

## JUDICIAL COUNCIL MEETING

### AGENDA

Monday, January 23, 2017

Judicial Council Room

Matheson Courthouse

Salt Lake City, Utah

*Chief Justice Matthew B. Durrant, Presiding*

1. 9:00 a.m. Welcome & Approval of Minutes . . . . Chief Justice Matthew B. Durrant  
(Tab 1 - Action)
2. 9:05 a.m. Chair's Report. . . . . Chief Justice Matthew B. Durrant
3. 9:10 a.m. Administrator's Report. . . . . Daniel J. Becker
4. 9:20 a.m. Reports: Management Committee. . . . Chief Justice Matthew B. Durrant  
Liaison Committee. . . . Justice Thomas Lee  
Policy and Planning . . . . Judge Reed Parkin  
Bar Commission. . . . John Lund, esq.  
(Tab 2 - Information)
5. 9:30 a.m. Legislative Update and Interim Highlights. . . . Rick Schwermer  
(Information)
6. 9:45 a.m. Small Claims Jury Committee Report. . . . Keisa Williams  
(Tab 3 – Information)
7. 10:00 a.m. Judicial Performance Evaluation Commission Update. . . . Jennifer Yim  
(Information)
- 10:20 a.m. Break
8. 10:30 a.m. Presentation on New Methodology for the District  
Court Judicial Weighted Caseload. . . . Judge James Taylor  
(Information) Tucker Samuelson  
Kim Allard  
Debra Moore
9. 11:15 a.m. Online Dispute Resolution (ODR) Status Report. . Justice Deno Himonas  
(Tab 4 – Information)
10. 11:35 a.m. Juvenile Indigent Representation Committee  
Recommendations. . . . Justice John Pearce  
(Action) Keisa Williams

11. 11:50 a.m. WINGS Committee Report. . . . . Judge David Connors  
(Tab 5 – Information) Karolina Abuzyarova
12. 12 10 p.m. Justice Court Judge Certifications. . . . . Jim Peters  
(Tab 6 – Action)
- 12:15 p.m. Lunch
13. 12:45 p.m. Executive Session
14. 1:15 p.m. Adjourn

### Consent Calendar

*The consent items in this section are approved without discussion if no objection has been raised with the Admin. Office (578-3806) or with a Council member by the scheduled Council meeting or with the Chair of the Council during the scheduled Council meeting.*

- |  |                         |
|--|-------------------------|
| 1. Committee Appointments<br>(Tab 7)   | Debra Moore<br>Ray Wahl |
| 2. Rules for Public Comment<br>(Tab 8) | Nancy Sylvester         |

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Note: Chief Justice Durrant will deliver his *State of the Judiciary Address* to the Legislature beginning at 2:00 p.m.

Transportation to the Capitol will be provided for Council members able to attend, and it will leave immediately following the Council meeting.

**TAB 1**

# JUDICIAL COUNCIL MEETING

## Minutes

Monday, December 19, 2016

Judicial Council Room

Matheson Courthouse

Salt Lake City, Utah

**Chief Justice Matthew B. Durrant, Presiding**

### **ATTENDEES:**

Chief Justice Matthew B. Durrant  
Justice Thomas Lee  
Hon. Marvin Bagley  
Hon. Ann Boyden  
Hon. Mark DeCaria  
Hon. Paul Farr  
Hon. Thomas Higbee  
Hon. David Marx  
Hon. Mary Noonan  
Hon. Reed Parkin  
Hon. Derek Pullan  
Hon. Todd Shaughnessy  
Hon. Kate Toomey  
John Lund, esq.

### **EXCUSED:**

### **STAFF PRESENT:**

Daniel J. Becker  
Jody Gonzales  
James Ishida  
Debra Moore  
Jim Peters  
Dawn Marie Rubio  
Rick Schwermer  
Ron Bowmaster  
Chris Palmer  
Nini Rich  
Nancy Sylvester  
Keisa Williams  
Nicholas Stiles

### **GUESTS:**

Hon. Dennis Fuchs  
Jim Hudspeth  
Hon. James Blanch  
Hon. Royal Hansen  
Hon. Michelle Heward

#### **1. WELCOME AND APPROVAL OF MINUTES: (Chief Justice Matthew B. Durrant)**

Chief Justice Matthew B. Durrant welcomed everyone to the meeting.

**Motion:** Judge Toomey moved to approve the minutes from the November 21, 2016 Judicial Council meeting. Judge DeCaria seconded the motion, and it passed unanimously.

#### **2. CHAIR'S REPORT: (Chief Justice Matthew B. Durrant)**

Chief Justice Durrant reported that he has been participating in the legislative meetings being held in each judicial district to meet with the local legislators.

#### **3. ADMINISTRATOR'S REPORT: (Daniel J. Becker)**

Mr. Becker reported on the following items:

Arnold Foundation – Pre-trial Release Assessment Tool Update. The Utah court system is in the final process of signing the contract with the Arnold Foundation for implementation of the pre-trial release assessment tool.

A meeting with Ron Gordon, the Executive Director of the Commission on Criminal and Juvenile Justice (CCJJ), will be held tomorrow to discuss details of funding for the implementation costs of using the Arnold pre-trial release assessment tool.

Legislative Meetings. The local legislative meetings being held in each judicial district have begun. The meetings are going well. Topics being discussed include: 1) JRI, 2) juvenile justice reform recommendations, 3) pre-trial release, and 4) the courts budget.

Legislative Audit. An audit exit meeting on the cash bail audit was held on December 2. The audit report will be presented to the audit committee in January. Mr. Becker has reviewed the audit report, and he has provided a response, on behalf of the courts. Findings from the audit will be presented to the Council at a future meeting.

Legislative Leadership. Mr. Becker reported there is a change in leadership on the Executive Appropriations Committee. The committee leadership includes: 1) Senator Jerry Stevenson, Senate chair; 2) Senator Kevin Van Tassell, Senate vice chair; 3) Representative Dean Sanpei, House chair, and 4) Representative Bradley Last, House vice chair. He noted Senator Lyle Hillyard's 12 years of service as Senate Appropriations chair.

Judicial Retirement. Judge Charles Behrens has announced his upcoming retirement, effective July 1, 2017.

COSCA Midyear Meeting. Justice Himonas participated as a panelist in a plenary session regarding *Online Dispute Resolution* at the COSCA Midyear meeting held in Naples, Florida at the beginning of December.

#### **4. COMMITTEE REPORTS:**

##### ***Management Committee Report:***

Chief Justice Durrant reported that the Management Committee meeting minutes accurately reflect the issues discussed. The items needing to be addressed by the Council have been placed on today's agenda.

##### ***Liaison Committee Report:***

The Liaison Committee, along with additional juvenile judges, met on December 9 to gather and to identify 3-4 priorities as the Liaison Committee prepares to address proposed legislation resulting from the recommendations of the Utah Juvenile Justice Working Group.

##### ***Policy and Planning Meeting:***

Judge Parkin reported on the following items: 1) the committee continues to work on a number of rules, and 2) several rules will be considered for final action later on the agenda.

##### ***Bar Commission Report:***

Mr. Lund reported on the following items: 1) the Bar's 2017 Spring Convention will be held in St. George on March 9-11, and 2) a meeting was recently held between several members of the State Bar and Mr. Bowmaster to discuss the matter of connecting lawyer interaction with the courts electronic data.

#### **5. PROBLEM-SOLVING COURT CERTIFICATIONS: (Judge Dennis Fuchs and Rick Schwermer)**

Chief Justice Durrant welcomed Judge Fuchs and Mr. Schwermer to the meeting.

Judge Fuchs reported that there are 22 problem solving courts being recommended for certification. All 22 courts meet the minimum qualifications for certification.

Judge Fuchs highlighted several concerns arising in the problem-solving courts statewide. The concerns included:

- Monitoring historically disadvantaged groups – determine if minority groups are adequately represented in problem-solving courts
  - As part of the CORIS rewrite, IT is working on developing a program that will capture data on minority representation in problem solving courts.
- Drug and alcohol testing is frequent enough to ensure substance use is detected quickly.
- Responsibilities of the judge.
  - The judge presides over the problem-solving court for no less than two consecutive years.
  - Outcomes are better when the problem-solving court judge attends annual training conferences on evidence-based practices in substance abuse and mental health treatment.
- Number of participants
  - The policy followed on behalf of the Council and State Substance Abuse allows for no more than 125 participants and no less than 15 participants.

Discussion took place.

It was determined that the concerns raised by Judge Fuchs could best be addressed by a working group on best practices that would then make recommendations to the Judicial Council. Judge Fuchs will prepare a list, for approval by the Management Committee, for potential working group members.

**Motion:** Judge Higbee moved to certify the problem-solving courts as recommended. Judge Toomey seconded the motion, and it passed unanimously.

**6. AP&P PRE-SENTENCE AND SUPERVISION STANDARDS REVIEW: (Jim Hudspeth, and Debra Moore)**

Chief Justice Durrant welcomed Mr. Hudspeth and Ms. Moore to the meeting.

Mr. Hudspeth provided his background information.

He reviewed information relative to the AP&P pre-sentence and supervision standards, of which, appropriate documentation is included in the Council materials. He highlighted the following in his review: 1) the response and incentive matrix for the O track has been completed, 2) currently working on the pre-sentence investigation report, 3) discussion of supervision and pre-sentence investigation standards, 4) currently using the Level of Services/Risk, Need, Responsivity (R&R) assessment tool, 5) providing case management training as needed, 6) treatment resource centers available in each region of the state, and 7) use of the DORA model.

Mr. Hudspeth responded to questions asked of him.

Ms. Moore mentioned that a modified PSR is being addressed as part of the CORIS rewrite. The Board of District Court Judges was provided a review of the AP&P pre-sentence and supervisions standards at their meeting on December 16. A minor change on the PSR custody status above the history was the only change requested by the board. No other concerns were noted.

Chief Justice Durrant thanked Mr. Hudspeth and Ms. Moore for their update.

**7. OPEN AND PUBLIC MEETING LAW ORIENTATION: (Keisa Williams)**

Chief Justice Durrant welcomed Ms. Williams to the meeting.

Ms. Williams highlighted the following relative to the Open and Public Meeting Law:

1) intent of Rule 2-103 is to establish procedures consistent with the philosophy of the Utah Open and Public Meetings Act; 2) requires the Administrative Office of the Courts to provide annual training to Council members; 3) the Council meetings must be open unless they are closed in the right way for the right reason; 4) what a meeting is; 5) public notice must be given; 6) audio recording and minutes; 7) public access to the meeting; 8) closed meetings—how the meetings are closed, reasons for closing a meeting, and limits on decisions made in a closed meeting; and 9) access to meeting records.

**8. LEGISLATIVE UPDATE AND INTERIM HIGHLIGHTS: (Rick Schwermer)**

Mr. Schwemer highlighted the following in his legislative update: 1) four legislative meetings have been held; 2) the Executive Appropriations Committee met last week and adopted budget estimates, and there seems to be little new general fund and even less general fund one-time; 3) bills have begun to be numbered; 4) the Liaison Committee will begin to meet in January; 5) a meeting will be held with Ron Gordon tomorrow regarding the recommendations prepared by the Utah Juvenile Justice Working Group; and 6) results of an Attorney Telephone Survey Report prepared for the Utah Judicial Performance Evaluation Committee will be shared with members of the Council at a later time.

**9. STANDING COMMITTEE ON TECHNOLOGY UPDATE: (Ron Bowmaster and Chris Palmer)**

Chief Justice Durrant welcomed Mr. Bowmaster and Mr. Palmer to the meeting.

Mr. Bowmaster reported on the recommended courtroom audio/video upgrades as determined by the Standing Committee on Technology.

The Standing Committee on Technology was tasked with evaluating the technology that can be used to retrofit video conferencing capability in existing courtrooms, to establish a plan to upgrade existing technology, and to make a recommendation for a statewide plan to guide the expansion of courtroom technology throughout the state. Currently there are 164 courtrooms throughout the state.

The following assumptions were used to develop the guidelines that could be used to schedule upgrades, as funding becomes available:

- The primary objective is to bring enhanced video conference capability to every courthouse
- Limit the enhanced video capability to each courthouse to one unit until all the courthouses have one courtroom with enhanced video capability
- In those courthouses with more than one courtroom, install enhanced video in only one courtroom or install a mobile solution that can be moved from courtroom to courtroom
- Establish an audio/video upgrade schedule based upon the age of existing equipment and/or those that require constant maintenance
- Create a statewide audio/video upgrade plan for all courtrooms in the state

Upgrade costs are as follows:

- Standalone mobile cart, \$8,000
- Audio system upgrade, \$25,000
- Video system upgrade - \$30,000

Mr. Bowmaster reviewed the recommended options, prepared by the Standing Committee on Technology, that could be used when determining what courtrooms to upgrade and in what order.

Mr. Becker mentioned that funding of courtroom audio/video upgrades may be considered at the May 2017 Council meeting when approving the FY 2018 spending plan.

Discussion took place.

**Motion:** Judge Toomey moved to enter into an executive session to discuss the deployment of security personnel devices or systems. Judge Shaughnessy seconded the motion, and it passed unanimously.

**10. STANDING COMMITTEE ON MODEL UTAH CRIMINAL JURY  
INSTRUCTIONS UPDATE: (Judge James Blanch and Keisa Williams)**

Judge Blanch and Ms. Williams were welcomed to the meeting.

Judge Blanch provided an update to the Council on the work of the Standing Committee on Model Utah Criminal Jury Instructions. He highlighted the following in his update on the work of the standing committee:

- Thanked Ms. Williams for all she does as staff to the committee
- Plan to develop substantive jury instruction that relates to specific offenses and defenses
- Plan to identify and prioritize those offenses that tend to get charged more often and go to trial more often
- Completed jury instructions relative to sex offenses which have been published
- Completed a comprehensive set of jury instructions on drug offenses that should be published in January
- Plan to update the general jury instructions
- Currently addressing jury instructions on affirmative defenses
- Development of jury instructions relative to domestic violence offenses will take place once the jury instructions on affirmative defenses have been completed

Chief Justice thanked Judge Blanch for all the work the Standing Committee on Model Utah Criminal Jury Instructions has completed.

**11. RULES FOR FINAL ACTION: (Nancy Sylvester)**

Chief Justice Durrant welcomed Ms. Sylvester to the meeting.

Several rules are being recommended for final action, on an expedited basis, by the Policy and Planning Committee.

CJA 4-202.02 – Records classification. The rule has been amended to classify dismissals in criminal cases as private rather than protected.

It was noted that a bill will be considered in the 2017 Legislative Session to address related issues.



**Motion:** Mr. Lund moved to approve Rule 4-202.02 – Records classification for final action, on an expedited basis, as it relates to classifying dismissals in criminal cases and classifying court records associated with actions for disease testing (approved at the November meeting). The rule will then go out for public comment and will have an effective date of May 15, 2017. Judge Toomey seconded the motion, and it passed unanimously.

CJA 1-205 – Standing and ad hoc committees. The rule has been amended to add the Committee on Court Forms.

CJA 3-117 – Committee on Court Forms. This is a new rule to establish a committee to determine the need for forms and to create forms for use by litigants in all court levels.

**Motion:** Judge Toomey moved to approve Rule 1-205 – Standing and ad hoc committees and Rule 3-117 – Committee on court forms as recommended by the Policy and Planning Committee and send the rules out for public comment. Mr. Lund seconded the motion, and it passed unanimously.

## **12. SENIOR JUDGE CERTIFICATION: (Nancy Sylvester)**

The following judges have requested certification as senior judges: 1) Judge Jeffrey R. Burbank, active senior judge; 2) Judge R. Scott Waterfall, inactive senior justice court judge; 3) Judge O. Lane McCotter, from an active senior justice court judge to an inactive senior justice court judge; and 4) Judge William Keetch, inactive senior judge.

**Motion:** Judge Toomey moved to enter into an executive session to discuss the character, competence, or physical or mental health of an individual. Judge Parkin seconded the motion, and it passed unanimously.

**Motion:** Judge Higbee moved to forward the recommendations for senior judge certification to the Supreme Court, on behalf of the Council for the following judges: 1) Judge Jeffrey R. Burbank, active senior judge; 2) Judge R. Scott Waterfall, inactive senior justice court judge; 3) Judge O. Lane McCotter, from an active senior justice court judge to an inactive senior justice court judge; and 4) Judge William Keetch, inactive senior judge. Judge DeCaria seconded the motion, and it passed unanimously.

## **13. ADR COMMITTEE UPDATE: (Judge Royal Hansen and Nini Rich)**

Chief Justice Durrant welcomed Judge Hansen and Ms. Rich to the meeting. Judge Hansen and Ms. Rich highlighted the following in their update:

- Inclusion of the ADR Committee Update to the Judicial Council dated December 19, 2016 in the Council's meeting materials
- Adoption of the *Utah Mediation Best Practice Guide* as a resource for mediation standards by the Council at their April 2016 meeting
- Continued focus on outreach and education programs to the legal community on the availability of ADR programs and resources
- Invited to present the Utah ADR programs at the 2016 ABA Conference to be held in San Francisco in April
- Peacekeeper of the Year Award was presented to Judge Royal Hansen, ADR Committee chair, in May 2016 by the Utah Council on Conflict Resolution (UCCR)

in recognition of his outspoken advocacy for the use of ADR in the courts and his commitment to advancing the ethical foundations of ADR practices in Utah

- ADR Committee focus for 2017 include: 1) update of the online ethics exam, 2) continue outreach and education on ethics, 3) continue to address statewide access and utilization of available ADR programs
- ADR Program statistic for FY 2016 included: 1) more than 3,000 cases were mediated through court ADR programs, 2) Five ADR staff mediators conducted 1,107 child welfare mediations statewide, and 3) more than 300 pro bono mediations were arranged directly by ADR staff
- Annual 40-Hour Basic Mediation Training provided to court staff and personnel

Chief Justice Durrant thanked Judge Hansen and Ms. Rich for their ADR Committee update.

**14. BOARD OF JUVENILE COURT JUDGES UPDATE: (Judge Michelle Heward and Dawn Marie Rubio)**

Chief Justice Durrant welcomed Judge Heward and Ms. Rubio to the meeting. A handout was distributed.

Judge Heward highlighted the following in her update to the Council: 1) members of the Board of Juvenile Court Judges, 2) mandatory e-filing in juvenile court, 3) education court report, 4) media access to juvenile court hearings and records, 5) development of court video for parents, 6) child welfare regarding permanency bench card and Indian Child Welfare Act (ICWA) guidelines and regulations, 7) juvenile justice working group – selected key findings and pro-active efforts of the Board and Probation.

Portions of the court video for parents was viewed by members of the Council.

Chief Justice Durrant thanked Judge Heward for her update.

Mr. Schwermer reviewed information from the October 2016 Attorney Telephone Survey Report as prepared for the Utah Judicial Performance Evaluation Commission. He highlighted the key findings from the survey as listed in the executive summary of the report to include the following: 1) general evaluation information, 2) barriers preventing completion of the evaluations, 3) motivation to complete the evaluations, and 4) evaluation statements.

Discussion took place.

**15. ADJOURN**

The meeting was adjourned.

# Administrative Office of the Courts

Chief Justice Matthew B. Durrant  
Utah Supreme Court  
Chair, Utah Judicial Council

Daniel J. Becker  
State Court Administrator  
Raymond H. Wahl  
Deputy Court Administrator

## Sworn Statement under Rule 2-103(4)(B) of the Utah Code of Judicial Administration Regarding Judicial Council Meeting Closure

I, Justice Matthew B. Durrant, state as follows:

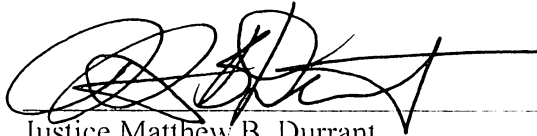
1. On 12-19-16 (date), the Judicial Council closed its meeting. The meeting was closed only to discuss:

- ☐ the character, competence, or physical or mental health of an individual;
- ☐ litigation;
- ☒ the deployment of security personnel, devices, or systems;
- ☐ allegations of criminal misconduct;
- ☐ consideration of a private, protected, sealed, juvenile court social, juvenile court legal, or safeguarded record;
- ☐ the purchase, or exchange or lease of real property because public discussion would prevent the Council from completing the transaction on the best possible terms; or
- ☐ the sale of real property because public discussion would prevent the Council from completing the transaction on the best possible terms.

2. For the reason(s) noted above, a recording and minutes were not kept during the closed portion of the meeting.

I declare under penalty of perjury that the statements made in this document are true and correct.

12-19-16  
Date

  
Justice Matthew B. Durrant  
Chair, Utah Judicial Council

The mission of the Utah judiciary is to provide the people an open, fair,  
efficient, and independent system for the advancement of justice under the law.

# Administrative Office of the Courts

Chief Justice Matthew B. Durrant  
Utah Supreme Court  
Chair, Utah Judicial Council

Daniel J. Becker  
State Court Administrator  
Raymond H. Wahl  
Deputy Court Administrator

## Sworn Statement under Rule 2-103(4)(B) of the Utah Code of Judicial Administration Regarding Judicial Council Meeting Closure

I, Justice Matthew B. Durrant, state as follows:

1. On 12-19-11 (date), the Judicial Council closed its meeting. The meeting was closed only to discuss:


- ☒ the character, competence, or physical or mental health of an individual;
- ☐ litigation;
- ☐ the deployment of security personnel, devices, or systems;
- ☐ allegations of criminal misconduct;
- ☐ consideration of a private, protected, sealed, juvenile court social, juvenile court legal, or safeguarded record;
- ☐ the purchase, or exchange or lease of real property because public discussion would prevent the Council from completing the transaction on the best possible terms; or
- ☐ the sale of real property because public discussion would prevent the Council from completing the transaction on the best possible terms.

2. For the reason(s) noted above, a recording and minutes were not kept during the closed portion of the meeting.

I declare under penalty of perjury that the statements made in this document are true and correct.

Date

12-19-11

  
Justice Matthew B. Durrant  
Chair, Utah Judicial Council

The mission of the Utah judiciary is to provide the people an open, fair,  
efficient, and independent system for the advancement of justice under the law.

**TAB 2**

# **Management Committee Minutes**

**JUDICIAL COUNCIL MANAGEMENT COMMITTEE  
MINUTES**

**Monday, January 9, 2017  
Matheson Courthouse  
450 South State Street  
Salt Lake City, Utah 84111**

**MEMBERS PRESENT:**

Hon. Kate Toomey, vice chair  
Hon. Thomas Higbee (by phone)  
Hon. David Marx  
Hon. Todd Shaughnessy

**EXCUSED:**

Chief Justice Matthew B. Durrant

**STAFF PRESENT:**

Daniel J. Becker  
Jody Gonzales  
James Ishida  
Debra Moore  
Rick Schwermer  
Heather Mackenzie-Campbell  
Brent Johnson

**GUESTS:**

Hon. Dennis Fuchs

**1. WELCOME AND APPROVAL OF MINUTES: (Judge Kate Toomey)**

Judge Kate Toomey welcomed everyone to the meeting. She mentioned that Chief Justice Matthew B. Durrant was unable to attend the meeting today. After reviewing the minutes, the following motion was made:

**Motion:** Judge Marx moved to approve the December 6, 2016 Management Committee meeting minutes. Judge Shaughnessy seconded the motion, and it passed unanimously.

**2. ADMINISTRATOR'S REPORT: (Daniel J. Becker)**

Mr. Becker provided the following update:

Legislative Meetings. The last two districts will hold their legislative meetings this week. Mr. Becker mentioned discussion topics being addressed at several of the legislative meetings.

2017 Legislative Session – Meetings. Mr. Becker, Mr. Wahl, Mr. Schwermer, and Mr. John Bell recently met with the courts legislative fiscal analyst. A meeting with Representative Eric Hutchings, appropriations chair will be held this week. Each state agency has been asked by the legislative analyst to look at where budgets could be reduced by 2 percent. The schedule for appropriation committee meetings has yet to be distributed.

Arnold Foundation Update. The language with regard to the MOU has been agreed upon. The cost estimates from the Justice Systems Partners has been received, which is \$30,000 less than what has been set aside for the implementation of the pre-trial release assessment tool.

Judicial Retirements. Judge Samuel McVey has announced his upcoming retirement, effective July 16, 2017. Judge Dane Nolan has announced his upcoming retirement, effective July 15, 2017.

January Council Meeting. The January Council meeting will be held on January 23. The 2017 Legislative Session will begin this day, and Chief Justice Durrant is scheduled to provide the State of the Judiciary Address that same afternoon.

Executive Session. An executive session will be needed at the end of the meeting.

**3. COMMITTEE APPOINTMENTS: (Debra Moore)**

The following judges have been recommended for reappointment to serve a second term on the Uniform Fine and Bail Committee: 1) Judge James Blanch, 2) Judge Keith Eddington, and 3) Judge Paul Parker. All three judges have expressed interest in serving a second term.

**Motion:** Judge Marx moved to approve the reappointments of the following judges to serve a second term on the Uniform Fine and Bail Committee: 1) Judge James Blanch, 2) Judge Keith Eddington, and 3) Judge Paul Parker. It will be placed on the January Judicial Council consent calendar. Judge Shaughnessy seconded the motion, and it passed unanimously.

The Standing Committee on Children and Family Law has a vacancy on the committee for a juvenile court judge with Judge Paul Lyman's second term expiring. Judge Lyman also served as the co-chair of the committee.

The Board of Juvenile Court Judges recommended Judge Brent Bartholomew be appointed to serve as a juvenile court judge on the committee. The Standing Committee on Children and Family Law recommended Judge Sherene Dillon be appointed to serve as the juvenile judge co-chair of the committee.

**Motion:** Judge Marx moved to approve the following appointments: 1) the appointment of Judge Brent Bartholomew to serve as a juvenile judge representative on the Standing Committee of Children and Family Law, and 2) the appointment of Judge Sherene Dillon to serve as the juvenile judge co-chair on the Standing Committee on Children and Family Law and place it on the January Judicial Council consent calendar. Judge Shaughnessy seconded the motion, and it passed unanimously.

**4. FOURTH DISTRICT – UTAH COUNTY – PROVO CITY JUSTICE COURT  
FINAL AUDIT REPORT: (Heather Mackenzie-Campbell)**

Judge Toomey welcomed Ms. Mackenzie-Campbell to the meeting.

Ms. Mackenzie-Campbell reviewed the results of the Fourth District – Utah County – Provo City Justice Court Final Audit. She highlighted the following in her report: 1) the court is operating as a Class I court; 2) in FY 2016, they reported 11,519 total cases filed; 3) records were examined from January 1, 2015 through December 31, 2015; 4) identified 19 commendable procedures; and 5) identified 15 of 44 observations as significant areas for improvement,

**Motion:** Judge Marx moved to accept the Fourth District – Utah County – Provo City Justice Court Final Audit Report as prepared. Judge Shaughnessy seconded the motion, and it passed unanimously.



**5. 2016 AUDIT SERVICES STATUS REPORT: (Heather Mackenzie-Campbell)**

Ms. Mackenzie-Campbell reviewed the details of the 2016 Audit Status report prepared for the Management Committee. She highlighted the following: 1) 4 audits currently underway, 2) provided assistance to the Utah Juvenile Justice Working Group with regard to FINET juvenile trust accounting and CARE trust (regular and RWF) accounting, and 3) presentations and training prepared and provided for various court entities.

**6. 2017 PROPOSED AUDIT SCHEDULE: (Heather Mackenzie-Campbell)**

Ms. Mackenzie-Campbell reviewed the 2017 proposed audit schedule.

The Board of Justice Court Judges recommended the following justice courts be scheduled for audits in 2017: 1) Seventh District, Carbon County, East Carbon City Justice Court; and 2) Fourth District, Utah County, City of Saratoga Springs Justice Court.

The following additional audits are being recommended in 2017: 1) AOC audit – Finance, Facilities, and Purchasing Review; and 2) Eighth District, Daggett County District Court, Full Audit.

**Motion:** Judge Marx moved to approve the 2017 proposed audit schedule as presented. Judge Shaughnessy seconded the motion, and it passed unanimously.

**7. COMMITTEE ON PROBLEM-SOLVING COURTS – COMPLIANCE WITH BEST PRACTICES: (Judge Dennis Fuchs)**

Judge Fuchs was welcomed to the meeting.

As recommended at the December Council meeting, a Committee on Problem-Solving Courts – Compliance with Best Practices will be created to address the concerns raised at the December meeting.

The concerns mentioned at the December Council meeting included:

- Monitoring historically disadvantaged groups – determine if minority groups are adequately represented in problem-solving courts
  - As part of the CORIS rewrite, IT is working on developing a program that will capture data on minority representation in problem solving courts.
- Drug and alcohol testing is frequent enough to ensure substance use is detected quickly.
- Responsibilities of the judge.
  - The judge presides over the problem-solving court for no less than two consecutive years.
  - Outcomes are better when the problem-solving court judge attends annual training conferences on evidence-based practices in substance abuse and mental health treatment.
- Number of participants
  - The policy followed on behalf of the Council and State Substance Abuse allows for no more than 125 participants and no less than 15 participants.

Judge Fuchs reviewed the proposed membership of the Committee on Problem-Solving Courts – Compliance with Best Practices to include:

Adult Drug Court Judge – Judge Randall Skanchy  
Juvenile Drug Court Judge – Judge Suchada Bazzelle  
Mental Health Court Judge – Judge Vernice Trease  
Trial Court Executive – Shane Bahr  
Staff to the Committee – Rick Schwermer and Judge Dennis Fuchs

Discussion took place regarding inclusion of a Judge with a rural perspective.

**Motion:** Judge Shaughnessy moved to approve the proposed membership of the Committee on Problem-Solving Courts – Compliance with Best Practices as recommended, but to include Judge Mary Manley (to provide a rural perspective). The committee will provide a report of their findings and recommendations to the Council in April or May. Judge Marx seconded the motion, and it passed unanimously.

**8. APPROVAL OF JUDICIAL COUNCIL AGENDA: (Chief Justice Matthew B. Durrant)**

Chief Justice Durrant reviewed the proposed Judicial Council agenda for the January 23 Council meeting.

**Motion:** Judge Marx moved to approve the agenda for the January 23 Judicial Council meeting as amended. Judge Shaughnessy seconded the motion, and it passed unanimously.

**Motion:** Judge Marx moved to enter into an executive session to discuss a matter of professional competence. Judge Shaughnessy seconded the motion, and it passed unanimously.

**9. EXECUTIVE SESSION**

An executive session was held at this time.

**10. ADJOURN**

The meeting was adjourned.

# **Liaison Committee Minutes**

# JUDICIAL COUNCIL LIAISON COMMITTEE MEETING

Minutes  
Friday, August 19, 2016  
Matheson Courthouse  
Council Room

Justice Thomas Lee, Presiding

## **ATTENDEES:**

Hon. Paul Farr  
Justice Thomas Lee  
Hon. Mark DeCaria  
Hon. Mary Noonan

## **STAFF PRESENT:**

Daniel J. Becker  
Brent Johnson  
Ray Wahl  
Debra Moore Keisa  
Williams Dawn  
Marie Rubio Rick  
Schwermer Nancy  
Sylvester Nancy  
Merrill

## **EXCUSED:**

## **GUESTS:**

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### 1. WELCOME: (Justice Thomas Lee)

Justice Lee welcomed everyone to the meeting.

***Motion:*** Judge Paul Farr moved to approve the minutes from the Liaison Committee Meeting on March 4, 2016. Judge Mary Noonan seconded the motion. The motion passed unanimously.

### 2. Consideration of Council Legislation (Mr. Brent Johnson)

Mr. Johnson reviewed proposed amendments to the following sections from the House Keeping Bill:

- An amendment that will reflect the processes for appointing a judge in a justice court. The Committee discussed the proposed change and decided to approve the concept and amend some of the language. The remaining justice court appeal language was also approved.
- A statute relating to salaries for presiding judges in Juvenile and Appellate Court. After further discussion Mr. Johnson agreed to revise the section and distribute the revisions to the Council for review.

*Liaison Committee's position: Support in concept but amend some of the language*

**NEXT MEETING:            To Be Determined**

# JUDICIAL COUNCIL LIAISON COMMITTEE MEETING

Minutes  
Friday, January 13, 2017  
Matheson Courthouse  
Council Room

Justice Thomas Lee, Presiding

**ATTENDEES:**

Justice Thomas Lee  
Hon. Paul Farr  
Hon. Mary Noonan

**STAFF PRESENT:**

Daniel J. Becker  
Rick Schwermer  
Nancy Merrill  
Nancy Sylvester  
Keisa Williams

**EXCUSED:**

Hon. Mark DeCaria

**GUESTS:**

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1. **WELCOME:** (Justice Thomas Lee)

***Motion:** Judge Paul Farr moved to approve the minutes from the Liaison Committee Meeting on August 19, 2016. Judge Mary Noonan seconded the motion. The motion passed unanimously.*

3. **H.B. 72 Child Welfare Proceedings Amendments**  
(Chief Sponsor: Michael S. Kennedy) (Judge Mary Noonan)

This bill amends provisions of the Juvenile Court Act relating to petitions for termination of parental rights.

The Committee discussed the language of the bill. The Juvenile Board expressed concern with time line inconsistencies particularly on lines 149 and 150. They noted that line 148 duplicates and existing provision. There are a number of procedural provisions and timelines.

***Liaison Committee's position:** Oppose the bill it is procedure and duplicative.*

4. **H.B. 73 Child Placement Amendments**  
(Chief Sponsor: Jeremy A. Peterson) (Judge Mary Noonan)

This bill enacts provisions in the Juvenile Court Act related to child placement during an abuse, neglect, or dependency proceeding.

Judge Noonan noted that the bill imposes new work on DCFS but that the bill is policy.

*Liaison Committee's position: No position*

**5. H.B. 77 Fifth District Court Judge  
(Chief Sponsor: V. Lowry Snow) (Judge Paul Farr)**

This bill adds a judge to the fifth judicial district.

*Liaison Committee's position: Support*

**6. H.B. 79 Private Attorney General Doctrine  
(Chief Sponsor: Brian M. Greene) (Justice Thomas Lee)**

This bill repeals a provision relating to the private attorney general doctrine.

Mr. Schwermer reviewed the background of this bill. He noted that the proposed bill is the original version from last year's legislative session. The Committee had further discussion about the bill and considered the judicial perspective of the bill.

*Liaison Committee's position: No position*

**7. H.B. 93 Judicial Nominating Process Amendments  
(Chief Sponsor: Merrill F. Nelson) (Justice Thomas Lee)**

This bill amends provisions related to the judicial nominating process.

The committee discussed line 41.

*Liaison Committee's position: No position but to the extent that this amendment restricts the nominating commission's ability to do what is clearly part of their purpose, than the courts will have a concern.*

**8. H.B. 101 1<sup>st</sup> sub (Buff) Adoptive Studies And Evaluations Amendments  
(Chief Sponsor: Edward H. Redd) (Judge Mary Noonan)**

This bill amends provisions related to adoptive evaluations.

*Liaison Committee's position: No position*

**9. H.B. 102 Cohabitant Abuse Act Amendments  
(Chief Sponsor: Angela Romero) (Judge Paul Farr)**

This bill defines the term "intimate partner."

Judge Farr noted that the definition of intimate partner in this proposed bill slightly differs from the Federal definition of intimate partner. The Committee discussed drafting concerns with line 66.

*Liaison Committee's position: No position but point out drafting concerns with line 66*

**10. S.B. 31 Protection Of Law Enforcement Officers Personal Information  
(Chief Sponsor: Don L. Ipson) (Judge Mary Noonan)**

This bill amends the Utah Criminal Code regarding protection of personal information of law enforcement officers.

The Committee discussed including other entities, such as judges.

*Liaison Committee's position: No position but consider other entities*

**11. S.B. 52 Rental Agreements  
(Chief Sponsor: Lincoln Fillmore) (Judge Paul Farr)**

This bill modifies provisions related to rental properties.

The Committee discussed the bill.

*Liaison Committee's position: No position*

**12. S.B. 54 Adoption Amendments  
(Chief Sponsor: Todd Weiler) (Justice Thomas Lee)**

This bill amends the Utah Adoption Act.

*Liaison Committee's position: No position*

**13. S.B. 71 Criminal Accounts Receivable Amendments  
(Chief Sponsor: Daniel W. Thatcher) (Judge Paul Farr)**

This bill makes changes in the monitoring and collection of criminal judgment accounts receivable.

The Committee agreed to discuss this bill at the next Liaison Committee meeting.

*Liaison Committee's position: The Committee will address the bill at the next Liaison Committee meeting.*

**15. S.B. 75 Child Welfare Amendments  
(Chief Sponsor: Lincoln Fillmore) (Judge Mary Noonan)**

This bill amends and enacts provisions concerning child and family services.



*Liaison Committee's position: No position the bill is policy*

**16. S.B. 76 Post-Conviction DNA Testing Amendments  
(Chief Sponsor: Lyle W. Hillyard) (Justice Thomas Lee)**

This bill modifies the Judicial Code regarding postconviction remedies.

The Committee discussed procedural concerns on line 77.

*Liaison Committee's position: No position but raise procedural concerns on line 77*

**18. S.J.R. 4 Joint Resolution Amending Rules of Evidence-Victim Selection  
(Chief Sponsor: Daniel W. Thatcher) (Justice Thomas Lee)**

This joint resolution amends the Utah Rules of Evidence by enacting a rule that prohibits the admissibility of evidence regarding the defendant's selection of the victim, except as specified.

Mr. Schwermer noted the work that the Evidence Advisory Committee has done on this issue. There was further discussion about the wording on line 37.

*Liaison Committee's position: No position but the language is problematic*

**19. S.B. 12 Expungement Amendments  
(Chief Sponsor: Daniel W. Thatcher) (Judge Paul Farr)**

This bill makes changes to provisions regarding expungements and pardons.

Judge Farr discussed various drafting issues with the bill; there are several provisions that are inconsistent making it difficult to interpret.

Mr. Schwermer noted that another substitute of S.B. 12 is being drafted and that he will send the most current substitute around. The Committee agreed to address the bill at the next Liaison Committee meeting.

*Liaison Committee's position: No position but some procedural concerns and confusing definitions.*

**20. Other Business:** Mr. Schwermer noted that he will include H.B. 19 Civil Asset Forfeiture Reform Amendments, H.B. 116 Child Support Amendments and S.B. 71 Criminal Accounts Receivable Amendments on the next Liaison Committee meeting agenda.

Justice Lee thanked everyone for their hard work and adjourned the meeting.

**NEXT MEETING:            January 20, 2017  
                                     12:00 p.m.  
                                     Council Room**

# **Policy and Planning Committee Minutes**

**Policy and Planning Committee**

Executive Dining Room  
Matheson Courthouse  
450 S. State St.  
Salt Lake City, Utah 84111

January 6, 2017  
Draft

**Members Present**

Hon. Reed S. Parkin- Chair  
Hon. Marvin Bagley- by phone  
Hon. Ann Boyden  
John Lund  
Hon. Mary Noonan - by phone  
Hon. Derek Pullan - by phone

**Members Excused**

**Staff**

Nancy J. Sylvester  
Keisa L. Williams  
Jeni Wood - recording secretary  
Rick Schwermer

**Guests**

Mark Buchi (Holland and Hart)  
Steve Young (Holland and Hart)  
Commissioner Rebecca Rockwell (Tax  
Commission)  
Michelle Alig Lombardi (Attorney  
General's Office)  
John McCarrey (Attorney General's  
Office)  
Kelly Wright (SL County District  
Attorney's Office)  
Tim Bodily (SL County District  
Attorney's Office)  
Brad Johnson (SL County District  
Attorney's Office)  
Tom Peters (Peters Scofield)

**(1) Approval of minutes.**

Judge Reed Parkin welcomed the members and guests to the meeting. Each guest introduced themselves. Judge Parkin then addressed the December 2, 2016 minutes. There being no changes to the minutes, John Lund moved to approve the December 2, 2016 minutes. Judge Ann Boyden seconded the motion and it passed unanimously.

**(2) CJA 6-103(6). District Court Tax Judges**

Judge Parkin again welcomed the guests to the meeting and invited someone to introduce the issue. Steve Young briefly addressed the committee, explaining the

relationship between property taxes and the counties. Mr. Young said there is a frequent conflict between the proper balance of confidential information and open courts. They would like to see a judicial rule that would make the process more efficient and protect taxpayers' information.

Mark Buchi next discussed his role in dealing with confidentiality. He has a long history dealing with tax issues: since the beginning of his career when he was a law clerk at the Tax Commission. Mr. Buchi stated currently the state tax system is quite efficient with approximately 750 employees. Mr. Buchi said one of the key factors is the honor system with self-reporting. People self-report because they know their information is protected and will not be widely disseminated. But Mr. Buchi said business owners are concerned with people getting their business records. They are confidential at the tax commission, but the minute they come to the courts, everything is made public. Mr. Buchi expressed concern about the amount of money that has been spent on litigating which records should remain private or protected. He said they are hopeful in bringing this to the Policy & Planning Committee that they will not affect due process rights but instead provide more confidentiality to tax payers. Mr. Buchi said the tax payers have asked that he and Mr. Young seek a fix to this issue. Mr. Young added that this proposal was a joint effort with the Tax Commission and Salt Lake County.

The representatives from Salt Lake County said they are very concerned about this issue, noting that courts are open and there should not be blanket confidentiality in these cases, especially where property tax and equalization of property values are concerned. But Tim Bodily said he thinks the proposed rule balances the public's right to know with the due process rights of the tax payer. Mr. Bodily said the parties usually reach an agreement as to what should be considered confidential, but it can take a long time. This proposal builds in an agreement: although the records are protected throughout the case, if a member of the public requests access to a tax payer's records, the tax payer has 30 days to provide the records or request that they be made private, protected or safeguarded, or sealed.

Thomas Peters, who represents most of the counties outside of Salt Lake, then addressed the committee and thanked the members for allowing this discussion. Mr. Peters said he also believes the rule does strike the necessary balance needed to accommodate all parties, the public, and the courts. Judge Boyden asked if Mr. Peters felt that there were other issues outside of Salt Lake County that have not been addressed with this proposal. Mr. Peters stated this hasn't been discussed extensively with all 28 counties but in his experience and through the conversations he has had he believes the issues are the same. It was noted that one case alone could affect multiple counties and that this was taken into consideration with the proposal. Mr. Young said many of the guests present have been involved in cases involving multiple counties. The cases typically go through an extensive administration process before they go to the

courts. The guests would like to see this process through rule versus statute because the issue is one of judicial procedure.

Judge Derek Pullan then addressed the guests. Judge Pullan said he has four concerns: 1) that the proposal makes too broad a brush stroke: the cases would now be closed as to all information, not just commercial information; 2) litigation over what is commercial information would now be at the end, rather than at the beginning of the case, which doesn't seem to fall in line with the cost savings theory; 3) the rule is tied to non-appealable final orders, which means these cases could be closed for years; and 4) striking commercial information from a published opinion could render them unintelligible.

Mr. Young addressed the published opinions and said he doesn't believe much information would end up being redacted. Mr. Lund asked if there was an alternate option. Judge Pullan said once a decision to redact is made it's important that the facts are clear. Mr. Young stated that they have been dealing with redacting information since 1996 and it hasn't been much of an issue. Mr. Young noted that in the past the parties have gotten protective orders in their cases to protect their information. Judge Pullan stated he has seen cases where competitors are involved in a case and the parties agree to protective orders. He surmised that if the protective order system is working well then there should not need to be a rule. Mr. Buchi argued that the protective order process has become more cumbersome and costly over the years.

Mr. Lund discussed how the federal system automatically imposes protective orders in cases like these. Mr. Buchi confirmed that that was what they were trying to do here, too. Mr. Lund asked for clarification on how long the information would be protected. Mr. Buchi said most cases tend to resolve any need for protection issues at the end; much of the information becomes outdated and irrelevant by that point. Mr. Lund noted that the media would request access in high-profile cases. He wondered how the rule addressed that situation. Mr. Young explained that just like any other member of the public, they would submit a request and the parties would need to either release the records or ask the court to seal, make private, protect, or safeguard the records. This would all be done within 30 days. There was further discussion about concerns regarding protecting information at the beginning or at the end of a case.

Judge Pullan believes the general rule that the public has access should remain. Mr. Young said Utah Code § 59-1-404 lays out very clearly what is allowed to be disclosed to the public. Mr. Young said this is a significant concern but they think the rule balances the openness and uniformity concerns. Concerns were discussed about how the media would know what to request access to. Keisa Williams suggested that there could be an amendment to proposed paragraph (c)(i) making it more broad, such as "if a request for **access to the file or for a specific record** is made...." It was noted that the court docket is public so someone would know what specifically to request access to.

Even when a document is listed as private, the title is still available. Mr. Lund noted that proposed paragraph (c)(ii) discusses that at the end of the case, all records are released unless the court orders specific records to be classified as sealed, private, protected, or safeguarded. This could be amended to state "released upon request." The committee briefly discussed the potential changes to (c)(ii).

Mr. Buchi said in his experience judges have ultimately almost always granted requests to protect information. He said it's not very cost effective for litigants to pay their attorneys to review every document to decide what should be protected and what shouldn't be. He further noted it can take months just to get a protective order in place. In the past judges simply granted the request in court, however, in the last several years or so this has changed considerably. It was noted that in some cases the entire files may end up completely protected. But there is concern from the State that tax payers are over-designating and wanting everything private. Noting the concern, Mr. Buchi said he believes businesses will not fight property tax cases if they don't believe there is protection. He thinks the courts will be used less. Mr. Lund said he understands the need for a default protection. Mr. Lund noted again that in the federal court there is a standard order of protection and wondered if there could be the same in the state courts. Mr. Young said he believes this proposed rule is tantamount to that order. The committee continued to express its concerns that a general protective order won't be specific enough and that courts have an obligation to remain open.

On a final note, the guests wanted to make sure the committee understood the proposal would still give judges control of what is protected, which is captured in proposed paragraph (10)(a) in the language "except as otherwise ordered by the court." Judge Pullan expressed his appreciation for having experts in the area come to the meeting to discuss the proposal with them. Judge Parkin summarized the goals that were discussed and also expressed his appreciation for the guests. He then explained Policy & Planning's processes to the guests. Mr. Young stated they would like approximately 14 days to modify their proposal based on the discussion and submit a revised version. Staff noted that they would not need them to come back for further discussion.

Judge Pullan suggested the committee take this issue back to their own districts' tax judges. The committee agreed to put the issue on next month's agenda for further discussion.

The guests were thanked for their time and excused.

### **(3) CJA 3-201 and 3-111. Court commissioners.**

Ms. Sylvester suggested that the committee defer discussion on this issue until its March meeting and the committee agreed.

#### **(4) CJA 9-301. Record of Conviction.**

Ms. Sylvester gave a brief explanation of the recommendation to repeal the rule in its entirety. The committee had previously voted to repeal paragraphs (1) and (2) and were still considering paragraph (3). Ms. Sylvester stated she discussed this proposal with Brent Johnson and he noted that courts are not required to collect fingerprints; they are only required to send the defendant to get fingerprinted (see CJA Rule 4-609(5)). The rest of paragraph (3) regarding executing a written and signed judgment of conviction and forwarding the information on is already provided for statutorily (see Utah Code § 53-10-208.1).

Judge Boyden said she is concerned about the language in Rule 4-609(5) about instructing the defendant to go immediately to the jail for booking and release. In Salt Lake County currently, the jail's appointments are six weeks out. Judge Boyden was concerned with the word "immediate." Judge Pullan said if the defendant follows his instructions and is unable to get in immediately, that defendant has still complied with his order. Judge Boyden said Rule 4-609(5) may need a fix to address this limitation with the jails. But Rick Schwermer said what's most important is that the defendants get an OTN (Offense Tracking Number). Ms. Williams noted that Third District is getting its own fingerprinting machine, so this concern may go away in light of that news. The committee agreed to address rule 4-609 at a later date if it was needed.

Mr. Lund moved to repeal rule 9-301. Judge Bagley seconded the motion and it passed unanimously.

#### **(6) Other Business.**

##### **CJA 4-202.02 and AIS**

Ms. Sylvester noted that the concern the appellate courts had brought up with respect to 4-202.02 and the AIS system had gone away (see November 2016 minutes). The concern was about juvenile records being made public once the new public interface went live. The appellate courts had determined that the issue was best addressed with a business (programming) rule rather than a CJA rule.

##### **Chairmanship**

Judge Parkin thanked the committee for their support during his chairmanship but noted that his term is now up and the committee needed to vote for a new chair. Before a new chair was nominated, Judge Boyden expressed her gratitude for everyone's hard work and noted how difficult their roles can be at times. They are tasked with working toward policies for the judiciary as a whole while coming from specific areas of the courts that have their own needs. It can at times be difficult to work toward the former when the latter plays a big role in their day-to-day. Judge Noonan then nominated Judge Pullan to be the new chair. John Lund seconded the motion and it passed unanimously.

The next meeting is February 3 in the west conference room at 10:00 am. There being no other business, the meeting adjourned at 11:50 am.



**TAB 3**

**Rule 26. General provisions governing disclosure and discovery.**

(a) **Disclosure.** This rule applies unless changed or supplemented by a rule governing disclosure and discovery in a practice area. This rule does not apply to cases subject to Tier 0.5.

(a)(1) Initial disclosures. Except in cases exempt under paragraph (a)(3), a party shall, without waiting for a discovery request, serve on the other parties:

(a)(1)(A) the name and, if known, the address and telephone number of:

(a)(1)(A)(i) each individual likely to have discoverable information supporting its claims or defenses, unless solely for impeachment, identifying the subjects of the information; and

(a)(1)(A)(ii) each fact witness the party may call in its case-in-chief and, except for an adverse party, a summary of the expected testimony;

(a)(1)(B) a copy of all documents, data compilations, electronically stored information, and tangible things in the possession or control of the party that the party may offer in its case-in-chief, except charts, summaries and demonstrative exhibits that have not yet been prepared and must be disclosed in accordance with paragraph (a)(5);

(a)(1)(C) a computation of any damages claimed and a copy of all discoverable documents or evidentiary material on which such computation is based, including materials about the nature and extent of injuries suffered;

(a)(1)(D) a copy of any agreement under which any person may be liable to satisfy part or all of a judgment or to indemnify or reimburse for payments made to satisfy the judgment; and

(a)(1)(E) a copy of all documents to which a party refers in its pleadings.

(a)(2) Timing of initial disclosures. The disclosures required by paragraph (a)(1) shall be served on the other parties:

(a)(2)(A) by the plaintiff within 14 days after filing of the first answer to the complaint; and

(a)(2)(B) by the defendant within 42 days after filing of the first answer to the complaint or within 28 days after that defendant's appearance, whichever is later.

(a)(3) Exemptions.

(a)(3)(A) Unless otherwise ordered by the court or agreed to by the parties, the requirements of paragraph (a)(1) do not apply to actions:

(a)(3)(A)(i) for judicial review of adjudicative proceedings or rule making proceedings of an administrative agency;

(a)(3)(A)(ii) governed by Rule 65B or Rule 65C;

(a)(3)(A)(iii) to enforce an arbitration award;

(a)(3)(A)(iv) for water rights general adjudication under Title 73, Chapter 4, Determination of Water Rights.

(a)(3)(B) In an exempt action, the matters subject to disclosure under paragraph (a)(1) are subject to discovery under paragraph (b).

(a)(4) Expert testimony.

(a)(4)(A) Disclosure of expert testimony. A party shall, without waiting for a discovery request, serve on the other parties the following information regarding any person who may be used at trial to present evidence under Rule 702 of the Utah Rules of Evidence and who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony: (i) the expert's name and qualifications, including a list of all publications authored within the preceding 10 years, and a list of any other cases in which the expert has testified as an expert at trial or by deposition within the preceding four years, (ii) a brief summary of the opinions to which the witness is expected to testify, (iii) all data and other information that will be relied upon by the witness in forming those opinions, and (iv) the compensation to be paid for the witness's study and testimony.

(a)(4)(B) Limits on expert discovery. Further discovery may be obtained from an expert witness either by deposition or by written report. A deposition shall not exceed four hours and the party taking the deposition shall pay the expert's reasonable hourly fees for attendance at the deposition. A report shall be signed by the expert and shall contain a complete statement of all opinions the expert will offer at trial and the basis and reasons for them. Such an expert may not testify in a party's case-in-chief concerning any matter not fairly disclosed in the report. The party offering the expert shall pay the costs for the report.

(a)(4)(C) Timing for expert discovery.

(a)(4)(C)(i) The party who bears the burden of proof on the issue for which expert testimony is offered shall serve on the other parties the information required by paragraph (a)(4)(A) within seven days after the close of fact discovery. Within seven days thereafter, the party opposing the expert may serve notice electing either a deposition of the expert pursuant to paragraph (a)(4)(B) and Rule 30, or a written report pursuant

to paragraph (a)(4)(B). The deposition shall occur, or the report shall be served on the other parties, within 28 days after the election is served on the other parties. If no election is served on the other parties, then no further discovery of the expert shall be permitted.

(a)(4)(C)(ii) The party who does not bear the burden of proof on the issue for which expert testimony is offered shall serve on the other parties the information required by paragraph (a)(4)(A) within seven days after the later of (A) the date on which the election under paragraph (a)(4)(C)(i) is due, or (B) receipt of the written report or the taking of the expert's deposition pursuant to paragraph (a)(4)(C)(i). Within seven days thereafter, the party opposing the expert may serve notice electing either a deposition of the expert pursuant to paragraph (a)(4)(B) and Rule 30, or a written report pursuant to paragraph (a)(4)(B). The deposition shall occur, or the report shall be served on the other parties, within 28 days after the election is served on the other parties. If no election is served on the other parties, then no further discovery of the expert shall be permitted.

(a)(4)(C)(iii) If the party who bears the burden of proof on an issue wants to designate rebuttal expert witnesses it shall serve on the other parties the information required by paragraph (a)(4)(A) within seven days after the later of (A) the date on which the election under paragraph (a)(4)(C)(ii) is due, or (B) receipt of the written report or the taking of the expert's deposition pursuant to paragraph (a)(4)(C)(ii). Within seven days thereafter, the party opposing the expert may serve notice electing either a deposition of the expert pursuant to paragraph (a)(4)(B) and Rule 30, or a written report pursuant to paragraph (a)(4)(B). The deposition shall occur, or the report shall be served on the other parties, within 28 days after the election is served on the other parties. If no election is served on the other parties, then no further discovery of the expert shall be permitted.

(a)(4)(D) Multiparty actions. In multiparty actions, all parties opposing the expert must agree on either a report or a deposition. If all parties opposing the expert do not agree, then further discovery of the expert may be obtained only by deposition pursuant to paragraph (a)(4)(B) and Rule 30.

(a)(4)(E) Summary of non-retained expert testimony. If a party intends to present evidence at trial under Rule 702 of the Utah Rules of Evidence from any person other than an expert witness who is retained or specially employed to provide testimony in the case or a person whose duties as an employee of the party regularly involve giving expert testimony, that party must serve on the other parties a written summary of the facts and opinions to which the witness is expected to testify in accordance with the deadlines set forth in paragraph (a)(4)(C). A deposition of such a witness may not exceed four hours.

(a)(5) Pretrial disclosures.

(a)(5)(A) A party shall, without waiting for a discovery request, serve on the other parties:

(a)(5)(A)(i) the name and, if not previously provided, the address and telephone number of each witness, unless solely for impeachment, separately identifying witnesses the party will call and witnesses the party may call;

(a)(5)(A)(ii) the name of witnesses whose testimony is expected to be presented by transcript of a deposition and a copy of the transcript with the proposed testimony designated; and

(a)(5)(A)(iii) a copy of each exhibit, including charts, summaries and demonstrative exhibits, unless solely for impeachment, separately identifying those which the party will offer and those which the party may offer.

(a)(5)(B) Disclosure required by paragraph (a)(5) shall be served on the other parties at least 28 days before trial. At least 14 days before trial, a party shall serve and file counter designations of deposition testimony, objections and grounds for the objections to the use of a deposition and to the admissibility of exhibits. Other than objections under Rules 402 and 403 of the Utah Rules of Evidence, objections not listed are waived unless excused by the court for good cause.

**(b) Discovery scope.**

(b)(1) In general. This rule does not apply to cases subject to Tier 0.5. Parties may discover any matter, not privileged, which is relevant to the claim or defense of any party if the discovery satisfies the standards of proportionality set forth below. Privileged matters that are not discoverable or admissible in any proceeding of any kind or character include all information in any form provided during and created specifically as part of a request for an investigation, the investigation, findings, or conclusions of peer review, care review, or quality assurance processes of any organization of health care providers as defined in the Utah Health Care Malpractice Act for the purpose of evaluating care provided to reduce morbidity and mortality or to improve the quality of medical care, or for the purpose of peer review of the ethics, competence, or professional conduct of any health care provider.

(b)(2) Proportionality. Discovery and discovery requests are proportional if:

(b)(2)(A) the discovery is reasonable, considering the needs of the case, the amount in controversy, the complexity of the case, the parties' resources, the importance of the issues, and the importance of the discovery in resolving the issues;

(b)(2)(B) the likely benefits of the proposed discovery outweigh the burden or expense;

(b)(2)(C) the discovery is consistent with the overall case management and will further the just, speedy and inexpensive determination of the case;

(b)(2)(D) the discovery is not unreasonably cumulative or duplicative;

(b)(2)(E) the information cannot be obtained from another source that is more convenient, less burdensome or less expensive; and

(b)(2)(F) the party seeking discovery has not had sufficient opportunity to obtain the information by discovery or otherwise, taking into account the parties' relative access to the information.

(b)(3) Burden. The party seeking discovery always has the burden of showing proportionality and relevance. To ensure proportionality, the court may enter orders under Rule 37.

(b)(4) Electronically stored information. A party claiming that electronically stored information is not reasonably accessible because of undue burden or cost shall describe the source of the electronically stored information, the nature and extent of the burden, the nature of the information not provided, and any other information that will enable other parties to evaluate the claim.

(b)(5) Trial preparation materials. A party may obtain otherwise discoverable documents and tangible things prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials and that the party is unable without undue hardship to obtain substantially equivalent materials by other means. In ordering discovery of such materials, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.

(b)(6) Statement previously made about the action. A party may obtain without the showing required in paragraph (b)(5) a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement about the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order under Rule 37. A statement previously made is (A) a written statement signed or approved by the person making it, or (B) a stenographic, mechanical, electronic, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(b)(7) Trial preparation; experts.

(b)(7)(A) Trial-preparation protection for draft reports or disclosures. Paragraph (b)(5) protects drafts of any report or disclosure required under paragraph (a)(4), regardless of the form in which the draft is recorded.

(b)(7)(B) Trial-preparation protection for communications between a party's attorney and expert witnesses. Paragraph (b)(5) protects communications between the party's attorney and any witness required to provide disclosures under paragraph (a)(4), regardless of the form of the communications, except to the extent that the communications:

(b)(7)(B)(i) relate to compensation for the expert's study or testimony;

(b)(7)(B)(ii) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or

(b)(7)(B)(iii) identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

(b)(7)(C) Expert employed only for trial preparation. Ordinarily, a party may not, by interrogatories or otherwise, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare for trial and who is not expected to be called as a witness at trial. A party may do so only:

(b)(7)(C)(i) as provided in Rule 35(b); or

(b)(7)(C)(ii) on showing exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.

(b)(8) Claims of privilege or protection of trial preparation materials.

(b)(8)(A) Information withheld. If a party withholds discoverable information by claiming that it is privileged or prepared in anticipation of litigation or for trial, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced in a manner that, without revealing the information itself, will enable other parties to evaluate the claim.

(b)(8)(B) Information produced. If a party produces information that the party claims is privileged or prepared in anticipation of litigation or for trial, the producing party may notify any receiving party of the claim and the basis for it. After being notified, a receiving party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present

the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The producing party must preserve the information until the claim is resolved.

**(c) Methods, sequence and timing of discovery; tiers; limits on standard discovery; extraordinary discovery.**

(c)(1) Methods of discovery. Parties in cases subject to Tiers 1-3 may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; requests for admission; and subpoenas other than for a court hearing or trial. Parties in cases subject to Tier 0.5 may obtain discovery only as set forth in the Utah Rules of Small Claims Procedure.

(c)(2) Sequence and timing of discovery. Methods of discovery may be used in any sequence, and the fact that a party is conducting discovery shall not delay any other party's discovery. Except for cases exempt under paragraph (a)(3), a party may not seek discovery from any source before that party's initial disclosure obligations are satisfied.

(c)(3) Definition of tiers for standard discovery. Actions claiming \$10,000 or less in damages are permitted limited discovery as described for Tier 0.5. Actions claiming more than \$10,000 and less than \$50,000 or less in damages are permitted standard discovery as described for Tier 1. Actions claiming more than \$50,000 and less than \$300,000 in damages are permitted standard discovery as described for Tier 2. Actions claiming \$300,000 or more in damages are permitted standard discovery as described for Tier 3. Absent an accompanying damage claim for more than \$300,000, actions claiming non-monetary relief are permitted standard discovery as described for Tier 2.

(c)(4) Definition of damages. For purposes of determining standard discovery, the amount of damages includes the total of all monetary damages sought (without duplication for alternative theories) by all parties in all claims for relief in the original pleadings.

(c)(5) Limits on standard fact discovery. Standard fact discovery per side (plaintiffs collectively, defendants collectively, and third-party defendants collectively) in each tier is as follows. The days to complete standard fact discovery are calculated from the date the first defendant's first disclosure is due and do not include expert discovery under paragraphs(a)(4)(C) and (D).



Tier	Amount of Damages	Total Fact Deposition Hours	Rule 33 Interrogatories including all discrete subparts	Rule 34 Requests for Production	Rule 36 Requests for Admission	Days to Complete Standard Fact Discovery
<b>0.5</b>	\$10,000 or less	Discovery as set forth in the Utah Rules of Small Claims Procedure				
<b>1</b>	More than \$10,000 and less than \$50,000 or less	3	0	5	5	120
<b>2</b>	More than \$50,000 and less than \$300,000 or non-monetary relief	15	10	10	10	180
<b>3</b>	\$300,000 or more	30	20	20	20	210

(c)(6) Extraordinary discovery. To obtain discovery beyond the limits established in paragraph (c)(5), a party shall file:

(c)(6)(A) before the close of standard discovery and after reaching the limits of standard discovery imposed by these rules, a stipulated statement that extraordinary discovery is necessary and proportional under paragraph (b)(2) and that each party has reviewed and approved a discovery budget; or

(c)(6)(B) before the close of standard discovery and after reaching the limits of standard discovery imposed by these rules, a request for extraordinary discovery under Rule 37(a).

**(d) Requirements for disclosure or response; disclosure or response by an organization; failure to disclose; initial and supplemental disclosures and responses.**

(d)(1) A party shall make disclosures and responses to discovery based on the information then known or reasonably available to the party.

(d)(2) If the party providing disclosure or responding to discovery is a corporation, partnership, association, or governmental agency, the party shall act through one or more officers, directors, managing agents, or other persons, who shall make disclosures and responses to discovery based on the information then known or reasonably available to the party.

(d)(3) A party is not excused from making disclosures or responses because the party has not completed investigating the case or because the party challenges the sufficiency of

another party's disclosures or responses or because another party has not made disclosures or responses.

(d)(4) If a party fails to disclose or to supplement timely a disclosure or response to discovery, that party may not use the undisclosed witness, document or material at any hearing or trial unless the failure is harmless or the party shows good cause for the failure.

(d)(5) If a party learns that a disclosure or response is incomplete or incorrect in some important way, the party must timely serve on the other parties the additional or correct information if it has not been made known to the other parties. The supplemental disclosure or response must state why the additional or correct information was not previously provided.

(e) **Signing discovery requests, responses, and objections.** Every disclosure, request for discovery, response to a request for discovery and objection to a request for discovery shall be in writing and signed by at least one attorney of record or by the party if the party is not represented. The signature of the attorney or party is a certification under Rule 11. If a request or response is not signed, the receiving party does not need to take any action with respect to it. If a certification is made in violation of the rule, the court, upon motion or upon its own initiative, may take any action authorized by Rule 11 or Rule 37(b).

(f) **Filing.** Except as required by these rules or ordered by the court, a party shall not file with the court a disclosure, a request for discovery or a response to a request for discovery, but shall file only the certificate of service stating that the disclosure, request for discovery or response has been served on the other parties and the date of service.

**Rule 26.2. Disclosures in personal injury actions.**

(a) **Scope.** This rule applies to all actions seeking damages arising out of personal physical injuries or physical sickness, except cases subject to Tier 0.5, to which the disclosure requirements of the Utah Rules of Small Claims Procedure shall apply.

(b) **Plaintiff's additional initial disclosures.** Except to the extent that plaintiff moves for a protective order, plaintiff's Rule 26(a) disclosures shall also include:

(b)(1) A list of all health care providers who have treated or examined the plaintiff for the injury at issue, including the name, address, approximate dates of treatment, and a general description of the reason for the treatment.

(b)(2) A list of all other health care providers who treated or examined the plaintiff for any reason in the 5 years before the event giving rise to the claim, including the name, address, approximate dates of treatment, and a general description of the reason for the treatment.

(b)(3) Plaintiff's Social Security number (SSN) or Medicare health insurance claim number (HICN), full name, and date of birth. The SSN and HICN may be used only for the purposes of the action, including compliance with the Medicare, Medicaid, and SCHIP Extension Act of 2007, unless otherwise ordered by the court.

(b)(4) A description of all disability or income-replacement benefits received if loss of wages or loss of earning capacity is claimed, including the amounts, payor's name and address, and the duration of the benefits.

(b)(5) A list of plaintiff's employers for the 5 years preceding the event giving rise to the claim if loss of wages or loss of earning capacity is claimed, including the employer's name and address and plaintiff's job description, wage, and benefits.

(b)(6) Copies of all bills, statements, or receipts for medical care, prescriptions, or other out-of-pocket expenses incurred as a result of the injury at issue.

(b)(7) Copies of all investigative reports prepared by any public official or agency and in the possession of plaintiff or counsel that describe the event giving rise to the claim.

(b)(8) Except as protected by Rule 26(b)(5), copies of all written or recorded statements of individuals, in the possession of plaintiff or counsel, regarding the event giving rise to the claim or the nature or extent of the injury.

(c) **Defendant's additional disclosures.** Defendant's Rule 26(a) disclosures shall also include:

(c)(1) A statement of the amount of insurance coverage applicable to the claim, including any potential excess coverage, and any deductible, self-insured retention, or reservations of rights, giving the name and address of the insurer.

(c)(2) Unless the plaintiff makes a written request for a copy of an entire insurance policy to be disclosed under Rule 26(a)(1)(D), it is sufficient for the defendant to disclose a copy of the declaration page or coverage sheet for any policy covering the claim.

(c)(3) Copies of all investigative reports, prepared by any public official or agency and in the possession of defendant, defendant's insurers, or counsel, that describe the event giving rise to the claim.

(c)(4) Except as protected by Rule 26(b)(5), copies of all written or recorded statements of individuals, in the possession of defendant, defendant's insurers, or counsel, regarding the event giving rise to the claim or the nature or extent of the injury.

(c)(5) The information required by Rule 9(l).

Advisory Committee Note

**Rule 4-801. Filing small claims cases.**

Intent:

To establish a procedure for filing small claims cases in the appropriate justice court.

Applicability:

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

Statement of the Rule:

Except where a jury trial is demanded, small claims actions shall be filed in a justice court with territorial jurisdiction. If there is no justice court with territorial jurisdiction, the case may be filed in the district court, and the plaintiff shall state why no justice court has jurisdiction. If a small claims affidavit, without the required statement, is presented for filing in a district court, the clerk shall reject it with instructions to file in a justice court with jurisdiction. If the clerk fails to reject it initially, the affidavit and filing fee shall be returned to the plaintiff when the deficiency is first noticed.

**Chapter 8**  
**Small Claims Courts**

**78A-8-101 Creation.**

There is created a limited jurisdiction division of the district and justice courts designated small claims court.

Amended by Chapter 205, 2012 General Session

**78A-8-102 Small claims -- Defined -- Counsel not necessary -- Removal from district court -  
- Deferring multiple claims of one plaintiff -- Supreme Court to govern procedures.**

(1) A small claims action is a civil action:

(a) for the recovery of money where:

- i. the amount claimed does not exceed \$10,000 including attorney fees but exclusive of court costs and interest; and
- ii. the defendant resides or the action of indebtedness was incurred within the jurisdiction of the court in which the action is to be maintained; or

(b) involving interpleader under Rule 22 of the Utah Rules of Civil Procedure, in which the amount claimed does not exceed \$10,000 including attorney fees but exclusive of court costs and interest.

(2)

(c) A defendant in an action filed in the district court that meets the requirement of Subsection (1)(a)(i) may remove, if agreed to by the plaintiff, the action to a small claims court within the same district by:

- i. giving notice, including the small claims filing number, to the district court of removal during the time afforded for a responsive pleading; and
- ii. paying the applicable small claims filing fee.

(d) No filing fee may be charged to a plaintiff to appeal a judgment on an action removed under Subsection (2)(a) to the district court where the action was originally filed.

(3) The judgment in a small claims action may not exceed \$10,000 including attorney fees but exclusive of court costs and interest.

(4) Counter claims may be maintained in small claims actions if the counter claim arises out of the transaction or occurrence which is the subject matter of the plaintiff's claim. A counter claim may not be raised for the first time in the trial de novo of the small claims action.

(5) Claims involving property damage to a motor vehicle may be maintained in small claims actions, and any removal or appeal thereof, without limiting the ability of a plaintiff to make a claim for bodily injury against the same defendant in a separate legal action. In the event that property damage claim is brought as a small claims action:

(a) any liability decision in an original small claims action or appeal thereof is not binding in any separate legal action for bodily injury; and

(b) no additional property damage claims can be brought in any separate legal action for bodily injury.

(6)

(a) With or without counsel, persons or corporations may litigate actions on behalf of themselves:

- i. in person; or
- ii. through authorized employees.

(b) A person or corporation may be represented in an action by an individual who is not an employee of the person or corporation and is not licensed to practice law only in accordance with the Utah rules of small claims procedure as promulgated by the Supreme Court.

(7) If a person or corporation other than a municipality or a political subdivision of the state files multiple small claims in any one court, the clerk or judge of the court may remove all but the initial claim from the court's calendar in order to dispose of all other small claims matters. Claims so removed shall be rescheduled as permitted by the court's calendar.

(8) Small claims matters shall be managed in accordance with simplified rules of procedure and evidence promulgated by the Supreme Court.

Amended by Chapter 368, 2013 General Session

**78A-8-103 Assignee may not file claim.**

A claim may not be filed or prosecuted in small claims court by any assignee of a claim.

Renumbered and Amended by Chapter 3, 2008 General Session

**78A-8-104 Object of small claims -- Attachment, garnishment, and execution.**

- (1) The hearing in a small claims action has the sole object of dispensing speedy justice between the parties. The record of small claims proceedings shall be as provided by rule of the Judicial Council.
- (2) Attachment, garnishment, and execution may issue after judgment as prescribed by law, upon the payment of the fees required for those services.

Renumbered and Amended by Chapter 3, 2008 General Session

**78A-8-105 Civil filing fees.**

- (1) Except as provided in this section, the fees for a small claims action in justice court shall be the same as provided in Section 78A-2-301.
- (2) Fees collected in small claims actions filed in municipal justice court are remitted to the municipal treasurer. Fees collected in small claims actions filed in a county justice court are remitted to the county treasurer.
- (3) The fee in the justice court for filing a notice of appeal for trial de novo in a court of record is \$10. The fee covers all services of the justice court on appeal but does not satisfy the trial de novo filing fee in the court of record.

Amended by Chapter 34, 2010 General Session

**78A-8-106 Appeals -- Who may take and jurisdiction.**

- (1) Either party may appeal the judgment in a small claims action ~~to the district court of the county~~ by filing a notice of appeal in the original trial court within 30 days of entry of the judgment. ~~If the judgment in a small claims action is entered by a judge or judge pro tempore of the district court, the notice of appeal shall be filed with the district court.~~

- (2) The appeal is ~~a trial de novo~~ and shall be tried in accordance with the procedures of small claims actions. A record of the trial shall be maintained. The ~~trial de novo~~ appeal may not be heard by a judge pro tempore appointed under Section 78A-8-108. The decision of ~~the~~ a trial de novo from a non-jury trial may not be appealed unless the court rules on the constitutionality of a statute or ordinance.

Renumbered and Amended by Chapter 3, 2008 General Session

#### **78A-8-107 Costs.**

The prevailing party in any small claims action is entitled to costs of the action and also the costs of execution upon a judgment rendered therein.

Renumbered and Amended by Chapter 3, 2008 General Session

#### **78A-8-108 Evening hours -- Judges pro tempore.**

- (1) The district or justice court may request that the Supreme Court appoint a member of the Utah State Bar in good standing, with the member's consent, as judge pro tempore to hear and determine small claims at times, including evening sessions, to be set by the court.
- (2) After being duly sworn, judges pro tempore shall:
  - (a) serve voluntarily and without compensation at the request of the court; and
  - (b) be extended the same immunities, and have the same powers with respect to matters within the jurisdiction of the small claims court as exercised by a regular judge.

Renumbered and Amended by Chapter 3, 2008 General Session

#### **78A-8-109 Report to Judiciary Interim Committee.**

The Judicial Council shall present to the Judiciary Interim Committee, if requested by the committee, a report and recommendation concerning the maximum amount of small claims actions.

Amended by Chapter 51, 2011 General Session

### **Chapter 1 Juries and Witnesses**

#### **78B-1-104. Jury composition.**

- (1) A trial jury consists of:
  - (a) 12 persons in a capital case;
  - (b) eight persons in a noncapital first degree felony aggravated murder or other criminal case which carries a term of incarceration of more than one year as a possible sentence for the most serious offense charged;
  - (c) six persons in a criminal case which carries a term of incarceration of more than six months but not more than one year as a possible sentence for the most serious offense charged;



- (d) four persons in a criminal case which carries a term of incarceration of six months or less as a possible sentence for the most serious offense charged; and
- (e) eight persons in a civil case at law except that the jury shall be four persons in a civil case for damages of less than \$20,000, exclusive of costs, interest, and attorney fees.
- (2) Except in the trial of a capital felony, the parties may stipulate upon the record to a jury of a lesser number than established by this section.
- (3)
- (a) The verdict in a criminal case shall be unanimous.
- (b) The verdict in a civil case shall be by not less than three-fourths of the jurors.
- ~~(4) There is no jury in the trial of small claims cases.~~
- (5) There is no jury in the adjudication of a minor charged with what would constitute a crime if committed by an adult.

**Title 78A – Judiciary and Judicial Administration**  
**Chapter 2 – Judicial Administrations**

**78A-2-301. Civil fees of the courts of record – Courts complex design.**

- (1) (a) The fee for filing any civil complaint or petition invoking the jurisdiction of a court of record not governed by another subsection is \$360.
- (b) The fee for filing a complaint or petition in district court is:
- (i) \$75 if the claim for damages or amount in interpleader exclusive of court costs, interest, and attorney fees is \$2,000 or less;
- (ii) \$185 if the claim for damages or amount in interpleader exclusive of court costs, interest, and attorney fees is greater than \$2,000 and less than \$10,000;
- (iii) \$360 if the claim for damages or amount in interpleader is \$10,000 or more;
- (iv) \$310 if the petition is filed under Title 30, Chapter 3, Divorce, or Title 30, Chapter 4, Separate Maintenance;
- (v) \$35 for a motion for temporary separation order filed under Section 30-3-4.5;
- (vi) \$125 if the petition is for removal from the Sex Offender and Kidnap Offender Registry under Section 77-41-112; and
- (vii) \$35 if the petition is for guardianship and the prospective ward is the biological or adoptive child of the petitioner.
- (c) The fee for filing a small claims affidavit in a small claims court is:
- (i) \$60 if the claim for damages or amount in interpleader exclusive of court costs, interest, and attorney fees is \$2,000 or less;
- (ii) \$100 if the claim for damages or amount in interpleader exclusive of court costs, interest, and attorney fees is greater than \$2,000, but less than \$7,500; and
- (iii) \$185 if the claim for damages or amount in interpleader exclusive of court costs, interest, and attorney fees is \$7,500 or more.
- (d) The fee for filing a counter claim, cross claim, complaint in intervention, third party complaint, or other claim for relief against an existing or joined party other than the

original complaint or petition is:

- (i) \$55 if the claim for relief exclusive of court costs, interest, and attorney fees is \$2,000 or less;
  - (ii) \$150 if the claim for relief exclusive of court costs, interest, and attorney fees is greater than \$2,000 and less than \$10,000;
  - (iii) \$155 if the original petition is filed under Subsection (1)(a), the claim for relief is \$10,000 or more, or the party seeks relief other than monetary damages; and
  - (iv) \$115 if the original petition is filed under Title 30, Chapter 3, Divorce, or Title 30, Chapter 4, Separate Maintenance.
- (e) The fee for filing a small claims counter affidavit in a small claims court is:
- (i) \$50 if the claim for relief exclusive of court costs, interest, and attorney fees is \$2,000 or less;
  - (ii) \$70 if the claim for relief exclusive of court costs, interest, and attorney fees is greater than \$2,000, but less than \$7,500; and
  - (iii) \$120 if the claim for relief exclusive of court costs, interest, and attorney fees is \$7,500 or more.
- (f) The fee for depositing funds under Section 57-1-29 when not associated with an action already before the court is determined under Subsection (1)(b) based on the amount deposited.
- (g) The fee for filing a petition is:
- (i) \$225 for trial de novo of an adjudication of the justice court or of the small claims department; and
  - (ii) \$65 for an appeal of a municipal administrative determination in accordance with Section 10-3-703.7.
- (h) The fee for filing a notice of appeal, petition for appeal of an interlocutory order, or petition for writ of certiorari is \$225.
- (i) The fee for filing a petition for expungement is \$135.
- (j) (i) Fifteen dollars of the fees established by Subsections (1)(a) through (i) shall be allocated to and between the Judges' Contributory Retirement Trust Fund and the Judges' Noncontributory Retirement Trust Fund, as provided in Title 49, Chapter 17, Judges' Contributory Retirement Act, and Title 49, Chapter 18, Judges' Noncontributory Retirement Act.
- (ii) Four dollars of the fees established by Subsections (1)(a) through (i) shall be allocated by the state treasurer to be deposited in the restricted account, Children's Legal Defense Account, as provided in Section 51-9-408.
- (iii) Three dollars of the fees established under Subsections (1)(a) through (e), (1)(g), and (1)(s) shall be allocated to and deposited with the Dispute Resolution Account as provided in Section 78B-6-209.
- (iv) Fifteen dollars of the fees established by Subsections (1)(a), (1)(b)(iii) and (iv), (1)(d)(iii) and (iv), (1)(g)(ii), (1)(h),

and (1)(i) shall be allocated by the state treasurer to be deposited in the restricted account, Court Security Account, as provided in Section 78A-2-602.

- (v) Five dollars of the fees established by Subsections (1)(b)(i) and (ii), (1)(d)(ii) and (1)(g)(i) shall be allocated by the state treasurer to be deposited in the restricted account, Court Security Account, as provided in Section 78A-2-602.
- (k) The fee for filing a judgment, order, or decree of a court of another state or of the United States is \$35.
- (l) The fee for filing a renewal of judgment in accordance with Section 78B-6-1801 is 50% of the fee for filing an original action seeking the same relief.
- (m) The fee for filing probate or child custody documents from another state is \$35.
- (n) (i) The fee for filing an abstract or transcript of judgment, order, or decree of the Utah State Tax Commission is \$30.
- (ii) The fee for filing an abstract or transcript of judgment of a court of law of this state or a judgment, order, or decree of an administrative agency, commission, board, council, or hearing officer of this state or of its political subdivisions other than the Utah State Tax Commission, is \$50.
- (o) The fee for filing a judgment by confession without action under Section 78B-5-205 is \$35.
- (p) The fee for filing an award of arbitration for confirmation, modification, or vacation under Title 78B, Chapter 11, Utah Uniform Arbitration Act, that is not part of an action before the court is \$35.
- (q) The fee for filing a petition or counter-petition to modify a domestic relations order other than a protective order or stalking injunction is \$100.
- (r) The fee for filing any accounting required by law is:
  - (i) \$15 for an estate valued at \$50,000 or less;
  - (ii) \$30 for an estate valued at \$75,000 or less but more than \$50,000;
  - (iii) \$50 for an estate valued at \$112,000 or less but more than \$75,000;
  - (iv) \$90 for an estate valued at \$168,000 or less but more than \$112,000; and
  - (v) \$175 for an estate valued at more than \$168,000.
- (s) The fee for filing a demand for a civil jury is \$250.

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SMALL CLAIMS JURY COMMITTEE DRAFT – 12-21-16  
UTAH RULES OF SMALL CLAIMS PROCEDURE (URSCP)  
Effective July 18, 2016

**Rule 1. General provisions.**

(a) These rules constitute the simplified rules of procedure and evidence in small claims cases required by the Utah Code 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. Therefore, jury trials in small claims cases shall only be available upon appeal to the district court.

(b) These rules apply to the initial trial and any appeal under Rule 12. ~~These rules do not apply to an action transferred from justice court to the general civil calendar of the district court.~~

(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.

(d) By presenting a document, a party is certifying that to the best of the party's knowledge it is not being presented for an improper purpose and the legal and factual contentions are made in good faith. If the court determines that this certification has been violated, the court may impose an appropriate sanction upon the attorney or party.

**Committee Note:**

These rule changes are in response to the Supreme Court's decision in *In Simler v. Chielel*, 2016 UT 23, 379 P.3d 1195., the Utah Supreme Court concluded that "the Utah Constitution guarantees the right to a jury trial in a small claims trial de novo."

~~By electing to file a complaint seeking a low damages award in district court, plaintiffs have always been able to obtain a jury trial, but defendants have had no corresponding option. These rules have been revised to include a mechanism for defendants to remove their cases from justice court to the district court where a jury trial is available in the first instance pursuant to the Utah Rule of Civil Procedure.~~

**Rule 2. Plaintiff beginning the case.**

(a) A case is begun by plaintiff filing with the clerk of the court either:

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

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

(b) The affidavit qualifies as a complaint under the Utah Code.

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

(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.

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

**Rule 2A. Defendant's removal from district court.**

(a) A defendant removing a case from district court pursuant to 78A-8-102 shall file with the clerk of the justice court with jurisdiction:

(a)(1) a copy of the notice of removal filed in district court;

(a)(2) the plaintiff's stipulation to proceed in small claims; and

(a)(3) any counter affidavit showing a right to recover damages from the plaintiff.

(b) Unless waived upon filing an affidavit of impecuniosity, the appropriate filing fee must accompany the notice of removal.

(c) Upon filing the notice of removal, the clerk of the court shall schedule the trial and issue notices, which the defendant shall serve upon the plaintiff, along with a copy of any counter affidavit.

**Rule 3. Service of the affidavit and summons.**

(a) Service of the small claims affidavit and summons shall be as provided in Utah Rule of Civil Procedure 4. The affidavit and summons must be served at least 30 calendar days before the trial date.

(b) Proof of service of the affidavit and summons must be filed as provided in Utah Rule of Civil Procedure 4 no later than ~~10 business~~ 14 calendar days after service.

(c) Each party shall serve on all other parties a copy of all documents filed with the court. 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 ~~14 10 business~~ calendar 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.

(d) The summons shall include language ~~sufficient to notifying~~ sufficient to notifying defendants of their ~~removal~~ right to a jury trial on appeal ~~provided in Rule 4A.~~

**Rule 4. Counter affidavit.**

(a) 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.

(c) Except as provided in Rule 2A, any counter affidavit must be filed at least 15 calendar days before the trial. The clerk of the court will mail a copy of the counter affidavit to plaintiff at the address provided by plaintiff on the affidavit.

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

**Committee Note:**

Pursuant to subsection (d), a counter affidavit for more than \$10,000 must be filed in the district court and proceed as a separate action. Although this may result in judicial inefficiencies and disparate judgments, the committee believes these concerns are outweighed by the need to preserve the purpose of small claims cases in dispensing speedy and inexpensive justice between the parties.

**~~Rule 4A. Defendant's removal to district court.~~**

~~(a) To exercise the right to a jury trial, a defendant shall:~~

~~(a)(1) Within 15 days of being served with the affidavit, file a notice of removal in the district court;~~

~~(a)(2) pay the appropriate filing fees, unless waived by the district court; and~~

~~(a)(3) file a copy of the notice of removal in the small claims court, with the number of the district court case, and proof of service.~~

~~(b) Upon filing the notice of removal, the clerk of the justice court shall close its case and the matter shall continue in district court under the Utah Rules of Civil Procedure.~~

~~(c) If a case is not removed to district court pursuant to this rule, the right to a jury trial in the first instance is waived and the matter, including any appeal, shall proceed according to these rules.~~

**Rule 5. No answer required.**

No answer is required to an Affidavit or Counter Affidavit. All allegations are deemed denied.

**Rule 6. Pretrial.**

~~(a) No 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 of the trial date per side may be granted by the clerk of the court. To request a postponement, a party must file a motion for postponement with the court at least 5 business days before trial. The clerk will give notice to the other party. A postponement for more than 45 calendar days may be granted only by the judge. The court may require the party requesting the postponement to pay the costs incurred by the other party.~~

**Rule 7. Non-Jury Trial.**

~~(a) Documents and Discovery. All parties must bring to the trial all documents related to the controversy regardless of whose position they support. No discovery may be conducted but the parties are urged to exchange information prior to the trial.~~

~~(b) Pretrial.~~

(b)(1) 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 the trial date.

(b)(2) One postponement of the trial date per side may be granted by the clerk of the court. To request a postponement, a party must file a motion for postponement with the court at least 5 business days before trial. The clerk will give notice to the other party. A postponement for more than 45 calendar days may be granted only by the judge. The court may require the party requesting the postponement to pay the costs incurred by the other party.

~~(b) (c) Witnesses. 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 5 business days prior to trial.~~

~~(c) (d) Conduct of Trial. 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) (e) Evidence. 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) (f) Judgments. After trial, the judge shall decide the case and direct the entry of judgment. No written findings are required. The clerk of the court will serve all parties present with a copy of the judgment.

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

#### **Rule 7. Jury trials.**

(a) Discovery and Documents. Fourteen days following the filing of the notice of removal, parties shall exchange and file with the court, all documents related to the controversy that they intend to present during the trial. If a party fails to disclose a document, that party shall not be permitted to use the document at trial unless the failure to disclose is harmless or the party shows good cause for the failure to disclose.

(b) Pretrial Conference. The court shall hold a pretrial conference, which may occur telephonically. If a party or party's attorney fails to attend a pretrial conference, the court, upon motion or its own initiative, may strike pleadings, dismiss the action, or render judgment by default against the party who fails to appear.

(c) Witnesses. 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.

(d) Conduct of Trial. The judge will preside over the jury trial. Each party will have a reasonable opportunity to question witnesses and present evidence. Each party may make opening statements and closing arguments, which should be as brief as possible in keeping with the nature of the case. Closing arguments shall be made after the court has given the jury its final instructions.

(e) Evidence. 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.

(f) Judgments. After trial, the jury shall decide the case and complete a verdict form. The judge shall direct the entry of judgment. The clerk of the court will serve all parties present with a copy of the judgment.

(g) Costs. Costs will be awarded to the prevailing party and to plaintiff in an interpleader action. If the party demanding a jury trial fails to appear at trial or settles the case without notice to the



230 court at least 24 hours prior to the trial date, the court may order the party to pay jury costs  
231 incurred by the court.

232 (h) Motions. Written motions and responses may be filed and heard prior to the trial date, at the  
233 discretion of the judge. Motions may be made orally or in writing at the beginning of the trial.  
234 All parties must bring to the trial all documents related to the controversy regardless of whose  
235 position they support.

236  
237 (i) Continuances. One postponement of the trial date per side may be granted by the clerk of the  
238 court. To request a postponement, a party must file a motion for postponement with the court at  
239 least 5 calendar days before trial. The clerk will give notice to the other party. A postponement  
240 for more than 45 calendar days may be granted only by the judge. The court may require the  
241 party requesting the postponement to pay the costs incurred by the other party.

242  
243 (j) Jurors

244  
245 (j)(1) The jury shall consist of 4 jurors. At least 3 jurors must agree on the verdict.

246  
247 (j)(2) The judge will conduct the examination of prospective jurors. Prior to examining  
248 the jurors, the court may make a preliminary statement of the case. The court may permit  
249 the parties or their attorneys to make a preliminary statement of the case.

250  
251 (j)(3) There shall be no peremptory challenges.

252  
253 (j)(4) A challenge for cause is an objection to a particular juror and shall be heard and  
254 determined by the court. A challenge for cause may be taken on one or more of the  
255 grounds set forth in Rule 47(f) of the Utah Rules of Civil Procedure.

256  
257 (j)(5) Declaration of Verdict. When a majority of jurors have agreed upon a verdict they  
258 must be conducted into court and the verdict rendered by their foreperson: the verdict  
259 must be in writing, signed by the foreperson, and must be read by the clerk to the jury,  
260 and the inquiry made whether it is their verdict. Either party may require the jury to be  
261 polled, which shall be done by the court or clerk asking each juror if it is the juror's  
262 verdict. If, upon such inquiry or polling there is an insufficient number of jurors agreeing  
263 therewith, the jury must be sent out again; otherwise the verdict is complete and the jury  
264 shall be discharged from the cause.

265  
266 (j)(6) All other procedures. For all other procedures involving jurors, the court shall  
267 comply with Utah Rule of Civil Procedure 47(h), (i), (j), (l), (m), (n), (o), (p), (q), and (s).

268  
269 (k) Jury Instructions. When instructing the jury, the court shall comply with Utah Rule of Civil  
270 Procedure 51.

271  
272 (l) Judgment as Matter of law. Parties may move for judgment as a matter of law pursuant to  
273 Utah Rule of Civil Procedure 50.

**Committee Note:** The standard for admitting evidence is the same for jury and non-jury trials. The time to disposition may be increased for jury trials; however, justice should still be dispensed unhindered by increased expense. Accordingly, documents such as appraisals, estimates, bills, medical records and opinions, etc. should be admitted at the discretion of the judge, without requiring testimony from their authors or custodians. Any concerns about such hearsay evidence being given undue weight may be addressed in cautionary jury instructions.

**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.

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

(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) The appearing party shall immediately 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) A party may request that the default judgment or dismissal be set aside by filing a motion to set aside within 15 calendar days after entry of the judgment or dismissal. If the court receives a timely motion to set aside the default judgment or dismissal and good cause is shown, the court may grant the motion and reschedule a trial. The court may require the moving party to pay the costs incurred by the other party.

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

**Rule 11. Collection of judgments.**

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

323  
324 (b) Upon payment in full of the judgment, including post-judgment costs and interest, the  
325 judgment creditor shall file a satisfaction of judgment with the court. Upon receipt of a  
326 satisfaction of judgment from the judgment creditor, the clerk of the court shall enter the  
327 satisfaction upon the docket. The judgment debtor may file a satisfaction of judgment and proof  
328 of payment. If the judgment creditor fails to object within 10 business calendar days after notice,  
329 the court may enter satisfaction of the judgment. If the judgment creditor objects to the proposed  
330 satisfaction, the court shall rule on the matter and may conduct a hearing.

331  
332 (c) If the judgment creditor is unavailable to accept payment of the judgment, the judgment  
333 debtor may pay the amount of the judgment into court and serve the creditor with notice of  
334 payment in the manner directed by the court as most likely to give the creditor actual notice,  
335 which may include publication. After 30 calendar days after final notice, the debtor may file a  
336 satisfaction of judgment and the court may conduct a hearing. The court will hold the money in  
337 trust for the creditor for the period required by state law. If not claimed by the judgment creditor,  
338 the clerk of the court shall transfer the money to the Unclaimed Property Division of the Office  
339 of the State Treasurer.

340  
341 **Rule 12. Appeals.**

342  
343 (a) Any party may appeal a final order or judgment within 30 calendar days after entry of  
344 judgment or order or after denial of a motion to set aside the judgment or order, whichever is  
345 later. If a party appeals the judgment in a small claims action and any party meets the  
346 requirements of Utah Rules of Civil Procedure Rule 38(b), the trial de novo in the district court  
347 shall be by a jury in accordance with Utah Rules of Civil Procedure Rules 38, 39, 47, 48, 49, 50,  
348 51 and 52.

349  
350 (b) To appeal, the appealing party must file a notice of appeal in the court issuing the  
351 judgment. Unless waived upon filing an affidavit of impecuniosity, the appropriate fee must  
352 accompany the notice of appeal.

353  
354 (c) Upon the receipt of the notice of appeal, the clerk of the district court shall schedule the  
355 new trial and notify the parties. All proceedings on appeal will be held in accordance with these  
356 rules, except that the parties will not file an affidavit or counter affidavit and the district court  
357 may order parties to exchange information prior to trial.

358  
359 (d) The district court shall issue all orders governing the new trial. The new trial of a justice  
360 court adjudication shall be heard in the district court nearest to and in the same county as the  
361 justice court from which the appeal is taken. The new trial of an adjudication by the small claims  
362 department of the district court shall be held at the same district court.

363  
364 (e) A judgment debtor may stay the judgment during appeal by posting a supersedeas bond  
365 with the district court. The stay shall continue until entry of the final judgment or order of the  
district court.

267  
368 (f) Within 10 ~~business calendar~~ days after filing the notice of appeal, the justice court shall  
369 transmit to the district court the notice of appeal, the district court fees, a certified copy of the  
370 register of actions, and the original of all papers filed in the case.

371  
372 (g) Upon the entry of the judgment or final order of the district court, the clerk of the district  
373 court shall transmit to the justice court that rendered the original judgment notice of the manner  
374 of disposition of the case.

375  
376 (h) The district court may dismiss the appeal and remand the case to the justice court if the  
377 appellant:

378  
379 (h)(1) fails to appear;

380  
381 (h)(2) fails to take any step necessary to prosecute the appeal; or

382  
383 (h)(3) requests the appeal be dismissed.

384  
385 (i) The decision of a trial de novo, whether by judge or jury, may not be appealed unless the  
386 court rules on the constitutionality of a statute or ordinance.

387 ~~(i) — If a defendant elects to remove a small claims case to the district court pursuant to Rule~~  
388 ~~4A, the matter shall be treated as if it were filed in the first instance in district court and the~~  
389 ~~parties shall be entitled to any appeal rights available to cases not brought in small claims.~~

390  
391 **Rule 13. Representation.**

392  
393 A party in a small claims action may be self-represented, represented by an attorney admitted to  
394 practice law in Utah, represented by an employee, or, with the express approval of the court,  
395 represented by any other person who is not compensated for the representation.

SMALL CLAIMS JURY COMMITTEE DRAFT – 12-21-16  
UTAH RULES OF SMALL CLAIMS PROCEDURE (URSCP)  
Effective July 18, 2016

**Rule 1. General provisions.**

(a) These rules constitute the simplified rules of procedure and evidence in small claims cases required by the Utah Code 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. Therefore, small claims cases that remain in justice court will be heard without juries. Plaintiffs who want to avail themselves of a jury trial should file their case in the District Court. Defendants seeking to exercise the right to a jury trial must remove the case to District Court pursuant to Rule 4A. The right to a jury is waived if the case is not either filed in District Court originally or removed pursuant to Rule 4A.

(b) These rules apply to the initial trial and any appeal under Rule 12. ~~These rules do not apply to an action transferred from justice court to the general civil calendar of the district court.~~

(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.

(d) By presenting a document, a party is certifying that to the best of the party's knowledge it is not being presented for an improper purpose and the legal and factual contentions are made in good faith. If the court determines that this certification has been violated, the court may impose an appropriate sanction upon the attorney or party.

**Committee Note:**

These rule changes are in response to the Supreme Court's decision in *In Simler v. Chiles*, 2016 UT 23, 379 P.3d 1195.; the Utah Supreme Court concluded that "the Utah Constitution guarantees the right to a jury trial in a small claims trial de novo."

~~By electing to file a complaint seeking a low damages award in district court, plaintiffs have always been able to obtain a jury trial, but defendants have had no corresponding option. These rules have been revised to include a mechanism for defendants to remove their cases from justice court to the district court where a jury trial is available in the first instance pursuant to the Utah Rule of Civil Procedure.~~

**Rule 2. Plaintiff beginning the case.**

(a) A case is begun by plaintiff filing with the clerk of the court either:

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

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

**Option 1**  
**Option 3 (requires additional amendments to Rule 12)**

(b) The affidavit qualifies as a complaint under the Utah Code.

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

(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.

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

**Rule 2A. Defendant's removal from district court.**

(a) A defendant removing a case from district court pursuant to 78A-8-102 shall file with the clerk of the justice court with jurisdiction:

(a)(1) a copy of the notice of removal filed in district court;

(a)(2) the plaintiff's stipulation to proceed in small claims; and

(a)(3) any counter affidavit showing a right to recover damages from the plaintiff.

(b) Unless waived upon filing an affidavit of impecuniosity, the appropriate filing fee must accompany the notice of removal.

(c) Upon filing the notice of removal, the clerk of the court shall schedule the trial and issue notices, which the defendant shall serve upon the plaintiff, along with a copy of any counter affidavit.

**Rule 3. Service of the affidavit and summons.**

(a) Service of the small claims affidavit and summons shall be as provided in Utah Rule of Civil Procedure 4. The affidavit and summons must be served at least 28 ~~30~~ calendar days before the trial date.

(b) Proof of service of the affidavit and summons must be filed as provided in Utah Rule of Civil Procedure 4 no later than ~~10 business~~ 14 calendar days after service.

(c) Each party shall serve on all other parties a copy of all documents filed with the court. 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 business~~ 14 calendar 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.

Option 1  
Option 3 (requires additional amendments to Rule 12)

(d) The summons shall include language ~~sufficient to notifying~~ defendants of their ~~removal~~ right to a jury trial, and potential waiver of that right, as provided in Rule 4A.

**Rule 4. Counter affidavit.**

(a) 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.

(c) Except as provided in Rules 2A and 4A, any counter affidavit must be filed at least 154 calendar days before the trial. The clerk of the court will mail a copy of the counter affidavit to plaintiff at the address provided by plaintiff on the affidavit.

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

**Committee Note:**

Pursuant to subsection (d), a counter affidavit for more than \$10,000 must be filed in the district court and proceed as a separate action. Although this may result in judicial inefficiencies and disparate judgments, the committee believes these concerns are outweighed by the need to preserve the purpose of small claims cases in dispensing speedy and inexpensive justice between the parties.

**Rule 4A. Defendant's removal to district court for trial by jury.**

(a) To exercise the right to a jury trial, a defendant shall, within 21 calendar days of being served with the affidavit:

~~(a)(1) Within 15 days of being served with the affidavit, file a notice of removal in the district court;~~

(a)(1) file in the district court a notice of removal, jury demand and, if applicable, a counter affidavit;

~~(a)(2) pay the appropriate filing jury demand fees to the district court, unless waived by the district court; and~~

(a)(3) serve, pursuant to Utah Rule of Civil Procedure 5, the notice of removal on plaintiff; and

~~(a)(3-4) file a copy of the notice of removal in the small-claims justice court, with the number of the district court case, and proof of service.~~

Option 1

Option 3 (requires additional amendments to Rule 12)

(b) ~~Upon filing the~~ Once a notice of removal has been filed, the clerk of the justice court shall close its case and the matter shall continue in district court ~~under the Utah Rules of Civil Procedure.~~

(c) If a case is not removed to district court pursuant to this rule, the right to a jury trial in the first instance is waived for all purposes and the matter, including any appeal, shall proceed according to these rules.

(d) If after removal, the jury demand is withdrawn, the district court shall remand the case back to the justice court for proceedings pursuant to these rules.

**Rule 5. No answer required.**

No answer is required to an Affidavit or Counter Affidavit. All allegations are deemed denied.

**~~Rule 6. Pretrial.~~**

~~(a) No 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 of the trial date per side may be granted by the clerk of the court. To request a postponement, a party must file a motion for postponement with the court at least 5 business days before trial. The clerk will give notice to the other party. A postponement for more than 45 calendar days may be granted only by the judge. The court may require the party requesting the postponement to pay the costs incurred by the other party.~~

**Rule 76. Non-Jury Trial.**

(a) Documents and Discovery. All parties must bring to the trial all documents related to the controversy regardless of whose position they support. No discovery may be conducted but the parties are urged to exchange information prior to the trial.

(b) Pretrial.

(b)(1) 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 the trial date.

(b)(2) One postponement of the trial date per side may be granted by the clerk of the court. To request a postponement, a party must file a motion for postponement with the court at least 5 business days before trial. The clerk will give notice to the other party. A postponement for more than 45 calendar days may be granted only by the judge. The



## Option 3 (requires additional amendments to Rule 12)

court may require the party requesting the postponement to pay the costs incurred by the other party.

~~(b)~~ (c) Witnesses. 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 5 business days prior to trial.~~

~~(e)~~ (d) Conduct of Trial. 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)~~ (e) Evidence. 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)~~ (f) Judgments. After trial, the judge shall decide the case and direct the entry of judgment. No written findings are required. The clerk of the court will serve all parties present with a copy of the judgment.

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

**Rule 7. Jury trials.**

(a) Discovery and Documents. Fourteen days following the filing of the notice of removal, parties shall exchange and file with the court, all documents related to the controversy that they intend to present during the trial. If a party fails to disclose a document, that party shall not be permitted to use the document at trial unless the failure to disclose is harmless or the party shows good cause for the failure to disclose.

(b) Pretrial Conference. The court shall hold a pretrial conference, which may occur telephonically. If a party or party's attorney fails to attend a pretrial conference, the court, upon motion or its own initiative, may strike pleadings, dismiss the action, or render judgment by default against the party who fails to appear.

(c) Witnesses. 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.

(d) Conduct of Trial. The judge will preside over the jury trial. Each party will have a reasonable opportunity to question witnesses and present evidence. Each party may make

**Option 1**  
**Option 3 (requires additional amendments to Rule 12)**

opening statements and closing arguments, which should be as brief as possible in keeping with the nature of the case. Closing arguments shall be made after the court has given the jury its final instructions.

(e) Evidence. 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.

(f) Judgments. After trial, the jury shall decide the case and complete a verdict form. The judge shall direct the entry of judgment. The clerk of the court will serve all parties present with a copy of the judgment.

(g) Costs. Costs will be awarded to the prevailing party and to plaintiff in an interpleader action. If the party demanding a jury trial fails to appear at trial or settles the case without notice to the court at least 24 hours prior to the trial date, the court may order the party to pay jury costs incurred by the court.

(h) Motions. Written motions and responses may be filed and heard prior to the trial date, at the discretion of the judge. Motions may be made orally or in writing at the beginning of the trial. All parties must bring to the trial all documents related to the controversy regardless of whose position they support.

(i) Continuances. One postponement of the trial date per side may be granted by the clerk of the court. To request a postponement, a party must file a motion for postponement with the court at least 5 calendar days before trial. The clerk will give notice to the other party. A postponement for more than 45 calendar days may be granted only by the judge. The court may require the party requesting the postponement to pay the costs incurred by the other party.

(j) Jurors

(j)(1) The jury shall consist of 4 jurors. At least 3 jurors must agree on the verdict.

(j)(2) The judge will conduct the examination of prospective jurors. Prior to examining the jurors, the court may make a preliminary statement of the case. The court may permit the parties or their attorneys to make a preliminary statement of the case.

(j)(3) There shall be no peremptory challenges.

(j)(4) A challenge for cause is an objection to a particular juror and shall be heard and determined by the court. A challenge for cause may be taken on one or more of the grounds set forth in Rule 47(f) of the Utah Rules of Civil Procedure.

(j)(5) Declaration of Verdict. When a majority of jurors have agreed upon a verdict they must be conducted into court and the verdict rendered by their foreperson; the verdict must be in writing, signed by the foreperson, and must be read by the clerk to the jury.

## Option 3 (requires additional amendments to Rule 12)

and the inquiry made whether it is their verdict. Either party may require the jury to be polled, which shall be done by the court or clerk asking each juror if it is the juror's verdict. If, upon such inquiry or polling there is an insufficient number of jurors agreeing therewith, the jury must be sent out again; otherwise the verdict is complete and the jury shall be discharged from the cause.

(j)(6) All other procedures. For all other procedures involving jurors, the court shall comply with Utah Rule of Civil Procedure 47(h), (i), (j), (l), (m), (n), (o), (p), (q), and (s).

(k) Jury Instructions. When instructing the jury, the court shall comply with Utah Rule of Civil Procedure 51.

(l) Judgment as Matter of law. Parties may move for judgment as a matter of law pursuant to Utah Rule of Civil Procedure 50.

**Committee Note:** The standard for admitting evidence is the same for jury and non-jury trials. The time to disposition may be increased for jury trials; however, justice should still be dispensed unhindered by increased expense. Accordingly, documents such as appraisals, estimates, bills, medical records and opinions, etc. should be admitted at the discretion of the judge, without requiring testimony from their authors or custodians. Any concerns about such hearsay evidence being given undue weight may be addressed in cautionary jury instructions.

**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.

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

(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) The appearing party shall immediately serve the default judgment on the non-appearing party.

**Option 1**  
**Option 3 (requires additional amendments to Rule 12)**

(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) A party may request that the default judgment or dismissal be set aside by filing a motion to set aside within 15 calendar days after entry of the judgment or dismissal. If the court receives a timely motion to set aside the default judgment or dismissal and good cause is shown, the court may grant the motion and reschedule a trial. The court may require the moving party to pay the costs incurred by the other party.

(b) The period for moving to set aside a default judgment or dismissal may be extended by the court for good cause if the 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 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. If the judgment creditor fails to object within 10 business calendar days after notice, the court may enter satisfaction of the judgment. If the judgment creditor objects to the proposed satisfaction, the court shall rule on the matter and may conduct a hearing.

(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 calendar 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 from non-jury trials.**

(a) Any party may appeal a final order or judgment within 30 calendar days after entry of judgment or order or after denial of a motion to set aside the judgment or order, whichever is later. If a party appeals the judgment in a small claims action that was tried without a jury and any party meets the requirements of Utah Rules of Civil Procedure Rule 38(b), the trial de novo in the district court shall be by a jury in accordance with Utah Rules of Civil Procedure Rules 38, 39, 47, 48, 49, 50, 51 and 52.

## Option 3 (requires additional amendments to Rule 12)

(b) To appeal, the appealing party must file a notice of appeal in the court issuing the judgment. Unless waived upon filing an affidavit of impecuniosity, the appropriate fee must accompany the notice of appeal.

(c) Upon the receipt of the notice of appeal, the clerk of the district court shall schedule the new trial and notify the parties. All proceedings on appeal will be held in accordance with these rules, except that the parties will not file an affidavit or counter affidavit and the district court may order parties to exchange information prior to trial.

(d) The district court shall issue all orders governing the new trial. The new trial 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 new trial of an adjudication by 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 10 business calendar 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 that 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:

(h)(1) fails to appear;

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

(h)(3) requests the appeal be dismissed.

~~(i) If a defendant elects to remove a small claims case to the district court pursuant to Rule 4A, the matter shall be treated as if it were filed in the first instance in district court and the parties shall be entitled to any appeal rights available to cases not brought in small claims.~~

**Rule 13. Appeals from jury trials.**

(a) Any party may appeal a final order or judgment within 30 calendar days after entry of judgment or order or after denial of a motion to set aside the judgment or order, whichever is later. All appeals will be conducted in the Utah Court of Appeals.

**Option 1**  
**Option 3 (requires additional amendments to Rule 12)**

79 (b) To appeal, the appealing party must file a notice of appeal in the court issuing the judgment.  
10 Unless waived upon filing an affidavit of impecuniosity, the appropriate fee must accompany the  
411 notice of appeal.

412  
413 (c) A judgment debtor may stay the judgment during appeal by posting a supersedeas bond with  
414 the district court pursuant to Utah Rule of Civil Procedure 62.

415  
416 (d) Within 10 calendar days after filing the notice of appeal, the trial court shall transmit to the  
417 reviewing court the notice of appeal, the court fees, a certified copy of the register of actions, the  
418 official audio recording of the jury trial and the original of all papers filed in the case.

419  
420 (e) Upon the entry of the judgment or final order of the Court of Appeals, the clerk shall transmit  
421 to the trial court that rendered the original judgment notice of the manner of disposition of the  
422 case.

423  
424 **Rule 134. Representation.**

425  
426 A party in a small claims action may be self-represented, represented by an attorney admitted to  
427 practice law in Utah, represented by an employee, or, with the express approval of the court,  
428 represented by any other person who is not compensated for the representation.

**TAB 4**

# Utah Small Claims Online Dispute Resolution

UTAH SUPREME COURT JUSTICE  
DENO HIMONAS

## Main Goals of the Project

- Promote access to justice
- Lower costs incurred by both the courts and users
- Encourage and assist in settlement and resolution of a dispute
- Simple, quick, inexpensive and easily accessible
- Provide individualized assistance to users through information and guided evaluation.
- Parties can opt out of the ODR process at any time and have their case heard at trial in a physical court.

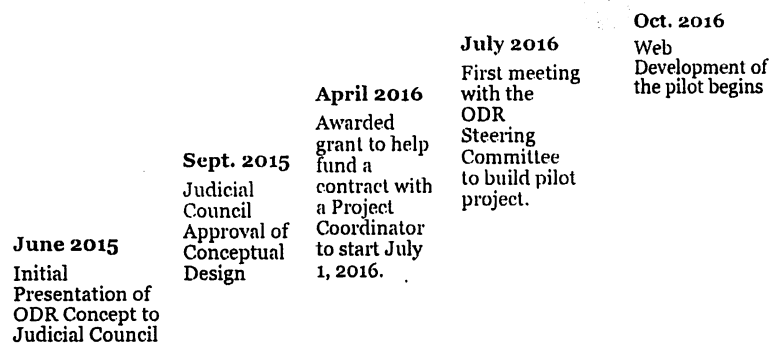


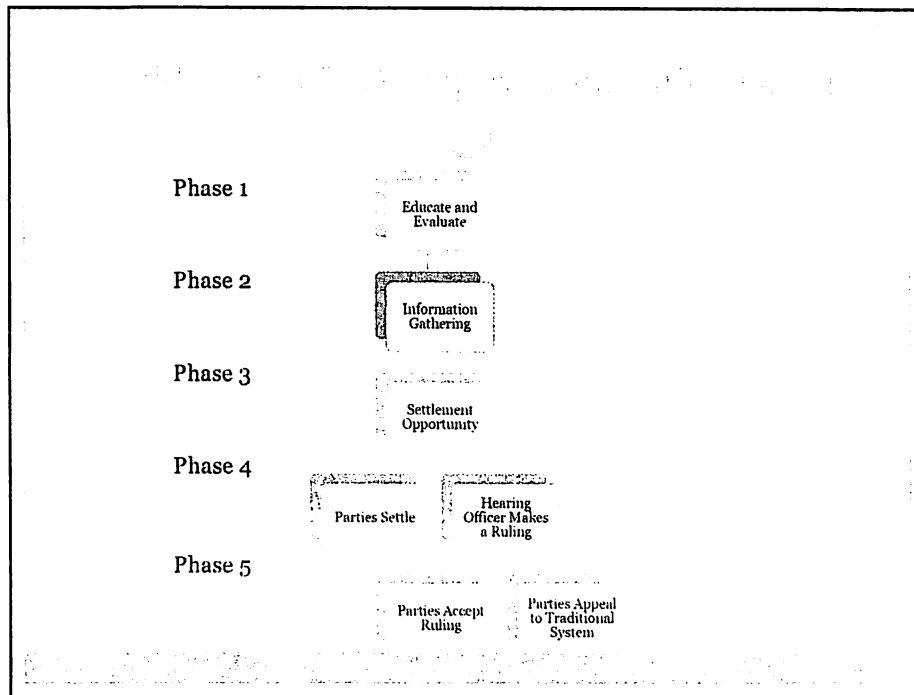
## Small Claims

### Why Small Claims?

- Claims are limited to money claims up to \$10,000
- Procedures and rules are simplified
- Parties are often self-represented
- If successful, will lay groundwork for building ODR systems for other types of disputes
- Typically only two parties involved

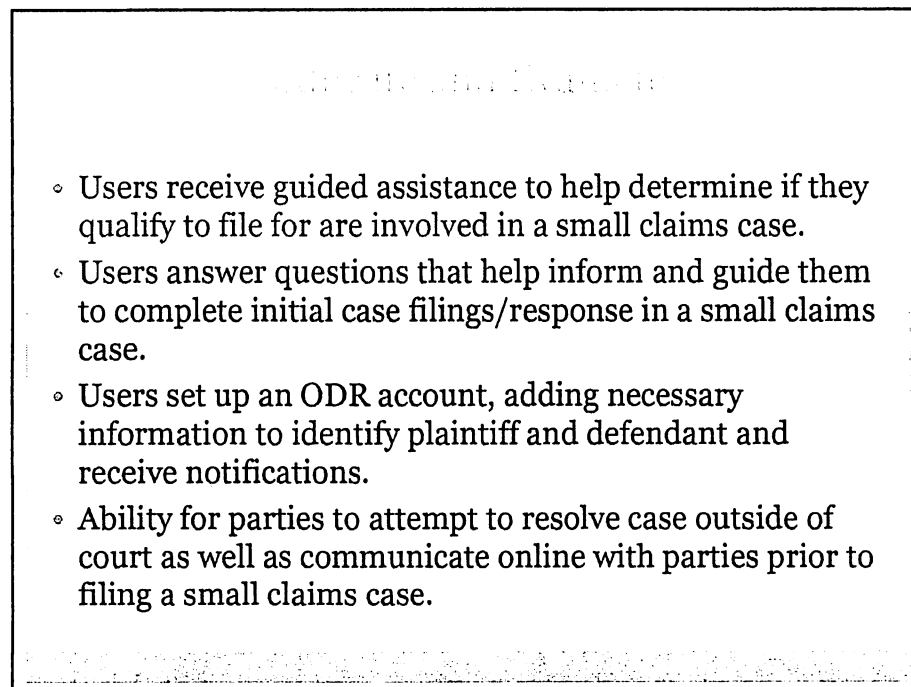
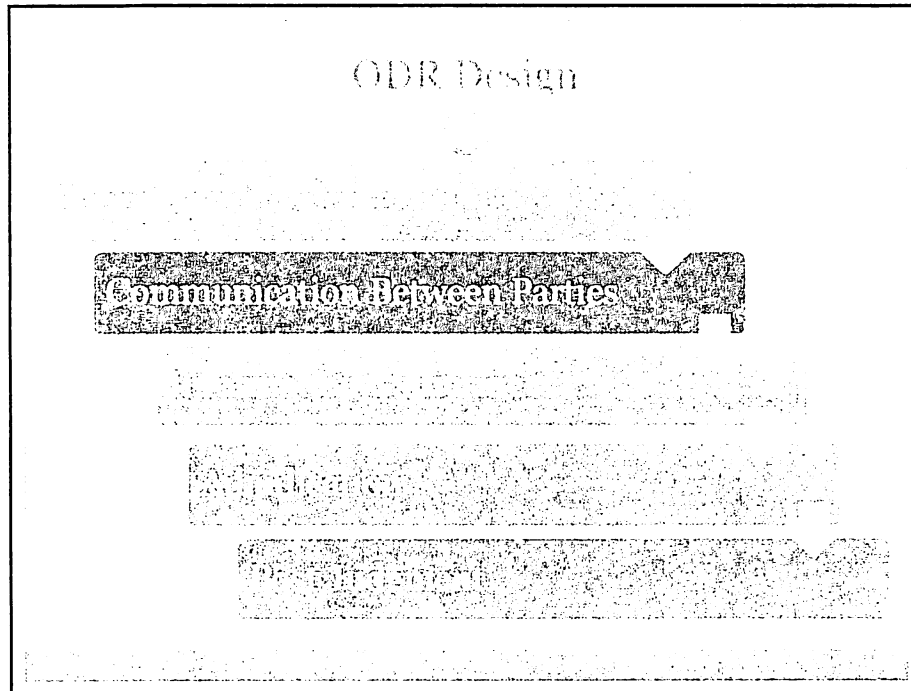
## Timeline





## Key Features of Utah's ODR Pilot

- Focus on small claims cases for the pilot project
- Access to program through various electronic devices including cell phones
- Importance of ensuring procedural justice
- Simple, easy to use and understand
- Ability to track progress and access prior conversations and information as needed.
- Provide individualized assistance to users through information, access to helpful resources and guided evaluation.
- Parties can opt out of the ODR process at any time and have their case heard at trial in a physical court.



## Communication Between Parties

- In the Communication between Parties stage parties will be able to communicate with each other asynchronously to negotiate a resolution to the dispute between themselves utilizing an "Off the Record" message board.
- The message board can be accessed after a case has been filed in the court or can be initiated by the plaintiff prior to any case filing online.
- Any communications conducted in this section will be considered private and confidential and cannot be used in trial.
- Parties can use the portal to create a settlement agreement, set up a payment plan or ask questions about the claims/defenses.

## Information Gathering

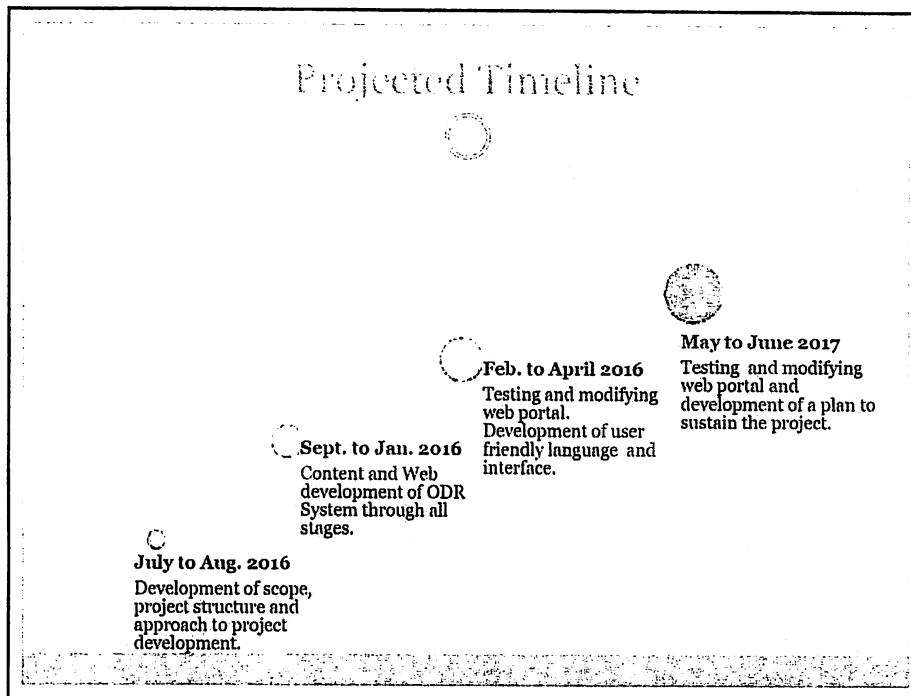
- Utilizing the "Off the Record" message board an ODR Facilitator, after a specific period of time, will review what has been submitted by the parties and request additional documents and information about the case as needed to help facilitate a resolution.
- Parties will have access to tools to request the assistance of a mediator, will be directed by the ODR Facilitator to information and, if desired by the parties, the ODR Facilitator can assist parties in understanding the strength of their case/defense and suggest possible resolutions.
- If the case cannot be resolved, the parties, with the help of the ODR Facilitator, can select documents and statements to be viewed by the Judge in order for an online trial on the case to be conducted through an "On the Record" message board.

### Post-Judgment

- Once the parties have signed and approved the documents and statements that will be seen by the Judge on the case, the parties will be moved to an “On the Record” message board where the judge can ask questions online to the parties and receive responses as well as have parties upload documents and submit evidence and testimony as necessary.
- The decision the adjudicator makes will be a binding judgment that can be appealed to the district court.

### Post-Judgment

- **Post-judgment activities will include:**
  - Appeal information and forms
  - Supplemental proceeding information and forms
  - Garnishment application information and forms
  - Satisfaction of judgment forms
  - Information and guidance on other relevant information for the parties at this stage in the case.



**TAB 5**

## Utah WINGS Update

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Working Interdisciplinary Network of Guardianship Stakeholders (WINGS), <http://www.utcourts.gov/utc/wings>, is a multi-disciplinary problem solving body that relies on court-community partnerships to:

- Oversee guardianship practice;
- Address key policy issues;
- Improve the current system of guardianship and less restrictive alternatives;
- Engage in outreach, education;
- Enhance the quality of care and quality of life of vulnerable adults.

### WINGS Executive Committee:

1. David Connors, Associate Presiding Judge, Second District Court, WINGS Chair
2. Karolina Abuzyarova, WINGS and Court Visitor Program Coordinator
3. Kent Alderman, Elder law attorney, Elder Law Section of the Utah State Bar
4. Mary Jane Ciccarello, Director, Self-help Center, Utah State Courts
5. Nancy Sylvester, Associate General Counsel, Administrative Office of the Courts
6. Shannon Alvey, Director, Office of Public Guardian

### Steering Committee:

1. Andrew Riggle, Policy Analyst, Disability Law Center
2. Daniel Musto, Director, Long-term Care Ombudsman
3. Dustin Hammers, Assistant Professor of Neurology, Neuropsychologist, Center for Alzheimer's Care, Imaging and Research, University of Utah Health Care
4. James Brady, Judge, Fourth District Court
5. James Toledo, Program Manager, Utah Division of Indian Affairs
6. Joanne Bueno Sayre, Probate Clerk, Third District Court
7. Kaye Lynn Wootton, Deputy Director, Medicaid Fraud Control Unit, Attorney General
8. Nan Mendenhall, Director, Adult Protective Services
9. Nels Holmgren, Director, Utah Division of Aging and Adult Services
10. Wendy Fayles, Criminal Justice Mentor, National Alliance on Mental Illness

### Utah WINGS activities and accomplishments are:

1. Secured \$30,000 grant from the Utah State University Center for Persons with Disabilities to conduct public classes on advance life planning and guardianship in FY17:
  - a. WINGS trained 97 professionals and caregivers in Vernal, Logan, Ogden, Provo, Salt Lake City in the first and second quarters of FY 2017
  - b. Teachers: Kent Alderman and Mary Jane Ciccarello
  - c. Expenditures: \$12,000 helps the Courts pay salary of the Project Director, Karolina Abuzyarova; \$500 is paid to presenters for each class; other expenditures: class advertising, travel, flyer design, space rental, meetings.
  - d. Advance Life Planning/Guardianship class schedule in 2017:



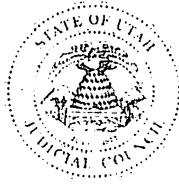
Report for the Utah Judicial Council  
Date: January 19, 2017

- January 27, 12pm, Senior Expo, South Towne Expo Center
  - February 9, 11am, Heber, Wasatch County Library
  - March 9, 11am, Richfield Courthouse
  - March 10, 11am, St. George Courthouse
  - March 11, 11:30, Spring Bar Convention, St. George
  - April 6, 11am, Price, Active Reentry Center for Independent Living
  - April 7, 11am, Moab, Senior Center
  - April 27, Salt Lake City, TBD
2. Online training program on advance life planning and guardianship published online:  
<https://www.utcourts.gov/howto/family/gc/training.html> (Mary Jane Ciccarello and Kent Alderman produced script, Libby Wadley produced the OTP)
  3. WINGS outreach activities:
    - Presentation to the Elder Law Section "Looking after the rights of the adults with diminished capacity in guardianships - Court Visitor Volunteer Program", Karolina
    - Panel presentation on guardianship and resources, Fall Convention of the Utah Healthcare Association; Karolina, OPG, APS, LTC Ombudsman
    - Public film screening and panel discussion "Caring for Mom and Dad", Salt Lake City, Vernal and St. George
    - Annual Judicial Conference presentations: "Resources for Capacity Evaluation", Kent Alderman; Panel on "Addressing Abuse, Neglect and Exploitation in Adult Guardianship Cases", Judge Connors, Karolina, APS, OPG, AG's Medicaid Fraud Control Unit
    - Presentation on the Visitor Program and WINGS development from the point of view of the U. N. Convention on the Rights of Persons with Disabilities, "Comparative Guardianship Study in Utah and Argentina", Karolina Abuzyarova, ABA National Aging and Law Conference, Alexandria, Virginia
    - Presentation to the National Association of Social Workers in St. George "Monitoring & Assisting Court-Appointed Guardians of Adults: Court Visitor Volunteer Program".

**Activities in progress:**

1. Create subcommittee on Judicial Response Protocol in cases of identified abuse and neglect, e.g.: identify red flags, establish referral policy and create a uniform process.
2. Increase the number of limited guardianship and establish practice of preparing care plans by court appointed guardians.
3. Evaluate the impact of the Court Visitor Volunteer Program and adjust accordingly.
4. With approval of the Management Committee and the Board or District Court Judges, apply for the Elder Justice Innovation Grant of the U.S. Administration for Community Living to enhance Court Oversight in Adult Guardianship (evaluate Court Visitor Program and establish judicial response protocol in cases of abuse and neglect)
5. Create online training program on standards of practice for family guardians.
6. Translate into Spanish online training program on advance life planning and guardianship.

**TAB 7**



## Administrative Office of the Courts

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

December 6, 2016

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

### MEMORANDUM

**TO:** Judicial Council Management Committee

**FROM:** Debra Moore

**RE:** Uniform Fine and Bail Schedule Committee

The terms of Judge James Blanch, Judge Keith Eddington, and Judge Paul Parker on the Uniform Fine and Bail Schedule Committee are expiring. They are all currently serving their first term and are eligible for reappointment. Judges Blanch, Eddington, and Parker have been active participants and valuable members of the committee as the committee has engaged in the work of revising and reorganizing the fine and bail schedule. That work will continue during the next year or so and reappointment of these members will provide valuable continuity between the past and future work of the committee.

I have confirmed that they are each willing to renew their terms. I have also contacted Judge James Brady who, as Chair of the Committee, recommends for the Management Committee's consideration that these three judges be reappointed.

The mission of the Utah judiciary is to provide an open, fair,  
efficient, and independent system for the advancement of justice under the law.

## MEMORANDUM

TO: Management Committee

FROM: Ray Wahl, Staff, Standing Committee on Children and Family Law

RE: Membership on Standing Committee

DATE: December 16, 2016

Judge Paul Lyman, Co-Chair of the above committee, has ably served for two terms on this committee since 2010. He has chosen to not ask for an exception to the rule to serve another term. With his departure, a new co-chair will need to be appointed. Judge Sherene Dillon has served as one of two juvenile court judges designated on the committee since 2013. The other co-chair, Judge Douglas Thomas, and the committee recommend that she be named co-chair.

On two separate occasions, an invitation has been sent out to all juvenile court judges inviting them to submit their name to serve on the committee. That has resulted in only one judge expressing interest, Judge Brent Bartholomew of the 4<sup>th</sup> District Juvenile Court. Attached is his resume but to summarize, when he worked for Utah Legal Services he handled domestic matters in 4<sup>th</sup> District, the Uintah Basin and Sanpete County. Subsequent to that assignment he served many years in the Guardian Ad Litem office. The Board of Juvenile Court Judges unanimously recommends him to serve on the standing committee.

Please let me know if you have questions about these recommendations.

Cc: Judge Douglas Thomas, Co-chair, SCCFL

Judge Paul Lyman, Co-Chair, SCCFL

## **BRENT H. BARTHOLOMEW**

Fourth District Juvenile Court

2021 South State Street

Provo, Utah 84606

Cell Phone: 801-319-3341

E-mail: [bbartholomew@utcourts.gov](mailto:bbartholomew@utcourts.gov)

### **PROFESSIONAL EXPERIENCE**

**Judge**, Fourth District Juvenile Court, Utah County, State of Utah: December 2013-present.

**Attorney Guardian ad Litem**, Office of Guardian ad Litem, Provo, Utah: 1997-2103.  
Handled child welfare cases in juvenile court and abuse-related cases in district court.

**Attorney**, Utah Legal Services, Provo, Utah: 1987-1997.  
Worked predominantly on domestic law cases in district court for indigent clients.

**Adjunct Assistant Professor**, J. Reuben Clark Law School, Brigham Young University (BYU),  
Provo, Utah: 1989-1997

### **PROFESSIONAL ASSOCIATIONS**

**Utah State Bar Association** (admitted October 1984).

**National Association of Counsel for Children**, Certified Child Welfare Law Specialist:  
2005-present.

### **PAST COMMITTEE ASSIGNMENTS**

**Utah Supreme Court Advisory Committee on the Rules of Juvenile Procedure**: 2003-2013.

**Children's Justice Center Advisory Board** (Wasatch and Summit Counties): 1999-2014

**Utah County Child Abuse Council**: 1998-1999.

### **EDUCATIONAL DEGREES**

**Juris Doctor**, J. Reuben Clark Law School, BYU: 1984.

**Master of Business Administration**, Marriott School of Management, BYU: 1986.

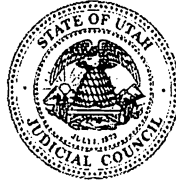
**Bachelor of Science** in psychology, *summa cum laude*, BYU: 1978.

### **AWARDS**

**"Mentor of the Year,"** Utah State Bar Association: 2013.

**"Child Advocate Award,"** Utah Country Child Abuse Council: 2006.

**TAB 8**



## Administrative Office of the Courts

Chief Justice Matthew B. Durrant  
Utah Supreme Court  
Chair, Utah Judicial Council

### MEMORANDUM

Daniel J. Becker  
State Court Administrator  
Raymond H. Wahl  
Deputy Court Administrator

**To:** Judicial Council  
**From:** Nancy Sylvester  
**Date:** January 11, 2017  
**Re:** Rule for Consideration: CJA 9-301. Record of arraignment and conviction.

---

The Policy and Planning Committee recommends that Code of Judicial Administration Rule 9-301 be repealed. If the Council votes to approve this proposal, it will be opened for public comment.

**CJA 9-301. Record of arraignment and conviction.** Repeal. The Court of Appeals has determined that failure to follow this rule does not affect the validity of a plea or conviction with respect to enhancements. *State v. Gonzales*, 2005 UT App 538, 127 P.3d 1252. The rule is also redundant to other rules and statutes, and in some instances, unnecessarily imposes certain burdens upon justice courts. *See, e.g.*, URCrP Rule 11, CJA Rule 4-609, UTAH CODE § 53-10-208.1.

The Policy and Planning Committee determined that this rule may improperly focus attention away from Utah Rule of Criminal Procedure 11 and that it also imposes burdens on the justice courts that do not apply to district courts, such as providing written advisements regarding enhancement penalties and supplying fingerprints to state agencies. Rule 4-609 provides for a contrary process with respect to fingerprinting (sending the defendant to the jail for booking and release). And much paper has been used to advise defendants of possible enhancements even though the Court of Appeals determined that these do not affect the validity of a guilty plea when enhancements are later imposed. *State v. Gonzales*, 2005 UT App 538, 127 P.3d 1252. The rule also imposed a requirement regarding transmission of judgments of conviction that is redundant to Utah Code section 53-10-208.1.

Encl. CJA 9-301

The mission of the Utah judiciary is to provide the people an open, fair,  
efficient, and independent system for the advancement of justice under the law.

450 South State Street / POB 140241 / Salt Lake City, Utah 84114-0241 / 801-578-3808 / Fax: 801-578-3843 / email: nancyjs@utcourts.gov

**~~Rule 9-301. Record of arraignment and conviction.~~**

**~~Intent:~~**

~~To establish a procedure for justice courts to follow in making a record at the time of arraignment and conviction in those cases where the defendant may be subject to an enhanced penalty if convicted of the same offense in the future.~~

**~~Applicability:~~**

~~This rule shall apply to the justice courts in those cases where the defendant may be subject to an enhanced penalty if convicted of the same offense in the future.~~

**~~Statement of the Rule:~~**

~~(1) At the time of arraignment, the justice court judge shall determine whether the defendant would be subject to an enhanced penalty if convicted of the same offense in the future.~~

~~(2) If the defendant would be subject to an enhanced penalty, upon the entry of a plea of guilty, the justice court judge shall:~~

~~(A) Advise the defendant, orally and in writing of the defendant's rights, the elements of the charged offense, the penalties for the charged offense, and the enhancement penalty which may be imposed in the event the defendant is convicted of the same offense in the future; and~~

~~(B) Require the defendant to sign a statement acknowledging that the defendant understands his rights and that he knowingly, intelligently and voluntarily waives those rights.~~

~~(3) Upon the entry of a guilty plea or receipt of a conviction, the justice court judge shall execute a written and signed judgment of conviction and forward the appropriate information and/or fingerprints to the state agencies responsible for maintaining criminal records.~~