 A.L.R.3d 112.

Service of process by mail in international civil action as permissible under Hague Convention, 112 A.L.R. Fed. 241.

Rule 6. Time.

(a) *Computation.* In computing any period of time prescribed or allowed by these rules, by the local rules of any district court, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

(b) *Enlargement.* When by these rules or by a notice given thereunder or by order of the court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended

by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect, but it may not extend the time for taking any action under Rules 50(b), 52(b), 59(b), (d) and (e), 60(b) and 73(a) and (g), except to the extent and under the conditions stated in them

(c) *Unaffected by expiration of term* The period of time provided for the doing of any act or the taking of any proceeding is not affected or limited by the continued existence or expiration of a term of court. The continued existence or expiration of a term of court in no way affects the power of a court to do any act or take any proceeding in any civil action which has been pending before it.

(d) *For motions — Affidavits* A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing, unless a different period is fixed by these rules, by CJA 4-501, or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion, and, except as otherwise provided in Rule 59(c), opposing affidavits may be served not later than 1 day before the hearing, unless the court permits them to be served at some other time.

(e) *Additional time after service by mail.* Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, 3 days shall be added to the prescribed period (Amended effective November 1, 1997)

Amendment Notes. — The 1997 amendment inserted “by CJA 4-501” in the first sentence of Subdivision (d).

Compiler’s Notes. — Subdivisions (a), (b), (d) and (e) of this rule are substantially similar to Rule 6 F R C P.

Rule 73, cited near the end of Subdivision (b), was repealed upon adoption of the Rules of Appellate Procedure.

Cross References. — Amendment to pleadings to conform to evidence, time of motion for, U R C P 15(b).

Commencement of action, time of service, U R C P 4(b).

Corporation or association, mailing of process to, U R C P 4(e)(5).

Depositions, objections to errors and irregularities, U R C P 32(c).

Discharge of attachment or release of property, U R C P 64C(f).

Documents for state or subdivision, filing date on weekend or holiday, § 63-37-3.

Election laws, weekends and holidays included in computation of time, § 20A-1-401.

Failure of term or vacancy in office of judge proceeding not affected, § 78-7-21.

Juvenile Court Act, time computed according to Rules of Civil Procedure § 78-3a-27.

Legal holidays enumerated § 63-13-2.

New trial, time of motion for after judgment notwithstanding the verdict, U R C P 50(c)(2).

Order defined U R C P 7(b)(2).

Pleadings and other papers service by mail, U R C P 5(b)(1).

Probate Code, mailing of notice of hearing, § 75-1-401.

Reference to master time of first meeting of parties after, U R C P 53(d)(1).

Relief from judgment or order, time for motion, U R C P 60.

Rules by district courts, U R C P 83.

Service by mail, U R C P 5(b)(1).

Substitution of parties, time of motion for, U R C P 25.

Summons mailed as alternative to personal service, U R C P 4(g).

Time, how computed, § 68-3-7.

Tribunal, board or office exceeding jurisdiction, notice, U R C P 65B(e).

Undertaking by nonresident plaintiff, timely filing, U R C P 12(k).

When a day appointed is a holiday, § 68-3-8.

NOTES TO DECISIONS

Additional time after service by mail

— Administrative procedure

— Failure to add days

— Waiver of objection

— Industrial Commission

Computation

— Months and years

— State -

Enlargement

— Motion for new trial

— Notice of appeal

— Designation of record

— Redemption from execution sales

Motions and affidavits

— Applicability of rule

— Court orders

Part X. District Courts and Clerks

Rule
77 District courts and clerks.
78 to 80 Repealed

Rule
83 Repealed
84 Forms
85 Title

Part XI. General Provisions

81 Applicability of rules in general
82 Jurisdiction and venue unaffected.

Appendix Of Forms**Index to Rules****PART I. SCOPE OF RULES — ONE FORM OF ACTION****Rule 1. General provisions.**

(a) *Scope of rules.* These rules shall govern the procedure in the courts of the state of Utah in all actions, suits, and proceedings of a civil nature, whether cognizable at law or in equity, and in all special statutory proceedings, except as governed by other rules promulgated by this court or enacted by the Legislature and except as stated in Rule 81. They shall be liberally construed to secure the just, speedy, and inexpensive determination of every action.

(b) *Effective date.* These rules shall take effect on January 1, 1950; and thereafter all laws in conflict therewith shall be of no further force or effect. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the court their application in a particular action pending when the rules take effect would not be feasible or would work injustice, in which event the former procedure applies.

(Amended effective Jan. 1, 1987; November 1, 1996.)

Amendment Notes. — The 1996 amendment substituted “the courts” for a list of courts, by level, near the beginning of Subdivision (a)

Compiler’s Notes. — This rule is substantially similar to Rules 1 and 86(a), F R C P, except that it has been adapted to procedure of this state

Cross References. — Children’s cases

deemed civil proceedings, § 78-3a-44.

Jurisdiction and venue of courts unaffected by rules, U.R.C.P. 82.

Supreme Court, Court of Appeals, district courts, circuit courts, and justice courts, Title 78, Chapters 2, 2a, 3, 4, 5

Supreme Court rulemaking, § 78-2-4

United States, execution of process on land acquired by, §§ 63-8-1, 63-8-3

NOTES TO DECISIONS

Applicability
— Administrative body
Federal rules
Noncompliance
Cited

Applicability.**—Administrative body.**

The Utah Rules of Civil Procedure do not apply to a proceeding before an administrative body seeking to regulate activities burdened with a public interest *Entre Nous Club v Toronto*, 4 Utah 2d 98, 287 P2d 670 (1955)

Federal rules.

Since these rules were fashioned after the Federal Rules of Civil Procedure it is proper to examine decisions under the federal rules to determine the meanings thereof *Winegar v*

Slim Olson, Inc, 122 Utah 487, 252 P2d 205 (1953) (construing Rule 41)

Noncompliance.

Noncompliance with rules is allowed only when some inadvertence, surprise, excusable neglect, or mistake has occurred, and deviation is required for substantial justice to be done *Holton v Holton*, 121 Utah 451, 243 P2d 438 (1952)

Cited in *Howard v Howard*, 11 Utah 2d 149, 356 P2d 275 (1960), *State v Geurts*, 11 Utah 2d 345, 359 P2d 12 (1961), *State ex rel Road Comm’n v Petty*, 17 Utah 2d 382, 412 P2d 914 (1966), *Ellis v Gilbert*, 19 Utah 2d 189, 429 P2d 39 (1967), *Bartholomew v Bartholomew*, 548 P2d 238 (Utah 1976), *Dixon v Stoddard*, 765 P2d 879 (Utah 1988).