



**SMALL CLAIMS TRAINING
FOR JUSTICE COURT CLERKS
2010**

Topics

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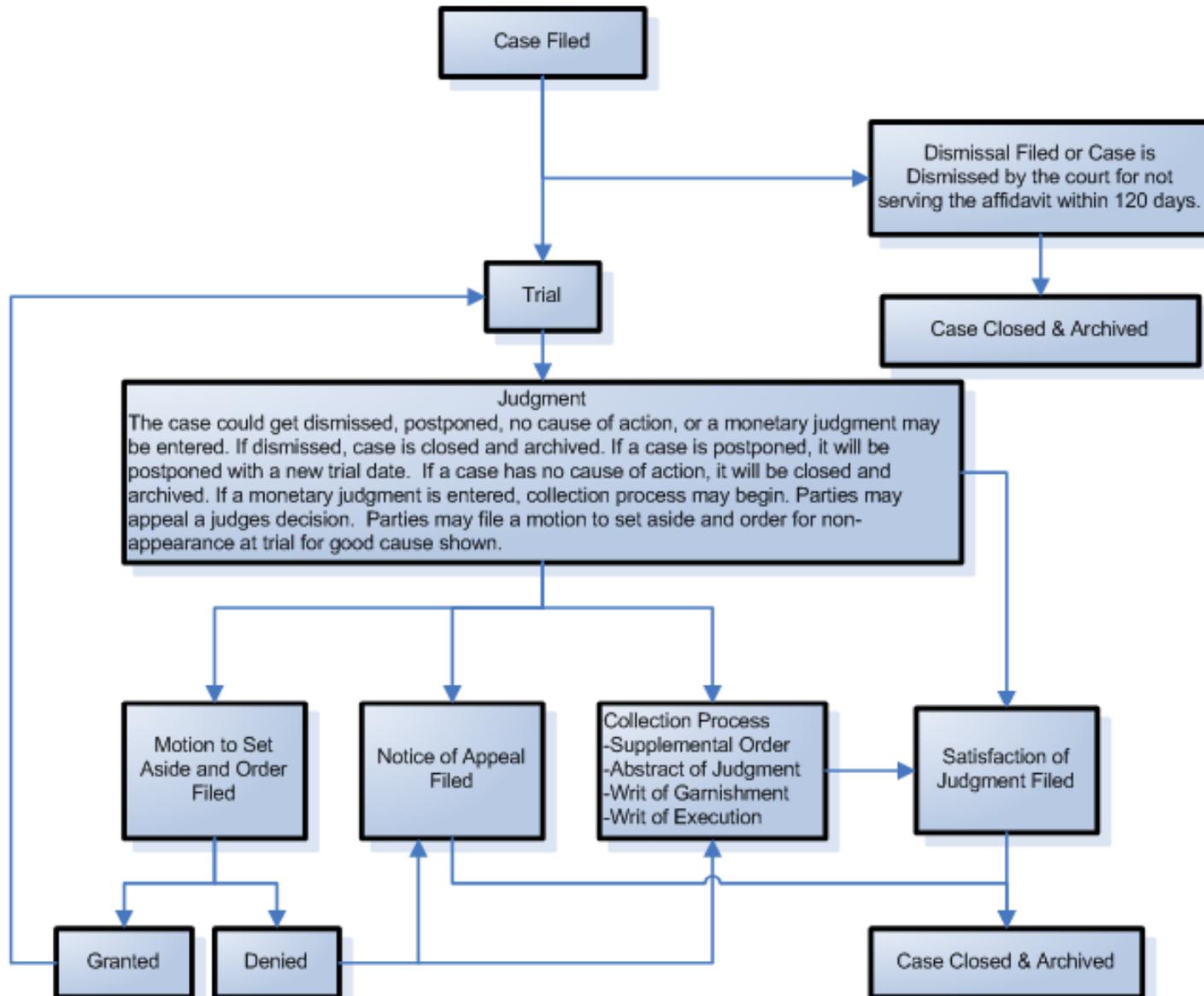
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Authority

- Small Claims is a civil action. 78A-8-102(1)
- Small Claims Court is for the recovery of money.
- Small Claims Court is not a court of record (78A-7-101).
- The rules Small claims matters are managed in accordance with simplified rules of procedure and evidence promulgated by the Supreme Court required by Utah Code Section 78A-8-102(6).
- Sections 78A-8-101 to 78A-8-109 of the Utah Code Annotated grants the authority and defines the scope of Small Claims Court.
- The Utah Rules of Small Claims Procedure (URSCP) is found in the Utah Court Rules Annotated.
- Knowing these rules can really help when you get asked why we do things the way we do.

SMALL CLAIMS FLOWCHART

Summarized Small Claims Process



FORMS

SMALL CLAIMS FORMS AND INFORMATION ARE AVAILABLE AT UTAH STATE COURTS WEBSITE.

GO TO THESE WEBSITES:

For Small Claims Forms

<http://www.utcourts.gov/howto/smallclaims/#forms>

OR

For Small Claims information:

<http://www.utcourts.gov/howto/smallclaims/>

CALCULATING TIME

Each step in the small claims process has a deadline. If a party misses a deadline, the claim or defense might not be heard. When a Small Claims filing is received, and the rule requires a deadline, exclude the day of the event that triggers the time period, then count the business or calendar days according to the rule, including the last day. If the court is closed on the last day, the time period continues to the end of the first day that the court is open.

DEADLINES

Affidavit & Summons -must be served at least 30 calendar days before the trial date. URSCP 3(b)

Certificate of Service -must be filed no later than 10 business days after service. URSCP 3(c)

Counter Affidavit -must be filed at least 15 calendar days before the trial. URSCP 4 (c)

Postponement -of the trial date must be filed at least 5 business days before trial. URSCP 6 (c)

Subpoena –must be served at least 5 business days prior to trial. URSCP 7(b)

Motion to set aside & Order -must be filed within 15 calendar days after entry of the judgment or dismissal. URSCP 10 (a)

Notice of Appeal - must be filed within 30 calendar days of entry of judgment. URSCP 12 (a)

Duration of Judgment is 8 years. Utah Code 78B-5-202

RULE 4-801

Small Claims Cases

Rule 4-801.

Effective September 1, 2010 small claims affidavits must be filed in justice court. The proper justice court in which to file is the court for the municipality or county in which the defendant resides or the court for the municipality or county in which the cause of action arose.

The jurisdiction of municipal justice courts extends to the municipal boundaries. The jurisdiction of county justice courts includes the unincorporated county and any municipality that does not have a justice court. A county court does not have jurisdiction within a municipality that has a justice court. However, there may be grounds for municipal and county courts to share jurisdiction: The defendant resides in a municipality that has a justice court, but the cause of action arose in the unincorporated county or vice-versa.

Except in Cache County, there will always be a municipal or county court with jurisdiction. As of September 1, Cache County is the only county without a justice court. If a cause of action arises in Cache County (or in a municipality without a justice court) and the defendant resides in Cache County (or in a municipality without a justice court), the affidavit may be filed in the district court.

AFFIDAVIT & SUMMONS

An Affidavit must be filed in the proper court that has jurisdiction over the case. Section 78A-102-(1)(a)(ii) of Utah Code provides jurisdiction where the defendant resides or where the action took place. This means, if the defendant resides within your city boundary, or that the action took place within your city boundary, a plaintiff may file in your court.

The affidavit is filed with the court clerk. The fee is \$60.00 for claims under \$2,000, and \$100.00 for claims over \$2,000 up to \$7500 and \$185 for claims over \$7500 and cannot exceed \$10,000, unless waived by a motion and order to waive court fees, formerly known as “affidavit of impecuniosity”.

The filing fee is due at the time of filing. The clerk will set a tentative trial date at least 45 days away, this gives the constable/sheriff/process server, 2 weeks to serve the affidavit, because of the 30 day rule. An affidavit must be served 30 days before the court date.

Interpleader Affidavit & Summons

This affidavit is used when a plaintiff is holding money that is claimed by two or more parties. In an interpleader action, the plaintiff must pay the money in to the court at the time of filing the affidavit or acknowledge that it will pay the money to whomever the court directs at trial.

This type of affidavit is almost always filed by a real estate agent. The interpleader affidavit & summons is filed with the court clerk. The fee is \$60.00 for claims under \$2,000, and \$100.00 for claims over \$2,000 up to \$7500 and \$185 for claims over \$7500 and cannot exceed \$10,000, unless waived by a motion and order to waive court fees, formerly known as “affidavit of impecuniosity”.

When a defendant is a business

If a business is being sued, the plaintiff must list on the Small Claims affidavit & summons the business' proper name and registered agent to be served. The plaintiff can find out the business' proper name and registered agent by calling the Utah Department of Commerce, Division of Corporations at (801-530-4849) located at 160 E 300 S or go to their website at <http://www.utah.gov/serv/bes> , to obtain the business' proper name and the name of its registered agent. If there is a registered agent, the registered agent must be served for the business according to Rule 16-17-301(1) of the Utah Code.

If there is no registered agent listed for the business, any person in charge at the regular location of the business maybe served according to rule 16-17-301(3) of the Utah Code. Refer to "Service of Affidavit" on the methods of serving, in this presentation.

All Businesses are required by law to register their business. This information is vital to an orderly legal system and marketplace according to Department of Commerce.

Service of the Affidavit

After filing the affidavit & summons, instruct the plaintiff to serve the affidavit by the following methods of choice:

- Sheriff's department, constable, or a person regularly engaged in the business of serving process and pay for that service.
- Mail or commercial courier service that requires defendant to sign a receipt and provides for return of that receipt to plaintiff.

Examples for a return receipt are, certified restricted delivery mail or registered mail. The date of service is the date the defendant signs the receipt. If the defendant does not sign the return receipt, the plaintiff must have a sheriff, constable or a person regularly engaged in the business of serving process to serve the affidavit and summons. If plaintiff decides to use mail or commercial courier service, give to the plaintiff a certificate of service of affidavit and summons form to fill out and file with the court once service is made, and filed within 10 days after service is made.

SERVICE OF ALL OTHER “PAPERS”

According to Rule 3 of the URSCP, it states that 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 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.

Counter Affidavit & Summons

If the defendant alleges that the plaintiff owes them money. They may file a Counter Affidavit & Summons by paying the proper fee (\$50.00 for claims \$2000 or less, \$70.00 for claims over \$2000, \$120.00 for claims over \$7500-\$10,000), unless waived by a motion and order for waiver of court fees, formerly known as “affidavit of impecuniosity”. The counter affidavit must be filed 15 days before the trial date. The trial may be rescheduled or the trial date may remain the same. The clerk will mail a copy of the counter affidavit to the plaintiff. The defendant may not claim more than the jurisdictional limit of \$10,000, in Small Claims. The defendant may file a civil complaint in the district court under Utah Rules of Civil procedure, if the counterclaim exceeds the jurisdictional limit of \$10,000.

Motion & Order to Postpone

One postponement of the trial date per side may be granted by the clerk per URSCP 6 (c). A party may request to postpone a trial date by filling out a motion to postpone and filing it with the court at least 5 business days before the trial date. The party requesting the postponement may be ordered to pay the other party's costs, such as the cost of preparing for trial. If a motion and order to postpone the trial date is for more than 45 calendar days, it may only be granted by the judge.

Subpoena

Parties may have witnesses testify at the trial and bring documents. To require attendance by a witness who will not attend voluntarily, a party must subpoena the witness. The clerk or the party's attorney may issue a subpoena pursuant to Utah Rules of Civil Procedure 45. The party requesting the subpoena must be served at least 5 business days prior to trial. Currently the witness is entitled to 18.50 for the first day of attendance and \$49 per day for each subsequent day of attendance; and if traveling more than 50 miles, \$1 for each four miles in excess of 50 miles actually and necessarily traveled in going only, regardless of county lines pursuant to rule 78B-1-119.

In Small Claims, usually they only attend the trial date, which is one day, so our court instructs the plaintiff to attach the \$18.50 with a check or money order payable to the witness, before issuing the subpoena and having it served. Service of the subpoena: According to URCP 45, it states to serve the subpoena under Rule 4 of the URCP. Rule 4 says service can be made by personal service, alternate service, service by mail or commercial courier service, and service by publication.

Motion to Dismiss & Order

A party may move to dismiss its claim at any time before the trial date. The party must fill out a motion to dismiss form, the order will be filled out by either the judge or clerk. At our court, the clerks fill out the order for dismissal and use the judge's signature.

If you have a standing order, policy of the court, or judges' prior approval, that allows the clerk to use the judge's signature stamp, then you would use the judge's signature stamp. Rule 4-403 is a good rule for signature stamp use found in the Rules of Judicial Administration in the Utah Court Rules Annotated.

Rule 4-403. Signature Stamp Use

Intent: To establish a uniform procedure for the use of judges' and commissioners' signature stamps.

Applicability: This rule shall apply to all trial courts of record and not of record.

Statement of the Rule:

(1) A clerk may, with the prior approval of the judge or commissioner, use a "signature stamp" in lieu of obtaining the judge's or commissioner's signature on the following:

(1)(A) bail bonds from approved bondsmen;

(1)(B) bench warrants;

(1)(C) civil orders for dismissal when submitted by the plaintiff in uncontested cases or when stipulated by both parties in contested cases;

(1)(D) civil orders for dismissal pursuant to Rule 4-103;

(1)(E) orders to show cause;

(1)(F) orders to take into custody;

(1)(G) summons;

(1)(H) supplemental procedure orders;

(1)(I) orders setting dates for hearing and for notice;

(1)(J) orders accepting a plea in abeyance in cases for which no appearance is required; and

(1)(K) orders for transportation of a person in custody to a court hearing.

(2) When a clerk is authorized to use a signature stamp as provided in paragraph (1), the clerk shall sign his or her name on the document directly beneath the stamped imprint of the judge's or commissioner's signature.

(3) All other documents requiring the judge's or commissioner's signature shall be personally signed by the judge or commissioner, unless the judge or commissioner, on a document by document basis, authorizes the clerk to use the judge's or commissioner's signature stamp in lieu of the judge's or commissioner's signature. On such documents, the clerk shall indicate in writing that the stamp was used at the direction of the judge or commissioner and shall sign his or her name directly beneath the stamped imprint of the judge's or commissioner's signature.

Mediation

Mediation is an opportunity where both parties try to reach an agreed solution with the help of a mediator.

Mediation is not available at all small claims courts. If your court wants the help of mediators, you can find a list of mediators on the Utah courts webpage at:

<http://www.utcourts.gov/mediation/roster/bios.asp>

Mediators are also listed in the yellow pages.

TRIAL

- Parties must bring or file prior to trial all documents related to the controversy, such as bills, estimates, receipts, rental agreements, leases, contracts and correspondence and witnesses.
- The judge will give both parties the opportunity to speak about the case, before making a ruling.
- Once the judge has made a decision, a judgment will be entered. The case maybe continued, dismissed, taken under advisement, transferred, or a money judgment maybe entered. Filing fees and court costs will be awarded to the prevailing party, unless the judge orders otherwise. If all parties are present they will get a copy of the judgment from the court clerk. If a party is not present, it is the responsibility of the appearing party to serve a copy of the judgment to the non-appearing party.

DEFAULT JUDGMENT AT TRIAL

Prior to entry of default judgment against an individual, the plaintiff must file with the court a military declaration form. This form is a requirement by the Servicemembers Civil Relief Act / Title II General Relief /521 /Protection of servicemembers against default judgments.

The plaintiff must do some research and make a statement indicating that the defendant is not active in the military, before a judge can enter default judgment. If the plaintiff proves that the defendant is not in the military, and the judge reviews it, the judge will fill out a military service order and may grant or deny the entry of default judgment. If the plaintiff does not do any research or does not know the military status, default judgment may not be entered. This military declaration does not apply to businesses. Unless the plaintiff is also suing the owner and lists them as a defendant on the affidavit and summons.

Servicemembers Civil Relief Act

SERVICEMEMBERS CIVIL RELIEF ACT TITLE II – GENERAL RELIEF

§ 521. Protection of servicemembers against default judgments [Sec. 201]

- (a) Applicability of section - This section applies to any civil action or proceeding in which the defendant does not make an appearance.
- (b) Affidavit requirement
 - (1) Plaintiff to file affidavit-In any action or proceeding covered by this section, the court, before entering judgment for the plaintiff, shall require the plaintiff to file with the court an affidavit--
 - (A) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or
 - (B) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service.
 - (2) Appointment of attorney to represent defendant in military service -If in an action covered by this section it appears that the defendant is in military service, the court may not enter a judgment until after the court appoints an attorney to represent the defendant. If an attorney appointed under this section to represent a servicemember cannot locate the servicemember, actions by the attorney in the case shall not waive any defense of the servicemember or otherwise bind the servicemember.
 - (3) Defendant's military status not ascertained by affidavit - If based upon the affidavits filed in such an action, the court is unable to determine whether the defendant is in military service, the court, before entering judgment, may require the plaintiff to file a bond in an amount approved by the court. If the defendant is later found to be in military service, the bond shall be available to indemnify the defendant against any loss or damage the defendant may suffer by reason of any judgment for the plaintiff against the defendant, should the judgment be set aside in whole or in part. The bond shall remain in effect until expiration of the time for appeal and setting aside of a judgment under applicable Federal or State law or regulation or under any applicable ordinance of a political subdivision of a State. The court may issue such orders or enter such judgments as the court determines necessary to protect the rights of the defendant under this Act [sections 501 to 596 of this Appendix].
 - (4) Satisfaction of requirement for affidavit - The requirement for an affidavit under paragraph (1) may be satisfied by a statement, declaration, verification, or certificate, in writing, subscribed and certified or declared to be true under penalty of perjury.
- (c) Penalty for making or using false affidavit
 - A person who makes or uses an affidavit permitted under subsection (b) (or a statement, declaration, verification, or certificate as authorized under subsection (b)(4)) knowing it to be false, shall be fined as
 - provided in title 18, United States Code, or imprisoned for not more than one year, or both.
- (d) Stay of proceedings
 - In an action covered by this section in which the defendant is in military service, the court shall grant a stay of proceedings for a minimum period of 90 days under this subsection upon application of counsel, or on the
 - court's own motion, if the court determines that--
 - (1) there may be a defense to the action and a defense cannot be presented without the presence of the defendant; or
 - (2) after due diligence, counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists.
- (e) Inapplicability of section 202 procedures
 - A stay of proceedings under subsection (d) shall not be controlled by procedures or requirements under section 202 [section 522 of this Appendix].
- (f) Section 202 protection
 - If a servicemember who is a defendant in an action covered by this section receives actual notice of the action, the servicemember may request a stay of proceeding under section 202 [section 522 of this Appendix].
- (g) Vacation or setting aside of default judgments
 - (1) Authority for court to vacate or set aside judgment
 - If a default judgment is entered in an action covered by this section against a servicemember during the servicemember's period of military service (or within 60 days after termination of or release from such
 - military service), the court entering the judgment shall, upon application by or on behalf of the servicemember, reopen the judgment for the purpose of allowing the servicemember to defend the action if it appears that
 - (A) the servicemember was materially affected by reason of that military service in making a defense to the action; and
 - (B) the servicemember has a meritorious or legal defense to the action or some part of it.
 - (2) Time for filing application
 - An application under this subsection must be filed not later than 90 days after the date of the termination of or release from military service.
- (h) Protection of bona fide purchaser
 - If a court vacates, sets aside, or reverses a default judgment against a servicemember and the vacating, setting aside, or reversing is because of a provision of this Act [sections 501 to 596 of this Appendix], that
 - action shall not impair a right or title acquired by a bona fide purchaser for value under the default judgment.
- **Formerly cited**

Notice of Default Judgment

After the Judge signs the military service order and the judgment, instruct the plaintiff to fill out a notice of default judgment form and immediately serve the default judgment to the non-appearing party – URSCP 9(c). This form gives notice to the defaulting party that a judgment was entered against them.

If the defendant is a business, the plaintiff still needs to fill out a notice of default judgment and serve it immediately on the non-appearing party.

JUDGMENT

- A Judgment is good for 8 years, Utah Code 78B-5-202.
- Judgments may be collected under the Utah Rules of Civil Procedure. A judgment entitles the judgment creditor to money, but if the judgment debtor does not voluntarily pay the judgment, the creditor must take steps to collect it. The creditor can have the debtor's non-exempt property seized and sold. The most common collection procedures that our court provides is a supplemental order and proceedings, writ of garnishment, writ of execution and abstract of judgment (also known as a judgment lien).
- All forms can be obtained and issued by the court clerk.

MOTION TO SET ASIDE AND ORDER

A plaintiff or defendant may file a Motion to set aside and order within 15 calendar days from the mailing of the notice of judgment or the date of dismissal for non-appearance at trial for good cause shown. The form must be obtained from the court clerk and completed. Our court requires a hearing on all motions to set aside. A hearing date will be set on the next available court date. At the hearing the judge may deny, grant, and set a new trial date. The court may require the requesting party's payment of the costs incurred by the other party, associated with the Motion to set aside.

Notice of Appeal

According to Small claims Information from the Utah State courts website, a party may appeal a small claims judgment by filing a Notice of Appeal within 30 days after the dismissal or judgment. The Notice of Appeal is filed with the court that issued the judgment. The appeal is a new trial, called a trial de novo, held in the district court. The clerk will forward the court's file to district court. The parties do not file new Affidavits, but the procedures for the trial de novo are the same as for the original trial. The parties present the evidence again, including any new evidence. The decision after the trial de novo is final and cannot be appealed. If you are appealing a small claims judgment to the Third District Court, mediation is required before the case will be scheduled for trial. Utah Dispute Resolution will schedule an appointment for mediation and will notify the parties. When the mediation process has been completed, Utah Dispute Resolution will notify the court whether the case has been resolved. If the case has not been resolved, it will be set for trial.

Even if the judgment debtor files a Notice of Appeal, the judgment creditor may still collect the judgment during the appeal, unless the judge enters a "stay." To stay the judgment and prohibit collection, the debtor must file with the district court a bond sufficient to cover the amount of the judgment. A stay is governed by [Rule of Civil Procedure 62](#).

The filing fee for a notice of appeal is \$10.00 to the justice court. Check or money order payable to district court for \$225.00 trial de novo. To accommodate everyone, our court attaches the check for \$225.00 and notice of mediation form filled out by the appellant for district court.

MOTION AND ORDER IN SUPPLEMENTAL PROCEEDINGS

(Ex parte motion for hearing to identify judgment debtor's property)

According to the Utah State Courts website, [Rule of Civil Procedure 64\(c\), Procedures in aid of writs](#) permits the creditor, with the judge's permission, to use discovery methods to identify the debtor's property, which might then be seized by a writ of execution or garnishment. The two most common methods of discovery are a hearing and written interrogatories. They permit the creditor to ask questions of the debtor, either orally or in writing, about the debtor's property. The creditor can ask the court to order the debtor to attend a hearing and answer questions about his or her property. This hearing is often called a "supplemental proceeding" and the order scheduling the hearing is often called a "supp order."

The creditor can also send written questions to the debtor. If the debtor serves the answers on the creditor at least 3 days before the hearing and answers the questions to the creditor's satisfaction, the creditor will cancel the hearing. This saves time and money for both parties.

If the debtor fails to appear for the supplemental order hearing, the judge will most often order an order to show cause, if the debtor was served alternately (not served personally). If the debtor was served personally, the judge may order a monetary bench warrant.

Writ of Garnishment

A garnishment is set up to intercept money owed to the defendant by someone else. You may garnish defendant's wages, bank accounts, or debts owed to the defendant. The plaintiff will begin this procedure by obtaining a packet of garnishment forms from the clerk, completing the required information and returning them to the clerk to be issued. There are two types of garnishments. Continuing Wage and Non-wage. The filing fee is the same for both - \$50.00. Another fee that is attached to the garnishment payable to the garnishee, depending upon the garnishment type, before service is made, are: continuing wage-\$25.00 / non-wage \$10.00. The garnishment can be served by the Sheriff's department, constable, or a person regularly engaged in the business of serving process and pay for that service, mail or commercial courier service that requires the garnishee to sign a receipt and provides for return of that receipt to plaintiff or mail the writ, the plaintiff must fill out the "certificate of service", attached to the writ and file it with the court, if plaintiff chooses to mail the writ to the garnishee.

Judgment Lien

also known as Abstract of Judgment

According to the Utah State Courts website, a judgment lien on real property is governed by [Utah Code Section 78B-5-201](#) and [Utah Code Section 78B-5-202](#). A judgment lien on real property is not a direct collection of money from the judgment debtor, but the lien prevents the debtor from selling or mortgaging real property until the judgment is paid or expires. Obtain an Abstract of Judgment or a certified copy of the judgment itself from the court that entered the judgment and a judgment information statement form. File the judgment or Abstract of Judgment in the office of the County Recorder in the county in which the debtor's real property is located. If the debtor has real property in more than one county, file in each county. Also file with the County Recorder a Judgment Information Statement.

Writ of Execution

Utah State Court website states, “Writs of Execution are governed by [Rule of Civil Procedure 64E](#). Use a Writ of Execution to seize the judgment debtor’s non-exempt real property or personal property in the debtor’s possession. A Writ of Execution is a court order to a sheriff or constable to seize and sell non-exempt property owned by the judgment debtor in order to pay the judgment creditor. After the court issues a Writ of Execution, the sheriff or constable will serve the Writ, seize the property and auction the property. The proceeds of the sale will first be used to pay the costs of the sale and then to pay the creditor. Any remaining money will be paid to the debtor. [Rule of Civil Procedure 64E](#) governs Writs of Execution. Rules [64](#), [69A](#), [69B](#) and [69C](#) also are relevant.” The issue fee is \$50.00 and the plaintiff must have a sheriff or constable serve the writ of execution and pay for service fees.

Motion & Order for Satisfaction of Judgment

When the judgment is paid, the creditor must file a motion and order for satisfaction of judgment. If an abstract of judgment was issued, a satisfaction of judgment must also be filed with the county recorder's office in which the abstract of judgment was filed.

URSCP Rule 11 (b) states: "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 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."

Links for helpful resources for Small claims

Small Claims Information:

<http://www.utcourts.gov/howto/smallclaims/>

Utah Codes:

http://www.le.state.ut.us/Documents/code_const.htm

Mediation:

<http://www.utcourts.gov/mediation/roster/bios.asp>

Legal advice for parties:

<http://www.utcourts.gov/howto/legalclinics/>

Small Claims Rules:

<http://www.utcourts.gov/resources/rules/srpe/>



Are you still awake?!!!

Thank for listening. If you have questions, feel free to contact me.

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