

IN THE SUPREME COURT OF THE STATE OF UTAH

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Standing Order No. 18

(Temporary Standing Order to Sit and Rule in Divisions)

Effective February 4, 2026

On January 31, 2026, Senate Bill 134 became effective upon the governor's signature. Among other things, the bill enlarges the Utah Supreme Court from five to seven justices. The law now states, "The Supreme Court consists of seven justices." UTAH CODE § 78A-3-101(1). However, the two additional justices have not yet been seated. And that process may take several months.

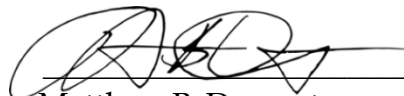
This change has immediate implications for how the Supreme Court manages its docket and adjudicates cases. Under the Utah Constitution, "The Supreme Court by rule may sit and render final judgment either en banc or in divisions." UTAH CONST. Art. VIII, sec. 2. The Court has made a deliberate policy choice not to adopt such a rule and instead to hear appeals as a full court. When a justice is recused or unavailable, the Chief Justice "call[s] an active judge from an appellate court or the district court to participate in the cause," as expressly contemplated by our Constitution. UTAH CONST. Art. VIII, sec. 2.

Now that the Court "consists of seven justices," continuing that practice would require the Chief Justice to call at least two replacement judges in every appeal until two new justices are appointed, confirmed, and sworn into office. To ensure that the Court can continue to hear and rule on appeals without placing an undue burden on the court of appeals and district courts, the Court has chosen to adopt a temporary rule through this standing order, allowing the Court to sit in a division of five justices. This rule will automatically expire once two additional justices are seated. Any appeals submitted to the Court for decision after that date will be heard by the full court.

This temporary rule does not apply to appeals in which a party seeks to have a law declared unconstitutional. The Utah Constitution prohibits the Court from "declar[ing] any law unconstitutional under this constitution or the Constitution of the United States, except on the concurrence of a majority of all justices of the Supreme Court." UTAH CONST. Art. VIII, sec. 2. Because hearing constitutional challenges as a five-judge division could potentially limit the outcome in those appeals, the Court will call for replacement judges and sit as a full court in any appeal in which a party seeks to have a law declared unconstitutional.

IT IS SO ORDERED.

DATED this 4th day of February, 2026


Matthew B. Durrant
Chief Justice
Utah Supreme Court