

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

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

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

(c) **Certification order.**

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

- (A) the question of law to be answered;
- (B) that the question certified is a controlling issue of law in a proceeding pending before the certifying court; and
- (C) that there appears to be no controlling Utah law.

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

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

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

(e) **Acceptance or rejection of certification.** Upon filing of the certification order and accompanying papers with the clerk, the Supreme Court shall promptly enter an order either accepting or rejecting the question certified to it, and the clerk shall serve copies of the order upon the certifying court and all parties identified in the certification order. If the Supreme Court accepts the question, the Court will set out in the order of acceptance (1) the specific question or questions accepted, (2) the deadline for notifying the Supreme Court as to those portions of the record which shall be copied and filed with the Clerk of the Supreme Court, and (3) information as to when the briefing schedule will be established.

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

(g) **Appearance of counsel pro hac vice.** Upon acceptance by the Supreme Court of the question of law presented by the certification order, counsel for the parties not licensed to practice law in the state of Utah may appear pro hac vice upon motion filed pursuant to the Code of Judicial Administration.

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

Advisory Committee Note

~~Refer to Rule 14-806 of the Rules Governing the Utah State Bar for qualification of out of state counsel to practice before the courts of Utah.~~