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 2, 2023
Time:	12:00 to 1:30 p.m.

Action: Welcome and approval of December 1, 2022 Minutes	Tab 1	Chris Ballard, Chair
Action: Comments received on Rules 19, 20, 23, and 23C	Tab 2	Chris Ballard
Action: Rules 19, 20, 23, and 23C	Tab 3	Chris Ballard
Discussion: Update on child welfare rules	–	Chris Ballard, Nick Stiles
Discussion: Update from Judge Disqualification Subcommittee	–	Clark Sabey, Scarlet Smith, Lisa Collins, Carol Funk, Mary Westby, Nick Stiles
Action: Rule 14	Tab 4	Chris Ballard, Amber Griffith
Discussion: Notices of appeal filed by a party subject to a vexatious litigant order under Utah R. Civ. P. 83	Tab 5	Chris Ballard
Discussion: Old/new business		Chris Ballard, Chair

Committee Webpage: https://legacy.utcourts.gov/rules/urap.php

2023 Meeting schedule:

March 2, 2023	June 1, 2023	September 7, 2023	December 7, 2023
April 6, 2023	July 6, 2023	October 5, 2023	
May 4, 2023	August 3, 2023	November 2, 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

By WebEx Videoconference
Thursday, December 1, 2022
12:00 pm to 1:30 pm

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

EXCUSED
Patrick Burt
Lisa Collins

1. Action: Chris Ballard
Approval of November 2022 Minutes

The committee reviewed the November 2022 minutes and did not note any needed changes.

After that review, Scarlet Smith moved to approve the November 2022 minutes. Mary Westby seconded that motion, and it passed without objection by unanimous consent.

2. Action: Emily Adams
Juvenile Briefing Rules

Emily Adams updated the committee on discussions she'd had with various stakeholders regarding the rules governing child-welfare cases. After those discussions, the most promising course appears to be to pause consideration of these potential amendments until February, to allow time to further consultation with additional stakeholders, including the indigent-defense office, the Attorney General's office, and the Guardian ad Litem's office.

By way of elaboration, Ms. Adams explained that 25 years ago, in an effort to make child-welfare appeals faster, Utah's rules for child-welfare "petitions on appeal" created an expedited procedure so children can achieve permanency faster. The question facing stakeholders, now, is whether it make sense for the "petition on appeal" process to stay in place. The changes now proposed would make child-welfare appeals more closely resemble the process that applies to any other appeal, but with certain expediting requirements. These changes would therefore create a dual track, depending on whether an evidentiary hearing was held below.

Mary Westby then flagged an issue for committee: Is the committee empowered to make the large-scale changes that are being contemplated? The committee discussed the priorities and concerns that have motivated the stakeholders to seek the changes at issue.

Following that discussion, the committee noted that the specific proposal at issue has been withdrawn. The committee's next step will be to hear reports from other stakeholders at its February meeting.

3. Discussion: Chris Ballard Judge Michelle
Intervention on Appeal Nathalie Skibine Christiansen Forster
Mary Westby

Nathalie Skibine introduced the animating issue: Do the intervention issues presented in *F.L. v. Court of Appeals*, 2022 UT 32 (filed July 7, 2022), merit changes to Utah's rules regarding intervention on appeal? After consideration, the subcommittee determined that no changes are necessary or warranted, as the existing rules provided an acceptable framework in *F.L.* The subcommittee also noted that other jurisdictions appear to have navigated intervention-on-appeal issues without the rule changes considered by the committee here.

The committee then moved to a second issue: How should privileged records be handled on appeal after they are reviewed *in camera* by the district court and then not admitted? The committee understands that the Rules of Evidence committee is reviewing that question now.

Given that report, the subcommittee's ultimate recommendation, on both issues, is to not do anything at this time. The committee agreed with that recommendation.

4. Action: Nick Stiles
Appellate Court Disqualification

Nick Stiles presented the issue and introduced the proposed rule to the committee. As Mr. Stiles explained it, Utah appellate courts have noted that Utah does not currently have a disqualification rule, though between 30 and 40 other states do. The proposed rule under consideration tracks Nevada's. The committee noted that lines 46 and 73 would need slight adjustments to the language to address pronoun issues. Mr. Stiles also identified a second question: If the rule were adopted, where would it be placed?

Ms. Adams noted that the reference to "affidavits" may now be outdated and may need to be replaced by "declarations" (or have the phrase "or declarations" added to the text. Troy Booher asked whether the rule is needed. As Mr. Booher explained, while most states may have them, Utah hasn't appeared to have had a pressing need for one, and there are challenges associated with application of the rule.

Mr. Stiles responded that he was happy to report back that committee has considered a change, but that we've determined our current system is working well. Carol Funk spoke in favor of the rule, as it could promote transparency and structure.

Following that discussion, Ms. Westby moved to create subcommittee to study the issue. Carol Funk seconded that motion and the motion passed without objection by unanimous consent. That subcommittee will include Clark Sabey, Mary Westby, Scarlet Smith, Lisa Collins, and Carol Funk.

5. Discussion: Chris Ballard
Old/New Business

By way of new business, Mr. Booher suggested attention to Rule 5, in an effort to address a lurking "back door" in interlocutory appeals. The committee expressed interest in a proposal to address the issue.

6. Adjourn

Ms. Westby moved to adjourn, and Ms. Funk seconded. The committee adjourned. The committee's next meeting will take place in February 2023.

TAB 2

1. **David Ferguson**
   December 10, 2022 at 5:54 pm

I'd like to write once again in opposition of the proposed rule change. This is the third round of trying to get rid of rule 20. Probably the most alarming part of that is the changes in Rule 19 that make habeas relief harder to get.

The foundation of habeas corpus is that a wrongful restraint on liberty is so perverse to our society that the courts owe the individual the ability to get meaningful review in an emergency timeframe. Rule 20 includes a variety of procedures that treat habeas corpus petitions with the seriousness of that concern. An incarcerated pro se person can seek redress by serving the petition on the AG's office in lieu of the actual responsible parties. Rule 20(b)(1). The court may order a stay or injunction pending the AG's response. Id. The respondent must file within 10 days. Id. The contents that must go into the petition are clear because the Rule is tailored to a specific kind of petition (habeas).

Rule 19, particularly the newly proposed rule 19, winds all of this back.

-Rule 19's service requirements are more complicated: The individual must identify all of the respondents in a Rule 19 motion, which may be extremely difficult to do in a speedy timeframe because the petitioner may not know who to name and even a quickly retained attorney may not be able to find out the information without a GRAMA request. The respondent may be a particular police officer who was responsible for the wrongful incarceration or the identity of a magistrate who signed off on a warrant. Warrants are searchable if someone has access to the internet and knows the applicable law enforcement agency, but people who get arrested don't always know which agency arrested them and certainly don't have access to the internet. When a person is held on a prefiling charge for longer than 4 days there is no way to know whether a magistrate is authorizing an extended detention at the request of a prosecutor or whether the jail is just holding them illegally since those detention orders don't get published. In other words, Rule 19 allows a habeas petition to fail on procedural grounds simply because the inmate doesn't know the identities of the responsible parties and where to serve them. That's a backwards step.

-Rule 19 should not be modified to add a cumbersome procedural rule: The committee has proposed to add language to part (g) found in other rules (e.g. rules (4) and (5)) that should not be part of this rule. For ease of reference the language is: "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." The effect of this language (that doesn't exist in either the prior rule 19 or in Rule 20) creates an additional delay to habeas proceedings. In a petition for interlocutory appeal I filed recently, it took over a week before the court indicated whether a response brief was required. (Filed Nov. 8, Court's order requiring response: Nov. 16). That's a substantial procedural delay for a wrongfully incarcerated individual. It should be left out, not only for habeas petitions but for all petitions that are made because there is no other "plain, *speedy*, or adequate remedy" available. And when in all honesty is an appellate court going to receive a habeas petition and not want some kind of responsive pleading?

-Part (e), explaining the necessary contents of the petition, is generally okay except that, as discussed above, Rule 20's habeas petitions give clear guidance on what the court is looking for to decide a habeas petition whereas Rule 19 is written broadly for any sort of emergency

petition. While rules should generally be broad to accommodate a variety of cases, the breadth of the rule doesn't seem to be a good tradeoff for the clarity of Rule 20 for habeas petition contents. If our appellate courts think that certain information should always be included for a given type of case to help them make the right decision, the rule should be explicit on what that information is.

-Modification for motions for emergency relief: The committee's decision to scrap the quick filing deadlines for habeas petitions (i.e. the response being due within 10 days) to the standard length used for appellate briefs (i.e. 30 days) is not a significant concern given that a motion for emergency relief is available for an incarcerated individual. However, now that that rule takes over as the only mechanism for a speedy remedy, there is a concerning provision in that rule that indicating that service by mail requires service by overnight mail. I'd ask that before adoption of this rule, the committee confirm whether inmates are allowed to buy stamps for overnight mail from the jails in this state. Jails offer limited and sometimes arbitrary services to inmates. If inmates can't take advantage of this rule and otherwise have to suffer through lengthened filing deadlines then that would defeat much of the point of a habeas petition.

The committee writes that the repeal or Rule 20 "is not intended to substantively affect a defendant's right to a writ of habeas corpus." But the proposal, without the modifications requested in this comment, do exactly that. Please keep working on this issue. It isn't ready yet.

-David Ferguson

2. **Ann Taliaferro**
December 11, 2022 at 7:51 pm

The plight of the innocent and wrongfully convicted is becoming more recognized. Everyday, there is some news story concerning an exoneration after "20 years", or "30 years." The reason it takes so long for the wrongfully convicted to obtain recourse is due to the broken post-conviction system that is not interested in the merits of claims of constitutional violations or claims of innocence, but interested only in finality.

The last resort left in our system for the wrongfully convicted is the Writ of Habeas Corpus. When justice requires, the "Great Writ" has been the guaranteed mechanism available for final recourse. The Committee's proposed repeal of Utah Rule of Appellate Procedure 20, and other amendments to Rule 19, effectively takes this last resort away from the wrongfully convicted in Utah.

I respectfully request that the Committee take no action at this time on Rules 19 and 20 of the Utah Rules of Appellate Procedure, and to please seek more input and data from a variety of sources, including practitioners who practice regularly in the post-conviction process, before making changes. Respectfully, the proposed changes do little more than erase a constitutionally-based and critical right to those whose criminal convictions have been secured through unconstitutional means.

Some background:

The PCRA, by its own terms, claims to be the “sole remedy” for any defendant making a collateral challenge to a sentence or conviction, replacing “prior remedies for review, including extraordinary or common-law writs.” Utah Code §78B-9-102(1)(a).

However, and directly competing with the PCRA’s statement of being the sole remedy, the guarantee to aggrieved persons of the ability to petition for habeas corpus relief as guaranteed by both the Utah and Federal Constitutions, all provide some avenue of relief outside the PCRA statutory confines. This is a contention that the State of Utah vigorously opposes, but for purposes of this comment, this Committee must understand that the Writ of Habeas Corpus is constitutionally based, and especially so in the Utah constitution.

For example, not only do the courts have “original jurisdiction to issue all extraordinary writs and authority to issue all writs and process necessary to carry into effect its orders, judgments, and decrees or in aid of its jurisdiction”, but critical here, the ability of aggrieved persons to petition for habeas corpus relief is also guaranteed by both the Federal and Utah Constitutions. See e.g., U.S. Const. art. 1, § 9; Utah Const. art. 1, § 5;55 Utah Const. art. 8, §§ 3 and 5.

As the Utah Supreme Court recently explained, in detail, in Patterson v. State, “the people of Utah gave the courts the power to issue writs”; agreed that the Utah constitution’s plain language supports the proposition that the Legislature can neither expand nor diminish the substantive writ authority the people of Utah granted the judicial branch; and found that while both the Legislature and the Court can regulate the procedures used with respect to writs, neither the Legislature nor the Court can regulate that power in a way that violates a petitioner’s constitutional rights. 2021 UT 52, ¶ 4, 504 P.3d 92.

Also in Patterson, the Utah Supreme Court recognized that its power to issue writs comes from Article VIII, § 3 and 5, of the Utah Constitution, see id. ¶ 143, and that the people of Utah, in adopting those provisions in the 1984 amendments, would have recognized that the writ power was “broad in scope,” id. ¶ 135, and encompassed the Court’s power to “protect against the denial of a constitutional right in a criminal conviction.” Id. ¶ 133.

And finally, the State argued in Patterson that the legislature could regulate the Court’s writ authority so long as that regulation was “reasonable.” Id. ¶ 143. The Court squarely rejected this contention, instead agreeing with Patterson that “the constitution’s plain language supports the proposition that the Legislature can neither expand nor diminish the substantive writ authority the people of Utah granted the judicial branch.” Id. ¶ 144; see also id. ¶ 152 (citing authority).

Accordingly, these principles underlie my objections to the Committees proposed changes to the two rules that relate to the writ of habeas corpus and extraordinary writs, and I beg the committee to not amend the rules as proposed – and surely, do not repeal Rule 20.

Utah R. App. P. 20:

The Committee proposes a repeal of this rule altogether. The advisory committee note explains:

“The Appellate Rules Committee recommended 116 repealing Rule 20 (Habeas Corpus Proceedings) because it was duplicative of Rule 19 117 (Extraordinary Relief) and potentially caused incarcerated individuals to forgo filing a petition under the Post-Conviction Remedies Act (Utah Code Title 78B, Chapter 9). The 119 repeal is not intended to substantively affect a

defendant's right to a writ of habeas 120 corpus. Rule 19 of the Utah Rules of Appellate Procedure and Rules 65B and 65C of the 121 Utah Rules of Civil Procedure govern habeas corpus proceedings."

Respectfully, the idea that Rule 20 "potentially causes incarcerated individuals to forgo filing a petition under the PCRA" is completely speculative, and at the very least, the Committee should pull additional data and ascertain the validity of this belief.

Instead, and though it is not the Committee's intent to substantively affect a defendant's right to a Writ of Habeas Corpus, the repeal of the "Habeas Corpus Rule" does just that. Not only would a repeal erase altogether any mention of the specific writ of habeas corpus, but a repeal creates even more "potential confusion" as to whether this constitutionally-based right still exists. Unless Rule 19 specifically details the procedures for how a petitioner can seek redress and file a Petition for Habeas Corpus outside the PCRA (which it does not), then repeal of Rule 20 is not remedying "any confusion" on the part of incarcerated individuals, it is adding to it by inferring this longstanding right no longer exists.

As for the changes to Rule 19:

Nowhere does Rule 19 delineate the procedures for the "writ of habeas corpus"; nor does Rule 65B of the Utah Rules of Civil Procedure. Although the advisory committee note to Rule 19 states that Rule 20 was essentially duplicative of Rule 19, it is not. The writ to habeas corpus and its purpose of protecting against the denial of a constitutional right in securing a criminal conviction, is not delineated in any other rules, and any mention of this particular writ will be effectively erased through the repeal of Rule 20.

Indeed, the Advisory Committee Note and the intention that "Rule 19 of the Utah Rules of Appellate Procedure and Rules 65B and 65C of the Utah Rules of Civil Procedure govern habeas corpus proceedings" is misguided, forgetting altogether the principles delineated above that the "Great Writ" is independent of the PCRA (the procedures of which are set forth in Rule 65C), and Rule 65B never utters the words or purpose of the writ of habeas corpus.

Also, any "regard" for the plight of incarcerated persons is missing in the proposed amendments to this rule. The committee must understand that filing fees, requirements for service upon the State and multiple respondents, and strict time limitations and deadlines, are the death knoll for an incarcerated person's legal claims. Abundant time is taken to determine indigence and whether filing fees should be waived (they should). Thus, the requirement that the petitioner pay the prescribed filing fee at the time of filing is both impractical and impossible for most. See Proposed Rule 19(d). The prison mail system also makes filings based on strict time strictures an impossibility, and often, the incarcerated person receives an order or the document requiring a response well into, or after, the time period prescribed for a response or action. And, incarcerated persons do not have access to adequate legal resources (and likely, not even access to the Court's rules), to even be able to decipher who their legal filings need to be served upon.

Please also make the timing requirements equal to both sides. Often, the Respondent's (the State's) response is due within a number of days, "or within such other time as the court orders." E.g. Proposed Rule 19(g)(1). The same discretion for presumably good cause is not granted to the petitioner, an exception that is especially needed for an incarcerated and often pro se petitioner. E.g. Proposed Rule 19 (h).

Rule 19(g)(3) – The language relating the State's response is confusing. Just require that the response must respond to the items in paragraph (e). Why does the Respondent get so many loopholes that allow it to never respond to the actual issues raised?

Rule 19(g)(4) – After being ordered to respond by a court, why would a Respondent be allowed to choose not to appear or file a response, and moreover, why, if the respondent is allowed not to respond, would the allegations left unanswered "not thereby be deemed admitted"? If the Court has ordered a response, then the Respondent should not be allowed to simply do nothing and suffer no "sanction" for its inaction in responding.

Rule 19(i) – Why the necessity for word limits? I know this is an unpopular position. But this is the incarcerated person's only/last chance to present his/her legal claims of constitutional violations they feel they have suffered. They are usually not represented by counsel; they have inadequate legal resources; and they usually have no aid of an attorney. A word limit, and especially one of less than what is afforded in a direct appeal, is not necessary. Just give the petitioner the chance to state his or her claims, whatever they may be and however long it takes. This may be their only opportunity.

3. **Sean Hullinger**
December 11, 2022 at 8:26 pm

You can repeal and amend-to-oblivion these rules. All that will do is oblige the Supreme Court to deal with the right enshrined in the Constitution without guidance or regulation.

Who are we, if we say, "You can't avail yourself of a Constitutional Right, because we repealed the instructions to do that fairly and efficiently"?

This amendment is the product of small minds. The Judiciary of a State of the Union should reject it as the trash that it is.

TAB 3

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~~Rule 65B of the Utah Rules~~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 petition 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. 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 table of contents 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~~document); 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 petition, subject to the court's review at the earliest possible time.~~

(3~~3~~) ~~With regard to all petitions, a~~ 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~~,~~ of the 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 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~~Rule 4~~,~~of the ~~-~~Utah Rule~~s~~~~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 repealing Rule 20 (Habeas Corpus Proceedings) because it was duplicative of Rule 19 (Extraordinary Relief) and potentially caused incarcerated individuals to forgo filing a petition under the Post-Conviction Remedies Act (Utah Code Title 78B, Chapter 9). The repeal is not intended to substantively affect a defendant's right to a writ of habeas corpus. Rule 19 of the Utah Rules of Appellate Procedure and Rules 65B and 65C of the Utah Rules of Civil Procedure govern habeas corpus proceedings.

~~**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.~~

~~(c) 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.~~

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 repealing Rule 20 (Habeas Corpus Proceedings) because it was duplicative of Rule 19 (Extraordinary Relief) and potentially caused incarcerated individuals to forgo filing a

petition under the Post-Conviction Remedies Act (Utah Code Title 78B, Chapter 9). The repeal is not intended to substantively affect a defendant's right to a writ of habeas corpus. Rule 19 of the Utah Rules of Appellate Procedure and Rules 65B and 65C of the Utah Rules of Civil Procedure govern habeas corpus proceedings.

Rule 23. Motions.

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

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

(2) a particular statement of the factual grounds;

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

(4) affidavits or declarations and documents, where appropriate.

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

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

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

(e) **Power of a single justice or judge to entertain motions**. In addition to the authority expressly conferred by these rules or by law, a single justice or judge of the court may entertain and may grant or deny any request for relief that under these rules may properly be sought by motion, except that:

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

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

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

Rule 23C. Motion for emergency relief.

(a) Emergency relief; exception. Emergency relief is any relief sought within a time period shorter than specified by otherwise applicable rules. A motion for emergency relief filed under this Rule is not sufficient to invoke the jurisdiction of the appellate court. No emergency relief will be granted in the absence of a separately filed petition or notice that invokes the appellate jurisdiction of the court.

(b) Content of motion. A party seeking emergency relief shall file with the appellate court a motion for emergency relief containing under appropriate headings and in the order indicated:

~~(b)~~(1) a specification of the order from which relief is sought;

~~(b)~~(2) a copy of any written order at issue;

~~(b)~~(3) a specific and clear statement of the relief sought;

~~(b)~~(4) a statement of the factual and legal grounds entitling the party to relief;

~~(b)~~(5) a statement of the facts justifying emergency action; and

~~(b)~~(6) a certificate that all papers filed with the court have been served upon all parties by overnight mail, hand delivery, facsimile, or electronic transmission.

The motion shall not exceed ~~fifteen~~ 15 pages, exclusive of any addendum containing statutes, rules, regulations, or portions of the record necessary to decide the matter. It also shall not seek relief beyond that necessitated by the emergency circumstances justifying the motion.

(c) Service in criminal and juvenile delinquency cases. Any motion filed by a defendant in a criminal case originally charged as a felony or by a juvenile in a delinquency proceeding shall be served on the Appeals Division of the Office of the Utah Attorney General.

(d) Response; no reply. Any party may file a response to the motion within three days after service of the motion or whatever shorter time the appellate court may fix. The response shall not exceed ~~fifteen~~ 15 pages, exclusive of any addendum containing statutes, rules, regulations, or portions of the record necessary to decide the matter. No reply shall be permitted. Unless the appellate court is persuaded that an emergency circumstance justifies and requires a temporary stay of a lower tribunal's proceedings prior to the opportunity to receive or review a response, no motion shall be granted before the response period expires.

(e) Form of papers ~~and number of copies~~. Papers filed pursuant to this rule shall comply with the requirements of Rule ~~23(f)~~27.

(f) Hearing. A hearing on the motion will be granted only in exceptional circumstances. No motion for emergency relief will be heard without the presence of an adverse party except on a showing that the party (1) was served with reasonable notice of the hearing, and (2) cannot be reached by telephone.

(g) Power of a single justice or judge to entertain motions. A single justice or judge may act upon a motion for emergency relief to the extent permitted by Rule 19~~(d)~~ where ~~the~~ extraordinary relief is sought~~, is an extraordinary writ~~ and by Rule 23(e) in all other cases.

TAB 4

Note: Rule 14 has been included on the agenda so The Committee can determine if a filing fee provision for petitions for review needs to be added back into the rule. This provision was removed in 2016 with the intention of combining the filing fees of Rules 3, 5, and 14 into Rule 21. The proposed amendments to Rules 3, 5, and 21 were later tabled, so only Rule 14 was finalized. Currently there is no provision in the rules that state a filing fee is required for a petition for review.

Rule 14. Review of administrative orders: how obtained; intervention.

(a) **Petition for review of order; joint petition**. When a statute provides for judicial review by or appeal to the Supreme Court or the Court of Appeals of an order or decision of an administrative agency, board, commission, committee, or officer (hereinafter the term "agency" shall include agency, board, commission, committee, or officer), a party seeking review must file a petition for review with the clerk of the appellate court within the time prescribed by statute, or if there is no time prescribed, then within 30 days after the date of the written decision or order. The petition must specify the parties seeking review and must designate the respondent(s) and the order or decision, or part thereof, to be reviewed. In each case, the agency must be named respondent. The State of Utah is a respondent if required by statute, even if not designated in the petition. If two or more persons are entitled to petition for review of the same order and their interests are such as to make joinder practicable, they may file a joint petition for review and may thereafter proceed as a single petitioner.

(b) **Service of petition**. The petitioner must serve the petition on the respondents and all parties to the proceeding before the agency in a manner provided by Rule 21.

(c) **Intervention**. Any person may file with the clerk of the appellate court a motion to intervene. The motion must contain a concise statement of the interest of the moving party and the grounds on which intervention is sought. A motion to intervene must be filed within 40 days of the date on which the petition for review is filed.

(d) Additional or Cross-Petition. If a timely petition for review is filed by any party, any other party may file a petition for review within 14 days after the date on which the first petition for review was filed, or within the time otherwise prescribed by paragraph (a) of this rule, whichever period last expires.

Effective November 1, 2022

TAB 5

Rule 83. Vexatious litigants.

(a) Definitions.

(1) The court may find a person to be a "vexatious litigant" if the person, with or without legal representation, including an attorney acting pro se, does any of the following:

(A) In the immediately preceding seven years, the person has filed at least five claims for relief, other than small claims actions, that have been finally determined against the person, and the person does not have within that time at least two claims, other than small claims actions, that have been finally determined in that person's favor.

(B) After a claim for relief or an issue of fact or law in the claim has been finally determined, the person two or more additional times re-litigates or attempts to re-litigate the claim, the issue of fact or law, or the validity of the determination against the same party in whose favor the claim or issue was determined.

(C) In any action, the person three or more times does any one or any combination of the following:

(i) files unmeritorious pleadings or other papers,

(ii) files pleadings or other papers that contain redundant, immaterial, impertinent or scandalous matter,

(iii) conducts unnecessary discovery or discovery that is not proportional to what is at stake in the litigation, or

(iv) engages in tactics that are frivolous or solely for the purpose of harassment or delay.

(D) The person purports to represent or to use the procedures of a court other than a court of the United States, a court created by the Constitution of the United States or by Congress under the authority of the Constitution of the United States, a tribal court recognized by the United States, a court created by a state or territory of the United States, or a court created by a foreign nation recognized by the United States.

(2) "Claim" and "claim for relief" mean a petition, complaint, counterclaim, cross claim or third-party complaint.

(b) Vexatious litigant orders. The court may, on its own motion or on the motion of any party, enter an order requiring a vexatious litigant to:

(1) furnish security to assure payment of the moving party's reasonable expenses, costs and, if authorized, attorney fees incurred in a pending action;

(2) obtain legal counsel before proceeding in a pending action;

(3) obtain legal counsel before filing any future claim for relief;

(4) abide by a prefiling order requiring the vexatious litigant to obtain the court's ~~leave~~ permission~~of the court~~ before filing any paper, pleading, or motion, in a pending action~~;~~, except that the court may not require a vexatious litigant to obtain the court's permission before filing a notice of appeal;

(5) abide by a prefiling order requiring the vexatious litigant to obtain the court's ~~leave~~ permission ~~of the court~~ before filing any future claim for relief in any court; or

(6) take any other action reasonably necessary to curb the vexatious litigant's abusive conduct.

(c) Necessary findings and security.

(1) Before entering an order under subparagraph (b), the court must find by clear and convincing evidence that:

(A) the party subject to the order is a vexatious litigant; and

(B) there is no reasonable probability that the vexatious litigant will prevail on the claim.

(2) A preliminary finding that there is no reasonable probability that the vexatious litigant will prevail is not a decision on the ultimate merits of the vexatious litigant's claim.

(3) The court shall identify the amount of the security and the time within which it is to be furnished. If the security is not furnished as ordered, the court shall dismiss the vexatious litigant's claim with prejudice.

(d) Prefiling orders in a pending action.

(1) If a vexatious litigant is subject to a prefiling order in a pending action requiring ~~leave~~ the court's permission~~of the court~~ to file any paper, pleading, or motion, the vexatious litigant shall submit any proposed paper, pleading, or motion, except for a notice of appeal, to the judge assigned to the case and must:

(A) demonstrate that the paper, pleading, or motion is based on a good faith dispute of the facts;

(B) demonstrate that the paper, pleading, or motion is warranted under existing law or a good faith argument for the extension, modification, or reversal of existing law;

(C) include an oath, affirmation or declaration under criminal penalty that the proposed paper, pleading or motion is not filed for the purpose of harassment or delay and contains no redundant, immaterial, impertinent or scandalous matter;

(2) A prefiling order in a pending action shall be effective until a final determination of the action on appeal, unless otherwise ordered by the court.

(3) After a prefiling order has been effective in a pending action for one year, the person subject to the prefiling order may move to have the order vacated. The motion shall be decided by the judge to whom the pending action is assigned. In granting the motion, the judge may impose any other vexatious litigant orders permitted in paragraph (b).

(4) All papers, pleadings, and motions filed by a vexatious litigant subject to a prefiling order under this paragraph (d) shall include a judicial order authorizing the filing and any required security. If the order or security is not included, the clerk or court shall reject the paper, pleading, or motion.

(e) Prefiling orders as to future claims.

(1) A vexatious litigant subject to a prefiling order restricting the filing of future claims shall submit an application seeking an order before filing. The presiding judge of the judicial district in which the claim is to be filed shall decide the application. The presiding judge may consult with the judge who entered the vexatious litigant order in deciding the application. In granting an application, the presiding judge may impose in the pending action any of the vexatious litigant orders permitted under paragraph (b).

(2) To obtain an order under paragraph (e)(1), the vexatious litigant's application must:

(A) demonstrate that the claim is based on a good faith dispute of the facts;

(B) demonstrate that the claim is warranted under existing law or a good faith argument for the extension, modification, or reversal of existing law;

(C) include an oath, affirmation, or declaration under criminal penalty that the proposed claim is not filed for the purpose of harassment or delay and contains no redundant, immaterial, impertinent or scandalous matter;

(D) include a copy of the proposed petition, complaint, counterclaim, cross-claim, or third party complaint; and

(E) include the court name and case number of all claims that the applicant has filed against each party within the preceding seven years and the disposition of each claim.

(3) A prefiling order limiting the filing of future claims is effective indefinitely unless the court orders a shorter period.

(4) After five years a person subject to a pre-filing order limiting the filing of future claims may file a motion to vacate the order. The motion shall be filed in the same judicial district from which the order entered and be decided by the presiding judge of that district.

(5) A claim filed by a vexatious litigant subject to a prefiling order under this paragraph (e) shall include an order authorizing the filing and any required security. If the order or security is not included, the clerk of court shall reject the filing.

(f) Notice of vexatious litigant orders.

(1) The clerks of court shall notify the Administrative Office of the Courts that a pre-filing order has been entered or vacated.

(2) The Administrative Office of the Courts shall disseminate to the clerks of court a list of vexatious litigants subject to a prefiling order.

(g) Statute of limitations or time for filing tolled. Any applicable statute of limitations or time in which the person is required to take any action is tolled until 7 days after notice of the decision on the motion or application for authorization to file.

(h) Contempt sanctions. Disobedience by a vexatious litigant of a pre-filing order may be punished as contempt of court.

(i) Other authority. This rule does not affect the authority of the court under other statutes and rules or the inherent authority of the court.

(j) Applicability of vexatious litigant order to other courts. After a court has issued a vexatious litigant order, any other court may rely upon that court's findings and order its own restrictions against the litigant as provided in paragraph (b).

Effective: May/Nov. 1, 202_.