

# In the Supreme Court of the State of Idaho

IN RE: AMENDMENTS TO THE )  
IDAHO APPELLATE RULES )  
\_\_\_\_\_ )

ORDER

The Court, having reviewed a recommendation from the Idaho Appellate Rules Advisory Committee to amend the Idaho Appellate Rules, and the Court being fully informed,

NOW, THEREFORE, IT IS HEREBY ORDERED that the Idaho Appellate Rules be amended as follows:

## **Rule 8. Amicus curiae.**

(a) When Permitted. An attorney, or person or entity through an attorney, may appear as amicus curiae in any proceeding by request of the Supreme Court; or by leave of the Supreme Court upon written ~~application~~ motion served upon all parties.;

(b) Motion for Leave to File. The motion must be accompanied by the proposed brief and setting forth ~~the particular employment, if any,~~ the interest of the ~~applicant~~ movant in the appeal or proceeding and the name of the party in whose support the amicus curiae would appear. The ~~application~~ motion shall also state whether leave is sought to file an amicus curiae brief or participate in oral argument, or both.

(c) Contents and Form. An amicus brief must comply with Rule 36. In addition to the requirements of Rule 36, the cover must identify the party or parties supported and indicate whether the brief supports affirmance or reversal. An amicus brief need not comply with Rule 35, but it must include the following:

(1) a table of contents, with page references;

(2) a table of cases (alphabetically arranged), statutes, and other authorities, with page references;

(3) a concise statement of the identity of the amicus curiae, its interest in the case, and the source of its authority to file;

(4) a statement that indicates whether:

(i) a party's counsel authored the brief in whole or in part;

(ii) a party or a party's counsel contributed money that was intended to fund preparing or submitting the brief; and

(iii) a person or entity - other than the amicus curiae, its members, or its counsel - contributed money that was intended to fund preparing or submitting the brief and, if so, identifies each such person or entity; and

(5) an argument, which may be preceded by a statement of the case and which need not include a statement of the applicable standard of review.

(d) Time for Filing. An amicus curiae must file its brief, accompanied by a motion for leave to file, no later than seven (7) days after the initial brief of the party being supported is filed. An amicus curiae that does not support either party must file its brief no later than seven (7) days after the appellant's initial brief is filed. The court may grant leave for later filing, specifying the time within which an opposing party may answer.

(e) Objections. Any objection to the appearance of an amicus curiae must be made by motion within 14 days of service of the ~~application~~ motion for leave to file in the manner provided for motions under Rule 32.

(f) Reply Brief. Except by the court's permission, an amicus curiae may not file a reply brief.

(g) Oral Argument. An amicus curiae may participate in oral argument only with the court's permission.

(h) Order. Leave to appear as amicus curiae shall be by written order of the Supreme Court which shall specify the manner of appearance by the amicus curiae attorney ~~and state the time for filing of any amicus curiae brief.~~

#### **Rule 9. Appearance of attorneys not licensed in Idaho.**

Upon written motion of a licensed Idaho attorney, at least 14 days before a hearing or argument, and upon order of the Supreme Court an attorney not licensed in Idaho may be permitted to appear and argue before the Supreme Court in association with such Idaho licensed attorney. The motion, or a supporting statement, shall certify that the attorney not licensed in Idaho is a licensed attorney in good standing in another specific state or jurisdiction and shall otherwise be in substantially the form found in Idaho Bar Commission Rule 227(j). If an attorney is has been granted pro hac vice admission pursuant to Idaho Bar Commission Rule to appear in any case, then the attorney may continue to appear in that case before the Supreme Court without obtaining an order pursuant to this rule.

#### **Rule 13. Stay of Proceedings Upon Appeal or Certification.**

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**(b) Stay Upon Appeal - Powers of District Court - Civil Actions.** In civil actions, unless prohibited by order of the Supreme Court, the district court shall have the power and authority to rule upon the following motions and to take the following actions during the pendency of an appeal;:

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(18) Take any action and rule upon all matters, including conduct of a trial, during a permissive appeal under Rule 12, I.A.R., if approved by the Supreme Court under Rule 13.4(a), I.A.R. ~~During a permissive appeal under Rule 12, I.A.R., take any actions and rule upon all matters unaffected by the permissive appeal, including conducting a trial,~~

unless a stay is entered by either the district court or the Supreme Court under Rule 13.4(c), I.A.R.

(19) During an appeal from a partial judgment certified as final under Rule 54(b), I.R.C.P., take any actions and rule upon any matters unaffected by the Rule 54(b) judgment, including conducting a trial of the issues remaining in the case, unless a stay is entered by either the district court or the Supreme Court under Rule 13.4(b), I.A.R.

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**(f) Stay Upon Permissive Appeal.**

(1) Stay during processing of motion for permission to appeal. The filing of a motion for permission to appeal under Rule 12 shall not automatically stay the action or proceeding nor the enforcement of the interlocutory judgment, order or decree. After a motion for permission to appeal has been filed, the district court or administrative agency, or the Supreme Court, may grant a stay in the manner provided in this Rule for a stay during an appeal.

(2) Stay after a motion for permission to appeal has been granted. Except as provided in subsections (a), (b), (c), (d) and (e) of this Rule, ~~the granting of a motion for permission to appeal under Rule 12 by the Supreme Court automatically stays the entire action or proceeding until the appeal has terminated, and during that time the district court or administrative agency shall have no power or authority over the action or proceeding, except as provided in subsections (a), (b), (c), (d) and (e) of this Rule.~~ Provided, the granting of the motion for permission to appeal does not stay the enforcement of any judgment, order or decree, but the district court or administrative agency, or the Supreme Court, may grant a stay in the manner provided in this Rule for a stay during an appeal.

**Rule 13.4. Delegation of Jurisdiction to District Court During an Appeal.**

**(a) Permissive Appeal Under Rule 12, I.A.R.** During a permissive appeal under Rule 12, I.A.R., ~~the Supreme Court may, by order, delegate jurisdiction to the district court~~ retains jurisdiction to take specific actions and rule upon specific matters unaffected by the permissive appeal, which may include jurisdiction to conduct a trial of issues. ~~A motion for an order under this rule may be filed with the Supreme Court by any party in the district court action or the administrative proceeding. Provided, however, that the district court may enter an order staying the remainder of the case pending final disposition of the permissive appeal, either on its own motion or on the motion of any party.~~

**(b) Appeal from a Partial Judgment Certified as Final under Rule 54(b), I.R.C.P.** During an appeal from a partial judgment certified as final under Rule 54(b), I.R.C.P., the district court retains jurisdiction to take actions and rule upon matters unaffected by the Rule 54(b) judgment, which may include jurisdiction to conduct a trial of the issues remaining in the case. Provided, however, that the district court may enter an order staying the remainder of the case pending an appeal of the Rule 54(b) judgment, either on its own motion or on the motion of any party.

**(c) Motion for Stay.**

(1) **Motion to District Court.** A motion for stay under ~~this subdivision (a) or (b) of this Rule~~ may be filed with the district court at any time during the pendency of the permissive appeal or appeal of the Rule 54(b) 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. Within fourteen (14) days after the hearing, the district court shall enter an order granting or denying the motion for stay and setting forth the reasoning for its decision.

(2) **Motion to Supreme Court.** If the district court denies the motion for stay, or fails to rule upon the motion within twenty-one (21) days after the filing of the motion, the moving party may apply to the Supreme Court for a stay. If the district court grants a stay, any party may apply to the Supreme Court to modify or vacate the stay. A copy of the district court's order granting or denying the motion to stay must be attached to the motion filed with the Supreme Court. Any order of the Supreme Court shall take precedence over any order entered by the district court.

**Rule 27. Clerk's or Agency's Record - Number - Clerk's Fees - Payment of Estimated Fees - Time for Preparation - Waiver of Clerk's Fee.**

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(c) **Payment of Estimated Fees.** ~~Before a notice of appeal is filed~~ Upon the filing of a notice of appeal, or within three (3) working days thereof, the appellant shall pay the clerk an estimated record fee as computed by the clerk of the district court or administrative agency in accordance with subparagraph (b) of this rule, provided, if the estimated fee has not been made within two (2) days after the conclusion of the trial or proceeding, the estimated fees for preparation of the record shall be deemed to be the sum of \$100.00 until the actual fee has been computed.

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**Rule 30. Augmentation or Deletions From Transcript or Record.**

(a) At any time before the issuance of an opinion, ~~Any~~ party may move the Supreme Court to augment or delete from the settled reporter's transcript or clerk's or agency's record. Such a motion shall be accompanied by a statement setting forth the specific grounds for the request and attaching a copy of any document sought to be augmented to the original motion which document must have a legible filing stamp of the clerk indicating the date of its filing, or the moving party must establish by citation to the record or transcript that the document was presented to the district court. In order for augmented pages to be easily identified whether the motion is granted entirely or in part, each page of any document attached to the motion must be separately and sequentially numbered in the following format: Aug. p. 1. Any request for augmentation with a transcript that has yet to be transcribed must identify the name of the court reporter(s) along with the date and title of the proceeding(s), and an estimated number of pages, and must contain a certificate of service on the names reporter(s). The motion and statement shall be served

upon all parties. Any party may within fourteen (14) days after service of the motion, file a brief or memorandum in opposition thereto. Unless otherwise expressly ordered by the Supreme Court such motion shall be determined without oral argument. The reporter's transcript and clerk's or agency's record may also be augmented or portions deleted by stipulation of the parties and order of the Supreme Court. The filing of a motion to augment shall not suspend or stay the appellate process or the briefing schedule.

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### **Rule 32. Motions - Time for Filing - Briefs.**

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(d) **Briefs or Statements to Accompany Motions.** All motions shall include or be accompanied by a brief, statement, or affidavit in support thereof and service shall be made upon all parties to the appeal. Absent a certificate that the motion is uncontested, the non-moving party shall, as soon as practicable, file a notice of non-objection if the party does not intend to object. Any party may file a brief or statement in opposition to the motion within 14 days from service of the motion. Any application for an extension of time to perform an act under this rule must be accompanied by an affidavit setting forth the reasons or grounds in support thereof. If the opposing party has been contacted and has no objection to the motion the following certificate may be attached:

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### **Rule 34. Briefs on Appeal - Number - Length - Time for Filing - Extension - Augmentation.**

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(b) **Length of Briefs.** No brief in excess of 50 pages, excluding covers, the caption page, the table of contents, the table of authorities, the certificate of service, and any addendums or exhibits, shall be filed without consent of the Supreme Court. In an appeal on unitary review of a capital criminal and post-conviction case, no brief in excess of 100 pages, excluding covers, the caption page, the table of contents, the table of authorities, the certificate of service, and any addendums or exhibits, shall be filed without consent of the Supreme Court.

(c) **Time for Filing.** Appellant's brief shall be filed with the clerk of the Supreme Court within 35 days of the date that the reporter's transcript and the clerk's or agency's record have been filed with the Supreme Court. The respondent's and cross-appellant's brief, which may be joined in one brief, shall be filed within 28 days after the service of appellant's brief. The cross-respondent's brief, if any, shall be filed within 28 days after the cross-appellant's brief. Any reply brief shall be filed within 21 days after service of any respondent's brief. ~~Briefs of amicus curiae shall be filed within the time set in the order of the Supreme Court granting leave to file an amicus curiae brief.~~

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**Rule 35. Content and Arrangement of Briefs.**

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(b) **Respondent's Brief.** The brief of the respondent shall contain the following divisions under appropriate headings:

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(6) **Argument.** The argument ~~shall~~ should contain the contentions of the respondent with respect to the issues presented on appeal, the reasons therefor, with citations to the authorities, statutes and parts of the transcript and record relied upon.

(7) **Conclusion.** A short conclusion stating the precise relief sought.

(c) **Other Briefs.** The appellant or cross-appellant may file a brief in reply to the brief of the respondent or cross-respondent within the time limit specified by Rule 34(c) which may contain additional argument in rebuttal to the contentions of the respondent. An amicus curiae brief may be permitted by order of the Court, pursuant to Rule 8 ~~may contain a statement of the case, points and authorities, and additional argument on any issue raised by the parties in the appeal or as allowed by order of the Supreme Court.~~ If the respondent has filed a cross-appeal, the appellant shall file a cross-respondent's brief which shall contain all of the requirements of Rule 35(b), above, and, unless otherwise ordered by the court, it shall be combined with appellant's reply brief.

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(e) **References in Briefs to the Reporter's Transcript and Clerk's or Agency's Record.** References to the reporter's transcript on appeal shall be made by the designation "Tr" followed by the volume, page and line number abbreviated "Vol. I, p. 14, L. 16". References to the clerk's or agency's record on appeal shall be made by the designation "R" followed by the volume, page and line number abbreviated "Vol. I, p. 14, L. 16". References to the reporter's transcript and clerk's record must be within the body of the brief, and shall not be included as footnotes or endnotes.

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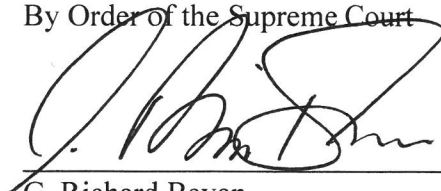
IT IS FURTHER ORDERED, that this order and these amendments shall be effective July 1, 2022.

IT IS FURTHER ORDERED, that the above designation of the striking of words from the Rules by lining through them, and the designation of the addition of new portions of the Rules by underlining such new portion is for the purposes of information only as amended, and NO OTHER AMENDMENTS ARE INTENDED. The lining through and underlining shall not be considered a part of the permanent Idaho Appellate Rules.

IT IS FURTHER ORDERED, that the Clerk of the Court shall cause notice of this Order to be published in one issue of *The Advocate*.

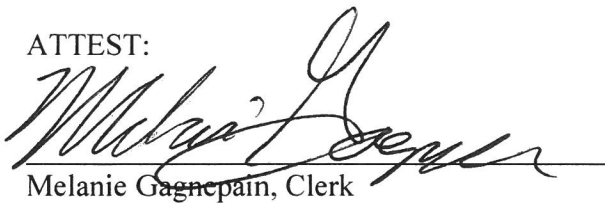
DATED this 28<sup>th</sup> day of April, 2022.

By Order of the Supreme Court



G. Richard Bevan  
Chief Justice, Idaho Supreme Court

ATTEST:



Melanie Gagnepain, Clerk

I, Melanie Gagnepain, Clerk of the Supreme Court/  
Court of Appeals of the State of Idaho, do hereby  
Certify that the above is a true and correct copy of the  
order entered in the above entitled  
cause and now on record in my office. WITNESS my  
hand and the Seal of this Court 4-28-22  
Melanie Gagnepain, Clerk

By  Deputy