

In the Supreme Court of the State of Idaho

IN RE: AMENDMENTS TO IDAHO)
APPELLATE RULES (I.A.R.) 11.1, 12.1,)
12.2, 25, 27(f), 28(g), 32(b), 33, 34(a), 34.1,)
and 40)

ORDER

The Court having reviewed a recommendation from the 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 as they appear in the volume published by the Idaho Code Commission be, and they are hereby, amended as follows:

1. That Rule 11.1 be, and the same is hereby, REPEALED in its entirety and a new Rule 11.1 ADOPTED as follows:

Rule 11.1. Appealable Judgments and Orders from the Magistrate Court. The following appeals from the magistrate court are expedited pursuant to Rule 12.2.

(a) **As a Matter of Right.** An appeal from the following final judgments, as defined in Rule 54(a), must be taken from the magistrate court to the Supreme Court:

- (1) a final judgment that grants or denies a petition for termination of parental rights, or
- (2) a final judgment that grants or denies a petition for adoption.

(b) **By Permission.** When permission has been granted pursuant to Rule 12.1, an appeal from the following may be taken to the Supreme Court:

- (1) a final judgment, as defined in Rule 803 of the Idaho Rules of Family Law Procedure, or an order made after final judgment, involving the custody of a minor, or
- (2) a final judgment or order after judgment in a Child Protective Act proceeding.

2. That Rule 12.1 be, and the same is hereby, REPEALED in its entirety and a new Rule 12.1 ADOPTED as follows:

Rule 12.1. Permissive Appeal in Custody Cases.

(a) **Motion for permission to appeal.** Whenever the best interest of a child would be served by an immediate appeal to the Supreme Court, any party may move the magistrate court for permission to seek an immediate appeal to the Supreme Court from the following:

- (1) a final judgment, as defined in Rule 803 of the Idaho Rules of Family Law Procedure, or an order entered after final judgment, involving the custody of a minor, or
- (2) a final judgment or an order entered after final judgment in a Child Protective Act proceeding.

The motion must be made within fourteen (14) days from the date evidenced by the filing stamp of the clerk on the final judgment or order the party seeks to appeal. The motion shall be filed, served, noticed for hearing and processed in the same manner as any other motion. If a hearing is held on the motion, it shall be expedited. Within fourteen (14) days after the time for response has expired or within fourteen (14) days of a hearing, whichever is later, the magistrate court shall enter its written order on the motion. The filing of a motion for permissive appeal shall stay the time for appealing to the district court until the magistrate court enters an order making the determination. In the event a notice of appeal to the district court is filed prior to the motion for permissive appeal, the magistrate shall retain jurisdiction to rule on the motion and, in the event the motion is granted, the appeal to the district court shall be dismissed.

(b) **Permission granted by magistrate court.** If the magistrate court grants permission for an immediate appeal to the Supreme Court, the appeal is not valid and effective unless a notice of appeal is physically filed with the clerk of the district court within fourteen (14) days from the date file stamped on the order of the magistrate granting permission. A notice of cross appeal must be filed within seven (7) days from the notice of appeal. The appeal shall be expedited as set forth in Rule 12.2.

(c) **Permission denied by magistrate court.**

- (1) **Motion to Supreme Court.** Within fourteen (14) days from entry by the magistrate court of an order denying a motion for permission to appeal under this rule, any party may file a motion with the Supreme Court requesting acceptance of the appeal by permission. A copy of the order of the magistrate court denying permission to appeal shall be attached to the motion along with a copy of the order or judgment the party seeks to appeal. If the magistrate court fails to rule upon a motion for permission to appeal within twenty-one (21) days from the date of the filing of the motion, any party may file a motion with the Supreme Court for

permission to appeal without any order of the magistrate court. A motion to the Supreme Court for permission to appeal under this rule shall be filed, served, and processed in the same manner as any other motion under Rule 32 of these rules.

- (2) **Motion granted by Supreme Court.** If the Supreme Court grants the motion for permission to appeal and directs that a notice of appeal be filed, the appeal is not valid and effective unless a notice of appeal is physically filed with the clerk of the district court within fourteen (14) days from the date of issuance of the Supreme Court order granting permission. The appeal shall be expedited as set forth in Rule 12.2. The clerk of the Supreme Court shall file with the magistrate court a copy of the order of the Supreme Court granting permission to appeal and shall send copies to all parties to the action or proceeding.

3. That Rule 12.2 be, and the same is hereby, amended as follows:

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.

(a) **Procedure for filing Notice of appeal.**

- (1) Appeal from a judgment granting or denying a petition to terminate parental rights or a petition for adoption. An appeal from any final judgment, as defined in Rule 54(a) of the Idaho Rules of Civil Procedure, granting or denying a petition for termination of parental rights or granting or denying a petition for adoption shall be made only by physically filing a notice of appeal with the clerk of the district court within fourteen (14) days from the date of ~~issuance of~~ file stamped on the judgment. A notice of cross appeal must be filed within seven (7) days from the notice of appeal.
- (2) Permissive appeals involving custody of a minor or a Child Protective Act proceeding. An appeal filed pursuant to ~~an order of the Supreme Court~~ granting a motion for ~~permissive appeals~~ permission to appeal pursuant to Rule 12.1 shall be made only by physically filing a notice of appeal with the clerk of the district court within fourteen (14) days from the date of ~~issuance of~~ file stamped on the order of the magistrate court granting the appeal or the date of issuance of the Supreme Court order granting the appeal. A notice of cross appeal must be filed within seven (7) days from the notice of appeal.

- (f) **Oral argument.** Oral argument, if requested, shall be held within one hundred twenty (120) days from the ~~filing of~~ date stamped on the notice of appeal when it is received by the Supreme Court.

4. That subsection (d) of Rule 25 be, and the same is hereby, REPEALED and a new subsection (d) ADOPTED as follows:

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.

(d) Standard Transcript – Criminal Appeals.

- (1) **Appeal from Judgment of Conviction.** If any party requests the reporter's standard transcript in an appeal from a criminal conviction, the transcript shall be limited to the following:
- (A) all testimony and proceedings reported by the reporter in the trial of the action or proceedings, including
 - (i) the voir dire examination of the jury,
 - (ii) the opening statements and closing arguments of counsel,
 - (iii) the conference on requested instructions, the objections of the parties to the instructions, and the court's ruling on instructions;
or
 - (B) the hearing at which the guilty plea was entered, and
 - (C) the sentencing hearing.

No transcripts of other hearings or proceedings heard by the trial court at some time other than during the course of the trial shall be prepared unless specifically requested. Transcripts of pre-trial and post-trial proceedings other than the entry of a guilty plea or sentencing must be specifically designated and requested.

- (2) **Appeal from post-judgment proceedings.** There is no standard transcript in an appeal from post-judgment proceedings. Requested proceedings must be identified by the name of the court reporter(s), along with the date and title of the proceeding(s), and an estimated number of pages.

5. That Rule 27 be, and the same is hereby, amended as follows:

Rule 27. Clerk's or agency's record – Number – Clerk's Fees – Payment of estimated fees – Time for preparation – Waiver of clerk's fee.

(f) **Waiver of Clerk's Fee.** The payment of the clerk's record fee as required by this rule may be waived by the district court applying the same requirements as for a civil case as set forth in ~~pursuant to~~ section 31-3220, Idaho Code, if the appellant is not a prisoner as defined in that statute. If the appellant is a prisoner, payment of the clerk's record fee as required by this rule may be waived by the district court applying the same requirements as for a civil case as set forth in section 31-3220A, Idaho Code in accordance with the local rules of the judicial district court.

6. That Rule 28 be, and the same is hereby, amended as follows:

Rule 28. Preparation of Clerk's or Agency's Record-Content and Arrangement.

(g) **Table of Contents and Index of Record-Electronic Bookmarks.**

(1). **Hard Copy Record.** Each volume of the clerk's or agency's record shall contain a chronological table of contents of the documents included in the entire record and shall have an alphabetical index indicating the volume and page where each pleading, document or paper may be found.

(2) **Electronic Copy of Record.** An electronic clerk or agency's record shall contain electronic bookmarks that link to each document in the electronic record.

7. That Rule 32 be, and the same is hereby, amended as follows:

Rule 32. Motions - Time for filing - Briefs.

(b) **Voluntary Motions to Dismiss.** At any point before issuance of an opinion, any ~~Any~~-appealing party may move the court to dismiss the party's appeal with prejudice ~~at any time, before or after oral argument.~~

The court may tax costs and attorney fees as though the non-appealing party had prevailed.

8. That Rule 33 be, and the same is hereby, amended as follows:

Rule 33. Stipulation for dismissal.

At any point before the issuance of ~~an~~ ~~the~~ Court's opinion, the affected parties may stipulate for the dismissal of the appeal or petition which stipulation shall contain an agreement as to the taxing of costs and attorney fees. Any such stipulation for dismissal signed by some but not all of the parties to an appeal shall be considered and processed as a motion for dismissal under Rule 32.

9. That Rule 34 be, and the same is hereby, amended as follows:

Rule 34. Briefs on appeal - Number - Length - Time for filing - Service of briefs.

(a) **Number of Copies.** With the exception of cases governed by Idaho Appellate Rule 35(h), the original bound brief, six (6) bound copies, and ~~one unbound, unstapled~~ an electronic copy of all appellate briefs shall be filed with the Supreme Court and the original shall be signed by counsel submitting the same. In cases governed by Idaho Appellate Rule 35(h), only the original and four (4) copies of all appellate briefs shall be filed. Electronic copies of briefs are governed by Idaho Appellate Rule 34.1.

10. That Rule 34.1 be, and the same is hereby, amended as follows:

Rule 34.1 Electronic Copies of Briefs (optional).

(a) **Additional electronic copy.** In addition to the current requirement for paper copies of briefs, the parties must file an electronic copy of each brief. ~~it is requested, but not required, that an additional copy of the brief be filed electronically.~~ Electronic filings ~~will be~~ are subject to the same due dates as hard copy briefing. ~~If an~~ The ~~electronic copy is filed,~~ it must be submitted in the following form and format:

1. Each ~~efiling shall~~ electronic copy must be submitted ~~either~~ by email attachment ~~or on a separate CD,~~ with an electronic copy served on each party to the appeal.

2. Each email attachment ~~or CD~~ must include a label that identifies the case name, the docket number, and type of brief (i.e. appellant's brief, respondent's brief).
3. ~~Files shall~~ Electronic copies must be submitted as a searchable PDF file. ~~because this format generally may not be altered.~~
4. The email attachment ~~or CD~~ must contain only an electronic copy of the submitted hard copy brief. The email attachment ~~or CD~~ must not contain any document or material that is not included in the original hard copy of the brief filed with the Court.
5. The email attachment ~~or CD~~ must be free of viruses or any other files that would be disruptive to the Court's computer system.
6. ~~If submitting an e-filing as an email attachment at the time the brief is filed, please advise the Clerk's office in your transmittal letter accompanying hard copies; please send e-filings~~ The electronic copy of the brief must be emailed to sctbriefs@idcourts.net.
7. If an electronic brief is filed, a Certificate of Compliance must also be submitted as a separate document and should read as follows:

CERTIFICATE OF COMPLIANCE

The undersigned does hereby certify that the electronic brief submitted is in compliance with all of the requirements set out in I.A.R. 34.1, and that an electronic copy was served on each party at the following email address(es):

_____.

Dated and certified this _____ day of _____, 20__.

(b) Electronic briefs in criminal cases. In criminal cases the parties may file an electronic brief without the necessity of filing any paper copies of the brief. The filing must comply in all other respects with the requirements set forth in subsection (a) of this rule.

11. That Rule 40 be, and the same is hereby, amended as follows:

Rule 40. Taxation of costs.

(a) **Costs to Prevailing Party.** With the exception of post-conviction appeals and appeals from proceedings involving the termination of parental rights or an adoption, costs ~~Costs~~ shall be allowed as a matter of course to the prevailing party unless otherwise provided by law or order of the Court.

IT IS FURTHER ORDERED, that this order and these amendments shall be effective July 1, 2017.

IT IS FURTHER ORDERED, that the above designation of the striking of words from the Rules by lining through them, and the designation of the addition of new portions of the Rules by underlining such new portion is for the purposes of information only as amended, and NO OTHER AMENDMENTS ARE INTENDED. The lining through and underlining shall not be considered a part of the permanent Idaho Appellate Rules.

IT IS FURTHER ORDERED, that the Clerk of the Court shall cause notice of this Order to be published in one issue of *The Advocate*.

DATED this 5 day of May, 2017.

By Order of the Supreme Court

R. Burdick
Roger S. Burdick, Chief Justice

ATTEST: Stephen Keen
Clerk

I, Stephen W. Kenyon, Clerk of the Supreme Court of the State of Idaho, do hereby certify that the above is a true and correct copy of the Order entered in the above entitled cause and now on record in my office. 5-8-17
WITNESS my hand and the Seal of this Court.

STEPHEN W. KENYON

Stephen W. Kenyon Clerk
By Steph Schumacher Chief Deputy