UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES-GENERAL

Case No. 17-MC-0088-UA(Ex) **Date:** September 13, 2017

Title: IN RE APPLICATION OF HULLEY ENTERPRISES LTD., ET AL.

DOCKET ENTRY

PRESENT:

HON. CHARLES F. EICK, JUDGE

STACEY PIERSON	N/A
DEPUTY CLERK	**COURT REPORTER**

ATTORNEYS PRESENT FOR PLAINTIFFS:	**ATTORNEYS PRESENT FOR DEFENDANTS:**
None	None

PROCEEDINGS: (IN CHAMBERS) (Page 1 of 4)

On June 19, 2017, Petitioners filed an "Application for an Order Pursuant to 28 U.S.C. § 1782 to Conduct Discovery for Use in a Foreign Proceeding, etc." On June 22, 2017, this Court entered an "Order, etc.," authorizing Petitioners to "issue, sign, and serve subpoenas upon" Edward Mouradian ("Mr. Mouradian"). The "Order, etc." required that Petitioners "proceed in accordance with the Federal Rules of Civil Procedure. . . ."

On September 11, 2017, Petitioners filed a "Motion for Leave to Serve Subpoenas on Edward Mouradian by Alternative Means" ("the Motion"). The Motion apparently seeks an advisory ruling that attempted service of subpoenas on Mr. Mouradian by "alternative means," including but not limited to "certified mail," "overnight courier" or "leaving the subpoenas with Mr. Mouradian's son," purportedly would fulfill the service requirements of Rule 45(b)(1) of the Federal Rules of Civil Procedure.

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Rule 45(b)(1) states that "[s]erving a subpoena requires delivering a copy to the named person. . . ." "A majority of courts interpret 'delivering' to require personal service." Prescott v. County of Stanislaus, 2012 WL 10617, at *3 (E.D. Cal. Jan. 3, 2012); see F.T.C. v. Compagnie De Saint-Gobain-Pont-a-Mousson, 636 F.2d 1300, 1312-13 (D.C. App. 1980) ("By contrast [to Rule 4], Federal Rule 45[ ] governing subpoena service does not permit any form of mail service, nor does it allow service of the subpoena merely by delivering to a witness' dwellingplace [sic]. Thus, under the Federal Rules, compulsory process may be served upon an unwilling witness only in person"); Alexander v. California Department of Corrections, 2011 WL 1047647, at *6 (E.D. Cal. March 18, 2011) ("Although it appears that the Ninth Circuit has only rarely had occasion to construe the service requirement of Rule 45, it has applied the majority rule . . ."); The Conanicut Investment Co. v. Coopers & Lybrand, 126 F.R.D. 461, 462 (E.D.N.Y. 1989) ("Nowhere in Rule 45 is the Court given discretion to permit alternate service in troublesome cases. . . . [¶] [T]he Court has no discretion to permit alternative service when a party has difficulty effecting service."); see also 9A Wright & Miller, Federal Practice & Procedure: Civil 3d § 2454 (2008); Wagstaffe, O'Connell & Stevenson, Federal Civil Procedure Before Trial ¶ 11:2272-75

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PROCEEDINGS: (IN CHAMBERS) (Page 3 of 4)

(The Rutter Group 2017); but see In re: Ex Parte Application of Pro-Sys Consultants and Neil Godfrey, 2016 WL 6025155, at *2 (N.D. Cal. Oct. 14, 2016); Green v. Baca, 2005 WL 283361, at *1 n.1 (C.D. Cal. Jan. 31, 2005) (dicta).

Absent legislative amendment or judicial rewriting, Rule 45(b)(1) directs that a copy of the subpoena be delivered "to the named person," rather than "to the named person's doorstep, mailbox or son." The issue presented is one of statutory interpretation rather than due process. Mr. Mouradian already may have actual notice of the subpoenas and/or Mr. Mouradian might well receive actual notice of the subpoenas from the "alternative means" proposed.

In 1989, a judge in the Eastern District of New York revealed he had decided to publish an opinion "merely to point out the problem" of the lack of judicial discretion to permit alternative service of a Rule 45 subpoena "and to suggest that Rule 45 be re-evaluated with a view to permitting service of a subpoena other than by personal delivery." The Conanicut Investment Co. v. Coopers & Lybrand, 126 F.R.D. at 462. Twenty-eight years later, after five separate amendments of Rule 45, the language

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None	None

PROCEEDINGS: (IN CHAMBERS) (Page 4 of 4)

of the rule's service requirement has remained unchanged. Regardless of whether a differently written rule might better "secure the just, speedy, and inexpensive determination" of this proceeding (see Fed. R. Civ. P. 1), the Court declines the Motion's invitation to rewrite the Rule. If a "rule is to be amended to eliminate [ ] possibilities of injustice, it must be done by those who have the authority to amend the rules. . . . It is not for us as enforcers of the rule to amend it under the guise of construing it." Green v. Bock Laundry Machine Co., 490 U.S. 504, 507-08 (1989) ("Our task in deciding this case . . . is not to fashion the rule we deem desirable but to identify the rule that Congress fashioned") (citations and quotations omitted).

Accordingly, the Motion is denied.

cc: All Counsel of Record