

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

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

12 (b) Fees and copies of petition. For a petition presented to the Supreme
13 Court, the petitioner shall file with the Clerk of the Supreme Court an original
14 and five copies of the petition, together with the fee required by statute. For a
15 petition presented to the Court of Appeals, the petitioner shall file with the
16 Clerk of the Court of Appeals an original and four copies of the petition,
17 together with the fee required by statute. The petitioner shall serve the petition
18 on the opposing party and notice of the filing of the petition on the trial court. If
19 an order is issued authorizing the appeal, the clerk of the appellate court shall
20 immediately give notice of the order by mail to the respective parties and shall
21 transmit a certified copy of the order, together with a copy of the petition, to
22 the trial court where the petition and order shall be filed in lieu of a notice of
23 appeal.

24 (c) Content of petition.

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

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

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

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

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

37 (c)(2) If the appeal is subject to assignment by the Supreme Court to the
38 Court of Appeals, the phrase "Subject to assignment to the Court of Appeals"
39 shall appear immediately under the title of the document, i.e. Petition for
40 Permission to Appeal. Appellant may then set forth in the petition a concise
41 statement why the Supreme Court should decide the case ~~in light of the~~
42 ~~relevant factors listed in Rule 9(c)(9).~~

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

48 (d) Page limitation. A petition for permission to appeal shall not exceed 20
49 pages, excluding table of contents, if any, and the addenda.

50 (e) Service in criminal and juvenile delinquency cases. Any petition filed by
51 a defendant in a criminal case originally charged as a felony or by a juvenile in
52 a delinquency proceeding shall be served on the Criminal Appeals Division of
53 the Office of the Utah Attorney General.

54 ~~(ef) Answer~~Response; no reply. No petition will be granted in the absence
55 of a request by the court for a response. No response to a petition for
56 permission to appeal will be received unless requested by the court. Within 10
57 days after an order requesting a response ~~service of the petition~~, any other
58 party may oppose or concur with the petition. ~~file an answer in opposition or~~
59 ~~concurrence. If the appeal is subject to assignment by the Supreme Court to~~
60 ~~the Court of Appeals, the answer may contain a concise response to the~~
61 ~~petitioner's contentions under Rule 5(c).~~ Any response to a petition for
62 permission to appeal shall be subject to the same page limitation set out in
63 subsection (d). An original and five copies of the answer shall be filed in the
64 Supreme Court. An original and four copies shall be filed in the Court of
65 Appeals. The respondent shall serve the ~~answer~~response on the petitioner.
66 The petition and any ~~answer~~response shall be submitted without oral
67 argument unless otherwise ordered. No reply in support of a petition for
68 permission to appeal shall be permitted unless requested by the court.

69 (fg) Grant of permission. An appeal from an interlocutory order may be
70 granted only if it appears that the order involves substantial rights and may
71 materially affect the final decision or that a determination of the correctness of
72 the order before final judgment will better serve the administration and
73 interests of justice. The order permitting the appeal may set forth the particular
74 issue or point of law which will be considered and may be on such terms,
75 including the filing of a bond for costs and damages, as the appellate court
76 may determine. The clerk of the appellate court shall immediately give the
77 parties and trial court notice by mail or by electronic order of any order
78 granting or denying the petition. If the petition is granted, the appeal shall be
79 deemed to have been filed and docketed by the granting of the petition. All
80 proceedings subsequent to the granting of the petition shall be as, and within

81 the time required, for appeals from final judgments except that no docketing
82 statement shall be filed under Rule 9 unless the court otherwise orders, and
83 no cross-appeal may be filed under rule 4(d).

84 (gh) Stays pending interlocutory review. The appellate court will not
85 consider an application for a stay pending disposition of an interlocutory
86 appeal until the petitioner has filed a petition for interlocutory appeal.

87 (i) Cross-petitions not permitted. A cross-petition for permission to appeal a
88 non-final order is not permitted by this rule. All parties seeking to appeal from
89 an interlocutory order must comply with subsection (a) of this rule.