

1 Rule 64D. Writ of garnishment.

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (c)(5) that the plaintiff will pay to the garnishee the fee established by Utah Code Section 78-
27 7-44.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

83 (j) Liability of garnishee.

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

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

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

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

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

99 (k) Property as security.

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

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

110 (l) Writ of continuing garnishment.

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

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

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

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

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

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

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

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

123 (1)(3)(B) serve the answers to the interrogatories on the plaintiff, the defendant and any other
124 person shown by the records of the garnishee to have an interest in the property;

125 (1)(3)(C) file the answers to the interrogatories with the clerk of the court; and

126 (1)(3)(D) deliver the property as provided in the writ.

127 (1)(4) Any person served by the garnishee may reply as in subsection (g), but whether to
128 grant a hearing is within the judge's discretion.

129 (1)(5) A writ of continuing garnishment issued in favor of the Office of Recovery Services or
130 the Department of Workforce Services of the state of Utah to recover overpayments:

131 (1)(5)(A) is not limited to 120-days;

132 (1)(5)(B) has priority over other writs of continuing garnishment; and

133 (1)(5)(C) if served during the term of another writ of continuing garnishment, tolls that term
134 and preserves all priorities until the expiration of the state's writ.

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