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:	October 6, 2022
Time:	12:00 to 1:30 p.m.

Action: Welcome and approval of September 1, 2022 Minutes	Tab 1	Chris Ballard, Chair
Action: Rule 20 – Rule 19 Advisory Committee Note	Tab 2	Emily Adams
Action: Rule 4	Tab 3	Chris Ballard
Action: Rule 19	Tab 4	Mary Westby, Clark Sabey
Action: Rule 22-Juneteenth Holiday	Tab 5	Chris Ballard
Action: Rule 57	Tab 6	Mary Westby
Action: Appellate Court Disqualification	Tab 7	Nick Stiles
Discussion: Old/new business		Chris Ballard, Chair

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

2022/2023 Meeting schedule:

November 3, 2022	February 2, 2023	May 4, 2023
December 1, 2022	March 2, 2023	June 1, 2023
January 5, 2023	April 6, 2023	July 6, 2023

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
Thursday, September 1, 2022
12:00 pm to 1:30 pm

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

EXCUSED
Patrick Burt

1. Action: Chris Ballard
Introductions and Approval of June 2022 Minutes

The committee introduced itself to its newest member, Judge Michele Christiansen Forster. The committee reviewed the June 2022 minutes and did not note any needed changes or corrections.

Mary Westby moved to approve the June 2022 minutes as circulated. Emily Adams seconded that motion, and it passed without objection by unanimous consent.

2. Action: Chris Ballard
Rules 8, 17, 23B, 29 & 37

This set of rules arrives back on the committee's agenda after being sent out for public comment. Chris Ballard noted that the committee received no comments from the public during the latest round of circulation.

Given the absence of any public comments, Judge Christiansen Forster moved to approve Rules 8, 17, 23B, 29, and 37 in the form they were sent out for comment. Mary Westby seconded that motion, and it passed without objection by unanimous consent.

3. Action: Chris Ballard
Rule 20

Mr. Ballard reported to the committee that he had recommended to the Utah Supreme Court that Rule 20 be repealed—which had been the committee's recommendation. Mr. Ballard also reported that Justice Pearce had raised one concern: After repeal, will there still an option to file a motion for relief directly with the Utah Supreme Court?

The committee worked together, and at length, on several approaches to address that concern, including a potential reworking of parts of Rule 56. After a substantial discussion, the committee considered whether carving out additional time to discuss the proposed changes may be the most reasonable approach, to ensure that the issue arrive back at the committee in a way that ensures all members are comfortable and ensures there is an avenue to file for extraordinary relief.

Mr. Ballard expressed a belief that Rule 19 may already address Justice Pearce's concern, and the committee weighed a proposal under which an advisory-committee note would be added to Rule 19, explaining that Rule 20 has been repealed and that Rule 19 provides a route for parties to extraordinary relief. Judge Orme suggested that Emily Adams propose language for advisory-committee note, given her familiarity with the issue.

Following that discussion, Carol Funk moved to table discussion of Rule 19 and to continue the discussion at the committee's next meeting. Judge Christiansen Forster seconded that motion, and it passed without objection by unanimous consent.

4. Action: Mary Westby
Rule 19

The committee noted that it has been at work on rounds of potential revisions to Rule 19 for several months now. At issue at this month's meeting were minor clarifications about handling a writ without a response, while retaining the ability to call for a response. The committee discussed potential confusion related to how Rule 23C applies and connects to this rule. The committee then discussed at length how emergency petitions will be handled. One potential solution identified by the committee is to add language clarifying that Rule 23C will govern in any conflict between Rule 23C and Rule 19.

Given the need to square Rule 19 with Rule 23C, Mary Westby moved to table discussion of Rule 19 and to resume discussion at the committee's next meeting. Carol Funk seconded that motion, and it passed without objection by unanimous consent.

5. Action: Chris Ballard
Rule 22—Juneteenth Holiday

Given a lack of time to address all issues slated for discussion in September, the committee opted to defer discussion of Rule 22 until October's meeting.

6. Action: Carol Funk
Rule 50 Clark Sabey

Carol Funk presented to the committee two alternative options for modifying the cert-petition response mechanism, as reflected in the meeting materials. The committee discussed those two potential approaches, and considered at length way to at least *leave open* the option for a party opposing a cert petition to file an opposition without the court calling for one. After discussion, the weight of committee members' opinions tipped in the other direction: parties opposing cert petitions will file a response only if requested.

Following that discussion, Ms. Westby moved to approve the first of the two options presented by Ms. Funk. Judge Orme seconded that motion, and it passed without objection by unanimous consent. That option will be presented to the Utah Supreme Court for its consideration.

7. Action: Mary Westby
Rule 57

Ms. Westby indicated that because the proposed amendments to Rule 57 are simple but not uncontroversial, it may be best for the committee to hold off on discussion of Rule 57 until October. The committee agreed.

8. Action: Nick Stiles
Appellate Court Disqualification

Given a lack of time to address all issues slated for discussion in September, the committee opted to defer discussion of appellate court disqualification until October's meeting.

9. Discussion: Chris Ballard
Old/New Business

Nick Stiles informed the committee that if its members are comfortable moving its meeting back to an in-person format, court protocols allow for that option. The committee will consider both a full return to in-person meetings or a rotation between videoconference and in-person meetings.

10. Adjourn

Following that discussion, the committee adjourned. The committee's next meeting will take place on October 6, 2022.

Tab 2

Comment received on Rule 20 (highlighted portion of the comment)

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.

Comment received on Rule 20 (highlighted portion of the comment)

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

Comment received on Rule 20 (highlighted portion of the comment)

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

Staci Visser
Amicus Committee Chair; Board Member

Ann Marie Taliaferro
Board Member

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.

Proposed Advisory Committee Note: Rule 19

Note: When we presented the Utah Supreme Court with the proposal to repeal Rule 20, addressing habeas corpus petitions, Justice Pearce asked whether the rules would still allow a party to seek extraordinary relief directly in the Utah Supreme Court in an appropriate circumstance. Please consider whether Rule 19 adequately affords that opportunity and addresses Justice Pearce's concern.

Rule 19. Extraordinary ~~writs~~relief.

(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 are 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.

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

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

(1) ~~A~~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~~a statement of the issues presented and of the relief sought;

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

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

(5) ~~(10) W~~when~~re~~ the subject of the petition is an interlocutory order, ~~the petitioner must state~~a statement explaining 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) ~~E~~except in cases where the ~~writ~~ relief 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~~f) **Emergency relief.** When~~re~~ emergency relief is sought, the petitioner ~~and respondent(s)~~ must file a separate motion pursuant to ~~also comply with~~ Rule 23C explaining why emergency relief is requested. Any response to a motion filed under Rule 23C is governed by that rule and is separate from any response to a petition filed

under Rule 19. A single justice or judge may act upon a motion for emergency relief separately from the underlying petition. ~~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.~~

~~(g c~~) **Response.** No petition will be granted in the absence of a request by the court for a response. No response to a petition will be received unless requested by the court. ~~**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) ~~(1)~~ **Timing.** If requested,~~Any~~ a respondent may file a response within 30 days of the court's request or within such other time as the court orders. ~~after the later of the date the petition is served or the filing fee is paid or waived.~~

(2) **Joint Response.** Two or more respondents may respond jointly.

(~~2~~3) **Contents.** The response must include, or respond to, as appropriate, the items in paragraph (e).

(~~3~~4) **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.~~

(h) **Reply.** The petitioner may file a reply within 14 days after service of the response. A reply must be limited to responding to the facts and arguments raised in the response.

(i) **Page and word limits.** A petition or response may not exceed 20 pages or 7,000 words. A reply may not exceed 10 pages or 3,500 words. Headings, footnotes, and quotations count toward the page or word limit, but the cover page or caption, any tables of content or authorities, signature block, certificates, and any attachments do not.

(j) **Certificate of compliance.** A petition, response, and reply must include the filer's certification that the document complies with:

(1) paragraph (i), governing the number of pages or words (the filer may rely on the word count of the word processing system used to prepare the brief); and

~~(2) Rule 27(a), governing format, typeface, and typesize; and~~

(~~3~~2) Rule 21(h), governing filings containing non-public information.

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

(1) The court may deny a~~will render a decision based on the~~ petition without a ~~and any timely~~ response. Where a response has been called for, 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) If the court determines that the petition was not appropriately filed in the appellate court, the court will refer the petition to the appropriate district court. Any review of the district court's decision on the petition must be pursued by appeal rather than a refiling of the petition.

(3) 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 emergency relief~~petition~~, subject to the court's review at the earliest possible time.

(43) 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 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.

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

(m~~f~~) **Issuing ~~an~~ extraordinary ~~writ~~ relief 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.

Advisory Committee Note

The Utah Constitution enshrines the right to a writ of habeas corpus. Utah Const., art. I, sec. 5; art. VIII, sec. 3, art. VIII, sec. 5. The Appellate Rules Committee recommended deleting Rule 20 (Habeas Corpus Proceedings) because it was duplicative of Rule 19 (Extraordinary Writs) and potentially caused incarcerated individuals to forgo filing a

petition under the Post-Conviction Remedies Act (Utah Code Title 78B, Chapter 9). This deletion does not affect a defendant's right to a writ of habeas corpus. Utah Rule of Civil Procedure 65C, which incorporates the Post-Conviction Remedies Act, and Utah Rule of Appellate Procedure 19 govern habeas corpus proceedings.

Tab 3

1. **Ann Taliaferro**
   July 14, 2022 at 9:11 am

This is much better… Thank you.

I have one final suggestion, and propose that you delete the language “or should have known in the exercise of reasonable diligence”. Almost everything “should have been known” and it guts the rule’s requirement of the defendant’s personal knowledge of the problem. This language is used to impute knowledge on a defendant where the defendant may not have had personal knowledge, but where his or her attorney did.

I propose the rule reads–

“The motion must be filed within one year, or within a reasonable time, whichever is later, from the day on which the defendant personally knew [deleted phrase] of evidentiary facts forming the basis of the claim that the defendant was deprived of the right to appeal”.

2. **Doug Thompson**
   July 14, 2022 at 3:19 pm

I’ve already raised some form of these concerns to the committee, but I wanted to make them in public to see whether anyone else might agree.

The proposed rule’s use of the phrase “evidentiary facts forming the basis of the claim that the defendant was deprived of the right to appeal” sounds straightforward at first glance, but I expect it will be very difficult to apply in actual cases, especially the common reinstatement scenarios. I think judges will vary widely about what kinds of facts are relevant or determinative on this proposed language. For example, consider the scenarios from Manning:
The first example is the “defendant asked his or her attorney to file an appeal but the attorney, after agreeing to file, failed to do so”. Assume defendant never hears from attorney again after asking for an appeal. Nothing happens. What fact gives rise to the claim? This is a defendant who knows his right, has attempted to exercise his right and relies upon his attorney to do so. How long can a reasonably diligent defendant wait before the “no news” creates an evidentiary basis that he’s been deprived of the right to appeal?
The second example is the defendant that “diligently but futilely attempted to appeal within the statutory time frame without fault on defendant’s part”. The pro se letter/request for an appeal is sent in the mail and is lost, never delivered, or because it is not properly titled or conform to the court’s expectation for notice of appeal, not recorded as such. Again, nothing happens and the defendant sits in solitary confinement for 5 years wondering what has happened with his appeal, never knowing about the failed attempt or, even if he assumes something went wrong, not knowing about the availability of Rule 4(f) reinstatement. How long can a reasonably diligent defendant wait before the “no news” creates an evidentiary basis that he’s been deprived of the right to appeal?
Finally, the third example is the defendant who is not properly informed of his right to appeal. He never requests an appeal because he doesn’t know he can. What kind of evidence will

start the one-year time limit? Can the State bring in cellmates who exercised their right to appeal to establish that a reasonably diligent defendant would have asked questions about his own appellate rights? What if the defendant attends a court hearing in another case where the court instructs another defendant of the right to appeal, does that constitute evidence to form the basis of the claim that he was deprived? The evidentiary questions needed to establish qualification for the timeframe will be very arbitrary and not serve any real legitimate purpose, other than to give the State an avenue of continuing to deprive defendants of their constitutional rights.
The proponents of the time limit want to foreclose resurrecting appeals in old cases. Though I disagree that is a worthwhile policy (after all, these are by definition defendants who have been utterly denied their constitutional right to appeal through no fault of their own), I understand why they support it. But the proposed language places the burden on the defendant, generally unrepresented, who has already been deprived of his constitutional rights. That burden will require him to justify the weeks and months and years he didn't fix the deprivation that was "no fault of his own." And the language requires the defendant to file this specific motion. Many defendants, deprived of their right to appeal, and the accompanying right to counsel, will try any number of desperate and generally useless "legal" forms of self-help. If the defendant spends months or years litigating a ill-conceived Rule 22 motion because he hasn't had qualified counsel, instead of filing the motion to reinstate, he'll miss this timeframe. Not because he wasn't diligent, not because he was purposefully delaying, but because he was unrepresented and ignorant of the limitations of the rule.
I stand by my original position that no timeframe should apply, but if one is absolutely necessary it should be the government's burden to establish bad faith on the part of the defendant. What about something like this:

If the prosecution believes the motion was filed beyond one year, or beyond a reasonable time, whichever is later, 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, the prosecution can file an objection on that basis. The prosecution will have the burden of demonstrating by a preponderance of the evidence that the defendant acted in bad faith by delaying the filing of the motion.

3. **David Ferguson**
   July 29, 2022 at 3:14 pm

I write in agreement with the comments of both Ann and Doug and wholeheartedly agree with the bad faith standard that Doug proposes.

Every time I speak with a prisoner I am reminded of just how little legal information they are actually given. What kind of reasonable diligence should be expected of prisoners? There is no law library at the prison, meaning they have no rule books or code books. The contract attorneys who are assigned to help them were essentially absentee through much of the pandemic and are sometimes non-responsive to prisoners. Prisoners may not necessarily keep records of their efforts because they wouldn't even know that the "reasonable diligence" standard applies to them, because they won't know that this rule exists. Any prisoner who says, "I didn't know what the law was" will always face the same "ignorance of the law is no defense" position. And yet, nearly every time an inmate expresses awareness of a legal topic

to me it has come through word of mouth through other inmates who have discussed the topic. They have almost no ability to fact check each other because they don't have a law library, the money to personally pay for law books, or regular access to competent legal services. Perhaps our trial courts will give prisoners the benefit of the doubt. My experience is that when prisoners or jailees complain about how difficult their conditions are, judges tend to tune out those protests. When the same complaints are heard all of the time it stops sounding like a good explanation. It sounds like another inmate with the same excuses trying to get different treatment from everyone else. Those issues fall on deaf ears when courts should instead be alarmed at how frequently they hear about the obstacles that inmates face.

This proposal runs the risk of creating a structural injustice. The term structural injustice comes from an extensive body of literature discussing situations in which a person is deprived of a right due to a group of obstacles put in that person's way by different organizations. Structural injustice describes those situations in which no one can be blamed for depriving someone of their rights; it is the structure of the system itself that causes the depravation. Where the prison (i.e., organization one) makes legal information difficult to obtain and verify while the courts (i.e., organization two) creates procedural rules that inadequately consider the obstacles that the prison (organization one) puts in place, then neither organization can take blame for creating an unjust system because both organizations can point to the other as being at fault. That's structural injustice.

A prisoner may come before a judge on a Manning motion. That prisoner may have low IQ, may be marginalized by other inmates, speak poor English as an immigrant, or be illiterate (there's quite a few of those folks in the criminal legal system) among any other variety of conditions.

It may be that a relaxed rule will allow some inmates to get appeals by falsely claiming ignorance. To the extent that the appellate courts see their primary role as correcting substantive errors in trial courts, then being confronted with a few more potential errors than they otherwise would have seen seems like a small price to pay for the rights of the convicted to have erroneous convictions reversed. If it is worse that one innocent person go to prison than 10 guilty go free, then it is also worse that 10 otherwise procedurally barred appeals get heard than 1 innocent person losing the right to appeal on a burdensome procedural standard.

I support the standard that Doug proposes. If anything, the Court should try it out first before trying something more restrictive.

4. **Lori Seppi**
   August 26, 2022 at 4:01 pm

I disagree with amending rule 4(f) to include a time limit. Rule 4(f) was created to protect a criminal defendant's constitutional right to appeal. If a defendant has been deprived of that right through no fault of his own, he should be granted his appeal without additional hurdles that will be difficult for an incarcerated person to meet. If there must be a time limit, I agree with Ann Taliaferro's, Doug Thompson's, and David Ferguson's concerns.

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, or within a reasonable time, whichever is later, 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 the defendant was deprived of the right to appeal through no fault of the defendant.

(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.

Tab 4

Rule 19. Extraordinary ~~writs~~relief.

(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 are 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.

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

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

(1) ~~A~~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~~a statement of the issues presented and of the relief sought;

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

(4) Aa statement of the reasons why no other plain, speedy, or adequate remedy exists and why the writ relief should issuebe granted;

(5) (10) Wwhenre the subject of the petition is an interlocutory order, the petitioner must statea statement explaining 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.;

(56) Eexcept in cases where the writ relief 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;

(67) a discussion of points and authorities in support of the petition; andCopies 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.

(9f) **Emergency relief.** Whenre emergency relief is sought, the petitioner and respondent(s) must file a separate motion pursuant to also comply with Rule 23C explaining why emergency relief is requested. Any response to a motion filed under Rule 23C is governed by that rule and is separate from any response to a petition filed under Rule 19. A single justice or judge may act upon a motion for emergency relief separately from the underlying petition. 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.~~

~~(~~g~~c~~) **Response.** No petition will be granted in the absence of a request by the court for a response. No response to a petition will be received unless requested by the court. ~~**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) ~~(1)~~ **Timing.** If requested,~~Any~~ a respondent may file a response within 30 days of the court's request or within such other time as the court orders. ~~after the later of the date the petition is served or the filing fee is paid or waived.~~

(2) **Joint Response.** Two or more respondents may respond jointly.

(~~2~~3) **Contents.** The response must include, or respond to, as appropriate, the items in paragraph (e).

(~~3~~4) **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.~~

(h) **Reply.** The petitioner may file a reply within 14 days after service of the response. A reply must be limited to responding to the facts and arguments raised in the response.

(i) **Page and word limits.** A petition or response may not exceed 20 pages or 7,000 words. A reply may not exceed 10 pages or 3,500 words. Headings, footnotes, and quotations count toward the page or word limit, but the cover page or caption, any tables of content or authorities, signature block, certificates, and any attachments do not.

(j) **Certificate of compliance.** A petition, response, and reply must include the filer's certification that the document complies with:

(1) paragraph (i), governing the number of pages or words (the filer may rely on the word count of the word processing system used to prepare the brief); and

~~(2) Rule 27(a), governing format, typeface, and typesize; and~~

(~~3~~2) Rule 21(h), governing filings containing non-public information.

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

(1) The court may deny a~~will render a decision based on the~~ petition without a ~~and any timely~~ response. Where a response has been called for, 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) If the court determines that the petition was not appropriately filed in the appellate court, the court will refer the petition to the appropriate district court. Any review of the district court's decision on the petition must be pursued by appeal rather than a refiling of the petition.

(3) 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 emergency relief~~petition~~, subject to the court's review at the earliest possible time.

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

(m~~f~~) **Issuing ~~an~~ extraordinary ~~writ~~ relief 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.

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

End of Document

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.

~~(b)~~(75)~~(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)~~(85)~~(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

Tab 6

Rule 57. Record on appeal; transmission of record.

(a) The record on appeal ~~must include~~consists of the legal file, any exhibits admitted as evidence, and any transcripts.

(b) The record will be transmitted by the juvenile court clerk to the Court of Appeals clerk upon the request of an appellate court.

Tab 7

Appellate Court Board

Nicholas Stiles
Appellate Court Administrator

450 South State Street
Salt Lake City, Utah 84114-0230
Telephone: (801) 578-3834
Email: nicks@utcourts.gov

To: Chris Ballard, Chair, Advisory Committee on the Rules of Appellate Procedure
From: Nick Stiles, Appellate Court Administrator
Re: Disqualification of Appellate Judges

Chris –

A member of the Court of Appeals recently brought this issue before all of our appellate judges. We do not currently have a rule regarding how a party may move for an appellate judge to be disqualified, recused, or be determined to be constitutionally or statutorily incompetent.

I have provided a draft version of a Utah rule. I have also provided two examples of other jurisdictions' relevant rules. One question in addition to the drafting considerations, is where within our appellate rules would be most appropriate for this new rule to be located.

Thanks!

Respectfully,

Nick Stiles

Attached:
Tab 1 Draft Utah Rule
Tab 2 Example Nevada Rule
Tab 3 Example Tennessee Rule

TAB 1

Potential Utah Rule

Rule XX - Disqualification of a Justice or Judge

(a) **Motion for Disqualification.** A request that a justice or judge of the Supreme Court or Court of Appeals be disqualified from sitting in a particular case shall be made by motion. Unless the court permits otherwise, the motion shall be in writing and shall be in the form required by Rule 23.

(1) Time to File. A motion to disqualify a justice or judge shall be filed with the clerk of the appropriate court within 60 days after filing of the notice of appeal under Rule 4, together with proof of service on all other parties. Except for good cause shown, the failure to file a timely motion to disqualify shall be deemed a waiver of the moving party's right to object to a justice's or judge's participation in a case.

(2) Contents of a Motion.

(A) Grounds, Supporting Facts, and Legal Authorities. A motion shall state clearly and concisely in separately numbered paragraphs each ground relied upon as a basis for disqualification with the specific facts alleged in support thereof and the legal argument, including citations to relevant cases, statutes or rules, necessary to support it.

(B) Verification. All assertions of fact in a motion must be supported by proper sworn averments in an affidavit or by citations to the specific page and line where support appears in the record of the case.

(i) A verification by affidavit shall be served and filed with the motion.

(ii) The affidavit shall be made upon personal knowledge by a person or persons affirmatively shown competent to testify and shall set forth only those facts that would be admissible in evidence.

(iii) The affidavit shall set forth the date or dates when the moving party first became aware of the facts set forth in the motion.

(C) Attorney's Certificate. A motion under this Rule filed by a party represented by counsel shall contain a certificate signed by at least 1 attorney of record who is an active member of the bar of this state. The certificate must contain the following information:

(i) A representation that the signing attorney has read the motion and supporting documents;

(ii) A representation that the motion and supporting documents are in the form required by this Rule; and

(iii) A representation that, based on personal investigation, the signing attorney believes all grounds asserted to be legally valid and all supporting factual allegations to be true, and that the motion is made in good faith and not for purposes of delay or for other improper motive.

(D) Striking a Motion Without an Attorney's Certificate. If a motion does not contain the certification required by Rule XX(a)(2)(C) it shall be stricken unless such a certification is provided within 14 days after the omission is called to the attorney's attention.

(b) Response.

(1) By a Party. Any party may file a response to a motion to disqualify a justice or judge. The response shall be filed within 14 days after service of the motion unless the court shortens or extends the time.

(2) By the Justice or Judge. The challenged justice or judge may submit a response to the motion in writing or orally at any hearing that may be ordered by the court.

(c) Reply. A reply may not be filed unless permission is first obtained from the court.

(d) Order. The judge in question shall act promptly by written order and either grant or deny the motion. If the motion is denied, the judge shall state in writing the grounds upon which he or she denies the motion. If the judge denies the motion, the movant, within 21 days of entry of the order, may file a motion for court review to be determined promptly by three other judges of the intermediate court upon a de novo standard of review.

(e) Motion concerning more than one judge. If a motion is filed seeking disqualification, recusal, or determination of constitutional or statutory incompetence of more than one judge of the intermediate appellate court ("recusal motion"), and if the recusal motion is denied by the judges in question, the movant, within twenty-one days of entry of the order, may file a motion for court review to be determined promptly by three other judges of the intermediate appellate court who were not subjects of the recusal motion, upon a de novo standard of review. If there are not three judges of the intermediate appellate court who were not subjects of the recusal motion, then a motion for court review is not available; under such circumstances, the order denying the recusal motion may be appealed pursuant to Rule XX(f).

(f) Review unavailable or denied. If the motion for court review is denied, or if a motion for court review is not available pursuant to the third sentence of Rule XX(e), an accelerated appeal as of right lies to the Utah Supreme Court, which shall expeditiously decide the appeal based upon the petition and other papers filed in the intermediate appellate court. The appeal to the Supreme Court shall be titled "recusal appeal from the Court of Appeals" and shall be filed within 21 days of the intermediate appellate court's order denying the motion for court review or, if a motion for court review was not available pursuant to the third sentence of Rule XX(e), within 21 days of the order denying the motion seeking disqualification or recusal of the appellate judges in question.

(g) Supreme Court justices. If a motion is filed seeking disqualification, recusal, or determination of constitutional or statutory incompetence of a Supreme Court justice, the justice in question shall act promptly by written order and either grant or deny the motion. If the motion is denied, the justice shall state in writing the grounds upon which he or she denies the motion. If the justice denies the motion, the movant, within 21 days of entry of the order, may file a motion for court review, which shall be determined promptly by the remaining justices upon a de novo standard of review.

Potential Utah Rule

(h) If a motion is filed seeking disqualification, recusal, or determination of constitutional or statutory incompetence of all of the justices of the Supreme Court, and if the motion is denied by the justices, no motion for further review is available.

TAB 2

Nevada Example

Rule 35 - Disqualification of a Justice or Judge

(a) Motion for Disqualification. A request that a justice or judge of the Supreme Court or Court of Appeals be disqualified from sitting in a particular case shall be made by motion. Unless the court permits otherwise, the motion shall be in writing and shall be in the form required by Rule 27.

(1) Time to File. A motion to disqualify a justice or judge shall be filed with the clerk of the Supreme Court within 60 days after docketing of the appeal under Rule 12, together with proof of service on all other parties. Except for good cause shown, the failure to file a timely motion to disqualify shall be deemed a waiver of the moving party's right to object to a justice's or judge's participation in a case.

(2) Contents of a Motion.

(A) Grounds, Supporting Facts, and Legal Authorities. A motion shall state clearly and concisely in separately numbered paragraphs each ground relied upon as a basis for disqualification with the specific facts alleged in support thereof and the legal argument, including citations to relevant cases, statutes or rules, necessary to support it.

(B) Verification. All assertions of fact in a motion must be supported by proper sworn averments in an affidavit or by citations to the specific page and line where support appears in the record of the case.

(i) A verification by affidavit shall be served and filed with the motion.

(ii) The affidavit shall be made upon personal knowledge by a person or persons affirmatively shown competent to testify and shall set forth only those facts that would be admissible in evidence.

(iii) The affidavit shall set forth the date or dates when the moving party first became aware of the facts set forth in the motion.

(C) Attorney's Certificate. A motion under this Rule filed by a party represented by counsel shall contain a certificate signed by at least 1 attorney of record who is an active member of the bar of this state. The certificate must contain the following information:

(i) A representation that the signing attorney has read the motion and supporting documents;

(ii) A representation that the motion and supporting documents are in the form required by this Rule; and

(iii) A representation that, based on personal investigation, the signing attorney believes all grounds asserted to be legally valid and all supporting factual allegations to be true, and that the motion is made in good faith and not for purposes of delay or for other improper motive.

(D) Striking a Motion Without an Attorney's Certificate. If a motion does not contain the certification required by Rule 35(a)(2)(C). it shall be stricken unless such a certification is provided within 14 days after the omission is called to the attorney's attention.

(b) Response.

Nevada Example

(1) By a Party. Any party may file a response to a motion to disqualify a justice or judge. The response shall be filed within 14 days after service of the motion unless the court shortens or extends the time.

(2) By the Justice or Judge. The challenged justice or judge may submit a response to the motion in writing or orally at any hearing that may be ordered by the court.

(c) Reply. A reply may not be filed unless permission is first obtained from the court.

Nev. R. App. P. 35

TAB 3

Tennessee Example – Not in their Rules of App Procedure, but in their Supreme Court Rules

Section 3 - Motion Seeking Disqualification or Recusal of Appellate Judge or Justice

3.01. Any party seeking disqualification, recusal, or a determination of constitutional or statutory incompetence of a judge or justice of an appellate court shall do so by a timely filed written motion. The motion shall be supported by an affidavit under oath or a declaration under penalty of perjury on personal knowledge and by other appropriate materials; the motion shall state, with specificity, all factual and legal grounds supporting disqualification of the judge or justice and shall affirmatively state that it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. A party who is represented by counsel is not permitted to file a pro se motion under this rule.

3.02.(a) Upon the filing of a motion seeking disqualification, recusal, or determination of constitutional or statutory incompetence of an intermediate appellate judge, the judge in question shall act promptly by written order and either grant or deny the motion. If the motion is denied, the judge shall state in writing the grounds upon which he or she denies the motion. If the judge denies the motion, the movant, within twenty-one days of entry of the order, may file a motion for court review to be determined promptly by three other judges of the intermediate court upon a de novo standard of review.
(b) If a motion is filed seeking disqualification, recusal, or determination of constitutional or statutory incompetence of more than one judge of the intermediate appellate court ("recusal motion"), and if the recusal motion is denied by the judges in question, the movant, within twenty-one days of entry of the order, may file a motion for court review to be determined promptly by three other judges of the intermediate appellate court who were not subjects of the recusal motion, upon a de novo standard of review. If there are not three judges of the intermediate appellate court who were not subjects of the recusal motion, then a motion for court review pursuant to this section 3.02(b) is not available; under such circumstances, the order denying the recusal motion may be appealed pursuant to section 3.02(c).**(c)** If the motion for court review is denied, or if a motion for court review is not available pursuant to the second sentence of section 3.02(b), an accelerated appeal as of right lies to the Tennessee Supreme Court, which shall expeditiously decide the appeal based upon the petition and other papers filed in the intermediate appellate court. The appeal to the Supreme Court shall be titled "recusal appeal from the [Court of Appeals or Court of Criminal Appeals]" and shall be filed within twenty-one days of the intermediate appellate court's order denying the motion for court review or, if a motion for court review was not available pursuant to the second sentence of section 3.02(b), within twenty-one days of the order denying the motion seeking disqualification or recusal of the appellate judges in question.

3.03.(a) If a motion is filed seeking disqualification, recusal, or determination of constitutional or statutory incompetence of a Supreme Court justice, the justice in question shall act promptly by written order and either grant or deny the motion. If the motion is denied, the justice shall state in writing the grounds upon which he or she denies the motion. If the justice denies the motion, the movant, within twenty-one days of entry of the order, may file a motion for court review, which shall be determined promptly by the remaining justices upon a de novo standard of review.
(b) If a motion is filed seeking disqualification, recusal, or determination of constitutional or statutory incompetence of all of the justices of the Supreme Court, and if the motion is denied by the justices, no motion for court review shall be available pursuant to section 3.03(a).

Tennessee Example – Not in their Rules of App Procedure, but in their Supreme Court Rules

3.04. The time periods for filing a motion for court review pursuant to sections 3.02(a), 3.02(b), or 3.03(a) and for filing a "recusal appeal from the [Court of Appeals or Court of Criminal Appeals]" pursuant to section 3.02(c) are jurisdictional and cannot be extended by the court. The computation of time for filing the foregoing matters under section 3 shall be governed by Tenn. R. App. P. 21(a).