

1 **Rule 20. Habeas corpus proceedings.**

2 **(a) Application for an original writ; when appropriate.** If a petition for a writ of habeas corpus is  
3 filed in the appellate court or submitted to a justice or judge ~~thereof of the court~~, it will be referred to the  
4 appropriate district court unless it is shown on the face of the petition to the satisfaction of the appellate  
5 court that the district court is unavailable or other exigent circumstances exist. If a petition is initially filed  
6 in a district court or is referred to a district court by the appellate court and the district court denies or  
7 dismisses the petition, ~~a re-filing of the order may be appealed, but the petition may not be refiled with the~~  
8 ~~appellate court is inappropriate; the proper procedure in such an instance is an appeal from the order of~~  
9 ~~the district court.~~

10 **(b) Procedure on original petition.**

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

25 (b)(2) If the petition is not referred to the district court, the attorney general or the county attorney,  
26 as the case may be, ~~shall must answer the petition or otherwise plead within ~~ten~~ 14 days after service~~  
27 ~~of a copy of the petition. When a responsive pleading or motion is filed or an order to show cause is~~  
28 ~~issued, the court shall will set the case for hearing and the clerk shall will give notice to the parties.~~

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

35 **(c) Contents of petition and attachments.** The petition ~~shall must~~ include the following:

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

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

40 (c)(2)(A) the facts giving rise to each claim that the confinement or detention is in violation of  
41 a state order or judgment or a ~~constitutional~~ right established by the United States Constitution or  
42 the Constitution of the State of Utah or is otherwise illegal;

43 (c)(2)(B) whether an appeal was taken from the judgment or conviction pursuant to which a  
44 petitioner is incarcerated; and

45 (c)(2)(C) whether the allegations of illegality were raised in the appeal and decided by the  
46 appellate court.

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

49 (c)(4) ~~Copies~~ A copy of or a link to the court order or legal process, court opinions and findings  
50 pursuant to which the petitioner is detained or confined, affidavits, copies of orders, and other  
51 supporting written documents ~~shall~~ must be attached to the petition or ~~it shall be stated by the~~  
52 petitioner must state why the same they are not attached.

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

58 **(e) Other provisions.**

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

63 (e)(2) If the respondent refuses or avoids service, or attempts wrongfully to carry the person  
64 imprisoned or restrained out of the county or state after service of the writ, the person serving the writ  
65 ~~shall~~ must immediately arrest the respondent or other person so resisting, for presentation, together  
66 with the person designated in the writ, forthwith before the court.

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

71 (e)(4) The respondent ~~shall~~ must appear at the proper time and place with the person designated  
72 or show good cause for not doing so. If the person designated has been transferred, the respondent  
73 must state when and to whom the transfer was made, and the reason and authority for the transfer.

74 The writ ~~shall~~may not be disobeyed for any defect of form or misdescription of the person restrained  
75 or of the respondent, if enough is stated to show the meaning and intent.

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

80 **Advisory Committee Note**

81 The amendments make clear that an original writ for habeas corpus should be filed only in the District  
82 Court. An application to an appellate court ~~must~~that does not demonstrate on the face of the petition the  
83 unavailability of the District Court. ~~Petitions that do not contain such documentation will~~ or exigent  
84 circumstances may be summarily referred to the District Court. The clarification seeks to halt the practice  
85 ~~by some pro se petitioners~~ of simultaneously filing the same petition in different courts.

86 The amendments simplify the procedures for service ~~of petitions upon~~on the respondent by  
87 incarcerated petitioners. The former rule required service by summons on the respondent. The  
88 amendments allow service on the Attorney General or county attorney by mail.

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