

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 of
3 Utah law certified to it by a court of the United States ~~when requested to do so by such certifying court~~
4 ~~acting~~ in accordance with the provisions of this rule if the state of the law of Utah applicable to a
5 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 of
7 certification as described in this rule. When invoking this rule, the certifying court may act either ~~sua~~
8 ~~sponte or upon a~~ on its own initiative or on motion by any party.

9 **(c) Certification order.**

10 (c)(1) A certification order ~~shall~~must be directed to the Utah Supreme Court and ~~shall~~must 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
13 before the certifying court; and

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

15 (c)(2) The order ~~shall~~must also set forth all facts ~~which are~~ relevant to the determination of the
16 question certified and ~~which that~~ 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~~must be signed by
21 the 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 require
23 that all or any portion of the record before the certifying court be filed with the Supreme Court if the record
24 ~~or a portion thereof~~ may be necessary in determining whether to accept the certified question or in
25 answering that question. A copy of the record certified by the clerk of the certifying court to conform to the
26 original may be substituted for the original as the record.

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

34 **(f) Briefing; oral argument.** The form of briefs and proceedings on oral argument will be governed
35 by these rules except as ~~such rules may be~~ modified by the Supreme Court to accommodate the
36 differences between the appeal process and the determination of a certified question. The clerk of the

37 Supreme Court will provide written notice to the parties ~~as to of~~ the schedule for the filing of briefs and
38 content requirements, as well as the schedule and procedures for oral argument.

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

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

46 **~~Advisory Committee Note~~**

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

49