



I.A.R. 12.1 Permissive Appeal in Custody Cases

Idaho Appellate Rule 12.1 Permissive Appeal in Custody Cases.

(a) Whenever the best interest of a child would be served by an immediate appeal to the Supreme Court, any party or the magistrate hearing a case may petition the Supreme Court to accept a direct permissive appeal of a final judgment, as defined in Rule 54(a) of the Idaho Rules of Civil Procedure, or order made after final judgment, involving the custody of a minor, or a Child Protective Act proceeding, without first appealing to the district court. The filing of a motion for permissive appeal shall stay the time for appealing to the district court until the Supreme Court enters an order granting or denying the appeal. In the event a notice of appeal to the district court is filed prior to the motion for permissive appeal, the magistrate shall retain jurisdiction to rule on the motion and, in the event the motion is granted by the Supreme Court, the appeal to the district court shall be dismissed.

(b) Motion to magistrate court. In any case in which it is a party seeking the permissive appeal, a motion for permission to appeal must first be filed with the magistrate court within fourteen days from the date of entry of the final judgment or order. The motion shall be filed, served, noticed for hearing and processed in the same manner as any other motion, and hearing of the motion shall be expedited. The magistrate court shall, within fourteen (14) days after the hearing, enter an order approving or disapproving the motion.

(c) Motion to Supreme Court for permission to appeal.

(1) Motion of a party. Within fourteen (14) days from entry by the magistrate court of an order approving or disapproving a motion for permission to appeal under this rule, any party may file a motion with the Supreme Court requesting acceptance of the appeal by permission. A copy of the order of the magistrate court approving or disapproving the permission to appeal shall be attached to the motion. If the magistrate court fails to rule upon a motion for permission to appeal within twenty-one (21) days from the date of the filing of the motion, any party may file a motion with the Supreme Court for permission to appeal without any order of the magistrate court.

(2) Motion by order of court. A magistrate court may enter, on its own initiative, an order recommending permission to appeal directly to the Supreme Court. The magistrate court shall file a certified copy of its order with the Supreme Court and serve copies on all parties. The order recommending permission to appeal shall constitute and be treated as a motion for permission to appeal under this rule.

(3) Procedure. A motion to the Supreme Court for permission to appeal under this rule shall be filed, served, and processed in the same manner as any other motion under Rule 32 of these rules.

(d) Acceptance by Supreme Court. Any appeal by permission of a judgment or order of a magistrate under this rule shall not be valid and effective unless and until the Supreme Court shall enter an order accepting such judgment or order of a magistrate, as appealable and granting leave to a party



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to file a notice of appeal, which must be filed within 14 days from the date of issuance of the Supreme Court order. Such appeal shall thereafter proceed in an expedited manner pursuant to Rule 12.2. The clerk of the Supreme Court shall file with the magistrate court a copy of the order of the Supreme Court granting or denying acceptance, and shall send copies to all parties to the action or proceeding.

(Adopted March 22, 2002, effective July 1, 2002; amended March 21, 2007, effective July 1, 2007; amended January 3, 2008, effective March 1, 2008; amended March 19, 2009, effective July 1, 2009; amended January 4, 2010, effective February 1, 2010, amended March 29, 2010, effective July 1, 2010.)

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