

IN THE SUPREME COURT OF THE STATE OF UTAH

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FILED
UTAH APPELLATE COURTS

JUL 18 2016

In re: Proposed Amendments to
Rule 1. General provisions;
Rule 2. Plaintiff beginning the case;
Rule 2A. Defendant beginning the case by transferring from district court;
Rule 3. Service of the affidavit and summons;
Rule 4. Counter affidavit;
Rule 4A. Transfer to District Court; and
Rule 12. Appeals
of the UTAH RULES OF SMALL CLAIMS PROCEDURE

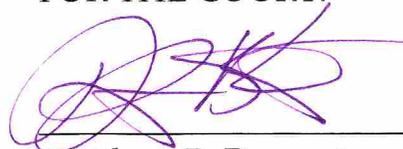
ORDER

IT IS HEREBY ORDERED that the proposed amendments to rules 1, 2, 3, 4, and 12, and new rules 2A and 4A, of the Utah Rules of Small Claims Procedure are adopted and promulgated effective the date of this order.

FOR THE COURT:

7-18-16

Date



Matthew B. Durrant
Chief Justice

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

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50 **Rule 2A. Defendant's beginning the case by transferring removal from district court.**

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

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

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

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

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

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

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67 Comment:

68 The term "remove" is used in Utah Code §78A-8-102, but to avoid confusion with the term of art
69 for taking cases from state court to federal court, the term "transfer" is used herein to describe the
70 procedure authorized under the statute.

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

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

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

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

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87 (d) The summons shall include a restatement language sufficient to notify defendant of the
88 transfer removal rights outlined provided in of Rule 4A, providing for a jury trial.

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90 **Rule 4. Counter affidavit.**

91 (a) Defendant may file with the clerk of the court a counter affidavit stating facts showing the
92 right to recover money from plaintiff.

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(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.

Rule 4A. Transfer-Defendant's removal to district court.

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

(a)(1) Within 415 days of being served with the affidavit, file a notice of transfer-removal in the district court, ~~pursuant to URCP XX;~~

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

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

(b) Upon filing the notice of transferremoval, 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 transferred-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. Trial.

139 (a) All parties must bring to the trial all documents related to the controversy regardless of whose
140 position they support.

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142 (b) Parties may have witnesses testify at trial and bring documents. To require attendance by a
143 witness who will not attend voluntarily, a party must subpoena the witness. The clerk of the court
144 or a party's attorney may issue a subpoena pursuant to Utah Rule of Civil Procedure 45. The
145 party requesting the subpoena is responsible for service of the subpoena and payment of any fees.
146 A subpoena must be served at least 5 business days prior to trial.

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

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

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157 (e) After trial, the judge shall decide the case and direct the entry of judgment. No written
158 findings are required. The clerk of the court will serve all parties present with a copy of the
159 judgment.

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

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164 **Rule 8. Dismissal.**

165 (a) Except in interpleader cases, if plaintiff fails to appear at the time set for trial, plaintiff's claim
166 will be dismissed.

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

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

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

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176 **Rule 9. Default judgment.**

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

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

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

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(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 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.

(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.

~~(b)~~

~~(a)~~ 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

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231 accompany the notice of appeal.

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

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238 | (c) The district court shall issue all orders governing the new trial, including the exchange of
239 information prior to trial. The new trial of a justice court adjudication shall be heard in the district
240 court nearest to and in the same county as the justice court from which the appeal is taken. The
241 new trial of an adjudication by the small claims department of the district court shall be held at
242 the same district court.

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

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248 | (e) Within 10 business days after filing the notice of appeal, the justice court shall transmit to
249 the district court the notice of appeal, the district court fees, a certified copy of the register of
250 actions, and the original of all papers filed in the case.

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252 | (f) Upon the entry of the judgment or final order of the district court, the clerk of the district
253 court shall transmit to the justice court that rendered the original judgment notice of the manner
254 of disposition of the case.

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256 | (g) The district court may dismiss the appeal and remand the case to the justice court if the
257 appellant:

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259 (h)(1) fails to appear;

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

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

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

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269 **Rule 13. Representation.**

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

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