

# In the Supreme Court of the State of Idaho

IN RE: AMENDMENTS TO THE IDAHO  
APPELLATE RULES

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**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 5. Special writs and proceedings.**

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(c) **Filing Fee – Briefs—Number.** Special writs shall issue only upon petitions verified by the party beneficially interested therein and upon briefs in support thereof filed with the Clerk of the Supreme Court with payment of the appropriate filing fee. No filing fee shall be required with a petition for writ of habeas corpus which is filed in connection with a criminal case or post-conviction relief proceeding. Petitioner shall file the original petition and brief with the Clerk of the Supreme Court. No copies are required.

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## **Rule 13. Stay of proceedings upon appeal or certification.**

(a) **Temporary Stay in Civil Actions Upon Filing a Notice of Appeal or Notice of Cross-Appeal.** Unless otherwise ordered by the district court, upon the filing of a notice of appeal or notice of cross-appeal all proceedings and execution of all judgments or orders in a civil action in the district court, shall be automatically stayed for a period of fourteen (14) days; provided, however, that there shall be no automatic stay of any civil protection order issued pursuant to Idaho Code Sections 18-7907 or 39-6306. Any further stay of proceedings and execution of judgments covered by this rule shall be only by order of the district court or the Supreme Court. Any stay of orders or proceedings in the Industrial Commission or the Public Utilities Commission shall be as provided in Rule 13(d) and (e).

(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. ~~or during an appeal from a partial judgment certified as final under Rule 54(b) I.R.C.P.~~, if approved by the Supreme Court under Rule 13.4(a), 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.

~~(19)~~(20) Rule upon any application for court appointed counsel in a civil case, including a petition for habeas corpus or a petition for post-conviction relief.

~~(20)~~(21) Rule upon any motion pertaining to the taking of depositions pursuant to Rule 27(b), I.R.C.P.

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#### **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., ~~or an appeal from a partial judgment certified as final under Rule 54(b) I.R.C.P.~~, the Supreme Court may, by order, delegate jurisdiction to the district court to take specific actions and rule upon specific matters, 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.

(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.

(1) Motion to District Court. A motion for stay under this subdivision may be filed with the district court at any time during the pendency of the 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