Agenda

Advisory Committee on Rules of Civil Procedure

March 26, 2003
4:00 to 6:00 p.m.

Administrative Office of the Courts
Scott M. Matheson Courthouse
450 South State Street
Council Room, Suite N31

Approval of minutes	Fran Wikstrom
Recodification of Code of Judicial Administration into Rules of Civil Procedure	Cullen Battle
Attorney Fees	Mark Olson
Small Claims Rules	Tim Shea
Notice to defendant of signature requirement	Tim Shea

Meeting Schedule

April 23
May 28
September 24
October 22
November 19 (3rd Wednesday)

MINUTES

UTAH SUPREME COURT ADVISORY COMMITTEE ON THE RULES OF CIVIL PROCEDURE

Wednesday, February 26, 2003
Administrative Office of the Courts

Francis M. Wikstrom, Presiding

PRESENT: Francis M. Wikstrom, Honorable Anthony W. Schofield, Honorable Anthony B. Quinn, David W. Scofield, R. Scott Waterfall, Terrie T. McIntosh, Thomas R. Lee, Glenn C. Hanni, Paula Carr, W. Cullen Battle, Leslie W. Slaugh, Thomas R. Karrenberg, Todd M. Shaughnessy, Virginia S. Smith, James T. Branch

STAFF: Tim Shea, Judith Wolferts

EXCUSED: Janet H. Smith, Francis J. Carney, Debora Threedy, Honorable Lyle R. Anderson

GUESTS: Matty Branch

I. WELCOME AND APPROVAL OF MINUTES

Tim Shea called the meeting to order at 4:00 p.m. Committee Chairman Francis M. Wikstrom had contacted Mr. Shea earlier to report that an unexpected personal matter had arisen and that he would be delayed. Prior to Mr. Wikstrom's arrival, Glenn Hanni suggested that additional commentary regarding oral argument as a fundamental right be included on page 4 of the January 22, 2003 Minutes. It was agreed to defer discussion on this until Mr. Wikstrom arrived. On Mr. Wikstrom's arrival, the minutes of the January 22, 2003 meeting were reviewed, and Mr. Hanni's suggestion was again raised. After discussion, the Minutes were approved as originally submitted.

II. RECODIFICATION OF CODE OF JUDICIAL ADMINISTRATION INTO RULES OF CIVIL PROCEDURE

W. Cullen Battle led the Committee in a discussion of the Rules as drafted thus far.

1. Rule 75--Attorneys' Fees

Mr. Battle had three comments regarding the present draft of Rule 75. He first noted that the first sentence of line 2 of Rule 75 (Agenda, p. 7), sounds like substantive law. Thomas Lee pointed out that the Committee had specifically used this particular language so as **not** to be substantive. After discussion, it was agreed that this language would be left as is.

Mr. Battle next suggested that line 14 of Rule 75 (Agenda, p. 7) should specifically state that the schedule of fees is for "debt collection" cases. Judge Anthony W. Schofield and Thomas Karrenberg discussed what a "debt collection" case is, with Mr. Karrenberg commenting that any contract case is a debt collection case. Mr. Battle stated that he believes that the schedule included in Rule 75 was intended to be automatic in a "debt collection" case, but that the present language suggests that the schedule could apply in any case. Judge Schofield then commented that he believes the schedule could apply in any situation where there is a "debt" to collect. After discussion, it was agreed to leave this language as it is.

Mr. Battle's third suggestion was that the language in line 16 of Rule 75 (Agenda, p. 7) be changed to strike "authorizing," and to insert "authorizing the award" at the end of the sentence. After discussion, it was agreed to make this change.

Leslie Slaugh pointed out a punctuation error, which was corrected, and Todd Shaughnessy suggested that "position" be substituted for "profession" in line 9. The Committee agreed. After further consideration of the word "position," Mr. Lee suggested that a parenthetical, *e.g.*, (lawyer, paralegal), be including after "position" to clarify what is intended.

Mr. Battle then moved to adopt the Rule for publication as amended, including adding "In such cases" as a preface to the first full sentence of line 16. Mr. Slaugh seconded the Motion, which was approved unanimously.

2. Rule 76–Withdrawal of Counsel

Mr. Battle addressed Rule 76, and directed attention to the first sentence (Agenda, p. 8, ll. 10-13). Terrie McIntosh commented that she thinks this sentence is too long, and suggested that it be divided into two sentences. After discussion, a majority of the Committee agreed with Ms. McIntosh's suggestion.

Mr. Battle next suggested that "of record" be deleted after "counsel" in line 12 (Agenda, p. 8), and that "of the case" be substituted. He also suggested adding "existing" before "hearing schedule and deadlines" in line 17 (Agenda, p. 9). Mr. Slaugh directed the Committee's attention to line 6 (Agenda, p. 9), and stated that "opposing counsel" should be changed to "opposing party." The Committee agreed to these changes.

Mr. Battle then moved that Rule 76 be adopted for publication as amended. Mr. Karrenberg seconded the Motion, which was approved unanimously.

3. Rule 77–Property Bonds

Mr. Slaugh referred the Committee to line 20 of Rule 77 (Agenda, p. 10), and asked what is meant by "exoneration of the bond." David Scofield commented that this was included in order to place the burden of obtaining a release on the person requesting it, *i.e.*, on the property

owner instead of on the court. The Committee then discussed clarifying line 20, and it was agreed that "shall" would be retained, and that "for approval" would be added to the end of the sentence, after "to the court."

Mr. Battle then moved that Rule 77 be adopted for publication as amended. The Motion was seconded and approved unanimously.

4. Rules 101–107 (Divorce Rules)

Mr. Slaugh pointed to lines 9-11 of Rule 102 (Agenda, p. 12), and stated that he believes this language creates a presumption that attorneys' fees will be granted. Several Committee members pointed out that this language is pre-existing, and that the Committee has not changed or added to it. Judge Schofield also commented that no judge that he knows believes that this language creates a presumption that attorneys' fees will be granted, and Judge Anthony Quinn pointed out that the word "may" is used. Mr. Slaugh withdrew his comment.

Mr. Lee stated that he continues to be concerned about what he believes to be the substantive nature of Rule 102, *i.e.*, that it creates a remedy. Mr. Wikstrom commented that this rule applies to temporary fees which can later be adjusted, and that the rule makes it easier for judges since it sets standards. Mr. Scofield stated that this rule applies only to dividing the marital estate and nothing more, and Judge Schofield commented that this provision is used by judges every day and if it is not placed here, where can it be placed? Mr. Lee withdrew his objection.

Mr. Battle then asked for comments concerning Rules 103 through 107.

Mr. Slaugh asked whether line 27 of Rule 104 (Agenda, p. 14), conflicts with Rule 103. After discussion, it was agreed that there is no conflict. With regard to Rule 104, Ms. McIntosh suggested striking the last sentence of lines 28-29 (Agenda, p. 15), and the Committee agreed with this suggestion. Mr. Slaugh suggested changing "the" at the end of line 18 in Rule 107 to "an" (Agenda, p. 19), and it was agreed to do this. Following on this, Mr. Lee suggested checking to make sure there is consistency of language in the "Divorce" rules.

Mr. Battle moved that Rules 101 through 107 be adopted for publication as amended. The motion was seconded, and approved unanimously.

5. "Divorce" and "Adoption" Rules

After discussing Rules 101 through 107, Mr. Wikstrom asked Mr. Shea to scan through the divorce and adoption rules as soon as possible, so that the Committee can send drafts to divorce lawyers who work with these rules on a consistent basis. Mr. Wikstrom would like these lawyers to have the opportunity to make suggestions prior to the Committee's March 26, 2003,

meeting. Virginia Smith stated that these rules should also be provided to the Commissioners for their review.

6. Rules 108-109 (Adoption Rules)

Mr. Battle next asked for comments about Rules 108 and 109, which deal with adoption.

a. Rule 108–Opening Sealed Adoption Files

Mr. Slaugh commented that lines 18-23 of Rule 108 (Agenda, p. 20) appear to be more substantive than procedural, and questioned what he considers to be advising petitioners about the procedures for obtaining medical information. Paula Carr stated that this language is very helpful to pro se parties, since it informs them where to obtain the information. Judge Schofield agreed that this information is very helpful to parties.

The Committee then discussed Rule 108's comments regarding "adoption agency." Mr. Slaugh questioned why line 15 of this rule (Agenda, p. 21), uses the language "records of the adoption agency," since he does not believe the court has any authority over adoption agencies. Judge Schofield agreed, and noted that the rule deals with court records and not those of the adoption agency.

Judge Quinn suggested that the term "adoption file" be substituted for "adoption records" in these rules, and the Committee agreed to this change.

Ms. Smith and Mr. Karrenberg questioned the use of the word "sensitive" in Rule 108, and Mr. Lee suggested using other phrasing. After discussion, it was agreed that Mr. Shea and Mr. Lee will edit Rule 108 to make the language less emotional and more consistent with that of other Rules of Civil Procedure. Rule 108 will then be distributed to probate attorneys for comments.

b. Rule 109–Adoptions

Judge Schofield stated that the adoption petitions that he sees never contain all of the items listed as requirements in Rule 109 (Agenda, pp. 22-23). It was also noted that there is a specific statute dealing with this, and the Committee discussed whether it is necessary to have a rule when there already is a statute. In the context of this discussion, Mr. Wikstrom referred to Utah Code Ann § 78-30-14, which suggests that the requirements listed in Rule 109 are left to the court's discretion. Judge Quinn further commented that at one time the statute required that there always be an investigation unless it was waived, whereas now there is an investigation only if the court orders it. Both Judge Schofield and Judge Quinn suggested eliminating the rule as superfluous. It was finally agreed that Judge Schofield would work with Mr. Shea to examine the rule more closely before a final decision is made.

7. Rules 90, 91, 92

Mr. Battle asked for comments on Rules 90, 91 and 92. Mr. Slaugh stated that he believes the three separate rules can be combined into one. Mr. Shea responded that he thinks Rules 90 and 91 can be combined, but that he is not sure that this is feasible with Rule 92.

Judge Schofield asked whether, as a practical matter, attorneys are even complying with the requirements of these rules. Mr. Shea stated that he and Mr. Wikstrom have met with probate attorneys and have been told that those attorneys do use these rules and the associated forms.

Mr. Wikstrom then expressed concern about adopting Rules 90-92 and sending them to the Supreme Court, when the Committee does not appear to be comfortable doing so. Responding to Ms. Smith's statement that it is her understanding that the recodification must be completed by the Committee's March meeting, Mr. Shea stated that these particular rules could be left in the CJA for the time being. Mr. Battle asked Mr. Shea whether these rules will be lost if the Committee does not going forward with recodifying them. Mr. Shea commented that the Committee could recommend that they be left in the CJA for the present time. Mr. Wikstrom then suggested notifying probate practitioners that the Committee will not go forward on these rules unless there are comments by the practitioners. R. Scott Waterfall agreed with Mr. Wikstrom's suggestion, and Mr. Waterfall and Mr. Slaugh commented that these rules should also be sent to trust officers for their comments. Mr. Slaugh also suggested that probate clerks at the Third District Court be asked for input and comments on these rules.

8. Rule 7–Pleadings Allowed; Motions, Memoranda, Orders, Objection to Commissioner's Order

Mr. Battle asked for comments on Rule 7 (Agenda, pp. 39-42), which has been revised by Mr. Lee to conform to the Committee's previous comments. Suggestions for technical language changes were made by Mr. Wikstrom, Mr. Lee, Mr. Battle, Mr. Slaugh, Mr. Karrenberg, and Judge Quinn.

The issue of required hearings was again raised. Mr. Hanni stated that he has no objection to the present language of the rule as long as it preserves the right to oral argument on dispositive motions. Mr. Lee stated that the rule as written does not require a hearing on motions for partial summary judgment, and suggested that this be added. Mr. Slaugh then suggested including the language "any motion under Rule 56," which would resolve Mr. Hanni's and Mr. Lee's concerns. Judge Quinn suggested adding "that would dispose of any claim or defense" to Mr. Slaugh's proposed language. It was agreed that Mr. Slaugh's and Judge Quinn's suggested language will be used.

Mr. Shaughnessy raised the issue of whether the parties should be required to raise a request for oral argument in their first memorandum. After extensive discussion, it was agreed

that Rule 7 should state that any party may make a request by placing it in the caption of any memorandum or Request to Submit for Judgment. Mr. Shaughnessy then suggested that subpart (c)(3)(D) be omitted, and that the information regarding a request for hearing be included in subpart (e). It was agreed that this was appropriate.

Mr. Battle then moved that Rule 7 be adopted for publication as amended. Mr. Lee seconded the Motion, and it was approved unanimously.

9. Rules 9, 42, 51, 54

Mr. Battle requested comments on Rules 9, 42, 51, and 54.

Mr. Slaugh raised the issue of the language of subpart (k) of Rule 9 (Agenda, p. 44). After discussion by the Committee, it was agreed that the language be changed to read "A complaint for failure to pay a judgment shall describe the judgment in detail, or a copy of the judgment shall be attached." Mr. Shaughnessy suggested that subpart (k) be preceded by a caption stating "Renewal of Judgment."

Referring to lines 27-28 of Rule 42 (Agenda, pp. 44-45), Mr. Battle suggested that the two sentences be combined.

Mr. Battle then moved that Rules 9, 42, 51, and 54 be adopted for publication as amended. The Motion was seconded and approved unanimously.

10. Thanks

Mr. Wikstom thanked Mr. Battle and Mr. Shea for their good work on the revisions to the rules discussed at this meeting.

III. NOTICE TO DEFENDANT OF SIGNATURE REQUIREMENT

The Committee has received a memorandum regarding default judgments being entered against defendants who have filed an unsigned answer. After a brief discussion, Mr. Shea was asked to discuss this issue with Chief Justice Christine Durham.

IV. DISQUALIFICATION OF TRIAL JUDGE AFTER REMAND

Mr. Wikstrom has received a letter from Douglas G Mortensen, with attachments, stating Mr. Mortensen's position that a trial judge should be disqualified from hearing a case that has been remanded after appeal. The letter states that a survey of the Utah Trial Lawyers Association favors a rule that would so disqualify a judge, and suggests that the Committee should be listening to lawyers and litigants on this issue. Mr. Wikstrom commented that the issue raised by Mr. Mortensen was considered a couple of years ago. The Litigation Committee

of the Bar circulated the proposal to lawyers and received no response, and Mr. Wikstrom later testified on this issue to a legislative committee.

After discussion, Mr. Wikstrom suggested that Mr. Mortensen be invited to the March 26, 2003 Committee Meeting to present his position on this issue. It was agreed that Mr. Mortensen will be invited to do this.

V. RULE 68; HJR 3

The issue of Rule 68 and the most recent legislative proposal concerning that rule were discussed. Mr. Wikstrom asked whether the Committee would like to assign a couple of Committee members to speak to legislators about Rule 68. When several members expressed concern about involving the legislature in this matter, Mr. Wikstrom commented that the problem is that the Committee is concerned that this rule is substantive. In response to this, Mr. Shaughnessy stated that the Committee is not creating a right, it is simply creating wording on it. There was additional discussion about the potential risks of the rule, and the Committee concluded that further input is needed.

VI. ADJOURNMENT

The meeting adjourned at 6:00 p.m. The next meeting of the Committee will be held at 4:00 p.m. on Wednesday, March 26, 2003, at the Administrative Office of the Courts.

Administrative Office of the Courts

Chief Justice Christine M. Durham
Utah Supreme Court
Chair, Utah Judicial Council

Daniel J. Becker
State Court Administrator
Myron K. March
Deputy Court Administrator

MEMORANDUM

To: Civil Procedures Committee
From: Tim Shea
Date: March 19, 2003
Re: CJA Rules

I think we're almost there. The Council has repealed the CJA rules as per our work. (Officially, the repeal will be published for comment and the effective date of that action will coincide with the effective date of the new rules, November 1.) I've attached in "final" format the drafts we've been working on. I've changed some of the numbering since one of the proposed rule numbers is in use. There are just two more rules to finish:

1. URCP 100, replacing 4-901. The committee originally decided to leave this rule in the CJA, but the criminal committee and the juvenile committee have included it in their work. For consistency, I recommend we do the same.
2. URCP 107, replacing 6-406. Tom Lee and I have developed this draft for your consideration.

A few collection lawyers have contacted me and Fran with the complaint that URCP 74, Attorney fees, would eliminate contingency fees and that the schedule of fees is insufficient. They will present on that matter.

I've also included a table summarizing the treatment of each of the CJA rules under consideration, although I've not been able to include the latest work of the Committee on Rules of Criminal Procedure. We'll publish this table with the rule changes to help explain what's happening.

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Recodification of Code of Judicial Administration into Rules of Procedure

Judicial Council CJA Rule to be repealed	Recommended Placement in Supreme Court Rules of Procedure	Notes
4-102. Law and motion calendar.	Not included in URCP. New URCrP 107	Adequately governed by various provisions in URCP.
4-105. Continuances in special circumstances.	Not included in URCP. New URCrP 108. URJP 54.	Civil provisions adequately governed by URCP 40 and judicial discretion.
4-107. Consolidation of cases.	URCP 42 New URCrP 110.	
4-203. Presentence investigation reports.	New URCrP 114. URAP 12	Includes 4-203 and 4-607. Sealed PSI report made part of the record on appeal is requested.
4-207. Expungement and sealing of records.	New URCrP 111.	
4-501. Motions.	URCP 7. New URCrP 102 and 115. URJP 19.	Civil. Redrafted, borrowing some features of the federal district court. Improved organization. More uniform phrasing. Some substantive changes. Also includes 6-401(4), objections to the commissioner's recommendations and (5), judicial review. Rule 6-401 should be accordingly amended, but not repealed. Criminal. Rule reorganized, but not significantly changed.
4-503. Request for jury instructions.	URCP 51.	
4-504. Written orders, judgments and decrees.	URCP 7. URCP 54. New URCrP 116.	New provision to permit party to submit a proposed order with the party's initial memorandum.
4-505. Attorney fee affidavits.	New URCP 75.	Integrates 4-505, 4-505.01, 6-501, and 6-502 into one rule.
4-505.01. Award of attorney fees in civil default judgments with a principal amount of $5000 or less.	New URCP 75.	Schedule of attorney fees made applicable to any case in which the claimant is satisfied with the schedule amount.

Judicial Council CJA Rule to be repealed	Recommended Placement in Supreme Court Rules of Procedure	Notes
4-506. Withdrawal of counsel in civil cases.	New URCP 76.	
4-507. Disposition of funds on trustee's sale.	Not included in URCP.	Identical to §57-1-29.
4-508. Unpublished opinions.	URAP 30.	Rule changed to allow citation of unpublished opinions if all parties and the court are provided with a copy of the decision.
4-509. Property bonds.	New URCP 77.	
4-601. Victims and witnesses.	New URCrP 201.	
4-603. Motions for reduction of offense at sentencing.	New URCrP 112.	
4-604. Withdrawal of counsel in criminal and delinquency cases.	New URCrP 118. URJP 53.	
4-605. Use of unpublished opinions in criminal cases.	URAP 30.	Rule changed to allow citation of unpublished opinions if all parties and the court are provided with a copy of the decision.
4-607. Presentence investigation reports.	New URCrP 114. URAP 12.	Includes 4-203 and 4-607. Sealed PSI report made part of the record on appeal is requested.
4-608. Trials de novo of justice court proceedings in criminal cases.	New URCrP 119.	
4-611. Probable cause determinations for purposes of detention.	New URCrP 105.	
6-612. Property bonds.	New URCrP 106.	
4-703. Outstanding citations and warrants.	New URCrP 117.	
4-802. Motion to reinstate small claims proceedings.	URSmClP 10.	

Judicial Council CJA Rule to be repealed	Recommended Placement in Supreme Court Rules of Procedure	Notes
4-803. Trials de novo in small claims cases.	URSmClP 12.	
4-901. Notice requirements for cases pending in district court and juvenile court.	New URCP 100. New URCrP 104. URJP 14	
4-902. Certification of district court cases to juvenile court.	Not included in URCP.	Rule is moot with passage of SB 128s1
4-905. Domestic pretrial conferences and orders.	New URCP 101.	
4-911. Motion and order for payment of costs and fees.	New URCP 102.	
4-912. Child support worksheets.	New URCP 103.	
4-913. Divorce decree upon affidavit.	New URCP 104.	
6-302. Restitution.	New URCrP 113.	
6-403. Shortening 90-day waiting period in domestic matters.	New URCP 105.	
6-404. Modification of divorce decrees.	New URCP 106.	
6-406. Opening sealed adoption files.	New URCP 107.	This rule is completely rewritten to better coordinate its provisions with those of Utah Code §§78-30-15, -16, -17, and -18.
6-407. Adoptions.	Not included in URCP.	Adequately governed by Utah Code §78-30-14 and judicial discretion.
6-501. Attorney's fees.	New URCP 75.	
6-502. Attorney's fees in conservatorships.	New URCP 75.	

Rule 5. Service and filing of pleadings and other papers.

(a) Service: When required.

(a)(1) Except as otherwise provided in these rules or as otherwise directed by the court, every judgment, every order required by its terms to be served, every pleading subsequent to the original complaint, every paper relating to discovery, every written motion other than one ~~which may be~~ heard ex parte, and every written notice, appearance, demand, offer of judgment, and similar paper shall be served upon each of the parties.

(a)(2) No service need be made on parties in default for failure to appear except as provided in Rule 55(a)(2)(default proceedings). Pleadings asserting new or additional claims for relief against a party in default shall be served in the manner provided for service of summons in Rule 4.

(a)(3) In an action begun by seizure of property, whether through arrest, attachment, garnishment or similar process, in which no person need be or is named as defendant, any service required to be made prior to the filing of an answer, claim or appearance shall be made upon the person having custody or possession of the property at the time of its seizure.

(b) Service: How made and by whom.

(b)(1) Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy or by mailing a copy to the last known address or, if no address is known, by leaving it with the clerk of the court.

(b)(1)(A) Delivery of a copy within this rule means: Handing it to the attorney or to the party; or leaving it at the person's office with a clerk or person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or, if consented to in writing by the person to be served, delivering a copy by electronic or other means.

(b)(1)(B) Service by mail is complete upon mailing. If the paper served is notice of a hearing and if the hearing is scheduled 5 days or less from the date of service, service shall be by delivery or other method of actual notice. Service by electronic means is complete on

transmission if transmission is completed during normal business hours at the place receiving the service; otherwise, service is complete on the next business day.

(b)(2) Unless otherwise directed by the court:

(b)(2)(A) an order signed by the court and required by its terms to be served or a judgment signed by the court shall be served by the party preparing it;

(b)(2)(B) every other pleading or paper required by this rule to be served shall be served by the party preparing it; and

(b)(2)(C) an order or judgment prepared by the court shall be served by the court.

(c) Service: Numerous defendants. In any action in which there is an unusually large number of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(d) Filing. ~~Except where rules of judicial administration prohibit the filing of discovery requests and responses, all~~ All papers after the complaint required to be served upon a party shall be filed with the court either before or within a reasonable time after service. The papers shall be accompanied by a certificate of service showing the date and manner of service completed by the person effecting service. Rule 26(i) governs the filing of papers related to discovery.

(e) Filing with the court defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may accept the papers, note thereon the filing date and forthwith transmit them to the office of the clerk.

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~~

that is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed, without reference to any additional time provided under subsection (e), is less than 11 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), and 60(b), 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~~ that has been pending before it.

(d) For motions - Affidavits. A written motion, other than one ~~which~~ that 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 end of the prescribed period as calculated under subsection (a). Saturdays, Sundays and legal holidays shall be included in the computation of any 3-day period under this subsection, except that if the last day of the 3-day period is a Saturday, a Sunday, or a legal holiday, the period shall run until the end of the next day ~~which~~ that is not a Saturday, Sunday, or a legal holiday.

Rule 7. Pleadings allowed; ~~form of~~ motions, memoranda, hearings, orders, objection to commissioner's order.

(a) Pleadings. There shall be a complaint and an answer; a reply to a counterclaim ~~denominated as such~~; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under the provisions of Rule 14; and a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.

~~(b) Motions, orders and other papers.~~

~~(1) Motions. An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.~~

~~(2) Orders. An order includes every direction of the court including a minute order made and entered in writing and not included in a judgment. An order for the payment of money may be enforced by execution in the same manner as if it were a judgment. Except as otherwise specifically provided by these rules, any order made without notice to the adverse party may be vacated or modified without notice by the judge who made it, or may be vacated or modified on notice.~~

~~(3) Hearings on motions or orders to show cause. When on the day fixed for the hearing of a motion or an order to show cause, the judge before whom such motion or order is to be heard is unable to hear the parties, the matter shall stand continued until the further order of the court, or it may be transferred by the court or judge to some other judge of the court for such hearing.~~

~~(4) Application of rules to motions, orders, and other papers. The rules applicable to captions, signings, and other matters of form of pleadings apply to all motions, orders, and other papers provided for by these rules.~~

~~(c) Demurrers, pleas, etc., abolished. Demurrers, pleas, and exceptions for insufficiency of a pleading shall not be used.~~

(b) Motions. An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in accordance with this rule. A motion shall be in writing and state succinctly and with particularity the relief sought and the grounds for the relief sought.

(c) Memoranda.

(c)(1) Memoranda required, exceptions, filing times. All motions, except uncontested or ex parte motions, shall be accompanied by a supporting memorandum. Within ten days after service of the motion and supporting memorandum, a party opposing the motion shall file a memorandum in opposition. Within five days after service of the memorandum in opposition, the moving party may file a reply memorandum, which shall be limited to rebuttal of matters raised in the memorandum in opposition. No other memoranda will be considered without leave of court. A party may attach a proposed order to its initial memorandum.

(c)(2) Length. Memoranda shall not exceed the following pages of argument without leave of the court:

(c)(2)(A) initial memorandum supporting or opposing a motion other than a motion for summary judgment: 10 pages;

(c)(2)(B) initial memorandum supporting or opposing a motion for summary judgment: 25 pages;

(C) reply to memorandum opposing a motion other than a motion for summary judgment: 5 pages; and

(c)(2)(D) reply to memorandum opposing a motion for summary judgment: 10 pages.

The court may permit a party to file an over-length memorandum upon ex parte application and a showing of good cause.

(c)(3) Content.

(c)(3)(A) A memorandum supporting a motion for summary judgment shall contain a statement of material facts as to which the moving party contends no genuine issue exists. Each fact shall be separately stated and numbered and supported by citation to relevant materials, such as affidavits or discovery materials. Each fact set forth in the moving party's memorandum is deemed admitted for the purpose of summary judgment unless controverted by the responding party.

(c)(3)(B) A memorandum opposing a motion for summary judgment shall contain a verbatim restatement of each of the moving party's facts that is controverted, and may contain a separate statement of additional facts in dispute. For each of the moving party's facts that is controverted, the opposing party shall provide an explanation of the grounds for any dispute, supported by citation to relevant materials, such as affidavits or discovery materials. For any additional facts

set forth in the opposing memorandum, each fact shall be separately stated and numbered and supported by citation to supporting materials, such as affidavits or discovery materials.

(c)(3)(C) A memorandum with more than 10 pages of argument shall contain a table of contents and a table of authorities with page references.

(c)(3)(D) A party may attach as exhibits to a memorandum relevant portions of documents cited in the memorandum, such as affidavits or discovery materials.

(d) Request to submit for decision. When briefing is complete, either party may file a "Request to Submit for Decision." The request to submit for decision shall state the date on which the motion was served, the date the opposing memorandum, if any, was served, the date the reply memorandum, if any, was served, and whether a hearing has been requested. If no party files a request, the motion will not be submitted for decision.1

(e) Hearings. The court may hold a hearing on any motion. A party may request a hearing in the motion, in a memorandum or in the request to submit for decision. A request for hearing shall be separately identified in the caption of the document in which it is requested. The court shall grant a request for a hearing on a motion under Rule 56 or a motion that would dispose of the action or any claim or defense in the action unless the court finds that the motion or opposition to the motion is frivolous or the issue has been authoritatively decided.

(f) Orders.

(f)(1) An order includes every direction of the court, including a minute order entered in writing, not included in a judgment. An order for the payment of money may be enforced in the same manner as if it were a judgment. Except as otherwise provided by these rules, any order made without notice to the adverse party may be vacated or modified by the judge who made it with or without notice. Orders shall state whether they are entered upon trial, stipulation, motion or the court's initiative.

(f)(2) Unless the court approves the proposed order submitted with an initial memorandum, or unless otherwise directed by the court, the prevailing party shall, within fifteen days after the court's decision, file a proposed order in conformity with the court's decision. Objections to the proposed order shall be filed within five days after service.

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1 Advisory Committee Note. The practice for courtesy copies varies by judge and so is not regulated by rule. Each party should ascertain whether the judge wants a courtesy copy of that party's motion, memoranda and supporting documents and, if so, when and where to deliver them.

(g) Objection to court commissioner's order. A recommended order of a court commissioner is the order of the court until modified by the court. A party may object to the recommended order of a court commissioner by filing an objection in the same manner as filing a motion within ten days after the recommended order is entered. A party may respond to the objection in the same manner as responding to a motion.

Rule 9. Pleading special matters.

(a) (1) Capacity. It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party. ~~When a~~ A party ~~desires to~~ may raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity~~, he shall do so~~ by specific negative averment, which shall include ~~such supporting particulars as are peculiarly~~ facts within the pleader's knowledge~~, and on such~~. If raised as an issue, the party relying on such capacity, authority, or legal existence, shall establish the same on the trial.

(a)(2) Designation of unknown defendant. When a party does not know the name of an adverse party, he may state that fact in the pleadings, and thereupon such adverse party may be designated in any pleading or proceeding by any name; provided, that when the true name of such adverse party is ascertained, the pleading or proceeding must be amended accordingly.

(a)(3) Actions to quiet title; description of interest of unknown parties. In an action to quiet title wherein any of the parties are designated in the caption as "unknown," the pleadings may describe such unknown persons as "all other persons unknown, claiming any right, title, estate or interest in, or lien upon the real property described in the pleading adverse to the complainant's ownership, or clouding his title thereto."

(b) Fraud, mistake, condition of the mind. In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

(c) Conditions precedent. In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity, and when so made the party pleading the performance or occurrence shall on the trial establish the facts showing such performance or occurrence.

(d) Official document or act. In pleading an official document or act it is sufficient to aver that the document was issued or the act done in compliance with law.

(e) Judgment. In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it. A denial of jurisdiction shall be made specifically and with particularity and when so made the party pleading the judgment or decision shall establish on the trial all controverted jurisdictional facts.

(f) Time and place. For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

(g) Special damage. When items of special damage are claimed, they shall be specifically stated.

(h) Statute of limitations. In pleading the statute of limitations it is not necessary to state the facts showing the defense but it may be alleged generally that the cause of action is barred by the provisions of the statute relied on, referring to or describing such statute specifically and definitely by section number, subsection designation, if any, or otherwise designating the provision relied upon sufficiently clearly to identify it. If such allegation is controverted, the party pleading the statute must establish, on the trial, the facts showing that the cause of action is so barred.

(i) Private statutes; ordinances. In pleading a private statute of this state, or an ordinance of any political subdivision thereof, or a right derived from such statute or ordinance, it is sufficient to refer to such statute or ordinance by its title and the day of its passage or by its section number or other designation in any official publication of the statutes or ordinances. The court shall thereupon take judicial notice thereof.

(j) Libel and slander.

(j)(1) Pleading defamatory matter. It is not necessary in an action for libel or slander to set forth any intrinsic facts showing the application to the plaintiff of the defamatory matter out of which the action arose; but it is sufficient to state generally that the same was published or spoken concerning the plaintiff. If such allegation is controverted, the party alleging such defamatory matter must establish, on the trial, that it was so published or spoken.

(j)(2) Pleading defense. In his answer to an action for libel or slander, the defendant may allege both the truth of the matter charged as defamatory and any mitigating circumstances to

reduce the amount of damages, and, whether he proves the justification or not, he may give in evidence the mitigating circumstances.

(k) Renew judgment. A complaint alleging failure to pay a judgment shall describe the judgment with particularity or attach a copy of the judgment to the complaint.

Rule 42. Consolidation; separate trials.

(a) Consolidation. When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(a)(1) A motion to consolidate cases shall be heard by the judge assigned to the first case filed. Notice of a motion to consolidate cases shall be given to all parties in each case. The order denying or granting the motion shall be filed in each case.

(a)(2) If a motion to consolidate is granted, the case number of the first case filed shall be used for all subsequent papers and the case shall be heard by the judge assigned to the first case. The presiding judge may assign the case to another judge for good cause.

(b) Separate trials. The court in furtherance of convenience or to avoid prejudice may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues.

Rule 51. Instructions to jury; objections.

(a) Preliminary instructions. After the jury is sworn and before opening statements, the court may instruct the jury concerning the jurors' duties and conduct, the order of proceedings, the elements and burden of proof for the cause of action, and the definition of terms. The court may instruct the jury concerning any matter stipulated to by the parties and agreed to by the court and any matter the court in its discretion believes will assist the jurors in comprehending the case. Preliminary instructions shall be in writing and a copy provided to each juror. At the final pretrial conference or at such other time as the court directs, a party may file a written request that the court instruct the jury on the law as set forth in the request. The court shall inform the parties of its action upon a requested instruction prior to instructing the jury, and it shall furnish the parties with a copy of its proposed instructions, unless the parties waive this requirement.

(b) Interim written instructions. During the course of the trial, the court may instruct the jury on the law if the instruction will assist the jurors in comprehending the case. Prior to giving the

written instruction, the court shall advise the parties of its intent to do so and of the content of the instruction. A party may request an interim written instruction.

(c) Final instructions. ~~At the close of the evidence or at such earlier time as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in said requests.~~ Parties shall file requested jury instructions at the time and in the format directed by the court. If a party relies on statute, rule or case law to support or object to a requested instruction, the party shall provide a citation to or a copy of the precedent. The court shall inform counsel of its proposed action upon the requests prior to instructing the jury; and it shall furnish counsel with a copy of its proposed instructions, unless the parties waive this requirement. Final instructions shall be in writing and at least one copy provided to the jury. The court shall provide a copy to any juror who requests one and may, in its discretion, provide a copy to all jurors.

(d) Objections to instructions. Objections to written instructions shall be made before the instructions are given to the jury. Objections to oral instructions may be made after they are given to the jury, but before the jury retires to consider its verdict. The court shall provide an opportunity to make objections outside the hearing of the jury. Unless a party objects to an instruction or the failure to give an instruction, the instruction may not be assigned as error except to avoid a manifest injustice. In objecting to the giving of an instruction, a party shall identify the matter to which the objection is made and the grounds for the objection.

(e) Arguments. Arguments for the respective parties shall be made after the court has given the jury its final instructions. The court shall not comment on the evidence in the case, and if the court states any of the evidence, it must instruct the jurors that they are the exclusive judges of all questions of fact.

Rule 54. Judgments; costs.

(a) Definition; form. "Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment need not contain a recital of pleadings, the report of a master, or the record of prior proceedings. Judgments shall state whether they are entered upon trial, stipulation, motion or the court's initiative; and, unless otherwise directed by the court, a judgment shall not include any matter by reference.

(b) Judgment upon multiple claims and/or involving multiple parties. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or

third-party claim, and/or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination by the court that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, ~~which~~ that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(c) Demand for judgment.

(c)(1) Generally. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings. It may be given for or against one or more of several claimants; and it may, when the justice of the case requires it, determine the ultimate rights of the parties on each side as between or among themselves.

(c)(2) Judgment by default. A judgment by default shall not be different in kind from, or exceed in amount, that specifically prayed for in the demand for judgment.

(d) Costs.

(d)(1) To whom awarded. Except when express provision therefor is made either in a statute of this state or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs; provided, however, where an appeal or other proceeding for review is taken, costs of the action, other than costs in connection with such appeal or other proceeding for review, shall abide the final determination of the cause. Costs against the state of Utah, its officers and agencies shall be imposed only to the extent permitted by law.

(d)(2) How assessed. The party who claims his costs must within five days after the entry of judgment serve upon the adverse party against whom costs are claimed, a copy of a memorandum of the items of his costs and necessary disbursements in the action, and file with the court a like memorandum thereof duly verified stating that to affiant's knowledge the items are correct, and that the disbursements have been necessarily incurred in the action or proceeding. A party dissatisfied with the costs claimed may, within seven days after service of the memorandum of costs, file a motion to have the bill of costs taxed by the court ~~in which the judgment was rendered~~.

A memorandum of costs served and filed after the verdict, or at the time of or subsequent to the service and filing of the findings of fact and conclusions of law, but before the entry of judgment, shall nevertheless be considered as served and filed on the date judgment is entered.

~~(3) [Deleted.]~~

~~(4) [Deleted.]~~

(e) Interest and costs to be included in the judgment. The clerk must include in any judgment signed by him any interest on the verdict or decision from the time it was rendered, and the costs, if the same have been taxed or ascertained. The clerk must, within two days after the costs have been taxed or ascertained, in any case where not included in the judgment, insert the amount thereof in a blank left in the judgment for that purpose, and make a similar notation thereof in the register of actions and in the judgment docket.

Rule 74. Attorney fees.

(a) Attorney fees shall not be awarded unless authorized by contract or by law. A request for attorney fees shall be supported by affidavit or testimony unless the party claims attorney fees in accordance with the schedule in subsection (c) or in accordance with Utah Code Section 75-718 and no objection to the fee has been made.

(b) An affidavit supporting a request for attorney fees shall set forth:

(b)(1) the basis for the award;

(b)(2) a reasonably detailed description of the time spent and work performed, including for each item of work the name, position (such as attorney, paralegal, administrative assistant, etc.) and hourly rate of the persons who performed the work;

(b)(3) factors showing the reasonableness of the fees; and

(b)(4) if the affidavit is in support of attorney fees for services rendered to an assignee or a debt collector, the terms of any agreement for sharing the fee and a statement that the attorney is not sharing the fee or any portion thereof in violation of Rule of Professional Conduct 5.4.

(c) No affidavit is required if a party requests attorney fees in accordance with the schedule below. In such cases the party's complaint shall state the basis for attorney fees, state the amount of attorney fees allowed by the schedule, and cite the law or attach a copy of the contract authorizing the award. The schedule of attorney fees includes fees for routine collection procedures. Attorney fees awarded under the schedule may be augmented only for extraordinary

efforts incurred in collecting or defending the judgment and only after further order of the court.[2]

Principal Amount of Damages, Exclusive of Costs and Interest, Between	and:	Attorney Fees Allowed
$0.00	$700.00	$150.00
700.01	900.00	175.00
900.01	1,000.00	200.00
1,000.01	1,500.00	250.00
1,500.01	2,000.00	325.00
2,000.01	2,500.00	400.00
2,500.01	3,000.00	475.00
3,000.01	3,500.00	550.00
3,500.01	4,000.00	625.00
4,000.01	4,500.00	700.00
4,500.01	or more	775.00

Rule 75. Withdrawal of counsel.

(a) If a motion is not pending and a certificate of readiness for trial has not been filed, an attorney may withdraw from the case by filing with the court and serving on all parties a notice of withdrawal. The notice of withdrawal shall include the address of the attorney's client and a statement that no motion is pending and no certificate of readiness for trial has been filed. If a motion is pending or a certificate of readiness for trial has been filed, an attorney may not withdraw except upon motion and order of the court.

(b) If an attorney withdraws, dies, is suspended from the practice of law, is disbarred, or is removed from the case by the court, the opposing party shall serve a Notice to Appear or Appoint Counsel on the unrepresented party, informing the party of the responsibility to appear personally or appoint counsel. A copy of the Notice to Appear or Appoint Counsel must be filed

2 Advisory Committee Note: Judges should limit augmentation to circumstances requiring extraordinary attorney time and not including routine collection methods or routine defense of a motion to set aside the judgment. Even where extraordinary collection efforts have occurred, the court should consider whether the attorney fees included in the judgment are sufficient to cover the collection efforts, taking into account the attorney time prior to entry of judgment.

with the court. No further proceedings shall be held in the case until 20 days after filing the Notice to Appear or Appoint Counsel unless the unrepresented party waives the time requirement or unless otherwise ordered by the court.

(c) Substitution of counsel. An attorney may replace the counsel of record by filing and serving a notice of substitution of counsel signed by former counsel, new counsel and the client. Court approval is not required if new counsel certifies in the notice of substitution that counsel will comply with the existing hearing schedule and deadlines.

Rule 76. Property bonds.

(a) A real property bond posted with the court shall:

(a)(1) be signed by all owners of record;

(a)(2) contain the complete legal description of the property and the property tax identification number;

(a)(3) be acknowledged before a notary public;

(a)(4) be accompanied by a copy of the document vesting title in the owners;

(a)(5) be accompanied by a copy of the property tax statement for the current or previous year;

(a)(6) be accompanied by a current title report, a current foreclosure report, or such other information as required by the court; and

(a)(7) be accompanied by a written statement from each lien holder stating:

(a)(7)(A) the current balance of the lien;

(a)(7)(B) the date the most recent payment was made;

(a)(7)(C) that the debt is not in default; and

(a)(7)(D) that the lien holder will notify the court if a default occurs or if a foreclosure process is commenced during the period the property bond is in effect.

(b) The bond is not effective until recorded with the county recorder of the county in which the property is located. Proof of recording shall be filed with the court.

(c) Upon exoneration of the bond, the property owner shall present a release of property bond to the court for approval.

Rule 100. Coordination of cases pending in district court and juvenile court.

(a) Notice to the court. In a civil case in which child custody, child support or parent time is an issue, all parties have a continuing duty to notify the court:

(a)(1) of a case in which a party or the party's child in the instant case is a party to or the subject of a petition or order involving child custody, child support or parent time;

(a)(2) of a criminal or delinquency case in which a party or the party's child in the instant case is a defendant or respondent;

(a)(3) of a protective order case involving a party in the instant case regardless whether a child of the party is involved.

(b) The notice shall be filed with a party's initial pleading or as soon as practicable after becoming aware of the other case. The notice shall include the case caption, file number and name of the judge or commissioner in the other case.

(c) Communication among judges and commissioners. The judge or commissioner assigned to a case in which child custody, child support or parent time is an issue shall communicate and consult with any other judge or commissioner assigned to any other pending case involving the same issues and the same parties or their children. The judges and commissioners may allow the parties to participate in the communication. The objective of the communication is to consider the feasibility of consolidating the cases before one judge or commissioner or of coordinating hearings and orders.

(d) Consolidation of cases. If the parties have not participated in the communication, the parties shall be given notice and the opportunity to present facts and arguments before a decision on consolidation is made.

(d)(1) Within one county and court level. The court on its own motion or motion of a party and upon the agreement of the judges or commissioners assigned to the cases may consolidate the cases within one county and one court level pursuant to Utah Code Section 78-3a-115(3), URCP 42, URJP 28 and CJA 4-107.

(d)(2) Between counties in one court level. The court on its own motion or motion of a party and upon the agreement of the judges or commissioners assigned to the cases may transfer cases in different counties of one court level to any county with venue or to any other county in accordance with Utah Code Section 78-13-9.

(d)(3) Between court levels. If the district court and juvenile court have concurrent jurisdiction over cases, either court may transfer a case to the other court upon the agreement of the judges or commissioners assigned to the cases.

(d)(4) Judicial reassignment. Within a district and a court level, the court may assign cases from different counties to one judge upon the agreement of the judges or commissioners assigned to the cases. A judge of one court or district may hear and determine a case in another court or district upon assignment in accordance with Rule 3-108(3).

Rule 101. Domestic pretrial conferences and orders.

(a) In the judicial districts with a court commissioner, a court commissioner shall conduct the pretrial conference in all contested matters seeking divorce, annulment, paternity or modification of a decree of divorce.

(b) At the pretrial conference, the commissioner shall discuss the issues with counsel and the parties, may receive proffers of evidence, and may receive evidence if authorized to do so by the presiding district judge. The commissioner may designate one of the parties' counsel to prepare a written order in accordance with Rule 7. Issues not resolved at the pretrial conference shall be set for trial

(c) Following the pretrial conference, the commissioner shall issue a pretrial order which shall include:

(c)(1) the issues stipulated to by the parties;

(c)(2) the disputed issues; and

(c)(3) the commissioner's recommendations as to the disputed issues if the commissioner conducted an evidentiary hearing on those issues.

Rule 102. Motion and order for payment of costs and fees.

(a) In any action designated by Utah Code Section 30-3-3(1), either party may move the court for an order requiring the other party to provide costs, attorney fees, and witness fees, including expert witness fees, to enable the moving party to prosecute or defend the action. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amount requested. The motion may include a request for costs or fees incurred:

(a)(1) prior to the commencement of the action;

(a)(2) during the action; or

(a)(3) after entry of judgment for the costs of enforcement of the judgment.

(b) The court may grant the motion if the court finds that:

(b)(1) the moving party lacks the financial resources to pay the costs and fees;

(b)(2) the non-moving party has the financial resources to pay the costs and fees;

(b)(3) the costs and fees are necessary for the proper prosecution or defense of the action; and

(b)(4) the amount of the costs and fees are reasonable.

(c) The court may deny the motion or award limited payment of costs and fees if the court finds that one or more of the grounds in paragraph (b) is missing or enters in the record the reason for denial of the motion.

(d) The order shall specify the costs and fees to be paid within 30 days of entry of the order or the court shall enter findings of fact that a delay in payment will not create an undue hardship to the moving party and will not impair the ability of the moving party to prosecute or defend the action. The order shall specify the amount to be paid. The court may order the amount to be paid in a lump sum or in periodic payments. The court may order the fees to be paid to the moving party or to the provider of the services for which the fees are awarded.

Rule 103. Child support worksheets.

(a) When filing a child support worksheet required by Utah Code Section 78-45-7.3, a party shall:

(a)(1) file the worksheet in duplicate and the clerk of court shall send one copy to the Administrative Office of the Courts; or

(a)(2) file one worksheet with the court, send the information on the worksheet electronically to the Administrative Office and so indicate on the worksheet.

(b) The court shall not enter the final decree of divorce, final order of modification, or final decree of paternity until the completed worksheet is filed.

Rule 104. Divorce decree upon affidavit.

(a) A party in a divorce case may apply for entry of a decree without a hearing in cases in which the opposing party fails to make a timely appearance after service of process or other appropriate notice, waives notice, stipulates to the withdrawal of the answer, or stipulates to the entry of the decree or entry of default. An affidavit in support of the decree shall accompany the application. The affidavit shall contain evidence sufficient to support necessary findings of fact and a final judgment by stating that:

(a)(1) either petitioner or respondent was at the time of the petition a resident of the county in which the action was filed for at least three months immediately prior to the commencement of the action and

(a)(2) petitioner and respondent are currently married;

(a)(3) the grounds for divorce provided in Utah Code Section 30-3-1 that exist;

(a)(4) public assistance has been provided or is being provided, or that public assistance has not been and is not being provided; and

(a)(5) the proposed findings of fact and decree conform to the complaint or to the stipulation, whichever forms the basis for entry of the decree.

(b) At a minimum the affidavit shall contain or be accompanied by the following:

(b)(1) the stipulation of the non-moving party, if applicable; and

(b)(2) as required by Rule 5(d), proof of service of the proposed order on the non-moving party; and

(b)(3) as required by Utah Code Section 78-45-7.3 and Rule 103,

(b)(3)(A) a written statement that there are no dependent children of the marriage; or

(b)(3)(B) two copies of a completed child support worksheet; and

(b)(3)(C) a written statement that the amount of requested child support is or is not consistent with the child support guidelines; and

(b)(4) as required by Utah Code Section 78-45-7.5,

(b)(4)(A) a statement of petitioner's current earnings;

(b)(4)(B) a statement of respondent's current earnings;

(b)(4)(C) verification of earnings such as petitioner's and respondent's tax returns, pay stubs, or employer statements or records of the Department of Employment Security pursuant to the Employment Security Act, Utah Code Section 35-4-312 and the rules of the Department; and

(b)(5) as required by Utah Code Section 30-3-11.3 and Rule 4-907, a certificate of completion of a parenting class or a written statement that there are no dependent children of the marriage; and

(b)(6) as required by Utah Code Section 78-45-9, if public assistance has been or is being provided, proof of service upon the Office of Recovery Services of an invitation to join; and

(b)(7) as required by Utah Code Sections 62A-11-501 through 62A-11-504, universal income withholding forms and affidavits.

(c)(1)If the requested amount of child support is not consistent with the child support guidelines, the statement regarding child support shall include facts sufficient to support a finding of good cause why the amount of child support should deviate from the guidelines.

(c)(2) If the application is for a divorce decree upon the failure of the respondent to answer, and if verification of earnings of the respondent are not available, the petitioner may, by affidavit based on the best available evidence, represent to the court the income of the respondent. The affidavit shall be served on the respondent. The court may permit the verification of income by this process in other cases governed by this rule upon a showing of diligent efforts to obtain verification of the income of the respondent.

(d) The party applying for entry of the decree or counsel on behalf of the party shall file with the affidavit and accompanying documents a "request to submit" that shall identify each document or statement required by this rule and note whether the document or statement is being filed concurrent with the request to submit. If the document or statement is not being filed concurrently, the request to submit shall state that the document or statement has already been filed with the court or shall explain why the document or statement is not required in the application of this rule to the facts of the particular case.

(e) A complaint for divorce alleging the insanity of the respondent shall not be granted under this rule, but shall proceed as provided in Utah Code Section 30-3-1.

Rule 105. Shortening 90-day waiting period in domestic matters.

A motion for a hearing less than 90 days from the date the petition was filed shall be accompanied by an affidavit setting forth the date on which the petition for divorce was filed and the facts constituting good cause.

Rule 106. Modification of divorce decrees.

Proceedings to modify a divorce decree shall be commenced by filing a petition to modify in the original divorce action. Service of the petition and summons upon the opposing party shall be in accordance with Rule 4. No request to modify a decree shall be raised by an order to show cause. The responding party shall serve the answer within twenty days after service of the petition.

Rule 107. Decree of adoption; Petition to open adoption records.

(a) An adoptive parent or adult adoptee may obtain a certified copy of the adoption decree upon request and presentation of positive identification.

(b) A petition to open the court's adoption records shall identify the type of information sought and shall state good cause for access, and, in the following circumstances, shall provide the information indicated below:

(b)(1) If the petition seeks health, genetic or social information, the petition shall state why the health history, genetic history or social history of the Bureau of Vital Statistics is insufficient for the purpose.

(b)(2) If the petition seeks identifying information, the petition shall state why the voluntary adoption registry of the Bureau of Vital Statistics is insufficient for the purpose.

(c) The court may order the petition served on any person having an interest in the petition, including the placement agency, the attorney handling a private placement, or the birth parents. If the petitioner seeks identifying information, or if the court orders the petition served on any person whose identity is confidential, the court shall proceed in a manner that gives that person notice and the opportunity to be heard without revealing that person's identity or location.

(d) The court shall determine whether the petitioner has shown good cause and whether the reasons for disclosure outweigh the reasons for non-disclosure.

(e) If the court grants the petition, the court shall permit the petitioner to inspect and copy only those records that serve the purpose of the petition. The order shall expressly permit the petitioner to inspect and copy such records.

(f) The clerk of the court shall reseal the records after the petitioner has inspected and copied them.

Administrative Office of the Courts

Chief Justice Christine M. Durham
Utah Supreme Court
Chair, Utah Judicial Council

Daniel J. Becker
State Court Administrator
Myron K. March
Deputy Court Administrator

MEMORANDUM

To: Civil Procedures Committee
From: Tim Shea
Date: March 19, 2003
Re: Small Claims Amendments

When the new small claims rules and forms were first published about 18 months ago, I began receiving, almost immediately, inquiries about amendments. At that time I asked the clerks and others to live with the new rules for a while to gain experience with what worked and what didn't. Now that we have had about that experience, I have been working with a group of district court and justice court clerks to revisit all of the small claims procedures. With the Committee's approval, these proposed amendments will be published for comment.

The work group has developed several rule amendments, which are summarized below. In general we wanted to have the rules operate as rules, not as introductions to the forms and not as explanations, instructions or definitions. Such matters are better dealt with in the instructions. The rules, forms and instructions have been vetted by the Board of District Court Judges, the Board of Justice Court Judges, the Trial Court Executives, the Clerks of Court, and select small claims judges pro tempore. The item generating the most disagreement is the change to Rule 4, regarding counter affidavits, summarized in item 7, below.

1. Repeal 4-802 and 4-803 and incorporate their content into Rule of Small Claims Procedures 10 and 12, respectively, as needed.
2. Eliminate the reference to particular forms in the rules.
3. Eliminate quoted text, the purpose of which was not always clear. Use terms common to civil procedures. The instructions provide some basic definitions.
4. Standardize with the Utah Rules of Civil Procedure: calculating time and calculating business and calendar days.
5. Provide a general sanction authority.
6. Provide a general requirement to serve all papers on the other party.
7. Prohibit counter affidavits over $5,000. If a defendant has a claim against the plaintiff that exceeds $5,000, defendant will have to file it as a civil complaint (as plaintiff) in district court. See *Faux v. Mickelson*, 725 P.2d 1372 (Utah 1986), holding that, under small claims statutes (§78-6-1(3)), counterclaims are permissive rather than mandatory and may be pursued by separate litigation. This approach is endorsed by the Board of District Court Judges and opposed by the Board of Justice Court Judges.
8. Standardize with the URCP: dismissals presumed without prejudice.

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9. Shorten the time to set aside a dismissal or default judgment to 15 days rather than 30.
10. Standardize with the URCP: time to appeal runs from denial of motion to set aside dismissal or default judgment if one is filed.
11. Clarify circumstances under which the debtor can file a satisfaction of judgment.

Encl. Proposed amendments to Rules of Small Claims Procedures
Faux v. Mickelson, 725 P.2d 1372 (Utah 1986)

Small Claims Rules

Rule 1. ~~Scope, purpose, and forms~~ General provisions.

(a) These rules constitute the ~~"~~simplified rules of procedure and evidence~~"~~ in small claims cases required by Utah Code Section 78-6-1 and shall be referred to as the Rules of Small Claims Procedure. They are to be interpreted to carry out the statutory purpose of small claims cases, dispensing speedy justice between the parties.

(b) These rules apply to ~~the initial trial and any appeal under Rule 12 of all actions pursued as a~~ small claims actions under Utah Code Section 78-6-1 et~~.~~ seq., including the trial de novo.

(c) ~~If the Supreme Court has approved a form for use in small claims actions, parties must file documents substantially similar in form to the approved form.~~ Parties must file documents substantially similar to forms approved by the Supreme Court.

(d) If the time designated in these rules is 10 or fewer days, the reference is to business days, excluding intervening Saturdays, Sundays and holidays. If the time designated is 11 or more days, the reference is to calendar days. The day from which the time begins to run is not included. The last day of the period is included. If the last day is a Saturday, Sunday or holiday, the time expires on the next business day.

(e) By presenting any pleading or other paper a party is certifying that: it is not being presented for an improper purpose; the legal contentions are supported by existing law or by an argument for a change in the law; and the factual contentions are supported by evidence. If the court determines that this certification has been violated, the court may impose an appropriate sanction upon the attorney or party.

Rule 2. Beginning the case.

(a) A case is begun by plaintiff filing ~~a Small Claims Affidavit (Form A)~~ with the clerk of the court either:

(1) an affidavit stating facts showing the right to recover money from defendant; or

(2) an interpleader affidavit showing that plaintiff is holding money claimed by two or more defendants.

(b)The affidavit qualifies as a complaint under Utah Code Section 78-27-25.

~~(b)~~(c) Unless waived upon filing an affidavit of impecuniosity, the appropriate filing fee must accompany the small claims affidavit.

~~(c) A separate form of Affidavit (Form C) is available for an "interpleader action" - - action in which plaintiff is holding money that is claimed by two or more other parties.~~ (d) In an interpleader action, plaintiff must pay the money into the court at the time of filing the affidavit or acknowledge that it will pay the money to whomever the court directs.

(e) Upon filing the affidavit, the clerk of the court shall schedule the trial and issue the summons for the defendant to appear.

Rule 3. Service of the affidavit and summons.

(a) After filing the affidavit and receiving a trial date, plaintiff must serve the affidavit and summons on defendant. To serve the affidavit and summons, plaintiff must either:

(1) have the affidavit and summons served on defendant by a sheriff's department, constable, or person regularly engaged in the business of serving process and pay for that service; or

(2) have the affidavit and summons delivered to defendant by a method of mail or commercial courier service that requires defendant to sign a ~~document indicating~~ receipt and provides for return of that ~~document~~ receipt to plaintiff.

(b) The affidavit and summons must be served at least thirty ~~calendar~~ days before the trial date. Service by mail or commercial courier service is complete on the date the receipt is signed by defendant.

(c) Proof of service of the affidavit and summons must be filed with the court no later than ten ~~calendar~~ days after service. If service is by mail or commercial courier service, plaintiff must file a proof of service ~~(Form D)~~. If service is by a sheriff, constable, or person regularly engaged in the business of serving process, proof of service must be filed by the person completing the service.

(d) Each party shall serve on all other parties a copy of all documents filed with the court other than the counter affidavit. Each party shall serve on all other parties all documents as ordered by the court. Service of all papers other than the affidavit and counter affidavit may be by first class mail to the other party's last known address. The party mailing the papers shall file proof of mailing with the court no later than 10 days after service. If the papers are returned to the party serving them as undeliverable, the party shall file the returned envelope with the court.

Rule 4. Counter affidavit.

(a) ~~If defendant claims plaintiff owes defendant money, defendant~~ Defendant may file with the clerk of the court a counter affidavit stating facts showing the right to recover money from plaintiff.

(b) Unless waived upon filing an affidavit of impecuniosity, the appropriate filing fee must accompany the counter affidavit ~~(Form B)~~.

(c) Any counter affidavit must be filed at least fifteen ~~calendar~~ days before the trial. The ~~court~~ clerk of the court will mail a copy of the counter affidavit and summons to plaintiff at the address provided by plaintiff on the affidavit.

~~(d) In a case filed in district court, if the counter affidavit alleges that plaintiff owes defendant more than the monetary limit for small claims procedures, the entire case will proceed as a regular civil case.~~

~~(e) In a case filed in justice court, if the counter affidavit alleges that plaintiff owes defendant more than the monetary limit for small claims procedures, the entire case must be transferred to district court and will proceed as a regular civil case.~~

~~(f) Defendant must pay both parties' additional filing fees imposed as a result of the case proceeding as a regular civil case. If necessary, defendant must arrange for transfer of the case.~~

(d) A counter affidavit for more than the monetary limit for small claims actions may not be filed under these rules.

Rule 6. Pretrial.

(a) No ~~formal~~ discovery may be conducted ~~but the parties are urged to exchange information prior to the trial~~.

(b) Written motions and responses may be filed prior to trial. Motions may be made orally or in writing at the beginning of the trial. ~~No motions will be heard prior to trial.~~

(c) One ~~postponement~~ continuance of the trial date ~~("continuance")~~ per side may be granted by the ~~court~~ clerk of the court. To request a continuance, a party must file a ~~request~~ motion for continuance ~~(Form E)~~ with the court at least five days before trial. The clerk will give notice to the other party. ~~A Request for Continuance must be received by the court at least five calendar days before trial.~~ A continuance for more than forty-five ~~calendar~~ days may be granted only by the judge. The court may require the party requesting the continuance to pay the costs incurred by the other party.

Rule 7. Trial.

(a) All parties must bring to the trial all documents related to the controversy regardless of whose position they support. ~~Possible documents include medical bills, damage estimates, receipts, rental agreements, leases, correspondence, and any contracts on which the case is based.~~

(b) Parties may have witnesses testify at trial and bring documents. To require attendance by a witness who will not attend voluntarily, a party must ~~"~~subpoena~~"~~ the witness. The clerk of the court or a party's attorney may issue a subpoena pursuant to Utah Rule of Civil Procedure 45. The party requesting the subpoena is responsible for service of the subpoena and payment of any fees. A subpoena must be served at least five ~~calendar~~ days prior to trial.

(c) The judge will conduct the trial and question the witnesses. The trial will be conducted in such a way as to give all parties a reasonable opportunity to present their positions. The judge may allow parties or their counsel to question witnesses.

(d) The judge may receive the type of evidence commonly relied upon by reasonably prudent persons in the conduct of their business affairs. The rules of evidence shall not be applied strictly. The judge may allow hearsay that is probative, trustworthy and credible. Irrelevant or unduly repetitious evidence shall be excluded.

(e) After trial, the judge shall decide the case and direct the entry of judgment. No written findings are required. ~~The small claims judgment (Form F or G) with the notice of Entry of judgment completed shall be provided to each party by the court if all parties are present at trial or by the prevailing party if fewer than all parties are present.~~ The clerk of the court will serve all parties present with a copy of the judgment.

(f) ~~Filing fees and costs~~ Costs will be awarded to the prevailing party and to plaintiff in an interpleader action unless the judge otherwise orders.

Rule 8. Dismissal.

(a) Except in interpleader cases, if plaintiff fails to appear at the time set for trial, plaintiff's claim will be dismissed ~~with prejudice unless the judge otherwise orders~~.

(b) If defendant has filed a counter affidavit and fails to appear at the time set for trial, defendant's claim will be dismissed ~~with prejudice unless the judge otherwise orders~~.

~~(c) The prevailing party shall send all other parties a copy of the small claims judgment (Form F or G) with the notice of entry of judgment completed and file the completed copy with the court.~~

(c) A party may move to dismiss its claim at any time before trial.

(d) Dismissal is without prejudice unless the judge otherwise orders. The appearing party shall serve the order of dismissal on the non-appearing party.

Rule 9. Default judgment.

(a) If defendant fails to appear at the time set for trial, the court may grant plaintiff judgment in an amount not to exceed the amount requested in plaintiff's affidavit.

(b) If defendant has filed a counter affidavit and plaintiff fails to appear at the time set for trial, the court may grant defendant judgment in an amount not to exceed the amount requested in defendant's counter affidavit.

(c) ~~Any party granted a default judgment shall promptly send a copy of a completed Notice of Default judgment (Form H) to the other party and file the original with the court.~~ The appearing party shall serve the default judgment on the non-appearing party.

(d) In an interpleader action, if a defendant fails to appear, a default judgment may be entered against the non-appearing defendant.

Rule 10. Set aside of default judgments and dismissals.

(a) ~~Within thirty calendar days from the mailing of the notice of default judgment or the date of dismissal, a~~ A party may request that the default judgment or dismissal be set aside by filing a ~~request~~ motion to set aside ~~judgment (Form I)~~ within 15 days after entry of the judgment or dismissal. If the court receives a timely ~~request~~ motion to set aside the default judgment or dismissal and good cause is shown, the court may grant the ~~request~~ motion and reschedule a trial. The court may require the ~~requesting~~ moving party~~'s payment of~~ to pay the costs incurred by the other party ~~in obtaining the default judgment or dismissal~~.

(b) The ~~thirty day~~ period for ~~requesting the~~ moving to set aside ~~of~~ a default judgment or dismissal may be extended by the court for good cause if the ~~request~~ motion is made in a reasonable time.

Rule 11. Collection of judgments.

(a) Judgments may be collected under the Utah Rules of Civil Procedure.

~~(b) Upon full payment of the judgment including post-judgment costs and interest, the prevailing party shall promptly file a satisfaction of judgment (Form J) with the court.~~

~~(c) The court may enter a Satisfaction of Judgment at the request of a party after ten calendar days notice to all parties.~~ (b) Upon payment in full of the judgment, including post-judgment costs and interest, the judgment creditor shall file a satisfaction of judgment with the court. Upon

receipt of a satisfaction of judgment from the judgment creditor, the clerk of the court shall enter the satisfaction upon the docket. The judgment debtor may file a satisfaction of judgment and proof of payment. The court may conduct a hearing. If the judgment creditor fails to object within 10 days after notice, the court may order the judgment satisfied.

(c) If the judgment creditor is unavailable to accept payment of the judgment, the judgment debtor may pay the amount of the judgment into court and serve the creditor with notice of payment in the manner directed by the court as most likely to give the creditor actual notice, which may include publication. After 30 days after final notice, the debtor may file a satisfaction of judgment and the court may conduct a hearing. The court will hold the money in trust for the creditor for the period required by state law. If not claimed by the judgment creditor, the clerk of the court shall transfer the money to the Unclaimed Property Division of the Office of the State Treasurer.

Rule 12. Appeals.

(a) Either party may appeal a ~~small claims judgment within ten business days (not counting weekends and holidays) of receipt of notice of entry of judgment~~ final order or judgment within the time permitted by statute after entry of the judgment or order or after denial of a motion to set aside the judgment or order, whichever is later.

(b) To appeal, the appealing party must file a notice of appeal ~~(Form K)~~ in the court issuing the judgment ~~and mail a copy to each party~~. ~~The~~ Unless waived upon filing an affidavit of impecuniosity, the appropriate fee must accompany the notice of appeal.

(c) On appeal, a new trial will be held ~~("trial de novo")~~ in accordance with these rules.

(d) The district court shall issue all orders governing the trial de novo. The trial de novo of a justice court adjudication shall be heard in the district court nearest to and in the same county as the justice court from which the appeal is taken. The trial de novo of the small claims department of the district court shall be held at the same district court.

(e) A judgment debtor may stay the judgment during appeal by posting a supersedeas bond with the district court. The stay shall continue until entry of the final judgment or order of the district court.

(f) Within ten days after filing the notice of appeal, the justice court shall transmit to the district court the notice of appeal, the district court fees, a certified copy of the register of actions, and the original of all papers filed in the case.

(g) Upon the entry of the judgment or final order of the district court, the clerk of the district court shall transmit to the justice court which rendered the original judgment notice of the manner of disposition of the case.

(h) The district court may dismiss the appeal and remand the case to the justice court if the appellant:

(1) fails to appear;

(2) fails to take any step necessary to prosecute the appeal; or

(3) requests the appeal be dismissed.

Rule 4-801. Transfer of small claims cases.

Intent:

To establish a procedure for the transfer of small claims cases to the appropriate justice court.

Applicability:

This rule shall apply to the courts of record and not of record.

Statement of the Rule:

(1) Small claims actions filed in a court of record may be assigned to a judge pro tempore, if one has been appointed under Rule 11-202 to adjudicate small claims actions. If no judge pro tempore has been appointed to adjudicate small claims actions, the case may be transferred to a justice court with jurisdiction under Utah Code Section 78-5-104.

(2) At the time of the transfer, the court shall also transfer the filing fee, less the portion dedicated to the judges' retirement trust fund.

(3) If there is no justice court with territorial jurisdiction of the small claims action and no judge pro tempore, a district judge of the court shall hear and determine the action. ~~The appeal shall be as provided in Rule 4-803.~~

Tina FAUX and Patrick Nacey, Plaintiffs and Appellants, v. Susan MICKELSEN, Defendant and Respondent
725 P.2d 1372; 42 Utah Adv. Rep. 24; 1986 Utah LEXIS 879
No. 20347
September 23, 1986, Filed
Supreme Court of Utah

Counsel

Wendell P. Ables, for Plaintiffs.

LeRoy S. Axland, Craig W. Anderson, for Defendant.

Opinion

Opinion by: PER CURIAM

{725 P.2d 1373} Plaintiffs Faux and Nacey appeal from an order of the district court dismissing their appeal and affirming the judgment of the circuit court. This cause arose from a landlord-tenant dispute. Defendant Mickelsen brought suit in the small claims court, fifth circuit, to recover past due rent, utilities, and costs for cleaning and repair. Faux and Nacey appeared with counsel, but brought no counterclaim against Mickelsen and executed no counter-affidavits. Judgment was entered in favor of Mickelsen. Faux and Nacey did not appeal within the five days provided by statute.

Several weeks later, Faux and Nacey filed the instant suit in the Fifth Circuit Court charging Mickelsen with wrongful ejection, willful exclusion, distraint, and conversion. Mickelsen brought a motion to dismiss, and the circuit court granted her summary judgment. Faux and Nacey appealed to the district court, which dismissed their appeal and affirmed the judgment of the circuit court. The district court's order was based on two findings: (1) Faux and Nacey had failed to properly remove the action originally filed in the small claims court to the circuit court, as required by Rule 13 (k) of the Rules of Civil Procedure. (2) Their claim arose out of the same transaction or occurrence that was the subject matter of Mickelsen's claim in the small claims court and was therefore barred by Rule 13 (a) and the doctrine of res judicata.

Faux and Nacey appeal on the grounds that section 78-6-2.5 of the Judicial Code conflicts with Rule 13 (a) and (k) of the Rules of Civil Procedure and that the district court's affirmance of the circuit court judgment operated to deny them due process of law and access to the courts and **{725 P.2d 1374}** constituted lack of uniform operation of laws under the Utah Constitution. We recognize jurisdiction over this constitutional issue under U.C.A., 1953, § 78-3-5 (Supp. 1985).

The Small Claims Courts Act (the Act) was established by the legislature to make it possible to dispose of certain actions in an informal manner from their inception to their end with the sole object of dispensing speedy justice between the parties. U.C.A., 1953, § 78-6-8 ; *Tuttle v. Hi-Land Dairyman's Association,* 10 Utah 2d 195, 350 P.2d 616 (1960); *accord Liedtke v. Schettler,* 649 P.2d 80 (Utah 1982).

The small claims court is totally a creature of statute. *Larson Ford Sales, Inc. v. Silver,* 551 P.2d 233 (Utah), *appeal dismissed,* 429 U.S. 909, 50 L. Ed. 2d 277, 97 S. Ct. 299 (1976). Its jurisdiction is not exclusive and is limited to the recovery of money up to $1,000. § 78-6-1(1)(a). Inasmuch as it is a department created in the circuit courts and justice's courts, the rules of practice and civil procedure apply to it, with certain exceptions. Section 78-4-29 provides in pertinent part: "The rules of civil procedure shall apply to actions commenced in circuit court except insofar as these rules are by their nature clearly inapplicable to circuit courts or proceedings therein." *See also* Utah R. Civ. P. 81(c) for similar language, and *Hume v. Small Claims Court of Murray City,* 590 P.2d 309 (Utah 1979). Examples of exceptions are the dispensation with formal pleadings to initiate an action, § 78-6-8, the acceleration of the trial setting, § 78-6-3, and the discretion of the small claims courts to remove all but the initial claim from the court's calendar where multiple claims are filed, § 78-6-1(3).

The question here raised is whether section 78-6-2.5 embodies such an exception. Faux and Nacey claim that counterclaims compulsive by definition under Rule 13 (a) are treated as permissive in nature under the Act. Mickelsen asserts that Rules 13 (a) and (k) mandate the joinder of the counterclaim and removal of the case to the circuit court. She does not discuss the disparate language of the section. We resolve this seeming conflict on statutory grounds and therefore do not reach the constitutional objections raised.

U.C.A., 1953, § 78-6-2.5 (1977 ed., Cum. Supp. 1986) provides in pertinent part:

> Counterclaims *authorized*--Form of counter-affidavit.
>
> Counter actions may also be maintained in small claims court *if the actions arise out of the transaction or occurrence that is the subject matter of the opposing party's claim* and when the party maintaining the counter action executes an affidavit setting forth the nature and the basis of the counterclaim.

(Emphasis added.) Under the Rules of Civil Procedure, Rule 13 (a) compels a counterclaim ("a pleading *shall* state as a counterclaim . . . .") "if it arises out of the transaction or occurrence that is the subject-matter of the opposing party's claim," and Rule 13 (b) merely permits ("a pleading *may* state as a counterclaim . . . .") such a claim if it does not arise out of the same transaction or occurrence. Compared to the language of the statute just cited, the divergence of the statute from the rules is apparent. A counterclaim under the former is authorized but not compelled. It may, but need not, be brought by the opposing party. Moreover, it is only authorized to the extent that the claim arises out of the same transaction, and no like authority is granted for counterclaims on unrelated claims.

We have long adhered to the well-established principle of statutory construction that "[a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant, and so that one section will not destroy another." *Brickyard Homeowners Association Management Committee v. Gibbons Realty Co.,* 668 P.2d 535, 538 (Utah 1983).

Within those guidelines, it becomes our duty to direct the focus of our inquiry not on the seeming disparity between the statute in question and the Rules of Civil Procedure, as Mickelsen would urge us, but on **{725 P.2d 1375}** the internal consistency and overall harmony between this section and others found in the Act.

> From the assumption that the law maker has a definite purpose in every enactment proceeds the cardinal rule that the general purpose, intent or purport of the whole act shall control, and that all the parts be interpreted as subsidiary and harmonious to its manifest object, and if the language is susceptible of two constructions, one which will carry out and the other defeat such manifest object, it should receive the former construction.
>
> 2A Sutherland's Statutory Construction § 46.05 (4th ed.).

The general purpose, as just stated, of the Act is to dispose of minor money disputes by dispensing speedy justice between the parties. To carry out that manifest object, section 78-6-2.5 must be interpreted to merely permit the simultaneous resolution of related counterclaims. "In certain instances, the word 'may' has the effect of 'must,' but, ordinarily, the use of the permissive term carries no mandate." 2A Sutherland § 57.03. Faux and Nacey's counterclaim consisted of several causes of action and alleged damages in excess of the small claims court's jurisdiction. Under Mickelsen's interpretation of the statute, they were compelled to bring their counterclaim and to remove the entire case to the circuit court for trial and adjudication. We believe that such a procedure would have the effect of defeating the purpose of the Act to dispense speedy justice to Mickelsen on a simple money judgment. Both the intent and the meaning of the statute permit no such construction.

Furthermore, the language of Rule 13 (k) does not lend itself to the interpretation suggested by Mickelsen and the district court. A counterclaimant must remove a case that exceeds the jurisdictional amount of the circuit court and have the action certified to the district court. There is no like provision calling for a similar removal from the small claims department within the circuit court to the circuit court. Instead, as we read the Act, the small claims court's procedural parameters are expressly altered to fit the accelerated process, and the Rules of Civil Procedure have been circumvented where expedient. For example, under section 78-6-1(3) multiple claims may be removed in the discretion of the clerk or the judge, leaving only the initial claim. Under Rule 18 of the Rules of Civil Procedure, joinder of claims is permitted.

We conclude that the meaning of section 78-6-2.5 is clear and not in conflict with the Rules of Civil Procedure. Within the limited jurisdiction of the small claims court, a defendant is not compelled to bring a counterclaim though it may arise from the same transaction or occurrence as the subject matter sued on. It follows that Faux and Nacey here had no duty to remove the small claims court matter to the circuit court in order to pursue a counterclaim to Mickelsen's complaint and that their action was not barred by the doctrine of res judicata.

The case is remanded to the circuit court for a trial on the merits.

Administrative Office of the Courts

Chief Justice Christine M. Durham
Utah Supreme Court
Chair, Utah Judicial Council

Daniel J. Becker
State Court Administrator
Myron K. March
Deputy Court Administrator

MEMORANDUM

To: Civil Procedures Committee
From: Tim Shea
Date: March 19, 2003
Re: Notice to defendant of signature requirement

One of the clerks of the Third District Court observes that default judgments are being entered against defendants who have filed an unsigned answer. It appears the defendants intend to contest the claim, but the answers are not being given effect because they lack a signature. The defendants may in good faith believe they have done all that is necessary to answer. She suggests amending URCP 4(c) to require the summons to contain notice to the defendant that the answer must be signed. I've suggested some language below. The other suggested amendments are intended only to make the list of what's required of a summons a little easier to read. If the rule is amended to require notice that a signed answer is required, we would need to make conforming amendments to Civil Forms 2 and 3.

(c) Contents of summons. The summons shall be directed to the defendant. The summons shall contain:

(1) ~~The summons shall contain~~ the name, address and county of the court~~, the address of the court,~~ in which the action is filed;

(2) the names of the parties to the action~~, and the county in which it is brought. It shall be directed to the defendant, state~~;

(3) the name, address and telephone number of the plaintiff's attorney, if any, and otherwise the plaintiff's address and telephone number~~. It shall state~~;

(4) the time within which the defendant is required to answer the complaint;

(5) notice that the answer must be in writing and signed~~, and shall notify the defendant~~;

(6) notice that in case of failure to ~~do so~~ answer, judgment by default will be rendered against the defendant~~. It shall state~~; and

(7) notice either that the complaint is on file with the court or that the complaint will be filed with the court within ten days of service.

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It is my opinion that if the court has accepted an answer without a signature, the court should not enter default until after notifying the defendant of the need for a signature. If the defendant fails to correct the oversight, the answer should be stricken and then default can be entered. URCP 11(a). If the committee agrees, I can advise the clerks of court.

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