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# Small Claims Courts

*Steve Averett\**

## I. INTRODUCTION

On November 1, 2001, the Utah Rules of Small Claims Procedure went into effect. The purpose of this essay is to summarize those rules and other laws related to Utah small claims courts.<sup>1</sup>

A small claims action is a civil action for the recovery of money where the amount claimed (or sought through interpleader<sup>2</sup>) is \$5,000 or less.<sup>3</sup> Not only the amount claimed, but the ultimate judgment also must be \$5,000 or less.<sup>4</sup> The \$5,000 limit includes attorney fees but not court costs or interest.<sup>5</sup> The defendant must reside within the jurisdiction of the court in which the action is to be maintained or the action of indebtedness must have been within the jurisdiction of the court in which the action is to be maintained.<sup>6</sup> Parties don't have to reduce their damage claims by amounts received from insurers so long as the amount awarded by the court does not exceed \$5,000 plus costs and interest.<sup>7</sup>

Although the jurisdiction of the small claims court is limited to claims for money only, an action does not exceed the jurisdiction of the small claims court merely because it is an automobile accident, personal injury action, or involving expert testimony.<sup>8</sup> General damages may be sought in small claims court, not just liquidated damages.<sup>9</sup> The court is also not divested of jurisdiction when fraud or misrepresentation is the alleged basis of recovery.<sup>10</sup>

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1. Helpful websites for Utah small claims court information are: <http://courtlink.utcourts.gov/howto/smclaims.htm>; <http://courtlink.utcourts.gov/rules/> and <http://courtlink.utcourts.gov/forms/>.

2. *See infra* at IV.

3. *See* UTAH CODE ANN. § 78-6-1(1) (Supp. 2001).

4. *See* UTAH CODE ANN. § 78-6-1(2) (Supp. 2001).

5. *See* UTAH CODE ANN. § 78-6-1(1)(a) (Supp. 2001).

6. *See id.*

7. *See Kawamoto v. Fratto*, 994 P.2d 187, 192 (Utah 2000).

8. *See id.* at 191.

9. *See id.* at 190-91.

10. *See Kapetanov v. Small Claims Court*, 659 P.2d 1049, 1051 (Utah 1983).

In small claims actions individuals or corporations are permitted to file actions in person or through authorized employees with or without counsel.<sup>11</sup> No claim, however, is to be filed or prosecuted in small claims court by an assignee of the claim.<sup>12</sup>

## II. JUDGES PRO TEM

Small claims actions filed in a court of record may be assigned to a judge pro tem if one has been appointed.<sup>13</sup> If no judge pro tem has been appointed, the case may be transferred to a justice court with jurisdiction under Utah Code Annotated § 78-5-104 (Supp. 2001).<sup>14</sup> If there is no judge pro tem nor justice court, the case is to be heard by a district court judge.<sup>15</sup>

The district court or justice court is permitted to ask the Supreme Court to appoint judges pro tempore (pro tem) to hear and decide small claims.<sup>16</sup> A pro tem judge must be a member of the Utah State Bar in good standing,<sup>17</sup> must be able to deal with the types of cases to be assigned,<sup>18</sup> and must consent to the appointment.<sup>19</sup>

Attorneys interested in serving as pro tem judges may obtain an application from a court executive and submit it, with a resume, to the presiding judge.<sup>20</sup> Applications are to be reviewed by the Administrative Office, which conducts a check of Utah records to determine whether the applicant has been a defendant in a bar disciplinary proceeding, a defendant in a misdemeanor or felony complaint, a party in a civil case, or arrested.<sup>21</sup> Judges pro tem are appointed by the Supreme Court through the Chief Justice.<sup>22</sup> Pro tem judges must take and subscribe to an oath of office upon the first appointment in that court.<sup>23</sup> The appointment may be withdrawn by the Supreme Court with or without cause by providing notice of the order of withdrawal to the appointee.<sup>24</sup>

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11. See UTAH CODE ANN. § 78-6-1(5) (Supp. 2001).

12. See UTAH CODE ANN. § 78-6-6 (1996).

13. See UTAH CODE JUD. ADMIN. 4-801(1).

14. See *id.*

15. See *id.* at 4-801(3).

16. See UTAH CODE ANN. § 78-6-1.5 (1996).

17. See UTAH CODE ANN. § 78-6-1.5 (1996); UTAH CODE JUD. ADMIN. 11-202.

18. See UTAH CODE JUD. ADMIN. 11-202.

19. See UTAH CODE ANN. § 78-6-1.5 (1996).

20. See UTAH CODE JUD. ADMIN. 11-202.

21. See *id.* at 11-202(2)(D).

22. See *id.* at 11-202(3).

23. See *id.* at 11-202(4)(B).

24. See *id.* at 11-202(4)(A).

After being duly sworn, a pro tem judge has the same immunities and powers “with respect to matters within the jurisdiction of the small claims court” as a regular judge.<sup>25</sup> Although a pro tem judge is to serve voluntarily and without compensation at the request of the court,<sup>26</sup> they may receive reimbursement for necessary travel expenses actually incurred in the performance of their duties.<sup>27</sup>

Pro tem judges are to serve for a term of up to two years.<sup>28</sup> However, the term is renewable.<sup>29</sup>

### III. FORMS AND FILING FEES

Necessary forms to file a claim are available from the small claims court or at the end of the Utah Rules of Small Claims Procedure. The filing fee for filing a small claims affidavit seeking an amount of \$2,000 or less is \$37.<sup>30</sup> The filing fee for filing a small claims affidavit seeking an amount of more than \$2,000 is \$60.<sup>31</sup>

The record of a small claims proceeding must follow the rules of the Judicial Council.<sup>32</sup>

The filing fee for a small claims appeal is currently \$70. This fee may be waived by filing an affidavit of impecuniosity.<sup>33</sup> In addition, there is a \$10 filing fee in the justice court for filing a notice of appeal for trial de novo in a court of record.<sup>34</sup>

Filing fees and costs are to be awarded to the prevailing party unless the judge orders otherwise.<sup>35</sup>

### IV. PROCEDURES

Small claims matters are to be managed according to simplified rules of procedure and evidence of the Utah Supreme Court.<sup>36</sup> In the past, there were only written instructions on the back of the small claims forms, but these “are not in fact the actual simplified rules of evidence and procedure contemplated by the statute,”<sup>37</sup> and the language on the

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25. UTAH CODE ANN. § 78-6-1.5 (1996). *See also* UTAH CODE JUD. ADMIN. 11-202(4)(C).

26. *See* UTAH CODE ANN. § 78-6-1.5 (1996); UTAH CODE JUD. ADMIN. 11-202(6)(B).

27. *See* UTAH CODE JUD. 11-202(6)(B).

28. *See id.* at 11-202(3)(B).

29. *See id.* at 11-202(5).

30. *See* UTAH CODE ANN. §§ 78-6-14(1), 78-7-35(1)(c) (Supp. 2001).

31. *See id.* at §§ 76-6-14(1), 78-7-35(1)(c) (Supp. 2001).

32. *See id.* at § 78-6-8(1) (Supp. 2001).

33. *See* UTAH CODE JUD. ADMIN. 4-803(2)(D).

34. *See* UTAH CODE ANN. § 78-6-14(4) (Supp. 2001).

35. *See* UTAH R. SMALL CLAIMS P. 7(f).

36. *See* UTAH CODE ANN. § 78-6-1(7) (Supp. 2001).

37. Kawamoto, 994 P.2d at 190.

back of the forms does not have the status of court rules. The language on the back of the affidavit contains directions about evidentiary procedure that are binding on the parties, but it does not have the status of rules promulgated by the Utah Supreme Court.<sup>38</sup> It is merely a set of instructions and suggestions to the parties rather than formal procedural and evidentiary rules that are binding on courts.<sup>39</sup>

The simplified rules, as well as forms, are now found in the Utah Rules of Small Claims Procedure, which became effective on November 1, 2001.<sup>40</sup> Prior to that time, the Utah Supreme Court had not authorized any simplified rules of procedure and evidence,<sup>41</sup> so Utah's general rules of civil procedure and evidence applied. The simplified rules provide, among other things, that a case begins with the filing of a Small Claims Affidavit and payment or waiver of the filing fee.<sup>42</sup>

The plaintiff must serve the Affidavit on the defendant through the sheriff's department or constable or "by a method of mail or commercial courier service that requires the defendant to sign a document indicating receipt and provides for return of that document to the court."<sup>43</sup> Service by mail or commercial courier service is complete on the date the defendant signs the receipt.<sup>44</sup> The affidavit must be served at least thirty calendar days before trial.<sup>45</sup> Proof of service must be filed with the court within ten calendar days.<sup>46</sup>

The defendant may file a counter affidavit, but if the defendant alleges that the plaintiff owes more than the monetary limit for small claims cases, then the case must be transferred to district court and the defendant must pay both parties' additional filing fees.<sup>47</sup> Counter claims are permitted if they arise out of the same transaction or occurrence that is the subject matter of the plaintiff's claim.<sup>48</sup> The counter claim may not be raised for the first time in the trial de novo of the small claims action.<sup>49</sup>

No answer to the plaintiff's official pleading is required.<sup>50</sup> No formal discovery is to be conducted but the parties are urged to exchange infor-

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38. *See id.*

39. *See id.*

40. *See* UTAH R. SMALL CLAIMS P. 1.

41. *See* Kawamoto, at 190 n.3 (Utah 2000).

42. *See* UTAH R. SMALL CLAIMS P. 2.

43. *Id.* at P. 3(a).

44. *See id.* at P. 3(b).

45. *See id.*

46. *See id.* at 3(c).

47. *See id.* at P. 4.

48. *See* UTAH CODE ANN. § 78-6-1(3)(Supp. 2001).

49. *See id.* at § 78-6-1(3).

50. *See* UTAH R. SMALL CLAIMS P. 5.

mation before trial.<sup>51</sup> Written motions and responses may be filed before trial and motions may be made orally or in writing at the beginning of the trial.<sup>52</sup> No motions will be heard before trial,<sup>53</sup> and each party, using the appropriate form, may be granted one continuance if the request is received at least five calendar days before trial.<sup>54</sup>

The parties must bring to the trial all of the documents related to the controversy.<sup>55</sup> They may have witnesses testify at trial and may use a subpoena if served at least five calendar days before trial.<sup>56</sup> The judge will conduct the trial and question the witnesses,<sup>57</sup> and the judge may “receive the type of evidence commonly relied upon by a reasonable prudent person in the conduct of their business affairs,” including hearsay that is “probative, trustworthy and credible.”<sup>58</sup> After the trial, the judge is to decide the case and direct entry of judgment.<sup>59</sup> No written findings are required,<sup>60</sup> and each party is to be given a copy of the Small Claims Judgment with the Notice of Entry of Judgment.<sup>61</sup> If all parties are present, this is done by the court; otherwise it is done by the prevailing party.<sup>62</sup>

Except in interpleader cases (where several people claim the same disputed item from a plaintiff or defendant), the case will be dismissed with prejudice if the plaintiff fails to appear at the time set for trial unless otherwise ordered by the judge.<sup>63</sup> Likewise, a counter affidavit will be dismissed with prejudice if the defendant fails to appear at the time set for trial unless otherwise ordered by the judge.<sup>64</sup>

If the defendant fails to appear at the time set for trial, then the court may grant the plaintiff a judgment not to exceed the amount requested in the affidavit.<sup>65</sup> Likewise, if the defendant has filed a counter affidavit and the plaintiff fails to appear at the time set for trial, the court may grant the defendant a judgment not to exceed the amount requested in the

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51. *See id.* at P. 6(a).

52. *See id.* at P. 6.

53. *See id.* at P. 6(b).

54. *See id.* at P. 6(c).

55. *See* UTAH R. SMALL CLAIMS P. 7(a).

56. *See id.* at P. 7(b).

57. *See id.* at P. 7(c).

58. *Id.* at P. 7(d).

59. *See id.* at P. 7(e).

60. *See id.*

61. *See* UTAH R. SMALL CLAIMS P. 7(e), 8(c).

62. *See id.*

63. *See id.* at P. 8(a).

64. *See id.* at P. 8(b).

65. *See id.* at P. 9(a).

counter affidavit, unless otherwise ordered by the judge.<sup>66</sup> In an interpleader action, a default judgment may be entered against a non-appearing defendant.<sup>67</sup> The party granted a default judgment is to promptly send a copy of the completed notice of default judgment to the other party and file the original with the court.<sup>68</sup>

Within thirty calendar days after mailing the notice of default judgment or the date of dismissal, a party, using the appropriate form, may request that the default judgment or dismissal be set aside.<sup>69</sup> If the request is timely and good cause is shown, the court may grant the request and reschedule the trial.<sup>70</sup> The court may require the requesting party to pay the costs incurred by the other party in obtaining the default judgment or dismissal.<sup>71</sup> The thirty day period may be extended by the court for good cause if requested in a reasonable time.<sup>72</sup>

The use of proffers (where the parties summarize the testimonies of the witnesses that the witnesses would give if called upon to testify) in small claims proceedings should not be allowed over a party's objections.<sup>73</sup> "[W]here the credibility of a witness is critical to the outcome of the case, or where the disputed evidence touches on expert assessments and opinions, the court may not limit a party's evidence to proffers from counsel."<sup>74</sup>

Speedy justice is the sole objective of the hearing in a small claims action.<sup>75</sup> Consequently, attachment, garnishment, and execution are allowed after judgment has been entered.<sup>76</sup> Judgments are to be collected under the Utah Rules of Civil Procedure.<sup>77</sup> The prevailing party in a

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66. See UTAH R. SMALL CLAIMS P. 9(b).

67. See *id.* at P. 9(d).

68. See *id.* at P. 9(c).

69. See *id.* at P. 10(a).

70. See *id.* at P. 10(a).

71. See *id.* at P. 10(a).

72. See UTAH R. SMALL CLAIMS P. 10(b) (Supp. 2001). If a small claims action is dismissed because of a party's failure to appear, that party may request a hearing to show cause to attempt reinstatement of the cause of action. UTAH CODE OF JUDICIAL ADMIN. 4-802(1). The request is to be in the form of a written motion accompanied by an affidavit stating the reasons that the party failed to appear and must be filed within the time prescribed by the Rules of Civil Procedure. *Id.* at 4-802(2). A copy of the motion and affidavit must be sent to the opposing party and a certificate of mailing must be filed with the court. *Id.* at 4-802(3). The clerk of the court is to schedule a hearing and notify the parties of the hearing date. *Id.* at 4-802(4).

73. See *Kawamoto v. Fratto*, 994 P.2d 187, 189 (Utah 2000).

74. *Id.*

75. See UTAH CODE ANN. § 78-6-8(1).

76. See *id.* at § 78-6-8(2).

77. See UTAH R. SMALL CLAIMS P. 11(a).

small claims action is entitled to be reimbursed for their court costs and the costs of execution of the judgment.<sup>78</sup>

Upon full payment of the judgment, including post-judgment costs and interest, the prevailing party is to promptly file a satisfaction of judgment form with the court.<sup>79</sup> However, the court may enter a satisfaction of judgment at the request of either party.<sup>80</sup>

Either party is permitted to appeal a small claims judgment to the district court of the county.<sup>81</sup> In order to appeal a small claims judgment, the party must file a notice of appeal in the original trial court.<sup>82</sup> The notice of appeal is to: (1) designate the district court location where the trial de novo will be held, (2) specify the parties, (3) identify the party obtaining the trial de novo, and (4) designate the judgment and court from which the appeal is taken.<sup>83</sup> The appellant is to file a proof of service or, at least, a mailing certificate stating that a copy of the notice of appeal was mailed to the other party's attorney, if represented, or, if unrepresented, to the other party.<sup>84</sup>

The notice of appeal must be filed within ten days of the notice of entry of judgment.<sup>85</sup> The short time period for filing a notice of appeal has been upheld as constitutional.<sup>86</sup> Since notice of entry of judgment triggers the commencement of the appeal time, "the defendant must receive actual notice that the small claims judgment has been entered before the 10 day appeal period begins."<sup>87</sup>

The appeal is a trial de novo and is to be tried according to the procedures of small claims actions, except that a record is to be maintained.<sup>88</sup> The trial de novo of a justice court case is to be heard in the district court nearest to and in the same county as the justice court that heard the case.<sup>89</sup> The trial de novo of a small claims department case is to be held at the same district court location.<sup>90</sup>

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78. See UTAH CODE ANN. § 78-6-15.

79. See UTAH R. SMALL CLAIMS P. 11(b).

80. See *id.* at P. 11(c).

81. See UTAH CODE ANN. § 78-6-10(1); UTAH CODE JUD. ADMIN. 4-803.

82. See UTAH CODE ANN. § 78-6-10(1); UTAH R. SMALL CLAIMS P. 12(c).

83. See UTAH CODE JUD. ADMIN. 4-803(2)(B).

84. See *id.* at 4-803(2)(C).

85. See UTAH CODE ANN. § 78-6-10(1); UTAH CODE JUD. ADMIN. 4-803(2)(A) (2001); UTAH R. SMALL CLAIMS P. 12(a).

86. See *Larson Ford Sales, Inc. v. Silver*, 551 P.2d 233 (Utah 1976), *appeal dismissed*, 429 U.S. 909 (1976) (the time period, then, was only five days).

87. *Butko Chevron/Joe Butkovich v. Grant*, 831 P.2d 1038, 1039 (Utah Ct App. 1992).

88. See UTAH CODE ANN. § 78-6-10(2) (Supp. 2001).

89. See UTAH CODE JUD. ADMIN. 4-803(1)(B).

90. See *id.*

The decision of the trial *de novo* may not be appealed unless the court rules on the constitutionality of a statute or ordinance.<sup>91</sup>

All matters are to be decided within two months after the matter was submitted for final determination.<sup>92</sup> There is an exception, however, for situations in which circumstances causing the delay are beyond the control of the judge.<sup>93</sup>

## V. RECOMMENDATIONS

The following are some ideas that might help practitioners and litigants in a small claims court setting.

1. You should try mediation before bringing a case to the small claims court. You need to recognize, from the start, that there are probably two sides to your case. You will remember the facts one way, and the opposing party may remember them another way. The judge will have to resolve any differences in the facts. The resolution could benefit your cause, or act to your detriment. This means there is a risk that you will not prevail in court. Mediation can help you reach a compromise that would give you something, even if it is not everything you want. It may also save court filing fees, service of process fees, and attorney fees. Most importantly, it will be a solution that you and the opposing party have made together, and, consequently, you will both have an interest in seeing it carried out.

2. Be familiar with and follow the simplified rules of procedure and evidence. These rules will let you know how to proceed with your case. They will let you know how to file, how to serve notice on the other side, what deadlines apply, how to obtain a continuance, how to present evidence, how to deal with a default judgment or dismissal, how to appeal a decision, and how to enforce a judgment.

3. Be punctual. Small claims judges usually call each case at the beginning of court to make sure all the parties are there. They will dismiss a case, usually with prejudice, if the plaintiff is not there. They will rule in favor of the plaintiff, by default, if the defendant is not there.

4. Bring to court the witnesses and documents that will prove your case and make sure they accurately tell the facts of the case. You need these to show that you should prevail. Remember that the plaintiff has the burden of proving the plaintiff's case. Unless it is a default case, the judge must rule in favor of the defendant unless the plaintiff proves that it is more likely than not that the plaintiff should prevail.

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91. See UTAH CODE ANN. § 78-6-10(2).

92. See *id.* at § 78-7-25(1).

93. See *id.*

5. Share relevant documents with the opposing party before trial. This allows all parties to be fully prepared for court.

6. Be courteous in court. Wait until it is your turn to speak. Be polite to the other party, and avoid making gestures, sounds, and comments, while the other party is presenting his or her case. This can interrupt the other party's ability to present his or her case. It may also distract or annoy the judge. Each side should have an opportunity to present his or her evidence without interruption.

7. Present your case as concisely as possible. The court may have many trials to hear that day, so avoid sharing information that is not relevant to your case. Limit the evidence you present to things that prove (or disprove) the alleged injury or agreement and prove what is owed.

8. Accept the judgment gracefully. Avoid becoming angry when the judgment is announced. Both sides have presented their evidence, and two points of view were offered. The judge has done his or her best to analyze the evidence and the law, and has made an effort to reach the right decision. If you disagree with the judgment you have the right to appeal. If you are dissatisfied with the judgment and choose not to appeal, pay what you owe quickly and put the matter behind you.