

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

2 (a) Scope. This rule governs proceedings in all petitions for post-conviction relief
3 filed under the Post-Conviction Remedies Act, Utah Code Title 78B, Chapter 9. The Act
4 sets forth the manner and extent to which a person may challenge the legality of a
5 criminal conviction and sentence after the conviction and sentence have been affirmed
6 in a direct appeal under Article I, Section 12 of the Utah Constitution, or the time to file
7 such an appeal has expired.

8 (b) Procedural defenses and merits review. Except as provided in paragraph (h), if
9 the court comments on the merits of a post-conviction claim, it shall first clearly and
10 expressly determine whether that claim is independently precluded under Section 78B-
11 9-106.

12 (c) Commencement and venue. The proceeding shall be commenced by filing a
13 petition with the clerk of the district court in the county in which the judgment of
14 conviction was entered. The petition should be filed on forms provided by the court. The
15 court may order a change of venue on its own motion if the petition is filed in the wrong
16 county. The court may order a change of venue on motion of a party for the
17 convenience of the parties or witnesses.

18 (d) Contents of the petition. The petition shall set forth all claims that the petitioner
19 has in relation to the legality of the conviction or sentence. The petition shall state:

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

21 (d)(2) the name of the court in which the petitioner was convicted and sentenced and
22 the dates of proceedings in which the conviction was entered, together with the court's
23 case number for those proceedings, if known by the petitioner;

24 (d)(3) in plain and concise terms, all of the facts that form the basis of the petitioner's
25 claim to relief;

26 (d)(4) whether the judgment of conviction, the sentence, or the commitment for
27 violation of probation has been reviewed on appeal, and, if so, the number and title of
28 the appellate proceeding, the issues raised on appeal, and the results of the appeal;

29 (d)(5) whether the legality of the conviction or sentence has been adjudicated in any
30 prior post-conviction or other civil proceeding, and, if so, the case number and title of

31 those proceedings, the issues raised in the petition, and the results of the prior
32 proceeding; and

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

36 (e) Attachments to the petition. If available to the petitioner, the petitioner shall attach
37 to the petition:

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

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

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

43 (e)(4) a copy of all relevant orders and memoranda of the court.

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

47 (g) Assignment. On the filing of the petition, the clerk shall promptly assign and
48 deliver it to the judge who sentenced the petitioner. If the judge who sentenced the
49 petitioner is not available, the clerk shall assign the case in the normal course.

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

57 (h)(2) A claim is frivolous on its face when, based solely on the allegations contained
58 in the pleadings and attachments, it appears that:

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

60 (h)(2)(B) the claim has no arguable basis in fact; or

61 (h)(2)(C) the claim challenges the sentence only and the sentence has expired prior
62 to the filing of the petition.

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

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

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

76 (j) Appointment of counsel. The court may appoint counsel under Section 78B-9-109
77 or Section 78B-9-202.

78 ~~(j)-(k)~~ Answer or other response. Within 30 days (plus time allowed under these rules
79 for service by mail) after service of a copy of the petition upon the respondent, or within
80 such other period of time as the court may allow, the respondent shall answer or
81 otherwise respond to the portions of the petition that have not been dismissed and shall
82 serve the answer or other response upon the petitioner in accordance with Rule 5(b).
83 Within 30 days (plus time allowed for service by mail) after service of any motion to
84 dismiss or for summary judgment, the petitioner may respond by memorandum to the
85 motion. No further pleadings or amendments will be permitted unless ordered by the
86 court.

87 ~~(k)-(l)~~ Hearings. After pleadings are closed, the court shall promptly set the
88 proceeding for a hearing or otherwise dispose of the case. The court may also order a
89 prehearing conference, but the conference shall not be set so as to delay unreasonably
90 the hearing on the merits of the petition. At the prehearing conference, the court may:

91 ~~(k)(1)-(l)(1)~~ consider the formation and simplification of issues;

92 ~~(k)(2)~~(l)(2) require the parties to identify witnesses and documents; and

93 ~~(k)(3)~~(l)(3) require the parties to establish the admissibility of evidence expected to
94 be presented at the evidentiary hearing.

95 ~~(l)~~(m) Presence of the petitioner at hearings. The petitioner shall be present at the
96 prehearing conference if the petitioner is not represented by counsel. The prehearing
97 conference may be conducted by means of telephone or video conferencing. The
98 petitioner shall be present before the court at hearings on dispositive issues but need
99 not otherwise be present in court during the proceeding. The court may conduct any
100 hearing at the correctional facility where the petitioner is confined.

101 ~~(m)~~(n) Discovery; records. Discovery under Rules 26 through 37 shall be allowed by
102 the court upon motion of a party and a determination that there is good cause to believe
103 that discovery is necessary to provide a party with evidence that is likely to be
104 admissible at an evidentiary hearing. The court may order either the petitioner or the
105 respondent to obtain any relevant transcript or court records.

106 ~~(n)~~(o) Orders; stay.

107 ~~(n)(1)~~(o)(1) If the court vacates the original conviction or sentence, it shall enter
108 findings of fact and conclusions of law and an appropriate order. If the petitioner is
109 serving a sentence for a felony conviction, the order shall be stayed for 5 days. Within
110 the stay period, the respondent shall give written notice to the court and the petitioner
111 that the respondent will pursue a new trial, pursue a new sentence, appeal the order, or
112 take no action. Thereafter the stay of the order is governed by these rules and by the
113 Rules of Appellate Procedure.

114 ~~(n)(2)~~(o)(2) If the respondent fails to provide notice or gives notice that no action will
115 be taken, the stay shall expire and the court shall deliver forthwith to the custodian of
116 the petitioner the order to release the petitioner.

117 ~~(n)(3)~~(o)(3) If the respondent gives notice that the petitioner will be retried or
118 resentenced, the trial court may enter any supplementary orders as to arraignment, trial,
119 sentencing, custody, bail, discharge, or other matters that may be necessary and
120 proper.

121 ~~(o)~~(p) Costs. The court may assign the costs of the proceeding, as allowed under
122 Rule 54(d), to any party as it deems appropriate. If the petitioner is indigent, the court

123 may direct the costs to be paid by the governmental entity that prosecuted the
124 petitioner. If the petitioner is in the custody of the Department of Corrections, Utah Code
125 Title 78A, Chapter 2, Part 3 governs the manner and procedure by which the trial court
126 shall determine the amount, if any, to charge for fees and costs.

127 ~~(p)~~ (q) Appeal. Any final judgment or order entered upon the petition may be
128 appealed to and reviewed by the Court of Appeals or the Supreme Court of Utah in
129 accord with the statutes governing appeals to those courts.

130 [Advisory Committee Notes](#)

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