

In the Supreme Court of the State of Utah

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Standing Order No. 13

(regarding Small Claims Online Dispute Resolution Pilot Project)

Effective September 19, 2018, Revised December 7, 2020,
Revised January 27, 2021

Paragraph 1: General Provisions

- a) In an effort to improve access to justice, the Utah Supreme Court has initiated an Online Dispute Resolution (ODR) pilot project. The project will include all small claims cases filed in courts within the project, and shall continue until the Supreme Court rescinds this Standing Order.
- b) The Supreme Court believes ODR will increase the participation rate of parties, assist the parties in resolving their disputes, and improve the quality and presentation of evidence at trial in those matters that cannot be resolved. In short, the Supreme Court believes ODR will further the statutory goal of small claims: dispensing speedy justice between the parties.
- c) The calculation of time periods under this Standing Order shall be governed by Utah Rule of Civil Procedure 6.

Paragraph 2: Beginning the Case

- a) A small claims case starts when the plaintiff files with the clerk of the court an affidavit stating the facts showing (i) the right to recover money from the defendant or (ii) that the plaintiff is holding money claimed by two or more defendants ("Claim").
- b) The plaintiff must include the plaintiff's email address and, if known, the defendant's email address in the Claim. The plaintiff must pay the appropriate filing fee or request for a fee waiver when filing the Claim.
- c) The plaintiff must file any request for exemption from ODR, pursuant to paragraph 5, at the same time as the Claim.
- d) A plaintiff must register for the ODR system within 7 days of filing the Claim or, if the plaintiff has sought a request for exemption and the exemption is denied, within 7 days from receiving the denial. The court shall dismiss the Claim without prejudice if the plaintiff fails to register within this time frame. If the defendant shows that the plaintiff failed to register or participate in a prior case on the same dispute, the dismissal shall be with prejudice.

Paragraph 3: Service

- a) A copy of the ODR Summons and Claim must be served as provided in Utah Rule of Civil Procedure 4.
- b) Service must occur within 120 days of the plaintiff filing the Claim or receiving a denial of a request for an exemption under paragraph 5, whichever is later.
- c) The plaintiff shall file a Proof of Service with the court within 7 days of service.
- d) If the plaintiff fails to comply with the timelines set forth in subparagraphs (b) or (c), the defendant may file a motion to dismiss the case without prejudice.
- e) If a Proof of Service is not filed within 7 days after expiration of the time in subparagraph (b) the court will dismiss the case without prejudice.

Paragraph 4: Responding to a Claim

- a) Upon being served with a Claim, the defendant must, within 14 days:
 - 1) register for an ODR account or link the claim to an existing ODR account as instructed in the Summons; or
 - 2) seek an exemption from participating in ODR pursuant to paragraph 5.
- b) A defendant who seeks an exemption pursuant to paragraph 5 and is denied the exemption must comply with subparagraph (a)(1) within 7 days of receiving the denial, or the time remaining under (a), whichever is longer.
- c) If a defendant fails to register or request an exemption the plaintiff may file a motion asking the court to enter a default judgment in an amount not to exceed the amount requested in the Claim.

Paragraph 5: Requesting an Exemption from ODR

- a) Parties must participate in the ODR process unless they have been exempted by the court due to an undue hardship. Undue hardship exists when a party cannot access the online system or participate in the online process without substantial difficulty or expense.
- b) The court shall provide to the requesting party the form necessary to request an exemption.

- c) The court shall grant the request if the party shows participation would cause undue hardship.
- d) If the court exempts the plaintiff from participating in ODR, the court clerk shall schedule a trial and issue a Summons for the defendant to appear.
- e) If the court exempts the defendant from participating in ODR, the court clerk shall schedule a trial and notify the parties of the date, time, and place of the trial.
- f) If the court grants an exemption, the Claim shall be governed by the Utah Rules of Small Claims Procedure.

Paragraph 6: Facilitators

- a) The role of the facilitator is to guide the parties through ODR and to assist them in reaching a settlement. To advance these goals, the facilitator may provide information to a party regarding procedure and evaluate the Claim or any defenses.
- b) If the parties do not settle the claim, the facilitator must provide the court with a concise description of the issues and as much relevant information as possible.
- c) A facilitator will be assigned to the case no later than 7 days after at least 2 parties have registered for an ODR account. The facilitator will inform the parties of the processes to be followed, including the types of communications the parties may use. The facilitator will establish timelines for sharing information and a deadline for attempts to informally resolve the case. Unless the facilitator determines additional time will likely result in a settlement, these efforts at resolution should not exceed 14 days. The facilitator may adjust the timelines at any time during the process.
- d) A facilitator may communicate privately with any party at any time for the purposes of facilitating a resolution.
- e) The facilitator may request a party provide the facilitator and every other party:
 - 1) information and evidence about the merits of the case;
 - 2) information about the ability to pay;
 - 3) responses to another party's information; and
 - 4) the party's position on any proposed resolution of the Claim.

- f) All information provided under this paragraph is considered private and will not be disclosed beyond the facilitation phase without the approval of the party providing the information.

Paragraph 7: Settlement Agreement

- a) If the parties settle the claim, the parties may request the facilitator to prepare the on-line settlement agreement form to be executed by the parties. If requested by the parties, the facilitator shall prepare the on-line settlement form, which shall set forth the terms agreed to by the parties and, except as provided below, will state that if the judgment debtor breaches the agreement, the judgment creditor may ask the court to enter judgment in the amount that remains owing under the settlement agreement.
- b) The court will not enter a judgment on the settlement agreement unless the parties elect to have the court enter a judgment at the time the settlement agreement is entered, or unless the judgment debtor fails to comply with the settlement agreement and the judgment creditor requests entry of a judgment under Paragraph 10.
- c) Settlement agreements that contain performance related terms, such as return of tangible property or performance of a service, will not be enforceable by the court in the event of a breach. In order for the court to enter a judgment on an agreement that contemplates performance, the agreement must provide for a monetary recovery in the event of non-performance.
- d) Parties who have registered for ODR participation under Paragraphs 2 and 4 may settle a claim without the use of a facilitator or the ODR process if the parties can reach a settlement agreement before the deadlines established by the facilitator.

Paragraph 8: Unsuccessful Facilitation

- a) If the facilitator determines that the parties are unable to reach a settlement, the facilitator will:
 - 1) terminate the facilitation process and notify the court to set a trial date;
 - 2) work with the parties to prepare a form to submit to the court that includes information provided during facilitation that are relevant to the dispute and agreed to by both parties;

- 3) submit the form prepared by the facilitator and agreed to by the parties in the ODR process to the court in advance of trial; and
 - 4) advise a defendant of the necessity of filing and serving any counterclaims at least 3 days before trial.
- b) The court shall:
- 1) schedule a date for trial to be held between 7 and 21 days from the date the court receives notification from the facilitator; and
 - 2) notify the parties of the date using the email address associated with the ODR account or other updated email address provided to the court.
- c) A party with a conflict on the assigned court date shall, as soon as possible, attempt to find a mutually agreeable date for trial with the other party and request a stipulated change of date from the court. Otherwise, the party must request a continuance of the trial date with the court no sooner than 5 days before trial.

Paragraph 9: Dismissal for Failing to Respond During ODR

Once facilitation has begun, if the plaintiff fails to respond to the facilitator within 10 days, the facilitator may notify the defendant of the ability to file a request to dismiss the case. If the defendant demonstrates that the plaintiff failed to register or participate in a prior case on the same dispute, the dismissal shall be with prejudice.

Paragraph 10: Breach of a Settlement Agreement

- a) If a judgment debtor fails to comply with the terms of a settlement agreement not already reduced to a judgment, the judgment creditor may file a request for the court to enter a judgment on the amount owing.
- b) The judgment creditor must provide the court with a copy of the settlement agreement form created under Paragraph 7 and an accounting of any payments received since the date of the settlement agreement.
- c) Upon receipt of a request to enter judgment, the court shall notify the judgment debtor using the email address associated with the ODR account or other updated email address provided to the court.
- d) The judgment debtor may file an objection within 14 days of the notice being sent by the court. If an objection is filed, the court shall set a hearing.

- e) If a hearing is not requested, or if the judgment debtor does not appear, the court shall enter judgment in favor of the judgment creditor.
- f) After the hearing, the court shall enter judgment unless the court determines the judgment debtor has not violated the terms of the settlement agreement.

Paragraph 11: Applicability of the Utah Rules of Small Claims Procedure

Unless otherwise inconsistent with these rules, the Utah Rules of Small Claims Procedure shall apply to all cases filed pursuant to this Standing Order.

Paragraph 12: Counterclaims

The defendant may raise and present evidence on any counterclaims during the facilitation process without the need to formally file a counterclaim. The facilitation process may result in an agreement with the defendant becoming the judgment creditor. If the case proceeds to trial, the defendant must file a counterclaim and pay the appropriate filing fee no later than 5 days before trial. The defendant may serve the plaintiff through the email address provided by the plaintiff.

1/27/2021

Date



Matthew B. Durrant

Chief Justice