I.A.R. 5 Special Writs and Proceedings

Idaho Appellate Rule 5. Special Writs and 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.

(b) Challenge to a final redistricting plan. In accord with Article III, Section 2(5) of the Idaho Constitution, any registered voter, any incorporated city or any 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.

(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 an original and six copies of the petition and brief with the Clerk of the Supreme Court.

(d) Procedure for Issuance of Writs. Special writs, except writs of habeas corpus, shall issue as herein provided. The Supreme Court acting through three (3) or more members, or by two (2) or more members when the Court is in recess, may issue a writ directing the respondent to act in accordance with the writ, or to appear or respond at the time fixed in the writ to show cause why the relief requested in the petition should not be granted. The court may enter an order providing for briefing and oral argument prior to issuance of a writ or an order to show cause. If such an order is entered, briefing shall be conducted in the manner outlined in the order as supplemented by these rules. The briefs shall be in the form prescribed by Rule 32(e). A majority of the entire Court, may also direct the respondent to so act, or to refrain from acting, as directed in the writ, pending hearing and upon such conditions as the Court may impose. Upon its issuance, a copy of the petition, brief and writ shall immediately be served upon all affected parties including the real party in interest as concerns the requested relief, which real party must be named in the petition and the writ. Service shall be made in the manner and within the time limit set by the Court. Appearance in response to the writ by any interested party shall be by verified answer and by brief. If no appearance is made, the Court may grant any requested relief justified by the petition. If appearance is made, the Court may schedule the matter for oral argument or decide the matter on the record. Issues of fact, if any, shall be determined in the manner ordered by the Court.

(e) Denial of Writ or Issuance of Peremptory Writ. If the Court denies a petition for a writ of mandamus or prohibition or issues a peremptory writ, the order denying the petition or the peremptory writ, as the case may be, shall be a separate document that only states the relief ordered. It shall not include a record of prior proceedings; the Court’s legal reasoning, findings of

fact, or conclusions of law; or the report of a master.

(f) Memorandum of Costs. No later than fourteen (14) days after the issuance of an order denying the petition or granting a peremptory writ, the prevailing party may file a memorandum of costs. Such memorandum must state that to the best of the party's knowledge and belief the items are correct and that the costs claimed are in compliance with this rule. A memorandum of costs mailed to the Court shall be deemed filed upon the date of mailing. Failure to file a memorandum of costs within the period prescribed by this rule shall be a waiver of the right to costs.

(g) Costs Allowed. Unless otherwise ordered by the Court, the costs allowed shall include:

1. Court filing fee.

2. Actual fees for service of the petition or any document in the action whether served by a public officer or other person.

3. Expenses or charges of certified copies of documents admitted as evidence in a hearing or the trial of the action.

4. The cost of a master appointed by the Court.

5. Reasonable costs of the preparation of exhibits admitted in evidence in a hearing or trial of the action, but not to exceed the sum of $500 for all of such exhibits of each party.

6. Witness fees of $20.00 per day for each day in which a witness, other than a party or expert, testifies in the trial of the action.

7. Travel expenses of witnesses who travel by private transportation, other than a party, who testify in the trial of the action, computed at the rate of $.30 per mile, one way, from the place of residence, whether it be within or without the state of Idaho; travel expenses of witnesses who travel other than by private transportation, other than a party, computed as the actual travel expenses of the witness not to exceed $.30 per mile, one way, from the place of residence of the witness, whether it be within or without the state of Idaho.

8. Cost of reporter's transcript of a trial before a master in the action, including the cost of computer-searchable disks filed with the Supreme Court under Rule 26.1(c), but excluding the cost of all other disks.

9. Reasonable expert witness fees for an expert who testifies at a deposition or at the trial of the action not to exceed the sum of $2,000 for each expert witness for all appearances.

10. Charges for reporting and transcribing of a deposition taken in preparation for trial of an action, whether or not read into evidence in the trial of an action.

11. Reasonable attorney's fees, which may include paralegal fees and the reasonable cost of automated legal research (Computer Assisted Legal Research). The claim for attorney fees as costs shall be supported by a statement of the legal basis for the award and an affidavit of the attorney stating the basis and method of computation of the attorney fees claimed. The allowance of attorney fees by the court under this rule is not to be construed as fixing the fees between attorney and client.

(h) Objections to Costs. No later than fourteen (14) days after the date of service of the memorandum of costs, any party may object to the claim for costs of another party by filing and

serving on the adverse party an objection to part or all of such costs, stating the reasons in support thereof. An objection to costs shall be deemed filed upon mailing and shall be heard and determined by the Court as an objection to the application for costs.

(i) Number of Copies. An original and six copies of the memorandum of costs, objections to costs, and briefs in support of or in opposition thereof shall be filed with the Clerk of the Supreme Court.

(j) Petitions for Writ of Habeas Corpus. Petitions for writs of habeas corpus shall be processed as provided by law.

(Adopted March 25, 1977, effective July 1, 1977; amended March 19, 2009, effective July 1, 2009; amended November 20, 2012, effective January 1, 2013; amended and effective January 21, 2016.)

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