I.A.R. 12. Appeal by Permission

Idaho Appellate Rule 12. Appeal by Permission.

(a) Criteria for permission to appeal. Permission may be granted by the Supreme Court to appeal from an interlocutory order or judgment of a district court in a civil or criminal action, or from an interlocutory order of an administrative agency, which is not otherwise appealable under these rules, but which involves a controlling question of law as to which there is substantial grounds for difference of opinion and in which an immediate appeal from the order or decree may materially advance the orderly resolution of the litigation.

(b) Motion to District Court or Administrative Agency--Order. A motion for permission to appeal from an interlocutory order or judgment, upon the grounds set forth in subdivision (a) of this rule, shall be filed with the district court or administrative agency within fourteen (14) days from date of entry of the order or judgment. 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. In criminal actions a motion filed by the defendant shall be served upon the prosecuting attorney of the county. The court or agency shall, within fourteen (14) days after the hearing, enter an order setting forth its reasoning for 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 district court or administrative agency of an order approving or disapproving a motion for permission to appeal under subdivision (b) of this rule, any party may file a motion with the Supreme Court requesting acceptance of the appeal by permission. A copy of the terlocutory order or judgment being appealed shall be attached to the motion, along with a copy of the order of the district court or administrative agency approving or disapproving the permission to appeal. If the district court or administrative agency 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 district court or administrative agency.

(2) Motion by order of court or agency. A district court or administrative agency may enter, on its own initiative, an order recommending permission to appeal from an interlocutory order or judgment. The court or agency 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 from the interlocutory order or decree 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. In criminal actions a motion filed by the defendant shall be served upon the prosecuting attorney of the county and the attorney general of the state of Idaho.

(d) Acceptance by Supreme Court. Any appeal by permission of an interlocutory order or judgment

under this rule shall not be valid and effective unless and until the Supreme Court shall enter an order accepting such interlocutory order or decree as appealable and granting leave to a party to file a notice of appeal within a time certain. Unless otherwise ordered by the Supreme Court in its order of acceptance, Such appeal shall thereafter proceed in the same manner as an appeal as a matter of right, except that it shall be retained by the Supreme Court. unless otherwise ordered by the Supreme Court in its order of acceptance. The clerk of the Supreme Court shall file with the district court or administrative agency a copy of the order of the Supreme Court granting or denying acceptance, and shall mail copies to all parties to the action or proceeding.

(Adopted March 24, 1982, effective July 1, 1982; amended April 18, 1983, effective July 1, 1983; amended March 23, 1990, effective July 1, 1990; amended January 28, 1997, effective July 1, 1997; amended March 18, 1998, effective July 1, 1998; amended March 22, 2002, effective July 1, 2002; amended March 24, 2005, effective July 1, 2005, amended March 29, 2010, effective July 1, 2010; amended November 20, 2012, effective January 1, 2013.)

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