

Agenda

Advisory Committee on Rules of Civil Procedure

May 28, 2008
4:00 to 6:00 p.m.

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

Approval of minutes	Tab 1	Fran Wikstrom
Garnishment Procedures	Tab 2	Tim Shea Guests
Overall evaluation of URCP		Fran Wikstrom
Rule 45. Objection to subpoena by a party.	Tab 3	Fran Wikstrom
Discovery Timing	Tab 4	Leslie Slauch
References to Title 78	Tab 5	Tim Shea

Committee Web Page: <http://www.utcourts.gov/committees/civproc/>

Meeting Schedule

September 24, 2008

October 22, 2008

November 19, 2008 (3d Wednesday)

Tab 1

MINUTES

UTAH SUPREME COURT ADVISORY COMMITTEE ON THE RULES OF CIVIL PROCEDURE

Wednesday, April 23, 2008
Administrative Office of the Courts

Francis M. Wikstrom, Presiding

PRESENT: Francis M. Wikstrom, James T. Blanch, Francis J. Carney, Terrie T. McIntosh, Leslie W. Slaugh, Honorable Derek Pullan, Honorable Lyle R. Anderson, Honorable David O. Nuffer, Jonathan Hafen, Thomas R. Lee, Lincoln Davies, Cullen Battle, Todd M. Shaughnessy, Honorable Anthony B. Quinn, Anthony W. Schofield, Janet H. Smith

EXCUSED: Lori Woffinden, Barbara Townsend, Judge R. Scott Waterfall, David W. Scofield, Steven Marsden

STAFF: Tim Shea, Matty Branch, Trystan B. Smith

I. APPROVAL OF MINUTES.

Mr. Wikstrom called the meeting to order at 4:00 p.m., and entertained comments from the committee concerning the April 23, 2008 minutes. No comments were made and Mr. Wikstrom asked for a motion that the minutes be approved. The motion was duly made and seconded, and unanimously approved.

II. CJA CHAPTER 11. ADVISORY COMMITTEES AND THE RULEMAKING PROCESS.

Mr. Wikstrom brought to the committee's attention a proposed amendment to the rule-making process that requires committee members to disclose the general nature of his or her legal practice. Mr. Shea indicated that the rule change would not go into effect until later this year. However, in anticipation of the rule change, Mr. Wikstrom invited the committee members to disclose the nature of their practices to the other members, and those present did so.

III. OVERALL EVALUATION OF URCP.

Mr. Wikstrom asked the respective committee members to address their observations of other jurisdictions' expedited discovery rules.

Mr. Hafen discussed his observations of Arizona's expedited discovery rules. He noted that Arizona referred to its expedited discovery process as the "Madd" track. Cases subject to expedited discovery were randomly selected. Cases under a certain amount in controversy were

subject to mandatory arbitration. Mr. Hafen indicated that certain practitioners noted an increase in civility due to the rules.

Judge Pullan discussed his observations of Colorado's simplified procedures for civil actions, CRCP 16.1(a)(1). He noted the rules applied to all civil actions for monetary damages (under \$100,000 - one party, one claim) or any other form of relief. However, the rules allow a party to opt-out, and the trial court could order termination of the simplified procedures as well.

Colorado's simplified procedures do not allow for written discovery or depositions. An emphasis is placed on initial disclosures. But there is a voluntary discovery procedure. Parties can agree to engage in traditional discovery, but disputes regarding voluntary discovery cannot be presented to the court.

Trial dates are set within 40 days of the case being at issue. The jury is not instructed as to the \$100,000 limit. The trial court makes adjustments post-verdict.

Mr. Carney, Mr. Blanch and Mr. Shaughnessy addressed the simplified procedures project for the federal rules of civil procedures. Mr. Carney indicated the advisory committee for the federal rules was hostile to expedited discovery. Mr. Shaughnessy noted, that according to one report, discovery is not used at all in approximately 40% of federal civil actions, and used sparingly in another 25% to 30% of cases.

The committee discussed a number of different proposals — limited discovery, no discovery, and expedited trial settings.

Mr. Wikstrom asked the committee to continue discussion on these issues at the next meeting.

IV. RULE 6, ET AL. TIME.

Mr. Shea brought Rule 6 back to the committee.

He indicated he revised Rule 6 to basically mirror the federal rule, i.e., the days-are-days approach. The committee members generally indicated their approval to the change, and indicated the committee's desire to adopt the rule change in lock-step with the federal rules.

V. GARNISHMENT PROCEDURES.

Mr. Shea brought the garnishment procedures to the committee to address.

Mr. Shea indicated a number of employers complained during the legislative session about the complexity of the garnishment process. Mr. Shea discussed the garnishment process, including a number of requirements that are dictated by federal law. He indicated that in light of those requirements he did not know what could be changed to simplify the process. The current policy is that the state approved forms could be used, but are not mandatory.

At Mr. Carney's suggestion, the committee agreed to invite the state legislators interested in simplifying the garnishment process and members of the public who may want to discuss the process to a later committee meeting.

VI. RULE 45. OBJECTION TO SUBPOENA BY A PARTY.

Mr. Shea brought a question concerning Rule 45 and the grounds to object to a subpoena to the committee.

Currently, a third party affected by a subpoena (but not subject to the subpoena) can only object to the subpoena by moving for a protective order. Mr. Slaugh suggested the addition of a committee note indicating that a party affected by a subpoena could also object to the subpoena by filing an objection with the court.

After discussion, the committee agreed to further address this issue at the next meeting.

VIII. MISCELLANEOUS ISSUES.

Mr. Wikstrom asked that the committee address these topics at the next meeting.

IX. 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, May 28, 2008, at the Administrative Office of the Courts.

Tab 2

Tim:

I waited until after the Session was over to broach this subject. But, I have had a number of legislators who have constituents who have complained about the amount of paperwork required for a garnishment. I have been asked to ask if your committee would look at the process and see if the paperwork could be cut down.

If you could broach this subject with the Civil Procedures committee and let me know, I will get back to my legislators.

Thanks
Esther D. Chelsea-McCarty
Associate General Counsel
echelsea@utah.gov
(801) 538-1032

Esther,

There is a meeting next Wednesday, but the agenda is already full. I will raise it with them in April. In the meantime, let me ask, too much paperwork from whose perspective? The creditor, debtor or garnishee/employer? They all have rights and responsibilities, and the combination adds up to a considerable package.

Thanks,
Tim

Tim:

Most of the constituents the legislators are dealing with are small business owners, so it's the garnishee/employer who is doing the complaining. In one of my meetings over this during last Summer, we actually printed out the two different packets of forms from the court's website and discussed them with some people that run collection agencies. All thought that the forms could be simplified, but they all also realized that rights, responsibilities, and procedures had to be adhered to. So, I was asked to contact you to see if your committee would take a look at it with an eye to streamlining the process.

Thanks,
Esther

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

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

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

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

14 (b) Grounds for writ before judgment. In addition to the grounds required in Rule
15 64A, the grounds for a writ of garnishment before judgment require all of the following:

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

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

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

22 (b)(4) that the garnishee possesses or controls property of the defendant; and

23 (b)(5) that the plaintiff has attached the garnishee fee established by Utah Code
24 Section [78-7-44](#) [78A-2-216](#).

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

26 (c)(1) if known, the nature, location, account number and estimated value of the
27 property and the name, address and phone number of the person holding the property;

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

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

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

32 (c)(5) that the plaintiff has attached or will serve the garnishee fee established by
33 Utah Code Section ~~78-7-44~~ 78A-2-216.

34 (d) Defendant identification. The plaintiff shall submit with the affidavit or application
35 a copy of the judgment information statement described in Utah Code Section 78-22-1.5
36 78B-5-201 or the defendant's name and address and, if known, the last four digits of the
37 defendant's social security number and driver license number and state of issuance.

38 (e) Interrogatories. The plaintiff shall submit with the affidavit or application
39 interrogatories to the garnishee inquiring:

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

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

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

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

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

53 (e)(6) the dates on which previously served writs of continuing garnishment were
54 served; and

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

58 (f) Content of writ; priority. The writ shall instruct the garnishee to complete the steps
59 in subsection (g) and instruct the garnishee how to deliver the property. Several writs
60 may be issued at the same time so long as only one garnishee is named in a writ.
61 Priority among writs of garnishment is in order of service. A writ of garnishment of

62 earnings applies to the earnings accruing during the pay period in which the writ is
63 effective.

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

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

67 (g)(2) serve the answers on the plaintiff;

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

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

72 The garnishee may amend answers to interrogatories to correct errors or to reflect a
73 change in circumstances by serving and filing the amended answers in the same
74 manner as the original answers.

75 (h) Reply to answers; request for hearing.

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

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

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

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

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

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

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

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

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

90 (i) Delivery of property. A garnishee shall not deliver property until the property is
91 due the defendant. Unless otherwise directed in the writ, the garnishee shall retain the
92 property until 20 days after service by the garnishee under subsection (g). If the

93 garnishee is served with a reply within that time, the garnishee shall retain the property
94 and comply with the order of the court entered after the hearing on the reply. Otherwise,
95 the garnishee shall deliver the property as provided in the writ.

96 (j) Liability of garnishee.

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

100 (j)(2) If the garnishee fails to comply with this rule, the writ or an order of the court,
101 the court may order the garnishee to appear and show cause why the garnishee should
102 not be ordered to pay such amounts as are just, including the value of the property or
103 the balance of the judgment, whichever is less, and reasonable costs and attorney fees
104 incurred by parties as a result of the garnishee's failure. If the garnishee shows that the
105 steps taken to secure the property were reasonable, the court may excuse the
106 garnishee's liability in whole or in part.

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

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

113 (j)(5) A garnishee may deduct from the property any liquidated claim against the
114 plaintiff or defendant.

115 (k) Property as security.

116 (k)(1) If property secures payment of a debt to the garnishee, the property need not
117 be applied at that time but the writ remains in effect, and the property remains subject to
118 being applied upon payment of the debt. If property secures payment of a debt to the
119 garnishee, the plaintiff may obtain an order authorizing the plaintiff to buy the debt and
120 requiring the garnishee to deliver the property.

121 (k)(2) If property secures an obligation that does not require the personal
122 performance of the defendant and that can be performed by a third person, the plaintiff
123 may obtain an order authorizing the plaintiff or a third person to perform the obligation

124 and requiring the garnishee to deliver the property upon completion of performance or
125 upon tender of performance that is refused.

126 (l) Writ of continuing garnishment.

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

130 (l)(2) A writ of continuing garnishment applies to payments to the defendant from the
131 effective date of the writ until the earlier of the following:

132 (l)(2)(A) 120 days;

133 (l)(2)(B) the last periodic payment;

134 (l)(2)(C) the judgment is stayed, vacated or satisfied in full; or

135 (l)(2)(D) the writ is discharged.

136 (l)(3) Within seven days after the end of each payment period, the garnishee shall
137 with respect to that period:

138 (l)(3)(A) answer the interrogatories under oath or affirmation;

139 (l)(3)(B) serve the answers to the interrogatories on the plaintiff, the defendant and
140 any other person shown by the records of the garnishee to have an interest in the
141 property;

142 (l)(3)(C) file the answers to the interrogatories with the clerk of the court; and

143 (l)(3)(D) deliver the property as provided in the writ.

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

146 (l)(5) A writ of continuing garnishment issued in favor of the Office of Recovery
147 Services or the Department of Workforce Services of the state of Utah to recover
148 overpayments:

149 (l)(5)(A) is not limited to 120 days;

150 (l)(5)(B) has priority over other writs of continuing garnishment; and

151 (l)(5)(C) if served during the term of another writ of continuing garnishment, tolls that
152 term and preserves all priorities until the expiration of the state's writ.

153

My Name _____
Address _____
Phone _____
Email _____

I am the Plaintiff/Petitioner
 Defendant/Respondent
 Attorney for the Plaintiff/Petitioner
 Defendant/Respondent and my Utah Bar number is _____

In the District Justice Court of Utah

_____ Judicial District _____ County

Court Address _____

Plaintiff/Petitioner

v.

Defendant/Respondent

**Request for Verification of
Employment**

Case Number _____

Judge _____

Commissioner _____

Instructions to the judgment creditor: You must attach the following records and forms.

- Copy of the judgment
- Copy of the Judgment Information Statement
- Response to Request for Verification of Employment

(1) To _____ (Name of presumed employer)

(2) This Request for Verification of Employment and the attached forms are being sent to you under Utah Code Section 78A-2-216. Do you currently employ the judgment debtor?

Certificate of Service			
I certify that I served a copy of this Request for Verification of Employment on the following people.			
Person's Name	Method of Service	Served at this Address	Served on this Date
(Other Party or Attorney)	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Fax (Person agreed to service by fax.) <input type="checkbox"/> Email (Person agreed to service by email.) <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		
(Presumed Employer)	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Fax (Person agreed to service by fax.) <input type="checkbox"/> Email (Person agreed to service by email.) <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		
	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Fax (Person agreed to service by fax.) <input type="checkbox"/> Email (Person agreed to service by email.) <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		
	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Fax (Person agreed to service by fax.) <input type="checkbox"/> Email (Person agreed to service by email.) <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		

Date _____

Sign here ► _____

Typed or printed name _____

My Name _____
Address _____
Phone _____
Email _____

In the District Justice Court of Utah

_____ Judicial District _____ County

Court Address _____

Plaintiff/Petitioner

v.

Defendant/Respondent

**Response to Request for
Verification of Employment**

Case Number _____

Judge _____

Commissioner _____

Instructions to the presumed employer. You are required to respond within 10 days after receipt of the Request for Verification of Employment.

Yes, I currently employ the person identified in the Request as the judgment debtor.

No, I do not employ the person identified in the Request as the judgment debtor.

I declare under criminal penalty of Utah Code Section 78B-5-705 that this Response to Request for Verification of Employment is true and correct.

Date _____ Sign here ► _____

Typed or printed name _____

Certificate of Service			
I certify that I served a copy of this Response to Request for Verification of Employment on the following people.			
Person's Name	Method of Service	Served at this Address	Served on this Date
(Judgment Creitor or Attorney)	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Fax (Person agreed to service by fax.) <input type="checkbox"/> Email (Person agreed to service by email.) <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		
(Judgment Debtor or Attorney)	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Fax (Person agreed to service by fax.) <input type="checkbox"/> Email (Person agreed to service by email.) <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		
(Clerk of Court)	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Fax (Person agreed to service by fax.) <input type="checkbox"/> Email (Person agreed to service by email.) <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		
	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Fax (Person agreed to service by fax.) <input type="checkbox"/> Email (Person agreed to service by email.) <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		

Date _____

Sign here ► _____

Typed or printed name _____

My Name _____
Address _____
Phone _____
Email _____

I am the Plaintiff/Petitioner
 Defendant/Respondent
 Attorney for the Plaintiff/Petitioner
 Defendant/Respondent and my Utah Bar number is _____

In the District Court of Utah, _____ Judicial District
_____ County

Court Address _____

_____ Plaintiff/Petitioner v. _____ Defendant/Respondent	Application for Writ of Garnishment Case Number _____ Judge _____ Commissioner _____
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Instructions: You must attach the following records and forms if they are not already filed with the court.

- Continuation pages (If any, completing paragraphs that don't have enough space. Write the paragraph number on the continuation page.)
- Writ of Garnishment and Answers to Interrogatories for Property Other than Earnings
- Writ of Continuing Garnishment and Answers to Interrogatories for Earnings
- Notice of Garnishment and Exemptions
- Reply and Request for Hearing (2 copies)
- Check payable to the Garnishee for the fee required by statute (If this Application is electronically filed, the fee must be delivered to the Garnishee when the Writ is served.)
- Check payable to the Sheriff, Constable or Private Investigator for serving the Writ
- Check payable to the court for the filing fee.

(1) If this is an Application for a Writ of Continuing Garnishment, have you served on the Garnishee a Request for Verification of Employment? (Check one.)

- This is not an Application for a Writ of Continuing Garnishment.
- The Garnishee has verified the employment of the debtor.
- That Garnishee has not responded to my Request for Verification of Employment.
- I have not requested verification of employment from the Garnishee.

(2) I request that a

- Writ of Garnishment
- Writ of Continuing Garnishment
- Writ of Continuing Garnishment for Child Support

be issued and served upon each of the Garnishees named below, along with the attached forms.

(3) The amount due is:

Amount of Original Judgment	\$
Post Judgment Costs and Interests	\$
Recoverable Costs Associated with this Writ	\$
Subtotal	\$
Less Payments Made	\$
Total Amount Due	\$

(4) The judgment debtor is:

Name	
Address	
Social security number (Last 4 digits only, if known)	
Driver's license number and state of issuance (Last 4 digits only, if known)	
Year and month of birth (if known)	

(5) I believe that the following people hold property of the judgment debtor.

Person Holding Property (name, address, phone number)	Property Description (If an account, include the location and last four digits of account number.)	Estimated Value of Property	Is the Property Earnings?
		\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	<input type="checkbox"/> Yes <input type="checkbox"/> No

(6) I believe that the following people claim an interest in the property, and I request that the Writ of Garnishment be served upon each, along with the attached forms:

Name of Person Claiming Property Interest	Address	Phone Number

I declare under criminal penalty of Utah Code Section 78B-5-705 that this Application for Writ of Garnishment is true and correct.

Date _____ Sign here ► _____
 Typed or printed name _____

Certificate of Service			
I certify that I served a copy of this Application for Writ of Garnishment on the following people.			
Person's Name	Method of Service	Served at this Address	Served on this Date

Certificate of Service			
I certify that I served a copy of this Application for Writ of Garnishment on the following people.			
Person's Name	Method of Service	Served at this Address	Served on this Date
(Other Party or Attorney)	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Fax (Person agreed to service by fax.) <input type="checkbox"/> Email (Person agreed to service by email.) <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		
	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Fax (Person agreed to service by fax.) <input type="checkbox"/> Email (Person agreed to service by email.) <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		
	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Fax (Person agreed to service by fax.) <input type="checkbox"/> Email (Person agreed to service by email.) <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		
	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Fax (Person agreed to service by fax.) <input type="checkbox"/> Email (Person agreed to service by email.) <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		

Date _____

Sign here ► _____

Typed or printed name _____

In the District Justice Court of Utah

_____ Judicial District _____ County

Court Address _____

Plaintiff/Petitioner

v.

Defendant/Respondent

Writ of Continuing Garnishment and Instructions for

Child Support

Other

Case Number _____

Judge _____

Commissioner _____

To:

Garnishee Name's _____

Address _____

(1) Under the Utah State Code, the judgment creditor should have included with this Writ of Garnishment a fee to you. If the fee was not included, sign here and return the forms to the judgment creditor (or judgment creditor's attorney). _____.

(2) A judgment for \$ _____ has been entered against the judgment debtor, and the judgment debtor still owes \$ _____. Papers filed with the court show that you may possess or control some of the judgment debtor's property. (Property includes real and personal property. Property includes money, including earnings not yet paid.) The property is being garnished (seized) in order to pay the judgment. If you are the Garnishee, (holder of the property) you are required to take certain steps to deliver the property or to hold and protect it. You may be held liable if you fail to do so. You should keep for your records a copy of everything that you prepare and everything that is served on you.

(3) For more information about writs of garnishment, go to the court's website at: <http://www.utcourts.gov/howto/civil/>

(4) The judgment debtor is:

Name	
Address	
Social security number (Last 4 digits only, if known)	
Driver's license number and state of issuance (Last 4 digits only, if known)	
Year and month of birth (if known)	

(5) Within 7 business days after this writ is served on you, you must:

- (A) answer the attached Interrogatories;
- (B) file with the clerk of the court your original Answers to Interrogatories.
- (C) serve a copy of your Answers to Interrogatories on the judgment creditor (or judgment creditor's attorney);
- (D) serve a copy of the following papers on the judgment debtor and on any other person shown by your records to have an interest in the property. The papers to be served are:
 - one copy of this Writ of Continuing Garnishment;
 - one copy of your Answers to the Interrogatories;
 - one copy of the Notice of Garnishment and Exemptions form; and
 - two copies of the Reply and Request for Hearing form.

(6) You may serve the court, the judgment creditor (or judgment creditor's attorney), the judgment debtor and any other person by hand delivery or by first class mail. The addresses of the clerk of court and judgment creditor (or judgment creditor's attorney) are at the top of the first page of this writ.

(7) If you are an employer who is garnishing earnings, the Utah courts have prepared an interactive worksheet that will calculate the amount to be withheld and prepare the Answers to Interrogatories form ready for filing. To use the worksheet, go to the Utah courts' website at https://www.utcourts.gov/ocap/emp_garnishment/. Note your session number. You may return to it for up to 180 days.

(8) This Writ of Continuing Garnishment is effective for 120 calendar days after the date on which it was served on you or 120 calendar days after the date of expiration of

an earlier writ, whichever is later. Within 7 business days after the close of each pay period occurring within that time, you must:

- (A) answer the attached Interrogatories;
 - (B) file with the clerk of the court your original Answers to the Interrogatories.
 - (C) serve a copy of your Answers to Interrogatories on the judgment creditor (or judgment creditor's attorney); the judgment debtor and on any other person shown by your records to have an interest in the property; and
- (9) What to do with the property.
- (A) **DO NOT SEND THE PROPERTY TO THE COURT.** You are to withhold from the judgment debtor the amount shown in your Answers to Interrogatories. You are to hold the property for 20 calendar days after you serve the judgment debtor.
 - (B) If you do not receive from the judgment debtor a Reply and Request for Hearing within 20 days after serving the judgment debtor, you are to deliver the property to the judgment creditor (or judgment creditor's attorney). You are then relieved from any liability unless it is shown that your Answers to the Interrogatories are incorrect.
 - (C) If you do receive a Reply and Request for Hearing, you must hold the property until you receive further orders from the court directing you how to proceed.
- (10) If you fail to take these steps, the court may hold you liable for the value of the property you should have withheld.
- (11) You may deliver to the judgment debtor in the normal course any property greater than you are required to withhold.
- (12) Multiple Writs of Garnishment for the same judgment debtor may be served on you, but only one Writ of Garnishment may be in effect at one time. You must satisfy the writs in the order in which they are served. When an earlier Writ of Garnishment expires or is satisfied, you must then satisfy the next writ. However, a Writ of Continuing Garnishment in favor of the Office of Recovery Services or the Department of Workforce Services takes precedence over other writs and must be satisfied first. Also, a Writ of Continuing Garnishment in favor of the Office of Recovery Services or the Department of Workforce Services continues indefinitely until fully satisfied, placing earlier writs on hold. These instructions do not apply to writs or orders entered by other courts or governmental agencies.

Date _____ Clerk of Court _____

By _____

Certificate of Service			
I certify that I served a copy of this Writ of Continuing Garnishment and Instructions on the following people.			
Person's Name	Method of Service	Served at this Address	Served on this Date
(Other Party or Attorney)	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Fax (Person agreed to service by fax.) <input type="checkbox"/> Email (Person agreed to service by email.) <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		
(Garnishee)	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Fax (Person agreed to service by fax.) <input type="checkbox"/> Email (Person agreed to service by email.) <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		
(Person Claiming Interest in Property)	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Fax (Person agreed to service by fax.) <input type="checkbox"/> Email (Person agreed to service by email.) <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		
	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Fax (Person agreed to service by fax.) <input type="checkbox"/> Email (Person agreed to service by email.) <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		

Date _____ Sign here ► _____

Typed or printed name _____

My Name _____
Address _____
Phone _____
Email _____

In the District Justice Court of Utah

_____ Judicial District _____ County

Court Address _____

Plaintiff/Petitioner

v.

Defendant/Respondent

Garnishee's Answers to Interrogatories for Earnings

Case Number _____

Judge _____

Commissioner _____

(1) Do you employ the judgment debtor?

ANSWER: Yes No

If "no," skip the remaining questions, sign the form, and mail it as indicated. If "yes," answer the remaining questions.

(2) Are there other Writs of Continuing Garnishment in effect?

ANSWER: Yes No

(3) If yes, when will they expire?

ANSWER: _____

(4)(a) What is the judgment debtor's pay period?

ANSWER:
 Weekly
 Biweekly

Semi-monthly
 Monthly
 Other (Describe): _____

(4)(b) What is the pay date to which these answers relate?

ANSWER: _____

(4)(c) What is the pay period to which these answers relate?

ANSWER: Start Date: _____ End Date: _____

(5) Is this Writ of Continuing Garnishment in effect on the last day of this period? (The Writ is in effect for 120 days after the date of service on you or for 120 days after the date the previous writ expired, whichever is later.)

ANSWER: Yes No

(6) Calculate the amount to be withheld from the judgment debtor. (Assume you are calculating this on the last day of the pay period for which these answers apply.)

(6)(a) Gross earnings from all sources payable to the judgment debtor (Including wages, salaries, commissions, bonuses, or earnings from a pension or retirement program. Tips are generally not considered earnings for the purposes of the wage garnishment law.)	\$
(6)(b) Deductions required by law	
(6)(b)(i) Federal income tax	\$
(6)(b)(ii) State income tax	\$
(6)(b)(iii) Social security tax (FICA)	\$
(6)(b)(iv) Medicare tax (FICA)	\$
(6)(b)(v) Other amounts required by law to be deducted (Please describe reason for deduction.)	\$
(6)(c) Total deductions (Calculate & record the sum of (6)(b)(i) through (6)(b)(v).)	\$
(6)(d) Disposable earnings (Calculate and record Line (6)(a) minus Line (6)(c).)	\$
(6)(e) Calculate:	
(6)(e)(i) 25% of the amount in Line (6)(d); or, if this is a judgment for child support, 50% of the amount in Line (6)(d)	\$
(6)(e)(ii) The difference between Line (6)(d) and the federal minimum hourly wage (\$5.85) times 30 times the number of weeks in this pay period For example: (Weekly): Line (6)(d) minus (\$5.85 X 30 X 1 week) (Biweekly): Line (6)(d) minus (\$5.85 X 30 X 2 weeks) (Semi-monthly): Line (6)(d) minus (\$5.85 X 30 X 2.16 weeks) (Monthly) Line (6)(d) minus (\$5.85 X 30 X 4.33 weeks)	\$
(6)(f) Of Line (6)(e)(i) and Line (6)(e)(ii), record the lesser amount	\$

(6)(g) Amount of any income withholding order	\$
(6)(h) Calculate and record Line (6)(f) minus Line (6)(g)	\$
(6)(i) Amount deducted for an undisputed debt owed to you by the <input type="checkbox"/> judgment creditor <input type="checkbox"/> judgment debtor (check one, both or neither)	\$
(6)(j) Total amount withheld* (Calculate and record Line (6)(h) minus Line (6)(i).)	\$

* Do not withhold more than the balance the judgment debtor owes on the judgment.
 (You may contact the judgment creditor or judgment creditor's attorney to obtain the outstanding balance.)

I declare under criminal penalty of Utah Code Section 78B-5-705 that this Garnishee's Answers to Interrogatories for Earnings is true and correct.

Date _____ Sign here ► _____

Typed or printed name _____

Certificate of Service			
I certify that I served a copy of this Garnishee's Answers to Interrogatories for Earnings on the following people.			
Person's Name	Method of Service	Served at this Address	Served on this Date
(Judgment Creditor or Attorney)	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Fax (Person agreed to service by fax.) <input type="checkbox"/> Email (Person agreed to service by email.) <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		
(Judgment Debtor or Attorney)	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Fax (Person agreed to service by fax.) <input type="checkbox"/> Email (Person agreed to service by email.) <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		

Certificate of Service

I certify that I served a copy of this Garnishee's Answers to Interrogatories for Earnings on the following people.

Person's Name	Method of Service	Served at this Address	Served on this Date
(Clerk of Court)	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Fax (Person agreed to service by fax.) <input type="checkbox"/> Email (Person agreed to service by email.) <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		
(Person Claiming Interest in Property)	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Fax (Person agreed to service by fax.) <input type="checkbox"/> Email (Person agreed to service by email.) <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		

Date _____

Sign here ► _____

Typed or printed name _____

NOTICE OF GARNISHMENT AND EXEMPTIONS

NOTICE: YOUR PROPERTY MAY BE TAKEN TO PAY A CREDITOR.

PLEASE READ THIS CAREFULLY.

1. If you are the judgment debtor in this action, your rights may be affected. You should read this notice and take steps to protect your rights.

2. If you are not the judgment debtor in this action, papers filed with the court indicate that you may have an interest in the judgment debtor's property. Your rights may be affected, and you should read this notice and take steps to protect your rights.

3. The Garnishee (someone who possesses your property) has been ordered to hold your property. This means that you cannot obtain the property and it may be used to pay a judgment creditor.

4. Certain property and money are exempt from execution (cannot be garnished). The following is a partial list of exempt property and money, but some of these exemptions might not apply to judgments for alimony or child support.

- (A) A burial plot for you and your family.
- (B) Health aids.
- (C) Benefits because of disability, illness or unemployment.
- (D) Medical care benefits.
- (E) Veteran's benefits.
- (F) Social security benefits.
- (G) Supplemental security income benefits (SSI).
- (H) Workers' compensation benefits.
- (I) Certain retirement benefits.
- (J) Public assistance.
- (K) Money or property for child support, alimony or separate maintenance.
- (L) Certain furnishings, appliances, carpets, animals, books, musical instruments, and heirlooms.
- (M) Provisions for 12 months.
- (N) Wearing apparel, not including jewelry or furs.
- (O) Beds and bedding.
- (P) Certain works of art.
- (Q) Compensatory damages from bodily injury or wrongful death.
- (R) The proceeds of certain life insurance contracts and trusts.
- (S) Books, implements and tools of a trade.
- (T) A personal motor vehicle.
- (U) A motor vehicle used in trade or business.

(V) Part of your wages.

(W) Property of a person who did not have a judgment entered against him or her, such as the co-owner of the property being held.

5. You should consult [Utah Code Title 78B, Chapter 5, Part 5, Utah Exemptions Act](#) for full information about exemptions. There is no exemption solely because you are having difficulty paying your debts.

6. If you believe that the Writ of Garnishment was issued improperly, that the Answers to Interrogatories are inaccurate, that the judgment creditor owes you money, or that you are entitled to an exemption, DO THE FOLLOWING IMMEDIATELY. You have a deadline of 10 business days from the date the Garnishee mailed or delivered this notice to you.

(A) Complete the attached "Reply and Request for Hearing" form.

(B) Sign your name in the space provided and write the address at which the court clerk should notify you of the hearing.

(C) Mail or deliver the form to: the court clerk, the judgment creditor, (or judgment creditor's attorney) and the Garnishee. Keep a copy for your records. The name and address of the clerk of the court, the judgment creditor, (or judgment creditor's attorney) and the Garnishee are on the Writ of Garnishment.

7. The court clerk will schedule the matter for hearing and notify you. You should file with the Reply and Request for Hearing form or bring to the hearing any documents that help you prove your property is exempt.

8. If you fail to take these steps, the property being held may be used to pay a judgment creditor.

9. You may consult an attorney and have the attorney represent you at the hearing.

My Name _____
Address _____
Phone _____
Email _____

I am the Plaintiff/Petitioner
 Defendant/Respondent
 Attorney for the Plaintiff/Petitioner
 Defendant/Respondent and my Utah Bar number is _____

In the District Justice Court of Utah

_____ Judicial District _____ County

Court Address _____

<p>_____ Plaintiff/Petitioner</p> <p>v.</p> <p>_____ Defendant/Respondent</p>	<p>Reply and Request for Hearing</p> <p>Case Number _____</p> <p>Judge _____</p> <p>Commissioner _____</p>
---	---

Instructions: You must attach the following records and forms if they are not already filed with the court.

- Continuation pages (If any, completing paragraphs that don't have enough space. Write the paragraph number on the continuation page.)
- Any documents supporting your claims

- (1) I have read the Notice of Garnishment and Exemptions form.
- (2) I request that this matter be scheduled for a hearing.
- (3) Funds in my account were garnished. Yes No

If you answered "yes" to number (3), answer (A) through (E) if they apply.

(A) The Writ of Garnishment was issued improperly because:

(B) The Answers to Interrogatories are inaccurate because:

(C) All [or this part: \$ _____] of the funds in my account are exempt because they are:

- Benefits because of disability, illness or unemployment.
 - Medical care benefits.
 - Veteran's benefits.
 - Social security benefits.
 - Supplemental security income benefits (SSI).
 - Workers' compensation benefits.
 - Retirement benefits.
 - Public assistance.
 - Money for child support, alimony or separate maintenance.
 - Compensatory damages from bodily injury or wrongful death.
 - The proceeds of a life insurance contract or trust.
 - Exempt wages.
 - Owned by another person.
 - Other. Explain.
-
-

(D) The judgment creditor owes me money because:

(E) I claim ownership of all or part of the money or property taken, and I am not one of the persons against whom a judgment was entered. Explain.

(4) My wages were garnished. Yes No

If you answered "yes" to number (4), answer (A) through (D) if they apply.

(A) The Writ of Garnishment was issued improperly because:

(B) The Answers to Interrogatories are inaccurate because:

(C) All [or this part: \$ _____] of my wages are exempt from garnishment because:

(D) The judgment creditor owes me money because:

(5) My property was garnished. Yes No

If you answered "yes" to number (5), answer (A) through (D) if they apply.

(A) The Writ of Garnishment was issued improperly because:

(B) The Answers to Interrogatories are inaccurate because:

(C) All or part of the property is exempt from garnishment because the property is:

- A burial plot for me or my family.
- Health aids.
- Property for child support, alimony or separate maintenance.
- Furnishings, appliances, carpets, animals, books, musical instruments, or heirlooms.
- Provisions for 12 months.
- Wearing apparel, not including jewelry or furs.
- Beds and bedding.
- Works of art.
- Books, implements or tools of a trade.
- A personal motor vehicle.
- A motor vehicle used in a trade or business.
- Owned by another person.
- Other. Explain.

(D) The judgment creditor owes me money because:

I declare under criminal penalty of Utah Code Section 78B-5-705 that this Reply and Request for Hearing is true and correct.

Date _____ Sign here ► _____

Typed or printed name _____

Certificate of Service			
I certify that I served a copy of this Reply and Request for Hearing on the following people.			
Person's Name	Method of Service	Served at this Address	Served on this Date
(Other Party or Attorney)	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Fax (Person agreed to service by fax.) <input type="checkbox"/> Email (Person agreed to service by email.) <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		
(Clerk of Court)	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Fax (Person agreed to service by fax.) <input type="checkbox"/> Email (Person agreed to service by email.) <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		
	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Fax (Person agreed to service by fax.) <input type="checkbox"/> Email (Person agreed to service by email.) <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		
	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Fax (Person agreed to service by fax.) <input type="checkbox"/> Email (Person agreed to service by email.) <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		

Date _____ Sign here ► _____

Certificate of Service

I certify that I served a copy of this Reply and Request for Hearing on the following people.

Person's Name	Method of Service	Served at this Address	Served on this Date
---------------	-------------------	------------------------	---------------------

Typed or printed name _____

My Name _____
Address _____
Phone _____
Email _____

I am the Plaintiff/Petitioner
 Defendant/Respondent
 Attorney for the Plaintiff/Petitioner
 Defendant/Respondent and my Utah Bar number is _____

In the District Justice Court of Utah

_____ Judicial District _____ County

Court Address _____

Plaintiff/Petitioner

v.

Defendant/Respondent

Motion for Order to Garnishee to Show Cause

Case Number _____

Judge _____

Commissioner _____

Instructions: You must attach the following records and forms if they are not already filed with the court.

- Continuation pages (If any, completing paragraphs that don't have enough space. Write the paragraph number on the continuation page.)
- Certificate of Service showing service upon the Garnishee of the Writ of Garnishment
- Order to Garnishee to Show Cause

(1) I am the Judgment Creditor, and I have caused to be served on _____, the Garnishee, a Writ of Garnishment

(2) The deadline for compliance with the Writ of Garnishment was _____ (date), which has passed. The Garnishee has not complied with the Writ of Garnishment by failing to:

(3) Therefore, I request that the court Order the Garnishee to Show Cause why s/he should not be held in contempt and for other appropriate relief, including costs of this motion.

I declare under criminal penalty of Utah Code Section 78B-5-705 that this Motion for Order to Garnishee to Show Cause is true and correct.

Date _____ Sign here ► _____

Typed or printed name _____

Certificate of Service			
I certify that I served a copy of this Motion for order to Garnishee to Show Cause on the following people.			
Person's Name	Method of Service	Served at this Address	Served on this Date
(Other Party or Attorney)	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Fax (Person agreed to service by fax.) <input type="checkbox"/> Email (Person agreed to service by email.) <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		
(Clerk of Court)	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Fax (Person agreed to service by fax.) <input type="checkbox"/> Email (Person agreed to service by email.) <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		
	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Fax (Person agreed to service by fax.) <input type="checkbox"/> Email (Person agreed to service by email.) <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		

Certificate of Service			
I certify that I served a copy of this Motion for order to Garnishee to Show Cause on the following people.			
Person's Name	Method of Service	Served at this Address	Served on this Date
	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Fax (Person agreed to service by fax.) <input type="checkbox"/> Email (Person agreed to service by email.) <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		

Date _____ Sign here ► _____
 Typed or printed name _____

In the District Justice Court of Utah

_____ Judicial District _____ County

Court Address _____

Plaintiff/Petitioner

v.

Defendant/Respondent

Order to Garnishee to Show Cause

Case Number _____

Judge _____

Commissioner _____

The State of Utah to _____, Garnishee:

(1) It appears from court records that you were served with a Writ of Garnishment and ordered to complete interrogatories.

(2) A motion has been filed requesting that you show cause why you should not be held in contempt for failing to comply with the Writ. The moving party has alleged that you

(3) Disobedience of a lawful court order is contempt of court and may be punished by up to \$1000 in fines or up to 30 days in jail or both. You may also be held liable for the amount of property that you should have garnished or the amount of the judgment, whichever is less, plus the costs and attorney fees of the plaintiff.

(4) The court has scheduled a hearing on the Motion for Order to Show Cause at the above court at the following date and time. You should appear and bring with you all relevant evidence and witnesses. You may be represented by a lawyer. **If you fail to appear, an order may be entered against you.**

Date _____ Time _____ : _____ a.m. p.m.

Room _____ Judicial Officer _____

Disability Accommodation. If you need accommodation of a disability, contact the clerk's office at least 5 days before the hearing.

Date _____

Sign here ► _____

Judge _____

Certificate of Service			
I certify that I served a copy of this Order to Garnishee to Show Cause on the following people.			
Person's Name	Method of Service	Served at this Address	Served on this Date
(Other Party or Attorney)	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Fax (Person agreed to service by fax.) <input type="checkbox"/> Email (Person agreed to service by email.) <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		
(Clerk of Court)	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Fax (Person agreed to service by fax.) <input type="checkbox"/> Email (Person agreed to service by email.) <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		
	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Fax (Person agreed to service by fax.) <input type="checkbox"/> Email (Person agreed to service by email.) <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		
	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Fax (Person agreed to service by fax.) <input type="checkbox"/> Email (Person agreed to service by email.) <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		

Date _____

Sign here ► _____

Typed or printed name _____

Tab 3

Tim,

Thank you for taking the time to answer my question yesterday. Unfortunately, I don't think I stated it very clearly.

My question is - Under Rule 45 as amended, what is the proper procedure for a party to the lawsuit, not the person subpoenaed, to object to the subpoena?

Rule 45(e)(3) clearly sets out the procedure for objecting to a subpoena for a "person subject to the subpoena." However, I do not see where amended Rule 45 specifically addresses the procedure a party to the lawsuit should follow if it wishes to object to the subpoena after it receives notice under (b)(3). For example, (c)(3)(B) of old Rule 45 stated that a court may modify or quash a subpoena "to protect a person subject to or affected by the subpoena." The "or affected by the subpoena" provided a foothold by which a party to the lawsuit could move to quash a subpoena served on a non-party. The "affected by the subpoena" language has been removed from the new rule leaving a gap, or at least some confusion, with regard to what procedure a party to the lawsuit (or any other person affected by the subpoena) should follow if that party/person wishes to object to the subpoena.

I gather from your response that the guidelines under (e)(3) apply to any person or party who desires to object to a subpoena. However, without the "affected by the subpoena" language, I began to wonder if there was some other purpose for its absence or if there was another procedure that a party to a lawsuit should follow when it wishes to object to a subpoena, e.g. filing for a protective order under Rule 26(c). Therefore, to put my question another way, is it correct that when a party to a lawsuit receives notice that a subpoena has been served on a non-party and the party wishes to object to the subpoena, all they need do is file a written objection as provided for under section 45(e)(3) and wait for the attorney that served the subpoena to file a motion to compel, in the same way a non-party subject to the subpoena would.

Thank you for your time.

Sam Slark

1 **Rule 45. Subpoena.**

2 (a) Form; issuance.

3 (a)(1) Every subpoena shall:

4 (a)(1)(A) issue from the court in which the action is pending;

5 (a)(1)(B) state the title and case number of the action, the name of the court from
6 which it is issued, and the name and address of the party or attorney responsible for
7 issuing the subpoena;

8 (a)(1)(C) command each person to whom it is directed

9 (a)(1)(C)(i) to appear and give testimony at a trial, hearing or deposition, or

10 (a)(1)(C)(ii) to appear and produce for inspection, copying, testing or sampling
11 documents, electronically stored information or tangible things in the possession,
12 custody or control of that person, or

13 (a)(1)(C)(iii) to copy documents or electronically stored information in the
14 possession, custody or control of that person and mail or deliver the copies to the party
15 or attorney responsible for issuing the subpoena before a date certain, or

16 (a)(1)(C)(iv) to appear and to permit inspection of premises;

17 (a)(1)(D) if an appearance is required, specify the date, time and place for the
18 appearance; and

19 (a)(1)(E) include a notice to persons served with a subpoena in a form substantially
20 similar to the subpoena form appended to these rules. A subpoena may specify the
21 form or forms in which electronically stored information is to be produced.

22 (a)(2) The clerk shall issue a subpoena, signed but otherwise in blank, to a party
23 requesting it, who shall complete it before service. An attorney admitted to practice in
24 Utah may issue and sign a subpoena as an officer of the court.

25 (b) Service; fees; prior notice.

26 (b)(1) A subpoena may be served by any person who is at least 18 years of age and
27 not a party to the case. Service of a subpoena upon the person to whom it is directed
28 shall be made as provided in Rule 4(d).

29 (b)(2) If the subpoena commands a person's appearance, the party or attorney
30 responsible for issuing the subpoena shall tender with the subpoena the fees for one
31 day's attendance and the mileage allowed by law. When the subpoena is issued on

32 behalf of the United States, or this state, or any officer or agency of either, fees and
33 mileage need not be tendered.

34 (b)(3) If the subpoena commands a person to copy and mail or deliver documents or
35 electronically stored information, to produce documents, electronically stored
36 information or tangible things for inspection, copying, testing or sampling or to permit
37 inspection of premises, the party or attorney responsible for issuing the subpoena shall
38 serve each party with notice of the subpoena by delivery or other method of actual
39 notice before serving the subpoena.

40 (c) Appearance; resident; non-resident.

41 (c)(1) A person who resides in this state may be required to appear:

42 (c)(1)(A) at a trial or hearing in the county in which the case is pending; and

43 (c)(1)(B) at a deposition, or to produce documents, electronically stored information
44 or tangible things, or to permit inspection of premises only in the county in which the
45 person resides, is employed, or transacts business in person, or at such other place as
46 the court may order.

47 (c)(2) A person who does not reside in this state but who is served within this state
48 may be required to appear:

49 (c)(2)(A) at a trial or hearing in the county in which the case is pending; and

50 (c)(2)(B) at a deposition, or to produce documents, electronically stored information
51 or tangible things, or to permit inspection of premises only in the county in which the
52 person is served or at such other place as the court may order.

53 (d) Payment of production or copying costs. The party or attorney responsible for
54 issuing the subpoena shall pay the reasonable cost of producing or copying documents,
55 electronically stored information or tangible things. Upon the request of any other party
56 and the payment of reasonable costs, the party or attorney responsible for issuing the
57 subpoena shall provide to the requesting party copies of all documents, electronically
58 stored information or tangible things obtained in response to the subpoena or shall
59 make the tangible things available for inspection.

60 (e) Protection of persons subject to subpoenas; objection.

61 (e)(1) The party or attorney responsible for issuing a subpoena shall take reasonable
62 steps to avoid imposing an undue burden or expense on the person subject to the

63 subpoena. The court shall enforce this duty and impose upon the party or attorney in
64 breach of this duty an appropriate sanction, which may include, but is not limited to, lost
65 earnings and a reasonable attorney fee.

66 (e)(2) A subpoena to copy and mail or deliver documents or electronically stored
67 information, to produce documents, electronically stored information or tangible things,
68 or to permit inspection of premises shall comply with Rule 34(a) and (b)(1), except that
69 the person subject to the subpoena must be allowed at least 14 days after service to
70 comply.

71 (e)(3) The person subject to the subpoena [or a non-party affected by the subpoena](#)
72 may object if the subpoena:

73 (e)(3)(A) fails to allow reasonable time for compliance;

74 (e)(3)(B) requires a resident of this state to appear at other than a trial or hearing in
75 a county in which the person does not reside, is not employed, or does not transact
76 business in person;

77 (e)(3)(C) requires a non-resident of this state to appear at other than a trial or
78 hearing in a county other than the county in which the person was served;

79 (e)(3)(D) requires the person to disclose privileged or other protected matter and no
80 exception or waiver applies;

81 (e)(3)(E) requires the person to disclose a trade secret or other confidential
82 research, development, or commercial information;

83 (e)(3)(F) subjects the person to an undue burden or cost;

84 (e)(3)(G) requires the person to produce electronically stored information in a form or
85 forms to which the person objects;

86 (e)(3)(H) requires the person to provide electronically stored information from
87 sources that the person identifies as not reasonably accessible because of undue
88 burden or cost; or

89 (e)(3)(I) requires the person to disclose an unretained expert's opinion or information
90 not describing specific events or occurrences in dispute and resulting from the expert's
91 study that was not made at the request of a party.

92 (e)(4)(A) If the person subject to the subpoena objects, the objection must be made
93 before the date for compliance.

94 (e)(4)(B) The person subject to the subpoena shall state the objection in a concise,
95 non-conclusory manner.

96 (e)(4)(C) If the objection is that the information commanded by the subpoena is
97 privileged or protected and no exception or waiver applies, or requires the person to
98 disclose a trade secret or other confidential research, development, or commercial
99 information, the objection shall sufficiently describe the nature of the documents,
100 communications, or things not produced to enable the party or attorney responsible for
101 issuing the subpoena to contest the objection.

102 (e)(4)(D) If the objection is that the electronically stored information is from sources
103 that are not reasonably accessible because of undue burden or cost, the person from
104 whom discovery is sought must show that the information sought is not reasonably
105 accessible because of undue burden or cost.

106 (e)(4)(E) The person shall serve the objection on the party or attorney responsible
107 for issuing the subpoena. The party or attorney responsible for issuing the subpoena
108 shall serve a copy of the objection on the other parties.

109 (e)(5) If objection is made, [or if a party files a motion for a protective order](#), the party
110 or attorney responsible for issuing the subpoena is not entitled to compliance but may
111 move for an order to compel compliance. The motion shall be served on the other
112 parties and on the person subject to the subpoena. An order compelling compliance
113 shall protect the person subject to the subpoena from significant expense or harm. The
114 court may quash or modify the subpoena. If the party or attorney responsible for issuing
115 the subpoena shows a substantial need for the information that cannot be met without
116 undue hardship, the court may order compliance upon specified conditions.

117 (f) Duties in responding to subpoena.

118 (f)(1) A person commanded to copy and mail or deliver documents or electronically
119 stored information or to produce documents, electronically stored information or tangible
120 things shall serve on the party or attorney responsible for issuing the subpoena a
121 declaration under penalty of law stating in substance:

122 (f)(1)(A) that the declarant has knowledge of the facts contained in the declaration;

123 (f)(1)(B) that the documents, electronically stored information or tangible things
124 copied or produced are a full and complete response to the subpoena;

125 (f)(1)(C) that the documents, electronically stored information or tangible things are
126 the originals or that a copy is a true copy of the original; and

127 (f)(1)(D) the reasonable cost of copying or producing the documents, electronically
128 stored information or tangible things.

129 (f)(2) A person commanded to copy and mail or deliver documents or electronically
130 stored information or to produce documents, electronically stored information or tangible
131 things shall copy or produce them as they are kept in the usual course of business or
132 shall organize and label them to correspond with the categories in the subpoena.

133 (f)(3) If a subpoena does not specify the form or forms for producing electronically
134 stored information, a person responding to a subpoena must produce the information in
135 the form or forms in which the person ordinarily maintains it or in a form or forms that
136 are reasonably usable.

137 (f)(4) If the information produced in response to a subpoena is subject to a claim of
138 privilege or of protection as trial-preparation material, the person making the claim may
139 notify any party who received the information of the claim and the basis for it. After
140 being notified, the party must promptly return, sequester, or destroy the specified
141 information and any copies of it and may not use or disclose the information until the
142 claim is resolved. A receiving party may promptly present the information to the court
143 under seal for a determination of the claim. If the receiving party disclosed the
144 information before being notified, it must take reasonable steps to retrieve the
145 information. The person who produced the information must preserve the information
146 until the claim is resolved.

147 (g) Contempt. Failure by any person without adequate excuse to obey a subpoena
148 served upon that person is punishable as contempt of court.

149 (h) Procedure when witness evades service or fails to attend. If a witness evades
150 service of a subpoena or fails to attend after service of a subpoena, the court may issue
151 a warrant to the sheriff of the county to arrest the witness and bring the witness before
152 the court.

153 (i) Procedure when witness is confined in jail. If the witness is a prisoner, a party
154 may move for an order to examine the witness in the jail or prison or to produce the
155 witness before the court or officer for the purpose of being orally examined.

156 (j) Subpoena unnecessary. A person present in court or before a judicial officer may
157 be required to testify in the same manner as if the person were in attendance upon a
158 subpoena.

159

Tab 4

Several recent cases in our office have highlighted a loophole in the discovery timing rules. Some attorneys are serving document subpoenas immediately after the complaint and before an answer is filed. I could find no rule that prohibits this.

Prior to the 1999 amendments, the rules prohibited some discovery immediately after the complaint except by leave of court. The time limits were 30 days for depositions (Rule 30(a)), 45 days for interrogatories (Rule 33(a)), 45 days for requests for production (Rule 34(b)). Because a records subpoena had to be tied to a deposition, it could not be served until 30 days after the complaint.

In 1999, Rule 26(d) prohibited any discovery "before the parties have met and conferred as required by Subdivision (f)." This provision does not apply, however, to cases exempt under Subdivision (a)(2). Among the exemptions are any case "in which any party not admitted to practice law in Utah is not represented by counsel." Rule 26(a)(2)(A)(vi). By definition, therefore, all cases are exempt from the discovery timing rules during the period between filing the complaint and the filing of an answer.

I recommend the following initial sentence could be added to Rule 26(d): "In all cases, a party may not seek discovery from any source until 30 days after service of the pleading to which the discovery relates."

Alternatively, Rule 26(a)(2)(A)(vi) could be amended to read: "in which any party not admitted to practice law in Utah has answered or otherwise appeared in the case and is not represented by counsel."

LESLIE W. SLAUGH

Rule 26. General provisions governing discovery.

(a) Required disclosures; Discovery methods.

(a)(1) Initial disclosures. Except in cases exempt under subdivision (a)(2) and except as otherwise stipulated or directed by order, a party shall, without awaiting a discovery request, provide to other parties:

(a)(1)(A) the name and, if known, the address and telephone number of each individual likely to have discoverable information supporting its claims or defenses, unless solely for impeachment, identifying the subjects of the information;

(a)(1)(B) a copy of, or a description by category and location of, all discoverable documents, data compilations, electronically stored information, and tangible things in the possession, custody, or control of the party supporting its claims or defenses, unless solely for impeachment;

(a)(1)(C) a computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 all discoverable documents or other evidentiary material on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and

(a)(1)(D) for inspection and copying as under Rule 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the case or to indemnify or reimburse for payments made to satisfy the judgment.

Unless otherwise stipulated by the parties or ordered by the court, the disclosures required by subdivision (a)(1) shall be made within 14 days after the meeting of the parties under subdivision (f). Unless otherwise stipulated by the parties or ordered by the court, a party joined after the meeting of the parties shall make these disclosures within 30 days after being served. A party shall make initial disclosures based on the information then reasonably available and is not excused from making disclosures because the party has not fully completed the investigation of the case or because the party challenges the sufficiency of another party's disclosures or because another party has not made disclosures.

(a)(2) Exemptions.

(a)(2)(A) The requirements of subdivision (a)(1) and subdivision (f) do not apply to actions:

(a)(2)(A)(i) based on contract in which the amount demanded in the pleadings is \$20,000 or less;

(a)(2)(A)(ii) for judicial review of adjudicative proceedings or rule making proceedings of an administrative agency;

(a)(2)(A)(iii) governed by Rule 65B or Rule 65C;

(a)(2)(A)(iv) to enforce an arbitration award;

(a)(2)(A)(v) for water rights general adjudication under Title 73, Chapter 4; and

(a)(2)(A)(vi) in which any party not admitted to practice law in Utah is not represented by counsel.

(a)(2)(B) In an exempt action, the matters subject to disclosure under subpart (a)(1) are subject to discovery under subpart (b).

(a)(3) Disclosure of expert testimony.

(a)(3)(A) A party shall disclose to other parties the identity of any person who may be used at trial to present evidence under Rules 702, 703, or 705 of the Utah Rules of Evidence.

(a)(3)(B) Unless otherwise stipulated by the parties or ordered by the court, this disclosure shall, with respect to a witness who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony, be accompanied by a written report prepared and signed by the witness or party. The report shall contain the subject matter on which the expert is expected to testify; the substance of the facts and opinions to which the expert is expected to testify; a summary of the grounds for each opinion; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

(a)(3)(C) Unless otherwise stipulated by the parties or ordered by the court, the disclosures required by subdivision (a)(3) shall be made within 30 days after the expiration of fact discovery as provided by subdivision (d) or, if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under paragraph (3)(B), within 60 days after the disclosure made by the other party.

(a)(4) Pretrial disclosures. A party shall provide to other parties the following information regarding the evidence that it may present at trial other than solely for impeachment:

(a)(4)(A) the name and, if not previously provided, the address and telephone number of each witness, separately identifying witnesses the party expects to present and witnesses the party may call if the need arises;

(a)(4)(B) the designation of witnesses whose testimony is expected to be presented by means of a deposition and, if not taken stenographically, a transcript of the pertinent portions of the deposition testimony; and

(a)(4)(C) an appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those which the party expects to offer and those which the party may offer if the need arises.

Unless otherwise stipulated by the parties or ordered by the court, the disclosures required by subdivision (a)(4) shall be made at least 30 days before trial. Within 14 days thereafter, unless a different time is specified by the court, a party may serve and file a list disclosing (i) any objections to the use under Rule 32(a) of a deposition designated by another party under subparagraph (B) and (ii) any objection, together with the

grounds therefor, that may be made to the admissibility of materials identified under subparagraph (C). Objections not so disclosed, other than objections under Rules 402 and 403 of the Utah Rules of Evidence, shall be deemed waived unless excused by the court for good cause shown.

(a)(5) Form of disclosures. Unless otherwise stipulated by the parties or ordered by the court, all disclosures under paragraphs (1), (3) and (4) shall be made in writing, signed and served.

(a)(6) Methods to discover additional matter. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.

(b) Discovery scope and limits. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(b)(1) In general. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(b)(2) A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. The party shall expressly make any claim that the source is not reasonably accessible, describing the source, the nature and extent of the burden, the nature of the information not provided, and any other information that will enable other parties to assess the claim. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may order discovery from such sources if the requesting party shows good cause, considering the limitations of subsection (b)(3). The court may specify conditions for the discovery.

(b)(3) Limitations. The frequency or extent of use of the discovery methods set forth in Subdivision (a)(6) shall be limited by the court if it determines that:

(b)(3)(A) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(b)(3)(B) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

(b)(3)(C) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and

the importance of the issues at stake in the litigation. The court may act upon its own initiative after reasonable notice or pursuant to a motion under Subdivision (c).

(b)(4) Trial preparation: Materials. Subject to the provisions of Subdivision (b)(5) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under Subdivision (b)(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(b)(5) Trial preparation: Experts.

(b)(5)(A) A party may depose any person who has been identified as an expert whose opinions may be presented at trial. If a report is required under subdivision (a)(3)(B), any deposition shall be conducted within 60 days after the report is provided.

(b)(5)(B) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(b)(5)(C) Unless manifest injustice would result,

(b)(5)(C)(i) The court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under Subdivision (b)(5) of this rule; and

(b)(5)(C)(ii) With respect to discovery obtained under Subdivision (b)(5)(A) of this rule the court may require, and with respect to discovery obtained under Subdivision (b)(5)(B) of this rule the court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(b)(6) Claims of Privilege or Protection of Trial Preparation Materials.

(b)(6)(A) Information withheld. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

(b)(6)(B) Information produced. If information is produced in discovery that is subject to a claim of privilege or of protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The producing party must preserve the information until the claim is resolved.

(c) Protective orders. Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the district where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(c)(1) that the discovery not be had;

(c)(2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(c)(3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(c)(4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

(c)(5) that discovery be conducted with no one present except persons designated by the court;

(c)(6) that a deposition after being sealed be opened only by order of the court;

(c)(7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;

(c)(8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(d) Sequence and timing of discovery. Except for cases exempt under subdivision (a)(2), except as authorized under these rules, or unless otherwise stipulated by the parties or ordered by the court, a party may not seek discovery from any source before the parties have met and conferred as required by subdivision (f). Unless otherwise stipulated by the parties or ordered by the court, fact discovery shall be completed within 240 days after the first answer is filed. Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(e) Supplementation of responses. A party who has made a disclosure under subdivision (a) or responded to a request for discovery with a response is under a duty to supplement the disclosure or response to include information thereafter acquired if ordered by the court or in the following circumstances:

(e)(1) A party is under a duty to supplement at appropriate intervals disclosures under subdivision (a) if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing. With respect to testimony of an expert from whom a report is required under subdivision (a)(3)(B) the duty extends both to information contained in the report and to information provided through a deposition of the expert.

(e)(2) A party is under a duty seasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(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), to discuss any issues relating to preserving discoverable information 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) any issues relating to preservation, disclosure or discovery of electronically stored information, including the form or forms in which it should be produced;

(f)(2)(D) any issues relating to claims of privilege or of protection as trial-preparation material, including - if the parties agree on a procedure to assert such claims after production - whether to ask the court to include their agreement in an order;

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

(f)(2)(F) the deadline for filing the description of the factual and legal basis for allocating fault to a non-party and the identity of the non-party; and

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

(f)(3) Plaintiff's counsel shall submit to the court within 14 days after the meeting and in any event no more than 60 days after the first answer is filed a proposed form of order in conformity with the parties' stipulated discovery plan. The proposed form of order shall also include each of the subjects listed in Rule 16(b)(1)-(6), except that the date or dates for pretrial conferences, final pretrial conference and trial shall be scheduled with the court or may be deferred until the close of discovery. If the parties are unable to agree to the terms of a discovery plan or any part thereof, the plaintiff shall and any party may move the court for entry of a discovery order on any topic on which the parties are unable to agree. Unless otherwise ordered by the court, the presumptions established by these rules shall govern any subject not included within the parties' stipulated discovery plan.

(f)(4) Any party may request a scheduling and management conference or order under Rule 16(b).

(f)(5) A party joined after the meeting of the parties is bound by the stipulated discovery plan and discovery order, unless the court orders on stipulation or motion a modification of the discovery plan and order. The stipulation or motion shall be filed within a reasonable time after joinder.

(g) Signing of discovery requests, responses, and objections. Every request for discovery or response or objection thereto made by a party shall be signed by at least one attorney of record or by the party if the party is not represented, whose address shall be stated. The signature of the attorney or party constitutes a certification that the person has read the request, response, or objection and that to the best of the person's knowledge, information, and belief formed after reasonable inquiry it is: (1) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (3) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection, and a party shall not be obligated to take any action with respect to it until it is signed.

If a certification is made in violation of the rule, the court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney fee.

(h) Deposition where action pending in another state. Any party to an action or proceeding in another state may take the deposition of any person within this state, in the same manner and subject to the same conditions and limitations as if such action or proceeding were pending in this state, provided that in order to obtain a subpoena the notice of the taking of such deposition shall be filed with the clerk of the court of the county in which the person whose deposition is to be taken resides or is to be served, and provided further that all matters arising during the taking of such deposition which by the rules are required to be submitted to the court shall be submitted to the court in the county where the deposition is being taken.

(i) Filing.

(i)(1) Unless otherwise ordered by the court, a party shall not file disclosures or requests for discovery with the court, but shall file only the original certificate of service stating that the disclosures or requests for discovery have been served on the other parties and the date of service. Unless otherwise ordered by the court, a party shall not file a response to a request for discovery with the court, but shall file only the original certificate of service stating that the response has been served on the other parties and the date of service. Except as provided in Rule 30(f)(1), Rule 32 or unless otherwise ordered by the court, depositions shall not be filed with the court.

(i)(2) A party filing a motion under subdivision (c) or a motion under Rule 37(a) shall attach to the motion a copy of the request for discovery or the response which is at issue.

Tab 5

1 **Rule 9. Pleading special matters.**

2 (a)(1) Capacity. It is not necessary to aver the capacity of a party to sue or be sued
3 or the authority of a party to sue or be sued in a representative capacity or the legal
4 existence of an organized association of persons that is made a party. A party may
5 raise an issue as to the legal existence of any party or the capacity of any party to sue
6 or be sued or the authority of a party to sue or be sued in a representative capacity by
7 specific negative averment, which shall include facts within the pleader's knowledge. If
8 raised as an issue, the party relying on such capacity, authority, or legal existence, shall
9 establish the same on the trial.

10 (a)(2) Designation of unknown defendant. When a party does not know the name of
11 an adverse party, he may state that fact in the pleadings, and thereupon such adverse
12 party may be designated in any pleading or proceeding by any name; provided, that
13 when the true name of such adverse party is ascertained, the pleading or proceeding
14 must be amended accordingly.

15 (a)(3) Actions to quiet title; description of interest of unknown parties. In an action to
16 quiet title wherein any of the parties are designated in the caption as "unknown," the
17 pleadings may describe such unknown persons as "all other persons unknown, claiming
18 any right, title, estate or interest in, or lien upon the real property described in the
19 pleading adverse to the complainant's ownership, or clouding his title thereto."

20 (b) Fraud, mistake, condition of the mind. In all averments of fraud or mistake, the
21 circumstances constituting fraud or mistake shall be stated with particularity. Malice,
22 intent, knowledge, and other condition of mind of a person may be averred generally.

23 (c) Conditions precedent. In pleading the performance or occurrence of conditions
24 precedent, it is sufficient to aver generally that all conditions precedent have been
25 performed or have occurred. A denial of performance or occurrence shall be made
26 specifically and with particularity, and when so made the party pleading the
27 performance or occurrence shall on the trial establish the facts showing such
28 performance or occurrence.

29 (d) Official document or act. In pleading an official document or act it is sufficient to
30 aver that the document was issued or the act done in compliance with law.

31 (e) Judgment. In pleading a judgment or decision of a domestic or foreign court,
32 judicial or quasi judicial tribunal, or of a board or officer, it is sufficient to aver the
33 judgment or decision without setting forth matter showing jurisdiction to render it. A
34 denial of jurisdiction shall be made specifically and with particularity and when so made
35 the party pleading the judgment or decision shall establish on the trial all controverted
36 jurisdictional facts.

37 (f) Time and place. For the purpose of testing the sufficiency of a pleading,
38 averments of time and place are material and shall be considered like all other
39 averments of material matter.

40 (g) Special damage. When items of special damage are claimed, they shall be
41 specifically stated.

42 (h) Statute of limitations. In pleading the statute of limitations it is not necessary to
43 state the facts showing the defense but it may be alleged generally that the cause of
44 action is barred by the provisions of the statute relied on, referring to or describing such
45 statute specifically and definitely by section number, subsection designation, if any, or
46 otherwise designating the provision relied upon sufficiently clearly to identify it. If such
47 allegation is controverted, the party pleading the statute must establish, on the trial, the
48 facts showing that the cause of action is so barred.

49 (i) Private statutes; ordinances. In pleading a private statute of this state, or an
50 ordinance of any political subdivision thereof, or a right derived from such statute or
51 ordinance, it is sufficient to refer to such statute or ordinance by its title and the day of
52 its passage or by its section number or other designation in any official publication of the
53 statutes or ordinances. The court shall thereupon take judicial notice thereof.

54 (j) Libel and slander.

55 (j)(1) Pleading defamatory matter. It is not necessary in an action for libel or slander
56 to set forth any intrinsic facts showing the application to the plaintiff of the defamatory
57 matter out of which the action arose; but it is sufficient to state generally that the same
58 was published or spoken concerning the plaintiff. If such allegation is controverted, the
59 party alleging such defamatory matter must establish, on the trial, that it was so
60 published or spoken.

61 (j)(2) Pleading defense. In his answer to an action for libel or slander, the defendant
62 may allege both the truth of the matter charged as defamatory and any mitigating
63 circumstances to reduce the amount of damages, and, whether he proves the
64 justification or not, he may give in evidence the mitigating circumstances.

65 (k) Renew judgment. A complaint alleging failure to pay a judgment shall describe
66 the judgment with particularity or attach a copy of the judgment to the complaint.

67 (l) Allocation of fault.

68 (l)(1) A party seeking to allocate fault to a non-party under [Title 78, Chapter 27-Title](#)
69 [78B, Chapter 5, Part 8](#) shall file:

70 (l)(1)(A) a description of the factual and legal basis on which fault can be allocated;
71 and

72 (l)(1)(B) information known or reasonably available to the party identifying the non-
73 party, including name, address, telephone number and employer. If the identity of the
74 non-party is unknown, the party shall so state.

75 (l)(2) The information specified in subsection (l)(1) must be included in the party's
76 responsive pleading if then known or must be included in a supplemental notice filed
77 within a reasonable time after the party discovers the factual and legal basis on which
78 fault can be allocated but no later than the deadline specified in the discovery plan
79 under Rule 26(f). The court, upon motion and for good cause shown, may permit a party
80 to file the information specified in subsection (l)(1) after the expiration of any period
81 permitted by this rule, but in no event later than 90 days before trial.

82 (l)(3) A party may not seek to allocate fault to another except by compliance with this
83 rule.

84

1 **URCP 026**

2 **Advisory Committee Note for Discovery Rules Amendments**

3 Objectives. The 1999 amendments to Rules 16, 26, 30, 32 and 33 comprise a new
4 model for discovery and case management in state court cases. The objective of the
5 new model is simply to better manage litigation by planning. The amendments achieve
6 this simple objective as follows:

7 They require the parties and encourage the judge to evaluate the case early in the
8 process and to plan appropriate discovery;

9 They establish default deadlines and limits to govern those cases in which the
10 parties cannot agree to a discovery plan and do not seek a judicial order; and

11 They require each party to disclose to other parties the names of persons with
12 discoverable information supporting that party's claims or defenses, a description of
13 documents supporting that party's claims or defenses, a computation of damages and
14 the existence of insurance agreements.

15 The rule changes are intended to simplify discovery and promote full disclosure of
16 discoverable information. The limits and deadlines specified in these rules are not
17 intended to fit all cases. Parties should cooperate and stipulate to and courts should
18 consider different deadlines and limits appropriate for specific cases. The rule changes
19 that implement these objectives are as follows:

20 Discovery and Scheduling Conference of the Parties. Rule 26(f). The 1999
21 amendments require the parties to meet and confer about the case as soon as
22 practicable after commencement of the action. (The deadline for filing the stipulated
23 discovery plan effectively limits the time for the conference to within 46 days after the
24 first answer is filed.) To help ensure the case does not stall, the rule imposes on
25 plaintiff's counsel the obligation to schedule the meeting and to submit to the court the
26 discovery plan and order resulting from the meeting. At the meeting the parties settle
27 what they can and develop a discovery plan for any remaining issues. At this point the
28 content of the discovery plan is entirely within the control of the parties. The rule
29 suggests elements commonly raised in the course of discovery, but counsel should
30 tailor the discovery plan to meet the needs of the particular case. Within 14 days after
31 the meeting, plaintiff's counsel prepares a stipulated discovery plan and order, which is

32 submitted to the court for approval. If the parties cannot agree or can only partially
33 agree to a stipulated discovery plan, the plaintiff must and any party may move for a
34 discovery order. If the court does not order otherwise, the default deadlines and limits of
35 the rules govern. Discovery proceeds in the normal course and in accordance with the
36 discovery plan after the discovery and scheduling conference. The parties are required
37 to meet once, but subsequent meetings, as necessary, to amend the discovery plan are
38 not precluded.

39 A later-added party is bound by the discovery order but can conduct a discovery and
40 scheduling conference to obtain a stipulated amendment to the original plan. If the
41 parties will not stipulate to reasonable discovery by a later-added party, the court can
42 order appropriate relief upon motion. The court should be sensitive to the nature, extent
43 and timing of discovery by a later-added party.

44 Scheduling and Management Conference with the Court. Rule 16(b). The 1999
45 amendments provide that any party can file a motion for a discovery order on issues the
46 parties cannot agree upon, and the court will rule upon that motion. Any party may seek
47 a scheduling and management conference with the court, but, because of large
48 caseloads, the rules permit the court to decline the conference. By conducting a
49 scheduling and management conference, however, the court has the opportunity early
50 in the process to evaluate the case and manage it accordingly, to explore mediation and
51 settlement, to resolve disputes over the nature and extent of discovery, and to identify
52 issues collateral to the litigation. It is not anticipated that judges will manage a case
53 contrary to the stipulation of the parties. However, the court's interest in case
54 management is independent of that of the parties, and the court needs the discretion
55 independently to manage the case, especially when the parties cannot agree.

56 The scheduling and management conference is designed to encourage the parties
57 and the court to take earlier and better control of the litigation. If possible, the trial date
58 should be set at this conference as well as dates for all of the necessary pretrial steps
59 and any modifications to the presumptions established by the discovery rules.

60 To avoid possible confusion surrounding the multiplicity of objectives of the various
61 conferences with the court, the amendments delete the long list of objectives found in
62 the former rule, which the committee determined are adequately covered under

63 subsection (a). The objectives remain sound. The scheduling and management
64 conference is a particular type of conference with specified and limited objectives. Any
65 other conference prior to trial is properly called a pretrial conference and the objectives
66 are more varied. In addition to the objectives in the rule itself, the following objectives
67 may be appropriate:

- 68 (1) forming and simplifying issues and eliminating frivolous claims and defenses;
- 69 (2) obtaining admissions of fact and stipulations to documents;
- 70 (3) obtaining stipulations or rulings on the admissibility of evidence;
- 71 (4) referring matters to mediation or other alternative dispute resolution;
- 72 (5) adopting special procedures for managing actions that may involve complex
73 issues of fact or law, multiple parties, or unusual proof problems; and
- 74 (6) the form and substance of a pretrial order.

75 Required Initial Disclosures. Rule 26(a). The 1999 amendments require each party
76 to provide to all other parties the names of persons with discoverable information
77 supporting that party's claims or defenses, a description of documents supporting that
78 party's claims or defenses, a computation of any damages it claims and any insurance
79 that may satisfy some or all of any judgment. This exchange of information occurs within
80 14 days after the discovery and scheduling conference of the parties. A party can only
81 disclose that which is known at the time. As further information is developed, the party is
82 under a duty to supplement the initial disclosures. If a party fails to comply with the
83 disclosure rule, Rule 37(f) requires the court to prohibit the use of the witness or
84 evidence at trial unless the failure was harmless or there is good cause for the failure.
85 The court may order any other sanction it determines to be appropriate and Rule 37(f)
86 provides some examples.

87 Expert reports. Rule 26(a)(3). Unlike the Federal Rules of Civil Procedure, an
88 expert's report need not be written and signed by the expert. The report may be signed
89 by the witness or the party. In addition to the qualifications of the expert, the report must
90 contain the subject matter on which the expert is expected to testify, the substance of
91 the facts and opinions to which the expert is expected to testify, and a summary of the
92 grounds for each opinion. In effect, the report will serve in lieu of responses to standard
93 interrogatories. The committee considered but decided not to adopt the federal rule

94 governing expert reports. Both plaintiffs' attorneys and defense attorneys reported on
95 the high cost of reports by experts, the growth of non-practicing experts as a profession,
96 and the need to depose experts regardless of a written report. The expert should not be
97 permitted to testify at variance with the report, regardless whether the expert or the
98 party prepares or signs it. For this reason, the committee believes the expert should
99 prepare and sign the report whenever possible and should always review and approve
100 the report. For genetics testing in paternity cases, compliance with Utah Code ~~78-45a-~~
101 [40-Title 78B, Chapter 15, Part 5](#) is sufficient to satisfy the expert report requirement
102 unless a party objects and specifically requests a report under the rule.

103 Exempt cases. Rule 26(a)(2). The scope of the exemption is very limited. If a case is
104 exempt, the parties do not need to meet and confer under Rule 26(f), and they do not
105 need to disclose under Rule 26(a)(1). All other discovery provisions apply to exempt
106 cases. All information subject to mandatory disclosure in a non-exempt case is subject
107 to discovery using traditional methods in an exempt case. The committee did not seek
108 to exempt simple cases. The rule amendments benefit simple as well as complex
109 litigation. The only exempt cases are those identified in Rule 26(a)(2).

110 Depositions. Rule 30. The party taking the deposition may designate and pay for any
111 method of recording the deposition. Any other party may designate and pay for an
112 additional method of recording. The rule prohibits argumentative and suggestive
113 objections.

114 Default Deadlines and Limits. The discovery rules establish presumptive deadlines
115 and limits, the purpose of which are to encourage stipulations to deadlines and limits
116 suitable to the needs of the particular case. If the discovery needs of the parties are not
117 equivalent, the court, in entering a discovery order, should consider whether the
118 presumptive deadlines and limits are being used by one party to frustrate legitimate
119 discovery. The discovery rules establish the following new deadlines and limits, any of
120 which can be modified by stipulation of the parties or order of the court:

- 121 Procedure
- 122 Deadline or Limitation
- 123 Discovery and scheduling conference of the parties

124 Held as soon as practicable after commencement of the action. (The deadline for
125 filing the stipulated discovery plan effectively limits the time for the conference to within
126 46 days after the first answer is filed.)

127 Stipulated discovery plan and order

128 Submit to court within 14 days after the discovery and scheduling conference but in
129 no event more than 60 days after the first answer is filed.

130 Required initial disclosures

131 Provide within 14 days after the discovery and scheduling conference.

132 Supplement required initial disclosures

133 At appropriate intervals.

134 Amend response to interrogatories, request for production or request for admission
135 Seasonably.

136 Initial disclosures by later added party

137 Provide within 30 days after being served.

138 Motion by later added party to amend the discovery plan

139 File within a reasonable time after being joined.

140 Number of depositions oral and written

141 Ten per side.

142 Review and modify record of deposition

143 Within 30 days after notice that record is available but only if deponent requested
144 opportunity to review record prior to completing deposition.

145 Interrogatories

146 No more than 25 questions, including discrete subparts.

147 Fact discovery

148 Begins after the parties conduct their discovery and scheduling conference. Closes
149 240 days after first appearance by a defendant.

150 Identify expert witnesses and disclose expert reports

151 Within 30 days after close of fact discovery.

152 Identify rebuttal expert and disclose rebuttal expert reports

153 Within 60 days after disclosure by other party of expert identity and report.

154 Deposition of expert witness

155 Conduct within 60 days after disclosure of the expert's report.

156 Certify that case is ready for trial

157 File immediately upon the close of all discovery.

158 Pretrial disclosure of "will call" and "may call" witnesses, deposition testimony, and
159 exhibits

160 Provide at least 30 days prior to trial.

161 Objections to pretrial disclosures

162 File within 14 days after pretrial disclosure.

163 Trial

164 Schedule as soon after certificate of readiness as is mutually convenient for court
165 and parties.

166 Code of Judicial Administration. Rules 4-104 and 4-502 are being repealed and the
167 provisions of those rules are being integrated into the Rule of Civil Procedure. The
168 certificate of readiness for trial required by 4-104 is now in URCP 16(b) and the
169 restrictions on filing discovery documents with the court are now in Rule 26(i).

170 The Supreme Court order approving the amendments directed that the new
171 procedures be applicable only to cases filed on or after November 1, 1999.

172

1 **Rule 57. Declaratory judgments.**

2 The procedure for obtaining a declaratory judgment pursuant to ~~Chapter 33 of Title~~
3 ~~78, U.C.A. 1953~~ Utah Code Title 78B, Chapter 6, Part 4, shall be in accordance with
4 these rules, and the right to trial by jury may be demanded under the circumstances and
5 in the manner provided in Rules 38 and 39. The existence of another adequate remedy
6 does not preclude a judgment for declaratory relief in cases where it is appropriate. The
7 court may order a speedy hearing of an action for a declaratory judgment and may
8 advance it on the calendar.

9

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
4 other claim.

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

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

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

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

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

20 (a)(7) "Officer" means any person designated by the court to whom the writ is
21 issued, including a sheriff, constable, deputy thereof or any person appointed by the
22 officer to hold the property.

23 (a)(8) "Plaintiff" means the party filing a claim or in whose favor judgment has been
24 entered.

25 (a)(9) "Property" means the defendant's property of any type not exempt from
26 seizure. Property includes but is not limited to real and personal property, tangible and
27 intangible property, the right to property whether due or to become due, and an
28 obligation of a third person to perform for the defendant.

29 (a)(10) "Serve" with respect to parties means any method of service authorized by
30 Rule 5 and with respect to non-parties means any manner of service authorized by Rule
31 4.

32 (b) Security.

33 (b)(1) Amount. When security is required of a party, the party shall provide security
34 in the sum and form the court deems adequate. For security by the plaintiff the amount
35 should be sufficient to reimburse other parties for damages, costs and attorney fees
36 incurred as a result of a writ wrongfully obtained. For security by the defendant, the
37 amount should be equivalent to the amount of the claim or judgment or the value of the
38 defendant's interest in the property. In fixing the amount, the court may consider any
39 relevant factor. The court may relieve a party from the necessity of providing security if it
40 appears that none of the parties will incur damages, costs or attorney fees as a result of
41 a writ wrongfully obtained or if there exists some other substantial reason for dispensing
42 with security. The amount of security does not establish or limit the amount of damages,
43 costs or attorney fees recoverable if the writ is wrongfully obtained.

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

52 (b)(3) Objection. The court may issue additional writs upon the original security
53 subject to the objection of the opposing party. The opposing party may object to the
54 sufficiency of the security or the sufficiency of the sureties within five days after service
55 of the writ. The burden to show the sufficiency of the security and the sufficiency of the
56 sureties is on the proponent of the security.

57 (b)(4) Security of governmental entity. No security is required of the United States,
58 the State of Utah, or an officer, agency, or subdivision of either, nor when prohibited by
59 law.

60 (c) Procedures in aid of writs.

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

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

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

69 (d) Issuance of writ; service

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

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

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

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

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

88 (d)(3) Service.

89 (d)(3)(A) Upon whom; effective date. The officer shall serve the writ and
90 accompanying papers on the defendant, and, as applicable, the garnishee and any
91 person named by the plaintiff as claiming an interest in the property. The officer may
92 simultaneously serve notice of the date, time and place of sale. A writ is effective upon
93 service.

94 (d)(3)(B) Limits on writs of garnishment.

95 (d)(3)(B)(i) A writ of garnishment served while a previous writ of garnishment is in
96 effect is effective upon expiration of the previous writ; otherwise, a writ of garnishment is
97 effective upon service.

98 (d)(3)(B)(ii) Only one writ of garnishment of earnings may be in effect at one time.
99 One additional writ of garnishment of earnings for a subsequent pay period may be
100 served on the garnishee while an earlier writ of continuing garnishment is in effect.

101 (d)(3)(C) Return; inventory. Within 10 days after service, the officer shall return the
102 writ to the court with proof of service. If property has been seized, the officer shall
103 include an inventory of the property and whether the property is held by the officer or
104 the officer's designee. If a person refuses to give the officer an affidavit describing the
105 property, the officer shall indicate the fact of refusal on the return, and the court may
106 require that person to pay the costs of any proceeding taken for the purpose of
107 obtaining such information.

108 (d)(3)(D) Service of writ by publication. The court may order service of a writ by
109 publication upon a person entitled to notice in circumstances in which service by
110 publication of a summons and complaint would be appropriate under Rule 4.

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

113 To _____, [Defendant/Garnishee/Claimant]:

114 A writ of _____ has been issued in the above-captioned case commanding
115 the officer of _____ County as follows:

116 [Quoting body of writ]

117 Your rights may be adversely affected by these proceedings. Property in which you
118 have an interest may be seized to pay a judgment or order. You have the right to claim
119 property exempt from seizure under statutes of the United States or this state, including
120 Utah Code, ~~Title 78, Chapter 23~~ [Title 78B, Chapter 5, Part 5](#).

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

125 (e) Claim to property by third person.

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

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

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

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

142 (f)(1) By defendant. At any time before notice of sale of the property or before the
143 property is delivered to the plaintiff, the defendant may file security and a motion to
144 discharge the writ. The plaintiff may object to the sufficiency of the security or the
145 sufficiency of the sureties within five days after service of the motion. At any time before
146 notice of sale of the property or before the property is delivered to the plaintiff, the
147 defendant may file a motion to discharge the writ on the ground that the writ was
148 wrongfully obtained. The court shall give the plaintiff reasonable opportunity to correct a
149 defect. The defendant shall serve the order to discharge the writ upon the officer,
150 plaintiff, garnishee and any third person claiming an interest in the property.

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

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

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

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

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

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

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

166

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

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

4 (b) Motion; affidavit. To obtain a writ of replevin, attachment or garnishment before
5 judgment, plaintiff shall file a motion, security as ordered by the court and an affidavit
6 stating facts showing the grounds for relief and other information required by these
7 rules. If the plaintiff cannot by due diligence determine the facts necessary to support
8 the affidavit, the plaintiff shall explain in the affidavit the steps taken to determine the
9 facts and why the facts could not be determined. The affidavit supporting the motion
10 shall state facts in simple, concise and direct terms that are not conclusory.

11 (c) Grounds for prejudgment writ. Grounds for a prejudgment writ include, in addition
12 to the grounds for the specific writ, all of the requirements listed in subsections (c)(1)
13 through (c)(3) and at least one of the requirements listed in subsections (c)(4) through
14 (c)(10):

15 (c)(1) that the property is not earnings and not exempt from execution; and

16 (c)(2) that the writ is not sought to hinder, delay or defraud a creditor of the
17 defendant; and

18 (c)(3) a substantial likelihood that the plaintiff will prevail on the merits of the
19 underlying claim; and

20 (c)(4) that the defendant is avoiding service of process; or

21 (c)(5) that the defendant has assigned, disposed of or concealed, or is about to
22 assign, dispose of or conceal, the property with intent to defraud creditors; or

23 (c)(6) that the defendant has left or is about to leave the state with intent to defraud
24 creditors; or

25 (c)(7) that the defendant has fraudulently incurred the obligation that is the subject of
26 the action; or

27 (c)(8) that the property will materially decline in value; or

28 (c)(9) that the plaintiff has an ownership or special interest in the property; or

29 (c)(10) probable cause of losing the remedy unless the court issues the writ.

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

32 (d)(1) if known, the nature, location, account number and estimated value of the
33 property and the name, address and phone number of the person holding the property;

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

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

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

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

40 (d)(6) that the plaintiff has attached the garnishee fee established by Utah Code
41 Section ~~78-7-44~~ [78A-2-216](#).

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

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

49 (g) Reply. The defendant may file a reply to the affidavit for a prejudgment writ at
50 least 24 hours before the hearing. The reply may:

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

52 (g)(2) object to the sufficiency of the security or the sufficiency of the sureties;

53 (g)(3) request return of the property;

54 (g)(4) claim the property is exempt; or

55 (g)(5) claim a set off.

56 (h) Burden of proof. The burden is on the plaintiff to prove the facts necessary to
57 support the writ.

58 (i) Ex parte writ before judgment. If the plaintiff seeks a prejudgment writ prior to a
59 hearing, the plaintiff shall file an affidavit stating facts showing irreparable injury to the
60 plaintiff before the defendant can be heard or other reason notice should not be given. If
61 a writ is issued without notice to the defendant and opportunity to be heard, the court

62 shall set a hearing for the earliest reasonable time, and the writ and the order
63 authorizing the writ shall:

64 (i)(1) state the grounds for issuance without notice;

65 (i)(2) designate the date and time of issuance and the date and time of expiration;

66 (i)(3) designate the date, time and place of the hearing;

67 (i)(4) forthwith be filed in the clerk's office and entered of record;

68 (i)(5) expire 10 days after issuance unless the court establishes an earlier expiration
69 date, the defendant consents that the order and writ be extended or the court extends
70 the order and writ after hearing;

71 (i)(6) be served on the defendant and any person named by the plaintiff as claiming
72 an interest in the property in a manner directed by the court that is reasonably
73 calculated to expeditiously give actual notice of the hearing.

74

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

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

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

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

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

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

12 (c) 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) Reply to writ; request for hearing.

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

18 (d)(2) The court shall set the matter for an evidentiary hearing. If the court
19 determines that the writ was wrongfully obtained, or that property is exempt from
20 seizure, the court shall enter an order directing the officer to release the property. If the
21 court determines that the writ was properly issued and the property is not exempt, the
22 court shall enter an order directing the officer to sell or deliver the property. If the date of
23 sale has passed, notice of the rescheduled sale shall be given. No sale may be held
24 until the court has decided 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) Mortgage foreclosure governed by statute. Utah Code ~~Title 78, Chapter 37~~ [Title](#)
27 [78B, Chapter 6, Part 9](#), Mortgage Foreclosure, governs mortgage foreclosure
28 proceedings notwithstanding contrary provisions of these rules.

29

1 **Rule 65C. Post-conviction relief.**

2 (a) Scope. This rule shall govern proceedings in all petitions for post-conviction relief
3 filed under Utah Code ~~Ann. § 78-35a-101 et seq.,~~ Title 78B, Chapter 9, Post-Conviction
4 Remedies Act.

5 (b) Commencement and venue. The proceeding shall be commenced by filing a
6 petition with the clerk of the district court in the county in which the judgment of
7 conviction was entered. The petition should be filed on forms provided by the court. The
8 court may order a change of venue on its own motion if the petition is filed in the wrong
9 county. The court may order a change of venue on motion of a party for the
10 convenience of the parties or witnesses.

11 (c) Contents of the petition. The petition shall set forth all claims that the petitioner
12 has in relation to the legality of the conviction or sentence. Additional claims relating to
13 the legality of the conviction or sentence may not be raised in subsequent proceedings
14 except for good cause shown. The petition shall state:

15 (c)(1) whether the petitioner is incarcerated and, if so, the place of incarceration;

16 (c)(2) the name of the court in which the petitioner was convicted and sentenced and
17 the dates of proceedings in which the conviction was entered, together with the court's
18 case number for those proceedings, if known by the petitioner;

19 (c)(3) in plain and concise terms, all of the facts that form the basis of the petitioner's
20 claim to relief;

21 (c)(4) whether the judgment of conviction, the sentence, or the commitment for
22 violation of probation has been reviewed on appeal, and, if so, the number and title of
23 the appellate proceeding, the issues raised on appeal, and the results of the appeal;

24 (c)(5) whether the legality of the conviction or sentence has been adjudicated in any
25 prior post-conviction or other civil proceeding, and, if so, the case number and title of
26 those proceedings, the issues raised in the petition, and the results of the prior
27 proceeding; and

28 (c)(6) if the petitioner claims entitlement to relief due to newly discovered evidence,
29 the reasons why the evidence could not have been discovered in time for the claim to
30 be addressed in the trial, the appeal, or any previous post-conviction petition.

31 (d) Attachments to the petition. If available to the petitioner, the petitioner shall
32 attach to the petition:

33 (d)(1) affidavits, copies of records and other evidence in support of the allegations;

34 (d)(2) a copy of or a citation to any opinion issued by an appellate court regarding
35 the direct appeal of the petitioner's case;

36 (d)(3) a copy of the pleadings filed by the petitioner in any prior post-conviction or
37 other civil proceeding that adjudicated the legality of the conviction or sentence; and

38 (d)(4) a copy of all relevant orders and memoranda of the court.

39 (e) Memorandum of authorities. The petitioner shall not set forth argument or
40 citations or discuss authorities in the petition, but these may be set out in a separate
41 memorandum, two copies of which shall be filed with the petition.

42 (f) Assignment. On the filing of the petition, the clerk shall promptly assign and
43 deliver it to the judge who sentenced the petitioner. If the judge who sentenced the
44 petitioner is not available, the clerk shall assign the case in the normal course.

45 (g)(1) Summary dismissal of claims. The assigned judge shall review the petition,
46 and, if it is apparent to the court that any claim has been adjudicated in a prior
47 proceeding, or if any claim in the petition appears frivolous on its face, the court shall
48 forthwith issue an order dismissing the claim, stating either that the claim has been
49 adjudicated or that the claim is frivolous on its face. The order shall be sent by mail to
50 the petitioner. Proceedings on the claim shall terminate with the entry of the order of
51 dismissal. The order of dismissal need not recite findings of fact or conclusions of law.

52 (g)(2) A petition is frivolous on its face when, based solely on the allegations
53 contained in the pleadings and attachments, it appears that:

54 (g)(2)(A) the facts alleged do not support a claim for relief as a matter of law;

55 (g)(2)(B) the claims have no arguable basis in fact; or

56 (g)(2)(C) the petition challenges the sentence only and the sentence has expired
57 prior to the filing of the petition.

58 (g)(3) If a petition is not frivolous on its face but is deficient due to a pleading error or
59 failure to comply with the requirements of this rule, the court shall return a copy of the
60 petition with leave to amend within 20 days. The court may grant one additional 20 day
61 period to amend for good cause shown.

62 (g)(4) The court shall not review for summary dismissal the initial post-conviction
63 petition in a case where the petitioner is sentenced to death.

64 (h) Service of petitions. If, on review of the petition, the court concludes that all or
65 part of the petition should not be summarily dismissed, the court shall designate the
66 portions of the petition that are not dismissed and direct the clerk to serve a copy of the
67 petition, attachments and memorandum by mail upon the respondent. If the petition is a
68 challenge to a felony conviction or sentence, the respondent is the state of Utah
69 represented by the Attorney General. In all other cases, the respondent is the
70 governmental entity that prosecuted the petitioner.

71 (i) Answer or other response. Within 30 days (plus time allowed under these rules for
72 service by mail) after service of a copy of the petition upon the respondent, or within
73 such other period of time as the court may allow, the respondent shall answer or
74 otherwise respond to the portions of the petition that have not been dismissed and shall
75 serve the answer or other response upon the petitioner in accordance with Rule 5(b).
76 Within 30 days (plus time allowed for service by mail) after service of any motion to
77 dismiss or for summary judgment, the petitioner may respond by memorandum to the
78 motion. No further pleadings or amendments will be permitted unless ordered by the
79 court.

80 (j) Hearings. After pleadings are closed, the court shall promptly set the proceeding
81 for a hearing or otherwise dispose of the case. The court may also order a prehearing
82 conference, but the conference shall not be set so as to delay unreasonably the hearing
83 on the merits of the petition. At the prehearing conference, the court may:

84 (j)(1) consider the formation and simplification of issues;

85 (j)(2) require the parties to identify witnesses and documents; and

86 (j)(3) require the parties to establish the admissibility of evidence expected to be
87 presented at the evidentiary hearing.

88 (k) Presence of the petitioner at hearings. The petitioner shall be present at the
89 prehearing conference if the petitioner is not represented by counsel. The prehearing
90 conference may be conducted by means of telephone or video conferencing. The
91 petitioner shall be present before the court at hearings on dispositive issues but need

92 not otherwise be present in court during the proceeding. The court may conduct any
93 hearing at the correctional facility where the petitioner is confined.

94 (l) Discovery; records. Discovery under Rules 26 through 37 shall be allowed by the
95 court upon motion of a party and a determination that there is good cause to believe
96 that discovery is necessary to provide a party with evidence that is likely to be
97 admissible at an evidentiary hearing. The court may order either the petitioner or the
98 respondent to obtain any relevant transcript or court records.

99 (m) Orders; stay.

100 (m)(1) If the court vacates the original conviction or sentence, it shall enter findings
101 of fact and conclusions of law and an appropriate order. If the petitioner is serving a
102 sentence for a felony conviction, the order shall be stayed for 5 days. Within the stay
103 period, the respondent shall give written notice to the court and the petitioner that the
104 respondent will pursue a new trial, pursue a new sentence, appeal the order, or take no
105 action. Thereafter the stay of the order is governed by these rules and by the Rules of
106 Appellate Procedure.

107 (m)(2) If the respondent fails to provide notice or gives notice that no action will be
108 taken, the stay shall expire and the court shall deliver forthwith to the custodian of the
109 petitioner the order to release the petitioner.

110 (m)(3) If the respondent gives notice that the petitioner will be retried or resentenced,
111 the trial court may enter any supplementary orders as to arraignment, trial, sentencing,
112 custody, bail, discharge, or other matters that may be necessary and proper.

113 (n) Costs. The court may assign the costs of the proceeding, as allowed under Rule
114 54(d), to any party as it deems appropriate. If the petitioner is indigent, the court may
115 direct the costs to be paid by the governmental entity that prosecuted the petitioner. If
116 the petitioner is in the custody of the Department of Corrections, ~~Section 64-13-23 and~~
117 ~~sections 78-7-36 through 78-7-43~~ Utah Code Title 78A, Chapter 2, Part 3 governs the
118 manner and procedure by which the trial court shall determine the amount, if any, to
119 charge for fees and costs.

120 (o) Appeal. Any final judgment or order entered upon the petition may be appealed
121 to and reviewed by the Court of Appeals or the Supreme Court of Utah in accord with
122 the statutes governing appeals to those courts.

123

1 **Rule 67. Deposit in court.**

2 When it is admitted by the pleadings, or shown upon the examination of a party, that
3 he has in his possession or under his control any money or other thing capable of
4 delivery, which, being the subject of litigation, is held by him as trustee for another party,
5 or which belongs or is due to another party, the court may order the same, upon motion,
6 to be deposited in court or delivered to such party upon such conditions as may be just,
7 subject to the further direction of the court; provided that if money is paid into court
8 under this rule it shall be deposited and withdrawn in accordance with [Section 78-27-4,](#)
9 Utah Code ~~Annotated 1953,~~ [Section 78B-8-504](#) or any like statute.

10

Rule 100. Coordination of cases pending in district court and juvenile court.

(a) Notice to the court. In a case in which child custody, child support or parent time is an issue, all parties have a continuing duty to notify the court:

(a)(1) of a case in which a party or the party's child is a party to or the subject of a petition or order involving child custody, child support or parent time;

(a)(2) of a criminal or delinquency case in which a party or the party's child is a defendant or respondent;

(a)(3) of a protective order case involving a party regardless whether a child of the party is involved.

The notice shall be filed with a party's initial pleading or as soon as practicable after the party becomes aware of the other case. The notice shall include the case caption, file number and name of the judge or commissioner in the other case.

(b) Communication among judges and commissioners. The judge or commissioner assigned to a case in which child custody, child support or parent time is an issue shall communicate and consult with any other judge or commissioner assigned to any other pending case involving the same issues and the same parties or their children. The objective of the communication is to consider the feasibility of consolidating the cases before one judge or commissioner or of coordinating hearings and orders.

(c) Participation of parties. The judges and commissioners may allow the parties to participate in the communication. If the parties have not participated in the communication, the parties shall be given notice and the opportunity to present facts and arguments before a decision to consolidate the cases.

(d) Consolidation of cases.

(d)(1) The court may consolidate cases within a county under Rule 42.

(d)(2) The court may transfer a case to the court of another county with venue or to the court of any county in accordance with Utah Code Section ~~78-13-9~~ [78B-3-309](#).

(d)(3) If the district court and juvenile court have concurrent jurisdiction over cases, either court may transfer a case to the other court upon the agreement of the judges or commissioners assigned to the cases.

(e) Judicial reassignment. A judge may hear and determine a case in another court or district upon assignment in accordance with CJA Rule 3-108(3).