

1 **Rule 65C. Post-conviction relief.**

2 (a) Scope. This rule shall govern proceedings in all petitions for post-conviction relief
3 filed under Utah Code ~~Ann. § 78-35a-101 et seq.~~ Title 78B, Chapter 9, Post-Conviction
4 Remedies Act.

5 (b) Commencement and venue. The proceeding shall be commenced by filing a
6 petition with the clerk of the district court in the county in which the judgment of
7 conviction was entered. The petition should be filed on forms provided by the court. The
8 court may order a change of venue on its own motion if the petition is filed in the wrong
9 county. The court may order a change of venue on motion of a party for the
10 convenience of the parties or witnesses.

11 (c) Contents of the petition. The petition shall set forth all claims that the petitioner
12 has in relation to the legality of the conviction or sentence. Additional claims relating to
13 the legality of the conviction or sentence may not be raised in subsequent proceedings
14 except for good cause shown. The petition shall state:

15 (c)(1) whether the petitioner is incarcerated and, if so, the place of incarceration;

16 (c)(2) the name of the court in which the petitioner was convicted and sentenced and
17 the dates of proceedings in which the conviction was entered, together with the court's
18 case number for those proceedings, if known by the petitioner;

19 (c)(3) in plain and concise terms, all of the facts that form the basis of the petitioner's
20 claim to relief;

21 (c)(4) whether the judgment of conviction, the sentence, or the commitment for
22 violation of probation has been reviewed on appeal, and, if so, the number and title of
23 the appellate proceeding, the issues raised on appeal, and the results of the appeal;

24 (c)(5) whether the legality of the conviction or sentence has been adjudicated in any
25 prior post-conviction or other civil proceeding, and, if so, the case number and title of
26 those proceedings, the issues raised in the petition, and the results of the prior
27 proceeding; and

28 (c)(6) if the petitioner claims entitlement to relief due to newly discovered evidence,
29 the reasons why the evidence could not have been discovered in time for the claim to
30 be addressed in the trial, the appeal, or any previous post-conviction petition.

31 (d) Attachments to the petition. If available to the petitioner, the petitioner shall
32 attach to the petition:

33 (d)(1) affidavits, copies of records and other evidence in support of the allegations;

34 (d)(2) a copy of or a citation to any opinion issued by an appellate court regarding
35 the direct appeal of the petitioner's case;

36 (d)(3) a copy of the pleadings filed by the petitioner in any prior post-conviction or
37 other civil proceeding that adjudicated the legality of the conviction or sentence; and

38 (d)(4) a copy of all relevant orders and memoranda of the court.

39 (e) Memorandum of authorities. The petitioner shall not set forth argument or
40 citations or discuss authorities in the petition, but these may be set out in a separate
41 memorandum, two copies of which shall be filed with the petition.

42 (f) Assignment. On the filing of the petition, the clerk shall promptly assign and
43 deliver it to the judge who sentenced the petitioner. If the judge who sentenced the
44 petitioner is not available, the clerk shall assign the case in the normal course.

45 (g)(1) Summary dismissal of claims. The assigned judge shall review the petition,
46 and, if it is apparent to the court that any claim has been adjudicated in a prior
47 proceeding, or if any claim in the petition appears frivolous on its face, the court shall
48 forthwith issue an order dismissing the claim, stating either that the claim has been
49 adjudicated or that the claim is frivolous on its face. The order shall be sent by mail to
50 the petitioner. Proceedings on the claim shall terminate with the entry of the order of
51 dismissal. The order of dismissal need not recite findings of fact or conclusions of law.

52 (g)(2) A petition is frivolous on its face when, based solely on the allegations
53 contained in the pleadings and attachments, it appears that:

54 (g)(2)(A) the facts alleged do not support a claim for relief as a matter of law;

55 (g)(2)(B) the claims have no arguable basis in fact; or

56 (g)(2)(C) the petition challenges the sentence only and the sentence has expired
57 prior to the filing of the petition.

58 (g)(3) If a petition is not frivolous on its face but is deficient due to a pleading error or
59 failure to comply with the requirements of this rule, the court shall return a copy of the
60 petition with leave to amend within 20 days. The court may grant one additional 20 day
61 period to amend for good cause shown.

62 (g)(4) The court shall not review for summary dismissal the initial post-conviction
63 petition in a case where the petitioner is sentenced to death.

64 (h) Service of petitions. If, on review of the petition, the court concludes that all or
65 part of the petition should not be summarily dismissed, the court shall designate the
66 portions of the petition that are not dismissed and direct the clerk to serve a copy of the
67 petition, attachments and memorandum by mail upon the respondent. If the petition is a
68 challenge to a felony conviction or sentence, the respondent is the state of Utah
69 represented by the Attorney General. In all other cases, the respondent is the
70 governmental entity that prosecuted the petitioner.

71 (i) Answer or other response. Within 30 days (plus time allowed under these rules for
72 service by mail) after service of a copy of the petition upon the respondent, or within
73 such other period of time as the court may allow, the respondent shall answer or
74 otherwise respond to the portions of the petition that have not been dismissed and shall
75 serve the answer or other response upon the petitioner in accordance with Rule 5(b).
76 Within 30 days (plus time allowed for service by mail) after service of any motion to
77 dismiss or for summary judgment, the petitioner may respond by memorandum to the
78 motion. No further pleadings or amendments will be permitted unless ordered by the
79 court.

80 (j) Hearings. After pleadings are closed, the court shall promptly set the proceeding
81 for a hearing or otherwise dispose of the case. The court may also order a prehearing
82 conference, but the conference shall not be set so as to delay unreasonably the hearing
83 on the merits of the petition. At the prehearing conference, the court may:

84 (j)(1) consider the formation and simplification of issues;

85 (j)(2) require the parties to identify witnesses and documents; and

86 (j)(3) require the parties to establish the admissibility of evidence expected to be
87 presented at the evidentiary hearing.

88 (k) Presence of the petitioner at hearings. The petitioner shall be present at the
89 prehearing conference if the petitioner is not represented by counsel. The prehearing
90 conference may be conducted by means of telephone or video conferencing. The
91 petitioner shall be present before the court at hearings on dispositive issues but need

92 not otherwise be present in court during the proceeding. The court may conduct any
93 hearing at the correctional facility where the petitioner is confined.

94 (l) Discovery; records. Discovery under Rules 26 through 37 shall be allowed by the
95 court upon motion of a party and a determination that there is good cause to believe
96 that discovery is necessary to provide a party with evidence that is likely to be
97 admissible at an evidentiary hearing. The court may order either the petitioner or the
98 respondent to obtain any relevant transcript or court records.

99 (m) Orders; stay.

100 (m)(1) If the court vacates the original conviction or sentence, it shall enter findings
101 of fact and conclusions of law and an appropriate order. If the petitioner is serving a
102 sentence for a felony conviction, the order shall be stayed for 5 days. Within the stay
103 period, the respondent shall give written notice to the court and the petitioner that the
104 respondent will pursue a new trial, pursue a new sentence, appeal the order, or take no
105 action. Thereafter the stay of the order is governed by these rules and by the Rules of
106 Appellate Procedure.

107 (m)(2) If the respondent fails to provide notice or gives notice that no action will be
108 taken, the stay shall expire and the court shall deliver forthwith to the custodian of the
109 petitioner the order to release the petitioner.

110 (m)(3) If the respondent gives notice that the petitioner will be retried or resented, the
111 trial court may enter any supplementary orders as to arraignment, trial, sentencing,
112 custody, bail, discharge, or other matters that may be necessary and proper.

113 (n) Costs. The court may assign the costs of the proceeding, as allowed under Rule
114 54(d), to any party as it deems appropriate. If the petitioner is indigent, the court may
115 direct the costs to be paid by the governmental entity that prosecuted the petitioner. If
116 the petitioner is in the custody of the Department of Corrections, ~~Section 64-13-23 and~~
117 ~~sections 78-7-36 through 78-7-43~~ Utah Code Title 78A, Chapter 2, Part 3 governs the
118 manner and procedure by which the trial court shall determine the amount, if any, to
119 charge for fees and costs.

120 (o) Appeal. Any final judgment or order entered upon the petition may be appealed
121 to and reviewed by the Court of Appeals or the Supreme Court of Utah in accord with
122 the statutes governing appeals to those courts.

