

1 **Rule 5. Discretionary appeals from interlocutory orders.**

2 (a) **Petition for permission to appeal.** An appeal from an interlocutory order may be sought by
3 any party by filing a petition for permission to appeal from the interlocutory order with the clerk
4 of the appellate court with jurisdiction over the case within 20 days after the entry of the order of
5 the trial court, with proof of service on all other parties to the action. A timely appeal from an
6 order certified under Rule 54(b), Utah Rules of Civil Procedure, that the appellate court
7 determines is not final may, in the discretion of the appellate court, be considered by the
8 appellate court as a petition for permission to appeal an interlocutory order. The appellate court
9 may direct the appellant to file a petition that conforms to the requirements of paragraph (c) of
10 this rule.

11 (b) **Fees and ~~copies~~ filing of petition.** ~~For a petition presented to the Supreme Court, t~~The
12 petitioner ~~shall~~must file with the ~~C~~clerk of the ~~Supreme Court~~appellate court an original paper
13 ~~and five copies of the~~ petition or an emailed petition, together with the fee required by statute.
14 ~~For a petition presented to the Court of Appeals, the petitioner shall file with the Clerk of the~~
15 ~~Court of Appeals an original and four copies of the petition, together with the fee required by~~
16 ~~statute.~~A petition filed by email in the Utah Supreme Court must be sent to
17 supremecourt@utcourts.gov. A petition filed by email in the Utah Court of Appeals must be sent
18 to courtofappeals@utcourts.gov. The petitioner ~~shall~~must serve the petition on the opposing
19 party and notice of the filing of the petition on the trial court. If an order is issued ~~authorizing~~
20 ~~the~~granting permission to appeal, the clerk of the appellate court ~~shall~~will immediately give
21 notice of the order by email or mail to the respective parties and ~~shall~~will transmit a certified
22 copy of the order, together with a copy of the petition, to the trial court where the petition and
23 order ~~shall~~will be filed ~~instead~~lieu of a notice of appeal.

24 (c) **Content of petition.**

25 (c)(1) The petition ~~shall~~must contain:

26 (c)(1)(A) A concise statement of facts material to a consideration of the issue presented and the
27 order sought to be reviewed;

28 (c)(1)(B) The issue presented expressed in the terms and circumstances of the case but without
29 unnecessary detail, and a demonstration that the issue was preserved in the trial court. Petitioner
30 must state the applicable standard of appellate review and cite supporting authority;

31 (c)(1)(C) A statement of the reasons why an immediate interlocutory appeal should be permitted,
32 including a concise analysis of the statutes, rules or cases believed to be determinative of the
33 issue stated; and

34 (c)(1)(D) A statement of the reason why the appeal may materially advance the termination of
35 the litigation.

36 (c)(2) If the ~~appeal~~petition is subject to assignment by the Supreme Court to the Court of
37 Appeals, the phrase “Subject to assignment to the Court of Appeals” ~~shall~~must appear
38 immediately under the title of the document, i.e. Petition for Permission to Appeal. ~~Appellant~~
39 Petitioner may then set forth in the petition a concise statement why the Supreme Court should
40 decide the case.

41 (c)(3) The petitioner ~~shall~~must attach a copy of the order of the trial court from which an appeal
42 is sought and any related findings of fact and conclusions of law and opinion. Other documents
43 that may be relevant to determining whether to grant permission to appeal may be referenced by
44 identifying trial court docket entries of the documents.

45 (d) **Page limitation.** A petition for permission to appeal ~~shall~~must not exceed 20 pages,
46 excluding table of contents, if any, and the addenda.

47 (e) **Service in criminal and juvenile delinquency cases.** Any petition filed by a defendant in a
48 criminal case originally charged as a felony or by a juvenile in a delinquency proceeding ~~shall~~
49 must be served on the Criminal Appeals Division of the Office of the Utah Attorney General.

50 (f) **Response; no reply.** No petition will be granted in the absence of a request by the court for a
51 response. No response to a petition for permission to appeal will be received unless requested by
52 the court. Within ~~10~~14 days after an order requesting a response, any other party may oppose or
53 concur with the petition. Any response to a petition for permission to appeal ~~shall be~~is subject to
54 the same page limitation set out in paragraph (d). An original paper response or an emailed
55 response must be filed in the appellate court. A response filed by email in the Utah Supreme

56 [Court must be sent to supremecourt@utcourts.gov. A response filed by email in the Utah Court](mailto:supremecourt@utcourts.gov)
57 [of Appeals must be sent to courtofappeals@utcourts.gov.](mailto:courtofappeals@utcourts.gov)~~and five copies of the answer shall be~~
58 ~~filed in the Supreme Court. An original and four copies shall be filed in the Court of Appeals.~~
59 The respondent ~~shall~~must serve the response on the petitioner. The petition and any response
60 ~~shall~~will be submitted without oral argument unless otherwise ordered. No reply in support of a
61 petition for permission to appeal ~~shall~~will be permitted unless requested by the court.

62 (g) **Grant of permission.** An appeal from an interlocutory order may be granted only if it
63 appears that the order involves substantial rights and may materially affect the final decision or
64 that a determination of the correctness of the order before final judgment will better serve the
65 administration and interests of justice. The order permitting the appeal may set forth the
66 particular issue or point of law which will be considered and may be on such terms, including the
67 filing of a bond for costs and damages, as the appellate court may determine. The clerk of the
68 appellate court ~~shall~~will immediately give the parties and trial court notice by mail or by
69 ~~electronic order~~email of any order granting or denying the petition. If the petition is granted, the
70 appeal ~~shall~~will be deemed to have been filed and docketed by the granting of the petition. All
71 proceedings subsequent to the granting of the petition ~~shall~~will be as, and within the time
72 required, for appeals from final judgments except that no docketing statement ~~shall be filed~~
73 under Rule 9 is required unless the court otherwise orders, and no cross-appeal may be filed
74 under rule 4(d).

75 (h) **Stays pending interlocutory review.** The appellate court will not consider an application for
76 a stay pending disposition of an interlocutory appeal until the petitioner has filed a petition for
77 interlocutory appeal.

78 (i) **Cross-petitions not permitted.** A cross-petition for permission to appeal a non-final order is
79 not permitted by this rule. All parties seeking to appeal from an interlocutory order must comply
80 with paragraph (a) of this rule.

81 (j) Record citations in merits briefs.

82 (j)(1) The trial court will not prepare or transmit the record under rule 11(b) or 12(b). The record
83 on appeal is as defined in rule 11(a).

84 (j)(2) A party may cite to the record by identifying documents by name and date and then using a
85 short form after the first citation. A party may prepare and cite to a paginated appendix of select
86 documents from the record. Any such appendix must be filed separately with the party's
87 principal brief.

88 (j)(3) If a hearing was held regarding the order on appeal, within five days after the grant of
89 permission to appeal, the appellant must order the transcript of the hearing as provided in rule
90 11(e)(1).