

# UNITEL

09-CV-C

June 25, 2009

Hon. Peter G. McCabe  
Secretary  
Committee on Rules of Practice and Procedure  
Washington, D.C. 20544

Re: Docket 07-CV-A

Dear Secretary Mc Cabe:

Follow-up to my letter of 15 March 07 (copy enclosed). Ah how time flies – here I am again and same issue. I'm hopeful there has been some interest shown in my suggestion.


The issue has taken on even more importance as we continue in the field to serve mostly Federal Subpoenas for depositions and documents in aid of federal litigation. Nowadays everyone in the country has their guard up because of privacy rights, identity thefts and all type of encroachments on an individual. The days are over when our process servers can simply ring a doorbell or even enter an office suite and announce their attention – security concerns trump everything. Service tricks relying on subterfuge, trespassing, chicanery and the like – was OK and expected years ago, but now one can get shot at, stabbed or punched just trying to perform his duty.

My own limited research into the law of service took me back to the Courts of Chancery in Great Britain of 1843, wherein the Lord Chancellor opined that ... [W]hen left at the dwelling house with a servant or family member; it is equally good as personal service, except for the privilege of Peerage ... . So even then, there was a glimmer of easing of the rules.

Thus, the issue is ripe for the Committee to conform R-45 (b)(1) to the constructive service provisions of Rule 4.

Thank you for your interest and that of the Committee.

Respectfully submitted,

  
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William P. Callahan, Esq.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE  
OF THE  
JUDICIAL CONFERENCE OF THE UNITED STATES  
WASHINGTON, D.C. 20544

**COPY**

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March 15, 2007

William P. Callahan, Esquire  
Unitel  
17 Battery Place, suite 1226  
New York, NY 10004

*Re: Your Suggestion for Proposed Amendment to Civil Rule 45  
(Docket Number 07-CV-A)*

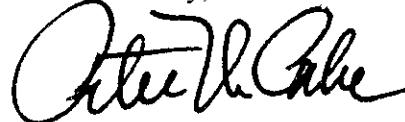
Dear Mr. Callahan:

Thank you for your letter of February 26, 2007, suggesting an amendment to Civil Rule 45, to simplify the methods of service of a subpoena to comport with the service provisions in Rule 4. A copy of your suggestion will be distributed to the chair and reporter of the Advisory Committee on Civil Rules for their consideration.

The federal rulemaking process is an exacting and time-consuming process. From beginning to end, it usually takes two to three years for a suggestion to be enacted as a rule. To follow the progress on your suggestion, you may contact the Rules Committee Support Office anytime at (202) 502-1820 for a status report.

We welcome your suggestion and appreciate your interest in the rulemaking process.

Sincerely,



Peter G. McCabe

cc: Honorable Lee H. Rosenthal  
Professor Edward H. Cooper

COPY

UNITEL  
17 Battery Place, Suite 1226  
New York, NY 10004  
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2-26-07

Secretary  
Committee on Rules of Practice and Procedure  
Administrative Office of the United States Courts  
Washington, D.C. 20544

Re: Recommendations for change of Rule 45 –F.Rules Civil Procedure with respect to personal service of subpoenas

Dear Secretary:

I respectfully write to urge a change in the requirements of Rule 45 with respect to personal service of all civil subpoenas to be in accord with substituted service of a summons in Rule 4. I am the president of Unitel and an attorney duly admitted to practice in New York. I am a former Federal Prosecutor with the U.S. Department of Justice.

We are an investigative consulting company and we work almost exclusively for law firms engaged in Intellectual Property litigation practice. Much of our assignments we receive from our law firm clients involve service of Federal Summons & Complaints and Subpoenas for Documents/Depositions. With respect to service of a Summons under Rule 4, there is a great deal of latitude in that Rule for substituted service on individuals and corporations such as Rule 4 (d) Waiver of Service; Duty to Save Costs of Service; Request to Waive. Thus, when an individual is hard to serve there are several remedies available under Rule 4 that are not available under Rule 45.

This is not so under Rule 45, where the Rule, states: “... *service ... shall be made by delivering a copy thereof to such person and tendering the fees ...*”. In our day to day work in the field, we must adhere to the personal service restrictions and in this day and age, such service becomes fairly impractical and futile most of the time. We must resort to all types of tricks and subterfuge since in most cases, the individual has already been served with the Summons and is thus alerted to any further legal documents. People will not open their doors anymore, go to great lengths to evade service, and it is professionally distasteful to have to resort to chicanery and tricks to effect service, not to mention the time and expense and even danger to our servers.