

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

Idaho Appellate Rule 12.1 Permissive Appeal in Custody Cases.

(a) Motion for permission to appeal. Whenever the best interest of a child would be served by an immediate appeal to the Supreme Court, any party may move the magistrate court for permission to seek an immediate appeal to the Supreme Court from the following:

(1) a final judgment, as defined in Rule 803 of the Idaho Rules of Family Law Procedure, or an order entered after final judgment, involving the custody of a minor, or

(2) a final judgment or an order entered after final judgment in a Child Protective Act proceeding.

The motion must be made within fourteen (14) days from the date evidenced by the filing stamp of the clerk on the final judgment or order the party seeks to appeal. The motion shall be filed, served, noticed for hearing and processed in the same manner as any other motion. If a hearing is held on the motion, it shall be expedited. Within fourteen (14) days after the time for response has expired or within fourteen (14) days of a hearing, whichever is later, the magistrate court shall enter its written order on the motion. The filing of a motion for permissive appeal shall stay the time for appealing to the district court until the magistrate court enters an order making the determination. 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, the appeal to the district court shall be dismissed.

(b) Permission granted by magistrate court. If the magistrate court grants permission for an immediate appeal to the Supreme Court, the appeal is not valid and effective unless a notice of appeal is physically filed with the clerk of the district court within fourteen (14) days from the date file stamped on the order of the magistrate granting permission. A notice of cross appeal must be filed within seven (7) days from the notice of appeal. The appeal shall be expedited as set forth in Rule 12.2.

(c) Permission denied by magistrate court.

(1) Motion to Supreme Court. Within fourteen (14) days from entry by the magistrate court of an order denying 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 denying permission to appeal shall be attached to the motion along with a copy of the order or judgment the party seeks to appeal. 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. 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.

(2) Motion granted by Supreme Court. If the Supreme Court grants the motion for permission to appeal and directs that a notice of appeal be filed, the appeal is not valid and effective unless a notice of appeal is physically filed with the clerk of the district court within fourteen (14) days from the date of issuance of the Supreme Court order granting permission. The appeal shall be expedited as set forth in 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 permission to appeal 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;

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