

**Proposed Amendments to the Idaho Appellate Rules  
and Related Rules of Civil Procedure**

The following amendments to the Idaho Appellate Rules and related Idaho Rules of Civil Rules of Procedure are being recommended by the Idaho Supreme Court's Idaho Appellate Rules Advisory Committee. The Idaho Appellate Rules Advisory Committee has approved all of the proposed revisions and is recommending that they be adopted by the Idaho Supreme Court.

Please send your comments to Lori Fleming at [lfleming@idcourts.net](mailto:lfleming@idcourts.net) by Friday, April 2, 2021.

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**Proposed Amendments re: Automatic Stay Provisions**  
**of I.A.R. 13(a) and I.R.C.P. 83(e)(1)**

**Rule 13. Stay of Proceedings Upon Appeal or Certifications.**

(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).

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**[Civil] Rule 83. Appeals From Decisions of Magistrates**

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**(e) Stay During Appeal--Powers of Magistrate.**

(1) *Stay of Proceedings.* The filing of an appeal to the district court automatically stays the proceeding and execution of any judgment or order appealed from by the appellant for a period of 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 must be by order of the presiding magistrate court or the district court.

**Proposed Amendments to I.A.R. 13, I.A.R. 13.4, and I.R.C.P. 54 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 Amendment to I.A.R. 29 re: Necessity of Hearing on  
Objections to the Record or Reporter's Transcript**

**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.

**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 to I.A.R. 26 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 1/2 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, ~~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.