

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

2 (a) **Petition for permission to appeal.** Any party may seek an appeal from an
3 interlocutory order by filing a petition for permission to appeal from the interlocutory
4 order with the appellate court with jurisdiction over the case. The petition must be filed
5 and served on all other parties to the action within 21 days after the trial court's order.
6 ~~is entered and served on all other parties to the action.~~ If the trial court enters an order
7 on a Saturday, Sunday, or legal holiday, the date of entry will be deemed to be the first
8 day following the trial court's entry that is not a Saturday, Sunday, or legal holiday. A
9 timely appeal from an order certified under Rule 54(b), Utah Rules of Civil Procedure,
10 that the appellate court determines is not final may, in the appellate court's discretion,
11 be considered by the appellate court as a petition for permission to appeal an
12 interlocutory order. The appellate court may direct the appellant to file a petition that
13 conforms to the requirements of paragraph (c) of this rule.

14 (b) **Fees and filing of petition.** The petitioner must file the petition with the appellate
15 court clerk and pay the fee required by statute within seven days of filing. The
16 petitioner must serve the petition on the opposing party and notice of the filing of the
17 petition on the trial court. If the appellate court issues an order granting permission to
18 appeal, the appellate court clerk will immediately give notice of the order to the
19 respective parties and will transmit the order to the trial court where the order will be
20 filed instead of a notice of appeal.

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

22 ~~(e)~~(1) The petition must contain:

23 ~~(e)(1)~~(A) A concise statement of facts material to a consideration of the
24 issue presented and the order sought to be reviewed;

25 ~~(e)(1)~~(B) The issue presented expressed in the terms and circumstances of
26 the case but without unnecessary detail, and a demonstration that the

27 issue was preserved in the trial court. Petitioner must state the applicable
28 standard of appellate review and cite supporting authority;

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

32 ~~(e)(1)~~(D) A statement of the reason why the appeal may materially
33 advance the termination of the litigation.

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

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

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

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

50 (f) **Response; no reply.** No petition will be granted in the absence of a request by the
51 court for a response. No response to a petition for permission to appeal will be received
52 unless requested by the court. Within 14 days after an order requesting a response, any
53 other party may oppose or concur with the petition. Any response to a petition for

54 permission to appeal is subject to the same page limitation set out in paragraph (d) and
55 must be filed in the appellate court. The respondent must serve the response on the
56 petitioner. The petition and any response will be submitted without oral argument
57 unless otherwise ordered. No reply in support of a petition for permission to appeal
58 will be permitted unless requested by the court.

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

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

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

78 **(j) Record citations in merits briefs.**

79 | ~~(1)~~(1) The trial court will not prepare or transmit the record under rule 11(b) or
80 | 12(b). The record on appeal is as defined in rule 11(a).

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

85 | ~~⊕~~(3) If a hearing was held regarding the order on appeal, the appellant must
86 | order the transcript of the hearing as provided in rule 11~~(e)~~(1) within five days
87 | after the grant of permission to appeal.

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