

Agenda

Advisory Committee on Rules of Civil Procedure

October 22, 2003
4:00 to 6:00 p.m.

Administrative Office of the Courts
Scott M. Matheson Courthouse
450 South State Street
Council Room, Suite N31

Approval of minutes	Fran Wikstrom
Change of judge after remand	Tom Lee
Remedies rules	Tim Shea

Meeting Schedule

November 19 (3rd Wednesday)
January 28, 2004
February 25
March 24
April 28
May 26
September 22
October 27
November 17 (3rd Wednesday)

MINUTES

UTAH SUPREME COURT ADVISORY COMMITTEE ON THE RULES OF CIVIL PROCEDURE

Wednesday, September 24, 2003
Administrative Office of the Courts

Tim Shea, Presiding

PRESENT: David W. Scofield, Francis J. Carney, Terrie T. McIntosh, Leslie W. Slaugh, Paula Carr, Thomas R. Lee, R. Scott Waterfall, Virginia S. Smith, Honorable Anthony B. Quinn, Honorable Lyle R. Anderson, Todd M. Shaughnessy, James Blanch, Honorable David O. Nuffer

STAFF: Tim Shea, Judith Wolferts

EXCUSED: Francis M. Wikstrom, Glenn C. Hanni, Thomas R. Karrenberg, W. Cullen Battle, Honorable Anthony W. Schofield, Janet H. Smith, Debora Threedy

GUESTS: Matty Branch

I. WELCOME AND APPROVAL OF MINUTES.

Tim Shea called the meeting to order at 4:00 p.m. The Minutes of the August 27, 2003 meeting were reviewed, and R. Scott Waterfall moved that they be approved as written. The motion was seconded, and approved unanimously.

II. RULE MAKING PROCESS.

Mr. Shea reported on the issue raised at the August 27, 2003, meeting as to whether members of the Bar have received recent notices of proposed rules changes. He stated that the Utah Supreme Court has been notified that there may have been a deficiency in the last distribution of proposed rules changes, in part because spam filters may be filtering out mass e-mail filings.

Mr. Shea stated that the next batch of rules changes is in the process of being distributed, and already have been distributed to judges. E-mail notices to Bar members advising of proposed rules changes will be sent out in smaller batches to attempt to avoid spam filters. A brief notice in the Utah Bar Journal will also advise Bar members that proposed rules changes can be found on the website.

Mr. Shea stated that there has been a suggestion that the Committee distribute proposed rules changes for comment as they are approved, rather than sending them out in large batches. He pointed out that the downside to this is that the Utah Code volume and supplement containing rules will be nearly continually out of date, although the latest version of the rules would be

available electronically. Mr. Shea discussed this issue with Francis Wikstrom prior to today's meeting.

Members voiced opinions on this issue. Thomas Lee expressed concern that Bar members may be more likely to ignore proposed rules changes if they are sent out more frequently. Judge David Nuffer favored the incremental publication of proposed rules, with effective dates only once or twice a year. Frank Carney commented that incremental publication may be chaotic and that Bar members may find it difficult to keep up with constant changes. Responding to Mr. Carney's concerns, Judge Nuffer stated that these concerns would be alleviated if Bar members knew that rules changes would be effective only once or twice a year. Todd Shaughnessy asked whether the incremental method would require the Supreme Court to go through its review process more frequently. Mr. Shea stated that this would not be required if the effective dates were limited to only once or twice a year.

After further discussion, Mr. Lee moved that the Committee give itself the prerogative to distribute proposed rules for comment more frequently, but that there be only one or two effective dates per year. Judge Anthony Quinn seconded the motion, which was approved unanimously.

III. CHANGE OF JUDGE AFTER REMAND.

Mr. Shea stated that prior to today's meeting, he discussed with Mr. Wikstrom the issue of whether the Committee should continue to consider a rule that would allow a party to request automatic disqualification of a judge after remand. Mr. Wikstrom agreed with Mr. Shea that there does not appear to be sufficient support by Committee members for such a rule.

The Committee again discussed the parameters of such a rule. Leslie Slaugh stated that he generally believes that a rule is a good idea, and that judges should recuse more often. That said, he cannot think of a way to effectively draft a rule stating that judges should exercise discretion, and in any event case law already requires that judges exercise discretion. He expressed his concern that the only way at present to have a judge removed is to allege bias, and stated that it would be helpful to allow parties to give a reason other than bias. Mr. Carney stated that he also is in favor of a rule in theory, but also has been unable to come up with an effective way of wording it.

The Committee discussed whether it would be useful to appoint a subcommittee to prepare a position statement on this issue. Judge Quinn commented that there does not appear to be a consensus as to exactly why this rule would be a bad idea and suggested that, at the least, the Committee should provide the Legislature with its reasons for not proposing such a rule. Judge Nuffer suggested that the Committee consider amending Rule 63 to allow both parties, after remand, to agree to a new judge. Mr. Lee commented that this may not resolve the issue because the parties may not agree. Judge Lyle Anderson pointed out that there also is a concern in small localities with any rule requiring automatic disqualification. Mr. Waterfall commented that there is a need to get away from judges having to concede bias in order for there to be recusal. Mr. Lee stated that he personally does not agree with a requirement of automatic recusal, but that he sees some merit in Mr. Slaugh's comment about bias. Mr. Lee suggested

considering a rule that would set forth a method for judges to assess whether they should recuse following remand. For example, a judge might be required to balance perceived bias, with efficiency and familiarity with the case.

After extensive discussion, Mr. Shea stated that there did not appear to be support for a rule requiring automatic recusal but that based on comments, the Committee might want to consider this issue further. David Scofield suggested that the Committee consider Mr. Lee's suggestion for a balancing requirement. It was agreed that Mr. Lee would work on this, with other members to contact him with any suggestions.

IV. REMEDIES RULES.

Mr. Shea discussed the Committee's past progress on reorganizing rules related to remedies, *i.e.*, writs. The Committee discussed the timing of filing various writs, and the meanings of various terms in the rules. Mr. Shea suggested that it may be useful to ask for volunteers who work with these rules on a regular basis, to review them and make suggestions.

Committee members posed and discussed various questions about the proposed rules, including posting of security, the term "improvidently issued," *ex parte* writs, service by publication, and notification and/or joinder of all known claimants to property. Members also pointed out specific portions of the proposed rules where changes should be made.

V. ADJOURNMENT.

The meeting adjourned at 6:00 p.m. The Committee's next meeting will be held at 4:00 p.m. on Wednesday, October 22, 2003, at the Administrative Office of the Courts.

MEMORANDUM

To: Advisory Committee on Rules of Civil Procedure
From: Thomas R. Lee
Date: October 13, 2003
Re: Draft Amendment to URCP 63

At our last meeting, I agreed to draft a proposed amendment to URCP 63 to address the issue of recusal after remand. Here is my proposed amendment, which would appear as subsection (c) to Rule 63:

(c) Discretionary recusal after remand. If an action is remanded after appeal, the judge to whom the matter is assigned may, either *sua sponte* or on motion of one of the parties, exercise the discretion to recuse himself or herself from further consideration of the action and allow it to be reassigned to another judge. In exercising such discretion, the judge should evaluate, in light of the nature of the decision on appeal and the extent of the issues remaining for decision on remand, (i) whether and to what extent recusal might impede the timely resolution of the issues remaining on remand, as in a case where the judge's familiarity with the law or the facts of the case may be important to the timely resolution of the action; and (ii) whether and to what extent recusal might avoid the appearance or perception of bias or prejudice against the parties prevailing on appeal.

1 **Rule 64. Writs in general.**

2 (a) Definitions. As used in Rules 64, 64A, 64B, 64C, 64D, 64E, 69A, 68B and 69C:

3 (a)(1)¹ “Defendant” means the party against whom a claim is filed or against whom judgment
4 has been entered.

5 (a)(2) “Deliver” means actual delivery or to make the property reasonably available and give
6 to the person entitled to delivery written notice of availability.

7 (a)(3)² “Disposable earnings” means that part of earnings for a pay period remaining after the
8 deduction of all amounts required by law to be withheld.

9 (a)(4)³ “Earnings” means compensation, however denominated, for personal services,
10 including periodic payments pursuant to a pension or retirement program. Earnings accrue on the
11 last day of the period in which they were earned. If the writ is served before the earnings have
12 been paid, the writ is deemed to have been served at the time the earnings accrued. For a
13 judgment for failure to support dependent children, earnings also include periodic payments
14 pursuant to insurance policies, unemployment compensation, and gain derived from capital or
15 labor, including profit gained through the sale or conversion of capital.

16 (a)(5)⁴ “Notice of exemptions” means a form that advises the defendant or a third person that
17 certain property is or may be exempt from seizure under state or federal law. The notice shall list
18 examples of exempt property and indicate that other exemptions may be available. The notice
19 shall instruct the defendant of the deadline for filing a reply and how to claim exemptions.

20 (a)(6) “Officer” means the person to whom the writ is issued, including the sheriff, constable,
21 any deputy and any person appointed by the officer to hold the property.⁵

22 (a)(7)⁶ “Plaintiff” means the party filing a claim or in whose favor judgment has been
23 entered.

24 (a)(8)⁷ “Property” means the defendant’s property of any type not exempt from seizure.
25 Property includes but is not limited to real and personal property, tangible and intangible
26 property, the right to property whether due or to become due, and an obligation of a third person
27 to perform for the defendant. Property includes any portion of the property.

¹ 64D(a)(iv), 64E

² 64D(d)(viii)

³ 64D(d)(vi), (vii)

⁴ 69(g)

⁵ 69(f)

⁶ 64D(a)(iv), 64E

⁷ 64C(a), 64D(a)(iii), 69(b)

1 (a)(9) “Seize” means to control the property sufficient for actual or constructive possession.

2 (a)(10) “Serve” with respect to parties means any method of service authorized by Rule 5 and
3 with respect to non-parties means any manner of service authorized by Rule 4.

4 (b)⁸ Security.

5 (b)(1) Amount. When security is required of a party, the party shall provide security in the
6 sum and form the court deems adequate. For security by the plaintiff the amount should be
7 sufficient to reimburse other parties for damages, costs and attorney fees incurred as a result of a
8 writ wrongfully obtained. For security by the defendant, the amount should be equivalent to the
9 amount of the claim or judgment or the value of the defendant’s interest in the property. In fixing
10 the amount, the court may consider any relevant factor. The court may relieve a party from the
11 necessity of providing security if it appears that none of the parties will incur damages, costs and
12 attorney fees as a result of a writ wrongfully obtained or if there exists some other substantial
13 reason for dispensing with the security.⁹ The amount of security does not establish or limit the
14 amount of damages, costs and attorney fees incurred as the result of a writ wrongfully obtained.

15 (b)(2) Jurisdiction over surety. A surety upon a bond or undertaking submits to the
16 jurisdiction of the court and irrevocably appoints the clerk of the court as agent upon whom
17 papers affecting the surety’s liability may be served. The surety’s liability may be enforced on
18 motion without the necessity of an independent action. The motion shall be served on the surety.
19 If the opposing party recovers judgment or if the writ is wrongfully obtained, the surety will pay
20 the judgment, damages, costs and attorney fees not to exceed the sum specified in the contract.
21 The surety is responsible for return of property ordered returned.

22 (b)(3) Objection. The court may issue additional writs upon the original security as often as
23 required subject to the objection of the opposing party. The opposing party may object to the
24 sufficiency of the security or the sufficiency of the sureties within five days after service of the
25 writ. The burden to show the sufficiency of the security and the sufficiency of the sureties is on
26 the proponent of the security.

27 (c) Inquiry and orders in aid of writs.

28 (c)(1) Referee. The court may appoint a referee who has the same authority as the court
29 under this subsection.

⁸ 64B(c), (d). 64C(b), (c), (f), (g)

⁹ 64F; 65A(c)

1 (c)(2)¹⁰ Witnesses. The court may require the defendant or any other person to appear and
2 testify regarding the defendant's property. The court may order witness fees and mileage paid as
3 provided by statute.

4 (c)(3)¹¹ Delivery or description of property. The court may order property capable of manual
5 delivery delivered to the officer on such terms as may be just. In the alternative or if the property
6 is not capable of manual delivery, the court may require a person to prepare a memorandum
7 describing the nature and value of personal property. If a person refuses to give the memorandum
8 to the officer, the court may require that person to pay the costs of any proceeding taken for the
9 purpose of obtaining such information.

10 (c)(4)¹² Restraint. The court may forbid any person from transferring, disposing or interfering
11 with the property. The court may order proceedings as necessary for the application of the
12 property toward the satisfaction of the judgment.

13 (d) Issuance of writ, service

14 (d)(1)¹³ Clerk to issue writs. The clerk of the court shall issue writs. A court in which a
15 transcript or abstract of a judgment or order has been filed has the same authority to issue a writ
16 as the court that entered the judgment or order. If the writ directs the seizure of real property, the
17 clerk of the court shall issue the writ to the sheriff of the county where the real property is
18 located. If the writ directs the seizure of personal property, the clerk of the court shall issue the
19 writ to the officer of any county.

20 (d)(2)¹⁴ Content of writ. As appropriate to the circumstances of the action, the writ shall
21 direct the officer to take possession of the property, to keep the property safe until further order
22 of the court or as directed in the writ, to deliver the property to the plaintiff, or to sell the
23 property. If the writ is to enforce a judgment or order for the payment of money, the writ shall
24 specify the amount ordered to be paid and the amount due. If the writ is issued ex parte before
25 judgment, the clerk shall attach to the writ plaintiff's affidavit, notice of hearing, order
26 authorizing the writ, notice of exemptions and reply form. If the writ is issued after judgment, the
27 clerk shall attach to the writ plaintiff's application, the judgment, notice of exemptions and reply
28 form.

¹⁰ 69(o), (p), (r); 64C(i).

¹¹ 64C(i)

¹² 69(q), (s), (t)

¹³ 69(c)

¹⁴ 64A(8), 64B(c), (h)(2), 64C(d), 64D(d), 69(d)

1 (d)(3) Service of writ.

2 (d)(3)(A)¹⁵ Upon whom. The officer shall serve the writ and accompanying papers on the
3 defendant, and, as applicable, the garnishee and any person named by the plaintiff as claiming an
4 interest in the property. The officer may simultaneously serve notice of the date, time and place
5 of sale.

6 (d)(3)(B)¹⁶ Return, inventory. Within 10 days after service, the officer shall return the writ to
7 the court with a certificate of proceedings, including an inventory of the property and proof of
8 service. Failure to file a return does not affect the validity of the seizure. The officer shall request
9 the person served to prepare a memorandum with a description and value of property not capable
10 of manual delivery, and, if the memorandum is refused, the officer shall indicate the fact of
11 refusal on the return.

12 (d)(3)(C)¹⁷ Service of a writ of execution by publication.

13 (d)(3)(C)(i) If service of a writ of execution is by publication, at least the following notice
14 shall be published under the caption of the case:

15 To _____, Defendant:

16 A writ of execution has been issued in the above-captioned case commanding the officer of
17 _____ County as follows:

18 [Quoting body of writ]

19 You have the right to claim property exempt from seizure under statutes of the United States
20 or this state, including Utah Code Annotated, Title 78, Chapter 23.

21 (d)(3)(C)(ii) The notice shall be published in a newspaper of general circulation in each
22 county in which the property is located at least 10 days prior to the due date for the reply or at
23 least 10 days prior to the date of any sale, or as the court orders. The date of publication is the
24 date of service.

25 (e)¹⁸ Claim to property by third person.

26 (e)(1) Claimant's rights. Any person claiming an interest in the property has the same rights
27 and obligations as the defendant with respect to the writ and with respect to providing and
28 objecting to security. Any claimant named by the plaintiff and served with the writ and

¹⁵ 64A(7), 64B(c), 64C(e), 64D(e), 69(f)

¹⁶ 64A(7), 64B(c), (h)(3), 64C(e)(7), (h), 64D(e), 69(e)

¹⁷ 69(g)

¹⁸ 64B(i), 64C(m), 64D(l), 69(n)

1 accompanying papers shall exercise those rights and obligations within the same time allowed
2 defendant. Any claimant not named by the plaintiff and not served with the writ and
3 accompanying papers may exercise those rights and obligations at any time before the property is
4 sold or delivered to plaintiff.

5 (e)(2) Join claimant as defendant. The court shall order any named claimant joined as a
6 defendant. The plaintiff shall serve the order on the claimant. The claimant is thereafter a
7 defendant to the action and shall answer within 10 days, setting forth any claim or defense. The
8 court may render judgment for or against the claimant to the limit of claimant's interest in the
9 property.

10 (e)(3) Plaintiff's security. If the plaintiff requests an officer seize property claimed by a
11 person other than the defendant, the officer may require the plaintiff to file security.

12 (f) Discharge of writ, release of property.

13 (f)(1)¹⁹ By defendant. At any time before the property is sold or delivered to the plaintiff, the
14 defendant may file security and a motion to discharge the writ and release the property. The
15 plaintiff may object to the sufficiency of the security or the sufficiency of the sureties within five
16 days after service of the motion. At any time before the property is sold or delivered to the
17 plaintiff, the defendant may file a motion to discharge the writ and release the property on the
18 ground that the writ was wrongfully obtained. The court shall give the plaintiff reasonable
19 opportunity to correct any defect. The defendant shall serve the order to discharge the writ and
20 release the property upon the officer, defendant, garnishee and any third person claiming an
21 interest in the property.

22 (f)(2) By plaintiff. The plaintiff may discharge the writ and release the property by filing a
23 release and serving it upon the officer, defendant, garnishee and any third person claiming an
24 interest in the property.

25 (f)(3)²⁰ Disposition of property if defendant prevails. If the defendant prevails, the court shall
26 order the writ discharged and proceeds of sales and remaining property delivered to the
27 defendant.

¹⁹ 64A(6), 64B(e), 64C(f)(1), (4)

²⁰ 64C(1)

1 (f)(4)²¹ Copy filed with county recorder. When an order discharges a writ upon property
2 seized by filing with the county recorder, the officer shall file a certified copy of the order with
3 the county recorder.

4 (f)(5)²² Service on officer, disposition of property. If the order discharging the writ and
5 releasing the property is served on the officer:

6 (f)(5)(A) before the writ is served, the officer shall return the writ to the court;

7 (f)(5)(B) after the writ has been served, the officer shall return the property to the defendant;

8 or

9 (f)(5)(C) after the property is sold, the officer shall deliver the proceeds of the sale to the
10 defendant.

11 **Rule 64A. Prejudgment writs in general.**

12 (a) Availability. A writ of replevin, attachment or garnishment is available after the claim has
13 been filed and before judgment only upon written order of the court.

14 (b)²³ Affidavit elements. To obtain a writ of replevin, attachment or garnishment before
15 judgment, plaintiff shall, in addition to the requirements for the specific writ, file security and an
16 affidavit stating facts showing at least one of the following:²⁴

17 (b)(1) that the defendant is avoiding service of process;

18 (b)(2) that the defendant has assigned, disposed of or concealed, or is about to assign, dispose
19 of or conceal, the property with intent to defraud creditors;

20 (b)(3) that the defendant has left or is about to leave the state with intent to defraud creditors;

21 (b)(4) that the defendant has fraudulently contracted the debt or incurred the obligation that is
22 the subject of the action;

23 (b)(5) that the property will decline in value leaving it insufficient to pay the debt; or

24 (b)(6) probable cause to be apprehensive of losing the remedy unless the court issues the
25 writ.

26 (c) Affidavit further elements. The affidavit also shall state facts showing all of the
27 following:

28 (c)(1) that the writ is not sought to hinder, delay or defraud a creditor of the defendant;

²¹ 64C(m)

²² 64C(3)

²³ 65C(a)

²⁴ Not currently required for replevin.

- 1 (c)(2) a description of the property, including its value;
- 2 (c)(3) that the property is not exempt from execution;
- 3 (c)(4)²⁵ that the property is not earnings;
- 4 (c)(5) that the property has not been taken for a tax, assessment or fine;
- 5 (c)(6) that the property has not been seized under a writ against the property of the plaintiff
- 6 or that it is exempt from seizure;
- 7 (c)(7) the name and address of any person known to the plaintiff to claim an interest in the
- 8 property;
- 9 (c)(8) that the threatened injury to the plaintiff outweighs the damage the writ may cause the
- 10 defendant; and
- 11 (c)(9) a substantial likelihood that the plaintiff will prevail on the merits of the underlying
- 12 claim.
- 13 (d) Notice, hearing. The court may order a writ of replevin, attachment or garnishment be
- 14 issued before judgment after notice to the defendant and opportunity to be heard.
- 15 (e) Method of service. The affidavit for the prejudgment writ shall be served on the defendant
- 16 and any person named by the plaintiff as claiming an interest in the property in a manner directed
- 17 by the court that will expeditiously give actual notice of the hearing.
- 18 (f)²⁶ Reply. The defendant may file a reply to the affidavit for a prejudgment writ at the
- 19 hearing or at any time prior to the hearing. The reply may:
- 20 (f)(1) challenge the issuance of the writ;
- 21 (f)(2) object to the sufficiency of sureties;
- 22 (f)(3) request return of the property;
- 23 (f)(4) claim the property is exempt; or
- 24 (f)(5) allege any matter which would charge the plaintiff with liability.
- 25 (g) Burden of proof. At the hearing the burden is on the plaintiff to prove the facts set forth in
- 26 the affidavit.
- 27 (h) Ex parte writ before judgment. If plaintiff seeks a prejudgment writ prior to a hearing, the
- 28 plaintiff shall file an affidavit stating facts showing irreparable injury to the plaintiff before the
- 29 defendant can be heard and the efforts made to give notice or the reasons notice should not be

²⁵ 64D(a)(i)

²⁶ 64D(h), 69(g)

1 given. If a writ is issued without notice to the defendant and opportunity to be heard, the court
2 shall set a hearing for the earliest reasonable time, and the writ and the order authorizing the writ
3 shall:

4 (h)(1) designate the date and time of issuance and the date and time of expiration;

5 (h)(2) forthwith be filed in the clerk's office and entered of record;

6 (h)(3) expire 10 days after issuance unless the court establishes an earlier expiration date, the
7 defendant consents that the order and writ be extended or the court extends the order and writ
8 after hearing;

9 (h)(4) be served on the defendant and any person named by the plaintiff as claiming an
10 interest in the property in a manner directed by the court that will expeditiously give actual
11 notice of the hearing.

12 **Rule 64B. Writ of replevin.**

13 (a)²⁷ Availability. A writ of replevin is available to compel delivery to plaintiff of specific
14 personal property held by defendant.

15 (b)²⁸ Affidavit. To obtain a writ of replevin, plaintiff shall, in addition to the requirements of
16 Rule 64A, file an affidavit stating facts showing:

17 (b)(1)²⁹ that plaintiff is entitled to possession; and

18 (b)(2)³⁰ that defendant wrongfully detains the property.

19 **Rule 64C. Writ of attachment.**

20 (a)³¹ Availability. A writ of attachment is available to seize property other than earnings in
21 the possession or under the control of the defendant.

22 (b)³² Affidavit. To obtain a writ of attachment, plaintiff shall, in addition to the requirements
23 of Rule 64A, file an affidavit stating facts showing:

24 (b)(1) that the defendant is indebted to the plaintiff, specifying the amount and nature of the
25 indebtedness;

26 (b)(2) that the action is upon a contract;

²⁷ 64B(a)

²⁸ 64B(b)

²⁹ 64B(b)(2)

³⁰ 64B(b)(3), (4)

³¹ 65C(a), (o)

³² 65C(a)

1 (b)(3) that the action is against a defendant who is not a resident of this state or against a
2 foreign corporation not qualified to do business in this state; and

3 (b)(4) that payment of the claim has not been secured by a lien upon property in this state.

4 **Rule 64D. Writ of garnishment.**

5 (a)³³ Availability. A writ of garnishment is available to seize personal property of the
6 defendant in the possession or under the control of a person other than the defendant. A writ of
7 garnishment is available after final judgment or after the claim has been filed and prior to
8 judgment. If the writ is issued before judgment, the property may not be earnings. The maximum
9 portion of disposable earnings of an individual subject to seizure is the lesser of:

10 (a)(1) 50% of defendant's disposable earnings for a writ to enforce payment of a judgment
11 for failure to support dependent children or 25% of defendant's disposable earnings for any other
12 writ; or

13 (a)(2) the amount by which the defendant's disposable earnings for a pay period exceeds the
14 number of weeks in that pay period multiplied by thirty times the federal minimum hourly wage
15 prescribed by the Fair Labor Standards Act in effect at the time the earnings are payable.

16 (b) Affidavit before judgment.³⁴ To obtain a writ of garnishment before judgment, plaintiff
17 shall, in addition to the requirements of sections Rule 64A, file an affidavit stating facts showing:

18 (b)(1) that the defendant is indebted to the plaintiff, specifying the amount and nature of the
19 indebtedness;

20 (b)(2) that the action is upon a contract,

21 (b)(3) that the action is against a defendant who is not a resident of this state or against a
22 foreign corporation not qualified to do business in this state;

23 (b)(4) that payment of the claim has not been secured by a lien upon property in this state;

24 (b)(5) the name and address of the garnishee;

25 (b)(6) that the garnishee possesses or controls property of the defendant;

26 (b)(7) that the property is not earnings; and

27 (b)(8) that the plaintiff will pay to the garnishee the fee established by Utah Code Section 78-
28 7-44.

³³ 64D(a)(i), (ii)

³⁴ 64D(b)(i), (ii)

1 (c) Application after judgment.³⁵ To obtain a writ of garnishment after judgment, plaintiff
2 shall file an application stating:

3 (c)(1) the name and address of the garnishee;

4 (c)(2) a description of the property;

5 (c)(3) whether any of the property consists of earnings;

6 (c)(4) the amount of the judgment and the amount due on the judgment;

7 (c)(5) the name and address of any person known to the plaintiff to claim an interest in the
8 property;

9 (c)(6) that the plaintiff will pay to the garnishee the fee established by Utah Code Section 78-
10 7-44; and

11 (c)(7)³⁶ if the application is for a writ of continuing garnishment, stating that there is no other
12 writ of continuing garnishment in effect in favor of plaintiff against these earnings.

13 (d)³⁷ Interrogatories. The plaintiff shall submit with the affidavit or application
14 interrogatories to the garnishee inquiring:

15 (d)(1) whether the garnishee is indebted to the defendant;

16 (d)(2) whether the garnishee possesses or controls any property of the defendant and, if so,
17 the nature and value of the property;

18 (d)(3) whether the garnishee knows of any property of the defendant in the possession or
19 under the control of another, and, if so, the nature and value of the property and the name and
20 address of the person with possession or control;

21 (d)(4) whether the garnishee is deducting an amount in satisfaction of a claim against the
22 plaintiff or the defendant, a designation as to whom the claim relates, and the amount deducted;

23 (d)(5)³⁸ the date and manner in which the garnishee has served the defendant and any third
24 persons;

25 (d)(6)³⁹ the dates on which previously served writs of continuing garnishment are expected to
26 terminate; and

³⁵ 64D(c)

³⁶ 64D(v)(iii)

³⁷ 64D(d)(ii)

³⁸ 64D(d)(iii), 64D(g)

³⁹ 64D(v)(iii)

1 (d)(7) any other relevant information plaintiff may desire, including defendant's position,
2 defendant's rate and method of compensation, defendant's pay period and the computation of the
3 amount of defendant's disposable earnings.

4 (e)⁴⁰ Content of writ, priority. The writ shall instruct the garnishee to complete the steps in
5 subsection (f) and instruct the garnishee how to deliver the property. Several writs may be issued
6 at the same time so long as there is only one garnishee named in a writ. Priority among writs of
7 garnishment shall be in order of their service. Only one writ of garnishment shall be in effect at
8 one time.

9 (f)⁴¹ Garnishee's responsibilities. The writ shall direct the garnishee to complete the
10 following within seven business days of service of the writ upon the garnishee:

11 (f)(1) answer the interrogatories under oath or affirmation;

12 (f)(2)⁴² serve the answers to the interrogatories on the plaintiff;

13 (f)(3)⁴³ serve the writ, answers to interrogatories, notice of exemptions and two copies of the
14 reply form upon the defendant and any other person shown by the records of the garnishee to
15 have an interest in the property; and

16 (f)(4) file the answers to the interrogatories with the clerk of the court.

17 (g)⁴⁴ Reply to answer of garnishee; request for hearing.

18 (g)(1) The plaintiff and defendant may file and serve upon the garnishee a reply to the
19 answers and request a hearing. The reply shall be filed and served within 10 days after service of
20 the answers to the interrogatories, but the court may deem the reply timely if filed before the
21 property is sold or delivered to the plaintiff. The reply may:

22 (g)(1)(A) challenge the issuance of the writ;

23 (g)(1)(B) challenge the accuracy of the answers to interrogatories;

24 (g)(1)(C) claim the property is exempt; or

25 (g)(1)(D) allege any matter that would charge the garnishee with liability.

26 (g)(2) The reply is deemed denied, and the court shall set the matter for hearing within 10
27 days after the reply is filed.

28 (g)(3) If a person served by the garnishee fails to reply, as to that person:

⁴⁰ 64D(c), 64D(d)(i), (v), 64D(v)(iii)

⁴¹ 64D(d)(iii)

⁴² 5(b)

⁴³ 5(b)

⁴⁴ 64D(h), (i)

1 (g)(3)(A) the garnishee’s answers to interrogatories are correct; and

2 (g)(3)(B) the property is not exempt, except as reflected in the answers to interrogatories.

3 (h)⁴⁵ Delivery of property. A garnishee shall not deliver property until the property is due the
4 defendant. Unless otherwise directed in the writ, the garnishee shall retain the property until 20
5 days after service by the garnishee under subsection (f). If the garnishee receives a reply within
6 that time, the garnishee shall retain the property and comply with the order of the court entered
7 after the hearing on the reply. Otherwise, the garnishee shall dispose of the property as provided
8 in the writ.

9 (i) Liability of garnishee.

10 (i)(1)⁴⁶ A garnishee who acts in accordance with this rule is released from liability, unless
11 answers to interrogatories are successfully controverted.

12 (i)(2)⁴⁷. If the garnishee fails to comply with this rule, the writ or an order of the court, the
13 court may order the garnishee to appear and show cause why the garnishee should not be held in
14 contempt. Upon a finding of contempt, the court may order the garnishee to pay such amounts as
15 are just, including the value of the property or the balance of the judgment, whichever is less, and
16 payment of reasonable cost and attorney fees incurred by parties as a result of garnishee’s failure.

17 (i)(3)⁴⁸ No person is liable as garnishee by reason of having drawn, accepted, made or
18 endorsed any negotiable instrument that is not in the possession or control of the garnishee at the
19 time of service of the writ.

20 (i)(4)⁴⁹ Any person indebted to the defendant may pay to the officer the amount of the debt or
21 so much as is necessary to satisfy the writ, and the officer’s receipt discharges the debtor for the
22 amount paid.

23 (i)(5)⁵⁰ A garnishee may deduct from the property any claim against the plaintiff or
24 defendant.

25 (j) Property as security.

26 (j)(1)⁵¹ If property secures payment of a debt to the garnishee, the property need not be
27 applied at that time but shall remain subject to being applied pending payment in full of the debt.

⁴⁵ 64D(h)(i), (iii), (iv), 64D(r)

⁴⁶ 64D(k)

⁴⁷ 64D(j)

⁴⁸ 64D(n)

⁴⁹ 69(m)

⁵⁰ 64D(m)

1 If property secures payment of a debt to the garnishee, the plaintiff may obtain an order
2 authorizing the plaintiff to pay the debt and requiring the garnishee to deliver the property.

3 (j)(2)⁵² If property secures an obligation that does not require the personal performance of the
4 defendant and can be performed by a third person, the plaintiff may obtain an order authorizing
5 the plaintiff or a third person to perform the obligation and requiring the garnishee to deliver the
6 property upon completion of the performance or tender of performance that is refused.

7 (k)⁵³ Writ of continuing garnishment on disposable earnings.

8 (k)(1) Plaintiff may obtain a writ of continuing garnishment on disposable earnings after the
9 court has entered final judgment. All provisions of this rule apply to this subsection, but this
10 subsection governs over a contrary provision.

11 (k)(2) A writ of continuing garnishment is a continuing lien on disposable earnings of the
12 defendant from the date of service of the writ until the earlier of the following events:

13 (k)(2)(A) 120 days from the date of service of the writ or, in the case of multiple writs, 120
14 days from the date a writ becomes effective;

15 (n)(2)(B) the end of the last pay period after the defendant's employment is terminated;

16 (k)(2)(C) the judgment is stayed, vacated or satisfied in full; or

17 (k)(2)(D) the writ is discharged.

18 (k)(3) Within seven days after the end of each pay period, the garnishee shall with respect to
19 that pay period :

20 (k)(3)(A) answer the interrogatories under oath or affirmation;

21 (k)(3)(B) serve the answers to the interrogatories on the plaintiff, defendant and any other
22 person shown by the records of the garnishee to have an interest in the earnings;

23 (k)(3)(C) file the answers to the interrogatories with the clerk of the court; and

24 (k)(3)(D) deliver the disposable earnings as provided in the writ.

25 (k)(4) Any person served by the garnishee may reply as in subsection (g), but whether to
26 grant a hearing is within the judge's discretion.

27 (k)(5) A writ of continuing garnishment issued to enforce a judgment for overpayment
28 obtained by the Office of Workforce Services:

29 (k)(5)(A) is not limited to a 120-day lien;

⁵¹ 64D(o)

⁵² 64D(p)

⁵³ 64D(v)

1 (k)(5)(B) has priority over other writs of continuing garnishment; and

2 (k)(5)(C) if served during the term of a lien created by another writ of continuing
3 garnishment, tolls the term of that lien and preserves all priorities until the expiration of the
4 Office of Recovery Services' writ.

5 **Rule 64E. Writ of execution.**

6 (a)⁵⁴ Availability. A writ of execution is available following entry of a final judgment or
7 order requiring the delivery of property or the payment of money.

8 (b)⁵⁵ Application. To obtain a writ of execution, plaintiff shall file an application stating:

9 (b)(1) the amount of the judgment and the amount due on the judgment;

10 (b)(2) a description of the property; and

11 (b)(3) the name and address of any person known to the plaintiff to claim an interest in the
12 property.

13 (c)⁵⁶ Death of plaintiff. If the plaintiff dies, a writ of execution may be issued upon the
14 affidavit of an authorized executor or administrator or successor in interest.

15 (d)⁵⁷ Reply to writ; request for hearing.

16 (d)(1) The defendant may reply to the writ and request a hearing. The reply shall be filed and
17 served within 10 days after service upon the defendant of the writ and accompanying papers
18 under Rule 64(d).

19 (d)(2) The court shall set the matter for hearing within 10 days after the reply is filed. If the
20 court determines that the writ was issued improperly, or that property is exempt from seizure, the
21 court shall issue an order directing the officer to release the property. If the court determines that
22 the writ was properly issued and the property is not exempt, the court shall issue an order
23 directing the officer to proceed to sell or deliver the property. If the date of sale has passed,
24 notice of the rescheduled sale shall be given. No sale may be held until the court has decided
25 upon the issues presented at the hearing.

26 (d)(3) If a reply is not filed, the officer shall proceed to sell or deliver the property.

27 (e)⁵⁸ Mortgage foreclosure governed by statute. Utah Code Annotated, Title 78, Chapter 37,
28 governs mortgage foreclosure proceedings over contrary provisions of this rule.

⁵⁴ 69(a), (c)

⁵⁵ 69(d)

⁵⁶ 69(c)

⁵⁷ 69(h)

1 **Rule 69A.⁵⁹ Seizure property.**

2 The officer shall seize property as follows:

3 (a)⁶⁰ Debtor's preference. When there is more property than necessary to satisfy the amount
4 due, the officer shall seize such part of the property as the defendant may indicate. If the
5 defendant does not indicate a preference, the officer shall first seize personal property, and if
6 sufficient personal property cannot be found, then the officer shall seize real property.

7 (b) Real property. Real property shall be seized by filing the writ and a description of the
8 property with the county recorder and leaving the writ and description with an occupant of the
9 property. If there is no occupant of the property, the officer shall post the writ and description in
10 a conspicuous place on the property. If another person claims an interest in the real property, the
11 officer shall serve the writ and description on the other person.

12 (c) Growing crops. Crops growing upon real property shall be seized by filing the writ and a
13 description of the crops and the property upon which the crops are growing with the county
14 recorder and leaving the writ and description with an occupant of the property. If there is no
15 occupant of the property, the officer shall post the writ and description in a conspicuous place on
16 the property. If another person claims an interest in the real property or the crops, the officer
17 shall serve the writ and description on the other person.

18 (d) Property capable of manual delivery. When severed, crops are property capable of
19 manual delivery. Except as provided in subsections (e) and (f), property capable of manual
20 delivery shall be seized by serving the writ and a description of the property on the person
21 holding the property and taking the property into custody.

22 (e) Range stock. Range stock, such as cattle, horses, sheep and other livestock, may be seized
23 by filing the writ and a description of the property, specifying the number and marks or brands,
24 with the county recorder. Range stock may be seized by taking it into custody, but any additional
25 cost of taking it into custody will not be allowed if the court finds that taking the property into
26 custody was unnecessary.

27 (f) Securities. Securities shall be seized as provided in Utah Code Section 70A-8-111.

⁵⁸ 69(g)

⁵⁹ 64C(e)

⁶⁰ 69(f)

1 (g) Property not capable of manual delivery. Debts, credits and other property not capable of
2 manual delivery shall be seized by serving the writ and a description of the property on the
3 person owing the debt, or having possession or control of the credit or other personal property.

4 **Rule 69B. Sale of property.**

5 (a)⁶¹ Sale before judgment. The officer may sell the property before judgment if it is
6 perishable or threatens to decline speedily in value. The court may order the officer to sell the
7 property before judgment if the court finds that the interest of the parties will be served by sale.
8 The officer shall keep proceeds of the sale safe subject to further order of the court.

9 (b) Notice of sale. The officer shall set the date, time and place for sale and serve notice
10 thereof on the defendant and on any third party named by the plaintiff or garnishee. Service on
11 the defendant and third party shall be not later than the initial publication of notice. The officer
12 shall publish notice of the date time and place of sale as follows:

13 (b)(1) If the property is perishable or threatens to decline speedily in value, the officer shall
14 post written notice of the date, time and place of sale and a general description of the property to
15 be sold in the courthouse from which the writ was issued and in at least three public places of the
16 county or city where the sale is to take place. The officer shall post the notice for such time as
17 the officer determines is reasonable, considering the character and condition of the property.

18 (b)(2) If the property is other personal property, the officer shall post written notice of the
19 date, time and place of sale and a general description of the property to be sold in the courthouse
20 from which the writ was issued and in at least three public places of the county or city where the
21 sale is to take place. The officer shall post the notice for at least seven days and publish the same
22 at least one time not less than one day preceding the sale in a newspaper of general circulation, if
23 there is one, in the county where the sale is to take place.

24 (b)(3) If the property is real property, the officer shall post written notice of the date, time
25 and place of sale and a particular description of the property to be sold on the property, at the
26 place of sale, at the district courthouse of the county in which the real property is situated, and in
27 at least three other public places of the county or city in which the sale is to take place. The
28 officer shall post the notice for at least 21 days and publish the same at least three times once a
29 week for three successive weeks immediately preceding the sale in a newspaper of general
30 circulation, if there is one, in the county.

⁶¹ 64C(j)

1 (c) Postponement. If the officer finds sufficient cause, the officer may postpone the sale. The
2 officer shall declare the postponement at the time and place set for the sale. If the postponement
3 is longer than 72 hours, notice of the rescheduled sale shall be given in the same manner as the
4 original notice of sale.

5 (d) Conduct of sale. All sales shall be at auction to the highest bidder, Monday through
6 Saturday, legal holidays excluded, between the hours of 9 o'clock a.m. and 8 o'clock p.m. at a
7 place reasonably convenient to the public. The officer shall sell only so much property as is
8 necessary to satisfy the amount due. The officer shall not purchase property or be interested in
9 any purchase. Property capable of manual delivery shall be within view of those who attend the
10 sale. The property shall be sold in such parcels as are likely to bring the highest price. Severable
11 lots of real property shall be sold separately. Real property claimed by a third party shall be sold
12 separately if requested by the third party. Real property shall be sold at the courthouse of the
13 county in which the property is situated. The defendant may direct the order in which the
14 property is sold.

15 (e) Accounting. Upon request of the defendant, the plaintiff shall deliver an accounting of the
16 sale. The officer is entitled to recover the reasonable and necessary costs of seizing, storing and
17 selling the property. The officer shall apply the property in the following order up to the amount
18 due or the value of the property, whichever is less:

19 (e)(1) pay the cost of seizure, storage and sale;

20 (e)(2) deliver to the plaintiff the remaining proceeds of the sale;

21 (e)(3) deliver to the defendant the remaining property and proceeds of the sale.

22 (f) Purchaser refusing to pay. Every bid is an irrevocable offer. If a person refuses to pay the
23 amount bid, the person is liable for the difference between the amount bid and the ultimate sale
24 price. If a person refuses to pay the amount bid, the officer may:

25 (f)(1) offer the property to the next highest bidder;

26 (f)(2) renew bidding on the property; and

27 (f)(3) reject any other bid of such person.

28 (g) Property capable of manual delivery. Upon payment of the amount bid, the officer shall
29 deliver to the purchaser of property capable of manual delivery the property and a certificate of
30 sale stating that all right, title and interest which the defendant had in the property is transferred
31 to the purchaser.

1 (h) Property not capable of manual delivery.⁶² Upon payment of the amount bid, the officer
2 shall deliver to the purchaser of property not capable of manual delivery a certificate of sale
3 describing the property and stating that all right, title and interest which the defendant had in the
4 property is transferred to the purchaser. The officer shall serve a duplicate of the certificate on
5 the person controlling the property.

6 (i) Real property. Upon payment of the amount bid, the officer shall deliver to the purchaser
7 of real property a certificate of sale for each lot containing:

8 (i)(1) a description of the real property;

9 (i)(2) the price paid;

10 (i)(3) a statement that all right, title, interest of the defendant in the property is conveyed to
11 the purchaser; and

12 (i)(4) a statement whether the sale is subject to redemption. The officer shall file a duplicate
13 of the certificate in the office of the county recorder.

14 **Rule 69C. Redemption of real property after sale.**

15 (a)⁶³ Right of redemption. Real property may be redeemed unless the estate is less than a
16 leasehold of a two-years' unexpired term, in which event the sale is absolute.

17 (b) Who may redeem. Real property subject to redemption may be redeemed by the
18 defendant or by a creditor having a lien on the property subsequent to that on which the property
19 was sold. If the defendant redeems, the effect of the sale is terminated and the defendant is
20 restored to the defendant's estate. If the property is redeemed by a creditor, any other creditor
21 having a right of redemption may redeem.

22 (c) How made. The redemptioner shall pay the amount required to the officer or to the
23 purchaser and shall serve on the officer or purchaser:

24 (c)(1) a certified copy of the judgment or lien under which the redemptioner claims the right
25 to redeem;

26 (c)(2) an assignment, properly acknowledged or proved if necessary to establish the claim;
27 and

28 (c)(3) an affidavit showing the amount due on the judgment or lien.

29 (d) Time for redemption. The property may be redeemed within 180 days after the sale.

⁶² New.

⁶³ 69(j)

1 (e) Redemption price. The price to redeem property is the sale price plus six percent. The
2 price for a subsequent redemption is the redemption price plus three percent. If the purchaser or
3 redemptioner has filed with the county recorder notice of the amount paid for taxes, assessments,
4 fire insurance, necessary maintenance or repair of improvements upon the property, and a lien
5 prior to that of the person seeking redemption other than the lien upon which the redemption was
6 made, the redemption price shall include such amounts plus interest.

7 (f) Dispute regarding price. If there is a dispute about the redemption price, the redemptioner
8 may pay into court the amount necessary for redemption less the amount in dispute and file and
9 serve upon the purchaser a petition setting forth the items to which the redemptioner objects and
10 the grounds for objection. The court shall enter an order determining the redemption price. The
11 redemptioner shall pay to the clerk any additional amount within seven days after the court's
12 order.

13 (g) Certificate of redemption. The purchaser shall promptly execute and deliver to the
14 redemptioner a certificate of redemption containing:

15 (g)(1) a particular description of the real property;

16 (g)(2) the price paid;

17 (g)(3) a statement that all right, title, interest of the purchaser in the property is conveyed to
18 the redemptioner; and

19 (g)(4) whether the sale is subject to redemption. The redemptioner shall file a duplicate of the
20 certificate in the office of the county recorder.

21 (h)⁶⁴ Conveyance. The purchaser or last redemptioner is entitled to conveyance upon the
22 expiration of the time permitted for redemption.

23 (i)⁶⁵ Rents and profits, request for accounting, extension of time for redemption.

24 (i)(1) The purchaser is entitled to the rents of the property or the value of the use and
25 occupation of the property from the time of sale until redemption. A redemptioner is entitled to
26 the rents of the property or the value of the use and occupation of the property from the time of
27 redemption until a subsequent redemption. Rents and profits are a credit upon the redemption
28 price.

⁶⁴ 69(j)(6)

⁶⁵ 69(j)(7)

1 (i)(2) Upon written request served on the purchaser before the expiration of time for
2 redemption, the purchaser shall prepare and serve on the requester a written and verified account
3 of rents and profits. The period for redemption is extended to five days after the accounting is
4 served. If the purchaser fails to serve the accounting within 30 days after the request, the
5 redemptioner may, within 60 days after the request, bring an action to compel an accounting.
6 The period for redemption is extended to 15 days after the order of the court.

7 (j)⁶⁶ Remedies.

8 (j)(1) For waste. A purchaser or redemptioner may file a motion requesting the court to
9 restrain the commission of waste on the property. It is not waste for the person in possession of
10 the property during the period allowed for redemption to continue to use the property in the same
11 manner in which it was previously used, to use it in the ordinary course of husbandry, to make
12 necessary repairs or improvements, or to use wood or timber on the property for repairing fences
13 or as fuel for a family. After the estate has become absolute, the purchaser or redemptioner may
14 file an action to recover damages for injury to the property by the tenant.

15 (j)(2) If the conveyance fails. If the conveyance fails a purchaser or redemptioner may file a
16 motion for judgment against the plaintiff for the price paid plus interest. If the conveyance fails
17 because of irregularity in the sale or because the property was exempt, the purchaser or
18 redemptioner may in addition file a motion to revive the original judgment against the defendant
19 in the name of the purchaser or redemptioner for the amount paid plus interest.

20 (k)⁶⁷ Contribution and reimbursement. A defendant may claim contribution or
21 reimbursement from other defendants by filing a motion.

22 **Rule 66. Receivers.**

23 (a) Grounds for appointment.

24 (a)(1) The court may appoint a receiver in any action in which property is in danger of being
25 lost, removed, materially injured or is probably insufficient to discharge the debt.

26 (a)(2) The court may appoint a receiver after judgment to carry the judgment into effect, to
27 dispose of the property according to the judgment, to preserve property during the pendency of
28 an appeal, in proceedings in aid of execution when an execution has been returned unsatisfied, or
29 when the judgment debtor refuses to apply property in satisfaction of the judgment.

⁶⁶ 69(k)

⁶⁷ 69(l)

1 (a)(3) The court may appoint a receiver in cases in which a corporation has been dissolved or
2 is insolvent or in imminent danger of insolvency or has forfeited its corporate rights.

3 (a)(4) The court may appoint a receiver in all other cases where receivers have been
4 appointed by courts of equity.

5 (b) Appointment of receiver. No party or attorney to the action, nor any person who is not
6 entirely impartial and disinterested as to all the parties and the subject matter of the action can be
7 appointed receiver without the written consent of all interested parties.

8 (c) The court may require security from the receiver in accordance with Rule 64.

9 (d) Oath. A receiver shall swear or affirm to perform duties faithfully.

10 (e) Powers of receivers. A receiver has, under the direction of the court, power to bring and
11 defend actions as receiver, to take and keep possession of the property, to receive rents, to collect
12 debts, to pay debts, to compound for and compromise the same, to make transfers and to do such
13 acts respecting the property as the court may authorize.

14 (f) Payment of taxes before sale or pledge of personal property. Before any personal property
15 coming into the hands of a receiver may be sold, transferred or pledged, the receiver shall pay all
16 taxes, and shall file receipts showing payment of taxes. If there are insufficient assets to pay the
17 taxes, the court may authorize the sale, transfer or pledge with the proceeds thereof to be used to
18 pay taxes. Within 10 days after payment the receiver shall file receipts showing payment of
19 taxes.

20 (g) Investments by receivers. Funds in the hands of a receiver may be invested by order of
21 the court.

22 (h) Real property. Before a receiver is vested with real property, the receiver shall record a
23 certified copy of the appointment in the office of the recorder of the county in which the real
24 property is located.

25