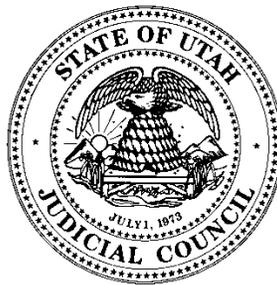


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# Small Claims Benchbook

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Updated

May 12, 2009

Small Claims Judges' Web Page:

<http://www.utcourts.gov/scjudges/>

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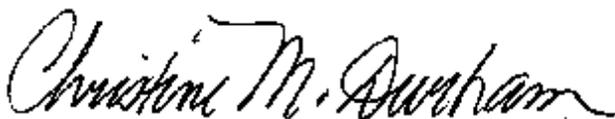
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The Supreme Court recognizes the invaluable service rendered by those attorneys who sit as Judges Pro Tempore. Without the volunteer efforts of the participating members of the bar, many citizens of this state would not have any forum for resolution of their disputes

For many of the people who appear in small claims court, that case will be their first experience with the judicial system. The experience is intimidating for them, and though the dollar amount may be small, their need to resolve the dispute could be a central issue in their lives. Others just want to be heard. Whatever their motivation, all expect their matter to be handled effectively and fairly. For most, the impression they take away that night will be of the entire judicial system. That is a weighty burden which we hope you take as seriously as we do.

And there are benefits for the Judges Pro Tempore as well. You will have the unique opportunity to see different litigation styles and strategies from the perspective of the bench. You will gain insight into the bench's routine and the impact of how a litigant's demeanor and approach affect the Court. More importantly, your service to the community will be personally stimulating and rewarding.

Thank you for your service, to the Court and to the community. It is greatly appreciated.

A handwritten signature in black ink that reads "Christine M. Durham". The signature is written in a cursive, flowing style.

Christine M. Durham  
Chief Justice  
Utah Supreme Court

## **(1) Introduction**

### **(a) In General**

A small claims action is a civil action for the recovery of money where the amount of the claim does not exceed the jurisdictional limit. In addition to that maximum, a party can recover court costs and interest. Small claims procedures are strictly for recovering money damages. The judge can order no injunctive relief or personal directive. A party may elect to bring a claim or counterclaim as a small claims case or as a regular civil case. However, if a party seeks remedies or procedural protections beyond those of small claims, that party's claim must be dismissed and re-filed under the Utah Rules of Civil Procedure in district court.

There are no limits on the grounds for relief in small claims: breach of contract, negligence, strict liability, etc, but the small claims judge can award only monetary remedies. Occasionally, a claimant will file an action to collect on assets awarded in a divorce matter. Under Utah Code Section 30-3-5(3), the divorce court retains exclusive, ongoing jurisdiction over all divorce issues. Plaintiffs occasionally bring matters involving juvenile court, or victim's reparations from criminal court. Again, the jurisdiction of a district or juvenile court precludes a small claims judge from hearing such matters. A governmental entity cannot be sued in small claims. Utah Code Section 63-30-16.

### **(b) Counterclaims**

Any counterclaim may be filed as a regular civil action, and a counterclaim greater than the small claims jurisdictional cap must be filed as a regular civil action. This is intended to protect the plaintiff's choice of forum. However, if a counterclaim in excess of the jurisdiction appears on the calendar, the judge should give the defendant the opportunity to lower the amount to have the matter heard, or advise the defendant that the higher dollar amount requires filing in district court.

### **(c) Interpleader**

Interpleader is allowed in small claims up to the jurisdictional limit. URCP 22 applies. Interpleader cases are usually brought by real estate brokers holding an earnest money deposit on a real estate purchase contract. Unless a claim is brought against the broker holding the deposit, only the buyer or seller is the proper defendant. These matters are generally heard summarily and are not litigated. If there is an interpleader on the calendar, the judge may want to inquire if the action is contested or if the action merely seeks to release the money. If it is simply to release the money, the judge may choose to handle that matter first.

### **(d) Rules of Procedure for Small Claims**

The Supreme Court has promulgated simplified rules of procedure for small claims cases. Small claims judges should review them and note how they differ from the Utah Rules of Civil Procedure. The small claims rules are designed to bring the case to a hearing on the merits as quickly as possible. The pleadings are cursory. There is no answer, summary judgment or discovery and motion practice is significantly restricted. The rules of evidence do not "strictly" apply. There are no jury trials.

## **(2) Role of Trial Judge**

Small claims is an opportunity for the parties to have their matters heard without incurring the costs normally associated with the legal system. For many people, small claims is their first, and occasionally only, contact with the judicial system. A small claims judge can help them feel that justice has been served, even if the litigant's preference has not been realized.

### **(a) Preparing for Trial**

A quick and essential step in preparing for the calendar is to review the cases beforehand. This checklist may provide some guidance.

#### **(i) Reasons for the Judge to Recuse**

Generally, only two issues cause the judge in small claims to recuse: a conflict of interest because of litigation between a client of the judge and/or the judge's law firm and one or the parties; or familiarity between the judge and one of the parties. Although neither of these issues requires automatic disqualification, if there is another judge available, the judge can direct the clerks to reassign any questionable cases before the session starts. Alternatively, or if that option is not available, the judge should discuss the issues of potential conflict with the parties and counsel. At that point, the parties have the option to waive recusal, to have the matter transferred to another judge or, if necessary, continued to another date. The parties should make that decision outside the presence of the judge.

#### **(ii) Verification of Service**

The Rules of Small Claims Procedure are simple, but permits only two types of service of process. URSCP 3. If the file does not contain an affidavit of service by the sheriff, constable or private process server or a paper signed by the defendant indicating receipt of the affidavit, or if plaintiff does not produce the document at the hearing, the hearing should be continued. There is no service by publication in small claims cases.

#### **(iii) Venue**

Either the defendant must reside within the jurisdiction of the court, or the action of indebtedness must have occurred within the jurisdiction of the court. Utah Code Section 78A-8-102.

#### **(iv) Parties and Their Representatives**

A plaintiff may not bring an assigned cause of action in small claims, nor collect upon an assigned judgment. Utah Code Section 78A-8-103.

As in any civil case, a party may be self-represented or represented by counsel. In addition, a party may be represented by an employee. A party may also be represented by non-lawyer who is not an employee if the person is not compensated. Utah Code Section 78A-8-102(5); Utah Rules of Small Claims Procedure 13.

A minor must be represented by a parent or legal guardian. A minor may address the court, and even conduct his/her side of the proceeding, but there must be a

responsible adult also in attendance. Spouses, as co-parties, may choose to designate one or the other to speak for both.

#### **(v) Understand the Complaint**

The parties may fail to provide a complete description of the action on the small claims affidavit. However, even a sparse description usually gives an indication of the type of case. Reviewing the affidavit gives the judge an opportunity to check the Code before taking the bench on any issue of concern or unfamiliarity.

#### **(vi) Miscellaneous**

If the defendant has filed for bankruptcy, the small claims case is automatically stayed. If there is any indication that the defendant is in bankruptcy, investigate this further before taking evidence on the merits of the claim.

Plaintiffs may not split a cause of action to recover more than the jurisdictional limit. The judge should check the docket to be certain that a plaintiff is not splitting an action. Clerks of the court watch for this, but factual situations sometimes disguise the effort to split actions.

#### **(b) Judge's Conduct**

The judge's conduct is crucial in small claims. It is the principal way in which a judge controls the courtroom. The judge's behavior dictates both the tone of the hearing and the satisfaction with which the parties leave the courtroom. Demeanor should reflect impartiality while expressing interest in what both litigants have to say. The judge's rulings should be clear and given with confidence. Conducting a small claims trial with the same decorum as any district court adds significantly to the authority of the judge, and the parties will leave satisfied, although not necessarily pleased, with the judge's rulings.

Unlike regular civil litigation, the participants in small claims are rarely schooled in either the law or evidence. Therefore, the judge must necessarily take a more active role in the small claims hearing than in a matter litigated by counsel. The parties should leave the courtroom feeling they had their matter fully and fairly heard, but many will need help to focus on the issues.

In using the opportunity to present their case to a third party, litigants occasionally make inflammatory, derogatory, or irrelevant remarks. The judge should immediately cut short such remarks. Failure to do so often results in degrading the decorum and control of the courtroom. The judge has the power to rule summarily against a party for misconduct in the courtroom. See Section IV.A.9. By keeping tight control of the courtroom and directing the questions and statements of the plaintiff and defendant to key points, the judge can maintain the dignity of the proceedings and move the hearing along.

### **(3) Law and Motion Calendar**

Many courts have the clerks handle the law and motion calendar, but if the law and motion calendar is not handled by the clerks, the following section will become applicable.

## **(a) Supplemental Orders**

### **(i) Procedure**

Proceedings supplemental to the judgment are available to the judgment creditor, usually the plaintiff, to assist in collecting the judgment. After swearing in the parties, the judge usually advises both parties to step out into the hallway so the debtor can answer the questions of the creditor. Advise the debtor to answer the questions truthfully and fully and that if the creditor is not satisfied that the responses are complete and truthful, the debtor will take the stand and answer the questions under the direct eye of the judge.

### **(ii) Bench Warrants**

If the judgment debtor fails to appear at the supplemental hearing, the judge should take steps to compel attendance. The options vary depending on whether the debtor was personally served with the notice for the supplemental hearing. If the debtor was not personally served, the court is limited to issuing an order to show cause why the debtor should not be held in contempt. If the debtor was personally served with either the notice of the supplemental hearing or the order to show cause, the judge can issue a bench warrant for the debtor's arrest. For each hearing at which the judgment debtor does not show, the judge should increase the warrant amount. Although there is no set amount, it usually increases in \$50 or \$100 increments. Do not exceed the total of the judgment plus costs, fees and interest.

### **(iii) Release of Bench Warrant Funds**

A judgment creditor may seek to collect money held by the court as the result of bail paid on a bench warrant. If the funds are sufficient to satisfy the judgment, the judge should direct the creditor to file a satisfaction of judgment. If the funds are insufficient, the creditor can continue collection efforts, including an additional bench warrant if necessary.

## **(b) Collection Writs**

The creditor can pursue collection of a small claims judgment in the same manner as a civil judgment. Utah Code Section 78A-8-104(2). The Rules of Small Claims Procedure do not contain rules for writs of garnishment and execution; these are governed by the Rules of Civil Procedure.

## **(c) Pretrial Motions**

Rarely are substantive pretrial motions brought in small claims. The issues are usually procedural and require only common sense determine the appropriate course of action.

### **(i) Motion to Continue**

Judges must frequently consider motions to continue. These are granted upon a showing of good cause, and the requesting party may be required to pay the other party's costs. URSCP 6(c) provides for one postponement of the trial date per side, which may be granted by the clerk of the court. To request a postponement, a party

must file a motion at least 5 business days before trial. However, the practice is to grant continuances as long as both parties agree.

### **(ii) Motion to Set Aside Default Judgments and Dismissals**

A party may file a motion to set aside a default judgment or dismissal. In determining whether to set aside, the judge might consider principles and examples under URCP 60. Under URSCP 10 a motion to set aside must be filed within 15 calendar days after the entry of judgment or dismissal. This period may be extended by the judge for good cause if the motion is made within a reasonable time.

## **(4) Conducting the Trial**

### **(a) Introduction**

Below, you will find a sample introduction that was created by taping an actual small claims session. Although the format and style may be different than yours, the elements set forth are important in the general execution of the proceeding. Those elements break down to the following points.

#### **(i) Order of Events**

Welcome

Call the calendar

Offer mediation (if available)

Swear in (either all at once or 1 case at a time)

Default calendar – enter defaults and dismissals

Motions

Explain courtroom procedure

Call first case

Conduct bench trials

#### **(ii) Sample Procedure**

“Good evening ladies and gentlemen. My name is \_\_\_\_\_. I am an attorney licensed to practice law in Utah. I have also been appointed by the Utah Supreme Court to act as a Pro Tempore Judge.

Before beginning, I need to check for conflicts of interest. Is there anyone here tonight whom I have represented, or anyone involved in a lawsuit with another party I have represented?

The small claims court is a system where you can have your matter heard without having to incur the cost of hiring someone like myself to represent you. You may have counsel present if you wish, but you are not required to do so.

Before we get underway, I would like to advise you that we have representatives here tonight from UDR, Utah Dispute Resolution. This gentleman/woman standing against the back wall with the yellow badge on is with that group. I would strongly encourage you to consider trying to mediate the case, especially if you are further down

on the list, because it is going to be a while before your case is heard. If you can reach a resolution through mediation, it will be signed by me or another judge and will be treated as a binding court order. You may find it more amicable and reasonable to work out your own solution, rather than live with my decision. If you meet and you cannot reach a resolution, you will still be able to have your case heard. So there is really no downside to mediation.

Let me read through the calendar to see who is here. Then we will have everyone sworn in. Once that is complete, I will take the defaults. After the defaults, I will explain the courtroom procedure, and then we will start hearing cases.

(Read calendar)

Is there anyone here who has not been called?

We will now swear everyone in. If you are a Plaintiff or Defendant, or a witness in a case, you need to stand and be sworn in. In other words, if there is any chance you will be speaking in the courtroom today, you need to stand now and be sworn in. You cannot speak without having been sworn in.

(Conduct defaults)

(Ask for Motions)

Now let me explain the courtroom procedure to you. The Plaintiff bears the burden of proof in each case. The Plaintiff prevails by a preponderance of the evidence, which is 51% or more. The Plaintiff must provide evidence sufficient to meet this burden of proof.

A trial is broken into two parts. The first is to prove the occurrence of the event and the second is to prove damages. For example, if you were involved in a car accident, you would first have to prove the Defendant was involved and was at fault. Once that was proven, you would then have to prove the amount of damages to your car.

Now, we do not hold you strictly to the Rules of Evidence, they are rather complicated. But we do use them, and I will apply the Rules of Evidence more strictly to the first part of the case than I will to the second. In particular, affidavits are generally not acceptable as evidence to prove your case and to meet your burden of proof. If you have a witness that is going to say something against the other party, then your witness should be here to speak. People have a right to face their accuser and to cross-examine what they say. Also, hearing the witness speak in response to questions helps me make my determination as to the truthfulness of the statements. However, I will readily accept affidavits or estimates on the second part of the case for repairs or damages.

At your option, you may present your case by the testimony of witnesses or by proffering the witness' testimony. Proffering testimony is simply your summary of what a witness would have said. You may proffer the testimony only of a witness who is present. Proffering testimony may be less confusing to you, and to me, since getting information in question and answer form is sometimes difficult. But the choice is yours. Finally, if proffered testimony shows that there is a dispute about the facts, both sides will have to present their witnesses to testify on that point under direct and cross examination. I will ask each party at the start of each trial whether they want to proceed by proffer or by testimony.

The Plaintiff will go first; they bear the burden of proof. The Defendant will then have an opportunity to respond. Don't interrupt the other side. If you do not like something they say, make a note of it. No theatrics or huffing or throwing of hands in the air. You will get a turn and you can address it then. If you forgot some critical point, don't worry. Each Plaintiff and Defendant will get a second opportunity to speak.

Anything you want me to see, you have to show the other side. They have a right to see what you are showing me and they need to have a chance to review it so that they can respond to it. Just show it to them, don't discuss it.

I will most likely direct questions to each of the sides so that I can determine relevant facts, or try to keep the case on the track of pertinent issues. I would request that you not bring up inflammatory or irrelevant matters. Let's just focus in on the matters at hand, the basis upon which the claims are made or the defenses to the claims.

I will say this again at the end of each trial. But right now while everyone is listening, let me advise you that if you are not satisfied with the judgment that is entered, you can appeal it. That appeal must be done within 30 calendar days. If you fail to appeal within 30 calendar days, your right of appeal is lost and this judgment will become final. The appeal is to be filed with the Clerk of the Court, and there is a substantial filing fee. The appeal will be heard as a trial de novo, which means it is a brand new trial. This is not a court of record. These microphones are not on. There is no record of what is said here. If you appeal tonight's ruling and the matter is reheard, anything that happened here is immaterial. You cannot say, "they said this" or "this happened at the trial." There is no record of it.

As we approach the end of a case, I will address the party against whom I am likely to rule. I will explain why, where the difficulties in the case are, and give them an additional opportunity to respond. Don't argue with me. Listen closely and formulate your last, best answer.

Lastly, when I rule, I will explain my ruling. Don't argue with me. Listen. I'm not taking any more arguments. I explain my rulings to help you understand why the decision was reached. If you intend to appeal this ruling, you will need to understand what went wrong here, so that you can address it on appeal."

### **(iii) Calling the Calendar**

Many judges call the entire calendar within 15 minutes of the appointed starting time. Although there is no rule, most judges feel that anyone who is more than 15 minutes late should have a default judgment entered against them or the case dismissed. Given the ability to file a motion to set aside the judgment or appeal it, most judges feel it is unfair to those who are present, and on time, to wait for those who are not. Calling the entire calendar at the beginning of the process treats those who happen to be early on the calendar the same as those who are later.

### **(iv) Swear in Parties**

There is no set procedure or rule for how the parties and witnesses are sworn in. Some judges choose to swear in the entire courtroom at once as a matter of expediency, and other judges choose to swear in the participants one at a time to help impress upon them the need to be truthful. This is left to your discretion. However, if a

matter is transferred from another court, swear in the new arrivals if your preference is to swear in everyone at the beginning.

#### **(v) Mediation**

Free mediation during the small claims sessions is available in some districts. The judge should encourage all litigants to avail themselves of this service if available. This serves several valuable purposes. Each matter that is mediated reduces the court docket. If the parties can reach a mediated resolution, they are more likely to be happy with that outcome than with a decision of the court. The mediated decision is signed by the judge to give it the full effect of a judgment. Most importantly, the parties are motivated to reach a resolution with a mediator. If they cannot settle, they may come back into the courtroom and litigate the matter. If the parties are advised of these points, many avail themselves of the opportunity.

#### **(vi) Defaults and Dismissals**

Failure of the defendant to appear results in a default judgment for the plaintiff, and therefore no recitation of the facts is necessary if the affidavit shows a right to recover. However, the plaintiff must explain the dollar amount prayed for in the complaint so the judge can determine that the damages are both justified and within the court's jurisdiction. Failure of the plaintiff to appear results in a dismissal. The judge should dismiss with prejudice only if there are justifiable grounds.

#### **(vii) Presenting the Case**

Allow each side to present their case and then allow each side to rebut the evidence of the other party. Giving each side two opportunities to speak allows them to regroup after the initial presentation, and the initial shock of being in court, and to more thoroughly think through their case for their second presentation. There is no obligation to allow litigants a second opportunity to address the court, but, given their lack of experience, a second chance makes them feel better about the presentation.

A trial is broken down into two parts: (1) the plaintiff must first satisfy the burden of proof on the merits of a claim; (2) then the plaintiff must demonstrate the amount of damages. It is helpful to explain to the litigants that both parts are necessary. Simply providing evidence of damages does not meet the initial burden of proving that the events occurred as the plaintiff claims.

Litigants rarely have an outline of their key points, and even more infrequently are aware of the elements of their cause of action. Often, they are emotionally charged and want not only to address their grievance, but to vent and to strengthen their story with irrelevant or inflammatory information about the other party. To maintain the decorum of the court, the judge must keep the parties on track, focusing on the matter and not exchanging barbed comments. The opposing party should be instructed to address only the evidence just presented. The judge should not allow the parties to recite post-issue facts or efforts to contact or settle with the opposing party.

Some judges set a time limit on each party. This does not allow for complex matters, or the lack of oratory skills. It may be more helpful to ask questions and focus on the issues than to impose a time limit. Parties often will take all the time permitted. The

judge should be conscious of the others waiting for an opportunity to speak and cut short parties who are only repeating the same things over and over.

Near the end of the case, it is helpful to explain to the party against whom you are likely to rule the problem you have with the case, and then provide an opportunity to address that point. By making this opportunity available to the side who may be about to lose, the judge gives an explanation of what the problem is, and an opportunity to correct it before it's too late.

### **(viii) Evidence**

#### **(A) Affidavits**

Because the Rules of Evidence in small claims are much more relaxed than in district court, the parties often use affidavits. The weight that the court gives an affidavit may be less than a witness's testimony due to the opposing party's inability to cross-examine. However, given that many matters involve parties from out-of-state, or that the litigants simply do not understand the subpoena process, the judge may show some lenience with regard to affidavits.

#### **(B) Repair Bids or Estimates**

Although these are not under oath and may be unsigned, repair bids and estimates are necessary in the estimation of damages, and should be allowed in without a supporting affidavit as they do not go to proving the events in the case.

#### **(C) Handling Evidence**

Parties rarely bring copies of each exhibit to provide one to the court and one to the opposing party. Although the failure to do so slows the process, the opposing party still has the right to review any evidence. Instruct litigants to show the opposing party any documents they wish the court to review before bringing the documents to the bench. Instruct the parties not to discuss the evidence during the review. Allow the opposing party time to review the evidence and raise any objection.

#### **(D) Objections**

Although the objections raised in small claims may not be technically accurate, they are frequently insightful and should be considered. It helps the parties to understand and to feel better about the process if the reason for the ruling is explained.

#### **(E) Testimony/Proffers**

In *Kawamoto v. Fratto*, 2000 UT 6, 994 P.2d 187, the issue of proffering testimony in small claims was argued before the Supreme Court. Although the court did not prohibit proffered testimony, the court did require that the parties be given the option either to proffer testimony or to conduct direct and cross examination. If the proffered testimony shows a factual dispute, testimony of a witness is required.

If the process for proffering testimony is explained at the beginning, the parties will have the opportunity to choose whether to proffer testimony or to conduct direct and cross examination of the witnesses. In explaining the option of proffering testimony, it is important to advise the litigants that they are not required to agree to proffer testimony, but that it helps move the proceeding along. Additionally, since few litigants are trained

in examining witnesses, they avoid the difficulty of extracting information in question and answer form, and thus avoid confusing the judge. Lastly, the judge should make it clear that if a factual dispute arises as the result of the proffered testimony, then the individual whose testimony is being proffered must be put on the stand and the issue in dispute resolved by direct and cross-examination.

If litigants appear without counsel, they may need help presenting their case. The judge may aid by reducing the party's factual history into a coherent cause of action or defense. The judge must take care in providing such help not to appear to be biased in favor of one party. Litigants are not trained, and cannot be expected to prepare as would an attorney. Therefore, the small claims judge needs to ask key questions. The judge must remain impartial, yet help to elicit key information regardless of whether it supports plaintiff or defendant. In asking questions, the judge keeps the matter on track. The rule offers the judge some guidance:

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

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

URSCP 7.

### **(F) Expert Witnesses**

Expert witnesses rarely are brought into small claims. However, it does occur. If an expert witness appears, proper qualification should be determined before the testimony is accepted as that of an expert. If there is no counsel or if the counsel failed to establish qualification of the expert, the judge should take steps to determine the qualification of the expert.

### **(G) Interpreters**

The clerk has an interpreter's oath, which the clerk or judge must administer. Because the court is required to provide interpreters in criminal matters, litigants sometimes mistakenly believe the court is also required to provide them in small claims. Parties may ask if there are any other people in courtroom who can assist them with the language, or ask the judge to continue the matter to another time when they can have an interpreter present.

### **(ix) Misconduct**

The court should allow no misconduct of any type. Although the judges do not have bailiffs available in the courtroom, there are usually bailiffs or sheriff's deputies somewhere in the courthouse who can be called quickly. The court can also exercise contempt powers which include fines up to \$1,000 and/or incarceration. Some small claims judges sanction uncooperative litigants by warning them that a summary ruling

against them will be entered if the inappropriate behavior continues, and ultimately entering judgment if the party committing the misconduct doesn't conform. Most parties are not willing to be more difficult than the dollar amount at issue, and therefore the threat of losing summarily is generally enough to bring a party into line.

## **(5) Rulings**

### **(a) Judgment**

Small claims judges should explain their rulings if time permits. Small claims may be the only contact many of the parties have with the judicial system, and it is frustrating and intimidating enough without receiving a judgment they do not understand. Before the rulings are explained, the judge should indicate that the purpose of the explanation is to help the parties understand and they are not to argue their case further. Their understanding of the ruling is particularly important if they wish to appeal and strengthen or clarify any part of their case in the retrial.

### **(b) Interest**

Interest awarded in small claims may be based upon the contractual rate set forth between the litigants or, if there is no contract, at the statutory rate. Utah Code Section 15-1-4. The judge is not bound to order interest set forth in a contract if the judge finds that the interest under the contract is unconscionable. Utah Code Section 70C-7-106.

### **(c) Attorney Fees**

The judge may award attorney fees in small claims if the attorney fees are authorized by contract or by law, but the judgment, including attorney fees, must not exceed the jurisdictional cap.

Under URCP 73, a request for fees must be supported by affidavit or testimony unless the attorney claims fees under the schedule in the rule.

### **(d) Court Costs**

The prevailing party is entitled to costs of the action and also the costs of execution upon a judgment. Utah Code Section 78A-8-107. Court costs and interest may exceed the jurisdictional cap.

### **(e) Rulings Taken Under Advisement**

Judges are discouraged from taking a case under advisement. However, either the facts or procedural issues may occasionally necessitate it. If a small claims matter is taken under advisement, rule promptly and reduce the ruling to writing. This is for the benefit of the parties and so that the court clerk can mail it out. Clerks should not have to call the parties and give them the ruling with no understanding or explanation of it.

### **(f) Renewals**

A small claims judgment can be abstracted to district court under Utah Code Section 78B-5-202 and then renewed on the same conditions as renewal of district court judgments. A small claims judgment is good for eight years, as is any judgment of the district court.

## **(g) Appeals**

The parties should be advised that if they wish to appeal, they must file the notice of appeal within 30 calendar days of the entry of judgment. Failure to do so will result in a judgment that cannot be appealed. Advise the litigants that if the matter is appealed, it will be retried and that there is no further appeal. Appealing the judgment is not sufficient to stay the judgment. The prevailing party can pursue collection unless the losing party files a bond and obtains a stay. But collections during an appeal may have to be returned if there is a different decision upon retrial.

**(6) [Rule 11-202. Judges pro tempore.](#)**

**(7) [Rules of Small Claims Procedure](#)**

**(8) [Small Claims Statutes](#)**

**(9) Sections of the Code Commonly Used in Small Claims Cases**

### **(a) Landlord/Tenant**

**(i) Security Deposits. See Utah Code Section 57-17-1 et seq.**

**(ii) Deductions on Security Deposits. See Utah Code Section 57-17-3.**

**(iii) Fit Premises Act. See Utah Code Section 57-22-1 et seq.**

**(iv) Habitability. See Utah Code Section 57-22-3.**

**(v) Renter Remedies. See Utah Code Section 57-22-6.**

**(vi) Forcible Entry and Detainer. See Utah Code Section 78B-6-801 et seq.**

### **(b) Construction Law**

**(i) License Requirement for Action. See Utah Code Section 58-55-604.**

**(ii) Mechanic's Liens. See Utah Code Section 38-1-1 et seq.**

**(iii) Automobile Lemon Laws. See Utah Code Section 13-20-1 et seq.**

**(iv) Utah Consumer Credit Code. See Utah Code Title 70C.**

**(10) Small Claims Case Law**

**(a) *Kawamoto v. Fratto*, 2000 UT 6; 994 P.2d 187**

Proffered testimony.

The case was before the court on a petition for an extraordinary writ filed pursuant to Utah R. Civ. P. 65B. The court found that where the credibility of a witness was critical to the outcome of the case, or where the disputed evidence touched on expert assessments and opinions, the trial court could not limit a party's evidence to proffers from counsel. The trial judge abused his discretion by requiring petitioner to submit all of her evidence by proffer. The judgment was vacated and a new trial was ordered. The trial judge abused his discretion in denying petitioner the opportunity to present her evidence through live witness testimony. The action did not exceed the small claims court's jurisdiction merely because general damages were sought. Automobile accident

cases were not outside the small claims court's subject matter jurisdiction. The judgment did not exceed the jurisdictional dollar amount of the small claims court.

**(b) Turner v. Hi-Country Homeowners Ass'n, 910 P.2d 1223 (Utah 1996)**

Res judicata.

Appellee homeowners association brought an action against appellant homeowner in small claims court. Appellee sought payment from appellant of a special gate repair assessment. Appellant refused to pay the gate repair assessment because his lot was outside of the gated area. The small claims court found in favor of appellant. Appellant then brought an action against appellee in the district court to restrain appellee from assessing his property for services he did not or could not use and to recover assessments already paid to appellee. The district court granted summary judgment in favor of appellee. On review, appellant contended that appellee breached its agreement with him and that the small claims court decision precluded appellee from relitigating the assessment issues. The court affirmed the district court's judgment. The court held that appellee's bylaws required appellant to pay the full assessment, as they specifically stated that a lot owner who did not use a service still had to pay for the service; and that the absence of a court record concerning the small claims court decision prevented the court from determining whether issue preclusion was applicable in this case.

**(c) Shopko Stores v. Dutson, 911 P.2d 980 (Utah 1995)**

Subject matter jurisdiction.

The presiding judge of the circuit court had entered a directive limiting the causes of action that might be brought as small claims actions. The Supreme Court ordered the directive withdrawn. Its directive issued February 7, 1995, to Circuit Court Judges, Commissioner Garner, The Court found nothing in section 78-6-1, et seq., of the Utah Code which authorizes the judges of the small claims division of the Circuit Court to refuse to entertain claims for relief meeting the explicit jurisdictional limits spelled out in section 78-6-1 or to decline to award a party successfully asserting such claim the full range of remedies the law otherwise makes available on that claim.

**(d) Faux v. Mickelsen, 725 P.2d 1372 (Utah 1986)**

Res judicata.

Defendant landlord recovered a small claims court judgment against plaintiff tenants for past due rent, utility costs, cleaning, and repair. The tenants did not counterclaim or appeal the judgment. The tenants then brought an action for wrongful ejection, willful exclusion, distraint, and conversion. The trial court granted summary judgment to the landlord on the ground of res judicata, the judgment was affirmed on appeal, and the tenants sought further review. The court held that, under the Judicial Code, codified at Utah Code Ann. § 78-6-2.5 (1953), counterclaims in small claims court were permissive and not mandatory as required under Utah R. Civ. P. 13(a), and operated as an exception to the provisions of Utah Code Ann. § 78-6-8, and the tenants had no duty to remove the case to the circuit court and assert a counterclaim.

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

Subject matter jurisdiction. Due process.

The recipient failed to report her son's income to obtain food stamps and claimed to be unaware of the income. The income rendered the family ineligible and respondent office of recovery services sought repayment of the benefits as being fraudulently obtained. A complaint was filed in small claims court. The recipient failed to defend and a default judgment was entered. The recipient then sought an extraordinary writ in the district court contending that the finding of fraud necessary to support the money judgment constituted a declaratory judgment and that the small claims court was without jurisdiction to render such a judgment. The district court denied the writ. On review, the court affirmed. The court held the jurisdiction was proper as the action was filed in the small claims court, not to seek declaratory relief, but to recover a money judgment, and to execute if it had been necessary. The court held that the recipient received due process when she was personally served with process which identified the nature of the relief sought; was afforded the opportunity to seek counsel and to present witnesses and evidence in the case; and given a right to appeal.

**(f) Dennis v. Vasquez, 2003 UT App 168; 72 P.3d 135**

Res judicata.

Previously, plaintiff sued defendant in small claims court to recover for property damage that allegedly occurred during the same automobile accident. In that case, the small claims court ruled against plaintiff, checking the box on the judgment form that stated, "No Cause of Action." Plaintiff did not appeal that decision but later filed the instant lawsuit in the district court, seeking damages for personal injuries. The district court properly granted summary judgment for defendant pursuant to Utah R. Civ. P. 56 based on claim preclusion. Clearly, the instant case involved the same parties as the first case. In addition, plaintiff could and should have brought his personal injury claims in the same action in which he asserted his property damage claims. Finally, contrary to plaintiff's argument, the small claims court's judgment was a final judgment. Having failed to appeal that judgment, plaintiff could not argue it had no preclusive effect because the judgment was erroneous.

**(g) Salt Lake City Corp. v. Leahy, 848 P.2d 179 (Utah App 1993)**

Appellate review.

The owner was cited for parking his vehicle next to an expired meter. When the owner refused to respond to the citation, the city filed an action against him in small claims court, in which the owner challenged the constitutionality of the ordinances under which he was cited. The lower courts upheld the constitutionality of the ordinances and entered judgments against the owner. The court dismissed the owner's appeal on the ground that, pursuant to Utah Code Ann. § 78-6-10(2), it was without jurisdiction to review an appeal from a trial de novo before the circuit court. The court found that the trial de novo could not be appealed because the circuit court did not hold either of the ordinances unconstitutional, as required by § 78-6-10(2).