

Rule 17. Parties plaintiff and defendant.

(a) Real party in interest. Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in that person's name without joining the party for whose benefit the action is brought; and when a statute so provides, an action for the use or benefit of another shall be brought in the name of the state of Utah. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

(b) Minors or incompetent persons. An unemancipated minor or an insane or incompetent person who is a party must appear either by a general guardian or by a guardian ad litem appointed in the particular case by the court in which the action is pending. A guardian ad litem may be appointed in any case when it is deemed by the court in which the action or proceeding is prosecuted expedient to represent the minor, insane or incompetent person in the action or proceeding, notwithstanding that the person may have a general guardian and may have appeared by the guardian. In an action in rem it shall not be necessary to appoint a guardian ad litem for any unknown party who might be a minor or an incompetent person.

(c) Guardian ad litem; how appointed. A guardian ad litem appointed by a court must be appointed as follows:

(c)(1) When the minor is plaintiff, upon the application of the minor, if the minor is of the age of fourteen years, or if under that age, upon the application of a relative or friend of the minor.

(c)(2) When the minor is defendant, upon the application of the minor if the minor is of the age of fourteen years and applies within 20 days after the service of the summons, or if under that age or if the minor neglects so to apply, then upon the application of a relative or friend of the minor, or of any other party to the action.

(c)(3) When a minor defendant resides out of this state, the plaintiff, upon motion therefor, shall be entitled to an order designating some suitable person to be guardian ad litem for the minor defendant, unless the defendant or someone in behalf of the defendant within 20 days after service of notice of such motion shall cause to be appointed a guardian for such minor. Service of such notice may be made upon the defendant's general or testamentary guardian located in the defendant's state; if there is none, such notice, together with the summons in the action, shall be served in the manner provided for publication of summons upon such minor, if over fourteen years of age, or, if under fourteen years of age, by such service on the person with whom the minor resides. The guardian ad litem for such nonresident minor defendant shall have 20 days after appointment in which to plead to the action.

(c)(4) When an insane or incompetent person is a party to an action or proceeding, upon the application of a relative or friend of such insane or incompetent person, or of any other party to the action or proceeding.

(d) Associates may sue or be sued by common name. When two or more persons associated in any business either as a joint-stock company, a partnership or other association, not a corporation, transact such business under a common name, whether it comprises the names of such associates or not, they may sue or be sued by such common name. Any judgment obtained against the association shall bind the joint property of all the associates in the same manner as if all had been named parties and had been sued upon their joint liability. The separate property of an individual member of the association may not be bound by the judgment unless the member is named as a party and the court acquires jurisdiction over the member.

(e) Action against a nonresident doing business in this state. When a nonresident person is associated in and conducts business within the state of Utah in one or more places in that person's own name or a common trade name, and the business is conducted under the supervision of a manager, superintendent or agent the person may be sued in the person's name in any action arising out of the conduct of the business.

(f) As used in these rules, the term plaintiff shall include a petitioner, and the term defendant shall include a respondent.

ADVISORY COMMITTEE NOTE