

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

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

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13 (b) Procedure on original petition.

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

32
33 (2) If the petition is not referred to the district court, the attorney general or the
34 county attorney, as the case may be, shall answer the petition or otherwise plead
35 within ten days after service of a copy of the petition. When a responsive
36 pleading or motion is filed or an order to show cause is issued, the court shall set
37 the case for hearing and the clerk shall give notice to the parties.

38
39 (3) The clerk of the appellate court shall, if the petitioner is imprisoned or is a
40 person otherwise in the custody of the state or any political subdivision thereof,

41 give notice of the time for the filing of memoranda and for oral argument, to the
42 attorney general, the county attorney, or the city attorney, depending on where
43 the petitioner is held and whether the petitioner is detained pursuant to state,
44 county or city law. Similar notice shall be given to any other person or an
45 association detaining the petitioner not in custody of the state.

46
47 (c) Contents of petition and attachments. The petition shall include the following:

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

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

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

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

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

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

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

75
76 (d) Contents of answer. The answer shall concisely set forth specific admissions,
77 denials, or affirmative defenses to the allegations of the petition and must state
78 plainly and unequivocally whether the respondent has, or at any time has had,
79 the person designated in the petition under control and restraint and, if so, the

80 ~~cause for the restraint. The answer shall not contain citations of legal authority or~~
81 ~~legal argument.~~

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83 ~~(e) Other provisions:~~

84
85 ~~(1) If the respondent cannot be found or if the respondent does not have the~~
86 ~~person in custody, the writ and any other process issued may be served upon~~
87 ~~anyone having the petitioner in custody, in the manner and with the same effect~~
88 ~~as if that person had been made respondent in the action.~~

89
90 ~~(2) If the respondent refuses or avoids service, or attempts wrongfully to carry~~
91 ~~the person imprisoned or restrained out of the county or state after service of the~~
92 ~~writ, the person serving the writ shall immediately arrest the respondent or other~~
93 ~~person so resisting, for presentation, together with the person designated in the~~
94 ~~writ, forthwith before the court.~~

95
96 ~~(3) At the time of the issuance of the writ, the court may, if it appears that the~~
97 ~~person detained will be carried out of the jurisdiction of the court or will suffer~~
98 ~~some irreparable injury before compliance with the writ can be enforced, cause a~~
99 ~~warrant to issue, reciting the facts and directing the sheriff to bring the detained~~
100 ~~person before the court to be dealt with according to law.~~

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

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

113 Advisory Committee Note

114 The Utah Constitution enshrines the right to a writ of habeas corpus. Utah Const., art. I,
115 sec. 5; art. VIII, sec. 3; art. VIII, sec. 5. 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

118 | 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.

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