

Agenda

Advisory Committee on Rules of Civil Procedure

September 24, 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	Fran Wikstrom
Rule making process	Tim Shea
Remedies rules	Tim Shea
Rule 47. Communication with jurors	Tim Shea

Meeting Schedule

October 22
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, August 27, 2003
Administrative Office of the Courts
Francis M. Wikstrom, Presiding

PRESENT: Francis M. Wikstrom, David W. Scofield, Francis J. Carney, Terrie T. McIntosh, W. Cullen Battle, Janet H. Smith, Leslie W. Slaugh, Paula Carr, Thomas R. Lee, R. Scott Waterfall, Virginia S. Smith, Honorable Lyle R. Anderson (via telephone), James Blanch, Honorable David O. Nuffer

STAFF: Tim Shea, Judith Wolferts

EXCUSED: Glenn C. Hanni, Thomas R. Karrenberg, Honorable Anthony B. Quinn, Honorable Anthony W. Schofield, Todd M. Shaughnessy

GUESTS: Rich Humpherys, Matty Branch

I. WELCOME, INTRODUCTION OF NEW COMMITTEE MEMBER, AND APPROVAL OF MINUTES.

Francis M. Wikstrom called the meeting to order at 4:00 p.m. Mr. Wikstrom introduced the Honorable David O. Nuffer, United States Magistrate Judge for the District of Utah, who was recently named as a Committee member.

The Minutes of the May 28, 2003 meeting were then reviewed, and Thomas R. Lee moved that they be approved as written. The Motion was seconded by James Blanch, and approved unanimously.

II. NEW TRIAL JUDGE AFTER REMAND.

Mr. Wikstrom introduced Rich Humpherys, who has asked to be heard on the issue of amending the rules to provide for automatic appointment of a new trial judge when there is a remand after appeal. Prior to the meeting, Mr. Humpherys was provided with copies of earlier Advisory Committee Minutes.

Mr. Humpherys stated that he has strong feelings on this issue, and is in favor of an amendment to allow for automatic disqualification of a trial judge whose ruling is reversed on appeal. He stated that although he feels that no trial judge deliberately tries to subvert an appellate ruling that has resulted in remand, trial judges sometimes have strong feelings about the merits of a case. As an example, he pointed to situations where a trial judge has made comments prior to appeal that a case has no merits. He stated that after remand, these same judges remain in a position to make rulings on discretionary matters that can undermine a case.

Mr. Humpherys believes it is better for the judicial system and for litigants' faith in the system for a trial judge to be replaced in all situations where a reversal is made on non-procedural grounds. He commented that he does not mean to imply by this that judges cannot be unbiased when they are reversed.

Leslie Slauch asked Mr. Humpherys whether he contends that there should be a new trial judge only if there would be a new trial. Mr. Humpherys responded that he believes the rule should also apply to any substantive rulings, *e.g.*, summary judgment, and he would not limit the rule to new trial situations. Mr. Wikstrom thanked Mr. Humpherys for his comments, and stated that the matter would be placed on the agenda for discussion at the Committee's next meeting.

III. RECEIPT OF RULE AMENDMENTS.

In response to a question about the method whereby the proposed amendments were submitted to the members of the Utah State Bar for comment, Tim Shea stated they were distributed in late April 2003 via an e-mail from the Bar. They were not published in the Utah Bar Journal. It was pointed out that the Supreme Court and Judicial Council have made a decision that these matters should be sent by e-mail.

The question was precipitated by a concern that there may be Bar members who did not receive the proposed amendments, and by the fact that nearly all comments received on the proposed amendments deal with Rule 73, which has been a subject of interest by attorneys who handle collections and who accordingly have been anticipating the publication of the proposed amendments. Some Committee members recalled receiving the e-mail, whereas other members did not remember ever seeing it and wondered whether there may have been a problem with distribution. The members discussed whether spam filters may have made the e-mail undeliverable for various reasons (*e.g.*, because it was a mass mailing), and suggested options for assuring that Bar members would know to expect an e-mail containing the proposed amendments.

In response to the discussion, Mr. Wikstrom stated that the Committee will still send the proposed amendments to the Supreme Court, but that the Court will be advised that the Committee does not have the same comfort level as it typically does that the proposed amendments were received by Bar members. Mr. Shea was asked to look into the issue of distribution in anticipation of the next publication for comment of proposed amendments.

IV. COMMENTS TO RULE AMENDMENTS.

The Committee then reviewed the comments to the proposed rules. There were two comments regarding Rule 7, and several comments on Rule 73.

A. Comments on Rule 7.

Bob Wilde recommended that Rule 7 allow thirty (30) days for a response to a motion for summary judgment, and fifteen (15) days for a reply in support of a motion for summary

judgment. The Committee discussed Mr. Wilde's recommendation, but there was no motion to adopt it.

Johnnie Johnson recommended that Rule 7 require the party preparing an order to give notice that the proposed order is only a proposal, and that the rule include a time frame for filing an objection. Mr. Johnson's recommendation was considered, but there was no motion to adopt his proposal.

B. Comments on Rule 73.

The Committee considered written comments from the following individuals on the proposed amendment to Rule 73: Chad McKay, Paul Simmons, Judy Jorgensen, Stephen Elggen, Jonathan Jensen, Jonathan Thomas, Judy Dawn Barking, Neil Harris, Mark Olson, Doug Short, Peter Waldo, and Brian Steffensen. The comments generally fell into two categories: those who feel the schedule of attorneys' fees is too low, and those who feel the new schedule is satisfactory. There were also comments about the meaning of the term "significant additional efforts."

Mr. Lee stated he is not surprised that lawyers who work in this field would want the schedule to be higher, but pointed out these lawyers can always submit an affidavit and go outside the schedule if they would like higher compensation. He also reiterated his previously expressed opinion that this is inherently a legislative issue.

Janet Smith asked the members why they thought the schedule is sufficiently high, since she is concerned that it is not in keeping with typical hourly rates. Virginia Smith stated that she has handled collections, and that for the bulk of defaults the process is easy, which would mean that the schedule is sufficient. When dealing with a debtor involves a lot of work, however, she stated that an attorney can simply use an affidavit. Judge Lyle Anderson commented that although he would not object to an increase in the schedule, it appears to be sufficient when attorneys handle collections in bulk. Paula Carr stated that she has spoken to attorneys who handle collections, and most of them say that the schedule is sufficient in 70% of the cases, and that in the remaining cases they submit an affidavit. Mr. Slauch pointed out that it is impossible to continue increasing the schedule because eventually the fee is more than the debt.

Mr. Wikstrom pointed to section (d), and asked whether the word "post-judgment" should be retained. After discussion, a motion was made to change the language of section (d) to read "Amount of Damages, Exclusive of Costs, Attorneys' Fees, and Post-Judgment Interest." The motion was seconded, and all members except Judge Anderson voted in favor of the change.

Judge David Nuffer pointed out that there appears to be two different standards and language in the rule that is not parallel. Mr. Lee agreed, and moved that the first sentence of section (d) be stricken. The motion was seconded, and approved unanimously.

Mr. Lee then asked whether the term "considerable additional efforts" should be defined. Mr. Wikstrom responded that the Committee has discussed this previously, and decided to live with the language as is and leave the interpretation to the discretion of the trial judge. Mr. Lee

then asked whether there is any way to give guidance to trial judges. After a comment from Judge Anderson about what he would consider this to mean, Mr. Lee stated that he would prefer to leave the language as it presently is.

Mr. Blanch commented that the deletion of the word “routine” has removed a point of reference. Judge Anderson explained why he does not believe that this is so. Mr. Slaugh agreed with Judge Anderson, stating that he does not believe that this standard is any more vague than many other standards.

Frank Carney stated that he believes an advisory committee note would be helpful, and Mr. Lee responded that he does not believe that a note would solve the problem. After discussion by Judge Anderson, Mr. Carney, Mr. Blanch and others, Mr. Wikstrom asked the Committee what it would prefer regarding an advisory committee note. It was agreed that Mr. Shea will prepare a proposed advisory committee note before the meeting with the Supreme Court.

Cullen Battle then commented that he is uncomfortable with removing the word “additional” from the term “considerable additional efforts.” Mr. Blanch moved that the language “considerable additional efforts” be retained and that an advisory committee note be included. Mr. Battle seconded the motion and it was approved unanimously.

Mr. Wikstrom stated that the proposed amendments to Rule 73 will be presented to the Supreme Court on September 10, 2003.

V. RULE 68. OFFER OF JUDGMENT.

The Committee discussed proposed amendments to Rule 68, and Mr. Battle presented his suggestion for amending the rule (which Mr. Battle had previously e-mailed to all Committee members). He stated that he had drafted the proposed amendment by comparing it with the federal rule. In response, Mr. Blanch commented that the federal rule is problematic and a trap for the unwary, since there is United States Supreme Court case law that states that if an offer does not specifically state that it includes everything, it arguably does not. He pointed out that the big trap in the federal rule is that the term “costs and attorneys fees” is not included in the rule. Mr. Blanch stated that he believes the Committee’s previous proposed amendment to Utah Rule 68 does make it clear that the offer includes everything.

The Committee discussed whether the language of the proposed rule makes clear that it includes everything, and whether the term “equitable relief” should be retained in the proposed amendment. After discussion, Mr. Blanch moved to strike the terms “damages” and “equitable relief.” The motion was seconded by Debora Threedy, and passed unanimously.

Mr. Battle questioned whether it is clear exactly when an offer is under Rule 68 so as to invoke the rule. Mr. Wikstrom stated that unless the offer is served under Rule 5, it is not a Rule 68 offer. Mr. Battle stated that he would not like to see every offer of settlement swept into Rule 68 and considered an offer of judgment. Mr. Slaugh expressed his opinion that Rule 68 should always apply, whereas Mr. Blanch stated that he believes that the consequences of Rule 68

should be visited only upon those who intend to do so under the rule. Mr. Blanch suggested inserting the language that the offer must be made under "this rule." After discussion and a suggestion of appropriate language, it was moved that in order for Rule 68 to apply, the offer must be made expressly under Rule 68. The motion was seconded and approved unanimously.

Janet Smith moved to replace the last sentence of proposed Rule 68 with the last sentence of Mr. Battle's proposed Rule 68. The motion was seconded and approved unanimously.

Mr. Slaugh asked whether the Committee contemplated that a Rule 68 offer would be filed with the trial court. After discussion about whether the rule is sufficiently clear that the offer should not be filed with the court, it was agreed that this is sufficiently clear. Mr. Slaugh moved to accept Rule 68 with all the changes that have been approved. The motion was seconded and approved unanimously.

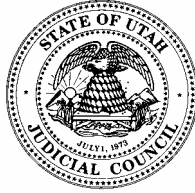
Ms. McIntosh then asked that the Committee be permitted to review Rule 68 once again, with all of the amendments. Mr. Wikstrom stated that it would be included on the September agenda, but would not be discussed again unless there is an issue. Mr. Wikstrom also asked Mr. Blanch to review the United States Supreme Court case to which he had referred, and determine how it would relate to a situation where a jury finds no cause of action.

VI. ELECTRONIC FILING RULES.

Mr. Wikstrom asked for volunteers for a subcommittee to consider electronic filing and how that would affect the rules. Judge Nuffer and Mr. Carney volunteered to serve on the subcommittee, which will also include Mr. Shea. Mr. Shea stated that he would like to focus on the mechanics of moving a case through the system electronically. He stated that the Committee has the Supreme Court's approval to work on this issue.

VII. ADJOURNMENT.

The meeting adjourned at 5:45 p.m. The Committee's next meeting will be held at 4:00 p.m. on Wednesday, September 24, 2003, at the Administrative Office of the Courts.



Administrative Office of the Courts

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

MEMORANDUM

Daniel J. Becker
State Court Administrator
Myron K. March
Deputy Court Administrator

To: Civil Procedures Committee
From: Tim Shea *TS*
Date: September 18, 2003
Re: Rule making process

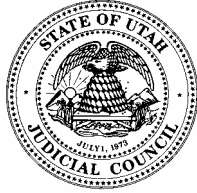
We might improve the timeliness of a rule change if we moved the amendments through the process as they are developed rather than in a huge batch twice a year.

The advisory committees would continue to develop rules as they do now, but, once approved for public comment, we would post the rule to our web page and send notice of the proposal to lawyers and others. The notice would be a brief summary with a link to the text embedded in the message. No attachments. We would include our regular list of publishers in this notice. Some publishers (West and Intermountain Commercial Record, for example) republish the drafts, others do not. I'd have to monitor multiple 45-day comment periods, but that's not difficult. And if a rule sits out there for 60 or 90 days, no one is likely to complain.

The committees would consider comments and make final recommendations as they do now, but these would be presented to the Supreme Court/Judicial Council as the committee concludes its work. Whether to make the effective date n-days after final action or remain with the April 1 and November 1 effective dates is an issue. If the latter, then the rule development is a more timely response, but rule approval is not. If the former, the Utah Court Rules Annotated is continually out of date and there may be some confusion about which version of the rule is in effect. I lean towards making the rules effective 30 or maybe 60 days after they are approved. We can email notice of the final action and effective dates to all judges and most lawyers as the rules are adopted.

These changes in practice do not require any rule changes. We would, in essence, do all that we now do, only more frequently and in smaller pieces.

The mission of the Utah judiciary is to provide the people an open, fair,
efficient, and independent system for the advancement of justice under the law.



Administrative Office of the Courts

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

MEMORANDUM

Daniel J. Becker
State Court Administrator
Myron K. March
Deputy Court Administrator

To: Civil Procedures Committee
From: Tim Shea *TS*
Date: September 18, 2003
Re: Provisional and final remedies

It's been about two years since we started this project and one year since we last looked at it, so here are a few reminders of where we've been.

1. The project began as an effort to rewrite Rule 64D on garnishments, a horribly bloated and confusing rule. That could not be done without incorporating the entire Rule 64 series, which in turn brought in Rule 69 and one small reference to receivers (new Para (h) of Rule 66) buried in one of the remedies rules. (The rest of the changes to Rule 66 are while-we're-at-it simplification.)
2. The objectives were two-fold: simplify and clarify the text; simplify and clarify the process.
3. A subcommittee of committee members and others helped develop the amendments. The amendments have been reviewed by the Salt Lake County Sheriff's Office.
4. The amendments were so extensive that we decided on a repeal-and-reenact approach (which means that all of the text except in Rule 66, should be underlined as new).
5. The breadth of the project enabled us to examine the logic of the overall organization. The footnotes are to the equivalent provision in the current rules. You can see from the non-sequential nature of the references that there has been considerable reorganization. Also, some of this stuff is pretty weird, and it's hard to believe that it's now the law.
6. We considered but rejected the idea of a single writ.
7. We changed some (but not all) of the traditionally used words into words of more modern usage.
8. No one liked my idea that one who redeems real property should be called a redeemer, rather than a redemptioner.
9. We have not yet decided on a numbering sequence. I've imposed one that seems to make sense and continues at least some of the numbering structure of the existing rules.

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efficient, and independent system for the advancement of justice under the law.

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

2 (a) Definitions. As used in Rules 64, 64A, 64B, 64C, 64D, 64E, 69A, 69B 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 the form that advises the defendant or a third person
17 that certain property is or may be exempt from seizure under state or federal law. The notice
18 shall list examples of exempt property and indicate that other exemptions may be available. The
19 notice 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 or
21 constable and any deputy. The officer may appoint the defendant as an agent to hold the
22 property.⁵

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

25 (a)(8)⁷ “Property” means the defendant’s property of any type not exempt from seizure.
26 Property includes but is not limited to real and personal property, tangible and intangible

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

1 property, the right to property whether due or to become due, and an obligation of a third person
2 to perform for the defendant. Property includes any portion of the property.

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

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

6 (b)⁸ Security.

7 (b)(1) Amount. When security is required of a party, the party shall provide security in the
8 sum and form the court deems adequate to reimburse other parties for damages, costs and
9 attorney fees incurred as a result of a writ improvidently issued. In fixing the amount of the
10 security, the court may consider any relevant factor, including the amount of indebtedness
11 claimed and the value of the property subject to the writ. The court may relieve a party from the
12 necessity of providing security if it appears that none of the parties will incur damages, costs and
13 attorney fees as a result of a writ improvidently issued or if there exists some other substantial
14 reason for dispensing with the security.⁹ The amount of security does not establish or limit the
15 amount of damages, costs and attorney fees incurred as the result of a writ improvidently issued.

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

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

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

⁷ 64C(a), 64D(a)(iii), 69(b)

⁸ 64B(c), (d). 64C(b), (c), (f), (g)

⁹ 64F; 65A(c)

1 (c)(1) Master. The court may appoint a master.

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

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

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

14 (d) Issuance of writ, service

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

22 (d)(2)¹⁴ Content of writ. As appropriate to the circumstances of the action, the writ shall
23 direct the officer to take possession of the property, to keep the property safe until further order
24 of the court or as directed in the writ, to deliver the property to the plaintiff, or to sell the
25 property. The writ shall specify the court from which it is issued and the caption and number of
26 the case to which it refers. If the writ is to enforce a judgment or order for the payment of money,
27 the writ shall specify the amount ordered to be paid and the amount due. If the writ is issued ex

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 parte before judgment, the clerk shall attach to the writ plaintiff's affidavit, notice of hearing,
2 order authorizing the writ, notice of exemptions and reply form. If the writ is issued after
3 judgment, the clerk shall attach to the writ plaintiff's application, the judgment, notice of
4 exemptions and reply form.

5 (d)(3) Service of writ.

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

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

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

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

19 To _____, Defendant:

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

22 [Quoting body of writ]

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

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

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)

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

2 (e)(1) Claimant's rights. Any person claiming an interest in the property has the same rights
3 and obligations as the defendant with respect to the writ and with respect to providing and
4 objecting to security. Any claimant named by the plaintiff and served with the writ and
5 accompanying papers shall exercise those rights and obligations within the same time allowed
6 defendant. Any claimant not named by the plaintiff and not served with the writ and
7 accompanying papers may exercise those rights and obligations at any time before the property is
8 sold or delivered to plaintiff.

9 (e)(2) Join claimant as defendant. The court may order the claimant joined as a defendant.
10 The plaintiff shall serve the order on the claimant. The claimant is thereafter a defendant to the
11 action and shall answer within 10 days, setting forth any claim or defense. The court may render
12 judgment for or against the claimant.

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

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

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

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

¹⁸ 64B(i), 64C(m), 64D(l), 69(n)

¹⁹ 64A(6), 64B(e), 64C(f)(1), (4)

1 (f)(3)²⁰ Proceedings where defendant prevails. If the defendant prevails, the court shall order
2 the writ discharged and any security, proceeds of sales and remaining property delivered to the
3 defendant.

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

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

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

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

11 or

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

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

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

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

20 (b)(1) that the defendant is concealed or is avoiding service of process;

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

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

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

26 (b)(5) that the property will decline in value through use or the passage of time; or

²⁰ 64C(1)

²¹ 64C(m)

²² 64C(3)

²³ 65C(a)

²⁴ Not currently required for replevin.

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

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

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

6 (c)(2) a description of the property, including its value;

7 (c)(3) that the property is not exempt from execution;

8 (c)(4)²⁵ that the property is not earnings;

9 (c)(5) that the property has not been taken for a tax, assessment or fine;

10 (c)(6) that the property has not been seized under a writ against the property of the plaintiff
11 or that it is exempt from seizure;

12 (c)(7) that the threatened injury to the plaintiff outweighs the damage the writ may cause the
13 defendant; and

14 (c)(8) a substantial likelihood that the plaintiff will prevail on the merits of the underlying
15 claim.

16 (d) Notice, hearing. The court may order a writ of replevin, attachment or garnishment be
17 issued before judgment after notice to the defendant and opportunity to be heard.

18 (e) Method of service. The affidavit for the prejudgment writ shall be served on the defendant
19 and any person named by the plaintiff as claiming an interest in the property in a manner directed
20 by the court that will expeditiously give actual notice of the hearing.

21 (f)²⁶ Reply. The defendant may file a reply to the affidavit for a prejudgment writ at the
22 hearing or at any time prior to the hearing. The reply may:

23 (f)(1) challenge the issuance of the writ;

24 (f)(2) object to the sufficiency of sureties;

25 (f)(3) request return of the property;

26 (f)(4) claim the property is exempt; or

27 (f)(5) allege any matter which would charge the plaintiff with liability.

28 (g) Burden of proof. At the hearing the burden is on the plaintiff to prove the facts set forth in
29 the affidavit.

²⁵ 64D(a)(i)

²⁶ 64D(h), 69(g)

1 (h) Ex parte writ before judgment. The court may order a writ be issued before judgment
2 without notice to the defendant and opportunity to be heard only if the court makes written
3 findings of immediate and irreparable injury from delay. If a writ is issued without notice to the
4 defendant and opportunity to be heard, the court shall set a hearing for the earliest reasonable
5 time, and the writ and the order authorizing the writ shall:

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

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

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

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

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

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

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

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

20 (b)(2)³⁰ that defendant wrongfully detains the property; and

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

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

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

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

²⁷ 64B(a)

²⁸ 64B(b)

²⁹ 64B(b)(2)

³⁰ 64B(b)(3), (4)

³¹ 65C(a), (o)

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

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

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

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

8 (b)(5) the name and address of any person known to the plaintiff to claim an interest in the
9 property.

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

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

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

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

22 (b) Affidavit before judgment.³⁴ To obtain a writ of garnishment before judgment, plaintiff
23 shall, in addition to the requirements of sections 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 (b)(3) that the action is against a defendant who is not a resident of this state or against a
28 foreign corporation not qualified to do business in this state;

³² 65C(a)

³³ 64D(a)(i), (ii)

³⁴ 64D(b)(i), (ii)

1 (b)(4) that payment of the claim has not been secured by a lien upon property in this state;
2 (b)(5) the identity of the garnishee;
3 (b)(6) that the garnishee possesses or controls property of the defendant;
4 (b)(7) that the property is not earnings;
5 (b)(8) the name and address of any person known to the plaintiff to claim an interest in the
6 property; and

7 (b)(9) that the plaintiff will pay to the garnishee the fee established by Utah Code Section 78-
8 7-44.

9 (c) Application after judgment.³⁵ To obtain a writ of garnishment after judgment, plaintiff
10 shall file an application stating facts showing:

11 (c)(1) the identity of the garnishee;

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

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

14 (c)(4) the amount due;

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

17 (c)(6) that the plaintiff will pay to the garnishee the fee established by Utah Code Section 78-
18 7-44; and

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

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

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

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

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

³⁵ 64D(c)

³⁶ 64D(v)(iii)

³⁷ 64D(d)(ii)

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

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

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

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

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

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

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

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

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

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

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

24 (g)(1) The plaintiff and defendant may file and serve upon the garnishee a reply to the
25 answers and request a hearing. The reply shall be filed and served within 10 days after service of

³⁸ 64D(d)(iii), 64D(g)

³⁹ 64D(v)(iii)

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 the answers to the interrogatories, but the court may deem the reply timely if filed before the
2 property is sold or delivered to the plaintiff. The reply may:

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

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

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

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

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

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

10 (g)(3)(A) the garnishee's answers to interrogatories are correct; and

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

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

18 (i) Liability of garnishee.

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

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

⁴⁵ 64D(h)(i), (iii), (iv), 64D(r)

⁴⁶ 64D(k)

⁴⁷ 64D(j)

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

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

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

9 (j) Property as security.

10 (j)(1)⁵¹ If property secures payment of a debt to the garnishee, the property need not be
11 applied at that time but shall remain subject to being applied pending payment in full of the debt.
12 If property secures payment of a debt to the garnishee, the plaintiff may obtain an order
13 authorizing the plaintiff to pay the debt and requiring the garnishee to deliver the property.

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

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

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

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

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

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

⁴⁸ 64D(n)

⁴⁹ 69(m)

⁵⁰ 64D(m)

⁵¹ 64D(o)

⁵² 64D(p)

⁵³ 64D(v)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (b)(2) describing the property; and

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

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

⁵⁴ 69(a), (c)

⁵⁵ 69(d)

⁵⁶ 69(c)

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

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

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

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

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

15 **Rule 69A.⁵⁹ Seizure property.**

16 The officer shall seize property as follows:

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

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

26 (c) Growing crops. Crops growing upon real property shall be seized by filing the writ and a
27 description of the crops and the property upon which the crops are growing with the county
28 recorder and leaving the writ and description with an occupant of the property. If there is no

⁵⁷ 69(h)

⁵⁸ 69(g)

⁵⁹ 64C(e)

⁶⁰ 69(f)

1 occupant of the property, the officer shall post the writ and description in a conspicuous place on
2 the property. If another person claims an interest in the real property or the crops, the officer
3 shall serve the writ and description on the other person.

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

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

13 (f) Certificated securities. Unless transfer of a certificate is enjoined or the certificate is
14 surrendered to the corporation issuing it, certificated securities of a corporation shall be seized by
15 serving the writ and a description of the property on the president, secretary, cashier or other
16 managing agent of the corporation and taking the certificate into custody.

17 (g) Property not capable of manual delivery. Debts, credits, non-certificated securities and
18 other property not capable of manual delivery shall be seized by serving the writ and a
19 description of the property on the person owing the debt, or having possession or control of the
20 credit or other personal property.

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

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

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

⁶¹ 64C(j)

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

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

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

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

23 (d) Conduct of sale. All sales shall be at auction to the highest bidder, Monday through
24 Saturday, legal holidays excluded, between the hours of 9 o'clock a.m. and 8 o'clock p.m. at a
25 place reasonably convenient to the public. The officer shall sell only so much property as is
26 necessary to satisfy the amount due. The officer shall not purchase property or be interested in
27 any purchase. Property capable of manual delivery shall be within view of those who attend the
28 sale. The property shall be sold in such parcels as are likely to bring the highest price. Severable
29 lots of real property shall be sold separately. Real property claimed by a third party shall be sold
30 separately if requested by the third party. Real property shall be sold at the courthouse of the

1 county in which the property is situated. The defendant may direct the order in which the
2 property is sold.

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

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

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

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

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

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

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

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

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

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

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

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

28 (i)(2) the price paid;

⁶² New.

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

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

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

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

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

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

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

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

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

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

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

27 (f) Dispute regarding price. If there is a dispute about the redemption price, the redemptioner
28 may pay into court the amount necessary for redemption less the amount in dispute and file and
29 serve upon the purchaser a petition setting forth the items to which the redemptioner objects and

⁶³ 69(j)

1 the grounds for objection. The court shall enter an order determining the redemption price. The
2 redemptioner shall pay to the clerk any additional amount within seven days after the court's
3 order.

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

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

7 (g)(2) the price paid;

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

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

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

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

15 (i)(1) The purchaser is entitled to the rents of the property or the value of the use and
16 occupation of the property from the time of sale until redemption. A redemptioner is entitled to
17 the rents of the property or the value of the use and occupation of the property from the time of
18 redemption until a subsequent redemption. Rents and profits are a credit upon the redemption
19 price.

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

26 (j)⁶⁶ Remedies.

27 (j)(1) For waste. A purchaser or redemptioner may file a motion requesting the court to
28 restrain the commission of waste on the property. It is not waste for the person in possession of

⁶⁴ 69(j)(6)

⁶⁵ 69(j)(7)

⁶⁶ 69(k)

1 the property during the period allowed for redemption to continue to use the property in the same
2 manner in which it was previously used, to use it in the ordinary course of husbandry, to make
3 necessary repairs or improvements, or to use wood or timber on the property for repairing fences
4 or as fuel for a family. After the estate has become absolute, the purchaser or redemptioner may
5 file an action to recover damages for injury to the property by the tenant.

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

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

13 **Rule 66. Receivers.**

14 (a) Grounds for appointment. ~~A receiver may be appointed by the court in which an action is~~
15 ~~pending or has passed to judgment.~~

16 (a)(1) ~~In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to~~
17 ~~subject any property or fund to his claim, or between partners or others jointly owning or~~
18 ~~interested in any property or fund, on the application of the plaintiff, or of any party whose right~~
19 ~~to or interest in the property or fund, or the proceeds thereof, is probable, and where it is shown~~
20 ~~that the property or fund is in danger of being lost, removed or materially injured.~~

21 (a)(2) ~~In an action by a mortgagee for the foreclosure of his mortgage and sale of the~~
22 ~~mortgaged property, where it appears that the mortgaged~~ The court may appoint a receiver in any
23 action in which property is in danger of being lost, removed, ~~or~~ materially injured; ~~or that the~~
24 ~~conditions of the mortgage have not been performed and that the property~~ is probably
25 insufficient to discharge the ~~mortgage~~ debt.

26 (a)(3) ~~After (a)(2)~~ The court may appoint a receiver after judgment, to carry the judgment
27 into effect.

28 (4) After judgment, to dispose of the property according to the judgment, ~~or~~ to preserve ~~it~~
29 property during the pendency of an appeal, ~~or~~ in proceedings in aid of execution when an

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1 | execution has been returned unsatisfied, or when the judgment debtor refuses to apply his
2 | property in satisfaction of the judgment.

3 | ~~(5) In (a)(3) The court may appoint a receiver in~~ cases where-in which a corporation has been
4 | dissolved or is insolvent or in imminent danger of insolvency or has forfeited its corporate rights.

5 | ~~(6) In (a)(4) The court may appoint a receiver in~~ all other cases where receivers have
6 | ~~heretofore~~ been appointed by ~~the usages of~~ courts of equity.

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

10 | ~~(c) Undertaking on ex parte appointment. If a receiver is appointed upon an ex parte~~
11 | ~~application, the court, before making the order, may require from the applicant an undertaking,~~
12 | ~~with sufficient sureties, in an amount to be fixed by the court, to the effect that the applicant will~~
13 | ~~pay to the adverse party all damages he may sustain by reason of the appointment of such~~
14 | ~~receiver and the entry by him upon his duties, in case the applicant has procured such~~
15 | ~~appointment wrongfully, maliciously or without sufficient cause; and the court may, in its~~
16 | ~~discretion, at any time after such appointment, require an additional undertaking. The court may~~
17 | ~~require security from the receiver in accordance with Rule 64.~~

18 | (d) Oath ~~and undertaking of receiver. Before entering upon his duties a~~ A receiver must be
19 | sworn shall swear or affirm to perform them duties faithfully, ~~and with one or more sureties,~~
20 | ~~approved by the court, execute an undertaking to such persons and in such sum as the court may~~
21 | ~~direct, to the effect that he will faithfully discharge the duties of receiver in the action and obey~~
22 | ~~the orders of the court therein.~~

23 | (e) Powers of receivers. A receiver has, under the direction of the court, power to bring and
24 | defend actions ~~in his own name~~ as receiver, to take and keep possession of the property, to
25 | receive rents, to collect debts, to pay debts, to compound for and compromise the same, to make
26 | transfers and generally to do such acts respecting the property as the court may authorize.

27 | (f) Payment of taxes before sale or ~~hypothecation-pledge~~ of personal property. Before any
28 | personal property coming into the hands of a receiver may be sold, transferred or ~~hypothecated~~
29 | pledged, ~~such the~~ receiver shall pay ~~and discharge any and~~ all taxes ~~constituting a lien thereon,~~
30 | ~~legally levied by any taxing unit of the state,~~ and shall file ~~with the court having jurisdiction of~~

1 ~~such receivership, receipts or other competent evidence showing the full payment and discharge~~
2 ~~of any and all such taxes, provided, that in a case where no sufficient liquid assets are at the time~~
3 ~~of the proposed sale, transfer or hypothecation, in the hands of such receiver. If there are~~
4 ~~insufficient assets to pay the taxes, the court having jurisdiction of such receivership may~~
5 ~~authorize such the sale, transfer or hypothecation-pledge with the proceeds thereof to be made~~
6 ~~prior to the payment and discharge of such taxes, but immediately upon receipt of the~~
7 ~~consideration for such sale, transfer or hypothecation such receiver shall used to pay and~~
8 ~~discharge all such liens, taxes, and within. Within 10 days thereafter after payment the receiver~~
9 ~~shall file with the court receipts or other competent evidence showing the full payment and~~
10 ~~discharge of all such taxes.~~

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

13 ~~(h) Appointment of receiver on dissolution of corporation. Upon the dissolution of a~~
14 ~~corporation the district court of the county in which the corporation carries on its business, or has~~
15 ~~its principal place of business, on application of any creditor of the corporation, or of any~~
16 ~~stockholder or member thereof, may appoint one or more persons to be receivers of the~~
17 ~~corporation, to take charge of the estate and effects thereof, and to collect the debts and property~~
18 ~~due and belonging to the corporation, to pay the outstanding debts thereof and to divide the~~
19 ~~remaining moneys and other property among the stockholders or members.~~

20 ~~(i) Dismissal of action. An action wherein a receiver has been appointed shall not be~~
21 ~~dismissed except by order of 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.