Agenda

Utah Supreme Court Advisory Committee
Utah Rules of Appellate Procedure

Chris Ballard, Chair
Nathalie Skibine, Vice Chair

Location:	Webex (see calendar appointment for instructions)
Date:	May 5, 2022
Time:	12:00 to 1:30 p.m.

Action: Welcome and approval of April 13, 2022 Minutes	Tab 1	Chris Ballard, Chair
Action: Comments rec'd on Rules 4 & 20	Tab 2	Chris Ballard
Action: Rule 19	Tab 3	Stan Purser
Action: Rule 50	Tab 4	Carol Funk
Action: Rule 22-Juneteenth Holiday	Tab 5	Chris Ballard
Discussion: Old/new business		Chris Ballard, Chair

Committee Webpage: https://www.utcourts.gov/utc/appellate-procedure/

2022 Meeting schedule:

June 2, 2022	September 1, 2022	December 1, 2022
July 7, 2022	October 6, 2022	
August 4, 2022	November 3, 2022	

Tab 1

Minutes

Supreme Court's Advisory Committee on the Utah Rules of Appellate Procedure

Administrative Office of the Courts
450 South State Street
Salt Lake City, Utah 84114

Via WebEx Videoconference
Wednesday, April 13, 2022
12:00 pm to 1:30 pm

PRESENT		EXCUSED
Emily Adams	Michael Judd—Recording Secretary	Tyler Green
Christopher Ballard—Chair	Judge Jill Pohlman	Michelle Quist
Troy Booher—Emeritus Member	Judge Gregory Orme	Scarlet Smith
Patrick Burt	Stanford Purser	
Jacqueline Carlton—Guest	Clark Sabey	
Lisa Collins	Nathalie Skibine	
Carol Funk	Nick Stiles—Staff	
Amber Griffith	Mary Westby	

1. Action: Chris Ballard
Approval of March 2022 Minutes

The committee identified several minor corrections, including a reference to "opposing counsel" in the final paragraph of Section 2, a change from "mention" to "mentioned" in the final paragraph of Section 3, and a change from "filed" to "entered" in Section 2.

With those corrections made, Mary Westby moved to approve the March 2022

minutes as amended. Judge Pohlman seconded that motion, and it passed without objection by unanimous consent.

2. Action: Chris Ballard
Public Comments on Rules 10, 11, and 12

Chris Ballard led out by observing that Leslie Slaugh's comment is well-taken: Will the issues addressed by these rule change be resolved by electronic filing? And to the rule changes need to anticipate that? The committee discussed a new exhibit rule practiced by the district courts—that any exhibit that's been scanned in by a district court is sent to appellate courts as well. Lisa Collins informed the committee that some of the concerns raised will be alleviated as district-court clerks catch up with that new practice. The committee noted that the second comment submitted is also well-taken but likely does not call for changes to the text of rule itself. Nick Stiles informed the committee that efforts to establish electronic filing remain active. The committee spent time considering Will Hains's comments, and incorporated aspects of those comments into the text of Rule 11

Following that discussion, Ms. Westby moved to amend rules as shown on-screen at the committee's meeting, in response to comments received. Lisa Collins seconded that motion, and it passed without objection by unanimous consent.

3. Action: Stan Purser
Rules 11, 22, and 24

Stan Purser presented the proposed changes to the committee. Mr. Ballard suggested that the term "any party" be changed to "a party," in all three rules. The committee engaged in a lengthy discussion about how the new requirements imposed by these rules would apply specifically to requests for overlength briefs, and the committee ended in agreement that the proposed changes don't apply as well to that type of request.

Following that discussion, Ms. Westby moved to strike the proposed amendment to Rule 24. Carol Funk seconded that motion, and it passed without objection by unanimous consent.

Ms. Collins then moved to adopt the proposed changes to Rules 11 and 22, as those rules appeared on-screen at the committee's meetings. Ms. Funk seconded that

motion, and it passed without objection by unanimous consent.

4. Action: Nathalie Skibine
Rules that use "affidavit" and "memorandum" Nick Stiles
Lisa Collins
Amber Griffith

The subcommittee responsible for these changes presented to the committee a table identifying all rules that include either the term "affidavit" or the term "memorandum." The subcommittee noted that two rules had already incorporated this type of change. Nathalie Skibine walked committee through table of changes, including instances in which the subcommittee opted not to make these proposed changes. The committee spent time discussing any distinctions, in practice, between affidavits and declarations.

After that discussion, Judge Orme moved that definition of declaration (including reference to Title 78B, Chapter 18a, Uniform Unsworn Declarations Act) be moved to the advisory committee note. Ms. Westby seconded that motion, and it passed without objection by unanimous consent.

Judge Pohlman then moved that the committee adopt the proposed changes to Rules 8 and 17, as amended and as discussed at the committee's meeting. Clark Sabey seconded that motion, and it passed without objection by unanimous consent.

Judge Pohlman then moved that, in Rule 37, the word "unsworn" be deleted and the proposed advisory committee note be added. Stan Purser seconded that motion, and it passed without objection by unanimous consent.

Ms. Skibine moved that the committee adopt the proposed changes to Rules 23B and 29, as amended and as discussed at the committee's meeting, and the committee noted that the words "or declarations" be added to those rules. Ms. Westby seconded that motion, and it passed without objection by unanimous consent.

Finally, Ms. Skibine moved that the committee adopt the proposed changes to Rule 19, as amended and as discussed at the committee's meeting, with the word "memorandum" being changed to "discussion." Mr. Sabey seconded that motion, and it passed without objection by unanimous consent.

5. Discussion: Chris Ballard
Old/New Business

Mr. Ballard noted that Mr. Purser is working on amendments to Rule 19, regarding extraordinary writs. Mr. Ballard also noted an issue regarding court holidays: Juneteenth is a new holiday, celebrated under federal rules on June 19, with Saturday occurrences celebrated on Fridays, and Sunday occurrences celebrated on Mondays. Utah's Juneteenth law may read differently, and may result in conflicting court holidays—an issue the rules may need to address. Ms. Funk raised a question about how cert petitions are addressed, and the committee plans to give that question further attention at future meetings.

6. Adjourn

Following that discussion, Mr. Ballard adjourned the meeting. The committee's next meeting will take place on May 5, 2022.

Tab 2

Comments received on Rules 4 and 20

Doug Thompson
March 14, 2022 at 12:57 pm

This proposal is flawed for several reasons and should be rejected. The rules should be written and interpreted in light of the unequivocal constitutional right to appeal in all cases. This alteration to the rule seems instead to be an attempt to reduce that right, a position the court should not endorse.

First, putting an arbitrary one year limitation on these motions will eliminate otherwise completely legitimate and deserving claims. As a rule, almost all criminal defendants who have been deprived of their right to appeal have been failed by the court, or their lawyer, or both. As a result most of them will be proceeding without the aid of an attorney, and many of them will be incarcerated. This is an almost impossible circumstance in which to investigate, prepare, and litigate a claim in district court. If a defendant in that circumstance has legitimately been deprived of the right to appeal and learns of the "evidentiary facts forming the basis of the claim" but, because he is unrepresented, does not know about Rule 4(f) or how it functions, or this proposed timing requirement, his claim will be denied simply because he files in 366 days later, rather then 365. Though statutes of limitations can be useful for the interests of efficiency and finality, where we know so many of the defendants that actually need the protections afforded by Rule 4(f) will be unrepresented and incarcerated during that critical time, the interests of efficiency and finality should not outweigh the constitutional right to appeal.

Second, the proposal's use of the 3 three examples from Manning (see (5)) as the only circumstances in which reinstatement can be established would unnecessarily limit the meaning of deprivation. These three instances do not encompass all the ways in which a person can be deprived of the constitutional right to appeal through no fault of their own. There are many ways, including other means of ineffective assistance, which as a practical matter will deprive the defendant of the right to appeal even if the defendant never asks for an appeal to be filed or if counsel advises his client of the right to appeal. For example, if counsel advises of the right to appeal, but provides inaccurate or misleading information about what the right entails, about what issues can be raised, etc., the lack of a request for notice to be filed should not eliminate the possibility of reinstatement.

Judges need the discretion to consider new scenarios and decide whether the constitutional right to appeal has been violated. Eliminating all other ways of establishing deprivation needlessly minimizes the meaning of the constitution by rule. The current language allows the court to consider whether the individual circumstances warrant reinstatement and how and why deprivation occurred.

This proposal should be rejected.

Comments received on Rules 4 and 20

Sarah Carlquist
April 21, 2022 at 12:56 pm

I agree with everything Doug Thompson has said in his comment. I would like to add that amending the rule to include a time limit during which a rule 4(f) motion has to be filed appears to be a solution in search of a problem. Yes, as Doug points out, efficiency and finality are important policy considerations. But are rule 4(f) motions so prevalent that their timing needs to be policed? From my practice as an appellate public defender in our State's most populous county, motions under rule 4(f) are not excessively common. Further, adding a timing requirement creates just one more thing that has to be litigated—that is, what did the client know, when did he or she know it, and when should he or she have known it? So, rather than promoting efficiency and finality, the proposed time limit could actually unnecessarily increase litigation. Lastly, the possibility that this amendment could increase litigation only makes Doug's concern about unrepresented, oft-times incarcerated, and indigent defendants all the more salient.

Ann Taliaferro
April 21, 2022 at 1:28 pm

My practice consists primarily of criminal defense. In the last several years, much of my focus has been on wrongful convictions and I have been working a lot in the appellate courts and the post-conviction processes. I believe that over the last several years, it has become more evident that there is a systemic problem in the criminal justice system as demonstrated by the number of exonerations and faulty convictions that have surfaced across the nation. The emergence of conviction integrity units and innocence projects corroborates this belief.

I make no bones stating that our post-conviction system is broken. It is an empty promise that
tells convicted individuals (most of whom are incarcerated) that there is some opportunity for relief to redress constitutional violations in their trials and sentences. (Surely, there is some procedure or process that can fix this). This promise is illusory for several reasons.

First, most convicted persons are not told what they must do to obtain post-conviction relief. Primarily because most defense attorneys in the trial court don't know. The post-conviction process is a daunting minefield of procedural rules and bars that most attorneys (and even judges) don't want to wade into.

Second, these convicted persons must navigate this process pro se, a process that is, again, a daunting minefield of procedural rules and bars.

And third, there is a general strict time limit of one year to file for post-conviction relief. Usually, this is a time period where the convicted person is likely incarcerated; where they have no further access to legal counsel unless they can afford to hire a private attorney; where the prison doesn't provide adequate legal resources or counsel; where there is no general notice given to inmates about filing deadlines and avenues for relief regarding their cases; and in the past two-plus years, where there has been even less access to the outside world and legal access due to Covid issues and lengthy unexpected lock downs. In fact, once sent to prison, the advice given to convicted persons is to not further challenge their conviction, but accept responsibility and demonstrate rehabilitation in order to get a more speedy hearing by the Board.

So for these many reasons, many if not the vast majority of convicted persons miss this one year deadline to seek post-conviction relief. As a consequence, all of their legal issues are barred, even if meritorious, and even if due to the deprivation of fundamental constitutional rights and the guarantee to effective assistance of counsel.

The proposal to now set a one year time frame for a convicted person to attempt to reinstate their guaranteed right to an appeal — a right which also guarantees counsel and defense resources paid by the state if indigent– poses every one of the same pitfalls just addressed in the broken post-conviction process. Who is to say that the person "should have known with reasonable diligence" about their right to appeal?. The Attorney General's Office? With all due respect, this is just one more way to close the book on the legal claims of convicted persons who may not have obtained effective counsel; to mentally challenged and perhaps incompetent individuals; and to those who do not have access to legal resources or advice as to their rights and remedies.

The buzz-phrase "access to justice" has been regularly bandied about the past few years. But the effect of this proposal is directly contrary to that principle. This proposal is a prime example of not only failing to provide "access to justice", but yet another "justification" to slam the courthouse doors shut to potentially meritorious and fundamental constitutional claims deserving of both review and a remedy.

I urge the committee to please reject this proposal. Persons convicted of a crime need some avenue to challenge their convictions unconstrained by arbitrary time frames – they truly need some "access to justice."

Lori Seppi
April 21, 2022 at 2:09 pm

I agree with Doug Thompson's comment. For the reasons he outlined, I believe the proposal should be rejected.

Comments received on Rules 4 and 20

William Hains
April 22, 2022 at 4:17 pm

Proposed rule 4(f)(5)(C) should say "the court and the defendant's counsel failed to properly advise the defendant of the right to appeal," rather than "the court or the defendant's counsel." If one of those actors properly advises the defendant but the other does not, the defendant has not been deprived of his right to appeal through no fault of his own—he or she would be aware of the right and could be presumed to have waived it by not appealing. Alternatively, language to this effect could be added to the end of 4(f)(5)(C): " … and the defendant was not otherwise aware of the right to appeal."

Also, the "through no fault of his own" requirement should be repeated in 4(f)(6). It may be clear enough since that requirement is mentioned in the intro to 4(f)(5), but it might be worth repeating it in rule 4(f)(6): "If the trial court finds by a preponderance of evidence that the defendant has been deprived of the right to appeal through no fault of his own, … ."

Ben Miller
April 24, 2022 at 7:49 am

I am writing to 100% echo Doug Thompson's comments. This proposal should be rejected because it is not clear that it truly does what it says is its intent – to avoid causing "prejudice to criminal defendants." We should always proceed with the utmost caution before removing a possible mechanism a person can use to challenge an unjust or an unconstitutional conviction. It is always, in any context, easier to remove something than it is later to go back and add what may be needed. Even if the premise is right that there may be some redundancy, there are still, as Mr. Thompson's comment notes, scenarios that might not be covered. And if those situations are left out, that will result in an injustice where someone has no mechanism available.
We have seen situations around the country where a person, even an innocent person, is in prison with no procedural mechanism to use to challenge the conviction. (For example, Lamar Johnson in Missouri has a claim of actual innocence but courts there, including the state supreme court, have rejected the claim because the procedure for him to bring the claim does not exist in their rules). We have to avoid that being a possibility here. According to the National Registry of Exonerations, nearly 30% of all exonerations have had cases where the person received ineffective assistance of counsel. And of the cases from Utah in the database, almost 40% had situations where the person who was wrongfully convicted did not have effective assistance. It would be a mistake to think that every such situation is known and a mistake to make changes that may lead to it being impossible for people with valid claims, through no fault of their own, being unable to pursue a viable claim to their representation and their conviction.

There is no reason to limit the options a person has to pursue a claim of ineffective assistance. When that occurs, it harms the entire integrity of the criminal justice system. If a person raises a claim that could have been raised before, then that may be a reason to dismiss it. But to adopt these changes that could take away a chance for someone who has not had a proper day in court to present the issue is needless and could cause irreparable harm to an individual.

The universe of people this amendment benefits is minuscule if it exists at all, whereas there is a real chance someone can be harmed by this change. With that being a possibility, I would urge that this proposal be rejected.

David Ferguson
April 24, 2022 at 3:06 pm

The Utah Association of Criminal Defense Lawyers opposes the proposed changes to Utah Rules of Appellate Procedure 4 and 20. These rule changes run the risk of keeping our appellate courts from hearing unique but deserving cases that have no other means to be heard. Closing off access to the appellate courts through procedural mechanisms does not advance the fundamental judicial functions of guaranteeing the right to an appeal, and exercising the constitutional authority only vested in the courts for this purpose. These changes instead hamper the ability of people to seek meaningful review. Further, the people most likely to be harmed by these changes are the most vulnerable individuals in society. For these reasons, explained in more detail below, the proposed changes should be rejected.

Beginning with the amendments to Rule 004, Doug Thompson's assessment is correct. The proposed changes limit the possibility of appeals in the most deserving of cases. These cases are often brought by prisoners who, due to their incarceration, face enormous obstacles in getting their appellate rights reinstated.

Prison rules prohibit keeping a law library, leaving inmates among the least likely individuals to be aware of procedural barriers to exercising rights, such as the right of appeal. Because of the lack of legal resources in prisons, inmates typically learn about their rights by word of mouth from other inmates. What they typically do not learn are procedural bars, including time limits for filing. Indigent inmates also have severely limited (if any) access to counsel. Thus, pro se prisoners are surrounded by misinformation and no meaningful ability to check what they are told against the rules and case law. The critical information about filing deadlines is least likely to reach the mentally ill, disabled, or individuals for whom English is not their first language. That means that the most disadvantaged individuals are most likely to be prejudiced by the rule change. The constraints of this rule allow courts to deny reinstatement motions more easily at the expense of limiting deserving appeals.

Additionally, the proposed changes to subsection 5 of Rule 4 is also unnecessarily constrictive. As Doug Thompson noted, the proposal takes a non-exhaustive list of three reasons to reinstate an appeal in _Manning_ and caps it at those three. There is real harm in this. District courts should continue to have the discretion to consider unusual circumstances resulting in a denial of a defendant's right to an appeal by a failure to file timely notice of appeal. The right to an appeal is constitutional and fundamental, and our rules of procedure should seek to protect this right, not substantively curtail it. What's more, our appellate system is designed to correct errors; our judicial system interferes with its own mission when it limits the avenues to hear the errors that need correcting.

As an association of lawyers committed to improving the outcomes for criminal defendants through education and support of their attorneys, we are acutely aware of the consequences when the legal system gets it wrong. Rule 4 is one of a series of mechanisms that correct for legal error in trial courts but more than that, it is necessary to guarantee the constitutional right to an appeal. If a defendant is unaware or unable to file for a timely appeal, whether through trial court, counsel error, or some unusual circumstance outside of the situations discussed in _Manning_, the constitutional right to an appeal includes a means for these individuals to seek a jurisdictional reprieve and have their cases reviewed on direct appeal. The proposed changes to Rule 4 unconstitutionally limit the right to an appeal.

Turning to the proposal for Rule 20, UACDL emphatically opposes this change as well. There are three issues:

1) The committee misunderstands the constitutional basis for the Supreme Court's writ power. The elimination of Rule 20 limits a person's power to petition a wrongful detention by forcing them to start their claim at the trial court. But the Supreme Court has original jurisdiction over writs as a matter of constitutional authority. _See_ Utah Const. Art. VII, § 3. Even if Rule 20 were to be eliminated, that original jurisdiction would continue to exist. All this rule change would do is eliminate the mechanism by which that writ may be exercised. _See Patterson v. State_, 2021 UT 52, ¶ 77. Eliminating procedural guidance just makes it less clear to Utah courts how such writs should be handled. It would not eliminate the Supreme Court's original jurisdiction; it would merely eliminate any direction on original writs.

2) By eliminating Rule 20, the Supreme Court would be abdicating its responsibility to exercise and explain its writ power. While Rule 65C cites the Post-Conviction Relief Act as the sole avenue for a defendant to challenge their conviction in many circumstances, we know this legislative enactment cannot obviate the Supreme Court's constitutional writ authority. Furthermore, habeas writs are based on principles of equity. Equity is, by its nature, designed to be flexible so that injustices unaddressed by law can nevertheless be addressed by courts. By eliminating Rule 20 the Supreme Court would

cede its constitutional authority to the legislature, something the Court simply cannot do. The Committee, in its notes accompanying the amendment, suggests that _Patterson_ has ended the discussion on this topic. UACDL does not share that interpretation. _Patterson_ is still under ongoing litigation. It would be premature to draw conclusions from _Patterson_ as-it-is to eliminate Rule 20 when there are still important issues for the Court to consider.

3) The Advisory Committee's notes also indicate that they cannot think of a single circumstance in which a petitioner would raise a habeas petition under Rule 20 instead of Utah Rules of Civil Procedure 65B and 65C. In _ACLU of Utah v. State_, the ACLU filed suit because the state prison and county jails throughout the state were failing to provide appropriate Covid-19 safeguards for inmates. 2020 UT 31, 467 P.3d 832. The case was dismissed for lack of standing, but one of the main topics of the briefing was the mechanism for bringing the case to the Supreme Court. The ACLU filed the case under 65B directly to the Supreme Court. They noted that there was a need for emergency relief that would address a statewide problem and provide clear guidance and binding precedent on all jail and prison facilities. Respondents pointed out that 65B requires that the petition be first brought to the District Court. In their reply, the ACLU argued that writs are flexible in nature and that the Supreme Court can (and in that case should) take the writ immediately given the nature of the situation. Both the ACLU and the State were probably somewhat wrong on the issue. While the ACLU was right in that there are rare and extraordinary situations in which the Supreme Court should have immediate review, they were wrong to bring their writ under 65B since that rule (as the State correctly pointed out) requires the case to go to a district court first. The petition should have been filed under Rule 20. Rule 20 explicitly provides for how a party may petition the Supreme Court to exercise its original jurisdiction to grant habeas petitions. The rule should remain to ensure that parties have guidance on how to bring unique situations directly to the Supreme Court.

As a final point, and to underscore a previous one, writs are meant to be flexible in nature. Their genesis is constitutional and grounded in equity. They are designed to solve the injustices that are not contemplated by the legislature in crafting law but nevertheless merit review. We request that the amendments be rejected and suggest instead that a task force be created to develop a more clear and effective writ system to encompass Rule 20, and potentially, a review of Utah Rules of Civil Procedure 65B and 65C.

Utah Association of Criminal Defense Lawyers

David Ferguson
Executive Director

Comments received on Rules 4 and 20

Staci Visser
Amicus Committee Chair; Board Member

Ann Marie Taliaferro
Board Member

Rule 4. Appeal as of right: when taken.

(a) **Appeal from final judgment and order.** In a case in which an appeal is permitted as a matter of right from the trial court to the appellate court, the notice of appeal required by Rule 3 shall be filed with the clerk of the trial court within 30 days after the date of entry of the judgment or order appealed from. However, when a judgment or order is entered in a statutory forcible entry or unlawful detainer action, the notice of appeal required by Rule 3 shall be filed with the clerk of the trial court within 10 days after the date of entry of the judgment or order appealed from.

(b) **Time for appeal extended by certain motions.**

(1) If a party timely files in the trial court any of the following, the time for all parties to appeal from the judgment runs from the entry of the dispositive order:

(A) A motion for judgment under Rule 50(b) of the Utah Rules of Civil Procedure;

(B) A motion to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted, under Rule 52(b) of the Utah Rules of Civil Procedure;

(C) A motion to alter or amend the judgment under Rule 59 of the Utah Rules of Civil Procedure;

(D) A motion for a new trial under Rule 59 of the Utah Rules of Civil Procedure;

(E) A motion for relief under Rule 60(b) of the Utah Rules of Civil Procedure if the motion is filed no later than 28 days after the judgment is entered;

(F) A motion or claim for attorney fees under Rule 73 of the Utah Rules of Civil Procedure; or

(G) A motion for a new trial under Rule 24 of the Utah Rules of Criminal Procedure.

(2) A notice of appeal filed after announcement or entry of judgment, but before entry of an order disposing of any motion listed in paragraph (b), shall be treated as filed after entry of the order and on the day thereof, except that such a notice of appeal is effective to appeal only from the underlying judgment. To appeal from a final order disposing of any motion listed in paragraph (b), a party must file a notice of appeal or an amended notice of appeal within the prescribed time measured from the entry of the order.

(c) **Filing prior to entry of judgment or order.** A notice of appeal filed after the announcement of a decision, judgment, or order but before entry of the judgment or order shall be treated as filed after such entry and on the day thereof.

(d) **Additional or cross-appeal.** If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days after the date on which the first notice of appeal was filed, or within the time otherwise prescribed by paragraphs (a) and (b) of this rule, whichever period last expires.

(e) **Motion for extension of time.**

(1) The trial court, upon a showing of good cause, may extend the time for filing a notice of appeal upon motion filed before the expiration of the time prescribed by paragraphs (a) and (b) of this rule. Responses to such motions for an extension of time are disfavored and the court may rule at any time after the filing of the motion. No extension shall exceed 30 days beyond the prescribed time or 14 days beyond the date of entry of the order granting the motion, whichever occurs later.

(2) The trial court, upon a showing of good cause or excusable neglect, may extend the time for filing a notice of appeal upon motion filed not later than 30 days after the expiration of the time prescribed by paragraphs (a) and (b) of this

rule. The court may rule at any time after the filing of the motion. That a movant did not file a notice of appeal to which paragraph (c) would apply is not relevant to the determination of good cause or excusable neglect. No extension shall exceed 30 days beyond the prescribed time or 14 days beyond the date of entry of the order granting the motion, whichever occurs later.

(f) **Motion to reinstate period for filing a direct appeal in criminal cases.** ~~Upon a showing that~~

(1) If no timely appeal is filed in a criminal case, a defendant ~~was deprived of the right to appeal, the trial court shall reinstate the thirty-day period for filing a direct appeal. A defendant seeking such reinstatement shall~~ may file a ~~written~~ motion in the ~~sentencing court and serve the prosecuting entity.~~ trial court to reinstate the time to appeal. The motion must be filed within one year from the day on which the defendant personally knew, or should have known in the exercise of reasonable diligence, of evidentiary facts forming the basis of the claim that the defendant was deprived of the right to appeal.

(2) If the defendant is not represented by counsel and is indigent, the trial court ~~shall~~must appoint counsel.

(3) The motion must be served on the prosecuting entity. The prosecutor ~~shall have 30 days after service of the motion to~~ may file a ~~written~~ response~~. If the prosecutor opposes~~ to the motion within 28 days after being served.

(4) If the motion to reinstate the time to appeal is opposed, the trial court ~~shall~~must set a hearing at which the parties may present evidence.

(5) The defendant must show that he was deprived of the right to appeal through no fault of his own by establishing that:

(A) counsel failed to file a timely appeal after agreeing to do so;

(B) the defendant diligently but futilely attempted to appeal within the statutory time frame without fault on the defendant's part; or

(C) the court or the defendant's counsel failed to properly advise the defendant of the right to appeal.

(6) If the trial court finds by a preponderance of ~~the~~ evidence that the defendant has ~~demonstrated that the defendant was~~been deprived of the right to appeal, ~~it shall~~the court must enter an order reinstating the ~~time for~~right to appeal. The defendant~~'~~s notice of appeal must be filed with the clerk of the trial court within 30 days after the date of entry of the order.

(g) **Motion to reinstate period for filing a direct appeal in civil cases.**

(1) The trial court shall reinstate the thirty-day period for filing a direct appeal if the trial court finds by a preponderance of the evidence that:

(A) The party seeking to appeal lacked actual notice of the entry of judgment at a time that would have allowed the party to file a timely motion under paragraph (e) of this rule;

(B) The party seeking to appeal exercised reasonable diligence in monitoring the proceedings; and

(C) The party, if any, responsible for serving the judgment under Rule 58A(d) of the Utah Rules of Civil Procedure did not promptly serve a copy of the signed judgment on the party seeking to appeal.

(2) A party seeking such reinstatement shall file a written motion in the trial court within one year from the entry of judgment. The party shall comply with Rule 7 of the Utah Rules of Civil Procedure and shall serve each of the parties in accordance with Rule 5 of the Utah Rules of Civil Procedure.

(3) If the trial court enters an order reinstating the time for filing a direct appeal, a notice of appeal must be filed within 30 days after the date of entry of the order.

URAP020. Repeal

Rule 20. Habeas corpus proceedings.

(a) Application for an original writ; when appropriate. If a petition for a writ of habeas corpus is filed in the appellate court or submitted to a justice or judge thereof, it will be referred to the appropriate district court unless it is shown on the face of the petition to the satisfaction of the appellate court that the district court is unavailable or other exigent circumstances exist. If a petition is initially filed in a district court or is referred to a district court by the appellate court and the district court denies or dismisses the petition, a refiling of the petition with the appellate court is inappropriate; the proper procedure in such an instance is an appeal from the order of the district court.

(b) Procedure on original petition.

(1) A habeas corpus proceeding may be commenced by filing a petition with the clerk of the appellate court or, in emergency situations, with a justice or judge of the court. For matters pending in the Supreme court, an original petition and seven copies shall be filed in the Supreme Court. For matters pending in the Court of Appeals, an original petition and four copies shall be filed in the Court of Appeals. The petitioner shall serve a copy of the petition on the respondent pursuant to any of the methods provided for service of process in Rule 4 of the Utah Rules of Civil Procedure but, if imprisoned, the petitioner may mail by United States mail, postage prepaid, a copy of the petition to the Attorney General of Utah or the county attorney of the county if imprisoned in a county jail. Such service is in lieu of service upon the named respondent, and a certificate of mailing under oath that a copy was mailed to the Attorney General or county attorney must be filed with the clerk of the appellate court. In emergency situations, an order to show cause may be issued by the court, or a single justice or judge if the court is not available, and a stay or injunction may be issued to preserve the court's jurisdiction until such time as the court can hear argument on whether a writ should issue.

(2) If the petition is not referred to the district court, the attorney general or the county attorney, as the case may be, shall answer the petition or otherwise plead within ten days after service of a copy of the petition. When a responsive pleading or motion is filed or an order to show cause is issued, the court shall set the case for hearing and the clerk shall give notice to the parties.

(3) The clerk of the appellate court shall, if the petitioner is imprisoned or is a person otherwise in the custody of the state or any political subdivision thereof, give notice of the time for the filing of memoranda and for oral argument, to the attorney general, the county attorney, or the city attorney, depending on where the petitioner is held and whether the petitioner is detained pursuant to state, county or city law. Similar notice shall be given to any other person or an association detaining the petitioner not in custody of the state.

(c) Contents of petition and attachments. The petition shall include the following:

(1) A statement of where the petitioner is detained, by whom the petitioner is detained, and the reason, if known, why the respondent has detained the petitioner.

(2) A brief statement of the reasons why the detention is deemed unlawful. The petition shall state in plain and concise language:

(A) the facts giving rise to each claim that the confinement or detention is in violation of a state order or judgment or a constitutional right established by the United States Constitution or the Constitution of the State of Utah or is otherwise illegal;

(B) whether an appeal was taken from the judgment or conviction pursuant to which a petitioner is incarcerated; and

(C) whether the allegations of illegality were raised in the appeal and decided by the appellate court.

(3) A statement indicating whether any other petition for a writ of habeas corpus based on the same or similar grounds has been filed and the reason why relief was denied.

(4) Copies of the court order or legal process, court opinions and findings pursuant to which the petitioner is detained or confined, affidavits, copies of orders, and other supporting written documents shall be attached to the petition or it shall be stated by petitioner why the same are not attached.

(d) Contents of answer. The answer shall concisely set forth specific admissions, denials, or affirmative defenses to the allegations of the petition and must state plainly and unequivocally whether the respondent has, or at any time has had, the person designated in the petition under control and restraint and, if so, the cause for the restraint. The answer shall not contain citations of legal authority or legal argument.

(e) Other provisions.

(1) If the respondent cannot be found or if the respondent does not have the person in custody, the writ and any other process issued may be served upon anyone having the petitioner in custody, in the manner and with the same effect as if that person had been made respondent in the action.

(2) If the respondent refuses or avoids service, or attempts wrongfully to carry the person imprisoned or restrained out of the county or state after service of the writ, the person serving the writ shall immediately arrest the respondent or other person so

resisting, for presentation, together with the person designated in the writ, forthwith before the court.

(3) At the time of the issuance of the writ, the court may, if it appears that the person detained will be carried out of the jurisdiction of the court or will suffer some irreparable injury before compliance with the writ can be enforced, cause a warrant to issue, reciting the facts and directing the sheriff to bring the detained person before the court to be dealt with according to law.

(4) The respondent shall appear at the proper time and place with the person designated or show good cause for not doing so. If the person designated has been transferred, the respondent must state when and to whom the transfer was made, and the reason and authority for the transfer. The writ shall not be disobeyed for any defect of form or misdescription of the person restrained or of the respondent, if enough is stated to show the meaning and intent.

(5) The person restrained may waive any rights to be present at the hearing, in which case the writ shall be modified accordingly. Pending a determination of the matter, the court may place such person in the custody of an individual or association as may be deemed proper.

Tab 3

Rule 19. Extraordinary writs.

(a) **Petition for extraordinary relief~~writ to a judge or agency; petition; service and filing~~.** When no other plain, speedy, or adequate remedy is available, a person may petition an appellate court for ~~An application for an~~ extraordinary relief~~writ~~ referred to in ~~Rule 65B, U~~Utah Rule~~s~~ of Civil Procedure 65B.~~, directed to a judge, agency, person, or entity must be made by filing a petition with the appellate court clerk.~~

(b) **Respondents.** The person or entity against whom relief is sought and all parties in any related district court or agency action other than the petitioner will be deemed respondents for all purposes.

(c) **Filing and service.** The petition must be filed with the appellate clerk and ~~be~~ served on the respondent(s) ~~judge, agency, person, or entity and on all parties to the action or case in the trial court~~. In the event of an original petition in the appellate court where no action is pending in the district~~trial~~ court or agency, the petition also must be served ~~personally on the respondent judge, agency, person, or entity and service must be made by the most direct means available~~ on all persons or ~~associations~~entities whose interests might be substantially affected.

(c) **Filing fee.** The petitioner must pay the prescribed filing fee at the time of filing, unless waived by the court.

(~~b~~d) **Contents of petition ~~and filing fee~~**. A petition for an extraordinary ~~writ~~relief must contain the following:

(1) A list~~statement~~ of all respondents against whom relief is sought, and all others persons or ~~associations~~entities, by name or by class, whose interests might be substantially affected;

(2) A statement of the issues presented and of the relief sought;

(3) A statement of the facts necessary to ~~an understanding of~~understand the issues presented by the petition;

(4) A statement of the reasons why no other plain, speedy, or adequate remedy exists and why the writ should issue;

(5) ~~(10) When~~re the subject of the petition is an interlocutory order, ~~the petitioner must state~~a statement whether a petition for interlocutory appeal has been filed and, if so, summarize its status or, if not, ~~state~~ why interlocutory appeal is not a plain, speedy, or adequate remedy~~.~~;

(~~5~~6) Except in cases where the writ is directed to a district court, a statement explaining why it is impractical or inappropriate to file the petition ~~for a writ~~ in the district court;

(~~6~~7) A discussion of points and authorities in support of the petition; and~~Copies of any order or opinion or parts of the record that may be essential to an understanding of the matters set forth in the petition;~~

(8)~~(7) A memorandum of points and authorities in support of the petition;~~ Copies of any order or opinion or parts of the record that may be essential to understand the matters set forth in the petition.~~and~~

~~(8) The prescribed filing fee, unless waived by the court.~~

(~~9~~e) **Emergency relief.** When~~re~~ emergency relief is sought, the petitioner and respondent(s) must also comply with Rule 23C. ~~file a separate petition and comply with the additional requirements set forth in Rule 23C(b).~~

~~(10) Where the subject of the petition is an interlocutory order, the petitioner must state whether a petition for interlocutory appeal has been filed and, if so, summarize its status or, if not, state why interlocutory appeal is not a plain, speedy, or adequate remedy.~~

(f~~e~~) **Response ~~to petition~~**.

~~The judge, agency, person, or entity and all parties in the action other than the petitioner will be deemed respondents for all purposes.~~

(1) **Timing.** Any respondent may file a response within 30 days after the later of the date the petition is served or the filing fee is paid or waived. Two or more respondents may respond jointly.

(2) **Contents.** The response shall address the items in paragraph (d).

(3) **Notice of non-participation.** If any respondent does not desire to appear in the proceedings or file a response, that respondent may advise the appellate court clerk and all parties by letter, but the allegations of the petition will not thereby be deemed admitted. ~~Where emergency relief is sought, Rule 23C(d) applies. Otherwise, within seven days after the petition is served, any respondent or any other party may file a response in opposition or concurrence, which includes supporting authority.~~

(g) **Reply.** The petitioner may file a reply within 14 days after service of the response.

(h) **Page and word limits.** A petition or response may not exceed 20 pages or 9,000 words. Any reply may not exceed 10 pages or 4,500 words.

(i~~d~~) **Review and disposition of petition**.

(1) The court will render a decision based on the petition and any timely response and reply, or it may require briefing or request further information, and may hold oral argument at its discretion. If additional briefing is required, the briefs must comply with Rules 24 and 27. ~~Rule 23C(f) applies to requests for hearings in emergency matters.~~

(2) With regard to emergency petitions submitted under Rule 23C, and ~~where~~ consultation with other members of the court cannot be timely obtained, a single judge or justice may grant or deny the petition, subject to the court's review at the earliest possible time.

(3) With regard to all petitions, a single judge or justice may deny the petition if it is frivolous on its face or fails to materially comply with the requirements of this rule or Rule 65B, Utah Rules of Civil Procedure. A petition's denial by a single

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judge or justice may be reviewed by the appellate court upon specific request filed within seven days of notice of disposition, but such request may not include any additional argument or briefing.

(~~e~~i) **Transmission of record**. In reviewing a petition for extraordinary writ, the appellate court may order transmission of the record, or any relevant portion thereof.

(k~~f~~) **Issuing an extraordinary writ on the court's motion**.

(1) The appellate court, in aid of its own jurisdiction in extraordinary cases, may on its own motion issue a writ of certiorari directed to a judge, agency, person, or entity.

(2) A copy of the writ will be served on the named respondents in the manner and by an individual authorized to accomplish personal service under ~~Rule 4,~~ Utah Rule~~s~~ of Civil Procedure 4. In addition, copies of the writ must be transmitted by the appellate court clerk, by the most direct means available, to all persons or associations whose interests might be substantially affected by the writ.

(3) The respondent and the persons or ~~associations~~entities whose interests are substantially affected may, within four days of the writ's issuance, petition the court to dissolve or amend the writ. The petition must be accompanied by a concise statement of the reasons for dissolving or amending the writ.

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Tab 4

Rule 50. Response; reply.

Option 1:

(a) **Response**. No petition for writ of certiorari will be granted absent a request by the court for a response, and no response will be received unless requested by the court. Within 30 days after an order requesting a response ~~petition for a writ of certiorari is served~~, any other party may file a response. If the petitioner pays the required filing fee or obtains a waiver of that fee after service, then the time for response will run from the date that obligation is satisfied. The response must comply with Rule 27 and, as applicable, Rule 49. A party opposing a petition may so indicate by letter in lieu of a formal response, but the letter may not include any argument or analysis.

Option 2:

(a) **Response**. Within 30 days after a petition for a writ of certiorari is served, any other party may file a response. If no response is submitted within the allotted time, the court may request a response. No petition for writ of certiorari will be granted unless a response is submitted within the allotted time or subsequently requested by the court. If the petitioner pays the required filing fee or obtains a waiver of that fee after service, then the time for response will run from the date that obligation is satisfied. The response must comply with Rule 27 and, as applicable, Rule 49. A party opposing a petition may so indicate by letter in lieu of a formal response, but the letter may not include any argument or analysis.

Rule 50. Response; reply.

(a) **Response**. Within 30 days after a petition for a writ of certiorari is served, any other party may file a response. If the petitioner pays the required filing fee or obtains a waiver of that fee after service, then the time for response will run from the date that obligation is satisfied. The response must comply with Rule 27 and, as applicable, Rule 49. A party opposing a petition may so indicate by letter in lieu of a formal response, but the letter may not include any argument or analysis.

(b) **Page limitation**. A response must be as short as possible and may not exceed 20 pages, excluding the table of contents, the table of authorities, and the appendix.

(c) **Objections to jurisdiction**. The court will not accept a motion to dismiss a petition for a writ of certiorari. Objections to the Supreme Court's jurisdiction to grant the petition may be included in the response.

(d) **Reply**. A petitioner may file a reply addressed to arguments first raised in the response within 7 days after the response is served, but distribution of the petition and response to the court ordinarily will not be delayed pending the filing of any such reply unless the response includes a new request for relief, such as an award of attorney fees for the response. The reply must be as short as possible, may not exceed five pages, and must comply with Rule 27.

Effective May 1, 2022

Tab 5

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

United States Code Annotated
Title 5. Government Organization and Employees (Refs & Annos)
Part III. Employees (Refs & Annos)
Subpart E. Attendance and Leave
Chapter 61. Hours of Work (Refs & Annos)
Subchapter I. General Provisions (Refs & Annos)

5 U.S.C.A. § 6103

§ 6103. Holidays

Effective: June 17, 2021
Currentness

(a) The following are legal public holidays:

New Year's Day, January 1.

Birthday of Martin Luther King, Jr., the third Monday in January.

Washington's Birthday, the third Monday in February.

Memorial Day, the last Monday in May.

Juneteenth National Independence Day, June 19.

Independence Day, July 4.

Labor Day, the first Monday in September.

Columbus Day, the second Monday in October.

Veterans Day, November 11.

Thanksgiving Day, the fourth Thursday in November.

Christmas Day, December 25.

(b) For the purpose of statutes relating to pay and leave of employees, with respect to a legal public holiday and any other day declared to be a holiday by Federal statute or Executive order, the following rules apply:

(1) Instead of a holiday that occurs on a Saturday, the Friday immediately before is a legal public holiday for--

(A) employees whose basic workweek is Monday through Friday; and

(B) the purpose of section 6309 of this title.

(2) Instead of a holiday that occurs on a regular weekly non-workday of an employee whose basic workweek is other than Monday through Friday, except the regular weekly non-workday administratively scheduled for the employee instead of Sunday, the workday immediately before that regular weekly nonworkday is a legal public holiday for the employee.

(3) Instead of a holiday that is designated under subsection (a) to occur on a Monday, for an employee at a duty post outside the United States whose basic workweek is other than Monday through Friday, and for whom Monday is a regularly scheduled workday, the legal public holiday is the first workday of the workweek in which the Monday designated for the observance of such holiday under subsection (a) occurs.

This subsection, except subparagraph (B) of paragraph (1), does not apply to an employee whose basic workweek is Monday through Saturday.

(c) January 20 of each fourth year after 1965, Inauguration Day, is a legal public holiday for the purpose of statutes relating to pay and leave of employees as defined by section 2105 of this title and individuals employed by the government of the District of Columbia employed in the District of Columbia, Montgomery and Prince Georges Counties in Maryland, Arlington and Fairfax Counties in Virginia, and the cities of Alexandria and Falls Church in Virginia. When January 20 of any fourth year after 1965 falls on Sunday, the next succeeding day selected for the public observance of the inauguration of the President is a legal public holiday for the purpose of this subsection.

(d)(1) For purposes of this subsection--

(A) the term “compressed schedule” has the meaning given such term by section 6121(5); and

(B) the term “adverse agency impact” has the meaning given such term by section 6131(b).

(2) An agency may prescribe rules under which employees on a compressed schedule may, in the case of a holiday that occurs on a regularly scheduled non-workday for such employees, and notwithstanding any other provision of law or the terms of any collective bargaining agreement, be required to observe such holiday on a workday other than as provided by subsection (b), if the agency head determines that it is necessary to do so in order to prevent an adverse agency impact.

CREDIT(S)

(Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 515; Pub.L. 90-363, § 1(a), June 28, 1968, 82 Stat. 250; Pub.L. 94-97, Sept. 18, 1975, 89 Stat. 479; Pub.L. 98-144, § 1, Nov. 2, 1983, 97 Stat. 917; Pub.L. 104-201, Div. A, Title XVI, § 1613, Sept. 23, 1996, 110 Stat. 2739; Pub.L. 105-261, Div. A, Title XI, § 1107, Oct. 17, 1998, 112 Stat. 2142; Pub.L. 117-17, § 2, June 17, 2021, 135 Stat. 287.)

EXECUTIVE ORDERS

EXECUTIVE ORDER NO. 10358

Ex. Ord. No. 10358, June 9, 1952, 17 F.R. 1529, as amended by Ex. Ord. No. 11226, May 27, 1965, 30 F.R. 7213; Ex. Ord. No. 11272, Feb. 23, 1966, 31 F.R. 3111, formerly set out as a note under this section, which related to the observance of holidays, was revoked by Ex. Ord. No. 11582, Feb. 11, 1971, 36 F.R. 2957, set out under this section.

EXECUTIVE ORDER NO. 11582

<Feb. 11, 1971, 36 F.R. 2957>

Observance of Holidays

By virtue of the authority vested in me as President of the United States, it is hereby ordered as follows:

Section 1. Except as provided in section 7, this order shall apply to all executive departments, independent agencies, and Government corporations, including their field services.

Sec. 2. As used in this order:

(a) Holiday means the first day of January, the third Monday of February, the last Monday of May, the fourth day of July, the first Monday of September, the second Monday of October, the fourth Monday of October, the fourth Thursday of November, the twenty-fifth day of December, or any other calendar day designated as a holiday by Federal statute or Executive order.

(b) Workday means those hours which comprise in sequence the employee's regular daily tour of duty within any 24-hour period, whether falling entirely within one calendar day or not.

Sec. 3. (a) Any employee whose basic workweek does not include Sunday and who would ordinarily be excused from work on a holiday falling within his basic workweek shall be excused from work on the next workday of his basic workweek whenever a holiday falls on Sunday.

(b) Any employee whose basic workweek includes Sunday and who would ordinarily be excused from work on a holiday falling within his basic workweek shall be excused from work on the next workday of his basic workweek whenever a holiday falls on a day that has been administratively scheduled as his regular weekly nonworkday in lieu of Sunday.

Sec. 4. The holiday for a full-time employee for whom the head of a department has established the first 40 hours of duty performed within a period of not more than six days of the administrative workweek as his basic workweek because of the impracticability of prescribing a regular schedule of definite hours of duty for each workday, shall be determined as follows:

(a) If a holiday occurs on Sunday, the head of the department shall designate in advance either Sunday or Monday as the employee's holiday and the employee's basic 40-hour tour of duty shall be deemed to include eight hours on the day designated as the employee's holiday.

(b) If a holiday occurs on Saturday, the head of the department shall designate in advance either the Saturday or the preceding Friday as the employee's holiday and the employee's basic 40-hour tour of duty shall be deemed to include eight hours on the day designated as the employee's holiday.

(c) If a holiday occurs on any other day of the week, that day shall be the employee's holiday, and the employee's basic 40-hour tour of duty shall be deemed to include eight hours on that day.

(d) When a holiday is less than a full day, proportionate credit will be given under paragraph (a), (b), or (c) of this section.

Sec. 5. Any employee whose workday covers portions of two calendar days and who would, except for this section, ordinarily be excused from work scheduled for the hours of any calendar day on which a holiday falls, shall instead be excused from work on his entire workday which commences on any such calendar day.

Sec. 6. In administering the provisions of law relating to pay and leave of absence, the workdays referred to in sections 3, 4, and 5 shall be treated as holidays in lieu of the corresponding calendar holidays.

Sec. 7. The provisions of this order shall apply to officers and employees of the Post Office Department and the United States Postal Service (except that sections 3, 4, 5, and 6 shall not apply to the Postal Field Service) until changed by the Postal Service in accordance with the Postal Reorganization Act [see Short Title note under 39 U.S.C.A. § 101].

Sec. 8. Executive Order No. 10358 of June 9, 1952, entitled **Observance of Holidays by Government Agencies**, and amendatory Executive Orders No. 11226 of May 27, 1965, and No. 11272 of February 23, 1966, are revoked.

Sec. 9. This order is effective as of January 1, 1971.

Richard Nixon

Notes of Decisions (13)

5 U.S.C.A. § 6103, 5 USCA § 6103
Current through P.L. 117-102. Some statute sections may be more current, see credits for details.

End of Document

2022 Utah Laws H.B. 238 (West's No. 328)

UTAH 2022 SESSION LAWS

64th LEGISLATURE, 2022 GENERAL SESSION

Additions are indicated by **Text**; deletions by ~~Text~~.
Vetoes are indicated by ~~Text~~;
stricken material by ~~**Text**~~.

HB 238

West's No. 328
STATE HOLIDAY MODIFICATIONS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Sandra Hollins

Senate Sponsor: Jacob L. Anderegg

LONG TITLE

General Description:

This bill amends provisions related to state holidays.

Highlighted Provisions:

This bill:

. provides for the observation of Juneteenth National Freedom Day each year as a holiday throughout the State.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63G–1–301, as last amended by Laws of Utah 2021, Chapters 335 and 344

Be It enacted by the Legislature of the state of Utah:

Section 1. Section 63G–1–301 is amended to read:

<< UT ST § 63G–1–301 >>

§ 63G–1–301. Legal holidays—Personal preference day—Governor authorized to declare additional days

(1)(a) The following-named days are legal holidays in this state:

(i) every Sunday, except as provided in Subsection (1)(e);

(ii) January 1, called New Year's Day;

(iii) the third Monday of January, called Dr. Martin Luther King, Jr. Day;

(iv) the third Monday of February, called Washington and Lincoln Day;

(v) the last Monday of May, called Memorial Day;

(vi) on the day described in Subsection (1)(f), Juneteenth National Freedom Day;

~~(vi)~~**(vii)** July 4, called Independence Day;

~~(vii)~~**(viii)** July 24, called Pioneer Day;

~~(viii)~~**(ix)** the first Monday of September, called Labor Day;

~~(ix)~~**(x)** the second Monday of October, called Columbus Day;

~~(x)~~**(xi)** November 11, called Veterans Day;

~~(xi)~~**(xii)** the fourth Thursday of November, called Thanksgiving Day;

~~(xii)~~**(xiii)** December 25, called Christmas; and

~~(xiii)~~**(xiv)** all days which may be set apart by the President of the United States, or the governor of this state by proclamation as days of fast or thanksgiving.

(b) If any of the holidays under Subsections (1)(a)(ii) through ~~(xiii)~~ **(v) or Subsections (1)(a)(vii) through (xiv)**, falls on Sunday, then the following Monday shall be the holiday.

(c) If any of the holidays under Subsections (1)(a)(ii) through ~~(xiii)~~ **(v) or Subsections (1)(a)(vii) through (xiv)** falls on Saturday, then the preceding Friday shall be the holiday.

(d) Each employee may select one additional day, called Personal Preference Day, to be scheduled pursuant to rules adopted by the Division of Human Resource Management.

(e) For purposes of Utah Constitution Article VI, Section 16, Subsection (1), regarding the exclusion of state holidays from the 45–day legislative general session, Sunday is not considered a state holiday.

(f)(i) The Juneteenth National Freedom Day holiday is on June 19, if that day is on a Monday.

(ii) If June 19 is on a Tuesday, Wednesday, Thursday, or Friday, the Juneteenth National Freedom Day holiday is on the immediately preceding Monday.

(iii) If June 19 is on a Saturday or Sunday, the Juneteenth National Freedom Day holiday is on the immediately following Monday.

(2)(a) Whenever in the governor's opinion extraordinary conditions exist justifying the action, the governor may:

(i) declare, by proclamation, legal holidays in addition to those holidays under Subsection (1); and

(ii) limit the holidays to certain classes of business and activities to be designated by the governor.

(b) A holiday may not extend for a longer period than 60 consecutive days.

(c) Any holiday may be renewed for one or more periods not exceeding 30 days each as the governor may consider necessary, and any holiday may, by like proclamation, be terminated before the expiration of the period for which it was declared.

Effective May 4, 2022.

Approved March 24, 2022

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Note: Highlighted sections are amendments previously approved by the Committee.

Rule 22. Computation and enlargement of time.

(a) **Computation of time**. In computing any period of time prescribed by these rules, by a~~n order of the~~ court's order, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run ~~shall~~may not be included. If the designated period of time begins to run from the date of entry of an order or judgment and the order or judgment is entered on a Saturday, Sunday, or legal holiday, the date of entry will be deemed to be the first day following the entry that is not a Saturday, Sunday, or legal holiday. The last day of the period ~~shall~~must be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period extends until the end of the next day that is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed, without reference to any additional time under ~~subsection~~ paragraph (d), is less than 11 days, intermediate Saturdays, Sundays, and legal holidays ~~shall~~must be excluded in the computation. As used in this rule, "legal holiday" includes days designated as holidays by the state or federal governments.

(b) **Enlargement of time**.

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

~~(b)~~(2) The court for good cause shown may upon motion extend the time prescribed by these rules or by its order for doing any act, or may permit an act to be done after the expiration of time. This rule does not authorize the court to extend the jurisdictional deadlines specified by any of the rules listed in Rule 2. For the purpose of this rule, good cause includes, but is not limited to, the complexity of the case on appeal, engagement in other litigation, and extreme hardship to counsel.

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

~~(b)~~(4) A motion for enlargement of time shall state:

~~(b)(4)~~(A) with particularity the good cause for granting the motion;

~~(b)(4)~~(B) whether the movant has previously been granted an enlargement of time and, if so, the number and duration of such enlargements;

~~(b)(4)~~(C) when the time will expire for doing the act for which the enlargement of time is sought; ~~and~~

~~(b)(4)~~(D) the date on which the act for which the enlargement of time is sought will be completed~~.~~; and

(E) the position of every other party on the requested extension or why the movant was unable to learn a party's position.

~~(b)~~(5)~~(A)~~ If the good cause relied upon is engagement in other litigation, the motion ~~shall~~must:

~~(b)(5)~~(A)~~(i)~~ identify such litigation by caption, number and court;

~~(b)(5)~~(B~~A~~)~~(ii)~~ describe the action of the court in the other litigation on a motion for continuance;

~~(b)(5)~~(C~~A~~)~~(iii)~~ state the reasons why the other litigation should take precedence over the subject appeal;

~~(b)(5)~~(D~~A~~)~~(iv)~~ state the reasons why associated counsel cannot prepare the brief for timely filing or relieve the movant in the other litigation; and

~~(b)(5)~~(E~~A~~)~~(v)~~ identify any other relevant circumstances.

~~(b)~~(6~~5~~)~~(B)~~ If the good cause relied upon is the complexity of the appeal, the movant ~~shall~~ must state the reasons why the appeal is so complex that an adequate brief cannot reasonably be prepared by the due date.

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~~(b)~~(7~~5~~)~~(C)~~ If the good cause relied upon is extreme hardship to counsel, the movant ~~shall~~ must state in detail the nature of the hardship.

~~(b)~~(8~~5~~)~~(D)~~ All facts supporting good cause ~~shall~~ msut be stated with specificity. Generalities, such as "the motion is not for the purpose of delay" or "counsel is engaged in other litigation," are insufficient.

(c) **Ex parte motion**. Except as to enlargements of time for filing and service of briefs under Rule 26(a), a party may file one ex parte motion for enlargement of time not to exceed 14 days if no enlargement of time has been previously granted, if the time has not already expired for doing the act for which the enlargement is sought, and if the motion otherwise complies with the requirements and limitations of paragraph (b) of this rule.

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

Effective November 14, 2016

Advisory Committee Note

A motion to enlarge time must be filed prior to the expiration of the time sought to be enlarged. A specific date on which the act will be completed must be provided. The court may grant an extension of time after the original deadline has expired, but the motion to enlarge the time must be filed prior to the deadline.

Both appellate courts place appeals in the oral argument queue in accordance with the priority of the case and after principal briefs have been filed. Delays in the completion of briefing will likely delay the date of oral argument.

Adopted 2020