

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

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

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

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

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

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

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

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

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

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

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

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

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

58 (e) Other provisions.

59 (e)(1) If the respondent cannot be found or if the respondent does not have the person in custody,
60 the writ and any other process issued may be served upon anyone having the petitioner in custody,

61 in the manner and with the same effect as if that person had been made respondent in the action.

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

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

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

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

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79 **ADVISORY COMMITTEE NOTE**

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

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