

Agenda

Advisory Committee on Rules of Civil Procedure

March 24, 2004
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
Rule 47. Communication with jurors	Tim Shea
Rule 51. Instructions to jury; objections	Tim Shea
Rule 26. Standards of Professionalism and Civility	Fran Wikstrom
Rule 73. Attorney fees. Fee splitting	Tim Shea
Remedies rules	Tim Shea

Meeting Schedule

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, February 25, 2004
Administrative Office of the Courts

Francis M. Wikstrom, Presiding

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

STAFF: Tim Shea, Judith Wolferts

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

GUESTS: Matty Branch
Bob Goodman

I. APPROVAL OF MINUTES.

Committee Chairman Francis M. Wikstrom called the meeting to order at 4:00 p.m. The minutes of the January 28, 2004 meeting were reviewed, and Judge Anthony B. Quinn moved that they be approved as written. The motion was seconded by James Blanch, and approved unanimously.

II. REPORT ON MEETING WITH SUPREME COURT.

Mr. Wikstrom reported on his and Tim Shea's recent meeting with the Supreme Court, which was for the purpose of reporting the Committee's recommendations for amendments to the rules and public comments that have been received. Judge Robert Hilder, Third District Court, also attended the meeting, and voiced opposition to the amendment to URCP 7 which increases from 10 pages to 25 pages the page limit for summary judgment memoranda. That amendment is presently in effect under the Supreme Court's emergency rules. Mr. Wikstrom stated that the Supreme Court has approved all amendments recommended, with the exception of the amendment increasing the page limit for summary judgment memoranda. The page limit for summary judgment memoranda accordingly will return to 10 pages. Mr. Wikstrom expressed the thanks of Chief Justice Durham and the Court for the dedication and hard work of the Committee.

III. H.J.R. 16. AMENDMENTS TO URCP 62.

Prior to today's meeting, Committee members were provided with a copy of H.J.R. 16, which would amend URCP 62. Mr. Shea commented that this amendment appears to be part of a national trend with regard to supersedeas bonds.

IV. RULE 47. COMMUNICATION WITH JURORS.

The Committee considered the proposed amendments to Rule 47. Mr. Shea stated that the version of the rule presently before the Committee is the final recommendation, and gave the following reasons for proposing amendments: (1) to provide that the admonishment to jurors need not be given each time there is a break in trial proceedings, and (2) to bring the rule into line with distinctions made in case law. He noted that the Advisory Committee on the Rules of Criminal Procedure adopted this version after adding "including another juror" to the first sentence of part (1), and adding language to the end of part (1) to the effect that the judge should instruct at the beginning of the case and remind the jurors as appropriate.

Judge Lyle Anderson referred to a recent case¹ dealing with communications between a potential juror and witness prior to the jury's being selected. This prompted a discussion about whether language should be added to the rule to address this situation, or whether it was more properly part of voir dire and the responsibility of the court and attorneys to inquire about. The Committee then discussed Thomas Lee's comment that the language of the amendment seems to imply that jurors can communicate with court personnel regarding the "subject of the trial," and also discussed whether the rule would preclude common courtesies such as "excuse me" or "thank you" from being exchanged. Mr. Shea will incorporate into the proposed amendment various suggested changes arising out of these discussions. Judge Anderson moved to approve these changes. Mr. Lee seconded the motion, which was approved unanimously. Mr. Shea will present the rule, with the suggested changes, at the March meeting.

V. RULE 51. INSTRUCTIONS TO JURY; OBJECTIONS.

Mr. Shea stated that the proposed amendment to Rule 51 is in response to requests by district court judges, and that the Advisory Committee on the Rules of Criminal Procedure has decided not to pursue a comparable change to the Criminal Rules at this time. That Committee instead will wait to see the outcome of several cases now pending before the Supreme Court on the issue of failure of the trial court to give **all** instructions at the end of trial (even though the trial court has given all instructions throughout the course of the trial). Mr. Shea asked whether this Committee would also like to delay considering this proposed amendment.

Francis Carney opposed any delay. He stated that the committee that is presently working on a revised version of the Model Utah Jury Instructions had intended to suggest that instructions be given throughout the trial as they apply. Any proposed amendment to Rule 51

¹*State v. Shipp*, 2004 WL 316150, 2004 UT App 40 (Feb. 20, 2004).

would impact that, and the MUJI committee will need to know the outcome of this proposed amendment before preparing its own recommendations.

Scott Waterfall commented that for the rule not to require that all instructions be repeated at the end of the presentation of evidence at trial, appears to fly in the face of current practice. In response, Mr. Shea stated that the amendment will not deny the court the right to do that, and will only give the trial judge discretion about whether or not to repeat all instruction already given. It was also suggested that the rule make clear that at least one complete copy of instructions must be provided to the jury, even if the instructions are given during the course of trial as they apply.

Judge Anderson moved to approve the language of lines 21-23 of the proposed amendment,² and also to include language making clear that no matter when instructions are given, one complete copy of the instructions must be provided to the jury. The motion was seconded and approved unanimously. Mr. Shea will work on the language of the amendment, and present a revised version for review at the next Committee meeting.

VI. REMEDIES RULES

Virginia Smith introduced Bob Goodman of Zions Bank's Legal Department, whose work for Zions includes dealing with garnishments and writs. Mr. Goodman has been invited to the meeting to provide the Committee with any input or comments that he may wish to make on the proposed amendments, based on his own practical experience.

As an introduction, Mr. Shea stated that the amendments to remedies rules began as an effort to redraft Rule 64 to make it more understandable. The effect of this was to cause a redrafting of Rule 64 to make it a general statement regarding writs, with each type of writ then being addressed specifically. Mr. Shea worked with a group of judges, lawyers and law clerks to reach the present point in drafting, and has also sent the proposed amendments to sheriffs for comment. It is intended that the proposed amendments be submitted for comment in April 2004. Mr. Wikstrom clarified that the Committee has already worked through these amendments, and that the most recent substantive changes are in **bold** type on the documents provided to members. The only exception to that is on page 15, where Mr. Shea has now added the concept of "continuing garnishment."

The first proposed amendment is at page 18, line 7, and would provide for service by publication. According to Mr. Shea, the concept of service by publication was previously implicit, but this amendment will make it explicit. Leslie Slaugh pointed out a wording concern in line 10 of page 15, and proposed language that would make clear that certain items must be

²This will impact the technical result of *State v. Reyes*, 2004 WL 63460, 2004 UT App. 8 (Jan. 15, 2004).

included in the notice. This change was approved. Judge Nuffer also suggested a language change, which was also approved.

The second proposed amendment is found at page 20, lines 17-18 (“An affidavit may be based upon information and belief by describing the investigation conducted to support the information and belief.”). Mr. Shea stated that this was included because there are times when the grounds and facts needed for the affidavit may be difficult to describe. Mr. Goodman gave an example of where it is unknown whether property is being used for work purposes, or where there are other persons involved with the property. Mr. Carney commented that he is concerned with a party providing an affidavit on information and belief, and that a party should be required to “know.” The Committee then discussed the fairness of such an affidavit. Mr. Goodman commented that the problem is that without such language, a party cannot even apply for a writ unless it specifically knows the information, which can sometimes be difficult. After extensive discussion about how to resolve the concern described by Mr. Goodman, it was decided that the proposed language would be deleted, and that an additional provision would be included after section (c)(5) which will state “ownership or special interest in property.” Mr. Shea will also renumber the sections as appropriate.

Judge Quinn commented that there is a problem with having a distinct section on “Prejudgment writs in general,” since there are different standards for replevin, as opposed to attachment or garnishment. He noted that since a lower standard is required for replevin, this also appears to be a substantive change, and also pointed out that this provision would place a great burden on lenders who take property as security because it would force them to comply with the requirements of this section. It was agreed that “replevin” will be carved out of this section.

The third proposed amendment is found at page 24, lines 9-11, and requires compliance with Utah Code Ann. § 78-22-1.5 with regards to affidavits or applications and interrogatories. Virginia Smith commented that this makes it easier to determine/identify the person being garnished. Mr. Carney suggested that the proposed language be changed to simply state “the judgment information required by Utah Code Ann. § 78-22-1.5.” This change was approved.

The fourth proposed amendment is found at page 25, lines 11-13 (“The garnishee may amend answers to interrogatories to correct errors or to reflect a change in circumstances by serving and filing the amended answers in the same manner as the original answers.”). Mr. Goodman stated that garnishees presently are being challenged as to whether they have the right to amend their answers, and this would specifically allow the garnishee to do so. Mr. Goodman provided an example of a situation where a garnishee bank might provide an bank account balance which later turned out to be incorrect because the garnishee was not yet aware that the account holder had just made a withdrawal from that account at an ATM. The Committee agreed by consensus to submit this proposed amendment.

The fifth proposed amendment is found at page 25, lines 23-24, and would allow the trial court to “permit discovery.” Mr. Goodman stated that the present rules are unclear as to whether

discovery is allowed, with the result that there sometimes is no way to challenge certain statements, and that this proposed amendment would allow for depositions. An issue was raised as to whether discovery is already allowed in these situations pursuant to Rule 26, and whether it is a right and not simply permissive. After a discussion as to whether discovery rights attach to ancillary proceedings, Judge Anderson made a motion to adopt this proposed amendment and to move it to Rule 64 (Writs in general) at part (C)(2). Judge Nuffer seconded the Motion, which was approved unanimously, with one abstention.

The sixth proposed amendment is found at page 26, lines 14-16 (“If the garnishee takes reasonable steps within a reasonable period of time to secure property to which defendant has immediate access, the garnishee is not in violation of this rule.”). Mr. Goodman explained that part of the problem at present is that a garnishment can be served on anyone,³ so that it will get to the proper person eventually but it may take awhile. This proposed amendment would recognize that it takes time to implement a garnishment. He provided one example of a situation where a bank had only a one-hour time frame in which to implement a garnishment, and when it was not able to comply in that time period, the court ordered a \$10,000 judgment against the bank. David Scofield and Mr. Slaugh stated that they believe that the present rule already handles this situation, with Mr. Scofield pointing out that a garnishee can “show cause” why it was not able to comply. After discussion, Mr. Lee moved to adopt the language of the proposed amendment, but to make it clear that it is the garnishee’s burden to establish this. Judge Quinn seconded the motion. Before a vote could be taken, Judge Nuffer commented that this amendment would appear to provide an absolute defense to garnishees. After discussion, it was agreed that Mr. Shea will work out language to include the concept that the garnishee has the burden to establish this and that it is not an absolute defense, and the motion was approved.

V. ADJOURNMENT.

The meeting adjourned at 6:00 p.m. The next meeting of the Committee will be held at 4:00 p.m. on Wednesday, March 24, 2004, at the Administrative Office of the Courts.

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³For example, it might simply be served on a teller at a bank, so that it may take time to get to the proper person who can implement it.

1 Rule 47. Jurors.

2 (a) Examination of jurors. The court may permit the parties or their attorneys to conduct the
3 examination of prospective jurors or may itself conduct the examination. In the latter event, the
4 court shall permit the parties or their attorneys to supplement the examination by such further
5 inquiry as is material and proper or shall itself submit to the prospective jurors such additional
6 questions of the parties or their attorneys as is material and proper. Prior to examining the jurors,
7 the court may make a preliminary statement of the case. The court may permit the parties or their
8 attorneys to make a preliminary statement of the case, and notify the parties in advance of trial.

9 (b) Alternate jurors. The court may direct that alternate jurors be impaneled. Alternate jurors,
10 in the order in which they are called, shall replace jurors who, prior to the time the jury retires to
11 consider its verdict, become unable or disqualified to perform their duties. Alternate jurors shall
12 be selected at the same time and in the same manner, shall have the same qualifications, shall be
13 subject to the same examination and challenges, shall take the same oath, and shall have the
14 same functions, powers, and privileges as principal jurors. An alternate juror who does not
15 replace a principal juror shall be discharged when the jury retires to consider its verdict unless
16 the parties stipulate otherwise and the court approves the stipulation. The court may withhold
17 from the jurors the identity of the alternate jurors until the jurors begin deliberations. If one or
18 two alternate jurors are called, each party is entitled to one peremptory challenge in addition to
19 those otherwise allowed.

20 (c) Challenge defined; by whom made. A challenge is an objection made to the trial jurors
21 and may be directed (1) to the panel or (2) to an individual juror. Either party may challenge the
22 jurors, but where there are several parties on either side, they must join in a challenge before it
23 can be made.

24 (d) Challenge to panel; time and manner of taking; proceedings. A challenge to the panel can
25 be founded only on a material departure from the forms prescribed in respect to the drawing and
26 return of the jury, or on the intentional omission of the proper officer to summon one or more of
27 the jurors drawn. It must be taken before a juror is sworn. It must be in writing or be stated on
28 the record, and must specifically set forth the facts constituting the ground of challenge. If the
29 challenge is allowed, the court must discharge the jury so far as the trial in question is concerned.

1 (e) Challenges to individual jurors; number of peremptory challenges. The challenges to
2 individual jurors are either peremptory or for cause. Each party shall be entitled to three
3 peremptory challenges, except as provided under Subdivisions (b) and (c) of this rule.

4 (f) Challenges for cause. A challenge for cause is an objection to a particular juror and shall
5 be heard and determined by the court. The juror challenged and any other person may be
6 examined as a witness on the hearing of such challenge. A challenge for cause may be taken on
7 one or more of the following grounds. On its own motion the court may remove a juror upon the
8 same grounds.

9 (f)(1) A want of any of the qualifications prescribed by law to render a person competent as a
10 juror.

11 (f)(2) Consanguinity or affinity within the fourth degree to either party, or to an officer of a
12 corporation that is a party.

13 (f)(3) Standing in the relation of debtor and creditor, guardian and ward, master and servant,
14 employer and employee or principal and agent, to either party, or united in business with either
15 party, or being on any bond or obligation for either party; provided, that the relationship of
16 debtor and creditor shall be deemed not to exist between a municipality and a resident thereof
17 indebted to such municipality by reason of a tax, license fee, or service charge for water, power,
18 light or other services rendered to such resident.

19 (f)(4) Having served as a juror, or having been a witness, on a previous trial between the
20 same parties for the same cause of action, or being then a witness therein.

21 (f)(5) Pecuniary interest on the part of the juror in the result of the action, or in the main
22 question involved in the action, except interest as a member or citizen of a municipal
23 corporation.

24 (f)(6) Conduct, responses, state of mind or other circumstances that reasonably lead the court
25 to conclude the juror is not likely to act impartially. No person may serve as a juror, if
26 challenged, unless the judge is convinced the juror can and will act impartially and fairly.

27 (g) Selection of jury. The judge shall determine the method of selecting the jury and notify
28 the parties at a pretrial conference or otherwise prior to trial. The following methods for selection
29 are not exclusive.

30 (g)(1) Strike and replace method. The court shall summon the number of jurors that are to try
31 the cause plus such an additional number as will allow for any alternates, for all peremptory

1 challenges permitted, and for all challenges for cause that may be granted. At the direction of the
2 judge, the clerk shall call jurors in random order. The judge may hear and determine challenges
3 for cause during the course of questioning or at the end thereof. The judge may and, at the
4 request of any party, shall hear and determine challenges for cause outside the hearing of the
5 jurors. After each challenge for cause sustained, another juror shall be called to fill the vacancy ,
6 and any such new juror may be challenged for cause. When the challenges for cause are
7 completed, the clerk shall provide a list of the jurors remaining, and each side, beginning with
8 the plaintiff, shall indicate thereon its peremptory challenge to one juror at a time in regular turn
9 until all peremptory challenges are exhausted or waived. The clerk shall then call the remaining
10 jurors, or so many of them as shall be necessary to constitute the jury, including any alternate
11 jurors, and the persons whose names are so called shall constitute the jury. If alternate jurors
12 have been selected, the last jurors called shall be the alternates, unless otherwise ordered by the
13 court prior to voir dire.

14 (g)(2) Struck method. The court shall summon the number of jurors that are to try the cause
15 plus such an additional number as will allow for any alternates, for all peremptory challenges
16 permitted and for all challenges for cause that may be granted. At the direction of the judge, the
17 clerk shall call jurors in random order. The judge may hear and determine challenges for cause
18 during the course of questioning or at the end thereof. The judge may and, at the request of any
19 party, shall hear and determine challenges for cause outside the hearing of the jurors. When the
20 challenges for cause are completed, the clerk shall provide a list of the jurors remaining, and
21 each side, beginning with the plaintiff, shall indicate thereon its peremptory challenge to one
22 juror at a time in regular turn until all peremptory challenges are exhausted or waived. The clerk
23 shall then call the remaining jurors, or so many of them as shall be necessary to constitute the
24 jury, including any alternate jurors, and the persons whose names are so called shall constitute
25 the jury. If alternate jurors have been selected, the last jurors called shall be the alternates, unless
26 otherwise ordered by the court prior to voir dire.

27 (g)(3) In courts using lists of prospective jurors generated in random order by computer, the
28 clerk may call the jurors in that random order.

29 (h) Oath of jury. As soon as the jury is completed an oath must be administered to the jurors,
30 in substance, that they and each of them will well and truly try the matter in issue between the
31 parties, and a true verdict rendered according to the evidence and the instructions of the court.

1 (i) Proceedings when juror discharged. If, after impaneling the jury and before verdict, a
2 juror becomes unable or disqualified to perform the duties of a juror and there is no alternate
3 juror, the parties may agree to proceed with the other jurors, or to swear a new juror and
4 commence the trial anew. If the parties do not so agree the court shall discharge the jury and the
5 case shall be tried with a new jury.

6 (j) Questions by jurors. A judge may invite jurors to submit written questions to a witness as
7 provided in this section.

8 (j)(1) If the judge permits jurors to submit questions, the judge shall control the process to
9 ensure the jury maintains its role as the impartial finder of fact and does not become an
10 investigative body. The judge may disallow any question from a juror and may discontinue
11 questions from jurors at any time.

12 (j)(2) If the judge permits jurors to submit questions, the judge should advise the jurors that
13 they may write the question as it occurs to them and submit the question to the bailiff for
14 transmittal to the judge. The judge should advise the jurors that some questions might not be
15 allowed.

16 (j)(3) The judge shall review the question with counsel and unrepresented parties and rule
17 upon any objection to the question. The judge may disallow a question even though no objection
18 is made. The judge shall preserve the written question in the court file. If the question is allowed,
19 the judge shall ask the question or permit counsel or an unrepresented party to ask it. The
20 question may be rephrased into proper form. The judge shall allow counsel and unrepresented
21 parties to examine the witness after the juror's question.

22 (k) View by jury. When in the opinion of the court it is proper for the jury to have a view of
23 the property which is the subject of litigation, or of the place in which any material fact occurred,
24 it may order them to be conducted in a body under the charge of an officer to the place, which
25 shall be shown to them by some person appointed by the court for that purpose. While the jury
26 are thus absent no person other than the person so appointed shall speak to them on any subject
27 connected with the trial.

28 ~~(l) Separation of jury. If the jurors are permitted to separate, either during the trial or after the~~
29 ~~case is submitted to them, they shall be admonished by the court that it is their duty not to~~
30 ~~converse with, or suffer themselves to be addressed by, any other person on any subject of the~~

1 ~~trial, and that it is their duty not to form or express an opinion thereon until the case is finally~~
2 ~~submitted to them.~~

3 (l) Communication with jurors. There shall be no off-the-record communication between
4 jurors and lawyers, parties, witnesses or persons acting on their behalf. Jurors shall not
5 communicate with any person regarding a subject of the trial. Jurors may communicate with
6 court personnel and among themselves about topics other than a subject of the trial. It is the duty
7 of jurors not to form or express an opinion regarding a subject of the trial except during
8 deliberation. The judge shall so admonish the jury at the beginning of trial and remind them as
9 appropriate.

10 (m) Deliberation of jury. When the case is finally submitted to the jury they may decide in
11 court or retire for deliberation. If they retire they must be kept together in some convenient place
12 under charge of an officer until they agree upon a verdict or are discharged, unless otherwise
13 ordered by the court. Unless by order of the court, the officer having charge of them must not
14 make or allow to be made any communication to them with respect to the action, except to ask
15 them if they have agreed upon their verdict, and the officer must not, before the verdict is
16 rendered, communicate to any person the state of deliberations or the verdict agreed upon.

17 (n) Exhibits taken by jury; notes. Upon retiring for deliberation the jury may take with them
18 the instructions of the court and all exhibits which have been received as evidence in the cause,
19 except exhibits that should not, in the opinion of the court, be in the possession of the jury, such
20 as exhibits of unusual size, weapons or contraband. The court shall permit the jury to view
21 exhibits upon request. Jurors are entitled to take notes during the trial and to have those notes
22 with them during deliberations. As necessary, the court shall provide jurors with writing
23 materials and instruct the jury on taking and using notes.

24 (o) Additional instructions of jury. After the jury have retired for deliberation, if there is a
25 disagreement among them as to any part of the testimony, or if they desire to be informed on any
26 point of law arising in the cause, they may require the officer to conduct them into court. Upon
27 their being brought into court the information required must be given in the presence of, or after
28 notice to, the parties or counsel. Such information must be given in writing or stated on the
29 record.

30 (p) New trial when no verdict given. If a jury is discharged or prevented from giving a
31 verdict for any reason, the action shall be tried anew.

1 (q) Court deemed in session pending verdict; verdict may be sealed. While the jury is absent
2 the court may be adjourned from time to time in respect to other business, but it shall be open for
3 every purpose connected with the cause submitted to the jury, until a verdict is rendered or the
4 jury discharged. The court may direct the jury to bring in a sealed verdict at the opening of the
5 court, in case of an agreement during a recess or adjournment for the day.

6 (r) Declaration of verdict. When the jury or three-fourths of them, or such other number as
7 may have been agreed upon by the parties pursuant to Rule 48, have agreed upon a verdict they
8 must be conducted into court, their names called by the clerk, and the verdict rendered by their
9 foreperson; the verdict must be in writing, signed by the foreperson, and must be read by the
10 clerk to the jury, and the inquiry made whether it is their verdict. Either party may require the
11 jury to be polled, which shall be done by the court or clerk asking each juror if it is the juror's
12 verdict. If, upon such inquiry or polling there is an insufficient number of jurors agreeing
13 therewith, the jury must be sent out again; otherwise the verdict is complete and the jury shall be
14 discharged from the cause.

15 (s) Correction of verdict. If the verdict rendered is informal or insufficient, it may be
16 corrected by the jury under the advice of the court, or the jury may be sent out again.

17

1 Rule 51. Instructions to jury; objections.

2 (a) Preliminary instructions. After the jury is sworn and before opening statements, the court
3 may instruct the jury concerning the jurors' duties and conduct, the order of proceedings, the
4 elements and burden of proof for the cause of action, and the definition of terms. The court may
5 instruct the jury concerning any matter stipulated to by the parties and agreed to by the court and
6 any matter the court in its discretion believes will assist the jurors in comprehending the case.

7 ~~Preliminary instructions shall be in writing and a copy provided to each juror. At the final
8 pretrial conference or at such other time as the court directs, a party may file a written request
9 that the court instruct the jury on the law as set forth in the request. The court shall inform the
10 parties of its action upon a requested instruction prior to instructing the jury, and it shall furnish
11 the parties with a copy of its proposed instructions, unless the parties waive this requirement.~~

12 (b) Interim ~~written~~ instructions. During the course of the trial, the court may instruct the jury
13 on the law if the instruction will assist the jurors in comprehending the case. ~~Prior to giving the
14 written instruction, the court shall advise the parties of its intent to do so and of the content of the
15 instruction.~~ A party may request an interim ~~written~~ instruction.

16 (c) Final instructions. The court shall instruct the jury at the conclusion of the evidence on
17 any matter not included in earlier instructions. The court may repeat an earlier instruction to
18 assist the jury in comprehending the case. Parties shall file requested jury instructions at the time
19 and in the format directed by the court. If a party relies on statute, rule or case law to support or
20 object to a requested instruction, the party shall provide a citation to or a copy of the precedent.
21 ~~The court shall inform counsel of its proposed action upon the requests prior to instructing the~~
22 ~~jury; and it shall furnish counsel with a copy of its proposed instructions, unless the parties waive~~
23 ~~this requirement. Final instructions shall be in writing and at least one copy provided to the jury.~~

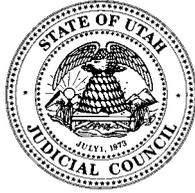
24 (d) Request for instructions. Parties shall file requested jury instructions at the final pretrial
25 conference or any other time directed by the court. If a party relies on a statute, rule or case to
26 support or object to a requested instruction, the party shall provide a citation to or a copy of the
27 statute, rule or case. The court shall inform the parties of its action upon a requested instruction
28 prior to instructing the jury, and shall provide the parties with a copy of the proposed
29 instructions, unless the parties waive this requirement.

1 (e) Copy of instructions to jury. Instructions approved by the court before being given to the
2 jury shall be in writing and at least one copy provided to the jury. The court shall provide a copy
3 to any juror who requests one and may, in its discretion, provide a copy to all jurors.

4 ~~(d)-(f)~~ Objections to instructions. Objections to written instructions shall be made before the
5 instructions are given to the jury. Objections to oral instructions may be made after they are
6 given to the jury, but before the jury retires to consider its verdict. The court shall provide an
7 opportunity to make objections outside the hearing of the jury. Unless a party objects to an
8 instruction or the failure to give an instruction, the instruction may not be assigned as error
9 except to avoid a manifest injustice. In objecting to the giving of an instruction, a party shall
10 identify the matter to which the objection is made and the grounds for the objection.

11 ~~(e)-(g)~~ Arguments. Arguments for the respective parties shall be made after the court has
12 given the jury its final instructions. The court shall not comment on the evidence in the case, and
13 if the court states any of the evidence, it must instruct the jurors that they are the exclusive
14 judges of all questions of fact.

15



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: March 17, 2004
Re: Rule 26. General provisions governing discovery.

Fran has suggested amending Rule 26 to identify in the discovery plan those who have pledged to abide by the Utah Standards of Professionalism and Civility.

(f) Discovery and scheduling conference.

The following applies to all cases not exempt under subdivision (a)(2), except as otherwise stipulated or directed by order.

(f)(1) The parties shall, as soon as practicable after commencement of the action, meet in person or by telephone to discuss the nature and basis of their claims and defenses, to discuss the possibilities for settlement of the action, to make or arrange for the disclosures required by subdivision (a)(1), and to develop a stipulated discovery plan. Plaintiff's counsel shall schedule the meeting. The attorneys of record shall be present at the meeting and shall attempt in good faith to agree upon the discovery plan.

(f)(2) The plan shall include:

(f)(2)(A) what changes should be made in the timing, form, or requirement for disclosures under subdivision (a), including a statement as to when disclosures under subdivision (a)(1) were made or will be made;

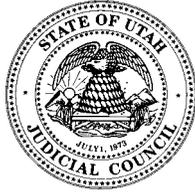
(f)(2)(B) the subjects on which discovery may be needed, when discovery should be completed, whether discovery should be conducted in phases and whether discovery should be limited to particular issues;

(f)(2)(C) what changes should be made in the limitations on discovery imposed under these rules, and what other limitations should be imposed;

(f)(2)(D) a statement indicating the names of counsel for the parties who have pledged to abide by the Utah Standards of Professionalism and Civility; and

~~(f)(2)(E)~~ any other orders that should be entered by the court.

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: March 17, 2004
Re: URCP 73. Attorney fees. Fee splitting

The issue has been raised whether amendments to URCP 73 might be appropriate in light of fee arrangements allegedly designed to improperly evade the fee splitting prohibition of Rule of Professional Conduct 5.4.

URCP 73 replaced CJA 4-505 and 4-505.01 on November 1, 2003. If attorney fees are claimed by affidavit detailing the work done, URCP 73 requires, as did its predecessor, an affidavit stating that the fees will not be split in violation of RPC 5.4. If fees are claimed under the schedule of fees, URCP 73 does not require such an affidavit, but neither did its predecessor. The prohibition against splitting fees is in RPC 5.4 not URCP 73.

URCP 73 might be amended to require an affidavit acknowledging the fee splitting prohibition even when claiming attorney fees under the schedule. Indeed, the committee earlier considered including such a requirement but rejected it, arguing that if the prohibition itself did not deter, neither would an affidavit that one would honor the prohibition.

If URCP 73 is amended, the amendment should not go beyond requiring the affidavit. If it is sound policy to define fee arrangements designed to evade the prohibition on fee splitting as the equivalent of fee splitting and therefore prohibited, the better vehicle is RPC 5.4, which is the responsibility of another committee. Whether a particular fee arrangement violates RPC 5.4 should be determined, not in a rule of civil procedure, but by a complaint to the Office of Professional Conduct or when properly raised in the course of litigation.

Encl. URCP 73
RPC 5.4

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.

1 Rule 73. Attorney fees.

2 (a) When attorney fees are authorized by contract or by law, a request for attorney fees shall
3 be supported by affidavit or testimony unless the party claims attorney fees in accordance with
4 the schedule in subsection (d) or in accordance with Utah Code Section 75-3-718 and no
5 objection to the fee has been made.

6 (b) An affidavit supporting a request for or augmentation of attorney fees shall set forth:

7 (b)(1) the basis for the award;

8 (b)(2) a reasonably detailed description of the time spent and work performed, including for
9 each item of work the name, position (such as attorney, paralegal, administrative assistant, etc.)
10 and hourly rate of the persons who performed the work;

11 (b)(3) factors showing the reasonableness of the fees;

12 (b)(4) the amount of attorney fees previously awarded; and

13 (b)(5) if the affidavit is in support of attorney fees for services rendered to an assignee or a
14 debt collector, the terms of any agreement for sharing the fee and a statement that the attorney is
15 not sharing the fee or any portion thereof in violation of Rule of Professional Conduct 5.4.

16 (c) ~~No affidavit is required if~~ If a party requests attorney fees in accordance with the schedule
17 in subsection (d) and if the attorney fees are for services rendered to an assignee or a debt
18 collector, the attorney shall file an affidavit showing the terms of any agreement for sharing the
19 fee and a statement that the attorney is not sharing the fee or any portion thereof in violation of
20 Rule of Professional Conduct 5.4. In such cases the party’s complaint shall state the basis for
21 attorney fees, state the amount of attorney fees allowed by the schedule, and cite the law or
22 attach a copy of the contract authorizing the award.

23 (d) Attorney fees awarded under the schedule may be augmented only for considerable
24 additional efforts in collecting or defending the judgment and only after further order of the
25 court.

Amount of Damages, Exclusive of Costs, Attorney Fees and Post-Judgment Interest, Between	and:	Attorney Fees Allowed
0.00	1,500.00	250.00
1,500.01	2,000.00	325.00
2,000.01	2,500.00	400.00
2,500.01	3,000.00	475.00
3,000.01	3,500.00	550.00

3,500.01	4,000.00	625.00
4,000.01	4,500.00	700.00
4,500.01	or more	775.00

1
2 Advisory Committee Note. The schedule does not limit the amount of a reasonable attorney
3 fee if an affidavit is submitted. The schedule of attorney fees includes amounts for routine orders
4 supplemental to the judgment and routine collection writs. For attorney fees for collection efforts
5 beyond such routine steps, the lawyer should apply to the court under subsections (a) and (b).
6

Rule 5.4. Professional independence of a lawyer.

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(a)(1) An agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(a)(2) A lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer; and

(a)(3) A lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(d)(1) A nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(d)(2) A nonlawyer is a corporate director or officer thereof; or

(d)(3) A nonlawyer has the right to direct or control the professional judgment of a lawyer.

(e) A lawyer may practice in a non-profit corporation which is established to serve the public interest provided that the nonlawyer directors and officers of such corporation do not interfere with the independent professional judgment of the lawyer.

COMMENT

The provisions of this Rule express traditional limitations on sharing fees. These limitations are to protect the lawyer's professional independence of judgment. Where someone other than the client pays the lawyer's fee or salary, or recommends employment of the lawyer, that arrangement does not modify the lawyer's obligation to the client. As stated in paragraph (c), such arrangements should not interfere with the lawyer's professional judgment.

The Rule is intended to prevent lay interference with the attorney/client relationship in non-profit public interest law firms. Typically, these organizations are structured so that a lay board of directors decides to undertake or fund a case or category of cases on behalf of a third party. The organization thus becomes the payor or provider of legal services for others.

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) “Claim” means a claim, counterclaim, cross claim, third party claim or any other
4 claim.

5 (a)(2)¹ “Defendant” means the party against whom a claim is filed or against whom judgment
6 has been entered.

7 (a)(3) “Deliver” means actual delivery or to make the property available for pick up and give
8 to the person entitled to delivery written notice of availability.

9 (a)(4)² “Disposable earnings” means that part of earnings for a pay period remaining after the
10 deduction of all amounts required by law to be withheld.

11 (a)(5)³ “Earnings” means compensation, however denominated, paid or payable to an
12 individual for personal services, including periodic payments pursuant to a pension or retirement
13 program. Earnings accrue on the last day of the period in which they were earned.

14 (a)(6)⁴ “Notice of exemptions” means a form that advises the defendant or a third person that
15 certain property is or may be exempt from seizure under state or federal law. The notice shall list
16 examples of exempt property and indicate that other exemptions may be available. The notice
17 shall instruct the defendant of the deadline for filing a reply and request for hearing.

18 (a)(7) “Officer” means any person designated by the court to whom the writ is issued,
19 including a sheriff, constable, deputy thereof or any person appointed by the officer to hold the
20 property.⁵

21 (a)(8)⁶ “Plaintiff” means the party filing a claim or in whose favor judgment has been
22 entered.

23 (a)(9)⁷ “Property” means the defendant’s property of any type not exempt from seizure.
24 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

⁷ 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.

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

5 (b)⁸ Security.

6 (b)(1) Amount. When security is required of a party, the party shall provide security in the
7 sum and form the court deems adequate. For security by the plaintiff the amount should be
8 sufficient to reimburse other parties for damages, costs and attorney fees incurred as a result of a
9 writ wrongfully obtained. For security by the defendant, the amount should be equivalent to the
10 amount of the claim or judgment or the value of the defendant’s interest in the property. In fixing
11 the amount, the court may consider any relevant factor. 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 or
13 attorney fees as a result of a writ wrongfully obtained or if there exists some other substantial
14 reason for dispensing with security.⁹ The amount of security does not establish or limit the
15 amount of damages, costs or attorney fees recoverable if the writ is wrongfully obtained.

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

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

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

⁸ 64B(c), (d). 64C(b), (c), (f), (g)

⁹ 64F; 65A(c)

1 (c)(1) Referee. The court may appoint a referee to monitor hearings under this subsection.

2 (c)(2)¹⁰ Hearing; witnesses; discovery. The court may conduct hearings as necessary to
3 identify property and to apply the property toward the satisfaction of the judgment or order.
4 Witnesses may be subpoenaed to appear, testify and produce records. **The court may permit**
5 **discovery.**

6 (c)(3)¹¹ Restraint. The court may forbid any person from transferring, disposing or interfering
7 with the property.

8 (d) Issuance of writ; service

9 (d)(1)¹² Clerk to issue writs. The clerk of the court shall issue writs. A court in which a
10 transcript or abstract of a judgment or order has been filed has the same authority to issue a writ
11 as the court that entered the judgment or order. If the writ directs the seizure of real property, the
12 clerk of the court shall issue the writ to the sheriff of the county in which the real property is
13 located. If the writ directs the seizure of personal property, the clerk of the court may issue the
14 writ to an officer of any county.

15 (d)(2)¹³ Content. The writ may direct the officer to seize the property, to keep the property
16 safe, to deliver the property to the plaintiff, to sell the property, or to take other specified actions.
17 If the writ is to enforce a judgment or order for the payment of money, the writ shall specify the
18 amount ordered to be paid and the amount due.

19 (d)(2)(A) If the writ is issued ex parte before judgment, the clerk shall attach to the writ
20 plaintiff's affidavit, detailed description of the property, notice of hearing, order authorizing the
21 writ, notice of exemptions and reply form.

22 (d)(2)(B) If the writ is issued before judgment but after a hearing, the clerk shall attach to the
23 writ plaintiff's affidavit and detailed description of the property.

24 (d)(2)(C) If the writ is issued after judgment, the clerk shall attach to the writ plaintiff's
25 application, detailed description of the property, the judgment, notice of exemptions and reply
26 form.

27 (d)(3) Service.

¹⁰ 69(o), (p), (r); 64C(i).

¹¹ 69(q), (s), (t)

¹² 69(c)

¹³ 64A(8), 64B(c), (h)(2), 64C(d), 64D(d), 69(d)

1 (d)(3)(A)¹⁴ Upon whom; effective date. The officer shall serve the writ and accompanying
2 papers on the defendant, and, as applicable, the garnishee and any person named by the plaintiff
3 as claiming an interest in the property. The officer may simultaneously serve notice of the date,
4 time and place of sale. A writ of continuing garnishment served while a previous writ of
5 continuing garnishment is in effect is effective upon expiration of the previous writ; otherwise, a
6 writ is effective upon service.

7 (d)(3)(B)¹⁵ Return; inventory. Within 10 days after service, the officer shall return the writ to
8 the court with proof of service. If property has been seized, the officer shall include an inventory
9 of the property and whether the property is held by the officer or the officer’s designee. If a
10 person refuses to give the officer an affidavit describing the property, the officer shall indicate
11 the fact of refusal on the return, and the court may require that person to pay the costs of any
12 proceeding taken for the purpose of obtaining such information.

13 **(d)(3)(C)¹⁶ Service of writ by publication. The court may order service of a writ by**
14 **publication upon a person entitled to notice in circumstances in which service by**
15 **publication of a summons and complaint would be appropriate under Rule 4.**

16 (d)(3)(C)(i) If service of a writ is by publication, substantially the following shall be
17 published under the caption of the case:

18 To _____, [Defendant/Garnishee/Claimant]:
19 A writ of _____ has been issued in the above-captioned case commanding the officer
20 of _____ County as follows:
21 [Quoting body of writ]

22 **Your rights may be adversely affected by these proceedings. Property in which you**
23 **have an interest may be seized to pay a judgment or order.** You have the right to claim
24 property exempt from seizure under statutes of the United States or this state, including Utah
25 Code, Title 78, Chapter 23.

26 (d)(3)(C)(ii) The notice shall be published in a newspaper of general circulation in each
27 county in which the property is located at least 10 days prior to the due date for the reply or at

¹⁴ 64A(7), 64B(c), 64C(e), 64D(e), 69(f)
¹⁵ 64A(7), 64B(c), (h)(3), 64C(e)(7), (h), 64D(e), 69(e)
¹⁶ 69(g)

1 least 10 days prior to the date of any sale, or as the court orders. The date of publication is the
2 date of service.

3 (e)¹⁷ Claim to property by third person.

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

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

16 (e)(3) Plaintiff's security. If the plaintiff requests that an officer seize or sell property claimed
17 by a person other than the defendant, the officer may request that the court require the plaintiff to
18 file security.

19 (f) Discharge of writ; release of property.

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

¹⁷ 64B(i), 64C(m), 64D(l), 69(n)

¹⁸ 64A(6), 64B(e), 64C(f)(1), (4)

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

3 (f)(3)¹⁹ Disposition of property. If the writ is discharged, the court shall order any remaining
4 property and proceeds of sales delivered to the defendant.

5 (f)(4)²⁰ Copy filed with county recorder. If an order discharges a writ upon property seized
6 by filing with the county recorder, the officer or a party shall file a certified copy of the order
7 with the county recorder.

8 (f)(5)²¹ Service on officer; disposition of property. If the order discharging the writ is served
9 on the officer:

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

11 (f)(5)(B) while the property is in the officer's custody, the officer shall return the property to
12 the defendant; or

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

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

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

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

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

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

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

¹⁹ 64C(1)

²⁰ 64C(m)

²¹ 64C(3)

²² 65C(a)

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

2 or

3 (c)(4) that the defendant has fraudulently incurred the obligation that is the subject of the
4 action; or

5 (c)(5) that the property will decline in value; or

6 **(c)(6) that the plaintiff has an ownership or special interest in the property; or**

7 (c)(7) probable cause of losing the remedy unless the court issues the writ;

8 and all of the following:

9 (c)(8) that the property is not earnings and not exempt from execution; and

10 (c)(9) that the writ is not sought to hinder, delay or defraud a creditor of the defendant; and

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

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

15 (d) Statement. The affidavit supporting the motion shall state facts sufficient to show the
16 following information:

17 (d)(1) the nature, location and estimated value of the property and the name, address and
18 phone number of the person holding the property;

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

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

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

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

25 (d)(6) that the plaintiff will pay to the garnishee the fee established by Utah Code Section 78-
26 7-44.

27 **(e) Due diligence. If the plaintiff cannot by due diligence determine the facts necessary**
28 **to support the affidavit, the plaintiff shall explain in the affidavit the steps taken to**
29 **determine the facts and why the facts could not be determined.**

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

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

7 (h)²³ Reply. The defendant may file a reply to the affidavit for a prejudgment writ at least 24
8 hours before the hearing. The reply may:

9 (h)(1) challenge the issuance of the writ;

10 (h)(2) object to the sufficiency of the security or the sufficiency of the sureties;

11 (h)(3) request return of the property;

12 (h)(4) claim the property is exempt; or

13 (h)(5) claim a set off.

14 (i) Burden of proof. The burden is on the plaintiff to prove the facts necessary to support the
15 writ.

16 (j) Ex parte writ before judgment. If the plaintiff seeks a prejudgment writ prior to a hearing,
17 the plaintiff shall file an affidavit stating facts showing irreparable injury to the plaintiff before
18 the defendant can be heard or other reason notice should not be given. If a writ is issued without
19 notice to the defendant and opportunity to be heard, the court shall set a hearing for the earliest
20 reasonable time, and the writ and the order authorizing the writ shall:

21 (j)(1) designate the date and time of issuance and the date and time of expiration;

22 (j)(2) designate the date, time and place of the hearing;

23 (j)(3) forthwith be filed in the clerk's office and entered of record;

24 (j)(4) expire 10 days after issuance unless the court establishes an earlier expiration date, the
25 defendant consents that the order and writ be extended or the court extends the order and writ
26 after hearing;

27 (j)(5) be served on the defendant and any person named by the plaintiff as claiming an
28 interest in the property in a manner directed by the court that is reasonably calculated to
29 expeditiously give actual notice of the hearing.

²³ 64D(h), 69(g)

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

2 (a)²⁴ Availability. A writ of replevin is available to compel delivery to the plaintiff of specific
3 personal property held by the defendant.

4 (b)²⁵ Grounds. In addition to the grounds required in Rule 64A, the grounds for a writ of
5 replevin require all of the following:

6 (b)(1)²⁶ that the plaintiff is entitled to possession; and

7 (b)(2)²⁷ that the defendant wrongfully detains the property.

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

9 (a)²⁸ Availability. A writ of attachment is available to seize property in the possession or
10 under the control of the defendant.

11 (b)²⁹ Grounds. In addition to the grounds required in Rule 64A, the grounds for a writ of
12 attachment require all of the following:

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

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

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

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

18 (a)³⁰ Availability. A writ of garnishment is available to seize property of the defendant in the
19 possession or under the control of a person other than the defendant. A writ of garnishment is
20 available after final judgment or after the claim has been filed and prior to judgment. The
21 maximum portion of disposable earnings of an individual subject to seizure is the lesser of:

22 (a)(1) 50% of the defendant's disposable earnings for a writ to enforce payment of a
23 judgment for failure to support dependent children or 25% of the defendant's disposable earnings
24 for any other writ; or

²⁴ 64B(a)

²⁵ 64B(b)

²⁶ 64B(b)(2)

²⁷ 64B(b)(3), (4)

²⁸ 65C(a), (o)

²⁹ 65C(a)

³⁰ 64D(a)(i), (ii)

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

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

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

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

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

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

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

12 (c)(1) the nature, location, **account number** and estimated value of the property and the
13 name, address and phone number of the person holding the property;

14 (c)(2) whether any of the property consists of earnings;

15 (c)(3) the amount of the judgment and the amount due on the judgment;

16 (c)(4) the name, address and phone number of any person known to the plaintiff to claim an
17 interest in the property; and

18 (c)(5) that the plaintiff will pay to the garnishee the fee established by Utah Code Section 78-
19 7-44.

20 **(d) Defendant identification. The plaintiff shall submit with the affidavit or application**
21 **a copy of the judgment information statement described in Utah Code Section 78-22-1.5 or**
22 **the defendant's name and address and, if known, the defendant's social security number**
23 **and driver license number.**

24 (e)³² Interrogatories. The plaintiff shall submit with the affidavit or application
25 interrogatories to the garnishee inquiring:

26 (e)(1) whether the garnishee is indebted to the defendant and the nature of the indebtedness;

27 (e)(2) whether the garnishee possesses or controls any property of the defendant and, if so,
28 the nature, location and estimated value of the property;

³¹ 64D(b)(i), (ii)

³² 64D(d)(ii)

1 (e)(3) whether the garnishee knows of any property of the defendant in the possession or
2 under the control of another, and, if so, the nature, location and estimated value of the property
3 and the name, address and phone number of the person with possession or control;

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

6 (e)(5)³³ the date and manner of the garnishee's service of papers upon the defendant and any
7 third persons;

8 (e)(6)³⁴ the dates on which previously served writs of continuing garnishment were served;
9 and

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

13 (f)³⁵ Content of writ; priority. The writ shall instruct the garnishee to complete the steps in
14 subsection (g) and instruct the garnishee how to deliver the property. Several writs may be issued
15 at the same time so long as only one garnishee is named in a writ. Priority among writs of
16 garnishment is in order of service. A writ of garnishment of earnings applies to the earnings
17 accruing during the pay period in which the writ is served.

18 (g)³⁶ Garnishee's responsibilities. The writ shall direct the garnishee to complete the
19 following within seven business days of service of the writ upon the garnishee:

20 (g)(1) answer the interrogatories under oath or affirmation;

21 (g)(2)³⁷ serve the answers on the plaintiff;

22 (g)(3)³⁸ serve the writ, answers, notice of exemptions and two copies of the reply form upon
23 the defendant and any other person shown by the records of the garnishee to have an interest in
24 the property; and

25 (g)(4) file the answers with the clerk of the court.

³³ 64D(d)(iii), 64D(g)

³⁴ 64D(v)(iii)

³⁵ 64D(c), 64D(d)(i), (v), 64D(v)(iii)

³⁶ 64D(d)(iii)

³⁷ 5(b)

³⁸ 5(b)

1 **The garnishee may amend answers to interrogatories to correct errors or to reflect a**
2 **change in circumstances by serving and filing the amended answers in the same manner as**
3 **the original answers.**

4 (h)³⁹ Reply to answers; request for hearing.

5 (h)(1) The plaintiff or defendant may file and serve upon the garnishee a reply to the answers
6 and request a hearing. The reply shall be filed and served within 10 days after service of the
7 answers or amended answers, but the court may deem the reply timely if filed before notice of
8 sale of the property or before the property is delivered to the plaintiff. The reply may:

9 (h)(1)(A) challenge the issuance of the writ;

10 (h)(1)(B) challenge the accuracy of the answers;

11 (h)(1)(C) claim the property or a portion of the property is exempt; or

12 (h)(1)(D) claim a set off.

13 (h)(2) The reply is deemed denied, and the court shall conduct an evidentiary hearing.

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

15 (h)(3)(A) the garnishee's answers are deemed correct; and

16 (h)(3)(B) the property is not exempt, except as reflected in the answers.

17 (i)⁴⁰ Delivery of property. A garnishee shall not deliver property until the property is due the
18 defendant. Unless otherwise directed in the writ, the garnishee shall retain the property until 20
19 days after service by the garnishee under subsection (g). If the garnishee is served with a reply
20 within that time, the garnishee shall retain the property and comply with the order of the court
21 entered after the hearing on the reply. Otherwise, the garnishee shall deliver the property as
22 provided in the writ.

23 (j) Liability of garnishee.

24 (j)(1)⁴¹ A garnishee who acts in accordance with this rule, the writ or an order of the court is
25 released from liability, unless answers to interrogatories are successfully controverted.

26 (j)(2)⁴² If the garnishee fails to comply with this rule, the writ or an order of the court, the
27 court may order the garnishee to appear and show cause why the garnishee should not be ordered

³⁹ 64D(h), (i)

⁴⁰ 64D(h)(i), (iii), (iv), 64D(r)

⁴¹ 64D(k)

⁴² 64D(j)

1 to pay such amounts as are just, including the value of the property or the balance of the
2 judgment, whichever is less, and reasonable costs and attorney fees incurred by parties as a result
3 of the garnishee's failure. **If the garnishee shows that the steps taken to secure the property
4 were reasonable, the court may excuse the garnishee's liability in whole or in part.**

5 (j)(3)⁴³ No person is liable as garnishee by reason of having drawn, accepted, made or
6 endorsed any negotiable instrument that is not in the possession or control of the garnishee at the
7 time of service of the writ.

8 (j)(4)⁴⁴ Any person indebted to the defendant may pay to the officer the amount of the debt or
9 so much as is necessary to satisfy the writ, and the officer's receipt discharges the debtor for the
10 amount paid.

11 (j)(5)⁴⁵ A garnishee may deduct from the property any claim against the plaintiff or
12 defendant.

13 (k) Property as security.

14 (k)(1)⁴⁶ If property secures payment of a debt to the garnishee, the property need not be
15 applied at that time but the writ remains in effect, and the property remains subject to being
16 applied upon payment of the debt. If property secures payment of a debt to the garnishee, the
17 plaintiff may obtain an order authorizing the plaintiff to buy the debt and requiring the garnishee
18 to deliver the property.

19 (k)(2)⁴⁷ If property secures an obligation that does not require the personal performance of
20 the defendant and that can be performed by a third person, the plaintiff may obtain an order
21 authorizing the plaintiff or a third person to perform the obligation and requiring the garnishee to
22 deliver the property upon completion of performance or upon tender of performance that is
23 refused.

24 (l)⁴⁸ Writ of continuing garnishment.

⁴³ 64D(n)

⁴⁴ 69(m)

⁴⁵ 64D(m)

⁴⁶ 64D(o)

⁴⁷ 64D(p)

⁴⁸ 64D(v)

1 (1)(1) After final judgment, the plaintiff may obtain a writ of continuing garnishment **against**
2 **any non exempt periodic payment.** All provisions of this rule apply to this subsection, but this
3 subsection governs over a contrary provision.

4 (1)(2) A writ of continuing garnishment applies to payments to the defendant from the
5 effective date of the writ until the earlier of the following:

6 (1)(2)(A) 120 days;

7 (1)(2)(B) the last periodic payment;

8 (1)(2)(C) the judgment is stayed, vacated or satisfied in full; or

9 (1)(2)(D) the writ is discharged.

10 (1)(3) Only one writ of continuing garnishment (*in favor of this plaintiff against this*
11 *defendant naming this garnishee*) may be in effect at one time. **One additional writ of**
12 **continuing garnishment (*in favor of this plaintiff against this defendant naming this***
13 ***garnishee*) for a subsequent payment period may be served on the garnishee while an**
14 **earlier writ of continuing garnishment is in effect.**

15 (1)(4) Within seven days after the end of each payment period, the garnishee shall with
16 respect to that period:

17 (1)(4)(A) answer the interrogatories under oath or affirmation;

18 (1)(4)(B) serve the answers to the interrogatories on the plaintiff, the defendant and any other
19 person shown by the records of the garnishee to have an interest in the property;

20 (1)(4)(C) file the answers to the interrogatories with the clerk of the court; and

21 (1)(4)(D) deliver the property as provided in the writ.

22 (1)(5) Any person served by the garnishee may reply as in subsection (g), but whether to
23 grant a hearing is within the judge's discretion.

24 (1)(6) A writ of continuing garnishment issued **in favor of the state of Utah:**

25 (1)(6)(A) is not limited to 120-days;

26 (1)(6)(B) has priority over other writs of continuing garnishment; and

27 (1)(6)(C) if served during the term of another writ of continuing garnishment, tolls that term
28 and preserves all priorities until the expiration of the state's writ.

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

1 (a)⁴⁹ Availability. A writ of execution is available following entry of a final judgment or
2 order requiring the delivery of property or the payment of money to seize property in the
3 possession or under the control of the defendant.

4 (b)⁵⁰ Application. To obtain a writ of execution, the plaintiff shall file an application stating:

5 (b)(1) the amount of the judgment or order and the amount due on the judgment or order;

6 (b)(2) the nature, location and estimated value of the property; and

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

9 (c)⁵¹ Death of plaintiff. If the plaintiff dies, a writ of execution may be issued upon the
10 affidavit of an authorized executor or administrator or successor in interest.

11 (d)⁵² Reply to writ; request for hearing.

12 (d)(1) The defendant may reply to the writ and request a hearing. The reply shall be filed and
13 served within 10 days after service of the writ and accompanying papers upon the defendant.

14 (d)(2) The court shall set the matter for an evidentiary hearing. If the court determines that
15 the writ was wrongfully obtained, or that property is exempt from seizure, the court shall enter an
16 order directing the officer to release the property. If the court determines that the writ was
17 properly issued and the property is not exempt, the court shall enter an order directing the officer
18 to sell or deliver the property. If the date of sale has passed, notice of the rescheduled sale shall
19 be given. No sale may be held until the court has decided upon the issues presented at the
20 hearing.

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

22 (e)⁵³ Mortgage foreclosure governed by statute. Utah Code Title 78, Chapter 37, Mortgage
23 Foreclosure, governs mortgage foreclosure proceedings over contrary provisions of these rules.

24 **Rule 69A.⁵⁴ Seizure of property.**

25 Unless otherwise directed by the writ, the officer shall seize property as follows:

⁴⁹ 69(a), (c)

⁵⁰ 69(d)

⁵¹ 69(c)

⁵² 69(h)

⁵³ 69(g)

⁵⁴ 64C(e)

1 (a)⁵⁵ Debtor's preference. When there is more property than necessary to satisfy the amount
2 due, the officer shall seize such part of the property as the defendant may indicate. If the
3 defendant does not indicate a preference, the officer shall first seize personal property, and if
4 sufficient personal property cannot be found, then the officer shall seize real property.

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

10 (c) Personal property.

11 **(c)(1) Farm products, as that term is defined in Utah Code Section 70A-9a-102, shall be**
12 **seized by filing the writ and description of the property with the central filing system**
13 **established by Utah Code Section 70A-9a-320.**

14 (c)(2) Securities shall be seized as provided in Utah Code Section 70A-8-111.

15 (c)(3) In the discretion of the officer, property of extraordinary size or bulk, property that
16 would be costly to take into custody or to store and property not capable of delivery may be
17 seized by serving the writ and a description of the property on the person holding the property.
18 The officer shall request of the person holding the property an affidavit describing the nature,
19 location and estimated value of the property.

20 (c)(4) Otherwise, personal property shall be seized by serving the writ and a description of
21 the property on the person holding the property and taking the property into custody.

22 **Rule 69B. Sale of property; delivery of property.**

23 (a)⁵⁶ Sale before judgment. The officer may sell the property before judgment if it is
24 perishable or threatens to decline speedily in value. The court may order the officer to sell the
25 property before judgment if the court finds that the interest of the parties will be served by sale.
26 The officer shall keep safe the proceeds of the sale subject to further order of the court.

27 (b) Notice of sale. The officer shall set the date, time and place for sale and serve notice
28 thereof on the defendant and on any third party named by the plaintiff or garnishee. Service shall

⁵⁵ 69(f)

⁵⁶ 64C(j)

1 be not later than the initial publication of notice of the sale. The officer shall publish notice of the
2 date time and place of sale as follows:

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

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

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

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

26 (d) Conduct of sale. All sales shall be at auction to the highest bidder, Monday through
27 Saturday, legal holidays excluded, between the hours of 9 o'clock a.m. and 8 o'clock p.m. at a
28 place reasonably convenient to the public. Real property shall be sold at the courthouse of the
29 county in which the property is located. The officer shall sell only so much property as is
30 necessary to satisfy the amount due. The officer shall not purchase property or be interested in

1 any purchase. Property capable of delivery shall be within view of those who attend the sale. The
2 property shall be sold in such parcels as are likely to bring the highest price. Severable lots of
3 real property shall be sold separately. Real property claimed by a third party shall be sold
4 separately if requested by the third party. The defendant may direct the order in which the
5 property is sold.

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

10 (e)(1) pay the reasonable and necessary costs of seizing, transporting, storing and selling the
11 property;

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

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

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

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

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

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

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

23 (h) Property not capable of delivery.⁵⁷ Upon payment of the amount bid, the officer shall
24 deliver to the purchaser of property not capable of delivery a certificate of sale describing the
25 property and stating that all right, title and interest which the defendant had in the property is
26 transferred to the purchaser. The officer shall serve a duplicate of the certificate on the person
27 controlling the property.

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

⁵⁷ New.

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

2 (i)(2) the price paid;

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

5 (i)(4) a statement whether the sale is subject to redemption.

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

7 (j) The officer shall deliver the property as directed by the writ.

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

9 (a)⁵⁸ Right of redemption. Real property may be redeemed unless the estate is less than a
10 leasehold of a two-years' unexpired term, in which case the sale is absolute.

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

16 (c) How made. **The redemptioner shall serve on the purchaser notice of intent to redeem**
17 **at least 10 days before redemption.** To redeem, the redemptioner shall pay the amount required
18 to the purchaser and shall serve on the purchaser:

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

21 (c)(2) an assignment, properly acknowledged if necessary to establish the claim; and

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

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

24 (e) Redemption price. The price to redeem is the sale price plus six percent. The price for a
25 subsequent redemption is the redemption price plus three percent. If the purchaser or
26 redemptioner, either before or after being served with a notice of intent to redeem, files with the
27 county recorder notice of the amounts paid for taxes, assessments, insurance, maintenance, repair
28 or any lien other than the lien on which the redemption was based, the price to redeem includes
29 such amounts plus six percent interest for an initial redemption or three percent interest for a

⁵⁸ 69(j)

1 subsequent redemption. Failure to file notice of the amounts with the county recorder waives the
2 right to claim such amounts.⁵⁹

3 (f) Dispute regarding price. If there is a dispute about the redemption price, the redemptioner
4 shall **within 20 days of the redemption** pay into court the amount necessary for redemption less
5 the amount in dispute and file and serve upon the purchaser a petition setting forth the items to
6 which the redemptioner objects and the grounds for the objection. The petition is deemed denied.
7 The court may permit discovery. The court shall conduct an evidentiary hearing and enter an
8 order determining the redemption price. The redemptioner shall pay to the clerk any additional
9 amount within seven days after the court's order.

10 (g) Certificate of redemption. The purchaser shall promptly execute and deliver to the
11 redemptioner, or the redemptioner to a subsequent redemptioner, a certificate of redemption
12 containing:

13 (g)(1) a detailed description of the real property;

14 (g)(2) the price paid;

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

17 (g)(4) if known, whether the sale is subject to redemption.

18 The redemptioner or subsequent redemptioner shall file a duplicate of the certificate with the
19 county recorder.

20 (h)⁶⁰ Conveyance. The purchaser or last redemptioner is entitled to conveyance upon the
21 expiration of the time permitted for redemption.

22 (i)⁶¹ Rents and profits, request for accounting, extension of time for redemption.

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

⁵⁹ 69(j)(5)

⁶⁰ 69(j)(6)

⁶¹ 69(j)(7)

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

7 (j)⁶² Remedies.

8 (j)(1) For waste. A purchaser or redemptioner may file a motion requesting the court to
9 restrain the commission of waste on the property. After the estate has become absolute, the
10 purchaser or redemptioner may file an action to recover damages for waste.

11 (j)(2) Failure to obtain property.

12 (j)(2)(A) A purchaser or redemptioner who fails to obtain the property or is evicted from the
13 property because the judgment against the defendant is reversed or discharged may file a motion
14 for judgment against the plaintiff for the purchase price plus amounts paid for taxes, assessments,
15 insurance, maintenance and repair plus interest.

16 (j)(2)(B) A purchaser or redemptioner who fails to obtain the property or is evicted from the
17 property because of an irregularity in the sale or because the property is exempt, may file a
18 motion for judgment against the plaintiff or the defendant for the purchase price plus amounts
19 paid for taxes, assessments, insurance, maintenance and repair plus interest. **If the court enters**
20 **judgment against the plaintiff, the court shall revive the plaintiff's judgment against**
21 **defendant for the amount of the judgment against plaintiff.**

22 (j)(2)(C) Interest on a judgment in favor of a purchaser or redemptioner is governed by Utah
23 Code Section 15-1-4. Interest on a revived judgment in favor of the plaintiff against the
24 defendant is at the rate of the original judgment. **The effective date of a revived judgment in**
25 **favor of plaintiff against defendant is the date of the revived judgment.**

26 (k)⁶³ Contribution and reimbursement. A defendant may claim contribution or reimbursement
27 from other defendants by filing a motion.

28 **Rule 66. Receivers.**

⁶² 69(k)

⁶³ 69(l)

1 (a) Grounds for appointment. The court may appoint a receiver:

2 (a)(1) in any action in which property is in danger of being lost, removed, damaged or is
3 insufficient to satisfy a judgment, order or claim;

4 (a)(2) to carry the judgment into effect, to dispose of property according to the judgment and
5 to preserve property during the pendency of an appeal;

6 (a)(3) when a writ of execution has been returned unsatisfied or when the judgment debtor
7 refuses to apply property in satisfaction of the judgment;

8 (a)(4) when a corporation has been dissolved or is insolvent or in imminent danger of
9 insolvency or has forfeited its corporate rights; or

10 (a)(5) in all other cases in which receivers have been appointed by courts of equity.

11 (b) Appointment of receiver. No party or attorney to the action, nor any person who is not
12 impartial and disinterested as to all the parties and the subject matter of the action may be
13 appointed receiver without the written consent of all interested parties.

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

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

16 (e) Powers of receivers. A receiver has, under the direction of the court, power to bring and
17 defend actions, to seize property, to collect, pay and compromise debts, to invest funds, to make
18 transfers and to take other action as the court may authorize.

19 (f) Payment of taxes before sale or pledge of personal property. Before the receiver may sell,
20 transfer or pledge personal property, the receiver shall pay applicable taxes and shall file receipts
21 showing payment of taxes. If there are insufficient assets to pay the taxes, the court may
22 authorize the sale, transfer or pledge with the proceeds to be used to pay taxes. Within 10 days
23 after payment, the receiver shall file receipts showing payment of taxes.

24 (g) Real property. Before a receiver is vested with real property, the receiver shall file a
25 certified copy of the appointment order in the office of the county recorder of the county in
26 which the real property is located.

27