

# **INTERNAL RULES OF THE IDAHO SUPREME COURT**

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1. **CHIEF JUSTICE.**
  - (a) Selection and Term. The chief justice shall be selected as provided in Art. 5, § 6, of the Constitution of the State of Idaho.
  - (b) Duties. The duties of the chief justice shall be as provided by the Constitution or as provided by law, and as further delineated by a written Declaration of Policy enacted in writing by a majority of the Court. The chief justice, or in the absence of the chief justice, the vice-chief justice, shall execute all official documents on behalf of the Court, except that the chief justice may designate one of the other justices, administrative director, or the clerk, to execute certain official documents on behalf of the Court regardless of the chief justice's presence.
2. **VICE-CHIEF JUSTICE.** The vice-chief justice shall be the justice (other than the chief justice) senior in terms of years of service on the Court, unless a specific election for the position is conducted, in which event the vice-chief justice shall be elected in the same manner as the chief justice for a term as designated by the Court and shall serve at the pleasure of the members of the Court. The vice-chief justice shall perform all functions of the chief justice in the latter's absence, disability or disqualification.
3. **JUSTICES.**
  - (a) Each justice on the Court shall be assigned a number which shall indicate their order of precedence.
  - (b) A retired justice, or an active or retired judge of the Court of Appeals or the district court, while acting by assignment as a justice of the Court (Const. Art., § 12), shall observe the duties and be entitled to exercise the powers of the office of a justice of the Court as to that assignment.
4. **VOTE.** Each justice, including the chief justice, shall have one vote on all issues brought before the Court and all votes shall be recorded.
5. **ATTIRE.** The Court shall select and purchase the official robe to be worn by each justice at official functions.

At all official functions of the Court, at which the Court is present in a body, the justices will ordinarily wear their official robes.

A justice, while in the performance of official functions, such as swearing-in of state officials or others, or performance of marriage ceremonies, shall normally wear the official robe.
6. **PHOTOGRAPHS OF JUSTICES.** Official group photograph of the justices shall be taken annually. Sufficient copies shall be obtained so that one copy may be presented to each justice and one copy shall be kept for a permanent record in

the clerk's office, and requisite copies made available for use by the news media. The costs of such photographs shall be paid out of the Court's appropriation.

Official individual photographs of newly-appointed or elected justices or a newly-elected chief justice shall be taken, framed and paid out of the Court's appropriation. All photographs of the justices shall be, as nearly as possible, of standardized size and framing. Copies of individual photographs of the justices shall be maintained by the Administrative Director of the Courts and made available for use by the news media.

7. **COURT PERSONNEL.** The term "court personnel" includes individuals, other than justices, employed regularly by the Court.
  - (1) All Court personnel shall be appointed and serve in accordance with the provisions of the most recent Idaho Judicial Personnel Policies Manual. Sick leave, vacation and other matters shall be governed by the provisions of the Idaho Judicial Personnel Policies Manual.
8. **CLERK OF THE COURT.**
  - (a) The clerk of the Court shall be appointed and serve at the pleasure of the Court and perform such duties as required by the statute and the direction of the Court.
  - (b) Attendance at Court Terms. The clerk or a designee of the clerk shall attend all terms of the Court and make arrangements for courtroom and other facilities in ample time prior to each term.
9. **CONFIDENTIALITY.** It is the policy of the Court to keep all information relating to the status of a case confidential from the time it is drawn and assigned to a particular office until the time the opinion is distributed to the public. "Confidential" means that information should not be disclosed to anyone other than a justice, judicial assistant, law clerk, clerk or deputy clerk, and is not to be conveyed further. Information on which justice has been assigned the case for preparation of the prehearing, how the various justices are voting or writing, where the opinion is in the circulation process and who has been assigned to write the majority opinion are all matters which are not to be disclosed.
10. **DISCRETIONARY FUNDS.** In those years the legislature appropriates an amount for the chief justice and for each justice for their discretionary fund, the expenditure of money from each justice's discretionary fund is to be at the sole discretion of the individual justice and is not subject to the approval or control of the chief justice or the fiscal office.
11. **PREPARATION OF CASE CALENDAR AND PREHEARING MEMORANDUM.**
  - (a) At least thirty (30) days prior to any scheduled terms of court, the clerk shall

prepare a proposed calendar of cases then at issue and ready for argument before the Court. Each case on the approved calendar shall be assigned by lot to a justice who shall be responsible for preparation of a prehearing memorandum for that case for circulation to the justices at least seven (7) days prior to the opening of the term. This prehearing memorandum shall consist of a summary of facts, the procedures below, the issues before the Court for resolution, the arguments and legal position of the respective parties, and additional or other data (such as findings of fact, memorandum opinions, exhibits, etc.) as may be of assistance to the other members of the Court, and may include a recommended decision on any or all issues.

(b) Press Releases. At least two weeks prior to the opening of each term of Court, press releases for the cases to be heard in the ensuing term will be prepared by the justices' offices, and disseminated by the clerk of the Court.

12. **ORAL ARGUMENT - CONFERENCE.** Following oral argument, the Court will recess and convene in a conference. Discussion of the case will be opened by the justice by whom the prehearing memorandum was prepared, these remarks being presented without interruption. Thereafter, each justice in inverse order of seniority may discuss the case without interruption. Following the initial discussion by each justice, the discussion will go around the table a second time in the same order, at which time each justice may comment on the remarks and issues raised by the preceding justices, and each justice at their second turn will conclude with an indication of the proposed disposition of the case. At the conclusion of the conference, if it appears that the justice who prepared the prehearing memorandum is in the majority, the chief justice will then assign the case to that justice.

If the justice who prepared the prehearing memorandum does not appear to be in the majority, the case will then be assigned by the chief justice to a justice in the apparent majority in which event an equalizing assignment between the relinquishing and receiving justice will be made from the cases drawn at the next term of court.

After a semifinal opinion has been prepared, it will be circulated among the other justices and registered with the clerk of the Court, which registration will be deemed to have discharged that justice's responsibility for preparing the semifinal opinion. The draft opinion will become final and be distributed to the litigants and the public as later provided in these rules.

The chief justice, with the approval and consent of the Court, may withdraw a case from assignment and submission to any individual justice.

The Court will maintain a record of all cases assigned, submitted or withdrawn and reassigned, reflecting the date of registration of each semifinal opinion.

Upon request, a justice who is excused by the Chief justice from being physically present at oral argument may listen to a live broadcast or recording of the argument and participate in oral conference with the court. Any justice may participate in oral conference by telephone conference.

13. **VOTING CALENDARS.** At least twice each month the chief justice will cause to be circulated to each justice a voting calendar, returnable by a date specified thereon not less than ten (10) working days. The voting calendar issued by the clerk's office shall be the official voting calendar of the Court. Each justice shall vote the calendar by use of one of the following designations:

Concur

Special Concurrence (which ordinarily would produce a written expression of reasons)

Concur in Result (which ordinarily would produce a written expression of reasons)

Dissent with written opinion

Dissent without written opinion

Concur in part and Dissent in part (with or without opinion)

Additional comments may be added as necessary.

14. **REASSIGNMENT OF CASES.** When it appears that the views of the justice to whom a case has been assigned are not concurred in by the majority of the Court, the chief justice may reassign the case to another justice who shares the majority view. At the drawing of cases for the next term, the first justice will draw one case in the place of the justice to whom the case has been reassigned.

A reassigned case shall retain its original distribution number upon the circulation of a new semifinal by the justice to whom it has been reassigned. The voting calendar will contain a notation as to the date of reassignment.

15. **OPINIONS.**

(a) After a semifinal opinion has been considered on two case calendars, and on the second, i.e., the calendar designated "02", or a subsequent calendar has been concurred in (or concurred in specially or in the result) by a majority of the Court, a lodging by the author of the opinion shall be accomplished by notifying the clerk. This provision may be waived by a unanimous vote of the Court. The Court shall cause a notation of the lodging of the opinion to be made in a record maintained for this purpose. A copy of the lodged opinion shall be delivered to each of the justices at least twenty-one (21) calendar days before it is released for publication. This period may be shortened by unanimous vote.

(b) Dissenting or Concurring Opinion. Any justice desiring to submit a dissenting or concurring opinion shall so notify, in writing, the author of the opinion, the other members of the Court, and the clerk, and shall lodge and

circulate the concurring or dissenting opinion within twenty-one (21) calendar days before the opinion is released for publication. The twenty-one (21) day period shall extend for each day the Court is sitting in a term outside of Boise.

The clerk shall cause the dissenting or concurring opinion to be attached to the majority opinion and all opinions shall then be filed and released at the same time. In the event that a dissenting or specially concurring opinion is not filed within the time provided by the rule, and unless the chief justice directs otherwise, the majority opinion shall be released and the justice who filed a notice of intent to file such a dissenting or specially concurring opinion shall be listed as dissenting or specially concurring, but “filed no opinion.”

Specially concurring and dissenting opinions will be published in the sequence lodged, all special concurrences first, followed by all dissenting opinions.

(c) Filing and Release for Publication. If a concurring or dissenting opinion is lodged and circulated during the twentieth (20th) or twenty-first (21st) days of the twenty-one (21) day period, the filing and release for publication will be held for four (4) additional working days for any change of vote. The four (4) day period shall be extended for each day the Court is sitting in a term outside of Boise.

(d) Typographical Errors in Transcripts. When portions of transcripts on appeal are quoted in opinions of the Court, obvious typographical errors appearing in the original text shall be disregarded.

(e) Uniform System of Citation. Citations appearing in opinions shall be in conformity with statutory provision of this state, the rules of this Court and if not therein covered, in conformity with the current edition of “A Uniform System of Citation,” published and distributed by the Harvard Law Review Association, or the “ALWD (Association of Legal Writing Directors) Citation Manual: A Professional System of Citation.”

(f) Unpublished Opinions of the Court. At or after the oral conference following the presentation of oral argument or the submission of the case to the Court on the briefs, the Court, by the unanimous consent of all justices, may determine not to publish the final opinion of the Court. If an opinion is not published, it may not be cited as authority or precedent in any court.

(g) News Releases. When an opinion is released for publication, the authoring justice shall determine whether it should be accompanied by a news release succinctly reporting the decision reached if the justice feels that there are significant new legal principles established or the case is one of great public interest. The justice who authored the opinion shall prepare the release and circulate it to the other justices participating in the decision no later than one working day before the release of the opinion.

16. **ORIGINAL PROCEEDINGS, PETITIONS AND MOTIONS.** Application for original writs, petitions for review, petitions for rehearing, and all other petitions, motions or preliminary matters, shall be circulated among the members of the Court for their vote on disposition forms, or such other forms as may be approved by the majority of the Court.

(a) Petitions for Rehearing

1. Rehearing shall be granted by majority vote of the justices who participated in the decision and opinion in the case. A justice pro tem who sat in the initial hearing or argument will participate in voting on such petitions. However, the pro tem will not sit on the rehearing if a duly appointed or elected justice is available to sit in the place of the pro tem. If a justice who participated in the decision and opinion of the case has been replaced by a duly appointed or elected justice, the new justice will vote on the Petition for Rehearing and sit on the rehearing if granted.

2. When a petition for rehearing has been filed, and whether or not granted, the original opinion may be withdrawn and a new opinion substituted therefor. When any material change, alteration, amendment or addition is made in an opinion upon petition for rehearing, the same shall be done by written opinion or memorandum filed with the clerk in the same manner as is done with an original opinion. When a petition for rehearing is to be denied, any justice who gives notice to the clerk of the Court that such justice intends to write a dissent on denial of rehearing will have seven (7) days in which to file such dissent with the clerk.

(b) Petitions for Review

1. Petitions for review of decisions of the Court of Appeals shall be granted by an affirmative vote of three or more justices. In the event that a justice is disqualified or is otherwise unable to participate, then a justice pro tem shall be designated by the chief justice to vote on the petition for review.

17. **ADMINISTRATIVE CONFERENCES.** Administrative conferences shall be called periodically by the chief justice and will deal with administrative and fiscal matters, committee reports, matters submitted by Court personnel, and other appropriate matters.

18. **PREPARATION AND APPROVAL OF MINUTES.** Following any official action of the Court (including administrative conferences), the chief justice shall prepare a proposed draft of minutes of the proceedings reflecting the vote of each justice. The proposed draft of the minutes shall be circulated to the justices for their approval prior to insertion into the Minute Book of the Court.

(h) Written Opinions. Written opinions of the Court should not contain allegations that judges violated the Idaho Code of Judicial Conduct or that



attorneys violated the Idaho Rules of Professional Conduct, unless provisions of the Code or Rules are at issue in the case. Proceedings to discipline judges or lawyers are confidential in nature and, therefore, allegations of ethical violations are to be entertained and processed pursuant to applicable rules of the Court or Bar Association. A referral to either the Idaho Judicial Council or the Idaho State Bar Association will not be included in an opinion. This does not mean that the Court or an individual Justice must refrain from commenting upon the conduct of a judge or lawyer in an opinion. The intent is only to limit allegations of violations of specific rules of conduct.

19. **REMOVAL OF RECORDS FROM VAULT.** Original files and transcripts in a particular case may be temporarily removed from the clerk's vault only upon request by a justice or the staff attorney and upon receipt given by the justice or staff attorney; exhibits and copies of briefs and transcripts may be removed and receipted for by a law clerk or judicial assistant to a justice or by the staff attorney.
20. **PUBLIC INFORMATION OFFICER.** The administrative director or designee shall serve as the public information officer of the Court and under the direction and supervision of the chief justice, shall advise news media of official Court functions.
21. **ASSIGNMENT OF CASES.** The chief justice (or designee) shall make the tentative assignment of cases as between the Supreme Court and the Court of Appeals. Copies of each assignment sheet shall be given to the justices, affording each an opportunity to object to and request the Court to reconsider the assignment. If no objection is filed within seven (7) days, the assignment shall be final. Any objection to the assignment shall be stated, with reasons, in writing and circulated to all justices. If a majority of the justices concur in the objection within the balance of the seven (7) day period or within three (3) days after the objection is circulated, whichever is later, the assignment shall be withdrawn. At the request of any justice, the objection to the assignment shall be taken up at conference.
22. **LEGAL INTERN CERTIFICATES.** The chief justice, or designee, shall sign legal intern certificates on behalf of the Court.

**SCHEDULE B**  
**(To be attached to the Declaration of Policy)**

The Motion Justice is assigned authority to enter orders or take other definitive action on behalf of the entire court in the following matters, unless the Motion Justice determines that the entire court should be involved. The Motion Justice will receive a disposition memo from the Staff Attorney before taking action.

1. Motions to withdraw filed by court appointed counsel.
2. Motions to reconsider rulings on prior motions.
3. Habeas petitions from prisoners where no grounds regarding conditions of confinement are raised.
4. Petitions from prisoners for writs of error or mandate where no grounds are asserted that would allow relief.
5. Motions to remand.
6. Non routine motions to waive fees.
7. Responses to orders of conditional dismissal based on timeliness or appealability of order.
8. Motions for appointment of counsel.
9. Request for Appointment of Hearing Committee in disciplinary proceedings.
10. Recalling a remittitur alleged to have been wrongly issued.
11. Motions for substitution of counsel.
12. Briefs exceeding 60 pages.
13. Motions for leave to file a late petition for review.
14. Motions to file a non-conforming brief if there is an objection.
15. Motions requesting a third extension of time.
16. Motions for extension of time for filing a transcript or record.
17. Motions for time for filing a transcript estimated to be over 500 pages.