Appellate Rules Advisory Committee Meeting Minutes
December 1, 2020 at 9:00 a.m.

Present: Chief Justice Roger Burdick, Chair; Chief Judge Molly Huskey, Judge Jason Scott, Judge Thomas Sullivan, Bobbi Dominick, Christopher Pooser, Justin Curtis, Kenneth Jorgensen, Ben McGreevy, Melanie Gagnepain, Michael Mehall, and Lori Fleming. Adam Triplett also joined the meeting as an observer.

Rule 8. Amicus Curiae. Idaho Appellate Rule 8 governs the participation of amicus curiae in appellate proceedings. A member of the Appellate Practice Section of the Idaho State Bar ("IAPS") suggested that the rule be amended to mirror the language of Federal Rule of Appellate Procedure 29(a)(6), which specifies the time for filing and criteria for granting motions for leave to file amicus briefs. Alternatively, the IAPS member suggested that a wholesale adoption of the federal rule may be the best course of action. The Committee discussed the proposal but, overall, was not in favor of it. The focus of the discussion was on whether an amendment to Rule 8 is necessary to address an existing problem. The Committee recognized that the rule currently does not set forth any time limits in which motions to appear as amicus curiae and amicus briefs must be filed. However, the Committee did not believe that importing the language of the federal rule would be appropriate in light of the differences between the federal procedures and Idaho appellate practice. Right now, the decisions whether to allow amicus briefing and in what timeframe any amicus briefs must be filed lie within the discretion of the Court. Most members of the Committee agreed that this discretionary system is working and that any issues regarding the timing of a motion to appear as amicus curiae or the filing of an amicus brief can be addressed on a case-by-case basis, by order of the Court. Ultimately, the Committee voted to table the proposal, but Chief Justice Burdick indicated he would take the Committee's thoughts on this issue back to the Court.

Rule 13(a) and I.R.C.P. 83(e)(1). Automatic Stay of Proceedings on Appeal. Idaho Appellate Rule 13(a**)** provides for an automatic 14-day stay of all district court judgments or orders in a civil action upon the filing of a notice of appeal. Rule 83(e)(1), I.R.C.P., similarly provides for an autmatic14-day stay of magistrate judgments or orders upon the filing of a notice of appeal to the district court. The Committee considered a proposal to amend these rules to exempt civil protection orders from orders that are automatically stayed when a notice of appeal is filed. Judge Sullivan addressed the Committee and explained that civil protection orders are issued after a finding by the court that there is an immediate and present danger of domestic violence. The orders always have a no contact component, but they may also require the perpetrator of the violence to move out of the parties' shared residence and/or may address child custody issues. Judge Sullivan stated that getting civil protection orders into the system requires quite a bit of coordination between the court, the clerk, and the sheriff's office. He indicated that he does not see any good policy reason why such orders should be automatically stayed—and the protections put in place by the order temporarily undone—merely because a notice of appeal has been filed.

The Committee discussed the proposal and Judge Sullivan's comments. Judge Scott questioned whether the automatic stay provisions of I.A.R. 13(a) and I.R.C.P. 83(e)(1) even apply to injunctive orders, like civil protections orders. He suggested that, if the Committee decided a clarification was necessary, it should propose amending the rules to exempt all injunctive orders from the automatic stay provisions, not just civil protection orders. The Committee was divided about whether all injunctive orders should be exempted from the automatic stay provisions, and Chief Justice Burdick indicated he would raise the issue with the Court. As to the original proposal, the Committee agreed that the rules should be amended to clarify that civil protection orders issued pursuant to I.C. § 39-6306 (domestic violence protections orders) are not automatically stayed upon the filing of a notice of appeal. Judge Sullivan also suggested, and the Committee agreed, that protection orders issued pursuant to I.C. § 18-7907 (protection orders for malicious harassment), should be exempted from the automatic stay provisions, as well. Proposed amendments to I.A.R. 13(a) and I.R.C.P. 83(e)(1) will be drafted and circulated for a vote after the meeting.

Rules 13(b) and 13.4. Stay of District Court Proceedings on Appeal of a Partial Judgment Certified as Final under I.R.C.P. 54(b). Idaho Appellate Rules 13(b)(18) and 13.4 currently provide that, when an appeal is taken from a partial judgment that is certified as final under I.R.C.P. 54(b), the entirety of the district court case is stayed and the district court has no power to take action unless approved by the Supreme Court. *See also* I.R.C.P. 54(b)(2) ("If a Rule 54(b) Certificate is issued on a partial judgment and an appeal is filed, the trial court loses all jurisdiction over the entire action, except as provided in Rule 13 of the Idaho Appellate Rules."). Judge Scott proposed that these rules be amended so that an appeal of a Rule 54(b) judgment does not automatically result in a stay of the balance of the civil case and that the decision whether to enter a stay be made by the district court, rather than by the Supreme Court, in the first instance.

Judge Scott addressed the Committee and explained that the entry of a Rule 54(b) certificate represents a determination by the district court that a portion of the case represents a discrete appellate unit from the remaining issues. Judge Scott suggested that, having been the one to make that determination, the district court, not the Supreme Court, is actually in the best position to determine whether the balance of the case should proceed or be stayed. He also suggested that, because the issues remaining after the entry of a Rule 54(b) judgment are ordinarily unaffected by the Rule 54(b) judgment, the default should be that the balance of the district court case should proceed unless the district court or the Supreme Court is persuaded that it should not. In Judge Scott's view, this changed approach would be more consistent with the purpose of Rule 54(b), as well as with the text of I.R.C.P. 62(d), which states: "When an appeal is taken from the district court to the Supreme Court, the proceedings in the district court *upon the judgment or order appealed from* is stayed as provided by the Idaho Appellate Rules." (Emphasis added). Judge Scott perceives this language as providing for a stay only of what is actually decided by the judgment from which the appeal is taken, not from what is left of the case following the entry of that judgment.

The Committee discussed the proposal and generally agreed that, following the entry and appeal of a Rule 54(b) judgment, the district court is in a better position than the Supreme Court to decide whether the balance of the district court case should proceed or be stayed. Judge Huskey expressed her concern that the issues decided in a Rule 54(b) judgment are not always discrete from the other issues that remain in the case and that allowing the district court to proceed while an appeal of the Rule 54(b) judgment is pending may result in having to unwind the district court proceedings if the appeal is successful. For example, the district court may enter a partial judgment dismissing a claim against a single party but allowing the same claim to proceed against other parties. If the trial of that claim against the remaining parties proceeds and the Rule 54(b) judgment is reversed, there may be a need for a new trial as to all of the parties. Judge Scott addressed Judge Husky's concern and suggested it is inappropriate to issue a Rule 54(b) certificate when the issues decided by the partial judgment are not discrete from the other issues that remain in the case. He stated that, if the rule is properly applied, the risks of having to unwind any district court proceedings that took place during the pendency of the appeal from the partial judgment would not exist. In any event, under his proposal, a party could still seek a stay of the balance of the district court proceedings if appropriate. Right now, Rule 13.4 creates a *de facto* stay of the balance of the district court case and imposes an obligation on the parties to seek approval from the Supreme Court before any aspect of the case is allowed to continue. In Judge Scott's view, the current procedure creates a disincentive to enter a Rule 54(b) certificate on a partial judgment because, once that happens and an appeal is filed, the district court immediately loses all control over the rest of the case.

Ultimately, the Committee agreed with Judge Scott's proposal. The consensus was that, upon appeal of a Rule 54(b) judgment, the balance of the district court case should not automatically be stayed. Instead, the district court should be the one to make the initial decision whether to stay the case, either on its own motion or on the motion of a party. The Committee recognized there may be instances in which the Rule 54(b) certificate should not have been entered and/or the issues decided by the Rule 54(b) judgment are not entirely discreet from other issues remaining in the case, such that allowing the balance of the case to continue would not be appropriate. The Committee thus agreed that, while the initial decision whether to enter a stay of the balance of the case should be made by the district court, a party who disagrees with the district court's ruling should be permitted to file a motion with the Supreme Court, much like the procedure that currently exists for seeking permissive appeals. The Committee's proposal will require amendments to Idaho Appellate Rules 13(b)(18) and 13.4, as well as to I.R.C.P. 54(b)(2). The proposed amendments will be drafted and circulated for a vote after the meeting.

Rule 28. Standard Clerk's Record. The Committee considered a proposal that Idaho Appellate Rule 28 be amended to include jury instructions as part of the standard clerk's record in both civil and non-capital criminal cases. The proposal originated with Justice Stegner, who observed that, as a matter of practice, the reporting of jury instructions is usually waived and, as a result, the instructions are not included in either the clerk's record or the reporter's transcript. Some

members of the Committee had no issue with the proposal since including the written instructions in the Clerk's Record would not significantly add to the cost of the appeal. However, other Committee members opposed the proposal. In particular, Judge Huskey noted that she had never had a case where a party challenging the jury instructions did not include the instructions as part of the record on appeal. Both Judge Huskey and Chief Justice Burdick expressed concern that including the jury instructions in every civil and non-capital criminal case, irrespective of whether the jury instructions are identified as an issue on appeal, would open the door to more issues than it would solve, including by encouraging parties to raise unpreserved challenges to the instructions. They also noted that, unless the record also included the jury instruction conference, including the jury instructions in every case would not be particularly useful. Ultimately, the Committee agreed that the rule should not be amended as proposed and that the burden should still be on the parties raising jury instruction issues to request that the instructions be included in the clerk's record.

Rule 29. Necessity of Hearing for Objections to the Record or Reporter's Transcript. Idaho Appellate Rule 29(a) states, in part: "Any objection made to the reporter's transcript or clerk's or agency's record must be accompanied by a notice setting the objection for hearing and shall be heard and determined by the district court or administrative agency from which the appeal is taken." The Committee was advised that at least one district court judge interprets the rule to require a hearing, even where the opposing party has stipulated or otherwise indicated in writing that the record should be corrected in the manner specified in the objection. The Committee considered and voted to approve a proposal to amend the rule, as follows:

> **Idaho Appellate Rule 29. Settlement and Filing of Reporter's Transcript and Clerk's or Agency's Record.**
>
> (a) Settlement of Transcript and Record. Upon the completion of the reporter's transcript, the reporter shall lodge the original and all copies with the clerk of the district court or administrative agency. Upon the receipt of the reporter's transcript and upon completion of the clerk's or agency's record, the clerk of the district court or administrative agency shall serve copies of the reporter's transcript and clerk's or agency's record upon the parties by serving one copy of the transcript and record on the appellant and one copy of the transcript and record on the respondent. In all appeals from criminal prosecutions and post-conviction relief petitions service shall be made upon the attorney general of the state of Idaho, as representative of the state. Service may be by personal delivery or by mail. If service is made by mail it shall be accompanied by a certificate indicating the date of mailing. If there are multiple parties appellant or respondent the clerk shall mail or deliver a notice of the lodging of the reporter's transcript and clerk's or agency's record to all attorneys or

> parties appearing in person, stating that the transcript and record have been lodged, and further stating that the clerk will serve the same upon the parties upon receipt of a stipulation of the parties, or order of the district court or administrative agency, as to which parties shall be served with the transcript and record. The parties shall have 28 days from the date of the service of the transcript and the record within which to file objections to the transcript or the record, including requests for corrections, additions or deletions. In the event no objections to the reporter's transcript or clerk's or agency's record are filed within said 28-day time period, the transcript and record shall be deemed settled. Any objection made to the reporter's transcript or clerk's or agency's record must be accompanied by a notice setting the objection for hearing and shall be heard and determined by the district court or administrative agency from which the appeal is taken; provided, however, that no hearing shall be necessary if the opposing party stipulates to, or otherwise indicates in writing that it does not oppose, the relief requested in the objection. After such determination is made, the reporter's transcript and clerk's or agency's record shall be deemed settled as ordered by the district court or administrative agency. The reporter's transcript and clerk's or agency's record may also be settled by stipulation of all affected parties.

Rule 30(a). Augmentations to or Deletions from Transcript or Record. Idaho Appellate Rule 30(a) states, in part: "Any party may move the Supreme Court to augment or delete from the settled reporter's transcript or clerk's or agency's record. …" Judge Gratton suggested that the rule be amended to provide that such motion may be made "at any time before the issuance of an opinion." The proposed amendment would make the rule consistent with I.A.R. 34(e), which permits parties to augment their briefs "at any time before the issuance of an opinion." The Committee voted to table this proposal on the motion of Judge Huskey.

Rule 32(d). Motions. Idaho Appellate Rule 32(d) governs the filing of motions and currently states: "If the opposing party has been contacted and has no objection to the motion," the moving party may so indicate by attaching a Certificate of Uncontested Motion. Judge Lorello suggested that the rule be amended to require the moving party to contact the opposing party and to indicate in the motion whether the opposing party objects. The Committee voted to table this proposal on the motion of Judge Huskey.

Rule 34(b). Length of Briefs. Idaho Appellate Rule 34(b) currently states: "No brief in excess of 50 pages, including covers and anything contained between them excluding addendums or exhibits, shall be filed without consent of the Supreme Court." Christopher Pooser and the IAPS proposed that the rule be amended to impose a word limit, rather than a page limit, for appellate

briefs. Mr. Pooser addressed the Committee and explained that many other appellate courts impose word limits for appellate briefing, particularly now that most briefs are filed electronically. He explained there are several advantages to that approach, the biggest of which is promoting readability of electronic briefs. When parties are constrained by a page limit, they can adjust the font, margins, and line spacing to increase the amount of text they can get on a single page. A word limit discourages this practice and evens the playing field so that all parties are confined to a certain number of words no matter the formatting of the text or number of pages in the brief. It also allows the parties to use bigger fonts and margins so that briefs are easier to read on a computer screen. Mr. Pooser explained there are times when the page limit currently imposed by the rule actually hinders good appellate practice because, in cases where the brief is approaching the 50-page limit, it forces practitioners to choose between omitting or shortening otherwise helpful text (e.g., argument headings) or filing a motion for an over-length brief. Mr. Pooser suggested that a word limit would be easy to use and enforce since most word processors have a word count feature. He proposed that Rule 34(b) be amended to switch from a page limit to a word limit and that such word limit only include the body of the brief and exclude things like the caption/cover page, tables of contents and authorities, the certificate of service, and any attachments or appendices. He also proposed that the new rule only apply to electronic briefs, and that hand-written briefs still be subject to a page limit.

The Committee discussed the proposal, and many members were in favor of it for all of the reasons advanced by Mr. Pooser. However, some Committee members noted there may be practical difficulties switching from a page limit to a word limit. Melanie Gagnepain advised the Committee that, right now, it easy for the Clerk's Office to determine whether appellate briefs meet or exceed the 50-page limit. However, she was unsure whether there is any feature in the iCourt filing system that would allow the Clerk's Office to easily determine how many words are in a brief. Michael Mehall did not think iCourt has such a feature, but he stated he would attempt to confirm that with the Court Management and IT Divisions. Judge Huskey expressed concern about the burden the proposed rule change might put on the Clerk's Office. She and other Committee members noted that the Court could follow the lead of the federal courts and require parties to attach a certification of word count to their briefs, but that still would not solve the issue regarding the ability of the Clerk's Office to confirm whether the brief complies with the rule. Judge Huskey also questioned why the issues the proponents of the rule change identified could not be resolved by keeping a page limit, but only applying the limit to the body or substance of the brief. The Committee generally agreed that would be a viable alternative.

Chief Justice Burdick indicated he would take this issue to the Court. He noted the decision whether to switch a word limit will be affected by whether the technology exists to enable the Clerk's Office to easily confirm that briefs comply with the rule. For now, he suggested that the rule be amended so that the existing 50-page limit excludes the caption page, tables of contents and authorities, the certificate of service, and any attachments to the brief. The Committee agreed with this recommendation. A suggestion was made that the Court consider doubling the

page limit for briefs in death penalty cases. Chief Justice Burdick indicated he would talk to the Court about that suggestion, as well. A proposed amendment to Rule 34(b) will be drafted and circulated to Committee for a vote after the meeting.

Rules re: Citations to Transcript and Clerk's or Agency's Record. Idaho Appellate Rule 35(e) currently provides:

> **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".

Justice Brody has observed that there are often discrepancies between the way transcripts are labeled and paginated and the way they are cited by the parties on appeal. The issue has come up because, with the advent of electronic filing, there are multiple ways to cite the same transcript—e.g., by page number of the electronic file, by page number of the transcript, by volume, by date, etc.—and it sometimes takes an inordinate amount of time for the Court to discern to which transcript/page the parties are actually referring. Similar issues exist with respect to citations to the Clerk's Record. The Committee discussed whether the rules need to be amended to specifically require either that the parties cite to the pages of the Clerk's Record and transcripts themselves or that they instead cite to the pages of the electronic file. As it pertains to the Clerk's Record, Judge Scott and the IAPS suggested citation issues might be solved by converting to a new approach in which the parties must file excerpts of record containing the portions of the record they consider necessary for appellate review. The Committee was generally not in favor of such approach, and Judge Huskey noted that such approach had already been considered and rejected by the Court Technology Committee before the rollout of Odyssey.

With respect to the citation issues identified by Justice Brody, many Committee members observed that those issues are partly attributable to the different ways district court clerks and court reporters in different districts prepare and label the Clerk's Record and transcripts. The Committee agreed there is a need for uniformity in record preparation and labelling and also agreed this will require that clerks and court reporters receive additional training and education regarding these issues. Michael Mehall offered to follow up with Julie Cheever to determine what training the clerks and reporters have already received and what resources exist to provide additional training and implementation of uniform processes across all of the counties. Some Committee members also suggested that it might be useful to come up with uniform naming conventions that parties would be required to use when citing to the record and transcripts. Ultimately, the Committee decided that a subcommittee should be formed to explore all of these issues and come up with viable solutions. The Committee recommended that, in the meantime, one way to eliminate the confusion regarding transcript citation would be to do away with the

compressed transcript format in which multiple pages of transcript are contained on one page and, instead, require a standard format in which only one page of transcript appears on a page. A proposed amendment to I.A.R. 26—the rule governing the preparation and arrangement of transcripts—will be drafted and circulated to the Committee for a vote after the meeting.

Rule 36(b). Formatting of Briefs. Idaho Appellate Rule 36(b) governs the "printing" of appellate briefs. The IAPS and Christopher Pooser proposed that the font, type-size, spacing, and margin requirements of the rule be amended to promote the readability of briefs that are filed in electronic format. The Committee agreed to table this proposal because it was tied to the earlier suggestion regarding switching to a word limit, rather than a page limit, for appellate briefs.

Rule 45. Withdrawal of Appellate Counsel. Idaho Appellate Rule 45 provides:

> Appellate Counsel may withdraw as the attorney of record for a party in a civil or criminal appeal only by order of the Supreme Court upon motion showing good cause. Provided, substitution of counsel may be made by notice without order of the Court if such substitution does not require any pending hearing or oral argument to be vacated.

The Committee considered a proposal to amend the rule to make it consistent with the language of I.R.C.P. 11.3, which governs the withdrawal and substitution of counsel in civil actions. Before the meeting, Justice Bevan also suggested that the rule should comport with the Court's form orders on attorney withdrawal. The Committee discussed the proposal and had concerns about incorporating the language of the civil rule into the appellate rule. In particular, the Committee did not believe that the requirement of I.R.C.P. 11.3 that a hearing be held on the motion to withdraw should apply in appellate cases. Melanie Gagnepain also noted that, under I.R.C.P. 11.3, the clerk is the one who is required to serve the parties with the order permitting the attorney to withdraw. Ms. Gagnepain advised the Committee that incorporating this aspect of the civil rule into the appellate rule would significantly alter the Court's practice as, currently, the Court's form order granting a motion to withdraw directs the attorney to serve the client with the order permitting withdrawal and to file a proof of service with the Court within a certain time. Chief Justice Burdick noted the Committee's concerns and indicated he would relay them to the Court and seek more direction about the Court's concerns with the current rule and whether any further action is needed.

Expedited Appeals. Currently, the appellate rules provide for expedited appeals in limited types of cases (e.g., child custody and termination of parental rights cases), but the rules do not set forth any specific procedure for requesting or obtaining expedited review in other types of appeals. Judge Scott addressed the Committee and proposed amending the rules to include such procedure. As an example, he noted that the Ninth Circuit rules permit a party who believes

there is good cause to expedite an appeal to file a motion setting forth the justification and proposing an expedited briefing and argument schedule. The Committee discussed the proposal and determined that amending the rules to provide such specific procedure in all cases is neither necessary or desirable. Chief Justice Burdick observed that, under the current rules governing motion practice, requests for expedited appeals already proceed in the fashion Judge Scott suggested. In addition, Ken Jorgensen expressed concern that, at least in the criminal context, adding a rule specifically setting forth a procedure for seeking an expedited appeal would invite defendants to abuse the process and request an expedited review in every case.

As an alternative to his original proposal, Judge Scott suggested that the rules be amended to provide for expedited review of permissive appeals taken pursuant to I.A.R. 12. Judge Scott noted that, in those cases, the entire district court litigation is generally put on hold until the Court issues its opinion in the permissive appeal. The Committee did not take any action on the proposal, but Chief Justice Burdick indicated that he would talk to the Court about whether all permissive appeals should be expedited and, if so, what the timeframes for briefing and argument should be.

Opportunity for Supplemental Briefing before a Decision is Issued on a Ground not argued by the Parties. A member of IAPS suggested that the following language be adopted and added as subsection (f) to I.A.R. 34: "Before a decision is issued on a ground not briefed or argued by either party, the court shall provide notice to the parties that describes the ground, and the court shall give the parties the opportunity to submit supplemental briefing on that issue." Ben McGreevy addressed the Committee and explained that the suggested amendment was modeled after a proposal by the American Academy of Appellate Lawyers to amend the Federal Rules of Appellate Procedure to address appeals that are decided on legal issues or theories not raised by the parties. Mr. McGreevy believed that it is not common practice for Idaho's appellate courts to decide cases on issues never raised or briefed by the parties but suggested that, when that occurs, it deprives the parties of fair notice and an opportunity to be heard.

The Committee considered the proposal and raised a number of concerns, particularly about the fact that whether issues are raised/preserved is often in the eye of the beholder. Judge Huskey expressed her opinion that this proposal is directly impacted by preservation issues and noted that, unlike the Supreme Court, the Court of Appeals is simply an error correction court and, as such, takes a much less expansive view of the issues and arguments raised on appeal than does the Supreme Court. Chief Justice Burdick agreed there are differences between the two Courts and noted the Supreme Court may decide an issue with an eye toward future cases, but he did not believe the Court routinely decides cases on issues never argued to it. The Committee members generally agreed. Justin Curtis suggested that the proposed amendment requiring notice and supplemental briefing might be useful in the rare instance when the Court decides the issues on a ground that can be raised *sua sponte* (e.g., lack of jurisdiction), but he and the other Committee members were unsure the proposed rule would solve more problems than it creates as it relates to determining whether the "ground" upon which the case was decided was one presented by the

parties or not. The Committee noted that, if a party is genuinely concerned that the Court has decided an issue on a ground not briefed or argued, the party may always seek rehearing or review. Allowing parties additional briefing on the chance that one of them may believe the ground upon which the Court intends to decide the case has not been adequately presented will inevitably build in more delay in the appeal process. Ultimately, the Committee was not inclined to take any action with respect to the proposed rule amendment without obtaining more information regarding whether practitioners view this as a problem. Ben McGreevy offered to survey the members of the IAPS regarding whether they have been involved in any appeals in which the appellate court decided the case on grounds not briefed or argued, and to report back to the Committee with the survey results.

Proposed Technical Revisions to Rules. The Committee considered and voted to approve the following proposed amendments that were suggested by the Court's contact at LexisNexis:

a. In **I.A.R. 5(c)**, with the recent amendment removing the requirement for copies, the word "Number" should be deleted from the heading.

b. In the heading for **I.A.R. 24**, same as above. Or, maybe substitute "Format" (as we have possibility of electronic and hard copy).

c. In **I.A.R. 27(b)**, it would seem that (1) and (2) should have switched positions with the recent amendment, as the clerk has to prepare an electronic record and only prepare a paper record if requested. Thus, rather than adding "If only electronic copy of the record is requested" to the beginning of (2), "If a paper copy of the record is requested" should have been added to the beginning of (1).

d. With the recent amendment of **I.A.R. 34**, seemingly "Number" and "Service of briefs" should be deleted from the rule heading. Also, "Extension – Augmentation" should be added to the end of the heading.

Drafts of the amended rules will be circulated for a vote after the meeting.

The meeting adjourned at noon.

The following proposed amendments were circulated and approved after the meeting.

Proposed Amendments re: Stay of District Court Proceedings on Appeal of Partial Judgment Certified as Final under I.R.C.P. 54(b)

Rule 13. Stay of Proceedings Upon Appeal or Certifications.

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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 ~~on~~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.

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

(a) ~~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.,~~ During a permissive appeal under Rule 12, I.A.R., 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 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.

[Civil] Rule 54. Judgments; Costs

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(b) Partial Judgment Upon Multiple Claims or Involving Multiple Parties.

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(2) *Jurisdiction if Appealed After Rule 54(b) Certificate.* If a Rule 54(b) Certificate is issued on a partial judgment and an appeal is filed, the trial court ~~loses all jurisdiction over the entire action~~ retains jurisdiction to 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, except as provided in Rules 13 and 13.4 of the Idaho Appellate Rules.

Proposed Amendments re: Length of Appellate Briefs; Technical Revisions to Heading of I.A.R. 34

Rule 34. Briefs on Appeal ~~- Number~~ - Length - Time for Filing ~~- Service of Briefs~~ - Extension - Augmentation.

(a) Number of Copies. The original of all appellate briefs shall be filed with the Supreme Court and the original shall be signed by the party submitting the brief. No copies are required.

(b) Length of Briefs. No brief in excess of 50 pages, ~~including covers and anything contained between them~~ 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.

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Proposed Amendments re: Format and Pagination of Reporter's Transcripts

Rule 26. Preparation and Arrangement of Reporter's Transcripts.

The reporter's transcript of all judicial proceedings shall be prepared in accordance with and as defined by this rule.

(a) Paper. If a hard copy of the transcript is requested, ~~The~~ the transcript shall be clearly and legibly printed on white, unglazed paper 8 1/2 x 11 inches in size on at least 20 pound paper.

(b) Margins. The margins at the top and bottom of each page shall be one inch. The left margin shall be a maximum of 1.5 inches and the right margin shall be a maximum of .5 inches.

(c) Lines. The lines of each transcript shall be double-spaced with a minimum of 25 lines and a maximum of 30 lines per page. Quotations, citations, and parenthetical notes may be single-spaced. Each line shall be numbered on the left margin., ~~each page shall be numbered consecutively at the bottom center of each page. Each page may be printed on the front and back.~~

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(m) ~~Compressed Transcript~~Format and Pagination.

(1) Electronic Format. The electronic copy of the reporter's transcript shall be prepared in standard format in the same arrangement as specified in this rule. The standard format shall have no more than one page of regular transcript on one 8 ½ x 11 inch page of the electronic file. Each page shall be numbered consecutively at the bottom center of each page.

(2) Hard Copy. If a hard copy of the reporter's transcript is requested, the hard copy may ~~The reporter's transcript shall~~ be prepared in a compressed format in the same arrangement as specified in this rule with the following requirements: A. The cover page and indexes shall be printed in standard format for ready identification, which information can also be included in the compressed transcript. B. The compressed format shall have no more than 12 pages of regular transcript on one page of compressed transcript, using both the front and back of each page and having no more than three columns of text on a page. Each page shall be numbered consecutively at the bottom center of each page. The pagination shall be horizontal as follows: 1 2 3 4. C. The compressed transcript shall contain identification of page and line numbers from the standard transcript and shall be printed in a format that is easily readable. D. Each volume

of a compressed transcript shall contain no more than 200 pages, unless the transcript can be completed in 250 pages or less.

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Proposed Technical Revision to Heading of I.A.R. 5(c)

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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Proposed Technical Revisions to Headings of I.A.R. 24 and 24(a)

Rule 24. Reporter's Transcript - ~~Number~~Format - Estimate of Fees - Time for Preparation - Waiver of Reporter's Fee.

(a) ~~Number~~Format and Use of Transcripts. The reporter shall prepare one copy of the reporter's transcript in electronic format for the Supreme Court, which shall be lodged with the district court and filed with the Supreme Court following settlement. If requested, the reporter shall also prepare a hard copy of the transcript for service on the appellant and respondent, as each party may elect whether to receive it in electronic format or in hard copy or both. If there are multiple appellants or respondents, they shall determine by stipulation which appellant or respondent shall be served with the transcript by the clerk and the manner and time and use of the transcript by each appellant or respondent. In the absence of such stipulation the determination shall be made by the trial court or agency upon the application of any party or the clerk. If a reporter's transcript has already been prepared for the appellant and/or respondent in an appeal from an administrative agency, when requested by the Supreme Court the reporter shall furnish one computer-searchable transcript in electronic format to the Court, but additional copies need not be made for the parties.

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Proposed Technical Revision to I.A.R. 27(b)(1)

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

(a) Number and Use of Record. The clerk of the district court or agency shall prepare one electronic copy of the clerk's or agency's record for the Supreme Court. If requested, the clerk shall also prepare a hard copy of the record for service on the appellant and respondent, as each party may elect whether to receive it in electronic format or in hard copy or both. If there are multiple parties, they shall determine by stipulation which party shall be served with the record by the clerk and the manner and time of use of the record by each party. In the absence of such a stipulation, the determination shall be made by the district court or agency upon the application of any party or the clerk. Any party may also request and pay for an additional separate copy of the record from the clerk.

(b) Clerk's Fee.

(1) Paper copy. If a paper copy of the record is requested, ~~T~~the clerk of the district court shall charge and collect a fee for the preparation of the record in the sum of $1.25 for each page of the record. Provided, in addition to this fee the clerk shall charge and collect an additional fee for the actual cost of the record covers. This fee shall be full payment for two paper copies of the record, one for the appellant and one for the respondent, and one electronic copy for the Supreme Court. Any party may obtain an additional copy of the record for the charge of $.50 per page. The clerk of an administrative agency shall charge such sum, in any, as ordered by the administrative agency.

(2) Electronic Copy. If only an electronic copy of the record is requested, the clerk of the district court shall charge and collect a fee for preparation of the electronic record in the sum of $0.65 for each page. Any party may request an additional copy of the record on CD upon payment of $20.00 to the clerk of the district court.