

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 entry of the trial
6 court's order. If the trial court enters an order on a Saturday, Sunday, or legal holiday,
7 the date of entry will be deemed to be the first day following the trial court's entry that
8 is not a Saturday, Sunday, or legal holiday. A timely appeal from an order certified
9 under Rule 54(b), Utah Rules of Civil Procedure, that the appellate court determines is
10 not final may, in the appellate court's discretion, be considered by the appellate court as
11 a petition for permission to appeal an interlocutory order. The appellate court may
12 direct the appellant to file a petition that conforms to the requirements of paragraph (c)
13 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 (1) The petition must contain:

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

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

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

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

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

34 (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 appear
36 immediately under the title of the document, i.e. Petition for Permission to Appeal.
37 Petitioner may then set forth in the petition a concise statement why the Supreme
38 Court should decide the case.

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

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

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

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

54 must be filed in the appellate court. The respondent must serve the response on the
55 petitioner. The petition and any response will be submitted without oral argument
56 unless otherwise ordered. No reply in support of a petition for permission to appeal
57 will be permitted unless requested by the court.

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

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

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

77 (j) **Record**~~citations in merits briefs.~~ (1) If the petition is granted, Tthe trial court will
78 ~~not~~ prepare ~~or~~and transmit the record under Rule 11**(b)** or 12**(b)**. ~~The record on appeal is~~
79 ~~as defined in rule 11(a).~~

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

84 ~~(3) If a hearing was held regarding the order on appeal, the appellant must order the~~
85 ~~transcript of the hearing as provided in rule 11 within five days after the petition is~~
86 ~~granted. grant of permission to appeal. Any transcript(s) must be ordered in~~
87 ~~compliance with Rule 11.~~

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