



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: February 3, 2022
Time: 12:00 to 1:30 p.m.

Action: Welcome and approval of January 6, 2022 Minutes	Tab 1	Chris Ballard, Chair
Action: Rule 4(f)	Tab 2	Chris Ballard
Action: Rule 25	Tab 3	Chris Ballard
Action: Rule 23	Tab 4	Stan Purser
Action: Rule 20	Tab 5	Chris Ballard/Clark Sabey/Mary Westby
Discussion: Orders on the Weekends Memo to URCrP & URCP	Tab 6	Nick Stiles/Mary Westby
Discussion: Old/new business		Chris Ballard, Chair

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

2022 Meeting schedule:

March 3, 2022	June 2, 2022	September 1, 2022	December 1, 2022
April 7, 2022	July 7, 2022	October 6, 2022	
May 5, 2022	August 4, 2022	November 3, 2022	

Tab 1



Minutes

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

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

Via WebEx Videoconference
Thursday, January 6, 2022
12:00 pm to 1:30 pm

PRESENT

Emily Adams
Christopher Ballard—Chair
Troy Booher—
Emeritus Member
Lisa Collins
Carol Funk
Amber Griffith
Michael Judd—
Recording Secretary

Judge Jill Pohlman
Judge Gregory Orme
Stanford Purser
Michelle Quist
Nathalie Skibine
Scarlet Smith
Nick Stiles—Staff
Mary Westby

EXCUSED

Patrick Burt
Tyler Green
Clark Sabey

1. Action: **Chris Ballard**
Approval of November 2021 Minutes

The committee reviewed the November 2021 minutes. Judge Orme noted for correction errors in Items 2, 3, and 5. Those errors were corrected

With those corrections made, Judge Orme moved to approve the November 2021 minutes as amended. Mary Westby seconded that motion, and it passed without objection by unanimous consent.

2. Information: Nick Stiles
Welcome and Introductions

Nick Stiles welcomed Amber Griffith, who will staff this committee and act as an assistant to Nick and to Justice Petersen. Chris Ballard reminded the committee that Rule 11-1(4) requires members of the committee to begin each year by disclosing the nature of their practices. Committee members did so.

3. Action: Mary Westby
Rule 4(f)

Mary Westby introduced the contemplated changes to Rule 4(f), which relate to time limits on ability to reinstate direct appeal, as well as some general clean-up. The committee devoted time to discussing an appropriate cut-off—specifically, whether it should tie to a PCRA filing, or simply hold to “reasonable time.” The committee discussed and adopted a change to lines 4–5, to strike unnecessary language, and to change the number of days identified in line 9.

Following that discussion, Ms. Westby moved to approve the rule as amended and as shown on screen at the committee meeting. Michelle Quist seconded that motion, and it passed without objection by unanimous consent.

4. Action: Emily Adams
Rule 10(d)

Emily Adams introduced a straightforward change to Rule 10(d), which clarifies the deadline language to state that a filing must be made *on or before* the stated deadline, not *before* that deadline.

After that discussion, Ms. Westby moved to approve the rule as amended and as shown on screen at the committee meeting. Stan Purser seconded that motion, and it passed without objection by unanimous consent.

5. **Discussion:** **Mary Westby**
Orders Entered on Weekends

Ms. Westby led the committee in a discussion of how the rules treat orders entered on the weekends, which may become an increasingly common occurrence. The committee concluded that the concern relates not only to the appellate rules, but also to the civil and criminal rules, and that it may make sense for any changes related to computation of timing be initiated with those committees.

Following that discussion, Mr. Stiles agreed to draft a proposal to the civil and criminal rules committees to seek clarity on these issues.

6. **Information:** **Lisa Collins**
Update re: UCJA 4-206

Lisa Collins and Nick Stiles provided the committee with an updated regarding UCJA 4-206. Ms. Collins and Mr. Stiles addressed the policy at a productive management meeting, and there are now indications of sound practice regarding exhibit preservation from district courts. The committee thanked Ms. Collins and Mr. Stiles for their dedicated work on this issue, and believes that no further attention to the policy is needed at this time.

7. **Discussion:** **Chris Ballard**
Old/New Business

The committee noted several items of new business for attention, including potential amendments to rules 19 and 20 and a potential rule regarding intervention on appeal. Mr. Purser noted another possible item: a provision in Rule 23 regarding motions regarding conferring before filing. Mr. Purser agreed to draft a proposed amendment adding that requirement.

8. **Adjourn**

Following its productive meeting, the committee adjourned. The committee's next meeting will take place on February 3, 2022.

Tab 2

Introductory Note URAP 004

The Supreme Court approved the proposed amendments to rule 4(f), subject to the Committee proposing a more concrete deadline for filing a motion to reinstate the right to appeal in a criminal case. See highlighted lines 62-66 for new proposed language regarding the deadline.

1 **Rule 4. Appeal as of right: when taken.**

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

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

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

12 (A) A motion for judgment under Rule [50\(b\)](#) of the Utah Rules of Civil
13 Procedure;

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

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

19 (D) A motion for a new trial under Rule [59](#) of the Utah Rules of Civil
20 Procedure;

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

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

26 (G) A motion for a new trial under Rule [24](#) of the Utah Rules of Criminal
27 Procedure.

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

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

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

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

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

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

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

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

60 (1) If no timely appeal is filed in a criminal case, a defendant ~~was deprived of~~
61 ~~the right to appeal, the trial court shall reinstate the thirty-day period for~~
62 ~~filing a direct appeal. A defendant seeking such reinstatement shall~~ may
63 file a ~~written~~ motion in the ~~sentencing court and serve the prosecuting~~
64 ~~entity.~~ trial court to reinstate the time to appeal. The motion must be made
65 within a reasonable time after the initial time to appeal has expired filed
66 within 90 days of the day on which the defendant knew, or should have
67 known in the exercise of reasonable diligence, of evidentiary facts forming
68 the basis of the claim that the defendant was deprived of the right to
69 appeal.

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

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

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

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

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

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

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

84 ~~(4)~~(6) If the trial court finds by a preponderance of ~~the~~ evidence that
85 ~~the~~the defendant has ~~demonstrated that the defendant was~~been deprived
86 of the right to appeal, ~~it shall~~the court must enter an order reinstating the
87 ~~time for~~right to appeal. The defendant's notice of appeal must be filed
88 with the clerk of the trial court within 30 days after the date of entry of the
89 order.

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

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

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

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

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

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

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

Tab 3

URAP025 Comment

One thought on “Rule of Appellate Procedure – Comment Period Closed January 16, 2022”

Cheryl Siler
January 5, 2022 at 11:17 am

I am writing to comment on the proposed amendment to URAP 25. Proposed section 25(a) sets a deadline to give notice of intent to file an amicus brief as “14 days before the brief’s due date as provided in paragraph (d).” Under paragraph (d), the brief is due 14 days after the petition for writ of certiorari is filed or 14 days after the principal brief of the party being supported is filed.

If an amicus is required to provide notice of the intent to file an amicus brief 14 days before the brief’s due date, that essentially requires the amicus to file the notice on the same day the petition for writ of cert is filed or the same day that the party’s brief is filed.

For example, if the petition for writ of cert is filed on 2/1/22, then the amicus brief must be filed on 2/15/22 (14 days later). If the amicus must provide notice of intent to file the amicus brief 14 days before the brief is due, then the amicus must provide notice on 2/1/22, the same day the petition for writ was filed. There is no time for the amicus to review the petition before being required to file a notice of intent to file an amicus brief. This may lead to amicus filing a notice of intent automatically, without knowing whether a brief is necessary.

I suggest URAP 25(a) be revised to set a shorter time for the notice of intent to file an amicus brief to allow amicus the chance to thoroughly review the issues. Perhaps the time frame in section (a) could be revised to 7 days?

Furthermore, it would be beneficial if section (g) setting deadlines for responsive briefs was further revised to provide clarity as to the number of days a party has to file a response brief. As proposed, section (g)(1) indicates when the time for responsive briefs begins to run (from the filing of the amicus brief or the filing of the brief of the party whose position the amicus supports, whichever is later). However, it does not clearly indicate the number of days the party has to file that responsive brief. Instead, the rule directs parties to Rule 26(a). By setting forth the period (30 days) in URAP 25(g) itself, parties and the court will benefit from a clear and concise rule that doesn’t require wading through another rule to determine the deadline.

Thank you for your time and consideration.

1 **Rule 25. Amicus curiae briefs**~~Brief of an amicus curiae or guardian ad litem.~~

2 (a) Notice. An amicus curiae in the Supreme Court or Court of Appeals must provide
3 notice to counsel of record for all parties to the appeal of its intent to file its brief at least
4 14 days before the brief's due date as provided in paragraph (d).

5 (1) Only one signatory to any amicus curiae brief filed jointly must notify the
6 parties of its intent to file that brief.

7 (2) An amicus curiae whose brief is requested by an appellate court need not
8 comply with this notice requirement.

9 (b) When permitted. ~~A brief of an amicus curiae or of a guardian ad litem representing~~
10 ~~a minor who is not a party to the appeal may be filed only by leave of court granted on~~
11 ~~motion or at the request of the court.~~

12 (1) The following entities may file an amicus curiae brief without consent of the
13 parties or leave of court:

14 (A) a guardian ad litem;

15 (B) the State of Utah or any agency of the State of Utah by the Office of the
16 Utah Attorney General;

17 (C) any other State, Commonwealth, or Territory when submitted by its
18 Attorney General; or

19 (D) the United States of America when submitted by the United States
20 Department of Justice.

21 (2) Any other amicus curiae brief may be filed only if all parties have consented
22 to its filing, at the court's request, or by leave of court granted on motion.

23 (c) Motion for leave to file. ~~The motion for leave may be accompanied by a proposed~~
24 ~~amicus brief, provided it complies with applicable rules and the number of copies~~
25 ~~specified by Rule 26(b) are submitted to the court. If one or more parties do not consent~~
26 ~~to the brief's filing, An amicus curiae may file a motion for leave to file the brief.~~

27 (1) The motion must ~~shall~~ identify the party or parties who have withheld
28 consent, identify the ~~movant's~~ interest, ~~of the movant and shall~~ and state the
29 reasons why ~~a brief of~~ an amicus curiae ~~or the guardian ad litem~~ brief is desirable
30 and why the matters asserted are relevant to the disposition of the case.

31 (2) The motion must not exceed 1,500 words. It must be submitted together with
32 the brief sought to be filed.

33 ~~Except for a motion for leave to participate in support of, or in opposition to, a~~
34 ~~petition for writ of certiorari filed pursuant to Rule 50(e), the motion for leave~~
35 ~~shall be filed at least 21 days prior to the date on which the brief of the party~~
36 ~~whose position as to affirmance or reversal the amicus curiae or guardian ad~~
37 ~~litem will support is due, unless the court for cause shown otherwise orders.~~

38 (3) A party ~~ies~~ to the appeal proceeding ~~may indicate their support for, or~~
39 ~~opposition to, the motion. Any responses of a party to a motion for leave shall~~
40 ~~be by~~ filed an objection within 714 days after the motion is ~~of~~ served that
41 concisely states its reasons for withholding consent ~~ice of the motion~~. The
42 objection must not exceed 1,500 words.

43 (4) The appellate court has discretion in determining whether to grant a motion
44 for leave to file an amicus curiae brief.

45 (d) Time for filing. An amicus curiae brief, together with a motion under paragraph (c)
46 when a party has withheld consent, must be filed:

47 (1) in a case before the Supreme Court when a petition for a writ of certiorari is
48 pending, 14 days after the petition is filed; or

49 (2) in a case before the Supreme Court for merits review, or before the Court of
50 Appeals, 14 days after the principal brief of the party being supported is filed. ~~If~~
51 ~~leave is granted, an amicus curiae or guardian ad litem shall file its brief within 7~~
52 ~~days of the time allowed the party whose position the amicus curiae or guardian~~
53 ~~ad litem will support, unless the order granting leave otherwise indicates.~~

54 (3) An amicus curiae that does not support either party must file its brief no later
55 than 7 days after the appellant's or petitioner's principal brief is filed.

56 (e) **Contents and form.** An amicus curiae brief must comply with Rule 27. In addition,
57 the cover must identify the party or parties supported and must indicate whether the
58 brief supports affirmance or reversal. The brief must include:

59 (1) a table of contents;

60 (2) a table of authorities;

61 (3) unless included as part of a motion under paragraph (c)(1), a concise
62 statement of the identity of the amicus curiae and its interest in the case;

63 (4) a statement indicating whether counsel for the parties received timely notice
64 under paragraph (a);

65 (5) a statement indicating whether all parties consented under paragraph (b)(2)

66 (6) unless the amicus curiae is one listed in paragraph (b)(1), a statement that
67 indicates whether:

68 (A) a party or party's counsel authored the brief in whole or in part;

69 (B) a party or party's counsel contributed money that was intended to
70 fund preparing or submitting the brief; and

71 (C) a person – other than the amicus curiae, its members, or its counsel –
72 contributed money that was intended to fund preparing or submitting the
73 brief, and if so, identifies each such person; and

74 (7) an argument, which may be preceded by a summary and which need not
75 include a statement of the applicable standard of review.

76 (8) a certificate of compliance as required by Rule 24(a)(11).

77 (f) **Length.** An amicus curiae brief filed regarding a petition for writ of certiorari may
78 not exceed 4,000 words. Any other amicus curiae brief may not exceed 7,000 words.

79 Those limits will not be extended on the amicus's motion. Both limits exclude the table
80 of contents, the table of authorities, any appendix, and required certificates of counsel.

81 (g) Responsive briefs.

82 (1) when no motion under paragraph (c) has been filed, ~~T~~the time for responsive
83 briefs under Rule 26(a) ~~shall runs~~ from the timely ~~filingservice~~ of the amicus
84 ~~curiae or guardian ad litem~~ brief, or from the timely ~~filingservice~~ of the brief of
85 the party whose position the amicus curiae ~~or guardian ad litem~~ supports,
86 whichever is later.

87 (2) when a motion under paragraph (c) has been filed, the time for responsive
88 briefs under Rule 26(a) runs from the date of the appellate court order granting
89 or denying the motion.

90 (h) Oral argument. ~~A motion of a~~While such motions are not favored, an amicus curiae
91 ~~or guardian ad litem~~ may file a letter requesting permission to participate in the oral
92 argument ~~within 14 days after the notice of oral argument. will be granted when~~
93 ~~circumstances warrant in the court's discretion.~~

94 (i) An amicus curiae brief may not be filed in support of a petition for rehearing under
95 Rule 35.

Tab 4

1 **Rule 23. Motions.**

2 (a) **Content of motion.** Unless another form is elsewhere prescribed by these rules, an
3 application for an order or other relief must be made by filing a motion for such order
4 or relief with proof of service on all other parties. The motion must contain:

5 (1) a specific and clear statement of the relief sought;

6 (2) a particular statement of the factual grounds;

7 (3) a ~~memorandum~~discussion of points and authorities in support (unless the
8 motion is for an enlargement of time); ~~and~~

9 (4) affidavits or declarations and documents, where appropriate; and,

10 (5) a statement of every other party's position on the relief requested or why the
11 moving party was unable to learn any party's position.

12 (b) **Response.** Any party may file a response to a motion within 14 days after the
13 motion is served; however, the court may, for good cause shown, dispense with,
14 shorten, or extend the time for responding to any motion.

15 (c) **Reply.** The moving party may file a reply only to answer new matters raised in the
16 response. A reply, if any, may be filed no later than 5 days after the response is served,
17 but the court may rule on the motion without awaiting a reply.

18 (d) **Determination of motions for procedural orders.** Notwithstanding paragraph

19 (a) ~~—~~as to motions generally, motions for procedural orders ~~—~~not substantially
20 affecting the rights of the parties or the ultimate disposition of the appeal, including any
21 motion under Rule 22(b), may be acted upon at any time, without awaiting a response
22 or reply. Pursuant to rule or at the court's direction, the clerk may dispose of motions
23 for specified types of procedural orders. The court may review a clerk's disposition
24 upon a party's motion or upon its own motion.

25 (e) **Power of a single justice or judge to entertain motions.** In addition to the authority
26 expressly conferred by these rules or by law, a single justice or judge of the court may

27 entertain and may grant or deny any request for relief that under these rules may
28 properly be sought by motion, except that:

29 (1) a single justice or judge may not dismiss or otherwise determine an appeal or
30 other proceeding;

31 (2) the court may provide by order or rule that any motion or class of motions
32 must be acted upon by the court; and

33 (3) the action of a single justice or judge may be reviewed by the court

Tab 5

The Rule 20 subcommittee (Clark Sabey, Mary Westby, and Christopher Ballard) recommends deleting the rule because its existence is superfluous and confusing and could prejudice a criminal defendant's opportunity to seek relief under the Post-Conviction Remedies Act (PCRA). The recent opinion in *Patterson v. State*, 2021 UT 52, does not change the subcommittee's conclusion.

Rule 20 provides a procedure for filing a petition for writ of habeas corpus directly in an appellate court to challenge an allegedly unlawful detention. *See* Rule 20(a). But Rules 65B and 65C of the civil rules, together with the PCRA, Utah Code § 78B-9-101 to -110, already provide mechanisms to challenge the lawfulness of any official detention.

Rule 65C and the PCRA govern all challenges to a detention resulting from a criminal conviction and sentence that has been affirmed on appeal, or that was not challenged in a timely appeal. *See* Utah R. Civ. P. 65C(a). The rule recognizes the PCRA as establishing "the manner and extent to which a person may challenge the legality of a criminal conviction and sentence" after direct appeal. *Id.*

Rule 65B governs extraordinary relief generally. Subsection (b) of that rule governs challenges to official detention based on anything other than a criminal conviction or sentence. "Except for instances governed by Rule 65C, this paragraph shall govern all petitions claiming that a person has been wrongfully restrained of personal liberty." Utah R. Civ. P. 65B(b)(1). Subsection (d) of Rule 65B governs claims that the Board of Pardons has exceeded its jurisdiction or violated a person's constitutional rights.

The subcommittee could not think of any official detention that could not be challenged under these two rules. Appellate Rule 20 is therefore superfluous.

Moreover, Rule 20's existence can cause confusion that could prejudice a criminal defendant's opportunity to seek post-conviction relief. The PCRA has a one-year statute of limitations. *See* Utah Code § 78B-9-107. Filing a petition for writ of habeas corpus under appellate Rule 20 does not toll the statute. *See id.*

The PCRA also bars subsequent petitions that raise claims that could have been raised in a prior petition. *See* Utah Code § 78B-9-106(d). Thus, a criminal defendant who files a petition under appellate rule 20 could be procedurally barred from filing additional claims in a PCRA petition.

The Utah Supreme Court's recent decision in *Patterson v. State*, 2021 UT 52, does not change the subcommittee's conclusion. The *Patterson* court held that the Utah Constitution delegates to the judicial branch the power to grant extraordinary relief in the form of a writ of habeas corpus. *See id.* ¶¶85, 143-44. The court further held that this writ power is not limited to examining only detentions other than those that are based on a criminal conviction, but includes the power to examine challenges to criminal

convictions after direct appeal (post-conviction challenges). *See id.* ¶¶129, 135, 143-44. But the court also clarified that it has chosen to exercise its constitutional writ authority to consider post-conviction challenges “in total harmony” with the PCRA’s provisions, and consequently adopted civil rule 65C to incorporate the PCRA. *See id.* ¶¶174, 218.

In short, *Patterson* clarifies that the court has chosen to exercise through the PCRA and rule 65C its constitutional authority to issue a writ of habeas corpus in response to a post-conviction challenge. Rule 65B governs all other circumstances in which habeas relief might be appropriate. Therefore, *Patterson* does not require maintaining a separate procedure for seeking habeas relief outside of rules 65B and 65C.

Rule 20. Habeas corpus proceedings.

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

(b) Procedure on original petition.

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

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

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

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

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

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

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

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

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

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

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

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

(e) Other provisions.

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

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

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

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

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

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

Tab 6

UTAH SUPREME COURT ADVISORY COMMITTEE



RULES OF APPELLATE PROCEDURE

CHRIS BALLARD, CHAIR
NATHALIE SKIBINE, CO-CHAIR

January 26, 2022

To: Lauren DiFrancesco, Chair, Advisory Committee on the Rules of Civil Procedure;
Doug Thompson, Chair, Advisory Committee on the Rules of Criminal Procedure
From: Chris Ballard, Chair, Advisory Committee on the Rules of Appellate Procedure
Re: Orders Entered on Weekends

Ms. DiFrancesco and Mr. Thompson:

The Advisory Committee on the Rules of Appellate Procedure has recently considered the impact of the entry of orders on weekends or holidays, specifically the possible confusion regarding jurisdictional timeframes. With electronic docket access, orders have been occasionally formally entered on non-business days. [Rule 4](#), [Rule 5](#), and [Rule 52](#) of the Appellate Rules of Procedure specify the time for filing a jurisdictional document from the date of entry of the relevant order. For example, rule 4(a) provides that a notice of appeal must be filed “within 30 days after the date of entry of the judgment or order appealed from.”

The Committee discussed whether the rules should be clarified to expressly start the time running from the first business day after entry of an order on a weekend or holiday. There was not a consensus about whether a change was necessary at this time. We also realized that the same issue could affect timelines for other purposes within the civil and criminal rules.

[Rule 22\(a\)](#) of the Appellate Rules of Procedure provides guidance on when the time-period’s last day falls on a Saturday, Sunday, or legal holiday, but it is silent regarding the first day. The same language can be found in [Rule 2\(a\)\(1\)\(c\)](#) of the Utah Rules of Criminal Procedure, and [Rule 6\(a\)\(1\)\(C\)](#) of the Utah Rules of Civil Procedure.

The Advisory Committee on the Rules of Appellate Procedure requests any feedback either of your respective committees have in regard to this issue within your rules of procedure.

Sincerely,

Chris Ballard, Chair
Utah Supreme Court’s Advisory Committee on the Rules of Appellate Procedure