

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.

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.

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 or the defendant's name and address and, if known, the defendant's social security
37 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.

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