

# Proposed Amendments To The Utah Court Rules

These rules are published by the Utah Supreme Court and Utah Judicial Council for comment. The comment period ends December 31, 2003.

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

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Rules marked with \*\* have been approved and are effective during the comment period pursuant to CJA 2-205 or 11-101 but are subject to further amendment as a result of comments. All other amendments are proposed.

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1       **CODE OF JUDICIAL ADMINISTRATION**

2       **Rule 4-202.08. Fees for records, information, and services.**

3       Intent:

4       To establish uniform fees for requests for records, information, and services.

5       Applicability:

6       This rule applies to all courts of record and not of record and to the Administrative Office of  
7 the Courts.

8       Statement of the Rule:

9       (1) Fees payable. Fees are payable to the court or office that provides the record, information,  
10 or service at the time the record, information, or service is provided. The initial and monthly  
11 subscription fee for public on-line services is due in advance. The connect-time fee is due upon  
12 receipt of an invoice. If a public on-line services account is more than 60 days overdue, the  
13 subscription may be terminated. If a subscription is terminated for nonpayment, the subscription  
14 will be reinstated only upon payment of past due amounts and a reconnect fee equal to the  
15 subscription fee.

16       (2) Use of fees. Fees received are credited to the court or office providing the record,  
17 information, or service in the account from which expenditures were made. Fees for public on-  
18 line services are credited to the Administrative Office of the Courts to improve data quality  
19 control, information services, and information technology.

20       (3) Copies. Copies are made of court records only. The term "copies" includes the original  
21 production. Fees for copies are based on the number of record sources to be copied and are as  
22 follows:

23       (3)(A) paper except as provided in (H): \$.25 per sheet;

24       (3)(B) microfiche: \$1.00 per card;

25       (3)(C) audio tape: \$10.00 per tape;

26       (3)(D) video tape: \$15.00 per tape;

27       (3)(E) floppy disk or compact disk other than of court hearings: \$10.00 per disk;

28       (3)(F) electronic copy of court reporter stenographic text: \$25.00 for each one-half day of  
29 testimony or part thereof;

1 (3)(G) electronic copy of audio record or video record of court proceeding: \$10.00 for each  
2 one-half day of testimony or part thereof; and

3 (3)(H) pre-printed forms and associated information: an amount for each packet established  
4 by the state court administrator.

5 (4) Mailing. The fee for mailing is ~~the actual cost. The fee for mailing shall include necessary~~  
6 ~~transmittal between courts or offices for which a public or private carrier is used~~ \$3.00.

7 (5) Personnel time. There is no fee for personnel time to copy the record of a court  
8 proceeding. There is no fee for the first 15 minutes of personnel time. The fee for time beyond  
9 the first 15 minutes is charged in 15 minute increments for any part thereof. The fee for  
10 personnel time is charged at the following rates for the least expensive group capable of  
11 providing the record, information, or service:

12 (5)(A) clerical assistant: \$15.00 per hour;

13 (5)(B) technician: \$22.00 per hour;

14 (5)(C) senior clerical: \$21.00 per hour

15 (5)(D) programmer/analyst: \$32.00 per hour;

16 (5)(E) manager: \$37.00 per hour; and

17 (5)(F) consultant: actual cost as billed by the consultant.

18 (6) Public on-line services. The fee for public on-line services shall be as follows:

19 (6)(A) a set-up fee of \$25.00;

20 (6)(B) a subscription fee of \$30.00 per month for any portion of a calendar month; and

21 (6)(C) \$.10 per minute of connect-time greater than 120 minutes during a billing cycle.

22 (7) No interference. Records, information, and services shall be provided at a time and in a  
23 manner that does not interfere with the regular business of the courts. The Administrative Office  
24 of the Courts may disconnect a user of public on-line services whose use interferes with  
25 computer performance or access by other users. The Administrative Office of the Courts may  
26 establish reasonable time limits per access call to promote access by a variety of users.

27 (8) Waiver of fees.

28 (8)(A) Fees established by this rule shall be waived for:

29 (8)(A)(i) any government entity required by law to obtain court records; or

30 (8)(A)(ii) any person who is the subject of the record and who is impecunious.

1 (8)(B) Fees established by this rule may be waived for a student engaged in research for an  
2 academic purpose.

3 (8)(C) Fees established by this rule may be waived for a governmental entity if the fee is  
4 minimal.

5 **Rule 4-801. Transfer of small claims cases.**

6 Intent:

7 To establish a procedure for the transfer of small claims cases to the appropriate justice court.

8 Applicability:

9 This rule shall apply to the courts of record and not of record.

10 Statement of the Rule:

11 (1) Small claims actions filed in a court of record may be assigned to a judge pro tempore, if  
12 one has been appointed under Rule 11-202 to adjudicate small claims actions. If no judge pro  
13 tempore has been appointed to adjudicate small claims actions, the case may be transferred to a  
14 justice court with jurisdiction under [Utah Code](#) Section 78-5-104.

15 (2) At the time of the transfer, the court shall also transfer the filing fee, less the portion  
16 dedicated to the judges' retirement trust fund.

17 (3) If there is no justice court with territorial jurisdiction of the small claims action and no  
18 judge pro tempore, a district judge of the court shall hear and determine the action. ~~The appeal~~  
19 ~~shall be as provided in Rule 4-803.~~

20 **Rule 11-101. Supreme Court's rulemaking process.**

21 Intent:

22 To establish a procedure for the adoption, modification and repeal of rules of procedure and  
23 evidence, and rules governing the practice of law.

24 Applicability:

25 This rule shall apply to the Judiciary, the Utah State Bar, the Supreme Court's Advisory  
26 Rule Committees, the Supreme Court's Board of Continuing Legal Education, the Supreme  
27 Court's Ethics and Discipline Committee, and all other individuals and ~~agencies~~ entities  
28 participating in the rulemaking process.

29 Statement of the Rule:

30 ~~(1) Creation and composition of Advisory Committees.~~

1 (A1) Statement of authority. Article VIII, Section 4 of the Utah Constitution provides that the  
2 Supreme Court shall adopt rules of procedure and evidence to be used in the courts of the state  
3 and shall by rule manage the appellate process. Section 4 further provides that the Court may  
4 authorize retired justices and judges and judges pro tempore to perform judicial duties. Finally,  
5 Section 4 provides that the Supreme Court shall by rule govern the practice of law, including  
6 admission to practice law and the conduct and discipline of persons admitted to practice law. To  
7 assist the Court with these responsibilities, the Supreme Court hereby establishes a procedure for  
8 the adoption, repeal and amendment of rules of procedure and evidence; rules regulating judges  
9 pro tempore and retired judges; and rules governing the practice of law.

10 (2) Creation and composition of advisory rules committees.

11 (2)(BA) Establishment of committees. There is hereby established a Supreme Court  
12 ~~A~~advisory rules ~~C~~committee in each of the following areas: civil procedure, criminal procedure,  
13 juvenile court procedure, appellate procedure, evidence, civil jury instructions, criminal jury  
14 instructions, and the rules of professional ~~practice~~ conduct.

15 (2)(CB) Composition of committees. The Supreme Court shall determine the size of each  
16 committee based upon the workload of the individual committees. The committees should be  
17 broadly representative of the legal community and should include practicing lawyers,  
18 academicians, and judges. Members should possess expertise within the committee's jurisdiction.

19 (2)(DC) Application and recruitment of committee members. Vacancies on the committees  
20 shall be announced in the Utah Bar Journal. The notice shall specify the name of the committee  
21 which has the vacancy, a brief description of the committee's responsibilities, the method for  
22 submitting an application or letter of interest and the application deadline. Members of the  
23 committees or the Supreme Court may solicit applications for membership on the committees.  
24 Applications and letters of interest shall be submitted to the ~~Administrative Office of the Courts~~  
25 Supreme Court.

26 (2)(ED) Appointment of committee members and chair. Upon expiration of the application  
27 deadline, ~~the Administrative Office of the Courts shall forward all applications and letters of~~  
28 ~~interest to the Supreme Court for consideration. T~~, the Supreme Court shall review the  
29 applications and letters of interest and appoint those individuals who are best suited to serve on  
30 the committee. Members shall be appointed to serve staggered four-year terms. The Chief Justice  
31 shall select a chair from among the committee's members. The chair shall be appointed to serve a

1 two-year term and may be appointed to serve additional two-year terms. Judges who serve as  
2 members of the committees generally shall not be selected as chairs.

3 (2)(~~FE~~) Vacancies. In the event of a vacancy on a committee due to death, incapacity,  
4 resignation or removal, the Supreme Court, after consultation with the committee chair, shall  
5 appoint a new committee member ~~in accordance with Paragraphs (1)(D) and (E).~~ New members  
6 ~~shall be appointed~~ to serve for the remainder of the term to which ~~they are~~ appointed.

7 (2)(~~GF~~) Absences. In the event that a committee member fails to attend three committee  
8 meetings during a calendar year, the chair shall notify the Supreme Court of those absences and  
9 may request that the Supreme Court replace that committee member.

10 (2)(~~HG~~) Administrative assistance. The Administrative Office of the Courts shall provide  
11 coordinate staff support to each committee, including the assistance of the Office of General  
12 Counsel general counsel in research and drafting and the coordination of secretarial support and  
13 publication activities. ~~The Office of General Counsel shall assign a staff attorney to each~~  
14 ~~committee to provide research and drafting assistance and to coordinate the publication activities~~  
15 ~~of the committee.~~

16 (2)(~~HI~~) Recording secretaries. ~~The Office of General Counsel~~ A committee chair may  
17 appoint a third-year law student, a ~~or~~ member of the Bar in good standing, or a legal secretary to  
18 serve as a recording secretary for ~~each~~ the committee. ~~The recording secretary shall be appointed~~  
19 ~~to serve a one-year term.~~ The recording secretary, ~~under the general supervision of the staff~~  
20 ~~attorney,~~ shall attend and take minutes at committee meetings, provide research and drafting  
21 assistance to committee members and perform other assignments as requested by the chair.  
22 ~~Recording secretaries shall be paid an honorarium for their services.~~

23 (2~~3~~) Responsibility of advisory rules committees.

24 (3)(A) Petitions. Petitions for the adoption, repeal or amendment of a rule of procedure, ~~or~~  
25 evidence, ~~or a rule governing the practice of law~~ professional conduct, or a jury instruction may  
26 be ~~filed~~ submitted by any interested individual ~~with~~ to the Utah Supreme Court's Advisory Rule  
27 Committees, Administrative Office of the Courts, 450 South State St., P.O. Box 140241, Salt  
28 Lake City, Utah 84114-0241. Petitions shall be in writing, shall set forth the proposed rule, ~~or~~  
29 amendment, or instruction, or the text of the rule or instruction proposed for repeal, and shall  
30 specify the need for and anticipated effect of the proposal.

1 (3)(B) Committee agenda. The ~~Office of General Counsel~~ Supreme Court shall forward all  
2 submitted petitions ~~filed with the Supreme Court's Advisory Committees~~ to the chair of the  
3 appropriate committee. All petitions shall be placed on the committee's agenda for consideration  
4 and the committee shall provide written notification of committee action to all individuals who  
5 file a petitions.

6 (3)(C) Committee work. Committees shall meet as a whole, at the direction of the chair, to  
7 discuss and vote upon individual and subcommittee recommendations and to prepare written  
8 recommendations to the Supreme Court concerning petitions or committee-initiated proposals.  
9 Minutes shall be taken at all meetings of the committee of the whole and shall be forwarded to  
10 the ~~committee's~~ Supreme Court's liaison for the committee.

11 (34) Public comment.

12 (4)(A) Submission of final rules recommendations. Each advisory rules committee shall vote  
13 upon and finalize its recommendations and any proposed committee notes for public comment  
14 and submit ~~its final recommendations~~ them to the Administrative Office of the Courts for  
15 publication and distribution.

16 (4)(B) Publication. The Administrative Office of the Courts shall publish the final committee  
17 recommendations ~~of each committee~~ and any proposed committee notes for a 45-day comment  
18 period. The comment period will run from the expected publication date of the law reporter  
19 service in which the rules will appear. The purpose of the comment period shall be to solicit  
20 written or oral comment concerning the committees' recommendations and to request input on  
21 the committees' agenda.

22 (4)(C) Distribution.

23 (i) Copies of proposed rules and any advisory committee ~~comments~~ notes shall be distributed  
24 as provided in Rule 2-203. ~~to the Governor, chairs of the Judicial Rules Review Committee, the~~  
25 ~~director of the Office of Legislative Research and General Counsel, the Executive Director of the~~  
26 ~~Commission on Criminal and Juvenile Justice, the chair of each Advisory Committee, the~~  
27 ~~Executive Director of the Utah State Bar, Chief Disciplinary Counsel of the Office of Attorney~~  
28 ~~Discipline, all judges, and, upon request, any other person.~~

29 (ii) ~~Copies of proposed rules and any advisory committee comments shall be distributed to at~~  
30 ~~least two regularly published law reporter services.~~

1 (iii) ~~At the Advisory Committees' discretion, copies of a proposed rule may be distributed to~~  
2 ~~identified group(s).~~

3 (iv) ~~Notice of proposed changes shall be mailed to each active member of the Utah State Bar.~~  
4 ~~The notice shall include a summary of the proposed changes and identify where the full text of~~  
5 ~~proposed rules and any advisory committee comments are available.~~

6 (v) ~~All information provided by this paragraph (C) shall include the deadline for public~~  
7 ~~comment and to whom public comment should be sent.~~

8 (4)(D) Comment. The committees have the discretion to limit public comment to oral or  
9 written comment. Written comment shall be submitted to the Administrative Office of the  
10 Courts. Oral comment shall be scheduled for hearing at the convenience of the committee during  
11 the 45-day comment period.

12 (E) ~~Request for petitions. During the comment period, the committees shall also request bar~~  
13 ~~members and other interested individuals to file petitions with the Supreme Court's Advisory~~  
14 ~~Committees in accordance with Paragraph (2)(A) for the purpose of identifying issues for~~  
15 ~~committee study.~~

16 (4)(~~FE~~) Committee review. Upon the expiration of the comment period, the Administrative  
17 Office of the Courts shall compile all of the written comment received and forward it to the  
18 appropriate committee chair. The chair shall convene a meeting of the committee for the purpose  
19 of reviewing the public comment and discussing and voting upon appropriate modifications to  
20 the rules.

21 (4)(~~GF~~) Transmittal. Once the committee has reviewed the public comment and voted upon  
22 the final modifications to the proposed rules and committee notes, it shall submit a letter of  
23 transmittal to the Supreme Court with a copy of the committee's final proposals, a summary of  
24 the public comment and the committee's recommendations in response to the comment.

25 (5) Responsibility of Utah State Bar, or other entities, as to proposed amendments to rules  
26 pertaining to the practice of law.

27 (5)(A) Petitions. Petitions for the adoption, repeal or amendment of rules or procedures  
28 governing, affecting, or pertaining to the practice of law, other than the rules of professional  
29 conduct, shall be filed with the Utah Supreme Court. Petitions shall set forth the proposed rule  
30 or amendment or the text of the rule proposed for repeal and shall specify the need for and  
31 anticipated effect of the proposal.

1 (5)(B) Publication. After preliminary review of the petition, the Supreme Court shall submit  
2 the proposed rule or amendments to the Administrative Office of the Courts to be published for a  
3 45-day comment period.

4 (5)(C) Distribution. Distribution of the proposed rule or amendments shall be as provided in  
5 Rule 2-203.

6 (5)(D) Supreme Court review. Upon the expiration of the comment period, the  
7 Administrative Office of the Courts shall compile all of the written comment received and  
8 forward it to the Supreme Court.

9 (5)(E) Petitioner's review. Following receipt of the written comment, the Supreme Court  
10 shall submit a copy of the comments to the entity who filed the petition seeking the rule change.  
11 Petitioner shall review the comments and vote upon final modification to the rules or procedures.  
12 Once petitioner has completed its review and voted upon the final modifications, it shall submit a  
13 memorandum to the Supreme Court containing the petitioner's final proposals, a summary of the  
14 public comment, and the petitioner's recommendations in response to the public comment.

15 ~~(4) (6) Responsibility of Supreme Court responsibilities.~~

16 (6)(A) Court liaison. The Supreme Court shall designate a representative of the Court to  
17 serve as a liaison ~~for~~ to each advisory rules committee and to the Utah State Bar.

18 (6)(B) Advisory rules committee proposals. The Supreme Court shall consider ~~€~~committee  
19 proposals and adopt, modify or reject those proposals. The Supreme Court shall ~~send a letter of~~  
20 ~~transmittal to each~~ notify committee chairs and the Administrative Office of the Courts ~~notifying~~  
21 ~~the committees of the~~ as to which proposals ~~which~~ were adopted, modified or rejected.

22 (6)(C) Petitions concerning rules or procedures pertaining to the practice of law. The  
23 Supreme Court shall consider petitions and petitioners' memoranda and adopt, modify, or reject  
24 the proposals made and enter an appropriate order.

25 (6)(~~€~~D) Court-initiated rules. In its discretion, the Supreme Court may adopt rules of  
26 procedure or evidence, rules regulating judges pro tempore and retired judges, rules governing  
27 the practice of law or modify or repeal those rules upon its own initiative and without proposals  
28 by the committees or the Utah State Bar. Court initiated rules shall be published for a 45-day  
29 public comment period in accordance with ~~p~~Paragraph (3).

30 (6)(~~€~~E) Effective date. Rules shall become effective 60 days after adoption by the Supreme  
31 Court unless otherwise ordered.

1 (6)(~~EF~~) Emergency rulemaking. Notwithstanding the other provisions contained in these  
2 rules, if the Supreme Court determines by an affirmative vote of the members of the Supreme  
3 Court that it is in the best interest of the judiciary to suspend the rulemaking procedures, the  
4 Supreme Court may take final action on a committee or Court-initiated proposal, approve the  
5 proposal and provide for an immediate effective date. The Supreme Court shall transmit a copy  
6 of the approved rule or committee note to each committee chair and the Administrative Office of  
7 the Courts. The Administrative Office of the Courts shall publish the rule for a 45-day comment  
8 period and submit any comments received during that period to the Supreme Court for  
9 consideration. The Supreme Court may then ratify, amend or repeal the rule.

10 (6)(~~EG~~) Publication. All rules adopted by the Supreme Court shall be published in the official  
11 publication for Supreme Court Rules.

12 **Rule 11-203. Senior justice court judges.**

13 Intent:

14 To establish the qualifications, term, authority, appointment and assignment for senior justice  
15 court judges and active senior justice court judges.

16 Applicability:

17 This rule shall apply to judges of courts not of record.

18 Statement of the Rule:

19 (1) Qualifications.

20 (A) Senior Justice Court Judge. To be a senior justice court judge, a judge shall:

21 (i) have been certified by the Judicial Council for retention election or reappointment at the  
22 last time the Judicial Council considered the judge for certification;

23 (ii) have voluntarily resigned from judicial office, retired upon reaching the mandatory  
24 retirement age, or, if involuntarily retired due to disability, shall have recovered from or shall  
25 have accommodated that disability;

26 (iii) demonstrate appropriate ability and character;

27 (iv) have been in office for at least five years; and

28 (v) comply with the restrictions on secondary employment provided by the Utah Code.

29 (B) Active Senior Justice Court Judge. To be an active senior justice court judge, a judge  
30 shall:

31 (i) meet the qualifications of a senior justice court judge;

1 (ii) be physically and mentally able to perform the duties of judicial office;  
2 (iii) maintain familiarity with current statutes, rules and case law;  
3 (iv) satisfy the education requirements of an active justice court judge;  
4 (v) accept assignments, subject to being called, at least two days per calendar year;  
5 (vi) conform to the Code of Judicial Conduct, the Code of Judicial Administration and rules  
6 of the Supreme Court;  
7 (vii) continue to meet the requirements for certification as those requirements are determined  
8 by the Judicial Council to apply to active senior justice court judges; and  
9 (viii) take and subscribe an oath of office to be maintained by the state court administrator.  
10 (2) Disqualifications. To be an active senior justice court judge, a judge shall not:  
11 (A) have been removed from office or involuntarily retired on grounds other than disability;  
12 (B) have been suspended during the judge's final term of office or final four years in office,  
13 whichever is greater;  
14 (C) have resigned from office as a result of negotiations with the Judicial Conduct  
15 Commission or while a complaint against the applicant was pending before the Supreme Court or  
16 pending before the Judicial Conduct Commission after a finding of reasonable cause; and  
17 (D) have been subject to any order of discipline for conduct as a senior justice court judge.  
18 (3) Term of Office. A senior justice court judge and active senior justice court judge is  
19 appointed for three years unless earlier removed by the Supreme Court with or without cause.  
20 Upon application, a senior justice court judge and active senior justice court judge may be  
21 reappointed. An active senior justice court judge may not serve beyond age 75.  
22 (4) Authority. A senior justice court judge may solemnize marriages. In addition to the  
23 authority of a senior justice court judge, an active senior justice court judge, during an  
24 assignment, has all the authority of a justice court judge.  
25 (5) Application and Appointment.  
26 (A) To be appointed a senior justice court judge or active senior justice court judge a judge  
27 shall apply to the Judicial Council and submit relevant information as requested by the Judicial  
28 Council.  
29 (B) The applicant shall:  
30 (i) provide the Judicial Council with the record of all orders of discipline entered by the  
31 Supreme Court; and

1 (ii) declare whether at the time of the application there is any complaint against the applicant  
2 pending before the Supreme Court or pending before the Judicial Conduct Commission after a  
3 finding of reasonable cause.

4 (C) The Judicial Council may apply to the judicial performance evaluation information the  
5 same standards and discretion provided for in Rule 3-111.04. After considering all information  
6 the Judicial Council may certify to the Supreme Court that the applicant meets the qualifications  
7 of a senior justice court judge or active senior justice court judge. The chief justice may appoint  
8 the judge as a senior justice court judge or active senior justice court judge.

9 (D) Senior justice court judges and active senior justice court judges holding those offices on  
10 the effective date of this rule may continue to serve in that capacity for three years and thereafter  
11 shall meet the requirements of this rule.

12 (6) Assignment.

13 (A) With the consent of the active senior justice court judge, the appointing authority for a  
14 justice court may assign an active senior justice court judge to a case or for a specified period of  
15 time. Cumulative assignments under this subsection shall not exceed 60 days per calendar year  
16 except as necessary to complete an assigned case.

17 (B) In extraordinary circumstances and with the consent of the active senior justice court  
18 judge, the chief justice may assign an active senior justice court judge to address the  
19 extraordinary circumstances for a specified period of time not to exceed 60 days per calendar  
20 year, which may be in addition to assignments under subsection (6)(A). To request an  
21 assignment under this subsection, the appointing authority shall certify that there is an  
22 extraordinary need.

23 (C) An active senior justice court judge may be assigned to any justice court in the state.

24 (D) The appointing authority shall make the assignment in writing and send a copy to the  
25 court to which the active senior justice court judge is assigned and to the state court  
26 administrator.

27 **Repealer.**

28 The Utah Judicial Council proposes to repeal the following rules:

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

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

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

1       **UTAH RULES OF SMALL CLAIMS PROCEDURE**

2       **Rule 1. ~~Scope, purpose, and forms~~ General provisions.**

3       (a) These rules constitute the “simplified rules of procedure and evidence” in small claims  
4 cases required by Utah Code Section 78-6-1 and shall be referred to as the Rules of Small Claims  
5 Procedure. They are to be interpreted to carry out the statutory purpose of small claims cases,  
6 dispensing speedy justice between the parties.

7       (b) These rules apply to the initial trial and any appeal under Rule 12 of all actions pursued as  
8 a small claims action under Utah Code Section 78-6-1 et. seq.

9       (c) If the Supreme Court has approved a form for use in small claims actions, parties must  
10 file documents substantially similar in form to the approved form.

11       (d) By presenting a document, a party is certifying that to the best of the party’s knowledge it  
12 is not being presented for an improper purpose, the legal and factual contentions are made in  
13 good faith. If the court determines that this certification has been violated, the court may impose  
14 an appropriate sanction upon the attorney or party.

15       **Rule 2. Beginning the case.**

16       (a) A case is begun by plaintiff filing ~~a Small Claims Affidavit (Form A)~~ with the clerk of the  
17 court either:

18       (1) an affidavit stating facts showing the right to recover money from defendant; or

19       (2) an interpleader affidavit showing that plaintiff is holding money claimed by two or more  
20 defendants.

21       (b)The affidavit qualifies as a complaint under Utah Code Section 78-27-25.

22       ~~(b)(c)~~ Unless waived upon filing an affidavit of impecuniosity, the appropriate filing fee must  
23 accompany the small claims affidavit.

24       ~~(e) A separate form of Affidavit (Form C) is available for an “interpleader action”——action~~  
25 ~~in which plaintiff is holding money that is claimed by two or more other parties.~~ (d) In an  
26 interpleader action, plaintiff must pay the money into the court at the time of filing the affidavit  
27 or acknowledge that it will pay the money to whomever the court directs.

28       (e) Upon filing the affidavit, the clerk of the court shall schedule the trial and issue the  
29 summons for the defendant to appear.

30       **Rule 3. Service of the affidavit.**

1 (a) After filing the affidavit and receiving a trial date, plaintiff must serve the affidavit and  
2 summons on defendant. To serve the affidavit, plaintiff must either:

3 (1) have the affidavit served on defendant by a sheriff's department, constable, or person  
4 regularly engaged in the business of serving process and pay for that service; or

5 (2) have the affidavit delivered to defendant by a method of mail or commercial courier  
6 service that requires defendant to sign a ~~document indicating~~ receipt and provides for return of  
7 that ~~document receipt~~ to plaintiff.

8 (b) The affidavit must be served at least ~~thirty~~ 30 calendar days before the trial date. Service  
9 by mail or commercial courier service is complete on the date the receipt is signed by defendant.

10 (c) Proof of service of the affidavit must be filed with the court no later than ~~ten calendar~~ 10  
11 business days after service. If service is by mail or commercial courier service, plaintiff must file  
12 a proof of service ~~(Form D)~~. If service is by a sheriff, constable, or person regularly engaged in  
13 the business of serving process, proof of service must be filed by the person completing the  
14 service.

15 (d) Each party shall serve on all other parties a copy of all documents filed with the court  
16 other than the counter affidavit. Each party shall serve on all other parties all documents as  
17 ordered by the court. Service of all papers other than the affidavit and counter affidavit may be  
18 by first class mail to the other party's last known address. The party mailing the papers shall file  
19 proof of mailing with the court no later than 10 business days after service. If the papers are  
20 returned to the party serving them as undeliverable, the party shall file the returned envelope  
21 with the court.

22 **Rule 4. Counter affidavit.**

23 (a) ~~If defendant claims plaintiff owes defendant money, defendant~~ Defendant may file with  
24 the clerk of the court a counter affidavit stating facts showing the right to recover money from  
25 plaintiff.

26 (b) Unless waived upon filing an affidavit of impecuniosity, the appropriate filing fee must  
27 accompany the counter affidavit ~~(Form B)~~.

28 (c) Any counter affidavit must be filed at least ~~fifteen~~ 15 calendar days before the trial. The  
29 ~~court~~ clerk of the court will mail a copy of the counter affidavit to plaintiff at the address  
30 provided by plaintiff on the affidavit.

1 ~~(d) In a case filed in district court, if the counter affidavit alleges that plaintiff owes~~  
2 ~~defendant more than the monetary limit for small claims procedures, the entire case will proceed~~  
3 ~~as a regular civil case.~~

4 ~~(e) In a case filed in justice court, if the counter affidavit alleges that plaintiff owes defendant~~  
5 ~~more than the monetary limit for small claims procedures, the entire case must be transferred to~~  
6 ~~district court and will proceed as a regular civil case.~~

7 ~~(f) Defendant must pay both parties' additional filing fees imposed as a result of the case~~  
8 ~~proceeding as a regular civil case. If necessary, defendant must arrange for transfer of the case.~~

9 (d) A counter affidavit for more than the monetary limit for small claims actions may not be  
10 filed under these rules.

### 11 **Rule 6. Pretrial.**

12 (a) No ~~formal~~ discovery may be conducted ~~but the parties are urged to exchange information~~  
13 ~~prior to the trial.~~

14 (b) Written motions and responses may be filed prior to trial. Motions may be made orally or  
15 in writing at the beginning of the trial. ~~No motions will be heard prior to trial.~~

16 (c) One postponement of the trial date (~~“continuance”~~) per side may be granted by the ~~court~~  
17 ~~clerk of the court.~~ To request a ~~continuance postponement~~, a party must file a ~~request motion~~ for  
18 ~~continuance (Form E) postponement~~ with the court ~~at least 5 business days before trial.~~ The clerk  
19 will give notice to the other party. ~~A Request for Continuance must be received by the court at~~  
20 ~~least five calendar days before trial.~~ A ~~continuance postponement~~ for more than ~~forty five 45~~  
21 ~~calendar days~~ may be granted only by the judge. The court may require the party requesting the  
22 postponement to pay the costs incurred by the other party.

### 23 **Rule 7. Trial.**

24 (a) All parties must bring to the trial all documents related to the controversy regardless of  
25 whose position they support. ~~Possible documents include medical bills, damage estimates,~~  
26 ~~receipts, rental agreements, leases, correspondence, and any contracts on which the case is based.~~

27 (b) Parties may have witnesses testify at trial and bring documents. To require attendance by  
28 a witness who will not attend voluntarily, a party must “subpoena” the witness. The clerk of the  
29 court or a party’s attorney may issue a subpoena pursuant to Utah Rule of Civil Procedure 45.  
30 The party requesting the subpoena is responsible for service of the subpoena and payment of any  
31 fees. A subpoena must be served at least ~~five calendar 5 business~~ days prior to trial.

1 (c) The judge will conduct the trial and question the witnesses. The trial will be conducted in  
2 such a way as to give all parties a reasonable opportunity to present their positions. The judge  
3 may allow parties or their counsel to question witnesses.

4 (d) The judge may receive the type of evidence commonly relied upon by reasonably prudent  
5 persons in the conduct of their business affairs. The rules of evidence shall not be applied  
6 strictly. The judge may allow hearsay that is probative, trustworthy and credible. Irrelevant or  
7 unduly repetitious evidence shall be excluded.

8 (e) After trial, the judge shall decide the case and direct the entry of judgment. No written  
9 findings are required. ~~The small claims judgment (Form F or G) with the notice of Entry of~~  
10 ~~judgment completed shall be provided to each party by the court if all parties are present at trial~~  
11 ~~or by the prevailing party if fewer than all parties are present. The clerk of the court will serve all~~  
12 ~~parties present with a copy of the judgment.~~

13 (f) ~~Filing fees and costs~~ Costs will be awarded to the prevailing party and to plaintiff in an  
14 interpleader action unless the judge otherwise orders.

#### 15 **Rule 8. Dismissal.**

16 (a) Except in interpleader cases, if plaintiff fails to appear at the time set for trial, plaintiff's  
17 claim will be dismissed ~~with prejudice unless the judge otherwise orders.~~

18 (b) If defendant has filed a counter affidavit and fails to appear at the time set for trial,  
19 defendant's claim will be dismissed ~~with prejudice unless the judge otherwise orders.~~

20 ~~(c) The prevailing party shall send all other parties a copy of the small claims judgment~~  
21 ~~(Form F or G) with the notice of entry of judgment completed and file the completed copy with~~  
22 ~~the court.~~

23 (c) A party may move to dismiss its claim at any time before trial.

24 (d) Dismissal is without prejudice unless the judge otherwise orders. The appearing party  
25 shall serve the order of dismissal on the non-appearing party.

#### 26 **Rule 9. Default judgment.**

27 (a) If defendant fails to appear at the time set for trial, the court may grant plaintiff judgment  
28 in an amount not to exceed the amount requested in plaintiff's affidavit.

29 (b) If defendant has filed a counter affidavit and plaintiff fails to appear at the time set for  
30 trial, the court may grant defendant judgment in an amount not to exceed the amount requested  
31 in defendant's counter affidavit.

1 (c) ~~Any party granted a default judgment shall promptly send a copy of a completed Notice~~  
2 ~~of Default judgment (Form H) to the other party and file the original with the court. The~~  
3 ~~appearing party shall serve the default judgment on the non-appearing party.~~

4 (d) In an interpleader action, if a defendant fails to appear, a default judgment may be entered  
5 against the non-appearing defendant.

6 **Rule 10. Set aside of default judgments and dismissals.**

7 (a) ~~Within thirty calendar days from the mailing of the notice of default judgment or the date~~  
8 ~~of dismissal, a~~ party may request that the default judgment or dismissal be set aside by filing a  
9 ~~request-motion~~ to set aside ~~judgment (Form I) within 30 calendar days after mailing of the~~  
10 ~~judgment or dismissal~~. If the court receives a timely ~~request-motion~~ to set aside the default  
11 judgment or dismissal and good cause is shown, the court may grant the ~~request-motion~~ and  
12 reschedule a trial. The court may require the ~~requesting-moving party's payment of to pay~~ the  
13 costs incurred by the other party ~~in obtaining the default judgment or dismissal~~.

14 (b) The ~~thirty day~~ period for ~~requesting the moving to~~ set aside ~~of~~ a default judgment or  
15 dismissal may be extended by the court for good cause if the ~~request-motion~~ is made in a  
16 reasonable time.

17 **Rule 11. Collection of judgments.**

18 (a) Judgments may be collected under the Utah Rules of Civil Procedure.

19 ~~(b) Upon full payment of the judgment including post-judgment costs and interest, the~~  
20 ~~prevailing party shall promptly file a satisfaction of judgment (Form J) with the court.~~

21 ~~(c) The court may enter a Satisfaction of Judgment at the request of a party after ten calendar~~  
22 ~~days notice to all parties. (b) Upon payment in full of the judgment, including post-judgment~~  
23 ~~costs and interest, the judgment creditor shall file a satisfaction of judgment with the court. Upon~~  
24 ~~receipt of a satisfaction of judgment from the judgment creditor, the clerk of the court shall enter~~  
25 ~~the satisfaction upon the docket. The judgment debtor may file a satisfaction of judgment and~~  
26 ~~proof of payment. If the judgment creditor fails to object within 10 business days after notice, the~~  
27 ~~court may enter satisfaction of the judgment. If the judgment creditor objects to the proposed~~  
28 ~~satisfaction, the court shall rule on the matter and may conduct a hearing.~~

29 ~~(c) If the judgment creditor is unavailable to accept payment of the judgment, the judgment~~  
30 ~~debtor may pay the amount of the judgment into court and serve the creditor with notice of~~  
31 ~~payment in the manner directed by the court as most likely to give the creditor actual notice,~~

1 which may include publication. After 30 calendar days after final notice, the debtor may file a  
2 satisfaction of judgment and the court may conduct a hearing. The court will hold the money in  
3 trust for the creditor for the period required by state law. If not claimed by the judgment creditor,  
4 the clerk of the court shall transfer the money to the Unclaimed Property Division of the Office  
5 of the State Treasurer.

6 **Rule 12. Appeals.**

7 (a) ~~Either~~ Any party may appeal a ~~small-claims-final order or~~ judgment within ~~ten-10~~  
8 business days ~~(not counting weekends and holidays) of receipt of~~ after notice of entry of  
9 judgment or order or after denial of a motion to set aside the judgment or order, whichever is  
10 later.

11 (b) To appeal, the appealing party must file a notice of appeal (~~Form K~~) in the court issuing  
12 the judgment ~~and mail a copy to each party. The~~ Unless waived upon filing an affidavit of  
13 impecuniosity, the appropriate fee must accompany the notice of appeal.

14 (c) ~~On appeal, a new trial will be held (“trial de novo”). Upon the receipt of the notice of~~  
15 appeal, the clerk of the district court shall schedule the new trial and notify the parties. All  
16 proceedings on appeal will be held in accordance with these rules, except that the parties will not  
17 file an affidavit or counter affidavit.

18 (d) The district court shall issue all orders governing the new trial. The new trial of a justice  
19 court adjudication shall be heard in the district court nearest to and in the same county as the  
20 justice court from which the appeal is taken. The new trial of an adjudication by the small claims  
21 department of the district court shall be held at the same district court.

22 (e) A judgment debtor may stay the judgment during appeal by posting a supersedeas bond  
23 with the district court. The stay shall continue until entry of the final judgment or order of the  
24 district court.

25 (f) Within 10 business days after filing the notice of appeal, the justice court shall transmit to  
26 the district court the notice of appeal, the district court fees, a certified copy of the register of  
27 actions, and the original of all papers filed in the case.

28 (g) Upon the entry of the judgment or final order of the district court, the clerk of the district  
29 court shall transmit to the justice court that rendered the original judgment notice of the manner  
30 of disposition of the case.

1 (h) The district court may dismiss the appeal and remand the case to the justice court if the  
2 appellant:

3 (1) fails to appear;

4 (2) fails to take any step necessary to prosecute the appeal; or

5 (3) requests the appeal be dismissed.

6 **UTAH RULES OF CIVIL PROCEDURE**

7 **Rule 4. Process.**

8 (a) Signing of summons. The summons shall be signed and issued by the plaintiff or the  
9 plaintiff's attorney. Separate summonses may be signed and served.

10 (b) Time of service. In an action commenced under Rule 3(a)(1), the summons together with  
11 a copy of the complaint shall be served no later than 120 days after the filing of the complaint  
12 unless the court allows a longer period of time for good cause shown. If the summons and  
13 complaint are not timely served, the action shall be dismissed, without prejudice on application  
14 of any party or upon the court's own initiative. In any action brought against two or more  
15 defendants on which service has been obtained upon one of them within the 120 days or such  
16 longer period as may be allowed by the court, the other or others may be served or appear at any  
17 time prior to trial.

18 (c) Contents of summons.

19 (c)(1) The summons shall contain the name of the court, the address of the court, the names  
20 of the parties to the action, and the county in which it is brought. It shall be directed to the  
21 defendant, state the name, address and telephone number of the plaintiff's attorney, if any, and  
22 otherwise the plaintiff's address and telephone number. It shall state the time within which the  
23 defendant is required to answer the complaint in writing, and shall notify the defendant that in  
24 case of failure to do so, judgment by default will be rendered against the defendant. It shall state  
25 either that the complaint is on file with the court or that the complaint will be filed with the court  
26 within ten days of service.

27 (c)(2) If the action is commenced under Rule 3(a)(2), the summons shall state that the  
28 defendant need not answer if the complaint is not filed within 10 days after service and shall  
29 state the telephone number of the clerk of the court where the defendant may call at least 13 days  
30 after service to determine if the complaint has been filed.

1 (c)(3) If service is made by publication, the summons shall briefly state the subject matter  
2 and the sum of money or other relief demanded, and that the complaint is on file with the court.

3 (d) Method of Service. Unless waived in writing, service of the summons and complaint shall  
4 be by one of the following methods:

5 (d)(1) Personal service. The summons and complaint may be served in any state or judicial  
6 district of the United States by the sheriff or constable or by the deputy of either, by a United  
7 States Marshal or by the marshal's deputy, or by any other person 18 years of age or older at the  
8 time of service and not a party to the action or a party's attorney. If the person to be served  
9 refuses to accept a copy of the process, service shall be sufficient if the person serving the same  
10 shall state the name of the process and offer to deliver a copy thereof. Personal service shall be  
11 made as follows:

12 (d)(1)(A) Upon any individual other than one covered by subparagraphs (B), (C) or (D)  
13 below, by delivering a copy of the summons and the complaint to the individual personally, or by  
14 leaving a copy at the individual's dwelling house or usual place of abode with some person of  
15 suitable age and discretion there residing, or by delivering a copy of the summons and the  
16 complaint to an agent authorized by appointment or by law to receive service of process;

17 (d)(1)(B) Upon an infant (being a person under 14 years) by delivering a copy of the  
18 summons and the complaint to the infant and also to the infant's father, mother or guardian or, if  
19 none can be found within the state, then to any person having the care and control of the infant,  
20 or with whom the infant resides, or in whose service the infant is employed;

21 (d)(1)(C) Upon an individual judicially declared to be of unsound mind or incapable of  
22 conducting the person's own affairs, by delivering a copy of the summons and the complaint to  
23 the person and to the person's legal representative if one has been appointed and in the absence  
24 of such representative, to the individual, if any, who has care, custody or control of the person;

25 (d)(1)(D) Upon an individual incarcerated or committed at a facility operated by the state or  
26 any of its political subdivisions, by delivering a copy of the summons and the complaint to the  
27 person who has the care, custody, or control of the individual to be served, or to that person's  
28 designee or to the guardian or conservator of the individual to be served if one has been  
29 appointed, who shall, in any case, promptly deliver the process to the individual served;

30 (d)(1)(E) Upon any corporation not herein otherwise provided for, upon a partnership or  
31 upon an unincorporated association which is subject to suit under a common name, by delivering

1 a copy of the summons and the complaint to an officer, a managing or general agent, or other  
2 agent authorized by appointment or by law to receive service of process and, if the agent is one  
3 authorized by statute to receive service and the statute so requires, by also mailing a copy of the  
4 summons and the complaint to the defendant. If no such officer or agent can be found within the  
5 state, and the defendant has, or advertises or holds itself out as having, an office or place of  
6 business within the state or elsewhere, or does business within this state or elsewhere, then upon  
7 the person in charge of such office or place of business;

8 (d)(1)(F) Upon an incorporated city or town, by delivering a copy of the summons and the  
9 complaint to the recorder;

10 (d)(1)(G) Upon a county, by delivering a copy of the summons and the complaint to the  
11 county clerk of such county;

12 (d)(1)(H) Upon a school district or board of education, by delivering a copy of the summons  
13 and the complaint to the superintendent or business administrator of the board;

14 (d)(1)(I) Upon an irrigation or drainage district, by delivering a copy of the summons and the  
15 complaint to the president or secretary of its board;

16 (d)(1)(J) Upon the state of Utah, in such cases as by law are authorized to be brought against  
17 the state, by delivering a copy of the summons and the complaint to the attorney general and any  
18 other person or agency required by statute to be served; and

19 (d)(1)(K) Upon a department or agency of the state of Utah, or upon any public board,  
20 commission or body, subject to suit, by delivering a copy of the summons and the complaint to  
21 any member of its governing board, or to its executive employee or secretary.

22 (d)(2) Service by mail or commercial courier service.

23 (d)(2)(A) The summons and complaint may be served upon an individual other than one  
24 covered by paragraphs (d)(1)(B) or (d)(1)(C) by mail or commercial courier service in any state  
25 or judicial district of the United States provided the defendant signs a document indicating  
26 receipt.

27 (d)(2)(B) The summons and complaint may be served upon an entity covered by paragraphs  
28 (d)(1)(E) through (d)(1)(I) by mail or commercial courier service in any state or judicial district  
29 of the United States provided defendant's agent authorized by appointment or by law to receive  
30 service of process signs a document indicating receipt.

1 (d)(2)(C) Service by mail or commercial courier service shall be complete on the date the  
2 receipt is signed as provided by this rule.

3 (d)(3) Service in a foreign country. Service in a foreign country shall be made as follows:

4 (d)(3)(A) by any internationally agreed means reasonably calculated to give notice, such as  
5 those means authorized by the Hague Convention on the Service Abroad of Judicial and  
6 Extrajudicial Documents;

7 (d)(3)(B) if there is no internationally agreed means of service or the applicable international  
8 agreement allows other means of service, provided that service is reasonably calculated to give  
9 notice:

10 (d)(3)(B)(i) in the manner prescribed by the law of the foreign country for service in that  
11 country in an action in any of its courts of general jurisdiction;

12 (d)(3)(B)(ii) as directed by the foreign authority in response to a letter rogatory or letter of  
13 request; or

14 (d)(3)(B)(iii) unless prohibited by the law of the foreign country, by delivery to the  
15 individual personally of a copy of the summons and the complaint or by any form of mail  
16 requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the party to  
17 be served; or

18 (d)(3)(C) by other means not prohibited by international agreement as may be directed by the  
19 court.

20 (d)(4) Other service.

21 (d)(4)(A) Where the identity or whereabouts of the person to be served are unknown and  
22 cannot be ascertained through reasonable diligence, where service upon all of the individual  
23 parties is impracticable under the circumstances, or where there exists good cause to believe that  
24 the person to be served is avoiding service of process, the party seeking service of process may  
25 file a motion supported by affidavit requesting an order allowing service by publication or by  
26 some other means. The supporting affidavit shall set forth the efforts made to identify, locate or  
27 serve the party to be served, or the circumstances which make it impracticable to serve all of the  
28 individual parties.

29 (d)(4)(B) If the motion is granted, the court shall order service of process by publication or  
30 by other means, provided that the means of notice employed shall be reasonably calculated,  
31 under all the circumstances, to apprise the interested parties of the pendency of the action to the

1 extent reasonably possible or practicable. The court's order shall also specify the content of the  
2 process to be served and the event or events as of which service shall be deemed complete. A  
3 Unless service is by publication, a copy of the court's order shall be served upon the defendant  
4 with the process specified by the court.

5 (d)(4)(C) In any proceeding where summons is required to be published, the court shall, upon  
6 the request of the party applying for publication, designate the newspaper in which publication  
7 shall be made. The newspaper selected shall be a newspaper of general circulation in the county  
8 where such publication is required to be made and shall be published in the English language.

9 (e) Proof of Service.

10 (e)(1) If service is not waived, the person effecting service shall file proof with the court. The  
11 proof of service must state the date, place, and manner of service. Proof of service made pursuant  
12 to paragraph (d)(2) shall include a receipt signed by the defendant or defendant's agent  
13 authorized by appointment or by law to receive service of process. If service is made by a person  
14 other than by an attorney, the sheriff or constable, or by the deputy of either, by a United States  
15 Marshal or by the marshal's deputy, the proof of service shall be made by affidavit.

16 (e)(2) Proof of service in a foreign country shall be made as prescribed in these rules for  
17 service within this state, or by the law of the foreign country, or by order of the court. When  
18 service is made pursuant to paragraph (d)(3)(C), proof of service shall include a receipt signed by  
19 the addressee or other evidence of delivery to the addressee satisfactory to the court.

20 (e)(3) Failure to make proof of service does not affect the validity of the service. The court  
21 may allow proof of service to be amended.

22 (f) Waiver of Service; Payment of Costs for Refusing to Waive.

23 (f)(1) A plaintiff may request a defendant subject to service under paragraph (d) to waive  
24 service of a summons. The request shall be mailed or delivered to the person upon whom service  
25 is authorized under paragraph (d). It shall include a copy of the complaint, shall allow the  
26 defendant at least 20 days from the date on which the request is sent to return the waiver, or 30  
27 days if addressed to a defendant outside of the United States, and shall be substantially in the  
28 form of the Notice of Lawsuit and Request for Waiver of Service of Summons set forth in the  
29 Appendix of Forms attached to these rules.

1 (f)(2) A defendant who timely returns a waiver is not required to respond to the complaint  
2 until 45 days after the date on which the request for waiver of service was mailed or delivered to  
3 the defendant, or 60 days after that date if addressed to a defendant outside of the United States.

4 (f)(3) A defendant who waives service of a summons does not thereby waive any objection to  
5 venue or to the jurisdiction of the court over the defendant.

6 (f)(4) If a defendant refuses a request for waiver of service submitted in accordance with this  
7 rule, the court shall impose upon the defendant the costs subsequently incurred in effecting  
8 service.

9 **Rule 62. Stay of proceedings to enforce a judgment.**

10 (a) Stay upon entry of judgment. Execution or other proceedings to enforce a judgment may  
11 issue immediately upon the entry of the final judgment, unless the court in its discretion and on  
12 such conditions for the security of the adverse party as are proper, otherwise directs.

13 (b) Stay on motion for new trial or for judgment. In its discretion and on such conditions for  
14 the security of the adverse party as are proper, the court may stay the execution of, or any  
15 proceedings to enforce, a judgment pending the disposition of a motion for a new trial or to alter  
16 or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment or  
17 order made pursuant to Rule 60, or of a motion for judgment in accordance with a motion for a  
18 directed verdict made pursuant to Rule 50, or of a motion for amendment to the findings or for  
19 additional findings made pursuant to Rule 52(b).

20 (c) Injunction pending appeal. When an appeal is taken from an interlocutory order or final  
21 judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend,  
22 modify, restore, or grant an injunction during the pendency of the appeal upon such conditions as  
23 it considers proper for the security of the rights of the adverse party.

24 (d) Stay upon appeal. When an appeal is taken the appellant by giving a supersedeas bond  
25 may obtain a stay, unless such a stay is otherwise prohibited by law or these rules. The bond may  
26 be given at or after the time of filing the notice of appeal. The stay is effective when the  
27 supersedeas bond is approved by the court.

28 (e) Stay in favor of the state, or agency thereof. When an appeal is taken by the United  
29 States, the state of Utah, or an officer or agency of either, or by direction of any department of  
30 either, and the operation or enforcement of the judgment is stayed, no bond, obligation, or other  
31 security shall be required from the appellant.

1 (f) Stay in quo warranto proceedings. Where the defendant is adjudged guilty of usurping,  
2 intruding into or unlawfully holding public office, civil or military, within this state, the  
3 execution of the judgment shall not be stayed on an appeal.

4 (g) Power of appellate court not limited. The provisions in this rule do not limit any power  
5 of an appellate court or of a judge or justice thereof to stay proceedings or to suspend, modify,  
6 restore, or grant an injunction, or extraordinary relief or to make any order appropriate to  
7 preserve the status quo or the effectiveness of the judgment subsequently to be entered.

8 (h) Stay of judgment upon multiple claims. When a court has ordered a final judgment on  
9 some but not all of the claims presented in the action under the conditions stated in Rule 54(b),  
10 the court may stay enforcement of that judgment until the entering of a subsequent judgment or  
11 judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the  
12 party in whose favor the judgment is entered.

13 (i) Form of supersedeas bond; deposit in lieu of bond; waiver of bond; jurisdiction over  
14 sureties to be set forth in undertaking.

15 (i)(1) A supersedeas bond given under Subdivision (d) may be either a commercial bond  
16 having a surety authorized to transact insurance business under Title 31A, or a personal bond  
17 having one or more sureties who are residents of Utah having a collective net worth of at least  
18 twice the amount of the bond, exclusive of property exempt from execution. Sureties on personal  
19 bonds shall make and file an affidavit setting forth in reasonable detail the assets and liabilities of  
20 the surety.

21 (i)(2) Upon motion and good cause shown, the court may permit a deposit of money in court  
22 or other security to be given in lieu of giving a supersedeas bond under Subdivision (d).

23 (i)(3) The parties may by written stipulation waive the requirement of giving a supersedeas  
24 bond under Subdivision (d) or agree to an alternate form of security.

25 (i)(4) A supersedeas bond given pursuant to Subdivision (d) shall provide that each surety  
26 submits to the jurisdiction of the court and irrevocably appoints the clerk of the court as the  
27 surety's agent upon whom any papers affecting the surety's liability on the bond may be served,  
28 and that the surety's liability may be enforced on motion and upon such notice as the court may  
29 require without the necessity of an independent action.

30 (j) Objecting to sufficiency or amount of security. Any party whose judgment is stayed or  
31 sought to be stayed pursuant to Subdivision (d) may object to the sufficiency of the sureties on

1 the supersedeas bond or the amount thereof, or to the sufficiency or amount of other security  
2 given to stay the judgment by filing and giving notice of such objection. The party so objecting  
3 shall be entitled to a hearing thereon upon five days notice or such shorter time as the court may  
4 order. The burden of justifying the sufficiency of the sureties or other security and the amount of  
5 the bond or other security, shall be borne by the party seeking the stay. The fact that a  
6 supersedeas bond, its surety or other security is generally permitted under this rule shall not be  
7 conclusive as to its sufficiency or amount.

8 **Rule 64D. Garnishment.**

9 **\*\*Amendments effective August 4, 2003 under Rule 11-101(4)(E).\*\***

10 (a) Availability of writ of garnishment (pre-judgment and after judgment). Except as  
11 provided in Rule 64A and as authorized and permitted therein a writ of garnishment is available  
12 as provided for herein.

13 (a)(i) Before judgment. A writ of garnishment is available as a means of attachment before  
14 judgment, other than for defendant's earnings from personal services as hereinafter defined in  
15 Subdivision (d)(vii), at any time after the filing of a complaint in cases in which a writ of  
16 attachment is available under Rule 64C.

17 (a)(ii) After judgment or order. A writ of garnishment is available in aid of execution to  
18 satisfy a money judgment or other order requiring the payment of money. Such judgments and  
19 orders are hereinafter sometimes referred to collectively as "judgment".

20 (a)(iii) Property subject to garnishment. The property subject to garnishment that a writ may  
21 be used to levy upon or affect is all the accrued credits, chattels, goods, effects, debts, choses in  
22 action, money and other personal property and rights to property of the defendant in the  
23 possession of a third person, or under the control or constituting a performance obligation to the  
24 defendant of any third person, whether due or yet to become due at the time of service of the writ  
25 of garnishment, which are not exempt from garnishment or exempt under any applicable  
26 provisions of state or federal law (hereinafter sometimes referred to as "Property Subject to  
27 Garnishment").

28 (a)(iv) As used in this Rule 64D, the term "plaintiff" means the person or entity seeking by  
29 garnishment to attach or execute upon the property of another subject to garnishment and the  
30 term "defendant" means the person or entity whose property subject to garnishment is sought to  
31 be attached or executed upon by the plaintiff.

1 (b) Requirements for issuance of a prejudgment writ of garnishment. The clerk shall issue a  
2 prejudgment writ or writs of garnishment, with or without notice to the defendant, directed to the  
3 person(s) sought to be charged as garnishee(s) and so identified in the affidavit required by  
4 Subdivision (b)(i) herein only upon the order of the court in which the action is filed. Several  
5 writs may be issued at the same time so long as there is only one named garnishee in a single  
6 writ. No writ shall issue unless there is attached thereto the fee required by Subdivision (d)(ii).  
7 Subject to Rule 64A, the court shall issue its order for the issuance of a prejudgment writ of  
8 garnishment only upon the occurrence of the following:

9 (b)(i) A finding that the plaintiff has filed with the clerk an affidavit briefly setting forth:  
10 admissible evidence of facts showing that plaintiff's claim is one for which attachment is  
11 authorized by Rule 64C; the amount due the plaintiff for which the complaint seeks judgment;  
12 that plaintiff has good reason to believe and does believe that defendant has Property Subject to  
13 Garnishment in the possession or in the control of or otherwise owing from one or more  
14 specified third persons who plaintiff seeks to charge as garnishees or that such third persons  
15 plaintiff seeks to charge as garnishees are otherwise indebted to the defendant; and that such  
16 Property Subject to Garnishment is not earnings for the personal services of the defendant, or  
17 otherwise exempt from garnishment.

18 (b)(ii) A finding that plaintiff has filed with the clerk a bond or undertaking in the form and  
19 amount required for the issuance of a writ of attachment.

20 (b)(iii) Exceptions to the sufficiency of the sureties on plaintiff's prejudgment garnishment  
21 bond or undertaking and the justification of such sureties shall be made within the times and in  
22 the manner and with the effect provided in Rule 64C(c).

23 (c) Requirements for issuance of writ of garnishment after judgment or other order. After the  
24 entry of a judgment or other order requiring the payment of money, the clerk of any court from  
25 which execution thereon may be issued shall issue a writ or writs of garnishment, without the  
26 necessity for an undertaking, upon the filing of an application by the plaintiff: (i) identifying the  
27 person sought to be charged as a garnishee; (ii) stating whether such property consists in whole  
28 or in part of earnings from personal services as hereinafter defined in Subdivision (d)(vii) of this  
29 rule and (iii) stating the remaining amount due on the judgment. Several writs may be issued at  
30 the same time so long as there is only one named garnishee in a single writ. No writ shall issue  
31 unless there is attached thereto the fee required by Subdivision (d)(ii).

1 (d) Content and effect of writ; to whom directed (pre-judgment or after judgment).

2 (d)(i) The writ of garnishment shall be issued in the name of the State of Utah and shall be  
3 directed to the person or persons designated in the plaintiff's affidavit or application as garnishee  
4 or garnishees, advising each such person that each is attached as garnishee in the action, and  
5 commanding each of them not to pay or deliver any non-exempt Property Subject to  
6 Garnishment as defined in Subdivision (a)(iii) herein in their possession, custody or control, or  
7 part thereof, due or to become due to the defendant up to the amount remaining due on the  
8 judgment (Subdivision (c)(iii)) if the writ is issued after judgment or the amount claimed to be  
9 due the plaintiff (Subdivision (b)(i)) if a prejudgment writ is issued, whichever is applicable, and  
10 to retain possession and control of all such property until further order of the court or as  
11 otherwise discharged or released as provided for herein. In the case of a prejudgment writ, the  
12 writ shall contain a designation that it is a prejudgment writ and further note the date and time of  
13 expiration of the writ. At the time the writ of garnishment is issued, the clerk shall attach to the  
14 writ a notice of garnishment and exemptions, interrogatories to the garnishee and two copies of  
15 an application by which the defendant may request a hearing.

16 (d)(ii) The writ shall require the garnishee to give answers to interrogatories within five (5)  
17 business days from the date of service of the writ. Service of a copy of the answers to  
18 interrogatories shall be made upon the plaintiff and the original filed with the clerk. The plaintiff  
19 shall provide a fee to the garnishee in an amount set by the Legislature. The interrogatories may  
20 in substance inquire: (1) whether the garnishee is indebted to the defendant, either in property or  
21 in money, whether the same is now due and, if not, when it is to become due; (2) whether there is  
22 any Property Subject to Garnishment in the possession, custody or control of the garnishee and,  
23 if so, the value of the same; (3) whether the garnishee knows of any debts owing to the  
24 defendant, whether due or not, or of any Property Subject to Garnishment belonging to the  
25 defendant or in which defendant has an interest, whether in the possession or under the control of  
26 the garnishee or another, and, if so, the particulars thereof; (4) whether the garnishee is retaining  
27 or deducting any amount in satisfaction of a claim the garnishee has against the plaintiff or the  
28 defendant, a designation as to whom such claim relates, and the amount retained or deducted;  
29 and (5) as to any other relevant information plaintiff may desire, including defendant's job,  
30 position or occupation, defendant's rate and method of compensation, defendant's pay period and  
31 the computation of the amount of defendant's accrued disposable earnings attached by the writ.

1 (d)(iii) If the garnishee has possession, custody or control of Property Subject to  
2 Garnishment, the garnishee shall serve within five (5) business days of service of the writ of  
3 garnishment upon the garnishee a copy of the writ of garnishment, answers to interrogatories,  
4 notice of garnishment and exemptions, and two copies of an application by which a hearing may  
5 be requested, upon: (1) the defendant at the last known address of the defendant shown on the  
6 records of the garnishee at the time the writ of garnishment was served on the garnishee; and (2)  
7 upon any other person shown upon the records of the garnishee to be a co-owner or having an  
8 interest in the property or money garnisheed at the last known address of the co-owner or other  
9 interested person as shown on the records of the garnishee at the time the writ of garnishment  
10 was served on the garnishee. If that which is garnisheed is an account, such as a bank account or  
11 the like, the copies of the writ of garnishment, answers to interrogatories, notice of garnishment  
12 and exemptions, and applications for hearing shall be served at the addresses maintained in the  
13 records of the garnishee for that account. Service shall be by first class mail or by hand delivery  
14 to the defendant and all others. In the answer to interrogatories, the garnishee shall state that the  
15 garnishee has mailed or hand delivered a copy of the writ of garnishment, answers to  
16 interrogatories, notice of garnishment and exemptions, and two copies of an application by  
17 which a hearing may be requested to the defendant and all other persons entitled thereto and state  
18 the manner and date of compliance therewith.

19 (d)(iv) The notice of garnishment and exemptions that is to be served upon the defendant and  
20 others entitled to its receipt shall indicate in substance that certain money is exempt from  
21 garnishment including but not limited to, Social Security benefits, Supplemental Security Income  
22 benefits, Veterans' benefits, unemployment benefits, Workers' Compensation benefits, public  
23 assistance (welfare), alimony, child support, certain pensions, and part or all of wages or other  
24 earnings from personal services. The notice shall also indicate that the defendant or other person  
25 notified must request a hearing within ten days from the date of service of the notice upon the  
26 defendant or other person, but in no case later than the time at which the court orders the  
27 disposition of the Property Subject to Garnishment provided for herein, which shall not be  
28 sooner than ten (10) days from the service of the notice, if such defendant or other person desires  
29 to claim any exemption that has not already been reflected in the answers to interrogatories,  
30 believes that the writ of garnishment was issued improperly, or that the answers to  
31 interrogatories are inaccurate. For purposes of this provision, the date of service shall be the date

1 of mailing, if mailed, or date of delivery, if hand-delivered, and no period for mailing (Rule 6(e))  
2 shall be used in computing the time period.

3 (d)(v) Priority among writs of garnishment served upon a garnishee shall be in order of their  
4 service.

5 (d)(vi) A writ of garnishment attaching earnings for personal services shall attach only that  
6 portion of the defendant's accrued and unpaid disposable earnings hereinafter specified. The writ  
7 shall so advise the garnishee and shall direct the garnishee to withhold from the defendant's  
8 accrued disposable earnings only the amount attached pursuant to the writ. Earnings for personal  
9 services shall be deemed to accrue on the last day of the period in which they were earned or to  
10 which they relate. If the writ is served before or on the date the defendant's earnings accrue and  
11 before the same have been paid to the defendant, the writ shall be deemed to have been served at  
12 the time the periodic earnings accrued;

13 (d)(vii) "Earnings" or "earnings from personal services" means compensation paid or payable  
14 for personal services, whether denominated as wages, salary, commission, bonus, or otherwise,  
15 and includes periodic payments pursuant to a pension or retirement program. "Disposable  
16 earnings" means that part of a defendant's earnings remaining after the deduction of all amounts  
17 required by law to be withheld. For purposes of a garnishment to enforce payment of a judgment  
18 arising out of a failure to support dependent children, earnings also include, in addition to those  
19 items listed above, periodic payments pursuant to insurance policies of any type, including  
20 unemployment compensation, insurance benefit payments, and all gain derived from capital,  
21 from labor, or from both combined, including profit gained through sale or conversion of capital  
22 assets or as otherwise modified or adopted by law for the support of dependent children.

23 (d)(viii) The maximum portion of the aggregate disposable earnings of defendant (if an  
24 individual) becoming due the defendant which is subject to garnishment is the lesser of:

25 (d)(viii)(A) Twenty-five per centum of defendant's disposable earnings (fifty per centum for  
26 a garnishment to enforce payment of a judgment arising out of failure to support dependent  
27 children) computed for the pay period for which the earnings accrued; or

28 (d)(viii)(B) The amount by which the defendant's aggregate disposable earnings computed  
29 for the pay period for which the earnings accrued exceeds the number of weeks in the period  
30 multiplied by thirty times the federal minimum hourly wage prescribed by the Fair Labor  
31 Standards Act in effect at the time the earnings are payable.

1 (d)(ix) Unless otherwise ordered by the Court, the garnishee shall treat the defendant's  
2 earnings becoming due from the garnishee as the defendant's entire aggregate earnings for the  
3 purpose of computing the sum attached by the garnishment.

4 (e) Service of writ; return; general service (pre-judgment or after judgment). The writ, any  
5 order pursuant to subdivision(s) of this rule, and any order pursuant to Rule 64A(3), shall be  
6 served upon the garnishee by a sheriff, constable, deputy, or such other person designated by  
7 court order and return thereof made in the same manner as a return of service upon a summons.  
8 All other service may be by first class mail or hand delivery.

9 (f) Release or discharge of garnishment (pre-judgment or after judgment). At any time either  
10 before or after the service of any writ of garnishment, the defendant may obtain a release or  
11 discharge thereof in the same manner and under the same conditions as a release or discharge of  
12 a writ of attachment may be obtained under the provisions of Subdivision (f) of Rule 64C. The  
13 plaintiff may release a writ of garnishment by filing with the clerk a release of garnishment and  
14 serving a copy thereof upon the garnishee.

15 (g) Answer of garnishee; delivery of property (pre-judgment or after judgment). The  
16 garnishee shall, within the time required by Subdivision (d)(ii) hereof, serve upon the court and  
17 the plaintiff verified answers to the interrogatories and provide proof(s) of service upon  
18 defendant of the copy of the writ of garnishment, answers to interrogatories, the notice of  
19 garnishment and exemptions, and the applications by which a hearing may be requested, stating  
20 the manner and date of service. The garnishee may also deliver to the officer serving the writ the  
21 Property Subject to Garnishment as shown by the answer of the garnishee, and the officer shall  
22 make return of such property and money with the writ to the court, to be dealt with as thereafter  
23 ordered by the court. Thereupon, the garnishee shall be relieved from further liability in the  
24 proceedings, unless the answer shall be successfully controverted as hereinafter provided or the  
25 garnishee has willfully failed to serve copies of the writ of garnishment, answers to  
26 interrogatories, notice of garnishment and exemptions, and the applications by which a request  
27 for a hearing may be made on the defendant and other persons entitled thereto.

28 (h) Procedure (pre-judgment or after judgment). The defendant or any other person who  
29 owns or claims an interest in the property subject to garnishment that is garnisheed may request a  
30 hearing to claim any exemption to the garnishment, or to challenge the issuance of the writ or the  
31 accuracy of the answers to interrogatories. Such request must be filed within ten days of the

1 service (for purposes of this provision the date of service shall be the date of mailing if mailed or  
2 date of delivery if hand-delivered and no period for mailing pursuant to Rule 6(e) shall be used  
3 in computing the time period) of the copy of the materials required to be served by Subdivision  
4 (d)(iii) upon the defendant and all others entitled to receive the same. Any person filing a request  
5 for hearing shall serve a copy of the request for hearing on the plaintiff, the garnishee, and other  
6 persons claiming an interest in the property. The request for a hearing shall be in a form to  
7 enable the defendant or other person to specify the grounds upon which the defendant or other  
8 person challenges the issuance of the writ or the accuracy of the answers to interrogatories, or  
9 claims the amount garnisheed to be exempt, in whole or in part, including, but not limited to  
10 exemptions claimed for Social Security benefits, Supplemental Security Income benefits,  
11 Veterans' benefits, unemployment benefits, Workers' Compensation benefits, public assistance  
12 (welfare) benefits, alimony and child support, pensions, wage or other earnings for personal  
13 service, and non-ownership of the garnisheed property. Where personal services are  
14 compensated, but no amounts are required by law to be withheld, the amounts that would have  
15 been required to be withheld by law had the defendant been an employee of the garnishee are  
16 exempt.

17 (h)(i) If no request for hearing is filed. If the garnishee does not receive a copy of a request  
18 for hearing within 20 days after service of copies of materials required to be served by  
19 Subdivision (d)(iii), the garnishee shall pay Property Subject to Garnishment to plaintiff or  
20 plaintiff's attorney. If a request for hearing is not filed as provided for in this Rule and the time  
21 for doing so has expired and the writ issued was a prejudgment writ of garnishment, then the  
22 court or the clerk, upon plaintiff's request, shall issue an order to the garnishee to pay the  
23 Property Subject to Garnishment into court by delivery of such property to the sheriff or  
24 constable for that purpose. Property Subject to Garnishment that is paid into court pursuant to a  
25 prejudgment writ of garnishment or at any time when a request for hearing has been filed shall  
26 be held by the clerk pending order of the court.

27 (h)(ii) Effect of failure to request hearing. If the defendant or any other person to whom the  
28 materials required to be served by Subdivision (d)(iii) fails to request a hearing as provided for  
29 herein, then defendant and such other persons shall be deemed to have accepted as correct the  
30 garnishee's answers to interrogatories and the amounts stated therein to be not exempt from  
31 garnishment except as reflected in the answers to interrogatories.

1 (h)(iii) If a request for hearing is filed. If a request for hearing is filed by or on behalf of the  
2 defendant or by any other person, the court shall set the matter for hearing within ten (10) days  
3 from the filing of the request and serve notice of that hearing upon all parties and claimants by  
4 first class mail. If the court determines at the hearing that the writ was issued improperly, that the  
5 answers to interrogatories are inaccurate, or that any assets garnisheed are exempt from or are  
6 not subject to garnishment, the court shall immediately issue an order to the garnishee releasing  
7 such assets or portion thereof from the writ of garnishment. If the court finds that the assets or a  
8 portion thereof are subject to garnishment and not exempt, it shall issue an order to pay the  
9 Property Subject to Garnishment directly to plaintiff or plaintiff's attorney or as otherwise  
10 ordered by the court, except in the case of a prejudgment writ of garnishment where the order  
11 shall require that such property be paid into court by delivery of such property to the sheriff or  
12 constable for that purpose. Property Subject to Garnishment that is paid into court shall be held  
13 by the clerk pending order of the court.

14 (h)(iv) If the property is other than money or its equivalent. Where the property is other than  
15 money or its equivalent, the court shall order that the garnishee deliver such property to the  
16 sheriff, constable, deputy, or such other person designated by court order. In the case of a writ  
17 issued after judgment, the person to whom the property was delivered shall sell as much of such  
18 property as may be necessary to satisfy the judgment together with costs of the garnishment  
19 proceedings and deposit the proceeds into court to be distributed by order of the court. Any  
20 surplus of such personal property or the proceeds thereof necessary to satisfy the writ of  
21 garnishment shall be returned to the defendant unless otherwise ordered by a court of competent  
22 jurisdiction. In the case of a prejudgment writ, the person to whom the property is delivered shall  
23 maintain possession of the property until further order of the court.

24 (i) Reply to answer of garnishee; trial of issues; judgment (pre-judgment or after judgment).  
25 The plaintiff or defendant may, within 10 days after the service of any answers to interrogatories,  
26 file and serve upon the garnishee and the other party to the principal action a reply to the whole  
27 or any part thereof and may also allege any matters which would charge the garnishee with  
28 liability except that all claims for exemptions to garnishment or non-ownership of property  
29 garnisheed shall be resolved under the procedures as otherwise provided for in Subdivision (h)  
30 herein. Such new matter in reply shall be taken as denied and the matter thus at issue shall be  
31 tried in the same manner as other issues of like nature. Judgment shall be entered upon the

1 verdict or finding the same as if the garnishee had answered according to such verdict or finding.  
2 Costs shall be awarded in accordance with the provisions of Rule 54(d).

3 (j) Proceedings on failure of garnishee to comply with rule (pre-judgment or after judgment).  
4 If a garnishee fails to answer interrogatories after payment of the required fee, or if any garnishee  
5 shall fail to send to the defendant the copy of the writ, answers to interrogatories, notice and  
6 applications required by Sections (d)(iii) of this Rule, the court may order the garnishee to appear  
7 before the court and show cause why the garnishee should not be held in contempt therefor and  
8 why the court should not order the garnishee to pay expenses and costs incurred by other parties  
9 to the proceeding as a result of garnishee's failure. After the garnishee has been personally served  
10 with an order to appear before the court and show cause, the court may make such orders as are  
11 just. Unless the court finds there was substantial justification for the garnishee's failure or that  
12 other circumstances make an award of expenses or costs unjust, the court shall order the  
13 garnishee to pay reasonable expenses, including attorney's fees, incurred as a result of garnishee's  
14 failure.

15 If a garnishee fails to serve upon the court answers to interrogatories or an Affidavit of  
16 Garnishee as to Continuing Garnishment but delivers to the court Property Subject to  
17 Garnishment, the plaintiff may obtain a release of such property by filing with the court 60 days  
18 after the writ of garnishment was issued, or, in the case of a continuing garnishment, 60 days  
19 after the Property Subject to Garnishment was delivered to the court, an Ex Parte Motion to  
20 Release Garnishment Funds and by mailing a copy of the motion to the defendant. The motion  
21 shall state the amount of the property delivered to the court by the garnishee, that the garnishee  
22 failed to answer the interrogatories or file an Affidavit of Garnishee as to Continuing  
23 Garnishment, that 60 days have elapsed since the issuance of the writ (or, in the case of a  
24 continuing garnishment, 60 days have elapsed since the Property Subject to Garnishment was  
25 delivered to the court), and that the defendant has made no objection to the garnishment. No  
26 earlier than 10 days after a copy of the motion is mailed to the defendant, the court may enter an  
27 order that the Property Subject to Garnishment shall be released to the plaintiff to be applied to  
28 the judgment against the defendant. If the defendant objects to such release of property, the  
29 defendant shall file an objection to the motion with the court prior to the order being entered and  
30 shall mail a copy of the objection to the plaintiff. The plaintiff shall mail a copy of the executed  
31 order to the defendant.

1 (k) Release of garnishee for amount paid (pre-judgment or after judgment). Except as  
2 provided for herein, a garnishee who acts in accordance with this Rule shall be released from all  
3 demands by the defendant for all Property Subject to Garnishment that is paid, delivered or  
4 accounted for by the garnishee pursuant to this Rule.

5 (l) Interpleader of third persons (pre-judgment or after judgment). When any person other  
6 than the defendant claims or may claim that the property held in the possession, custody, or  
7 control of the garnishee pursuant to a Writ is not subject to garnishment, the court may on  
8 motion order that such claimant be interpleaded as a defendant to the garnishment action, and if  
9 not already subject to the jurisdiction of the court, provide for notice thereof, in such form as the  
10 court shall direct, together with service of a copy of the order upon such third-party claimant in  
11 the manner required for the service of a summons. Thereupon the garnishee may pay or deliver  
12 to the court such property held pursuant to the Writ, which shall be a complete discharge from all  
13 liability to any party for the amount so paid or property so delivered. The third-party claimant  
14 shall thereupon be deemed a defendant to the garnishment action and shall answer within 10  
15 days, setting forth any claim or defense. In case of default, judgment may be rendered as in any  
16 other cases of default which shall extinguish any claim of such third-party claimant.

17 (m) Claims of garnishee against plaintiff or defendant (pre-judgment or after judgment).  
18 Every garnishee shall be allowed to retain or deduct out of the Property Subject to Garnishment  
19 all demands against the plaintiff and against the defendant of which the garnishee could have  
20 availed itself if the garnishee had not been served as garnishee, whether the same are at the time  
21 due or not so long as the claims are liquidated, but only to the extent that the amounts retained  
22 and deducted are applied to reduce a debt or other obligation of the plaintiff or defendant, except  
23 that should such property, otherwise subject to garnishment, be held as security for the payment  
24 of a debt or other obligation of the defendant to the garnishee, then such property need not be  
25 applied at that time but must remain subject to being applied at any time pending the payment in  
26 full of the debt or other obligation. In answering the interrogatories propounded to the garnishee,  
27 the garnishee shall specify the amount retained or deducted and the person against whom the  
28 claim is made. Amounts retained and deducted for amounts owed by the plaintiff to the garnishee  
29 shall also be applied in reduction of any judgment amount rendered in favor of plaintiff and  
30 against defendant. All amounts properly garnisheed in excess of those amounts retained or

1 deducted pursuant to this subdivision are subject to payment and distribution in accordance with  
2 this Rule.

3 (n) Liability of garnishee on negotiable instruments (pre-judgment or after judgment). No  
4 person shall be liable as garnishee by reason of having drawn, accepted, made or endorsed any  
5 negotiable instrument which is not in the possession, custody, or control of the garnishee at the  
6 time of service of the writ of garnishment.

7 (o) When garnishee is mortgagee or pledgee (pre-judgment or after judgment). When any  
8 Property Subject to Garnishment is mortgaged or pledged, or in any way held for the payment of  
9 a debt to the garnishee, the plaintiff may obtain an order from the court authorizing the plaintiff  
10 to pay the total amount of the obligation to the garnishee in accordance with the terms of the  
11 mortgage, pledge or obligation, and requiring the garnishee to deliver such Property Subject to  
12 Garnishment according to the order of the court upon payment to such garnishee of the total  
13 obligation.

14 (p) Where property is held to secure performance of other obligation (pre-judgment or after  
15 judgment). If the Property Subject to Garnishment secures any obligation other than the payment  
16 of money and if the obligation secured does not require the personal performance of the  
17 defendant and can be performed by the plaintiff or its designee, the court may, upon plaintiff's  
18 motion, authorize the plaintiff or its designee to perform the obligation or tender performance  
19 and that upon such performance, or any tender thereof which is refused, the garnishee shall  
20 deliver the Property Subject to Garnishment in accordance with the order of the Court.

21 (q) Disposition of property (pre-judgment or after judgment). The Property Subject to  
22 Garnishment under either Subdivision (o) or (p) of this Rule or the proceeds from the sale thereof  
23 shall be applied to the extent available, first to satisfy any costs of sale, then to repay any amount  
24 paid by the plaintiff to the garnishee to satisfy the obligation of the defendant to the garnishee,  
25 then to pay the costs to perform the obligation of the defendant to the garnishee for an obligation  
26 other than the payment of money, and then to satisfy the writ of garnishment.

27 (r) Order against garnishee for debt not due (pre-judgment or after judgment). When an order  
28 is made requiring a garnishee to pay an amount to the plaintiff or plaintiff's attorney or into court  
29 or otherwise provide property for disposition by the court and the same is not yet due to the  
30 defendant, payment or providing of property shall not be required until such payment or property  
31 is otherwise due the defendant from the garnishee.

1 (s) Failure to proceed against garnisheed property (pre-judgment or after judgment).  
2 Notwithstanding any other provision of this Rule, if a plaintiff fails, within sixty days from the  
3 filing of the garnishee's answers to interrogatories, to secure and personally serve on the  
4 garnishee an order requiring the garnishee to pay the property garnisheed into court or as  
5 otherwise provided herein, then the writ, which commanded the garnishee to hold the amount or  
6 property, shall be released and the garnishee discharged without further order of the court. If the  
7 Property Subject to Garnishment or any part thereof has been deposited with the court and the  
8 writ of garnishment was issued in aid of the execution of a judgment or order for the payment of  
9 money, and the plaintiff fails, within sixty days from the filing of the garnishee's answers to  
10 interrogatories, to request a release of the property garnisheed from the court in accordance with  
11 Subdivision (h)(i), then the writ shall be released; the garnisheed property shall be returned to the  
12 garnishee; and the garnishee discharged without further order of the court. Property Subject to  
13 Garnishment deposited with the court pursuant to a prejudgment writ of garnishment shall be  
14 released only upon order of the court. A release under this subdivision may be stayed upon order  
15 of the court for good cause shown. Such order shall not be binding upon the garnishee until  
16 served upon it.

17 (t) Costs (pre-judgment or after judgment).

18 (t)(i) Costs shall be allowed as a matter of course to the plaintiff and against the defendant in  
19 the pursuit of any garnishee action instituted after judgment unless the court otherwise directs;  
20 provided, however, where an appeal or other proceeding for review is taken, costs of the  
21 garnishee action shall abide the final determination of the cause. Costs against the State of Utah,  
22 its officers and agencies shall be imposed only to the extent permitted by law.

23 (t)(ii) The plaintiff must serve upon the defendant a copy of a memorandum of the items of  
24 necessary costs and disbursements in the garnishee action or actions, and file with the court a  
25 like memorandum duly verified stating that the items are correct, the disbursements have been  
26 necessarily incurred in the garnishee action, and the items of costs have not been claimed in any  
27 previous memorandum. The memorandum or memoranda may be filed at any time after  
28 judgment is rendered but in no event later than five days after the receipt of funds that would pay  
29 the judgment in full but for the payment of any costs associated with a garnishee action for  
30 which a memorandum or memoranda have not been filed with the court. A party dissatisfied with

1 the costs claimed, may, within seven days after service of the memorandum of costs of the  
2 garnishee action, file a motion to have the costs taxed by the court.

3 (t)(iii) All costs incurred in garnishee actions prior to the rendering of a judgment shall be  
4 taxed according to Rule 54(d) of these rules.

5 (u)(i) A garnishment issued to enforce a judgment obtained by the ~~Office of Recovery~~  
6 ~~Services, within the Department of Social Services, Department of Workforce Services~~ for  
7 repayment of overpayments, as defined in Section ~~62A-11-202~~ 35A-3-602, shall continue to  
8 operate and require the garnishee to withhold the nonexempt portion of disposable earnings, as  
9 defined in Subsection 62A-11-103~~(2)~~(4), at each succeeding earnings disbursement interval until  
10 the garnishment is released in writing by the court or the ~~Office of Recovery Services~~  
11 Department of Workforce Services.

12 (u)(ii) The garnishment described in Subdivision (u)(i) may not exceed 25% of disposable  
13 earnings, as defined in Subsection 62A-11-103~~(3)~~(4), or the amount permitted under Section  
14 303(a) of the Consumer Credit Protection Act, 15 U.S.C. Section 1673(a), whichever is less.

15 (v) Writ of continuing garnishment on earnings.

16 (v)(i) "Continuing garnishment" means any procedure for withholding the earnings of a  
17 defendant for successive pay periods for payment of a judgment debt, other than a judgment for  
18 support. "Earnings" and "Disposable Earnings" shall have the meaning set forth in Subdivision  
19 (d) of this rule. In addition to garnishment proceedings otherwise available under this rule, in any  
20 case in which a money judgment is obtained in a court of competent jurisdiction, the plaintiff or  
21 plaintiff's assignee shall be entitled, in accordance with this subdivision, to have the clerk of the  
22 court issue a writ of continuing garnishment against any garnishee who may owe earnings to the  
23 defendant. The person who serves a writ of continuing garnishment, together with the notices  
24 required by this rule, on the garnishee shall note the date and time of such service on the copy  
25 served. A writ of continuing garnishment shall be subject to the same exemptions from  
26 garnishment and portion of aggregate disposable earnings of defendant subject to garnishment as  
27 are described in Subdivision (d) of this rule.

28 (v)(ii) To the extent that the earnings are not exempt from garnishment, the writ of  
29 continuing garnishment shall be a continuing lien on all disposable earnings due or to become  
30 due to the defendant from the date of service of the writ and continuing until the earlier of the  
31 following events:

1 (v)(ii)(A) 120 days has expired from the date of service of the writ or, in the case of multiple  
2 garnishments, 120 days from the date a garnishment becomes effective as described hereafter in  
3 Subdivision (v)(iii);

4 (v)(ii)(B) the end of the last pay period after the defendant's employment relationship is  
5 terminated;

6 (v)(ii)(C) the underlying judgment is stayed, vacated or satisfied in full;

7 (v)(ii)(D) the plaintiff releases the garnishment; or

8 (v)(ii)(E) the writ of continuing garnishment is dismissed, vacated, or stayed by a court of  
9 competent jurisdiction.

10 The plaintiff shall notify the garnishee in writing by first class mail within 5 days after a  
11 judgment is stayed, vacated, or satisfied or a writ of continuing garnishment is dismissed,  
12 vacated, or stayed by the court.

13 (v)(iii) Only one writ of garnishment (continuing or otherwise) shall be in effect and satisfied  
14 at one time. When more than one writ of garnishment has been issued against earnings due the  
15 same defendant and served on the same garnishee, the writs shall be satisfied in the order of  
16 service on the garnishee. Upon expiration of a writ of continuing garnishment, as provided in  
17 Subdivision (v)(ii) above, any other writ of continuing garnishment that has been issued and  
18 served upon a garnishee against earnings due the defendant shall then become effective and shall  
19 continue for the period described in Subdivision (v)(ii) above. No plaintiff may have issued more  
20 than one writ of continuing garnishment against the same earnings of any individual defendant  
21 during the term of the lien created by any writ of continuing garnishment previously issued and  
22 served in favor of that plaintiff. Any writ of continuing garnishment served upon a garnishee  
23 while any previous writ is still in effect shall be answered by the garnishee with a statement that  
24 the garnishee has been served previously with one or more writs of garnishment against earnings  
25 and specifying the date on which all such liens previously served are expected to terminate.

26 (v)(iv) Garnishee shall answer any interrogatories and serve upon the defendant information  
27 as required by Subdivisions (d) and (g) of this rule. Thereafter, the defendant shall have the right  
28 to request a hearing as provided in Subdivision (h) of this rule. If garnishee does not receive a  
29 copy of a request for hearing within 20 days after service of copies of materials required to be  
30 served by Subdivision (d)(iii), garnishee shall pay Property Subject to Garnishment from the first  
31 applicable pay period to plaintiff or plaintiff's attorney. Any hearing requested by the defendant

1 outside of that provided for in Subdivision (h) shall be requested by motion to the court and held  
2 within the judge's sole discretion. Unless the writ shall terminate pursuant to Subdivision (v)(ii)  
3 above or unless a request for hearing has been served on the garnishee but there has been no  
4 subsequent court order, within 10 days after the end of each subsequent pay period, the garnishee  
5 shall deliver the Property Subject to Garnishment either to the plaintiff or to the plaintiff's  
6 attorney, together with an affidavit which shall state (1) whether the garnishee is indebted to the  
7 defendant for earnings, specifying the beginning and ending dates of the applicable pay period,  
8 and the total earnings for the pay period; (2) whether garnishee is retaining or deducting any  
9 amount in satisfaction of a claim the garnishee has against the plaintiff or the defendant, a  
10 designation as to whom such claim relates, and the amount retained or deducted; (3) the  
11 computation of the amount of defendant's accrued disposable earnings attached by the writ for  
12 the applicable pay period; and (4) that garnishee has served defendant with a copy of the writ of  
13 garnishment and notice of garnishment and exemptions as required by Subdivision (d) of this  
14 rule. Proceedings on failure of garnishee to comply with this Subdivision (v) shall follow  
15 Subdivision (j) of this rule. Reply to any answer or affidavit of garnishee completed pursuant to  
16 this Subdivision (v) shall follow Subdivision (i) of this rule.

17 (v)(v) Notwithstanding any other provision of this Subdivision (v), a writ of continuing  
18 garnishment issued to enforce a judgment obtained by the Office of Recovery Services, within  
19 the Department of Social Services, shall have priority over any other writ of continuing  
20 garnishment in accordance with Subdivision (u) of this rule. If a writ of continuing garnishment  
21 issued by the Office of Recovery Services is served during the term of a lien created by any other  
22 writ of continuing garnishment, the term of that lien shall be tolled and all priorities preserved  
23 until the expiration of the Office of Recovery Services writ.

24 (v)(vi) The plaintiff shall be responsible for insuring that the amounts garnished do not  
25 exceed the amount due on the judgment.

26 (v)(vii) Except as specifically noted in this Subdivision (v), all other provisions of this rule  
27 apply to this subdivision.

28 **Rule 68. Offer of judgment.**

29 (a) Unless otherwise specified, an offer made under this rule by a party defending against a  
30 claim to allow judgment to be entered in accordance with the offer is an offer to resolve all  
31 claims between the parties to the date of the offer, including costs, interest and, if attorney fees

1 are permitted by law or contract, attorney fees. If the adjusted award is not more favorable than  
2 the offer, the offeror is not liable for costs, prejudgment interest or attorney fees incurred by the  
3 offeree after the offer and the offeree shall pay the offeror's costs incurred after the offer. The  
4 court may suspend the application of this rule to prevent manifest injustice.

5 (b) An offer made under this rule shall:

6 (b)(1) be in writing;

7 (b)(2) expressly refer to this rule;

8 (b)(3) be made more than 10 days before trial;

9 (b)(4) remain open for at least 10 days; and

10 (b)(5) be served on the offeree under Rule 5.

11 Acceptance of the offer shall be in writing and served on the offeror under Rule 5. Upon  
12 acceptance, either party may file the offer and acceptance with a proposed judgment under Rule  
13 58A.

14 (c) "Adjusted award" means the amount awarded by the finder of fact and, unless excluded  
15 by the offer, the offeree's costs and interest incurred before the offer, and, if attorney fees are  
16 permitted by law or contract and not excluded by the offer, the offeree's reasonable attorney fees  
17 incurred before the offer. If the offeree's attorney fees are subject to a contingency fee  
18 agreement, the court shall determine a reasonable attorney fee for the period preceding the offer.

## 19 **UTAH RULES OF CRIMINAL PROCEDURE**

### 20 **Rule 7. Proceedings before magistrate.**

21 (a) When a summons is issued in lieu of a warrant of arrest, the defendant shall appear before  
22 the court as directed in the summons.

23 (b) When any peace officer or other person makes an arrest with or without a warrant, the  
24 person arrested shall be taken to the nearest available magistrate for setting of bail. If an  
25 information has not been filed, one shall be filed without delay before the magistrate having  
26 jurisdiction over the offense.

27 (c)(1) In order to detain any person arrested without a warrant, as soon as is reasonably  
28 feasible but in no event longer than 48 hours after the arrest, a determination shall be made as to  
29 whether there is probable cause to continue to detain the arrestee. The determination may be  
30 made by any magistrate, although if the arrestee is charged with a first degree felony or a capital

1 offense, the magistrate may not be a justice court judge. The arrestee need not be present at the  
2 probable cause determination.

3 (c)(2) A written probable cause statement shall be presented to the magistrate, although the  
4 statement may be verbally communicated by telephone, telefaxed, or otherwise electronically  
5 transmitted to the magistrate.

6 (c)(2)(A) A statement which is verbally communicated by telephone shall be reduced to a  
7 sworn written statement prior to submitting the probable cause issue to the magistrate for  
8 decision. The person reading the statement to the magistrate shall verify to the magistrate that the  
9 person is reading the written statement verbatim, and shall write on the statement that person's  
10 name and title, the date and time of the communication with the magistrate, and the  
11 determination the magistrate directs to be indicated on the statement.

12 (c)(2)(B) If a statement is verbally communicated by telephone, telefaxed, or otherwise  
13 electronically transmitted, the original statement shall, as soon as practicable, be filed with the  
14 court where the case will be filed.

15 (c)(3) The magistrate shall review the probable cause statement and from it determine  
16 whether there is probable cause to continue to detain the arrestee.

17 (c)(3)(A) If the magistrate finds there is not probable cause to continue to detain the arrestee,  
18 the magistrate shall order the immediate release of the arrestee.

19 (c)(3)(B) If the magistrate finds probable cause to continue to detain the arrestee, the  
20 magistrate shall immediately make a bail determination. The bail determination shall coincide  
21 with the recommended bail amount in the Uniform Fine/Bail Schedule unless the magistrate  
22 finds substantial cause to deviate from the Schedule.

23 (c)(4) The presiding district court judge shall, in consultation with the Justice Court  
24 Administrator, develop a rotation of magistrates which assures availability of magistrates  
25 consistent with the need in that particular district. The schedule shall take into account the case  
26 load of each of the magistrates, their location and their willingness to serve.

27 (c)(5) Nothing in this subsection (c) is intended to preclude the accomplishment of other  
28 procedural processes at the time of the determination referred to in paragraph (c)(1) above.

29 ~~(e)~~(d)(1) If a person is arrested in a county other than where the offense was committed the  
30 person arrested shall without unnecessary delay be returned to the county where the crime was  
31 committed and shall be taken before the proper magistrate under these rules.

1       ~~(e)~~(d)(2) If for any reason the person arrested cannot be promptly returned to the county and  
2 the charge against the defendant is a misdemeanor for which a voluntary forfeiture of bail may  
3 be entered as a conviction under Subsection 77-7-21(1), the person arrested may state in writing  
4 a desire to forfeit bail, waive trial in the district in which the information is pending, and consent  
5 to disposition of the case in the county in which the person was arrested, is held, or is present.

6       ~~(e)~~(d)(3) Upon receipt of the defendant's statement, the clerk of the court in which the  
7 information is pending shall transmit the papers in the proceeding or copies of them to the clerk  
8 of the court for the county in which the defendant is arrested, held, or present. The prosecution  
9 shall continue in that county.

10       ~~(e)~~(d)(4) Forfeited bail shall be returned to the jurisdiction that issued the warrant.

11       ~~(e)~~(d)(5) If the defendant is charged with an offense other than a misdemeanor for which a  
12 voluntary forfeiture of bail may be entered as a conviction under Subsection 77-7-21(1), the  
13 defendant shall be taken without unnecessary delay before a magistrate within the county of  
14 arrest for the determination of bail under Section 77-20-1 and released on bail or held without  
15 bail under Section 77-20-1.

16       ~~(e)~~(d)(6) Bail shall be returned to the magistrate having jurisdiction over the offense, with the  
17 record made of the proceedings before the magistrate.

18       ~~(d)~~(e)The magistrate having jurisdiction over the offense charged shall, upon the defendant's  
19 first appearance, inform the defendant:

20       ~~(d)~~(e)(1) of the charge in the information or indictment and furnish a copy;

21       ~~(d)~~(e)(2) of any affidavit or recorded testimony given in support of the information and how  
22 to obtain them;

23       ~~(d)~~(e)(3) of the right to retain counsel or have counsel appointed by the court without  
24 expense if unable to obtain counsel;

25       ~~(d)~~(e)(4) of rights concerning pretrial release, including bail; and

26       ~~(d)~~(e)(5) that the defendant is not required to make any statement, and that the statements the  
27 defendant does make may be used against the defendant in a court of law.

28       ~~(e)~~(f) The magistrate shall, after providing the information under paragraph ~~(d)~~(e) and before  
29 proceeding further, allow the defendant reasonable time and opportunity to consult counsel and  
30 shall allow the defendant to contact any attorney by any reasonable means, without delay and  
31 without fee.

1       ~~(f)~~(g) If the charge against the defendant is a misdemeanor, the magistrate shall call upon the  
2 defendant to enter a plea.

3       ~~(f)~~(g)(1) If the plea is guilty, the defendant shall be sentenced by the magistrate as provided  
4 by law.

5       ~~(f)~~(g)(2) If the plea is not guilty, a trial date shall be set. The date may not be extended except  
6 for good cause shown. Trial shall be held under these rules and law applicable to criminal cases.

7       ~~(g)~~(h)(1) If a defendant is charged with a felony, the defendant shall be advised of the right to  
8 a preliminary examination. If the defendant waives the right to a preliminary examination, and  
9 the prosecuting attorney consents, the magistrate shall order the defendant bound over to answer  
10 in the district court.

11       ~~(g)~~(h)(2) If the defendant does not waive a preliminary examination, the magistrate shall  
12 schedule the preliminary examination. The examination shall be held within a reasonable time,  
13 but not later than ten days if the defendant is in custody for the offense charged and not later than  
14 30 days if the defendant is not in custody. These time periods may be extended by the magistrate  
15 for good cause shown. A preliminary examination may not be held if the defendant is indicted.

16       ~~(h)~~(i)(1) Unless otherwise provided, a preliminary examination shall be held under the rules  
17 and laws applicable to criminal cases tried before a court. The state has the burden of proof and  
18 shall proceed first with its case. At the conclusion of the state's case, the defendant may testify  
19 under oath, call witnesses, and present evidence. The defendant may also cross-examine adverse  
20 witnesses.

21       ~~(h)~~(i)(2) If from the evidence a magistrate finds probable cause to believe that the crime  
22 charged has been committed and that the defendant has committed it, the magistrate shall order,  
23 in writing, that the defendant be bound over to answer in the district court. The findings of  
24 probable cause may be based on hearsay in whole or in part. Objections to evidence on the  
25 ground that it was acquired by unlawful means are not properly raised at the preliminary  
26 examination.

27       ~~(h)~~(i)(3) If the magistrate does not find probable cause to believe that the crime charged has  
28 been committed or that the defendant committed it, the magistrate shall dismiss the information  
29 and discharge the defendant. The magistrate may enter findings of fact, conclusions of law, and  
30 an order of dismissal. The dismissal and discharge do not preclude the state from instituting a  
31 subsequent prosecution for the same offense.

1       ~~(j)~~(j) At a preliminary examination, the magistrate, upon request of either party, may exclude  
2 witnesses from the courtroom and may require witnesses not to converse with each other until  
3 the preliminary examination is concluded. On the request of either party, the magistrate may  
4 order all spectators to be excluded from the courtroom.

5       ~~(k)~~(k)(1) If the magistrate orders the defendant bound over to the district court, the magistrate  
6 shall execute in writing a bind-over order and shall transmit to the clerk of the district court all  
7 pleadings in and records made of the proceedings before the magistrate, including exhibits,  
8 recordings, and any typewritten transcript.

9       ~~(k)~~(k)(2) When a magistrate commits a defendant to the custody of the sheriff, the magistrate  
10 shall execute the appropriate commitment order.

11       ~~(l)~~(l)(1) When a magistrate has good cause to believe that any material witness in a pending  
12 case will not appear and testify unless bond is required, the magistrate may fix a bond with or  
13 without sureties and in a sum considered adequate for the appearance of the witness.

14       ~~(l)~~(l)(2) If the witness fails or refuses to post the bond with the clerk of the court, the  
15 magistrate may commit the witness to jail until the witness complies or is otherwise legally  
16 discharged.

17       ~~(l)~~(l)(3) If the witness does provide bond when required, the witness may be examined and  
18 cross-examined before the magistrate in the presence of the defendant and the testimony shall be  
19 recorded. The witness shall then be discharged.

20       ~~(l)~~(l)(4) If the witness is unavailable or fails to appear at any subsequent hearing or trial  
21 when ordered to do so, the recorded testimony may be used at the hearing or trial in lieu of the  
22 personal testimony of the witness.

## 23       **UTAH RULES OF APPELLATE PROCEDURE**

### 24       **Rule 5. Discretionary appeals from interlocutory orders.**

25       (a) *Petition for permission to appeal.* An appeal from an interlocutory order may be sought  
26 by any party by filing a petition for permission to appeal from the interlocutory order with the  
27 clerk of the appellate court with jurisdiction over the case within 20 days after the entry of the  
28 order of the trial court, with proof of service on all other parties to the action. A timely appeal  
29 from an order certified under Rule 54(b), Utah Rules of Civil Procedure, that the appellate court  
30 determines is not final may, in the discretion of the appellate court, be considered by the  
31 appellate court as a petition for permission to appeal an interlocutory order. The appellate court

1 may direct the appellant to file a petition that conforms to the requirements of paragraph (c) of  
2 this rule.

3 (b) *Fees and copies of petition.* For a petition presented to the Supreme Court, the petitioner  
4 shall file with the Clerk of the Supreme Court an original and five copies of the petition, together  
5 with the fee required by statute. For a petition presented to the Court of Appeals, the petitioner  
6 shall file with the Clerk of the Court of Appeals an original and four copies of the petition,  
7 together with the fee required by statute. The petitioner shall serve the petition on the opposing  
8 party and notice of the filing of the petition on the trial court. If an order is issued authorizing the  
9 appeal, the clerk of the appellate court shall immediately give notice of the order by mail to the  
10 respective parties and shall transmit a certified copy of the order, together with a copy of the  
11 petition, to the trial court where the petition and order shall be filed in lieu of a notice of appeal.

12 (c) *Content of petition.*

13 (c)(1) The petition shall contain:

14 (c)(1)(A) A concise statement of facts material to a consideration of the issue presented and  
15 the order sought to be reviewed;

16 (c)(1)(B) The issue presented expressed in the terms and circumstances of the case but  
17 without unnecessary detail, and a demonstration that the issue was preserved in the trial court.  
18 Petitioner must state the applicable standard of appellate review and cite supporting authority;

19 (c)(1)(C) A statement of the reasons why an immediate interlocutory appeal should be  
20 permitted, including a concise analysis of the statutes, rules or cases believed to be determinative  
21 of the issue stated; and

22 (c)(1)(D) A statement of the reason why the appeal may materially advance the termination  
23 of the litigation.

24 (c)(2) If the appeal is subject to assignment by the Supreme Court to the Court of Appeals,  
25 the phrase "Subject to assignment to the Court of Appeals" shall appear immediately under the  
26 title of the document, i.e. Petition for Permission to Appeal. Appellant may then set forth in the  
27 petition a concise statement why the Supreme Court should decide the case in light of the  
28 relevant factors listed in Rule 9(c)(7).

29 (c)(3) The petitioner shall attach a copy of the order of the trial court from which an appeal is  
30 sought and any related findings of fact and conclusions of law and opinion.

1 (d) *Answer*. Within 10 days after service of the petition, any other party may file an answer  
2 in opposition or concurrence. If the appeal is subject to assignment by the Supreme Court to the  
3 Court of Appeals, the answer may contain a concise response to the petitioner's contentions  
4 under Rule 5(c) (5). An original and five copies of the answer shall be filed in the Supreme  
5 Court. An original and four copies shall be filed in the Court of Appeals. The respondent shall  
6 serve the answer on the petitioner. The petition and any answer shall be submitted without oral  
7 argument unless otherwise ordered.

8 (e) *Grant of permission*. An appeal from an interlocutory order may be granted only if it  
9 appears that the order involves substantial rights and may materially affect the final decision or  
10 that a determination of the correctness of the order before final judgment will better serve the  
11 administration and interests of justice. The order permitting the appeal may set forth the  
12 particular issue or point of law which will be considered and may be on such terms, including the  
13 filing of a bond for costs and damages, as the appellate court may determine. The clerk of the  
14 appellate court shall immediately give the parties and trial court notice by mail of any order  
15 granting or denying the petition. If the petition is granted, the appeal shall be deemed to have  
16 been filed and docketed by the granting of the petition. All proceedings subsequent to the  
17 granting of the petition shall be as, and within the time required, for appeals from final  
18 judgments except that no docketing statement shall be filed under Rule 9 unless the court  
19 otherwise orders.

20 (f) *Stays pending interlocutory review*. The appellate court will not consider an application  
21 for a stay pending disposition of an interlocutory appeal until the petitioner has filed a petition  
22 for interlocutory appeal.

23 **Rule 8. Stay or injunction pending appeal.**

24 (a) *Stay must ordinarily be sought in the first instance in trial court; motion for stay in*  
25 *appellate court*. Application for a stay of the judgment or order of a trial court pending appeal,  
26 or disposition of a petition under Rule 5, or for approval of a supersedeas bond, or for an order  
27 suspending, modifying, restoring, or granting an injunction during the pendency of an appeal  
28 must ordinarily be made in the first instance in the trial court. A motion for such relief may be  
29 made to the appellate court, but the motion shall show that application to the trial court for the  
30 relief sought is not practicable, or that the trial court has denied an application, or has failed to  
31 afford the relief which the applicant requested, with the reasons given by the trial court for its

1 action. The motion shall also show the reasons for the relief requested and the facts relied upon,  
2 and if the facts are subject to dispute, the motion shall be supported by affidavits or other sworn  
3 statements or copies thereof. With the motion shall be filed such parts of the record as are  
4 relevant, including a copy of the order sought to be stayed. Any motion for stay not filed as an  
5 emergency motion under rule 8A shall be filed under rule 23. The motion shall be filed with the  
6 clerk and normally will be considered by the court, but in exceptional cases where such  
7 procedure would be impracticable due to the requirements of time, the application may be  
8 considered by a single justice or judge of the court.

9 (b) *Stay may be conditioned upon giving of bond.* Relief available in the appellate court  
10 under this rule may be conditioned upon the filing of a bond or other appropriate security in the  
11 trial court.

12 (c) *Stays in criminal cases.* Stays pending appeal in criminal cases ~~pending appeal~~ in which  
13 the defendant has been sentenced are governed by Utah Code Ann. § 77-20-10 and Rule 27,  
14 Utah. R. Crim. P. Stays in other criminal cases are governed by this rule.

15 **Rule 8A. Emergency relief. [adapted from Supreme Court Standing Order No.1]**

16 (a) Emergency relief. Emergency relief is any relief, including extraordinary relief and stays  
17 pending appeal, sought within a time period shorter than permitted by otherwise applicable rules.

18 (b) Notice to opposing party. A party seeking emergency relief may present to this court a  
19 petition for an extraordinary writ or other emergency matter, including a stay, the party must  
20 shall certify by signed statement that it or its counsel has notified opposing counsel or, if  
21 unrepresented, the opposing party, (1) that it seeks a hearing before ~~this~~ the court at a time  
22 certain, and (2) that it has submitted to the opposing party or counsel a copy of supporting papers  
23 by delivery or facsimile transmission. No petition for emergency relief will be heard ~~by one or~~  
24 ~~more members of this court ex parte in the absence of the opposing party or their counsel,~~ unless  
25 the petitioning party demonstrates that it was impossible to secure ~~their~~ the presence of opposing  
26 counsel or the opposing party, if unrepresented. A party or counsel ~~will be considered present if~~  
27 ~~they are able to participate telephonically~~ will be considered present.

28 (c) Challenged order. ~~In all cases where a party seeks to challenge~~ Any petition challenging  
29 a court order, it shall also present to this court shall include a copy of that order. Whenever  
30 possible, the order ~~in question~~ should be reduced ~~in~~ to writing and signed by the judge, ~~so that~~  
31 ~~this court will act only on accurate premises.~~

1        ~~At least three members of this court shall hear the petition. Only under extraordinary~~  
2 ~~circumstances will fewer than three members of this court hear the petition, and then only if all~~  
3 ~~reasonable efforts to secure the presence of three or more have failed.~~

4        ~~(d) *Page limit.* The body of any Any petition that exceeds exceeding ten pages shall include~~  
5 ~~a ten-page summary of summary not exceeding ten pages containing the factual premises and~~  
6 ~~legal arguments in support. The parties should assume that the court members acting on the~~  
7 ~~petition will need to review only this ten-page summary. necessary to decide the matter.~~

8        ~~This court will not consider an application for a stay pending a decision on a petition for an~~  
9 ~~interlocutory appeal until the party seeking the stay has filed a petition for interlocutory appeal~~  
10 ~~with this court.~~

11        **Rule 10. Motion for summary disposition.**

12        (a) *Time for filing; grounds for motion.*

13        ~~(a)(1) A party may move at any time to dismiss the appeal or the petition for review on the~~  
14 ~~basis that the appellate court has no jurisdiction.~~

15        ~~(a)(2) Within 10 days after the docketing statement or an order granting a petition under Rule~~  
16 ~~5(e) is served, a party may move:~~

17        ~~(a)(1) To dismiss the appeal or the petition for review on the basis that the appellate court has~~  
18 ~~no jurisdiction; or~~

19        ~~(a)(2)(A) To affirm the order or judgment which is the subject of review on the basis that the~~  
20 ~~grounds for review are so insubstantial as not to merit further proceedings and consideration by~~  
21 ~~the appellate court; or~~

22        ~~(a)(3)(B) To reverse the order or judgment which is the subject of review on the basis of~~  
23 ~~manifest error.~~

24        (b) *Number of copies; form of motion.* An original and seven copies of a motion made  
25 pursuant to this rule shall be filed with the Clerk of the Supreme Court. An original and four  
26 copies shall be filed with the Clerk of the Court of Appeals. The motion shall be in the form  
27 prescribed by Rule 23.

28        (c) *Filing of response.* The party moved against shall have 10 days from the service of such a  
29 motion in which to file a response. An original response and seven copies shall be filed in the  
30 Supreme Court. An original response and four copies shall be filed in the Court of Appeals.

1 (d) *Submission of motion; suspension of further proceedings.* Upon the filing of a response or  
2 the expiration of time therefor, the motion shall be submitted to the court for consideration and  
3 an appropriate order. The time for taking other steps in the appellate procedure is suspended  
4 pending disposition of a motion to affirm or reverse or dismiss.

5 (e) *Ruling of court.* The court, upon its own motion, and on such notice as it directs, may  
6 dismiss an appeal or petition for review if the court lacks jurisdiction; or may summarily affirm  
7 the judgment or order which is the subject of review, if it plainly appears that no substantial  
8 question is presented; or may summarily reverse in cases of manifest error.

9 (f) *Deferral of ruling.* As to any issue raised by a motion for summary disposition, the court  
10 may defer its ruling until plenary presentation and consideration of the case.

11 **Rule 22. Computation and enlargement of time.**

12 (a) *Computation of time.* In computing any period of time prescribed by these rules, by an  
13 order of the court, or by any applicable statute, the day of the act, event, or default from which  
14 the designated period of time begins to run shall not be included. The last day of the period shall  
15 be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period  
16 extends until the end of the next day that is not a Saturday, a Sunday, or a legal holiday. When  
17 the period of time prescribed or allowed, ~~after including~~ without reference to any additional time  
18 under subsection (d), is less than 11 days, intermediate Saturdays, Sundays, and legal holidays  
19 shall be excluded in the computation. As used in this rule, "legal holiday" includes days  
20 designated as holidays by the state or federal governments.

21 (b) *Enlargement of time.*

22 (b)(1) Motions for an enlargement of time for filing briefs beyond the time permitted by  
23 stipulation of the parties under Rule 26(a) are not favored.

24 (b)(2) The court for good cause shown may upon motion enlarge the time prescribed by these  
25 rules or by its order for doing any act, or may permit an act to be done after the expiration of  
26 such time, but the court may not enlarge the time for filing a notice of appeal or a petition for  
27 review from an order of an administrative agency, except as specifically authorized by law. For  
28 the purpose of this rule, good cause includes, but is not limited to, the complexity of the case on  
29 appeal, engagement in other litigation, and extreme hardship to counsel.

30 (b)(3) A motion for an enlargement of time shall be filed prior to the expiration of the time  
31 for which the enlargement is sought.

1 (b)(4) A motion for enlargement of time shall state:  
2 (b)(4)(A) with particularity the good cause for granting the motion;  
3 (b)(4)(B) whether the movant has previously been granted an enlargement of time and, if so,  
4 the number and duration of such enlargements;  
5 (b)(4)(C) when the time will expire for doing the act for which the enlargement of time is  
6 sought; and  
7 (b)(4)(D) the date on which the act for which the enlargement of time is sought will be  
8 completed.  
9 (b)(5)(A) If the good cause relied upon is engagement in other litigation, the motion shall:  
10 (b)(5)(A)(i) identify such litigation by caption, number and court;  
11 (b)(5)(A)(ii) describe the action of the court in the other litigation on a motion for  
12 continuance;  
13 (b)(5)(A)(iii) state the reasons why the other litigation should take precedence over the  
14 subject appeal;  
15 (b)(5)(A)(iv) state the reasons why associated counsel cannot prepare the brief for timely  
16 filing or relieve the movant in the other litigation; and  
17 (b)(5)(A)(v) identify any other relevant circumstances.  
18 (b)(5)(B) If the good cause relied upon is the complexity of the appeal, the movant shall state  
19 the reasons why the appeal is so complex that an adequate brief cannot reasonably be prepared  
20 by the due date.  
21 (b)(5)(C) If the good cause relied upon is extreme hardship to counsel, the movant shall state  
22 in detail the nature of the hardship.  
23 (b)(5)(D) All facts supporting good cause shall be stated with specificity. Generalities, such  
24 as "the motion is not for the purpose of delay" or "counsel is engaged in other litigation," are  
25 insufficient.  
26 (c) *Ex parte motion*. Except as to enlargements of time for filing and service of briefs under  
27 Rule 26(a), a party may file one *ex parte* motion for enlargement of time not to exceed 14 days if  
28 no enlargement of time has been previously granted, if the time has not already expired for doing  
29 the act for which the enlargement is sought, and if the motion otherwise complies with the  
30 requirements and limitations of paragraph (b) of this rule.

1 (d) *Additional time after service by mail.* Whenever a party is required or permitted to do an  
2 act within a prescribed period after service of a paper and the paper is served by mail, 3 days  
3 shall be added to the prescribed period.

4 **Rule 25. Brief of an amicus curiae or guardian ad litem.**

5 A brief of an amicus curiae or of a guardian ad litem representing a minor who is not a party  
6 to the appeal may be filed only ~~if accompanied by written consent of all parties, or~~ by leave of  
7 court granted on motion or at the request of the court. Parties to the case may indicate their  
8 support for, or opposition to, the motion. A motion for leave shall identify the interest of the  
9 applicant and shall state the reasons why a brief of an amicus curiae or the guardian ad litem is  
10 desirable. Except as all parties otherwise consent, an amicus curiae or guardian ad litem shall file  
11 its brief within the time allowed the party whose position as to affirmance or reversal the amicus  
12 curiae or guardian ad litem will support, unless the court for cause shown otherwise orders. A  
13 motion of an amicus curiae or guardian ad litem to participate in the oral argument will be  
14 granted when circumstances warrant in the court's discretion.

15 **Rule 27. Form of briefs.**

16 (a) *Paper size; printing margins.* Briefs shall be typewritten, printed or prepared by  
17 photocopying or other duplicating or copying process that will produce clear, black and  
18 permanent copies equally legible to printing, on opaque, unglazed paper 8 1/2 inches wide and  
19 11 inches long, and shall be securely bound along the left margin. Paper may be recycled paper,  
20 with or without deinking. The printing must be double spaced, except for matter customarily  
21 single spaced and indented. Margins shall be at least one inch on the top, bottom and sides of  
22 each page. Page numbers may appear in the margins.

23 (b) *Typeface.* Either a proportionally spaced or monospaced typeface in a plain, roman style  
24 may be used. A proportionally spaced typeface must be 13-point or larger for both text and  
25 footnotes. Examples are CG Times, Times New Roman, New Century, Bookman and Garamond.  
26 A monospaced typeface may not contain more than ten characters per inch for both text and  
27 footnotes. Examples are Pica and Courier.

28 (c) *Binding.* Briefs shall be printed on both sides of the page, and bound with a compact-type  
29 binding so as not unduly to increase the thickness of the brief along the bound side. Coiled  
30 plastic and spiral-type bindings are not acceptable.

1 (d) *Color of cover; contents of cover.* The cover of the opening brief of appellant shall be  
2 blue; that of appellee, red; that of intervenor, guardian ad litem, or amicus curiae, green; that of  
3 any reply brief, or in cases involving a cross-appeal, the appellant's second brief, gray; that of  
4 any petition for rehearing, tan; that of any response to a petition for rehearing, white; that of a  
5 petition for certiorari, white; that of a response to a petition for certiorari, orange; and that of a  
6 reply to the response to a petition for certiorari, yellow. All brief covers shall be of heavy cover  
7 stock. There shall be adequate contrast between the printing and the color of the cover. The cover  
8 of all briefs shall set forth in the caption the full title given to the case in the court or agency  
9 from which the appeal was taken, as modified pursuant to Rule 3(g), as well as the designation of  
10 the parties both as they appeared in the lower court or agency and as they appear in the appeal. In  
11 addition, the covers shall contain: the name of the appellate court; the number of the case in the  
12 appellate court opposite the case title; the title of the document (e.g., Brief of Appellant); the  
13 nature of the proceeding in the appellate court (e.g., Appeal, Petition for Review); the name of  
14 the court and judge, agency or board below; and the names and addresses of counsel for the  
15 respective parties designated as attorney for appellant, petitioner, appellee, or respondent, as the  
16 case may be. The names of counsel for the party filing the document shall appear in the lower  
17 right and opposing counsel in the lower left of the cover. In criminal cases, the cover of the  
18 defendant's brief shall also indicate whether the defendant is presently incarcerated in connection  
19 with the case on appeal or if the brief is an *Anders* brief.

20 (e) *Effect of non-compliance with rules.* The clerk shall examine all briefs before filing. If  
21 they are not prepared in accordance with these rules, they will not be filed but shall be returned  
22 to be properly prepared. The clerk shall retain one copy of the non-complying brief and the party  
23 shall file a brief prepared in compliance with these rules within 5 days. The party whose brief has  
24 been rejected under this provision shall immediately notify the opposing party in writing of the  
25 lodging. The clerk may grant additional time for bringing a brief into compliance only under  
26 extraordinary circumstances. This rule is not intended to permit significant substantive changes  
27 in briefs.

28 **Rule 35. Petition for rehearing.**

29 (a) *Time for filing; contents; answer; oral argument not permitted.* A rehearing will not be  
30 granted in the absence of a petition for rehearing. A petition for rehearing may be filed with the  
31 clerk within 14 days after the entry of the decision of the court, unless the time is shortened or

1 enlarged by order. The petition shall state with particularity the points of law or fact which the  
2 petitioner claims the court has overlooked or misapprehended and shall contain such argument in  
3 support of the petition as the petitioner desires. Counsel for petitioner must certify that the  
4 petition is presented in good faith and not for delay. Oral argument in support of the petition will  
5 not be permitted. No answer to a petition for rehearing will be received unless requested by the  
6 court. The answer to the petition for rehearing shall be filed within 14 days after the entry of the  
7 order requesting the answer, unless otherwise ordered by the court. A petition for rehearing will  
8 not be granted in the absence of a request for an answer.

9 (b) *Form of petition; length.* The petition shall be in a form prescribed by Rule 27. An  
10 original and six copies shall be filed with the court. Two copies shall be served on counsel for  
11 each party separately represented. Except by order of the court, a petition for rehearing and any  
12 response requested by the court shall not exceed 15 pages.

13 (c) *Action by court if granted.* If a petition for rehearing is granted, the court may make a  
14 final disposition of the cause without reargument, or may restore it to the calendar for  
15 reargument or resubmission, or may make such other orders as are deemed appropriate under the  
16 circumstances of the particular case.

17 (d) *Untimely or consecutive petitions.* Petitions for rehearing that are not timely presented  
18 under this rule and consecutive petitions for rehearing will not be received by the clerk.

19 (e) *Amicus curiae.* An amicus curiae may not file a petition for rehearing but may file an  
20 answer to a petition if the court has requested an answer under subparagraph (a) of this rule.

21 **Rule 38A. Qualifications for Appointed Appellate Counsel.**

22 (a) In all appeals where a party is entitled to appointed counsel, only an attorney proficient in  
23 appellate practice may be appointed to represent such a party before either the Utah Supreme  
24 Court or the Utah Court of Appeals.

25 (b) The burden of establishing proficiency shall be on counsel. Acceptance of the  
26 appointment constitutes certification by counsel that counsel is eligible for appointment in  
27 accordance with this rule.

28 (c) Counsel is presumed proficient in appellate practice if any of the following conditions  
29 are satisfied:

30 (c)(1) Counsel has briefed the merits in at least three appeals within the past three years or in  
31 12 appeals total; or

1 (c)(2) Counsel is directly supervised by an attorney qualified under subsection (c)(1); or

2 (c)(3) Counsel has completed the equivalent of 12 months of full time employment, either as  
3 an attorney or as a law student, in an appellate practice setting, which may include but is not  
4 limited to appellate judicial clerkships, appellate clerkships with the Utah Attorney General's  
5 Office, or appellate clerkships with a legal services agency that represents indigent parties on  
6 appeal; and during that employment counsel had significant personal involvement in researching  
7 legal issues, preparing appellate briefs or appellate opinions, and experience with the Utah Rules  
8 of Appellate Procedure.

9 (d) Counsel who do not qualify for appointment under the presumptions described above in  
10 subsection (c) may nonetheless be appointed to represent a party on appeal if the appointing  
11 court concludes there is a compelling reason to appoint counsel to represent the party and further  
12 concludes that counsel is capable of litigating the appeal. The appointing court shall make  
13 findings on the record in support of its determination to appoint counsel under this subsection.

14 (e) Notwithstanding counsel's apparent eligibility for appointment under subsection (c) or  
15 (d) above, counsel may not be appointed to represent a party before the Utah Supreme Court or  
16 the Utah Court of Appeals if during the three year period immediately preceding counsel's  
17 proposed appointment counsel was the subject of an order issued by either appellate court  
18 imposing sanctions against counsel, discharging counsel, or taking other equivalent action  
19 against counsel because of counsel's substandard performance before either appellate court.

20 (f) The fact that appointed counsel does not meet the requirements of this rule shall not  
21 establish a claim of ineffective assistance of counsel.

## 22 **UTAH RULES OF JUVENILE PROCEDURE**

### 23 **Rule 50. Presence at hearings.**

24 **\*\*Amendments effective August 20, 2003 under Rule 11-101.\*\***

25 (a) In abuse, neglect, and dependency cases the court shall exclude all persons who do not  
26 have a direct interest in the proceedings except as provided for by Utah Code Section 78-3a-115  
27 and Section 78-3a-115.1. If a motion is made to deny any person access to any part of a hearing,  
28 the parties to the hearing, including the person challenged, may address the issue by proffer, but  
29 are not entitled to an evidentiary hearing. A person denied access to a proceeding may petition  
30 the Utah Court of Appeals under Utah Rule of Appellate Procedure 19. Proceedings shall not be  
31 stayed pending appeal. As provided for by Utah Code Section 78-3a-116, a person may file a

1 petition requesting a copy of a record of the proceedings, setting forth the reasons for the request.  
2 Upon a finding of good cause by the Court and payment of a fee, the person shall receive an  
3 audio recording of a proceeding. The Court may place under seal information received in an  
4 open proceeding.

5 (b) In delinquency cases the court shall admit all persons who have a direct interest in the  
6 case and may admit persons requested by the parent or legal guardian to be present.

7 (c) In delinquency cases in which the minor charged is 14 years of age or older, the court  
8 shall admit any person unless the hearing is closed by the court upon findings on the record for  
9 good cause if:

10 (c)(1) the minor has been charged with an offense which would be a felony if committed by  
11 an adult; or

12 (c)(2) the minor is charged with an offense that would be a class A or B misdemeanor if  
13 committed by an adult and the minor has been previously charged with an offense which would  
14 be a misdemeanor or felony if committed by an adult.

15 (d) If any person, after having been warned, engages in conduct which disrupts the court, the  
16 person may be excluded from the courtroom. Any exclusion of a person who has the right to  
17 attend a hearing shall be noted on the record and the reasons for the exclusion given. Counsel for  
18 the excluded person has the right to remain and participate in the hearing.

19 (e) Videotaping, photographing or recording court proceedings shall be as authorized by the  
20 Code of Judicial Administration.

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