Appellate Rules Advisory Committee Meeting
September 14, 2012

Present: Chief Justice Roger Burdick, Judge Karen Lansing, Steve Kenyon, Lori Fleming, Sara Thomas, Christopher Pooser, Clive Strong, and Cathy Derden.

Amended Notice of Appeal. Rule 17(m) provides that in the event the notice of appeal erroneously states any of the information and requirements of the rule, or additional facts arise after filing the notice of appeal, then an amended notice can be filed; however, there is no time limit in the rule for filing an amended notice. It was proposed that a time limit for filing be set and that the requirement of striking and underlining to indicate the amendments be eliminated. Not having any kind of time limit impacts the disposition of the appeal because the filing often requires resetting briefing. Post judgment orders are already included in the appeal so an amended notice is not necessary when one is entered. These orders can be added with a motion to augment the record. Though the amended notice can be used to make corrections to information in the notice of appeal, the SAPD's office and others also use it to request additional record and transcripts. However, once the settlement period is over and the record is filed with the Supreme Court, transcripts should be added by filing a motion to augment. The Clerk's office emails the parties when the record is filed with the Supreme Court. The one exception to the need to amend the notice of appeal on a different time frame is capital cases due to the way post-conviction is handled in those cases. The Committee voted unanimously to recommend the following amendment:

> Rule 17. Notice of appeal – Contents.
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> (m) Amended Notice of Appeal. - In the event the original notice of appeal erroneously states any of the information and requirements of this rule or additional facts arise after the filing of the initial notice of appeal, the appellant may thereafter file an amended notice of appeal correctly setting forth the facts and information. ~~The amended notice of appeal shall indicate changes from the original notice of appeal by means of strikethroughs and underlining.~~ An amended notice of appeal shall be filed with the clerk of the district court in the same manner as the original notice of appeal but no filing fee shall be required. If the original notice of appeal was timely filed from an appealable judgment, order or decree, the amended notice of appeal will relate back to the date of filing of the original notice of appeal. If the amended notice of appeal includes a request for preparation of additional transcripts, the notice must include an estimate of the number of additional pages requested and a certification that the amended notice has been served on each reporter of whom a request for additional transcript is made. Except in capital cases, an amended notice of appeal may not be filed after the record has been filed with the Supreme Court.

There was also a recommendation that there be separate appellate rules for capital cases.

Petitions for review. It was questioned whether the timely filing of a petition for review should be jurisdictional the same as a notice of appeal, notice of cross-appeal and a petition for rehearing. Sara Thomas reminded the committee that this issue was reviewed in 2005 and at that time the decision was made not to add petitions for review to Rule 21, the effect of failure to comply with time limits, because the failure to file a petition for rehearing is not considered ineffective assistance of counsel while the failure to file a petition for review upon request of the defendant is so considered. The SAPD's office sends out a letter to each client advising as to whether a petition for review is warranted. If they advise against it, then they do not file it unless the client specifically requests them to do so. If the SAPD files a motion to accept a late petition then it is because for some reason that advisory letter was not sent to the client. This allows them a remedy when that happens and it actually does not happen too often. The Committee voted not to change Rule 21 or Rule 46 to make a timely filing of a petition for review jurisdictional.

Expedited reviews. Pursuant to Rule 12.2, custody cases are expedited except when it comes to a petition for rehearing or a petition for review; thus, it was proposed that this aspect of the case be expedited as well. The proposal was to shorten the time frame for each from 21 days to 14 days and to require that the brief be filed with the petition or the petition would be summarily dismissed. Currently a party has another 14 days to file a brief after filing the petition and may get extensions on the brief. Committee members were concerned about changing the time frame and believed requiring the brief to be filed with the petition would expedite these petitions.

The Committee voted to recommend the following amendments to Rules 12.2, 42 and 118:

Rule 12.2. Expedited review for appeals in custody cases brought pursuant to Rule 11.1 or Rule 12.1**.**

This rule governs procedures for an expedited review of an appeal brought as a matter of right pursuant to Rule 11.1 or a permissive appeal granted pursuant to Rule 12.1.

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(g) Petitions for rehearing and review. Any petition for rehearing or review shall be accompanied by the brief in support of the petition or the petition shall be summarily dismissed.

Rule 42. Petition for rehearing.

(a) Time for Filing - Filing Fee. Petitions for rehearing must be physically filed with the Clerk of the Supreme Court, together with the filing fee, within 21 days after the filing date of the Court's opinion, and must be served upon all parties to the appeal or proceeding. If the opinion is modified, other than to correct a clerical error, an aggrieved party may physically file another petition for rehearing within 21 days from the date of the modified opinion and serve all adverse parties

in the appeal or proceeding. No response to any petition for rehearing shall be made except upon direction of the Court.

(b) Briefs on the Petition. A brief or memorandum in support of the petition must be filed within 14 days of the filing date of the petition and shall be typewritten on letter size paper. If the appeal was expedited pursuant to Rule 12.2, the brief in support of the petition shall be filed with the petition or the petition will be summarily dismissed. An original and six (6) copies of the petition and brief shall be filed with the Clerk of the Supreme Court.

Rule 118. Petition for review by the Supreme Court.

(a) Petition, Time for Filing, Ruling by Supreme Court. Any party to a proceeding aggrieved by opinion or order of the Court of Appeals may physically file a petition for review with the Clerk of the Supreme Court within twenty-one (21) days after the announcement of the opinion or order, or after the announcement of an order denying rehearing, after an opinion is modified without rehearing in a manner other than to correct a clerical error. It is not necessary to file a petition for rehearing with the Court of Appeals before filing a petition for review under this rule. A brief in support of the petition for review must be filed with the petition or within fourteen (14) days thereafter; however, if the appeal was expedited pursuant to Rule 12.2, the brief in support of the petition shall be filed with the petition or the petition will be summarily dismissed. Such petition shall be processed within the time limits and in the manner prescribed for a petition for rehearing of a Supreme Court opinion as provided by Rule 42. There shall be no response to a petition for review, unless the Supreme Court requests a party to respond to the petition for review before granting or denying the same. The filing of a petition for review under this rule does not preclude the filing of a timely petition for rehearing under Rule 116; and no action will be taken by the Supreme Court on a petition for review until the Court of Appeals has made a final ruling upon and determination of all petitions for rehearing. If a petition for review is granted, the Supreme Court will include in its order the sequence for the filing of briefs by the parties before oral argument. A brief in support of or in opposition to a petition for review need not be bound nor have any colored cover.

Permissive Appeals. Due to the criteria for a permissive appeal these are always assigned to the Supreme Court; however, Rule 12 states that a permissive appeal shall proceed as an appeal as if it were a matter of right, which could be interpreted to mean that they need to go through the assignment process. Steve Kenyon proposed amending the rule to clarify these appeals are assigned directly to the Supreme Court. The Committee voted in favor of recommending the following amendment:

Rule 12. Appeal by permission.

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(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.

There was also discussion as to whether permissive appeals and certified questions from the federal court should be expedited since these both involve the interruption of a case. However, there was no information on how this would impact the court and a party may always file a motion to expedite.

Rule 9. This rule provides for appearance of attorneys not licensed in Idaho. The rule states that they must file a motion to appear before participating in oral argument; however, it has been the understanding of the Idaho State Bar that if an attorney has been granted an I.B.C.R. 227 order for admission in the lower court proceeding then that attorney is admitted for the life of the case, even if it goes on appeal. The proposal was to clarify in the rule that if an attorney is appointed at the lower court then that appointment continues through the appeal. The Committee voted to recommend the following amendment:

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. If an attorney is granted admission pursuant to Idaho Bar Commission Rule 227 to appear in any case, then the attorney may continue to appear in the case before the Supreme Court without obtaining an order pursuant to this rule.

Rule 11 and Vexatious Litigants. Idaho Court Administrative Rule 59, the new rule on vexatious litigants, provides in subsection (f) that a "prefiling order entered by an administrative district judge designating a person as a vexatious litigant may be appealed to the Supreme Court by such person as a matter of right." Thus, it was proposed the appellate rules be amended to reflect this and to provide that the appeal may to be filed directly with the Supreme Court rather than with the district court. In a recent appeal, the district court clerk held the notice of appeal due to the order stating the person could not file anything without permission. Since timely filing is jurisdictional, this could present a problem if the notice is held and not filed. The Committee voted to recommend the following amendment to Rule 11:

Rule 11. Appealable judgments and orders.
An appeal as a matter of right may be taken to the Supreme Court from the following judgments and orders:

(a) Civil Actions. From the following judgments and orders of a district court in a civil action:
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(9) An order designating a person a vexatious litigant pursuant to Idaho Court Administrative Rule 59, in which case the notice of appeal may be filed with either the district court clerk or the Clerk of the Supreme Court.

In addition, the Committee recommended that I.C.A.R. 59 be amended to state the notice of appeal may be filed with the district court or the Supreme Court.

Rule 59. Vexatious Litigation.
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(f) A prefiling order entered by an administrative district judge designating a person as a vexatious litigant may be appealed to the Supreme Court by such person as a matter of right by filing a notice of appeal with either the district court clerk or the Clerk of the Supreme Court.

This proposal as well as all of the other proposed amendments will be submitted to the Administrative Conference for review.

Rule 11.2. The Committee also reviewed an order that had been entered by the Supreme Court pursuant to I.C.A.R. 59 declaring a person a vexatious litigant in that court and discussed whether an appellate rule was needed in this situation. The Committee found that the existing Rule 59 was sufficient but proposed adding language to Rule 11.2 warning that a person could be found to be a vexatious litigant. The Committee voted to recommend adding a new subsection (b) to the rule as follows:

Rule 11.2. Signing of notice of appeals, petitions, motions, briefs and other papers; sanctions.
(a). Every notice of appeal, petition, motion, brief and other document of a party represented by an attorney shall be signed by at least one (1) licensed attorney of record of the state of Idaho, in the attorney's individual name, whose address shall be stated before the same may be filed.
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(b) The court may declare a party a vexatious litigant pursuant to Idaho Court Administrative Rule 59.

The Committee also recommended that similar language be added at the end of Civil Rule 11(a)(1).

Rule 11(a)(1). Signing of pleadings, motions, and other papers; sanctions.
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The court may declare a party a vexatious litigant pursuant to Idaho Court Administrative Rule 59.

Supersedeas bonds. I.C. § 13-302 addresses appeals to the Supreme Court and states:

> 13-202. Stay of proceedings pending appeal. (1) Upon and after an appeal of a judgment or order of the district court in a civil action, the judgment or order appealed from, or any other order or proceeding in the action may be stayed by the district court or the supreme court as provided by rule of the supreme court.
> (2) If a plaintiff in a civil action obtains a judgment for punitive damages, the supersedeas bond or cash deposit requirements shall be waived as to that portion of the punitive damages that exceeds one million dollars ($1,000,000) if the party or parties found liable seek a stay of enforcement of the judgment during the appeal.
> (3) If the plaintiff proves by a preponderance of the evidence that a party bringing an appeal, for whom the supersedeas bond or cash deposit requirement has been waived, is purposefully dissipating its assets or diverting assets outside the jurisdiction of the United States courts, waiver may be rescinded and the bond or cash deposit requirements may be reinstated for the full amount of the judgment.
> (4) The supersedeas bond or cash deposit requirements may also be waived in any action for good cause shown as provided by rule of the supreme court.

Because this is a procedural issue, the Idaho Appellate Rules prevail but Rule 13 does not allow for any discretion to waive for good cause the requirement that an appellant post a bond or cash deposit. It also does not incorporate subsection (2) specifically requiring that any supersedeas bond or cash deposit be waived for punitive damages in excess of $1,000,000. The Committee was asked to consider whether Rule 13 should be amended to allow for the waivers provided by statute. The Committee was in favor of allowing the district court the discretion to waive a bond for good cause as there may be times when the bond impedes access to the court for an appeal in a case where the appeal should be available. However, the Committee was unsure of the rationale for adopting the $1,000,000 limit on punitive damages when setting the bond amount and wanted more information before recommending that the rule follow the statutory language. Cathy Derden will circulate information on this and then the Committee will vote on this proposal.

Challenge to Legislative Redistricting. Idaho Constitution, Article III, Section (2)(5) provides that the Supreme Court shall have original jurisdiction over actions involving challenges to legislative apportionment. I.C. § 72-1501 addresses the commission for reapportionment and I.C. § 72-1508 provides that the final report of the commission shall be filed with the office of the secretary of state not more than ninety (90) days after the commission has been organized. Last year there was proposed legislation to add two new statutes: 72-1509, to allow for an appeal to the supreme court from a congressional or legislative redistricting plan adopted by the commission, with the procedure to be as provided by supreme court rule, and § 72-1510 to allow

for a challenge to an existing plan when there is a new federal census available. Previous challenges to redistricting plans have been brought as an original action to the court pursuant to the constitutional provision and have asked for injunctive relief. In response, the court has issued an order setting out the procedure for the case, such as dates for briefing and oral argument. The timeliness of these challenges can be problematic and the Committee discussed adding a provision under Rule 5 on special writs to address challenges to a final report and establish a jurisdictional time limit. Since it is an original proceeding it would then proceed as other original writs that are filed. The time will run from the time the final report is filed with the Secretary of State and a 35 day time limit was suggested. Rules 21 and 46 would also need to be amended to make it clear the time is jurisdictional. While a time limit can be established for challenging a final report, it would be difficult to establish a time frame for a challenge to an existing plan on the basis of failure to adopt a new plan when there is a new census. This second circumstance would require a petition for a writ of mandate and fall under the existing rule.

The Committee voted to recommend a new subsection in Rule 5 addressing these challenges. The recommended amendments to Rules 5, 21 and 46 are as follows:

Rule 5. Special writs and <u>original</u> proceedings

(a) Special writs. Any person may apply to the Supreme Court for the issuance of any extraordinary writ or other proceeding over which the Supreme Court has original jurisdiction. Except for petitions for writs filed by incarcerated persons and petitions for writs of habeas corpus, petitions for writs and motions seeking to intervene in such petitions shall contemporaneously be served by mail on all affected parties, including the real party in interest. There shall be no response to applications filed pursuant to this rule unless the Supreme Court requests a party to respond to the application before granting or denying the same. The Supreme Court shall process petitions for such special writs as are established by law in the manner provided in this rule.

<u>(b) Challenge to a final redistricting plan</u>. <u>In accord with Article III, Section 2(5) of the Idaho Constitution, any registered voter, or any incorporated city or county in this state, may file an original action challenging a congressional or legislative redistricting plan adopted by the Commission on Reapportionment. Such challenges shall be filed within 35 days of the filing of the final report with the office of the Secretary of State by the Commission.</u>

(~~b~~ <u>c</u>) Filing Fee--Briefs--Number.

(~~c~~ <u>d</u>) Procedure for Issuance of Writs.

Rule 21. Effect of failure to comply with time limits.
The failure to physically file a notice of appeal or notice of cross-appeal with the clerk of the district court or an administrative agency, or the failure to physically

file a petition for rehearing or a challenge to a final redistricting plan with the clerk of the Supreme Court, each within the time limits prescribed by these rules, shall be jurisdictional and shall cause automatic dismissal of such appeal or petition, upon the motion of any party, or upon the initiative of the Supreme Court. Failure of a party to timely take any other step in the appellate process shall not be deemed jurisdictional, but may be grounds only for such action or sanction as the Supreme Court deems appropriate, which may include dismissal of the appeal.

Rule 46. Extension of time generally.
The time prescribed by these rules for any act, except the physical filing of a notice of appeal, a notice of cross-appeal, ~~or~~ petition for rehearing, or a challenge to a final redistricting plan may be enlarged by the Court or any Justice thereof for good cause shown upon the motion of a party. Applications for extensions of time for filing briefs shall also be subject to the requirements of Rule 34(e). Any motion for the extension of time to do an act must be served upon all parties, but the order enlarging the time for performance may be issued immediately and ex parte in the discretion of the Court or any Justice thereof, subject to review upon any written objection filed within seven (7) days of service of the motion. Any order of extension of time to do an act shall be served by the Clerk on all parties.

Rule 25. The Clerk's office is still receiving requests for the standard transcript in civil cases and requests that do not specify the date and title of the proceeding or the reporter's name and suggested further clarification in this rule. The Committee voted to recommend the following amendments:

Rule 25. Reporter's transcript - Contents.
The reporter's transcript shall contain those portions of the record designated by the parties in conformance with and as defined in this rule.

(a) Designation of Transcript. The parties are responsible for designating the proceedings necessary for inclusion in the reporter's transcript on appeal. Parties are encouraged and expected to specify a transcript more limited than the standard transcript where appropriate. All requests for transcripts, including a request for a standard transcript in a criminal appeal, 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.

(b) Partial Transcript.
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(c) Standard Transcript -
(1) Criminal Appeals. If any party requests the reporter's standard transcript", the transcript shall include all testimony and proceedings reported by the reporter in the trial of the action or proceedings or the hearing at which the guilty plea was

entered and the sentencing hearing, except the following which shall not be included in a standard transcript:
(a ~~1~~) The voir dire examination of the jury.
(b ~~2~~) The opening statements and closing arguments of counsel.
(c ~~3~~) The conference on requested instructions, the objections of the parties to the instructions, and the court's ruling thereon.
(d ~~4~~) The oral presentation by the court of written instructions given to the jury and reported by the reporter. While the written requested instructions and the written instructions given by the district court in an action shall not be included in the reporter's transcript, they shall be included in the clerk's record if specifically requested pursuant to Rules 19 or 28(c).
(e ~~5~~) All other hearings and proceedings which were heard by the trial court at some time other than during the course of the trial. Transcripts of pre-trial and post-trial proceedings other than the entry of a guilty plea or sentencing must be specifically designated and requested.
(f ~~6~~) Oral arguments on appeal to the district court.

(2) Civil Appeals. There is no standard transcript in civil appeals. Requested proceedings 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.

(d) Standard Transcript in Death Penalty
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Rule 23. The judge's retirement fund for filings was raised by $8.00 effective July 1, 2012, and the civil filing fee schedule was amended to reflect this increase in the filing fee for appeals to the Supreme Court. The Committee noted that Rule 23 on fees needed to be amended to also reflect this increase. In addition, the Committee recommended adding a reference to challenges to a final redistricting plan under subsection (6) on petitions for special writs.

Rule 23. Filing fees and clerk's certificate of appeal - Waiver of appellate filing fee.
(a) Filing Fees. The Clerk of the Supreme Court shall charge the following filing fees for appeals and petitions:

Filing Fee

(1) Appeals in civil cases except for habeas corpus and post-conviction relief ..... $~~86.00~~0 94.00
(2) Appeals from the Public Utilities Commission ..... $ ~~86.00~~ 94.00
(3) Appeals from the Industrial Commission ..... $ ~~86.00~~ 94.00
(4) Any cross-appeals in the appeals set out in (1), (2) and (3) above ..... $ ~~86.00~~ 94.00
(5) Applications to intervene ..... $ ~~86.00~~ 94.00
(6) Petitions pursuant to Rule 5 ~~for a special writ~~ under the original jurisdiction of the Supreme Court except for habeas corpus and criminal cases...$76.00

Rule 31. Exhibits. Several years ago the rules were changed so that original exhibits are retained at the district court and photocopies sent to this court, though occasionally a party may request that an original be sent. Rule 31 requires that originals be returned. The clerk's office is now destroying the copies at the end of the appeal. I.C.A.R. 40 on retention of appellate records states the entire case file in civil and criminal appeals is to be preserved for ten years following the date of the remittitur and the clerk's office inquired as to whether it should be keeping the copies. With electronic records this problem will go away in the future. The clerk's office is now scanning appellate files but has not been scanning the exhibits, which can be quite large in some cases. It was proposed that all exhibits be scanned and retained as part of the file so it is clear what exhibits were actually sent to the court as part of the appeal. The Committee voted to recommend the following amendment to Rule 31:

> Rule 31. Exhibits, recordings and documents.
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> (e) Disposition of Exhibits. Unless otherwise ordered by the Supreme Court under Rule 31.1, the Supreme Court will retain the exhibits until ninety (90) days after final determination of the appeal, at which point the court will ~~then~~ return all original exhibits and retain an electronic copy of all documentary exhibits.

Additional information circulated after the meeting on I.C. § 13-302

In 2003, subsections (2) and (3) were added to § 13-202 as part of a broader package that also amended I.C. § 6-803, § 6-1603, and § 6-1604. It was House Bill 92 and the link to the bill can be found at http://legislature.idaho.gov/legislation/2003/H0092.html.

Statement of Purpose / Fiscal Impact

STATEMENT OF PURPOSE RS12581

This legislation would modify rules for the determination and imposition of tort liability in Idaho. It would modify three provisions of tort reform enacted in 1987 but not revisited since. It would clean up the repeal of joint and several liability by repealing exceptions for environmental damages and damages associated with medical devices and pharmaceutical products. It would reduce the cap on noneconomic damages to $250,000. It would impose limits on punitive damages. Finally, it would modify the appeal bond requirements to enable defendants to appeal large awards for punitive damages by posting a bond for compensatory damages and the first million dollars of punitive damages.

This is the explanation given at the beginning:

H0092.....by JUDICIARY, RULES AND ADMINISTRATION
TORTS - Amends existing law to provide for several liability for certain torts; to lower the limitation on the recovery of noneconomic damages; to revise the evidentiary standard to clear and convincing evidence for the award of punitive damages; to provide a limitation on the recovery of punitive damages; and to waive a portion of the bonding and case deposit requirements on appeals of judgments for punitive damages, with exceptions.

This is the amendment to I.C. § 13-202.

13-202. STAY OF PROCEEDINGS PENDING APPEAL. **(1)** Upon and after an appeal of a judgment or order of the district court in a civil action, the judgment or order appealed from, or any other order or proceeding in the action may be stayed by the district court or the ~~S~~**s**upreme ~~C~~**c**ourt as provided by ~~R~~**r**ule of the ~~S~~**s**upreme ~~C~~**c**ourt.

(2) If a plaintiff in a civil action obtains a judgment for punitive damages, the supersedeas bond or cash deposit requirements shall be waived as to that portion of the punitive damages that exceeds one million dollars ($1,000,000) if the party or parties found liable seek a stay of enforcement of the judgment during the appeal.

(3) If the plaintiff proves by a preponderance of the evidence that a party bringing an appeal, for whom the supersedeas bond or cash deposit requirement has been waived, is purposefully dissipating its assets or diverting assets outside the jurisdiction of the United States courts, waiver may be rescinded and the bond or cash deposit requirements may be reinstated for the full amount of the judgment.

(4) The supersedeas bond or cash deposit requirements may also be waived in any action for good cause shown as provided by rule of the supreme court.

Since by rule the supersedeas bond amount is the amount of the judgment or order, plus 36% of such amount, I.A.R. 13 (b)(15), a large punitive award could make it impossible to appeal in some cases.

At the meeting all Committee members were in favor of adding a provision for waiver for good cause. Thus, two possible amendments are proposed.

Amendment ONE – Add in provision relating to good cause

Rule 13 (b) (15) Stay execution or enforcement of a money judgment upon the posting of a cash deposit or supersedeas bond by a fidelity, surety, guaranty, title or trust company authorized to do business in the state and to be a surety on undertakings and bonds, either of which must be in the amount of the judgment or order, plus 36% of such amount. Provided, an agreement not to

execute on the judgment made pursuant to Rule 16(b) may be filed in lieu of such bond or cash deposit. Any bond filed pursuant to this rule shall state that the company issuing or executing the same agrees to pay on behalf of the appellant all sums found to be due and owing by the appellant by reason of the outcome of the appeal, within 30 days of the filing of the remittitur from the Supreme Court, up to the full amount of the bond or undertaking. A copy of the bond, agreement not to execute, or notification of a cash deposit shall be served upon all parties to the appeal at the time of the application for the stay of execution. Any objection to the sufficiency of a cash deposit or bond posted under this rule shall be waived unless a written objection is made in the form of a motion and filed with the district court within 21 days of the filing of such bond or cash deposit. The district court shall rule upon such objection in the same manner as any other motion under the I.R.C.P. If the district court stays execution or enforcement of a money judgment upon the posting of a cash deposit or supersedeas bond, the court may, upon motion or application, cause or direct any judgment lien filed to be released. If the appellate court has vacated any money judgment and remanded only for a determination of the amount of the judgment, the district court may continue or modify the amount of any cash deposit or supersedeas bond posted in connection with the appeal. Any cash deposit may be applied to the judgment upon filing of the remittitur from the Supreme Court. <u>The supersedeas bond or cash deposit requirements may be waived in any action for good cause shown. However, if the plaintiff proves by a preponderance of the evidence that a party bringing an appeal, for whom the supersedeas bond or cash deposit requirement has been waived, is purposefully dissipating its assets or diverting assets outside the jurisdiction of the United States courts, waiver may be rescinded and the bond or cash deposit requirements may be reinstated for the full amount of the judgment.</u>

Amendment TWO – Also add in the provision set out in I.C.§ 13-202 limiting the bond on punitive damages

Rule 13 (b) (15) Stay execution or enforcement of a money judgment upon the posting of a cash deposit or supersedeas bond by a fidelity, surety, guaranty, title or trust company authorized to do business in the state and to be a surety on undertakings and bonds, either of which must be in the amount of the judgment or order, plus 36% of such amount. Provided, an agreement not to execute on the judgment made pursuant to Rule 16(b) may be filed in lieu of such bond or cash deposit. Any bond filed pursuant to this rule shall state that the company issuing or executing the same agrees to pay on behalf of the appellant all sums found to be due and owing by the appellant by reason of the outcome of the appeal, within 30 days of the filing of the remittitur from the Supreme Court, up to the full amount of the bond or undertaking. A copy of the bond, agreement not to execute, or notification of a cash deposit shall be served upon all parties to the appeal at the time of the application for the stay of execution. Any objection to the sufficiency of a cash deposit or bond posted under this rule shall be waived unless a written objection is made in the form of a motion and filed with the district court within 21 days of the filing of such bond or cash deposit. The district court shall rule upon such objection in the same manner as any other motion under the I.R.C.P. If the district court stays execution or enforcement of a money judgment upon the posting of a cash deposit or supersedeas bond, the court may, upon motion or application, cause or direct any judgment lien filed to be released. If the appellate court has vacated any money judgment and remanded only for a determination of the amount of the

judgment, the district court may continue or modify the amount of any cash deposit or supersedeas bond posted in connection with the appeal. Any cash deposit may be applied to the judgment upon filing of the remittitur from the Supreme Court. If a plaintiff obtains a judgment for punitive damages, the supersedeas bond or cash deposit requirements shall be waived as to that portion of the punitive damages that exceeds one million dollars ($1,000,000) if the party or parties found liable seek a stay of enforcement of the judgment during the appeal. In addition, the supersedeas bond or cash deposit requirements may be waived in any action for good cause shown. However, if the plaintiff proves by a preponderance of the evidence that a party bringing an appeal, for whom the supersedeas bond or cash deposit requirement has been waived, is purposefully dissipating its assets or diverting assets outside the jurisdiction of the United States courts, waiver may be rescinded and the bond or cash deposit requirements may be reinstated for the full amount of the judgment.