



**Utah State Courts**

# **SMALL CLAIMS JURY COMMITTEE**

**July 27, 2017**

# *Simler v. Chilel*



In *Simler v. Chilel*, 2016 UT 23, decided June 1, 2016, the Utah Supreme Court concluded that **“the right to a jury trial . . . exists in small claims cases at the trial de novo stage,”** and “[t]herefore, Utah Code § 78B-1-104(4) is an unconstitutional deprivation of article I, section 10’s guarantee of the right to jury trial in appeals from small claims judgment to district court.” *Id.* ¶¶ 13, 17.

In addition to declaring unconstitutional this subsection of the Utah Code governing small claims actions, the Court **suspended rule 81(c) of the Utah Rules of Civil Procedure “insofar as it precludes incorporation of the jury-related rules of civil procedure to trials de novo on appeals from the small claims court,** pending further action to align the Utah Rules of Small Claims Procedure with this opinion.” *Id.*, n5.

# Committee



Shortly after publishing its decision in *Simler*, the Utah Supreme Court and the Utah Judicial Council created the Small Claims Jury Committee “to address issues relating to the Court’s holding.” The committee members are:

- Judge Kate Toomey, Court of Appeals (Chair)
- Rod Andreason, Kirton McConkie
- Adrienne Bossi, Asst. City Attorney, West Valley City
- Judge George Harmond, 7<sup>th</sup> District
- Judge Ryan Harris, 3<sup>rd</sup> District
- Lynn Heward, Robert J. Debry & Assoc.
- Judge Catherine Hoskins, Clinton Justice Court
- Brent Johnson, General Counsel, AOC
- Lloyd Jones, Petersen & Assoc.
- Judge Brendan McCullagh, West Valley City Justice Court
- Jim Peters, Justice Court Administrator, AOC
- Judge Rueben Renstrom, Woods Cross Justice Court
- Staff, Keisa Williams, Assoc. General Counsel, AOC

# Committee Charge



In July 2016, the committee developed, and the Supreme Court approved, what the committee considered temporary or “patch” amendments to avoid violations of the constitutional right to a jury while a more extensive review could be conducted. Those are in place now.

The Supreme Court asked the committee to develop options for the Court’s consideration and to obtain feedback from the affected Boards of Judges as well as practitioners.

# Options & Feedback



The committee developed three (3) options, in addition to the current patch fix, and presented those options for feedback by practitioners and judges from all over the state.

## **Practitioners**

- Cache County Bar Association
- Davis County Bar Association
- Central Utah Bar Association (Wasatch and Utah counties)
- Litigation Section – Utah Bar (SLC)
- Spring Bar Convention (St. George) – Justice Court Breakout Session
- Uintah Basin Bar Association (Vernal)

## **Judiciary**

- Board of District Court Judges
- Board of Justice Court Judges
- Judicial Council

# Judicial Feedback



## **Board of Justice Court Judges:**

- No preference selected
- Because the jury trial would be held in District Court, and justice courts are relatively unaffected, there were no strong opinions either way

## **Board of District Court Judges:**

- Voted unanimously for Option 3
  - Without the 2nd appeal right to the Court of Appeals (unless the Court feels there is a constitutional issue)
  - Amendment to language in Rule 7 of our amended URSCP: 7(d) - remove the "right" of attorneys to give opening and closing statements. Let the judge decide or don't allow at all
- Option 3 is the only option the board was comfortable with. They disliked all other options

# Practitioner Feedback



- Procedural Fairness concerns. Should eliminate judicial discretion to question witnesses and “conduct” the jury trial because it would be prejudicial – especially when both sides are represented.
  - What is the standard of review for judges’ trial conduct on appeal?
  - If litigants are pro se, who drafts jury instructions?
- Mandatory attempted mediation should be added to the process, regardless of the option chosen
- The Court should create an online training module for litigants and practitioners, and a judicial guideline document with committee comments on complex issues like procedural fairness, discovery and evidence
- Option 3 breeds disrespect for the justice court because parties who want a jury trial are forced to try the case in justice court first. They can get a “do-over” in district court. Enticing attorneys to be underprepared.
- General dislike for the second right of appeal in Option 3
- There should be a process which allows the justice court’s decision to be considered in the district court trial de novo
- There should be a presumption in the rules allowing hearsay evidence
- Judges should be given the discretion to hear and rule on motions prior to the trial date – especially when both sides are represented
- The cap on attorney fees should be raised if a party prevails in a jury trial because the costs increase significantly

# Option 3 Preferred



During an April 5, 2017 presentation by the committee, the Supreme Court favored Option 3, with the following notes:

- The exchange of discovery should be the same at each level (bench and jury trial)
- There should be an appellate right from the de novo bench and jury trials in District Court to the Court of Appeals, using expedited procedures
- Begin finalizing necessary rule drafts
- Continue to gather feedback – feel free to “push back”

Once the committee has completed its rule drafts, it will meet with the Supreme Court again for approval of the plan before submission of the rules to the appropriate rule advisory committees

# URSCP - Currently



- Petitioner has the choice to file in justice or district court and demand a jury
- Defendants have a right to remove a case from justice court to district court and demand a jury
- Once in district court, the case is treated as an ordinary civil case and is subject to the Rules of Civil Procedure and Evidence
- Appeal rights are the same as any district court case – as if the case was filed initially in district court

# Option 3 Overview



## Option 3:

- **Bench trial in justice court**
  - Rules of Small Claims Procedure apply
  - No removal option for Defendants
  - Plaintiffs waive right to jury trial in first instance by filing in justice court
  - Appeal (de novo) to district court with or without a jury
- **Jury trial only available on appeal in district court**
  - Pursuant to Tier 0.5 and the URSCP
  - URCP 26 and 26.2 amendments apply
  - Appeal to Court of Appeals
    - Committee may push back on this issue
    - Question: Does a de novo trial constitute an appeal for purposes of small claims cases?

# Small Claims de Novo



	2012	2013	2014	2015	2016
<b>District 1</b>	17	19	10	16	16
<b>District 2</b>	30	47	37	37	31
<b>District 3</b>	163	136	136	119	119
<b>District 4</b>	46	51	52	40	38
<b>District 5</b>	17	20	21	13	18
<b>District 6</b>	7	6	3	4	2
<b>District 7</b>	5	2	4	5	1
<b>District 8</b>	4	4	8	2	12
<b>TOTALS:</b>	<b>289</b>	<b>285</b>	<b>271</b>	<b>236</b>	<b>237</b>

# Conclusion



**Questions?**