

1 **Rule 41. Certification of questions of law by United States courts**

2 (a) Authorization to answer questions of law. The Utah Supreme Court may answer a question
3 of Utah law certified to it by a court of the United States when requested to do so by such certifying
4 court acting in accordance with the provisions of this rule if the state of the law of Utah applicable
5 to a proceeding before the certifying court is uncertain.

6 (b) Procedure to invoke. Any court of the United States may invoke this rule by entering an order
7 of certification as described in this rule. When invoking this rule, the certifying court may act either
8 sua sponte or upon a motion by any party.

9 (c) Certification order.

10 (c)(1) A certification order shall be directed to the Utah Supreme Court and shall state:

11 (c)(1)(A) the question of law to be answered;

12 (c)(1)(B) that the question certified is a controlling issue of law in a proceeding pending before
13 the certifying court; and

14 (c)(1)(C) that there appears to be no controlling Utah law.

15 (c)(2) The order shall also set forth all facts which are relevant to the determination of the
16 question certified and which show the nature of the controversy, the context in which the question
17 arose, and the procedural steps by which the question was framed.

18 (c)(3) The certifying court may also include in the order any additional reasons for its entry of the
19 certification order that are not otherwise apparent.

20 (d) Form of certification order; submission of record. A certification order shall be signed by the
21 judge presiding over the proceeding giving rise to the certification order and forwarded to the Utah
22 Supreme Court by the clerk of the certifying court under its official seal. The Supreme Court may
23 require that all or any portion of the record before the certifying court be filed with the Supreme
24 Court if the record or a portion thereof may be necessary in determining whether to accept the
25 certified question or in answering that question. A copy of the record certified by the clerk of the
26 certifying court to conform to the original may be substituted for the original as the record.

27 (e) Acceptance or rejection of certification. Upon filing of the certification order and
28 accompanying papers with the clerk, the Supreme Court shall promptly enter an order either
29 accepting or rejecting the question certified to it, and the clerk shall serve copies of the order upon

30 the certifying court and all parties identified in the certification order. If the Supreme Court accepts
31 the question, the Court will set out in the order of acceptance (1) the specific question or questions
32 accepted, (2) the deadline for notifying the Supreme Court as to those portions of the record which
33 shall be copied and filed with the Clerk of the Supreme Court, and (3) ~~a schedule for the filing of~~
34 ~~briefs and for oral argument by the parties. The form of briefs and proceedings on oral argument~~
35 ~~shall be governed by these rules~~ information as to when the briefing schedule will be established.

36 (f) Fees. The fees for filing an order of certification in the Supreme Court shall be the same as for
37 filing and docketing a notice of appeal in a civil appeal, and the cost shall be equally divided between
38 the parties to the cause unless otherwise ordered by the certifying court in its order of certification.

39 (f) Briefing; oral argument. The form of briefs and proceedings on oral argument will be governed
40 by these rules except as such rules may be modified by the Supreme Court to accommodate the
41 differences between the appeal process and the determination of a certified question. The clerk of
42 the Supreme Court will provide written notice to the parties as to the schedule for the filing of briefs
43 and content requirements, as well as the schedule and procedures for oral argument.

44 (g) ~~Association~~ Appearance of counsel *pro hac vice*. Upon acceptance by the Supreme Court of
45 the question of law presented by the certification order, counsel for the parties not licensed to
46 practice law in the state of Utah ~~shall associate with a member in good standing of the Utah State~~
47 ~~Bar in connection with all further proceedings~~ may appear *pro hac vice* upon motion filed pursuant
48 to the Code of Judicial Administration.

49 (h) Issuance of opinion on certified questions. The Supreme Court will issue a written opinion
50 that will be published and reported. A copy of the opinion shall be transmitted by the clerk under the
51 seal of the Supreme Court to the certifying court and to the parties identified in the certification
52 order.

53 Advisory Committee Note. – Refer to Rule 11-302 of the Code of Judicial Administration for
54 qualification of out of state counsel to practice before the courts of Utah.