(d)(1)(B) demonstrate that the paper, pleading, or motion is warranted under existing law or a good faith argument for the extension, modification, or reversal of existing law;

(d)(1)(C) include an oath, affirmation or declaration under criminal penalty that the proposed paper, pleading or motion is not filed for the purpose of harassment or delay and contains no redundant, immaterial, impertinent or scandalous matter;

(d)(2) A prefiling order in a pending action shall be effective until a final determination of the action on appeal, unless otherwise ordered by the court.

(d)(3) After a prefiling order has been effective in a pending action for one year, the person subject to the prefiling order may move to have the order vacated. The motion shall be decided by the judge to whom the pending action is assigned. In granting the motion, the judge may impose any other vexatious litigant orders permitted in paragraph (b).

(d)(4) All papers, pleadings, and motions filed by a vexatious litigant subject to a prefiling order under this paragraph (d) shall include a judicial order authorizing the filing and any required security. If the order or security is not included, the clerk or court shall reject the paper, pleading, or motion.

(e) Prefiling orders as to future claims.

(e)(1) A vexatious litigant subject to a prefiling order restricting the filing of future claims shall, before filing, obtain an order authorizing the vexatious litigant to file the claim. The presiding judge of the judicial district in which the claim is to be filed shall decide the application. In granting an application, the presiding judge may impose in the pending action any of the vexatious litigant orders permitted under paragraph (b).

(e)(2) To obtain an order under paragraph (e)(1), the vexatious litigant's application must:

(e)(2)(A) demonstrate that the claim is based on a good faith dispute of the facts;

(e)(2)(B) demonstrate that the claim is warranted under existing law or a good faith argument for the extension, modification, or reversal of existing law;

(e)(2)(C) include an oath, affirmation, or declaration under criminal penalty that the proposed claim is not filed for the purpose of harassment or delay and contains no redundant, immaterial, impertinent or scandalous matter;

(e)(2)(D) include a copy of the proposed petition, complaint, counterclaim, cross-claim, or third party complaint; and

(e)(2)(E) include the court name and case number of all claims that the applicant has filed against each party within the preceding seven years and the disposition of each claim.

(e)(3) A prefiling order limiting the filing of future claims is effective indefinitely unless the court orders a shorter period.

(e)(4) After five years a person subject to a pre-filing order limiting the filing of future claims may file a motion to vacate the order. The motion shall be filed in the same judicial district from which the order entered and be decided by the presiding judge of that district.

(e)(5) A claim filed by a vexatious litigant subject to a prefiling order under this paragraph (e) shall include an order authorizing the filing and any required security. If the order or security is not included, the clerk of court shall reject the filing.

(f) Notice of vexatious litigant orders.

(f)(1) The clerks of court shall notify the Judicial Council that a pre-filing order has been entered or vacated.

(f)(2) The Judicial Council shall disseminate to the clerks of court a list of vexatious litigants subject to a prefiling order.

(g) Statute of limitations or time for filing tolled. Any applicable statute of limitations or time in which the person is required to take any action is tolled until 7 days after notice of the decision on the motion or application for authorization to file.

(h) Contempt sanctions. Disobedience by a vexatious litigant of a pre-filing order may be punished as contempt of court.

(i) Other authority. This rule does not affect the authority of the court under other statutes and rules or the inherent authority of the court.

Tab 4

Administrative Office of the Courts

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

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

MEMORANDUM

To: Civil Procedures Committee
From: Tim Shea
Date: September 22, 2011
Re: Rules for final action

The comment period for the following rules has closed, and they are ready for your final recommendations.

(1) Rule Summary

URCP 004. Process. Amend. Deletes the requirement that a summons published in a newspaper must be in an English language newspaper.

URCP 065C. Post-conviction relief. Amend. Adds appointment of pro bono counsel in accordance with Sections 78B-9-109 and -202..

(2) Comments

On appointment of pro-bono counsel under Rule 65C: The proposed rule should be amended to require counsel's consent before the Court may appoint him or her as pro-bono counsel. There are cases in other states indicating there may be a constitutional problem with making counsel represent a party without compensation in civil cases.

Posted by Samuel D. McVey

Encl. Draft Rules

Rule 4. Process.

(a) **Signing of summons**. The summons shall be signed and issued by the plaintiff or the plaintiff's attorney. Separate summonses may be signed and served.

(b)(i) **Time of service**. In an action commenced under Rule 3(a)(1), the summons together with a copy of the complaint shall be served no later than 120 days after the filing of the complaint unless the court allows a longer period of time for good cause shown. If the summons and complaint are not timely served, the action shall be dismissed, without prejudice on application of any party or upon the court's own initiative.

(b)(ii) In any action brought against two or more defendants on which service has been timely obtained upon one of them,

(b)(ii)(A) the plaintiff may proceed against those served, and

(b)(ii)(B) the others may be served or appear at any time prior to trial.

(c) **Contents of summons**.

(c)(1) The summons shall contain the name of the court, the address of the court, the names of the parties to the action, and the county in which it is brought. It shall be directed to the defendant, state the name, address and telephone number of the plaintiff's attorney, if any, and otherwise the plaintiff's address and telephone number. It shall state the time within which the defendant is required to answer the complaint in writing, and shall notify the defendant that in case of failure to do so, judgment by default will be rendered against the defendant. It shall state either that the complaint is on file with the court or that the complaint will be filed with the court within ten days of service.

(c)(2) If the action is commenced under Rule 3(a)(2), the summons shall state that the defendant need not answer if the complaint is not filed within 10 days after service and shall state the telephone number of the clerk of the court where the defendant may call at least 13 days after service to determine if the complaint has been filed.

(c)(3) If service is made by publication, the summons shall briefly state the subject matter and the sum of money or other relief demanded, and that the complaint is on file with the court.

(d) **Method of service**. Unless waived in writing, service of the summons and complaint shall be by one of the following methods:

(d)(1) **Personal service**. The summons and complaint may be served in any state or judicial district of the United States by the sheriff or constable or by the deputy of either, by a United States Marshal or by the marshal's deputy, or by any other person 18 years of age or older at the time of service and not a party to the action or a party's attorney. If the person to be served refuses to accept a copy of the process, service shall be sufficient if the person serving the same shall state the name of the process and offer to deliver a copy thereof. Personal service shall be made as follows:

(d)(1)(A) Upon any individual other than one covered by subparagraphs (B), (C) or (D) below, by delivering a copy of the summons and the complaint to the individual personally, or by leaving a copy at the individual's dwelling house or usual place of abode with some person of suitable age and discretion there residing, or by delivering a copy of the summons and the complaint to an agent authorized by appointment or by law to receive service of process;

(d)(1)(B) Upon an infant (being a person under 14 years) by delivering a copy of the summons and the complaint to the infant and also to the infant's father, mother or guardian or, if none can be found within the state, then to any person having the care and control of the infant, or with whom the infant resides, or in whose service the infant is employed;

(d)(1)(C) Upon an individual judicially declared to be of unsound mind or incapable of conducting the person's own affairs, by delivering a copy of the summons and the complaint to the person and to the person's legal representative if one has been appointed and in the absence of such representative, to the individual, if any, who has care, custody or control of the person;

(d)(1)(D) Upon an individual incarcerated or committed at a facility operated by the state or any of its political subdivisions, by delivering a copy of the summons and the complaint to the person who has the care, custody, or control of the individual to be served, or to that person's designee or to the guardian or conservator of the individual to be served if one has been appointed, who shall, in any case, promptly deliver the process to the individual served;

(d)(1)(E) Upon any corporation not herein otherwise provided for, upon a partnership or upon an unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and the complaint to an officer, a managing or general agent, or other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy of the summons and the complaint to the defendant. If no such officer or agent can be found within the state, and the defendant has, or advertises or holds itself out as having, an office or place of business within the state or elsewhere, or does business within this state or elsewhere, then upon the person in charge of such office or place of business;

(d)(1)(F) Upon an incorporated city or town, by delivering a copy of the summons and the complaint to the recorder;

(d)(1)(G) Upon a county, by delivering a copy of the summons and the complaint to the county clerk of such county;

(d)(1)(H) Upon a school district or board of education, by delivering a copy of the summons and the complaint to the superintendent or business administrator of the board;

(d)(1)(I) Upon an irrigation or drainage district, by delivering a copy of the summons and the complaint to the president or secretary of its board;

(d)(1)(J) Upon the state of Utah, in such cases as by law are authorized to be brought against the state, by delivering a copy of the summons and the complaint to the attorney general and any other person or agency required by statute to be served; and

(d)(1)(K) Upon a department or agency of the state of Utah, or upon any public board, commission or body, subject to suit, by delivering a copy of the summons and the complaint to any member of its governing board, or to its executive employee or secretary.

(d)(2) **Service by mail or commercial courier service**.

(d)(2)(A) The summons and complaint may be served upon an individual other than one covered by paragraphs (d)(1)(B) or (d)(1)(C) by mail or commercial courier service in any state or judicial district of the United States provided the defendant signs a document indicating receipt.

(d)(2)(B) The summons and complaint may be served upon an entity covered by paragraphs (d)(1)(E) through (d)(1)(I) by mail or commercial courier service in any state or judicial district of the United States provided defendant's agent authorized by appointment or by law to receive service of process signs a document indicating receipt.

(d)(2)(C) Service by mail or commercial courier service shall be complete on the date the receipt is signed as provided by this rule.

(d)(3) **Service in a foreign country**. Service in a foreign country shall be made as follows:

(d)(3)(A) by any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;

(d)(3)(B) if there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:

(d)(3)(B)(i) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction;

(d)(3)(B)(ii) as directed by the foreign authority in response to a letter rogatory or letter of request; or

(d)(3)(B)(iii) unless prohibited by the law of the foreign country, by delivery to the individual personally of a copy of the summons and the complaint or by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the party to be served; or

(d)(3)(C) by other means not prohibited by international agreement as may be directed by the court.

(d)(4) **Other service**.

(d)(4)(A) Where the identity or whereabouts of the person to be served are unknown and cannot be ascertained through reasonable diligence, where service upon all of the individual parties is impracticable under the circumstances, or where there exists good cause to believe that the person to be served is avoiding service of process, the party seeking service of process may file a motion supported by affidavit requesting an order allowing service by publication or by some other means. The supporting affidavit shall

set forth the efforts made to identify, locate or serve the party to be served, or the circumstances which make it impracticable to serve all of the individual parties.

(d)(4)(B) If the motion is granted, the court shall order service of process by ~~publication or by other~~ means~~, provided that the means of notice employed shall be~~ reasonably calculated, under all the circumstances, to apprise the interested parties of the pendency of the action to the extent reasonably possible or practicable. The court's order shall also specify the content of the process to be served and the event or events as of which service shall be deemed complete. Unless service is by publication, a copy of the court's order shall be served upon the defendant with the process specified by the court.

(d)(4)(C) In any proceeding where summons is required to be published, the court shall, upon the request of the party applying for publication, designate the newspaper in which publication shall be made. The newspaper selected shall be a newspaper of general circulation in the county where such publication is required to be made~~ and shall be published in the English language~~.

(e) **Proof of service**.

(e)(1) If service is not waived, the person effecting service shall file proof with the court. The proof of service must state the date, place, and manner of service. Proof of service made pursuant to paragraph (d)(2) shall include a receipt signed by the defendant or defendant's agent authorized by appointment or by law to receive service of process. If service is made by a person other than by an attorney, the sheriff or constable, or by the deputy of either, by a United States Marshal or by the marshal's deputy, the proof of service shall be made by affidavit.

(e)(2) Proof of service in a foreign country shall be made as prescribed in these rules for service within this state, or by the law of the foreign country, or by order of the court. When service is made pursuant to paragraph (d)(3)(C), proof of service shall include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court.

(e)(3) Failure to make proof of service does not affect the validity of the service. The court may allow proof of service to be amended.

(f) **Waiver of service; Payment of costs for refusing to waive**.

(f)(1) A plaintiff may request a defendant subject to service under paragraph (d) to waive service of a summons. The request shall be mailed or delivered to the person upon whom service is authorized under paragraph (d). It shall include a copy of the complaint, shall allow the defendant at least 20 days from the date on which the request is sent to return the waiver, or 30 days if addressed to a defendant outside of the United States, and shall be substantially in the form of the Notice of Lawsuit and Request for Waiver of Service of Summons set forth in the Appendix of Forms attached to these rules.

(f)(2) A defendant who timely returns a waiver is not required to respond to the complaint until 45 days after the date on which the request for waiver of service was mailed or delivered to the defendant, or 60 days after that date if addressed to a defendant outside of the United States.

(f)(3) A defendant who waives service of a summons does not thereby waive any objection to venue or to the jurisdiction of the court over the defendant.

(f)(4) If a defendant refuses a request for waiver of service submitted in accordance with this rule, the court shall impose upon the defendant the costs subsequently incurred in effecting service.

Advisory Committee Notes

Rule 65C. Post-conviction relief.

(a) Scope. This rule governs proceedings in all petitions for post-conviction relief filed under the Post-Conviction Remedies Act, Utah Code Title 78B, Chapter 9. The Act sets forth the manner and extent to which a person may challenge the legality of a criminal conviction and sentence after the conviction and sentence have been affirmed in a direct appeal under Article I, Section 12 of the Utah Constitution, or the time to file such an appeal has expired.

(b) Procedural defenses and merits review. Except as provided in paragraph (h), if the court comments on the merits of a post-conviction claim, it shall first clearly and expressly determine whether that claim is independently precluded under Section 78B-9-106.

(c) Commencement and venue. The proceeding shall be commenced by filing a petition with the clerk of the district court in the county in which the judgment of conviction was entered. The petition should be filed on forms provided by the court. The court may order a change of venue on its own motion if the petition is filed in the wrong county. The court may order a change of venue on motion of a party for the convenience of the parties or witnesses.

(d) Contents of the petition. The petition shall set forth all claims that the petitioner has in relation to the legality of the conviction or sentence. The petition shall state:

(d)(1) whether the petitioner is incarcerated and, if so, the place of incarceration;

(d)(2) the name of the court in which the petitioner was convicted and sentenced and the dates of proceedings in which the conviction was entered, together with the court's case number for those proceedings, if known by the petitioner;

(d)(3) in plain and concise terms, all of the facts that form the basis of the petitioner's claim to relief;

(d)(4) whether the judgment of conviction, the sentence, or the commitment for violation of probation has been reviewed on appeal, and, if so, the number and title of the appellate proceeding, the issues raised on appeal, and the results of the appeal;

(d)(5) whether the legality of the conviction or sentence has been adjudicated in any prior post-conviction or other civil proceeding, and, if so, the case number and title of

those proceedings, the issues raised in the petition, and the results of the prior proceeding; and

(d)(6) if the petitioner claims entitlement to relief due to newly discovered evidence, the reasons why the evidence could not have been discovered in time for the claim to be addressed in the trial, the appeal, or any previous post-conviction petition.

(e) Attachments to the petition. If available to the petitioner, the petitioner shall attach to the petition:

(e)(1) affidavits, copies of records and other evidence in support of the allegations;

(e)(2) a copy of or a citation to any opinion issued by an appellate court regarding the direct appeal of the petitioner's case;

(e)(3) a copy of the pleadings filed by the petitioner in any prior post-conviction or other civil proceeding that adjudicated the legality of the conviction or sentence; and

(e)(4) a copy of all relevant orders and memoranda of the court.

(f) Memorandum of authorities. The petitioner shall not set forth argument or citations or discuss authorities in the petition, but these may be set out in a separate memorandum, two copies of which shall be filed with the petition.

(g) Assignment. On the filing of the petition, the clerk shall promptly assign and deliver it to the judge who sentenced the petitioner. If the judge who sentenced the petitioner is not available, the clerk shall assign the case in the normal course.

(h)(1) Summary dismissal of claims. The assigned judge shall review the petition, and, if it is apparent to the court that any claim has been adjudicated in a prior proceeding, or if any claim in the petition appears frivolous on its face, the court shall forthwith issue an order dismissing the claim, stating either that the claim has been adjudicated or that the claim is frivolous on its face. The order shall be sent by mail to the petitioner. Proceedings on the claim shall terminate with the entry of the order of dismissal. The order of dismissal need not recite findings of fact or conclusions of law.

(h)(2) A claim is frivolous on its face when, based solely on the allegations contained in the pleadings and attachments, it appears that:

(h)(2)(A) the facts alleged do not support a claim for relief as a matter of law;

(h)(2)(B) the claim has no arguable basis in fact; or

(h)(2)(C) the claim challenges the sentence only and the sentence has expired prior to the filing of the petition.

(h)(3) If a claim is not frivolous on its face but is deficient due to a pleading error or failure to comply with the requirements of this rule, the court shall return a copy of the petition with leave to amend within 20 days. The court may grant one additional 20 day period to amend for good cause shown.

(h)(4) The court shall not review for summary dismissal the initial post-conviction petition in a case where the petitioner is sentenced to death.

(i) Service of petitions. If, on review of the petition, the court concludes that all or part of the petition should not be summarily dismissed, the court shall designate the portions of the petition that are not dismissed and direct the clerk to serve a copy of the petition, attachments and memorandum by mail upon the respondent. If the petition is a challenge to a felony conviction or sentence, the respondent is the state of Utah represented by the Attorney General. In all other cases, the respondent is the governmental entity that prosecuted the petitioner.

(j) Appointment of counsel. The court may appoint counsel under Section 78B-9-109 or Section 78B-9-202.

~~(j)~~ (k) Answer or other response. Within 30 days (plus time allowed under these rules for service by mail) after service of a copy of the petition upon the respondent, or within such other period of time as the court may allow, the respondent shall answer or otherwise respond to the portions of the petition that have not been dismissed and shall serve the answer or other response upon the petitioner in accordance with Rule 5(b). Within 30 days (plus time allowed for service by mail) after service of any motion to dismiss or for summary judgment, the petitioner may respond by memorandum to the motion. No further pleadings or amendments will be permitted unless ordered by the court.

~~(k)~~ (l) Hearings. After pleadings are closed, the court shall promptly set the proceeding for a hearing or otherwise dispose of the case. The court may also order a prehearing conference, but the conference shall not be set so as to delay unreasonably the hearing on the merits of the petition. At the prehearing conference, the court may:

~~(k)(1)~~ (l)(1) consider the formation and simplification of issues;

~~(k)(2)~~ (l)(2) require the parties to identify witnesses and documents; and

~~(k)(3)~~ (l)(3) require the parties to establish the admissibility of evidence expected to be presented at the evidentiary hearing.

~~(l)~~ (m) Presence of the petitioner at hearings. The petitioner shall be present at the prehearing conference if the petitioner is not represented by counsel. The prehearing conference may be conducted by means of telephone or video conferencing. The petitioner shall be present before the court at hearings on dispositive issues but need not otherwise be present in court during the proceeding. The court may conduct any hearing at the correctional facility where the petitioner is confined.

~~(m)~~ (n) Discovery; records. Discovery under Rules 26 through 37 shall be allowed by the court upon motion of a party and a determination that there is good cause to believe that discovery is necessary to provide a party with evidence that is likely to be admissible at an evidentiary hearing. The court may order either the petitioner or the respondent to obtain any relevant transcript or court records.

~~(n)~~ (o) Orders; stay.

~~(n)(1)~~ (o)(1) If the court vacates the original conviction or sentence, it shall enter findings of fact and conclusions of law and an appropriate order. If the petitioner is serving a sentence for a felony conviction, the order shall be stayed for 5 days. Within the stay period, the respondent shall give written notice to the court and the petitioner that the respondent will pursue a new trial, pursue a new sentence, appeal the order, or take no action. Thereafter the stay of the order is governed by these rules and by the Rules of Appellate Procedure.

~~(n)(2)~~ (o)(2) If the respondent fails to provide notice or gives notice that no action will be taken, the stay shall expire and the court shall deliver forthwith to the custodian of the petitioner the order to release the petitioner.

~~(n)(3)~~ (o)(3) If the respondent gives notice that the petitioner will be retried or resentenced, the trial court may enter any supplementary orders as to arraignment, trial, sentencing, custody, bail, discharge, or other matters that may be necessary and proper.

~~(o)~~ (p) Costs. The court may assign the costs of the proceeding, as allowed under Rule 54(d), to any party as it deems appropriate. If the petitioner is indigent, the court

may direct the costs to be paid by the governmental entity that prosecuted the petitioner. If the petitioner is in the custody of the Department of Corrections, Utah Code Title 78A, Chapter 2, Part 3 governs the manner and procedure by which the trial court shall determine the amount, if any, to charge for fees and costs.

~~(p)~~ (q) Appeal. Any final judgment or order entered upon the petition may be appealed to and reviewed by the Court of Appeals or the Supreme Court of Utah in accord with the statutes governing appeals to those courts.

Advisory Committee Notes

Tab 5

This opinion is subject to revision before final publication in the Pacific Reporter

2011 UT 44

IN THE

SUPREME COURT OF THE STATE OF UTAH

ANDREW T. ALLEN,
Plaintiff and Appellant,

v.

MELISSA MOYER,
Defendant and Appellee.

No. 20090841
July 29, 2011

Third District, Salt Lake
The Honorable Tyrone E. Medley
No. 090901453

Attorneys:

Daniel L. Wilson, Scott G. Nance, Ogden, for plaintiff

Kent R. Holmberg, Salt Lake City, for defendant

ASSOCIATE CHIEF JUSTICE DURRANT, opinion of the Court:

INTRODUCTION

¶1 In this case, we are asked to determine whether the doctrine of claim preclusion applies to small claims judgments. We conclude that claim preclusion is applicable to small claims judgments because application of the doctrine will promote finality, judicial economy, and consistent judgments.

BACKGROUND

¶2 The facts in this case are undisputed. In 2008, Andrew T. Allen and Melissa Moyer were involved in an automobile accident (the Accident) on Interstate 15 near Murray, Utah. Approximately two weeks later, Mr. Allen filed a complaint against Ms. Moyer in small claims court for property damage arising out of the Accident. The small claims court held a bench trial on Mr. Allen's claim and awarded him a judgment of $4,831.50 for the damage to his car.

¶3 Approximately six months after Ms. Moyer paid the judgment amount, Mr. Allen filed a separate action against Ms.

Moyer in the Third District Court for personal injuries arising out of the Accident. Ms. Moyer responded by filing a motion for summary judgment, arguing that Mr. Allen's personal injury claim was barred by the doctrine of claim preclusion. In opposition to Ms. Moyer's motion, Mr. Allen contended that under Utah case law and the Utah Rules of Small Claims Procedure, the doctrine of claim preclusion does not apply to small claims judgments. To resolve the issue, the district court turned to the Utah Court of Appeals' opinion in *Dennis v. Vasquez*, in which the court of appeals applied claim preclusion to a small claims judgment.[1] Finding *Dennis* to be on point, the district court applied claim preclusion to Mr. Allen's personal injury claim and held that his claim was barred. Accordingly, the district court granted summary judgment in favor of Ms. Moyer.

¶4 On appeal, Mr. Allen raises three arguments challenging the district court's conclusion that claim preclusion applies to small claims judgments.[2] First, he contends that claim preclusion cannot be applied to small claims judgments because the doctrine has not been incorporated into the Utah Rules of Small Claims Procedure. Second, he argues that this court held in *Faux v. Mickelsen*[3] that claim preclusion does not apply to small claims judgments. Finally, he contends that even if we have not held that claim preclusion is inapplicable to small claims judgments, we should adopt such a rule for personal injury and property damage claims arising out of an automobile accident in light of the unique aspects of small claims courts; that is, their simplified rules and their objective of dispensing speedy justice between the parties. We have jurisdiction to hear this appeal pursuant to section 78A-3-102(3)(j) of the Utah Code.

STANDARD OF REVIEW

¶5 "We review a district court's decision to grant summary judgment for correctness, granting no deference to the district court's conclusions . . . ."[4] Similarly, "[w]hether res judicata, and

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[1] 2003 UT App 168, ¶¶ 5–7, 72 P.3d 135.

[2] Mr. Allen does not challenge the district court's conclusion that his personal injury claim met the claim preclusion test that is applied in other contexts. Thus, we will address only Mr. Allen's arguments that claim preclusion is inapplicable to small claims judgments.

[3] 725 P.2d 1372 (Utah 1986) (per curiam).

[4] *City of Grantsville v. Redevelopment Agency*, 2010 UT 38, ¶ 8, 233 (continued...)

more specifically claim preclusion, 'bars an action presents a question of law' that we review for correctness."[5]

ANALYSIS

¶6 Claim preclusion is one of two branches of the judicially created doctrine known as res judicata.[6] "Claim preclusion is premised on the principle that a controversy should be adjudicated only once."[7] To promote this principle, claim preclusion bars a party from bringing in a subsequent lawsuit a related claim that has already been fully litigated.[8] In determining whether claim preclusion bars a litigant from asserting a related claim in a subsequent action, courts impose a three-part test:

> "First, both [suits] must involve the same parties or their privies. Second, the claim that is alleged to be barred must have been presented in the first suit or be one that could and should have been raised in the first action [because it arose from the same transaction or the same operative facts]. Third, the first suit must have resulted in a final judgment on the merits."[9]

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[4] (...continued)
P.3d 461 (internal quotation marks omitted).

[5] *Mack v. Utah State Dep't of Commerce*, 2009 UT 47, ¶ 26, 221 P.3d 194 (quoting *Macris & Assocs., Inc. v. Neways, Inc.*, 2000 UT 93, ¶ 17, 16 P.3d 1214).

[6] *See id.* ¶ 29; *see also* 18 CHARLES ALAN WRIGHT, ARTHUR R. MILLER & EDWARD H. COOPER, FEDERAL PRACTICE AND PROCEDURE § 4403 (2d ed. 2002) (discussing res judicata as a judicial creation). Specifically, res judicata encompasses the doctrine of claim preclusion and issue preclusion. *See Mack*, 2009 UT 47, ¶ 29. "'[C]laim preclusion corresponds to causes of action[;] issue preclusion corresponds to the facts and issues underlying causes of action.'" *Id.* (alterations in original) (quoting *Oman v. Davis Sch. Dist.*, 2008 UT 70, ¶ 31, 194 P.3d 956).

[7] *Mack*, 2009 UT 47, ¶ 29 (internal quotation marks omitted).

[8] *See id.*

[9] *Id.* (quoting *Snyder v. Murray City Corp.*, 2003 UT 13, ¶ 34, 73 P.3d 325); *see also id.* ¶ 30 (stating that "[c]laims or causes of action are the same as those brought or that could have been brought in the first (continued...)

¶7 By barring claims that satisfy this three-part test, claim preclusion advances three important purposes. First, it ensures finality and "'protect[s] litigants from harassment by vexatious litigation.'"[10] Second, it "promot[es] judicial economy by preventing previously litigated [claims] from being relitigated."[11] Finally, claim preclusion "preserv[es] the integrity of the judicial system by preventing inconsistent judicial outcomes."[12]

¶8 Although the doctrine was initially developed with respect to judgments of courts of general jurisdiction, courts have since applied claim preclusion in other contexts when the application will promote finality, judicial economy, and consistent judgments.[13] For instance, to encourage finality and judicial economy, we have applied claim preclusion to administrative agency determinations.[14]

¶9 As to the issue before us, all of the reasons that support claim preclusion's application in other contexts weigh in favor of applying the doctrine to small claims judgments. Specifically, applying claim preclusion to small claims judgments will (1) ensure

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[9] (...continued)
action if they arise from the same operative facts, or in other words from the same transaction").

[10] *Gudmundson v. Del Ozone*, 2010 UT 33, ¶ 30, 232 P.3d 1059 (quoting *Buckner v. Kennard*, 2004 UT 78, ¶ 14, 99 P.3d 842).

[11] *Id.* (internal quotation marks omitted).

[12] *Id.* (internal quotation marks omitted).

[13] *See, e.g.*, *Salt Lake Citizens Cong. v. Mountain States Tel. & Tel. Co.*, 846 P.2d 1245, 1251 (Utah 1992) (noting that claim preclusion's "same basic policies, including the need for finality in administrative decisions, support application of the doctrine . . . to administrative agency determinations"); *see also Buckner*, 2004 UT 78, ¶¶ 14, 22–30 (holding that the issue preclusion branch of res judicata does not apply to certain arbitration proceedings because such application would not promote judicial economy, consistent judicial outcomes, or finality).

[14] *See Utah Dep't of Admin. Servs. v. Public Serv. Comm'n*, 658 P.2d 601, 621 (Utah 1983); *see also Salt Lake Citizens Cong.*, 846 P.2d at 1251 (recognizing that because claim preclusion's purposes are advanced, Utah courts have applied the doctrine to administrative agency determinations since at least 1950).

finality and protect litigants from vexatious litigation, (2) promote judicial economy by preventing related claims from being relitigated, and (3) preserve the integrity of the judicial system by preventing inconsistent judgments.

¶10 First, applying claim preclusion to small claims judgments will promote finality and protect litigants by ensuring that parties will have to litigate a controversy only once. Indeed, if claim preclusion were not applied to small claims judgments, parties could be forced to relitigate identical claims in the district court months or years after a small claims judgment is issued. Additionally, without claim preclusion, parties would be free to use small claims proceedings as a testing ground to explore the strength of their case or the sufficiency of their evidence before filing a claim in the district court.[15] As a result, parties could be repeatedly dragged into court to litigate the same factual dispute. Such repetitive litigation would undermine the importance of finality in our judicial system and would be financially and emotionally burdensome to litigants.

¶11 Second, applying claim preclusion to small claims judgments will advance judicial economy by requiring that plaintiffs assert all of their related claims in one proceeding.[16] Resolving a dispute in one action protects judicial resources from being burdened by the need to address identical claims in multiple forums.[17] In addition, resolving a dispute in one action ensures that judicial resources are expended on binding determinations.

¶12 Finally, applying claim preclusion to small claims judgments will preserve the integrity of the judicial system by preventing inconsistent judgments. Inconsistent judgments may occur when multiple courts examine the same evidence to make the same factual determinations. Indeed, it is possible that in a case such as

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[15] *See, e.g.*, *Hindmarsh v. Mock*, 57 P.3d 803, 806 (Idaho 2002) (recognizing that without claim preclusion, "plaintiffs in small claims cases will not feel obligated to present all of their claims or all of their evidence . . . and they can simply file again . . . if need be").

[16] *See id.* ("[J]udicial economy is not served by encouraging resolution of property claims in small claims court and other claims in district court. This creates two lawsuits, rather than one.").

[17] *See id.* In this respect, the judicial interest in avoiding the burden of repetitious litigation is allied with a party's interest in finality and preventing vexatious lawsuits.

this—where a property damage claim arising out of an automobile accident is litigated in small claims court and a personal injury claim arising out of the same accident is later asserted in the district court—the two courts might reach opposite conclusions regarding the fault of a particular driver. These inconsistent results would not only create problems of liability and a general confusion about fault, but would also undermine public confidence in the judicial process.

¶13 In concluding that the doctrine of claim preclusion applies to small claims judgments, we find it highly relevant that parties have broad discretion in deciding whether to bring their claims in small claims court or district court.[18] When plaintiffs choose to take advantage of the benefits of a particular forum, they should not be permitted to save future related claims for later proceedings. Instead, they should be bound by the consequences of choosing that forum.

¶14 Furthermore, we are not persuaded by Mr. Allen's three arguments against applying claim preclusion to small claims judgments. First, he argues that claim preclusion cannot apply to small claims judgments because the doctrine has not been incorporated into the Utah Rules of Small Claims Procedure. But nothing in our claim preclusion jurisprudence suggests that the doctrine must be incorporated into a procedural rule before it can be applied to other judicial proceedings. This is because our procedural rules do not purport to set forth every available legal doctrine from our case law. Instead, the rules of procedure govern only the process by which a cause of action moves through the judicial system. And claim preclusion is a judicially created doctrine, "not a mere matter of practice or procedure."[19] Because claim preclusion is a judicially created doctrine, it is the role of this court to determine whether the doctrine applies to a particular type of final judgment. Accordingly, the application of claim preclusion is not dependent upon incorporation into a procedural rule.

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[18] *See Faux v. Mickelsen*, 725 P.2d 1372, 1374 (Utah 1986) (per curiam) (noting that the jurisdiction of small claims court is not exclusive).

[19] *Nipper v. Douglas*, 2004 UT App 118, ¶ 13, 90 P.3d 649 (internal quotation marks omitted).

¶15 Second, Mr. Allen contends that this court held in *Faux v. Mickelsen*[20] that claim preclusion does not apply to small claims proceedings. But contrary to Mr. Allen's assertion, our holding in that case was not so broad as to make claim preclusion inapplicable to all small claims judgments. Instead, in *Faux* we addressed only the narrow issue of how to treat counterclaims that would ordinarily be compulsory under rule 13(a) of the Utah Rules of Civil Procedure, but which are not raised in a small claims proceeding.[21] To resolve this issue, we examined the plain language of Utah Code section 78-6-2.5 and concluded that under the statute, such counterclaims were to be treated as permissive.[22] Because the statute allowed defendants to assert compulsory counterclaims outside of the small claims action, we held that claim preclusion would not apply to this limited category of counterclaims.[23] The fact that we declined to extend claim preclusion to compulsory counterclaims did not mean that we made claim preclusion categorically inapplicable to small claims judgments. Indeed, nothing in our holding stated or implied such a broad pronouncement. Accordingly, our holding in *Faux* should not be interpreted to exempt claim preclusion from all small claims judgments.

¶16 Finally, Mr. Allen argues that we should exempt claim preclusion from small claims judgments regarding property damage claims arising out of an automobile accident because of the unique aspects of small claims courts. Specifically, Mr. Allen asserts that in light of small claims courts' simplified rules and objective of "dispensing speedy justice,"[24] parties involved in an automobile accident should be allowed to split their property and personal injury claims and resolve the property damage claim quickly in small claims court. Then, after the speedy resolution of the property damage claim, parties should be allowed to assert any personal injury claim in the district court when the full extent of the injury is realized. Mr. Allen advocates this position because "[t]he value of

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[20] 725 P.2d 1372 (Utah 1986) (per curiam).

[21] *See id.* at 1374–75.

[22] *See id.*

[23] *See id.* at 1375.

[24] UTAH CODE ANN. § 78A-8-104(1) (2008) ("The hearing in a small claims action has the sole object of dispensing speedy justice between the parties.").

damage to a vehicle is ascertainable immediately after the collision . . . [but] injuries to the person may not be known for months or even years" after an accident. In rejecting this argument, we note that Mr. Allen's position conflicts with our clear precedent that "a single act causing simultaneous injury to the physical person and property of one individual . . . give[s] rise to only one cause of action, and not to separate causes based . . . on the personal injury, and . . . the property loss."[25] Furthermore, while we recognize that the speedy and informal nature of small claims proceedings may make litigants want to bring their property damage claim quickly in small claims court and later file a personal injury claim in district court, we believe the policy reasons discussed above outweigh the potential desire of litigants to split their property and personal injury claims.

¶17 For the foregoing reasons, we hold that claim preclusion applies to small claims judgments.[26] To ensure that future plaintiffs

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[25] *Raymer v. Hi-Line Transp., Inc.*, 394 P.2d 383, 384 (Utah 1964) (internal quotation marks omitted).

[26] While agreeing with the analysis in this opinion, Chief Justice Durham argues that we should not apply this holding to Mr. Allen, but should apply our holding prospectively only. We decline to do so. At the time Mr. Allen filed his two actions, the operative law on this issue was set forth in *Dennis v. Vasquez*, a case directly on point. 2003 UT App 168, ¶¶ 5–7, 72 P.3d 135. And until we overrule a court of appeals decision, it stands as the controlling law. Accordingly, when Mr. Allen filed his two suits, the operative law was that claim preclusion applied to small claims judgments.

In addition, although Chief Justice Durham also expresses concern about our holding's fairness to Mr. Allen, we note that fairness to Ms. Moyer must also bear on our decision of whether to apply our holding prospectively only. And because *Dennis* set forth the operative law at the time the suits were filed, Ms. Moyer may have justifiably relied on it in her defense against Mr. Allen's property damage claim.

Furthermore, our holding in *Turner v. Hi-Country Homeowners Association*, 910 P.2d 1223 (Utah 1996), does not suggest that claim preclusion would not apply to small claims judgments. In *Turner*, we did not apply issue preclusion to a particular small claims judgment because the lack of a record made it impossible to evaluate an element of that doctrine, specifically whether an issue had been fully

(continued...)

are aware of this conclusion, we instruct the Supreme Court Advisory Committee on the Utah Rules of Civil Procedure, which oversees small claims courts, to provide small claims litigants with express notice that claim preclusion applies to small claims judgments.[27]

CONCLUSION

¶18 We hold that the doctrine of claim preclusion applies to small claims judgments because application of the doctrine will promote finality, judicial economy, and consistent judgments. Therefore, we affirm the district court's grant of summary judgment in favor of Ms. Moyer.

¶19 Justice Nehring and Justice Lee concur in Associate Chief Justice Durrant's opinion.

CHIEF JUSTICE DURHAM, concurring and dissenting:

¶20 I concur with the majority's analysis on the applicability of claim preclusion to small claims judgments. On grounds of fairness

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[26] (...continued)
litigated. 910 P.2d at 1226–27. But claim preclusion does not involve this same element. Therefore, applying claim preclusion to small claims judgments does not present the same logistical problems as those identified in *Turner*. In fact, a court is capable of evaluating the three-part claim preclusion test without the need for a small claims record. Thus, our holding in *Turner* cannot reasonably serve as a basis for expecting that claim preclusion would not apply to small claims judgments.

We also disagree with the assertion that the small claims court instructions available to Mr. Allen were misleading. While the instructions could have been more clear, they do not evidence a misrepresentation about the applicability of claim preclusion to small claims judgments.

[27] Such express notice might be accomplished by including a statement on the small claims affidavit—which takes the place of a complaint—stating that "all of plaintiff's claims arising out of the same facts, occurrence, or transaction, must be raised in a single action."

and equity, however, I would apply the rule announced today only prospectively.

¶21 First, the rationale we apply today was not a foregone conclusion to anyone reviewing our holding in *Faux v. Mickelsen*, in which we observed the following:

> The general purpose . . . of the [Small Claims] Act is to dispose of minor money disputes by dispensing speedy justice between the parties. . . . Faux and Nacey's counterclaim consisted of several causes of action and alleged damages in excess of the small claims court's jurisdiction. Under Mickelsen's interpretation of the statute, they were compelled to bring their counterclaim and to remove the entire case to the circuit court for trial and adjudication. We believe that such a procedure would have the effect of defeating the purpose of the Act to dispense speedy justice to Mickelsen on a simple money judgment.

725 P.2d 1372, 1375 (Utah 1986) (per curiam). It is true that, as the majority opinion points out, we were not dealing with the issues of splitting claims and claim preclusion in *Faux*, but certainly someone reading the above language from that opinion might have reasonably predicted that other rules resembling those governing compulsory counterclaims might be suspended in the context of the specialized purposes of small claims proceedings.[1] Furthermore, we had previously refused to apply issue preclusion (the other branch of res judicata) to small claims judgments due to "the absence of a court record or other specific evidence concerning the scope of the prior proceeding." *Turner v. Hi-Country Homeowners Ass'n*, 910 P.2d 1223, 1226–27 (Utah 1996); *see also id.* at 1227 ("In particular, we cannot determine whether the issue in the prior case was identical

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[1] In this regard, the court of appeals' decision in *Dennis v. Vasquez* does not resolve the issue before us. In *Dennis*, the court of appeals applied claim preclusion to a small claims judgment. 2003 UT App 168, ¶ 10, 72 P.3d 135. The majority opinion, however, correctly treats this as an issue of first impression for our court. Furthermore, someone reading the language from *Faux* could have reasonably concluded that this court would not impose claim preclusion on small claims judgments. And any purported reliance on *Dennis* as controlling law is undermined greatly by the misleading instructions given to small claims plaintiffs. *See infra* ¶ 22 & n.2.

to the present issue and whether the issue was fully, fairly, and competently litigated.").

¶22 Second, the instructions available to the small claims plaintiff in this case were misleading: they explained that claims worth more than the jurisdictional limits could not be filed in the small claims court without *also* explaining that any such claims arising from the same incident at issue would be lost if not pled. Under similar circumstances, we afforded relief to the affected party on reliance and fairness grounds in *Kawamoto v. Fratto*, 2000 UT 6, ¶ 13, 994 P.2d 187. Given that small claims court procedures are designed to permit and encourage parties to represent themselves, instructions that lead parties into mistakenly forgoing their rights or claims should be accounted for in the application of this rule. This is particularly so when our court had never addressed the application of the rule to small claims cases and even attorneys might have had grounds for believing that we would go another direction based on our language in *Faux* and *Turner*.[2]

¶23 Although the majority is correct that "fairness to Ms. Moyer must also bear on our decision," *supra* ¶ 17 n.26, on balance I believe that the potential unfairness to Mr. Allen outweighs any unfairness to Ms. Moyer. For the foregoing reasons, I would apply the rule announced by the majority opinion only prospectively and would permit this claimant to pursue his personal injury claim in district court.

¶24 Justice Parrish concurs in Chief Justice Durham's opinion.

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[2] Furthermore, one attorney has asserted that "it is common practice for small claims judges to advise litigants securing $10,000 judgments capped only by the jurisdictional limit that *res judicata* does not prevent litigants from seeking the damages exceeding the jurisdictional limit in subsequent actions in district court." Steven Rinehart, *Small Claims Courts: Getting More Bang for Fewer Bucks*, 23 UTAH BAR J. 32, 33–34 (2010).

Administrative Office of the Courts

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

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

MEMORANDUM

To: Civil Procedures Committee
From: Tim Shea
Date: September 22, 2011
Re: Committee notes to discovery rules

The committee did not talk about what to do with the existing committee notes to the rules, and I need to tell the publishers how to proceed. Here are my recommendations. Several are to delete the existing notes, since they have only a general reference to the 1999 amendments, and the committee did not write new notes. Where the committee did write a new note, Rules 1, 16, 26, 35 and 37, the old note is no longer relevant, except in Rule 1. There are no existing notes for Rules 8 and 26.1

- Rule 1: Add new note to existing.
- Rule 8: New note.
- Rule 16: Replace current note with new note.
- Rule 26: Replace current note with new note.
- Rule 26.1. New note.
- Rule 29: Delete current note.
- Rule 30: Delete current note.
- Rule 31: Delete current note.
- Rule 33: Delete current note.
- Rule 34: Delete current note.
- Rule 35: Replace current note with new note.
- Rule 36: Delete current note.
- Rule 37: Replace current note with new note.

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