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## STATUTORY INSTRUMENTS

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# 2005 No. 2795

## The Family Procedure (Adoption) Rules 2005

### PART 19

### APPEALS

#### Scope and interpretation

**171.**—(1) The rules in this Part apply to appeals to—

- (a) the High Court; and
- (b) a county court.

(2) This Part does not apply to an appeal in detailed assessment proceedings against a decision of an authorised court officer. (Rules 47.20 to 47.23 of the CPR deal with appeals against a decision of an authorised court officer in detailed assessment proceedings.)

(3) In this Part—

“appeal” includes an appeal by way of case stated;

“appeal court” means the court to which an appeal is made;

“appeal notice” means an appellant’s or respondent’s notice;

“appellant” means a person who brings or seeks to bring an appeal;

“lower court” means the court from whose decision an appeal is brought;

“respondent” means—

- (a) a person other than the appellant who was a party to the proceedings in the lower court and who is affected by the appeal; and
- (b) a person who is permitted by the appeal court to be a party to the appeal.

(4) This Part is subject to any rule, enactment or practice direction which sets out special provisions with regard to any particular category of appeal.

#### Parties to comply with the practice direction

**172.** All parties to an appeal must comply with the relevant practice direction.

#### Permission

**173.**—(1) An appellant or respondent requires permission to appeal—

- (a) against a decision in assessment proceedings relating to costs in proceedings where the decision appealed against was made by a district judge or a costs judge; or
- (b) as provided by the relevant practice direction.

(2) An application for permission to appeal may be made—

- (a) to the lower court, if that court is a county court or the High Court, at the hearing at which the decision to be appealed was made; or
- (b) to the appeal court in an appeal notice.

(Rule 174 sets out the time limits for filing an appellant's notice at the appeal court. Rule 175 sets out the time limits for filing a respondent's notice at the appeal court. Any application for permission to appeal to the appeal court must be made in the appeal notice (see rules 174(1) and 175(3).)

(3) Where the lower court refuses an application for permission to appeal, a further application for permission to appeal may be made to the appeal court.

(4) Where the appeal court, without a hearing, refuses permission to appeal, the person seeking permission may request the decision to be reconsidered at a hearing.

(5) A request under paragraph (4) must be filed within 7 days beginning with the date on which the notice that permission has been refused was served.

(6) Permission to appeal will only be given where—

- (a) the court considers that the appeal would have a real prospect of success; or
- (b) there is some other compelling reason why the appeal should be heard.

(7) An order giving permission may—

- (a) limit the issues to be heard; and
- (b) be made subject to conditions.

(8) In this rule “costs judge” means a taxing master of the Supreme Court.

### **Appellant's notice**

**174.**—(1) Where the appellant seeks permission from the appeal court it must be requested in the appellant's notice.

(2) The appellant must file the appellant's notice at the appeal court within—

- (a) such period as may be directed by the lower court, if that court is a county court or the High Court; or
- (b) (i) where the lower court makes no such direction; or
- (ii) the lower court is a magistrates' court,

14 days beginning with the date on which the decision of the lower court that the appellant wishes to appeal was made.

(3) Unless the appeal court directs otherwise, an appeal notice must be served on the persons referred to in paragraph (4)—

- (a) as soon as practicable; and
- (b) in any event not later than 7 days,

after it is filed.

(4) The persons referred to in paragraph (3) are—

- (a) each respondent;
- (b) any children's guardian, reporting officer or children and family reporter; and
- (c) where the appeal is from a magistrates' court, the court officer.

(5) Unless the appeal court directs otherwise, a court officer will serve the appeal notice.

### **Respondent's notice**

**175.**—(1) A respondent may file a respondent's notice.

(2) A respondent who—

- (a) is seeking permission to appeal from the appeal court; or
- (b) wishes to ask the appeal court to uphold the order of the lower court for reasons different from or additional to those given by the lower court,

must file a respondent's notice.

(3) Where the respondent seeks permission from the appeal court it must be requested in the respondent's notice.

(4) A respondent's notice must be filed within—

- (a) such period as may be directed by the lower court, if that court is a county court or the High Court; or
- (b)
  - (i) where the lower court makes no such direction; or
  - (ii) the lower court is a magistrates' court,14 days beginning with the date referred to in paragraph (5).

(5) The date referred to in paragraph (4) is—

- (a) the date on which the respondent is served with the appellant's notice where—
  - (i) permission to appeal was given by the lower court; or
  - (ii) permission to appeal is not required;
- (b) the date on which the respondent is served with notification that the appeal court has given the appellant permission to appeal; or
- (c) the date on which the respondent is served with notification that the application for permission to appeal and the appeal itself are to be heard together.

(6) Unless the appeal court directs otherwise, a respondent's notice must be served on the appellant and any other respondent—

- (a) as soon as practicable; and
- (b) in any event not later than 7 days,

after it is filed.

(7) Unless the appeal court directs otherwise, a court officer will serve a respondent's notice.

### **Variation of time**

**176.**—(1) An application to vary the time limit for filing an appeal notice must be made to the appeal court.

(2) The parties may not agree to extend any date or time limit set by—

- (a) these Rules;
- (b) the relevant practice direction; or
- (c) an order of the appeal court or the lower court.

(Rule 12(2)(a) provides that the court may extend or shorten the time for compliance with any rule, practice direction or court order (even if an application for extension is made after the time for compliance has expired).)

(Rule 12(2)(b) provides that the court may adjourn or bring forward a hearing.)

## **Stay**

**177.** Unless the appeal court or the lower court, other than a magistrates' court, orders otherwise an appeal shall not operate as a stay of any order or decision of the lower court.

## **Amendment of appeal notice**

**178.** An appeal notice may not be amended without the permission of the appeal court.

## **Striking out appeal notices and setting aside or imposing conditions on permission to appeal**

**179.—**(1) The appeal court may—

- (a) strike out the whole or part of an appeal notice;
- (b) set aside permission to appeal in whole or in part; or
- (c) impose or vary conditions upon which an appeal may be brought.

(2) The court will only exercise its powers under paragraph (1) where there is a compelling reason for doing so.

(3) Where a party was present at the hearing at which permission was given he may not subsequently apply for an order that the court exercise its powers under paragraphs (1)(b) or (c).

## **Appeal court's powers**

**180.—**(1) In relation to an appeal the appeal court has all the powers of the lower court.

(Rule 171(4) provides that this Part is subject to any enactment that sets out special provisions with regard to any particular category of appeal.)

(2) The appeal court has power to—

- (a) affirm, set aside or vary any order or judgment made or given by the lower court;
- (b) refer any application or issue for determination by the lower court;
- (c) order a new hearing;
- (d) make orders for the payment of interest; and
- (e) make a costs order.

(3) The appeal court may exercise its powers in relation to the whole or part of an order of the lower court.

(Rule 12 contains general rules about the court's case management powers.)

(4) If the appeal court—

- (a) refuses an application for permission to appeal;
- (b) strikes out an appellant's notice; or
- (c) dismisses an appeal,

and it considers that the application, the appellant's notice or the appeal is totally without merit, the provisions of paragraph (5) must be complied with.

(5) Where paragraph (4) applies—

- (a) the court's order must record the fact that it considers the application, the appellant's notice or the appeal to be totally without merit; and
- (b) the court must at the same time consider whether it is appropriate to make a civil restraint order.

### **Hearing of appeals**

- 181.**—(1) Every appeal will be limited to a review of the decision of the lower court unless—
- (a) a practice direction makes different provision for a particular category of appeal; or
  - (b) the court considers that in the circumstances of an individual appeal it would be in the interests of justice to hold a re-hearing.
- (2) Unless it orders otherwise, the appeal court will not receive—
- (a) oral evidence; or
  - (b) evidence which was not before the lower court.
- (3) The appeal court will allow an appeal where the decision of the lower court was—
- (a) wrong; or
  - (b) unjust because of a serious procedural or other irregularity in the proceedings in the lower court.
- (4) The appeal court may draw any inference of fact which it considers justified on the evidence.
- (5) At the hearing of the appeal a party may not rely on a matter not contained in his appeal notice unless the appeal court gives permission.

### **Assignment of appeals to the Court of Appeal**

- 182.**—(1) Where the court from or to which an appeal is made or from which permission to appeal is sought (“the relevant court”) considers that—
- (a) an appeal which is to be heard by a county court or the High Court would raise an important point of principle or practice; or
  - (b) there is some other compelling reason for the Court of Appeal to hear it,
- the relevant court may order the appeal to be transferred to the Court of Appeal.
- (2) This rule does not apply to proceedings in a magistrates' court.

### **Reopening of final appeals**

- 183.**—(1) The High Court will not reopen a final determination of any appeal unless—
- (a) it is necessary to do so in order to avoid real injustice;
  - (b) the circumstances are exceptional and make it appropriate to reopen the appeal; and
  - (c) there is no alternative effective remedy.
- (2) In paragraphs (1), (3), (4) and (6), “appeal” includes an application for permission to appeal.
- (3) This rule does not apply to appeals to a county court.
- (4) Permission is needed to make an application under this rule to reopen a final determination of an appeal.
- (5) There is no right to an oral hearing of an application for permission unless, exceptionally, the judge so directs.
- (6) The judge will not grant permission without directing the application to be served on the other party to the original appeal and giving him an opportunity to make representations.
- (7) There is no right of appeal or review from the decision of the judge on the application for permission, which is final.
- (8) The procedure for making an application for permission is set out in the practice direction.