

Agenda

Advisory Committee on Rules of Civil Procedure

November 19, 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

Electronic filing demonstration	Jerome Battle
Republication of Supreme Court Rules for comment	Tim Shea
New judge after remand	Tom Lee
Motion to reconsider	Frank Carney
Remedies rules	Tim Shea

Meeting Schedule

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, October 22, 2003
Administrative Office of the Courts

Francis Wikstrom, Presiding

PRESENT: Francis Wikstrom, David W. Scofield, Terrie T. McIntosh, Leslie W. Slaugh, Paula Carr, Thomas R. Lee, Thomas R. Karrenberg, R. Scott Waterfall, Virginia S. Smith, W. Cullen Battle, Honorable Lyle R. Anderson, James Blanch, Honorable David O. Nuffer

STAFF: Tim Shea, Judith Wolferts

EXCUSED: Francis J. Carney, Glenn C. Hanni, Honorable Anthony B. Quinn, Honorable Anthony W. Schofield, Todd M. Shaughnessy, Janet H. Smith, Debora Threedy

GUESTS: Matty Branch

I. WELCOME AND APPROVAL OF MINUTES.

Francis Wikstrom called the meeting to order at 4:00 p.m. The Minutes of the September 24, 2003 meeting were reviewed, and Thomas Lee moved that they be approved as written. The motion was seconded by James Blanch, and approved unanimously.

II. CHANGE OF JUDGE AFTER REMAND.

Mr. Lee led the discussion of his proposed rule dealing with recusal of a judge after remand.¹ Mr. Lee stated that he initially was not in favor of such a rule, but that after consideration he believes that a rule couched in the proposed language is a good idea. The proposed rule balances two issues: a judge's previous investment in the case and whether recusal would impede a timely resolution of the issues v. perception of bias.

Several members voiced approval of the proposed rule, including: (1) Thomas Karrenberg, who stated that he believes the proposed rule is a "first rate job" and gives a party a way to seek recusal without attacking the judge, (2) Cullen Battle, who stated that he is comfortable with the rule's language, (3) Virginia Smith, who noted that the proposed rule gives

¹After extensive discussion during the September 24, 2003 meeting, Mr. Lee agreed to work on a proposed rule dealing with change of judge after remand. His suggested rule was circulated to members prior to the October 22, 2003 meeting.

judges “permission” to recuse without making it appear as though those who decide to recuse are shirking their duty, and (4) Judge David Nuffer, who stated that he believes that the proposed rule is good, and who suggested minor changes in wording.

Mr. Wikstrom asked Mr. Shea whether there had been any feedback about the proposed rule from judges who are members of the Committee, and Mr. Shea stated that there has not been. Judge Lyle Anderson then expressed his opinion that the proposed rule is “alright,” and that it raises the level of consciousness about this issue without providing “great opportunities” for gamesmanship by attorneys.

After additional discussion and comments by Committee members, Mr. Slaugh moved that the proposed rule be adopted. Mr. Karrenberg seconded the motion, which was approved unanimously. Mr. Lee will prepare a statement on the extensive time and efforts expended by the Committee over a period of several months in considering this issue and in drafting a proposed rule.

III. REMEDIES RULES.

In response to Mr. Battle’s question of whether there is some way to deal with proposed changes to the remedies rules prior to a meeting, Mr. Wikstrom commented that he believes that there is considerable merit in going through the entire process during a meeting and thus hearing the opinions of everyone. Mr. Shea agreed with Mr. Wikstrom, noting that he believes that the rules have been improved each time that the Committee has gone through them. Mr. Battle agreed with Mr. Shea that the rules have been improved with input from members. Mr. Wikstrom then stated that the Committee will first go through each remedies rule, and then will send them out for comment to practitioners who deal with the rules on a frequent basis.

A. Rule 69C. Redemption of Real Property After Sale.

Judge Anderson asked what the term “subsequent redemption” is intended to mean. After comments and explanations by Mr. Shea and Judge Nuffer, Judge Anderson stated that he believes it would be helpful to clarify this term’s meaning. Judge Nuffer agreed, noting that there is little common law on this issue.

After more questions by the members about how subsequent redemption would work, Mr. Wikstrom stated that he believes that the Committee should educate itself on this issue.

B. Rule 64. Writs in General.

Mr. Slaugh expressed concerns about the definitions of “earnings” (page 6), and how long “earnings” retain their character. He commented that it appears that once earnings have been deposited into a savings account, they no longer are “earnings.” Virginia Smith agreed, stating that she acted as counsel for a bank for several years, and that in her experience a bank would see it that way. Mr. Slaugh asked Ms. Smith whether this means that if a person receives pay from an employer in cash, the bank would not see the cash as “earnings.” Ms. Smith said yes. Mr. Slaugh then stated that the Committee should clarify the rule to address this. Judge Anderson

agreed, commenting that unless there is a cessation period, everything arguably is “earnings.” Mr. Shea stated that he would research this issue.

Committee members also discussed Mr. Slaugh’s question about “earnings” in the context of child support. Judge Anderson commented that, ordinarily, only 25% of “earnings” can be garnished, but this increases to 50% for child support obligations. After additional comments, Mr. Slaugh stated that he would look into this issue.

Mr. Battle suggested that the words “earned by an individual” should be inserted after “compensation” (page 6, line 9), so as not to allow corporations to avail themselves of this limitation. Mr. Karrenberg asked whether the proposed additional language would allow a sole proprietorship to use the limitation.

Mr. Wikstrom and Mr. Slaugh suggested a change in the “writ wrongfully obtained” language on page 4, line 14. Referring to page 7, line 18, Mr. Slaugh questioned the use of the language that “The motion shall be served on the surety.” After discussion, Mr. Shea suggested that the language be changed to read that the clerk be directed to send copies to the surety.

The members expressed other questions on the proposed rule, including: (1) whether page 10, lines 11 and 14, should read “file security” or “post security,” and (2) the use and meaning of the term “sufficiency” (page 7).

C. Rule 64A. Prejudgment Writs in General.

With regard to language on page 12, lines 16-17, Judge Nuffer suggested that the term “is reasonably calculated to expeditiously give notice of the hearing” be substituted for “will expeditiously give actual notice of the hearing.”

Mr. Battle questioned whether there is a clear statement of what actually must be done in order to obtain a writ, and suggested that this be spelled out in detail. Judge Anderson and Judge Nuffer agreed with Mr. Battle’s comment, noting that the rule never actually says what must be done to obtain a particular writ. In response, Mr. Shea commented that the purpose of Rule 64A is to include in all **common** requirements in one rule. Judge Anderson then stated that his concern is that Rule 64A(b) appears to imply that all that must be done to obtain a writ is to file an affidavit. Similarly, Judge Nuffer noted that Rule 64A(g) sounds as though all a party must do to obtain a writ is to prove the facts set forth in the affidavit, whereas in reality the party must prove the elements of the writ. Mr. Battle agreed with Judge Nuffer’s assessment, commenting that the elements of the writs must be established in this rule because they cannot be found anywhere else.

After additional discussion, Mr. Shea stated that he will work on the proposed rule in light of the concerns raised.

D. Rule 64B (Writ of Replevin), Rule 64C (Writ of Attachment), and Rule 64D (Writ of Garnishment).

The Committee discussed the language in proposed Rules 64B, 64C, and 64D. Mr. Shea stated that he will compare the rules in light of members' comments, and make sure that language in the rules is accurate.

IV. ADJOURNMENT.

The meeting adjourned at 5:45 p.m. The Committee's next meeting will be held at 4:00 p.m. on Wednesday, November 19, 2003, at the Administrative Office of the Courts.

Notice of Proposed Amendments to Utah Court Rules

The Supreme Court has published for comment proposed amendments to several Utah court rules. The full text of the rules and amendments can be found at <http://www.utcourts.gov/resources/rules/>, under two separate links:

1. Rules Effective November 1, 2003; and
2. Notice of Proposed Amendments to Rules; comment period ends December 31, 2003.

The Court has ordered that the comment period for both sets of amendments be extended to December 31 because notice of these amendments was emailed to the Bar under Rule 2-203 rather than mailed under Rule 11-101.

The Judicial Council amendments, including the repeal of several rules, designated as effective November 1 are effective November 1. The Supreme Court amendments designated as effective November 1 are effective November 1 under the Supreme Court's emergency rulemaking authority, 11-101(4)(E), but are subject to further amendment after the comment period. (The Supreme Court rules begin on page 35.)

The amendments designated as proposed, with a comment period ending December 31, are not in effect unless otherwise noted. As demonstrated by the proposed amendment to Rule 11-101, future notification of Supreme Court rule changes may be by email.

Submit written comments to:

Tim Shea
Senior Staff Attorney
Administrative Office of the Courts
P.O. Box 140241
Salt Lake City, UT 84114-0241
Fax: 801-578-3843
E-mail: tims@email.utcourts.gov

Comments by email are preferred. Please include the comment in the message text, not in an attachment.

Summary of Amendments

Rules effective November 1, 2003.

Rules of Professional Conduct

Rule 1.16. Declining or terminating representation. Requires compliance with laws regulating notice to and permission of the tribunal when terminating representation. Comments regarding client with diminished capacity. Deletes rule and comment regarding retention of papers.

Rules of Appellate Procedure.

Rule 6. Bond for costs on appeal. Technical changes.

Rule 12. Transmission of the record. Requires transmission of pre-sentence investigation report when that record is designated by a party.

Rule 30. Decision of the court; dismissal; notice of decision. Replaces CJA 4-508; 4-605. Regulates citation of published and unpublished opinions.

Rules of Civil Procedure.

Rule 3. Commencement of action. Establishes process to obtain filing fee. Recognizes authority of the court to impose sanctions for failure to pay filing fee.

Rule 6. Time. Technical changes.

Rule 7, Pleadings allowed, motions, memoranda, hearings, orders, objection to commissioner's order. Replaces CJA 4-501; 4-504; 6-401(4) and (5). Regulates timing and content of motions, memoranda, requests for hearings and order.

Rule 9. Pleading special matters. Replaces CJA 4-504(8). Regulates pleading non-payment of a judgment.

Rule 24. Intervention. Provides for notice to the attorney general, county attorney or municipal attorney when claiming that a statute or ordinance is unconstitutional.

Rule 42. Consolidation; separate trials. Replaces CJA 4-107. Designates the judge responsible for deciding a motion to consolidate cases. Regulates filing papers.

Rule 51. Instructions to jury; objections. Replaces CJA 4-503. Leaves timing of request for final jury instructions to the discretion of the judge. Requires citation or copy of controlling statute, rule or case.

Rule 54, Judgments; costs. Replaces CJA 4-504(4) and (6). Regulates content of judgment.

Rule 72. Property bonds. Replaces CJA 6-612. Regulates security based on real property.

Rule 73. Attorney fees. Replaces CJA 4-505; 4-505.01; 6-501; 6-501. Regulates process for claiming attorney fees by affidavit or in reliance on schedule of fees.

Rule 74. Withdrawal of counsel. Replaces 4-506. Regulates process for withdrawing from representation.

Rule 100. Coordination of cases pending in district court and juvenile court. Replaces CJA 4-901. Regulates notice to the court of other cases in which custody, visitation or support is an issue.

Rule 101. Domestic pretrial conferences and orders. Replaces CJA 4-905. Regulates pretrial conferences with court commissioner in family law case.

Rule 102. Motion and order for payment of costs and fees. Replaces CJA 4-911. Regulates payments of costs and fees under statutory conditions.

Rule 103. Child support worksheets. Replaces CJA 4-912. Regulates child support worksheets under statutory conditions.

Rule 104. Divorce decree upon affidavit. Replaces CJA 4-913. Permits entry of divorce default or stipulated decree based on prima facie case established by affidavit.

Rule 105. Shortening 90-day waiting period in domestic matters. Replaces CJA 6-403. Regulates motion to shorten statutory 90-day waiting period.

Rule 106. Modification of divorce decrees. Replaces CJA 6-404. Requires petition, served as an initial complaint, to initiate action to modify divorce decree.

Rule 107. Decree of adoption; petition to open adoption records. Replaces CJA 6-406. Regulates conditions and procedures for opening adoption records.

Rule of Criminal Procedure

Rule 12. Motions. Regulates timing and content of motions, memoranda and requests for hearing.

Rule 21. Verdict. Conforms rule to statutorily created pleas and verdicts.

Rule 21.5. Pre-sentence investigation reports. Replaces CJA 4-203. Regulates security of pre-sentence investigation reports.

Rule 26. Written orders, judgments and decrees. Regulates procedures for entering orders.

Rule 34. Consolidation of cases. Replaces CJA 4-104. Designates the judge responsible for deciding a motion to consolidate cases. Regulates filing papers.

Rule 35. Victims and witnesses. Replaces CJA 4-601. Establishes procedures for enforcing the constitutional and statutory rights of victims and witnesses.

Rule 36. Withdrawal of counsel. Regulates process for withdrawing from representation.

Rule 37. Citation to decisions. Replaces CJA 4-605. Regulates citation of published and unpublished opinions.

Rule 38. Trials de novo of justice court proceedings. Replaces CJA 4-608. Regulates procedures for trial de novo.

Rule 39. Coordination of cases pending in district court and juvenile court. Replaces CJA 4-901. Requires notice to the court if the defendant is a party in a delinquency case in juvenile court.

Rules of Juvenile Procedure.

Rule 7. Warrants for immediate custody of minors; grounds; execution of warrants; search warrants. Conforms rule to statutory amendments.

Rule 14. Reception of referral; preliminary determination. Replaces CJA 4-901. Requires notice to the court if the defendant is a party in a criminal or delinquency case or is the subject of a petition or order in an abuse, neglect or dependency case.

Rule 15. Preliminary hearing; informal adjustment without petition. Technical change.

Rule 19. Responsive pleadings and motions. Regulates timing of dispositive motions. Regulates courtesy copies.

Rule 37. Child protective orders. Conforms rule to statutory changes.

Rule 45. Pre-disposition reports and social studies. Requires delivery of report to counsel at least two days before hearing.

Rule 46. Dispositional hearing. Permits parent or guardian to address the court.

Rule 47. Reviews and modification of orders. Regulates intervention plans and progress reports.

Rule 50. Appeals. Designates party to sign notice of appeal. Establishes procedures for impecunious appellants.

Rule 53. Appearance and withdrawal of counsel. Regulates process for withdrawing from representation.

Rule 54. Continuances. Adds requirements for requesting and granting a continuance.

Proposed Amendments to Rules; comment period ends December 31, 2003.

Code of Judicial Administration

Rule 4-202.08. Fees for records, information, and services. Establish a fixed fee for mailing

Rule 4-801. Transfer of small claims cases. Conform to small claims amendments

Rule 11-101. Supreme Court's rulemaking process. Include rules regulating the Utah State Bar in the Supreme Court's rule making process. Adopts notice of comment period by email.

Rule 11-203. Senior justice court judges. Adopt for senior justice court judges the similar qualifications and procedures as for senior judges of the courts of record.

Repealer. The Judicial Council proposes to repeal the following rules:

CJA 4-611. Probable cause determinations for purposes of detention.

CJA 4-802. Motion to reinstate small claims proceedings.

CJA 4-803. Trials de novo in small claims cases.

Utah Rules of Small Claims Procedure.

Rule 1. General provisions. Permit sanctions.

Rule 2. Beginning the case. Technical amendments.

Rule 3. Service of the affidavit. Adopt a general service and filing requirement.

Rule 4. Counter affidavit. Conform small claims counter affidavit rule to permissive counter affidavit statute. Effect would be that counter affidavits of more than the jurisdictional amount would have to be filed as claims in the regular civil docket of the district court.

Rule 6. Pretrial. Technical amendments.

Rule 7. Trial. Technical amendments.

Rule 8. Dismissal. Establishes presumption that dismissal is without prejudice to conform to civil rules.

Rule 9. Default judgment. Technical amendments.

Rule 10. Set aside of default judgments and dismissals. Incorporate provisions from Code of Judicial Administration governing small claims cases.

Rule 11. Collection of judgments. Establishes procedure whereby debtor request satisfaction of judgment be entered.

Rule 12. Appeals. Incorporate provisions from Code of Judicial Administration governing small claims cases.

Utah Rules of Civil Procedure

Rule 4. Process. Dispense with requirement that order allowing service by publication be published.

Rule 62. Stay of proceedings to enforce a judgment. Clarify finality rule.

Rule 64D. Garnishment. Conform to statutory changes assigning collection responsibility to the Department of Workforce services.

Rule 68. Offer of judgment. Limit liability of offeror for costs and attorney fees incurred by offeree after an offer. Establishes offeree's responsibility for offeror's costs.

Utah Rules of Criminal Procedure

Rule 7. Proceedings before magistrate. Incorporate provisions from Code of Judicial Administration governing detention.

Utah Rules of Appellate Procedure

Rule 5. Discretionary appeals from interlocutory orders. Require petition for review of interlocutory order be filed before court will consider request for stay.

Rule 8. Stay or injunction pending appeal. Modify procedural requirements for requesting a stay pending appeal.

Rule 8A. Emergency relief. Adapted from Supreme Court Standing Order Number 1.

Rule 10. Motion for summary disposition. Technical amendments.

Rule 22. Computation and enlargement of time. Technical amendments.

Rule 25. Brief of an amicus curiae or guardian ad litem. Provide to the court more direct control over whether to permit an amicus brief.

Rule 27. Form of briefs. Require notice of incarceration and Anders brief.

Rule 35. Petition for rehearing. Prohibit petition for rehearing by amicus.

Rule 38A. Qualifications for Appointed Appellate Counsel. Establish minimum qualifications for appointed counsel in appellate cases.

Utah Rules of Juvenile Procedure

Rule 50. Presence at hearings. Establish procedure for requesting records in child welfare proceedings.

History of Proposed Utah R. Civ. P. 63(c)

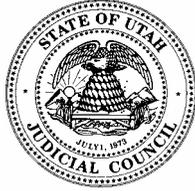
The proposed amendment to Rule 63 comes after extensive deliberation and debate by the Advisory Committee over the course of the past couple of years. During that time frame, various members of the Utah bar have appeared before the Committee to express the concern that a trial judge who is reversed on appeal may be perceived to be prejudiced against the successful appellant in any further proceedings on remand. Because the current version of Rule 63 does not appear to provide a mechanism for protecting that concern, members of the bar proposed an amendment to Rule 63 that would give successful appellants the right to disqualify the trial judge after remand.

Such a proposal was first presented to the Committee in 2001. At that time, the Committee heard testimony and considered proposals to amend Rule 63, but ultimately decided against any change after extensive discussion, primarily because of concerns that the proposed rule was overbroad, would invite gamesmanship on the part of prevailing appellants, and would introduce inefficiencies in proceedings on remand. Later that year, Fran Wikstrom, Advisory Committee Chair, testified on this issue to a committee of the Utah legislature.

The proposed amendment to Rule 63 was again considered by this Committee in a series of meetings in 2003. In February, the Committee received a letter from attorney Douglas Mortensen, expressing his view that a party prevailing on appeal should have the discretion to exercise a right to disqualify a trial judge on remand, and suggesting that this view is supported by a survey of members of the Utah Trial Lawyers Association. Although the Committee had considered and rejected the same proposal in 2001, it invited Mr. Mortensen and other proponents of the amendment to attend the Committee's April meeting. At that meeting, the Committee heard at length from Mr. Mortensen, and from attorneys Richard Burbidge, Robert Wallace, and Michael Zundel, all of whom suggested that parties who prevail on appeal often have serious concerns as to whether the trial judge whose decision has been reversed may be prejudiced against the appellant and in favor of the appellee. In response to extensive questions from members of the Committee, the proponents of the amendment to Rule 63 also asserted that an appellant's right to disqualify the trial judge on remand would not substantially compromise the goal of judicial economy, nor impugn the integrity of trial judges.

During the April 2003 meeting, members of the Committee generally agreed that the perception of prejudice on the part of prevailing appellants is a real concern, but there was extensive debate as to whether this concern could be effectively addressed by the proposed amendment. Most importantly, members of the Committee noted that not all cases that are remanded involve a new trial, and that in some cases the judge's familiarity with the law or the facts of the case may be important to the timely resolution of the case. Moreover, members of the Committee suggested that it would be difficult to identify a rule for distinguishing the cases in which disqualification would be appropriate from the cases in which it would not be. Finally, Committee members expressed concerns that a rule allowing automatic disqualification would introduce the potential for gamesmanship and abuse on the part of prevailing appellants. At that point, the matter was tabled for further consideration at a subsequent meeting.

Members of the Committee continued to debate this issue via email and again in further meetings May, August, and September, 2003. Many of the same concerns were raised and discussed during those meetings, and in the August meeting the Committee heard from another proponent of the proposed amendment, attorney Rich Humphreys. In the September meeting, the Committee ultimately agreed to the concept of a compromise amendment to Rule 63, which would provide a mechanism for the parties to ask the trial judge to exercise discretion to recuse himself on remand, without risking the costs associated with an overbroad rule of automatic disqualification. The specific language of the proposed compromise amendment was presented and unanimously approved at the Committee's meeting in October 2003. By authorizing a motion to disqualify on the basis of an appearance of bias or prejudice against a party prevailing on appeal, the proposed amendment recognizes the important concerns raised by those members of the bar who appeared to the Committee. By making the decision to disqualify a discretionary call on the part of the trial judge, however, the proposed amendment also avoids the inefficiencies and other difficulties associated with a rule allowing automatic disqualification.



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: November 14, 2003
Re: Motions to reconsider

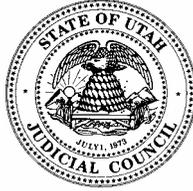
Frank Carney forwarded to me a request to regulate motions to reconsider. I used as sources for the following draft, Utah Code Section 78-7-19, Repeated application for orders forbidden, and California Code of Civil Procedure §1008. Subsequent application. A provision regulating motions to reconsider might be integrated into URCP 7 which now extensively regulates motion practice. The Committee may want to consider and state in the rule how much of the balance of URCP 7 applies to a motion to reconsider.

(1) A motion may not be made while a motion for the same relief is pending. If a motion is ruled upon, a motion for the same relief may not be made to any other judge. If a motion is ruled upon, a motion to reconsider the result may not be made to the same judge except as provided in this rule.

(2) A party may file a motion to reconsider if the party filing the motion has discovered new facts or law that were unknown to the party at the time the first motion was ruled upon and that could not have been timely discovered by the party exercising reasonable diligence. The party shall state in an affidavit accompanying the motion to reconsider:

- (2)(A) what new facts or law are relied upon;
- (2)(B) whether the party knew of the facts or law before the first motion was ruled upon; and
- (2)(C) why the party could not have timely discovered the facts or law by exercising reasonable diligence.

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: November 14, 2003
Re: Remedies rules

The committee asked for further research on four issues and significant stylistic changes on a fifth:

(1) Whether earnings remain earnings after they are paid.

Thanks to Leslie for this research: In *In re Kokoszka*, 479 F.2d 990, 997 (2d Cir. 1973), the court held:

The intent of the Consumer Act was to make sure that wage earners *997 were able to receive at least 75% of their take home pay in any one pay period so that they would have enough cash to meet basic needs. As a side effect, it was hoped that honest debtors, with this protection on their wages, would not be forced into bankruptcy, H.Rep. No. 1040, 90th Cong., 2d Sess., U.S.Code Cong. & Ad.News, pp. 1962, 1977-79 (1968). It is clear, then, both from the language of the statute, §§ 1672, 1673 and the legislative intent, that "earnings" means periodic payments of compensation and does not pertain to every asset that is traceable in some way to such compensation.

The issue in that case was whether tax refunds were "earnings." The court held they were not. California has apparently resolved this by rule. In *Phillips v. Bartolomie*, 121 Cal. Rptr 56, 58 n. 2 (Ct. App. 1975), the court cited to rules that provide the exempt income remains exempt after deposit.

To support Leslie's research I've included in the definition a phrase from the federal statute: "earnings" means compensation "paid or payable."

(2) The purpose of the additional categories of earnings when the judgment is for child support.

These additional sources of earnings for child support judgments are not based on federal law. In response to my inquiry, DCFS says the (effectively reduced) cap has not been a problem. Of the three items listed, the first, insurance payments, are sometimes exempt under §78-23-5.

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.

Insurance payments for death or injury are exempt. Social security payment, disability payments and a few others – which are a form of insurance – are exempt. The second item listed, unemployment compensation, is exempt under 78-23-5. It's questionable whether the Court by rule can override an exemption created by statute. At a minimum the rule conflicts with the statute to no apparent purpose. Of the remaining item, “gain derived from capital or labor” gain from labor is the essence of earnings and well within the general definition. The only issue appears to be whether “gain derived from capital, including profit gained through the sale or conversion of capital” should be earnings for all judgments, child support judgments only or not at all. See my proposed further changes to the draft rule.

(3) Whether prejudgment writs against an out of state defendant are limited to contract actions.

No. Under the existing URCP 64C, “the plaintiff, at any time after the filing of the complaint, in an action upon a judgment, upon any contract express or implied, or in an action against a nonresident of this state, ...” I’ve redrafted Rule 64C and 64D accordingly. I’ve continued to omit an action upon a judgment. As we have already concluded, if the application is for a post-judgment writ, the writ is one of execution, not attachment.

(4) What are the rights of an earlier lien creditor to redeem real property if the property is bought or redeemed by a creditor with a later lien?

I could find no Utah case law on this question, so this analysis relies on the text of the current rule.

Current URCP 69. Under a relatively straightforward interpretation of URCP 69(j)(1) a creditor with a lien prior to that of the purchaser may redeem (initial or subsequent redemption) provided the redemptioner’s lien is subsequent to that on which the property was sold.

Current URCP 69(j)(1): “Real property sold subject to redemption ... may be redeemed by ... the judgment debtor [or by] a creditor having a lien ... subsequent to that on which the property was sold.” And current URCP 69(j)(4): “If the property is redeemed by a creditor, any other creditor having a right of redemption may ... redeem the property from such last redemptioner in the same manner as provided [for the original redemption]”

In other words, the relevant relationship is not between the purchaser and the redemptioner, but between the redemptioner and the judgment creditor. Although amended stylistically, I believe the redrafted rule is to the same effect:

Proposed Rule 69C(b): “Real property subject to redemption may be redeemed by the defendant or by a creditor having a lien on the property subsequent to that on which the property was sold.”

Under the current rule and the proposed rule, a creditor whose lien precedes that on which the property was sold does not have the right to redeem.

Current URCP 69 requires later creditors to pay off liens of earlier creditors as part of the purchase or redemption price, but not vice-versa:

Current URCP 69(j)(3): “if the purchaser is ... a creditor having a lien prior to that of the person seeking redemption, ... [the redemptioner shall pay the purchase price plus expenses plus interest plus] the amount of such other lien, with interest.” And current URCP 69(j)(4): “... any ... creditor having a right of redemption may ... redeem the property from such last redemptioner ... upon paying [the last redemption price plus expenses plus interest plus] the amount of any lien held by such last redemptioner prior to the redemptioner's own”

This is not inconsistent with the principle that a creditor with a lien prior to that of the purchaser/redemptioner may redeem. It means simply that the redemption price in such a transaction would not include the amount of the subsequent lien. In other words: If a later creditor redeems from an earlier creditor, the earlier creditor is made whole because the redemption price includes the value of the earlier lien. But the reverse is not the case. If an earlier creditor redeems from a later creditor, the purchase price does not include the value of the later lien.

This interpretation can be illustrated by the following example (which will never come to pass). Assume the following interests in order of time in real property sold at sheriff’s execution sale:

1. judgment debtor
2. lien holder
3. judgment creditor
4. lien holder
5. lien holder

1, judgment debtor, can purchase or can redeem from anyone. If 1 purchases or redeems, no one else can redeem. (All of this is clear under the current rule.)

2 can purchase but not redeem because 2’s lien is prior to that of the judgment creditor.

If 3 purchases, either 4 or 5 can redeem because their liens are subsequent to the judgment creditor’s.

If 5 redeems from 3, the price includes the value of 3’s lien.

If 4 redeems from 5, the price includes 5’s redemption price, which already includes 3’s lien, but does not include the value of 5’s lien. 5 is left *status quo ante*, but is not made whole. Although, presumably, the earlier creditor acquires the property subject to the later lien.

If the lien on the property is sufficient to protect a later creditor from whom an earlier creditor redeems, no further changes are needed.

There are at least two alternatives, but I believe these would be changes in the law, not just stylistic changes.

Alternative 1. Creditors whose liens are prior to that of the purchaser or redemptioner cannot redeem. This approach changes the relevant relationship from redemptioner/judgment creditor to that of purchaser/redemptioner. The effect is that earlier lien creditors are left with their liens but no right to redeem property purchased or redeemed by a later lien creditor. Would require amending the definition of who has the right to redeem.

Alternative 2. Earlier lien creditors may redeem from a purchaser/redemptioner with a later lien (as they can now) but the price includes the value of the later lien. The policy is to apply the same price formula to all redemptioners without distinction of chronology. The effect is to make later creditors whole, not just *status quo ante*. Would require amending the formula for the purchase/redemption price. This may be the most efficient alternative since under either the current rule of alternative 1, the lien holder must foreclose against the redemptioner to obtain relief. Under alternative 2, the relief is built into the formula for the redemption price.

(5) Style change: Write the rule to establish the elements of or the grounds for a writ rather than the content of the supporting affidavit.

It was easy enough to merge the two paragraphs (affidavit elements and affidavit further elements) into one. And only a little more difficult to convert the rule from a list of facts in the affidavit to grounds for the writ. This approach highlighted that some of the facts in the affidavit are in the nature of grounds while others are simply information that may be helpful to process the writ. I've separated the two. This approach has also allowed me to move some of the information requirements from Rules 64C and 64D to 64A(d), thereby avoiding a little repetition. The result is Rule 64A(c)(1)-(10) and (d)(1)-(6). The former lists the grounds; the latter lists information about the property. It's possible to include in (d) that the property is not earnings and not exempt from execution, but this seemed substantive and I've included it as (c)(7).

Seizing property of extraordinary size.

As I mentioned at the last meeting, the Salt Lake County Sheriff's Office has requested a provision that would permit the officer to seize large equipment by some manner other than actual possession. Rule 69(A)(d)(3) is an attempt at this.

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)² “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)³ “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)⁴ “Earnings” means compensation, however denominated, paid or payable to an
10 individual for personal services, including periodic payments pursuant to a pension or retirement
11 program, and gain derived from capital. Earnings accrue on the last day of the period in which
12 they were earned. If the writ is served before the earnings have been paid, the writ is deemed to
13 have been served at the time the earnings accrued. ~~For a judgment for failure to support
14 dependent children, earnings also include periodic payments pursuant to insurance policies,
15 unemployment compensation, and gain derived from capital or labor, including profit gained
16 through the sale or conversion of capital.~~

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

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

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

25 (a)(8)⁸ “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

² 64D(a)(iv), 64E

³ 64D(d)(viii)

⁴ 64D(d)(vi), (vii)

⁵ 69(g)

⁶ 69(f)

⁷ 64D(a)(iv), 64E

⁸ 64C(a), 64D(a)(iii), 69(b)

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

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

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

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

⁹ 64B(c), (d). 64C(b), (c), (f), (g)

¹⁰ 64F; 65A(c)

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

3 (c)(2)¹¹ Witnesses. The court may require the defendant or any other person to appear and
4 testify regarding the defendant's property. The court may order witness fees and mileage paid as
5 provided by statute.

6 (c)(3)¹² Delivery or description of property. The court may order property capable of manual
7 delivery delivered to the officer on such terms as may be just. In the alternative or if the property
8 is not capable of manual delivery, the court may require a person to prepare a memorandum
9 describing the nature and value of personal property. If a person refuses to give the memorandum
10 to the officer, the court may require that person to pay the costs of any proceeding taken for the
11 purpose of obtaining such information.

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

15 (d) Issuance of writ, service

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

22 (d)(2)¹⁵ 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. If the writ is to enforce a judgment or order for the payment of money, the writ shall
26 specify the amount ordered to be paid and the amount due. If the writ is issued ex parte before
27 judgment, the clerk shall attach to the writ plaintiff's affidavit, notice of hearing, order
28 authorizing the writ, notice of exemptions and reply form. If the writ is issued after judgment, the

¹¹ 69(o), (p), (r); 64C(i).

¹² 64C(i)

¹³ 69(q), (s), (t)

¹⁴ 69(c)

¹⁵ 64A(8), 64B(c), (h)(2), 64C(d), 64D(d), 69(d)

1 clerk shall attach to the writ plaintiff's application, the judgment, notice of exemptions and reply
2 form.

3 (d)(3) Service of writ.

4 (d)(3)(A)¹⁶ Upon whom. The officer shall serve the writ and accompanying papers on the
5 defendant, and, as applicable, the garnishee and any person named by the plaintiff as claiming an
6 interest in the property. The officer may simultaneously serve notice of the date, time and place
7 of sale.

8 (d)(3)(B)¹⁷ Return, inventory. Within 10 days after service, the officer shall return the writ to
9 the court with a certificate of proceedings, including an inventory of the property and proof of
10 service. Failure to file a return does not affect the validity of the seizure. The officer shall request
11 the person served to prepare a memorandum with a description and value of property not capable
12 of manual delivery, and, if the memorandum is refused, the officer shall indicate the fact of
13 refusal on the return.

14 (d)(3)(C)¹⁸ Service of a writ of execution by publication.

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

17 To _____, Defendant:

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

20 [Quoting body of writ]

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

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

27 (e)¹⁹ Claim to property by third person.

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

¹⁷ 64A(7), 64B(c), (h)(3), 64C(e)(7), (h), 64D(e), 69(e)

¹⁸ 69(g)

¹⁹ 64B(i), 64C(m), 64D(l), 69(n)

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

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

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)²⁰ 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 wrongfully obtained. The court shall give the plaintiff reasonable
22 opportunity to correct any defect. The defendant shall serve the order to discharge the writ and
23 release the property upon the officer, defendant, garnishee and any third person claiming an
24 interest in the property.

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

²⁰ 64A(6), 64B(e), 64C(f)(1), (4)

1 (f)(3)²¹ Disposition of property if defendant prevails. If the defendant prevails, the court shall
2 order the writ discharged and proceeds of sales and remaining property delivered to the
3 defendant.

4 (f)(4)²² 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)²³ 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)²⁴ Motion, affidavit. To obtain a writ of replevin, attachment or garnishment before
18 judgment, plaintiff shall file a motion, security and an affidavit stating facts showing the grounds
19 for relief and other information required by these rules. The affidavit supporting the motion shall
20 state facts in simple, concise and direct terms that are not conclusory.

21 (c) Grounds for prejudgment writ. Grounds for a prejudgment writ include, in addition to the
22 grounds for the specific writ, at least one of the following:

23 (c)(1) that the defendant is avoiding service of process; or

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

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

27 or

²¹ 64C(1)

²² 64C(m)

²³ 64C(3)

²⁴ 65C(a)

1 (c)(4) that the defendant has fraudulently contracted the debt or incurred the obligation that is
2 the subject of the action; or

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

4 (c)(6) probable cause to be apprehensive of losing the remedy unless the court issues the
5 writ;

6 and all of the following:

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

8 (c)(8) that the writ is not sought to hinder, delay or defraud a creditor of the defendant; and

9 (c)(9) that the threatened injury to the plaintiff outweighs the damage the writ may cause the
10 defendant; and

11 (c)(10) a substantial likelihood that the plaintiff will prevail on the merits of the underlying
12 claim.

13 (d) Statement. The affidavit supporting the motion shall state facts sufficient to show:

14 (d)(1) a description of the property, including its value;

15 (d)(2) that the property has not been taken for a tax, assessment or fine;

16 (d)(3) that the property has not been seized under a writ against the property of the plaintiff
17 or that it is exempt from seizure;

18 (d)(4) the name and address of any person known to the plaintiff to claim an interest in the
19 property; and, if the motion is for a writ of garnishment,

20 (d)(5) the name and address of the garnishee; and

21 (d)(6) that the plaintiff will pay to the garnishee the fee established by Utah Code Section 78-
22 7-44.

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

25 (f) Method of service. The affidavit for the prejudgment writ shall be served on the defendant
26 and any person named by the plaintiff as claiming an interest in the property in a manner directed
27 by the court that is reasonably calculated to expeditiously give actual notice of the hearing.

28 (g)²⁵ Reply. The defendant may file a reply to the affidavit for a prejudgment writ at the
29 hearing or at any time prior to the hearing. The reply may:

30 (g)(1) challenge the issuance of the writ;

²⁵ 64D(h), 69(g)

- 1 (g)(2) object to the sufficiency of sureties;
- 2 (g)(3) request return of the property;
- 3 (g)(4) claim the property is exempt; or
- 4 (g)(5) allege any matter which would charge the plaintiff with liability.
- 5 (h) Burden of proof. At the hearing the burden is on the plaintiff to prove the facts necessary
- 6 to support the writ.
- 7 (i) Ex parte writ before judgment. If plaintiff seeks a prejudgment writ prior to a hearing, the
- 8 plaintiff shall file an affidavit stating facts showing irreparable injury to the plaintiff before the
- 9 defendant can be heard or the reasons notice should not be given. If a writ is issued without
- 10 notice to the defendant and opportunity to be heard, the court shall set a hearing for the earliest
- 11 reasonable time, and the writ and the order authorizing the writ shall:
- 12 (i)(1) designate the date and time of issuance and the date and time of expiration;
- 13 (i)(2) forthwith be filed in the clerk's office and entered of record;
- 14 (i)(3) expire 10 days after issuance unless the court establishes an earlier expiration date, the
- 15 defendant consents that the order and writ be extended or the court extends the order and writ
- 16 after hearing;
- 17 (i)(4) be served on the defendant and any person named by the plaintiff as claiming an
- 18 interest in the property in a manner directed by the court that is reasonably calculated to
- 19 expeditiously give actual notice of the hearing.

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

21 (a)²⁶ Availability. A writ of replevin is available to compel delivery to plaintiff of specific

22 personal property held by defendant.

23 (b)²⁷ Grounds. In addition to the grounds required in Rule 64A, grounds for a writ of replevin

24 require all of the following:

25 (b)(1)²⁸ that plaintiff is entitled to possession; and

26 (b)(2)²⁹ that defendant wrongfully detains the property.

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

²⁶ 64B(a)

²⁷ 64B(b)

²⁸ 64B(b)(2)

²⁹ 64B(b)(3), (4)

1 (a)³⁰ Availability. A writ of attachment is available to seize property in the possession or
2 under the control of the defendant.

3 (b)³¹ Grounds. In addition to the grounds required in Rule 64A, grounds for a writ of
4 attachment require all of the following:

5 (b)(1) that the defendant is indebted to the plaintiff;

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

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

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

10 (a)³² Availability. A writ of garnishment is available to seize personal property of the
11 defendant in the possession or under the control of a person other than the defendant. A writ of
12 garnishment is available after final judgment or after the claim has been filed and prior to
13 judgment. The maximum portion of disposable earnings of an individual subject to seizure is the
14 lesser of:

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

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

21 (b) Grounds for writ before judgment.³³ In addition to the grounds required in Rule 64A,
22 grounds for a writ of garnishment before judgment require all of the following:

23 (b)(1) that the defendant is indebted to the plaintiff;

24 (b)(2) that the action is upon a contract; is against a defendant who is not a resident of this
25 state or is against a foreign corporation not qualified to do business in this state;

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

27 (b)(4) that the garnishee possesses or controls property of the defendant.

28 (c) Statement. The application for a post-judgment writ of garnishment shall state:

³⁰ 65C(a), (o)

³¹ 65C(a)

³² 64D(a)(i), (ii)

³³ 64D(b)(i), (ii)

1 (c)(1) the name and address of the garnishee;
2 (c)(2) a description of the property, including its value;
3 (c)(3) whether any of the property consists of earnings;
4 (c)(4) the amount of the judgment and the amount due on the judgment;
5 (c)(5) the name and address of any person known to the plaintiff to claim an interest in the
6 property;
7 (c)(6) that the plaintiff will pay to the garnishee the fee established by Utah Code Section 78-
8 7-44; and, if the application is for a writ of continuing garnishment,
9 (c)(7)³⁴ that there is no other writ of continuing garnishment in effect in favor of plaintiff
10 against these earnings.
11 (d)³⁵ Interrogatories. The plaintiff shall submit with the affidavit or application
12 interrogatories to the garnishee inquiring:
13 (d)(1) whether the garnishee is indebted to the defendant;
14 (d)(2) whether the garnishee possesses or controls any property of the defendant and, if so,
15 the nature and value of the property;
16 (d)(3) whether the garnishee knows of any property of the defendant in the possession or
17 under the control of another, and, if so, the nature and value of the property and the name and
18 address of the person with possession or control;
19 (d)(4) whether the garnishee is deducting an amount in satisfaction of a claim against the
20 plaintiff or the defendant, a designation as to whom the claim relates, and the amount deducted;
21 (d)(5)³⁶ the date and manner in which the garnishee has served the defendant and any third
22 persons;
23 (d)(6)³⁷ the dates on which previously served writs of continuing garnishment are expected to
24 terminate; and
25 (d)(7) any other relevant information plaintiff may desire, including defendant's position,
26 defendant's rate and method of compensation, defendant's pay period and the computation of the
27 amount of defendant's disposable earnings.

³⁴ 64D(v)(iii)

³⁵ 64D(d)(ii)

³⁶ 64D(d)(iii), 64D(g)

³⁷ 64D(v)(iii)

1 (e)³⁸ Content of writ, priority. The writ shall instruct the garnishee to complete the steps in
2 subsection (f) and instruct the garnishee how to deliver the property. Several writs may be issued
3 at the same time so long as there is only one garnishee named in a writ. Priority among writs of
4 garnishment shall be in order of their service. Only one writ of garnishment shall be in effect at
5 one time.

6 (f)³⁹ Garnishee's responsibilities. The writ shall direct the garnishee to complete the
7 following within seven business days of service of the writ upon the garnishee:

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

9 (f)(2)⁴⁰ serve the answers to the interrogatories on the plaintiff;

10 (f)(3)⁴¹ serve the writ, answers to interrogatories, notice of exemptions and two copies of the
11 reply form upon the defendant and any other person shown by the records of the garnishee to
12 have an interest in the property; and

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

14 (g)⁴² Reply to answer of garnishee; request for hearing.

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

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

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

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

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

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

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

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

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

³⁸ 64D(c), 64D(d)(i), (v), 64D(v)(iii)

³⁹ 64D(d)(iii)

⁴⁰ 5(b)

⁴¹ 5(b)

⁴² 64D(h), (i)

1 (h)⁴³ Delivery of property. A garnishee shall not deliver property until the property is due the
2 defendant. Unless otherwise directed in the writ, the garnishee shall retain the property until 20
3 days after service by the garnishee under subsection (f). If the garnishee receives a reply within
4 that time, the garnishee shall retain the property and comply with the order of the court entered
5 after the hearing on the reply. Otherwise, the garnishee shall dispose of the property as provided
6 in the writ.

7 (i) Liability of garnishee.

8 (i)(1)⁴⁴ A garnishee who acts in accordance with this rule is released from liability, unless
9 answers to interrogatories are successfully controverted.

10 (i)(2)⁴⁵. If the garnishee fails to comply with this rule, the writ or an order of the court, the
11 court may order the garnishee to appear and show cause why the garnishee should not be held in
12 contempt. Upon a finding of contempt, the court may order the garnishee to pay such amounts as
13 are just, including the value of the property or the balance of the judgment, whichever is less, and
14 payment of reasonable cost and attorney fees incurred by parties as a result of garnishee's failure.

15 (i)(3)⁴⁶ No person is liable as garnishee by reason of having drawn, accepted, made or
16 endorsed any negotiable instrument that is not in the possession or control of the garnishee at the
17 time of service of the writ.

18 (i)(4)⁴⁷ Any person indebted to the defendant may pay to the officer the amount of the debt or
19 so much as is necessary to satisfy the writ, and the officer's receipt discharges the debtor for the
20 amount paid.

21 (i)(5)⁴⁸ A garnishee may deduct from the property any claim against the plaintiff or
22 defendant.

23 (j) Property as security.

24 (j)(1)⁴⁹ If property secures payment of a debt to the garnishee, the property need not be
25 applied at that time but shall remain subject to being applied pending payment in full of the debt.
26 If property secures payment of a debt to the garnishee, the plaintiff may obtain an order
27 authorizing the plaintiff to pay the debt and requiring the garnishee to deliver the property.

⁴³ 64D(h)(i), (iii), (iv), 64D(r)

⁴⁴ 64D(k)

⁴⁵ 64D(j)

⁴⁶ 64D(n)

⁴⁷ 69(m)

⁴⁸ 64D(m)

⁴⁹ 64D(o)

1 (j)(2)⁵⁰ If property secures an obligation that does not require the personal performance of the
2 defendant and can be performed by a third person, the plaintiff may obtain an order authorizing
3 the plaintiff or a third person to perform the obligation and requiring the garnishee to deliver the
4 property upon completion of the performance or tender of performance that is refused.

5 (k)⁵¹ Writ of continuing garnishment on disposable earnings.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

⁵⁰ 64D(p)

⁵¹ 64D(v)

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

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

5 (a)⁵² Availability. A writ of execution is available following entry of a final judgment or
6 order requiring the delivery of property or the payment of money.

7 (b)⁵³ Application. To obtain a writ of execution, plaintiff shall file an application stating:

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

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

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

12 (c)⁵⁴ Death of plaintiff. If the plaintiff dies, a writ of execution may be issued upon the
13 affidavit of an authorized executor or administrator or successor in interest.

14 (d)⁵⁵ Reply to writ; request for hearing.

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

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

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

26 (e)⁵⁶ Mortgage foreclosure governed by statute. Utah Code Annotated, Title 78, Chapter 37,
27 governs mortgage foreclosure proceedings over contrary provisions of this rule.

28 **Rule 69A.⁵⁷ Seizure of property.**

⁵² 69(a), (c)

⁵³ 69(d)

⁵⁴ 69(c)

⁵⁵ 69(h)

⁵⁶ 69(g)

1 The officer shall seize property as follows:

2 (a)⁵⁸ Debtor's preference. When there is more property than necessary to satisfy the amount
3 due, the officer shall seize such part of the property as the defendant may indicate. If the
4 defendant does not indicate a preference, the officer shall first seize personal property, and if
5 sufficient personal property cannot be found, then the officer shall seize real property.

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

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

17 (d)(1) Property capable of manual delivery. When severed, crops are property capable of
18 manual delivery. Except as provided in subsections (d)(2) and (d)(3), property capable of manual
19 delivery shall be seized by serving the writ and a description of the property on the person
20 holding the property and taking the property into custody.

21 (d)(2) Range stock, such as cattle, horses, sheep and other livestock, may be seized by filing
22 the writ and a description of the property, specifying the number and marks or brands, with the
23 county recorder. Range stock may be seized by taking it into custody, but any additional cost of
24 taking it into custody will not be allowed if the court finds that taking the property into custody
25 was unnecessary.

26 (d)(3) In the discretion of the officer, property of extraordinary size or bulk or property that
27 would be costly to store may be seized by securing it in place.

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

⁵⁷ 64C(e)

⁵⁸ 69(f)

1 (f) 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)⁵⁹ 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.

⁵⁹ 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.⁶⁰ 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.

13 The officer shall file a duplicate of the certificate in the office of the county recorder.

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

15 (a)⁶¹ 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 or by their successors in interest. If the defendant redeems, the effect of the sale is
20 terminated and the defendant is restored to the defendant's estate. If the property is redeemed by
21 a creditor, any other creditor 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.

⁶⁰ New.

⁶¹ 69(j)

1 (e) Notice of expenses. The purchaser or redmptioner shall file with the county recorder
2 notice of the amounts paid for taxes, assessments, insurance, maintenance, repair and any lien
3 other than the lien on which the redemption was based. Failure to do so relieves a subsequent
4 redemptioner of the obligation to pay such amounts.⁶²

5 (f) Redemption price. The price to redeem property is the sale price plus six percent. The
6 price for a subsequent redemption is the redemption price plus three percent. If notice of the
7 amounts are filed with the county recorder, the price to redeem includes the amounts paid for
8 taxes, assessments, insurance, maintenance, repair and any lien other than the lien on which the
9 redemption was based plus six percent interest for an initial redemption or three percent interest
10 for a subsequent redemption.

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

17 (h) Certificate of redemption. The purchaser shall promptly execute and deliver to the
18 redemptioner, or the redemptioner to a subsequent redemptioner, a certificate of redemption
19 containing:

20 (h)(1) a particular description of the real property;

21 (h)(2) the price paid;

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

24 (h)(4) whether the sale is subject to redemption.

25 The redemptioner or subsequent redemptioner shall file a duplicate of the certificate with the
26 county recorder.

27 (i)⁶³ Conveyance. The purchaser or last redemptioner is entitled to conveyance upon the
28 expiration of the time permitted for redemption.

29 (j)⁶⁴ Rents and profits, request for accounting, extension of time for redemption.

⁶² 69(j)(5)

⁶³ 69(j)(6)

1 (j)(1) The purchaser is entitled to the rents of the property or the value of the use and
2 occupation of the property from the time of sale until redemption. A redemptioner is entitled to
3 the rents of the property or the value of the use and occupation of the property from the time of
4 redemption until a subsequent redemption. Rents and profits are a credit upon the redemption
5 price.

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

12 (k)⁶⁵ Remedies.

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

20 (k)(2) If the conveyance fails. If the conveyance fails a purchaser or redemptioner may file a
21 motion for judgment against the plaintiff for the price paid plus interest. If the conveyance fails
22 because of irregularity in the sale or because the property was exempt, the purchaser or
23 redemptioner may in addition file a motion to revive the original judgment against the defendant
24 in the name of the purchaser or redemptioner for the amount paid plus interest.

25 (l)⁶⁶ Contribution and reimbursement. A defendant may claim contribution or reimbursement
26 from other defendants by filing a motion.

27 **Rule 66. Receivers.**

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

⁶⁴ 69(j)(7)

⁶⁵ 69(k)

⁶⁶ 69(l)

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

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

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

13 (4) ~~After judgment~~, to dispose of the property according to the judgment, ~~or~~ to preserve ~~it~~
14 property during the pendency of an appeal, ~~or~~ in proceedings in aid of execution when an
15 execution has been returned unsatisfied, or when the judgment debtor refuses to apply ~~his~~
16 property in satisfaction of the judgment.

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

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

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

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

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

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

10 (f) Payment of taxes before sale or hypothecation-pledge of personal property. Before any
11 personal property coming into the hands of a receiver may be sold, transferred or ~~hypothecated~~
12 pledged, ~~such the~~ receiver shall pay ~~and discharge any and all taxes constituting a lien thereon,~~
13 ~~legally levied by any taxing unit of the state, and shall file with the court having jurisdiction of~~
14 ~~such receivership, receipts or other competent evidence showing the full payment and discharge~~
15 ~~of any and all such taxes, provided, that in a case where no sufficient liquid assets are at the time~~
16 ~~of the proposed sale, transfer or hypothecation, in the hands of such receiver~~ If there are
17 insufficient assets to pay the taxes, the court ~~having jurisdiction of such receivership~~ may
18 authorize ~~such the~~ sale, transfer or hypothecation-pledge with the proceeds thereof to be made
19 ~~prior to the payment and discharge of such taxes, but immediately upon receipt of the~~
20 ~~consideration for such sale, transfer or hypothecation such receiver shall used to pay and~~
21 ~~discharge all such liens, taxes, and within. Within~~ 10 days ~~thereafter~~ after payment the receiver
22 shall file ~~with the court receipts or other competent evidence showing the full payment and~~
23 ~~discharge of all such taxes.~~

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

26 (h) ~~Appointment of receiver on dissolution of corporation. Upon the dissolution of a~~
27 ~~corporation the district court of the county in which the corporation carries on its business, or has~~
28 ~~its principal place of business, on application of any creditor of the corporation, or of any~~
29 ~~stockholder or member thereof, may appoint one or more persons to be receivers of the~~
30 ~~corporation, to take charge of the estate and effects thereof, and to collect the debts and property~~

1 | ~~due and belonging to the corporation, to pay the outstanding debts thereof and to divide the~~
2 | ~~remaining moneys and other property among the stockholders or members.~~

3 | ~~(i) Dismissal of action. An action wherein a receiver has been appointed shall not be~~
4 | ~~dismissed except by order of the court.~~

5 | (h) Real property. Before a receiver is vested with real property, the receiver shall record a
6 | certified copy of the appointment in the office of the recorder of the county in which the real
7 | property is located.