

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

2 (a) **Petition for permission to appeal.** Any party may seek an appeal from an interlocutory
3 order ~~may be sought by any party~~ by filing a petition for permission to appeal from the
4 interlocutory order with ~~the clerk of~~ the appellate court with jurisdiction over the case. The
5 petition must be filed within ~~20~~1 days after ~~the entry of the order of~~ the trial court's order is
6 entered and served, ~~with proof of service~~ on all other parties to the action. A timely appeal from
7 an order certified under Rule 54(b), Utah Rules of Civil Procedure, that the appellate court
8 determines is not final may, in the appellate court's discretion ~~of the appellate court~~, be
9 considered by the appellate court as a petition for permission to appeal an interlocutory order.
10 The appellate court may direct the appellant to file a petition that conforms to the requirements
11 of paragraph (c) of this rule.

12 (b) **Fees and ~~copies~~ filing of petition.** ~~For a petition presented to the Supreme Court, t~~The
13 petitioner ~~shall~~must file the petition with the ~~Clerk of the Supreme Court~~appellate court clerk
14 and pay an original and five copies of the petition, together with the fee required by statute
15 within seven days of filing. ~~For a petition presented to the Court of Appeals, the petitioner shall~~
16 ~~file with the Clerk of the Court of Appeals an original and four copies of the petition, together~~
17 ~~with the fee required by statute.~~The petitioner ~~shall~~must serve the petition on the opposing party
18 and notice of the filing of the petition on the trial court. If the appellate court issues an order ~~is~~
19 ~~issued authorizing the~~granting permission to appeal, the ~~clerk of the~~ appellate court clerk
20 ~~shall~~will immediately give notice of the order ~~by mail~~ to the respective parties and ~~shall~~will
21 transmit ~~a certified copy of the order, together with a copy of the petition,~~ to the trial court where
22 the ~~petition and~~ order ~~shall~~will be filed ~~instead~~lieu of a notice of appeal.

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

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

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

27 (c)(1)(B) The issue presented expressed in the terms and circumstances of the
28 case but without unnecessary detail, and a demonstration that the issue was

29 preserved in the trial court. Petitioner must state the applicable standard of
30 appellate review and cite supporting authority;

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

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

36 (c)(2) If the ~~appeal~~petition is subject to assignment by the Supreme Court to the Court of
37 Appeals, the phrase “Subject to assignment to the Court of Appeals” ~~shall~~must appear
38 immediately under the title of the document, i.e. Petition for Permission to Appeal.
39 ~~Appellant~~Petitioner may then set forth in the petition a concise statement why the
40 Supreme Court should decide the case.

41 (c)(3) The petitioner ~~shall~~must attach a copy of the ~~order of the~~ trial court’s order from
42 which an appeal is sought and any related findings of fact and conclusions of law and
43 opinion. Other documents that may be relevant to determining whether to grant
44 permission to appeal may be referenced by identifying trial court docket entries of the
45 documents.

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

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

51 (f) **Response; no reply.** No petition will be granted in the absence of a request by the court for a
52 response. No response to a petition for permission to appeal will be received unless requested by
53 the court. Within ~~10~~14 days after an order requesting a response, any other party may oppose or
54 concur with the petition. Any response to a petition for permission to appeal ~~shall be~~is subject to
55 the same page limitation set out in paragraph (d) and must be filed in the appellate court. ~~An~~
56 ~~original and five copies of the answer shall be filed in the Supreme Court. An original and four~~

57 ~~copies shall be filed in the Court of Appeals.~~ The respondent ~~shall~~must serve the response on the
58 petitioner. The petition and any response ~~shall~~will be submitted without oral argument unless
59 otherwise ordered. No reply in support of a petition for permission to appeal ~~shall~~will be
60 permitted unless requested by the court.

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

74 (h) **Stays pending interlocutory review.** The appellate court will not consider an application for
75 a stay pending disposition of an interlocutory appeal until the petitioner has filed a petition for
76 interlocutory appeal.

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

80 (j) Record citations in merits briefs.

81 (j)(1) The trial court will not prepare or transmit the record under rule 11(b) or 12(b). The
82 record on appeal is as defined in rule 11(a).

83 (j)(2) A party may cite to the record by identifying documents by name and date and then
84 using a short form after the first citation. A party may prepare and cite to a paginated

85 appendix of select documents from the record. Any such appendix must be filed
86 separately with the party's principal brief.

87 (j)(3) If a hearing was held regarding the order on appeal, the appellant must order the
88 transcript of the hearing as provided in rule 11(e)(1) within five days after the grant of
89 permission to appeal.

90 Effective February 19, 2020