

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

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

10 (b) Procedure on original petition.

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

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

28 (b)(3) The clerk of the appellate court shall, if the petitioner is imprisoned or is a person
29 otherwise in the custody of the state or any political subdivision thereof, give notice of the time for

30 the filing of memoranda and for oral argument, to the attorney general, the county attorney, or the
31 city attorney, depending on where the petitioner is held and whether the petitioner is detained
32 pursuant to state, county or city law. Similar notice shall be given to any other person or an
33 association detaining the petitioner not in custody of the state.

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

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

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

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

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

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

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

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

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

57 (e) Other provisions.

58 (e)(1) If the respondent cannot be found or if the respondent does not have the person in custody,

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59 the writ and any other process issued may be served upon anyone having the petitioner in custody,
60 in the manner and with the same effect as if that person had been made respondent in the action.

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

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

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

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

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78 **ADVISORY COMMITTEE NOTE**

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

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