

In the Supreme Court of the State of Idaho

IN RE: AMENDMENTS TO IDAHO)
APPELLATE RULE (I.A.R.) 12.3)

ORDER

The Court having reviewed a recommendation to amend Idaho Appellate Rule 12.3, 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 12.3 be, and the same is hereby, amended as follows:

Rule 12.3. Certification of a question of law from a United States court.

(a) **Certification of a Question of Law.** The Supreme Court of the United States, a Court of Appeals of the United States or a United States District Court may certify in writing to the Idaho Supreme Court a question of law asking for a declaratory judgment or decree adjudicating the Idaho law on such question if such court, on the court's own motion or upon the motion of any party, finds in a pending action that:

(1) The question of law certified is a controlling question of law in the pending action in the United States court as to which there is no controlling precedent in the decisions of the Idaho Supreme Court, and

(2) An immediate determination of the Idaho law with regard to the certified question would materially advance the orderly resolution of the litigation in the United States court.

(b) **Filing with Idaho Supreme Court.** Upon the certification of a question of law to the Idaho Supreme Court under this rule, the United States court or any party in the action pending in that court, may file a certified copy of its order of certification with the Idaho Supreme Court without the payment of any filing fee. Any party to the action pending in the United States court may file a statement or brief in support of, or in opposition to, the certification of the question of law to the Idaho Supreme Court within ~~fourteen (14)~~ seven (7) days from the date of filing of the Order of Certification.

(c) **Acceptance by the Idaho Supreme Court.** The Idaho Supreme Court may in its discretion accept the question of law certified by the United States court under this rule unless it finds that it appears that there is another ground for determination of the

case pending in the United States court, or that the question certified for adjudication under this rule is not clearly defined in the Order of Certification, or that there is not an adequate showing that the question of law qualifies for determination under subsection (a) of this rule. The Idaho Supreme Court will enter an order either accepting or rejecting the question certified to it by the United States court and serve copies of such order upon the United States court and all parties to that pending action. If the Idaho Supreme Court accepts the certified question of law for adjudication, the Idaho Supreme Court will, in its order of acceptance, set forth the procedure to be followed in the adjudication proceeding including the sequence and time for the filing of briefs by the parties to the pending action in the United States court. The filing of briefs shall follow an expedited schedule with the appellant's brief due within 28 days from the date of the order, the respondent's brief due within 21 days of the filing of the appellant's brief and any reply brief due within 14 days of the respondent's brief. The Idaho Supreme Court may, in its discretion, also require copies of all or any portion of the clerk's record or reporter's transcript before the United States court to be filed with the Court, if in the opinion of the Court such documents are necessary in the determination of the question certified.

(d) Argument on Certified Question Before the Idaho Supreme Court. Upon acceptance of a question of law for adjudication under this rule, the Idaho Supreme Court will at that time, or at such later time as the Court deems appropriate, determine whether oral argument is required on the certified question of law and will advise the parties to the pending action in the United States court as to the time, place and procedure for presenting oral arguments to the Court. If oral argument is held, it shall be given priority on the court's calendar behind arguments in custody appeals that are filed pursuant to I.A.R. 11.1 or 12.1.

(e) Adjudication of Certified Question of Law. Upon adjudication of a question of law certified under this rule, the Idaho Supreme Court will issue a written opinion in the same manner as an opinion in an appeal to the Idaho Supreme Court and such opinion shall be distributed, published and reported in the same manner as an opinion in an appeal.

IT IS FURTHER ORDERED, that this order and these amendments shall be effective the 1st day of January, 2018.

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 1st day of September, 2017.

By Order of the Supreme Court

R. Burdick
Roger S. Burdick, Chief Justice

ATTEST:

Karel A. Lehrman
Clerk

I, Karel A. Lehrman, Clerk of the Supreme Court/
Court of Appeals of the State of Idaho, do hereby
certify that the above is a true and correct copy of
the Order In RE Amendments
entered in the above entitled cause and now on
record in my office.
WITNESS my hand and the Seal of this Court _____

KAREL A. LEHRMAN Clerk
By: Melvin J. [Signature] Chief Deputy