

Section II

Interlocutory and DCS Appeals

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Section II

Interlocutory and DCS Appeals

A. INTERLOCUTORY APPEALS

I. The Rule

Appellate Rule 14

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B. Discretionary Interlocutory Appeals. An appeal may be taken from other interlocutory orders if the trial court certifies its order and the Court of Appeals accepts jurisdiction over the appeal.

(1) *Certification by the Trial Court.* The trial court, in its discretion, upon motion by a party, may certify an interlocutory order to allow an immediate appeal.

(a) *Time for Filing Motion.* A motion requesting certification of an interlocutory order must be filed in the trial court within thirty (30) days after the date the interlocutory order is noted in the Chronological Case Summary unless the trial court, for good cause, permits a belated motion. If the trial court grants a belated motion and certifies the appeal, the court shall make a finding that the certification is based on a showing of good cause, and shall set forth the basis for that finding.

(b) *Content of the Motion in the Trial Court.* A motion to the trial court shall contain the following:

(i) An identification of the interlocutory order sought to be certified;

(ii) A concise statement of the issues to be addressed in the interlocutory appeal; and

(iii) The reasons why an interlocutory appeal should be permitted.

(c) *Grounds for Granting Interlocutory Appeal.* Grounds for granting an interlocutory appeal include:

(i) The appellant will suffer substantial expense, damage or injury if the order is erroneous and the determination of the error is withheld until after judgment.

(ii) The order involves a substantial question of law, the early determination of which will promote a more orderly disposition of the case.

(iii) The remedy by appeal is otherwise inadequate.

(d) *Response to Motion.* Any response to a motion for the trial court to certify an interlocutory order shall be filed within fifteen (15) days after service of the motion, and computing time in accordance with Trial Rule 6.

- (e) *Ruling on Motion by the Trial Court.* In the event the trial court fails for thirty (30) days to set the motion for hearing or fails to rule on the motion within thirty (30) days after it was heard or thirty (30) days after it was filed, if no hearing is set, the motion requesting certification of an interlocutory order shall be deemed denied.
- (2) *Acceptance of the Interlocutory Appeal by the Court of Appeals.* If the trial court certifies an order for interlocutory appeal, the Court of Appeals, in its discretion, upon motion by a party, may accept jurisdiction of the appeal. The motion shall be accompanied by an appearance as required by Rule 16(H).
 - (a) *Time for Filing Motion in the Court of Appeals.* The motion requesting that the Court of Appeals accept jurisdiction over an interlocutory appeal shall be filed within thirty (30) days after the date the trial court's certification is noted in the Chronological Case Summary.
 - (b) *Content of the Motion in the Court of Appeals.* The motion requesting that the Court of Appeals accept jurisdiction shall state:
 - (i) The date of the interlocutory order.
 - (ii) The date the motion for certification was filed in the trial court.
 - (iii) The date the trial court's certification of its interlocutory order was noted in the Chronological Case Summary.
 - (iv) The reasons the Court of Appeals should accept this interlocutory appeal.
 - (c) *Submission with Motion.* The party seeking an interlocutory appeal shall submit with its motion a copy of the trial court's certification of the interlocutory order and a copy of the interlocutory order.
 - (d) *Response to Motion.* Any response to a motion requesting the Court of Appeals to accept jurisdiction shall be filed within fifteen (15) days after service of the motion.
- (3) *Filing of Notice of Appeal.* The appellant shall file a Notice of Appeal with the Clerk within fifteen (15) days of the Court of Appeals' order accepting jurisdiction over the interlocutory appeal. The Notice of Appeal shall be in the form prescribed by Rule 9, and served in accordance with Rule 9(F)(10). The appellant shall also comply with Rule 9(E).

* * * *

- D. Statutory Interlocutory Appeals.** Other interlocutory appeals may be taken only as provided by statute.
- E. Clerk's Record and Transcript.** The Clerk's Record shall be assembled in accordance with Rule 10. The court reporter shall file the Transcript in accordance with Rule 11.
- F. Briefing.** Briefing in interlocutory appeals shall be governed by Rules 43 and 44.
- G. Shortening or Extending Time.**

- (1) *Extensions.* Extensions of time to prepare the Transcript or to file any brief in an interlocutory appeal are disfavored and will be granted only upon a showing of good cause. Any motion for extension must comply with Rule 35.
- (2) *Shortening Deadlines.* The Court of Appeals, upon motion by a party and for good cause, may shorten any time period. A motion to shorten time shall be filed within ten (10) days of the filing of either the Notice of Appeal with the trial court clerk or the motion to the Court of Appeals requesting permission to file an interlocutory appeal.

H. Stay of Trial Court Proceedings. An interlocutory appeal shall not stay proceedings in the trial court unless the trial court or a judge of the Court of Appeals so orders. The order staying proceedings may be conditioned upon the furnishing of a bond or security protecting the appellee against loss incurred by the interlocutory appeal.

I. Death Penalty Cases. In any case in which the State seeks the death penalty or in which the interlocutory order raises a question of interpretation of IC 35-50-2-9, references in this Rule to the Court of Appeals shall refer to the Supreme Court.

As explained in the Introduction to this manual, litigants are entitled to an appeal as a matter of right of all final judgments. Ind. Appellate Rules 2(H) & 5(A). Criminal cases generally become final after sentencing, when all claims are resolved. App. R. 2(H). Sometimes, however, there are compelling reasons to appeal a ruling earlier in the process. In those cases, the proper course of action is an interlocutory appeal. An interlocutory appeal is one of an order of trial court; the rule “does not require or even permit certification of particular issues.” *Harbour v. Arelco, Inc.*, 678 N.E.2d 381, 386 (Ind. 1997) (explaining predecessor rule); *see also Curtis v. State*, 947 N.E.2d 1143, 1148 (Ind. 2011).

Appellate Rule 14(A) delineates some instances in which a party may pursue an interlocutory appeal as a matter of right; none of these arise in criminal cases. Therefore, this section—and criminal practice—is limited to discretionary interlocutory appeals, *i.e.*, those that require the approval of both the trial court and court of appeals to be pursued.

II. Important Considerations in Pursuing an Interlocutory Appeal

In 2018, 204 motions for permissive interlocutory appeal were filed with the Indiana Court of Appeals and about 39% (79) were granted. This is similar to other recent years. Securing approval for an interlocutory appeal may be an uphill battle, but this does not mean counsel should never ask. Rather, counsel should ask only in appropriate cases and in an appropriate manner that is likely to lead the trial court to certify the issue and the court of appeals to accept your request.

Rule 14(B) lists three grounds for granting an interlocutory appeal. These are quite broad and non-exhaustive; parties may assert a ground not listed in the rule. In a 2016 presentation, the Court of Appeals’ Chief Staff Attorney listed the following as items the judges will consider in ruling on a motion for discretionary interlocutory appeal:

- Does the case present a question of law?
- Is the case too fact-sensitive?

- Will the issue presented be dispositive of the case as a whole?
- Does the case present an issue of first impression?

In any event, the reason(s) stated should be compelling. Recent practice suggests that the most common issues approved for interlocutory appeal in criminal cases involve search and seizure claims, although a variety of other issues may grab the court's attention.

- Search and Seizure: Fourth Amendment and/or Article 1, Section 11
- Interrogations
- Double Jeopardy: Constitutional and/or Statutory Claims
- Delay in Bringing Charges: Due Process or Statute of Limitations
- Dismissal of Charges: Constitutionality and/or Statutory Interpretation
- Speedy Trial: Criminal Rule 4
- Discovery
- Waiver of Juvenile to Adult Court

Important Note: Bail is Not an Interlocutory Order. *Bradley v. State*, 649 N.E.2d 100, 106 (Ind. 1995) (“The denial of bail is deemed a final judgment appealable immediately, without waiting for the final judgment following trial.”). See also Kerr, [16A Ind. Prac., Criminal Procedure—Trial § 11.8](#) (April 2022 Update) (“A trial court’s determination of an issue concerning bail is a final judgment which is subject to an immediate appeal.”).

III. Motion in the Trial Court

The first step in pursuing an interlocutory appeal is seeking certification of the order being appealed from the trial court.

Deadline

A motion requesting certification of an order for interlocutory appeal must be filed in the trial court within thirty (30) days of the trial court’s order that a party seeks to appeal. Ind. Appellate Rule 14(B)(1)(a).

Trial courts may allow a belated motion for interlocutory appeal when good cause is shown. If trial counsel blows the thirty-day deadline, the trial court must make a finding that good cause justified the belated certification. Without such a finding, the Court of Appeals will dismiss the appeal for lack of jurisdiction. *Pipkin v. State*, 982 N.E.2d 1085 (Ind. Ct. App. 2013). When filing a motion for belated certification of an order for interlocutory appeal, counsel should specifically explain the good cause and include it in the proposed order tendered to the trial court with your motion. The court of appeals will afford considerable deference to the trial court’s determination of good cause. *State v. Foy*, 862 N.E.2d 1219, 1224 (Ind. Ct. App. 2007) (upholding trial court’s grant of a belated motion, filed four days late, when the trial court found “the State’s failure to timely file the appropriate Motion was not based upon a

disregarding of the time limit involved, but rather a mistake in calculation” of the time available to file the certification motion).

Content of Motion

The motion must: (1) identify the order sought to be certified, (2) include a concise statement of the issues to be addressed in the interlocutory appeal, and (3) explain the reasons why an interlocutory appeal should be granted. Ind. Appellate Rule 14(B)(1)(b). As to the third, the motion should specifically advance one or more of the three grounds cited in Rule 14(B)(1)(c): (1) the defendant will suffer substantial injury if the trial court’s erroneous ruling is not addressed until after a trial; (2) the order involves a “substantial question of law” that could be resolved on appeal and lead to “a more orderly disposition of the case”; and (3) the normal remedy of a direct appeal is not adequate.

In some cases, you might seek the State’s agreement (or lack of objection) to an interlocutory appeal. If the issues are significant ones that would prove dispositive of the case, it is often in the State’s interest to have them resolved in an interlocutory appeal rather than after a long and expensive trial.

Finally, you should include language in your motion requesting that the trial court stay the proceedings pending resolution of the request for an interlocutory appeal.

Tender a Proposed Order with the Motion

Most counties have local rules requiring counsel to tender a proposed order with any motion. This is especially important with a motion for interlocutory appeal. If granted, a copy of the order must be attached to the motion in the court of appeals. Your proposed order should include appropriate language and findings to advance your claim in the court of appeals, i.e., one or more of the grounds in Rule 14(B)(1)(c). In the absence of a proposed order from you, the trial court may draft an order that fails to recite any of these grounds. This will allow the State an easy opportunity to urge the court of appeals to deny your request. Without a proposed order to sign, the trial court may also attempt to designate certain issues for the interlocutory appeal. This would be inappropriate, as an interlocutory appeal is of “an interlocutory order”—and not specific issues.

In addition, the proposed order should include language granting a stay of the proceedings pending resolution of the interlocutory appeal. Without such language, the trial court might continue to schedule hearings or even hold a trial in the case.

The Importance of a Timely Ruling

A trial court does not have unlimited time to certify an order for interlocutory appeal. If a few weeks have passed without a ruling, you should inquire about the status of your motion. A motion is deemed denied if the trial court fails to take any action for thirty (30) days or fails to grant the motion within thirty (30) days of holding a hearing. Ind. Appellate Rule 14(B)(1)(e).

Effect of Denial

The trial court’s denial of a request to certify an order for interlocutory is the end of the matter. You cannot appeal that denial to the Indiana Court of Appeals. Rather, counsel should proceed to trial, renew all objection(s) to the evidence or procedure at trial, and raise the issue on direct appeal. A defendant may not pursue a guilty plea and later seek to raise the pre-trial issue on direct appeal. Alvey v. State, 911 N.E.2d 1248 (Ind. 2011); Cornelius v. State, 846 N.E.2d 354, 357 (Ind. Ct. App. 2007) (“When

a defendant pleads guilty he or she cannot question pre-trial orders after a guilty plea is entered.”); but cf. Douglas v. State, 878 N.E.2d 873, 878 (Ind. Ct. App. 2007) (allowing defendant who pleaded guilty without a plea agreement to raise an *ex post facto* claim that was thoroughly litigated in the trial court).

IV. Motion in the Court of Appeals

If your request for certification of the interlocutory order is granted by the trial court, you must next secure acceptance of the order for interlocutory appeal to the Indiana Court of Appeals. Therefore, it is essential to make a cogent and compelling case while following all the rules and meeting the deadlines.

Deadline

A motion requesting the court of appeals to accept jurisdiction over an interlocutory appeal must be filed within thirty (30) days of the date the trial court certified the order for interlocutory appeal. Ind. Appellate Rule 14(B)(2)(a). The rule does not allow for a belated motion to the court of appeals. See generally Haston v. State, 695 N.E.2d 1042, 1044 (Ind. Ct. App. 1998) (interpreting predecessor rule) (“Failure to timely perfect an interlocutory appeal results in forfeiture of the opportunity to pursue the appeal.”); cf. Young v. Estate of Sweeney, 808 N.E.2d 1217, 1219 (Ind. Ct. App. 2004) (finding no jurisdiction to hear interlocutory appeal and dismissing it sua sponte).

If the thirty days since certification has lapsed, the best course of action is to ask the trial court to re-certify the order under Rule 14(B)(1)(a); or, as a recent case suggests, you can file a repetitive motion or a motion to reconsider. See National Collegiate Athletic Ass’n v. Finnerty, 191 N.E.3d 211, 216 (Ind. 2022) (holding that App. R. 14(B) “broadly permits review of ‘other interlocutory orders,’ including an order on a repetitive motion to reconsider”).

Content of Motion

The motion to the court of appeals must include three important dates: (1) the date of the order you are seeking to appeal, (2) the date the motion for certification was filed in the trial court, and (3) the date the trial court’s certification of its interlocutory order was noted in the Chronological Case Summary. Ind. Appellate Rule 14(B)(2)(b). Most importantly, the motion must explain the reasons why the interlocutory appeal should be accepted. Id. This should focus on one or more of the grounds listed in Rule 14(B)(1)(c): (1) the defendant will suffer substantial injury if the trial court’s erroneous ruling is not addressed until after a trial; (2) the order involves a “substantial question of law” that could be resolved on appeal and lead to “a more orderly disposition of the case”; and (3) the normal remedy of a direct appeal is not adequate. The first two grounds are the most useful, and the cases discussed in Part II above provide some idea of the types of issues generally appropriate for interlocutory appeal.

Because the judges on the motions panel at the Court of Appeals will be reviewing several motions at the weekly conference to decide whether to accept your interlocutory appeal, be specific about the reasons that your case stands out from the crowd. A bare bones motion stating the issue involves suppression will not suffice. At CLEs, Court of Appeals judges have said the most common reason a motion for interlocutory appeal is denied is that they do not have enough information about the issue. One way to get the necessary information before the motions panel is to file a very comprehensive petition for interlocutory appeal in the trial court setting out in detail the pertinent facts, law and argument regarding why you should prevail. You can then attach that motion to your motion for interlocutory appeal in the Court of Appeals. It may seem like a lot of work, but if the Court of Appeals grants your motion for interlocutory appeal, you will already have a great foundation for your brief and will not have to start from scratch. As noted above, the Court of Appeals will be most interested in issues that will be

dispositive of the case—like a suppression motion that renders the State unable to proceed. Fact-specific claims are generally better resolved at trial, while legal questions are more suitable for interlocutory resolution. Be sure to emphasize if your case is one of first impression in Indiana.

Finally, the motion should follow all the requirements for motions explained in Rule 34 and Section III of this manual.

Submissions with the Motion

At a minimum, a party seeking an interlocutory appeal must submit with its motion two documents to the motion for interlocutory appeal in the court appeals: (1) the trial court's order certifying the order for interlocutory appeal and (2) the order being appealed. App. R. 14(B)(2)(c). As stated above, including a very comprehensive petition filed in the trial court that clearly sets out the facts, law and arguments can be very helpful. You will usually not have a transcript to include. If, for example, the case involves a challenge to the charging information, you should include a copy of it. Because the motions panel will be considering numerous motions at its weekly conference, carefully select only the attachments necessary and helpful to your case.

An Appearance Must be Filed with Motion

A party seeking to pursue an interlocutory appeal must file an Appearance with the motion. App. R. 14(B)(2).

If Motion is Denied

You may not seek rehearing or transfer from an order denying your motion for interlocutory appeal. App. R. 54(A) & 57(B). Therefore, in most cases the denial by the court of appeals is the end of the matter.

In an extraordinary case you may consider filing a motion to reconsider. As explained in Section III(H), Rule 34(B) allows parties to seek reconsideration of the ruling on a motion within ten (10) days. Counsel should not routinely ask the court to reconsider the denial of every motion. If, however, there has been a significant development since the initial motion, a motion to reconsider may be appropriate.

For example, in Zitlaw v. State, 880 N.E.2d 724 (Ind. Ct. App. 2008), trans. denied, the court initially denied the motion for interlocutory appeal by a 2-1 vote. The case involved a sting operation that affected more than twenty pending cases in Hamilton County, and a different judge had recently granted a motion to dismiss on the same facts. The State failed to perfect an appeal of that ruling while Zitlaw's petition was pending. Both the Attorney General and Hamilton County Prosecutor did not object to Zitlaw's motion to reconsider his interlocutory appeal to have "these legal questions decided by this Court prior to the twenty-something pending matters proceeding to trials." The motion was effectively captioned, "Motion to Reconsider Denial of Petition to Accept Jurisdiction of an Interlocutory Appeal Without Objection from the Attorney General," and it was granted by a 3-0 vote just ten days after it was filed.

If Motion Granted: Proceed to Briefing

If your motion for interlocutory appeal is granted by the court of appeals, most of the appellate rules apply just as they do in direct appeals. There are a few important exceptions, however.

1. Notice of Appeal: Fifteen (15) days

Although appellants normally have thirty (30) days to file a notice of appeal, those pursuing an interlocutory appeal must file a Notice of Appeal within fifteen (15) days of the court of appeals' order accepting the interlocutory appeal. App. R. 14(B)(3). Section I explains the important procedures for initiating an appeal and securing the transcript and clerk's record.

2. Extensions Disfavored

Appellate Rule 21(A) provides for expedited consideration by the court of interlocutory appeals. Consistent with that rule, extensions for additional time to file any briefs "are disfavored and will be granted only upon a showing of good cause." Ind. Appellate Rule 14(G)(1).

3. Deadlines May Be Shortened

Rule 14(G)(2) allows for a party to file a motion to shorten the deadlines within ten (10) days of the filing of the Notice of Appeal. These motions are uncommon and likely to be filed and granted only in cases of a time-sensitive nature and wide impact. For example, deadlines were shortened to allow for all briefs to be filed and oral argument to be held in just a month in a Marion County case involving the dismissal of criminal charges based on the failure of police officers to take their oath when the Indianapolis Police Department merged with the county sheriff to become the Indianapolis Metropolitan Police Department. State v. Oddi-Smith, 49S00-0710-CR-396. The case cast doubt on the ability of the State to prosecute thousands of cases.

Interlocutory Appeals in the Indiana Supreme Court

Almost all discretionary interlocutory appeals under Appellate Rule 14(B) must be filed in the Indiana Court of Appeals. Under Rule 14(I), cases in which "the State seeks the death penalty or in which the interlocutory order raises a question of interpretation of IC 35-50-2-9" are appealed directly to the Indiana Supreme Court.

Statutory Interlocutory Appeals: Appeals by the State

The State's right to appeal is statutory and requires an express grant of authority by the legislature. State v. Aynes, 715 N.E.2d 945, 948 (Ind. Ct. App. 1999). Rule 14(D) makes clear that the State may pursue interlocutory appeals. Indiana Code § 35-38-4-2(6) echoes the grounds of Appellate Rule 14(B)(1)(c) and allows the State to seek certification of an interlocutory order in the trial court and approval from the court of appeals to pursue an interlocutory appeal.

The State's right to appeal in criminal cases is broader. For example, other sections of the statute authorize an appeal by the State "[f]rom an order granting a motion to dismiss one (1) or more counts of an indictment or information" or "[f]rom an order granting a motion to suppress evidence, if the ultimate effect of the order is to preclude further prosecution of one (1) or more counts of an information or indictment." Ind. Code § 35-38-4-2(1) & (5). In the latter instances, the State may pursue an appeal without jumping through the 14(B) hoops. But cf. State v. Campos, 845 N.E.2d 1074 (Ind. Ct. App. 2006) (holding that the State cannot appeal the dismissal of one count of a multi-count information under the statute).

B. DCS APPEALS

I. The Rule

Rule 14.1. Expedited Appeal for Payment of Placement and/or Services

A. Applicability. This Rule governs appellate review per Indiana Code sections 31-34-4-7(f), 31-34-19-6.1(f), 31-37-5-8(g), and 31-37-18-9(d). All other appeals concerning children alleged to be in need of service or children alleged to be delinquent are not covered by this rule.

B. Notice of Expedited Appeal.

- (1) The Department of Child Services (“DCS”) shall file a Notice of Expedited Appeal with the Clerk within five (5) business days after the trial court's order of placement and/or services is noted in the Chronological Case Summary. (See Form #App.R. 9-1).
- (2) On the same day DCS files the Notice of Expedited Appeal, it shall serve the Notice on the trial court judge, the clerk of the trial court, the Court Reporter (if a Transcript, or any portion of a Transcript is requested), the county commissioners, the guardian ad litem, CASA, any juvenile who is the subject of the order if 14 years of age or older, counsel for the juvenile, the parents of the juvenile, the Attorney General, in the case of a juvenile delinquency matter the Chief Probation Officer and Prosecutor, and any other party of record.
- (3) The Notice of Expedited Appeal shall include all content required by Rule 9(F).
- (4) The certificate of service attached to the Notice of Expedited Appeal shall include (a) the name and address, and (b) the FAX number and e-mail address if known, of every person to whom it was sent.
- (5) Any party who has received the Notice of Expedited Appeal shall have five (5) business days from service of the Notice of Expedited Appeal to file an Appearance and request any additional other items to be included in the record. Failure to file an Appearance shall remove that party from the Appeal.
- (6) The trial court shall be considered a party to the Appeal if it files a timely appearance.

C. Transcript and Record.

- (1) The completion of the Transcript and the Record on Appeal shall take priority over all other appeal Transcripts and records. Within ten (10) business days after the filing of the Notice of Appeal is noted in the Chronological Case Summary, the assembly of the Clerk's Record shall be completed and any requested Transcript shall be prepared and filed, after which the clerk shall immediately issue and file a Notice of Completion of Clerk's Record (and a separate Notice of Completion of Transcript if assembly of the Clerk's Record is completed before the Transcript is filed) and shall immediately serve all parties to the Appeal by both: (i) U.S. mail or third-party commercial carrier; and (ii) personal service, electronic mail, or facsimile.
- (2) The Clerk's Record in appeals governed by this rule shall contain the pre-dispositional report and any attachments thereto, in addition to the other records listed in Appellate Rule 2(E). The trial court clerk is not obligated to index or marginally annotate the Clerk's Record, which shall be the responsibility of DCS.
- (3) On the eleventh (11th) business day following the filing of the Transcript, the trial court clerk shall transmit the Transcript to the Clerk without any further notice from the Clerk. Failure to meet this deadline shall require the trial court clerk to show cause to the Court on Appeal why

he or she should not be held in contempt. DCS may, but is not required to, file a show cause motion with the Court on Appeal concerning the trial court clerk's failure to meet this deadline.

D. Memoranda.

- (1) Any party on Appeal may file a memorandum, which may be in narrative form and need not contain the sections under separate headings listed in Appellate Rule 46(a).
- (2) Memoranda shall not exceed ten (10) pages unless limited to 4,200 words and shall adhere to the requirements of Appellate Rules 43(A)-(H), and (J). Memoranda exceeding ten (10) pages in length shall contain the word count certification required by Appellate Rule 44(F). Any factual statement shall be supported by a citation to a page where it appears in the record.
- (3) DCS shall have five (5) business days from the notation in the Chronological Case Summary of the filing of the Notice of Completion of Transcript (or the Notice of Completion of Clerk's Record if a Transcript was not requested) to file a memorandum stating why the trial court's decision should be reversed. DCS's memorandum shall be accompanied by an Appendix that shall contain copies of all relevant pleadings, motions, orders, entries, and other papers filed, tendered for filing, or entered by the trial court, including but not limited to the pre-dispositional report and all attachments thereto.
- (4) Any responding party shall have five (5) business days after DCS has filed its memorandum to file a responsive memorandum stating why the decision should be sustained or reversed, and to file any accompanying supplemental Appendix.
- (5) No reply memorandum shall be allowed.

E. Extensions of Time. Extensions of time are not allowed.

F. Rehearing on Appeal. A party may not seek rehearing of an appellate decision issued under this rule.

G. Outcome of Appeal. If DCS prevails on appeal, payment shall be made in accordance with Indiana Code sections 31-34-4-7(g), 31-34-19-6.1(g), 31-37-5-8(h), or 31-37-18-9(e), as the case may be.

H. Petition to Transfer. A Petition to Transfer must be filed no later than five (5) business days after the adverse decision of the Court of Appeals. A party who files a Petition to Transfer by mail or third-party commercial carrier shall also contemporaneously tender a copy to the Clerk's Office via facsimile. The Petition to Transfer shall adhere to the requirements of Appellate Rules 43(A)-(G), (J), and (K). Appellate Rules 43(H) and (I), 44, and 57 shall not apply. The Petition to Transfer shall not exceed one (1) page in length, excluding the front page, signature block and certificate of service, and shall notify the Supreme Court simply of the party's desire for the Supreme Court to assume jurisdiction over the appeal following the adverse decision of the Court of Appeals. A file-stamped copy of the Court of Appeals' opinion or memorandum decision shall be submitted with the Petition to Transfer. No brief in response shall be allowed. The Supreme Court will consider the merits of the Petition to Transfer based on the party's filings submitted to the Court of Appeals and on the Court of Appeals' opinion or memorandum decision.

I. Certification of Opinion. The Clerk shall certify the Court of Appeals' opinion or memorandum decision six (6) business days after it is handed down unless a timely Petition to Transfer has been filed and served in accordance with the preceding section. The Clerk shall certify any opinion of the Supreme Court immediately upon issuance.

J. Service. If a party provides service by mail or third-party commercial carrier pursuant to Rule 68(F)(2), then the party shall also provide service by contemporaneous fax or email on all parties whose FAX number or e-mail address is known by the serving party. Parties who are served by

contemporaneous FAX or e-mail shall not be entitled to the extension of time set forth in Appellate Rule 25(C). Any party filing an appearance after documents have been served shall promptly be served with all documents not previously provided to the later-appearing party.

II. Practical Considerations

This rule took effect January 1, 2009, and few cases have been litigated under it. The limited practice has highlighted a few things, however.

Scope of the Rule

The rule applies only to the DCS appeal of issues regarding the *payment for services*. The underlying appeal of the merits of the case (e.g., whether the child delinquent or was the child a CHINS) will proceed under the regular appellate rules and deadlines. Because of the significant liberty interests involved, counsel may consider seeking an expedited appeal of the merits of the case. See Section III(F).

Importance of Filing a (Timely) Appearance

If you plan to be involved in a DCS appeal, you must file an appearance in the court of appeals within five days of the filing of the Notice of Expedited Appeal. Failure to file a timely appearance will remove the non-filing party from the appeal.

Deadlines

The deadlines are much shorter. The notice of appeal must be filed by DCS within five days, the court reporter has only ten days to prepare the Transcript, and parties have only five days to write “memoranda” to argue their position.

Issues Not Addressed in the Rule

One court official described Rule 14.1 as a “piece of Swiss cheese,” explaining it should be placed over the existing rules and merely addresses those specific subjects it addresses. The appellate rules continue to govern all issues not addressed.

Standard of Review

Although “the statute creates in the juvenile court a presumption of correctness of the DCS final recommendations,” if a juvenile court reaches a contrary conclusion the standard of review is clearly erroneous. In re T.S., 906 N.E.2d 801 (Ind. 2009).