

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

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

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

19 **(c) Content of petition.**

20 (c)(1) The petition ~~shall~~ must contain:

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

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

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

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

31 (c)(2) If the appeal is subject to assignment by the Supreme Court to the Court of Appeals, the
32 phrase "Subject to assignment to the Court of Appeals" ~~shall~~ must appear immediately under the title
33 of the document, i.e. Petition for Permission to Appeal. Appellant may then set forth in the petition a
34 concise statement why the Supreme Court should decide the case.

35 (c)(3) The petitioner ~~shall~~ must attach a copy of or link to the order of the trial court from which an
36 appeal is sought and any related findings of fact and conclusions of law and opinion. Other

37 ~~documents parts of the record~~ that may be relevant to determining whether to grant permission to
38 appeal may be referenced by identifying trial court docket entries of the documents.

39 **(d) Page limitation.** A petition for permission to appeal ~~shall~~may not exceed 20 pages, excluding
40 table of contents, if any, and the addenda.

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

44 ~~**(f)**~~**(e) Response; no reply.** No petition will be granted in the absence of a request by the court for a
45 response. No response to a petition for permission to appeal will be received unless requested by the
46 court. Within ~~40~~14 days after an order requesting a response, any other party may oppose or concur with
47 the petition. Any response to a petition for permission to appeal ~~shall be~~is subject to the same page
48 limitation set out in ~~subsection paragraph (d), and may refer to parts of the record that may be relevant to~~
49 determining whether to grant permission to appeal by identifying trial court docket entries of the
50 documents. ~~An original and five copies of the answer shall be filed in the Supreme Court. An original and~~
51 ~~four copies shall be filed in the Court of Appeals. The respondent shall serve the response on the~~
52 ~~petitioner.~~ The petition and any response ~~shall~~will be submitted without oral argument unless otherwise
53 ordered. No reply in support of a petition for permission to appeal ~~shall be~~is permitted, unless requested
54 by the court.

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

67 **(g) Notice of order.** The clerk of the appellate court will promptly transmit the order granting or
68 denying the petition to the parties and trial court. If the order grants the petition, the clerk of the appellate
69 court will promptly transmit a copy of the petition to the trial court.

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

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

76 The provisions for service, proof of service, and paying filing fees, formerly found in this rule, have
77 been consolidated in Rule 21.

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