

1 **Rule 27. Stays pending appeal.**

2 (a)(1) A sentence of death shall be stayed if an appeal or a petition for other relief is pending.

3 (a)(2) A sentence of fine, imprisonment, or probation shall be stayed if an appeal is taken and a
4 certificate of probable cause is issued.

5 (a)(3) When an appeal is taken by the state, a stay of any order of judgment in favor of the
6 defendant may be granted by the court upon good cause pending disposition of the appeal.

7 (b) A person who has been found guilty of an offense and sentenced to a term of incarceration in
8 jail or prison, and who has filed a notice of appeal, shall be detained, unless the trial judge issues a
9 certificate of probable cause and determines by clear and convincing evidence that the defendant is
10 not likely to flee during pendency of the appeal and that the defendant will not pose a danger to the
11 safety of any other person or the community if released under any of the conditions set forth in
12 paragraph (g).

13 (c) If the trial court denies the defendant a certificate of probable cause, or finds that the
14 defendant is likely to flee or poses a danger to the safety of any other person or the community and
15 denies release, the decision may be appealed to the court in which the notice of appeal of the
16 conviction has been filed.

17 (d)(1) No certificate of probable cause shall issue except upon application of the defendant filed
18 with the appropriate court.

19 (d)(2) The application for a certificate of probable cause shall be in writing and accompanied by
20 a memorandum of law identifying the issues to be presented on appeal and supporting the
21 defendant's position that those issues raise a substantial question of law or fact reasonably likely to
22 result in reversal, an order for a new trial or a sentence that does not include a term of incarceration
23 in jail or prison.

24 (d)(3) If release is denied, any appeal shall be accompanied by an affidavit made and signed by
25 counsel for the defendant, or by the defendant if the defendant is not represented by counsel. The
26 affidavit shall contain the following:

27 (d)(3)(A) A narration of the relevant facts developed at trial;

28 (d)(3)(B) A statement of the crime(s) of which the defendant was convicted;

29 (d)(3)(C) A statement setting out the sentence imposed; and

30 (d)(3)(D) A statement that the defendant has previously applied for a certificate of probable
31 cause, setting forth the issues that were presented to the court, the court's ruling and the reasons
32 given in support of the ruling.

33 (e) When filed in the trial court, A a copy of the application for a certificate of probable cause
34 and a copy of the supporting memorandum shall be served on the prosecuting attorney. When filed
35 in the appellate court, a copy of the application and supporting memorandum shall be served on the
36 Utah Attorney General if the case involved any felony charge, and on the prosecuting attorney if the
37 case involved only misdemeanor charges. The prosecuting attorney may file a written reply An
38 opposing memorandum may be filed within 10 days after receipt of the application. A hearing on the
39 application shall be held within 10 days after the appropriate court receives the ~~prosecuting~~
40 ~~attorney's reply~~ the opposing memorandum, or if no ~~reply~~ opposing memorandum is filed, within 15
41 days after the application is filed with the court.

42 (f) No certificate of probable cause shall issue and the defendant shall be detained unless the
43 appropriate court finds that the appeal:

44 (f)(1) is not being taken for the purpose of delay; and

45 (f)(2) raises substantial issues of law or fact reasonably likely to result in reversal, an order for a
46 new trial or a sentence that does not include a term of incarceration in jail or prison.

47 (g) If the court determines that the defendant may be released pending appeal, it may release the
48 defendant on the least restrictive condition or combination of conditions that the court determines
49 will reasonably assure the appearance of the person as required and the safety of persons and
50 property in the community, which conditions may include, without limitation, that the defendant:

51 (g)(1) is admitted to appropriate bail;

52 (g)(2) not commit a federal, state or local crime during the period of release;

53 (g)(3) remain in the custody of a designated person who agrees to assume supervision of the
54 defendant and who agrees to report any violation of a release condition to the court, if the designated
55 person is reasonably able to assure the court that the person will appear as required and will not pose
56 a danger to the safety of any other person or the community;

57 (g)(4) maintain employment, or if unemployed, actively seek employment;

58 (g)(5) maintain or commence an educational program;

59 (g)(6) abide by specified restrictions on personal associations, place of abode or travel;

60 (g)(7) avoid all contact with the victim or victims of the crime(s), any witness or witnesses who
61 testified against the defendant and any potential witnesses who might testify concerning the offenses
62 if the appeal results in a reversal or an order for a new trial;

63 (g)(8) report on a regular basis to a designated law enforcement agency, pretrial services agency
64 or other agency;

65 (g)(9) comply with a specified curfew;

66 (g)(10) refrain from possessing a firearm, destructive device or other dangerous weapon;

67 (g)(11) refrain from possessing or using alcohol, or any narcotic drug or other controlled
68 substance except as prescribed by a licensed medical practitioner;

69 (g)(12) undergo available medical, psychological or psychiatric treatment, including treatment
70 for drug or alcohol abuse or dependency;

71 (g)(13) execute an agreement to forfeit, upon failing to appear as required, such designated
72 property, including money, as is reasonably necessary to assure the appearance of the defendant as
73 required, and post with the court such indicia of ownership of the property or such percentage of the
74 money as the court may specify;

75 (g)(14) return to custody for specified hours following release for employment, schooling or
76 other limited purposes; and

77 (g)(15) satisfy any other condition that is reasonably necessary to assure the appearance of the
78 defendant as required and to assure the safety of persons and property in the community.

79 (h) The court may at any time for good cause shown amend the order granting release to impose
80 additional or different conditions of release.

81