User Name: Jeremy Bass
Date and Time: Sunday, December 1, 2024 5:31:00 PM PST
Job Number: 239806984

Documents (110)

1. *Rule 26.1. Computer-searchable disks of transcripts. [Repealed]*
   Client/Matter: -None-
2. *Rule 13.1. Ex parte temporary stay.*
   Client/Matter: -None-
3. *Rule 1. Title, construction and effective date.*
   Client/Matter: -None-
4. *Rule 30.1. Corrections of transcript or record.*
   Client/Matter: -None-
5. *Rule 2. Scope and definitions.*
   Client/Matter: -None-
6. *Rule 7. Substitution of party.*
   Client/Matter: -None-
7. *Rule 10. Hearings by the Supreme Court.*
   Client/Matter: -None-
8. *Rule 13.5. Stipulation for vacation, reversal or modification of judgment. [Repealed]*
   Client/Matter: -None-
9. *Rule 3. Writs of review, bills of exceptions, and writs of certiorari.*
   Client/Matter: -None-
10. *Rule 13.2. Suspension of appeal.*
    Client/Matter: -None-
11. *Rule 33. Stipulation for dismissal.*
    Client/Matter: -None-
12. *Rule 30. Augmentation or deletions from transcript or record.*
    Client/Matter: -None-
13. *Rule 27. Clerk's or agency's record -- Number -- Clerk's fees -- Payment of estimated fees -- Time for preparation -- Waiver of clerk's fee.*
    Client/Matter: -None-
14. *Rule 26. Preparation and arrangement of reporter's transcripts.*
    Client/Matter: -None-
15. *Rule 5. Special writs and proceedings.*
    Client/Matter: -None-
16. *Rule 20.1. Filing and service of documents by facsimile machine.*
    Client/Matter: -None-
17. *Rule 22. Computation of time.*
    Client/Matter: -None-

18. *Rule 12.1. Permissive appeal in custody and guardianship cases.*
Client/Matter: -None-
19. *Rule 37. Oral argument.*
Client/Matter: -None-
20. *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.*
Client/Matter: -None-
21. *Rule 31.1. Reclaiming exhibits, documents or property.*
Client/Matter: -None-
22. *Rule 9. Appearance of attorneys not licensed in Idaho.*
Client/Matter: -None-
23. *Rule 8. Amicus curiae.*
Client/Matter: -None-
24. *Rule 23. Filing fees and clerk's certificate of appeal -- Waiver of appellate filing fee.*
Client/Matter: -None-
25. *Rule 6. Title of appeal and designation of parties and size of paper.*
Client/Matter: -None-
26. *Rule 31. Exhibits, recordings and documents.*
Client/Matter: -None-
27. *Rule 33.1. Stipulation for vacation, reversal or modification of judgment. [Rescinded.]*
Client/Matter: -None-
28. *Rule 30.2. Augmentation of record on appeal with copy of an ordinance.*
Client/Matter: -None-
29. *Rule 34.1. Electronic Copies of Briefs. [Repealed]*
Client/Matter: -None-
30. *Rule 12.4. Expedited appeals in Industrial Commission appeals pursuant to Rule 11(d)(2).*
Client/Matter: -None-
31. *Rule 36. Preparation of briefs.*
Client/Matter: -None-
32. *Rule 24. Reporter's transcript -- Format -- Estimate of fees -- Time for preparation -- Waiver of reporter's fee.*
Client/Matter: -None-
33. *Rule 12. Appeal by permission.*
Client/Matter: -None-
34. *Rule 39. Remittitur following mandate from the Supreme Court of the United States.*
Client/Matter: -None-
35. *Rule 13.3. Temporary remand to district court or administrative agency.*
Client/Matter: -None-
36. *Rule 7.1. Intervention.*
Client/Matter: -None-
37. *Rule 34. Briefs on appeal -- Number -- Length -- Time for filing -- Extension -- Augmentation.*
Client/Matter: -None-
38. *Rule 13.4. Delegation of jurisdiction to district court during an appeal.*
Client/Matter: -None-
39. *Rule 32. Motions -- Time for filing -- Briefs.*

Client/Matter: -None-

40. *Rule 16. Bonds on appeal.*

Client/Matter: -None-

41. *Rule 18. Notice of cross-appeal -- Contents.*

Client/Matter: -None-

42. *Rule 12.2. Expedited review for appeals in custody cases brought pursuant to Rule 11.1 or Rule 12.1.*

Client/Matter: -None-

43. *Rule 15. Cross-appeal after an appeal.*

Client/Matter: -None-

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

Client/Matter: -None-

45. *Rule 29. Settlement and filing of reporter's transcript and clerk's or agency's record.*

Client/Matter: -None-

46. *Rule 21. Effect of failure to comply with time limits.*

Client/Matter: -None-

47. *Rule 4. Persons who may appeal.*

Client/Matter: -None-

48. *Rule 43. Special writs. [Repealed]*

Client/Matter: -None-

49. *Rule 45.1. Criminal appeals -- Counsel on appeal.*

Client/Matter: -None-

50. *Rule 38. Opinions and remittiturs.*

Client/Matter: -None-

51. *Rule 19. Request for additional transcript or clerk's or agency's record -- Payment.*

Client/Matter: -None-

52. *Rule 11.2. Signing of notice of appeals, petitions, motions, briefs and other papers; sanctions.*

Client/Matter: -None-

53. *Rule 44. Extraordinary appellate procedure.*

Client/Matter: -None-

54. *Rule 17. Notice of appeal -- Contents.*

Client/Matter: -None-

55. *Rule 103. [Reserved.]*

Client/Matter: -None-

56. *Rule 45. Withdrawal or substitution of appellate counsel.*

Client/Matter: -None-

57. *Rule 47. Service of court opinions, orders and other documents by the clerk.*

Client/Matter: -None-

58. *Rule 48. Practice not covered by rules.*

Client/Matter: -None-

59. *Rule 42. Petition for rehearing.*

Client/Matter: -None-

60. *Rule 13. Stay of proceedings upon appeal or certification.*

Client/Matter: -None-

61. *Rule 28. Preparation of clerk's or agency's record -- Content and arrangement.*

Client/Matter: -None-

62. *Rule 46. Extension of time generally.*

Client/Matter: -None-

63. *Rule 44.1. Expedited review for appeals brought pursuant to I.C. 18-609A.*

Client/Matter: -None-

64. *Rule 105. [Reserved.]*

Client/Matter: -None-

65. *Rule 102. Idaho Court of Appeals.*

Client/Matter: -None-

66. *Rule 109. Oral Argument.*

Client/Matter: -None-

67. *Rule 104. Chief Judge.*

Client/Matter: -None-

68. *Rule 101. Rules applicable to the Idaho Court of Appeals.*

Client/Matter: -None-

69. *Rule 20. Filing and service of documents.*

Client/Matter: -None-

70. PROCEDURES IN THE SRBA_Attachment1

Client/Matter: -None-

71. *Rule 107. [Reserved.]*

Client/Matter: -None-

72. Rule 41. Attorney fees on appeal._Attachment1

Client/Matter: -None-

73. *Rule 25. Reporter's transcript -- Contents.*

Client/Matter: -None-

74. *Rule 110. Case files.*

Client/Matter: -None-

75. *Rule 106. Clerk and officers of court.*

Client/Matter: -None-

76. *Rule 117. [Reserved.]*

Client/Matter: -None-

77. Rule 116. Petition for rehearing before Court of Appeals._Attachment1

Client/Matter: -None-

78. *Rule 121. [Reserved.]*

Client/Matter: -None-

79. 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._Attachment1

Client/Matter: -None-

80. *Note*

Client/Matter: -None-

81. *Rule 113. [Reserved.]*

Client/Matter: -None-

82. *Note*
Client/Matter: -None-
83. *Rule 115. [Reserved.]*
Client/Matter: -None-
84. *Rule 114. Re-transfer of case to Supreme Court.*
Client/Matter: -None-
85. *Rule 49. Appellate settlement conference.*
Client/Matter: -None-
86. *Rule 108. Assignment of cases.*
Client/Matter: -None-

87. PROCEDURES IN THE SRBA_Attachment2
Client/Matter: -None-
88. *Rule 111. Argument by telephone conference call.*
Client/Matter: -None-

89. Rule 28. Preparation of clerk's or agency's record -- Content and arrangement._Attachment2
Client/Matter: -None-
90. *Rule 120. Review of decisions on initiative of Supreme Court.*
Client/Matter: -None-
91. *Rule 112. Determination of appeals.*
Client/Matter: -None-

92. Rule 22. Computation of time._Attachment1
Client/Matter: -None-
93. *Rule 119. [Reserved.]*
Client/Matter: -None-

94. Rule 34. Briefs on appeal -- Number -- Length -- Time for filing -- Extension -- Augmentation._Attachment2
Client/Matter: -None-

95. Rule 40. Taxation of costs._Attachment1
Client/Matter: -None-
96. *Rule 122. Opinions and remittiturs.*
Client/Matter: -None-
97. *Rule 40. Taxation of costs.*
Client/Matter: -None-
98. *Rule 118. Petition for review by the Supreme Court.*
Client/Matter: -None-

99. Rule 33.1. Stipulation for vacation, reversal or modification of judgment. [Rescinded.]_Attachment1
Client/Matter: -None-

100. Rule 40. Taxation of costs._Attachment2
Client/Matter: -None-
101. *Rule 35. Content and arrangement of briefs.*
Client/Matter: -None-

102. Rule 34. Briefs on appeal -- Number -- Length -- Time for filing -- Extension -- Augmentation._Attachment1
Client/Matter: -None-
103. *Rule 116. Petition for rehearing before Court of Appeals.*
Client/Matter: -None-

104. Rule 33.1. Stipulation for vacation, reversal or modification of judgment. [Rescinded.]_Attachment2
Client/Matter: -None-

105. Rule 42. Petition for rehearing._Attachment1
Client/Matter: -None-

106. Rule 28. Preparation of clerk's or agency's record -- Content and arrangement._Attachment1
Client/Matter: -None-
107. *Rule 14. Time for filing appeals.*
Client/Matter: -None-
108. *PROCEDURES IN THE SRBA*
Client/Matter: -None-
109. *Rule 41. Attorney fees on appeal.*
Client/Matter: -None-
110. *Rule 11. Appealable judgments and orders.*
Client/Matter: -None-

I.A.R. Rule 1

State and Federal through Rules promulgated through January 31, 2022

ID - Idaho State & Federal Court Rules > IDAHO APPELLATE RULES

Rule 1. Title, construction and effective date.

These rules shall be known and cited as the "Idaho Appellate Rules" (I.A.R.). These rules shall take effect on July 1, 1977, and thereafter all laws and rules of appellate procedure in the Supreme Court in conflict therewith shall be of no further force or effect. These rules shall govern all proceedings pending in the Supreme Court on the effective date or thereafter commenced, but shall not control as to the time for filing a notice of appeal if the judgment or order appealed from was entered before July 1, 1977, in which case the time for appeal shall be as provided by law on June 30, 1977.

History

(Adopted March 25, 1977, effective July 1, 1977; amended June 15, 1987, effective November 1, 1987.)

Annotations

Commentary

STATUTORY NOTES

Compiler's Notes.

The order of the Supreme Court adopting the Idaho Appellate Rules read:

The order of the Supreme Court of March 31, 1978 amending the Idaho Appellate Rules read:

Case Notes

Prerequisites to Appeal.

Since former § 13-203 was repealed and I.A.R. 16(a) was adopted there was no longer a requirement of posting a cost bond on appeal, the doctrine of *Martinson v. Martinson, 90 Idaho 490, 414 P.2d 204 (1966)*, that an uncashed check, given as an appeal bond, does not constitute such a bond, has been eliminated, and where the notice exception to I.A.R. 1 was satisfied, the appeal would be heard. *Erickson v. Amoth, 99 Idaho 907, 591 P.2d 1074 (1978)*.

Cited in:

State, Dep't of Law Enforcement v. One 1955 Willys Jeep, 100 Idaho 150, 595 P.2d 299 (1979); *Dep't of Health & Welfare v. Doe (In re Doe), 156 Idaho 103, 320 P.3d 1262 (2014)*.

I.A.R. Rule 2

State and Federal through Rules promulgated through January 31, 2022

ID - Idaho State & Federal Court Rules > IDAHO APPELLATE RULES

Rule 2. Scope and definitions.

(a) Scope. These rules shall govern all appeals and petitions for special writs or proceedings in the Supreme Court.

(b) Definitions. For purposes of these rules:

(1) "District court" shall include the district courts of all judicial districts but shall not include the magistrates divisions thereof.

(2) "Appellant" shall include "petitioner."

(3) "Respondent" shall mean the adverse party not initially seeking affirmative relief.

(4) "Petition" shall include "complaint" or "application."

(5) "Administrative agency" shall include only the Public Utilities Commission and the Industrial Commission.

(6) "Transcript" shall mean the reporter's transcript.

(7) "Record" shall mean the clerk's or agency's record.

(8) "Clerk" shall mean the clerk of the district court, or the secretary or designated clerk, if any, of the Industrial Commission or the Public Utilities Commission.

History

(Adopted March 25, 1977, effective July 1, 1977.)

Annotations

Case Notes

Cited in:

Foster v. Shore Club Lodge, Inc., 127 Idaho 921, 908 P.2d 1228 (1995); *Losser v. Bradstreet, 145 Idaho 670, 183 P.3d 758 (2008)*.

End of Document

I.A.R. Rule 3

State and Federal through Rules promulgated through January 31, 2022

ID - Idaho State & Federal Court Rules > IDAHO APPELLATE RULES

Rule 3. Writs of review, bills of exceptions, and writs of certiorari.

Appellate review by bill of exceptions is hereby abolished. Writs of certiorari or writs of review shall be processed in the same manner as writs of prohibition as provided in these rules.

History

(Adopted March 25, 1977, effective July 1, 1977.)

Annotations

Case Notes

Writ of Review.
--Review Denied.

Writ of Review.

--Review Denied.

Where state did not appeal from order withholding judgment, it could not appeal from previous order reducing charges from felony to misdemeanor as such order did not fall within the language of I.A.R. 11(c)(3) or (6); nor would Supreme Court exercise its plenary power to hear such appeal, under Const., Art. 5, § 9, or treat the appeal as a petition for a writ of review under *§ 7-201* and this rule. (Decided under former *Rule 43.) State v. Molinelli, 105 Idaho 833, 673 P.2d 433 (1983)*.

End of Document

Rule 4. Persons who may appeal.

Any party aggrieved by an appealable judgment, order or decree, as defined in these rules, of a district court, the Public Utilities Commission or the Industrial Commission may appeal such decision to the Supreme Court as provided in these rules.

History

(Adopted March 25, 1977, effective July 1, 1977.)

Annotations

Case Notes

Cross-appeal Denied.
Party Aggrieved.
Party to Action.
Standing.
Appeal Statutory.
Party Aggrieved.
--Child Custody.
--Contracts.
--Decedent's Estate.
--Habeas Corpus.
--Partially Successful Plaintiff.
--School Districts.
--Stockholders.
--Taxpayers.
--Trust Mortgage.
Party to Action.

Cross-appeal Denied.

In a boundary dispute case in which one set of neighbors filed a cross- appeal, that cross-appeal was not properly before the court because there was no adverse determination to appeal from. The district court did not make any decision, findings, or conclusions on the issues of

adverse possession or boundary by agreement or acquiescence. *Campbell v. Kvamme, 155 Idaho 692, 316 P.3d 104 (2013)*.

Party Aggrieved.

Purchasers of real property, who remained primarily liable on a promissory note for the purchase price, were parties aggrieved by, and thus entitled to appeal, a judgment against their assignee, in favor of a lender which had obtained priority lien status pursuant to a subordination agreement with the original vendor. *Provident Fed. Sav. & Loan Ass'n v. Idaho Land Developers, Inc., 114 Idaho 453, 757 P.2d 716 (Ct. App. 1988)*.

Mortgagors' son had standing as a party aggrieved to appeal a foreclosure judgment, even though his only interest in the property was an expectancy, where the bank named him as a defendant in its foreclosure complaint in order to extinguish any possible interest he might have; if the son had an interest that could be extinguished by the judgment, then he also had an interest to assert an appeal. *Federal Land Bank v. Parsons, 116 Idaho 545, 777 P.2d 1218 (Ct. App. 1989)*.

The defendant was not an "aggrieved party" under this Rule where the district court granted his motion to correct time. *Cochran v. State, 133 Idaho 205, 984 P.2d 128 (Ct. App. 1999)*.

Finding that the subcontractor had standing was proper where the subcontractor was named in the order for judgment n.o.v. or new trial, depriving it of a money judgment. The subcontractor was also ordered to pay attorney fees to the contractor; thus, it was an aggrieved party pursuant to *Idaho App. R. 4. Gillingham Constr., Inc. v. Newby-Wiggins Constr., Inc., 142 Idaho 15, 121 P.3d 946 (2005)*.

Party to Action.

Where the Department of Employment did not appeal to the Industrial Commission from the decision of the Department appeals examiner, and did not participate in the hearing before the Industrial Commission, it was too late for the Department to claim status as a "party" for the purposes of appeal, particularly where neither the claimant nor the employer had appealed from the ruling of the *Industrial Commission. DiIorio v. Potlatch Corp., 107 Idaho 383, 690 P.2d 318 (1984)*.

While there was no doubt that an attorney was aggrieved by a trial court's refusal to recognize the attorney's claimed lien, the impediment to the attorney's appeal was the attorney's lack of party status. *Kinghorn v. Clay, 153 Idaho 462, 283 P.3d 779 (2012)*.

Standing.

The holder of a reversionary interest in the property under a sale contract that was extinguished by the judgment of condemnation had standing to raise a jurisdictional question on appeal. *State ex rel. Moore v. Howell, 111 Idaho 963, 729 P.2d 438 (Ct. App. 1986)*.

Cited in:

Simpson v. Louisiana-Pacific Corp., 134 Idaho 209, 998 P.2d 1122 (2000); *Losser v. Bradstreet, 145 Idaho 670, 183 P.3d 758 (2008)*.

Decisions Under Prior Rule or Statute

Appeal Statutory.

The right of appeal is purely statutory. *Vaught v. Struble, 63 Idaho 352, 120 P.2d 259 (1941)*.

Party Aggrieved.

"Party aggrieved" has been defined by this court as any person injuriously affected by judgment, irrespective of whether he be named as plaintiff, defendant or intervener. He has to be named neither in the caption, pleadings nor judgment. *State v. Eves, 6 Idaho 144, 53 P. 543 (1898)*; *Washington County Abstract Co. v. Stewart, 9 Idaho 376, 74 P. 955 (1903)*; *Oatman v. Hampton, 43 Idaho 675, 256 P. 529 (1927)*; *In re Blades, 59 Idaho 682, 86 P.2d 737 (1939)*.

Record itself must disclose that party taking appeal is aggrieved party. *Rural High Sch. Dist. No. 1 v. School Dist. No. 37, 32 Idaho 325, 182 P. 859 (1919)*.

Party not aggrieved by judgment is not entitled to appeal. *Northern Pac. Ry. v. Idaho County, 34 Idaho 191, 200 P. 128 (1921)*.

Where the county appealing would not be affected by affirmance or reversal, it is not "aggrieved" by the judgment, the appeal presents a moot question and the appeal must be dismissed. *Kootenai County v. White, 53 Idaho 804, 27 P.2d 977 (1933)*.

The test of whether a party is an "aggrieved party" so as to be entitled to appeal is whether the party would have had the thing if the erroneous judgment had not been entered. *Dowd v. Dowd, 62 Idaho 157, 108 P.2d 287 (1940)*.

The term "party aggrieved" mean any person injured or affected by the judgment. *Roosma v. Moots, 62 Idaho 450, 112 P.2d 1000 (1941)*.

--Child Custody.

A divorced wife, filing a petition seeking the custody and control of a minor child jointly with the maternal grandmother, was a "party aggrieved" by an order denying petition and awarding sole custody to the grandmother. *Roosma v. Moots, 62 Idaho 450, 112 P.2d 1000 (1941)*.

--Contracts.

The state is the aggrieved party to order denying motion for judgment for penalty prescribed in case of usurious contracts, and may appeal from such order. *State v. Eves, 6 Idaho 144, 53 P. 543 (1898)*.

--Decedent's Estate.

The estate of a deceased person was an "aggrieved party," by a judgment for the administratrix, and hence could appeal, since the estate would have to pay the judgment if it were not reversed, vacated, or modified. *Dowd v. Dowd, 62 Idaho 157, 108 P.2d 287 (1940)*.

--Habeas Corpus.

The officer from whose custody a person has been discharged on habeas corpus is a "party aggrieved" and has such an interest as will authorize him to appeal from, or sue out a writ of error to review, the judgment of discharge applied to warden of state penitentiary. *In re Blades, 59 Idaho 682, 86 P.2d 737 (1939)*.

The state itself is a "party aggrieved" under statutes permitting such a party to appeal from a judgment, so that on habeas corpus it may appeal from a judgment discharging a petitioner from custody. *In re Blades, 59 Idaho 682, 86 P.2d 737 (1939)*.

--Partially Successful Plaintiff.

Party who recovers judgment for only part of his claim is aggrieved by such judgment and entitled to appeal therefrom. *Phillips v. Salmon River Mining & Dev. Co., 9 Idaho 149, 72 P. 886 (1903)*.

--School Districts.

Rural high school district is party aggrieved by order of board of county commissioners segregating school district from rural high school district. *Rural High Sch. Dist. No. 1 v. School Dist. No. 37, 32 Idaho 325, 182 P. 859 (1919)*.

--Stockholders.

Stockholder not in privity with corporation is not a party aggrieved by judgment rendered against the corporation. *Eldridge v. Payette-Boise Water Users Ass'n, 48 Idaho 182, 279 P. 713 (1929)*.

--Taxpayers.

School district taxpayer who did not appeal to district court from order of board of county commissioners affecting his district is not party aggrieved by final judgment of district court. *Rural High Sch. Dist. No. 1 v. School Dist. No. 37, 32 Idaho 325, 182 P. 859 (1919)*.

Taxpayers of district who intervened in a proceeding brought by the highway district to determine validity of payments made to highway commissioners were entitled to appeal as aggrieved parties. *Nampa Hwy. Dist. No. 1 v. Graves, 77 Idaho 381, 293 P.2d 269 (1956)*.

--Trust Mortgage.

Members of the board of trustees named in a trust mortgage are not aggrieved by a foreclosure of the mortgage. *Poage v. Cooperative Publishing Co., 57 Idaho 561, 66 P.2d 1119 (1937)*.

Party to Action.

It is not necessary for a person to be named as plaintiff or defendant or intervener in the title to an action, or in the title of judgment entered therein, in order to become party thereto so as to be entitled to appeal. *Washington County Abstract Co. v. Stewart, 9 Idaho 376, 74 P. 955 (1903)*.

In action by county to recover road poll tax an appeal from judgment in favor of defendant may be taken by county and in name of county as party in interest; it need not be taken in name of attorney general. *Kootenai County v. Hope Lumber Co., 13 Idaho 262, 89 P. 1054 (1907)*.

Right of nonsubstituted or nonappearing administrator to appeal from decision rendered against his intestate was derived exclusively from former similar provision. *Oatman v. Hampton, 43 Idaho 675, 256 P. 529 (1927)*.

Research References & Practice Aids

RESEARCH REFERENCES

A.L.R.

When criminal case becomes moot so as to preclude review of or attack on conviction or sentence. *9 A.L.R.3d 462*.

Executor's or administrator's right to appeal from order granting or denying distribution. *16 A.L.R.3d 1274*.

Party's acceptance of remittitur in lower court as affecting his right to complain in appellate court as to amount of damages for personal injury. *16 A.L.R.3d 1327*.

Right of creditor who has not filed timely petition for review of referee's order to participate in appeal secured by another creditor. *22 A.L.R.3d 914*.

Remarriage pending appeal as precluding party from attacking property settlement of divorce decree. *55 A.L.R.3d 1299*.

End of Document

Rule 5. Special writs and proceedings.

(a) Special Writs. Any person may apply to the Supreme Court for the issuance of any extraordinary writ or other proceeding over which the Supreme Court has original jurisdiction. Except for petitions for writs filed by incarcerated persons and petitions for writs of habeas corpus, petitions for writs and motions seeking to intervene in such petitions shall contemporaneously be served by mail on all affected parties, including the real party in interest. There shall be no response to applications filed pursuant to this rule unless the Supreme Court requests a party to respond to the application before granting or denying the same. The Supreme Court shall process petitions for such special writs as are established by law in the manner provided in this rule.

(b) Challenge to a Final Redistricting Plan. In accord with *Article III, Section 2(5) of the Idaho Constitution*, any registered voter, any incorporated city or any county in this state, may file an original action challenging a congressional or legislative redistricting plan adopted by the Commission on Reapportionment. Such challenges shall be filed within 35 days of the filing of the final report with the office of the Secretary of State by the Commission.

(c) Filing Fee -- Briefs. 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.

(d) Procedure for Issuance of Writs. Special writs, except writs of habeas corpus, shall issue as herein provided. The Supreme Court acting through three (3) or more members, or by two (2) or more members when the Court is in recess, may issue a writ directing the respondent to act in accordance with the writ, or to appear or respond at the time fixed in the writ to show cause why the relief requested in the petition should not be granted. The court may enter an order providing for briefing and oral argument prior to issuance of a writ or an order to show cause. If such an order is entered, briefing shall be conducted in the manner outlined in the order as supplemented by these rules. The briefs shall be in the form prescribed by Rule 32(e). A majority of the entire Court, may also direct the respondent to so act, or to refrain from acting, as directed in the writ, pending hearing and upon such conditions as the Court may impose. Upon its issuance, a copy of the petition, brief and writ shall immediately be served upon all affected parties including the real party in interest as concerns the requested relief, which real party must be named in the petition and the writ. Service shall be made in the manner and within the

time limit set by the Court. Appearance in response to the writ by any interested party shall be by verified answer and by brief. If no appearance is made, the Court may grant any requested relief justified by the petition. If appearance is made, the Court may schedule the matter for oral argument or decide the matter on the record. Issues of fact, if any, shall be determined in the manner ordered by the Court.

(e) Denial of Writ or Issuance of Peremptory Writ. If the Court denies a petition for a writ of mandamus or prohibition or issues a peremptory writ, the order denying the petition or the peremptory writ, as the case may be, shall be a separate document that only states the relief ordered. It shall not include a record of prior proceedings; the Court's legal reasoning, findings of fact, or conclusions of law; or the report of a master.

(f) Memorandum of Costs. No later than fourteen (14) days after the issuance of an order denying the petition or granting a peremptory writ, the prevailing party may file a memorandum of costs. Such memorandum must state that to the best of the party's knowledge and belief the items are correct and that the costs claimed are in compliance with this rule. A memorandum of costs mailed to the Court shall be deemed filed upon the date of mailing. Failure to file a memorandum of costs within the period prescribed by this rule shall be a waiver of the right to costs.

(g) Costs Allowed. Unless otherwise ordered by the Court, the costs allowed shall include:

1. Court filing fee.

2. Actual fees for service of the petition or any document in the action whether served by a public officer or other person.

3. Expenses or charges of certified copies of documents admitted as evidence in a hearing or the trial of the action.

4. The cost of a master appointed by the Court.

5. Reasonable costs of the preparation of exhibits admitted in evidence in a hearing or trial of the action, but not to exceed the sum of $500 for all of such exhibits of each party.

6. Witness fees of $20.00 per day for each day in which a witness, other than a party or expert, testifies in the trial of the action.

7. Travel expenses of witnesses who travel by private transportation, other than a party, who testify in the trial of the action, computed at the rate of $.30 per mile, one way, from the place of residence, whether it be within or without the state of Idaho; travel expenses of witnesses who travel other than by private transportation, other than a party, computed as the actual travel expenses of the witness not to exceed $.30 per mile, one way, from the place of residence of the witness, whether it be within or without the state of Idaho.

8. Cost of reporter's transcript of a trial before a master in the action, including the cost of computer-searchable disks filed with the Supreme Court under Rule 26.1 (c), but excluding the cost of all other disks.

9. Reasonable expert witness fees for an expert who testifies at a deposition or at the trial of the action not to exceed the sum of $2,000 for each expert witness for all appearances.

10. Charges for reporting and transcribing of a deposition taken in preparation for trial of an action, whether or not read into evidence in the trial of an action.

11. Reasonable attorney's fees, which may include paralegal fees and the reasonable cost of automated legal research (Computer Assisted Legal Research). The claim for attorney fees as costs shall be supported by a statement of the legal basis for the award and an affidavit of the attorney stating the basis and method of computation of the attorney fees claimed. The allowance of attorney fees by the court under this rule is not to be construed as fixing the fees between attorney and client.

(h) Objections to Costs. No later than fourteen (14) days after the date of service of the memorandum of costs, any party may object to the claim for costs of another party by filing and serving on the adverse party an objection to part or all of such costs, stating the reasons in support thereof. An objection to costs shall be deemed filed upon mailing and shall be heard and determined by the Court as an objection to the application for costs.

(i) Petitions for Writ of Habeas Corpus. Petitions for writs of habeas corpus shall be processed as provided by law.

History

(Adopted March 25, 1977, effective July 1, 1977; Amended March 19, 2009, effective July 1, 2009; amended November 20, 2012, effective January 1, 2013; amended and effective January 21, 2016; amended and effective January 24, 2019; amended April 28, 2021, and effective July 1, 2021.)

Annotations

Commentary

STATUTORY NOTES

Cross References.

Original jurisdiction of Supreme Court, *Idaho Const., Art. 5, § 9*.

Case Notes

Assertion of Jurisdiction.
Authority to Issue.
Litigation Against Judges.
Procedural Defects.

Assertion of Jurisdiction.

Once the Supreme Court has asserted its original jurisdiction, it may issue writs of mandamus and/or prohibition. *Mead v. Arnell, 117 Idaho 660, 791 P.2d 410 (1990)*.

Authority to Issue.

Once the Supreme Court has asserted its original jurisdiction, it may issue writs of mandamus and/or prohibition. (Decided under former *Rule 43). Mead v. Arnell, 117 Idaho 660, 791 P.2d 410 (1990)*.

District court did not err in denying a vexatious litigant leave to file new litigation because the litigant attempted to engage in unauthorized practice of law by seeking to file a habeas petition in a juvenile case on behalf of his minor child, no facts showing unlawful restraint of liberty were alleged, and improper purposes were evident. A procedural due process argument lacked merit because the litigant chose not to seek relief under this rule in the vexatious litigant proceedings. *Van Hook v. State, 170 Idaho 24, 506 P.3d 887 (2022)*.

Litigation Against Judges.

Where individual sued all members of Supreme Court, as well as virtually all members of the bench in northern Idaho, manifested a pattern of initiating litigation against any judge ruling against him and stated and restated his belief that no judge in Idaho could hear his cases, at least until the bar is declared unlawful, Supreme Court would not declare itself disqualified and would enjoin individual from filing pro se actions without court approval and from filing liens without an attorney. *Eismann v. Miller, 101 Idaho 692, 619 P.2d 1145 (1980)*.

Procedural Defects.

Petition for a writ of prohibition was considered despite any procedural defects in its verification where the petition raised legitimate constitutional concerns regarding the magistrate court's issuance of the warrant of attachment, numerous individuals and entities had weighed in as amici, and the dispute would benefit from addressing it now as opposed to in the future because it was likely to reoccur. *Beck v. Elmore Cty. Magistrate Court (in re Writ of Prohibition), 168 Idaho 909, 489 P.3d 820 (2021)*.

Cited in:

Regan v. Denney, 437 P.3d 15 (2019); *Durst v. Idaho Comm'n for Reapportionment, 169 Idaho 863, 505 P.3d 324 (2022)*.

Research References & Practice Aids

OPINIONS OF ATTORNEY GENERAL

Should legislation be adopted permitting a public subdivision to voluntarily withdraw from PERSI (Public Employees Retirement System of Idaho), PERSI while not having a fiduciary duty to challenge the legislation, would be charged with the responsibility of allowing political subdivisions to withdraw from the system and would thus have standing to bring a declaratory judgment action or to bring an original action in the Supreme Court seeking a judicial declaration of the validity of the statute before allowing any withdrawals; thus by obtaining such a declaration prior to actually allowing employers to withdraw, PERSI could avoid the logistical problems that could be created if the statute were declared invalid after a number of employers had already withdrawn and employees brought an action seeking damages for PERSI's breach of its fiduciary duty regarding employee's benefits. OAG 96-1.

I.A.R. Rule 6

State and Federal through Rules promulgated through January 31, 2022

ID - Idaho State & Federal Court Rules > IDAHO APPELLATE RULES

Rule 6. Title of appeal and designation of parties and size of paper.

The original title of an action or proceeding, with the names of the parties in the same order, shall be retained on appeal by adding the designations of "appellant" and "respondent." In special proceedings the party prosecuting shall be designated the "petitioner" and the adverse party, if any, the "respondent." In an appeal in which there is no adverse party named in the title, there shall be added the name of the party prosecuting the appeal designated as "appellant." In an appeal from a decision or order of the Idaho Public Utilities commission filed by an intervenor in the original proceedings, the petitioner or applicant in the original proceedings shall be made a party to the appeal, and designated as a "respondent". The district court or administrative agency may by order correct the title of an appeal or cross-appeal at any time before the clerk's or agency's record is lodged as provided in Rule 29. The Supreme Court may amend a title of an appeal or proceeding before it at any time. All motions, petitions and other documents filed with the court should be typed on 8 1/2 x 11 inch paper. Prisoners incarcerated or detained in a state prison or county jail may file documents that are legibly hand-printed in black ink, in whole or in part, that otherwise conform to the requirements of these rules. Once a Supreme Court case number is assigned, all motions, briefs and other documents filed shall specify both the Supreme Court case number and the district court docket number, including county, or agency docket number from which the case originated. The original case number should appear below the Supreme Court case number.

History

(Adopted March 25, 1977, effective July 1, 1977; amended March 24, 1982, effective July 1, 1982; amended March 30, 1984, effective July 1, 1984; amended March 20, 1985, effective July 1, 1985; amended January 30, 2001, effective July 1, 2001; amended November 20, 2012, effective January 1, 2013.)

Annotations

Case Notes

Mandamus.
Writ of Review.

Cited in:

Security Pac. Bank v. Curtis, 123 Idaho 320, 847 P.2d 1181 (Ct. App. 1993).

Decisions Under Prior Rule or Statute

Mandamus.

An original proceeding in Supreme Court for writ of mandamus to compel clerk of district court to place plaintiff's name on ballot is a special proceeding and the parties should be designated as plaintiff and defendant. *Winter v. Davis, 65 Idaho 696, 152 P.2d 249 (1944)*.

Writ of Review.

Application to the Supreme Court for a writ of review (certiorari) is a special proceeding and the parties should be entitled plaintiff and defendant. *Shaw v. McDougall, 56 Idaho 697, 58 P.2d 463 (1936)*.

End of Document

I.A.R. Rule 7

State and Federal through Rules promulgated through January 31, 2022

ID - Idaho State & Federal Court Rules > IDAHO APPELLATE RULES

Rule 7. Substitution of party.

Upon the death or disability of a party to a proceeding governed by these rules, or upon the assignment, transfer, or the accession to the interest or office of party to a proceeding governed by these rules by another person, the representative, or successor in interest of such party shall file a notification of substitution of party and serve the same on all parties to the proceeding or appeal. The substitution shall be effective unless an objection thereto is made within fourteen (14) days of service, by a motion to disallow such substitution, in the manner provided for motions under Rule 32.

History

(Adopted March 25, 1977, effective July 1, 1977; amended April 11, 1979, effective July 1, 1979.)

Annotations

Case Notes

Applicability.
Discretion of Court.

Applicability.

Shortly after defendant was released from prison, and while his appeal was still pending, he died; substitution under Idaho App. R. 7 was not necessary in the circumstances of the case, where the attorney for the deceased had not been granted leave to withdraw and merely wished to conclude the criminal proceeding. *State v. Korsen, 141 Idaho 445, 111 P.3d 130 (2005)*.

In a dispute between neighbors over a locked gate placed across a road subject to easement rights, the successors-in-interest to one of the dominant estate owners were permitted to be substituted as the real parties in interest, because the easement benefits ran with the dominant estate, so the successors-in-interest had an appurtenant easement and could continue to assert and defend the prior owner's claim on appeal. *Berglund v. Dix, 170 Idaho 378, 511 P.3d 260 (2022)*.

Discretion of Court.

Where a party dies while his appeal is pending and no notification of substitution of party is filed, the appellate court has the discretion under this rule either to consider the merits of the appeal or to dismiss the appeal. *Dypwick v. Swift Transp. Co., 147 Idaho 347, 209 P.3d 644 (2009)*.

Cited in:

Thornton v. Pandrea, 161 Idaho 301, 385 P.3d 856 (Idaho 2016); *First Sec. Corp. v. Belle Ranch, LLC, 165 Idaho 733, 451 P.3d 446 (2019)*.

I.A.R. Rule 7.1

State and Federal through Rules promulgated through January 31, 2022

ID - Idaho State & Federal Court Rules > IDAHO APPELLATE RULES

Rule 7.1. Intervention.

Any person or entity who is a real party in interest to an appeal or proceeding governed by these rules or whose interest would be affected by the outcome of an appeal or proceeding under these rules may file a verified petition with the Supreme Court asking for leave to intervene as a party to the appeal or proceeding and serve a copy thereof upon all parties to the appeal or proceeding. The petition shall be processed as a motion in accordance with Rule 32 of these rules, and if the Supreme Court finds that such petitioning person or entity is a real party in interest or would be affected by the outcome of the appeal or proceeding, the Court may, in its discretion, grant leave to the petitioning party to intervene as a party appellant or respondent. In exercising its discretion, the Court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights. If leave to intervene is granted such petitioning party shall thereafter be a party to the appeal or proceedings for all purposes under these rules.

History

(Adopted April 11, 1979, effective July 1, 1979; amended May 1, 2024, effective July 1, 2024.)

Annotations

Case Notes

Party Properly Before the Court.

An appellate court will not grant relief to an appellant as against another party who is not properly brought before the court as a respondent. *Security Pac. Bank v. Curtis, 123 Idaho 320, 847 P.2d 1181 (Ct. App. 1993)*.

Cited in:

Kinghorn v. Clay, 153 Idaho 462, 283 P.3d 779 (2012).

End of Document

Rule 8. Amicus curiae.

(a) When Permitted. An attorney, or person or entity through an attorney, may appear as amicus curiae in any proceeding by request of the Supreme Court; or by leave of the Supreme Court upon written motion served upon all parties.

(b) Motion for Leave to File. The motion must be accompanied by the proposed brief and set forth the interest of the movant in the appeal or proceeding and the name of the party in whose support the amicus curiae would appear. The motion shall also state whether leave is sought to file an amicus curiae brief or participate in oral argument, or both.

(c) Contents and Form. An amicus brief must comply with Rule 36. In addition to the requirements of Rule 36, the cover must identify the party or parties supported and indicate whether the brief supports affirmance or reversal. An amicus brief need not comply with Rule 35, but it must include the following:

(1) a table of contents, with page references;

(2) a table of cases (alphabetically arranged), statutes, and other authorities, with page references;

(3) a concise statement of the identity of the amicus curiae, its interest in the case, and the source of its authority to file;

(4) a statement that indicates whether:

(i) a party's counsel authored the brief in whole or in part;

(ii) a party or a party's counsel contributed money that was intended to fund preparing or submitting the brief; and

(iii) a person or entity - other than the amicus curiae, its members, or its counsel - contributed money that was intended to fund preparing or submitting the brief and, if so, identifies each such person or entity; and

(5) an argument, which may be preceded by a statement of the case and which need not include a statement of the applicable standard of review.

(d) Time for Filing. An amicus curiae must file its brief, accompanied by a motion for leave to file, no later than seven (7) days after the initial brief of the party being supported is filed. An amicus curiae that does not support either party must file its brief no later than seven (7) days after the appellant's initial brief is filed. The court may grant leave for later filing, specifying the time within which an opposing party may answer.

(e) Objections. Any objection to the appearance of an amicus curiae must be made by motion within 14 days of service of the motion for leave to file in the manner provided for motions under Rule 32.

(f) Reply Brief. Except by the court's permission, an amicus curiae may not file a reply brief.

(g) Oral Argument. An amicus curiae may participate in oral argument only with the court's permission.

(h) Order. Leave to appear as amicus curiae shall be by written order of the Supreme Court which shall specify the manner of appearance by the amicus curiae attorney.

History

(Adopted March 25, 1977, effective July 1, 1977; amended April 18, 1983, effective July 1, 1983; amended March 23, 1990, effective July 1, 1990; amended April 28, 2022, effective July 1, 2022.)

Annotations

Commentary

STATUTORY NOTES

Cross References.

Extension of time for filing brief, I.A.R., Rule 34(e).

Rule 9. Appearance of attorneys not licensed in Idaho.

Upon written motion of a licensed Idaho attorney, at least 14 days before a hearing or argument, and upon order of the Supreme Court an attorney not licensed in Idaho may be permitted to appear and argue before the Supreme Court in association with such Idaho licensed attorney. The motion, or a supporting statement, shall certify that the attorney not licensed in Idaho is a licensed attorney in good standing in another specific state or jurisdiction and shall otherwise be in substantially the form found in Idaho Bar Commission Rule 227(j). If an attorney has been granted pro hac vice admission pursuant to Idaho Bar Commission Rule to appear in any case, then the attorney may continue to appear in that case before the Supreme Court without obtaining an order pursuant to this rule.

History

(Adopted March 25, 1977, effective July 1, 1977; amended March 28, 1986, effective July 1, 1986; amended November 20, 2012, effective January 1, 2013; amended April 28, 2022, effective July 1, 2022.)

Rule 10. Hearings by the Supreme Court.

The Supreme Court shall hold terms of Court as provided by the Idaho constitution, the statutes of the state of Idaho and the rules of the Supreme Court, and will hear appeals and petitions in accordance with the following procedure:

(a) Terms of Court. The Supreme Court will hold terms of Court as required by the Idaho Constitution and such other terms as may be set by the Court. In addition, the Supreme Court may set cases individually for hearing or argument. Changes in the terms of Court may be made by order of the Supreme Court.

(b) Hearing Appeals Outside of Terms of Court. The Court may set and hear appeals and petitions before a quorum of the Court at any time and at any place within the state of Idaho.

(c) Register of Actions. The Clerk shall number consecutively and enter all cases in a Register of Actions in the order of the filing with the Supreme Court of the initial document in each proceeding. All cases will be heard in the division and in the order in which they come at issue, unless otherwise ordered. Provided, the Clerk shall, upon order of the Court, transfer the appeal filed in any division to a special calendar of the Court of expedited appeals for hearing in Boise or at such other place as the Court may order.

(d) Divisions and Calendars. There shall be five appellate divisions in the state and calendars of appeals as follows:

(1) The Coeur d'Alene division calendars shall contain all appeals filed in the counties of the First Judicial District.

(2) The Lewiston division calendars shall contain all appeals filed in the counties of the Second Judicial District.

(3) The Boise division calendars shall contain all appeals filed in the counties of the Third and Fourth Judicial Districts.

(4) The Twin Falls division calendars shall contain all appeals filed in the counties of the Fifth Judicial District.

(5) The Pocatello division calendars shall contain all appeals filed in the counties of the Sixth and Seventh Judicial District.

(e) Expedited Calendar.

There shall be an additional calendar of expedited appeals and petitions for hearing in Boise or at such other place as ordered by the Court, and the Clerk shall transfer such appeals and petitions from any of the above divisions to the expedited calendar as directed by the Court.

History

(Adopted March 25, 1977, effective July 1, 1977; amended March 26, 1992, effective July 1, 1992.)

Rule 11. Appealable judgments and orders.

An appeal as a matter of right may be taken to the Supreme Court from the following judgments and orders, a copy of which must be attached to the notice of appeal:

(a) Civil Actions. From the following judgments and orders of a district court in a civil action:

(1) Final judgments, as defined in Rule 54(a) of the Idaho Rules of Civil Procedure including judgments of the district court granting or denying peremptory writs of mandate and prohibition.

(2) Decisions by the district court dismissing, affirming, reversing or remanding an appeal.

(3) Judgments made pursuant to a partial judgment certified by the trial court to be final as provided by Rule 54(b), I.R.C.P.

(4) Any order or judgment of contempt.

(5) An order granting or refusing a new trial, including such orders which contain a conditional grant or denial of a new trial subject to additur and remittitur.

(6) An order granting or denying a motion for judgment notwithstanding the verdict.

(7) Any order made after final judgment including an order denying a motion to set aside a default judgment, but excluding an order granting a motion to set aside a default judgment. A copy of the final judgment must also be attached to the notice of appeal.

(8) Any order expressly made appealable by statute.

(9) A district court order designating a person a vexatious litigant pursuant to Idaho Court Administrative Rule 59, in which case the notice of appeal may be filed with either the district court clerk or the Clerk of the Supreme Court.

(b) Probate Proceedings. From any interlocutory or final judgment or order made after final judgment of a district court in a probate proceeding, whether original or appellate, which is or would be appealable from the magistrates division to the district court by statute or these rules.

(c) Criminal Proceedings. From the following judgments and orders of the district court in a criminal action, whether or not the trial court retains jurisdiction:

(1) Final judgments of conviction.

(2) An order granting or denying a withheld judgment on a verdict or plea of guilty.

(3) An order granting a motion to dismiss an information or complaint.

(4) Any order or judgment, whenever entered and however denominated, terminating a criminal action, provided that this provision shall not authorize a new trial in any case where the constitutional guarantee against double jeopardy would otherwise prevent a second trial.

(5) Any order, however denominated, reducing a charge of criminal conduct over the objection of the prosecutor.

(6) Any judgment imposing sentence after conviction, except a sentence imposing the death penalty which shall not be appealable until the death warrant is issued as provided by statute.

(7) An order granting a motion to suppress evidence.

(8) An order granting or denying a motion for new trial.

(9) Any order made after judgment affecting the substantial rights of the defendant or the state.

(10) Decisions by the district court on criminal appeals from a magistrate, either dismissing the appeal or affirming, reversing or remanding.

(11) Any order or judgment of contempt.

(d) Administrative Proceedings -- Industrial Commission.

(1) From any final decision or order of the Industrial Commission or from any final decision or order upon rehearing or reconsideration by the administrative agency.

(2) From any order of the Industrial Commission deciding compensability that the Commission has determined should be immediately appealable pursuant to Rule 12.4. Any appeal from the order must be taken within fourteen (14) days from the date file stamped by the Industrial Commission on the written determination that the order should be immediately appealable. The appeal shall be expedited as set forth in Rule 12.4. The failure to appeal the order on compensability pursuant to this subsection shall not preclude consideration of the order in an appeal taken pursuant to subsection (1) of this rule.

(e) Administrative Proceedings -- Public Utilities Commission. From any decision or order of the Public Utilities Commission which is appealable to the Supreme Court by statute.

(f) Administrative Proceedings -- Judicial Review of Agency Decisions. From any final decision or order of the district court on judicial review of an agency decision.

(g) Cross-appeals and additional issues on appeal.

After an appeal has been filed from a judgment or order specified above in this rule, a timely cross-appeal may be filed from any interlocutory or final judgment order or decree. If no affirmative relief is sought by way of reversal, vacation or modification of the

judgment, order or decree, an issue may be presented by the respondent as an additional issue on appeal under Rule 35(b)(4) without filing a cross-appeal.

History

(Adopted March 25, 1977, effective July 1, 1977; amended March 31, 1978, effective July 1, 1978; amended March 24, 1982, effective July 1, 1982; amended March 30, 1984, effective July 1, 1984; amended March 20, 1985, effective July 1, 1985; amended March 28, 1986, effective July 1, 1986; amended June 15, 1987, effective November 1, 1987; amended March 20, 1991, effective July 1, 1991; amended March 9, 1999, effective July 1, 1999; amended January 30, 2001, effective July 1, 2001; amended March 21, 2007, effective July 1, 2007; amended March 29, 2010, effective July 1, 2010; amended November 20, 2012, effective January 1, 2013; amended June 20, 2013, effective July 1, 2013; amended April 23, 2015, effective July 1, 2015; amended September 1, 2015, effective January 1, 2016; amended May 1, 2024, effective July 1, 2024.)

Annotations

Commentary

STATUTORY NOTES

Cross References.

Appeals from district court to Supreme Court, *§ 13-201*.

Case Notes

Additur or New Trial.
Ambiguity in Sentence.
Appealable Order.
Appeal by Certification.
Appealability.
Attorney's Fees.
Confiscation Order.
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Default Orders.
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Industrial Commission Decisions.
Interlocutory Orders.
Judgment Notwithstanding Verdict.
Judgment of Conviction.
Jurisdiction of Court.
Jury Verdict.
Legality of Sentence.
Memorandum Decision.
Motion to Withdraw Guilty Plea.
Order Denying Copy of Report.
Order Denying Leave to Amend.
Order Denying Transcript.
Order for Trial De Novo.
Order of Industrial Commission.
Order of Probation.
Order Revoking Probation.
Order Suppressing Evidence.
Partial Summary Judgment.
Partition Proceedings.
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Reduction of Charge.
Restitution Order.
Sanctions.
Summary Judgment.
Time for Perfecting Appeal.
Appeal After Death.
Appeal by Partially Successful Plaintiff.
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Appeal Statutory.
Appealable Judgments or Orders.
Entry of Judgment.
Failure to Appeal.
Final Judgments and Orders.
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Nonappealable Orders and Judgments.
Order Made After Appeal.
Party to Action.
Review of Evidence.
Review of Nonappealable Orders.
Scope of Supreme Court Review.
Sufficiency of Evidence.
Writ of Assistance.

Cited in:

Hill v. Blaine Cnty., -- Idaho --, 550 P.3d 264, 2024 Ida. LEXIS 51 (June 5, 2024).

Additur or New Trial.

The district court determined that since the total amount the jury was awarded was less than half of what it could have awarded, and the award shocked the district court, it did not abuse its discretion in granting additur or in the alternative a new trial. *Collins v. Jones, 131 Idaho 556, 961 P.2d 647 (1998)*.

Ambiguity in Sentence.

Where the trial judge in pronouncing a sentence referred to burglary in the second degree instead of murder in the second degree, his slip of the tongue was not such as to create an ambiguity in sentencing which justified an appeal. *State v. Stormoen, 103 Idaho 83, 645 P.2d 317 (1982)*.

Where the trial judge in pronouncing a sentence erroneously referred to the "state correctional institution" instead of the "state board of correction" he did not create an ambiguity in the sentence which required appellate interference since no one was misled by the slip of the tongue. *State v. Stormoen, 103 Idaho 83, 645 P.2d 317 (1982)*.

Appealable Order.

Aunt's appeal of an order awarding custody of nieces and nephews to the Idaho department of health and welfare (department) was dismissed because the aunt's stipulation that it was in the children's best interests to award custody to the department did not preserve error and rendered the controversy moot, as no justiciable controversy was presented. *Doe v. Doe, 164 Idaho 393, 431 P.3d 1 (2018)*.

Appeal by Certification.

It was the intent of I.A.R. 12 to provide an immediate appeal from an interlocutory order if substantial legal issues of great public interest or legal questions of first impression are involved. The court also considers such factors as the impact of an immediate appeal upon the parties, the effect of the delay of the proceedings in the district court pending the appeal, the likelihood or possibility of a second appeal after judgment is finally entered by the district court, and the case workload of the appellate courts; no single factor is controlling in the court's decision of acceptance or rejection of an appeal by certification, but the court intends by I.A.R. 12 to create an appeal in the exceptional case and does not intend by the rule to broaden the appeals which may be taken as a matter of right under this rule. *Budell v. Todd, 105 Idaho 2, 665 P.2d 701 (1983)*.

Appealability.

After July 1, 1977, this rule will govern appealability of an order dismissing an information for lack of a speedy trial. *State v. Daugherty, 98 Idaho 716, 571 P.2d 777 (1977)*.

Since an order denying posttrial motions is one made after final judgment, it is appealable, whether or not it is meritorious. *Wheeler v. McIntyre, 100 Idaho 286, 596 P.2d 798 (1979)*.

Where the judgment provides, among other things, both a finding of no just reason for delay and an order that the judgment be entered, it is held that this language satisfied the requirements of 54(b), I.R.C.P., and consequently was a final appealable judgment as defined by subdivision (a)(2) of this rule. *Large v. Mayes, 100 Idaho 450, 600 P.2d 126 (1979)*.

An order of a district court upon appeal, remanding the matter to the magistrate division, is appealable to the Supreme Court as a matter of right under subdivision (a)(1) of this rule. *Duff v. Bonner Bldg. Supply, Inc., 103 Idaho 432, 649 P.2d 391 (Ct. App. 1982)*, aff'd, *105 Idaho 123, 666 P.2d 650 (1983)*.

An order denying a motion for reduction of sentence under I.C.R. 35 is appealable under subdivision (c)(6) of this rule, but where the Rule 35 motion had not been made -- much less decided -- when the notice of appeal was filed, the untimely appeal from the original judgment could not be viewed as appeal from the Rule 35 order. *State v. Fuller, 104 Idaho 891, 665 P.2d 190 (Ct. App. 1983)*.

Where no appeal was taken from the judgment of conviction but, rather, appeal was from an order revoking probation, the issues on appeal were confined to that order; because defendant did not appeal when the sentences were initially pronounced, he could not later challenge their reasonableness at that time. *State v. Dryden, 105 Idaho 848, 673 P.2d 809 (Ct. App. 1983)*.

An order is final and appealable when it fully and finally resolves all the issues of a case, and whether an order is final and appealable must be determined by its content and substance, and not by its title. *Fenich v. Boise Elks Lodge No. 310, 106 Idaho 550, 682 P.2d 91 (1984)*.

An appeal taken from a nonappealable order does not divest the lower court of continuing jurisdiction in the case. *Camp v. Jiminez, 107 Idaho 878, 693 P.2d 1080 (Ct. App. 1984)*.

A district judge's memorandum decision is not appealable unless it disposes of an appeal from the magistrate division; when a district court acts as a trial court, an appeal may be taken only from a final judgment or as otherwise provided in this rule and *I.A.R. 12. Kugler v. Northwest Aviation, Inc., 108 Idaho 884, 702 P.2d 922 (Ct. App. 1985)*.

The amended judgment, which set forth the terms of probation, was a final judgment of conviction and was appealable under subdivision (c)(1) and (6) of this rule. *State v. Hancock, 111 Idaho 835, 727 P.2d 1263 (Ct. App. 1986)*.

An order "remanding an appeal" is appealable to the Supreme Court as a matter of right. *H & V Eng'g, Inc. v. Idaho State Bd. of Professional Eng'rs & Land Surveyors, 113 Idaho 646, 747 P.2d 55 (1987)*.

Under the provisions of this rule, decisions by the district court dismissing, affirming, reversing, or remanding on appeal are appealable. *H & V Eng'g, Inc. v. Idaho State Bd. of Professional Eng'rs & Land Surveyors, 113 Idaho 646, 747 P.2d 55 (1987)*.

An appeal may be taken from a judgment of contempt. *Whittle v. Seehusen, 113 Idaho 852, 748 P.2d 1382 (Ct. App. 1987)*.

Where the district court entered an order that appellate fees and costs were not waived, after the Supreme Court had dismissed the original action and entered an order waiving only the filing fee for that appeal, the district court order was deemed to involve a separately appealable order "made after final judgment," even though an appeal is deemed to include all interlocutory or final orders entered after the order appealed from, as the Supreme Court by its own order, (a) treated the matter as a discrete appeal by giving it a designation and a case number separate from the earlier appeal, (b) assigned the action to the Court of Appeals for determination, and (c) suspended further proceedings in the earlier action until the instant appeal was decided. *Madsen v. Idaho Dep't of Health & Welfare, 114 Idaho 624, 759 P.2d 915 (Ct. App. 1988)*.

Once the state has taken an appeal from an order granting a motion to suppress under subdivision (c)(7) of this rule and an appellate decision is obtained, then subdivision (c)(10) of this rule is triggered and allows further appellate review. *State v. McAfee, 116 Idaho 1007, 783 P.2d 874 (Ct. App. 1989)*.

A summary disposition would not have entitled defendant to appeal under subdivision (c)(9) of this Rule because it would not have been an order entered after judgment affecting substantial rights of the defendant, since defendant had no right to file what was essentially a renewed I.C.R. 35 motion. *State v. Hickman, 119 Idaho 7, 802 P.2d 1219 (Ct. App. 1990)*.

Referee's order denying motion to compel discovery was not a final decision of the Commission, therefore, there was no right to appeal from the referee's order. *Peterson v. Farmore Pump & Irrigation, 119 Idaho 969, 812 P.2d 276 (1991)*.

Where the district court entered no order on the I.C.R. Rule 35 motion, but rather deferred ruling on the matter until it could receive further information concerning the timeliness of the motion, there was no order within the meaning of subdivision (c) of this rule from which defendant could appeal because there was no order entered on the Rule 35 motion either granting or denying the motion. *State v. Ochoa, 121 Idaho 536, 826 P.2d 497 (Ct. App. 1992)*.

A motion for reconsideration of a denial of a motion for a reduction of a sentence is a renewed motion under Rule 35 and is not permitted, but where the court nonetheless entertains such a motion and denies it on its merits, the court's exercise of discretion in that regard may be asserted as an issue on appeal. *State v. Lenwai, 122 Idaho 258, 833 P.2d 116 (Ct. App. 1992)*.

Defendant's second motion to reduce his sentence was not an order entered after judgment affecting substantial rights of the defendant, because defendant had no right to file a renewed motion; therefore, defendant was not entitled to appeal the order under this rule. *State v. Atwood, 122 Idaho 199, 832 P.2d 1134 (Ct. App. 1992)*.

The order to dismiss charges against defendant was an order terminating a criminal action, which was an appealable order pursuant to this rule. While the state might have objected to the condition of the probation order that defendant could withdraw his guilty plea after completion of probation; the state's failure to object to this condition at the time of the entry of the probation order did not remove its right to later appeal the order of dismissal. *State v. Funk, 123 Idaho 967, 855 P.2d 52 (1993)*.

Where the district court found that defendant's attorney had fulfilled his obligation to notify defendant of his right to appeal, of the options available, and had candidly discussed the probable results of each course of action, and the court further found that, although defendant may have "wanted to appeal," he failed to direct his attorney to, so the district court's findings, made after conducting the evidentiary hearing, are supported by substantial, even if conflicting, evidence. *Fox v. State, 125 Idaho 672, 873 P.2d 926 (Ct. App. 1994)*.

The denial of a motion for directed verdict is not a final order independently appealable under this rule; hence a motion for directed verdict which was denied by the district court is reviewable, as are other interlocutory orders, pursuant to the later appealable order. *Beco Constr. Co. v. Harper Contracting, Inc., 130 Idaho 4, 936 P.2d 202 (Ct. App. 1997)*.

Order for change of venue issued during a child custody and support modification proceeding was not immediately appealable as an order made after final judgment. *Rake v. Rake, 142 Idaho 83, 123 P.3d 716 (Ct. App. 2005)*.

Because motion to confirm and arbitrator's award were filed, and granted, under I.C. *§ 7-911*, they were appealable as a matter of right under Idaho App. R. 11(a)(8) and I.C. *§ 7-919(a)*(*3). Harrison v. Certain Underwriters at Lloyd's, 149 Idaho 201, 233 P.3d 132 (2010)*.

Although there is no specific provision of the Idaho Rules of Appellate Procedure that permits an appeal from an order denying a motion for the return of property illegally seized, the Idaho Constitution grants the appellate court the plenary power to review any decision of the district court. *State v. Ruck, 155 Idaho 475, 314 P.3d 157 (2013)*.

Attorney's Fees.

Separate certification of finality was not required for the order awarding attorney fees to be appealable when entered. *Wilsey v. Fielding, 115 Idaho 437, 767 P.2d 280 (Ct. App. 1989)*.

Confiscation Order.

Where court order allowed confiscation of defendant's firearm, subdivision (c)(6) of this rule authorized an appeal. *State v. Money, 109 Idaho 757, 710 P.2d 667 (Ct. App. 1985)*.

Construction.

The 1987 amendment of subdivision (a)(5) of this rule to include "such orders which contain a conditional grant or denial of a new trial subject to additur and remittitur" does not describe a new category of orders that are appealable, but only clarifies that an order granting or refusing a new trial is appealable, even when the order includes the condition that the grant or denial is subject to additur or remittitur. *Smallwood v. Dick, 114 Idaho 860, 761 P.2d 1212 (1988)*.

The reference in subdivision (c)(9) of this rule to "the state" refers to the state as that entity which is the plaintiff in all criminal actions, "the people of the State of Idaho." To hold that any subdivision of state government is provided an independent basis for appeal under subdivision (c)(9) urges a meaning which is contrary to both the plain meaning and intent of this rule. *State v. State, Dep't of Health & Welfare, 125 Idaho 227, 869 P.2d 227 (1994)*.

The filing of a notice of appeal which is based upon an appealable order under this rule has the effect of staying the proceedings before the district court. *State v. Schwarz, 133 Idaho 463, 988 P.2d 689 (1999)*.

Contempt Order.

Since there is no appeal as of right from a contempt order, an attempt to appeal from such an order did not divest the jurisdiction of the magistrate under I.A.R. 13(b). *Marks v. Vehlow, 105 Idaho 560, 671 P.2d 473 (1983)*.

District court's order denying contempt motion was an interlocutory order, entered prior to final disposition of an appeal pending in the district court, and interlocutory orders are appealable only if allowed by the Idaho Appellate Rules. This rule specifies the judgments, orders and decisions from which appeals can be taken, and this rule does not include, as an appealable item, an order denying a motion for contempt. *Sivak v. State, 119 Idaho 211, 804 P.2d 940 (Ct. App. 1991)*.

A contempt order of a magistrate judge that is certified by the magistrate judge to be final as provided by I.R.C.P. 54(b) is appealable to the district judge. *Beeman v. Petrie, 123 Idaho 838, 853 P.2d 583 (1993)*.

A writ of review is a proper method to seek a higher court's review of a lower court's jurisdiction to issue a contempt order. *Beeman v. Petrie, 123 Idaho 838, 853 P.2d 583 (1993)*.

If a contempt order is properly certified to be final, the party who seeks review of the order must appeal, rather than pursuing a writ of review; however, if a party wishes only to challenge the jurisdiction of the court to issue the contempt order, and if the order has not been properly certified as final pursuant to I.R.C.P. 54(b), the party may pursue a writ of review. *Beeman v. Petrie, 123 Idaho 838, 853 P.2d 583 (1993)*.

Where defendant did not request certification of the magistrate judge's finding of contempt and order pursuant to I.R.C.P. 54(b), defendant did not have the right to appeal, but only to challenge, by means of a writ of review, the magistrate judge's jurisdiction to issue a contempt order. *Beeman v. Petrie, 123 Idaho 838, 853 P.2d 583 (1993)*.

Cross-Appeal.

A cross-appeal is required only when the respondent seeks to change or add to the relief afforded below, but not when it merely seeks to sustain a judgment for reasons presented at trial which were not relied upon by the trial judge but should have been. *Walker v. Shoshone County, 112 Idaho 991, 739 P.2d 290 (1987)*.

Where the defendant pleaded the statute of limitations defense to the trial court, and it was only seeking an affirmation of the trial court's granting of summary judgment, the statute of limitations defense was properly before the Supreme Court, and there was no necessity for a cross-appeal in order to preserve that issue. *Walker v. Shoshone County, 112 Idaho 991, 739 P.2d 290 (1987)*.

Owners of a company were not required to file a cross-appeal under Idaho App. R. 11(g) to challenge the district court's denial of their motion to strike the purchaser's motion to vacate or modify an arbitration award on claims against an escrow account arising from the sale of the company as they were not seeking to add to the relief granted in the district court, but were seeking to sustain the judgment for a reason presented to, but rejected by that court. *Driver v. SI Corp., 139 Idaho 423, 80 P.3d 1024 (2003)*.

The state was not required to file a cross appeal under Idaho App. R. 15(a) or paragraph (g) of this rule, where the state did not seek to reverse, vacate, or modify the district court's denial of the defendant's petition. The state merely urged affirmance of that denial and asserted an alternate basis for upholding the judgment. *Leer v. State, 148 Idaho 112, 218 P.3d 1173 (2009)*.

Default Orders.

Default orders require distinction between entry of default and entry of judgment on the default. Entry of default, or refusal to enter default, are interlocutory. This is in sharp contrast to a default judgment which is a final disposition of the case and an appealable order. *Earth Resources Co. v. Mountain States Mineral Enters., Inc., 106 Idaho 864, 683 P.2d 900 (Ct. App. 1984)*.

Denial of Attorney Fees.

An order denying attorney fees is appealable and where notice of appeal was filed within 42 days of court's order denying attorney fees, court had jurisdiction to consider the appeal as it related to the order denying attorney fees. *State ex rel. Moore v. Lawson, 105 Idaho 164, 667 P.2d 267 (Ct. App. 1983)*.

Denial of Motion to Set Aside.

An order denying a motion to set aside an earlier order of default is not appealable. *Earth Resources Co. v. Mountain States Mineral Enters., Inc., 106 Idaho 864, 683 P.2d 900 (Ct. App. 1984)*.

Determination of Employee's Rights.

The trial court's determination of who was liable for payment of workers' compensation benefits to injured employee was not a final determination of employee's rights where the amount of compensation to which employee was entitled had not yet been determined. *Lines v. Idaho Forest Indus., 125 Idaho 462, 872 P.2d 725 (1994)*.

Dismissal of Criminal Prosecution.

The Supreme Court would not give subdivision (c)(6) of this rule a construction which would allow the state an appeal when a rape prosecution was dismissed subsequent to a guilty verdict but prior to entry of judgment, nor would the court exercise its plenary power to review such a dismissal since nothing in the record or historical Idaho jurisprudence suggested that post guilty verdict dismissals have been frequent or are likely to become frequent, and thus, the case did not present a recurring question, the resolution of which would be of substantial importance in the administration of justice in this state. *State v. Dennard, 102 Idaho 824, 642 P.2d 61 (1982)*.

An order denying a motion to dismiss the information is a nonappealable order under this rule. *State v. Hoffman, 104 Idaho 510, 660 P.2d 1353 (1983)*.

Due Process.

Because an inmate had no right to appeal the Idaho Supreme Court's interlocutory orders, the inmate was not deprived of due process by the Court of Appeal of Idaho's lack of authority to review those orders. *State v. Stevenson, 157 Idaho 798, 339 P.3d 1202 (Ct. App. 2014)*.

Final Judgment.

If the instrument "ends the suit," "adjudicate[s] the subject matter of the controversy," and represents a "final determination of the rights of the parties," the instrument constitutes a final judgment regardless of its title. *Idah-Best, Inc. v. First Sec. Bank, 99 Idaho 517, 584 P.2d 1242 (1978)*.

The final judgment or decree to which subdivision (a)(1) of this rule refers means a final determination of the rights of the parties. *Nelson v. Whitesides, 103 Idaho 374, 647 P.2d 1246 (1982)*.

In a personal injury action arising out of a one-car accident brought by the passenger against the minor driver, in which the minor's father was named as a codefendant on the basis of *§ 49-313* (now *§ 49-310*), where the plaintiff moved for partial summary judgment against the father and he countered with a pleading denominated a "petition for declaratory judgment," by which he sought determination of the extent of his liability under *§ 49-313* (now *§ 49-310*), the trial court's order purporting to determine the extent of such liability could not be considered a declaratory order or judgment under *§ 10-1207*, nor was it in the nature of a final judgment or decree subject to review under subdivision (a)(1) of this rule; rather, it remained subject to

review and revision in the trial court so long as the jurisdiction of that court continued. *Nelson v. Whitesides, 103 Idaho 374, 647 P.2d 1246 (1982)*.

The judgment of conviction which included the sentencing order, was a final judgment for purposes of appeal. Placing defendant on probation did not affect the finality of the judgment of conviction and sentence, for the purpose of appeal. *State v. Tucker, 103 Idaho 885, 655 P.2d 92 (Ct. App. 1982)*.

An order denying a motion for summary judgment is not a final order and a direct appeal ordinarily cannot be taken from it. Moreover, an order denying a motion for summary judgment is not reviewable on appeal from a final judgment. *Evans v. Jensen, 103 Idaho 937, 655 P.2d 454 (Ct. App. 1982)*.

A judgment was final, as required for appealability under this rule, although the judgment adjudicated less than all claims asserted in the lawsuit, it disposed of all remaining claims, leaving none pending; therefore, it was of no consequence that the judgment was not certified as final under I.R.C.P. 54(b). *M & H Rentals, Inc. v. Sales, 108 Idaho 567, 700 P.2d 970 (Ct. App. 1985)*.

Since order denying worker's motion to reconsider the motion to change caption did not finally dispose of all of worker's claims, and since the Industrial Commission retained jurisdiction in order to determine the amount of benefits to which worker was entitled, order denying the motion to reconsider was not a final decision or order for purposes of subdivision (d) of this rule. *Mortimer v. Riviera Apts., 122 Idaho 839, 840 P.2d 383 (1992)*.

As a result of the district court vacating its own order, there was no final judgment from which taxpayer could have appealed. Therefore, the Supreme Court of Idaho rejected the State Tax Commission's argument that the district court was precluded from remanding a first notice of tax deficiency back to the Board of Tax Appeals because taxpayer failed to appeal. The law of the case did not preclude the district court from remanding the first notice of deficiency back to the *Board of Tax Appeals. Grand Canyon Dories v. Idaho State Tax Comm'n, 124 Idaho 1, 855 P.2d 462 (1993)*.

Claimant could not appeal referee's denial of his request to reopen his workers' compensation case because the Industrial Commission did not approve and confirm the denial and thus order was not appealable because it was not an order of the Commission, but only of the referee. *Wheaton v. Industrial Special Indem. Fund, 129 Idaho 538, 928 P.2d 42 (1996)*.

The commission did not adopt, approve, or confirm the referee's ruling on the admissibility of the testimony of the witness and the Findings of Fact, Conclusions of Law, and Proposed Order contained no reference to the referee's decision regarding the testimony of the witness, nor did the record indicate that the plaintiff sought, at any time, to bring the ruling to the Commission's attention, either by filing a motion to reconsider or by arguing the issue in a post-hearing briefing. Thus, since the Commission did not specifically approve or adopt the referee's ruling, and it was not a final appealable order pursuant to subsection (d) of this section. *Dehlbom v. State, Indus. Special Indem. Fund, 129 Idaho 579, 930 P.2d 1021 (1997)*.

Decision of the Idaho Industrial Commission was not a final appealable order when the commission could not establish from the record the extent of the Industrial Special Indemnity Fund's liability, and retained jurisdiction over the issue to enable the parties to resolve the matter or present additional evidence for consideration; the Commission specifically declined to consider certain issues and the resolution of these issues was necessary for a "final order" within the meaning of subsection (d) of this rule. *Hartman v. Double L Mfg., 141 Idaho 456, 111 P.3d 141 (2005)*.

Post-conviction petitioner's notice of appeal from a district court's notice of intent to dismiss, though premature and interlocutory in nature, was nevertheless sufficient to effectuate an appeal from a final order dismissing the petition four days after the petitioner's notice of appeal was filed. *Weller v. State, 146 Idaho 652, 200 P.3d 1201 (2008)*.

Industrial Commission Decisions.

A decision of the Industrial Commission which does not finally dispose of all of the claimant's claims would not be a final decision subject to appeal pursuant to subsection (d) of this rule, particularly where the Industrial Commission did not rule on the issue of income benefits and expressly retained jurisdiction. *Kindred v. Amalgamated Sugar Co., 118 Idaho 147, 795 P.2d 309 (1990)*.

Idaho industrial commission's decision that the entire proceeds of an injured worker's third-party settlement were subject to subrogation was subject to review. Even if it was not an appealable final order, it was subject to the Idaho supreme court's plenary jurisdiction, because the case presented an important issue that would provide helpful guidance to the affected legal community. *Izaguirre v. R&L Carriers Shared Servs., LLC, 155 Idaho 229, 308 P.3d 929 (2013)*.

Employee properly appealed the Idaho industrial commission's declaratory ruling that the employee had to attend a medical examination, because (1) the ruling had the effect of a final order, and (2) the employee timely appealed. *Moser v. Rosauers Supermarkets, Employer, 165 Idaho 133, 443 P.3d 147 (2019)*.

Interlocutory Orders.

In civil actions, except for certain designated orders, interlocutory rulings are not appealable unless certified for appeal as partial judgments; otherwise, only final judgments are appealable. *Valley Bank v. Dalton, 110 Idaho 87, 714 P.2d 56 (Ct. App. 1985)*.

Where case came to Court of Appeals from the granting of a motion for a new trial, this was an appealable order under subdivision (a)(5) of this rule, and as such, was deemed also to include and present all interlocutory judgments, orders, and decrees; therefore, the court was free to examine the propriety of the trial court's earlier denials of directed verdict and summary judgment motions filed by the defendants. *Umphenour v. Yokum, 118 Idaho 102, 794 P.2d 1158 (Ct. App. 1990)*.

This rule specifically authorizes an interlocutory appeal from "an order granting a motion to suppress." However, such an appeal must have been perfected by filing a notice of appeal within 42 days from the date of the court's order suppressing the evidence obtained during the execution of the search warrant. *Richardson v. $4,543.00 U.S. Currency, 120 Idaho 220, 814 P.2d 952 (Ct. App. 1991)*.

State could not have appealed an order granting an in-camera hearing and concluding that defendant had met the threshold showing and was entitled to a Franks hearing because it was not an appealable order according to I.A.R. 11(c), and the State was not required to cross-appeal the order under I.A.R. 15(a) when defendant appealed his later convictions because the State was not seeking affirmative relief. *State v. Fisher, 140 Idaho 365, 93 P.3d 696 (2004)*.

The general rule is that interlocutory orders are not appealable and the Supreme Court declined to adopt an exception to this rule to allow an appeal of a summary judgment made strictly on a point of law which would preclude the losing party from offering evidence or urging the point at trial. *Garcia v. Windley, 144 Idaho 539, 164 P.3d 819 (2007)*.

Judgment Notwithstanding Verdict.

Upon the filing of a notice of appeal by defendants of an order granting a motion for JNOV, which defendants had the right to file under this rule, the trial court was divested of jurisdiction except for actions under Idaho App. R. 13(b); hence, the trial court did not have the authority to enter a later judgment. *Mosell Equities, LLC v. Berryhill & Co., 154 Idaho 269, 297 P.3d 232 (2013)*.

Judgment of Conviction.

Where prior to trial the defendant moved to dismiss one of the counts against him on the grounds that the evidence produced at the preliminary hearing did not establish probable cause, the trial court's denial of the motion to dismiss that count was not an appealable order, since as to that count the defendant was not appealing from a judgment of conviction -- because the jury failed to reach a verdict on that count -- nor was he appealing from any other final order in respect to that count. *State v. Garner, 103 Idaho 468, 649 P.2d 1224 (Ct. App. 1982)*.

Jurisdiction of Court.

Because the question of jurisdiction on appeal from a conviction is fundamental, it must not be ignored when brought to the attention of the Court of Appeals, and should be addressed before considering the merits of the substantive appeal. *State v. Rollins, 103 Idaho 48, 644 P.2d 370 (Ct. App. 1982)*.

Where, in a criminal case which began in the magistrates division and was appealed from there to the district court, the record as certified by the clerk of the district court did not contain any judgments entered prior to the district court decision, the record did not establish the appellate jurisdiction of the district court and the district court decision on appeal had to be

vacated. It necessarily followed that appeal to the Supreme Court as a matter of right on the merits did not exist. *State v. Mason, 102 Idaho 866, 643 P.2d 78 (1982)*.

The Court of Appeals lacked jurisdiction, where the default judgment did not resolve all claims asserted by the plaintiffs, it resolved none of the claims against one defendant and it contained no definitive ruling on either defendant's liability for damages, the judgment was not certified, and claims not resolved by the judgment were still pending in the district court. *Wilson v. Bivins, 113 Idaho 865, 749 P.2d 4 (Ct. App. 1988)*.

The Supreme Court declined to exercise its constitutional plenary power to review rulings on motions in limine where the issues of the exclusion of bad acts evidence and the confidentiality and privilege of communications with, and reports from, mental health professionals the defendant had previously consulted were not significant enough to warrant the exercise of such jurisdiction. *State v. Young, 133 Idaho 177, 983 P.2d 831 (1999)*.

Trial court properly denied defendant's motion to withdraw his guilty plea because the trial court was without jurisdiction to consider the motion because the motion was untimely, having been filed nearly five months after the entry of the withheld judgment. Because defendant did not appeal the order withholding judgment, although he could have pursuant to Idaho App. R. 11(c)(2), it was final 42 days after entry. *State v. Woodbury, 141 Idaho 547, 112 P.3d 835 (Ct. App. 2005)*.

Defendant failed to timely file a notice of appeal from district court's appellate decision affirming magistrate's denial of his motion to suppress, choosing instead to proceed on remand to the magistrate in defense of the underlying charge. Court of appeals therefore lacked subject matter jurisdiction over defendant's appeal of magistrate's order. Because defendant did not assert that he would raise any other issues if provided with the opportunity to appeal to the district court the magistrate's final judgment, remand was inappropriate, and his appeal was dismissed. *State v. Savage, 145 Idaho 756, 185 P.3d 268 (2008)*.

Supreme court had jurisdiction over the appeal of the trial court's granting of defendant's motion to suppress, even though the defendant never filed such a motion; both parties proceeded as if a motion had been filed, both briefed the nonexistent motion, and the trial court granted the motion. *State v. Koivu, 152 Idaho 511, 272 P.3d 483 (2012)*.

In a drug case, a district court's reconsideration order was void because a notice of appeal had been filed, and the district court lost jurisdiction, except as to take certain actions. A motion for reconsideration or a motion for acquittal were not among the actions authorized by court rule. *State v. Lemmons, 158 Idaho 971, 354 P.3d 1186 (2015)*.

Supreme Court of Idaho had jurisdiction to hear an appeal where a prior order was not a final, appealable judgment because it did not begin with or even contain the words "JUDGMENT IS ENTERED AS FOLLOWS." The order dismissing the appeal from the prior order was without prejudice, and the district court still had jurisdiction over the matter, including the authority to enter a final judgment from which appellant could appeal. *Davis v. George & Jesse's Les Schwab Tire Store, Inc., -- Idaho --, 541 P.3d 667 (2023)*.

Jury Verdict.

A verdict is not the final action which occurs in litigation; in fact verdicts can be set aside for many reasons, before a final judgment, order or decree is entered. *State v. Rollins, 103 Idaho 48, 644 P.2d 370 (Ct. App. 1982)*.

A "verdict of the jury" is not included in the list of appealable matters contained in subsection (c) of this rule, and it is not a judgment, order or decree of the district court from which an appeal can be taken. A verdict, as such, is not appealable; only a judgment rendered on the verdict is appealable. *State v. Rollins, 103 Idaho 48, 644 P.2d 370 (Ct. App. 1982)*.

Where the defendant filed his appeal after the jury verdict but prior to the entry of judgment of conviction and he failed to amend his notice of appeal following entry of the judgment of conviction, the Court of Appeals could not consider the appeal as it had no jurisdiction on an appeal from a mere verdict. *State v. Rollins, 103 Idaho 48, 644 P.2d 370 (Ct. App. 1982)*.

Legality of Sentence.

If objection to the illegality of a sentence has not been otherwise raised before the trial court by either the state or the defendant, it may not be raised for the first time on appeal. The state or a defendant may challenge the legality of the sentence in the trial court under I.C.R. 35 and appeal from the trial court's ruling if necessary. *State v. Martin, 119 Idaho 577, 808 P.2d 1322 (1991)*.

Memorandum Decision.

Where a trial court's memorandum decision clearly granted defendant's motion to dismiss an information, it was an appealable order. *State v. Schulz, 151 Idaho 863, 264 P.3d 970 (2011)*.

Motion to Withdraw Guilty Plea.

Where defendant entered plea of guilty pursuant to written plea agreement to charge of second degree murder and after presentence report was received but prior to sentencing she moved to withdraw her guilty plea, where record showed that defendant understood the nature of the charge and the evidence against her, understood that the possible penalty was an indeterminate ten years to life, understood the nature of an Alford plea, had been adequately informed regarding the intent element of second degree murder and entered her guilty plea intelligently and voluntarily, district court did not err in concluding that defendant presented no justifiable reason for granting her motion. *State v. Hansen, 120 Idaho 286, 815 P.2d 484 (Ct. App. 1991)*.

Order Denying Copy of Report.

An order denying defendant's motion for a copy of his presentence investigation report was not a "final" judgment or order from which an appeal may be taken. *State v. Adams, 115 Idaho 724, 769 P.2d 601 (Ct. App. 1989)*.

A defendant who had failed to raise objections at his sentencing hearing that certain information in a presentence investigative report was incomplete or inaccurate, and who did not show he had any right to raise such sentencing issues at a post-conviction relief proceeding, was properly deemed to have shown no genuine need for a copy of his presentence report; district court's order denying defendant's motion for a copy of the report did not effect his "substantial rights" within the meaning of this rule. *State v. Adams, 115 Idaho 724, 769 P.2d 601 (Ct. App. 1989)*.

Order Denying Leave to Amend.

An order denying leave to amend a third party complaint is not an appealable order under this rule. *Mitchell v. Bingham Mechanical & Metal Prods., Inc., 99 Idaho 516, 584 P.2d 1241 (1978)*.

Order Denying Transcript.

Order denying a transcript was not a final order disposing of a case, where a final and unappealed judgment already had been entered in the criminal prosecution, and no new action was pending when the transcript order was entered. *State v. McRoberts, 114 Idaho 459, 757 P.2d 722 (Ct. App. 1988)*.

Order for Trial De Novo.

Where the district court was to retain jurisdiction and conduct a trial de novo of a divorce action to finally settle a controversy over property which, on the state of the record and in view of the nature of the findings of the court below, was not susceptible of final resolution, the order for a trial de novo, which the district court was empowered to enter, precluded the decision from being appealable; furthermore, the "reversal" of the magistrate did not render the decision appealable. *Winn v. Winn, 101 Idaho 270, 611 P.2d 1055 (1980)*.

This rule contains no provision permitting an appeal from an order entered under I.R.C.P. 83(b) through (u), and *§ 1-2213* for a trial de novo. *Winn v. Winn, 101 Idaho 270, 611 P.2d 1055 (1980)*.

Because this rule contains no provision permitting an appeal from an order for a trial de novo, such an order is not appealable. *Latham Motors, Inc. v. Phillips, 123 Idaho 689, 851 P.2d 985 (Ct. App. 1993)*.

Order of Industrial Commission.

An order of the Industrial Commission which stated that the Industrial Commission did not have authority to entertain a class action type proceeding functioned as a dismissal on jurisdictional grounds and therefore was a final order of the Industrial Commission properly appealable to the *Supreme Court. Monroe v. Chapman, 105 Idaho 269, 668 P.2d 1000 (1983)*.

Where the Industrial Commission failed to resolve all the issues arising from claimants 1987 industrial accident and it specifically declined to consider certain issues stating, "[t]he Commission reserves jurisdiction on the issues of permanent physical impairment and permanent partial disability regarding claimant's wrist and arm," the resolution of these issues was necessary for a "final order" within the meaning of this Rule and consequently, the controversy was not presently subject to appeal as a matter of right pursuant to this *Rule. Jensen v. Pillsbury Co., 121 Idaho 127, 823 P.2d 161 (1992)*.

State Industrial Commission's determination that beauty salon owner was liable for unemployment insurance contributions on wages paid to cosmetologists was not a final order subject to appeal where commission did not determine the period for which contributions were due or the amount of owner's liability. *State, Dep't of Emp. v. Hopper, 126 Idaho 144, 879 P.2d 1077 (1994)*.

Order of Probation.

An order of the trial court suspending the execution of sentence and placing the defendant on probation is appealable by the State as a matter of right under subdivision (c)(6) of this rule and *§ 19-2801*, rather than as a matter of discretion. *State v. Greene, 102 Idaho 897, 643 P.2d 1067 (1982)*.

Pursuant to Idaho App. R. 11(c)(2), an order withholding judgment is a de facto judgment for purposes of appeal, meaning that the defendant may appeal even though the order is not a final judgment in the usual sense. *State v. Woodbury, 141 Idaho 547, 112 P.3d 835 (Ct. App. 2005)*.

Order Revoking Probation.

An order revoking probation is an order affecting the substantial rights of the defendant. *State v. Dryden, 105 Idaho 848, 673 P.2d 809 (Ct. App. 1983)*.

Order Suppressing Evidence.

Subdivision (c)(4) of this rule does not qualify or condition the right of appeal upon a subsequent entry of final judgment of conviction, nor does it state that such an appeal must be taken immediately upon entry of the order granting the motion; accordingly, the state's appeal was properly taken as to order suppressing evidence, even though the trial court dismissed case with prejudice and acquitted defendant. *State v. Alanis, 109 Idaho 884, 712 P.2d 585 (1985)*.

Where the basis for the defendant's motion in limine was that the statements were extracted by the officers in violation of his constitutional rights, the thrust of the motion was to invoke the

exclusionary rule to suppress otherwise admissible evidence, and it was properly regarded as a suppression motion and appealed under subdivision (c)(4) of this section. *State v. Yeates, 112 Idaho 377, 732 P.2d 346 (Ct. App. 1987)*.

Appellate court had jurisdiction to hear the State's appeals of the granting of defendants' motions to suppress where the orders granting the motions to suppress were interlocutory orders and were not transformed into final judgments because I.A.R. 11(c)(7) and 14(a) granted the State the right to appeal such orders simply by filing a notice of appeal within 42 days; no final judgments had yet been entered in either of the cases, such that the cases did not involve the failure to file a timely notice of appeal from a final judgment. *State v. Bicknell, 140 Idaho 201, 91 P.3d 1105 (2004)*.

Partial Summary Judgment.

An examination of a somewhat confused record shows that the "partial summary judgment" was intended as a final judgment: it disposed of the substantive issues, leaving for determination only the issue of "attorney's fees and costs of suit," not only determining that appellant is liable on the dishonored check and establishing the amount of the damages, but also calculating interest on the amount of the liability; if the court had truly granted a partial summary judgment it would not have calculated interest until entry of a subsequent final judgment. *Idah-Best, Inc. v. First Sec. Bank, 99 Idaho 517, 584 P.2d 1242 (1978)*.

If the "partial summary judgment" were only that, the court would not have granted a "stay of execution" pending a ruling on the motion to reconsider the decision; there can be no execution on a money judgment not yet final. *Idah-Best, Inc. v. First Sec. Bank, 99 Idaho 517, 584 P.2d 1242 (1978)*.

In order for the "partial summary judgment" to be appealable, it must come within this rule's provisions allowing appeals either from "final judgments" or from "[j]udgments made pursuant to a partial summary judgment certified by the trial court to be final as provided by Rule 54(b), *I.R.C.P." Idah-Best, Inc. v. First Sec. Bank, 99 Idaho 517, 584 P.2d 1242 (1978)*.

Partial summary judgments must be certified in conformance with I.R.C.P. 54(b) in order to be appealable. *Loomis, Inc. v. Cudahy, 101 Idaho 459, 615 P.2d 128 (1980)*.

Where first summary judgment did not resolve all substantive issues, it was interlocutory and not immediately appealable; the time for appealing it did not start to run until second summary judgment resolving remaining issues was entered. *IBM Corp. v. Lawhorn, 106 Idaho 194, 677 P.2d 507 (Ct. App. 1984)*.

Although the denial of a motion for summary judgment is ordinarily both nonappealable, under subdivision 11(a) of this rule, and nonreviewable, a partial summary judgment certified by the trial court to be final as provided by I.R.C.P. 54(b), such as the partial summary judgment qualifies as an appealable order under subdivision 11(a)(3) of this rule; therefore district court's partial summary judgment, including its findings of: (1) the formation of an agreement; and (2) a

material issue of fact precluding summary judgment on defendant's motion, was properly reviewable. *Hess v. Wheeler, 127 Idaho 151, 898 P.2d 82 (Ct. App. 1995)*.

Partition Proceedings.

An appeal from a judgment which confirmed earlier partition judgments and which finalized the sale and disbursement of proceeds did not act to revive the earlier judgments, and thus the court did not have jurisdiction to again review the merits of all previous judgments in the partition proceedings. *Mendenhall v. Caine, 101 Idaho 628, 619 P.2d 146 (1980)*.

Proper Procedure.

Where the state accepted remand by a district court to a magistrate of a magistrate's order denying summary judgment for defendant with orders to the magistrate to dismiss the state's suit if he found delay in prosecution of the suit to have been caused by the court, obtained a final judgment by the magistrate, dismissing the action, again appealed to the district court and then to the Supreme Court, the proper procedural course was taken, and the state would be entitled to challenge the first district court order ordering a remand as well as the order granting dismissal of the state's case. *State, Dep't of Law Enforcement v. One 1955 Willys Jeep, 100 Idaho 150, 595 P.2d 299 (1979)*, overruled on other grounds, *Verska v. St. Alphonsus Reg'l Med. Ctr., 151 Idaho 889, 265 P.3d 502 (2011)*.

Where a district court sits as an appellate court for purposes of reviewing a magistrate's judgment, the district court is required to determine whether there is substantial and competent evidence to support the magistrate's findings of fact and conclusions of law; if those findings are so supported and the conclusions follow therefrom, and if correct legal principles have been applied, then a district court's decision affirming a magistrate's judgment will be upheld on further appeal. The judgment of the magistrate, as well as the decision of the district court affirming that judgment, are reviewable by the higher appellate court under a substantial evidence standard. *Ustick v. Ustick, 104 Idaho 215, 657 P.2d 1083 (Ct. App. 1983)*.

The court will not address on appeal, a challenge to the legality of a sentence where the trial court was not given an opportunity to consider the issue. *State v. Martin, 119 Idaho 577, 808 P.2d 1322 (1991)*.

Where there are two motions, one for directed verdict and the other for judgment n.o.v., the court need make only one ruling because both are governed by the same standard; however, despite the existence of the same standard, if the directed verdict at the close of plaintiff's case, and a motion for j.n.o.v. after the deliberations of the jury were to be considered on the basis of evidence before the trial court at the time the motions were made, separate rulings would still be required; thus a motion for directed verdict made at the close of plaintiff's case in chief is to be considered in conjunction with and in the light of the full record, rather than that evidence presented only during the plaintiff's case. *Beco Constr. Co. v. Harper Contracting, Inc., 130 Idaho 4, 936 P.2d 202 (Ct. App. 1997)*.

Reduction of Charge.

Where the district court did not grant defendant's motion to dismiss the information, but simply reduced the charge against him, the reduction was not in the nature of the dismissal of the information so as to render the court's action appealable as a matter of right pursuant to subdivision (c)(3) of this rule. *State v. Molinelli, 105 Idaho 833, 673 P.2d 433 (1983)*.

Where state did not appeal from order withholding judgment, it could not appeal from previous order reducing charges from felony to misdemeanor as such order did not fall within the language of I.A.R. 11(c)(3) or (6); nor would Supreme Court exercise its plenary power to hear such appeal, under Const., Art. 5, § 9, or treat the appeal as a petition for a writ of review under *§ 7-201* and *I.A.R. 43. State v. Molinelli, 105 Idaho 833, 673 P.2d 433 (1983)*.

Restitution Order.

An appeal for relief of a restitution order was considered by appellate court, even though the motion was pursued under I.C.R. 35 instead of I.C. *§ 19-5304(10)*, since the state raised no issue regarding the procedural error and the appeal was timely filed. *State v. Bybee, 115 Idaho 541, 768 P.2d 804 (Ct. App. 1989)*.

Sanctions.

Because the claimant, by and through her attorney, made a good faith argument for the modification of the law governing the deference accorded to the Industrial Commission's credibility determinations in a worker's compensation case, the Superior Court of Idaho declined to impose sanctions. *Ross v. Tupperware Mfg. Company/Premark, 122 Idaho 641, 837 P.2d 316 (1992)*.

Court imposed sanctions on the attorney for claimant, personally and individually, in a sum equal to reasonable attorney fees incurred by respondent on appeal were warranted, where attorney admitted during oral argument before court, that substantial and competent evidence in the record supported the commission's finding that the preponderance of the medical evidence established that the September 1991 incident did not cause an injury nor did it cause or aggravate the condition for which claimant sought worker's compensation. *Talbot v. Ames Constr., 127 Idaho 648, 904 P.2d 560 (1995)*.

Sanctions against the developers under Idaho App. R. 11. 1 were merited where the developers appealed a case in which they previously engaged in a fraud upon the court and the district court had the inherent power to set aside the confirmed arbitration award; the filing of the appeal on the issues related to the Ada County Code was a continuation of the sanctionable conduct, inviting further sanctions against the parties (not the attorneys) on appeal. *Campbell v. Kildew, 141 Idaho 640, 115 P.3d 731 (2005)*.

Summary Judgment.

The district court's summary judgment granted in favor of the plaintiff in its action to foreclose a mechanic's lien was final and appealable where the judgment resolved all substantive issues, awarded a money judgment, awarded interest and attorney fees, and the court issued a stay of execution and vacated a trial setting for the resolution of the issues raised by the defendant's counterclaim against the plaintiff and the defendant's third-party complaint pending the resolution of the appeal from the summary judgment. *Loomis, Inc. v. Cudahy, 101 Idaho 459, 615 P.2d 128 (1980)*.

A denial of a summary judgment motion is not appealable when a district court is not acting as an appellate court. However, when a district court is acting as an appellate court, subdivision (a)(1) of this rule allows a party to appeal when the district court reverses a granting of the summary judgment motion. *Bluestone v. Mathewson, 103 Idaho 453, 649 P.2d 1209 (1982)*.

A summary judgment ruling which ends the suit, adjudicates the subject matter of the controversy, and represents a final determination of the rights of the parties is a final judgment and appealable. *Walker v. Shoshone County, 112 Idaho 991, 739 P.2d 290 (1987)*.

A grant of partial summary judgment may be certified by the district court as a final judgment, and thus appealable, when the trial judge makes the determination that there is no just reason for delay. *Walker v. Shoshone County, 112 Idaho 991, 739 P.2d 290 (1987)*.

It is well settled in Idaho that an order denying a motion for summary judgment is an interlocutory order from which no direct appeal may be taken. This rule is not altered by the entry of an appealable final judgment. *Chandler v. Hayden, 147 Idaho 765, 215 P.3d 485 (2009)*.

An order denying summary judgment was neither a final order that could be directly appealed, nor was it an order that could be reviewed on an appeal from a final judgment in the action. *Bach v. Bagley, 148 Idaho 784, 229 P.3d 1146 (2010)*.

Time for Perfecting Appeal.

The requirement of perfecting an appeal within the time period allowed by this Rule and I.A.R. Rule 14, is jurisdictional. An appeal taken after expiration of the filing period will be dismissed. *State v. Tucker, 103 Idaho 885, 655 P.2d 92 (Ct. App. 1982)*.

The defendant's appeal was timely as to both contempt orders identical except for the award of costs and attorney fees, because the appeal included both judgments within its scope. *Whittle v. Seehusen, 113 Idaho 852, 748 P.2d 1382 (Ct. App. 1987)*.

Idaho Appellate Rule 14 provides that the time for appeal from a "criminal judgment, order or sentence" can be extended by the filing of a motion within 14 days of the judgment; however, there is no similar provision, permitting an extension of the time to appeal, applicable with respect to appellate review of a post-judgment order revoking probation once the 14 days following the judgment has expired. Any order thereafter entered, including the revocation of probation, is simply an "order made after judgment" which is appealable under subdivision (c)(9) of this rule, but the appeal must be filed within 42 days of that order; under these rules,

defendant's motion to reconsider the probation revocation which was filed seven days after the entry of the order revoking probation did not extend the time within which to appeal from that order and because the appeal was taken untimely with respect to the order revoking probation, the court was without jurisdiction to review the merits of that order. *State v. Yeaton, 121 Idaho 1018, 829 P.2d 1367 (Ct. App. 1992)*.

Noncustodial father's right to appeal from an order of restitution included in conviction and sentencing for interference with child custody, accrued as of the date of the entry of conviction. *State v. Levicek, 131 Idaho 130, 953 P.2d 214 (1998)*.

State's motion to dismiss charges against the defendant, without prejudice, was a final, appealable order under this rule, even though the prosecution intended to immediately refile identical charges, and defendant's failure to file an appeal within 42 days under I.A.R. 14 deprived the appellate court of jurisdiction to review the denial of the motion, pursuant to *I.A.R. 21. State v. Huntsman, 146 Idaho 580, 199 P.3d 155 (2008)*.

Cited in:

State v. Wagenius, 99 Idaho 273, 581 P.2d 319 (1978); *Ledesma v. Bergeson, 99 Idaho 555, 585 P.2d 965 (1978)*; *State v. Rauch, 99 Idaho 586, 586 P.2d 671 (1978)*; *Rogers v. Trim House, 99 Idaho 746, 588 P.2d 945 (1979)*; *State v. Martin, 99 Idaho 781, 589 P.2d 116 (1979)*; *State v. Griffith, 101 Idaho 315, 612 P.2d 552 (1980)*; *State v. Carlson, 101 Idaho 598, 618 P.2d 776 (1980)*; *State v. Nelson, 104 Idaho 430, 659 P.2d 783 (Ct. App. 1983)*; *Schwilling v. Horne, 105 Idaho 294, 669 P.2d 183 (1983)*; *Spencer v. Idaho First Nat'l Bank (In re Estate of Spencer), 106 Idaho 316, 678 P.2d 108 (Ct. App. 1984)*; *Keeven v. Wakley (In re Estate of Keeven), 110 Idaho 452, 716 P.2d 1224 (1986)*; *First Sec. Bank v. Stauffer, 112 Idaho 133, 730 P.2d 1053 (Ct. App. 1986)*; *Reeves v. Reynolds, 112 Idaho 574, 733 P.2d 795 (Ct. App. 1987)*; *Swope v. Swope, 112 Idaho 974, 739 P.2d 273 (1987)*; *Baldwin v. Baldwin, 114 Idaho 525, 757 P.2d 1244 (Ct. App. 1988)*; *State v. Harrison, 115 Idaho 329, 766 P.2d 799 (Ct. App. 1988)*; *Roll v. City of Middleton, 115 Idaho 833, 771 P.2d 54 (Ct. App. 1989)*; *Davis v. State, 116 Idaho 401, 775 P.2d 1243 (Ct. App. 1989)*; *Harney v. Weatherby, 116 Idaho 904, 781 P.2d 241 (Ct. App. 1989)*; *Beard v. Hanny, 120 Idaho 689, 819 P.2d 107 (1991)*; *State v. Gallegos, 120 Idaho 894, 821 P.2d 949 (1991)*; *Law v. Omark Indus., 121 Idaho 128, 823 P.2d 162 (1992)*; *Ziemann v. Creed, 121 Idaho 259, 824 P.2d 190 (Ct. App. 1992)*; *Tiffany v. City of Payette, 121 Idaho 396, 825 P.2d 493 (1992)*; *Rodriguez v. State, 122 Idaho 20, 830 P.2d 531 (Ct. App. 1992)*; *Harten Aluminum Co. v. State, Dep't of Emp., 126 Idaho 139, 879 P.2d 602 (1994)*; *State v. Durst, 126 Idaho 140, 879 P.2d 603 (Ct. App. 1994)*; *State v. Wilson, 127 Idaho 506, 903 P.2d 95 (Ct. App. 1995)*; *Foster v. Shore Club Lodge, Inc., 127 Idaho 921, 908 P.2d 1228 (1995)*; *Miller v. Haller, 129 Idaho 345, 924 P.2d 607 (1996)*; *Ratliff v. Ratliff, 129 Idaho 422, 925 P.2d 1121 (1996)*; *Wright v. Wright, 130 Idaho 918, 950 P.2d 1257 (1998)*; *Castle v. Hays, 131 Idaho 373, 957 P.2d 351 (1998)*; *State v. McCarthy, 133 Idaho 119, 982 P.2d 954 (Ct. App. 1999)*; *Simpson v. Louisiana-Pacific Corp., 134 Idaho 209, 998 P.2d 1122 (2000)*; *State v. Young, 136 Idaho 113, 29 P.3d 949 (2001)*; *Floyd v. Bd. of Comm'rs, 137 Idaho 718, 52 P.3d 863 (2002)*; *Hoskinson v. Hoskinson, 139 Idaho 448, 80 P.3d 1049 (2003)*; *Homestead Farms, Inc. v. Bd. of Comm'rs, 141 Idaho 855, 119 P.3d 630 (2005)*; *Dominguez v. Evergreen Res., Inc., 142 Idaho 7, 121 P.3d 938 (2005)*; *State v. Savage, 145 Idaho 756, 185 P.3d 268 (2008)*; *Cecil v. Gagnebin, 146 Idaho 714, 202 P.3d 1 (2009)*; *Spokane Structures, Inc. v. Equitable Inv., LLC, 148 Idaho 616, 226*

P.3d 1263 (2010); Schroeder v. Partin, 151 Idaho 471, 259 P.3d 617 (2011); Wurzburg v. Kootenai County, 155 Idaho 236, 308 P.3d 936 (2013)Rule Steel Tanks, Inc. v. Idaho Dep't of Labor, 155 Idaho 812, 155 Idaho 812, 317 P.3d 709 (2013); State v. Carmouche, 155 Idaho 831, 317 P.3d 728 (Ct. App. 2013); Carr v. Pridgen, 157 Idaho 238, 335 P.3d 578 (2014); Am. Bank v. BRN Dev., Inc., 159 Idaho 201, 358 P.3d 762 (2015); Wurdemann v. State, 161 Idaho 713, 390 P.3d 439 (2017); State v. Herrera, 164 Idaho 440, 431 P.3d 275 (2018).

Decisions Under Prior Rule or Statute

Appeal After Death.

Supreme Court has no jurisdiction to entertain appeal, all proceedings in which were taken subsequent to the death of one of the parties and before any substitution of said party's representatives was made. Coffin v. Edgington, 2 Idaho 627, 23 P. 80 (1890).

Appeal by Partially Successful Plaintiff.

Where party recovers judgment and collects the same and prosecutes an appeal in hope of gaining a larger judgment, but thereby incurs hazard of recovering a less judgment, his appeal will be dismissed; but if appeal is from such order or judgment that he can in no event recover a less favorable judgment than that which he has collected, the appeal will be sustained. Bechtel v. Evans, 10 Idaho 147, 77 P. 212 (1904).

Appeal from Part of Judgment.

Right to appeal from specific part of a judgment lies without appealing from the entire judgment. McClain v. Lewiston Interstate Fair & Racing Ass'n, 17 Idaho 63, 104 P. 1015 (1909).

An appeal from an order denying a motion for new trial is a separate and distinct proceeding from an appeal from the judgment. The two are independent remedies. In the absence of an appeal from the order denying motion for new trial, this (Supreme) court cannot consider such order and pass upon its correctness. State ex rel. Rich v. Hansen, 80 Idaho 201, 327 P.2d 366 (1958).

An appeal taken only from that portion of the divorce decree requiring appellant to dismiss proceedings brought by her against her husband and others in Arizona, enjoining her from maintaining, prosecuting or instituting any action against her husband and others affecting the Arizona property, is severable from the remainder of the judgment although it is closely related to the trial court's division of the community property, and motion to dismiss such appeal would be denied. Porter v. Porter, 84 Idaho 400, 373 P.2d 327 (1962).

Where after appeals were perfected, two motions were filed under I.R.C.P. rule 59(e) to amend judgment, and were directed to a certain gratuitous portion thereof, having no effect on the rights of the parties, that portion of the judgment from which appeals were taken was final and appeals not premature. Coeur d'Alene Turf Club, Inc. v. Cogswell, 93 Idaho 324, 461 P.2d 107 (1969).

Under the former section, a partial decree of partition of real property, while it was an appealable interlocutory judgment, was nonetheless subject to revision under I.R.C.P. rule 54(b) until final judgment was entered on all of the claims between the parties. *Baker v. Pendry, 98 Idaho 745, 572 P.2d 179 (1977)*.

Appeal Statutory.

The right of appeal is purely statutory. *Vaught v. Struble, 63 Idaho 352, 120 P.2d 259 (1941)*.

Appealable Judgments or Orders.

The following judgments or orders are appealable:

Assignee of judgment: Order, after judgment, decreeing certain person to be assignee of the judgment and declaring his claim to be a lien thereon. *Dahlstrom v. Portland Mining Co., 12 Idaho 87, 85 P. 916 (1906)*.

Attachment: Order made after judgment refusing to release attached property claimed to be exempt. *Coey v. Cleghorn, 10 Idaho 162, 77 P. 331 (1904)*.

Attachment: Appellant was entitled to absolute right of appeal from an order dissolving or refusing to dissolve attachment, irrespective of whether appellant gave a supersedeas bond. *Citizens Auto. Inter-Insurance Exch. v. Andrus, 70 Idaho 114, 212 P.2d 406 (1949)*.

Attorneys: Order changing. *Curtis v. Richards, 4 Idaho 434, 40 P. 57 (1895)*.

Change of venue: Order ruling upon motion for. *Boise Ass'n of Credit Men v. United States Fire Ins. Co., 44 Idaho 249, 256 P. 523 (1927)*.

Condemnation proceeding: Order or judgment allowing commissioners to be appointed and authorizing taking of land. *McLean v. District Court, 24 Idaho 441, 134 P. 536 (1913)*.

Costs: Action of trial court in taxing costs is subject to review in appellate court, where the matter is covered in the clerk's transcript in response to appellant's praecipe. *Erickson v. Edward Rutledge Timber Co., 34 Idaho 754, 203 P. 1078 (1921)*.

Costs: Order after final judgment taxing costs. *Keane v. Pittsburg Lead Mining Co., 17 Idaho 179, 105 P. 60 (1909)*; *Webster-Soule Farm v. Woodmansee's Adm'r, 36 Idaho 520, 211 P. 1090 (1922)*.

County commissioners: Judgment of district court on an appeal from order of county commissioners. *Foresman v. Board of County Comm'rs, 11 Idaho 11, 80 P. 1131 (1905)*; *Rhea v. Board of County Comm'rs, 12 Idaho 455, 88 P. 89 (1906)*.

Decedent's estate: Order of judge allowing or disallowing claims against estate, and directing receiver to pay out of funds in his hands such claims as judge has allowed. *Canadian Bank of Commerce v. Wood, 13 Idaho 794, 93 P. 257 (1907)*.

Decedent's estate: A judgment of the district court on verdict for the administratrix in an action by the administratrix on a claim against the estate was a "final judgment" and appealable. *Dowd v. Dowd, 62 Idaho 157, 108 P.2d 287 (1940)*.

Defaults: Judgments entered by default by the clerk of the court are appealable. *Hardiman v. South Chariot Mining Co., 1 Idaho 704 (1878)*.

Dismissal: Order dismissing intervenor's complaint is final judgment and is appealable. *Walker Bank & Trust Co. v. Steely, 54 Idaho 591, 34 P.2d 56 (1934)*.

Dismissal: Order dismissing case on motion of plaintiff before completing his case without providing that dismissal was "with prejudice" is an appealable order. *Molen v. Denning & Clark Livestock Co., 56 Idaho 57, 50 P.2d 9 (1935)*.

Dismissal: Where case was dismissed under court rule for want of prosecution, the proper remedy was an appeal and mandamus would not lie to compel district judge to reinstate the case. *Donaldson v. Buckner, 66 Idaho 183, 157 P.2d 84 (1945)*.

Dismissal: Where a counterclaim had been interposed by defendant to plaintiff's claim for damages due to crop loss, but the district judge, pursuant to I.R.C.P. rule 54(b), made an express determination that there was no reason for delay in entering judgment upon plaintiff's claim regardless of outcome of defendant's counterclaim, judge's dismissal of plaintiff's claim was properly appealable to Supreme Court pursuant to this section. *Rawlings v. Layne & Bowler Pump Co., 93 Idaho 496, 465 P.2d 107 (1970)*.

Divorce: Order made after appeal in divorce case directing further payment of suit money. *Roby v. Roby, 9 Idaho 371, 74 P. 957 (1903)*.

Divorce: Order of trial court for allowance of fees, costs, and support is an appealable order. *Gapsch v. Gapsch, 76 Idaho 44, 277 P.2d 278 (1954)*.

Election of directors: Order of court which ordered new election of corporate directors, with reservation of jurisdiction to court for appropriate relief, pending the calling and holding of the reconvened meeting and election, was not a final order, and was not appealable. *Hunter v. Merger Mines Corp., 66 Idaho 438, 160 P.2d 455 (1945)*.

Election of directors: Order of trial court upholding validity of election of directors of a corporation though retaining "continuous jurisdiction herein" was a final appealable order. *Doolittle v. Morley, 76 Idaho 138, 278 P.2d 998 (1955)*.

Execution: Denial of motion for order for issuance of writ of execution for judgment creditor, in a case where proration of a fund of debtor among his creditors was sought. *Pond v. Babcock, 50 Idaho 400, 296 P. 596 (1931)*.

Forfeiture of bond: in appeal from conviction for burglary the defendant could not content that action of trial court in ordering forfeiture on bond for failure of defendant to appear on date set for trial was error, since defendant should have appealed from the order forfeiting the bond, as

the order forfeiting the bond was a final appealable order. *State v. Fedder, 76 Idaho 535, 285 P.2d 802 (1955)*.

Habeas corpus: Judgment of district court. *Jain v. Priest, 30 Idaho 273, 164 P. 364 (1917)*; *In re Jennings, 46 Idaho 142, 267 P. 227 (1928)*; *In re Blades, 59 Idaho 682, 86 P.2d 737 (1939)*.

Habeas corpus: A denial of release from prison on petition for writ of habeas corpus is an appealable judgment. *In re Haney, 77 Idaho 166, 289 P.2d 945 (1955)*.

Industrial accident board: Judgment affirming or reversing award. *McNeil v. Panhandle Lumber Co., 34 Idaho 773, 203 P. 1068 (1921)*.

Industrial accident board: Unless the industrial accident board or a majority thereof hears and sees witnesses testify, its findings are not conclusive on the Supreme Court, even under the constitutional amendment providing that on appeal from orders of the board, the court shall be limited to review of questions of law. *Phipps v. Boise St. Car Co., 61 Idaho 740, 107 P.2d 148 (1940)*.

Injunctions: Order dissolving a temporary injunction is appealable. *Dougal v. Eby, 11 Idaho 789, 85 P. 102 (1906)*.

Injunctions: Order granting or denying injunction is appealable. *La Veine v. Stack-Gibbs Lumber Co., 17 Idaho 51, 104 P. 666 (1909)*.

Injunctions: Order restraining party from alienating, encumbering or disposing of his property is appealable. *Hay v. Hay, 40 Idaho 159, 232 P. 895 (1924)*.

Injunctions: Former section permitted appeals to the Supreme Court from an order refusing to grant an injunction. Cases construing such section assumed, without deciding, that the term "injunction" included both temporary and permanent injunctions. *Unity Light & Power Co. v. City of Burley, 83 Idaho 285, 361 P.2d 788 (1961)*.

Injunctions: In a suit to establish a right-of-way across defendants' property, the trial court's order on the last day of hearing and his statement in his written memorandum opinion constituted issuance of an injunction restraining defendants from blocking plaintiff's right of way during pendency of the action and thus was an appealable order. *Valley View Farms v. Westover, 96 Idaho 615, 533 P.2d 736 (1974)*.

Motion to strike: The ruling of a trial court on a motion to strike from the complaint is subject to review on appeal without a certificate showing papers used at trial. *Maxwell v. Twin Falls Canal Co., 49 Idaho 806, 292 P. 232 (1930)*.

Motion to strike: Where the trial court struck from the complaint two elements of appellants' cause of action, leaving one element upon which the trial proceeded, the effect of filing the second amended complaint was to allege only the third remaining element, the order of the trial court granting motion to strike portions of appellants' second amended complaint being a matter deemed excepted to an appearing in the record may be reviewed upon appeal from the final

judgment, as against contention that upon filing of amended complaint all prior complaints became functus officio. *Hughes v. State, 80 Idaho 286, 328 P.2d 397 (1958)*.

Nonsuit: Judgment of. Lalande v. McDonald, 2 Idaho 307, 13 P. 347 (1887); *Spongberg v. First Nat'l Bank, 15 Idaho 671, 99 P. 712 (1909)*; *Miller v. Gooding Hwy. Dist., 54 Idaho 154, 30 P.2d 1074 (1934)*.

Order vacating judgment: Order made after judgment vacating such judgment is appealable. *Shumake v. Shumake, 17 Idaho 649, 107 P. 42 (1910)*.

Order vacating judgment: Where trial judge abused discretion in denying motion to vacate judgment of dismissal for want of prosecution, such action was subject to review on appeal and mandamus would not lie to compel court to reinstate case. *Donaldson v. Buckner, 66 Idaho 183, 157 P.2d 84 (1945)*.

Order vacating judgment: An order made after judgment refusing to vacate such judgment is an appealable order. *Cain v. C.C. Anderson Co., 67 Idaho 1, 169 P.2d 505 (1946)*.

Public officer: Judgment removing from office. *Miller v. Smith, 7 Idaho 204, 61 P. 824 (1900)*; *Ponting v. Isaman, 7 Idaho 283, 62 P. 680 (1900)*; *Worthman v. Shane, 31 Idaho 433, 173 P. 750 (1918)*.

Receiver's sale: Order confirming receiver's sale which constitutes final disposition of the assets of an insolvent estate. *First Nat'l Bank v. C. Bunting & Co., 7 Idaho 387, 63 P. 694 (1900)*.

Reclamation commissioner: judgment of district court on appeal from order. *State v. Adair, 49 Idaho 271, 287 P. 950 (1930)*.

Reinstatement of case: Where judge had jurisdiction of the parties and the subject-matter he had jurisdiction to rule on a motion to reinstate case dismissed for want of prosecution. *Donaldson v. Buckner, 66 Idaho 183, 157 P.2d 84 (1945)*.

Removal of county seat: Judgment ordering an election on question. *Wilson v. Bartlett, 7 Idaho 269, 62 P. 415 (1900)*.

Setting aside judgment: Order refusing to set aside. *Oliver v. Kootenai County, 13 Idaho 281, 90 P. 107 (1907)*; *Duffield v. Ohnewein, 32 Idaho 732, 187 P. 541 (1920)*; *Central Deep Creek Orchard Co. v. C.C. Taft Co., 34 Idaho 458, 202 P. 1062 (1921)*.

Supplemental decree: Appeal may be taken from a supplemental decree modifying a judgment. *Blaine County Inv. Co. v. Mays, 52 Idaho 381, 15 P.2d 734 (1933)*.

Transcript: Order of trial judge settling or refusing to settle. *Bergh v. Pennington, 33 Idaho 198, 191 P. 204 (1920)*.

Entry of Judgment.

No appeal can be taken from a judgment until judgment has been entered, and if clerk neglects to enter same either party may compel him to do so by writ of mandate. *Oliver v. Kootenai County, 13 Idaho 281, 90 P. 107 (1907)*; *Santti v. Hartman, 29 Idaho 490, 161 P. 249 (1916)*.

Unless final judgment has been signed, filed, and entered. Supreme Court is without jurisdiction and no appeal can be taken. *Santti v. Hartman, 29 Idaho 490, 161 P. 249 (1916)*.

Appeal taken before entry of judgment in judgment book is premature, and the Supreme Court is without jurisdiction. *Yeomans v. Lamberton, 29 Idaho 801, 162 P. 674 (1917)*.

Entry on judgment docket raises prima facie presumption that clerk has done his duty and that judgment has actually been entered. *Athey v. Oregon S. L. R.R., 30 Idaho 318, 165 P. 1116 (1917)*.

An entry of findings of fact and conclusions of law at the conclusion of which the court ordered, "Let judgment be entered accordingly," was not a judgment and, therefore, not appealable. *Hamblen v. Goff, 90 Idaho 180, 409 P.2d 429 (1965)*.

Failure to Appeal.

The question whether or not trial court was right or wrong in disposition of motion for change of venue, when not presented or considered on appeal to district court, will not be reviewed by *Supreme Court. Joslin v. Union Grain & Elevator Co., 46 Idaho 697, 270 P. 1056 (1928)*.

Where no appeal has been taken from the order granting a new trial, Supreme Court can not go back of that order. *Evans v. Davidson, 57 Idaho 548, 67 P.2d 83 (1937)*.

Denial by trial court of motion by plaintiff for return of plaintiff's exhibits was not before the Supreme Court where no appeal was taken from the order. *Papineau v. Idaho First Nat'l Bank, 74 Idaho 145, 258 P.2d 755 (1953)*.

Mortgagor was entitled to a joint release of mortgages where the trial court entered an order that the clerk should enter of record satisfaction of the mortgages from which order the mortgagee made no appeal. *Head v. Crone, 76 Idaho 196, 279 P.2d 1064 (1955)*.

Where no appeal was taken from an order denying a motion for a change of venue within the time required by this statute, the Supreme Court could not review the matter on appeal. *State v. Sweet, 82 Idaho 191, 351 P.2d 230 (1960)*.

Defendants waived error of the court in denying their motion to dissolve an attachment by not appealing from such order and such error could not be reviewed on appeal from final judgment in the main action. *Hessing v. Drake, 90 Idaho 67, 408 P.2d 180 (1965)*.

Final Judgments and Orders.

Fact that judgment contains an unfilled blank for insertion of costs which were never taxed does not make said judgment any the less a final judgment from which an appeal may be taken. *Cantwell v. McPherson, 3 Idaho 321, 29 P. 102 (1892)*.

When it appears from record that no final judgment was rendered, attempted appeal should be dismissed. *Thiessen v. Riggs, 5 Idaho 21, 46 P. 829 (1896)*; *Continental & Com. Trust Sav. Bank v. Werner, 33 Idaho 764, 198 P. 471 (1921)*; *Blaine County Nat'l Bank v. Jones, 45 Idaho 358, 262 P. 509 (1927)*.

An order vacating satisfaction of judgment and adjudging plaintiff's attorney entitled to execution to enforce his interest in the judgment is a final judgment within the purview of the statute. *Dahlstrom v. Featherstone, 18 Idaho 179, 110 P. 243 (1910)*.

Real character of order is to be judged by its contents and substance and, when it is in fact a judgment, it is appealable although otherwise entitled. *Swinehart v. Turner, 36 Idaho 450, 211 P. 558 (1922)*.

Appeal from order or judgment not final will be dismissed. *Witty v. Wells, 39 Idaho 20, 225 P. 1020 (1924)*.

Formal order dismissing action is in effect final judgment within contemplation of statute and will be so considered notwithstanding its designation. *Marshall v. Enns, 39 Idaho 744, 230 P. 46 (1924)*.

Under statutes and constitution of this state, appeals can only be taken from judgments that are final or those from which appeals are specifically provided. *Blaine County Nat'l Bank v. Jones, 45 Idaho 358, 262 P. 509 (1927)*.

Test of finality for purpose of appeal therefore is not necessarily whether whole matter involved in action is concluded, but whether particular proceeding or action is terminated by judgment. *In re Jennings, 46 Idaho 142, 267 P. 227 (1928)*.

Findings and conclusions constitute the "decision" of the court and are not the final judgment, from which appeal lies. *Blaine County Inv. Co. v. Mays, 52 Idaho 381, 15 P.2d 734 (1933)*.

Though the judgment had become final by lapse of the 60-day appeal period, appellants were not thereby prejudiced since their right to test the validity of the order made after judgment fixing judgment creditor's attorneys' fees and directing the clerk of the court to tax certain costs as shown by judgment creditor's cross bill together with the attorneys' fees fixed by such order, was duly preserved by the remedy of appeal therefrom which they duly pursued. *St. John v. O'Reilly, 80 Idaho 429, 333 P.2d 467 (1958)*.

Where the record showed that neither counsel for plaintiffs nor the district judge intended or regarded the minute entry dates Feb. 2, 1961, as a final judgment but rather regarded it as an order for a judgment, the minute entry was not a final judgment and the order vacating the default judgment made by the court on Feb. 9, 1961, was not a special order made as final judgment. *McPheters v. Central Mut. Ins. Co., 83 Idaho 472, 365 P.2d 47 (1961)*.

Where judgment was not a final determination of the rights of the parties in the case, but an intermediate determination of a portion of the controversy, it was not a final judgment authorizing an appeal to the Supreme Court from a final judgment in a district court. *Gerry v. Johnston, 85 Idaho 226, 378 P.2d 198 (1963)*.

The appellant has the election to treat the trial court's order of dismissal of his complaint, for failure to state a cause of action upon which relief can be granted, as a final judgment from which an appeal may be made rather than seeking leave to amend his original complaint. *McKenney v. Anselmo, 88 Idaho 197, 398 P.2d 226 (1965)*.

Where a judgment fully and finally settles all the issues in a case, and jurisdiction is retained only to assure compliance with its terms, it is a "final judgment." *Coeur d'Alene v. Ochs, 96 Idaho 268, 526 P.2d 1104 (1974)*.

Where a foreclosure action and an interpleader action were dismissed by the same court order but had never been consolidated, an I.R.C.P. rule 59(e) motion to set aside and reinstate the foreclosure action tolled the appeal time on the order only insofar as it affected the foreclosure action and had no effect on the finality of the interpleader action. *First Sec. Bank v. Neibaur, 98 Idaho 598, 570 P.2d 276 (1977)*.

Jurisdiction of Court.

When order attempted to be appealed from is not appealable, court has no jurisdiction and appeal should be dismissed of court's own motion. *White v. Stiner, 36 Idaho 129, 209 P. 598 (1922)*.

Once proceedings are stayed by appeal, the district court is ordinarily divested of jurisdiction to act in any manner (with relation to the rights and liabilities of an appellant) except to act in aid of and not inconsistent with the appeal. *Coeur d'Alene Turf Club, Inc. v. Cogswell, 93 Idaho 324, 461 P.2d 107 (1969)*.

Motion for New Trial.

An appeal from an order denying a motion for new trial is a separate and distinct proceeding from an appeal from the judgment. The two are independent remedies. In the absence of an appeal from the order denying motion for new trial, this (Supreme) court cannot consider such order and pass upon its correctness. *State ex rel. Rich v. Hansen, 80 Idaho 201, 327 P.2d 366 (1958)*.

The appeals from the judgment and the order denying motion for new trial would be considered as timely where the judgment was entered June 19, 1957, the motion for new trial was filed June 27, 1957, notice of appeal and appeal bond were filed December 11, 1957, in view of the amendment of this section effective as of September 2, 1957, which provided that the running of time for appeal was terminated by a timely motion for a new trial, it governing the appeal time in this instance. *Hall v. Bannock County, 81 Idaho 256, 340 P.2d 855 (1959)*.

An order denying a motion for a new trial, being an order made after judgment, is not included within the purview of an appeal from the judgment, and being an appealable order the Supreme Court cannot review it upon an appeal from the judgment. *Seamons v. Spackman, 81 Idaho 361, 341 P.2d 442 (1959)*.

The trial court was in error in refusing to pass upon the motion for a new trial on the ground that the appeal from the judgment divested it of jurisdiction to consider the motion. *Angleton v. Angleton, 84 Idaho 184, 370 P.2d 788 (1962)*.

Nonappealable Orders and Judgments.

The following orders are nonappealable:

Accounting: Where the district court initially heard the objection by children of intestate to the classification of a motel as community property in the administratrix's proposed final accounting, the district court's order declaring the motel to be community property was not an appealable order. *In re Estate of Freeburn, 97 Idaho 845, 555 P.2d 385 (1976)*.

Accounting: Order of reference requiring accounts to be stated in accordance with principles therein fixed. *State v. Bruce, 17 Idaho 1, 102 P. 831 (1909)*.

Additional parties: Order refusing to bring in. *Weiser Irrigation Dist. v. Middle Valley Irrigation Ditch Co., 28 Idaho 548, 155 P. 484 (1916)*.

Alimony pendente lite: Order awarding. *Wyatt v. Wyatt, 2 Idaho 236, 10 P. 228 (1886)*; *Seelig v. Seelig, 60 Idaho 137, 89 P.2d 552 (1939)*.

Attachment: Order of court denying motion to dissolve an attachment could not be reviewed on appeal from the final judgment. *Hessing v. Drake, 90 Idaho 67, 408 P.2d 180 (1965)*.

Clerk's fees: Judgment determining the law applicable but failing to fix the amount of the judgment. *Potter v. Talkington, 5 Idaho 317, 49 P. 14 (1897)*.

County commissioners: Judgment rendered on appeal from order of county commissioners declaring the result of an election. *Rupert v. Board County Comm'rs, 2 Idaho 19, 2 P. 718 (1882)* (decided prior to 1911 amendment).

Dismissal: Order directing entry of judgment of dismissal. *Durant v. Comegys, 3 Idaho 67, 26 P. 755 (1891)*; *Bissing v. Bissing, 19 Idaho 777, 115 P. 827 (1911)*; *La Salle Extension Univ. v. District Court, 52 Idaho 559, 16 P.2d 1064 (1932)*.

Dismissal: One of two separate causes of action. *Salchert v. Rice, 47 Idaho 422, 276 P. 305 (1929)*.

Dismissal: In action involving five separate claims and sixteen parties, an order granting cross-defendant's motion to dismiss a cross complaint was not a final judgment from which an appeal could be taken, where the trial court did not direct entry of judgment and where there was no

express determination finding no just reason for delaying entry of judgment. *Merchants, Inc. v. Intermountain Indus., Inc., 97 Idaho 890, 556 P.2d 366 (1976)*.

Drainage district: Order of district court declaring proposed drainage district duly organized. *In re Organization of Drainage Dist. No. 1, 30 Idaho 351, 164 P. 1018 (1917)*.

Drainage district: Order disallowing certain items in cost bill, after hearing at which drainage district was organized, the drainage district law making no provision for allowance of costs upon an order organizing a district, nor for an appeal. *Rhodenbaugh v. Stigel, 31 Idaho 594, 174 P. 604 (1918)*.

Evidence: Order sustaining introduction of. *Marshall v. Enns, 39 Idaho 744, 230 P. 46 (1924)*.

Execution: Order refusing to dismiss appeal from order denying motion to quash execution. *Connell v. Warren, 3 Idaho 117, 27 P. 730 (1891)*.

Injunctions: In action for injunction and payment over to plaintiff of amount found due on accounting, judgment enjoining defendant and ordering accounting is not final and is not appealable. *Winters v. Ethell, 132 U.S. 207, 10 S. Ct. 56, 33 L. Ed. 339 (1889)*.

Injunctions: Order granting an injunction in futuro is nonappealable. *Porter v. Speno, 13 Idaho 600, 92 P. 367 (1907)*.

Injunctions: Order granting injunction pendente lite is not appealable. *Ferrell v. Coeur d'Alene & St. Joe Transp. Co., 29 Idaho 118, 157 P. 946 (1916)*.

Injunctions: An order dissolving a portion of temporary restraining order is non-appealable. *Wood v. Wood, 96 Idaho 100, 524 P.2d 1072 (1974)*.

Interlocutory judgment: On appeal taken upon a determination that a child's death was the result of gross negligence on the part of defendant, defendant being liable as a matter of law and the only issue remaining to be resolved being the amount of damages, such judgment while having the character of finality was declared by rule to be interlocutory in character due to the amount of damages not being determined, and while the negligence of defendant could be determined upon appeal from a final judgment, it could not be upon the attempted appeal from the interlocutory judgment. *Clear v. Marvin, 83 Idaho 399, 363 P.2d 355 (1961)*.

Intermediate orders: In an action to require city officials to pay additional funds into the policemen's retirement fund, a court order directing the city to make an actuarial study and increase its tax levy for such fund and the deductions from policemen's salaries sufficiently to maintain the fund in actuarially sound condition and retaining jurisdiction to make such further orders as might be required between the parties was not a final judgment from which the plaintiffs could appeal. *Perkins v. Pocatello, 92 Idaho 636, 448 P.2d 250 (1968)*.

Judgment: Order for. Hodgins v. Harris, 4 Idaho 517, 43 P. 72 (1895); *Santti v. Hartman, 29 Idaho 490, 161 P. 249 (1916)*; *Blaine County Inv. Co. v. Mays, 52 Idaho 381, 15 P.2d 734 (1933)*.

Judgment notwithstanding verdict: Order denying motion for. *Cady v. Keller, 28 Idaho 368, 154 P. 629 (1916)*; *Snyder v. Utah Constr. Co., 55 Idaho 31, 38 P.2d 1004 (1934)*.

Judgment notwithstanding verdict: An appeal from an order denying motion for judgment notwithstanding verdict would be considered an appeal from the judgment alone, since the order is not appealable. *Anderson v. Ruberg, 66 Idaho 417, 160 P.2d 456 (1945)*.

Memorandum decision: A memorandum decision authorizing cross defendant and respondent to prepare an order to quash service of the summons upon respondent, and no such order having been entered in the case, is not a final judgment from which an appeal may be taken. *Farmers Equip. Co. v. Clinger, 70 Idaho 501, 222 P.2d 1077 (1950)*.

Motion to strike: Order sustaining motion. *White v. Stiner, 36 Idaho 129, 209 P. 598 (1922)*.

Nonsuit: Where motion is made for nonsuit at the close of evidence on the part of plaintiff upon the ground that the evidence is insufficient to warrant the submission of the cause to a jury, and the motion is denied, and evidence is thereafter ordered by defendant, the ruling of a trial court upon the motion is not reviewable upon appeal from the judgment or from the order overruling the motion for new trial. *Rippetoe v. Feely, 20 Idaho 619, 119 P. 465 (1911)*; *Knauf v. Dover Lumber Co., 20 Idaho 773, 120 P. 157 (1911)*; *Smith v. Potlach Lumber Co., 22 Idaho 782, 128 P. 546 (1912)*; *Tonkin-Clark Realty Co. v. Hedges, 24 Idaho 304, 133 P. 669 (1913)*; *Groefsema v. Mountain Home Coop. Irrigation Co., 33 Idaho 86, 190 P. 356 (1920)*.

Nonsuit: Order of trial court denying motion for nonsuit will not be reviewed on appeal where, subsequent to order, evidence is offered by and admitted on behalf of party who made motion. *Palcher v. Oregon Short Line R.R., 31 Idaho 93, 169 P. 298 (1917)*; *Groefsema v. Mountain Home Coop. Irrigation Co., 33 Idaho 86, 190 P. 356 (1920)*; *Bevercombe v. Denney & Co., 40 Idaho 34, 231 P. 427 (1924)*.

Nonsuit: Order sustaining motion for. *Reberger v. Johanson, 38 Idaho 618, 223 P. 1079 (1924)*; *Young v. Washington Water Power Co., 39 Idaho 539, 228 P. 323 (1924)*.

Nonsuit: Minute entry showing that motion for nonsuit was granted, not followed by entry of judgment of dismissal. *First Trust & Sav. Bank v. Randall, 57 Idaho 126, 63 P.2d 157 (1936)*.

Oral orders: Notes of official report do not constitute court minutes proper, and appeal will not ordinarily lie from ruling or order orally made and found only in reporter's transcript. *First Nat'l Bank v. Poling, 42 Idaho 636, 248 P. 19 (1926)*.

Partial summary judgment: A partial summary judgment which leaves certain issues for trial is not an appealable final judgment since it does not require a final determination of the rights of the parties, and thus is an intermediate order or decision subject to review under § 13-219 (repealed). *Viani v. Aetna Ins. Co., 95 Idaho 22, 501 P.2d 706 (1972)*, overruled on other grounds, *Sloviaczek v. Estate of Puckett, 98 Idaho 371, 565 P.2d 564 (1977)*.

Partial summary judgment: In plaintiff's action to impose joint and several liability against five defendants resulting from a sale of potatoes, a partial summary judgment rendered in favor of three of the defendants, not being a final determination of the rights of all parties, was not a

"final judgment" and thus was not appealable. *Southland Produce Co. v. Belson, 96 Idaho 776, 536 P.2d 1126 (1975)*.

Partition: Where several issues were to be determined, court's decision on issue of economic feasibility of partitioning the assets of corporation was an intermediate decision and not a final judgment and hence not appealable. *Oneida v. Oneida, 95 Idaho 105, 503 P.2d 305 (1972)*.

Post-conviction relief: A court order, that unless a petitioner for post-conviction relief presented new and additional grounds for such relief within twenty days his petition would be dismissed was neither a final judgment and, as such, appealable nor one of the appealable interlocutory judgments specified under former section. *Pulver v. State, 92 Idaho 627, 448 P.2d 241 (1968)*.

Quashing service: Order of the trial court denying defendant's motion to quash the service on its special limited appearance challenging jurisdiction. *Venus Foods v. District Court, 67 Idaho 390, 181 P.2d 775 (1947)*.

Quashing service: An order quashing service of summons was not an appealable order under former section. *Silver Sage Ranch, Inc. v. Lawson, 98 Idaho 707, 571 P.2d 768 (1977)*.

Receiver: Order granting or refusing appointment. *Chemung Mining Co. v. Hanley, 11 Idaho 302, 81 P. 619 (1905)*.

Receiver: Order granting or denying appointment. *Beus v. Terrell, 46 Idaho 635, 269 P. 593 (1928)*.

Receiver: Order appointing receiver of mortgaged property, order denying motion to vacate receivership, or order authorizing sale of property. *Evans State Bank v. Skeen, 30 Idaho 703, 167 P. 1165 (1917)*.

Removal of county officers: Order quashing an information in a proceeding to remove county officers. *Mahoney v. Elliott, 8 Idaho 356, 69 P. 108 (1902)*.

Setting aside defaults: An order made by the district court, setting aside a default entered by the clerk of said court and granting leave to the defendant to answer or otherwise plead, is not an appealable order. *Omaha Structural Steel Works v. Lemon, 30 Idaho 363, 164 P. 1011 (1917)*; *Sweeney v. American Nat'l Bank, 64 Idaho 695, 136 P.2d 973 (1943)*; *Shumake v. Shumake, 17 Idaho 649, 107 P. 42 (1910)*.

Setting aside defaults: Order of district court directing probate court to open default and set aside judgment rendered thereon is not appealable. *Soderman v. Peterson, 36 Idaho 414, 211 P. 448 (1922)*.

Special order: Interlocutory order made on trial of application for special order after final judgment. *Connell v. Warren, 3 Idaho 117, 27 P. 730 (1891)*.

Special order: An appeal would not lie in an action to recover against a foreign insurance company where summons had been served on the state insurance commissioner in behalf of the defendant insurance company by registered mail as provided in *§ 41-608*, and service was

completed on that day where a minute entry considered an order for judgment was later vacated by order of court, such order not being considered a special order made as final judgment. *McPheters v. Central Mut. Ins. Co., 83 Idaho 472, 365 P.2d 47 (1961)*.

Staying proceedings: Order or judgment for. *Blaine County Nat'l Bank v. Jones, 45 Idaho 358, 262 P. 509 (1927)*.

Summary judgment: Appeal attempted to be taken to Supreme Court from an order denying defendant's motion for summary judgment is not authorized by the legislature, which, in turn, is constitutionally authorized to prescribe the system of appeals and therefore such order was not appealable. *Wilson v. DeBoard, 94 Idaho 562, 494 P.2d 566 (1972)*.

Summary judgment: An interlocutory summary judgment entered pursuant to I.R.C.P. Rule 56(c) is not appealable. *Lloyd v. Lloyd, 95 Idaho 108, 503 P.2d 308 (1972)*.

Where the judgment in an action to adjudicate water rights upheld the claim of the United States to reserved nonconsumptive water rights to the entire natural flow of several streams, but did not adjudicate the water rights of private parties who had requested additional time to submit material for incorporation in a stipulation, the judgment was not final and therefore not appealable. *Avondale Irrigation Dist. v. North Idaho Properties, Inc., 99 Idaho 30, 577 P.2d 9 (1978)*.

Order Made After Appeal.

Supreme Court would not enforce order of district court requiring husband to pay costs and expenditures on appeal, where order was entered some months after the appeal was taken. *Brashear v. Brashear, 71 Idaho 158, 228 P.2d 243 (1951)*.

A motion to amend and alter the findings of fact and conclusions of law and vacate the judgment filed after the opposing party had perfected an appeal was not a motion timely filed and the trial court had no jurisdiction to entertain such a motion. *Dolbeer v. Harten, 91 Idaho 141, 417 P.2d 407 (1965)*.

A timely appeal must be taken from a final judgment even when that judgment is followed by a post-judgment order. *First Sec. Bank v. Neibaur, 98 Idaho 598, 570 P.2d 276 (1977)*.

Party to Action.

A special prosecuting attorney did not become a party to civil action involving party seeking discovery by petitioning district court for protective order to prevent inquiry into certain aspects of criminal investigation during taking of depositions; therefore, a writ of prohibition rather than an appeal was the proper remedy to prevent enforcement of district court's assessment of discovery costs against special prosecuting attorney. *Frost v. Hofmeister, 97 Idaho 757, 554 P.2d 935 (1976)*.

Review of Evidence.

Evidence will not be reviewed in order to determine its sufficiency to sustain verdict on appeal from judgment, where such appeal is not taken within sixty days after rendition of judgment. *Holt v. Spokane & P. R. R., 3 Idaho 703, 35 P. 39 (1893)*; *Brady v. Linehan, 5 Idaho 732, 51 P. 761 (1898)*; *Moe v. Harger, 10 Idaho 194, 77 P. 645 (1904)*; *Cunningham v. Stoner, 10 Idaho 549, 79 P. 228 (1904)*; *Walker v. Elmore County, 16 Idaho 696, 102 P. 389 (1909)*; *Haas v. Teters, 19 Idaho 182, 113 P. 96 (1911)*.

Evidence will not be considered in order to determine whether verdict is in accordance with instructions. *Trull v. Modern Woodmen of Am., 12 Idaho 318, 85 P. 1081 (1906)*.

Where appeal is taken from judgment within sixty days from rendition thereof, to authorize Supreme Court to examine evidence for purpose of determining whether evidence supports judgment, it is necessary that appellant specify the particulars in which it is alleged that the evidence fails to support the judgment. *Later v. Haywood, 14 Idaho 45, 93 P. 374 (1908)*.

An appeal may be taken from order denying new trial within sixty days after entry of filing of order, and on such appeal sufficiency of evidence to support verdict may be considered, although appeal from judgment is not taken within sixty days after its rendition. *White v. Whitcomb, 13 Idaho 490, 90 P. 1080 (1907)*, aff'd, *214 U.S. 15, 29 S. Ct. 599, 53 L. Ed. 889 (1909)*.

Review of Nonappealable Orders.

Where statutes fail to provide for appeal from final judgment of district court to Supreme Court, the Supreme Court will entertain writ of error or other proper writ to bring such judgment before it for review, under Const., art. 5, § 9. *State v. Reed, 3 Idaho 554, 32 P. 202 (1893)*.

All orders or decisions of district court or judges thereof that are not final judgments or orders or decisions specifically provided for by statute from which a direct appeal may be taken prior to final judgment, if duly excepted to or deemed to be excepted to as provided by law, will be reviewed by the Supreme Court on appeal from final judgment, or from an order granting or denying new trial. *Maple v. Williams, 15 Idaho 642, 98 P. 848 (1908)*; *Richards v. Richards, 24 Idaho 87, 132 P. 576 (1913)*; *Weiser Irrigation Dist. v. Middle Valley Irrigation Ditch Co., 28 Idaho 548, 155 P. 484 (1916)*.

Supreme Court has no jurisdiction of separate appeals from nonappealable orders made before entry of final judgment. Orders denying motion to strike, vacating setting for trial and the like are reviewable on appeal from judgment without being specified in notice of appeal when they appear in the record. *Aumock v. Kilborn, 52 Idaho 438, 16 P.2d 975 (1932)*.

Scope of Supreme Court Review.

Where trial is de novo in district court, the Supreme Court can not, on appeal from that court, consider any proceedings anterior to those in district court. *Chase v. Hagood, 3 Idaho 682, 34 P. 811 (1893)*; *Elliott v. Rising, 36 Idaho 137, 209 P. 887 (1922)*.

Sufficiency of Evidence.

Appellant may question the sufficiency of the evidence to sustain the verdict though no motion for directed verdict or new trial was made. *Herrick v. Breier, 59 Idaho 171, 82 P.2d 90 (1938)*.

Writ of Assistance.

Where writ of assistance is issued, party to suit at time of its issuance must appeal direct from order of issuance if he desires to contest same, but one who is not a party at such time and whose interests are affected by order, may appear and move to set same aside, and in case of refusal, may appeal from the order denying his motion. *Mills v. Smiley, 9 Idaho 317, 76 P. 783 (1903)*.

Under the statute making a homestead subject to execution in satisfaction of a judgment obtained on a debt secured by a materialmen's lien, the court, in decreeing the foreclosure of such lien and in issuing a writ of assistance directing the sheriff to place the holder of sheriff's deed in possession, did not proceed in excess of its jurisdiction, and the former owner of the land who was a party to the proceeding for the issuance of a writ of assistance had a plain, speedy, and adequate remedy in the ordinary course of law, by way of appeal from the order issuing the writ of assistance, and hence was not entitled to a writ of prohibition. *Roark v. Koelsch, 62 Idaho 626, 115 P.2d 95 (1941)*.

A party to a suit at the time of the issuance of a writ of assistance in order to contest the order issuing same, must appeal directly from such order. *Roark v. Koelsch, 62 Idaho 626, 115 P.2d 95 (1941)*.

Research References & Practice Aids

RESEARCH REFERENCES

A.L.R.

Appealability of order setting aside, or refusing to set aside, default judgment. *8 A.L.R.3d 1272*.

When criminal case becomes moot so as to preclude review of or attack on conviction or sentence. *9 A.L.R.3d 462*.

Appealability of order directing payment of money into court. *15 A.L.R.3d 568*.

Reviewability of order denying motion for summary judgment. *15 A.L.R.3d 899*.

Appealability of orders or rulings, prior to final judgment in criminal case, as to accused's mental competency. *16 A.L.R.3d 714*.

Appealability of order staying, or refusing to stay, action because of pendency of another action. *18 A.L.R.3d 400*.

Appealability of order granting, extending, or refusing to dissolve temporary restraining order. *19 A.L.R.3d 403*.

Appealability of order refusing to grant or dissolving temporary restraining order. *19 A.L.R.3d 459*.

Court review of bar examiners' decision on applicant's examination. *39 A.L.R.3d 719*.

Appealability of order denying right to proceed in form of class action -- state cases. *54 A.L.R.3d 595*.

Appealability of state court order granting or denying consolidation, severance, or separate trials. *77 A.L.R.3d 1082*.

End of Document

I.A.R. Rule 11.1

State and Federal through Rules promulgated through January 31, 2022

ID - Idaho State & Federal Court Rules > IDAHO APPELLATE RULES

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 802 of the Idaho Rules of Family Law Procedure, or an order made after final judgment, involving the custody of a minor, or

(2) those orders or decrees of the magistrate court in a Child Protective Act proceeding specified in *section 16-1625, Idaho Code*, or

(3) a final judgment, as defined in Rule 54(a) of the Idaho Rules of Civil Procedure, or an order made after final judgment, in a guardianship proceeding arising under Title 15, Chapter 5 of the Idaho Code.

History

(Adopted May 5, 2017, effective July 1, 2017; amended and effective April 28, 2022; amended August 31, 2023, effective *nunc pro tunc* March 2, 2023; amended May 1, 2024, effective July 1, 2024.)

Annotations

Commentary

STATUTORY NOTES

Compiler's notes.

Former Rule 11.1, Appealable judgments from the magistrate court, was repealed and readopted by order dated May 5, 2017.

The August 31, 2023, court order, amending this rule, read, in part: "IT IS FURTHER ORDERED that this order and these amendments shall be effective *nunc pro tunc* as of March 2, 2023, and will only be applicable to cases appealed on or after that date. This order does not enlarge the time for filing an appeal or give rise to the right to an appeal where the time limit for appeal has already expired."

Case Notes

Appealable Order.
Attorney's Fees.
Sanctions.

Appealable Order.

Conclusion that an order may be appealed does not compel the conclusion that the order must be appealed or forever be foreclosed from appellate review; the finding of aggravated circumstances was clearly an appealable order, and the rule had no application because the case did not involve an attempt to present an untimely appeal, and instead this appeal was governed by the rule that authorized an appeal from an order terminating parental rights. *Dep't of Health & Welfare v. Doe (In re Doe), 156 Idaho 103, 320 P.3d 1262 (2014)*.

Attorney's Fees.

Appeal was brought for an improper purpose and attorney fees were awarded to the employer and insurer on appeal against the employee's attorney, personally, pursuant to this rule; the employee did little more than ask the supreme court to reweigh the evidence presented to the Industrial Commission and, implicitly, to substitute the supreme court's view of the evidence for that of the *Commission. Gibson v. Ada County Sheriff's Office, 147 Idaho 491, 211 P.3d 100 (2009)*.

As appellant raised legal and factual issues for the first time on appeal and her request for relief was without a foundation in law or fact, the appellate court concluded that the appeal was brought to harass the respondents, to cause unnecessary delay, or to needlessly increase the cost of litigation. The appellate court, on its own initiative, awarded the responents attorney's fees, pursuant to this rule, to be paid by the appellant's attorney. *Read v. Harvey, 147 Idaho 364, 209 P.3d 661 (2009)*.

Sanctions.

Sanctions will be awarded under this rule if: (1) the other party's arguments are not well grounded in fact, warranted by existing law, or made in good faith, and (2) the claims were brought for an improper purpose, such as unnecessary delay or increase in the costs of litigation *Davidson v. Riverland Excavating, Inc., 147 Idaho 339, 209 P.3d 636 (2009)*.

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.

Cited in:

Bradford v. Roche Moving & Storage, Inc., 147 Idaho 733, 215 P.3d 453 (2009).

Rule 11.2. Signing of notice of appeals, petitions, motions, briefs and other papers; sanctions.

(a) Every notice of appeal, petition, motion, brief and other document of a party represented by an attorney shall be signed by at least one (1) licensed attorney of record of the state of Idaho, in the attorney's individual name, whose address shall be stated before the same may be filed. A party who is not represented by an attorney shall sign the notice of appeal, petition, motion, brief or other document and state the party's address. The signature of an attorney or party constitutes a certificate that the attorney or party has read the notice of appeal, petition, motion, brief or other document; that to the best of the signer's knowledge, information, and belief after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If the notice of appeal, petition, motion, brief, or other document is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the notice of appeal, petition, motion, brief or other document including a reasonable attorney's fee.

(b) The court may declare a party a vexatious litigant pursuant to Idaho Court Administrative Rule 59.

History

(Adopted June 15, 1987, effective November 1, 1987; redesignated from I.A.R. 11.1, March 19, 2009, effective July 1, 2009; amended November 20, 2012, effective January 1, 2013.)

Annotations

Case Notes

Attorney's Fees.
Award Denied.
New Issues on Appeal.
Sanctions.
Sexual Harassment Action.

Attorney's Fees.

Although denial of unemployment benefits was affirmed on appeal, case where aviation worker was discharged for misconduct due to failure to get tower clearance before crossing runways presented legitimate issues of the basis of discharge and proper standards for determining employment discharge and employer's claim for attorney fees was denied. *Bullard v. Sun Valley Aviation, Inc., 128 Idaho 430, 914 P.2d 564 (1996)*.

The court does not award attorney fees in appeals by claimants from decisions of the Industrial Commission, unless the court determines that the proceedings have been instituted or continued without reasonable ground. *Rivas v. K.C. Logging, 134 Idaho 603, 7 P.3d 212 (2000)*.

Personal liability for State's attorney's fees on appeal was imposed on attorney who failed to assure that disabled client's notice of tort claim was timely filed and yet thereafter persisted in appealing dismissal of his client's second attempt at filing lawsuit that was barred on its face for failure to provide timely notice of claim. *Rodriguez v. Department of Corr., 136 Idaho 90, 29 P.3d 401 (2001)*.

An award of attorney fees on appeal in favor of the insurer was proper where the attorney failed to conduct a reasonable inquiry that the appeal was well grounded in fact and warranted by existing law. *Sprinkler Irrigation Co. v. John Deere Ins. Co., 139 Idaho 691, 85 P.3d 667 (2004)*.

Attorney fees for prosecuting an appeal of a summary judgment award on an attractive nuisance claim were appropriate where the case lacked any reasonable basis in fact or clearly defined law and improper purpose was properly inferred, particularly in light of the district court's repeated explanations of the lawsuit's failings. *Doe v. City of Elk River, 144 Idaho 337, 160 P.3d 1272 (2007)*.

In a quiet title action against a title insurer, the insurer as a prevailing party was entitled to an award of attorney fees on appeal under I.C. *§ 12-121* against the party who filed the action and against her counsel under Idaho App. R. 11.1. The pursuit of the appeal was not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law. *Chavez v. Barrus, 146 Idaho 212, 192 P.3d 1036 (2008)*.

When an appeal was not timely filed, and it was not well-grounded in fact or warranted by existing law, attorney fees were awarded to a respondent. *Goodman Oil Co. v. Scotty's Duro-Bilt Generator, Inc., 147 Idaho 56, 205 P.3d 1192 (2009)*.

A buyer of property at a foreclosure sale was not entitled to attorney fees under I.C. *§ 12-120(3)* because the ejectment action was not an action to recover on a commercial transaction; the buyer was, however, entitled to receive attorney fees under Idaho App. R. 11.2 because the lawsuit was frivolous in that the mortgagor's counsel framed the issue as questioning what notice was required for a postponed sale, and the law on that issue was clearly stated in I.C. *§ 45-1506(8)*. *Black Diamond Alliance, LLC v. Kimball, 148 Idaho 798, 229 P.3d 1160 (2010)*.

Property owners were denied attorney's fees in an action seeking to enforce several mechanic's liens where the lienholder's brief was not interposed for an improper purpose and provided a good faith argument regarding case law as to whether the deed of trustees had to be joined to the action. *Sims v. ACI Northwest, Inc., 157 Idaho 906, 342 P.3d 618 (2015)*.

A party seeking an award of attorney fees under this rule must identify the document that was signed in violation of the rule. *Chadwick v. Multi-State Elec., LLC, 159 Idaho 451, 362 P.3d 526 (2015)*.

The supreme court of Idaho has the authority to sua sponte award attorney fees pursuant to this rule. *Akers v. Mortensen, 160 Idaho 286, 371 P.3d 340 (2016)*.

Employer and its surety were not entitled to an award of attorney fees as a sanction against an injured worker's counsel, because the position of the worker's counsel, though rejected, was not wholly unsupported, as the evidence was conflicting. Moreover, the worker's counsel did not pursue the worker's compensation claim by the injured worker for an improper purpose. *Hartgrave v. City of Twin Falls, 163 Idaho 347, 413 P.3d 747 (2018)*.

There was no legal foundation for a daughter's appeal of the denial of partial summary judgment as to the civil trespass claims against her because the partial summary judgment decision was not certified nor did the daughter request that it be certified; however, rather than awarding attorney fees under *IC 12-121*, it was more appropriate to award attorney fees pursuant to the rule as sanctions against the daughter's counsel. *Frost v. Gilbert, 169 Idaho 250, 494 P.3d 798 (2021)*.

Award against appellant's counsel of a portion of appellees' reasonable attorney fees was appropriate because appellant's opening brief contained numerous citations to an augmented record even though appellant's motion to augment was denied, appellant's opening brief and initial portions of counsel's oral argument relied heavily on documents that were not in the record, and counsel never filed an updated brief to remove the references, nor address the augmented record citations in the reply brief. *Davis v. George & Jesse's Les Schwab Tire Store, Inc., -- Idaho --, 541 P.3d 667 (2023)*.

Award Denied.

Because teacher did not include argument that she should be awarded sanctions under this rule in her briefs submitted to Supreme Court or cite supporting authority, Court declined to award attorney's fees under this rule. *Folks v. Moscow Sch. Dist. # 281, 129 Idaho 833, 933 P.2d 642 (1997)*.

In a case where attorney fees were awarded to respondents, sanctions were not imposed where the record lacked a sufficient indication that an appeal was interposed for an improper purpose. *Bowles v. Pro Indiviso, Inc., 132 Idaho 371, 973 P.2d 142 (1999)*.

Court had no basis to award attorney fees where employee presented good faith arguments concerning the standards to be applied when the Industrial Commission made determinations

contrary to the referee when the referee was put in the position to observe demeanor and decide credibility. *Seufert v. Larson, 137 Idaho 589, 51 P.3d 403 (2002)*.

Where the appeal did not appear to have been brought for an improper purpose the appellate court refused to award sanctions against appellate counsel under I.A.R. 11.1 where the appellate court had rejected plaintiff's claims for the issuance of writs and concluded the arguments were not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law but the second prong of Rule 11.1 required finding that the appeal was interposed for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. *Ackerman v. Bonneville County, 140 Idaho 307, 92 P.3d 557 (Ct. App. 2004)*.

Citizen lacked standing to challenge the cigarette tax since he had a "generalized grievance" shared by a large class of citizens, and his remedy was through the political process. Further, the sales and use tax bill originated in the Idaho House and although substantially amended in the Idaho Senate, it was constitutionally enacted; although the law was well settled that the Senate could amend a revenue bill, the appeal was not frivolous, so as to have justified an award of attorney fees for the *State. Gallagher v. State, 141 Idaho 665, 115 P.3d 756 (2005)*.

Landowner's appeal was well grounded in fact and law, and sanctions against the landowner were unwarranted. *Tungsten Holdings v. Drake, 143 Idaho 69, 137 P.3d 456 (2006)*.

Mother was not entitled to an award of fees because she failed to present any facts indicating that the father brought the appeal from an award of custody for an improper purpose. *Danti v. Danti, 146 Idaho 929, 204 P.3d 1140 (2009)*.

Idaho industrial special indemnity account was not entitled to appellate attorney fees under the rule, because an employer's appeal of a determination that it was liable for an employee's permanent total disability benefits was not brought for an improper purpose. *Tarbet v. J.R. Simplot Co., 151 Idaho 755, 264 P.3d 394 (2011)*.

Property owner acted reasonably on appeal in a zoning case, conceding arguments where a decision unfavorable to him was res judicata and by not making frivolous arguments. Thus, although the owner lacked standing under *§ 10-1202* because the zoning of his land had not been changed, the county was not entitled to attorney fees on appeal. *Martin v. Smith, 154 Idaho 161, 296 P.3d 367 (2013)*.

Employer was not entitled to attorney fees under this rule because it failed to identify a document that was signed by the employee or his attorney in violation of the *Rule. Giles v. Eagle Farms, Inc., 157 Idaho 651, 339 P.3d 535 (2014)*.

Employer was denied attorney fees on appeal in a workers' compaensation case, where the employee made an argument that the industrial commission failed to correctly apply the statutory definitions of permanent impairment and failed to undertake a proper permanent disability analysis. While the supreme court ultimately found the argument to be without merit, given the statutory interplay and the employee's arguments regarding the effect of a finding of a 2 percent permanent partial impairment without a finding of disability, the argument presented a

good faith argument warranted by existing law. *Sevy v. SVL Analytical, Inc., 159 Idaho 579, 364 P.3d 279 (2015)*.

In a case relating to the powers of a parenting coordinator, sanctions were not awarded because a father's persistence did not amount to harassment or unnecessary delay or unreasonably increase the costs of litigation. *Hausladen v. Knoche, 159 Idaho 359, 360 P.3d 367 (2015)*.

Neither party was permitted to benefit from an award of attorney's fees by statute or the attorney's fees provision in a real estate purchase and sale agreement, because the agreement orchestrated by a real estate broker, and executed by the buyer and the seller, was fraudulent and violated public policy. *Kosmann v. Gilbride, 161 Idaho 363, 386 P.3d 504 (2016)*.

Where a claimant was a prevailing party in her suit challenging the suspension of compensation benefits for refusing to submit to a scheduled IME, the surety was not entitled to fees under the frivolous filing sanction, because the claimant's appeal, which brought to the Idaho supreme court's attention its manifestly wrong decision in *Brewer v. La Crosse Health & Rehab, 138 Idaho 859, 71 P.3d 458 (2003)* and the apparent procedural bar flowing from it, was neither frivolous nor filed for an improper purpose. *Arreola v. Scentsy, Inc., -- Idaho --, 531 P.3d 1148 (2023)*.

In a dispute about a city's approval of land use applications, no party was entitled to attorney fees on appeal; although the city did not prevail, it did not lack foundation in defending the appeal, and the objector did not misrepresent facts or engage in other sanctionable conduct. *N. W. Neighborhood Ass'n v. City of Boise, -- Idaho --, 535 P.3d 583 (2023)*.

New Issues on Appeal.

This rule does not permit the introduction on appeal of matters which should have been brought before the trial court. *Campbell v. Campbell, 120 Idaho 394, 816 P.2d 350 (Ct. App. 1991)*.

Sanctions.

In compensation case in view of the court's partial reversal, and because court perceived good faith arguments undergirding claimant's positions on appeal, court declined to consider availability of Appellate Rule 11.1 sanctions. *Soto v. J.R. Simplot, 126 Idaho 536, 887 P.2d 1043 (1994)*.

Where appellee asked the Court of Appeals to award attorney fees on appeal under *§ 12-121* and I.R.C.P. 54 (e) due to her claim that the appeal was brought "frivolously, unreasonably, and without foundation," the Court of Appeal noted that, under this rule, it could award fees against a party or the party's attorney involved in the appeal of its own motion. The Court of Appeals held that by failing to appeal an I.R.C.P. 9(b) dismissal, the appellant could not have prevailed under any circumstances and so it awarded costs and attorney fees against appellant's counsel, as it was the responsibility of the attorney, not the client, to recognize the legal basis upon which an

order was granted and to properly evaluate whether or not good faith grounds existed for an appeal. *MacLeod v. Reed, 126 Idaho 669, 889 P.2d 103 (Ct. App. 1995)*.

Sanctions under this rule were appropriate with respect to portion of appeal challenging dismissal of plaintiff's claim against defendant in suit to recover for personal injuries as a result of injuries sustained at concert, where argument of plaintiff's counsel that a jury question was presented as to whether defendant was an actual organizer or sponsor of the concert was utterly without support in evidence and while there was no reason to believe that the appeal was taken in bad faith or for any improper purpose, an excess zeal in the well-intended pursuit of their clients' interest led counsel beyond the bounds of legitimate appellate advocacy. *Landvik ex rel. Landvik v. Herbert, 130 Idaho 54, 936 P.2d 697 (Ct. App. 1997)*.

Denial of a motion to sanction the employee's attorney in a workers' compensation action was proper where there was no indication that he interposed the appeal for an improper purpose. *Painter v. Potlatch Corp., 138 Idaho 309, 63 P.3d 435 (2003)*.

In a workers' compensation case, attorney fees were not awarded on appeal because, despite the fact that an issue was rejected, there was no evidence that the appeal was filed for an improper purpose; the lack of a legal or factual basis alone was not enough. *Shriner v. Rausch, 141 Idaho 228, 108 P.3d 375 (2005)*.

In a case involving the proposed enlargement of water rights by an irrigation district, attorney fees were not awarded as a sanction because the claim was not frivolous, unreasonable, or without merit. *A & B Irrigation Dist. v. Aberdeen-American Falls Ground Water Dist. (In re SRBA Case No. 39576), 141 Idaho 746, 118 P.3d 78 (2005)*.

Where the workers' compensation claimant's attorney unnecessarily and needlessly increased the costs of the litigation, under Idaho R. App. P. 11.1, the appellate court imposed sanctions on him, personally, in the amount of the employer's reasonable attorney fees incurred on appeal. *Neihart v. Universal Joint Auto Parts, Inc., 141 Idaho 801, 118 P.3d 133 (2005)*.

Where a legitimate issue as to whether maximum medical improvement was properly before the workers' compensation referee, the employer was not entitled to its attorney fees under *Idaho R. App. P. 11.1. Hernandez v. Phillips, 141 Idaho 779, 118 P.3d 111 (2005)*.

In a case involving the alleged sexual molestation of children by their father, sanctions were awarded against daughters' attorney since the case was not factually or legally grounded. The daughters' counsel failed to comply with basic requirements for pleading and offered, at best, implausible theories for the court to consider. *Glaze v. Deffenbaugh, 144 Idaho 829, 172 P.3d 1104 (2007)*.

Father was not entitled to sanctions in a mother's appeal of a child custody order because, while the mother failed to comply with a myriad of procedural rules, she did not act with an improper purpose by harassing the father, but rather was motivated by a desire to regain custody of her child. *Woods v. Sanders, 150 Idaho 53, 244 P.3d 197 (2010)*.

Where an irrigation district claimed attorney fees under § 12-121, which was inapplicable, rather than under § 12-117, which applied to it as a government taxing entity, the district was not awarded fees under either section; however, the district was entitled to fees under this rule because the appeal was without merit and appeared to be primarily for the purpose of harassment and annoyance. *Bettwieser v. New York Irrigation Dist., 154 Idaho 317, 297 P.3d 1134 (2013)*.

Pursuant to Idaho App. R. 11.2, the property owners were entitled to sanctions for the lien foreclosure issue where the contractor had failed to timely comply with I.C. § 45-510, any confusion as to the property owners could have been cleared up with a title report to litigation guaranty from a title company, and thus, the contractor's attorney should have know after reasonable inquiry that the appeal had no basis in law or fact. *Sims v. Jacobson, 157 Idaho 980, 342 P.3d 907 (2015)*.

Attorney fees can be awarded as sanctions when a party or attorney violates either (1) the frivolous filings clause of Idaho App. R. 11.2, or (2) the improper purpose clause of *Idaho App. R. 11.2. Sims v. Jacobson, 157 Idaho 980, 342 P.3d 907 (2015)*.

Loan processor and a foreclosure purchaser were entitled to attorney fees as sanctions against an owner's counsel, where owner's counsel was responsible for a frivolous appeal and for unwarranted attacks on the integrity of the district court and for misconduct before the appellate court. *Bergeman v. Select Portfolio Servicing, 164 Idaho 498, 432 P.3d 47 (2018)*.

Attorney fee award against appellant's counsel personally was proper as a sanction, as appellants' claims were not well-grounded in fact, nor were they warranted by existing law or an extension thereof; appellants' brief failed to include appropriate citations to the record or a comprehensible argument. *Alpha Mortg. Fund II v. Drinkard, 169 Idaho 446, 497 P.3d 200 (2021)*.

Even though the district court did not rule on whether a county's order that an inmate stand for roll call was discretionary, the county's position that the district court did rule was at least a plausible argument given the district court's ultimate dismissal of the case; as a result, it could not be considered so far outside the realm of reasonability that it warranted a sanction. *Williamson v. Ada Cnty., 170 Idaho 204, 509 P.3d 1133 (2022)*.

Sexual Harassment Action.

While there were compelling arguments for awarding fees to employer whose favorable directed verdict in quid pro quo sexual harassment action was upheld on appeal, due to the sparse case law in Idaho involving sexual discrimination issues, court could not say that appeal was brought for improper purposes or in bad faith. *De Los Santos v. J.R. Simplot Co., 126 Idaho 963, 895 P.2d 564 (1995)*.

Cited in:

Challis v. Louisiana-Pacific Corp., 126 Idaho 134, 879 P.2d 597 (1994); *Crown v. Hawkins Co., 128 Idaho 114, 910 P.2d 786 (Ct. App. 1996)*; *Teevan v. Office of Att'y Gen., 130 Idaho 79, 936*

P.2d 1321 (1997); *Tupper v. State Farm Ins., 131 Idaho 724, 963 P.2d 1161 (1998)*; *Simpson v. Louisiana-Pacific Corp., 134 Idaho 209, 998 P.2d 1122 (2000)*; *Perkins v. Croman, Inc., 134 Idaho 721, 9 P.3d 524 (2000)*; *Curzon v. Hansen, 137 Idaho 420, 49 P.3d 1270 (Ct. App. 2002)*; *Herrera v. Estay, 146 Idaho 674, 201 P.3d 647 (2009)*; *Bates v. Seldin, 146 Idaho 772, 203 P.3d 702 (2009)*; *Funes v. Aardema Dairy, 150 Idaho 7, 244 P.3d 151 (2010)*; *Giltner Dairy, LLC v. Jerome County, 150 Idaho 559, 249 P.3d 358 (2011)*; *Knowlton v. Wood River Med. Ctr., 151 Idaho 135, 254 P.3d 36 (2011)State v. Keithly, 155 Idaho 464, 314 P.3d 146 (2013)*; *Fonseca v. Corral Agric., Inc., 156 Idaho 142, 321 P.3d 692 (2014)*; *Fairchild v. Ky. Fried Chicken, 159 Idaho 208, 358 P.3d 769 (2015)*; *Gordon v. Hedrick, 159 Idaho 605, 364 P.3d 951 (2015)*; *Strong v. Intermountain Anesthesia, P.A., 160 Idaho 27, 368 P.3d 647 (2016)*; *Wilson v. Conagra Foods Lamb Weston, 160 Idaho 66, 368 P.3d 1009 (2016)*; *Thornton v. Pandrea, 161 Idaho 301, 385 P.3d 856 (Idaho 2016)*; *Andrews v. State, 162 Idaho 156, 395 P.3d 375 (2017)*; *Haight v. Idaho DOT, 163 Idaho 383, 414 P.3d 205 (2018)*; *Aguilar v. State, 164 Idaho 893, 436 P.3d 1242 (2019)*; *McGivney v. Aerocet, Inc., 165 Idaho 227, 443 P.3d 241 (2019)*; *Doe v. Doe (in re Doe), 170 Idaho 901, 517 P.3d 830 (2022)*.

Research References & Practice Aids

RESEARCH REFERENCES

Law Reviews.

Attorney Fee Awards in Idaho: A Handbook, Comment. *52 Idaho L. Rev. 583 (2016)*.

End of Document

Rule 12. Appeal by permission.

(a) Criteria for permission to appeal. Permission may be granted by the Supreme Court to appeal from an interlocutory order or judgment of a district court in a civil or criminal action, or from an interlocutory order of an administrative agency, which is not otherwise appealable under these rules, but which involves a controlling question of law as to which there is substantial grounds for difference of opinion and in which an immediate appeal from the order or decree may materially advance the orderly resolution of the litigation.

(b) Motion to District Court or Administrative Agency -- Order. A motion for permission to appeal from an interlocutory order or judgment, upon the grounds set forth in subdivision (a) of this rule, shall be filed with the district court or administrative agency within fourteen (14) days from date of entry of the order or 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. In criminal actions a motion filed by the defendant shall be served upon the prosecuting attorney of the county. The court or agency shall, within fourteen (14) days after the hearing, enter an order setting forth its reasoning for approving or disapproving the motion.

(c) Motion to Supreme Court for Permission to Appeal.

(1) Motion of a party. Within fourteen (14) days from entry by the district court or administrative agency of an order approving or disapproving a motion for permission to appeal under subdivision (b) of this rule, any party may file a motion with the Supreme Court requesting acceptance of the appeal by permission. A copy of the interlocutory order or judgment being appealed shall be attached to the motion, along with a copy of the order of the district court or administrative agency approving or disapproving the permission to appeal. If the district court or administrative agency 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 district court or administrative agency.

(2) Motion by order of court or agency. A district court or administrative agency may enter, on its own initiative, an order recommending permission to appeal from an interlocutory order or judgment. The court or agency shall file a certified copy of its order with the Supreme Court and serve copies on all parties. The order recommending permission to appeal shall constitute and be treated as a motion for permission to appeal from the interlocutory order or judgment under this rule.

(3) Procedure. 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. In criminal actions a motion filed by the defendant shall be served upon the prosecuting attorney of the county and the attorney general of the state of Idaho.

(d) Acceptance by Supreme Court. Any appeal by permission of an interlocutory order or judgment under this rule shall not be valid and effective unless and until the Supreme Court shall enter an order accepting such interlocutory order or judgment as appealable and granting leave to a party to file a notice of appeal within a time certain. Unless otherwise ordered by the Supreme Court in its order of acceptance, such appeal shall thereafter proceed in the same manner as an appeal as a matter of right, except that it shall be retained by the Supreme Court. The clerk of the Supreme Court shall file with the district court or administrative agency a copy of the order of the Supreme Court granting or denying acceptance, and shall mail copies to all parties to the action or proceeding.

History

(Adopted March 24, 1982, effective July 1, 1982; amended April 18, 1983, effective July 1, 1983; amended March 23, 1990, effective July 1, 1990; amended January 28, 1997, effective July 1, 1997; amended March 18, 1998, effective July 1, 1998; amended March 22, 2002, effective July 1, 2002; amended March 24, 2005, effective July 1, 2005; amended March 29, 2010, effective July 1, 2010; amended November 20, 2012, effective January 1, 2013.)

Annotations

Commentary

STATUTORY NOTES

Compiler's Notes.

By order of March 24, 1982, the Supreme Court of Idaho rescinded I.A.R. 12 as it appears in the bound volume and replaced it with the present rule.

By Supreme Court Order of January 28, 1997, effective July 1, 1997, subsection (d) of this Rule -- Acceptance by Supreme Court -- was amended to be subsection (e) and a new subsection (d) was adopted -- Permissive appeal from the Magistrate's Division of the District Court.

Case Notes

Abuse of Discretion.
Certification of Interlocutory Orders.
Denial of Summary Judgment.
Expedited Appeal.

Intent of Rule.
Jurisdiction.
Motion for Acceptance.
Questions of Law.

Abuse of Discretion.

The trial court abused its discretion in considering motion to suppress evidence which was not timely filed, when neither "good cause" nor "excusable neglect" was shown. *State v. Alanis, 109 Idaho 884, 712 P.2d 585 (1985)*.

Certification of Interlocutory Orders.

Until the magistrate approves the administration, distribution and closing of the estate, the approval of accountings by the magistrate is not ripe for review; however, there is no impediment to special review of interlocutory orders approving interim accountings by certification under I.R.C.P. 54(b), concerning the appeal from the magistrate division to the district court, and under I.R.C.P. 54(b) or this rule concerning the appeal from the district court to the *Supreme Court. Spencer v. Idaho First Nat'l Bank (In re Estate of Spencer), 106 Idaho 316, 678 P.2d 108 (Ct. App. 1984)*.

Denial of Summary Judgment.

Where the legal issue that would be raised by an appeal by certification from an order denying a motion for summary judgment was whether a prior judgment in favor of the defendant in a small claim action for property damage to a vehicle in an accident barred an action for personal injury under the doctrine of res judicata, collateral estoppel, or the single cause of action rule, motion to appeal by certification was denied. *Budell v. Todd, 105 Idaho 2, 665 P.2d 701 (1983)*.

A denial of summary judgment by a district judge is not appealable unless the district judge was acting as an appellate court or unless the Supreme Court granted permission. *North Pac. Ins. Co. v. Mai, 130 Idaho 251, 939 P.2d 570 (1997)*.

Where permission to appeal from denial of summary judgment was not sought because the trial court's decision involved a controlling question of law as to where there was substantial grounds for difference of opinion and because an immediate appeal may materially advance the orderly resolution of the litigation, the Supreme Court would consider and treat the appeal as an appeal by permission. *North Pac. Ins. Co. v. Mai, 130 Idaho 251, 939 P.2d 570 (1997)*.

Expedited Appeal.

Father was granted a permissive expedited appeal of the decision of the magistrate judge granting the mother's motion for a modification of child custody. *McGriff v. McGriff, 140 Idaho 642, 99 P.3d 111 (2004)*.

Intent of Rule.

It was the intent of this rule to provide an immediate appeal from an interlocutory order if substantial legal issues of great public interest or legal questions of first impression are involved. The court also considers such factors as the impact of an immediate appeal upon the parties, the effect of the delay of the proceedings in the district court pending the appeal, the likelihood or possibility of a second appeal after judgment is finally entered by the district court, and the case workload of the appellate courts; no single factor is controlling in the court's decision of acceptance or rejection of an appeal by certification, but the court intends by this rule to create an appeal in the exceptional case and does not intend by the rule to broaden the appeals which may be taken as a matter of right under *I.A.R. 11. Budell v. Todd, 105 Idaho 2, 665 P.2d 701 (1983)*.

Under this rule, appeals are only accepted in the most exceptional cases, with the intent to resolve substantial legal issues of great public interest or legal questions of first impression. *Aardema v. U.S. Dairy Sys., 147 Idaho 785, 215 P.3d 505 (2009)*.

Jurisdiction.

Because the Supreme Court of Idaho granted the motion of the employer's workers' compensation surety for appeal by permission pursuant to subsection (a) of this rule, surety's appeal of Industrial Commission's decision was properly before the court, despite Commission's retention of jurisdiction over future medical benefits. *Dohl v. PSF Indus., Inc., 127 Idaho 232, 899 P.2d 445 (1995)*.

Appellate court exercised its discretion to grant the State's request to appeal the orders granting defendants' motions to suppress pursuant to I.A.R. 12 because the cases presented a significant issue, the resolution of which would be of practical importance in the administration of the criminal justice system, and defendants did not convince the appellate court that it erred in the exercise of that discretion. *State v. Bicknell, 140 Idaho 201, 91 P.3d 1105 (2004)*.

Motion for Acceptance.

Although the defendant complied with the appellate rules by obtaining an order from the magistrate authorizing an appeal, his failure to file a further motion with the district court for acceptance of the appeal fell short of satisfying subsection (c) of this rule. *State v. McCarthy, 133 Idaho 119, 982 P.2d 954 (Ct. App. 1999)*.

Because Idaho Appellate Rule 21 provides that "any other step" in the appellate process is not jurisdictional, the absence of a motion for acceptance of an appeal did not deprive the district court of jurisdiction. *State v. McCarthy, 133 Idaho 119, 982 P.2d 954 (Ct. App. 1999)*.

Questions of Law.

Generally, an appeal under this rule will be permitted when the order involves a controlling question of law as to which there is substantial grounds for difference of opinion and where an immediate appeal may materially advance the orderly resolution of the litigation. *Kindred v. Amalgamated Sugar Co., 118 Idaho 147, 795 P.2d 309 (1990)*; *Bishop v. Owens, 152 Idaho 617, 272 P.3d 1247 (2012)*

Cited in:

Ledesma v. Bergeson, 99 Idaho 555, 585 P.2d 965 (1978); *Schiess v. Bates, 107 Idaho 794, 693 P.2d 440 (1984)*; *Evans v. Galloway, 108 Idaho 711, 701 P.2d 659 (1985)*; *Kugler v. Northwest Aviation, Inc., 108 Idaho 884, 702 P.2d 922 (Ct. App. 1985)*; *Burdick v. Thornton, 109 Idaho 869, 712 P.2d 570 (1985)*; *State v. Groves, 109 Idaho 1006, 712 P.2d 707 (Ct. App. 1985)*; *Idaho State AFL-CIO v. Leroy, 110 Idaho 691, 718 P.2d 1129 (1986)*; *Murgoitio v. Murgoitio, 111 Idaho 573, 726 P.2d 685 (1986)*; *Stattner v. City of Caldwell, 111 Idaho 714, 727 P.2d 1142 (1986)*; *Barringer v. State, 111 Idaho 794, 727 P.2d 1222 (1986)*; *Crawford v. Pacific Car & Foundry Co., 112 Idaho 820, 736 P.2d 872 (Ct. App. 1987)*; *O'Boskey v. First Fed. Sav. & Loan Ass'n, 112 Idaho 1002, 739 P.2d 301 (1987)*; *Merritt v. State, 113 Idaho 142, 742 P.2d 397 (1986)*; *McAtee v. Faulkner Land & Livestock, Inc., 113 Idaho 393, 744 P.2d 121 (Ct. App. 1987)*; *Nations v. Bonner Bldg. Supply, 113 Idaho 568, 746 P.2d 1027 (Ct. App. 1987)*; *Fairway Dev. Co. v. Bannock County, 113 Idaho 933, 750 P.2d 954 (1988)*; *Winn v. Frasher, 116 Idaho 500, 777 P.2d 722 (1989)*; *Harney v. Weatherby, 116 Idaho 904, 781 P.2d 241 (Ct. App. 1989)*; *Bannock Bldg. Co. v. Sahlberg, 126 Idaho 545, 887 P.2d 1052 (1994)*; *State v. Clifford, 130 Idaho 259, 939 P.2d 578 (Ct. App. 1997)*; *State v. Young, 136 Idaho 113, 29 P.3d 949 (2001)*; *State v. Maynard, 139 Idaho 876, 88 P.3d 695 (2004)*; *State v. Savage, 145 Idaho 756, 185 P.3d 268 (2008)*; *Rountree v. Boise Baseball, LLC, 154 Idaho 167, 296 P.3d 373 (2013)*; *Taylor v. Riley, 157 Idaho 323, 336 P.3d 256 (2014)*; *Litke v. Munkhoff, 163 Idaho 627, 417 P.3d 224 (2018)*.

Research References & Practice Aids

Cross References.

28 U.S.C. § 1292(b); *Rule 5 of Federal Rules of Appellate Procedure*; *Idaho Const., Art. 5, § 9*.

Rule 12.1. Permissive appeal in custody and guardianship cases.

(a) Motion for permission to appeal. Whenever the best interest of a child or protected person 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 802 of the Idaho Rules of Family Law Procedure, or an order entered after final judgment, involving the custody of a minor, or

(2) those orders or decrees of the magistrate court in a Child Protective Act proceeding specified in *section 16-1625, Idaho Code*, or

(3) a final judgment, as defined in Rule 54(a) of the Idaho Rules of Civil Procedure, or an order made after final judgment, in a guardianship proceeding arising under Title 15, Chapter 5 of the Idaho Code.

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.

History

(Adopted March 22, 2002, effective July 1, 2002; amended March 21, 2007, effective July 1, 2007; amended January 3, 2008, effective March 1, 2008; amended March 19, 2009, effective July 1, 2009; amended January 4, 2010, effective February 1, 2010, amended March 29, 2010, effective July 1, 2010; repealed and a new rule adopted May 5, 2017, effective July 1, 2017; amended and effective April 28, 2022; amended August 31, 2023, effective *nunc pro tunc* March 2, 2023; amended May 1, 2024, effective July 1, 2024.)

Annotations

Commentary

STATUTORY NOTES

Compiler's notes.

Former Rule 12.1, Permissive appeal in custody cases, was repealed and readopted by order dated May 5, 2017.

The August 31, 2023, court order, amending this rule, read, in part: "IT IS FURTHER ORDERED that this order and these amendments shall be effective nunc pro tunc as of March 2, 2023, and will only be applicable to cases appealed on or after that date. This order does not enlarge the time for filing an appeal or give rise to the right to an appeal where the time limit for appeal has already expired."

Case Notes

Permissive Appeal.
Scope of Rule.

Permissive Appeal.

Pursuant to Idaho R. Civ. P. 83(u)(1), when an appeal is taken from a magistrate court to a district court, the magistrate court retains the same powers, enumerated in I.A.R. 13(b), that a district court retains upon an appeal to the supreme court. Recommending a direct permissive appeal pursuant to this rule is not one of the powers enumerated in I.A.R. 13(b). Therefore, a magistrate court's recommendation of a direct permissive appeal in a custody case, after an appeal has been filed with the district court, has no force or effect. *Dep't of Health & Welfare v. Doe (In re Doe), 147 Idaho 314, 208 P.3d 296 (2009)*.

Because no final judgment was ever entered in a case, the case did not qualify for a permissive appeal as Idaho App. R. 12.1 permitted a direct appeal from a magistrate court to the appellate court of a final judgment, as defined in Idaho R. Civ. P. 54(a), or order made after final judgment, involving the custody of a minor. *Cook v. Arias, 164 Idaho 766, 435 P.3d 1086 (2015)*.

Aunt's appeal of an order awarding custody of nieces and nephews to the Idaho department of health and welfare (department) was dismissed because the aunt's stipulation that it was in the children's best interests to award custody to the department did not preserve error and rendered the controversy moot, as no justiciable controversy was presented. *Doe v. Doe, 164 Idaho 393, 431 P.3d 1 (2018)*.

Because the adjudicatory decree finding a child to be within the jurisdiction of the Child Protective Act was subject to modification, it was not a final order or final judgment, and the magistrate court lacked authority to grant the child's mother permission to appeal directly to the state supreme court; accordingly, there was no jurisdiction to hear the appeal. *State v. Doe (in re Doe), -- Idaho --, 537 P.3d 88 (2023)*.

Scope of Rule.

Because the magistrate's order denying the mother's request for attorney fees in a custody proceeding did not fall within the scope of this rule, her only appellate recourse was an appeal to the district court pursuant to Idaho R. Civ. P. 83; therefore, the appellate court possessed no jurisdiction to hear her attempted appeal and it had to be dismissed. *Olson v. Montoya, 147 Idaho 833, 215 P.3d 553 (2009)*.

Cited in:

Suter v. Biggers, 157 Idaho 542, 337 P.3d 1271 (2014); *Searle v. Searle, 162 Idaho 839, 405 P.3d 1180 (2017)*; *Swanson v. Swanson, 169 Idaho 766, 503 P.3d 982 (2022)*; *Plasse v. Reid, -- Idaho --, 529 P.3d 718 (2023)*.

End of Document

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 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 granting a motion for 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 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.

(b) Preparation and filing of clerk's record. The official court file, including any minute entries or orders together with the exhibits offered or admitted, shall constitute the clerk's record in such appeal. The record shall be prepared in accord with Rule 27 (a) and (b) as to number, use and fee, and Rule 28 (d) (e) and (f) and (g) as to preparation. The clerk shall prepare the record and have it ready for service on the parties within twenty one (21) days of the date of the filing of the notice of appeal. Clerks shall give priority to preparation of the record in these cases. The payment of the clerk's record fee as required by this rule may be waived by the magistrate court pursuant to *section 31-3220, Idaho Code*, in accordance with the local rules of the judicial district of the district court.

(c) Preparation and filing of transcript. Upon the filing of the notice of appeal the clerk of the district court shall forward the notice to the Trial Court Administrator, who shall be responsible for assigning preparation of the transcript. Unless otherwise ordered by the magistrate court, the appellant shall pay the estimated fee for preparation of the transcript as determined by the transcriber within the time set by the Trial Court Administrator and transcriptionist. The payment of the transcript fee may

be waived by the magistrate court pursuant to *section 31-3220, Idaho Code*, in accordance with the local rules of the judicial district of the district court. Upon receipt of the estimated fee or payment in full, the reporter shall file a Notice of Transcript Deposit with the clerk of the district court on a form provided by the Supreme Court. The transcript shall be prepared in accord with Rule 24 (a) and (b) as to number, use and format, and in accord with Rules 25 and 26. The transcript shall be prepared and ready for service on the parties within twenty one (21) days of the date of the filing of the notice of appeal.

(d) Briefing. The time prescribed in Rule 34 for filing of briefs shall be reduced such that the appellant's brief is due within twenty-one (21) days of the date that the clerk's record and transcript are filed with the Supreme Court. The respondent's and cross-appellant's brief, if any, shall be joined in one brief, and shall be filed within twenty-one (21) days after service of the appellant's brief. The reply brief and cross-respondent's brief, if any, shall be combined and shall be filed within fourteen (14) days of service of any respondent's brief. If there is no cross-respondent's brief then the reply brief shall be filed within seven (7) days after service of the respondent's brief.

(e) Extensions. Each case subject to this rule shall be given the highest priority at all stages of the appellate process, and the clerk, transcriptionist or court reporter, and litigants will not be given extensions of time in which to comply with the expedited docketing and briefing schedules except upon a verified showing of the most unusual and compelling circumstances.

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

(g) Petitions for rehearing and review. Any petition for rehearing or review shall be accompanied by the brief in support of the petition or the petition shall be summarily dismissed.

History

(Adopted March 19, 2009, effective July 1, 2009; amended March 29, 2010, effective July 1, 2010; amended November 20, 2012, effective January 1, 2013; amended May 5, 2017, effective July 1, 2017; amended and effective September 11, 2024.)

Annotations

Case Notes

Cited in:

Plasse v. Reid, -- Idaho --, 529 P.3d 718 (2023).

End of Document

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 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.

History

(Adopted April 3, 1981, effective July 1, 1981; renumbered from 12.1 March 22, 2002, effective July 1, 2002; amended September 11, 2017, effective January 1, 2018.)

Annotations

Case Notes

Constitutionality.
Controlling Precedent.
Properly Certified.

Constitutionality.

This rule, permitting certification of questions of law from United States courts to the Idaho Supreme Court, is constitutional and the certification procedure established therein is valid. *Sunshine Mining Co. v. Allendale Mut. Ins. Co., 105 Idaho 133, 666 P.2d 1144 (1983)*.

Controlling Precedent.

In a wrongful discharge case in which an employee claimed he was fired for petitioning to exercise stock options granted to him by the employer, because the United States Court of Appeals for the Ninth Circuit found no controlling precedent in the decisions of the Idaho courts, pursuant to Idaho App. R. 12.2, it requested the Idaho Supreme Court to exercise its discretion to accept certification of two legal questions. *Paolini v. Albertson's Inc., 418 F.3d 1023 (9th Cir. 2005)*.

Properly Certified.

Case concerning the assignability of a legal malpractice claim to a client's successor was properly certified from a federal district court because there was no controlling precedent to resolve the question, and there were public policy issues on both sides of the legal question presented. *St. Luke's Magic Valley Reg'l Med. Ctr. v. Luciani (In re Order Certifying Question to Idaho Supreme Court), 154 Idaho 37, 293 P.3d 661 (2013)*.

Cited in:

Meckert v. Transamerica Ins. Co., 742 F.2d 505 (9th Cir. 1984); *Aetna Ins. Co. v. Craftwall of Idaho, Inc., 757 F.2d 1030 (9th Cir. 1985)*; *Meckert v. Transamerica Ins. Co., 108 Idaho 597, 701 P.2d 217 (1985)*; *Waters v. Armstrong World Indus., Inc., 773 F.2d 248 (9th Cir. 1985)*; *Toner v. Lederle Lab., 779 F.2d 1429 (9th Cir. 1986)*; *White v. Unigard Mut. Ins. Co., 112 Idaho 94, 730 P.2d 1014 (1986)*; *Toner v. Lederle Labs., 112 Idaho 328, 732 P.2d 297 (1987)*; *Peone v. Regulus Stud Mills, Inc., 113 Idaho 374, 744 P.2d 102 (1987)*; *Sherrard v. City of Rexburg, 113 Idaho 815, 748 P.2d 399 (1988)*; *Hansen v. White, 114 Idaho 907, 762 P.2d 820 (1988)*; *Morrell Constr., Inc. v. Home Ins. Co., 920 F.2d 576 (9th Cir. 1990)*; *Hansen v. White, 947 F.2d 1378 (9th Cir. 1991)*; *Santana v. Zilog, Inc., 878 F. Supp. 1373 (D. Idaho 1995)*.

Research References & Practice Aids

RESEARCH REFERENCES

A.L.R.

Construction and application of Uniform Certification of Questions of Law Act. *69 A.L.R.6th 415*.

End of Document

Rule 12.4. Expedited appeals in Industrial Commission appeals pursuant to Rule 11(d)(2).

(a) Criteria for Expedited Appeal. If the Industrial Commission enters an order deciding compensability that resolves less than all issues regarding a claim for benefits, a party may move the Industrial Commission to make a determination as to whether the order should be immediately appealable. In making this determination, the Industrial Commission shall consider the following:

(1) Whether an immediate appeal may prevent needless, expensive, and protracted litigation, giving consideration to whether the challenged order would be a basis for reversal upon entry of an order resolving all issues regarding a claim for benefits.

(2) Whether irreparable harm or loss will result, the possibility of success on appeal is substantially demonstrated, and administrative economy will be achieved.

(3) Whether delay would be unduly prejudicial or cause significant material harm to a party.

(4) Whether an immediate appeal is likely to result in a net reduction in duration, expense and complexity of litigation if the challenged order is reversed.

(5) Whether the order from which appeal is taken raises a novel or important issue that will provide helpful guidance to the affected legal community.

(b) Motion for Determination of Appealability. The motion for determination of whether the order deciding compensability should be immediately appealable to the Supreme Court must be made within fourteen (14) days from the date of the file stamp of the Industrial Commission on the order deciding compensability. The motion shall be filed, served and processed in the same manner as any other motion before the Industrial Commission. If a hearing is held on the motion, it shall be expedited. The Commission shall, within fourteen (14) days after the time for response has expired or within fourteen (14) days of a hearing, whichever is later, enter its written order on the motion.

(c) Notice of Appeal. If the Industrial Commission determines that an order deciding compensability may be immediately appealed to the Supreme Court, the notice of appeal must be physically filed with the clerk of the Industrial Commission within fourteen (14) days from the date of the file stamp of the Industrial Commission on the order making that determination. A notice of cross-appeal must be filed within seven (7) days from the notice of appeal.

(d) Preparation and Filing of Clerk's Record. The record shall be prepared in accord with Rule 27.

(e) Preparation and Filing of Transcript. The transcript shall be prepared in accord with Rule 24 (a) and (b) as to number, use and format, and in accord with Rules 25 and 26. The transcript shall be prepared and ready for service on the parties within twenty eight (28) days of the date of the filing of the notice of appeal.

(f) Settlement of the Record. Settlement of the record shall be in accord with Rule 29 except that, in the event an objection to the record is filed, the objection must be set for hearing within fourteen (14) days of the filing of the objection.

(g) Briefing. The time prescribed in Rule 34 for filing of briefs shall be reduced such that the appellant's brief is due within twenty-eight (28) days of the date that the clerks record and transcript are filed with the Supreme Court. The respondent's and cross-appellant's brief, if any, shall be joined in one brief, and shall be filed within twenty-one (21) days after service of the appellant's brief. The reply brief and cross-respondent's brief, if any, shall be combined and shall be filed within fourteen (14) days of service of any respondent's brief.

(h) Extensions. Each case subject to this rule shall be given priority at all stages of the appellate process, and the clerk, transcriptionist or court reporter, and litigants will not be given extensions of time in which to comply with the expedited docketing and briefing schedules except upon a verified showing of the most unusual and compelling circumstances.

(i) Oral Argument. Oral argument, if requested, shall be held within one hundred eighty (180) days from the filing of the notice of appeal.

(j) Petitions for Rehearing. Any petition for rehearing shall be accompanied by the brief in support of the petition or the petition shall be summarily dismissed.

History

(Adopted April 23, 2015, effective July 1, 2015; amended and effective January 24, 2019.)

Annotations

Case Notes

Cited in:

Mayer v. TPC Holdings, Inc., 160 Idaho 223, 370 P.3d 738 (2016).

Rule 13. Stay of proceedings upon appeal or certification.

(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).

(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 of an appeal:

(1) Settle the transcript on appeal.

(2) Rule upon any motion for new trial.

(3) Rule on any motion to amend findings of fact or conclusions of law.

(4) Rule on any motion to amend the judgment.

(5) Rule upon any motion for judgment notwithstanding the verdict.

(6) Rule on any motion under Rule 60(a) or (b), I.R.C.P.

(7) Rule upon any motion for reconsideration filed pursuant to Rule 11.2 (b), I.R.C.P.

(8) Enter a stay of execution or enforcement of any injunction or mandatory order entered by the court upon such conditions and upon the posting of such security as the court determines in its discretion.

(9) Make any order regarding the taxing of costs or determination of attorneys fees incurred in the trial of the action.

(10) Make any order regarding the use, preservation or possession of any property which is the subject of the action on appeal.

(11) Take any action or enter any order deemed advisable in the discretion of the court with regard to the custody or support of children pending any appeal involving the custody or support of such children, and to amend or modify such order from time

to time, during the pendency of the appeal, by reason of changes of circumstances of the parties.

(12) Make any order which the district court deems appropriate in its discretion for the payment or advancement of attorneys fees and/or anticipated costs on appeal by one party to the other, subject to the order of the Supreme Court determining the right to, and amount of, attorneys fees on appeal.

(13) Take any action or enter any order required for the enforcement of any judgment or order.

(14) Stay execution or enforcement of any judgment, order or decree appealed from, other than a money judgment, upon the posting of such security and upon such conditions as the district court shall determine.

(15) Stay execution or enforcement of a money judgment upon the posting of a cash deposit or supersedeas bond by a fidelity, surety, guaranty, title or trust company authorized to do business in the state and to be a surety on undertakings and bonds, either of which must be in the amount of the judgment or order, plus 36% of such amount. Provided, an agreement not to execute on the judgment made pursuant to Rule 16(b) may be filed in lieu of such bond or cash deposit. Any bond filed pursuant to this rule shall state that the company issuing or executing the same agrees to pay on behalf of the appellant all sums found to be due and owing by the appellant by reason of the outcome of the appeal, within 30 days of the filing of the remittitur from the Supreme Court, up to the full amount of the bond or undertaking. A copy of the bond, agreement not to execute, or notification of a cash deposit shall be served upon all parties to the appeal at the time of the application for the stay of execution. Any objection to the sufficiency of a cash deposit or bond posted under this rule shall be waived unless a written objection is made in the form of a motion and filed with the district court within 21 days of the filing of such bond or cash deposit. The district court shall rule upon such objection in the same manner as any other motion under the I.R.C.P. If the district court stays execution or enforcement of a money judgment upon the posting of a cash deposit or supersedeas bond, the court may, upon motion or application, cause or direct any judgment lien filed to be released. If the appellate court has vacated any money judgment and remanded only for a determination of the amount of the judgment, the district court may continue or modify the amount of any cash deposit or supersedeas bond posted in connection with the appeal. Any cash deposit may be applied to the judgment upon filing of the remittitur from the Supreme Court. If a party obtains a judgment for punitive damages, the supersedeas bond or cash deposit requirements shall be waived as to that portion of the punitive damages that exceeds one million dollars ($1,000,000) if the party or parties found liable seek a stay of enforcement of the judgment during the appeal. In addition, the supersedeas bond or cash deposit requirements may be waived in any action for good cause shown. However, if the judgment creditor proves by a preponderance of the evidence that a party bringing an appeal, for whom the supersedeas bond or cash deposit requirement has been waived, is purposefully dissipating its assets or diverting assets outside the jurisdiction of the United States courts, waiver may be rescinded and the

bond or cash deposit requirements may be reinstated for the full amount of the judgment.

(16) Any order of the Supreme Court as to whether or not a judgment, order, decree or proceeding shall be stayed shall take precedence over any order entered by the district court.

(17) Rule on any motion or application for the issuance of a Rule 54(b) I.R.C.P. certificate making a partial judgment final and appealable.

(18) During a permissive appeal under Rule 12, I.A.R., take any actions and rule upon all matters unaffected by the permissive appeal, including conducting a trial, unless a stay is entered by either the district court or the Supreme Court under Rule 13.4 (c), 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 (c), I.A.R.

(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.

(21) Rule upon any motion pertaining to the taking of depositions pursuant to Rule 27(b), I.R.C.P.

(c) Stay upon appeal -- Powers of district court -- Criminal action. In criminal 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 of an appeal:

(1) Settle the transcript on appeal.

(2) Rule upon any motion for a new trial.

(3) Rule upon any motion for arrest of judgment.

(4) Conduct any hearing, and make any order, decision or judgment allowed or permitted by *§ 19-2601, Idaho Code*.

(5) Conduct any hearing and make any order, decision or judgment with regard to an originally withheld judgment upon a plea or verdict of guilty.

(6) Place a defendant upon probation, modify or revoke such probation, or sentence a defendant upon revocation of probation.

(7) Determine and order whether there shall be a stay of execution of a judgment of conviction upon an appeal to the Supreme Court, except where the sentence is capital punishment, in which case execution of the sentence shall be automatically stayed pending appeal.

(8) Determine whether the defendant should be allowed bail, and if the defendant is allowed bail:

(i) Determine the amount of bail;

(ii) Modify the amount of bail from time to time;

(iii) Forfeit bail for violation of any of its conditions;

(iv) Issue a bench warrant for the arrest of the defendant for violation of bail.

(9) Determine whether the defendant is entitled to a transcript and court appointed attorney on appeal at public expense, and if so, appoint an attorney for the defendant and upon the filing of a notice of appeal, order the preparation of the transcript and record at public expense.

(10) Enter any other order after judgment affecting the substantial rights of the defendant as authorized by law.

(11) Rule upon a motion to correct or reduce a sentence under Rule 35 I.C.R.

(12) Sentence a defendant for a crime for which the defendant had been found guilty and which has been appealed.

(d) Stay upon appeal from the Industrial Commission. In administrative appeals from the Industrial Commission the order or award shall be stayed as provided by statute during the pendency of the appeal, unless otherwise ordered by the Industrial Commission or the Supreme Court.

(e) Stay upon appeal from the Public Utilities Commission. In administrative appeals from the Public Utilities Commission, unless stayed by the Supreme Court, the administrative agency shall have continued jurisdiction of the matter and the parties consistent with the provisions of applicable statutes including the power to settle the transcript and record on appeal.

(f) Stay upon permissive appeal.

(1) Stay during processing of motion for permission to appeal. The filing of a motion for permission to appeal under Rule 12 shall not automatically stay the action or proceeding nor the enforcement of the interlocutory judgment, order or decree. After a motion for permission to appeal has been filed, the district court or administrative agency, or the Supreme Court, may grant a stay in the manner provided in this Rule for a stay during an appeal.

(2) Stay after a motion for permission to appeal has been granted. Except as provided in subsections (a), (b), (c), (d) and (e) of this Rule, the granting of a motion for permission to appeal under Rule 12 by the Supreme Court automatically stays the entire action or proceeding until the appeal has terminated, and during that time the district court or administrative agency shall have no power or authority over the action or proceeding. Provided, the granting of the motion for permission to appeal does not stay the enforcement of any judgment, order or decree, but the district court or administrative agency, or the Supreme Court, may grant a stay in the manner provided in this Rule for a stay during an appeal.

(g) Stay by Supreme Court. The Supreme Court may also, in its discretion, enter an order staying a proposed act, a pending action or proceeding, or the enforcement of any judgment, order or decree, including but not limited to an injunction, writ of mandamus or

prohibition, at any time during the pendency of an original application or petition for any extraordinary writ, or during the pendency of any appeal or a motion for certification of appeal. Any order of the Supreme Court shall take precedence over any order entered by the district court or administrative agency. Provided, in any appeal from the district court or an administrative agency, a party desiring to obtain any such stay must first make application to the district court or administrative agency before making application to the Supreme Court. If a district court or administrative agency denies an application for stay, or fails to act upon the application within fourteen (14) days after the filing of the application, any party may apply to the Supreme Court for a stay. If a district court or administrative agency grants a stay, any party may apply to the Supreme Court to modify or vacate the stay.

History

(Adopted March 25, 1977, effective July 1, 1977; amended April 11, 1979, effective July 1, 1979; amended March 24, 1982, effective July 1, 1982; amended March 28, 1986, effective July 1, 1986; amended June 15, 1987, effective November 1, 1987; amended March 27, 1989, effective July 1, 1989; amended March 23, 1990, effective July 1, 1990; amended February 10, 1993, effective July 1, 1993; amended March 18, 1998, effective July 1, 1998; amended March 19, 2009, effective July 1, 2009; amended March 29, 2010, effective July 1, 2010; amended November 20, 2012, effective January 1, 2013; amended April 27, 2016, effective July 1, 2016; amended April 28, 2021, effective July 1, 2021; amended April 28, 2022, effective July 1, 2022; amended and effective September 11, 2024.)

Annotations

Commentary

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Cross References.

Stay pending appeal, *§ 13-202*.

Case Notes

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Additional Bond.

District court's determination of an additional bond amount stemmed from the legal rate of interest and an estimated appeal window of 18 months, but there was no explanation as to why these criteria were used, particularly where the district court awarded no damages for the tortious interference claim at trial; the district court abused its discretion by requiring appellants to post the additional bond. *Tricore Invs. LLC v. Estate of Warren, 168 Idaho 596, 485 P.3d 92 (2021)*.

Appeal from Industrial Commission.

Both *§ 72-731* and subsection (d) of this rule provide that upon an appeal to the Supreme Court from the Industrial Commission, the award is stayed; therefore, the commission's order denying the claimant's motion to permit collection of judgment pending appeal was proper. *Nielson v. State, Indus. Special Indem. Fund, 106 Idaho 878, 684 P.2d 280 (1984)*.

Authority of Magistrate.

During the pendency of the appeal, the district court's authority is limited to the extent set out in subsection (b) of this rule. The same powers and authority granted to a district judge by

subsection (b) of this rule are conferred on a magistrate during the pendency of an appeal. The district court is empowered to take any action or enter any order required for the enforcement of any judgment, order or decree. *DesFosses v. DesFosses, 120 Idaho 27, 813 P.2d 366 (Ct. App. 1991)*, aff'd, *122 Idaho 634, 836 P.2d 1095 (Ct. App. 1992)*.

Where the advancement of attorney fees was within the discretion of the magistrate, and no argument or authority was presented to the appellate court in support of the cross-claimant's contention that the advancement was in error, the order advancing fees for appeal was affirmed. *Peasley Transfer & Storage Co. v. Smith, 132 Idaho 732, 979 P.2d 605 (1999)*.

Catchall Provision.

Trial court did not lack jurisdiction to rule on defendant's motion to withdraw his guilty plea during the pendancy of his appeal because the catchall provision in subdivision (c)(10) allowed the court to hear the motion. *State v. Wilson, 136 Idaho 771, 40 P.3d 129 (Ct. App. 2001)*.

Child Support Modification.

Where there was substantial, competent evidence in the record to support the magistrate's finding that a father's reduced gross income combined with the birth of another child by his current wife and that child's need for support constituted a permanent, material, and substantial change of circumstances since the last order modifying the divorce decree, there was no error in the magistrate's granting the father's petition for modification, despite the fact that the parties' divorce decree was contemporaneously the subject of an appeal before the *Idaho Court of Appeals. Rohr v. Rohr, 128 Idaho 137, 911 P.2d 133 (1996)*.

Construction with Other Rules.

The filing of a notice of appeal which is based upon an appealable order under Idaho Appellate Rule 11 has the effect of staying the proceedings before the district court. *State v. Schwarz, 133 Idaho 463, 988 P.2d 689 (1999)*.

Costs and Attorney Fees.

Idaho App. R. 13(b)(9) provided that the district court retained jurisdiction to make any order regarding the taxing of costs or determination of attorneys fees incurred in the trial of the action; thus, the district court had jurisdiction to award costs, including attorney fees. *Bagley v. Thomason, 149 Idaho 799, 241 P.3d. 972 (2010)*

Supersedeas bond is required to stay enforcement of any judgment for attorney fees and court costs from which an appeal is taken, regardless of the timing of the notice of appeal. The supersedeas bond requirement in Idaho App. R. 13 applies to the entire judgment that is appealed, including costs and attorney fees. *Keybank Nat'l Ass'n v. PAL, LLC, 155 Idaho 287, 311 P.3d 299 (2013)*.

Although it was not legal error, by failing to make a ruling on an applicant's request for attorney fees, the district court left the door open for a second appeal solely on the issue of attorney fees; the interests of the parties, as well as judicial economy, are such that the better practice is for the district court to rule on attorney fees requests so that all issues may be resolved in a single appeal. *Wade v. Taylor, 156 Idaho 91, 320 P.3d 1250 (2014)*.

Criminal Action.

--Completion of Record.

After an appeal is filed, a district court in a criminal proceeding may enter an order on a motion filed prior to the appeal where such ruling merely completes the record and does not in any way alter an order or judgment from which the appeal has been taken. *State v. Wade, 125 Idaho 522, 873 P.2d 167 (Ct. App. 1994)*.

--Omitted Issue.

Where the district court was presented with three motions: one requesting a reduction of sentence pursuant to Rule 35, one requesting a progress report, and one requesting appointed counsel, and where the district court initially denied two of these requests but omitted to rule on the third, after defendant appealed, the district court retained jurisdiction to rule upon the omitted issue of appointed counsel in conjunction with its denial of defendant's motion for reconsideration of the Rule 35 motion. *State v. Wade, 125 Idaho 522, 873 P.2d 167 (Ct. App. 1994)*.

Filing of Appeal.

Upon the filing of a defendant's notice of appeal, the district court has no jurisdiction to take any action in the case, except as permitted in this rule or in Idaho Appellate Rule 13.3(a), which provides that before an opinion is issued, the supreme court may remand a case on appeal to the district court to take further designated action. *State v. Umphenour, 160 Idaho 503, 376 P.3d 707 (2016)*.

Jurisdiction.

Once proceedings are stayed by appeal, the district court ordinarily is divested of jurisdiction to act in any manner with relation to the rights and liabilities of an appellant except to act in aid of and not inconsistent with the appeal. *H & V Eng'g, Inc. v. Idaho State Bd. of Professional Eng'rs & Land Surveyors, 113 Idaho 646, 747 P.2d 55 (1987)*.

The district court was without jurisdiction to affirm the disciplinary order imposed by the Board of Professional Engineers and Land Surveyors after having initially ordered a remand, from which order the engineers perfected their appeal, and jurisdiction was vested in the *Supreme*

Court. H & V Eng'g, Inc. v. Idaho State Bd. of Professional Eng'rs & Land Surveyors, 113 Idaho 646, 747 P.2d 55 (1987).

In a drug case, a district court's reconsideration order was void because a notice of appeal had been filed, and the district court lost jurisdiction, except as to take certain actions. A motion for reconsideration or a motion for acquittal were not among the actions authorized by court rule. *State v. Lemmons, 158 Idaho 971, 354 P.3d 1186 (2015)*.

District court lacked jurisdiction to grant the state's motion to supplement the record and to make factual findings, where the motion was filed after the case was fully adjudicated. *State v. Youmans, 161 Idaho 4, 383 P.3d 142 (Idaho Ct. App. 2016)*.

Under Idaho App. R. 13(b)(13), the district court had the jurisdiction to enforce its judgment in such a way that would have enabled the developer to proceed with construction where the recording of a lawful condominium plat by the developer (which was the gravamen of the district court's judgment) should have entitled the developer to obtain building permits (by operation of county ordinances) to construct the approved condominiums on a lot. The gist of the developer's enforcement action was to enjoin the county from preventing the recording of a lawful condominium plat by the developer. Had the county done what it was ordered to do by the district court it would not have been necessary for the developer to seek enforcement of its judgment. TCR, LLC v. Teton Cnty., -- Idaho --, -- P.3d --, *2024 Ida. LEXIS 5 (Jan. 11, 2024)*.

Motion to Disqualify Judge.

This rule does not provide the District Court with the authority to rule on a motion to disqualify a judge after an appeal has been filed. *Christensen v. Ransom, 123 Idaho 99, 844 P.2d 1349 (Ct. App. 1992)*.

Motions No Longer Pending.

The district court had no power or authority -- because it lacked jurisdiction -- to reconsider its earlier decision and to enter a different ruling in respect to the defendant's motions for judgment notwithstanding the verdict or for a new trial after the defendant's notice of appeal was filed, because those motions were no longer pending and the subsequent notice of appeal transferred jurisdiction of the case from the district court to the appellate court. *Hells Canyon Excursions, Inc. v. Oakes, 111 Idaho 123, 721 P.2d 223 (Ct. App. 1986)*.

Motions Pending.

This rule does not authorize the district court during the pendency of appeal to rule on a motion to amend a party's pleadings or a motion to compel production of documents. *First Sec. Bank v. Webster, 119 Idaho 262, 805 P.2d 468 (1991)*.

No Order Staying Enforcement.

Where the record did not contain any order staying enforcement of the divorce judgment entered by the magistrate following the husband's appeal to the district court, the judgment therefore remained enforceable in the magistrate division while the appeal was pending in the district court, and since the district court judge refused to process the case as a trial de novo, the district court did not have jurisdiction to entertain or to dispose of issues relating to the enforcement of the magistrate's judgment. *Ustick v. Ustick, 104 Idaho 215, 657 P.2d 1083 (Ct. App. 1983)*.

Order Lifting Stay.

Order lifting a seven-day automatic stay in a foreclosure action was upheld due to purchaser's failure to show they were prejudiced by the order. *Markham v. Anderton, 118 Idaho 856, 801 P.2d 565 (Ct. App. 1990)*.

Permissive Appeal.

Pursuant to Idaho R. Civ. P. 83(u)(1), when an appeal is taken from a magistrate court to a district court, the magistrate court retains the same powers, enumerated in paragraph (b) of this rule, that a district court retains upon an appeal to the supreme court. Recommending a direct permissive appeal pursuant to I.A.R. 12.1 is not one of the powers enumerated in paragraph (b). Therefore, a magistrate court's recommendation of a direct permissive appeal in a custody case, after an appeal has been filed with the district court, has no force or effect. *Dep't of Health & Welfare v. Doe (In re Doe), 147 Idaho 314, 208 P.3d 296 (2009)*.

Posting of Security.

Posting the letter of irrevocable credit was substantially equivalent to posting a supersedeas bond where no objection to the form of the security was made at the time of its posting; accordingly, this cost was allowable under subdivision (b)(5) of *I.A.R. 40. Whittle v. Seehusen, 113 Idaho 852, 748 P.2d 1382 (Ct. App. 1987)*.

Rule 35 Motion.

Defendant's I.C.R, Rule 35 motion for reduction of sentence had to be filed within 120 days after the judgment of conviction was entered. But defendant also desired to appeal from the judgment of conviction and, under the provisions of Rule 35 then in force (after the 1986 change to the rule), he could not file a Rule 35 motion for reduction after completion of the anticipated appeal. Notwithstanding the joint action by the attorneys for the parties, the district court was not bound to delay a decision on the Rule 35 motion. Under this Rule, the district court had the authority to decide the motion while the appeal from the judgment was pending. Nevertheless, the court cooperatively acceded to the parties' desire not to have the motion determined until after the appeal was resolved and the court's action was not a violation of the provisions of Rule 35 which would have deprived the district court of jurisdiction to decide defendant's motion. *State v. Nickerson, 123 Idaho 971, 855 P.2d 56 (Ct. App. 1993)*.

Stay Enforcement of Judgment.

A district court does not have the power to stay enforcement of a money judgment unless the party against whom judgment is entered posts a cash deposit or supersedeas bond equal to 136 percent of the judgment. *Bagley v. Thomason, 155 Idaho 193, 307 P.3d 1219 (2013)*.

Stay upon Appeal.

Since there is no appeal as of right from a contempt order, an attempt to appeal from such an order did not divest the jurisdiction of the magistrate under subsection (b) of this rule. *Marks v. Vehlow, 105 Idaho 560, 671 P.2d 473 (1983)*.

The district court did not ignore a request by the claimant to hold certain persons in contempt of court where his motion was filed simultaneously with his notice of appeal from the order of the District Court upholding administrative decision of the Department of Health and Welfare because the notice of appeal deprived the court of authority to proceed on the motion filed by the claimant. *Madsen v. State, Dep't of Health & Welfare, 114 Idaho 182, 755 P.2d 479 (Ct. App. 1988)*.

Upon the filing of a notice of appeal by defendants of an order granting a motion for JNOV, the trial court was divested of jurisdiction except to take the actions in Idaho App. R. 13(b); hence, the trial court did not have the authority to enter a later judgment. *Mosell Equities, LLC v. Berryhill & Co., 154 Idaho 269, 297 P.3d 232 (2013)*.

--New Trial.

There is no exception in subsection (b) of this rule granting the district court power to entertain its own motion to reconsider an order granting a new trial and this is particularly the case given the prohibition in I.R.C.P. 11(a)(2)(B), which specifically provides that "there shall be no motion for reconsideration of an order of the trial court entered on any motion [granting a new trial] filed under Rules ...59(a)...," whether it be the party's motion or the trial court's "own motion." *Syth v. Parke, 121 Idaho 156, 823 P.2d 760 (1991)*.

Cited in:

Owen v. Boydstun, 102 Idaho 31, 624 P.2d 413 (1981); *Devine v. Cluff, 111 Idaho 476, 725 P.2d 181 (Ct. App. 1986)*; *Bernard v. Roby, 112 Idaho 583, 733 P.2d 804 (Ct. App. 1987)*; *State v. Roy, 127 Idaho 228, 899 P.2d 441 (1995)*; *Bettinger v. Idaho Auto Auction, Inc., 128 Idaho 327, 912 P.2d 695 (Ct. App. 1996)*; *Bott v. Idaho State Bldg. Auth., 128 Idaho 580, 917 P.2d 737 (1996)*; *Eacret v. Bonner County, 139 Idaho 780, 86 P.3d 494 (2004)*; *Johnson v. Johnson, 147 Idaho 912, 216 P.3d 1284 (2009)*; *In re Hook, 164 Idaho 586, 434 P.3d 190 (2019)*; *Davis v. George & Jesse's Les Schwab Tire Store, Inc., -- Idaho --, 541 P.3d 667 (2023)*.

Decisions Under Prior Rule or Statute

Condemnation.

Perfecting of an appeal from a judgment in the matter of condemning land for a railway stays all proceedings in district court upon judgment and order appealed from, and pending appeal, commissioners have no jurisdiction to act. *McLean v. District Court, 24 Idaho 441, 134 P. 536 (1913)*.

Custodial Modification.

Where a former husband took custody of his children subsequent to a custodial modification order and before the mother perfected her appeal of the modification order, the change in physical custody had occurred before the appeal was taken and was not a further proceeding which could be stayed, so that the court did not err in failing to restore custody to the mother during her appeal. *Prescott v. Prescott, 97 Idaho 257, 542 P.2d 1176 (1975)*.

Foreign Attachment.

The fact that an appeal was taken from an Idaho judgment which was subsequently affirmed, did not affect the validity of an attachment of the judgment in New York during the pendency of the appeal, since the appeal did not change the nature of the debt evidenced by the judgment. *Lincoln Mines Operating Co. v. Huron Holding Corp., 27 F. Supp. 720 (D. Idaho 1939)*, aff'd, *312 U.S. 183, 61 S. Ct. 513, 85 L. Ed. 725 (1941)*.

Jurisdiction Retained by District Court.

The contention, that the appeal transfers the entire jurisdiction of the case from the district court to the supreme court, is unsound since, in some instances where an appeal is taken, it will be necessary for the trial court to retain and exercise its jurisdiction. *Sherwood v. Porter, 58 Idaho 523, 76 P.2d 928 (1938)*.

District court retains jurisdiction after appeal and supersedeas for the purpose of preserving attachment lien and protecting the property held. *Sherwood v. Porter, 58 Idaho 523, 76 P.2d 928 (1938)*.

Land Sale Contract.

Where the lower court found no default by the purchasers on the land sale contract for the property, the judgment required no further process by the lower court for its enforcement, thus the operation of the escrow contract was not stayed by the appeal perfected by the vendors since the judgment of the trial court was self-executing, and upon completion of the terms of the escrow contract the purchasers had a right to the escrowed documents, notwithstanding the appeal. *Suitts v. First Sec. Bank, 100 Idaho 555, 602 P.2d 53 (1979)*.

Motion for Change of Venue.

An appeal from an order denying a motion for change of venue does not stay proceedings in the case. *Bentley v. Lucky Friday Extension Mining Co., 70 Idaho 511, 223 P.2d 947 (1950)*.

Preservation of Attachment.

While judgment in favor of defendant dissolves attachment, if appeal be perfected within time prescribed, attachment may be continued in force. *Washington County v. Weiser Nat'l Bank, 43 Idaho 618, 253 P. 838 (1927)*.

Proceedings After Appeal.

The trial court had no authority to pass upon a motion to amend and alter the findings of fact and conclusions of law and vacate the judgment filed by defendants after plaintiffs had perfected an appeal. *Dolbeer v. Harten, 91 Idaho 141, 417 P.2d 407 (1965)*.

Receivership.

Appeal taken from judgment directing execution of certain conveyances by defendant does not prevent appointment of a receiver under *§ 8-601*, subdivisions 3 and 4, where the defendant has failed to execute and deliver such conveyances. *Bedal v. Johnson, 37 Idaho 359, 218 P. 641 (1923)*.

Rule 13.1. Ex parte temporary stay.

(a) Application. A party may file in the Supreme Court an application for an ex parte temporary stay of execution of an order or judgment pending the determination of an application made to the Supreme Court under Rule 13(g) for stay during the appeal. Such application shall be made by verified petition, motion or application which shall certify what efforts, if any, have been made to give notice of the application to the adverse party or shall state the reasons supporting the claim that notice should not be required.

(b) Ex parte temporary stay. The Supreme Court, acting through three or more members, may issue an ex parte temporary stay of execution pending the determination of an application for stay during the appeal. An ex parte temporary stay may be granted only if it appears from the specific facts shown by the verified petition, motion or application that immediate and irreparable injury, loss, or damage will result to the applicant before a ruling can be had upon the application for stay during the appeal. An ex parte stay may issue with or without security, in the discretion of the Supreme Court, and will state the duration and any conditions of the temporary stay.

(c) Motion to dissolve temporary stay. Any party affected by an ex parte temporary stay under this rule may file a motion with the Supreme Court to dissolve such temporary stay and shall serve the motion on all parties to the appeal. The motion shall be processed by the Supreme Court in such manner as it deems appropriate under the circumstances.

History

(Adopted March 24, 1982, effective July 1, 1982; amended March 27, 1989, effective July 1, 1989; amended February 10, 1993, effective July 1, 1993.)

I.A.R. Rule 13.2

State and Federal through Rules promulgated through January 31, 2022

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Rule 13.2. Suspension of appeal.

Proceedings in an appeal before the Supreme Court may be suspended only by order of the Supreme Court on motion showing good cause. An order suspending an appeal will state the duration and any conditions of such suspension, which may be terminated or extended by further order of the court upon application of any party or upon the initiative of the Court.

History

(Adopted March 24, 1982, effective July 1, 1982.)

Annotations

Case Notes

Effect of Clerk's Suspension Order.

Clerk of court's stay of the processing of appeal, i.e., the preparation of the clerk's and reporter's transcripts, and the briefing by the parties, did not remand the case to the District Court "to fulfill the requirements of the order of remand," and therefore, the order issued by the clerk of the court did not reinvest the trial court with jurisdiction to rule upon its own sua sponte motion to reconsider its prior order granting a new trial. *Syth v. Parke, 121 Idaho 162, 823 P.2d 766 (1991)*.

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Rule 13.3. Temporary remand to district court or administrative agency.

(a) Remand by the Court. At any time before the issuance of an opinion, the Supreme Court may on its own motion, or on motion of any party showing good cause, order a case to be remanded to the district court or to the administrative agency to take further action as designated in the order of remand.

(b) Effect of Remand. During a remand to the district court or administrative agency the appeal shall remain pending in the Supreme Court, but the district court or administrative agency shall have jurisdiction to take all actions necessary to fulfill the requirements of the order of remand.

History

(Adopted March 28, 1986, effective July 1, 1986.)

Annotations

Case Notes

Administrative Remand.
Effect of Clerk's Suspension Order.
Review of District Court's Order upon Remand.

Administrative Remand.

Petition for judicial review of a decision of a county board of commissioners, denying an application of medical indigency benefits on the ground that the applicant was not a resident of the County because she was an undocumented alien, was remanded to the board, pursuant to an appellate court's discretion under Idaho App. R. 13.3(a), because the board failed to make findings on critical factors of eligibility including indigency and medical necessity. *Mercy Med. Ctr. v. Ada County, 146 Idaho 226, 192 P.3d 1050 (2008)*.

Effect of Clerk's Suspension Order.

Clerk of court's stay of the processing of appeal, i.e., the preparation of the clerk's and reporter's transcripts, and the briefing by the parties, did not remand the case to the District

Court "to fulfill the requirements of the order of remand," and therefore, the order issued by the clerk of the court did not reinvest the trial court with jurisdiction to rule upon its own sua sponte motion to reconsider its prior order granting a new trial. *Syth v. Parke, 121 Idaho 162, 823 P.2d 766 (1991)*.

Review of District Court's Order upon Remand.

Although a district court's order upon remand which dismissed one defendant in a two-defendant case, ordinarily would have required a certificate of finality for appellate review of the dismissal, the Supreme Court deemed the district court's order as functionally equivalent to a certificate of finality because appellate jurisdiction was fully vested when the appeal was initially filed and the court perceived no just reason to delay consideration on appeal of the dismissal order. *Madsen v. Idaho Dep't of Health & Welfare, 116 Idaho 758, 779 P.2d 433 (Ct. App. 1989)*.

Upon the filing of a defendant's notice of appeal, the district court has no jurisdiction to take any action in the case, except as permitted in Idaho Appellate Rule 13 or in this rule, which provides that, before an opinion is issued, the supreme court may remand a case on appeal to the district court to take further designated action. *State v. Umphenour, 160 Idaho 503, 376 P.3d 707 (2016)*.

Rule 13.4. Delegation of jurisdiction to district court during an appeal.

(a) Permissive Appeal Under Rule 12, I.A.R.

During a permissive appeal under Rule 12, I.A.R., the district court retains jurisdiction to take actions and rule upon matters unaffected by the permissive appeal, which may include jurisdiction to conduct a trial of issues. Provided, however, that the district court may enter an order staying the remainder of the case pending final disposition of the permissive appeal, either on its own motion or on the motion of any party.

(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.

(c) Motion for Stay.

(1) Motion to District Court. A motion for stay under subdivision (a) or (b) of this Rule may be filed with the district court at any time during the pendency of the permissive appeal or 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.

History

(Adopted March 27, 1989, effective July 1, 1989; amended March 9, 1999, effective July 1, 1999; amended April 28, 2021, and effective July 1, 2021; amended April 28, 2022, effective July 1, 2022.)

Rule 13.4. Delegation of jurisdiction to district court during an appeal.

End of Document

Rule 13.5. Stipulation for vacation, reversal or modification of judgment. [Repealed]

Annotations

Commentary

STATUTORY NOTES

Compiler's Notes.

Former Rule 13.5 (Adopted March 23, 1990, effective July 1, 1990; amended March 20, 1991, effective July 1, 1991) was repealed by a court order dated August 27, 2013.

The Supreme Court Order of March 20, 1991, effective July 1, 1991 renumbered former Rule 33.1 as Rule 13.5.

Rule 14. Time for filing appeals.

All appeals permitted or authorized by these rules, except as provided in Rule 12, shall be taken and made in the manner and within the time limits as follows:

(a) Appeals From the District Court. Any appeal as a matter of right from the district court may be made only by physically filing a notice of appeal with the clerk of the district court within 42 days from the date evidenced by the filing stamp of the clerk of the court on any judgment or order of the district court appealable as a matter of right in any civil or criminal action. As used in these rules, "physical filing" includes electronic filing in conformance with the Idaho Rules of Electronic Filing and Service. The time for an appeal from any civil judgment or order in an action is terminated by the filing of a timely motion which, if granted, could affect any findings of fact, conclusions of law or any judgment in the action (except motions under Rule 60 of the Idaho Rules of Civil Procedure or motions regarding costs or attorneys fees), in which case the appeal period for all judgments or orders commences to run upon the date of the clerk's filing stamp on the order deciding such motion. The time for an appeal from any criminal judgment, order or sentence in an action is terminated by the filing of a motion within fourteen (14) days of the entry of the judgment which, if granted, could affect the judgment, order or sentence in the action, in which case the appeal period for the judgment and sentence commences to run upon the date of the clerk's filing stamp on the order deciding such motion. If, at the time of judgment, the district court retains jurisdiction pursuant to *Idaho Code § 19-2601(4)*, the length of time to file an appeal from the sentence contained in the criminal judgment shall be enlarged by the length of time between entry of the judgment of conviction and entry of the order relinquishing jurisdiction or placing the defendant on probation; provided, however, that all other appeals challenging the judgment must be brought within 42 days of that judgment. Provided, if a criminal judgment imposes the sentence of death, the time within which to file a notice of appeal does not commence to run until the death warrant is signed and filed by the court.

(b) Appeals From an Administrative Agency.

An appeal as a matter of right from an administrative agency may be made only by physically filing a notice of appeal with the Public Utilities Commission or the Industrial Commission within 42 days from the date evidenced by the filing stamp of the clerk or secretary of the administrative agency on any decision, order or award appealable as a matter of right. The time for an appeal from such decision, order or award of the industrial commission is terminated by a timely motion for rehearing or reconsideration of the decision or order which, if granted, could affect the decision, order or award (except

motions regarding costs or attorneys fees), in which case the appeal period commences to run upon the date of the filing stamp on the order or decision denying such motion or the decision on rehearing or reconsideration. The time for an appeal from such decision, order or award of the public utilities commission begins to run when an application for rehearing is denied, or, if the application is granted, after the date evidenced by the filing stamp on the decision on rehearing.

History

(Adopted March 25, 1977, effective July 1, 1977; amended March 31, 1978, effective July 1, 1978; amended April 3, 1981, effective July 1, 1981; amended April 18, 1983, effective July 1, 1983; amended March 30, 1984, effective July 1, 1984; amended March 21, 2007, effective July 1, 2007; amended March 29, 2010, effective July 1, 2010; amended March 18, 2011, effective July 1, 2011; amended May 1, 2024, effective July 1, 2024.)

Annotations

Commentary

STATUTORY NOTES

Compiler's Notes.

The words in parentheses so appeared in the rule as promulgated.

Case Notes

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Tolling of Running.
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Jurisdiction.
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Vacation of Judgment.
Validity of Judgment.

Amended Judgment.

When an amended judgment alters content other than the material terms from which a party may appeal, its entry does not serve to enlarge the time for appeal. *State v. Ciccone, 150 Idaho 305, 246 P.3d 958 (2010)*.

Amendment of judgment to correct an obvious error in the clerk's stamp on the judgment does not trigger a new period during which an appeal may be taken. *State v. Ciccone, 150 Idaho 305, 246 P.3d 958 (2010)*.

Appeal by Inmate.

The issue of timeliness of an appeal, done pro se by inmate which was received by court clerk 45 days after the entry of the order from which the appeal was taken, was implicitly resolved by a Supreme Court order reinstating the appeal after lower courts had dismissed it. *State v. Lee, 117 Idaho 203, 786 P.2d 594 (Ct. App. 1990)*.

Constitutionality.

Where post-conviction petitioner's judgment of conviction was filed on October 4, 2005 and on March 22, 2006, the district court relinquished jurisdiction over him, petitioner had one year and 42 days from March 22, 2006, in which to file his petition for relief. *Weller v. State, 146 Idaho 652, 200 P.3d 1201 (2008)*.

Counsel's Failure to Advise Regarding Time.

An attorney's failure to notify a defendant of the time limit within which to file did not abridge that defendant's right to appeal where just after defendant's incarceration, his attorney wrote to him regarding the possibility of appeal, the letter informed defendant that the attorney would await further instructions from him as to whether he wished to appeal, and defendant did not respond to his attorney's request at all. *Davis v. State, 116 Idaho 401, 775 P.2d 1243 (Ct. App. 1989)*.

Date of Judgment.

Where a sentencing hearing was held on June 7 and the district court judge signed the judgment the same day, but the judgment was inadvertently dated May 7 on the filing stamp and the court, on June 21, amended the judgment to correct the date to June 7, a notice of appeal of the judgment must be filed within 42 days of the June 7 judgment, not the June 21 corrective order. *State v. Ciccone, 150 Idaho 305, 246 P.3d 958 (2010)*.

Divorce Decrees.

Once a divorce decree becomes final, it is res judicata with respect to all issues which were or could have been litigated. However, there exists various avenues for directly attacking a divorce decree. For example, a party may move the district court to amend the decree, or for a new trial, within 14 days of the decree's entry. The decree is also subject to appeal within 42 days. Moreover, where a party seeks to avoid the operation of a judgment on the basis of fraud, mistake, or other justifiable reason, I.R.C.P. 60(b) permits the court to set aside the judgment upon timely motion. *Harper v. Harper, 122 Idaho 535, 835 P.2d 1346 (Ct. App. 1992)*.

Effect of Criminal Rules Motion.

An I.C.R., Rule 35 motion extends the time for filing an appeal only if it is filed within 14 days of the entry of judgment, which if granted, could affect the judgment, order or sentence. *State v. Repici, 122 Idaho 538, 835 P.2d 1349 (Ct. App. 1992)*.

Enlargement of Time to File.

The filing of an I.C.R., Rule 35 motion more than fourteen days after the entry of a judgment did not serve to enlarge the time to file an appeal from the judgment of conviction and sentence. *State v. Mosqueda, 123 Idaho 858, 853 P.2d 603 (Ct. App. 1993)*.

A probationary period does not extend the time in which a defendant may appeal from the judgment of conviction and sentence. *State v. Krambule, 163 Idaho 264, 409 P.3d 844 (2017)*.

Extension Not Permitted.

The time for appealing from the denial of I.C.R. 35 motion is not extended under this rule by the filing of a motion to alter or amend. *State v. Hickman, 119 Idaho 7, 802 P.2d 1219 (Ct. App. 1990)*.

Filing Timely.

Where plaintiff obtained default judgment against entity of first title company for transaction that took place prior to sale of entity to second title company and where on December 4, 1979 court denied motion to vacate judgment of second title company that was not a party to the transaction stating that the second company had not been authorized to intervene and thus had

no standing to make motion to vacate, whereupon second company filed motion to intervene which was granted on February 12, 1980 and on March 7, 1980 second company renewed its motion to vacate which was denied on June 26, 1980, appeal from denial of June 26, 1980 being the first order addressing the merits of second company's motion to vacate the judgment was an appealable order made after final judgment and thus an appeal from that order was timely and appropriate. *Johnson v. Pioneer Title Co., 104 Idaho 727, 662 P.2d 1171 (Ct. App. 1983)*.

Where the defendant filed his notice of appeal from the trial court's order denying post-conviction relief 49 days after the filing of the court's order, such filing was timely under the former provisions of *§ 19-4909*, which allowed 60 days for filing, although untimely under I.A.R. 14, which allows 42 days for filing; since these filing provisions were inconsistent at the time of this filing, dismissal of the appeal was not required. *Carter v. State, 108 Idaho 788, 702 P.2d 826 (1985)* (decision prior to 1985 amendment of *§ 19-4909*).

Where the defendant filed his notice of appeal 59 days after the judgment, the notice was within the 60-day filing requirement of former § 19-4909, but not within the 42-day requirement of this rule; however, in the interest of justice and because of the conflict between this rule and former § 19-4909, the appeal was not dismissed. *Baruth v. Gardner, 110 Idaho 156, 715 P.2d 369 (Ct. App. 1986)* (decision prior to 1985 amendment of *§ 19-4909*).

Where the plaintiff filed the motion to vacate the I.R.C.P. 54(b) certificate on the fortieth day of the appeal period, but the judge granted the motion to vacate the certificate after the end of the 42-day period, the motion to vacate was still timely; as with other post-judgment motions, the applicant need only file the motion during the stated period following the judgment. *Willis v. Larsen, 110 Idaho 818, 718 P.2d 1256 (Ct. App. 1986)*.

Where the defendant's notice of appeal was filed within 42 days after his Rule 35 motion was denied by the district court, the order denying the motion to modify was properly before the *Court of Appeals. State v. Swan, 113 Idaho 859, 748 P.2d 1389 (Ct. App. 1988)*.

Where imprisoned defendant alleged a delay in mailing his notice of appeal and an accompanying affidavit on the part of the penitentiary, although defendant's notice of appeal was received forty-three days after the district court's order was filed the Court of Appeals had jurisdiction to entertain defendant's appeal. *State v. Rodriguez, 119 Idaho 895, 811 P.2d 505 (Ct. App. 1991)*.

Although defendant's motion to reduce sentence was not timely filed following an order revoking probation, the court of appeals deemed it to be timely because the trial court might have misled defendant as to time for filing such a motion. *State v. Joyner, 121 Idaho 376, 825 P.2d 99 (Ct. App. 1992)*.

The notice of appeal from the district court's order dismissing the defendant's petition as untimely was filed on February 4, 1992, which was beyond the 42 day time limit within which to file an appeal from a final order. The time for filing the appeal, however, was extended by the filing of defendant's motion to reconsider the dismissal which was timely filed within 14 days of the order to be reconsidered. *Freeman v. State, 122 Idaho 627, 836 P.2d 1088 (Ct. App. 1992)*.

Since order denying worker's motion to reconsider the motion to change caption did not finally dispose of all of worker's claims, and since the Industrial Commission retained jurisdiction in order to determine the amount of benefits to which worker was entitled, order denying the motion to reconsider was not a final decision or order for purposes of I.A.R. 11(d). The appeal was timely because it was filed within 42 days after the issuance of the Commission's decision awarding benefits. *Mortimer v. Riviera Apts., 122 Idaho 839, 840 P.2d 383 (1992)*.

When the County Board of Commissioners issued its decision denying a request for reconsideration on August 30, 1990, the time for appeal commenced to run. The September 7, 1990, filing of the notice of appeal was well within the 20 day time limit. *Eastern Idaho Health Servs., Inc. v. Burtenshaw, 122 Idaho 904, 841 P.2d 434 (1992)*.

Because an appeal was timely, it was timely as to all issues from which an appeal could be taken, not just those mentioned in the motion to alter or amend. The interests of efficient case management would not be served by interpreting rules to require that a party must appeal from each issue as it is decided or risk losing the right to appeal once the case has been concluded. *Idaho Dep't of Health & Welfare v. Southfork Lumber Co., 123 Idaho 146, 845 P.2d 564 (1993)*.

The Department of Health and Welfare served an I.R.C.P., Rule 59(e) motion within 14 days of the August 10, 1989 order. This was timely for purposes of I.R.C.P., Rule 59(e) motion on January 2, 1990, and the department appealed within 42 days thereafter as required by this Rule. Therefore, the department's appeal was timely and should not have been dismissed. *Idaho Dep't of Health & Welfare v. Southfork Lumber Co., 123 Idaho 146, 845 P.2d 564 (1993)*.

Inmate's appeal of the district court's denial of his petition for post-conviction relief was timely, even though his original notice of appeal was not physically received by the clerk of the court within 42 days of the district court's dismissal order, because, under the mail box rule, the inmate provided ample evidence that he did in fact present a notice of appeal for mailing on August 3, nine days before the August 12 deadline. *Hayes v. State, 143 Idaho 88, 137 P.3d 475 (Ct. App. 2006)*.

Post-conviction petitioner's notice of appeal from a district court's notice of intent to dismiss, though premature and interlocutory in nature, was nevertheless sufficient to effectuate an appeal from a final order dismissing the petition four days after the petitioner's notice of appeal was filed. *Weller v. State, 146 Idaho 652, 200 P.3d 1201 (2008)*.

Defendants timely appealed from a verdict based upon the doctrine of boundary by agreement. *Cecil v. Gagnebin, 146 Idaho 714, 202 P.3d 1 (2009)*.

Publisher timely sought review of a judgment because the publisher's notice was timely filed within 42 days from entry of the judgment, which was final under Idaho R. Civ. P. 54(a), as the judgment disposed of all claims except costs and fees. *Stibal v. Fano, 157 Idaho 428, 337 P.3d 587 (2014)*.

Employee properly appealed the Idaho Industrial Commission's declaratory ruling that the employee had to attend a medical examination, because (1) the ruling had the effect of a final

order, and (2) the employee timely appealed. *Moser v. Rosauers Supermarkets, Employer, 165 Idaho 133, 443 P.3d 147 (2019)*.

Filing Untimely.

Where the defendants' final partial summary judgment was filed April 19, and plaintiff's appeal was not filed until June 28, 70 days later, it was not timely filed and defendant-respondents' motion for dismissal of plaintiff's appeal would have to be granted. *Large v. Mayes, 100 Idaho 450, 600 P.2d 126 (1979)*.

Although there was no showing in the court records of a mailing of notice of entry of judgment, where appellants' counsel had actual notice of entry of judgment 13 days prior to expiration of the time for filing an appeal, appellants' notice of appeal filed 44 days after the entry of judgment was not timely. *Tanner v. Estate of Cobb, 101 Idaho 444, 614 P.2d 984 (1980)*.

The requirement of perfecting an appeal within the time period allowed by I.A.R. Rules 11 and 14, is jurisdictional. An appeal taken after expiration of the filing period will be dismissed. *State v. Tucker, 103 Idaho 885, 655 P.2d 92 (Ct. App. 1982)*.

Where the notice of appeal was filed after the order revoking probation was entered and more than one year from the date of the original sentence, the appellate court was without jurisdiction to entertain the question of whether the district court lawfully could enhance the sentence under *§ 19-2520*. *State v. Tucker, 103 Idaho 885, 655 P.2d 92 (Ct. App. 1982)*.

Since there is no rule of criminal procedure which permits a party to file a motion for reconsideration of an order granting a motion to suppress evidence, such a motion does not terminate the time for filing notice of appeal under subdivision (a) of this rule. Accordingly, where state filed motion for reconsideration of an order granting a motion to suppress but did not file timely notice of appeal from such order, the appeal must be dismissed. *State v. Nelson, 104 Idaho 430, 659 P.2d 783 (Ct. App. 1983)*.

Appeal filed 43 days after entry of judgment of conviction was untimely under this rule where no intervening motion was made in the case, and the failure to file timely notice was a jurisdictional defect requiring dismissal of the appeal under *I.A.R. 21. State v. Fuller, 104 Idaho 891, 665 P.2d 190 (Ct. App. 1983)*.

Because the filing by the state of its objection and motion concerning costs and attorney fees did not extend the time to appeal the judgment, the time for appeal had expired when the landowners filed their appeal over three months after entry of judgment in condemnation action; hence the appeal must be dismissed, as to the judgment. *State ex rel. Moore v. Lawson, 105 Idaho 164, 667 P.2d 267 (Ct. App. 1983)*.

Where the time within which defendant could have appealed from the sentence had expired at least three weeks before he filed his motion for reduction of sentence, the court was without jurisdiction to entertain the question of whether the judge abused his discretion by imposing the sentence. *State v. Hirshbrunner, 105 Idaho 168, 667 P.2d 271 (Ct. App. 1983)*.

Where no appeal was taken from the judgment of conviction but, rather, appeal was from an order revoking probation, the issues on appeal were confined to that order; because defendant did not appeal when the sentences were initially pronounced, he could not later challenge their reasonableness at that time. *State v. Dryden, 105 Idaho 848, 673 P.2d 809 (Ct. App. 1983)*.

Where the final judgment was filed June 17, the motion to amend or alter the judgment was denied on November 3, and plaintiff filed its notice of appeal on January 17, the notice was not timely filed and there could be no appeal from the judgment. *Equal Water Rights Ass'n v. Coeur D'Alene, 110 Idaho 247, 715 P.2d 917 (1985)*.

Where judgment was entered against the defendant on June 26, the defendant's motion for a new trial was denied on September 27, and his motion for reconsideration was denied on October 23, the defendant's notice of appeal, which was filed on December 5, was untimely, as the denial of the motion for a new trial reinstated the 42-day period within which an appeal should have been filed, and the motion for reconsideration was not filed within ten days of the motion for a new trial and was filed approximately 90 days after the entry of judgment. *Hamilton v. Rybar, 111 Idaho 396, 724 P.2d 132 (1986)*.

Where the appeal from the original and amended judgments was filed after 42 days had elapsed from the amended judgment, the appeal was untimely under this rule. *State v. Hancock, 111 Idaho 835, 727 P.2d 1263 (Ct. App. 1986)*.

Where the notice of appeal was filed more than 42 days after the court released its jurisdiction, and no timely appeal was taken from the judgment of conviction, from the order revoking probation, or from the order relinquishing jurisdiction, the Court of Appeals was without jurisdiction to address the issues raised by the defendant concerning the district court's discretion in revoking probation or relinquishing jurisdiction. *State v. Swan, 113 Idaho 859, 748 P.2d 1389 (Ct. App. 1988)*.

A motion filed under I.C.R. 35 to modify sentences did not preserve the right to appellate review of conviction and sentences, because that motion was filed more than 14 days after the entry of the judgment. *State v. Hickman, 119 Idaho 7, 802 P.2d 1219 (Ct. App. 1990)*.

Defendant's notice of appeal was not filed within 42 days of the judgment, nor was any motion filed within 14 days of the judgment so as to enlarge the time for an appeal pursuant to this Rule, rendering the appeal untimely insofar as it was taken from the judgment and sentence; therefore the Court of Appeals was without jurisdiction to consider any challenge to the entry of the judgment or to the district court's decision imposing the sentence. *State v. Prieto, 120 Idaho 884, 820 P.2d 1241 (Ct. App. 1991)*.

Where defendant's appeal, filed on January 15, 1991, was not timely with respect to the judgment of conviction entered May 22, 1990, and defendant's Rule 35 motion was filed more than 14 days after the entry of the judgment, because the issue of the voluntariness of defendant's guilty plea was never presented in a timely appeal, the court lacked appellate authority to consider it. *State v. Hernandez, 121 Idaho 114, 822 P.2d 1011 (Ct. App. 1991)*.

Defendant's notice of appeal was not filed within 42 days of the judgment, nor was any motion filed within 14 days of the judgment so as to enlarge the time for an appeal pursuant to this Rule, rendering the appeal untimely insofar as it was taken from the judgment and sentence; such being the case, the court without jurisdiction to consider any challenge to the entry of the judgment or to the District Court's decision imposing the sentence. *State v. McGonigal, 121 Idaho 123, 822 P.2d 1020 (Ct. App. 1991)*.

Where the second notice of appeal was not timely under this Rule and nearly two years elapsed from the filing of the order granting a new trial on August 1, 1989, to the filing of the notice of appeal, accordingly, the notice of appeal was dismissed because it was not timely filed since the timely filing of a notice of appeal is jurisdictional. *Syth v. Parke, 121 Idaho 162, 823 P.2d 766 (1991)*.

Where notice of appeal was filed more than forty-two days after the order to quash jurisdiction, all issues with respect to the judgment of conviction, sentence and retention of jurisdiction were not properly raised. *State v. Sapp, 124 Idaho 17, 855 P.2d 478 (Ct. App. 1993)*.

Where defendant's notice of appeal was filed more than forty-two days after order relinquishing jurisdiction was entered, following a period of retained jurisdiction under *§ 19-2601(4)*, and no motion to extend the deadline to appeal was filed, defendant's appeal was not timely under I.A.R. 14 and the Court of Appeals did not have jurisdiction to entertain a direct challenge to the order relinquishing jurisdiction. *State v. Roberts, 126 Idaho 920, 894 P.2d 153 (Ct. App. 1995)*.

Where defendant filed his appeal challenging the relinquishment of jurisdiction more than 42 days after the entry of the court's order, and filed his motion to correct or reduce his sentence under I.C.R. 35, more than 14 days after entry, the appellate court was without jurisdiction to consider the merits of the claim. *State v. Alvarado, 132 Idaho 248, 970 P.2d 516 (Ct. App. 1998)*.

Where a court order settling costs did not extend the time to file an appeal from a prior final judgment because it merely designated the award of costs and attorney fees, the plaintiff's filing of its appeal on the issue of damages 62 days after the judgment was untimely, and the appellate court was without jurisdiction to hear the appeal. *Walton, Inc. v. Jensen, 132 Idaho 716, 979 P.2d 118 (Ct. App. 1999)*.

Defendant's notice of appeal, filed after the order revoking his probation, was not timely to raise a double jeopardy challenge to his sentences; therefore, the trial court lacked appellate jurisdiction to consider defendant's double jeopardy claim. *State v. Jensen, 138 Idaho 941, 71 P.3d 1088 (Ct. App. 2003)*.

Question presented was whether the petition for post-conviction relief was timely, because it was filed within one year after the conclusion of petitioner's appeal from the probation revocation order. The appellate court concluded that the petition was not timely, because petitioner's post-conviction petition did not challenge the probation revocation order or proceedings leading up to it, in 2000; rather, the petition challenged only the validity of the judgment of conviction and sentence, imposed in *January 1990. Gonzalez v. State, 139 Idaho 384, 79 P.3d 743 (Ct. App. 2003)*.

Farmer raised various arguments attacking the judgment for the county in receiving a portion of the proceeds in reimbursement of its care of the cattle, but the trial court noted that the farmer filed his notice of appeal well past the 42-day time limit for filing an appeal under Idaho App. R. 14; therefore, it would not consider the arguments. *Twin Falls County v. Coates, 139 Idaho 442, 80 P.3d 1043 (2003)*.

Since there were no issues left after the trial court's denied attorney fees, the insureds were required to appeal the final judgment within 42 days; when they failed to do so, the court did not have jurisdiction to change its original decision. *Scaggs v. Mut. of Enumclaw Ins. Co., 141 Idaho 114, 106 P.3d 440 (2005)*.

Where defendant did not timely file his notice of appeal of the order revoking his probation within 42 days of the order, the untimely filing of a motion for a reduction of sentence did not terminate the running of the time for appeal. The Supreme Court of Idaho could not hear defendant's untimely appeal of the order revoking his probation. *State v. Thomas, 146 Idaho 592, 199 P.3d 769 (2008)*.

State's motion to dismiss charges against the defendant, without prejudice, was a final, appealable order under I.A.R. 11, even though the prosecution intended to immediately refile identical charges, and defendant's failure to file an appeal within 42 days under this rule deprived the appellate court of jurisdiction to review the denial of the motion, pursuant to *I.A.R. 21. State v. Huntsman, 146 Idaho 580, 199 P.3d 155 (2008)*.

Under Idaho App. R. 21, the appellate court had no jurisdiction to address the merits of defendant's claim of error and dismissed it because the appeal was not timely filed. A temporary order filed on May 22 placed defendant on probation, making July 3 the last day for him to file his notice of appeal, which he missed by three days. Defendant erroneously relied upon the May 25 date of entry of the final order in calculating the time he had to file his notice of appeal. *State v. Schultz, 147 Idaho 675, 214 P.3d 661 (2009)*.

Oil company's notice of appeal was untimely, Idaho App. R. 14(a), Idaho R. Civ. P. 58(a), because the company filed the notice of appeal more than 42 days after the district court's order, which was a separate document and was a judgment under *Idaho R. Civ. P. 54(a). Goodman Oil Co. v. Scotty's Duro-Bilt Generator, Inc., 148 Idaho 588, 226 P.3d 530 (2010)*.

Final Judgment.

The judgment of conviction which included the sentencing order, was a final judgment for purposes of appeal. Placing defendant on probation did not affect the finality of the judgment of conviction and sentence, for the purpose of appeal. *State v. Tucker, 103 Idaho 885, 655 P.2d 92 (Ct. App. 1982)*.

A judgment which contained a blank for insertion of costs was considered a final judgment for purposes of activating the time for appeal. *State ex rel. Moore v. Lawson, 105 Idaho 164, 667 P.2d 267 (Ct. App. 1983)*.

An order adopted by the Industrial Commission, which denied the claimant's petition on the grounds that she had failed to establish that her change in condition was attributable to the accident and resultant injury, was a final and appealable order even though the Commission retained jurisdiction to decide any further issues presented on the matter; the fact that the Commission retained jurisdiction to resolve other issues did not affect the finality of the order with respect to her change of condition. *Fenich v. Boise Elks Lodge No. 310, 106 Idaho 550, 682 P.2d 91 (1984)*.

Where the court's order included a comprehensive adjudication of the subject matter in controversy and represented a final determination of the rights of the parties, it was intended to be the final judgment. *Equal Water Rights Ass'n v. Coeur D'Alene, 110 Idaho 247, 715 P.2d 917 (1985)*.

In General.

When the judge denied the plaintiff's motion under I.R.C.P. 60(b) for relief from the dismissal, the plaintiff had ten days to file a motion for amendment or alteration under I.R.C.P. 59(a) or (e), and he had 42 days to appeal. *Lee v. Morrison-Knudsen Co., 111 Idaho 861, 727 P.2d 1289 (Ct. App. 1986)*.

Appellate court had jurisdiction to hear the State's appeals of the granting of defendants' motions to suppress where the orders granting the motions to suppress were interlocutory orders and were not transformed into final judgments because I.A.R. 11(c)(7) and 14(a) granted the State the right to appeal such orders simply by filing a notice of appeal within 42 days; no final judgments had yet been entered in either of the cases, such that the cases did not involve the failure to file a timely notice of appeal from a final judgment. *State v. Bicknell, 140 Idaho 201, 91 P.3d 1105 (2004)*.

Jurisdiction of Court.

Because the question of jurisdiction on appeal from a conviction is fundamental, it must not be ignored when brought to the attention of the Court of Appeals, and should be addressed before considering the merits of the substantive appeal. *State v. Rollins, 103 Idaho 48, 644 P.2d 370 (Ct. App. 1982)*.

An order denying attorney fees is appealable and where notice of appeal was filed within 42 days of court's order denying attorney fees, court had jurisdiction to consider the appeal as it related to the order denying attorney fees. *State ex rel. Moore v. Lawson, 105 Idaho 164, 667 P.2d 267 (Ct. App. 1983)*.

The requirement of perfecting an appeal within the 42-day time period is jurisdictional; appeals taken after expiration of the filing period must be dismissed. *State v. James, 112 Idaho 239, 731 P.2d 234 (Ct. App. 1986)*.

In a criminal case, the time to file an appeal is enlarged by the length of time the district court retains jurisdiction; however, when the court releases retained jurisdiction or places the

defendant on probation, the time for appeal starts to run. *State v. Joyner, 121 Idaho 376, 825 P.2d 99 (Ct. App. 1992)*.

Appellate jurisdiction would vest only if a notice of appeal was filed within 42 days of the entry of a particular order sought to be challenged. *Ziemann v. Creed, 121 Idaho 259, 824 P.2d 190 (Ct. App. 1992)*.

Defendant's motion to "reinstate" his appeal essentially constituted a petition for rehearing, which was timely and extended the period within which to seek further appellate review of the district court's dismissal decision, until 42 days following determination of the motion for reinstatement of the appeal from the magistrate division. When the district court entered an order on April 8, 1991, denying defendant's petition for rehearing, defendant's only remaining remedy was to appeal to the Supreme Court within 42 days. He was not entitled to file another petition for rehearing or any similar motion labeled as a "Motion for Reconsideration." Defendant did not file a notice of appeal within 42 days of April 8, 1991. Instead, he waited until after the district court again refused to reinstate the appeal from the magistrate division, and then he filed a notice of appeal on May 31. Because the time for filing a notice of appeal was not stayed by the filing of the unauthorized "Motion for Reconsideration," the motion was not only unauthorized, it was also untimely. As a result, the Court of Appeals had no jurisdiction to review the merits of the district court's decision to dismiss the appeal. *Dieziger v. Pickering, 122 Idaho 718, 838 P.2d 321 (Ct. App. 1992)*.

Where defendant filed a timely notice of appeal from an amended order of restitution entered against him for arson damages, the court had jurisdiction to consider his appeal pursuant to *I.A.R. 14(a). State v. Ferguson, 138 Idaho 659, 67 P.3d 1271 (Ct. App. 2002)*.

Defendant failed to timely file a notice of appeal from district court's appellate decision affirming magistrate's denial of his motion to suppress, choosing instead to proceed on remand to the magistrate in defense of the underlying charge. Court of appeals therefore lacked subject matter jurisdiction over defendant's appeal of magistrate's order. Because defendant did not assert that he would raise any other issues if provided with the opportunity to appeal to the district court the magistrate's final judgment, remand was inappropriate, and his appeal was dismissed. *State v. Savage, 145 Idaho 756, 185 P.3d 268 (2008)*.

Defendant failed to timely file a notice of appeal from district court's appellate decision affirming magistrate's denial of his motion to suppress, choosing instead to proceed on remand to the magistrate in defense of the underlying charge. Court of appeals therefore lacked subject matter jurisdiction over defendant's appeal of magistrate's order. Because defendant did not assert that he would raise any other issues if provided with the opportunity to appeal to the district court the magistrate's final judgment, remand was inappropriate, and his appeal was dismissed. *State v. Savage, 145 Idaho 756, 185 P.3d 268 (2008)*.

District court lacked jurisdiction to order a second period of retained jurisdiction because I.C. *§ 19-2601(4)* is clear that the district court has to order probation prior to ordering the second period of jurisdiction; thus, the district court's order relinquishing jurisdiction on the second rider was void, and defendant's appeal was untimely under *Idaho App. R. 14(a). State v. Urrabazo,*

150 Idaho 158, 244 P.3d 1244 (2010), overruled on other grounds, *Verska v. St. Alphonsus Reg'l Med. Ctr., 151 Idaho 889, 265 P.3d 502 (2011)*.

Defendant was not entitled to a hearing on a motion to reconsider the denial of an Idaho Crim. R. 35 motion because defendant did not timely appeal defendant's case's dismissal, including a post-conviction relief petition and the reconsideration motion, under Idaho App. R. 14(a), so the court had no jurisdiction to consider defendant's motion nearly five years later. *State v. Wolfe, 158 Idaho 55, 343 P.3d 497 (2015)*.

District court had subject matter jurisdiction to consider appellant's motion to reimburse because it was conferred on the court when the State filed a complaint alleging appellant committed various crimes, the court dismissed appellant's case under Idaho Crim. R. 48(a), and appellant filed her motion the next day within the forty-two day period in this section. *State v. Karst, -- Idaho --, 553 P.3d 938, 2024 Ida. LEXIS 81 (Aug. 2, 2024)*.

Jury Verdict.

A "verdict of the jury" is not included in the list of appealable matters contained in I.A.R. 11(c), and it is not a judgment, order or decree of the district court from which an appeal can be taken. A verdict, as such, is not appealable; only a judgment rendered on the verdict is appealable. *State v. Rollins, 103 Idaho 48, 644 P.2d 370 (Ct. App. 1982)*.

Notice.

In a malpractice action brought by client against former attorney the evidence was undisputed that the trial court's law clerk sent a copy of the summary judgment order to client the day before the district court clerk placed the clerk's filing stamp on the order, and that the trial court records did not show that the clerk of the district court ever sent client a copy of the order bearing the filing stamp. Since the placement of the filing stamp on the summary judgment order determined when the entry of judgment occurred, the trial court's finding that client did not have actual notice of the entry of judgment dismissing client's claims against his former attorney was not clearly erroneous. *Thompson v. Pike, 122 Idaho 690, 838 P.2d 293 (1992)*.

Post-Conviction Relief.

Where no claim of deficiency in the presentation of a Rule 35 motion was raised as a ground for post-conviction relief, the filing of a Rule 35 motion beyond the fourteen-day limit provided by subsection (a) of this Rule does not extend the time for filing a post-conviction application. *Mills v. State, 126 Idaho 330, 882 P.2d 985 (Ct. App. 1994)*.

Inmate's petitions for post-conviction relief were the functional equivalent of filing a notice of appeal. Where a litigant files documents with the court within the time limit required by the rules and those documents give notice to other parties and the courts of a litigant's intent to appeal as required by the rules, those documents can be effective as a notice of appeal. *Baker v. State, 142 Idaho 411, 128 P.3d 948 (Ct. App. 2005)*.

Timeliness.

I. A.R. 17(e) deals with the subject matter scope of an appeal, and does not extend the time for filing a notice of appeal as prescribed in this rule. *State v. Fuller, 104 Idaho 891, 665 P.2d 190 (Ct. App. 1983)*.

Where defendant was not placed on probation with regard to sentences imposed in June, 1987, until September 26, 1989, and notice of appeal was filed on June 6, 1990, well beyond 42 days after September 26, 1989, court could not review the propriety of the judgments of conviction, and the sentences imposed, due to lack of jurisdiction as the result of an untimely appeal. *State v. Morris, 119 Idaho 448, 807 P.2d 1286 (Ct. App. 1991)*.

Subdivision (c)(7) of this rule and Idaho Appellate Rule 11 specifically authorizes an interlocutory appeal from "an order granting a motion to suppress." However, such an appeal must have been perfected by filing a notice of appeal within 42 days from the date of the court's order suppressing the evidence obtained during the execution of the search warrant. *Richardson v. $4,543.00 U.S. Currency, 120 Idaho 220, 814 P.2d 952 (Ct. App. 1991)*.

This rule provides that the time for appeal from a "criminal judgment, order or sentence" can be extended by the filing of a motion within 14 days of the judgment; however, there is no similar provision, permitting an extension of the time to appeal, applicable with respect to appellate review of a post-judgment order revoking probation once the 14 days following the judgment has expired. Any order thereafter entered, including the revocation of probation, is simply an "order made after judgment" which is appealable under I.A.R. 11(c)(9), but the appeal must be filed within 42 days of that order; under these rules, defendant's motion to reconsider the probation revocation which was filed seven days after the entry of the order revoking probation did not extend the time within which to appeal from that order and because the appeal was taken untimely with respect to the order revoking probation, the court was without jurisdiction to review the merits of that order. *State v. Yeaton, 121 Idaho 1018, 829 P.2d 1367 (Ct. App. 1992)*.

Defendant's notice of appeal was filed 43 days after the judgment of conviction was entered. Pursuant to I.A.R. 21 and this Rule, defendant's appeal is untimely, and the court therefore lacks jurisdiction to address the substantive issues. *State v. Payan, 128 Idaho 866, 920 P.2d 82 (Ct. App. 1996)*.

The filing of a timely motion to alter or amend a judgment under I.R.C.P. 59(e) tolls the time for appeal from the challenged judgment. *J.P. Stravens Planning Assocs. v. City of Wallace, 129 Idaho 542, 928 P.2d 46 (Ct. App. 1996)*.

Since pursuant to *§ 19-2601* a trial court can retain jurisdiction only once, where court had retained jurisdiction on January 17, 1995 and placed defendant on probation which was later revoked for probation violations, written order of December 29, 1995 which stated that the court was retaining jurisdiction was of no effect and time for appeal was not enlarged as the court had no authority to retain jurisdiction a second time even though court issued a corrected order on January 24, 1996 stating that it was not retaining jurisdiction and appeal filed on February 29,

1996 was more than 42 days from the entry of the order which he attempted to appeal and was thus untimely. *State v. Ferguson, 130 Idaho 160, 938 P.2d 187 (1997)*.

Defendant's failure to file a notice of appeal within 42 days from the district court's appellate decision on a magistrate's interlocutory order denying his motion to suppress evidence required automatic dismissal of his appeal. *State v. Savage, 145 Idaho 756, 185 P.3d 268 (2008)*.

Appeal was dismissed as untimely because it was not filed with 42 days of the judgment. *Goodman Oil Co. v. Scotty's Duro-Bilt Generator, Inc., 147 Idaho 56, 205 P.3d 1192 (2009)*.

Parents timely filed their notice of appeal under this rule where they filed their notice of appeal within 42 days of the trial court's judgment. A prior order was not a final judgment because it was not set out in a separate document, it was not entitled "judgment," and it contained a recital of the trial court's findings of fact, legal reasoning, and conclusions of law. *Hymas v. Meridian Police Dep't, 156 Idaho 739, 330 P.3d 1097 (2014)*.

Tolling of Running.

Since a motion for new trial, a motion to alter judgment, and objections to judgment, findings and conclusions were untimely, they did not terminate the running of the 42 days in which to file notice of appeal. *Wheeler v. McIntyre, 100 Idaho 286, 596 P.2d 798 (1979)*.

The time for filing appeals, as provided by subdivision (a), is terminated only by motions cognizable under the *Civil or Criminal Rules of Procedure. State v. Nelson, 104 Idaho 430, 659 P.2d 783 (Ct. App. 1983)*.

A timely motion to reduce or to correct a sentence under I.C.R. 35 is a motion which, if granted, could affect the judgment in the action; thus, where the defendant filed such a timely motion, the time for filing an appeal was terminated until the court ruled upon the motion. Therefore, where the defendant filed his appeal from the judgment against him within 42 days of the denial of his motion to have his sentence reduced, the defendant's appeal was timely filed. *State v. Knight, 106 Idaho 496, 681 P.2d 6 (Ct. App. 1984)*.

The time for filing appeal commences anew after the disposition of a timely post-judgment motion. *Sinclair Mktg., Inc. v. Siepert, 107 Idaho 1000, 695 P.2d 385 (1985)*.

Where the trial court entered a partial summary judgment against the plaintiff on June 3, but the clerk of the court did not mail the order denying the plaintiff's motion for reconsideration until November 30, and there was no evidence in the record to indicate that the plaintiff or his attorney actually knew that the court denied the motion for reconsideration prior to November 30, the 42-day appeal period under subdivision (a) of this rule could not have commenced to run until at least November 30, despite the fact that the district court filed judgment and certified the case for appeal under I.R.C.P. 54(b) after the plaintiff filed the motion for reconsideration. *Willis v. Larsen, 110 Idaho 818, 718 P.2d 1256 (Ct. App. 1986)*.

Defendant's motion for a new trial extended the time for appeal from the judgment, consistent with the purpose and intent of this rule, where, although defendant's motion for a new trial was

not filed in a documentary form with the district court, the motion was made on the record in open court, was argued, and was considered by the trial judge at the same hearing when the judgment of conviction was pronounced; the judge took the motion under advisement and suspended execution of the judgment of conviction in the meantime, and had the motion been granted, it clearly would have affected the judgment and sentence. *State v. Poland, 116 Idaho 34, 773 P.2d 651 (Ct. App. 1989)*.

The time for appeal was not tolled by the Justice's motion because the motion was filed more than 14 days after the order relinquishing jurisdiction. *State v. Justice, 122 Idaho 407, 834 P.2d 1323 (Ct. App. 1992)*.

The time for appeal from any criminal judgment, order or sentence stops running when a motion is filed within 14 days of the entry of a judgment which, if granted, could affect the judgment, order or sentence. The appeal period does not stop running merely because the defendant is placed on probation. *State v. Fox, 122 Idaho 550, 835 P.2d 1361 (Ct. App. 1992)*.

Even if motion for a new trial had not fallen within the parameters of *§ 19-2406*, it would have extended the time for appeal from the judgment under the tolling provisions of this rule. *State v. Lee, 131 Idaho 600, 961 P.2d 1203 (Ct. App. 1998)*.

Motion under I.R.C.P. 59 to alter or amend the judgment or a motion under I.R.C.P. 11(a)(2)(B) for reconsideration tolls the time period for the filing of a notice of appeal as provided in *I.A.R. 14(a). State v. Ferguson, 138 Idaho 659, 67 P.3d 1271 (Ct. App. 2002)*.

While appeals from the district court must be made within 42 days of the entry of the appealable order or judgment, a motion for reconsideration under Idaho Rule of Civil Procedure 11.2(b) or a motion to amend findings of fact or conclusions of law under Idaho Rule of Civil Procedure 52(b) would toll that filing period. *Idaho Dep't of Envtl. Quality v. Gibson, 166 Idaho 424, 461 P.3d 706 (2020)*.

Cited in:

Neal v. Harris, 100 Idaho 348, 597 P.2d 234 (1979); *Compton v. Compton, 101 Idaho 328, 612 P.2d 1175 (1980)*; *State v. Stradley, 102 Idaho 41, 624 P.2d 949 (1981)*; *State v. Smith, 103 Idaho 135, 645 P.2d 369 (1982)*; *Ustick v. Ustick, 104 Idaho 215, 657 P.2d 1083 (Ct. App. 1983)*; *Puphal v. Puphal, 105 Idaho 302, 669 P.2d 191 (1983)*; *State v. Torres, 107 Idaho 895, 693 P.2d 1097 (Ct. App. 1984)*; *Merritt v. State, 108 Idaho 20, 696 P.2d 871 (1985)*; *Pichon v. L.J. Broekemeier, Inc., 108 Idaho 846, 702 P.2d 884 (Ct. App. 1985)*; *Lindquist v. Gardner, 770 F.2d 876 (9th Cir. 1985)*; *Valley Bank v. Dalton, 110 Idaho 87, 714 P.2d 56 (Ct. App. 1985)*; *State v. Anderson, 111 Idaho 121, 721 P.2d 221 (Ct. App. 1986)*; *First Sec. Bank v. Stauffer, 112 Idaho 133, 730 P.2d 1053 (Ct. App. 1986)*; *Nations v. Bonner Bldg. Supply, 113 Idaho 568, 746 P.2d 1027 (Ct. App. 1987)*; *Marcher v. Butler, 113 Idaho 867, 749 P.2d 486 (1988)*; *State v. Montague, 114 Idaho 319, 756 P.2d 1083 (Ct. App. 1988)*; *Wilsey v. Fielding, 115 Idaho 437, 767 P.2d 280 (Ct. App. 1989)*; *Roll v. City of Middleton, 115 Idaho 833, 771 P.2d 54 (Ct. App. 1989)*; *Hoopes v. Bagley (In re Estate of Bagley), 117 Idaho 1091, 793 P.2d 1263 (Ct. App. 1990)*; *State v. Caldwell, 119 Idaho 281, 805 P.2d 487 (Ct. App. 1991)*; *State v. Ward, 120 Idaho 182, 814 P.2d 442 (Ct. App. 1991)*; *State v. Coffin, 122 Idaho 392, 834 P.2d 909 (Ct. App.*

1992); State v. Alberts, 124 Idaho 489, 861 P.2d 59 (1993); State v. Williams, 126 Idaho 39, 878 P.2d 213 (Ct. App. 1994); State v. Wilson, 127 Idaho 506, 903 P.2d 95 (Ct. App. 1995); Swisher v. State, 129 Idaho 467, 926 P.2d 1314 (Ct. App. 1996); Kolln v. Saint Luke's Reg'l Med. Ctr., 130 Idaho 323, 940 P.2d 1142 (1997); Cochran v. State, 133 Idaho 205, 984 P.2d 128 (Ct. App. 1999); Dunlap v. Cassia Mem. Hosp. & Med. Ctr., 134 Idaho 233, 999 P.2d 888 (2000); State v. Jakoski, 139 Idaho 352, 79 P.3d 711 (2003); Hoskinson v. Hoskinson, 139 Idaho 448, 80 P.3d 1049 (2003); E. Idaho Econ. Dev. Council v. Lockwood Packaging Corp. Idaho, 139 Idaho 492, 80 P.3d 1093 (2003); State v. Veloquio, 141 Idaho 154, 106 P.3d 480 (Ct. App. 2005); West Wood Invs., Inc. v. Acord, 141 Idaho 75, 106 P.3d 401 (2005); State v. Urrabazo, 150 Idaho 158, 244 P.3d 1244 (2010); State v. Hansen, 154 Idaho 882, 303 P.3d 241 (2013); Kennedy v. Hagadone Hospitality Co., 159 Idaho 157, 357 P.3d 1265 (2015); Icanovic v. State, 159 Idaho 524, 363 P.3d 365 (2015); Kantor v. Kantor, 160 Idaho 805, 379 P.3d 1073 (2016); Wurdemann v. State, 161 Idaho 713, 390 P.3d 439 (2017); State v. Daly, 161 Idaho 925, 393 P.3d 585 (2017); State v. Brown, 163 Idaho 941, 422 P.3d 1147 (2018); Smith v. Smith, 164 Idaho 46, 423 P.3d 998 (2018).

Decisions Under Prior Rule or Statute

Computation.

Time is computed from date of filing of order with clerk. Kimzey v. Highland Livestock & Land Co., 37 Idaho 9, 214 P. 750 (1923).

Notice of appeal is sufficient where it is filed one day after time had elapsed, when last day fell on Sunday. Myers v. Harvey, 39 Idaho 724, 229 P. 1112 (1924).

Where original entry of denial of motion for new trial was incorrect and court subsequently made formal entry of order of denial, time for appeal was from entry of formal order. Hample v. McKinney, 48 Idaho 221, 281 P. 1 (1929).

Time within which appeal may be taken is jurisdictional and Supreme Court can neither extend time nor cure defect in failing to take appeal within that time, although such defect is caused by laches of clerk. Moe v. Harger, 10 Idaho 194, 77 P. 645 (1904); McElroy v. Whitney, 24 Idaho 210, 133 P. 118 (1913); Chapman v. Boehm, 27 Idaho 150, 147 P. 289 (1915).

Where notice of appeal is not filed until after time fixed by statute, Supreme Court acquires no jurisdiction. Glenn v. Aultman & Taylor Mach. Co., 30 Idaho 719, 167 P. 1163 (1917).

Jurisdiction.

Appeal taken after expiration of statutory time will be dismissed since perfection of appeal within such time is jurisdictional. Mills v. Board of County Comm'rs, 35 Idaho 47, 204 P. 876 (1922); Goade v. Gossett, 35 Idaho 84, 204 P. 670 (1922); Continental & Commercial Trust & Sav. Bank v. Werner, 36 Idaho 601, 215 P. 458 (1923), Appeal dismissed, *Continental & C. T. & S. Bank v. Werner, 264 U.S. 576, 44 S. Ct. 452, 68 L. Ed. 857 (1924)*; Kimzey v. Highland Livestock & Land Co., 37 Idaho 9, 214 P. 750 (1923); Wallace v. McKenna, 37 Idaho 579, 217

P. 982 (1923); *Price v. Case, 40 Idaho 197, 232 P. 576 (1925)*; *West States Mtg. Loan Co. v. Hurst, 41 Idaho 80, 237 P. 1107 (1925)*; *In re Dunn's Estate, 45 Idaho 23, 260 P. 432 (1927)*.

Premature Appeal.

Dismissal of appeal prematurely taken is not affirmance of judgment, and does not defeat an appeal regularly taken. *Stout v. Cunningham, 33 Idaho 83, 189 P. 1107 (1920)*.

Appeal from order denying motion for new trial, taken before such order is filed, will be dismissed. *Goade v. Gossett, 35 Idaho 84, 204 P. 670 (1922)*.

Timeliness.

Under former law that provided that appeals from final summary judgment would have to be taken within 60 days of entry of judgment, and even assuming this time would be tolled because the district court clerk failed to provide immediate notice ad required by I.R.C.P. 77(d), where the defendant admitted he knew of the March 21 judgment by April 11, his appeal filed on August 11 was too late, since there were still over four weeks, after April 11, in which to file the appeal within the time allowed or seek an extension. *Johnston v. Pascoe, 100 Idaho 414, 599 P.2d 985 (1979)*.

Vacation of Judgment.

Vacation of judgment does not extend time for appeal. *Boam v. Sewell, 41 Idaho 718, 241 P. 1020 (1925)*.

Validity of Judgment.

Whether or not a judgment is void does not affect the necessity of making a timely appeal. *First Sec. Bank v. Neibaur, 98 Idaho 598, 570 P.2d 276 (1977)*.

Research References & Practice Aids

RESEARCH REFERENCES

Law Reviews.

Collateral Damage in Idaho: A Proposal to Strengthen the Effect of the Juvenile Corrections Act, Jenny V. Gallegos, *55 Idaho L. Rev. 379 (2019)*.

Rule 14. Time for filing appeals.

End of Document

I.A.R. Rule 15

State and Federal through Rules promulgated through January 31, 2022

ID - Idaho State & Federal Court Rules > IDAHO APPELLATE RULES

Rule 15. Cross-appeal after an appeal.

(a) Right to cross-appeal. After an appeal has been filed, a timely cross-appeal may be filed from any interlocutory or final judgment or order. If no affirmative relief is sought by way of reversal, vacation or modification of the judgment or order, an issue may be presented by the respondent as an additional issue on appeal under Rule 35(b)(4) without filing a cross-appeal.

(b) Time for filing. A cross-appeal, as a matter of right, may be made only by physically filing the notice of cross-appeal with the clerk of the district court or administrative agency within the 42 day time limit prescribed in Rule 14, as it applies to the judgment or order from which the cross-appeal is taken, or within 21 days after the date of filing of the original notice of appeal, whichever is later.

History

(Adopted March 27, 1989, effective July 1, 1989; amended March 1, 2004, effective July 1, 2004; amended March 29, 2010, effective July 1, 2010.)

Annotations

Commentary

STATUTORY NOTES

Compiler's Notes.

Former Rule 15 which was adopted March 25, 1977, effective July 1, 1977 and amended March 30, 1984, effective July 1, 1984 was rescinded by Order of the Idaho Supreme Court of March 27, 1989, effective July 1, 1989.

Case Notes

Additional Issue by Respondent.
Cross-Appeal Not Required.
Cross-Appeal by Opposing Party.
Failure to File Cross-Appeal.

Timeliness.
Cross-Appeal by Opposing Party.

Additional Issue by Respondent.

Even if a district court determined that defendant was not entitled to a *Franks* hearing after improperly hearing in-camera testimony, the district court's decision was correct because defendant should not have been granted a hearing in a prior order; therefore, the State did not seek affirmative relief and properly brought the issue of defendant's entitlement to a *Franks* hearing as an additional issue on appeal under I.A.R. 35(b)(4) instead of being required to cross appeal from the previous district court order under *I.A.R. 15(a). State v. Fisher, 140 Idaho 365, 93 P.3d 696 (2004)*.

Cross-Appeal Not Required.

State could not have appealed an order granting an in-camera hearing and concluding that defendant had met the threshold showing and was entitled to a *Franks* hearing because it was not an appealable order according to I.A.R. 11(c), and the State was not required to cross-appeal the order under I.A.R. 15(a) when defendant appealed his later convictions because the State was not seeking affirmative relief. *State v. Fisher, 140 Idaho 365, 93 P.3d 696 (2004)*.

As to the issue of the application of this rule, the owners were not seeking to reverse or vacate the judgment, nor were they seeking a reversal of the finding upon which the judgment was based; the rule presented no bar to the court's consideration of an issue, and the owners were not required to file a cross-appeal. *McKay v. Boise Project Bd. of Control, 141 Idaho 463, 111 P.3d 148 (2005)*.

The state was not required to file a cross appeal under Idaho App. R. 11(g) or paragraph (a) of this rule, as the state did not seek to reverse, vacate, or modify the district court's denial of the defenant's petition. The state merely urged affirmance of that denial and asserted an alternate basis for upholding the judgment. *Leer v. State, 148 Idaho 112, 218 P.3d 1173 (2009)*.

Cross-Appeal by Opposing Party.

Music festival's request to consider the constitutionality of *§ 18-3302J* was denied per subsection (a). Although it raised the issue below and did not receive relief when the district court failed to address the issue, it failed to file a notice of cross-appeal asserting the claim. *Herndon v. City of Sandpoint, -- Idaho --, 531 P.3d 1125 (2023)*.

Failure to File Cross-Appeal.

Defendants were precluded from bringing additional issues on appeal where they were seeking a change in judgment, but failed to file a cross-appeal. *Miller v. Board of Trustees, 132 Idaho*

244, 970 P.2d 512 (1998), cert. denied, *526 U.S. 1159, 119 S. Ct. 2050, 144 L. Ed. 2d 216 (1999)*.

Appellate court lacked jurisdiction to consider respondents' challenge to the district court's decision regarding attorney fees because respondents did not file a cross-appeal. Cannon v. Teel, -- Idaho --, -- P.3d --, *2023 Ida. App. LEXIS 26 (Nov. 1, 2023)*.

Timeliness.

A timely notice of appeal or cross-appeal is a jurisdictional prerequisite to challenge a determination made by a lower court. Failure to timely file such a notice "shall cause automatic dismissal" of the issue on appeal. *Carr v. Carr, 116 Idaho 754, 779 P.2d 429 (Ct. App. 1989)*.

The defendant's cross-appeal on the issue of damages was untimely, even though it was filed within 21 days of the untimely filing of the plaintiff's appeal. *Walton, Inc. v. Jensen, 132 Idaho 716, 979 P.2d 118 (Ct. App. 1999)*.

Cited in:

West Wood Invs., Inc. v. Acord, 141 Idaho 75, 106 P.3d 401 (2005); *Hamilton v. Alpha Servs., LLC, 158 Idaho 683, 351 P.3d 611 (2015)*; *Dickinson Frozen Foods, Inc. v. J.R. Simplot Co., 164 Idaho 669, 434 P.3d 1275 (2019)*.

Decisions Under Prior Rule or Statute

Cross-Appeal by Opposing Party.

If a party qualifies as a party opposing the appeal, he has 14 days following the notice of appeal to file a cross-appeal, without regard to which party the cross-appeal is filed against. *Pichon v. L.J. Broekemeier, Inc., 108 Idaho 846, 702 P.2d 884 (Ct. App. 1985)* (decision prior to 1984 amendment).

End of Document

I.A.R. Rule 16

State and Federal through Rules promulgated through January 31, 2022

ID - Idaho State & Federal Court Rules > IDAHO APPELLATE RULES

Rule 16. Bonds on appeal.

(a) No Cost Bond Required. No undertaking on appeal for costs shall be required.

(b) Waiver of Supersedeas Bond. The party in whose favor an execution may issue may agree in writing that the party will not execute pending the appeal, in which case no supersedeas bond shall be necessary to stay execution and the district court shall issue a stay so that no writ of execution shall issue on the judgment, or be served if already issued, pending final disposition of appeal.

History

(Adopted March 25, 1977, effective July 1, 1977.)

Annotations

Case Notes

Doctrine of Martinson v. Martinson.
Supersedeas Bond.
--Amount.
--Child Custody.
--Complaint.
--Effect.
--Foreclosure Suits.
--Injunction.
--Judgment Against Sureties.
--Liability of Surety.
--Measure of Damages.
--Notice of Hearing.
--Preservation of Attachment.
--Proceedings After Appeal.

Doctrine of Martinson v. Martinson.

Since former § 13-203 was repealed and I.A.R. 16(a) was adopted there was no longer a requirement of posting a cost bond on appeal, the doctrine of *Martinson v. Martinson, 90 Idaho*

490, 414 P.2d 204 (1966), that an uncashed check, given as an appeal bond, does not constitute such a bond, has been eliminated, and where the notice exception to I.A.R. 1 was satisfied, the appeal would be heard. *Erickson v. Amoth, 99 Idaho 907, 591 P.2d 1074 (1978)*.

Cited in:

Keybank Nat'l Ass'n v. PAL, LLC, 155 Idaho 287, 311 P.3d 299 (2013).

Decisions Under Prior Rule or Statute

Supersedeas Bond.

--Amount.

Judgment foreclosing a chattel mortgage is not a money judgment and consequently an undertaking in the sum of $300 stays execution thereof pending appeal, and no further undertaking can be required. *Barnes v. Buffalo Pitts Co., 6 Idaho 519, 57 P. 267 (1899)*.

On appeal from judgment and decree foreclosing a mechanic's or laborer's lien, in order to stay further proceedings for collection of judgment appeals from, it is necessary that the amount of the stay bond to cover waste and use and occupation of the premises directed to be sold be fixed by the trial judge, and such supersedeas bond is properly given. *Naylor & Norlin v. Lewiston & S.E. Elec. Ry. Co., 14 Idaho 722, 95 P. 827 (1908)*.

Where a judgment was entered holding certain sales and transfers of personal and other property fraudulent and void, and a receiver was appointed to take charge of such property and an appeal was taken by the defendants and an undertaking on appeal in the sum of $300 was filed, the receivership may be continued pending the appeal. *Morbeck v. Bradford-Kennedy Co., 18 Idaho 458, 110 P. 261 (1910)*.

When appeal has been taken from a judgment or order directing the sale or delivery of possession of real property, it is the duty of the trial judge on application therefor by appellant, to make an order fixing the amount of a supersedeas undertaking. Appellant may make application to have amount of such undertaking fixed at any time after appeal and before the case is finally disposed of. Possession of real property, the subject of the litigation, acquired during pendency of appeal by one not a party to the action, does not defeat appellant's right to have amount of supersedeas undertaking fixed. *Mays v. Winstead, 59 Idaho 677, 86 P.2d 471 (1939)*.

--Child Custody.

Where a husband appealed from a district court order awarding custody of children and directing payment by him for their support, but did not post a supersedeas bond, the district court had jurisdiction to enforce payment of the support money during the pendency of the appeal by citation for contempt. *Montgomery v. Montgomery, 89 Idaho 319, 404 P.2d 610 (1965)*.

--Complaint.

A complaint in an action on a supersedeas bond on a judgment directing delivery of certain documents is sufficient, notwithstanding the absence of allegations as to damages incurred, since damages were considered as liquidated and measured by the amount of the bond. *Coeur d'Alenes Lead Co. v. Kingsbury, 56 Idaho 475, 55 P.2d 1307 (1936)*.

--Effect.

The giving of a supersedeas bond only stays enforcement of the judgment while the appeal is pending, and doe not change the judgment or debts evidenced by it, or vacate the judgment. *Lincoln Mines Operating Co. v. Huron Holding Corp., 27 F. Supp. 720 (D. Idaho 1939)*, aff'd, *312 U.S. 183, 61 S. Ct. 513, 85 L. Ed. 725 (1941)*.

--Foreclosure Suits.

On appeal from judgment of foreclosure of mortgage on personal property, undertaking stays execution. *Barnes v. Buffalo Pitts Co., 6 Idaho 519, 57 P. 267 (1899)*.

To stay execution of foreclosure decree it is necessary to give an undertaking and where this is not done and the foreclosure is perfected by sale and delivery of sheriff's deed, the only right remaining in the mortgagor is that of redemption. *Sherwood v. Daly, 58 Idaho 744, 78 P.2d 357 (1938)*; *Eagle Rock Corp. v. Idamont Hotel Co., 60 Idaho 639, 95 P.2d 838 (1939)*.

--Injunction.

Although a decree in an injunction suit directing the distribution of water stored in a reservoir is in effect a mandatory injunction, the execution of such decree will not be stayed without the giving of an undertaking. *Salmon River Canal Co. v. District Court, 38 Idaho 377, 221 P. 135 (1923)*.

--Judgment Against Sureties.

Where, after affirmance on appeal, appellee filed in trial court a motion to proceed, containing a notice to sureties on appellant's supersedeas bond that he would apply for a summary decree on the bond, service of which notice was admitted by surety, such surety was a quasi party to the proceeding, and the court was authorized to render summary judgment against it. *Empire State-Idaho Mining & Dev. Co. v. Hanley, 136 F. 99 (9th Cir. 1905)*.

No formal motion for summary judgment against sureties is required, oral application for the order is sufficient. *Baldwin v. Anderson, 52 Idaho 243, 13 P.2d 650 (1932)*.

--Liability of Surety.

That appeal, in which a supersedeas bond sued upon was given, was taken from an order denying a new trial, and that affirmance on appeal was predicated upon the lack of timely statutory notice of intention to move for a new trial, does not relieve the surety of liability for failure to comply with the judgment, especially where the trial court and all parties acted upon the theory that the supersedeas bond stayed the judgment. *Coeur d'Alenes Lead Co. v. Kingsbury, 56 Idaho 475, 55 P.2d 1307 (1936)*.

The obligation of the sureties on an undertaking is an obligation to obey the order of the appellate court upon the appeal, without reference to any question of damages to the other party, the whole sum of the bond being recoverable in the event of nonperformance. *Coeur d'Alenes Lead Co. v. Kingsbury, 56 Idaho 475, 55 P.2d 1307 (1936)*.

--Measure of Damages.

Where the sum mentioned in a supersedeas bond is in the nature of a statutory penalty for the nonperformance of a statutory duty it is not necessary to show actual damages and the whole sum may be recovered. *Coeur d'Alenes Lead Co. v. Kingsbury, 56 Idaho 475, 55 P.2d 1307 (1936)*.

--Notice of Hearing.

Entry of judgment on a supersedeas bond given by a surety company without notice for failure to pay or an opportunity for a hearing was not a denial of due process where the opportunity for such a hearing was provided by an appeal after the entry of judgment. *American Sur. Co. v. Baldwin, 287 U.S. 156, 53 S. Ct. 98, 77 L. Ed. 231 (1932)*.

--Preservation of Attachment.

Only purpose of giving supersedeas is to provide additional remedy of keeping attachment alive, if supersedeas is filed within time specified. *Citizens Auto. Inter-Insurance Exch. v. Andrus, 70 Idaho 114, 212 P.2d 406 (1949)*.

Giving supersedeas bond preserves plaintiff's security for the payment of any judgment he might obtain in the event he succeeds on appeal. *Sherwood v. Porter, 58 Idaho 523, 76 P.2d 928 (1938)*.

The court determined that the judgment for defendant operated as a dissolution of the attachment and released the attached property and the additional undertaking, not having been filed until seven days after the entry of the judgment, did not stay the self-executing quality of the judgment appealed from. *Sampson v. Layton, 86 Idaho 453, 387 P.2d 883 (1963)*.

The dissolvent force of a judgment for the defendant is neutralized if a perfected appeal providing the additional undertaking is filed before or at the time judgment for defendant is

entered and the appeal is perfected within the specified period. *Sampson v. Layton, 86 Idaho 453, 387 P.2d 883 (1963)*.

--Proceedings After Appeal.

Execution issued pending an appeal perfected by service of notice and a filing of a supersedeas bond is without authority of law and should be quashed on motion. *Miller v. Pine Mining Co., 3 Idaho 603, 32 P. 207 (1893)*.

End of Document

Rule 17. Notice of appeal -- Contents.

A notice of appeal shall contain substantially the following information:

(a) Title. The title of the action or proceeding.

(b) Court or agency title. The title of the court or agency which heard the trial or proceeding and the name and title of the presiding judge or official.

(c) Case number. The number assigned to the action or proceeding by the trial court or administrative agency.

(d) Parties. The name of the appealing party and the party's attorney and the name of the adverse party and that party's attorney. An address, phone number and email address must also be given, except no email address is required for persons appearing pro se.

(e) Designation of appeal.

(1) A designation of the judgment or order appealed from. The notice of appeal shall designate and have attached to it a copy of the judgment or order appealed from which shall be deemed to include, and present on appeal:

(A) All interlocutory judgments and orders entered prior to the judgment, order or decree appealed from, and

(B) All final judgments and orders entered prior to the judgment or order appealed from for which the time for appeal has not expired, and

(C) All interlocutory or final judgments and orders entered after the judgment or order appealed from except orders relinquishing jurisdiction after a period of retained jurisdiction or orders granting probation following a period of retained jurisdiction.

(2) Premature filing of notice of appeal. A notice of appeal filed from an appealable judgment or order before formal written entry of such document shall become valid upon the filing and the placing the stamp of the clerk of the court on such appealable judgment or order, without refiling the notice of appeal.

(f) Issues. A preliminary statement of the issues on appeal which the appellant then intends to assert in the appeal; provided, any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal.

(g) Jurisdictional statement. A statement as to the basis for the right to appeal to the Idaho Supreme Court from the judgments or orders described in paragraph 1 of

the notice of appeal, including citation to any statute under which the order is made appealable.

(h) Transcript. A designation as to whether a transcript is requested, and if requested, whether a standard transcript, a supplemented transcript, or a partial transcript as defined in Rule 25 is requested by the appellant. The notice shall also state whether the appellant's copy of the transcript shall be provided in hard copy or electronic format or both. If no election is made within 21 days of filing the notice of appeal, the appellant will receive a hard copy of the transcript. If a supplemented transcript is requested, the request shall specifically identify each of the items of additional record requested which would otherwise be excluded under Rule 25(c).

(i) Record. A designation of documents, if any, to be included in the clerk's or agency's record in addition to those automatically included pursuant to the following Rule 28.

(j) Exhibits - Civil cases. A designation of documents, charts, or pictures offered or admitted as exhibits in a trial or hearing to be copied and sent to the Supreme Court.

(k) Sealed record. A statement as to whether an order has been entered sealing all or any part of the record or transcript.

(l) Certification.

A certification of the attorney of the appellant, or affidavit of the appellant representing himself or herself:

(1) That service of the notice of appeal has been made upon the reporter of the trial or proceeding;

(2) That the clerk of the district court or administrative agency has been paid the estimated fees for preparation of the designated reporter's transcript as required by Rule 24, or that appellant is exempt from paying such fees because of stated reasons;

(3) That the estimated fees for preparation of the clerk's or agency's record have been paid, or that appellant is exempt from paying such fees because of stated reasons;

(4) That all appellate filing fees have been paid, or that appellant is exempt from paying such fees because of stated reasons; and

(5) That service has been made upon all other parties required to be served pursuant to Rule 20, and that in all cases referred to in *Section 67-1401(1), Idaho Code*, service has been made upon the attorney general of the state of Idaho. The appellant shall not be required to certify the payment of estimated fees in criminal appeals, appeals from denial of a petition for writ of habeas corpus, or petitions for post-conviction relief, if the district court has entered an order, or thereafter enters an order within 14 days of filing the notice of appeal, that such costs shall be at public expense.

(m) Amended notice of appeal. In the event the original notice of appeal erroneously states any of the information and requirements of this rule or additional

facts arise after the filing of the initial notice of appeal, the appellant may thereafter file an amended notice of appeal correctly setting forth the facts and information. An amended notice of appeal shall be filed with the clerk of the district court in the same manner as the original notice of appeal but no filing fee shall be required. If the original notice of appeal was timely filed from an appealable judgment, order or decree, the amended notice of appeal will relate back to the date of filing of the original notice of appeal. If the amended notice of appeal includes a request for preparation of additional transcripts, the notice must include an estimate of the number of additional pages requested and a certification that the amended notice has been served on each reporter of whom a request for additional transcript is made. Except in capital cases, an amended notice of appeal may not be filed after the record has been filed with the Supreme Court.

(n) Signature. The name and signature of the attorney for the appellant, or name of appellant if the appellant does not have an attorney.

(o) Form.

The notice of appeal shall be in substantially the following form: Click here to view form

(When certification is made by a party instead of the party's attorney, the following affidavit must be executed pursuant to Rule 17(i)) Click here to view form

History

(Adopted March 25, 1977, effective July 1, 1977; amended March 31, 1978, effective July 1, 1978; amended April 11, 1979, effective July 1, 1979; amended December 27, 1979, effective July 1, 1980; amended April 18, 1983, effective July 1, 1983; amended March 30, 1984, effective July 1, 1984; amended June 15, 1987, effective November 1, 1987; amended March 27, 1989, effective July 1, 1989; amended March 26, 1992, effective July 1, 1992; amended April 3, 1996, effective July 1, 1996; amended January 30, 2001, effective July 1, 2001; amended March 24, 2005, effective July 1, 2005; amended January 3, 2008, effective March 1, 2008; amended February 4, 2008, effective March 1, 2008; amended April 7, 2008, effective July 1, 2008; amended March 19, 2009, effective July 1, 2009; amended January 4, 2010, effective February 1, 2010; amended March 29, 2010, effective July 1, 2010; amended March 18, 2011, effective July 1, 2011; amended November 20, 2012, effective January 1, 2013; amended September 1, 2015, effective January 1, 2016; amended May 1, 2024, effective July 1, 2024; amended and effective September 11, 2024.)

Annotations

Case Notes

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Absence of Summons.

The original summons was not automatically included in the record for an appeal from a default judgment in a debt collection, thus the mere absence of the summons in the record, without a proper request for its inclusion by defendant, was insufficient upon which to base defendant's allegation of error that there was no valid summons in the record. *Credit Bureau, Inc. v. Harrison, 101 Idaho 554, 617 P.2d 858 (1980)*.

Adequate Record.

An appellant bears the burden of presenting an adequate record to support the issues raised on an appeal; failure to provide a transcript may preclude a review of any issue which depends upon such a transcript for resolution. *Bernard v. Roby, 112 Idaho 583, 733 P.2d 804 (Ct. App. 1987)*.

Appeal Inadequate.

Taxpayer appealed from the decision of the District Court determining the amount of tax, penalty, and interest taxpayer owed; in its initial brief presented to the court, taxpayer raised only issues concerning the correctness of the district court's decision on the merits of the State Tax Commission's redetermination and concerning taxpayer's entitlement to attorney fees on appeal. In neither its initial brief nor in its reply brief did taxpayer cite authorities or present argument challenging the District Court's decision upholding the board's dismissal of taxpayer's appeal; therefore, the Idaho Supreme Court would not consider whether the District Court correctly upheld the board's dismissal of taxpayer's appeal. *Grand Canyon Dories, Inc. v. Idaho State Tax Comm'n, 121 Idaho 515, 826 P.2d 476 (1992)*.

Construction.

Subdivision (e)(1)(A) of this rule might be construed to allow the Supreme Court to consider a referee's order denying a motion to compel discovery; to do so, however, would expand the statutory right of appeal specified by the legislature in *§ 72-724* to include orders that were not orders of the Commission, and is beyond the court's authority to do so. *Peterson v. Farmore Pump & Irrigation, 119 Idaho 969, 812 P.2d 276 (1991)*.

Contemporaneous Order.

Where confiscation order was issued contemporaneously with order from which appeal was taken, it qualified under subdivision (e) of this rule; this rule is a notice provision, and it would be incongruous to allow an appeal from orders entered prior and subsequent to the order from which the appeal is taken, but not from orders entered contemporaneously. *State v. Money, 109 Idaho 757, 710 P.2d 667 (Ct. App. 1985)*.

Designation of Appeal.

Under subdivision (e) of this rule as it was in effect on September 10, 1979, an appeal from a final order denying a motion to set aside order granting post-conviction relief included an appeal from all judgments, orders and decrees in the action or proceeding and, thus, the notice of appeal designating an appeal from such order, presented for appeal all orders entered in the action, including the order granting post-conviction relief. *State v. Goodrich, 104 Idaho 469, 660 P.2d 934 (1983)*.

Appeal from the second summary judgment included the previous interlocutory summary judgment by operation of this rule and the appellant's failure to specifically designate the first summary judgment in his notice of appeal was not fatal. *IBM Corp. v. Lawhorn, 106 Idaho 194, 677 P.2d 507 (Ct. App. 1984)*.

An improper designation of the "judgment, order or decree appealed from," as required by subdivision (e) of this rule, is a nonjurisdictional defect. *Kugler v. Northwest Aviation, Inc., 108 Idaho 884, 702 P.2d 922 (Ct. App. 1985)*.

Incorporation of Custody Order.

Where interlocutory order of custody was incorporated into final judgment of divorce under subsection (e) of this rule, the Supreme Court of Idaho in reviewing the final judgment must necessarily review the custody order. *Moye v. Moye, 102 Idaho 170, 627 P.2d 799 (1981)*.

Parties to Appeal.

An amendment for the purpose of adding or redesignating the alignment of parties to an appeal ought to occur either prior to the Supreme Court's assignment of the case to the Court of

Appeals so all parties have been provided with opportunities to file briefs setting forth their respective positions on the issues raised by the appeal and allowing the Supreme Court full consideration of whether to retain the case or assign it to the Court of Appeals for disposition or, at the very least, before submission of the case to this court for decision on the merits and for determination of the rights and interests of the various parties who might be affected by the appeal. *Security Pac. Bank v. Curtis, 123 Idaho 320, 847 P.2d 1181 (Ct. App. 1993)*.

Post-Conviction Relief.

Court had jurisdiction to consider the merits of the inmate's appeal from the dismissal of his petitions for post-conviction relief because his action in filing the motions and affidavits was the functional equivalent of filing a notice of appeal. Where a litigant files documents with the court within the time limit required by the rules and those documents give notice to other parties and the courts of a litigant's intent to appeal as required by the rules, those documents can be effective as a notice of appeal. *Baker v. State, 142 Idaho 411, 128 P.3d 948 (Ct. App. 2005)*.

Premature Notices.

The adoption of the 1983 amendment to subdivision (e)(2) of this rule afforded the Court of Appeals the freedom in the pending case to decide that premature notices of appeal to the district court matured and validly vested jurisdiction in that court, upon entry of record of the written judgments of conviction in the magistrate division, so that the district court did have jurisdiction to hear the appeal from convictions of criminal trespass. *State v. Gissel, 105 Idaho 287, 668 P.2d 1018 (Ct. App. 1983)*.

Notice of appeal was premature where it was from a judgment rendered under I.R.C.P., Rule 54(b), governing multiple parties and claims, and it was not certified as appealable under that rule; however, the subsequent filing of two formal judgments which disposed of the remaining claims cured the defect as of that date. *Meridian Bowling Lanes, Inc. v. Meridian Athletic Ass'n, 105 Idaho 509, 670 P.2d 1294 (1983)*.

Where the appellants filed a notice of appeal on December 11 and the final judgment was filed on January 4, the appeal became effective on January 4 under subdivision (e)(2) of this rule. *Valley Bank v. Dalton, 110 Idaho 87, 714 P.2d 56 (Ct. App. 1985)*.

Subdivision (e)(2) of this rule applies only in situations where the court has orally ruled, thereby indicating the outcome, the notice of appeal is then filed, and the court subsequently enters a written order or judgment consistent with its earlier indication. *Hawley v. Green, 124 Idaho 385, 860 P.2d 1 (Ct. App. 1993)*.

Post-conviction petitioner's notice of appeal from a district court's notice of intent to dismiss, though premature and interlocutory in nature, was nevertheless sufficient to effectuate an appeal from a final order dismissing the petition four days after the petitioner's notice of appeal was filed. *Weller v. State, 146 Idaho 652, 200 P.3d 1201 (2008)*.

Because the magistrate court's orders resolved all of the substantive issues in the case, and the magistrate court entered the final judgment before the district court's review on appeal, the district court had jurisdiction to consider the appeal, even though the motion to appeal was filed before the final judgment. *Ellis v. Ellis, 167 Idaho 1, 467 P.3d 365 (2020)*.

Scope of Appeal.

If there is a final appealable order in a case and an appeal is properly taken from that order, then all other interlocutory orders issued prior to the entry of the final appealable order which would otherwise not be appealable may be considered by the *Supreme Court. Keeven v. Wakley (In re Estate of Keeven), 110 Idaho 452, 716 P.2d 1224 (1986)*.

Subdivision (e) of this rule and *§ 1-205* are parallel provisions and both serve the ends of judicial economy; both contemplate that if there is a final appealable order before the Supreme Court, the court should resolve all interlocutory issues which have been passed upon by the trial court so that possibly another appeal will be avoided. Hence, although an order declaring part of decedent's property as separate or community was not normally an appealable order, the court addressed this issue, based on the mandate of subdivision (e) of this rule and *§ 1-205*, where the magistrate's order that the decedent's husband was not an omitted spouse was appealed. *Keeven v. Wakley (In re Estate of Keeven), 110 Idaho 452, 716 P.2d 1224 (1986)*.

Where an order denying the plaintiff's motion to augment the record was entered subsequent to an order denying him medical and disability benefits, the notice of appeal filed for the earlier order covered his appeal of the later one, and that second order was reviewable on appeal. *Warden v. Idaho Timber Corp., 132 Idaho 454, 974 P.2d 506 (1999)*.

-- Post-Judgment Orders.

Although defendant's direct appeal from a judgment of conviction was filed before his motion to modify the sentence was dismissed, the appeal of conviction did encompass the denial of his motion to modify; a notice of appeal from a judgment is deemed to include all post-judgment orders, and an order denying a motion to modify a sentence is such a post-judgment order. *State v. Fortin, 124 Idaho 323, 859 P.2d 359 (Ct. App. 1993)*.

Separate Appealable Order.

Where the District Court entered an order that appellate fees and costs were not waived, after the Supreme Court had dismissed the original action and entered an order waiving only the filing fee for that appeal, the District Court order was deemed to involve a separately appealable order "made after final judgment," even though an appeal was deemed to include all interlocutory or final orders entered after the order appealed from, as the Supreme Court by its own order, (a) treated the matter as a discrete appeal by giving it a designation and a case number separate from the earlier appeal, (b) assigned the action to the Court of Appeals for determination, and (c)

suspended further proceedings in the earlier action until the instant appeal was decided. *Madsen v. Idaho Dep't of Health & Welfare, 114 Idaho 624, 759 P.2d 915 (Ct. App. 1988)*.

Substantial Compliance.

A notice of appeal substantially complies with this rule when it identifies the parties and the attorney involved and clearly states the issue raised. *Smith v. Treasure Valley Seed Co., LLC, 161 Idaho 107, 383 P.3d 1277 (2016)*.

Time for Appeal.

Where there has been a final judgment, order or decree entered and the time for taking an appeal has not been extended under the provisions of I.R.C.P. 59, and no appeal has been timely taken, the provisions of this rule do not extend or reopen the appeal time on such final judgment or order. *Wheeler v. McIntyre, 100 Idaho 286, 596 P.2d 798 (1979)*.

The defendant's appeal was timely as to both contempt orders identical except for the award of costs and attorney fees, because the appeal included both judgments within its scope. *Whittle v. Seehusen, 113 Idaho 852, 748 P.2d 1382 (Ct. App. 1987)*.

In a dispute over the sale of land between two tenants in common, a judgment in 2003 ordering an accounting was not final in nature because the accounting had not been completed; therefore, an appeal from a money judgment entered after the accounting in 2005 was final, and it included the 2003 judgment. The 2003 judgment was merely interlocutory in nature. *Watson v. Watson, 144 Idaho 214, 159 P.3d 851 (2007)*.

Mother timely appeal from the order terminating her rights; applying the definition of interlocutory order that it might on final hearing be set aside, altered, changed, or modified, the finding of aggravating circumstances in this case was an interlocutory order because the finding was made pursuant to the statute and the order was subject to modification, and thus the finding was legitimately before the court by operation of the rule. *Dep't of Health & Welfare v. Doe (In re Doe), 156 Idaho 103, 320 P.3d 1262 (2014)*.

Defendant filed his notice of appeal before the district court denied his motion to correct an illegal sentence; accordingly, defendant could properly challenge the district court's denial of his motion based on his prior notice of appeal filed following the judgment of conviction. *State v. Medrano, 169 Idaho 684, 502 P.3d 61 (2021)*.

District court signed an order granting summary judgment and an order awarding court costs, but it did not sign a separate document that would constitute a judgment until one month after the builder had filed its notice of appeal, making the builder's notice of appeal premature. However, since the district court's grant of the landowner's motion for summary judgment resolved all of the substantive issues in the case, the builder's premature notice of appeal became valid upon entry of the final judgment. *Spokane Structures, Inc. v. Equitable Inv., LLC, 148 Idaho 616, 226 P.3d 1263 (2010)*.

Because motion to confirm and arbitrator's award was filed, and granted, under I.C. § 7-911, it was appealable as a matter of right under Idaho App. R. 11(a)(8) and I.C. § 7-919(a)(3); moreover, Idaho App. R. 17(e)(1)(B) does not extend the time for filing an appeal, but instead, must be read in conjunction with *Idaho App. R. 11. Harrison v. Certain Underwriters at Lloyd's, 149 Idaho 201, 233 P.3d 132 (2010)*.

Time for Notice.

Where the defendant filed his appeal after the jury verdict but prior to the entry of judgment of conviction, and he failed to amend his notice of appeal following entry of the judgment of conviction, the Court of Appeals could not consider the appeal as it had no jurisdiction on an appeal from a verdict. *State v. Rollins, 103 Idaho 48, 644 P.2d 370 (Ct. App. 1982)*.

Subdivision (e) of this rule deals with the subject matter scope of an appeal, and does not extend the time for filing a notice of appeal as prescribed in *I.A.R. 14. State v. Fuller, 104 Idaho 891, 665 P.2d 190 (Ct. App. 1983)*.

Defendant argues that, because the district court eventually entered an amended judgment of conviction, his notice of appeal was premature rather than untimely, and this court has jurisdiction over the appeal. The language of this Rule applies where the trial rules orally, the notice of appeal is then filed and the trial court subsequently enters a written judgment. Hence, subsection (e) of this Rule should not be interpreted to allow an untimely filing from the original judgment of conviction to be made timely by a later amendment to the judgment of conviction. *State v. Payan, 128 Idaho 866, 920 P.2d 82 (Ct. App. 1996)*.

Cited in:

Sines v. Blaser, 100 Idaho 50, 592 P.2d 1367 (1979); *State v. Dennard, 102 Idaho 824, 642 P.2d 61 (1982)*; *Crowley v. Lafayette Life Ins. Co., 106 Idaho 818, 683 P.2d 854 (1984)*; *Willis v. Larsen, 110 Idaho 818, 718 P.2d 1256 (Ct. App. 1986)*; *State v. Hancock, 111 Idaho 835, 727 P.2d 1263 (Ct. App. 1986)*; *Lee v. Morrison-Knudsen Co., 111 Idaho 861, 727 P.2d 1289 (Ct. App. 1986)*; *Nations v. Bonner Bldg. Supply, 113 Idaho 568, 746 P.2d 1027 (Ct. App. 1987)*; *State v. Porath, 113 Idaho 974, 751 P.2d 670 (Ct. App. 1988)*; *Wilsey v. Fielding, 115 Idaho 437, 767 P.2d 280 (Ct. App. 1989)*; *Ziemann v. Creed, 121 Idaho 259, 824 P.2d 190 (Ct. App. 1992)*; *Miller v. Haller, 129 Idaho 345, 924 P.2d 607 (1996)*; *Beco Constr. Co. v. Harper Contracting, Inc., 130 Idaho 4, 936 P.2d 202 (Ct. App. 1997)*; *Blaha v. Eagle City Council, 134 Idaho 768, 9 P.3d 1234 (2000)*; *State v. Young, 136 Idaho 113, 29 P.3d 949 (2001)*; *Suter v. Biggers, 157 Idaho 542, 337 P.3d 1271 (2014)*; *Medrain v. Lee, 166 Idaho 604, 462 P.3d 132 (2020)*; *Riverton Citizens Grp. v. Bingham Cnty. Comm'rs, 171 Idaho 898, 527 P.3d 501 (2023)*; Bronco Elite Arts & Ath., LLC v. 106 *Garden City, LLC, -- Idaho --, 534 P.3d 558 (2023)*.

Decisions Under Prior Rule or Statute

Attorney.

Attorney admitted to practice in the district court in which a cause is tried, but not in the Supreme Court, can legally sign notice of appeal and take all steps necessary to perfect such appeal, for until appeal is perfected the case is in the trial court. *Taylor v. McCormick, 7 Idaho 524, 64 P. 239 (1901)*.

Discretion.

It is not necessary that notice of appeal be directed to clerk of lower court. *Westheimer v. Thompson, 3 Idaho 560, 32 P. 205 (1893)*.

Notice of appeal from judgment and order denying new trial is sufficient, although it is entitled solely with names of original parties to the action, and is addressed only to attorneys of the original adverse party; whereas, other parties were brought in by way of cross-complaint filed by appellant, where additional parties appeared by the same counsel as original adverse party to whose attorneys notice is directed. *Idaho Comstock Mining & Milling Co. v. Lundstrum, 9 Idaho 257, 74 P. 975 (1903)*.

Where notice of appeal is addressed to clerk of court and to attorney for defendants, the fact that the attorney designated in the notice did not represent all defendants is not sufficient to vitiate such notice. *Frost v. Alturas Water Co., 11 Idaho 294, 81 P. 996 (1905)*.

Where notice of appeal is addressed to certain parties, naming them, its legal effect is limited to such parties. *Glenn v. Aultman & Taylor Mach. Co., 30 Idaho 727, 167 P. 1163 (1917)*; *Williams v. Sherman, 34 Idaho 63, 199 P. 646 (1921)*; *Mahaffey v. Pattee, 46 Idaho 16, 266 P. 430 (1928)*; *Hutton v. Davis, 56 Idaho 231, 53 P.2d 345 (1935)*.

Where notice of appeal is directed to one party alone, its service upon another party would not effect of bringing such other party before court. *Mahaffey v. Pattee, 46 Idaho 16, 266 P. 430 (1928)*.

Material Defect.

Notice of appeal is defective in form which states that such appeal is from a judgment in favor of plaintiffs, when in fact it is in favor of some of defendants; but where such defect does not affect the substantial rights of respondents it will be disregarded. *Taylor v. McCormick, 7 Idaho 524, 64 P. 239 (1901)*.

Multiple Appeals.

Same notice of appeal may specify both appeal from judgment and appeal from order upon motion for new trial. *McCoy v. Oldham, 1 Idaho 465 (1873)*.

Specificity.

Orders from which the statute makes no provision for appeal may be reviewed on appeal from judgment or order denying new trial, without being specified in notice of appeal. *Warren v. Stoddart, 6 Idaho 692, 59 P. 540 (1899)*.

Research References & Practice Aids

RESEARCH REFERENCES

A.L.R.

Sufficiency of "designation," under *Federal Appellate Procedure Rule 3(c)* or former *Federal Civil Procedure Rule 73 (b)*, of judgment or order appealed from in civil case by notice of appeal not specifically designating such judgment or order. *2 A.L.R. Fed. 545*.

End of Document

Rule 18. Notice of cross-appeal -- Contents.

A notice of cross-appeal shall contain substantially the following information:

(a) Title. The title of the action or proceeding.

(b) Court or Agency Title. The title of the court or agency which heard the trial or proceeding and the name and title of the presiding judge or official.

(c) Case Number. The number assigned to the action or proceeding by the trial court or administrative agency.

(d) Parties. The name of the party cross-appealing and the party's attorney and the name of the adverse party and that party's attorney. An address, phone number and email address must also be given, except no email address is required for persons appearing pro se.

(e) Designation of Appeal. A designation of the judgment or order appealed from shall be deemed to include, and present on appeal, the same interlocutory and final judgments and orders in the same manner as provided for a notice of appeal under Rule 17(e).

(f) Issues. A preliminary statement of the issues on appeal which the cross-appellant then intends to assert in the appeal; provided, any such list of issues on appeal shall not prevent the cross-appellant from asserting other issues on appeal.

(g) Jurisdictional Statement. A statement as to the basis for the right to cross-appeal to the Idaho Supreme Court from the judgments or orders described in paragraph 1 of the notice of cross-appeal.

(h) Transcript. A designation as to what portion, if any, of the reporter's transcript is requested by the cross-appellant in addition to those requested by the appellant in the original notice of appeal, and a certification that the estimated reporter's fee for the transcript requested by the cross-appeal has been paid or that payment is exempt. The notice shall also state whether the cross-appellant's copy of this additional transcript shall be provided in hard copy or electronic format or both. If no election is made within 21 days of filing the notice of cross-appeal, the cross-appellant shall receive a hard copy of the transcript.

(i) Record. A designation of documents, if any, to be included in the clerk's or agency's record in addition to those automatically included pursuant to the following Rule 28 and those designated by the appellant in the initial notice of appeal.

(j) Exhibits -- Civil Cases. A designation of documents, charts, or pictures offered or admitted as exhibits in a trial or hearing, if any, in addition to those requested by the appellant in the original notice of appeal, to be copied and sent to the Supreme Court.

(k) Certification. A certification of the attorney of the cross-appellant, or affidavit of the person representing himself or herself:

(1) That service of the notice of cross-appeal and any request for additional transcript has been made upon the reporter;

(2) That the estimated reporter's fees for the requested transcript, if any, have been paid, or that cross-appellant is exempt from paying such fees for stated reasons;

(3) That the estimated fees for including any additional documents in the clerk's or agency's record have been paid, or that cross-appellant is exempt from paying such fees for stated reasons;

(4) That all appellate filing fees have been paid, or that cross-appellant is exempt from paying such fees because of stated reasons; and

(5) That service has been made upon all other parties required to be served pursuant to Rule 20; and that in all cases referred to in *Section 67-1401(1), Idaho Code*, service has been made upon the attorney general of the state of Idaho.

(l) Amended Notice of Cross-Appeal.

In the event the original notice of cross-appeal erroneously states any of the information and requirements of this rule or additional facts arise after the filing of the initial notice of cross-appeal, the cross-appellant may thereafter file an amended notice of cross-appeal correctly setting forth the facts and information. An amended notice of cross-appeal shall be filed with the clerk of the district court in the same manner as the original notice of cross-appeal but no filing fee shall be required. If the original notice of cross-appeal was timely filed from an appealable judgment, order or decree, the amended notice of cross-appeal will relate back to the date of filing of the original notice of cross-appeal.

(m) Signature. The name and signature of the attorney for the cross-appellant, or name of cross-appellant if the cross-appellant does not have an attorney.

(n) Form.

The notice of cross-appeal shall be in substantially the following form: Click here to view form

(When certification is made by a party instead of the party's attorney the following affidavit must be executed pursuant to Rule 18(i)) Click here to view form

History

(Adopted March 25, 1977, effective July 1, 1977; amended March 31, 1978, effective July 1, 1978; amended April 11, 1979, effective July 1, 1979; amended December 27, 1979, effective

July 1, 1980; amended April 18, 1983, effective July 1, 1983; amended March 30, 1984, effective July 1, 1984; amended June 15, 1987, effective November 1, 1987; amended March 27, 1989, effective July 1, 1989; amended April 3, 1996, effective July 1, 1996; amended February 4, 2008, effective March 1, 2008; amended March 19, 2009, effective July 1, 2009; amended March 29, 2010, effective July 1, 2010.)

Annotations

Case Notes

Cited in:

Mortimer v. Riviera Apts., 122 Idaho 839, 840 P.2d 383 (1992); *Security Pac. Bank v. Curtis, 123 Idaho 320, 847 P.2d 1181 (Ct. App. 1993)*.

Rule 19. Request for additional transcript or clerk's or agency's record -- Payment.

(a) Requests for less than the standard transcript and standard record on appeal. When the appellant has requested less than the standard transcript per I.A.R. 25 or less than the standard clerk's or agency's record per I.A.R. 28, and the respondent wants to include documents that are part of the standard transcript or standard clerk's or agency's record, then the respondent must file a request for this additional material within 14 days of the filing of the notice of appeal or within 14 days of the amended notice of appeal that reduced the standard transcript or standard record requested. The respondent's request must be served upon the appellant and the court reporter or court clerk or administrative agency as appropriate. The appellant must pay the estimated cost of the additional material within 14 days of the requested additions and file a receipt with the court or agency unless otherwise ordered by the court or agency. The additional cost may be taxed to the proper party upon the decision on appeal.

(b) No transcript requested. If the appellant does not request any reporter's transcript in the notice of appeal and the respondent wants to include the reporter's transcript, then the respondent must file a request for this additional material within 14 days of the filing of the notice of appeal or within 14 days of the amended notice of appeal that eliminated the transcript requested. The respondent's request must be served upon the appellant and the court reporter or court clerk or administrative agency as appropriate. The respondent shall be responsible for paying the cost of the reporter's transcript and must pay the estimated cost within 14 days of the requested additions and file a receipt with the court or agency unless otherwise ordered by the court or agency. The request shall also state whether the respondent's copy of the transcript shall be provided in hard copy or electronic format or both. If no election is made within 21 days of filing the request for transcript, the respondent shall receive a hard copy of the transcript.

(c) Requests for documents in addition to the standard transcript and standard clerk's or agency's record. When the appellant has requested the standard transcript per I.A.R. 25 and the standard clerk's or agency's record per I.A.R. 28 and the respondent wants to include additional documents, the respondent must file a request for this additional material within 14 days of the filing of the notice of appeal or within 14 days of the amended notice of appeal that eliminated these additional documents. The respondent's request must be served upon the appellant and the court reporter or court clerk or administrative agency as appropriate. The respondent shall be responsible for paying the cost of the additional documents and must pay the estimated cost of the additional material within 14 days of the requested additions and file a receipt with the

court or agency unless otherwise ordered by the court or agency. The additional cost may be taxed to the proper party upon the decision on appeal.

(d) Preparation of additional transcript or record. The additional transcript or record requested shall be incorporated into the original transcript or record and included in the index and table of contents by the reporter or clerk if reasonably practicable, but may be prepared as a supplemental transcript or record.

(e) Sanctions. If the court concludes that a party or attorney has vexatiously or unreasonably increased the cost of litigation by inclusion of irrelevant materials, the court may deny that portion of the costs the court deems to be excessive and/or impose monetary sanctions. Notice and an opportunity to respond shall be provided before sanctions are imposed.

(f) Form. The request for additional transcript or record, made after the filing of the notice of appeal or notice of cross-appeal, shall be in substantially the following form: Click here to view form

(When certification is made by a party instead of the party's attorney the following affidavit must be executed.) Click here to view form

History

(Adopted March 25, 1977, effective July 1, 1977; amended March 20, 1985, effective July 1, 1985; amended June 15, 1987, effective November 1, 1987; amended March 26, 1992, effective July 1, 1992; amended March 9, 1999, effective July 1, 1999; amended March 1, 2000, effective July 1, 2000; repealed and readopted March 21, 2007, effective July 1, 2007; amended January 3, 2008, effective March 1, 2008; amended February 4, 2008, effective March 1, 2008; amended March 19, 2009, effective July 1, 2009.)

Annotations

Case Notes

Overinclusive Record.

District court did not abuse its discretion in denying a request for deletion of part of the record on appeal; judicial economy favors an overinclusive record, rather than having to go through the additional process of augmentation, if the appellate court finds the record lacking. *Rizzo v. State Farm Ins. Co., 155 Idaho 75, 305 P.3d 519 (2013)*.

Cited in:

Collins v. Collins, 130 Idaho 705, 946 P.2d 1345 (Ct. App. 1997).

Rule 19. Request for additional transcript or clerk's or agency's record -- Payment.

End of Document

I.A.R. Rule 20

State and Federal through Rules promulgated through January 31, 2022

ID - Idaho State & Federal Court Rules > IDAHO APPELLATE RULES

Rule 20. Filing and service of documents.

A notice of appeal or notice of cross-appeal from a district court or an administrative agency, a petition for rehearing, and a petition for review to the Supreme Court are not deemed filed until they are physically received by the clerk of the respective court or administrative agency. For the purpose of filing all other documents involved in the appellate process, and for the purpose of service of all documents upon parties to an action, including service of a copy of a notice of appeal, a petition for rehearing or a petition for review, if the document is transmitted by mail such filing and service shall be deemed complete upon mailing. A certificate of mailing signed by an attorney that a document was properly mailed in the United States mail with postage prepaid to named persons on a day certain shall create a rebuttable presumption that such mailing was so made. At the time of the filing of a notice of appeal or cross-appeal, the appellant or cross-appellant shall serve copies thereof upon all persons who were parties and who appeared in the proceedings below, whether or not they are parties to the appeal, and upon each court reporter from whom a transcript is requested. At the time of the filing of any other document in the appellate process, the party filing the same shall serve a copy thereof upon all other parties to the action who are parties to the appeal, or who were parties in the proceeding below and who could be affected by the appeal; provided, if the parties to be served are numerous or cannot be found the trial court may order substituted service by publication, or otherwise, upon motion of the serving party. The party shall certify such service and the date and manner of service on the original document filed. Upon receipt of the notice of appeal, the Clerk of the Supreme Court shall notify the court reporter(s) identified in the Clerk's Certificate of Appeal that a transcript has been requested.

History

(Adopted March 25, 1977, effective July 1, 1977; amended March 20, 1985, effective July 1, 1985; amended March 28, 1986, effective July 1, 1986; amended June 15, 1987, effective November 1, 1987; amended January 3, 2008, effective March 1, 2008.)

Annotations

Case Notes

Timeliness of Filing
Compliance.
Failure to Serve.
Jurisdiction.

Necessity of Filing.
Order of Filing.
Persons Served.
--Attachment.
--Child Custody.
--Default Judgments.
--Dismissal.
--Foreclosure.
--Industrial Accident Board.
--Intervention.
--Joint and Several Judgments.
--Party to Action.
--Personal Injury.
--Probate.
--Quiet Title Action.
--Special Appearance.
Proof of Service.
Service by Mail or Telegraph.
Service on Attorneys.
Waiver.

Timeliness of Filing

Inmate's appeal of the district court's denial of his petition for post-conviction relief was timely, even though his original notice of appeal was not physically received by the clerk of the court within 42 days of the district court's dismissal order, because, under the mail box rule, the inmate provided ample evidence that he did in fact present a notice of appeal for mailing on August 3, nine days before the August 12 deadline. *Hayes v. State, 143 Idaho 88, 137 P.3d 475 (Ct. App. 2006)*.

Cited in:

Mortimer v. Riviera Apts., 122 Idaho 839, 840 P.2d 383 (1992); *Security Pac. Bank v. Curtis, 123 Idaho 320, 847 P.2d 1181 (Ct. App. 1993)*.

Decisions Under Prior Rule or Statute

Compliance.

Two separate notices of appeal, each directed to one or two adverse parties, were sufficient compliance with former similar provision. *Mendini v. Milner, 47 Idaho 322, 276 P. 35 (1929)*.

Failure to Serve.

A motion to dismiss appeal must be sustained in the absence of service on one of the parties whose interests might be affected by the court's decision. *Finlayson v. Humphreys, 67 Idaho 193, 174 P.2d 210 (1946)*.

Jurisdiction.

Requirement that notice of appeal shall be served on adverse party or his attorney is jurisdictional. *Diamond Bank v. Van Meter, 18 Idaho 243, 108 P. 1042 (1910)*.

Notice must be effectual against necessary and adverse party to appeal in order that court have jurisdiction. *Williams v. Sherman, 34 Idaho 63, 199 P. 646 (1921)*; *Lind v. Lambert, 40 Idaho 569, 236 P. 121 (1925)*, aff'd, *Lambert v. Paysee, 45 Idaho 564, 263 P. 1001 (1928)*; *Abel v. Robert Noble Estate, 43 Idaho 391, 252 P. 493 (1927)*; *In re Dunn's Estate, 45 Idaho 23, 260 P. 432 (1927)*; *Walker v. Jackson, 48 Idaho 18, 279 P. 293 (1929)*.

Serving and filing proper notice of appeal is jurisdictional. *Helgeson v. Powell, 54 Idaho 667, 34 P.2d 957 (1934)*.

Service of notice of appeal on all adverse parties, or their attorney, is necessary to give the Supreme Court jurisdiction of the case. *Finlayson v. Humphreys, 67 Idaho 193, 174 P.2d 210 (1946)*.

Necessity of Filing.

Appeal is not taken until notice is filed and served, both of which acts must be done within statutory time allowed for taking appeal. *Moe v. Harger, 10 Idaho 194, 77 P. 645 (1904)*.

Former similar provision was mandatory, and required appellant to file with proper clerk and serve on adverse party or his attorney notice of appeal. *Adams v. McPherson, 3 Idaho 718, 34 P. 1095 (1893)*; *Richardson v. Banbury, 39 Idaho 1, 225 P. 1023 (1924)*.

Order of Filing.

It was formerly held that filing of notice must precede or be contemporaneous with service of a copy on adverse party (*Slocum v. Slocum, 1 Idaho 589*); but it is now settled that order of filing and serving notice is immaterial, but both acts must be performed within prescribed time. *Arthur v. Mounce, 4 Idaho 487, 42 P. 509 (1895)*.

Persons Served.

Notice of appeal must be served on each party whose interest would be affected by modification or reversal of judgment appeal from, whether such party be plaintiff, defendant, or intervener, and whether he appears or is in default. *Titiman v. Alamance Mining Co., 9 Idaho 240, 74 P. 529 (1903)*; *Miller v. Wallace, 26 Idaho 373, 143 P. 524 (1914)*; *State Bank v.*

Watson, 27 Idaho 211, 148 P. 470 (1915); Bridgham v. National Pole Co., 27 Idaho 214, 147 P. 1056 (1915).

--Attachment.

Husband is not adverse party to his wife who intervenes in attachment suit against him by third party, where, if she can prosecute the action at all, she must do so for their joint benefit, and her appeal will not be dismissed for failure to serve on him. Holt v. Empey, 32 Idaho 106, 178 P. 703 (1919).

--Child Custody.

The maternal grandmother of a minor child of divorced parents was not an "adverse party" upon whom must be served notice of appeal from an order awarding a child's custody to the grandmother, where she was not a party to the custody proceedings between divorced husband and wife, and was not brought in by any order or process of the court and did not seek the custody of the child by petition, but was merely custodian of the child by appointment of the court. Roosma v. Moots, 62 Idaho 450, 112 P.2d 1000 (1941).

--Default Judgments.

Defaulting defendants are not entitled to notice on appeal by other defendants. Aulbach v. Dahler, 4 Idaho 522, 43 P. 192 (1895).

Where judgment is rendered in favor of defendants, all the defendants must be served with notice of plaintiff's appeal, although some of such defendants defaulted. Baker v. Drews, 9 Idaho 276, 74 P. 1130 (1903); Wright v. Spencer, 38 Idaho 447, 221 P. 846 (1923); Lind v. Lambert, 40 Idaho 569, 236 P. 121 (1925), aff'd, Lambert v. Paysee, 45 Idaho 564, 263 P. 1001 (1928).

Where default is entered and right of defendant can not be prejudicially affected by further proceedings in case, he is not entitled to notice of such further proceedings. Lind v. Lambert, 40 Idaho 569, 236 P. 121 (1925), aff'd, Lambert v. Paysee, 45 Idaho 564, 263 P. 1001 (1928); Aulbach v. Dahler, 4 Idaho 522, 43 P. 192 (1895).

Where one defendant did not appear and his default was entered, and during the trial counsel for the other defendant moved the court to dismiss the case as to such defendant, the plaintiff proceeded properly in these circumstances in serving the notice of appeal on counsel of remaining defendant without serving it on the defaulting defendant. Houghtelin v. Diehl, 47 Idaho 636, 277 P. 699 (1929).

Where mortgagor permitted default to be taken against her in mortgage foreclosure suit and was not served with notice of appeal, appellate court was without jurisdiction to entertain appeal. Gibson v. Boone, 47 Idaho 735, 279 P. 409 (1929).

--Dismissal.

Where motion for nonsuit is sustained as to one of several defendants, and verdict is rendered against other defendants, the defendant in whose favor judgment of nonsuit is entered is not adverse party, and need not be served with notice of appeal. *McClain v. Lewiston Interstate Fair & Racing Ass'n, 17 Idaho 63, 104 P. 1015 (1909)*.

--Foreclosure.

On appeal from order refusing to vacate writ of assistance issued after judgment in foreclosure proceedings, judgment of foreclosure is in no way reviewable, and parties to foreclosure proceedings who are not interested in the writ of assistance need not be served with notice of appeal. *Mills v. Smiley, 9 Idaho 325, 76 P. 783, 76 P. 786 (1904)*.

--Industrial Accident Board.

When no one has appeared as general or ad litem guardian for an infant and the general guardian is not named as respondent nor served with notice of appeal, Supreme Court is without jurisdiction to review award by accident board to infant as dependent of deceased employee. *Hutton v. Davis, 56 Idaho 231, 53 P.2d 345 (1935)*.

--Intervention.

Intervener is adverse party and notice of appeal should be served on him. *Berlin Mach. Works v. Bradford-Kennedy Co., 21 Idaho 669, 123 P. 637 (1912)*.

--Joint and Several Judgments.

Where joint judgment is rendered against two or more parties, and appeal is taken by one of them, then all other parties against whom such joint judgment has been rendered are adverse parties, and notice of appeal must be served upon each in order to give appellate court jurisdiction. *Jones v. Quantrell, 2 Idaho 153, 9 P. 418 (1886)*; *Coffin v. Edgington, 2 Idaho 627, 23 P. 80 (1890)*; *Lydon v. Godard, 5 Idaho 607, 51 P. 459 (1897)*; *Lewiston Nat'l Bank v. Tefft, 6 Idaho 104, 53 P. 271 (1898)*; *Doust v. Rocky Mt. Bell Tel. Co., 14 Idaho 677, 95 P. 209 (1908)*; *Diamond Bank v. Van Meter, 18 Idaho 243, 108 P. 1042 (1910)*; *Glenn v. Aultman & Taylor Mach. Co., 30 Idaho 727, 167 P. 1163 (1917)*.

Where there is a several judgment for a different amount against each defendant, one defendant is not an adverse party to appeal by another defendant such as to be entitled to notice. *Aulbach v. Dahler, 4 Idaho 522, 43 P. 192 (1895)*.

Where judgment is rendered in favor of defendants, all defendants must be served with notice of plaintiff's appeal, although some of such defendants defaulted. *Baker v. Drews, 9 Idaho 276, 74 P. 1130 (1903)*.

Where same counsel is attorney for three defendants and only one of them appeals, notice of appeal need not be served upon the nonappealing defendants or their counsel. *Weeter Lbr. Co. v. Fales, 20 Idaho 255, 118 P. 289 (1911)*.

--Party to Action.

Though person may be named in complaint as party to action, he is not an adverse party upon whom notice of appeal must be served where he was not served with process, did not appear in the action, and no judgment was entered either for or against him. *McKinnon v. McIlhargey, 24 Idaho 720, 135 P. 826 (1913)*; *Kissler v. Moss, 26 Idaho 516, 144 P. 647 (1914)*; *Walker v. Jackson, 48 Idaho 18, 279 P. 293 (1929)*.

Not all persons whose interest might possibly be affected by judgment on appeal are entitled to notice, but only those persons who are parties. *Eldridge v. Payette-Boise Water Users Ass'n, 48 Idaho 182, 279 P. 713 (1929)*.

Service of notice of appeal on claimants who have merely filed claims with receiver is not necessary, as they are not parties to action. *Eldridge v. Payette-Boise Water Users Ass'n, 48 Idaho 182, 279 P. 713 (1929)*.

--Personal Injury.

In suit by plaintiff to recover damages for personal injuries sustained while riding in a car to which she had been transferred by a bus driver wherein the verdict of the jury was in favor of plaintiff and driver of car against the bus company but only judgment was in favor of plaintiff against the bus company, the driver of the car was not an adverse party to defendant's appeal so as to require the serving of notice of the appeal papers on the car driver. *Clark v. Tarr, 76 Idaho 383, 283 P.2d 942 (1955)*.

--Probate.

Since title to property of intestate passes to heirs, such heirs are interested parties in sale of property, and where sale has been confirmed by probate court and purchaser appeals from such confirmation, such heirs or their guardian ad litem are adverse parties and must be served with notice of appeal. *Reed v. Stewart, 12 Idaho 699, 87 P. 1002 (1906)*.

Where district court could exercise jurisdiction on appeal in probate proceeding without certain parties being served with notice, it was not necessary to serve such parties with notice of appeal from district court's judgment to *Supreme Court. Kline v. Shoup, 35 Idaho 527, 207 P. 584 (1922)*.

--Quiet Title Action.

Codefendants in quiet title action are both adverse parties, within meaning of former section, notwithstanding that one of the defendants might be called on to answer the other defendant regarding conveyance by former to latter, and where former is not served with notice of the appeal, a motion to dismiss will lie. *Finlayson v. Humphreys, 67 Idaho 193, 174 P.2d 210 (1946)*.

--Special Appearance.

Notice must be served on parties who made a general appearance, but not on parties appearing specially to attack jurisdiction of court. *Kline v. Shoup, 35 Idaho 527, 207 P. 584 (1922)*.

Proof of Service.

It must affirmatively appear from transcript that notice of appeal had been served as required by former section, or appeal will be dismissed. *Anderson v. Knott, 1 Idaho 626 (1876)*; *Tootle v. French, 3 Idaho 1, 25 P. 1091 (1891)*; *Adams v. McPherson, 3 Idaho 718, 34 P. 1095 (1893)*; *Doust v. Rocky Mt. Bell Tel. Co., 14 Idaho 677, 95 P. 209 (1908)*; *Diamond Bank v. Van Meter, 18 Idaho 243, 108 P. 1042 (1910)*; *Chapman v. Boehm, 27 Idaho 150, 147 P. 289 (1915)*; *State Bank v. Watson, 27 Idaho 211, 148 P. 470 (1915)*; *Bridgham v. National Pole Co., 27 Idaho 214, 147 P. 1056 (1915)*; *Cook v. Miller, 30 Idaho 749, 168 P. 911 (1917)*; *Green v. Morrison, 37 Idaho 420, 216 P. 1035 (1923)*; *Richardson v. Banbury, 39 Idaho 1, 225 P. 1023 (1924)*; *Bain v. Tolley, 39 Idaho 174, 226 P. 1069 (1924)*.

Where there is no proof of service of notice of appeal, appeal should be dismissed. *Davis v. Bach, 33 Idaho 551, 196 P. 673 (1921)*.

It is fact of service rather than proof of service upon which jurisdiction of court rests, and on motion to dismiss appeal for lack of service of notice of appeal on adverse parties, it is proper to entertain suggestion for diminution of record accompanied by affidavits showing service on such parties. *Mendini v. Milner, 47 Idaho 322, 276 P. 35 (1929)*.

Motion to dismiss appeal on the ground that notice of service had been omitted from transcript was denied, and augmentation ordered, where proof showed that an affidavit of service had been filed with clerk of district court. *Common Sch. Dist. No. 58 v. Lunden, 71 Idaho 486, 233 P.2d 806 (1951)*.

Service by Mail or Telegraph.

A nonresident defaulting defendant may be served with a notice of appeal by depositing same in the post office. *Titiman v. Alamance Mining Co., 9 Idaho 240, 74 P. 529 (1903)*.

Service of notice of appeal is complete when notice with copy thereof was deposited in mail. *People's Sav. & Trust Co. v. Rayl, 45 Idaho 776, 265 P. 703 (1928)*; *Bothwell v. Keefer, 52 Idaho 737, 20 P.2d 199 (1933)*.

Notice of appeal may be served by mail. *Isaak v. Journey, 52 Idaho 274, 13 P.2d 247 (1932)*; *Bothwell v. Keefer, 52 Idaho 737, 20 P.2d 199 (1933)*.

Where parties to be served with notice of appeal resided at different place from party making service it was proper to serve such notice of appeal by mailing. *Mendini v. Milner, 47 Idaho 322, 276 P. 35 (1929)*.

Notice of appeal may be served by mail and where undertaking is filed simultaneously with the notice of appeal, the appeal is perfected. *Isaak v. Journey, 52 Idaho 274, 13 P.2d 247 (1932)*.

Service of notice of appeal by mail is proper and such service is complete when the notice is deposited in the mail. *Bothwell v. Keefer, 52 Idaho 737, 20 P.2d 199 (1933)*.

Where a copy of a notice of appeal was deposited in the post office in a sealed envelope with postage prepaid, and directed to the respondents' attorney at his post-office address within the 90 days after the entry of the judgment appealed from, and another copy of such notice was transmitted by telegraph to the clerk of the lower court, and filed by him within such time, the notice was duly filed within the time required by law. *Roddy v. State, 64 Idaho 653, 135 P.2d 298 (1943)*.

Service of notice of appeal was sufficient, though the notice telegraphed to the clerk of the lower court and filed by him within the statutory time was not served on respondents. *Roddy v. State, 64 Idaho 653, 135 P.2d 298 (1943)*.

The service of notice of appeal by telegraph is lawful. *Roddy v. State, 64 Idaho 653, 135 P.2d 298 (1943)*.

Service on Attorneys.

Affidavit of service of notice of appeal "upon the attorney for respondent by leaving a true copy thereof at his office in Boise City, Ada County, Idaho territory, on the twenty-first day of May, 1883." is insufficient to show service. *Warner v. Teachenor, 2 Idaho 38, 2 P. 717 (1884)*.

Waiver.

Defective service of notice of appeal is waived by admission of service contained in transcript. *Wilson v. Wilson, 6 Idaho 597, 57 P. 708 (1899)*; *Mendini v. Milner, 47 Idaho 322, 276 P. 35 (1929)*.

Rule 20.1. Filing and service of documents by facsimile machine.

(a) Filing With Court. An application for stay of execution of a criminal or civil judgment or a petition for review, but not the supporting memorandum or brief, may be filed with the Supreme Court by a facsimile machine process. Any other document may be filed with the Supreme Court by a facsimile machine process when there is an emergency and when orally approved by the office of the clerk of the court in advance of filing. The clerk shall file stamp the facsimile copy as an original and the signature on the copy shall constitute the required signature under Rule 11.1. When a brief or memorandum is thereafter filed in support of a document filed by the facsimile process, each copy of the brief or memorandum shall have attached to it a copy of the motion, application or petition which was filed by the facsimile process. Filings may be made with the Supreme Court only during normal working hours. Provided, documents over ten (10) pages in length cannot be filed by the facsimile machine process.

(b) Service of Documents. Service of a document which has been filed with the Supreme Court by facsimile process may be made upon an attorney by transmitting a copy to the office of the attorney by a facsimile machine process. Provided, this rule shall not require a facsimile machine to be maintained in the office of an attorney.

History

(Adopted November 15, 1989, effective January 1, 1990.)

I.A.R. Rule 21

State and Federal through Rules promulgated through January 31, 2022

ID - Idaho State & Federal Court Rules > IDAHO APPELLATE RULES

Rule 21. Effect of failure to comply with time limits.

The failure to physically file a notice of appeal or notice of cross-appeal with the clerk of the district court or an administrative agency, or the failure to physically file a petition for rehearing or a challenge to a final redistricting plan with the clerk of the Supreme Court, each within the time limits prescribed by these rules, shall be jurisdictional and shall cause automatic dismissal of such appeal or petition, upon the motion of any party, or upon the initiative of the Supreme Court. Failure of a party to timely take any other step in the appellate process shall not be deemed jurisdictional, but may be grounds only for such action or sanction as the Supreme Court deems appropriate, which may include dismissal of the appeal.

History

(Adopted March 25, 1977, effective July 1, 1977; amended April 18, 1983, effective July 1, 1983; amended November 20, 2012, effective January 1, 2013.)

Annotations

Commentary

STATUTORY NOTES

Cross References.

I.A.R., Rule 17 (Notice of Appeal); I.A.R., Rule 18 (Notice of Cross-Appeal); I.A.R., Rule 42 (Petition for Rehearing).

Case Notes

Dismissal.
Judgments.
Jurisdiction.
Post-Conviction Relief.
Requirement Jurisdictional.
Timeliness.

Dismissal.

The failure to file the notice of appeal and the failure to file a timely motion which suspends the time period, shall cause automatic dismissal of such appeal upon the motion of any party, or upon the initiative of the *Supreme Court. Wheeler v. McIntyre, 100 Idaho 286, 596 P.2d 798 (1979)*.

The district court erred in dismissing the appeal without an express finding that the failure to "perfect" the appeal has resulted in delay which has prejudiced the respondent. *Neal v. Harris, 100 Idaho 348, 597 P.2d 234 (1979)*.

The requirement of perfecting an appeal within the time period allowed by I.A.R. Rules 11 and 14, is jurisdictional. An appeal taken after expiration of the filing period will be dismissed. *State v. Tucker, 103 Idaho 885, 655 P.2d 92 (Ct. App. 1982)*.

Since there is no rule of criminal procedure which permits a party to file a motion for reconsideration of an order granting a motion to suppress evidence such a motion does not terminate the time for filing notice of appeal under I.A.R. 14(a). Accordingly, where state filed motion for reconsideration of an order granting a motion to suppress but did not file timely notice of appeal from such order, the appeal must be dismissed. *State v. Nelson, 104 Idaho 430, 659 P.2d 783 (Ct. App. 1983)*.

Because the filing by the state of its objection and motion concerning costs and attorney fees did not extend the time to appeal the judgment, the time for appeal had expired when the landowners filed their appeal over three months after entry of judgment in condemnation action; hence the appeal had to be dismissed, as to the judgment. *State ex rel. Moore v. Lawson, 105 Idaho 164, 667 P.2d 267 (Ct. App. 1983)*.

A timely notice of appeal or cross-appeal is a jurisdictional prerequisite to challenge a determination made by a lower court. Failure to timely file such a notice "shall cause automatic dismissal" of the issue on appeal. *Carr v. Carr, 116 Idaho 754, 779 P.2d 429 (Ct. App. 1989)*.

Dismissal of an appeal is a permissible sanction when the appellant fails to file a timely brief. *Hoopes v. Bagley (In re Estate of Bagley), 117 Idaho 1091, 793 P.2d 1263 (Ct. App. 1990)*.

Given the lengthy and repeated extensions of time and counsel's unjustified failure to file the opening brief as expressly ordered by the court, the appeal was dismissed per Idaho App. R. 21. The matter was to be referred to the Idaho State Bar for possible discipline of counsel for failure to pursue the matter with reasonable diligence. *Dep't of Health & Welfare v. Doe (in the Int. of Doe), -- Idaho --, 542 P.3d 295 (2024)*.

Judgments.

A trial court cannot restart the time for appeal by the mere expedient of entering a second judgment identical to the first. *Spreader Specialists, Inc. v. Monroc, Inc., 114 Idaho 15, 752 P.2d 617 (Ct. App. 1987)*, overruled on other grounds, *Walton, Inc. v. Jensen, 132 Idaho 716, 979 P.2d 118 (Ct. App. 1999)*.

Jurisdiction.

Because this rule provides that "any other step" in the appellate process is not jurisdictional, the absence of a motion for acceptance of an appeal did not deprive the district court of jurisdiction. *State v. McCarthy, 133 Idaho 119, 982 P.2d 954 (Ct. App. 1999)*.

Defendant failed to timely file a notice of appeal from district court's appellate decision affirming magistrate's denial of his motion to suppress, choosing instead to proceed on remand to the magistrate in defense of the underlying charge. Court of appeals therefore lacked subject matter jurisdiction over defendant's appeal of magistrate's order. Because defendant did not assert that he would raise any other issues if provided with the opportunity to appeal to the district court the magistrate's final judgment, remand was inappropriate, and his appeal was dismissed. *State v. Savage, 145 Idaho 756, 185 P.3d 268 (2008)*.

Whether an appellate court lacks jurisdiction is a question of law over which that court exercises free review. *Weller v. State, 146 Idaho 652, 200 P.3d 1201 (2008)*.

Post-Conviction Relief.

Court had jurisdiction to consider the merits of the inmate's appeal from the dismissal of his petitions for post-conviction relief because his action in filing the motions and affidavits was the functional equivalent of filing a notice of appeal. Where a litigant files documents with the court within the time limit required by the rules and those documents give notice to other parties and the courts of a litigant's intent to appeal as required by the rules, those documents can be effective as a notice of appeal. *Baker v. State, 142 Idaho 411, 128 P.3d 948 (Ct. App. 2005)*.

Requirement Jurisdictional.

A timely notice of appeal is a jurisdictional requirement. *Johnson v. Pioneer Title Co., 104 Idaho 727, 662 P.2d 1171 (Ct. App. 1983)*.

Appeal filed 43 days after entry of judgment of conviction was untimely under I.A.R. 14 where no intervening motion was made in the case, and the failure to file timely notice was a jurisdictional defect requiring dismissal of the appeal under this rule. *State v. Fuller, 104 Idaho 891, 665 P.2d 190 (Ct. App. 1983)*.

Parties could not waive the appellant's failure to timely file the appeal, since failure to timely file an appeal deprives an appellate court of jurisdiction. *Herrett v. Herrett, 105 Idaho 358, 670 P.2d 63 (Ct. App. 1983)*.

Where the second notice of appeal was not timely under I.A.R. 14, which requires that the notice of appeal be filed within 42 days of the filing of the judgment or post trial order appealed from and nearly two years elapsed from the filing of the order granting a new trial on August 1, 1989, to the filing of the notice of appeal, the notice of appeal was dismissed because it was not timely filed and the timely filing of a notice of appeal is jurisdictional. *Syth v. Parke, 121 Idaho 162, 823 P.2d 766 (1991)*.

State's motion to dismiss charges against the defendant, without prejudice, was a final, appealable order under I.A.R. 11, even though the prosecution intended to immediately refile identical charges, and defendant's failure to file an appeal within 42 days under I.A.R. 14 deprived the appellate court of jurisdiction to review the denial of the motion, pursuant to this rule. *State v. Huntsman, 146 Idaho 580, 199 P.3d 155 (2008)*.

Appellate court lacked jurisdiction to consider respondents' challenge to the district court's decision regarding attorney fees because respondents did not file a cross-appeal. Cannon v. Teel, -- Idaho --, -- P.3d --, *2023 Ida. App. LEXIS 26 (Nov. 1, 2023)*.

Timeliness.

Defendant's notice of appeal was filed 43 days after the judgment of conviction was entered; pursuant to this Rule and I.A.R. 14, defendant's appeal is untimely, and the court therefore lacks jurisdiction to address the substantive issues. *State v. Payan, 128 Idaho 866, 920 P.2d 82 (Ct. App. 1996)*.

The failure to timely file a notice of appeal is jurisdictional and causes automatic dismissal of such appeal. *Walton, Inc. v. Jensen, 132 Idaho 716, 979 P.2d 118 (Ct. App. 1999)*.

Post-conviction petitioner's notice of appeal from a district court's notice of intent to dismiss, though premature and interlocutory in nature, was nevertheless sufficient to effectuate an appeal from a final order dismissing the petition four days after the petitioner's notice of appeal was filed. *Weller v. State, 146 Idaho 652, 200 P.3d 1201 (2008)*.

Appeal was dismissed as untimely because it was not filed with 42 days of the judgment. *Goodman Oil Co. v. Scotty's Duro-Bilt Generator, Inc., 147 Idaho 56, 205 P.3d 1192 (2009)*.

Where defendant relied upon the date of entry of a final order, rather than upon the date of entry of a temporary order which place him on probation, he filed his notice of appeal later than allowed, and the appeal was properly dismissed. *State v. Schultz, 147 Idaho 675, 214 P.3d 661 (2009)*.

Parents timely filed their notice of appeal under this rule where they filed their notice of appeal within 42 days of the trial court's judgment. A prior order was not a final judgment because it was not set out in a separate document, it was not entitled "judgment," and it contained a recital of the trial court's findings of fact, legal reasoning, and conclusions of law. *Hymas v. Meridian Police Dep't, 156 Idaho 739, 330 P.3d 1097 (2014)*.

Because appellants complied with the time restraints imposed by the court, including an emergency order issued due to the pandemic, the court denied respondent's request for sanctions. *Jones v. Lynn, 169 Idaho 545, 498 P.3d 1174 (2021)*.

Cited in:

State v. Smith, 103 Idaho 135, 645 P.2d 369 (1982); *Lindstrom v. District Bd. of Health, 109 Idaho 956, 712 P.2d 657 (Ct. App. 1985)*; *Roll v. City of Middleton, 115 Idaho 833, 771 P.2d 54*

(Ct. App. 1989); *Sartain v. Fidelity Fin. Servs., Inc., 116 Idaho 269, 775 P.2d 161 (Ct. App. 1989)*; *Hunting v. Clark County Sch. Dist. No. 161, 129 Idaho 634, 931 P.2d 628 (1997)*; *Hoskinson v. Hoskinson, 139 Idaho 448, 80 P.3d 1049 (2003)*; *State v. Maynard, 139 Idaho 876, 88 P.3d 695 (2004)*; *Pierce v. State, 142 Idaho 32, 121 P.3d 963 (2005)*; *State v. Savage, 145 Idaho 756, 185 P.3d 268 (2008)*; *State v. Ciccone, 150 Idaho 305, 246 P.3d 958 (2010)*; *State v. Krambule, 163 Idaho 264, 409 P.3d 844 (2017)*.

I.A.R. Rule 22

State and Federal through Rules promulgated through January 31, 2022

ID - Idaho State & Federal Court Rules > IDAHO APPELLATE RULES

Rule 22. Computation of time.

In computing the time period prescribed or allowed for the filing or service of any document in these rules, the day of the act or event after which the designated period of time begins to run is not to be included, but the last day of the period so computed is to be included unless it is a Saturday, Sunday or a non-judicial day, as defined in *Section 1-1607, Idaho Code*, in which event the period runs until the end of the next day which is neither a Saturday, Sunday or a non-judicial day as defined in *Section 1-1607, Idaho Code*.

History

(Adopted March 25, 1977, effective July 1, 1977.)

Annotations

Case Notes

Cited in:

Durst v. Idaho Comm'n for Reapportionment, 169 Idaho 863, 505 P.3d 324 (2022).

End of Document

Rule 23. Filing fees and clerk's certificate of appeal -- Waiver of appellate filing fee.

(a) Filing Fees. The Clerk of the Supreme Court shall charge the following filing fees for appeals and petitions: Click here to view image.

(b) Collection and Transmittal to the Clerk of the Supreme Court. The Clerk of the Supreme Court shall charge and collect the appropriate fee for any petitions initially filed with the Supreme Court. Upon the filing of a notice of appeal, or notice of cross-appeal, the clerk of the district court or administrative agency where the document is filed shall charge and collect the appropriate filing fee and the clerk shall forthwith forward a certified copy of the notice of appeal together with the filing fee to the Clerk of the Supreme Court; provided, an administrative agency may forward the filing fee to the Clerk of the Supreme Court with the Certificate of Appeal. The Clerk of the Supreme Court shall forward all such fees to the state treasurer for deposit in the appropriate fund.

(c) Waiver of Appellate Filing Fee. Any appellate filing fee set forth under subsection (a) of this rule may be waived pursuant to *section 31-3220, Idaho Code*, if such waiver is approved by the Supreme Court. Any party desiring waiver of the appellate filing fee in a civil appeal shall first make application to the district court or administrative agency from which the appeal is taken in accordance with the rules of procedure adopted by the judicial district of the district court or the administrative agency from which the appeal is taken. The order of the district court or administrative agency recommending waiver or no waiver of the appellate filing fee shall be filed by the appellant with the notice of appeal. The appellant shall also file with the notice of appeal a verified petition, motion or affidavit sworn to be the appellant stating:

(1) The name and address of the applicant.

(2) A request for the waiver of the appellate filing fee.

(3) A statement of the factual basis showing the indigency of the applicant to pay such filing fee.

(4) A certification by the applicant that the applicant believes that the applicant is entitled to waiver of the filing fee.

(d) Request for Waiver. All of said documents filed with the district court with the notice of appeal requesting a waiver of the appellate filing fee shall be forwarded by the clerk of the district court to the Supreme Court at the same time and with the notice of appeal. The Clerk of the Supreme Court, upon receiving the notice of appeal and the request for the waiver of the appellate filing fee shall mark all documents as "lodged" indicating the

date and time received. The Supreme Court will rule upon the request for waiver of the appellate filing fee without further briefs or arguments unless otherwise ordered by the Court. If the Supreme Court grants the waiver of the appellate filing fee, it will enter an order to that effect and the Clerk of the Court shall thereupon file the notice of appeal and all other documents relating to the waiver of the appellate filing fee which shall be deemed filed on the date and time they were initially lodged with the Supreme Court. In the event the Supreme Court denies the waiver of the appellate filing fee the Clerk shall so notify the appellant and the notice of appeal and all documents relating to the waiver of the appellate filing fee shall be lodged with the Supreme Court but not filed, and no appeal shall be pending with the Supreme Court unless and until the appellate filing fee is paid by the appellant.

(e) Automatic Waiver. In any appeal in which the appellant or cross-appellant is represented by the Idaho Legal Aid Services, the appellate filing fee shall automatically be waived and the clerk of the district court and the Clerk of the Idaho Supreme Court shall accept the notice of appeal or notice of cross-appeal without the payment of the appellate filing fee.

(f) Certificate of Appeal. Along with the notice of appeal or notice of cross-appeal, the clerk of the district court or the administrative agency shall prepare and send to the Clerk of the Supreme Court a Certificate of Appeal in the form provided by these rules. Provided, if the appeal is from the denial by the trial court of an application for waiver of fees, the clerk shall attach to the Certificate of Appeal copies of the motion or application for waiver of fees, all affidavits and documents presented in support of the motion or application and the order of the trial court denying the same.

(g) Form of Certificate of Appeal. The Certificate of Appeal made by the clerk of the district court or administrative agency for filing with the Supreme Court shall be in the following form: IN THE DISTRICT COURT OF THE JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR COUNTY (IN THE (PUBLIC UTILITIES COMMISSION) (INDUSTRIAL COMMISSION) OF THE STATE OF IDAHO)

History

(Adopted March 25, 1977, effective July 1, 1977; amended April 11, 1979, effective July 1, 1979; amended December 27, 1979, effective July 1, 1980; amended April 3, 1981, effective July 1, 1981; amended March 24, 1982, effective July 1, 1982; amended March 30, 1984, effective July 1, 1984; amended March 20, 1985, effective July 1, 1985; amended June 15, 1987, effective November 1, 1987; amended March 30, 1988, effective July 1, 1988; amended April 5, 1990, effective July 1, 1990; amended April 28, 1983, effective July 1, 1993; April 11, 1994, effective July 1, 1994; amended April 3, 1996, effective July 1, 1996; amended March 24, 2004, effective July 1, 2004; amended March 21, 2007, effective July 1, 2007; amended January 3, 2008, effective March 1, 2008; amended February 4, 2008, effective March 1, 2008; amended January 4, 2010, effective February 1, 2010; amended November 20, 2012, effective January 1, 2013; amended and effective June 26, 2019.)

Annotations

Case Notes

Cited in:

Madsen v. Idaho Dep't of Health & Welfare, 114 Idaho 624, 759 P.2d 915 (Ct. App. 1988).

Rule 24. Reporter's transcript -- Format -- Estimate of fees -- Time for preparation -- Waiver of reporter's fee.

(a) 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.

(b) Additional electronic copy. Once an original transcript in either hard copy or electronic format has been paid for, any party may request an additional electronic copy of the transcript upon payment of $20.00 to the court reporter.

(c) Estimate of reporter's fees -- Filing. Upon the conclusion of any trial in the district court, or proceeding in an administrative agency, the reporter shall estimate the number of pages or cost of preparing a transcript of the trial or proceeding and shall certify the amount thereof in writing which shall be delivered to the clerk and filed in the file of the action or proceeding. In the event the reporter fails to so estimate the fees for a transcript within two (2) days from the conclusion of the trial or proceeding, the estimated fees for preparation of the transcript shall be deemed to be the sum of $200.00, unless the reporter shall thereafter file the reporter's estimated fees before the filing of a notice of appeal; provided, the reporter's estimated fee may be included in the minute entry of the hearing or proceeding or stamped or endorsed thereon.

(d) Payment of estimated reporter's fees to clerk. Before filing a notice of appeal, a party to a trial in the district court or a proceeding in the Public Utilities Commission must first serve a copy of the notice of appeal on the reporter, which may be made by mail to the reporter at the resident chambers of the reporter's judge or the office of the clerk of the Public Utilities Commission addressed to the reporter; and the appealing party shall pay to either the clerk of the district court or the reporter, as determined by the Trial Court

Administrator, the estimated fees for the preparation of any requested transcript in the amount determined under subparagraph (b) of this rule. Upon receipt of the estimated fee or payment in full, the reporter or clerk of the district court, as appropriate, shall file a Notice of Transcript Deposit with the clerk of the district court on a form provided by the Supreme Court. If the estimated transcript fees are paid to the clerk of the district court, the clerk shall hold the same in trust and pay the same to the reporter upon the lodging of the completed transcript by the reporter. The payment of the reporter's fee in appeals from the Industrial Commission or Public Utilities Commission shall be as ordered by the respective Commission.

(e) Time for preparation of transcript. The reporter of any trial or proceedings shall prepare and lodge with the district court or with the administrative agency the requested transcript(s) according to the following:

(1) If the transcript is estimated according to section (c) of this rule to be less than 100 pages in length, the transcript shall be due within 30 days from the date the reporter is notified by the Supreme Court of the requested transcript.

(2) If the transcript is estimated according to section (c) of this rule to be more than 100 pages in length but less than 500 pages in length, the transcript shall be due within 63 days from the date the reporter is notified by the Supreme Court of the requested transcript.

(3) If the transcript is estimated according to section (c) of this rule to be more than 500 pages in length, and the court reporter estimates that additional time above the 63 days set out in section (d)(2) will be needed to complete the transcript, then the court reporter must file a proposed completion schedule with the Supreme Court. This motion for time to file a transcript estimated to be over 500 pages shall be filed on a form approved by the Supreme Court. The court will then determine the due date for the lodging of the transcript with the district court.

(4) In the event a court reporter fails to provide a written summary of the anticipated length of the reporter's transcript according to part (c) of this rule, the reporter's transcript shall be due within 30 days from the date the reporter is notified by the Supreme Court of the requested transcript.

(f) Extensions of time for preparation of transcript. The reporter of any trial or proceeding shall prepare and lodge with the district court or with the administrative agency the requested transcript within the time limits set out in subsection (d) of this rule. If the reporter is unable to meet this deadline an extension of time must be requested from the Idaho Supreme Court. An extension of time for the preparation and lodging of the transcript may be obtained by filing a motion for extension of time with the Idaho Supreme Court at least five days before the transcript is due unless good cause is shown for the failure to timely file a motion. The motion for extension of time shall be on a form approved by the Supreme Court.

(g) Past due transcripts. In the event a transcript is 14 days past due, the clerk of the Idaho Supreme Court shall notify the court reporter, trial court administrator, administrative district judge and the district judge responsible for supervising the reporter, and the trial court administrator shall take appropriate action which may include

(1) imposing disciplinary action,

(2) identifying another official reporter in the district who can provide coverage for court proceedings while the transcript is completed,

(3) implementing a performance improvement plan that requires weekend and evening hours to complete the transcript(s),

(4) identifying an official or a freelance court reporter who will complete the transcript and be compensated as appropriate, or

(5) with approval of the Administrative Director of the Courts, removing the court reporter from the courtroom until the transcript is complete and hiring a different court reporter to provide coverage for court proceedings. In the event a transcript is reassigned to a different court reporter, the court reporter must immediately turn over all notes of the particular proceeding to the trial court administrator. The trial court administrator shall notify the clerk of the Supreme Court of the action taken regarding the transcript, including the anticipated date of filing and any reassignment.

(h) Waiver of reporter's fee. The payment of the reporter's fee as required by this rule may be waived by the district court pursuant to *section 31-3220, Idaho Code*, in accordance with the local rules of the judicial district of the district court.

History

(Adopted March 25, 1977, effective July 1, 1977; amended March 31, 1978, effective July 1, 1978; amended December 27, 1979, effective July 1, 1980; amended April 18, 1983, effective July 1, 1983; amended March 30, 1984, effective July 1, 1984; amended June 15, 1987, effective November 1, 1987; amended July 17, 1996, effective October 1, 1996; amended December 31, 1996, effective January 6, 1997; amended September 2, 1997, effective October 1, 1997; amended January 3, 2008, effective March 1, 2008; amended February 4, 2008, effective March 1, 2008; amended March 19, 2009, effective July 1, 2009; amended March 18, 2011, effective July 1, 2011; amended and effective January 24, 2019; amended April 28, 2021, and effective July 1, 2021; amended and effective September 11, 2024.)

Annotations

Commentary

STATUTORY NOTES

Cross References.

Record on appeal, *§ 13-203*.

Case Notes

Failure to Provide Transcript.
Appeal Expedited.
Costs.
--Waiver.
Effect of Motion.
Extension of Time.
Neglect of Officer.
One Transcript for Separate Appeals.
Presumption of Delivery.
Service and Jurisdiction.
Specification of Errors.

Failure to Provide Transcript.

In petition by mother that child buried in Idaho be exhumed and reinterred in New Mexico, trial court denied father's motion to dismiss on the basis of unclean hands, as the father had wrongfully removed child from New Mexico in violation of court order. Since father failed to provide a full transcript of the proceeding, there was no support for his claim on appeal that the trial court precluded him from producing further evidence on laches, and the denial of his motion was affirmed. *Garcia v. Pinkham (In re Pinkham), 144 Idaho 898, 174 P.3d 868 (2007)*.

Decisions Under Prior Rule or Statute

Appeal Expedited.

Former similar provision, with others, was intended to cheapen and expedite appeals, transferring the duty of preparing appeals from the attorneys to the court officers. *Fischer v. Davis, 24 Idaho 216, 133 P. 910 (1913)*.

It was the intention of the legislature to render the preparation of records and transcripts on appeal less technical and perhaps in some instances to broaden the scope of review on appeal. *Steinour v. Oakley State Bank, 32 Idaho 91, 177 P. 843 (1918)*.

Costs.

Costs may be taxed for printed transcripts. *Ulbright v. Baslington, 20 Idaho 546, 119 P. 294 (1911)*.

Neither court reporter nor clerk is required, or can be compelled, to proceed in the preparation of their respective transcripts until prescribed statutory fees are paid. *Anderson v. White, 51 Idaho 392, 5 P.2d 1055 (1931)*.

--Waiver.

As to waiver of transcript fees or record costs, the initial decision lies with the District Court, subject to appellate review of the District Court's exercise of discretion. *Madsen v. Idaho Dep't of Health & Welfare, 114 Idaho 624, 759 P.2d 915 (Ct. App. 1988)*.

The initial decision regarding the waiver of transcript fees or record costs lies with the district court pursuant to this rule and I.A.R. 27; the district court's decision is discretionary and is subject to appellate review. In the present case, the issue whether transcript fees should be waived was submitted to the Supreme Court through an appellate motion and the Supreme Court denied the motion; this issue was thus foreclosed from further review. *State v. Hardman, 121 Idaho 873, 828 P.2d 902 (Ct. App. 1992)*.

Effect of Motion.

Pendency of motion for new trial does not extend the time for preparing and filing the record on appeal from the judgment. *Idaho Gold Dredging Corp. v. Boise-Payette Lumber Co., 54 Idaho 270, 30 P.2d 1076 (1934)*.

Extension of Time.

District judge has authority to control getting out of reporter's notes and to grant necessary extensions of time for reporter to transcribe his notes and to make all orders in relation thereto. *Fischer v. Davis, 24 Idaho 216, 133 P. 910 (1913)*; *Junction Placer Mining Co. v. Reed, 28 Idaho 219, 153 P. 564 (1915)*; *Moody v. Crane, 34 Idaho 103, 199 P. 652 (1921)*.

A failure to apply for an extension of time within which to file a transcript negatives question of diligence. *Blumauer-Frank Drug Co. v. First Nat'l Bank, 35 Idaho 436, 206 P. 807 (1922)*.

Appellate court will not go behind order made by trial court granting further time to reporter within which to prepare and lodge his transcript with clerk of district court. *Obermeyer v. Kendall, 36 Idaho 144, 209 P. 888 (1922)*.

Neglect of Officer.

Failure on part of officer to prepare and deliver transcript within stipulated time will not work a dismissal of the appeal, unless the appellant has been guilty of laches or contributed to the delay. *Fischer v. Davis, 24 Idaho 216, 133 P. 910 (1913)*; *Moody v. Crane, 34 Idaho 103, 199 P. 652 (1921)*.

It is duty of reporter to keep time for preparing transcript extended, and his failure to do so will not prejudice rights of appellant. *California Gulch Placer Mining Co. v. Patrick, 37 Idaho 661, 218 P. 378 (1923)*.

One Transcript for Separate Appeals.

Where separate appeals by different parties are taken, one of these parties can secure a transcript and the others avail themselves of it for the basing of their appeals, thus saving expense. Where one party obtains a transcript, other appellants refusing to pay for same may not use same on appeal. *Morris-Roberts Co. v. Mariner, 24 Idaho 788, 135 P. 1166 (1913)*.

Presumption of Delivery.

In the absence of a showing of an actual delivery date of the completed copies of the transcript to appellants' attorneys, it may be presumed that delivery was accomplished at the time of filing in this court. *Guiles v. Kellar, 68 Idaho 249, 192 P.2d 853 (1948)*.

Service and Jurisdiction.

Failure to serve reporter's transcript does not justify dismissal of appeal, in the absence of prejudice to the party not served. *Guiles v. Kellar, 68 Idaho 249, 192 P.2d 853 (1948)*.

Where copy of transcript was served on attorney for city in zoning case who delivered transcript to attorney for other adverse parties, there was no prejudice so failure to serve copy on other adverse party was not grounds for dismissal of appeal. *Moerder v. City of Moscow, 74 Idaho 410, 263 P.2d 993 (1953)*.

Specification of Errors.

Reporter's transcript is adequate to present for review any question of insufficiency of evidence which may afterwards be properly presented by specification of insufficiency in brief on appeal. *McKinlay v. Javan Mines Co., 42 Idaho 770, 248 P. 473 (1926)*.

Research References & Practice Aids

RESEARCH REFERENCES

A.L.R.

Determination of indigency of accused entitling him to transcript or similar record for purposes of appeal. *66 A.L.R.3d 954*.

End of Document

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.

(a) Designation of Transcript. The parties are responsible for designating the proceedings necessary for inclusion in the reporter's transcript on appeal. Parties are encouraged and expected to specify a transcript more limited than the standard transcript where appropriate. All requests for transcripts, including a request for a standard transcript in a criminal appeal, must identify the name of the court reporter(s) along with the date and title of the proceeding(s), and an estimated number of pages.

(b) Partial Transcript. The partial transcript shall consist of those portions of the testimony and proceedings specifically designated in the notice of appeal, notice of cross-appeal, or request for additional reporter's transcript under Rule 19.

(c) Standard Transcript -- Civil Appeals. There is no standard transcript in civil appeals. Requested proceedings must identify the name of the court reporter(s) along with the date and title of the proceeding(s), and an estimated number of pages.

(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.

(e) Standard Transcript in Death Penalty Cases. In criminal appeals in which the death penalty was imposed the standard transcript shall include all hearings and proceedings held in the trial court of every nature and description.

(f) Depositions or Statements. Depositions or statements which are read into the record shall be reported by the reporter and shall be included in the reporter's standard transcript or when specifically requested by a party. Depositions or statements which are admitted as exhibits in evidence but not read into the record, and depositions or statements which are not read into the record but which are considered by the court in the trial of the action or by an administrative agency in a proceeding, or in connection with any motion in the action or proceedings, shall not be included in the reporter's transcript, but shall be included in the clerks or agency's record if specifically requested pursuant to Rules 19 or 28(c).

(g) Recorded Testimony.

Any audio recording or audio-visual recording of testimony given under oath and played during the proceeding shall be reported by the reporter and included in the reporter's standard transcript in the same manner as other testimony of the trial or hearing.

History

(Adopted March 25, 1977, effective July 1, 1977; amended March 31, 1978, effective July 1, 1978; amended March 30, 1984, effective July 1, 1984; amended March 20, 1985, effective July 1, 1985; amended June 15, 1987, effective November 1, 1987; amended April 3, 1996, effective July 1, 1996; amended March 18, 1998, effective July 1, 1998; amended March 1, 2000, effective July 1, 2000; amended March 21, 2007, effective July 1, 2007; amended March 19, 2009, effective July 1, 2009; amended March 18, 2011, effective July 1, 2011; amended November 20, 2012, effective January 1, 2013; amended May 5, 2017, effective July 1, 2017.)

Annotations

Commentary

STATUTORY NOTES

Compiler's Notes.

In the introductory language of subsection (c), the words "or proceedings" were reinserted following "action," to correct an inadvertent omission in the Court's Order of March 21, 2007, amending that provision.

For supplementary provisions of this rule applicable to appeals of Snake River Basin Adjudication matters to the Idaho Supreme Court, see Administrative Order 13 (June 25, 2001), set forth in the Appendix to the Idaho Court Rules.

Case Notes

Augmented Records.
Construction with Other Rules.
Excluded Material.
In General.
Recorded Material.
--Specific Request for Material Required.
Amended Pleading.
Augmented Records.
Excluded Material.
Instructions.
Specification of Errors.
Sufficiency of Transcript.

Augmented Records.

Industrial commission did not err by denying a claimant's request to augment the record on appeal, because, although the claimant had the right to request inclusion of additional documents, the commission did not have to duplicate records that were already included in the record on appeal and did not have the obligation - much less the ability - to include that which did not exist. *Fonseca v. Corral Agric., Inc., 156 Idaho 142, 321 P.3d 692 (2014)*, abrogated by *Sims v. Jacobson, 157 Idaho 980, 342 P.3d 907 (2015)*.

Construction with Other Rules.

Where the district court suggested that inclusion of documents relating to the first district court proceeding was mandated by the "shall also include" language of I.A.R. 28(b) and by the "shall contain" language of I.A.R. 25(c), and also reasoned that judicial economy dictated it would be better to include an item that the Supreme Court would be free not to consider than to wrongly strike it and go through the additional process of augmentation, the court properly exercised its discretion in denying the city's request for deletion. *Lamar Corp. v. City of Twin Falls, 133 Idaho 36, 981 P.2d 1146 (1999)*.

Excluded Material.

Although it is within the judge's discretion to order transcripts of proceedings in the magistrate division, a general order for transcripts ordinarily does not include oral arguments by counsel on motions. *Davis v. Davis, 114 Idaho 170, 755 P.2d 3 (Ct. App. 1988)*.

In General.

Appellate records should be tailored to the issues. *State v. Huskey, 106 Idaho 91, 675 P.2d 351 (Ct. App. 1984)*.

Recorded Material.

--Specific Request for Material Required.

Appellants failed to request that contested jury instructions be included in the clerk's record and instead, were attached as an appendix to appellant's opening brief, but to be included in the record, jury instructions must be specifically requested in the notice of appeal pursuant to subsection (e) of this Rule, therefore, the Supreme Court was bound by the record and could not consider the instructions that were not a part of the record. *State ex rel. Ohman v. Talbot Family Trust, 120 Idaho 825, 820 P.2d 695 (1991)*.

Industrial Commission of the State of Idaho did not abuse its discretion by partially denying an employee motion to augment the record because the Commission acted consistently with the rules governing the creation and augmentation of the record on appeal and through the exercise of reason by including the only transcript requested that was in existence; because the Commission reviewed the request under subsection 29(a), it understood the decision to augment the record was discretionary. *Serrano v. Four Seasons Framing, 157 Idaho 309, 336 P.3d 242 (2014)*.

Cited in:

State v. Palin, 106 Idaho 70, 675 P.2d 49 (Ct. App. 1983); *State v. Flint, 114 Idaho 806, 761 P.2d 1158 (1988)*; *State v. Hall, 163 Idaho 744, 419 P.3d 1042 (2018)*.

Decisions Under Prior Rule or Statute

Amended Pleading.

When amended pleading has been filed and no question raised as to original pleading, latter must not be put in transcript. *Ryan v. Old Veteran Mining Co., 35 Idaho 637, 207 P. 1076 (1922)*.

Augmented Records.

Where proceedings could have been obtained to augment transcript, appeal was not dismissable by reason of praecipe failing to ask for an order bringing in a designated additional party or transcript failing to show such order where respondent failed to show wherein order was material to appeal or that any matter necessary to support respondents judgment was omitted from transcript. *Guiles v. Kellar, 68 Idaho 249, 192 P.2d 853 (1948)*.

Excluded Material.

Papers, when not included in reporters transcript and no part of judgment roll, are not properly part of transcript on appeal and should be stricken. *King v. Seebeck, 20 Idaho 223, 118 P. 292 (1911)*; *Baldwin v. Singer Sewing Mach. Co., 48 Idaho 596, 284 P. 1027 (1930)*.

Instructions.

Instructions given or refused and exceptions thereto are properly part of reporter's transcript on appeal, but they may, in response to appellant's praecipe, be included in clerk's transcript. *T.W. & L.O. Naylor Co. v. Bowman, 37 Idaho 514, 217 P. 263 (1923)*.

In a criminal action, instructions given and refused must be included in transcript prepared by reporter and settled by trial judge. *State v. Trathen, 51 Idaho 435, 6 P.2d 150 (1931)*. See *State v. Upham, 52 Idaho 340, 14 P.2d 1101 (1932)*.

When a reporter's transcript is used, appellants should not request the instructions "given, or refused" in praecipe to clerk since statute now imposes duty on court reporter to include them in his transcript. *Peterson v. Hailey Nat'l Bank, 51 Idaho 427, 6 P.2d 145 (1931)*.

Specification of Errors.

Question of insufficiency of evidence to support judgment may be raised on reporter's transcript if presented by specification of insufficiency in brief. *Marnella v. Froman, 35 Idaho 21, 204 P. 202 (1922)*.

"Omissions" from reporter's transcript may be designated as "errors" by respondent on appeal. *Aker v. Aker, 52 Idaho 50, 11 P.2d 372 (1932)*.

Sufficiency of Transcript.

Where the findings of the trial judge are challenged, the practice and statutes in this state declare that the transcript affirmatively show all the evidence. *Nash v. Hope Silver-Lead Mines, Inc., 79 Idaho 137, 314 P.2d 681 (1957)*.

The transcript not containing all the testimony and other evidence, the court must necessarily presume that the evidence justifies the decision and that the findings are supported by substantial evidence. *Nash v. Hope Silver-Lead Mines, Inc., 79 Idaho 137, 314 P.2d 681 (1957)*.

Research References & Practice Aids

Cross References.

Record on appeal, *§ 13-203*.

End of Document

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 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.

(d) Font. The transcript shall be printed in courier or equivalent font style.

(e) Type Size. The type size shall be ten characters to the inch.

(f) Indentions. All indentions for paragraphs and "Q" and "A" shall be seven spaces with subsequent lines extended to the left margin.

(g) Parentheticals. Parenthetical material shall be indented no more than 12 spaces from the left margin with no blank spaces before or after the parenthetical. Parentheticals shall be clear and concise and shall avoid the use of legal terms. The following parentheticals shall be used wherever possible and placed on a single line; Click here to view image.

(h) Colloquies. A colloquies shall begin on the same line as the identification of the speaker, no more than seven spaces from the left margin with subsequent lines extended to the left margin.

(i) Page Breaks. Page breaks shall be used only after a recess or at the beginning of a new day.

(j) Index. Each volume of the reporter's transcript shall contain an index of the contents of the complete reporter's transcript in alphabetical order, describing the proceedings and date, volume number, page and line, together with the name of each witness, form of testimony, (e.g. direct, cross, redirect, etc.) and indicate where each exhibit is marked, offered, admitted, or rejected. The reporter's transcript shall report the trial or proceedings in chronological order. Each index may be separate.

(k) Cover Page. Each volume of the reporter's transcript shall include a cover page, which shall state the title of the Supreme Court and the title of the action in the district court or administrative agency with the names and proper designation of the parties on appeal. The proceedings reported shall be included, together with the title of the district court or administrative agency appealed from, the name of the presiding judge or chair, and the names of the attorneys and the parties for which they appear in the appeal.

(l) Binding.

Each volume of the reporter's transcript shall be bound with a front cover of heavy clear plastic and a back cover of 65 pound paper-stock or heavier material, fastened at the left edge in spiral or plastic-type binding, so as to open as flat as possible. A transcript shall contain no more than 300 pages, unless the transcript can be completed in 350 pages or less.

(m) Format and Pagination. The reporter's transcript shall be prepared in a compressed format in the same arrangement as specified in this rule with the following requirements:

(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 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.

(n) Certificate of Reporter. At the end of the reporter's transcript, the reporter preparing the transcript shall certify that the reporter was the reporter of the trial or

proceeding, or that the reporter was designated by the district court, agency, or Supreme Court to transcribe the proceedings, and that the transcript is a true and accurate report of such trial or proceeding to the best of the reporter's ability, and that the transcript contains all of the material designated in the notice of appeal, any notice of cross-appeal, and any request for additional transcripts, which may have been served upon the reporter.

(o) Filing notice of lodging with the district court.

Upon lodging one or more transcripts with the district court or administrative agency the court reporter shall file a notice of lodging with the district court, a copy of which shall be sent to the Supreme Court by email, fax or letter. The notice shall state that the court reporter has lodged all assigned appellate transcript(s) requested in that appeal and shall list each transcript lodged by date and title of proceeding. If more than one transcript is requested from a court reporter within the same appeal the court reporter shall not file this notice until all transcripts due from that court reporter have been lodged. The notice of lodging shall be file stamped by the district clerk and included in the clerk's record on appeal.

(p) Transcripts on Appeal from the Public Utilities Commission.

On appeal from the Public Utilities Commission, the reporter may file transcripts complying with the Public Utility Commission's rules for preparation of transcripts so long as the first page and cover page of all such transcripts shall state the title of the Supreme Court, the title of the proceedings in the Public Utilities Commission, the names and proper designation of the parties and their counsel.

History

(Adopted July 17, 1996, effective October 1, 1996; amended effective October 1, 1996; amended March 18, 1998, effective July 1, 1998; amended March 19, 2009, effective July 1, 2009; amended April 28, 2021, and effective July 1, 2021.)

Annotations

Commentary

STATUTORY NOTES

Compiler's Notes.

Former Rule 26 which comprised Adopted March 25, 1977, effective July 1, 1977; amended March 30, 1984, effective July 1, 1984; amended March 26, 1992, effective July 1, 1992 was rescinded by Supreme Court Order of July 17, 1995, effective October 1, 1996.

Research References & Practice Aids

Cross References.

Record on appeal, *§ 13-203*.

Rule 26.1. Computer-searchable disks of transcripts. [Repealed]

Repealed effective January 24, 2019.

(Adopted March 20, 1991, effective July 1, 1991.)

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 complete 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, if 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.

(c) Payment of Estimated Fees. Upon the filing of a notice of appeal, or within three (3) working days thereof, the appellant shall pay the clerk an estimated record fee as computed by the clerk of the district court or administrative agency in accordance with subparagraph (b) of this rule, provided, if the estimated fee has not been made within two (2) days after the conclusion of the trial or proceeding, the estimated fees for preparation of the record shall be deemed to be the sum of $100.00 until the actual fee has been computed.

(d) Time for Preparation. The clerk of the district court or administrative agency shall prepare the clerk's or agency's record and have it ready for service on the parties within 28 days of the date of the filing of the notice of appeal. The clerk shall retain the copies of

the clerk's or agency's record until the reporter's transcript, if any, is finished and thereafter cause the same to be settled and forwarded to the Supreme Court as provided by Rule 29. An extension of time for preparation of the record may be obtained by filing a motion for extension of time with the Idaho Supreme Court at least five days before the record is due unless good cause is shown for the failure to timely file a motion. The motion for extension of time shall be on a form approved by the Supreme Court.

(e) 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 *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*.

History

(Adopted March 25, 1977, effective July 1, 1977; amended March 31, 1978, effective July 1, 1978; amended December 27, 1979, effective July 1, 1980; amended March 24, 1982, effective July 1, 1982; amended March 20, 1985, effective July 1, 1985; amended June 19, 1995, effective July 1, 1995; amended March 9, 1999, effective July 1, 1999; amended March 24, 2005, effective July 1, 2005; amended February 4, 2008, effective March 1, 2008; amended April 7, 2008, effective July 1, 2008; amended June 24, 2010, effective July 1, 2010; amended March 18, 2011, effective July 1, 2011; amended May 5, 2017, effective July 1, 2017; amended and effective January 24, 2019; amended April 28, 2021, and effective July 1, 2021; amended April 28, 2022, effective July 1, 2022.)

Annotations

Commentary

STATUTORY NOTES

Compiler's Notes.

For supplementary provisions of this rule applicable to appeals of Snake River Basin Adjudication matters to the Idaho Supreme Court, see Administrative Order 13 (June 25, 2001), set forth in the Appendix to the Idaho Court Rules.

Case Notes

Constitutionality.
Costs.
--Waiver.
Payment of Fees.

Constitutionality.

The fee charged to an appellant for preparation of the clerk's record on appeal did not violate Const., art. 1, § 18, where she did not assert that the fee set by subsection (b) of this rule, $1.25 for each page of the record, was an unreasonable amount, and she made no showing that she should be relieved from the payment of the fee for the clerk's record on grounds of indigency. *Rodell v. Nelson, 113 Idaho 945, 750 P.2d 966 (Ct. App. 1988)*.

Costs.

--Waiver.

As to waiver of transcript fees or record costs, the initial decision lies with the District Court, subject to appellate review of the District Court's exercise of discretion. *Madsen v. Idaho Dep't of Health & Welfare, 114 Idaho 624, 759 P.2d 915 (Ct. App. 1988)*.

The initial decision regarding the waiver of transcript fees or record costs lies with the district court pursuant to I.A.R. 24 and this rule; the district court's decision is discretionary and is subject to appellate review. In the present case, the issue whether transcript fees should be waived was submitted to the Supreme Court through an appellate motion and the Supreme Court denied the motion; this issue was thus foreclosed from further review. *State v. Hardman, 121 Idaho 873, 828 P.2d 902 (Ct. App. 1992)*.

Cited in:

Bernard v. Roby, 112 Idaho 583, 733 P.2d 804 (Ct. App. 1987).

Decisions Under Prior Rule or Statute

Payment of Fees.

Neither court reporter nor clerk is required, or can be compelled, to proceed in the preparation of their respective transcripts until prescribed statutory fees are paid. *Anderson v. White, 51 Idaho 392, 5 P.2d 1055 (1931)*.

Research References & Practice Aids

Cross References.

Record on appeal, *§ 13-203*.

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

End of Document

Rule 28. Preparation of clerk's or agency's record -- Content and arrangement.

(a) Designation of Record. Parties are responsible for designating the documents which will comprise the clerk's record on appeal. The standard record described in subsection (b) is not designed to include many items (i.e., motions for summary judgment, affidavits, jury instructions, etc.) which may be pertinent to the appeal in a specific case. Parties are encouraged to designate a clerk's or agency's record more limited than the standard record.

(b) Content -- Standard Record. The clerk's or agency's record shall automatically include the following pleadings and documents, including the following pleadings and documents filed in the magistrates division:

(1) In civil cases and proceedings, unless limited by designation in the notice of appeal or amended notice of appeal:

A. Register of actions.

B. Any order sealing all or any portion of the record.

C. The original and any amended complaint or petition.

D. The original and any amended answer or response to the complaint or petition.

E. The original and any amended counterclaim, third party claim, or cross-claim.

F. The original and any amended answer or response to a counterclaim.

G. The jury verdict rendered in a jury trial.

H. The findings of fact and conclusions of law and any memorandum decision entered by the court.

I. All judgments and decrees.

J. A list of all exhibits offered, whether or not admitted.

K. Notice of appeal and cross-appeal.

L. Any briefs filed by the parties in an appeal from the magistrates division to the district court.

M. Any request for additional reporter's transcript or clerk's record.

N. A court reporter's notice of lodging with the district court.

O. Table of contents and index, which shall be placed at the beginning of each volume of the record.

(2) In criminal cases and proceedings.

A. Any order sealing all or any portion of the record.

B. Register of actions.

C. All court minutes.

D. All uniform citations, complaints, information and indictments.

E. All orders of the court.

F. All motions filed by either the state or the defendant.

G. All written plea agreements.

H. The jury verdict.

I. The judgment or order withholding judgment.

J. A list of all exhibits offered, whether admitted or not.

K. Presentence Investigation Reports; however, this report shall be forwarded as a confidential exhibit and shall not be placed in the bound clerk's record.

L. Notice of appeal and any notice of cross-appeal.

M. Any briefs filed by the parties in an appeal from the magistrates division to the district court.

N. Any request for additional reporter's transcript or clerk's record.

O. A court reporter's notice of lodging with the district court.

P. In criminal appeals in which the death penalty was imposed, all documents in the trial court file of every nature, kind and description, except that the presentence investigation report shall be forwarded as an exhibit to the record.

(3) In administrative proceedings:

A. Any order sealing all or any portion of the record.

B. Any original or amended complaint, petition, application or other initial pleading.

C. Any answer or response thereto.

D. All documents relating to an application or petition to intervene.

E. Any protest or other opposition filed by a party.

F. A list of all exhibits offered, whether or not admitted.

G. The findings of fact and conclusions of law made by a referee or a hearing officer.

H. The findings of fact and conclusions of law, or if none, any memorandum decision entered by the agency.

I. The final decision, order or award.

J. Petitions for rehearing or reconsideration and orders thereon.

K. Notice of appeal and any notice of cross-appeal.

L. Any request for additional reporter's transcript or agency's record.

M. Table of contents and index.

(c) Additional Documents. The clerk's or agency's record shall also include all additional documents requested by any party in the notice of appeal, notice of cross-appeal and requests for additional documents in the record. Any party may request any written document filed or lodged with the district court or agency to be included in the clerk's or agency's record including, but not limited to, written requested jury instructions, written jury instructions given by the court, depositions, briefs, statements or affidavits considered by the court or administrative agency in the trial of the action or proceeding, or considered on any motion made therein, and memorandum opinions or decisions of a court or administrative agency.

(d) Preparation of Record. The clerk shall prepare the record on paper by making clearly and distinctly legible photocopies or other reproductions of all documents included in the record. The clerk shall type or have typed any document which cannot be reproduced in a distinctly legible form.

(e) Cover of Record. The clerk's or agency's record shall be bound with a cover of 65 pound paper stock or heavier material and shall not have a plastic or acetate cover. The record shall be fastened at the top edge so as to open as flatly as possible.

(f) Arrangement and Numbering. All pleadings, documents, and papers required to be in the clerk's or agency's record shall be inserted chronologically as indicated by the date of filing. Each page of the clerk's or agency's record shall be numbered consecutively at the bottom of the page. The numbering shall include every page included in the record even if it was not a filed document, such as the title page, the table of contents, the index, and the register of actions. Each volume of the clerk's or agency's record shall contain no more than 200 pages unless the record can be completed in 250 pages.

(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.

(h) Certificate of Clerk. The clerk of the court or administrative agency shall certify at the end of the record, that the record contains true and correct copies of all pleadings, documents and papers designated to be included in the clerk's or agency's record by Rule 28, the notice of appeal, any notice of cross-appeal, and any designation of additional documents to be included in the clerk's or agency's record. The clerk's or agency's record shall also include the certificate required by Rule 31(d).

(i) Certificate of Service. The clerk shall certify in the record, or in the clerk's certificate, the date of service of the record and the transcript on the parties or their counsel.

History

(Adopted March 25, 1977, effective July 1, 1977; amended December 27, 1979, effective July 1, 1980; amended March 24, 1982, effective July 1, 1982; amended March 20, 1985, effective July 1, 1985; amended June 15, 1987, effective November 1, 1987; amended March 27, 1989, effective July 1, 1989; amended March 26, 1992, effective July 1, 1992; amended June 19, 1995, effective July 1, 1995; amended March 1, 2000, effective July 1, 2000; amended January 30, 2001, effective July 1, 2001; amended March 22, 2002, effective July 1, 2002; amended April 21, 2007, effective July 1, 2007; amended January 4, 2010, effective February 1, 2010; amended February 27, 2013, effective July 1, 2013; amended December 29, 2015, effective January 1, 2016; amended May 5, 2017, effective July 1, 2017; amended May 1, 2024, effective July 1, 2024.)

Annotations

Commentary

STATUTORY NOTES

Compiler's Notes.

For supplementary provisions of this rule applicable to appeals of Snake River Basin Adjudication matters to the Idaho Supreme Court, see Administrative Order 13 (June 25, 2001), set forth in the Appendix to the Idaho Court Rules.

Case Notes

Construction with Other Rules.
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Jurisdiction of Court.
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Findings of Fact and Conclusions of Law.
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Construction with Other Rules.

Where the district court suggested that inclusion of documents relating to the first district court proceeding was mandated by the "shall also include" language of subsection (b) of this rule and by the "shall contain" language of I.A.R. 25(c), and also reasoned that judicial economy dictated it would be better to include an item that the Supreme Court would be free not to consider than to wrongly strike it and go through the additional process of augmentation, the court properly exercised its discretion in denying the city's request for deletion. *Lamar Corp. v. City of Twin Falls, 133 Idaho 36, 981 P.2d 1146 (1999)*.

Inclusion of Summons.

The original summons was not automatically included in the record for an appeal from a default judgment in a debt collection, thus the mere absence of the summons in the record, without a proper request for its inclusion by defendant, was insufficient upon which to base defendant's allegation of error that there was no valid summons in the record. *Credit Bureau, Inc. v. Harrison, 101 Idaho 554, 617 P.2d 858 (1980)*.

Jurisdiction of Court.

Where, in a criminal case which began in the magistrates division and was appealed from there to the district court, the record as certified by the clerk of the district court did not contain any judgments entered prior to the district court decision, the record did not establish the appellate jurisdiction of the district court and the district court decision on appeal had to be vacated. It necessarily followed that appeal to the Supreme Court as a matter of right on the merits did not exist. *State v. Mason, 102 Idaho 866, 643 P.2d 78 (1982)*.

Record on Appeal.

Industrial commission did not err by denying a claimant's request to augment the record on appeal, because, although the claimant had the right to request inclusion of additional documents, the commission did not have to duplicate records that were already included in the record on appeal and did not have the obligation - much less the ability - to include that which did not exist. *Fonseca v. Corral Agric., Inc., 156 Idaho 142, 321 P.3d 692 (2014)*.

While both exhibits were included in the record on appeal, neither was admitted before the Idaho Industrial Commission, and the exhibits were not considered on appeal in determining whether the Commission's order was supported by substantial and competent evidence. *Shubert v. Macy's West, Inc., 158 Idaho 92, 343 P.3d 1099 (2015)*.

Cited in:

State v. Adams, 115 Idaho 724, 769 P.2d 601 (Ct. App. 1989); *Rizzo v. State Farm Ins. Co., 155 Idaho 75, 305 P.3d 519 (2013)*; *State v. Hall, 163 Idaho 744, 419 P.3d 1042 (2018)*;

Groveland Water Sewer, Dist. (GWSD) v. City of Blackfoot, 169 Idaho 936, 505 P.3d 722 (2022).

Decisions Under Prior Rule or Statute

Certificate.

Clerk's certificate that he considered all the records and files of the cause as contained in the judgment roll, if erroneous, should have been considered in the court below. *Baldwin v. Singer Sewing Mach. Co., 48 Idaho 596, 284 P. 1027 (1930)*.

Where original transcript certified by clerk omitted papers used by judge in denying motion for new trial and clerk refused to execute supplemental certificate on the ground that he was not present at the time the motion was determined, and judge who had retired could not remember what papers were used, and attorneys for appellee refused to join with attorney for appellant in executing a certificate, the latter was entitled to execute the certificate where no contention was made that it was not correct. *Julien v. Barker, 75 Idaho 413, 272 P.2d 718 (1954)*.

A clerk's certificate that the transcript contained "all the pleadings contained in the file which were before the district court at the time said court entered its order from which the appeal is taken," without certifying as to what papers or evidence were presented to the court at the hearing was insufficient. *Scheel v. Rinard, 91 Idaho 736, 430 P.2d 482 (1967)*.

Findings of Fact and Conclusions of Law.

The remarks and statements of the trial court can not be treated as findings of fact and conclusions of law on an appeal from a final judgment when as a requisite to such appeal the appellate court must be furnished with a copy of the judgment roll, which in this particular case included the findings of the trial court. *Roberts v. Roberts, 68 Idaho 535, 201 P.2d 91 (1948)*, modified on other grounds, *Knudson v. Bank of Idaho, 91 Idaho 923, 435 P.2d 348 (1967)*.

Instructions.

On appeal from conviction, instructions given by court embodied in clerk's transcript are properly before court without being included in reporter's transcript. *State v. Upham, 52 Idaho 340, 14 P.2d 1101 (1932)*.

Judgment in Other Case.

Judgment obtained in another case and relied upon in action must be copied into record or certified copy thereof included. *DeBarre v. Tway, 46 Idaho 474, 270 P. 618 (1928)*.

Judgment Roll.

The judgment roll does not become a part of the record on appeal from an order granting or denying a motion for a new trial, unless same was used on hearing of motion in lower court. *Johnston v. Bronson, 19 Idaho 449, 114 P. 5 (1911)*.

Fact that clerk incorporates in judgment roll papers which do not belong there does not make them legally part of judgment roll or entitle them to be brought to appellate court as such, unless record discloses they were used or considered or submitted and their consideration refused at hearing in lower court. *Blandy v. Modern Box Mfg. Co., 40 Idaho 356, 232 P. 1095 (1925)*.

Where the praecipe calls for the pleadings, the findings of the court and the decree, which papers ordinarily constitute the judgment roll, an objection claiming the judgment roll is not included in the praecipe or transcript is immaterial and does not constitute grounds for dismissal of appeal. *Guiles v. Kellar, 68 Idaho 249, 192 P.2d 853 (1948)*.

Memorandum Decision.

Memorandum decision of trial court is no part of the record on appeal, but a motion to strike will be denied where the decision was a document of nine typewritten pages covering every detail in fact, and may have been the trial court's findings on the facts, and was so treated by the parties. *Varkas v. Varkas, 64 Idaho 297, 130 P.2d 867 (1942)*.

A memorandum decision of the trial judge is not properly a part of the record. *Natatorium Co. v. Board of Comm'rs, 67 Idaho 143, 174 P.2d 936 (1946)*.

Motion for New Trial.

Where appellate court is unable to determine from record what papers were used on hearing in lower court, and consequently unable to tell what papers, files, and records should be contained in transcript, appeal from an order overruling a motion for a new trial will be dismissed. *Johnston v. Bronson, 19 Idaho 449, 114 P. 5 (1911)*.

Where the record on appeal does not contain a copy of the order denying motion for a new trial, appeal from such order will be dismissed. *Bulfinch v. Schatz, 37 Idaho 462, 217 P. 983 (1923)*.

Motion to Strike.

Paragraphs of a pleading which are stricken out remain, nevertheless, a part of the judgment roll and of the record on appeal. *Warren v. Stoddart, 6 Idaho 692, 59 P. 540 (1899)*.

Where motion in trial court to strike the cost bill from the files and the rulings of the court thereon are not properly in the record, they can not be considered on appeal. *Fairview Inv. Co. v. Lamberson, 25 Idaho 72, 136 P. 606 (1913)*.

Order denying motion to strike respondent's cost bill can not be reviewed because it is not part of the judgment roll, nor is it one of the papers required to be furnished to the court upon appeal. *Bell v. Stadler, 31 Idaho 568, 174 P. 129 (1918)*.

Presumption on Appeal.

Where an appeal is taken on a judgment roll alone, the Supreme Court must decide the case upon the assumption that the evidence supported the findings made by the trial court. *American Mut. Bldg. & Loan Co. v. Kesler, 64 Idaho 799, 137 P.2d 960 (1943)*.

Research References & Practice Aids

Cross References.

Record on appeal, *§ 13-203*.

End of Document

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.

(b) Filing Transcript and Record with Supreme Court. Upon settlement of the reporter's transcript and the clerk's or agency's record, the clerk of the district court or administrative agency shall, within seven (7) days, file the electronic copy of the transcript and the clerk's or agency's record with the Clerk of the Supreme Court. The Clerk of the Supreme Court shall notify all attorneys of record, or parties appearing in person, of the

date of such filing. Such notification shall also state when the briefs of the parties are required to be filed.

History

(Adopted March 25, 1977, effective July 1, 1977; amended March 31, 1978, effective July 1, 1978; amended March 30, 1984, effective July 1, 1984; amended July 17, 1996, effective October 1, 1996; amended January 30, 2001, effective July 1, 2001; amended March 22, 2002, effective July 1, 2002; amended March 19, 2009, effective July 1, 2009; amended and effective January 24, 2019; amended April 28, 2021, and effective July 1, 2021.)

Annotations

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Record on appeal, *§ 13-203*.

Case Notes

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What Constitutes "Settlement."

Construction with Other Rules.

Even the opportunity to file an objection under this rule is not the last opportunity for a party to request additions to the clerk's records or the reporter's transcript. After the record and transcript

are settled pursuant to this rule, a party may still request augmentation or deletions from the transcript or record by filing a motion with the Supreme Court pursuant to *IAR 30. Collins v. Collins, 130 Idaho 705, 946 P.2d 1345 (Ct. App. 1997)*.

Where the district court minutes were such that meaningful review of the defendant's claims was possible, the failure of appellate counsel to object to the record on appeal or include the transcript from a motion hearing was not fatal to the appeal. *State v. Murphy, 133 Idaho 489, 988 P.2d 715 (Ct. App. 1999)*.

Where the district court suggested that inclusion of documents relating to the first district court proceeding was mandated by the "shall also include" language of I.A.R. 28(b) and by the "shall contain" language of I.A.R. 25(c), and also reasoned that judicial economy dictated it would be better to include an item that the Supreme Court would be free not to consider than to wrongly strike it and go through the additional process of augmentation, the court properly exercised its discretion in denying the city's request for deletion. *Lamar Corp. v. City of Twin Falls, 133 Idaho 36, 981 P.2d 1146 (1999)*.

Record on Appeal.

Industrial commission did not err by denying a claimant's request to augment the record on appeal, because, although the claimant had the right to request inclusion of additional documents, the commission did not have to duplicate records that were already included in the record on appeal and did not have the obligation - much less the ability - to include that which did not exist. *Fonseca v. Corral Agric., Inc., 156 Idaho 142, 321 P.3d 692 (2014)*, abrogated by *Sims v. Jacobson, 157 Idaho 980, 342 P.3d 907 (2015)*.

Voir Dire of Jurors.

Where a voir dire of potential jurors was held in the judge's chambers to determine whether jurors had viewed or heard about defendant wearing handcuffs as he entered the courtroom, and where the transcript of the official court reporter contained the questions asked but not the jurors' responses to those questions, the defendant could not complain of the failure to include the responses in light of the fact that the record on appeal contained no motion for an addition to the reporter's transcript to include the responses of the jurors. *State v. Youngblood, 117 Idaho 160, 786 P.2d 551 (1990)*.

Cited in:

Golden Condor, Inc. v. Bell, 106 Idaho 280, 678 P.2d 72 (Ct. App. 1984); *Selkirk-Priest Basin Ass'n v. State ex rel. Andrus, 127 Idaho 239, 899 P.2d 949 (1995)*; *Rizzo v. State Farm Ins. Co., 155 Idaho 75, 305 P.3d 519 (2013)*; *Ellis v. Ellis, 167 Idaho 1, 467 P.3d 365 (2020)*.

Decisions Under Prior Rule or Statute

Amendments to Transcript.

Amendments to reporter's transcript may be incorporated therein, by reference in court's order settling transcript, to stipulation of parties concerning proposed amendments. *Robinson v. St. Maries Lumber Co., 32 Idaho 651, 186 P. 923 (1920)* (this practice is not to be commended on account of liability to confusion).

Change of Judge.

Judge succeeding in office judge who tried case is authorized to settle transcript. *Aker v. Aker, 52 Idaho 50, 11 P.2d 372 (1932)*.

Delivery to Supreme Court.

When appellant has, within the time fixed by law, done everything the statute requires, the fact that the clerk whose duty it is to deliver the record to the Supreme Court prematurely delivered it, was no ground for striking it from the record. *Williamson v. Wilson, 55 Idaho 337, 42 P.2d 290 (1935)*.

Diminution of Record.

Joinder in error by stipulation that settlement of transcript should constitute true record on appeal estops either party from raising question of diminution of record, so far as joinder in error extended. *Sweaney & Smith Co. v. St. Paul Fire & Marine Ins. Co., 35 Idaho 303, 206 P. 178 (1922)*.

Discretion of Court.

Settlement of reporter's transcript in first instance is by trial court. *Littler v. Jefferis, 35 Idaho 27, 202 P. 602 (1922)*.

Question whether necessary evidence has been omitted from transcript is within discretion of judge who settles transcript. *Aker v. Aker, 52 Idaho 50, 11 P.2d 372 (1932)*.

Failure to Settle.

Supplemental transcript which is not settled or allowed by court is not subject to review on appeal. *Sweaney & Smith Co. v. St. Paul Fire & Marine Ins. Co., 35 Idaho 303, 206 P. 178 (1922)*.

On appeal from judgment or from an order denying a new trial, where no reporter's transcript has been settled and allowed, the Supreme Court can not review whether the trial court's findings are sustained by the evidence, but must assume that there was evidence to justify the findings made. *Anderson v. Walker Co., 38 Idaho 751, 225 P. 144 (1924)*.

On appeal from order of judge other than trial judge refusing to settle transcript, such judge being a stranger to the record, Supreme Court must examine record sas nisi prius court would. *Aker v. Aker, 52 Idaho 50, 11 P.2d 372 (1932)*.

In absence of objection to transcript when served, or suggestion of its incorrectness, fact that there is no order of court settling the transcript is no ground for dismissal of appeal. *Geist v. Moore, 58 Idaho 149, 70 P.2d 403 (1937)*.

Judgment on Findings of Referee.

On appeal from judgment on findings of referee, any adverse ruling of referee saved in reporter's transcript, may be assigned as error and considered same as if proceedings were had before, and in course of trial by, district court. *Morton v. Morton Realty Co., 41 Idaho 729, 241 P. 1014 (1925)*.

Mandamus.

Mandamus lies to compel judge to settle transcript when properly presented. *Johnson v. Ensign, 34 Idaho 374, 201 P. 723 (1921)*.

Necessity of Settlement.

Reporter's transcript is not required to be settled or filed prior to hearing of motion for new trial. *Kelley v. Clark, 21 Idaho 231, 121 P. 95 (1912)*; *Bohannon Dredging Co. v. England, 30 Idaho 721, 168 P. 12 (1917)*.

Former statute left it to the judge alone to settle the transcript, and mere failure of counsel to designate errors did not limit the power of the judge or excuse the necessary statutory requirement of a settlement of such transcript. *Grisinger v. Hubbard, 21 Idaho 469, 122 P. 853 (1912)*.

The transcript of evidence certified to by stenographer must be settled by trial judge to have same reviewed upon appeal to *Supreme Court. Furey v. Taylor, 22 Idaho 605, 127 P. 676 (1912)*; *Chapman v. A.H. Averill Mach. Co., 27 Idaho 213, 147 P. 785 (1915)*; *Wells v. Culp, 30 Idaho 438, 166 P. 218 (1917)*; *Minneapolis Threshing Mach. Co. v. Peterson, 31 Idaho 745, 176 P. 99 (1918)*; *Sweaney & Smith Co. v. St. Paul Fire & Marine Ins. Co., 35 Idaho 303, 206 P. 178 (1922)*; *McCarty v. Warnkin, 35 Idaho 614, 207 P. 1075 (1922)*.

Where stenographer's transcript is not settled on motion made within proper time, appeal must be dismissed. *Edwards v. Anderson, 23 Idaho 508, 130 P. 1001 (1913)*.

Transcript not settled by judge will be stricken on motion. *Strand v. Crooked River Mining & Milling Co., 23 Idaho 577, 131 P. 5 (1913)*; *Chapman v. A.H. Averill Mach. Co., 28 Idaho 121, 152 P. 573 (1915)*.

An order overruling a motion for a new trial can not be considered on appeal where the record fails to contain a transcript of the evidence, duly certified and settled. *Wells v. Culp, 30 Idaho 438, 166 P. 218 (1917)*.

Neglect of Attorneys.

Where attorneys for both parties, due to inattention or lack of interest, fail to proceed to have the reporter's transcript settled, respondent has no grounds for complaint as to delay. *Guiles v. Kellar, 68 Idaho 249, 192 P.2d 853 (1948)*.

Service.

The failure to make service divests the Supreme Court of jurisdiction to consider on appeal the record or that portion thereof involved in the failure of service. *Bohannon Dredging Co. v. England, 30 Idaho 721, 168 P. 12 (1917)*; *Boise-Payette Lumber Co. v. McCarthy, 31 Idaho 305, 170 P. 920 (1918)*; *Columbia Trust Co. v. Balding, 34 Idaho 579, 205 P. 264 (1921)*; *Ft. Misery Hwy. Dist. v. State Bank, 41 Idaho 491, 239 P. 277 (1925)*; *Hudson v. Kootenai Power Co., 48 Idaho 95, 279 P. 619 (1929)*.

Waiver of Time Limitations.

By stipulating that reporter's transcript might be settled by trial court, respondents waived objection that it was not lodged with clerk within required time. *Robinson v. St. Maries Lumber Co., 32 Idaho 651, 186 P. 923 (1920)*.

Where respondent permits transcript to be settled by court without objection, he waives his right to object on the ground that it was not served on him within the statutory time. *Littler v. Jefferis, 35 Idaho 27, 202 P. 602 (1922)*; *Lucas v. City of Nampa, 37 Idaho 763, 219 P. 596 (1923)*.

What Constitutes "Settlement."

Where the transcript is properly certified by the court reporter and contains an acknowledgment of service by counsel for plaintiff and does not show any designation of errors by either party and the completed transcript is properly certified by the clerk, under such circumstances the reporter's transcript is "deemed settled by the judge." *Pacific Fin. Corp. v. Axelsen, 84 Idaho 70, 368 P.2d 430 (1962)*.

Rule 30. Augmentation or deletions from transcript or record.

(a) At any time before the issuance of an opinion, any party may move the Supreme Court to augment or delete from the settled reporter's transcript or clerk's or agency's record. Such a motion shall be accompanied by a statement setting forth the specific grounds for the request and attaching a copy of any document sought to be augmented to the original motion which document must have a legible filing stamp of the clerk indicating the date of its filing, or the moving party must establish by citation to the record or transcript that the document was presented to the district court. In order for augmented pages to be easily identified whether the motion is granted entirely or in part, each page of any document attached to the motion must be separately and sequentially numbered in the following format: Aug. p.l. Any request for augmentation with a transcript that has yet to be transcribed must identify the name of the court reporter(s) along with the date and title of the proceeding(s), and an estimated number of pages, and must contain a certificate of service on the named reporter(s). The motion and statement shall be served upon all parties. Any party may within fourteen (14) days after service of the motion, file a brief or memorandum in opposition thereto. Unless otherwise expressly ordered by the Supreme Court such motion shall be determined without oral argument. The reporter's transcript and clerk's or agency's record may also be augmented or portions deleted by stipulation of the parties and order of the Supreme Court. The filing of a motion to augment shall not suspend or stay the appellate process or the briefing schedule.

(b) Clerk's Fee. The Clerk of the Supreme Court shall charge and collect a fee for the preparation of the augmentation of the record in the sum of $2.00 per page. The order granting augmentation, whether requested by motion or stipulation, shall state the amount of the required fee, which shall be due within fourteen (14) days of the order. Failure to timely pay the fee shall result in the denial of the augmentation.

(c) Form. The request for augmentation with additional transcript that has yet to be transcribed shall be in substantially the following form: Click here to view form

History

(Adopted March 25, 1977, effective July 1, 1977; amended March 31, 1978, effective July 1, 1978; amended April 11, 1979, effective July 1, 1979; amended March 20, 1985, effective July 1, 1985; amended March 26, 1992, effective July 1, 1992; amended March 24, 2005, effective July 1, 2005; amended January 3, 2008, effective March 1, 2008; amended February 4, 2008, effective March 1, 2008; amended March 19, 2009, effective July 1, 2009; amended January 4, 2010, effective February 1, 2010; amended December 5, 2013, effective July 1, 2014; amended

September 1, 2015, effective January 1, 2016; amended and effective January 24, 2019; amended April 28, 2022, effective July 1, 2022.)

Annotations

Commentary

STATUTORY NOTES

Cross References.

Record on appeal, *§ 13-203*.

Case Notes

Construction with Other Rule.
Need for Motion.
Filing.

Construction with Other Rule.

Even the opportunity to file an objection under IAR 29 is not the last opportunity for a party to request additions to the clerk's records or the reporter's transcript. After the record and transcript are settled pursuant to IAR 29, a party may still request augmentation or deletions from the transcript or record by filing a motion with the Supreme Court pursuant to this rule. *Collins v. Collins, 130 Idaho 705, 946 P.2d 1345 (Ct. App. 1997)*.

Where the district court minutes were such that meaningful review of the defendant's claims was possible, the failure of appellate counsel to object to the record on appeal or include the transcript from a motion hearing was not fatal to the appeal. *State v. Murphy, 133 Idaho 489, 988 P.2d 715 (Ct. App. 1999)*.

Need for Motion.

The court of appeals will not address the issue of a denied motion to augment the record made before the supreme court, absent some basis for renewing the motion. This may occur via a renewed motion, with new evidence to support it, filed with the court of appeals or the presentation of refined, clarified, or expanded issues on appeal that demonstrates the need for additional records or transcripts, in effect renewing the motion. *State v. Cornelison, 154 Idaho 793, 302 P.3d 1066 (2013)*.

Cited in:

State v. Simonson, 112 Idaho 451, 732 P.2d 689 (Ct. App. 1987); *Ellis v. Ellis, 167 Idaho 1, 467 P.3d 365 (2020)*.

Decisions Under Prior Rule or Statute

Filing.

Supplemental transcript which is not filed within time allowed by rules of court can not be reviewed on appeal. *Sweaney & Smith Co. v. St. Paul Fire & Marine Ins. Co., 35 Idaho 303, 206 P. 178 (1922)*.

Rule 30.1. Corrections of transcript or record.

(a) By Stipulation. At any time after the filing of a transcript or record with the Supreme Court the parties may, by stipulation filed with the Court, correct any statement in the transcript or record. The stipulation shall clearly identify the volume, page and line of the statement to be corrected, and upon filing with the Court the clerk shall attach the stipulation to the transcript or record and no order of the Court shall be necessary.

(b) By Motion. Any party to an appeal may file a motion for the correction of a statement in a transcript or record filed with the Supreme Court by filing a motion in accordance with Rule 32. The Supreme Court may rule upon the motion directly or may refer that portion of the transcript or record to the trial court or administrative agency for settlement, in which case the ruling of the trial court or agency shall be final.

History

(Adopted March 20, 1985, effective July 1, 1985.)

Rule 30.2. Augmentation of record on appeal with copy of an ordinance.

(a) By motion. Any party may move the Supreme Court to augment the record on appeal with a copy of an ordinance. A certified copy of the ordinance shall be attached to the motion, and the motion shall be accompanied by a statement setting forth the specific grounds for the request, including that the ordinance was in effect at the time of the action or occurrence at issue in the appeal. The party shall file the original of the motion and statement and shall serve a copy of the motion and statement upon all parties. Any party may, within fourteen (14) days after service of the motion, file a brief or memorandum in opposition thereto. Unless otherwise expressly ordered by the Supreme Court, such motion shall be determined without oral argument. The filing of a motion to augment shall not suspend or stay the appellate process or the briefing schedule.

(b) By stipulation. The parties may augment the record on appeal by filing with the Court a stipulation stating that the copy of the ordinance attached to the stipulation was in effect at the time of the action or occurrence at issue in the appeal.

History

(Adopted March 19, 2009, effective July 1, 2009; amended and effective January 24, 2019.)

Rule 31. Exhibits, recordings and documents.

(a) Lodging with Supreme Court. The clerk of the district court or administrative agency shall lodge all of the following exhibits, recordings and documents with the Supreme Court:

(1) Copies of all requested documents, charts and pictures offered or admitted as exhibits in a trial or hearing in a civil case and copies of all documents, charts and pictures offered or admitted as exhibits in a trial or hearing in a criminal case, except that pictures or depictions of child pornography shall not be copied and sent to the parties or the Supreme Court unless specifically ordered by the court. Documentary exhibits in pdf format may be sent to the Supreme Court on a CD that includes an index. All other exhibits shall be retained by the clerk of the district court or administrative agency, unless otherwise ordered by the Supreme Court. The clerk shall forward to the Supreme Court photographs of all other exhibits in death penalty cases. Upon the request of a party in other cases, the clerk shall forward to the Supreme Court photographs of designated exhibits.

(2) All records and transcripts filed with the district court or administrative agency.

(3) All transcripts from the magistrate's division of the district court.

(4) All audio and audio-visual recordings offered or played during the proceedings.

(b) Documentary Exhibits. In any criminal or post-conviction case where a documentary exhibit, including a pre-sentence report, is transmitted to the Supreme Court for use in an appellate proceeding, the district court shall serve a copy of the documentary exhibit on the attorney general and on appellate counsel for the defendant, subject to the confidentiality provisions of I.C.A.R. 32. Copies of documentary exhibits in pdf format may be sent on a CD that includes an index. However, pictures or depictions of child pornography that are separately identified pursuant to I.C.R. 32 (e)(1) shall not be transmitted to the parties or the Supreme Court unless specifically requested.

(c) Certificate of Clerk or Secretary. The clerk, secretary, or the officer responsible for collecting exhibits offered or admitted at the trial or hearing shall file a certificate with the Supreme Court certifying the exhibits, recordings and copies of documents which have been lodged with the Supreme Court, specifically identifying each item lodged, and listing and describing those exhibits which are retained by the clerk or secretary. In the event there are no exhibits to be lodged with the Supreme Court, the certificate shall specifically state that no exhibits were lodged.

(d) Time for Lodging. Unless otherwise directed by the Supreme Court, the above exhibits, recordings and documents shall be lodged with the Supreme Court at or before the time that the reporter's transcript and clerk's record are lodged with the Supreme Court.

(e) Disposition of Exhibits. Unless otherwise ordered by the Supreme Court under Rule 31.1, the Supreme Court will retain the exhibits until ninety (90) days after final determination of the appeal, at which point the court will return all original exhibits and retain an electronic copy of all documentary exhibits.

History

(Adopted June 15, 1987, effective November 1, 1987; amended March 27, 1989, effective July 1, 1989; amended March 18, 1998, effective July 1, 1998; amended November 17, 1999, effective December 1, 1999; amended March 22, 2002, effective July 1, 2002; amended April 7, 2008, effective July 1, 2008; amended March 19, 2009, effective July 1, 2009; amended March 29, 2010, effective July 1, 2010; amended November 20, 2012, effective January 1, 2013.)

Annotations

Commentary

STATUTORY NOTES

Compiler's Notes.

A former rule 31 (Adopted March 25, 1977, effective July 1, 1977; amended March 20, 1985, effective July 1, 1985) was rescinded by Supreme Court order of June 14, 1987, effective November 1, 1987.

Case Notes

Augmented Record.
Certification of Exhibits.
Praecipe for Transcript.
Reading of Original Exhibits.

Augmented Record.

Industrial Commission of the State of Idaho did not abuse its discretion by partially denying an employee motion to augment the record because the Commission acted consistently with the rules governing the creation and augmentation of the record on appeal and through the exercise of reason by including the only transcript requested that was in existence; because the Commission reviewed the request under subsection 29(a), it understood the decision to

augment the record was discretionary. *Serrano v. Four Seasons Framing, 157 Idaho 309, 336 P.3d 242 (2014)*.

Cited in:

State v. Adams, 115 Idaho 724, 769 P.2d 601 (Ct. App. 1989).

Decisions Under Prior Rule or Statute

Certification of Exhibits.

Failure to certify exhibits is not jurisdictional and does not entitle respondent to dismissal of appeal. *Douglas v. Kenney, 40 Idaho 412, 233 P. 874 (1925)*.

Propriety of admitting certain exhibits in trial court can not be determined on appeal when they have not been certified to appellate court. *Hayes v. Independent Sch. Dist. No. 9, 45 Idaho 464, 262 P. 862 (1928)*.

Praecipe for Transcript.

Where appellant's praecipe for transcript does not direct the inclusion of exhibits and such exhibits are not included, the propriety of their admission or exclusion cannot be determined on appeal. *Dawson v. Eldredge, 89 Idaho 402, 405 P.2d 754 (1965)*.

Reading of Original Exhibits.

Court may refuse to permit withdrawal of original judicial records and may require reading of original exhibits into record, or introduction of certified copies. *Evans v. District Court, 50 Idaho 60, 293 P. 323 (1930)*.

Research References & Practice Aids

Cross References.

Record on appeal, *§ 13-203*.

I.A.R. Rule 31.1

State and Federal through Rules promulgated through January 31, 2022

ID - Idaho State & Federal Court Rules > IDAHO APPELLATE RULES

Rule 31.1. Reclaiming exhibits, documents or property.

At any time after the commencement of an appeal, any interested party or person may file a motion with the Supreme Court for an order permitting the reclamation by such party or person of exhibits offered or admitted in evidence, documents or property displayed or considered in connection with the action, or any property in the possession of any court, department, agency or official. The Supreme Court in its discretion may grant such an order on such conditions and under such circumstances as it deems appropriate, including but not limited to the substitution of a copy, photograph, drawing, facsimile, or other reproduction of the original exhibit, document or property, or the posting of a bond that the exhibit, document or property will be returned if either the Supreme Court or the trial court later orders that such exhibit, document or property be returned to the court for any purpose in the action or appeal.

History

(Adopted June 15, 1987, effective November 1, 1987.)

End of Document

Rule 32. Motions -- Time for filing -- Briefs.

(a) Motions to Dismiss. A motion for involuntary dismissal of an appeal with prejudice for failure to comply with these rules must be filed at least 21 days before oral argument on the merits; provided, a motion to dismiss an appeal for failure to timely physically file a notice of appeal or to dismiss a petition for rehearing for failure to timely physically file a petition for rehearing may be made at any time.

(b) Voluntary Motions to Dismiss. At any point before issuance of an opinion, any appealing party may move the court to dismiss the party's appeal with prejudice. The court may tax costs and attorney fees as though the non-appealing party had prevailed.

(c) Other Motions. All other motions permitted under these rules, other than a motion to dismiss, may be made at any time, before or after oral argument.

(d) Briefs or Statements to Accompany Motions. All motions shall include or be accompanied by a brief, statement, or affidavit in support thereof and service shall be made upon all parties to the appeal. Absent a certificate that the motion is uncontested, the non-moving party shall, as soon as practicable, file a notice of non-objection if the party does not intend to object. Any party may file a brief or statement in opposition to the motion within 14 days from service of the motion. Any application for an extension of time to perform an act under this rule must be accompanied by an affidavit setting forth the reasons or grounds in support thereof. If the opposing party has been contacted and has no objection to the motion the following certificate may be attached: CERTIFICATE OF UNCONTESTED MOTION

(e) Size and Number of Copies. All motions, notices, affidavits, statements, motion briefs, or any other documents filed with the court should be typed on 8 1/2 x 11 inch paper. The body of all such documents may be typed with double line spacing or one-and-one-half (1 1/2) line spacing. Only the original of each motion, brief, statement, affidavit or memorandum shall be filed with the clerk of the Supreme Court. No copies are required. Prisoners incarcerated or detained in a state prison or county jail may file documents that are legibly hand-printed in black ink, in whole or in part, that otherwise conform to the requirements of these rules.

(f) Oral Argument. All motions will be considered and disposed of without oral argument unless otherwise ordered by the Supreme Court.

History

(Adopted March 25, 1977, effective July 1, 1977; amended March 31, 1978, effective July 1, 1978; amended April 18, 1983, effective July 1, 1983; amended March 23, 1990, effective July 1, 1990; amended January 30, 2001, effective July 1, 2001; amended March 21, 2007, effective July 1, 2007; amended May 5, 2017, effective July 1, 2017; amended and effective January 24, 2019; amended April 28, 2022, effective July 1, 2022.)

Annotations

Case Notes

JUDICIAL DECISIONS

Decisions Under Prior Rule or Statute

Premature Motion.

Motion to dismiss appeal made when reporter's transcript had not been settled was premature, although more than six months had elapsed after appeal was perfected. *Welch v. Spokane Int'l Ry., 32 Idaho 668, 186 P. 915 (1920)*.

Rule 33. Stipulation for dismissal.

At any point before the issuance of an 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.

History

(Adopted March 25, 1977, effective July 1, 1977; amended March 28, 1986, effective July 1, 1986; amended and effective September 8, 2016; amended May 5, 2017, effective July 1, 2017.)

Rule 33.1. Stipulation for vacation, reversal or modification of judgment. [Rescinded.]

Annotations

Commentary

STATUTORY NOTES

Compiler's Notes.

This rule (adopted March 23, 1990, effective July 1, 1990) was rescinded by order of the Supreme Court of January 30, 2001, effective July 1, 2001.

Rule 34. Briefs on appeal -- Number -- Length -- Time for filing -- 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, 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. In an appeal on unitary review of a capital criminal and post-conviction case, no brief in excess of 100 pages, 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.

(c) Time for Filing. Appellant's brief shall be filed with the clerk of the Supreme Court within 35 days of the date that the reporter's transcript and the clerk's or agency's record have been filed with the Supreme Court. The respondent's and cross-appellant's brief, which may be joined in one brief, shall be filed within 28 days after the service of appellant's brief. The cross-respondent's brief, if any, shall be filed within 28 days after the cross-appellant's brief. Any reply brief shall be filed within 21 days after service of any respondent's brief.

(d) Extension. A motion for extension of time for filing a brief may be made no later than the due date for the appellate brief and shall be supported by an affidavit setting forth:

(1) The date when the brief is due;

(2) The number of extensions of time previously granted, and if extensions were granted the original date when the brief was due;

(3) Whether any previous requests for extensions of time have been denied or denied in part;

(4) The reasons or grounds why an extension is necessary;

(5) The number of days of extension deemed necessary and the date on which the brief would become due;

(6) Whether there has been any stipulation of the parties for this application for extension, which stipulation shall not be binding upon the Court;

(7) The position of the opposing parties concerning the application, and whether or not the opposing parties have verbally expressed their agreement or disagreement;

(8) What assurance there is that the brief will be filed within the extended time requested.

Extensions of time for filing briefs shall not be favored and will be granted by the Supreme Court only upon a clear showing of good cause and as provided in Rule 46.

(e) Augmentation of Briefs.

(1) At any time before the issuance of an opinion, any party may supplement his brief by the citation of additional authority, identifying the issue on appeal to which it pertains, without written comment thereon, and identifying the headnote or relevant pages of the authority cited. This augmentation may be done by written notice to the court and all parties without first obtaining leave of the court.

(2) At any time before the issuance of an opinion, any party may file a motion to augment the authority and argument presented in his brief. Such motion shall be filed in accordance with Rule 32, with or without the supplemental brief attached, and will be granted by the court upon a showing of good cause why the material had not been included in the prior brief. An order granting a motion to augment a brief will state the time within which any reply brief of an adverse party can be filed.

History

(Adopted March 25, 1977, effective July 1, 1977; amended April 11, 1979, effective July 1, 1979; amended April 18, 1983, effective July 1, 1983; amended March 30, 1984, effective July 1, 1984; amended March 28, 1986, effective July 1, 1986; amended June 15, 1987; effective November 1, 1987; amended January 1, 1995, effective January 1, 1995; amended March 9, 1999, effective July 1, 1999; amended January 30, 2001 and March 30, 2001, effective July 1, 2001; amended March 24, 2005, effective July 1, 2005; amended March 21, 2007, effective July 1, 2007; amended March 18, 2011, effective July 1, 2011; amended May 5, 2017, effective July 1, 2017; amended and effective January 24, 2019; amended April 28, 2021, and effective July 1, 2021; amended April 28, 2022, effective July 1, 2022.)

Annotations

Case Notes

Court-Appointed Counsel.
Failure to File Brief.
Meritless Appeal.

Court-Appointed Counsel.

A court-appointed attorney who believes that his or her client's appeal is without merit must still submit a brief in accordance with this rule. *Freeman v. State, 131 Idaho 722, 963 P.2d 1159 (1998)*.

Failure to File Brief.

Where defendant in fraud case, who was also attorney, appealed pro se and failed to file a brief under this rule and I.A.R. 35, the judgment was affirmed since, absent compliance with the Appellate Rules, the Supreme Court of Idaho will not search the record for error. *Woods v. Crouse, 101 Idaho 764, 620 P.2d 798 (1980)*.

Meritless Appeal.

Requiring a court-appointed attorney who believes that his or her client's appeal is without merit to file a brief under this rule does not mean an appellant has a constitutional right to counsel in the post-conviction proceedings or that procedures outlined in *Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967)* are applicable. *Freeman v. State, 131 Idaho 722, 963 P.2d 1159 (1998)*.

Cited in:

Duff v. Bonner Bldg. Supply, Inc., 103 Idaho 432, 649 P.2d 391 (Ct. App. 1982); *State v. Langdon, 117 Idaho 115, 785 P.2d 679 (Ct. App. 1990)*; *Estes v. Barry, 132 Idaho 82, 967 P.2d 284 (1998)*.

Rule 34.1. Electronic Copies of Briefs. [Repealed]

Repealed effective January 24, 2019.

(Adopted March 21, 2007, effective July 1, 2007; amended December 29, 2015, effective January 1, 2016; amended May 5, 2017, effective July 1, 2017.)

Rule 35. Content and arrangement of briefs.

(a) Appellant's Brief. The brief of the appellant shall contain the following divisions under appropriate headings:

(1) Table of Contents. A table of contents, with page references, which shall include an outline of the Argument section of the brief.

(2) Table of Cases and Authorities. A table of cases (alphabetically arranged), statutes and other authorities cited, with references to the pages of the brief where they are cited.

(3) Statement of the Case.

(i) A statement of the case indicating briefly the nature of the case.

(ii) The course of the proceedings in the trial or the hearing below and its disposition.

(iii) A concise statement of the facts.

(4) Issues Presented on Appeal. A list of the issues presented on appeal, expressed in the terms and circumstances of the case but without unnecessary detail. The statement of the issues should be short and concise, and should not be repetitious. The issues shall fairly state the issues presented for review. The statement of issues presented will be deemed to include every subsidiary issue fairly comprised therein.

(5) Attorney Fees on Appeal. If the appellant is claiming attorney fees on appeal the appellant must so indicate in the division of issues on appeal that appellant is claiming attorney fees and state the basis for the claim.

(6) Argument. The argument shall contain the contentions of the appellant with respect to the issues presented on appeal, the reasons therefor, with citations to the authorities, statutes and parts of the transcript and record relied upon.

(7) Conclusion. A short conclusion stating the precise relief sought.

(b) Respondent's Brief. The brief of the respondent shall contain the following divisions under appropriate headings:

(1) Table of Contents. A table of contents, with page references, which shall include an outline of the argument section of the brief.

(2) Table of Cases and Authorities. A table of cases (alphabetically arranged), statutes and other authorities cited, with references to the pages of the brief where there [they] are cited.

(3) Statement of the Case. A statement of the case to the extent that the respondent disagrees with the statement of the case set forth in appellant's brief.

(4) Additional Issues presented on Appeal. In the event the respondent contends that the issues presented on appeal listed in appellant's brief are insufficient, incomplete, or raise additional issues for review, the respondent may list additional issues presented on appeal in the same form as prescribed in Rule 35(a)(4) above.

(5) Attorney Fees on Appeal. If the respondent is claiming attorney fees on appeal the respondent must so indicate in the division of additional issues on appeal that respondent is claiming attorney fees and state the basis for the claim.

(6) Argument. The argument should contain the contentions of the respondent with respect to the issues presented on appeal, the reasons therefor, with citations to the authorities, statutes and parts of the transcript and record relied upon.

(7) Conclusion. A short conclusion stating the precise relief sought.

(c) Other Briefs. The appellant or cross-appellant may file a brief in reply to the brief of the respondent or cross-respondent within the time limit specified by Rule 34(c) which may contain additional argument in rebuttal to the contentions of the respondent. An amicus curiae brief may be permitted by order of the Court, pursuant to Rule 8. If the respondent has filed a cross-appeal, the appellant shall file a cross-respondent's brief which shall contain all of the requirements of Rule 35(b), above, and, unless otherwise ordered by the court, it shall be combined with appellant's reply brief.

(d) References in Briefs to Parties. Counsel will be expected in their briefs and oral arguments to keep to a minimum reference to parties by such designations as "appellant," "respondent," and "cross-appellant." To promote clarity and simplicity in the presentation of written and oral contentions of the parties to the Supreme Court, the counsel shall use the designations used in the trial court or other proceedings under review, or the actual names of the parties, or descriptive terms such as the "employee," the "employer," the "landlord," etc.; provided, all references to a minor shall be by the use of initials or a designation other than the minor's actual name.

(e) 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". References to the reporter's transcript and clerk's record must be within the body of the brief, and shall not be included as footnotes or endnotes.

(f) Reproduction of Statutes, Rules, Regulations, Decisions, Etc. If determination of the issues presented on appeal requires the study of statutes, rules, regulations, recent court decisions not yet published, or relevant parts thereof, they may be reproduced in the brief or in an addendum at the end of the brief.

(g) Real Property Disputes. In cases involving easements, boundary disputes, or other types of real property disputes, the brief shall include a map, diagram, illustrative drawing, or other document depicting (i) the lay of the land, (ii) the location of the parcels or pieces of property in dispute, and (iii) the location of any features of or on the land that are pertinent to identify the matters in dispute, including but not limited to easements, roads, trails, boundaries, markers, fences, and structures. The parcels, pieces and features depicted shall be labeled so as to adequately identify them. The document shall be based upon testimony or evidence in the record with citations to such supporting evidence.

(h) Briefs in Cases Involving Multiple Parties. In cases involving more than one appellant or respondent, including cases consolidated for purposes of appeal, any number of parties to the appeal may join in a single brief, and any party may adopt by reference any part of the brief of another party.

(i) Briefs in Criminal Appeals Involving Only Challenges to the Revocation of Probation or the Severity of Sentence. In criminal appeals involving only claims regarding the revocation of probation, the severity of the sentence, or a motion brought under Idaho Criminal Rule 35, the brief of the appellant and respondent need not contain a table of contents, table of cases and authorities, or citations to authorities.

History

(Adopted March 25, 1977, effective July 1, 1977; amended March 31, 1978, effective July 1, 1978; amended March 20, 1985, effective July 1, 1985; amended June 15, 1987, effective November 1, 1987; amended March 27, 1989, effective July 1, 1989; amended April 3, 1996, effective July 1, 1996; amended March 9, 1999, effective July 1, 1999; amended March 1, 2000, effective July 1, 2000; amended January 30, 2001, effective July 1, 2001; amended October 17, 2003; amended April 1, 2009, effective July 1, 2009; amended March 28, 2014, effective July 1, 2014; amended and effective January 24, 2019; amended April 28, 2022, effective July 1, 2022.)

Annotations

Case Notes

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Cited in:

Barton v. Bd. of Regents, -- Idaho --, 550 P.3d 293, 2024 Ida. LEXIS 55 (June 7, 2024).

Argument.

The defendants apparently intended the I.R.C.P. 68 issue to be part of their cross-appeal, but the appellate court could not address that issue because the defendants did not comply with subsection (a)(6) of this *Rule. Weaver v. Searle Bros., 129 Idaho 497, 927 P.2d 887 (1996)*.

An award of attorney fees on appeal in favor of the insurer was proper where the appeal was frivolous and where the brief was inadequate pursuant to *Idaho R. App. P. 35(a)(6). Sprinkler Irrigation Co. v. John Deere Ins. Co., 139 Idaho 691, 85 P.3d 667 (2004)*.

Although a former employee was proceeding pro se in his appeal of an Idaho Industrial Commission decision denying his unemployment insurance benefits claim, he was held to the same pleading standards as individuals who were represented by counsel, and the court could not consider seven of his claims on appeal because the employee had not supported the claims by propositions of law, by citation to legal authority, or by legal argument. *Huff v. Singleton, 143 Idaho 498, 148 P.3d 1244 (2006)*.

Because a power company devoted only a footnote in its appellate brief to a discussion of two issues relating to a term condition in a hydropower water right license, and neither issue was adequately supported by legal authority or argument, the court declined to address the issues. *Idaho Power Co. v. Idaho Dep't of Water Res. (In re Licensed Water Right No. 03-7018) 151 Idaho 266, 255 P.3d 1152 (2011)*.

Where an appellant fails to assert his assignments of error with particularity and to support his position with sufficient authority, those assignments of error are too indefinite to be heard by an appellate court. *Minor Miracle Prods., LLC v. Starkey, 152 Idaho 333, 271 P.3d 1189 (2012)*.

Appellants failed to present relevant argument and authority to support several of their arguments to achieve a new trial, because they tended to make the same arguments before the supreme court as they did before the district court, without demonstrating how the district court erred. *McCandless v. Pease, 166 Idaho 865, 465 P.3d 1104 (2020)*.

Appellant's conclusory allegations and assertions of fact that the magistrate court improperly shifted the burden of proof, without citation to the record below, were not sufficient to support an argument on appeal. Not only did appellant provide no authority to support appellant's position, but appellant failed to cite to any portion of the record to show that the magistrate court shifted

the burden of proof in the case. *Nicholson v. Bennett (In re Doe), 166 Idaho 720, 462 P.3d 1184 (2020)*.

-- Failure to Support.

Where defendant vaguely asserted that he raised genuine factual issues regarding counsel's performance at trial yet did not identify any and where defendant had not pointed to a single deficiency in trial counsel's performance and did not mention or support allegations that evidence of an out-of-state conviction and confession were inadmissible, district court's summary dismissal of defendant's application for post-conviction relief was affirmed. *Smith v. State, 129 Idaho 162, 922 P.2d 1088 (Ct. App. 1996)*

The failure to support an alleged error with argument and authority is deemed a waiver of the issue. *East v. West One Bank, 120 Idaho 226, 815 P.2d 35 (Ct. App. 1991)*, cert. denied, *504 U.S. 996, 112 S. Ct. 2948, 119 L. Ed. 2d 571 (1992)*.

Where the plaintiff did not comply with this rule in that it failed to support its claim for attorney fees on appeal by propositions of law, authority or argument, the appellate court could not consider the claim. *Interlode Constructors, Inc. v. Bryant, 132 Idaho 443, 974 P.2d 89 (Ct. App. 1999)*.

The court declined to consider an award of fees where the plaintiffs failed to address the request in the argument section of their brief. *McVicker v. City of Lewiston, 134 Idaho 34, 995 P.2d 804 (2000)*.

Where a civil appellant provided insufficient argument and no authority to support his contentions, the appellate court would not relax Idaho App. R. 35(a)(4), and those issues were not considered on appeal. *Haight v. Dale's Used Cars, Inc., 139 Idaho 853, 87 P.3d 962 (Ct. App. 2003)*.

In a mother's challenge to a child custody decision, because many of her arguments had no citations to any evidence in the record or relevant legal authority, they were barred. *Michalk v. Michalk, 148 Idaho 224, 220 P.3d 580 (2009)*.

Buyers failed to comply with this rule with respect to their argument that the trial court abused its discretion by failing to grant their motion for a new trial; there was no citation to the record for many of the alleged facts, and there was neither argument nor supporting authority as to why any of the alleged facts constituted a ground for a new trial or why the district court abused its discretion in failing to grant the motion for a new trial. *Bolognese v. Forte, 153 Idaho 857, 292 P.3d 248 (2012)*.

Appellant waived on appeal the issue of the district court's order to strike portions of an affidavit by the appellant's attorney because the appellant offered no argument or authority on the issue in the appellant's appellate brief. *Shea v. Kevic Corp., 156 Idaho 540, 328 P.3d 520 (2014)*.

Appellant's brief did not satisfy the standard for the arguments that had to be made on appeal, and the fact that the Clerk of the Court was directed to accept her third brief for filing because it

finally had a section labeled "argument" did not mean that the substance of the document was found proper under *Idaho App. R. 35(a)(6). Dorr v. Idaho Dep't of Labor, 171 Idaho 306, 520 P.3d 1266 (2022)*.

Attorney Fees.

Where a lender was appealing from a judgment denying all relief against the guarantor of loans on which the borrower defaulted, the appeal necessarily embraced the obligation imposed by the attorney fee provisions of the guaranty instruments; therefore, even though the lender had not specified denial of attorney fees as an issue on appeal, the district court on remand should have awarded attorney fees to the lender. *Industrial Inv. Corp. v. Rocca, 102 Idaho 920, 643 P.2d 1090 (Ct. App. 1982)*.

Dairyman's action against farmer for nondelivery of hay was based entirely upon the existence of a contract. Although dairyman failed to prove a contract, that failure should not insulate dairyman from having to pay a reasonable award of attorney fees to the prevailing party. Because farmer prevailed in an action brought to recover damages for the breach of contract for the sale of hay, he was entitled to a reasonable award for attorney fees incurred in bringing the appeal. *Hilt v. Draper, 122 Idaho 612, 836 P.2d 558 (Ct. App. 1992)*.

No award of attorney fees on appeal was made where the plaintiff sought such an award as an additional claim in its issues on appeal, but failed to include any argument or authority in its opening brief. *Sprenger, Grubb & Assocs. v. City of Hailey, 133 Idaho 320, 986 P.2d 343 (1999)*.

When attorney fees are requested by either party, but are not discussed in the argument portion of the brief, the request will not be considered by the court. *Bouten Constr. Co. v. H.F. Magnuson Co., 133 Idaho 756, 992 P.2d 751 (1999)*.

Doctor's request for attorney fees did not comply with Idaho App. R. 35(b)(6) because he failed to provide argument in support of his request. *Goldman v. Graham, 139 Idaho 945, 88 P.3d 764 (2004)*.

This rule did not provide a mechanism by which an appellate court could award attorney fees because the rule merely required that a party indicate in the "Issues on Appeal" section of its brief that it was seeking attorney fees. *Commercial Ventures v. Lea Family Trust, 145 Idaho 208, 177 P.3d 955 (2008)*.

Investor was not entitled to attorney fees on appeal because the case presented an issue of first impression and the husband and wife, who brought the claim against their fellow investor who had been paid profits in an investment Ponzi scheme, prevailed on appeal. *Christian v. Mason, 148 Idaho 149, 219 P.3d 473 (2009)*.

While paragraph (a)(6) directs an appellant to address his entitlement to attorney's fees in the argument section of his brief, paragraph (a)(5) can be read as allowing appellant to address attorney's fees solely in a section devoted to that topic. *Knipe Land Co. v. Robertson, 151 Idaho 449, 259 P.3d 595 (2011)*.

Father was not awarded attorney's fees on appeal as he did not comply with the requirements of (b)(5), and the mother had a good faith basis for arguing that her decision not to go to school was a substantial and material change of circumstances. *Evans v. Sayler, 151 Idaho 223, 254 P.3d 1219 (2011)*.

Idaho Appellate Rule 41 and paragraph (a)(5) of this rule merely set forth the procedural steps necessary for a party to seek attorney fees on appeal and do not provide an independent basis for an award of attorney fees. *Collection Bureau, Inc. v. Dorsey, 150 Idaho 695, 249 P.3d 1150 (2011)*.

Lessor sufficiently complied with this rule by presenting citation to authority and argument supporting its claim for attorney fees. *Pocatello Hosp., LLC v. Quail Ridge Med. Investor, LLC, 156 Idaho 709, 330 P.3d 1067 (2014)*.

Payees of promissory notes were not entitled to an award of attorney's fees on appeal from the summary judgment entered in their favor, because they failed to comply with the appellate rules in requesting attorney's fees as the payees did not present any argument or citation to facts in the record showing that there was a commercial transaction in the payor issuing the notes to the payees. *Lee v. Litster, 161 Idaho 546, 388 P.3d 61 (2017)*.

Award.

In an action on a credit card account, a bank was not entitled to an award of attorney's fees on appeal because the bank failed to cite to any legal authority authorizing such an award. Idaho App. R. 41 merely set forth the procedure for awarding attorney's fees on appeal; neither Idaho App. R. 35 nor Idaho R. Civ. P. 54(e)(1) provide any authority for such an award, and the bank failed to provide any argument that the action fit within the provisions of I.C. *§ 12-120(3). Capps v. FIA Card Servs., N.A., 149 Idaho 737, 240 P.3d 583 (2010)*.

--Burden of Proof.

Despite respondents' deficient briefing on appeal when respondents' brief included no citations to legal authorities, the appellate court still had to determine whether appellant showed that the district court erred because it was appellant that bore the burden of proving error and respondents bore no such burden. *Allen v. Campbell, 169 Idaho 125, 492 P.3d 1084 (2021)*.

Cross-Appeal Not Required.

Even if a district court determined that defendant was not entitled to a Franks hearing after improperly hearing in-camera testimony, the district court's decision was correct because defendant should not have been granted a hearing in a prior order; therefore, the State did not seek affirmative relief and properly brought the issue of defendant's entitlement to a Franks hearing as an additional issue on appeal under I.A.R. 35(b)(4) instead of being required to cross appeal from the previous district court order under *I.A.R. 15(a). State v. Fisher, 140 Idaho 365, 93 P.3d 696 (2004)*.

Failure to Designate Issues.

Failure to designate issues on appeal is cause for denying an appeal as it is not the duty of the appellate court to review the record for errors; however, the rule may be relaxed if the briefing addressed an issue through authority or argument. *Everhart v. Washington County Rd. & Bridge Dep't, 130 Idaho 273, 939 P.2d 849 (1997)*.

Refusal to award attorney's fees on appeal in the parties' contract dispute action was appropriate because the lessee did not present any argument justifying an award of attorney fees. In fact, the lessee did not even state that it was entitled to attorney fees. *Independence Lead Mines Co. v. Hecla Mining Co., 143 Idaho 22, 137 P.3d 409 (2006)*.

Failure to File Brief.

Where defendant in fraud case, who was an attorney, appealed pro se and failed to file a brief under I.A.R. 34 and this rule, the judgment was affirmed since, absent compliance with the Appellate Rules, the Supreme Court of Idaho will not search the record for error. *Woods v. Crouse, 101 Idaho 764, 620 P.2d 798 (1980)*.

Failure to Raise Issue.

The Supreme Court will not review the actions of a district court which have not been specifically assigned as error, especially where there are no authorities cited nor argument contained in the briefs upon the question. *State v. Hoisington, 104 Idaho 153, 657 P.2d 17 (1983)*.

The Supreme Court would not review an issue that neither party raised or argued in their briefs. *State v. Hoisington, 104 Idaho 153, 657 P.2d 17 (1983)*.

Where the issue of whether an attorney signed a complaint was not raised in the trial court, the court would not address the award of attorney fees and costs against the attorney. *Sun Valley Shopping Ctr., Inc. v. Idaho Power Co., 119 Idaho 87, 803 P.2d 993 (1991)*.

Where defendant has not affirmatively shown how he was prejudiced by the court's jury instructions the court will not presume error. *State v. Walker, 121 Idaho 18, 822 P.2d 537 (Ct. App. 1991)*.

Taxpayer appealed from the decision of the District Court determining the amount of tax, penalty, and interest taxpayer owed; in its initial brief presented to the court, taxpayer raised only issues concerning the correctness of the District Court's decision on the merits of the State Tax Commission's redetermination and concerning taxpayer's entitlement to attorney fees on appeal. In neither its initial brief nor in its reply brief did taxpayer cite authorities or present argument challenging the District Court's decision upholding the board's dismissal of taxpayer's appeal; therefore, the Idaho Supreme Court would not consider whether the District Court

correctly upheld the board's dismissal of taxpayer's appeal. *Grand Canyon Dories, Inc. v. Idaho State Tax Comm'n, 121 Idaho 515, 826 P.2d 476 (1992)*.

Because the statute of frauds is an affirmative defense that must be pled, where the defendants did not list the threshold issue of waiver with respect to their statute of frauds defense as an issue on appeal or otherwise address the issue in their opening brief, the issue was not preserved on appeal. *Rowley v. Fuhrman, 133 Idaho 105, 982 P.2d 940 (1999)*.

Where the defendant failed to list violation of the state constitution as an issue on appeal from a summary judgment ruling that the school district violated teachers' due process rights in terminating extra day assignments, and where the defendant failed to argue the issue in its opening brief, the appellate court declined to consider the issue. *Lowder v. Minidoka County Joint Sch. Dist., 132 Idaho 834, 979 P.2d 1192 (1999)*.

The court refused to consider the issues of breach of contract and bad faith where the plaintiffs failed to raise them in their initial brief. *Rhead v. Hartford Ins. Co., 135 Idaho 446, 19 P.3d 760 (2001)*.

Defendant files an appellate brief challenging testimony from a DNA expert on Sixth Amendment grounds, but did not raise his hearsay challenge until his reply brief. This rule did not prevent appellate review of the hearsay challenge, because the State had an adequate opportunity to respond. *State v. Watkins, 148 Idaho 418, 224 P.3d 485 (2009)*.

An appellant's failure to include in his initial appellate brief a fair statement of an issue presented for review results in waiver of the issue. This rule will be relaxed when the issue is supported by argument in appellant's opening brief. Appellant may not raise an issue, including statute of limitations, in a reply brief. *Weisel v. Beaver Springs Owners Ass'n, 152 Idaho 519, 272 P.3d 491 (2012)*.

Where a party requests attorney fees on appeal, but does not address the issue in the argument section of the party's brief, the court will not address the issue because the party has failed to comply with this rule. *Morrison v. Northwest Nazarene Univ., 152 Idaho 660, 273 P.3d 1253 (2012)*.

Failure to Support.

Bulk of the landowner's claims on appeal would not be considered by the Idaho Supreme Court because the landowner failed to support them with relevant argument and authority. *Bach v. Bagley, 148 Idaho 784, 229 P.3d 1146 (2010)*.

Property owner failed to provide any argument or authority to support his claim that the trial court abused its discretion by denying a motion to disqualify an irrigation district's counsel on grounds that the counsel and a member of the district board were father and son. Accordingly, the issue was waived on appeal. *Bettwieser v. New York Irrigation Dist., 154 Idaho 317, 297 P.3d 1134 (2013)*.

Husband listed a claim of error in award of attorney fees in his appellate brief, but, because he did not provide any argument or authority on the issue, it could not be addressed on appeal. *Davidson v. Soelberg, 154 Idaho 227, 296 P.3d 433 (2013)*.

In a case involving unemployment benefits, a claimant's assertion that he was entitled to a waiver of an overpayment reimbursement requirement was not addressed on appeal because a one sentence argument on this issue did not satisfy the appellate rule. *Lebow v. Commercial Tire, Inc., 157 Idaho 379, 336 P.3d 786 (2014)*.

In an appeal from a judgment regarding the division of property, spousal maintenance, and attorney fees, the ex-wife waived her issues on appeal because she failed to provide sufficient support for the appellate court to review her claims. The ex-wife never directly cited the record at any point in her briefing. Breckon v. Breckon, -- Idaho --, -- P.3d --, *2024 Ida. App. LEXIS 22 (Sept. 5, 2024)*.

Relief Sought.

Appellant's brief contained a sufficient statement of the relief sought and was in compliance with *Idaho App. R. 35(a)(7). SE/Z Constr., L.L.C. v. Idaho State Univ., 140 Idaho 8, 89 P.3d 848 (2004)*.

Reply Brief.

Petitioner failed to raise a genuine issue of material fact for any of his claims of ineffective assistance of appellate counsel, and these claims in his successive petition were conclusory, plus he failed to support any of these allegations with admissible evidence; specifically, he failed to allege how appellate counsel's decision not to file a reply brief constituted objectively deficient performance or prejudiced his appeal, and the order summarily dismissing his successive petition was affirmed. *Heilman v. State, 158 Idaho 139, 344 P.3d 919 (2015)*.

Party waited until her reply brief to make certain argument, but one could not raise new issues in a reply brief, and thus the party failed to raise the issue. *Shubert v. Macy's West, Inc., 158 Idaho 92, 343 P.3d 1099 (2015)*.

Despite respondents' deficient briefing on appeal when their brief included no citations to legal authorities, the appellate court still had to determine whether appellant showed that the district court erred because it was appellant that bore the burden of proving error and respondents bore no such burden. *Allen v. Campbell, 169 Idaho 125, 492 P.3d 1084 (2021)*.

Statement of Issue on Appeal.

Where the appellant's statement of issue was really nothing more than a general invitation to search the record for error, in that it did not identify any findings of fact, statements of law, or application of law to facts, that were assertedly in error, the brief did not comply with the requirements of subdivision (a)(3) of this rule with respect to that issue and consequently the

issue would not be considered on appeal. *Drake v. Craven, 105 Idaho 734, 672 P.2d 1064 (Ct. App. 1983)*.

Contractor was awarded appellate attorney fees and costs in customers' appeal of an award of attorney fees and costs to the contractor as the prevailing party in a property damage action because the contractor properly raised the issue of attorney fees on appeal by listing it as a separate issue in the contractor's first appellate brief and addressing it in detail with supporting argument and authority. *Crump v. Bromley, 148 Idaho 172, 219 P.3d 1188 (2009)*.

District court did not err in summarily dismissing defendant's petition for post-conviction relief as defendant's brief failed to comply with this rule, by not including a statement of issues and not assigning specific error to the district court's actions. Defendant needed to explain how the district court erred in applying the statutory and case law to the facts of his case; and he failed to cite to any authority supporting his argument by making a class of claims, which were effectively unreviewable. *Roberts v. State, 163 Idaho 660, 417 P.3d 986 (2018)*.

Statement of Issues.

Where plaintiff's brief on appeal failed to denominate any issues to be reviewed as required by this rule, the Supreme Court of Idaho will not review the record for error. *Jensen v. Doherty, 101 Idaho 910, 623 P.2d 1287 (1981)*.

The failure of appellant to include an issue in the statement of issues as required by subdivision (a)(4) of this rule will eliminate the consideration of that issue in the appeal; however, this rule might be relaxed where the issue was addressed by authorities cited or arguments contained in the briefs. *State v. Prestwich, 116 Idaho 959, 783 P.2d 298 (1989)*, overruled on other grounds, *State v. Guzman, 122 Idaho 981, 842 P.2d 660 (1992)*.

Failure of the appellant to include an issue in the statement of issues required by subdivision (a)(4) of this rule will eliminate consideration of that issue on appeal. *Kugler v. Drown, 119 Idaho 687, 809 P.2d 1166 (Ct. App. 1991)*.

Since the state of issues presented will be deemed to include every subsidiary issue fairly comprised therein, in divorce action in deciding issues of property valuation and division, a claim of failure to make sufficient findings respect to an issue of the valuation of community interest in a business, will be subsumed in the broader question of whether a trial court's findings with respect to that issue are in error. *Jensen v. Jensen, 124 Idaho 162, 857 P.2d 641 (1993)*.

Although the failure to include an issue in the statement of issues will generally eliminate the issue from consideration on appeal, this rule may be relaxed where the issue or issues were addressed by authorities cited or arguments contained in the briefs; thus, although growers bringing action against Department of Agriculture for negligent inspection of commodities warehouse failed to provide a statement of issues, their arguments and the authority presented in their brief were construed as raising certain issues for review. *Crown v. State, Dep't of Agric., 127 Idaho 188, 898 P.2d 1099 (Ct. App. 1994)*.

Subsidiary Issue.

Where defendant did not raise a particular issue in his appellate brief, but rather, he raised the issue for the first time during oral arguments before the Court of Appeals, although an issue which neither party has raised or argued in their briefs will usually not be considered on appeal, subdivision (a)(4) of this rule also provides that an appellant's statement of the issues will be deemed to include every subsidiary issue fairly comprised therein, and the issue was heard. *State v. Robison, 119 Idaho 890, 811 P.2d 500 (Ct. App. 1991)*.

Unspecified Errors.

It is implicit in this rule that the Court of Appeals will not search a trial record for unspecified errors. *State v. Crawford, 104 Idaho 840, 663 P.2d 1142 (Ct. App. 1983)*.

Waiver.

The failure to support an alleged assignment of error with argument and authority is deemed a waiver of the assignment. *State v. Burris, 101 Idaho 683, 619 P.2d 1136 (1980)*.

Although an appellant bears the burden of showing error in its brief and noncompliance with the rule constitutes a waiver of that assignment of error, respondent's failure to address an issue in its brief does not mandate reversal of the district court's ruling. *Idaho Power Co. v. Cogeneration, Inc., 134 Idaho 738, 9 P.3d 1204 (2000)*.

Issues on appeal that are not supported by propositions of law or authority are deemed waived and will not be considered. *Wheeler v. Idaho Dep't of Health & Welfare, 147 Idaho 257, 207 P.3d 988 (2009)*.

Mortgagor waived any due process argument because she failed to raise any due process challenges before the district court, and she failed to provide the supreme court with any legal authority on appeal regarding due process. *Fed. Home Loan Mortg. Corp. v. Butcher, 157 Idaho 577, 338 P.3d 556 (2014)*.

Mortgagor waived her argument that a bank's failure to record its assignment of a deed of trust to the purchaser at a foreclosure sale precluded the purchaser from buying the property with a credit bid because the mortgagor did not preserve the specific credit bid issue for review; the mortgagor failed to properly frame and preserve the credit bid issue in both the magistrate court and the district court. *Fed. Home Loan Mortg. Corp. v. Butcher, 157 Idaho 577, 338 P.3d 556 (2014)*.

In a case in which appellant vacated the 10-acre parcel as ordered, and the district court held that his appeal was moot as he no longer occupied or owned the parcel, because appellant failed to challenge the district court's dispositive holding regarding mootness in his opening brief, he waived that dispositive issue on appeal, and the supreme court would not reach the merits of his appeal as it related to the sufficiency of proof regarding the forcible detainer action. *Farms, LLC v. Isom, 169 Idaho 188, 493 P.3d 947 (2021)*.

Property owners only provided specific arguments relating to one-week maintenance periods, their ability to maintain a ditch in event of an emergency, and the requirement to obtain written agreement after seventy-two hours of notice to conduct maintenance activities in excess of the district court's schedule. Accordingly, the owners waived any challenge to the other restrictions identified in the district court's order. *Hood v. Poorman, 171 Idaho 176, 519 P.3d 769 (2022)*.

Because it was unclear from appellant's briefing where in the record the magistrate court purportedly erred by relying on appellant's comments as the representative of appellant when appellant appeared pro se, the appellate court did not scour the record for error so that the court did not need to address appellant's argument further. *Plasse v. Reid, -- Idaho --, 529 P.3d 718 (2023)*.

Cited in:

State v. Huggins, 103 Idaho 422, 648 P.2d 1135 (Ct. App. 1982); *State v. Major, 105 Idaho 4, 665 P.2d 703 (1983)*; *Price v. Aztec Ltd., 108 Idaho 674, 701 P.2d 294 (Ct. App. 1985)*; *Wilson v. Hambleton, 109 Idaho 198, 706 P.2d 87 (Ct. App. 1985)*; *Valley Bank v. Dalton, 110 Idaho 87, 714 P.2d 56 (Ct. App. 1985)*; *Soria v. Sierra Pac. Airlines, 111 Idaho 594, 726 P.2d 706 (1986)*; *Vulk v. Haley, 112 Idaho 855, 736 P.2d 1309 (1987)*; *O'Boskey v. First Fed. Sav. & Loan Ass'n, 112 Idaho 1002, 739 P.2d 301 (1987)*; *Hickman v. Fraternal Order of Eagles, 114 Idaho 545, 758 P.2d 704 (1988)*; *State v. Phillips, 118 Idaho 27, 794 P.2d 297 (Ct. App. 1990)*; *State v. Oakley, 119 Idaho 1006, 812 P.2d 313 (Ct. App. 1991)*; *Swain v. State, 122 Idaho 918, 841 P.2d 448 (Ct. App. 1992)*; *State v. Rupp, 123 Idaho 1, 843 P.2d 151 (1992)*; *Curr v. Curr, 124 Idaho 686, 864 P.2d 132 (1993)*; *Phipps v. Phipps, 124 Idaho 775, 864 P.2d 613 (1993)*; *State v. Williams, 126 Idaho 39, 878 P.2d 213 (Ct. App. 1994)*; *Ernst v. Hemenway & Moser Co., 126 Idaho 980, 895 P.2d 581 (1995)*; *Saint Alphonsus Regional Medical Ctr. v. Bannon, 128 Idaho 41, 910 P.2d 155 (1995)*; *Idaho Watersheds Project, Inc. v. State Bd. of Land Comm'rs, 128 Idaho 761, 918 P.2d 1206 (1996)*; *Taylor v. Browning, 129 Idaho 483, 927 P.2d 873 (1996)*; *The Highlands, Inc. v. Hosac, 130 Idaho 67, 936 P.2d 1309 (1997)*; *North Pac. Ins. Co. v. Mai, 130 Idaho 251, 939 P.2d 570 (1997)*; *Weaver v. Searle Bros., 131 Idaho 610, 962 P.2d 381 (1998)*; *Henman v. State, 132 Idaho 49, 966 P.2d 49 (Ct. App. 1998)*; *Ramerth v. Hart, 133 Idaho 194, 983 P.2d 848 (1999)*; *State v. Barnett, 133 Idaho 231, 985 P.2d 111 (1999)*; *U.S. Bank Nat'l Ass'n v. Kuenzli, 134 Idaho 222, 999 P.2d 877 (2000)*; *Cheung v. Wasatch Elec., 136 Idaho 895, 42 P.3d 688 (2002)*; *Kohring v. Robertson, 137 Idaho 94, 44 P.3d 1149 (2002)*; *Thomas v. Med. Ctr. Physicians, P.A., 138 Idaho 200, 61 P.3d 557 (2002)*; *Bream v. Benscoter, 139 Idaho 364, 79 P.3d 723 (2003)*; *Miller v. Estate of Prater, 141 Idaho 208, 108 P.3d 355 (2005)*; *A & J Constr. Co. v. Wood, 141 Idaho 682, 116 P.3d 12 (2005)*; *Craig Johnson Constr., L.L.C. v. Floyd Town Architects, 142 Idaho 797, 134 P.3d 648 (2006)*; *Craig Johnson Constr., L.L.C. v. Floyd Town Architects, 142 Idaho 797, 134 P.3d 648 (2006)*; *Herrera v. Estay, 146 Idaho 674, 201 P.3d 647 (2009)*; *Griffith v. Clear Lakes Trout Co., 146 Idaho 613, 200 P.3d 1162 (2009)*; *Neighbors for Responsible Growth v. Kootenai County, 147 Idaho 173, 207 P.3d 149 (2009)*; *Vavold v. State, 148 Idaho 44, 218 P.3d 388 (2009)*; *State v. Korn, 148 Idaho 413, 224 P.3d 480 (2009)*; *Bagley v. Thomason, 149 Idaho 799, 241 P.3d. 972 (2010)*; *Woods v. Sanders, 150 Idaho 53, 244 P.3d 197 (2010)*; *Doe v. Doe (in re Doe), 150 Idaho 432, 247 P.3d 659 (2011)*; *Enriquez v. Idaho Power Co., 152 Idaho 562, 272 P.3d 534 (2012)*; *Peterson v. Private Wilderness, LLC, 152 Idaho 691, 273 P.3d 1284 (2012)*; *Trotter v. Bank of N.Y. Mellon, 152*

Idaho 842, 275 P.3d 857 (2012); Charney v. Charney, 159 Idaho 62, 356 P.3d 355 (2015); Fairchild v. Ky. Fried Chicken, 159 Idaho 208, 358 P.3d 769 (2015); Sherman Storage, LLC v. Global Signal Acquisitions II, LLC, 159 Idaho 331, 360 P.3d 340 (2015); Hausladen v. Knoche, 159 Idaho 359, 360 P.3d 367 (2015); Hayes v. Kessler, 161 Idaho 833, 392 P.3d 11 (2016); Kempton-Baughman v. Wells Fargo Bank, N.A., 162 Idaho 174, 395 P.3d 393 (2017); Phillips v. Gomez, 162 Idaho 803, 405 P.3d 588 (2017); Current v. Wada Farms P'ship, 162 Idaho 894, 407 P.3d 208 (2017); Holden v. Weece (In re SRBA Case No. 39576), 163 Idaho 393, 414 P.3d 215 (2018); Budget Truck Sales, LLC v. Tilley, 163 Idaho 841, 419 P.3d 1139 (2018); In re Hook, 164 Idaho 586, 434 P.3d 190 (2019); Primera Beef, LLC v. Ward, 166 Idaho 180, 457 P.3d 161 (2020); Stanley v. State Indus. Special Indem. Fund, 168 Idaho 183, 481 P.3d 731 (2021); State, Dep't of Health & Welfare v. Doe (in re Doe), -- Idaho --, 538 P.3d 1062 (2023).

Decisions Under Prior Rule or Statute

Specification of Errors.

A specification of the insufficiency of the evidence to support the findings in the brief of appellant is required in order to bring before Supreme Court for review the question of such insufficiency. Citizens Right of Way Co. v. Ayers, 32 Idaho 206, 179 P. 954 (1919).

It is within province and power of court to make additional reasonable requirements tending to expedite and facilitate determination of matter submitted to it, and rule providing for distinct enumeration of errors relied upon is reasonable requirement. Morton Realty Co. v. Big Bend Irrigation & Mining Co., 37 Idaho 311, 218 P. 433 (1923).

Assignment of insufficiency of evidence to support judgment will only be considered where specification of errors is made in appellant's brief. Hurt v. Monumental Mercury Mining Co., 35 Idaho 295, 206 P. 184 (1922); McDonald v. North River Ins. Co., 36 Idaho 638, 213 P. 349 (1928); Merrill v. Fremont Abstract Co., 39 Idaho 238, 227 P. 34 (1924).

Assignment that findings and conclusions as whole do not support judgment without specifying particulars is too general for consideration. Lus v. Pecararo, 41 Idaho 425, 238 P. 1021 (1925).

The Supreme Court will not review the actions of a District Court which have not been specifically assigned as error, especially where there are no authorities cited nor argument contained in the briefs upon the question. Bolen v. Baker, 69 Idaho 93, 203 P.2d 376 (1949).

Rule 36. Preparation of briefs.

All briefs shall be prepared in accordance with the following requirements:

(a) Cover of Brief. The cover of all briefs shall state the title of the Supreme Court, the title of the action designated on the certificate of appeal, whether it is appellant's or respondent's brief, the name of the district court or administrative agency appealed from, the name of the trial judge or chairman presiding at the trial or hearing, and the names and addresses of all counsel of record showing for whom they appear. The information on the cover shall be substantially in the following form: Click here to view form

(b) Printing of Briefs.

All briefs shall be printed on unruled and untreated white paper 11 inches long by 81/2 inches wide. The original brief filed with the court shall be typed with black ribbon or produced by a computer or word processor type printer of letter quality. The type shall be no smaller than 12 point Times New Roman. All lines must be double-spaced, except for quotations which may be indented and single spaced. There shall be a margin of 11/2 inches at the top and at the bottom of each page, and 1 inch at each side of each page. The pages shall be numbered at the bottom and may be printed on both the front and back of each page. Prisoners incarcerated or detained in a state prison or county jail may file documents under this rule that are legibly hand-printed in black ink, in whole or in part, that otherwise conform to the requirements of this rule.

History

(Adopted March 25, 1977, effective July 1, 1977; amended March 28, 1986, effective July 1, 1986; amended March 23, 1990, effective July 1, 1990; amended March 26, 1992, effective July 1, 1992; amended February 10, 1993, effective July 1, 1993; amended August 31, 1994, effective September 1, 1994; amended March 18, 1998, effective July 1, 1998; amended March 1, 2000, effective July 1, 2000; amended January 30, 2001, effective July 1, 2001; amended and effective January 24, 2019.)

Rule 37. Oral argument.

(a) When Appeal Submitted on Briefs. There shall be oral argument in all appeals at such time and place scheduled by the Supreme Court, unless (1) all parties stipulate to submit the appeal upon the briefs and such stipulation is approved by order of the Supreme Court, or (2) the Supreme Court orders that the appeal will be submitted upon the briefs without oral argument, in which case any party may file a written objection to the order for submission on the briefs within twenty-one (21) days of the date of the order, setting forth the reasons for which the party desires oral argument. Any such objection to submission on the briefs shall be determined without oral argument.

(b) Time Allotted for Argument. Each side will be allowed 30 minutes for argument; provided, that for good cause shown the Supreme Court may extend or shorten the time. If argument is allowed on a preliminary motion, one counsel on a side will be heard and each will be allowed ten (10) minutes. The Court may alter the procedure and shorten the time for oral argument of appeals and petitions placed upon the expedited calendar in order to provide a system of prompt and speedy hearing of all expedited appeals. If there are multiple parties, the parties on each side shall allocate the time for argument between and among themselves prior to the commencement of oral argument. In the absence of such agreement, on the request of any party at least 14 days before oral argument, an allocation of time will be made by the Supreme Court at least seven (7) days before argument. The Court may allocate the time for argument between and among co-parties or in its discretion allocate equal or unequal time for argument to each of the co-parties, or the Court may allot the full time for argument to each of the co-parties.

(c) Order of Argument. The appellant or the petitioner shall be entitled to open and close the argument; provided, in the event there are multiple parties or third parties, the Supreme Court shall determine the sequence and order of argument.

(d) Non-Appearance of Parties. If any party fails to appear for oral argument, the Court may hear the argument of any party appearing, may vacate the hearing, or may decide the appeal on the briefs. If no party appears, the case will be decided upon the briefs unless the Court orders otherwise. If counsel for a party fails to appear to present oral argument, the Supreme Court may assess penalties and sanctions including reasonable attorneys fees.

(e) Non-Filing of Brief. If no respondent's brief is filed, the appeal shall be submitted on the appellant's brief without oral argument, unless the appellant requests oral argument. Any party who has failed to file a brief shall not be permitted to present oral argument.

History

(Adopted March 25, 1977, effective July 1, 1977; amended March 28, 1986, effective July 1, 1986; amended March 1, 2000, effective July 1, 2000.)

Annotations

Case Notes

Time for Argument.

In divorce action where plaintiff contended that district judge was biased due to fact that judge allowed only fifteen minutes instead of thirty minutes for the appellate argument of each party per subsection (b) of this section as made applicable to appeals from magistrate division by I.R.C.P. 83 (x), where district judge relying on local rule allotted fifteen minutes per side for argument and plaintiff did not request additional time, nor did he contend that any rule of court entitled him to additional time for argument and he used all of his allotted time without reserving any time for rebuttal and he had submitted a comprehensive appellate brief to the court covering the points he discussed, plaintiff failed to show how he was prejudiced by the procedure followed by the court. *Bell v. Bell, 122 Idaho 520, 835 P.2d 1331 (Ct. App. 1992)*.

Cited in:

Laurance v. Laurance, 112 Idaho 635, 733 P.2d 1260 (Ct. App. 1987).

Rule 38. Opinions and remittiturs.

(a) Opinions. The filing of an opinion of the Court shall be the announcement of the opinion. A certified copy of the opinion filed in an appeal or proceeding shall be transmitted forthwith by the Clerk of the Supreme Court to the clerk of the district court or administrative agency from which the appeal was taken and copies of the opinion shall be transmitted to each party in the appeal or proceeding, to the presiding district judge or chairman of the administrative agency, and if the suit of proceeding originated in the magistrate division of the district court, to the presiding magistrate.

(b) Finality of Opinions. Opinions shall become final 21 days after the date of the last of the following events:

(1) The announcement of the opinion;

(2) The announcement of the opinion on rehearing;

(3) The announcement of a modified opinion without a rehearing.

(c) Remittiturs. When the opinion filed has become final in accordance with this rule, the Clerk of the Supreme Court shall issue and file a remittitur with the district court or administrative agency appealed from and mail copies to all parties to the appeal and to the presiding district judge or chairman of the agency. The remittitur shall advise the district court or administrative agency that the opinion has become final and that the district court or administrative agency shall forthwith comply with the directive of the opinion.

(d) Costs and Attorney Fees. The taxation of costs and attorney fees, if any, shall be included in the remittitur if the same have been determined, but the issuance of the remittitur shall not be delayed if the taxation of such items has not been determined.

History

(Adopted March 25, 1977, effective July 1, 1977; amended January 30, 2001, effective July 1, 2001; amended March 22, 2002, effective July 1, 2002.)

Annotations

Case Notes

Effect of Reversal.
Purpose.
Sua Sponte Dismissal.
Rehearing Denied.

Effect of Reversal.

Absent a disposal of the case in its entirety by the appellate court, reversal of a judgment does not foreclose a new trial. *State v. Billups, 163 Idaho 889, 421 P.3d 220 (2018)*.

Purpose.

This rule is merely the codification of the law of the case doctrine. *State v. Hawkins, 155 Idaho 69, 305 P.3d 513 (2013)*.

Sua Sponte Dismissal.

Where an order dismissing an appeal has been entered sua sponte without prior notice and opportunity to be heard or to respond by memorandum, justice requires an opportunity to seek the court's reconsideration. *State v. Langdon, 117 Idaho 115, 785 P.2d 679 (Ct. App. 1990)*.

Cited in:

McGivney v. Aerocet, Inc., 165 Idaho 227, 443 P.3d 241 (2019); *Safaris Unlimited, LLC v. Jones, 169 Idaho 644, 501 P.3d 334 (2021)*.

Decisions Under Prior Rule or Statute

Rehearing Denied.

When rehearing is denied, the remittitur must issue forthwith and the judgment of the district court carrying into effect the provisions for costs follows as a matter of course. *Fite v. French, 54 Idaho 104, 30 P.2d 360 (1934)*.

End of Document

Rule 39. Remittitur following mandate from the Supreme Court of the United States.

Upon receipt by the Clerk of the Supreme Court of a mandate from the Supreme Court of the United States, the Clerk shall immediately notify respective counsel in writing of such fact and the date thereof. Unless further proceedings are required in the Idaho Supreme Court, at the expiration of 21 days from said date the Clerk shall issue a remittitur to the district court in which the judgment was rendered commanding such court to take appropriate action. All of the costs subsequent to the appeal from said district court shall be taxed in such remittitur.

History

(Adopted March 25, 1977, effective July 1, 1977.)

Annotations

Case Notes

Cited in:

McGimpsey v. D&L Ventures, Inc., 165 Idaho 205, 443 P.3d 219 (2019).

End of Document

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 shall be allowed as a matter of course to the prevailing party unless otherwise provided by law or order of the Court.

(b) Items of Costs. Costs shall, unless otherwise ordered, include the following items:

(1) Filing fees.

(2) Cost of reporter's transcript including the cost of computer-searchable disks filed with the Supreme Court under Rule 26.1 (c), but excluding the cost of all other disks.

(3) Cost of clerk's or agency's record.

(4) Cost of premiums of a supersedeas bond, unless the party taxed with costs had agreed in writing, within seven (7) days of the filing of the notice of appeal, not to execute pending appeal as provided in Rule 16(b).

(c) Memorandum of Costs. Within 14 days of the filing and announcement of the opinion on appeal, whether or not a petition for rehearing or petition for review is filed, any party who claims costs shall file with the Court and serve upon all adverse parties a memorandum of costs, itemizing each claimed expense. A memorandum of costs mailed to the Court shall be deemed filed upon the date of mailing. Failure to file a memorandum of costs within the period prescribed by this rule shall be a waiver of the right to costs.

(d) Objections to Costs. No later than fourteen (14) days after the date of service of the memorandum of costs, any party may object to the claim for costs of another party by filing and serving on the adverse party an objection to part or all of such costs, stating the reasons in support thereof. An objection to costs shall be deemed filed upon mailing and shall be heard and determined by the Court as an objection to the application for costs.

(e) Number of Copies. Only the original of the memorandum of costs, objections to costs, and briefs in support of or in opposition thereof shall be filed with the Clerk of the Supreme Court. No copies are required.

(f) Clerk to Insert Costs in Remittitur. The Clerk of the Supreme Court shall prepare an itemized statement of costs taxed in the Supreme Court and insert the same in the remittitur. If the remittitur has been issued before the final determination of costs, or any amendment thereto, an itemized statement of costs allowed shall be forwarded by the Clerk of the Supreme Court to the district court or administrative agency as soon as it is

available and shall then be added to the judgment or order. The payment of costs on appeal shall be enforced in the district court or administrative agency.

History

(Adopted March 25, 1977, effective July 1, 1977; amended March 30, 1984, effective July 1, 1984; amended March 20, 1985, effective July 1, 1985; amended March 28, 1986, effective July 1, 1986; amended March 20, 1991, effective July 1, 1991; amended January 30, 2001, effective July 1, 2001; amended May 5, 2017, effective July 1, 2017; amended and effective January 24, 2019; amended and effective April 28, 2022.)

Annotations

Case Notes

Appeal Without Foundation.
Applicability.
Award to Amicus Curiae.
Compliance with Rule.
Conflicting Evidence.
Cost of Supersedeas Bond.
Costs Against State.
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Lien Foreclosures.
Multiple Claims.
Prevailing Party.
Recovery by Criminal Appellant.
Sexual Harassment Action.
Cost of Brief.
Cost of Transcript.
Costs Against State.
Modification by Lower Court.
Modification of Judgment.

Cited in:

Lanningham v. Farm Bureau Mut. Ins. Co. of Idaho, -- Idaho --, 551 P.3d 1251, 2024 Ida. LEXIS 71 (July 3, 2024).

Appeal Without Foundation.

Where the plaintiff's appeal of her dismissal for failure to prosecute did not raise a genuine issue as to the legal standards governing the district judge's discretion nor did it present a

cogent challenge to the judge's reasoning powers in exercising that discretion, the appeal was brought without foundation, and the defendants were entitled to a reasonable award of attorney fees. *Nagel v. Wagers, 111 Idaho 822, 727 P.2d 1250 (Ct. App. 1986)*.

Applicability.

Court erred in awarding costs to neighbors in their action against a county challenging the issuance of a zoning variance to an adjoining property owner because the filing of the neighbors' memorandum of costs was not in compliance with Idaho App. R. 40(c) as it was not filed within 14 days from the filing and announcement of the opinion on appeal. *Eacret v. Bonner County, 139 Idaho 780, 86 P.3d 494 (2004)*, overruled on other grounds, *City of Osburn v. Randel, 152 Idaho 906, 277 P.3d 353 (2012)*.

While this rule provides for the awarding of costs on appeal and Appellate Rule 41 specifies the procedure for requesting an award of attorney fees on appeal, neither rule provides the authority for awarding attorney fees. *Edwards v. Mortgage Elec. Registration Sys., 154 Idaho 511, 300 P.3d 43 (2013)*.

Award to Amicus Curiae.

Where the purchasers of property at a partition sale could not continue to effectively protect their interests absent involvement, as amicus curiae, in an appeal from a decision enforcing the partition judgment and finalizing the sale, the purchasers would be awarded costs and attorney fees. *Mendenhall v. Caine, 101 Idaho 628, 619 P.2d 146 (1980)*.

Compliance with Rule.

Request for attorney fees was denied where defendant failed to provide any proposition of law, authority or argument on the issue. *Farnworth v. Ratliff, 134 Idaho 237, 999 P.2d 892 (2000)*.

Defendant shareholder was not entitled to an award of attorney fees where he did not cite any statutory or contractual provision authorizing such award; since Idaho R. App. P. 40 did not provide the authority for awarding attorney fees, the appellate court would not address the issue. *Gilman v. Davis, 138 Idaho 599, 67 P.3d 78 (2003)*.

Conflicting Evidence.

Respondents are entitled to an award of attorney fees on appeal where nonprevailing party invited the Court of Appeals to do no more than second-guess the trial court on conflicting evidence and where the law was well-settled. *Blaser v. Cameron, 121 Idaho 1012, 829 P.2d 1361 (Ct. App. 1991)*.

Cost of Supersedeas Bond.

Posting the letter of irrevocable credit was substantially equivalent to posting a supersedeas bond where no objection to the form of the security was made at the time of its posting; accordingly, this cost was allowable under subdivision (b)(5) of this rule. *Whittle v. Seehusen, 113 Idaho 852, 748 P.2d 1382 (Ct. App. 1987)*.

Costs Against State.

Absent an explicit statutory authorization, costs of transcripts or briefs, incurred by a defendant who successfully prevails on an appeal in a criminal action, are not recoverable against the state. *State v. Peterson, 113 Idaho 554, 746 P.2d 1013 (Ct. App. 1987)*.

Since the costs of a defendant who successfully prevails on an appeal in a criminal action are not recoverable as a matter of law, the state's alleged failure to timely file a formal objection under subsection (d) of this rule did not create any right of recovery under a theory of waiver. *State v. Peterson, 113 Idaho 554, 746 P.2d 1013 (Ct. App. 1987)*.

Absent an explicit statutory authorization, attorney fees incurred by a defendant who prevails on appeal in a criminal action are not recoverable against the state. *State v. Spurr, 114 Idaho 277, 755 P.2d 1315 (Ct. App. 1988)*.

Costs Awarded.

Because company failed on appeal to present any significant issue regarding a question of law, had not shown that findings of fact made by lower court were arguably unsupported by substantial evidence, did not advance any new legal standards or seek modification of existing ones, attempted to relitigate matters put to rest by first appeal, complained of the admission of exhibits that plainly had no bearing on the judgment and whose admission could not possibly constitute reversible error, raised as issues pretrial rulings that after trial were ultimately found in its favor, and disingenuously claimed not to know what discovery order it had disobeyed and for which attorney fees were imposed as sanctions, the appeal was deemed to be unreasonable and without foundation and attorney fees were awarded pursuant to I.A.R. 41(a) and *§ 12-121* and costs pursuant to this rule. *Ernst v. Hemenway & Moser Co., 126 Idaho 980, 895 P.2d 581 (1995)*.

Where legal malpractice action based on medical malpractice action was brought based upon deliberate misstatements to a court of law by both the litigant and her counsel acting in concert, the appeal in such action was brought or defended frivolously, unreasonably, or without foundation and therefore attorney's fees should be awarded pursuant to I.A.R., Rule 41 and costs should be awarded pursuant to this rule. *McKay v. Owens, 130 Idaho 148, 937 P.2d 1222 (1997)*.

As the defendants prevailed on the summary judgment issue on appeal, costs were awarded pursuant to this rule, but the court declined to award attorney's fees under *§ 12-121* because although the plaintiff's argument urging error in the grant of summary judgment as to these

particular defendants was not persuasive, it was not unreasonable or frivolous. *Sammis v. MagneTek, Inc., 130 Idaho 342, 941 P.2d 314 (1997)*.

In an action arising from the alleged breach of a contract to build a cabin, where the owner and the general contractor prevailed in part on appeal of a summary judgment motion, they were directed to bear their own costs. *Nelson v. Anderson Lumber Co., 140 Idaho 702, 99 P.3d 1092 (Ct. App. 2004)*.

Where a builder bought materials from a supplier to use on defendants' building project and the supplier was entitled to a lien on the buildings that the project produced, the supplier was entitled to costs and fees on appeal as the prevailing party. *BMC West Corp. v. Horkley, 144 Idaho 890, 174 P.3d 399 (2007)*.

Costs incurred in defending against this appeal were awarded as a matter of course to the employees because they were prevailing parties. *Butters v. Valdez, 149 Idaho 764, 241 P.3d 7 (Ct. App. 2010)*.

While a property owner was entitled to costs on appeal as the prevailing party in an action against an irrigation district, it was not entitled to it attorney fees, because the owner did not claim attorney fees under *§ 6-918A*, which controls the award of attorney's fees under the Idaho tort claims act. *CNW, LLC v. New Sweden Irrigation Dist., 161 Idaho 89, 383 P.3d 1259 (2016)*.

Because a debtor was the prevailing party on appeal in a debt collection action and because the debt collector's complaint alleged an amount at issue less than $35,000, the debtor was entitled to an award of attorney fees and to costs. *Med. Recovery Servs., LLC v. Gepford, 167 Idaho 182, 468 P.3d 312 (2020)*.

Because the board prevailed on appeal, it was entitled to costs as a matter of right. *Rouwenhorst v. Gem Cty., 168 Idaho 657, 485 P.3d 153 (2021)*.

Because the hospital was not the prevailing party, it was not entitled to costs on appeal; however, the patient, as the prevailing party, was entitled to costs on appeal. *Summerfield v. St. Luke's McCall, Ltd., 169 Idaho 221, 494 P.3d 769 (2021)*.

Costs Denied.

Appellate court reversed the award of attorneys fees and costs granted to respondents, Idaho Commission of Pardons, and Parole, commissioners and hearing officer, after the intermediate appeal, as the appellate court determined that the inmate had valid points in his habeas corpus petition and it should not have been dismissed. *Dopp v. Idaho Comm'n of Pardons & Parole, 139 Idaho 657, 84 P.3d 593 (Ct. App. 2004)*.

Costs for State.

In a murder and robbery case, where the post-convictioner's petition was a civil matter and because the State was the prevailing party on appeal, the State was entitled to costs on appeal. *Rhoades v. State, 148 Idaho 247, 220 P.3d 1066 (2009)*.

Lien Foreclosures.

Since the limitation placed upon the recovery of attorney fees on appeal in a mechanic's lien action has not been extended to costs on appeal, the prevailing party was entitled to recover his costs in both the appeal and cross-appeal. *Fairfax v. Ramirez, 133 Idaho 72, 982 P.2d 375 (Ct. App. 1999)*.

Multiple Claims.

Defendants' claims and defenses were based upon the false testimony of one of the defendants. A claim or defense based upon false testimony is frivolous, unreasonable and without foundation. However, while defendants did not prevail on the issues raised in plaintiffs' cross-appeal, their defense to such cross-appeal was not frivolous, unreasonable or without foundation. Therefore, plaintiffs were entitled to their costs associated with the appeal and cross-appeal and were entitled to attorneys' fees on defendants' appeal, but not for fees resulting from their cross-appeal. *Mikesell v. Newworld Dev. Corp., 122 Idaho 868, 840 P.2d 1090 (Ct. App. 1992)*.

Prevailing Party.

If, on remand, the district court would find the partnership to be the prevailing party below, entitling it to attorney fees and a full award of costs, then the partnership would be deemed the prevailing party on appeal as well and entitled to cost and attorney fee awards pursuant to I.A.R. 41 and this rule. *Evans v. Sawtooth Partners, 111 Idaho 381, 723 P.2d 925 (Ct. App. 1986)*.

While landlord was not successful on his cross-appeal, he was the prevailing party on the underlying claim for breach of the lease agreement, both at trial and on appeal, and based on the terms of the lease, which provided for the payment of all attorney's fees and court costs incurred in such litigation, landlord was entitled to an award of costs and fees incurred on the appeal but not on the cross-appeal. *Melton v. Lehmann, 118 Idaho 61, 794 P.2d 650 (Ct. App. 1990)*.

Plaintiffs were entitled to an award of fees for appeal even though defendant could ultimately be found to be the prevailing party after trial on his counterclaim. *Bowen v. Heth, 120 Idaho 452, 816 P.2d 1009 (Ct. App. 1991)*.

Seller's counterclaim was an action to recover on a contract for the sale of goods. Because the sellers prevailed on their claim below, and because the judgment of the district court on the contractual issue was affirmed, sellers were the prevailing parties on appeal and were thus entitled to an award of attorney fees and costs in both the lower court and on appeal. *Christensen v. Ransom, 123 Idaho 99, 844 P.2d 1349 (Ct. App. 1992)*.

Costs are allowed as a matter of course to the prevailing party unless otherwise provided by law or order of the court. *Beale v. Speck, 127 Idaho 521, 903 P.2d 110 (Ct. App. 1995)*.

Where judgment for plaintiffs was reversed on appeal, they were not entitled to costs or attorney fees. *Erickson v. State, 132 Idaho 208, 970 P.2d 1 (1998)*.

Used car dealership and its owners were entitled to attorney's fees after prevailing on appeal in a buyer's action to revoke acceptance of a sale contract. *Haight v. Dale's Used Cars, Inc., 139 Idaho 853, 87 P.3d 962 (Ct. App. 2003)*.

Where it remained to be seen whether the prevailing party on appeal would be the prevailing party in the action, and, therefore, entitled to attorney fees under I.C. *§ 12-120(3)* and Idaho App. R. 41, the district court, upon final resolution of the case, could consider fees incurred on appeal when it made an award to the prevailing party. As a matter of right, costs on appeal were awarded to the prevailing party on appeal under *Idaho App. R. 40. Cox v. City of Sandpoint, 140 Idaho 127, 90 P.3d 352 (Ct. App. 2003)*.

Costs were awarded to respondent insurer where it prevailed on appeal, even though the basis of the appeal was well-founded and respondent was denied attorney fees. *Or. Mut. Ins. Co. v. Farm Bureau Mut. Ins. Co., 148 Idaho 47, 218 P.3d 391 (2009)*.

Where appellant insured's claims for breach of an insurance contract and declaratory relief were dismissed, the insured was not the prevailing party, and thus was not entitled to recover attorney fees under Idaho App. R. 40 or costs under I.C. *§ 10-1210*. *Villa Highlands, LLC v. Western Cmty. Ins. Co., 148 Idaho 598, 226 P.3d 540 (2010)*.

Because a physician and a clinic were the prevailing parties in a patient's appeal of an award of summary judgment in a medical malpractice action, they were awarded costs on appeal. *McCallister v. Dixon, 154 Idaho 891, 303 P.3d 578 (2013)*.

Because the assignee of real property lots was the prevailing party on appeal, when the dismissal of a real estate developer's declaratory judgment action against the assignee was affirmed, the assignee was entitled to attorney fees under the option agreement between the developer and the assignor of the property lots. *ABC Agra, LLC v. Critical Access Group, Inc., 156 Idaho 781, 331 P.3d 523 (2014)*.

Because the supreme court affirmed the judgment of the district court, property owners prevailed on appeal; accordingly, the supreme court awarded costs to them as a matter of right. *Frost v. Gilbert, 169 Idaho 250, 494 P.3d 798 (2021)*.

In an action for unlawful detainer, the tenant was entitled to costs on appeal, but neither party was entitled to attorney fees because although the tenant was the prevailing party on appeal, the case presented a novel legal issue; thus, it was not brought unreasonably, frivolously, or without foundation. *Worthington v. Thunder, -- Idaho --, 541 P.3d 694 (2024)*.

Recovery by Criminal Appellant.

A successful criminal appellant cannot recover attorney fees under §§ 12-120 and 12-121 which apply to only civil actions or under this rule or I.A.R. 41 absent an explicit statutory authorization. State v. Roll, 118 Idaho 936, 801 P.2d 1287 (Ct. App. 1990).

Where appellant insured's suit against respondent insurance company for breach of an insurance contract and declaratory relief was dismissed, and the Supreme Court of Idaho upheld the decision, the insurance company was entitled to costs on appeal under *Idaho App. R. 40(a). Villa Highlands, LLC v. Western Cmty. Ins. Co., 148 Idaho 598, 226 P.3d 540 (2010)*.

Sexual Harassment Action.

While there were compelling arguments for awarding fees to employer whose favorable directed verdict in quid pro quo sexual harassment action was upheld on appeal, due to the sparse case law in Idaho involving sexual discrimination issues, court could not say that appeal was brought for improper purposes or in bad faith. De Los Santos v. J.R. Simplot Co., 126 Idaho 963, 895 P.2d 564 (1995).

Cited in:

Pratt v. Pratt, 99 Idaho 500, 584 P.2d 645 (1978); Fouser v. Paige, 101 Idaho 294, 612 P.2d 137 (1980); Griffin v. Griffin, 102 Idaho 858, 642 P.2d 949 (Ct. App. 1982); Farber v. Howell, 111 Idaho 132, 721 P.2d 731 (Ct. App. 1986); Brazier v. Brazier, 111 Idaho 692, 726 P.2d 1143 (Ct. App. 1986); *Davidson v. Beco Corp., 112 Idaho 560, 733 P.2d 781 (Ct. App. 1986)*; Gem State Homes, Inc. v. Idaho Dep't of Health & Welfare, 113 Idaho 23, 740 P.2d 65 (Ct. App. 1987); Lowery v. Board of County Comm'rs, 115 Idaho 64, 764 P.2d 431 (Ct. App. 1988); Burnett v. Jayo, 119 Idaho 1009, 812 P.2d 316 (Ct. App. 1991); USA Fertilizer, Inc. v. Idaho First Nat'l Bank, 120 Idaho 271, 815 P.2d 469 (Ct. App. 1991); Hoff Cos. v. Danner, 121 Idaho 39, 822 P.2d 558 (Ct. App. 1991); Lambert v. Hasson, 121 Idaho 133, 823 P.2d 167 (Ct. App. 1991); Cox v. Department of Ins., 121 Idaho 143, 823 P.2d 177 (Ct. App. 1991); Dante v. Golas, 121 Idaho 149, 823 P.2d 183 (Ct. App. 1992); Treasure Valley Bank v. Butcher, 121 Idaho 531, 826 P.2d 492 (Ct. App. 1992); Phillips Indus., Inc. v. Firkins, 121 Idaho 693, 827 P.2d 706 (Ct. App. 1992); Haag v. Pollack, 122 Idaho 605, 836 P.2d 551 (Ct. App. 1992); Figueroa v. Kit-San Co., 123 Idaho 149, 845 P.2d 567 (Ct. App. 1992); Alcan Bldg. Prods. v. Peoples, 124 Idaho 338, 859 P.2d 374 (Ct. App. 1993); Langley v. State, Indus. Special Indem. Fund, 126 Idaho 781, 890 P.2d 732 (1995); Crown v. State, Dep't of Agric., 127 Idaho 188, 898 P.2d 1099 (Ct. App. 1994); Wolfe v. Farm Bureau Ins. Co., 128 Idaho 398, 913 P.2d 1168 (1996); Tyler v. Keeney, 128 Idaho 524, 915 P.2d 1382 (Ct. App. 1996); Angstman v. City of Boise, 128 Idaho 575, 917 P.2d 409 (Ct. App. 1996); Hawks v. EPI Prods. USA, Inc., 129 Idaho 281, 923 P.2d 988 (1996); Toews v. Funk, 129 Idaho 316, 924 P.2d 217 (Ct. App. 1994); Landvik ex rel. Landvik v. Herbert, 130 Idaho 54, 936 P.2d 697 (Ct. App. 1997); Quinto v. Millwood Forest Prods., Inc., 130 Idaho 162, 938 P.2d 189 (Ct. App. 1997); Idaho State Tax Comm'n v. Beacom, 131 Idaho 569, 961 P.2d 660 (Ct. App. 1998); Weaver v. Searle Bros., 131 Idaho 610, 962 P.2d 381 (1998); West v. Sonke, 132 Idaho 133, 968 P.2d 228 (1998); Magic Valley Truck Brokers, Inc. v. Meyer, 133 Idaho 110, 982 P.2d 945 (Ct. App. 1999); Hummer v. Evans, 132 Idaho 830, 979 P.2d 1188 (1999); Viafax Corp. v. Stuckenbrock, 134 Idaho 65, 995 P.2d 835 (Ct. App. 2000); Eagle Water Co. v. Roundy Pole Fence Co., 134 Idaho 626, 7 P.3d 1103 (2000); Ahles v. Tabor,

136 Idaho 393, 34 P.3d 1076 (2001); Beard v. George, 135 Idaho 685, 23 P.3d 147 (2001); Hoyle v. Utica Mut. Ins. Co., 137 Idaho 367, 48 P.3d 1256 (2002); Primary Health Network v. State, 137 Idaho 663, 52 P.3d 307 (2002); Hill v. Hill, 140 Idaho 812, 102 P.3d 1131 (2004); Heritage Excavation, Inc. v. Briscoe, 141 Idaho 40, 105 P.3d 700 (Ct. App. 2005); West Wood Invs., Inc. v. Acord, 141 Idaho 75, 106 P.3d 401 (2005); VanVooren v. Astin, 141 Idaho 440, 111 P.3d 125 (2005); Thomson v. Olsen, 147 Idaho 99, 205 P.3d 1235 (2009); Idaho Counties Risk Mgmt. Program Underwriters v. Northland Ins. Cos., 147 Idaho 84, 205 P.3d 1220 (2009); Neighbors for Responsible Growth v. Kootenai County, 147 Idaho 173, 207 P.3d 149 (2009); Aguilar v. Coonrod, 151 Idaho 642, 262 P.3d 671 (2011); Gordon v. Hedrick, 159 Idaho 605, 364 P.3d 951 (2015); Huber v. Lightforce USA, Inc., 159 Idaho 833, 367 P.3d 228 (2016); State v. Hudson, 162 Idaho 888, 407 P.3d 202 (2017); Lincoln Land Co., LLC v. LP Broadband, Inc., 163 Idaho 105, 408 P.3d 465 (2017); Eden v. State (In re SRBA Case No. 39576), 164 Idaho 241, 429 P.3d 129 (2018); Budget Truck Sales, LLC v. Tilley, 163 Idaho 841, 419 P.3d 1139 (2018); Litke v. Munkhoff, 163 Idaho 627, 417 P.3d 224 (2018); Medical Recovery Servs., LLC v. Ugaki-Hicks, 163 Idaho 651, 417 P.3d 248 (2018); First Sec. Corp. v. Belle Ranch, LLC, 165 Idaho 733, 451 P.3d 446 (2019); Johnson v. Idaho Dep't of Labor, 165 Idaho 827, 453 P.3d 261 (2019); Kenworth Sales Co. v. Skinner Trucking, Inc., 165 Idaho 938, 454 P.3d 580 (2019); Papin v. Papin, 166 Idaho 9, 454 P.3d 1092 (2019); Primera Beef, LLC v. Ward, 166 Idaho 180, 457 P.3d 161 (2020); Eldridge v. West, 166 Idaho 303, 458 P.3d 172 (2020); Nelson v. Evans, 166 Idaho 815, 464 P.3d 301 (2020); Radford v. Orden, 168 Idaho 287, 483 P.3d 344 (2021); Agstar Fin. Servs. v. Northwest Sand & Gravel, Inc., 168 Idaho 358, 483 P.3d 415 (2021); St. Luke's Health Sys. v. Bd. of Comm'rs, 168 Idaho 750, 487 P.3d 342 (2021); Safaris Unlimited, LLC v. Jones, 169 Idaho 644, 501 P.3d 334 (2021); Martin v. Thelma V. Garrett Living Trust, 170 Idaho 1, 506 P.3d 237 (2022); Glatte v. Hernandez, 170 Idaho 481, 512 P.3d 1104 (2022); United Heritage Prop. & Cas. Co. v. Zech, 170 Idaho 764, 516 P.3d 1035 (2022); Access Behavioral Health v. State, Dep't of Health & Welfare, 170 Idaho 874, 517 P.3d 803 (2022); Grace v. Jeppesen, 170 Idaho 534, 519 P.3d 1227 (2022); Nordgaarden v. Kiebert, 171 Idaho 883, 527 P.3d 486 (2023); Christmann v. State Farm Mut. Auto. Ins. Co., -- Idaho --, 535 P.3d 1087 (2023); Davis v. George & Jesse's Les Schwab Tire Store, Inc., -- Idaho --, 541 P.3d 667 (2023).

Decisions Under Prior Rule or Statute

Cost of Brief.

Where custom of Supreme Court is to receive typewritten briefs in all original proceedings, it is not necessary to have a brief printed; hence cost of a printed brief is not a necessary disbursement and can not be taxes as a part of the costs in the case. Cronan v. District Court, 15 Idaho 462, 98 P. 614 (1908).

Cost of Transcript.

Appellate court will allow costs to be taxed for a printed transcript at rate fixed by rule of court. Ulbright v. Baslington, 20 Idaho 546, 119 P. 294 (1911).

Costs Against State.

Former statute authorized the allowance of costs to a successful plaintiff in an appeal by the former state tax collector and acting state tax collector to the Supreme Court from a judgment against them for refund of taxes paid by the plaintiff under protest as to their legality. *American Oil Co. v. Neill, 90 Idaho 333, 414 P.2d 206 (1966)*, overruled on other grounds, *County of Ada v. Red Steer Drive-Ins, 101 Idaho 94, 609 P.2d 161 (1980)*.

Modification by Lower Court.

Costs taxed by Supreme Court become part of judgment, and lower court is without authority to modify them. *Mountain Home Lumber Co. v. Swartwout, 33 Idaho 737, 197 P. 1027 (1921)*.

Modification of Judgment.

Judgment having been modified on appeal, no costs of appeal are allowed. *Jardine v. Hawkes, 44 Idaho 237, 256 P. 97 (1927)*.

Rule 41. Attorney fees on appeal.

(a) Application for Attorney Fees -- Waiver. Any party seeking attorney fees on appeal must assert such a claim as an issue presented on appeal in the first appellate brief filed by such party as provided by Rules 35(a)(5) and 35(b)(5); provided, however, the Supreme Court may permit a later claim for attorney fees under such conditions as it deems appropriate.

(b) Oral Argument on Attorney Fees. At the time of oral argument of an appeal, the parties may present argument as to whether or not the party claiming attorney fees has a legal right thereto.

(c) Adjudication of Right to Attorney Fees. The Supreme Court in its decision on appeal shall include its determination of a claimed right to attorney fees, but such ruling will not contain the amount of attorney fees allowed.

(d) Amount of Attorney Fees. If the Court determines that a party is entitled to attorney fees on appeal, the party claiming attorney fees shall file a claim concurrently with, or as part of, the memorandum of costs provided for by Rule 40. The claim for attorney fees, which at the discretion of the court may include paralegal fees, shall be accompanied by an affidavit setting forth the method of computation of the attorney fees claimed. Attorney fees may also include the reasonable cost of automated legal research (Computer Assisted Legal Research), if the court finds it was reasonably necessary in preparing the party's case. The opposing party may object to the amount of attorney fees claimed in the same manner as provided for objections to a memorandum of costs in Rule 40. The Court shall determine the amount of attorney fees or remand this question to the district court or agency to hear additional evidence and determine the amount of attorney fees to be allowed. Upon the determination of the amount of attorney fees, the Clerk shall insert the amount thereof in the remittitur in the same manner as the Clerk inserts costs pursuant to Rule 40(f).

(e) Number of Copies. The original of the claim or memorandum for attorney fees, objections to attorney fees, and briefs in support of or in opposition thereto shall be filed with the Clerk of the Supreme Court. No copies are required.

History

(Adopted March 25, 1977, effective July 1, 1977; amended March 30, 1984, effective July 1, 1984; amended March 23, 1990, effective July 1, 1990; amended March 19, 2009, effective July 1, 2009; amended and effective January 24, 2019.)

Annotations

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Attorney Fees.

In a case involving the proposed enlargement of water rights by an irrigation district, attorney fees were not awarded as a sanction because the claim was not frivolous, unreasonable, or unmeritorious. *A & B Irrigation Dist. v. Aberdeen-American Falls Ground Water Dist. (In re SRBA Case No. 39576), 141 Idaho 746, 118 P.3d 78 (2005)*.

Because of its failure to cite appropriate authority, the employer's successor was not granted attorney fees on appeal. *Dominguez v. Evergreen Res., Inc., 142 Idaho 7, 121 P.3d 938 (2005)*.

Where there was a genuine issue as to whether a driver had operated insured vehicle with the owner's permission, and where the existence of that permission governed the insurers' obligation, attorney fees were not awarded to respondent insurer, despite the fact that respondent prevailed on appeal. *Or. Mut. Ins. Co. v. Farm Bureau Mut. Ins. Co., 148 Idaho 47, 218 P.3d 391 (2009)*.

Because the assignee of three property lots was the prevailing party on appeal, when the dismissal of a real estate developer's declaratory judgment action against the assignee was affirmed, the assignee was entitled to attorney fees under the option agreement between the developer and the assignor of the property lots. *ABC Agra, LLC v. Critical Access Group, Inc., 156 Idaho 781, 331 P.3d 523 (2014)*.

Although a citizen prevailed on appeal, the supreme court declined to award attorney fees because the citizen did not initially request an award of attorney fees in her opening brief, and she did not cite any authority that would support an award of fees. *Oksman v. City of Idaho Falls, -- Idaho --, 549 P.3d 1086, 2024 Ida. LEXIS 50 (June 4, 2024)*.

Because the supreme court affirmed the district court's decision granting summary judgment in an insurer's favor, the deceased insured's adult heirs were not entitled to payment under the insured's uninsured motorist coverage; thus, the adult heirs were not entitled to attorney fees on appeal. *Lanningham v. Farm Bureau Mut. Ins. Co. of Idaho, -- Idaho --, 551 P.3d 1251, 2024 Ida. LEXIS 71 (July 3, 2024)*.

Award Justified.

Where plaintiffs presented no persuasive argument in support of the contention that the district court, in granting attorney fees to defendant, abused its discretion or misapplied the law, attorney fees on appeal were also awarded to defendant. *Durrant v. Christensen, 117 Idaho 70, 785 P.2d 634 (1990)*.

Where plaintiffs employed clearly dilatory tactics throughout the pretrial stages of litigation, and appealed to the Supreme Court for relief from the sanctions they brought upon themselves, an award of attorney fees was justified. *Ashby v. Western Council, 117 Idaho 684, 791 P.2d 434 (1990)*.

Because the jury's verdict was supported by substantial evidence, the court held that the real estate sales contract between the parties supported an award of attorney fees on appeal. *Haag v. Pollack, 122 Idaho 605, 836 P.2d 551 (Ct. App. 1992)*.

Dairyman's action against farmer for nondelivery of hay was based entirely upon the existence of a contract. Although dairyman failed to prove a contract, that failure should not insulate dairyman from having to pay a reasonable award of attorney fees to the prevailing party. Because farmer prevailed in an action brought to recover damages for the breach of contract for the sale of hay, he was entitled to a reasonable award for attorney fees incurred in bringing the appeal. *Hilt v. Draper, 122 Idaho 612, 836 P.2d 558 (Ct. App. 1992)*.

Where party had agreed in promissory note to pay all costs incurred in collecting the sums due, including attorney fees on appeal, and where the appeal merely presented an invitation to second-guess the trial court on conflicting evidence and issues not raised below, an award of attorney fees to the opposing party was appropriate. *Saint Alphonsus Regional Medical Ctr., Inc. v. Krueger, 124 Idaho 501, 861 P.2d 71 (Ct. App. 1993)*.

Where the only serious question presented was whether the term "judicial proceeding" encompassed the letters written two weeks after the taking of a default judgment in which the attorney informed the trial court of a possible fraud and requested that the court inquire into the matter, in light of the case law and the clearly enunciated policy behind the rule granting immunity for such communications, the appeal was unreasonable and without adequate legal foundation. Therefore, attorney fees were proper for the respondents on appeal. *Malmin v. Engler, 124 Idaho 733, 864 P.2d 179 (Ct. App. 1993)*.

Because company failed on appeal to present any significant issue regarding a question of law, had not shown that findings of fact made by lower court were arguably unsupported by substantial evidence, did not advance any new legal standards or seek modification of existing ones, attempted to relitigate matters put to rest by first appeal, complained of the admission of exhibits that plainly had no bearing on the judgment and whose admission could not possibly constitute reversible error, raised as issues pretrial rulings that after trial were ultimately found in its favor, and disingenuously claimed not to know what discovery order it had disobeyed and for which attorney fees were imposed as sanctions, the appeal was deemed to be unreasonable and without foundation and attorney fees were awarded pursuant to subsection (a) of this rule and § 12-121 and costs pursuant to *I.A.R. 40. Ernst v. Hemenway & Moser Co., 126 Idaho 980, 895 P.2d 581 (1995)*.

The mere fact that an arbitrator's interpretation of a prior case is unsatisfactory to a party is not, of itself, a valid basis for appeal; thus where the nonprevailing party presented no cogent argument as to why settled law did not apply, the appeal was pursued frivolously and without foundation and attorney, prevailing in professional malpractice case, was entitled to attorney fees. *Chicoine v. Bignall, 127 Idaho 225, 899 P.2d 438 (1995)*.

Where legal malpractice action based on medical malpractice action was brought based upon deliberate misstatements to a court of law by both the litigant and her counsel acting in concert, the appeal in such action was brought or defended frivolously, unreasonably, or without foundation and therefore attorney's fees should be awarded pursuant to this rule, and costs should be awarded pursuant to *I.A.R., Rule 40. McKay v. Owens, 130 Idaho 148, 937 P.2d 1222 (1997)*.

Where plaintiff failed to provide argument or authority in support of the only issues on appeal that were properly before the court, the appeal was brought and pursued frivolously, unreasonably, and without foundation and thus defendants were entitled to attorney fees and costs on appeal pursuant to § 12-121, I.R.C.P. 54(e)(1), and this rule. *Anson v. Les Bois Race Track, Inc., 130 Idaho 303, 939 P.2d 1382 (1997)*.

Where plaintiffs presented arguments that were largely incomprehensible, unreasonable, and lacking foundation in law, it was proper to award attorney fees in favor of the respondents. *Bowles v. Pro Indiviso, Inc., 132 Idaho 371, 973 P.2d 142 (1999)*.

Where the plaintiff's appellate argument asked the court to disregard the plainly governing civil rule, and where he had made no colorable argument that the criteria of the applicable rule were satisfied with respect to his claim against the decedent's estate, attorney fees on appeal were

awarded to the defendant estate. *Damian v. Estate of Pina, 132 Idaho 447, 974 P.2d 93 (Ct. App. 1999)*.

Defendant was awarded attorney fees on appeal where plaintiff argued numerous issues which he failed to preserve for appeal by proper objection, argued with findings of fact and invited the appellate court to substitute its own judgment for that of the trial court, and urged the court to ignore firmly-established law. *Kirkman v. Stoker, 134 Idaho 541, 6 P.3d 397 (Ct. App. 2000)*.

Where former husband presented no argument or authority to show that the magistrate abused its discretion in dividing and valuing retirement benefits under the reserved jurisdiction method by utilizing established time rule instead of the accrued benefits method, the district court properly awarded former wife attorney fees pursuant to the appeal. Moreover, the former wife was entitled to attorney fees and costs pursuant to former husband's appeal to the supreme court. *Hunt v. Hunt, 137 Idaho 18, 43 P.3d 777 (2002)*.

On appeal, an award of attorney fees may be granted to the prevailing party pursuant to I.C. *§ 12-121* and Idaho App. R. 41; such an award is appropriate when the court is left with the abiding belief that the appeal has been brought, or defended frivolously, unreasonably, or without foundation. *Hagy v. State, 137 Idaho 618, 51 P.3d 432 (Ct. App. 2002)*.

Appellate court awarded attorney fees to a cow owner, a pasture owner, and the state in a personal injury action brought by injured parties who struck a cow on a highway, as the injured parties' arguments on appeal totally lacked foundation. *Karlson v. Harris, 140 Idaho 561, 97 P.3d 428 (2004)*.

Award to Amicus Curiae.

Where the purchasers of property at a partition sale could not continue to effectively protect their interests absent involvement, as amicus curiae, in an appeal from a decision enforcing the partition judgment and finalizing the sale, the purchasers would be awarded costs and attorney fees. *Mendenhall v. Caine, 101 Idaho 628, 619 P.2d 146 (1980)*.

Award to Appellees.

Where in an action by a lender against the guarantor of certain loans, the lender responded successfully to the principal appeal which was brought by the guarantor and the lender cross-appealed successfully on the question of entitlement to attorney fees for bringing its original cause of action, the lender was therefore entitled to reasonable attorney fees incurred in the appeal. *Industrial Inv. Corp. v. Rocca, 102 Idaho 920, 643 P.2d 1090 (Ct. App. 1982)*.

Compliance with Rule.

Where a reply brief filed after July 1, 1977, contained a claim for attorney's fees, this rule was complied with. *Stanger v. Stanger, 98 Idaho 725, 571 P.2d 1126 (1977)*.

When properly requested in the first appellate brief filed by a party, this Rule provides for an award of attorney fees on appeal. *Tentinger v. McPheters, 132 Idaho 620, 977 P.2d 234 (Ct. App. 1999)*.

Defendant shareholder was not entitled to an award of attorney fees where he did not cite any statutory or contractual provision authorizing such award; since Idaho R. App. P. 41 did not provide the authority for awarding attorney fees, the appellate court would not address the issue. *Gilman v. Davis, 138 Idaho 599, 67 P.3d 78 (2003)*.

Contractor was awarded appellate attorney fees and costs in customers' appeal of an award of attorney fees and costs to the contractor as the prevailing party in a property damage action because the contractor properly raised the issue of attorney fees on appeal by listing it as a separate issue in the contractor's first appellate brief and addressing it in detail with supporting argument and authority. *Crump v. Bromley, 148 Idaho 172, 219 P.3d 1188 (2009)*.

Simply requesting an award of attorney fees pursuant to this rule, without citing any statutory or contractual basis for the award, is insufficient to raise the issue of attorney fees on appeal. A party must point to a statute or contractual provision authorizing an award of attorney fees on appeal. *Sallaz v. Rice, 161 Idaho 223, 384 P.3d 987 (2016)*.

Criminal Action.

Absent an explicit statutory authorization, attorney fees incurred by a defendant who prevails on appeal in a criminal action are not recoverable against the state. *State v. Spurr, 114 Idaho 277, 755 P.2d 1315 (Ct. App. 1988)*.

Discretion.

Where the decision of the trial court is a matter of discretion under this section the appellants must present a cogent challenge with regard to the exercise of discretion under the holding of *Pass v. Kenny, 118 Idaho 445, 797 P.2d 153 (Ct. App. 1990)*. *United States Nat'l Bank v. Cox, 126 Idaho 733, 889 P.2d 1123 (Ct. App. 1995)*.

Divorce Action.

Costs and attorney's fees were awarded to plaintiff-wife in a divorce action. *Stanger v. Stanger, 98 Idaho 725, 571 P.2d 1126 (1977)*.

Where a plaintiff wife brought an appeal to a district court from a magistrate's determination of property issues in a divorce action, the wife's failure to object to the memorandum of costs filed by the defendant husband in the district court did not constitute a waiver of all objections to the claimed attorney fees, because the district judge was sitting as an appellate court in this action and, therefore, the district judge was required to determine the appeal in the same manner and upon the same standards of review as an appeal from the district court to the Supreme Court;

thus, this rule governed the procedure for applying for attorney fees on appeal. *Griffin v. Griffin, 102 Idaho 858, 642 P.2d 949 (Ct. App. 1982)*.

Failure to Comply with Appellate Rules.

Where plaintiff was unprepared to proceed with proof on date of trial and on appeal failed to comply with a number of provisions of the Idaho Appellate Rules, Supreme Court was justified in awarding attorney fees to defendant on appeal under this rule and *§ 12-121*. *Jensen v. Doherty, 101 Idaho 910, 623 P.2d 1287 (1981)*.

Failure to Identify Authority for Reward.

Father was not entitled to attorney's fees in his wrongful death action against the Department of Health and Welfare and a social worker because he failed to provide the court with statutory authority allowing an award of attorney's fees. *Rees v. State, 143 Idaho 10, 137 P.3d 397 (2006)*.

This rule did not provide a mechanism by which the Supreme Court of Idaho could award attorney fees because the rule provided the procedure for requesting attorney fees on appeal, but was not authority alone for awarding fees. *Commercial Ventures v. Lea Family Trust, 145 Idaho 208, 177 P.3d 955 (2008)*.

In an action on a credit card account, a bank was not entitled to an award of attorney's fees on appeal because the bank failed to cite to any legal authority authorizing such an award. Idaho App. R. 41 merely set forth the procedure for awarding attorney's fees on appeal; neither Idaho App. R. 35 or Idaho R. Civ. P. 54(e)(1) provided any authority for such an award; and the bank failed to provide any argument that the action fit within the provisions of I.C. *§ 12-120*(*3). Capps v. FIA Card Servs., N.A., 149 Idaho 737, 240 P.3d 583 (2010)*.

Failure to Provide Adequate Record.

In petition by mother that child buried in Idaho be exhumed and reinterred in New Mexico, trial court denied father's motion to dismiss on the basis of unclean hands, as the father had wrongfully removed child from New Mexico in violation of court order. As the record provided on appeal was inexcusably scant and clearly insufficient to conduct a review of the issues asserted by the father, the court imposed costs on the father's attorney on its own motion. *Garcia v. Pinkham (In re Pinkham), 144 Idaho 898, 174 P.3d 868 (2007)*.

Failure to Raise Issue in Briefs.

The reviewing court did not consider a request for fees on appeal where the plaintiffs did not raise the issue in their first appellate brief. *Bingham v. Montane Resource Assocs., 133 Idaho 420, 987 P.2d 1035 (1999)*.

Idaho App. R. 41 was not the authority for the awarding of attorney fees on appeal as attorney fees were awardable only where they were authorized by statute or contract; because the witness did not support her request for attorney fees on appeal with any authority or argument, the appellate court would not consider the issue. *Bream v. Benscoter, 139 Idaho 364, 79 P.3d 723 (2003)*.

Frivolous Appeal.

Where the appeal was brought frivolously, unreasonably and without foundation, attorney fees were awarded on appeal. *Keller v. Rogstad, 112 Idaho 484, 733 P.2d 705 (1987)*.

Where the investor's appeal was frivolous and without foundation, the Court of Appeals awarded attorney fees on appeal to the futures commission merchant, the amount to be determined under I.A.R. 41(d). *Sinclair & Co. v. Gurule, 114 Idaho 362, 757 P.2d 225 (Ct. App. 1988)*.

Where husband's appeal was brought frivolously and without foundation and merely has disputed the trial court's factual findings by pointing to conflicts in the evidence, wife was entitled to an award of a reasonable attorney fee on appeal, to be determined under this rule. *Krebs v. Krebs, 114 Idaho 571, 759 P.2d 77 (Ct. App. 1988)*.

A taxpayer whose appeal from a decision awarding county payment of delinquent personal property taxes raised frivolous and nonfrivolous issues was liable for attorney's fees only as to issues raised frivolously, unreasonably or without foundation. *Childers v. Wolters, 115 Idaho 527, 768 P.2d 790 (Ct. App. 1988)*.

Where appellant failed on appeal to present any significant issue regarding a question of law, where no findings of fact made by the district court were clearly or arguably unsupported by substantial evidence, where the court was not asked to establish any new legal standards or modify existing ones, and where the focus of the case was the application of settled law to the facts, the appeal was deemed to be unreasonable and without foundation and attorney fees were awarded the appellee. *Excel Leasing Co. v. Christensen, 115 Idaho 708, 769 P.2d 585 (Ct. App. 1989)*.

Appeal was brought frivolously and without foundation where appeal presented no meaningful issue on a question of law in a dispute between the wife and son of decedent, over the ownership of a community property beekeeping business. *Mundell v. Stellmon, 121 Idaho 413, 825 P.2d 510 (Ct. App. 1992)*.

Respondents are entitled to an award of attorney fees on appeal where nonprevailing party invited the Court of Appeals to do no more than second-guess the trial court on conflicting evidence and where the law was well-settled. *Blaser v. Cameron, 121 Idaho 1012, 829 P.2d 1361 (Ct. App. 1991)*.

Defendants' claims and defenses were based upon the false testimony of one of the defendants. A claim or defense based upon false testimony is frivolous, unreasonable and without foundation. However, while defendants did not prevail on the issues raised in plaintiffs'

cross-appeal, their defense to such cross-appeal was not frivolous, unreasonable or without foundation. Therefore, plaintiffs were entitled to their costs associated with the appeal and cross-appeal and were entitled to attorneys' fees on defendants' appeal, but not for fees resulting from their cross-appeal. *Mikesell v. Newworld Dev. Corp., 122 Idaho 868, 840 P.2d 1090 (Ct. App. 1992)*.

An award of attorney fees on appeal in favor of the insurer was proper where the appeal was frivolous because the insured presented no substantial legal argument, Idaho. R. App. P. 41(a), I.C. *§ 12-121*. *Sprinkler Irrigation Co. v. John Deere Ins. Co., 139 Idaho 691, 85 P.3d 667 (2004)*.

Sellers appeal was brought or defended frivolously, unreasonably, or without foundation because the trial court's summary judgment was based upon alternative grounds and the fact that one of the grounds might have been in error was of no consequence and could be disregarded if the judgment could have been sustained upon one of the other grounds; thus, an award of attorney fees on appeal was granted to the escrow agent and the buyer pursuant to Idaho App. R. 41(a) and *§ 12-121*. *Andersen v. Prof'l Escrow Servs., 141 Idaho 743, 118 P.3d 75 (2005)*.

Where plaintiff voluntarily dismissed some of his claims as to a defendant and then re-raised those claims on appeal, his appeal, as to those issues, was frivolous, and the defendant was entitled to an award of costs and attorney fees related to those claims. *Davidson v. Davidson, 150 Idaho 455, 248 P.3d 242 (2011)*.

Defendant's request for attorney fees on appeal was granted because the appellate court was left with the abiding belief that plaintiff's appeal had been brought unreasonably and without legal foundation. *Lytle v. Lytle, 158 Idaho 639, 350 P.3d 340 (Ct. App. 2015)*.

Supreme court declined to award attorney fees to property owners on a daughter's prescriptive and express easement appeals because they were not brought frivolously, unreasonably, or without foundation; the claims involved complex factual and legal matters that merited appellate review. *Frost v. Gilbert, 169 Idaho 250, 494 P.3d 798 (2021)*.

Genuine Issue.

Where the evidence showed that a wife's appeal to the district court, from a magistrate's determination of property issues in a divorce action, seriously addressed the then unresolved and genuine issue of the transmutation of her husband's property from separate to community property, the district judge improperly determined that the husband was entitled to attorney fees since the appeal was not brought or pursued frivolously, unreasonably or without foundation. *Griffin v. Griffin, 102 Idaho 858, 642 P.2d 949 (Ct. App. 1982)*.

Although, with one exception, the issues raised by the defendant on appeal were frivolous and without foundation, the only exception was settled by a decision issued after the defendant's briefs had been filed; therefore, the defendant's appeal was nonfrivolous, and the Court of

Appeals declined to award attorney fees on appeal to the tax commission. *Parsons v. Idaho State Tax Comm'n, 110 Idaho 572, 716 P.2d 1344 (Ct. App. 1986)*.

The appeal was brought without foundation and the appellee was entitled to a reasonable award of attorney fees to be determined under this rule, where the appeal did not raise a genuine issue as to the legal standards governing the trial court's discretion to award costs, nor did it present a cogent challenge to the judge's reasoning process in exercising that discretion. *McGill v. Lester, 111 Idaho 841, 727 P.2d 1269 (Ct. App. 1986)*.

Where the issues presented by the appellant were entirely justified, the respondents were not entitled to attorney fees on appeal. *Ashe v. Hurt, 114 Idaho 70, 753 P.2d 281 (Ct. App. 1988)*, aff'd, *117 Idaho 266, 787 P.2d 252 (1990)*.

Plaintiffs' request for fees was denied where the defendants raised serious issues about whether the district judge properly characterized the relationship between the defendants and the plaintiffs and whether the waiver and release provision of their rental agreement should have barred recovery. *Hanks v. Sawtelle Rentals, Inc., 133 Idaho 199, 984 P.2d 122 (1999)*.

Where the district court did not correctly apply the law with regard to the amount of credit to paid to the other driver's insurer, and the outcome of the case was mixed, attorney fees were inappropriate. *Schaffer v. Curtis-Perrin, 141 Idaho 356, 109 P.3d 1098 (2005)*.

In General.

An award of attorney fees may be granted under I.C. *§ 12-121* and this rule on appeal to the prevailing party; such an award is appropriate when this court is left with the abiding belief that the appeal has been brought or defended frivolously, unreasonably or without foundation. *Excel Leasing Co. v. Christensen, 115 Idaho 708, 769 P.2d 585 (Ct. App. 1989)*.

An award of attorney fees will be made if an appeal does no more than simply invite the appellate court to second-guess a trial court on conflicting evidence, or if the law is well settled and the appellant has made no substantial showing that the lower court misapplied the law, or -- on review of discretionary decisions -- no cogent challenge is presented with regard to the trial judge's exercise of discretion. *Pass v. Kenny, 118 Idaho 445, 797 P.2d 153 (Ct. App. 1990)*.

Attorney fees on appeal are appropriate under this rule and this section if the appellate court is left without an abiding belief that the appeal has been brought or defended frivolously, unreasonably, or without foundation under the holding of *Durrant v. Christensen, 117 Idaho 70, 74, 785 P.2d 634 (1990)*. *United States Nat'l Bank v. Cox, 126 Idaho 733, 889 P.2d 1123 (Ct. App. 1995)*.

This rule does not provide the Court with a basis for awarding attorney fees on appeal, rather, it simply allows the court to award fees if those fees are allowed by some other contractual or statutory authority. *Robbins v. County of Blaine, 134 Idaho 113, 996 P.2d 813 (2000)*.

Idaho Appellate Rule 35(a)(5) and this rule merely set forth the procedural steps necessary for a party to seek attorney fees on appeal and do not provide an independent basis for an award of attorney fees. *Collection Bureau, Inc. v. Dorsey, 150 Idaho 695, 249 P.3d 1150 (2011)*.

While Idaho Appellate Rule 40 provides for the awarding of costs on appeal and this rule specifies the procedure for requesting an award of attorney fees on appeal, neither rule provides the authority for awarding attorney fees. *Edwards v. Mortgage Elec. Registration Sys., 154 Idaho 511, 300 P.3d 43 (2013)*.

Insufficient Grounds for Appeal.

Where an appeal presented no meaningful issue on a question of law and, in regard to the trial court's findings, the appellant was unable to do more than dispute minor details and point to conflicts in the evidence, the appellate court was left with the abiding belief that the appeal was brought without foundation, and thus, the prevailing appellee was entitled to an award of a reasonable attorney fee on appeal. *T-Craft Aero Club, Inc. v. Blough, 102 Idaho 833, 642 P.2d 70 (Ct. App. 1982)*.

Where a dispassionate view of the record disclosed that there was no valid reason to anticipate reversal of the lower court's judgment on the factual grounds urged, the record contained abundant evidence supporting the determination of the judge and jury, and the arguments and authorities advanced in support of the two legal issues presented on appeal failed to establish how the discretionary decisions of the district court not to bifurcate the issues involved in the trial or to act upon the motion for a view arose to the level of error, costs and attorney fees would be awarded to the appellees on appeal. *Rueth v. State, 103 Idaho 74, 644 P.2d 1333 (1982)*.

Where the narrow focus of appeal by landlord from judgment imposing materialman's lien was upon the application of settled law to undisputed facts and the landlord made no substantial showing that the district court misapplied the law, the court concluded that the appeal was brought and pursued without foundation and attorney fees would be awarded to the contractor in an amount to be determined as provided by subsection (d) of this rule. *Christensen v. Idaho Land Developers, Inc., 104 Idaho 458, 660 P.2d 70 (Ct. App. 1983)*.

Where in appeal appellant did not show any findings of facts that were supported by the evidence and appellate court was not asked to establish any new legal standards, nor to modify or clarify any existing legal standards but the focus of the appeal was the application of settled law to facts, attorney's fees were awarded to appellee. *Scott v. Castle, 104 Idaho 719, 662 P.2d 1163 (Ct. App. 1983)*.

Where appellants who were challenging order reducing attorney fees for administratrix of estate did not point to any findings of fact which were clearly, or even arguably, unsupported by substantial and competent evidence, presented no significant issue on a question of law, did not request that the court establish any new legal standards, nor that the court modify or clarify any existing standards, and where the narrow focus of the appeal was the application of settled law to the facts and there was no showing that the magistrate misapplied the law, the appeal from the district court was brought unreasonably and without foundation; hence, attorney fees on

appeal were awarded to the respondent heirs in an amount to be determined as provided in subsection (d) of this rule. *Gatchel v. Butler, 104 Idaho 876, 664 P.2d 783 (Ct. App. 1983)*.

Where appellant did not point to any findings of fact, with one exception, which was not supported by substantial and competent evidence and that exception did not affect the trial court's ultimate conclusions of law nor did he ask the court to establish any new legal standards, nor to modify or clarify any existing standards the appeal was brought frivolously, unreasonably and without foundation. Therefore, the court awarded attorney fees to the respondents. *Fairchild v. Fairchild, 106 Idaho 147, 676 P.2d 722 (Ct. App. 1984)*.

Where the appeal presents no meaningful issue on a question of law, but simply invites the appellate court to second-guess the trial judge on questions of fact, an award of attorney fees is appropriate. *DeMarco v. Stewart, 107 Idaho 555, 691 P.2d 801 (Ct. App. 1984)*.

Although the defendant's arguments to the Supreme Court superficially read reasonably, its contentions in fact were unreasonably grounded; therefore, the district court correctly awarded attorney's fees to the plaintiff. *O'Boskey v. First Fed. Sav. & Loan Ass'n, 112 Idaho 1002, 739 P.2d 301 (1987)*.

Landowner who brought an action against sublessee, seed supplier, and tenant farmers to recover the value of its share of wheat harvested from the landowner's property by the tenant farmers, was entitled to reasonable attorney fees on appeal, to be determined by the trial court pursuant to this rule, where the arguments forwarded by the seed supplier, although apparently sincere, were substantially without merit and the appeal was unreasonable. *NBC Leasing Co. v. R & T Farms, Inc., 114 Idaho 141, 754 P.2d 454 (Ct. App. 1988)*.

An award under I.C. *§ 12-121* is appropriate where an appeal presents no meaningful issue on a question of law but simply invites the appellate court to second-guess the trial judge on conflicting evidence; in such a case a reasonable attorney fee, to be determined under this rule, may be awarded. *Knowlton v. Mudd, 116 Idaho 262, 775 P.2d 154 (Ct. App. 1989)*.

Where substantial and competent evidence supporting the district court's findings was minimally challenged by defendant's case, and appeal was brought without foundation, plaintiff was entitled to an award of reasonable attorney fees on appeal. *Tri-Circle, Inc. v. Brugger Corp., 121 Idaho 950, 829 P.2d 540 (Ct. App. 1992)*.

No Entitlement to Fees.

Neither party presented a sufficient showing of entitlement to attorney fees on appeal, where the appeal was not brought, pursued or defended frivolously, unreasonably or without foundation. *Siegel Mobile Home Group, Inc. v. Bowen, 114 Idaho 531, 757 P.2d 1250 (Ct. App. 1988)*.

Where the record did not reflect that the plaintiffs' claims were brought or pursued frivolously, but that their arguments had at least some foundation, attorney fees were not awarded on appeal. *Baker v. Sullivan, 132 Idaho 746, 979 P.2d 619 (1999)*.

The reviewing court declined to award attorney fees on appeal where the defendant brought some legitimate issues before the court and did not pursue its appeal "frivolously, unreasonably, or without foundation." *Perry v. Magic Valley Reg'l Med. Ctr., 134 Idaho 46, 995 P.2d 816 (2000)*.

Lien claimant presented a good faith argument for modification of I.C. *§ 45-506*, albeit unsuccessfully, and given the divided nature of prior case law and the potential for an alternative construction of the statute, it could not be said that the lien claimant's argument was frivolous, unreasonable, or without foundation; the request for attorney fees was, therefore, denied. *Ultrawall, Inc. v. Washington Mut. Bank, 135 Idaho 832, 25 P.3d 855 (2001)*.

Attorney fees were not awarded where plaintiff's challenge to the discovery sanction imposed by the trial court, though unsuccessful, was not frivolous. *Clark v. Raty, 137 Idaho 343, 48 P.3d 672 (Ct. App. 2002)*.

Where no statutory or contractual authority authorized an award of attorney fees in quiet title action, an appellate court was unable to award the fees on appeal. *Neider v. Shaw, 138 Idaho 503, 65 P.3d 525 (2003)*.

In an insured's bad faith breach of contract action against her insurer, the insurer's request under Idaho App. R. 41 for attorney's fees on appeal was denied because R. 41 did not authorize such an award. *Lovey v. Regence Blueshield of Idaho, 139 Idaho 37, 72 P.3d 877 (2003)*.

No attorney fees were awarded to either party where neither party brought or defended an appeal frivolously, unreasonably, or without foundation; as the prevailing party, the ex-wife was awarded costs. *Pike v. Pike, 139 Idaho 406, 80 P.3d 342 (Ct. App. 2003)*.

Department of Finance's request for attorney fees on appeal was denied where the central issues on appeal were the interpretation of the word "claim," as found in *§ 26-2223(2)*, and whether the corporation's agreement was an assignment for collection purposes or an assignment of the entire claim; there were issues of first impression and a case of first impression did not constitute an area of settled law. *Purco Fleet Servs. v. Idaho State Dep't of Fin., 140 Idaho 121, 90 P.3d 346 (2004)*.

In an action arising from a breach of a contract to design and construct a cabin, a wholesale supplier who prevailed on summary judgment was properly awarded costs and attorney fees pursuant to *§ 12-121*, and the supplier was not entitled to attorney fees on appeal under *§ 12-120*, because it only prevailed in part. *Nelson v. Anderson Lumber Co., 140 Idaho 702, 99 P.3d 1092 (Ct. App. 2004)*.

After determining that the State of Idaho DOT properly denied plaintiff's application to renew his driver's license for failing to provide his social security number, an appellate court declined to award the state attorney's fees because the state conceded that plaintiff's religious beliefs and motivations were sincere. *Lewis v. State, 143 Idaho 418, 146 P.3d 684 (2006)*.

Father was not entitled to attorney's fees in his wrongful death action against the department of health and welfare and a social worker because he failed to provide the court with statutory authority allowing an award of attorney's fees. *Rees v. State, 143 Idaho 10, 137 P.3d 397 (2006)*.

After determining that the State of Idaho DOT properly denied plaintiff's application to renew his driver's license for failing to provide his social security number, an appellate court declined to award the State attorney fees because the State conceded that plaintiff's religious beliefs and motivations were sincere. *Lewis v. State, 143 Idaho 418, 146 P.3d 684 (2006)*.

Therapist was not entitled to attorney fees on appeal where she failed to cite any statutory authority for such an award. *Ater v. Idaho Bureau of Occupational Licenses, 144 Idaho 281, 160 P.3d 438 (2007)*, overruled on other grounds, *City of Osburn v. Randel, 152 Idaho 906, 277 P.3d 353 (2012)*.

Mother's request for an award of fees under this rule was denied because this rule only specifies the procedure for requesting an award of attorney fees on appeal. It did not serve as substantive authority for awarding fees. *Danti v. Danti, 146 Idaho 929, 204 P.3d 1140 (2009)*.

Where appellant insured's suit against respondent insurance company for breach of an insurance contract and declaratory relief was dismissed, and the Supreme Court of Idaho upheld the decision, although the insurance company prevailed on appeal, I.C. *§ 41-1839(4)* precluded an award of attorney fees. *Villa Highlands, LLC v. Western Cmty. Ins. Co., 148 Idaho 598, 226 P.3d 540 (2010)*.

Employee was not entitled to attorney's fees under *§ 72-804* and Idaho App. R. 41 because the Idaho Industrial Commission's decision to deny the employee workers' compensation benefits was affirmed on appeal. *Watson v. Joslin Millwork, Inc., 149 Idaho 850, 243 P.3d 666 (2010)*.

County was not entitled to an award of attorney fees on appeal as the prevailing party because the appeal by a property owner asserted a fairly debatable position concerning the support in the evidence for the district court's dismissal of the owner's action, such that the appellate court could not say, with an abiding belief that the appeal was brought unreasonably, frivolously, or without adequate foundation. *Spirit Ridge Mineral Springs, LLC v. Franklin County, 157 Idaho 424, 337 P.3d 583 (2014)*.

Mother was not entitled to fees on appeal under this rule and *§ 12-121* even though she was the prevailing party, because the stepfather's appeal was not unreasonable, frivolous, or without foundation, as he raised a novel legal question regarding the scope of *Stockwell v. Stockwell, 116 Idaho 297, 775 P.2d 611 (1989)* after *Doe v. Doe, 162 Idaho 254, 395 P.3d 1287 (2017)* in the context of an underlying divorce. *Glatte v. Hernandez, 170 Idaho 481, 512 P.3d 1104 (2022)*.

--Failure to Identify Authority for Award.

Reference to this rule is not sufficient by itself to properly request an award of attorney fees on appeal; no fees could be awarded because no statute or contractual provision authorizing such

an award was identified. *State v. Daicel Chem. Indus., Ltd., 141 Idaho 102, 106 P.3d 428 (2005)*.

Lessor was not entitled to attorney fees on appeal because the lessor neither submitted a legal argument in support of its request nor specified the statute or contractual provision pursuant to which an award of fees was available. *Parkside Sch., Inc. v. Bronco Elite Arts & Ath., LLC, 145 Idaho 176, 177 P.3d 390 (2008)*.

Where claimant sought benefits for a work-related injury, the Supreme Court of Idaho reversed the decision of the Idaho Industrial Commission which had denied the claim as untimely; because respondents, the employer and the Idaho State Insurance Fund, had reasonable grounds to contest the claim because case law on the "anniversary rule" was unclear, claimant was not entitled to attorney fees. *Nelson v. City of Bonners Ferry, 149 Idaho 29, 232 P.3d 807 (2010)*.

In a dispute concerning a foreign judgment, attorney fees were not awarded to a creditor on appeal because of a failure to cite a statutory basis for its separate request for an award. *Int'l Real Estate Solutions, Inc. v. Arave, 157 Idaho 816, 340 P.3d 465 (2014)*.

--Habeas Corpus Action.

Where magistrate summarily dismissed defendant's petition for habeas corpus relief and where, on appeal, the district court did not remand to the magistrate for an evidentiary hearing, the full nature and extent of the state's defense to defendant's petition was unknown, and based on the current record it was not possible to determine if the state's actions met the criteria necessary under *§ 12-121* and this rule for an award of attorney fees to defendant, as such, the district court did not abuse its discretion in denying defendant his attorney fees in the intermediate appeal. *Rendon v. Paskett, 126 Idaho 944, 894 P.2d 775 (Ct. App. 1995)*.

--Sexual Harassment Action.

While there were compelling arguments for awarding fees to employer whose favorable directed verdict in quid pro quo sexual harassment action was upheld on appeal, due to the sparse case law in Idaho involving sexual discrimination issues, court could not say that appeal was brought for improper purposes or in bad faith. *De Los Santos v. J.R. Simplot Co., 126 Idaho 963, 895 P.2d 564 (1995)*.

Prevailing Party.

Where the contractor in breach of contract suit prevailed on appeal by successfully responding to the issues raised by the plaintiff owners and the construction contract mandated an award of attorney fees to the prevailing party, the contractor was entitled to reasonable attorney fees to be determined in conformance with this rule. *Chadderdon v. King, 104 Idaho 406, 659 P.2d 160 (Ct. App. 1983)*.

Where insured prevailed on one issue and also successfully met challenges on other issues, it was entitled to a reasonable attorney fee on appeal. *Manduca Datsun, Inc. v. Universal Underwriters Ins. Co., 106 Idaho 163, 676 P.2d 1274 (Ct. App. 1984)*.

If, on remand, the district court would find the partnership to be the prevailing party below, entitling it to attorney fees and a full award of costs, then the partnership would be deemed the prevailing party on appeal as well and entitled to cost and attorney fee awards pursuant to I.A.R. 40 and this rule. *Evans v. Sawtooth Partners, 111 Idaho 381, 723 P.2d 925 (Ct. App. 1986)*.

The decision of the Court of Appeals to uphold the award of attorney fees in the district court made the plaintiff the prevailing party on appeal; accordingly, the plaintiff was entitled to an award of a reasonable attorney fee on appeal, to be determined under this rule. *Building Concepts, Ltd. v. Pickering, 114 Idaho 640, 759 P.2d 931 (Ct. App. 1988)*.

While landlord was not successful on his cross-appeal, he was the prevailing party on the underlying claim for breach of the lease agreement, both at trial and on appeal, and based on the terms of the lease, which provided for the payment of all attorney's fees and court costs incurred in such litigation, landlord was entitled to an award of costs and fees incurred on the appeal but not on the cross-appeal. *Melton v. Lehmann, 118 Idaho 61, 794 P.2d 650 (Ct. App. 1990)*.

Plaintiffs were entitled to an award of fees for appeal even though defendant could ultimately be found to be the prevailing party after trial on his counterclaim. *Bowen v. Heth, 120 Idaho 452, 816 P.2d 1009 (Ct. App. 1991)*.

Seller's counterclaim was an action to recover on a contract for the sale of goods. Because the sellers prevailed on their claim below, and because the judgment of the district court on the contractual issue was affirmed, sellers were the prevailing parties on appeal and were thus entitled to an award of attorney fees and costs in both the lower court and on appeal. *Christensen v. Ransom, 123 Idaho 99, 844 P.2d 1349 (Ct. App. 1992)*.

The plaintiff was not entitled to costs on appeal where it was the prevailing party on appeal but only prevailed partially on cross-appeal. *Aberdeen-Springfield Canal Co. v. Peiper, 133 Idaho 82, 982 P.2d 917 (1999)*.

Where it remained to be seen whether the prevailing party on appeal would be the prevailing party in the action, and, therefore, entitled to attorney fees under I.C. *§ 12-120(3)* and Idaho App. R. 41, the district court, upon final resolution of the case, could consider fees incurred on appeal when it made an award to the prevailing party. As a matter of right, costs on appeal were awarded to the prevailing party on appeal under *Idaho App. R. 40. Cox v. City of Sandpoint, 140 Idaho 127, 90 P.3d 352 (Ct. App. 2003)*.

Grant of summary judgment in favor of the purchasers pursuant to I.R.C.P. 56(c) was improper where the seller was not in breach of the sale agreement because the first amended covenants were simply void and thus, the purchasers were not deprived of any benefits under the contract; further, attorney fees and costs was proper pursuant to I.A.R. 41 because it was the prevailing

party on appeal and the sale agreement further provided as such. *Shawver v. Huckleberry Estates, L.L.C., 140 Idaho 354, 93 P.3d 685 (2004)*.

Where a city did not prevail in a declaratory judgment action against several presenters regarding a proposed marijuana initiative, it was not entitled to attorney's fees; moreover, the presenters were not entitled to such fees on appeal either because the appeal had a reasonable basis since a pivotal case on the issue had not yet been decided. *Davidson v. Wright, 143 Idaho 616, 151 P.3d 812 (2006)*.

Where a city did not prevail in a declaratory judgment action against several presenters regarding a proposed marijuana initiative, it was not entitled to attorney fees; moreover, the presenters were not entitled to such fees on appeal either because the appeal had a reasonable basis since a pivotal case on the issue had not yet been decided. *Davidson v. Wright, 143 Idaho 616, 151 P.3d 812 (2006)*.

Investor was not entitled to attorney fees on appeal because the case presented an issue of first impression and the husband and wife, who brought the claim to recover profits paid to a fellow investor in an investment Ponzi scheme, prevailed on appeal. *Christian v. Mason, 148 Idaho 149, 219 P.3d 473 (2009)*.

Because the merits of appellants' claims still needed to be addressed, a prevailing party could not yet be determined, and the court would not consider interim appellate attorney fees. *Tucker v. State, 168 Idaho 570, 484 P.3d 851 (2021)*.

Residents were not the prevailing party on appeal and consequently were not entitled to attorney fees and costs. *Richardson v. Blaine Cnty., 171 Idaho 806, 526 P.3d 976 (2023)*.

Neither party was entitled to attorney fees on appeal, because they both prevailed in part on appeal. Although plaintiff prevailed on the issues presented in defendant's cross-appeal, it did not prevail on the issues it raised on appeal, and, while defendant successfully defended plaintiff's appeal, it had not prevailed on the issues raised in its cross-appeal. *Burns Concrete, Inc. v. Teton Cnty., -- Idaho --, 529 P.3d 747 (2023)*.

In an action for unlawful detainer, the tenant was entitled to costs on appeal, but neither party was entitled to attorney fees, because although the tenant was the prevailing party on appeal, the case presented a novel legal issue; thus, it was not brought unreasonably, frivolously, or without foundation. *Worthington v. Thunder, -- Idaho --, 541 P.3d 694 (2024)*.

Recovery by Criminal Appellant.

A successful criminal appellant cannot recover attorney fees under *§§ 12-120* and *12-121* which apply to only civil actions or under I.A.R. 40 and this rule absent an explicit statutory authorization. *State v. Roll, 118 Idaho 936, 801 P.2d 1287 (Ct. App. 1990)*.

Rehearing.

District court did not err in denying rehearing; the motion for reconsideration should be considered as a petition for rehearing, and an appellate court is not required to issue an opinion or explain its reason for denying rehearing; whether to grant or deny rehearing is entirely within the appellate court's unbridled discretion. *Charney v. Charney, 159 Idaho 62, 356 P.3d 355 (2015)*.

Worker's Compensation Cases.

There is no authority for the award of attorney fees against a worker's compensation claimant who unsuccessfully appeals to the *Supreme Court of Idaho. Swanson v. Kraft, Inc., 116 Idaho 315, 775 P.2d 629 (1989)*.

Cited in:

Pratt v. Pratt, 99 Idaho 500, 584 P.2d 645 (1978); *Levra v. National Union Fire Ins. Co., 99 Idaho 871, 590 P.2d 1017 (1979)*; *Idaho First Nat'l Bank v. Wells, 100 Idaho 256, 596 P.2d 429 (1979)*; *Ross v. Ross, 103 Idaho 406, 648 P.2d 1119 (1982)*; *Biggers v. Biggers, 103 Idaho 550, 650 P.2d 692 (1982)*; *Bank of Idaho v. Colley, 103 Idaho 320, 647 P.2d 776 (Ct. App. 1982)*; *Fahrenwald v. LaBonte, 103 Idaho 751, 653 P.2d 806 (Ct. App. 1982)*; *Goodwin v. Nationwide Ins. Co., 104 Idaho 74, 656 P.2d 135 (Ct. App. 1982)*; *Hayes v. Amalgamated Sugar Co., 104 Idaho 279, 658 P.2d 950 (1983)*; *Steiner v. Amalgamated Sugar Co., 106 Idaho 111, 675 P.2d 826 (Ct. App. 1984)*; *Andre v. Morrow, 106 Idaho 455, 680 P.2d 1355 (1984)*; *Bob Daniels & Sons v. Weaver, 106 Idaho 535, 681 P.2d 1010 (Ct. App. 1984)*; *Lind v. Perkins, 107 Idaho 901, 693 P.2d 1103 (Ct. App. 1984)*; *Makin v. Liddle, 108 Idaho 67, 696 P.2d 918 (Ct. App. 1985)*; *Miller Constr. Co. v. Stresstek, 108 Idaho 187, 697 P.2d 1201 (Ct. App. 1985)*; *Cheney v. Smith, 108 Idaho 209, 697 P.2d 1223 (Ct. App. 1985)*; *Laight v. Idaho First Nat'l Bank, 108 Idaho 211, 697 P.2d 1225 (Ct. App. 1985)*; *Centers v. Yehezkely, 109 Idaho 216, 706 P.2d 105 (Ct. App. 1985)*; *Davis v. Gage, 109 Idaho 1029, 712 P.2d 730 (Ct. App. 1985)*; *Farber v. Howell, 111 Idaho 132, 721 P.2d 731 (Ct. App. 1986)*; *Brazier v. Brazier, 111 Idaho 692, 726 P.2d 1143 (Ct. App. 1986)*; *Spidell v. Jenkins, 111 Idaho 857, 727 P.2d 1285 (Ct. App. 1986)*; *First Sec. Bank v. Mountain View Equip. Co., 112 Idaho 158, 730 P.2d 1078 (Ct. App. 1986)*; *Davidson v. Beco Corp., 112 Idaho 560, 733 P.2d 781 (Ct. App. 1986)*; *Nalen v. Jenkins, 113 Idaho 79, 741 P.2d 366 (Ct. App. 1987)*; *Thomas v. John Hancock Mut. Life Ins. Co. (In re Death of Cole), 113 Idaho 98, 741 P.2d 734 (Ct. App. 1987)*; *Vanoski v. Thomson, 114 Idaho 381, 757 P.2d 244 (Ct. App. 1988)*; *Lowery v. Board of County Comm'rs, 115 Idaho 64, 764 P.2d 431 (Ct. App. 1988)*; *Pilcher v. Dattel, 115 Idaho 79, 764 P.2d 446 (Ct. App. 1988)*; *Jennings v. Edmo, 115 Idaho 391, 766 P.2d 1272 (Ct. App. 1988)*; *Parsons v. Beebe, 116 Idaho 551, 777 P.2d 1224 (Ct. App. 1989)*; *Bell v. Golden Condor, Inc., 117 Idaho 21, 784 P.2d 351 (Ct. App. 1989)*; *Harter v. Products Mgt. Corp., 117 Idaho 121, 785 P.2d 685 (Ct. App. 1990)*; *Heirs & Devisees of Grover v. Roselle, 117 Idaho 184, 786 P.2d 575 (Ct. App. 1990)*; *Andrews v. Idaho Forest Indus., Inc., 117 Idaho 195, 786 P.2d 586 (Ct. App. 1990)*; *Kinsela v. State, Dep't of Fin., 117 Idaho 632, 790 P.2d 1388 (1990)*; *Wells v. Williamson, 118 Idaho 37, 794 P.2d 626 (1990)*; *Sun Valley Shamrock Resources, Inc. v. Travelers Leasing Corp., 118 Idaho 116, 794 P.2d 1389 (1990)*; *Needs v. State, 118 Idaho 207, 795 P.2d 912 (Ct. App. 1990)*; *USA Fertilizer, Inc. v. Idaho First Nat'l Bank, 120 Idaho 271, 815 P.2d 469 (Ct. App. 1991)*; *Hoff Cos. v. Danner, 121 Idaho 39, 822 P.2d 558 (Ct. App. 1991)*; *Maslen v. Maslen, 121 Idaho 85, 822 P.2d 982 (1991)*; *Dante v.*

Golas, 121 Idaho 149, 823 P.2d 183 (Ct. App. 1992); Ellibee v. Ellibee, 121 Idaho 501, 826 P.2d 462 (1992); Treasure Valley Bank v. Butcher, 121 Idaho 531, 826 P.2d 492 (Ct. App. 1992); Phillips Indus., Inc. v. Firkins, 121 Idaho 693, 827 P.2d 706 (Ct. App. 1992); Curtis v. Canyon Highway Dist. No. 4, 122 Idaho 73, 831 P.2d 541 (1992); Figueroa v. Kit-San Co., 123 Idaho 149, 845 P.2d 567 (Ct. App. 1992); Suitts v. First Sec. Bank of Idaho, N.A., 125 Idaho 27, 867 P.2d 260 (Ct. App. 1993); Bannock Bldg. Co. v. Sahlberg, 126 Idaho 545, 887 P.2d 1052 (1994); Toews v. Funk, 129 Idaho 316, 924 P.2d 217 (Ct. App. 1994); Parrott v. Wallace, 127 Idaho 306, 900 P.2d 214 (Ct. App. 1995); Tyler v. Keeney, 128 Idaho 524, 915 P.2d 1382 (Ct. App. 1996); Angstman v. City of Boise, 128 Idaho 575, 917 P.2d 409 (Ct. App. 1996); Hawks v. EPI Prods. USA, Inc., 129 Idaho 281, 923 P.2d 988 (1996); Landvik ex rel. Landvik v. Herbert, 130 Idaho 54, 936 P.2d 697 (Ct. App. 1997); Kolln v. Saint Luke's Reg'l Med. Ctr., 130 Idaho 323, 940 P.2d 1142 (1997); Idaho State Tax Comm'n v. Beacom, 131 Idaho 569, 961 P.2d 660 (Ct. App. 1998); Weaver v. Searle Bros., 131 Idaho 610, 962 P.2d 381 (1998); Tupper v. State Farm Ins., 131 Idaho 724, 963 P.2d 1161 (1998); Danz v. Lockhart, 132 Idaho 113, 967 P.2d 1075 (Ct. App. 1998); Viafax Corp. v. Stuckenbrock, 134 Idaho 65, 995 P.2d 835 (Ct. App. 2000); State ex rel. Industrial Comm'n v. Quick Transp., Inc., 134 Idaho 240, 999 P.2d 895 (2000); Perez v. Perez, 134 Idaho 555, 6 P.3d 411 (Ct. App. 2000); Weaver v. Stafford, 134 Idaho 691, 8 P.3d 1234 (2000); Stanley v. McDaniel, 134 Idaho 630, 7 P.3d 1107 (2000); Blaha v. Board of Ada County Comm'rs, 134 Idaho 770, 9 P.3d 1236 (2000); Brinkmeyer v. Brinkmeyer, 135 Idaho 596, 21 P.3d 918 (2001); Kohring v. Robertson, 137 Idaho 94, 44 P.3d 1149 (2002); Primary Health Network v. State, 137 Idaho 663, 52 P.3d 307 (2002); Action Collection Serv. v. Seele, 138 Idaho 753, 69 P.3d 173 (Ct. App. 2003); Elliott v. Darwin Neibaur Farms, 138 Idaho 774, 69 P.3d 1035; Bailey v. Sanford, 139 Idaho 744, 86 P.3d 458 (2004); Eacret v. Bonner County, 139 Idaho 780, 86 P.3d 494 (2004); Heritage Excavation, Inc. v. Briscoe, 141 Idaho 40, 105 P.3d 700 (Ct. App. 2005); VFP VC v. Dakota Co., 141 Idaho 326, 109 P.3d 714 (2005); Gibson v. Bennett, 141 Idaho 270, 108 P.3d 417 (Ct. App. 2005); Fischer v. City of Ketchum, 141 Idaho 349, 109 P.3d 1091 (2005); VanVooren v. Astin, 141 Idaho 440, 111 P.3d 125 (2005); Campbell v. Kildew, 141 Idaho 640, 115 P.3d 731 (2005); Edmunds v. Kraner, 142 Idaho 867, 136 P.3d 338 (2006); Silva v. Silva, 142 Idaho 900, 136 P.3d 371 (Ct. App. 2006); Foster v. Kootenai Med. Ctr., 143 Idaho 425, 146 P.3d 691 (Ct. App. 2006); Goodman v. Lothrop, 143 Idaho 622, 151 P.3d 818 (2007); C Sys. v. McGee, 145 Idaho 559, 181 P.3d 485 (2008); Youngblood v. Higbee, 145 Idaho 665, 182 P.3d 1199 (2008); Losser v. Bradstreet, 145 Idaho 670, 183 P.3d 758 (2008); Lawrence v. Hutchinson, 146 Idaho 892, 204 P.3d 532 (2009); Neighbors for Responsible Growth v. Kootenai County, 147 Idaho 173, 207 P.3d 149 (2009); Craig v. Gellings, 148 Idaho 192, 219 P.3d 1208 (2009); Butters v. Valdez, 149 Idaho 764, 241 P.3d 7 (Ct. App. 2010); Bagley v. Thomason, 149 Idaho 799, 241 P.3d. 972 (2010); Moore v. Moore, 152 Idaho 245, 269 P.3d 802 (2011); Fazzio v. Mason, 150 Idaho 591, 249 P.3d 390 (2011); Knowlton v. Wood River Med. Ctr., 151 Idaho 135, 254 P.3d 36 (2011); Aguilar v. Coonrod, 151 Idaho 642, 262 P.3d 671 (2011); McDavid v. Kiroglu, 155 Idaho 49, 304 P.3d 1215 (2013); Taft v. Jumbo Foods, Inc., 155 Idaho 511, 314 P.3d 193 (2013); Campbell v. Kvamme, 155 Idaho 692, 316 P.3d 104 (2013); Brown v. Brown, 157 Idaho 522, 337 P.3d 681 (2014); Charney v. Charney, 159 Idaho 62, 356 P.3d 355 (2015); Huber v. Lightforce USA, Inc., 159 Idaho 833, 367 P.3d 228 (2016); Action Collection Serv. v. Black, 163 Idaho 268, 411 P.3d 312 (2017); Med. Recovery Servs., LLC v. Siler, 162 Idaho 30, 394 P.3d 73 (2017); Forbush v. Sagecrest Multi Family Prop. Owners' Ass'n, 162 Idaho 317, 396 P.3d 1199 (2017); Valentine v. Valentine, 162 Idaho 86, 394 P.3d 129 (2017); Kirby v. Scotton, 163 Idaho 551, 415 P.3d 960

(Ct. App. 2018); *Budget Truck Sales, LLC v. Tilley, 163 Idaho 841, 419 P.3d 1139 (2018)*; *Medical Recovery Servs., LLC v. Ugaki-Hicks, 163 Idaho 651, 417 P.3d 248 (2018)*; *Idaho Power Co. v. Tidwell, 164 Idaho 571, 434 P.3d 175 (2018)*; *Monitor Fin., L.C. v. Wildfire Ridge Estates, LLC, 164 Idaho 555, 433 P.3d 183 (2019)*; *Aguilar v. State, 164 Idaho 893, 436 P.3d 1242 (2019)*; *Oliveros v. Rule Steel Tanks, Inc., 165 Idaho 53, 438 P.3d 291 (2019)*; *Stender v. SSI Food Servs. Inc. (In re Bd. of Tax Appeals), 165 Idaho 433, 447 P.3d 881 (2019)*; *Eagle Creek Irrigation Co. v. A.C.& C.E. Invs., Inc., 165 Idaho 467, 447 P.3d 915 (2019)*; *Smith v. Glenns Ferry Highway Dist., 166 Idaho 683, 462 P.3d 1147 (2020)*; *Ellis v. Ellis, 167 Idaho 1, 467 P.3d 365 (2020)*; *Agstar Fin. Servs. v. Northwest Sand & Gravel, Inc., 168 Idaho 358, 483 P.3d 415 (2021)*; *Safaris Unlimited, LLC v. Jones, 169 Idaho 644, 501 P.3d 334 (2021)*; *Chester v. Wild Idaho Adventures RV Park, LLC, 171 Idaho 212, 519 P.3d 1152 (2022)*; *Farms, LLC v. Isom, -- Idaho --, 537 P.3d 1241 (2023)*.

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A.L.R.

Construction of contingent fee contract as regards compensation for services after judgment or on appeal. *13 A.L.R.3d 673*.

End of Document

Rule 42. Petition for rehearing.

(a) Time for Filing -- Filing Fee. Petitions for rehearing must be physically filed with the Clerk of the Supreme Court, together with the filing fee, within 21 days after the filing date of the Court's opinion, and must be served upon all parties to the appeal or proceeding. If the opinion is modified, other than to correct a clerical error, an aggrieved party may physically file another petition for rehearing within 21 days from the date of the modified opinion and serve all adverse parties in the appeal or proceeding. No response to any petition for rehearing shall be made except upon direction of the Court.

(b) Briefs on the Petition. A brief or memorandum in support of the petition must be filed within 14 days of the filing date of the petition and shall be typewritten on letter size paper. If the appeal was expedited pursuant to Rule 12.2, the brief in support of the petition shall be filed with the petition or the petition will be summarily dismissed. The original petition and brief shall be filed with the Clerk of the Supreme Court. No copies are required.

(c) Oral Argument on Petition for Rehearing. There shall be no oral argument upon the petition for rehearing of an appeal or proceeding unless ordered by the Supreme Court.

(d) Notice of Rehearing -- Briefs. Copies of an order granting or denying a rehearing shall be served by the Clerk of the Supreme Court upon all parties to the appeal or proceeding. The order may set forth the issues to be reheard, and shall direct the time and order for the filing of briefs. A brief in support of or in opposition to a petition for rehearing need not be bound nor have any colored cover.

(e) Oral Argument on Rehearing. If the Supreme Court grants a petition for rehearing, argument upon rehearing shall be scheduled by the Court in the same manner as argument on the merits of an appeal or petition.

History

(Adopted March 25, 1977, effective July 1, 1977; amended March 20, 1985, effective July 1, 1985; amended March 28, 1986, effective July 1, 1986; amended January 4, 2010, effective February 1, 2010; amended March 18, 2011, effective July 1, 2011; amended November 20, 2012, effective January 1, 2013; amended and effective January 24, 2019.)

Annotations

Case Notes

Denial of Petition.
Motion for Reconsideration.
Reconsideration of Affirmance of Magistrate.
Sua Sponte Dismissal.

Denial of Petition.

Although petitions for rehearing are not required under the present rules before seeking further appellate review by a higher court, neither is the higher review limited, under the rules, solely to the question of whether the application for rehearing should or should not have been granted. Commonly, the denial of a petition for rehearing preserves for review, by the higher appellate court, the merits of the decision entered by the lower court on appeal. *Ustick v. Ustick, 104 Idaho 215, 657 P.2d 1083 (Ct. App. 1983)*.

Motion for Reconsideration.

Defendant's motion to "reinstate" his appeal essentially constituted a petition for rehearing, which was timely and extended the period within which to seek further appellate review of the district court's dismissal decision, until 42 days following determination of the motion for reinstatement of the appeal from the magistrate division. When the district court entered an order on April 8, 1991, denying defendant's petition for rehearing, defendant's only remaining remedy was to appeal to the Supreme Court within 42 days. He was not entitled to file another petition for rehearing or any similar motion labeled as a "Motion for Reconsideration." Defendant did not file a notice of appeal within 42 days of April 8, 1991. Instead, he waited until after the district court again refused to reinstate the appeal from the magistrate division, and then he filed a notice of appeal on May 31. Because the time for filing a notice of appeal was not stayed by the filing of the unauthorized "Motion for Reconsideration," the motion was not only unauthorized, it was also untimely. As a result, the Court of Appeals had no jurisdiction to review the merits of the district court's decision to dismiss the appeal. *Dieziger v. Pickering, 122 Idaho 718, 838 P.2d 321 (Ct. App. 1992)*.

Because the order dismissing an appeal was not an opinion, Idaho App. R. 42, which provided for petitions for rehearing, did not apply. Therefore, the appellate court considered a petition as a motion for reconsideration and addressed it pursuant to *Idaho App. R. 48. Cook v. Arias, 164 Idaho 766, 435 P.3d 1086 (2015)*.

Reconsideration of Affirmance of Magistrate.

Where, 11 days after the district court filed its decision affirming the magistrate's judgment against him, the husband applied to the district court for reconsideration of its affirmance, the request of the husband for reconsideration was properly treated by the district court as a petition for rehearing timely filed under I.A.R. 42 as incorporated by I.R.C.P. 83(x), and it preserved the

merits of the decision of the district court affirming the magistrate's judgment, for further appellate review. *Ustick v. Ustick, 104 Idaho 215, 657 P.2d 1083 (Ct. App. 1983)*.

Sua Sponte Dismissal.

Where an order dismissing an appeal has been entered sua sponte, without prior notice and opportunity to be heard or to respond by memorandum, justice requires an opportunity to seek the court's reconsideration. *State v. Langdon, 117 Idaho 115, 785 P.2d 679 (Ct. App. 1990)*.

Cited in:

Neilsen & Co. v. Cassia & Twin Falls County Joint Class A Sch. Dist. 151, 103 Idaho 317, 647 P.2d 773 (Ct. App. 1982); *DeWils Interiors, Inc. v. Dines, 106 Idaho 288, 678 P.2d 80 (Ct. App. 1984)*.

Rule 43. Special writs. [Repealed]

End of Document

I.A.R. Rule 44

State and Federal through Rules promulgated through January 31, 2022

ID - Idaho State & Federal Court Rules > IDAHO APPELLATE RULES

Rule 44. Extraordinary appellate procedure.

The Supreme Court by order may alter, shorten, or eliminate any step or procedure in the appeal from an order or judgment upon finding extraordinary circumstances; provided, however, the time within which a party can file a notice of appeal, a notice of cross-appeal, or a petition for rehearing will not be shortened or lengthened.

History

(Adopted March 25, 1977, effective July 1, 1977; amended March 28, 1986, effective July 1, 1986; amended March 24, 2005, effective July 1, 2005; amended June 8, 2011, effective July 1, 2011.)

Annotations

Case Notes

Prohibition Against Rehearing Petition.
Sua Sponte Dismissal.

Prohibition Against Rehearing Petition.

Dismissing an appeal without prior notice and opportunity to be heard or to file a memorandum concerning the dismissal, represents an extraordinary circumstance under which an appellate court may alter appellate procedure, and the court erred where it plainly sought to foreclose such an opportunity after the dismissal with its prohibition against filing a petition for rehearing. *State v. Langdon, 117 Idaho 115, 785 P.2d 679 (Ct. App. 1990)*.

Sua Sponte Dismissal.

Where an order dismissing an appeal has been entered sua sponte, without prior notice and opportunity to be heard or to respond by memorandum, concerning the reason for a contemplated dismissal; justice requires an opportunity to seek the court's reconsideration. *State v. Langdon, 117 Idaho 115, 785 P.2d 679 (Ct. App. 1990)*.

Cited in:

Lindsey v. Cornell, 103 Idaho 562, 650 P.2d 704 (Ct. App. 1982); *State v. Tisdale, 103 Idaho 836, 654 P.2d 1389 (Ct. App. 1982)*; *Olds v. Cook, 104 Idaho 935, 665 P.2d 699 (1983)*; *Evans v. Andrus, 124 Idaho 6, 855 P.2d 467 (1993)*.

Rule 44.1. Expedited review for appeals brought pursuant to *I.C. 18-609A*.

This rule governs procedures for an expedited review of an appeal brought pursuant to I.C. *§ 18-609A* from an order of the district court denying a minor's petition for judicial bypass of parental consent.

(a) Notice of appeal.

(1) An appeal from any order denying a petition filed pursuant to I.C. *§ 18-609A (6)* shall be made only by physically filing a notice of appeal with the clerk of the district court within five days, excluding weekends and holidays, from the date of issuance of the order. This filing may be made by facsimile machine process.

(2) If the district court denies a petition filed under I.C. *§ 18-609A*, the district court must serve on the minor a copy of the order denying relief with the date and time endorsed, along with a "Notice of Appeal" form. The notice of appeal form shall include a request for the record and audio recording of the proceedings and notice to the clerk that the record and audio recording are to be immediately forwarded to the Idaho Supreme Court for filing. The district court shall advise the minor that the minor has five days, excluding weekends and holidays, from the date of issuance of the order to file the notice of appeal.

(b) Transmittal of record. Upon the filing of the notice of appeal, the clerk of the district court shall immediately fax to the Supreme Court a copy of the notice of appeal and a copy of the district court order denying the petition, along with any other documents or exhibits filed in the case. Arrangements shall also be made for the audio recording of the hearing to be sent to the Supreme Court or for the Court to otherwise listen to the audio recording. A complete copy of the record in the case shall also be made immediately available to the minor and/or her counsel, including a copy of or access to the audio recording of the hearing. Absolutely no extension of time will be granted by the Supreme Court.

(c) Fees. No filing or other fees shall be charged for appeals brought pursuant to this section.

(d) Briefing. Briefing is not required but may be submitted prior to the hearing. Formal briefing requirements do not have to be met.

(e) Assignment. All appeals filed pursuant to I.C. *§ 18-609A* shall be assigned to the Supreme Court.

(f) Hearing. When the notice of appeal is filed pursuant to I.C. *§ 18-609A*, the clerk of the Supreme Court shall set the appeal for hearing within 48 hours of the filing of the notice of appeal, excluding weekends and holidays.

(g) Decision. The Supreme Court, acting through a majority of the justices participating in the hearing, shall issue its decision at the conclusion of the hearing. If the Court fails to issue a ruling at the conclusion of the hearing then the petition will be deemed granted. No application for rehearing shall be filed.

(h) Confidentiality. All proceedings in this appeal shall be conducted in a manner that will preserve the anonymity of the minor, and the identity of the minor involved and all records pertaining to the appeal shall be kept confidential.

(i) Representation. The attorney appointed to represent the minor at the hearing before the district court shall continue on appeal unless other counsel is substituted. Any document or notice required to be served upon the minor shall be served on counsel.

(j) Guardian ad litem.

If a guardian ad litem was appointed for the district court hearing, then that person shall continue on appeal.

History

(Adopted effective September 18, 2000; amended and effective November 20, 2001; repealed and readopted, effective March 19, 2007.)

Rule 45. Withdrawal or substitution of appellate counsel.

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.

History

(Adopted March 24, 1982, effective July 1, 1982.)

Annotations

Commentary

STATUTORY NOTES

Compiler's Notes.

By order of March 24, 1982, the Supreme Court of Idaho rescinded I.A.R. 45 as adopted March 25, 1977, effective July 1, 1977, and replaced it with the present rule.

Rule 45.1. Criminal appeals -- Counsel on appeal.

(a) Right of Counsel on Appeal. The determination of whether a defendant in a criminal prosecution is entitled to court appointed counsel on appeal shall first be made by the trial court upon application of the defendant, or upon the trial court's own motion, either before or after a notice of appeal has been filed. If the application is denied by the trial court, the defendant may apply to the Supreme Court for an order directing the trial court to appoint counsel. An application for counsel on appeal may be treated as a notice of appeal.

(b) Trial Defense Counsel to Continue Representation on Appeal. A court appointed trial defense counsel of an indigent defendant shall continue to represent the defendant on an appeal, if any, unless granted leave to withdraw as counsel by order of the district court for good cause shown before the filing of a notice of appeal. In the event of the withdrawal of trial defense counsel, the district court shall appoint new counsel for the indigent defendant if the defendant desires to appeal.

History

(Adopted March 24, 1982, effective July 1, 1982.)

Rule 46. Extension of time generally.

The time prescribed by these rules for any act, except the physical filing of a notice of appeal, a notice of cross-appeal, petition for rehearing, or a challenge to a final redistricting plan may be enlarged by the Court or any Justice thereof for good cause shown upon the motion of a party. Applications for extensions of time for filing briefs shall also be subject to the requirements of Rule 34(d). Any motion for the extension of time to do an act must be served upon all parties, but the order enlarging the time for performance may be issued immediately and ex parte in the discretion of the Court or any Justice thereof, subject to review upon any written objection filed within seven (7) days of service of the motion. Any order of extension of time to do an act shall be served by the Clerk on all parties.

History

(Adopted March 25, 1977, effective July 1, 1977; amended March 24, 2005, effective July 1, 2005; amended November 20, 2012, effective January 1, 2013; amended and effective April 28, 2022.)

Annotations

Case Notes

Cited in:

Nations v. Bonner Bldg. Supply, 113 Idaho 568, 746 P.2d 1027 (Ct. App. 1987).

End of Document

Rule 47. Service of court opinions, orders and other documents by the clerk.

The Clerk of the Supreme Court shall serve by mail, electronic mail (e-mail), personal service or delivery, copies of all of the following documents upon all of the parties to an appeal or proceeding as soon as the documents are filed with the Supreme Court:

(a) Certificate of Appeal.

(b) All Supreme Court orders and notices.

(c) Supreme Court opinions on appeal.

(d) Remittiturs. With the exception of persons appearing pro se, all parties participating in an appeal must provide an email address that the Clerk of the Supreme Court may use for service and are responsible for updating this information. An attorney representing a party on appeal must provide a current email address to the Idaho State Bar.

History

(Adopted March 25, 1977, effective July 1, 1977; amended March 1, 2004, effective July 1, 2004; amended March 19, 2009, effective July 1, 2009.)

Rule 48. Practice not covered by rules.

In cases where no provision is made by statute or by these rules, proceedings in the Supreme Court shall be in accordance with the practice usually followed in such or similar cases, or as may be prescribed by the Court or a Justice thereof.

History

(Adopted March 25, 1977, effective July 1, 1977.)

Annotations

Case Notes

Applicability.

Because the order dismissing an appeal was not an opinion, Idaho App. R. 42, which provided for petitions for rehearing, did not apply. Therefore, the appellate court considered a petition as a motion for reconsideration and addressed it pursuant to *Idaho App. R. 48. Cook v. Arias, 164 Idaho 766, 435 P.3d 1086 (2015)*.

Cited in:

Ustick v. Ustick, 104 Idaho 215, 657 P.2d 1083 (Ct. App. 1983).

Rule 49. Appellate settlement conference.

(a) Submission for Conference. Upon request, pursuant to a written agreement of all parties, a civil appellate case or an appeal from the Industrial Commission may be submitted for consideration for an appellate settlement conference before a person, who shall be known as the Conference Judge, and who shall be selected by the parties from the list of settlement justices and judges maintained by the Administrative Director of the Courts. The parties should direct the request for a settlement conference in writing to the Clerk of the Supreme Court. The Clerk shall then enter an order suspending the appeal for 49 days, after which the appeal process shall resume. The settlement conference shall be held at a place near the court from which the civil case is appealed, at a place near the place of employment in an Industrial Commission case, or at any other place agreed upon by the parties and the Conference Judge. The facility in which the conference is held shall be determined by the Conference Judge. In advance of the settlement conference, all parties shall deliver to the clerk of the Supreme Court, for submission to the Conference Judge, a settlement statement in a form prescribed by the Supreme Court. The parties are responsible for the payment of costs and for scheduling the settlement conference at a time convenient to all parties and the Conference Judge. The Conference Judge shall not participate in the determination of the appeal.

(b) Settlement Statement. The written settlement statement of each party, in the form prescribed by the Supreme Court, shall be a confidential statement which shall not be filed in the case file and shall be disclosed only to the Conference Judge. In no event shall the settlement statement, or the contents thereof, be disclosed to opposing counsel, and upon conclusion of the conference negotiations, it shall be destroyed by the Conference Judge. The Conference Judge shall use the settlement statement only for the purpose of acquainting the judge with the appeal, the positions of the parties and the possibility of settlement.

(c) Settlement Conference. The settlement conference shall be an informal confidential meeting presided over by the Conference Judge. The agenda and sequence of presentations shall be in the discretion of the Conference Judge who may deliver to the parties an agenda in advance of the conference. The Conference Judge may request additional information not contained in the settlement statements. All parties to the appeal, or representatives of the parties empowered to enter into a binding settlement agreement, shall attend the settlement conference with their attorney. Provided, if the client or the client's representative is not able to be present, the attorney must be able to have immediate telephone contact with the client or the client's representative, who has authority to approve a settlement. The attorney who will argue the case on appeal, or the

attorney who represented the client in the trial of the action, shall appear at the settlement conference. There shall be no recording of the discussions at the settlement conference, but the attorneys for the parties may make written notes. The seating at the settlement conference shall be in an informal manner, preferably around a table, and the conference shall not be conducted as a formal hearing. A settlement conference may be continued from time to time by agreement of all parties and the Conference Judge. The initial settlement conference, or any subsequent conference, may be held by conference telephone call when agreed upon by all parties and the Conference Judge.

(d) Role of Conference Judge. There shall be no duty upon the Conference Judge to make a recommendation for settlement of the appeal. The role of Conference Judge is to act as a mediator to assist the parties and their counsel to come to an agreement.

(e) Settlement Agreement. If the conference results in a settlement, the parties immediately will execute a settlement agreement and will file a stipulation for dismissal of the appeal with the Supreme Court.

(f) Confidentiality. The settlement conference and all documents prepared by the parties or the Conference Judge shall be confidential. Upon settlement of the appeal, or upon the determination by the Conference Judge that there can be no settlement, the Conference Judge shall destroy all records of the settlement conference including the settlement statements of the parties and the notes or other documents prepared by the Conference Judge. The Conference Judge shall not discuss the meeting with any other person and any written or oral statements made or submitted by an attorney or a party at the settlement conference shall not be admissible in evidence in any judicial proceeding for any purpose and shall not be subject to discovery.

History

(Adopted effective October 26, 1989; amended effective March 27, 1997; amended January 4, 2010, effective February 1, 2010.)

I.A.R. Rule 101

State and Federal through Rules promulgated through January 31, 2022

ID - Idaho State & Federal Court Rules > IDAHO APPELLATE RULES > IDAHO COURT OF APPEALS

Rule 101. Rules applicable to the Idaho Court of Appeals.

This Rule 101 and the following Idaho Appellate Rules are adopted specifically for and shall apply to the Idaho Court of Appeals, which is hereafter referred to as the Court of Appeals. The Idaho Appellate Rules shall apply to all proceedings in the Court of Appeals as well as the following rules. The Court of Appeals may adopt rules for its internal administration and operation.

History

(Adopted April 17, 1981, effective July 1, 1981; amended December 5, 2013, effective December 5, 2013.)

Annotations

Case Notes

Cited in:

State v. Rollins, 103 Idaho 48, 644 P.2d 370 (Ct. App. 1982); *State v. Cornelison, 154 Idaho 793, 302 P.3d 1066 (2013)*.

End of Document

Rule 102. Idaho Court of Appeals.

The Judges of the Court of Appeals shall have resident chambers in Boise, Idaho, and shall hold sessions of court in such cities in the state of Idaho and at such times as prescribed by order of the Supreme Court. Three Judges, one or more of whom may be a judge pro tem appointed by the Supreme Court to substitute for an absent judge, shall be necessary to constitute a quorum, two of whom must concur to pronounce a decision or to render an opinion.

History

(Adopted April 17, 1981, effective July 1, 1981.)

Rule 103. [Reserved.]

Rule 104. Chief Judge.

The Chief Judge of the Court of Appeals shall be appointed by the Chief Justice of the Supreme Court for a term of two (2) years. The Chief Judge shall preside over all sessions of court at which the judge is present, sign all orders of the court and shall be responsible for the management and administration of the court and its personnel subject to statutes, rules, orders, and administrative policies of the Supreme Court. The Chief Judge shall designate another judge of the court to serve as Acting Chief Judge in the absence of the Chief Judge.

History

(Adopted April 17, 1981, effective July 1, 1981.)

Rule 105. [Reserved.]

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Rule 106. Clerk and officers of court.

The Clerk of the Supreme Court shall be the Clerk of the Court of Appeals.

History

(Adopted April 17, 1981, effective July 1, 1981.)

End of Document

Rule 107. [Reserved.]

Rule 108. Assignment of cases.

(a) Cases Reserved to Supreme Court. The Court of Appeals shall hear and decide all cases assigned to it by the Supreme Court; provided that the Supreme Court will not assign the following cases:

(1) Proceedings invoking the original jurisdiction of the Idaho Supreme Court;

(2) Appeals from imposition of sentences of capital punishment in criminal cases;

(3) Appeals from the Industrial Commission;

(4) Appeals from the Public Utilities Commission;

(5) Review of the recommendatory orders of the Board of Commissioners of the Idaho State Bar;

(6) Review of recommendatory orders of the Judicial Council.

(b) Assignment of Cases to Court of Appeals. Generally, cases which involve consideration of existing legal principles will be assigned to the Court of Appeals. In assigning cases to the Court of Appeals, due regard will be given to the workload of each court, and to the error review and correction functions of the Court of Appeals. In assigning cases to the Court of Appeals, the Supreme Court may order that the appeal is to be submitted upon the briefs without oral argument, in which case any party may file a written objection to the order for submission on the briefs within twenty-one (21) days of the date of the order, setting forth the reasons for which the party desires oral argument. Any such objection to submission on the briefs shall be determined without oral argument. Ordinarily, the Supreme Court will retain the following classes of cases:

(1) Cases in which there is substantial public interest;

(2) Cases in which there are significant issues involving clarification or development of the law, or which present a question of first impression;

(3) Cases which involve a question of substantial state or federal constitutional interpretation;

(4) Cases raising a substantial question of law regarding the validity of a state statute, or of a county, city, or other local ordinance;

(5) Cases involving issues upon which there is an inconsistency in the decisions of the Court of Appeals or of the Supreme Court.

(c) Transfer of Assigned Cases. The Supreme Court may order transfer of a case from the Court of Appeals to the Supreme Court when a case concerns an issue of imperative or fundamental public importance.

History

(Adopted April 17, 1981, effective July 1, 1981; amended March 1, 2000, effective July 1, 2000.)

Annotations

Case Notes

Exhaustion of State Remedies.
Scope of Review.

Exhaustion of State Remedies.

The habeas corpus petitioner failed to exhaust state remedies when he did not petition the Supreme Court for review of the Court of Appeals' decision; under I.A.R. 118, he had a right to petition for Supreme Court review of the Court of Appeals' decision regardless of the fact that the case was originally appealed to the Supreme Court and then assigned to the Court of Appeals under this rule. *McNeeley v. Arave, 842 F.2d 230 (9th Cir. 1988)*.

The state habeas petitioner failed to exhaust state remedies when he did not petition the Supreme Court for review of a Court of Appeals decision, even though he had originally appealed the denial of post-conviction relief to the Supreme Court, which had then assigned the appeal to the Court of Appeals under this rule. *Roberts v. Arave, 847 F.2d 528 (9th Cir. 1988)*.

Scope of Review.

This rule provides that the Court of Appeals shall hear and decide all cases assigned to it by the Supreme Court of Idaho. Idaho Appellate Rules, Rule 118 allows any party to a proceeding aggrieved by an opinion or order of the Court of Appeals to petition the Supreme Court of Idaho to review the opinion or order. Review is granted, if a majority of the Supreme Court of Idaho votes to grant the petition. The court may also grant review of an opinion or order of the Court of Appeals on its own motion pursuant to *Idaho Appellate Rules, Rule 120. Sato v. Schossberger, 117 Idaho 771, 792 P.2d 336 (1990)*.

The court of appeals will not address the issue of a denied motion to augment the record made before the supreme court, absent some basis for renewing the motion. This may occur via a renewed motion, with new evidence to support it, filed with the court of appeals or the presentation of refined, clarified, or expanded issues on appeal that demonstrates the need for additional records or transcripts, in effect renewing the motion. *State v. Cornelison, 154 Idaho 793, 302 P.3d 1066 (2013)*.

Cited in:

State v. Lee, 117 Idaho 203, 786 P.2d 594 (Ct. App. 1990).

Rule 109. Oral Argument.

The Court of Appeals may, in its discretion, order that an appeal shall be submitted on the briefs without oral argument. Any party to the appeal may file a written objection to the order for submission on the briefs within twenty-one (21) days of the date of the order, setting forth the reasons for which the party desires oral argument. Any such objection to submission on the briefs shall be determined without oral argument.

History

(Adopted January 7, 1997, effective February 1, 1997; amended March 1, 2000, effective July 1, 2000.)

Rule 110. Case files.

All motions, petitions, briefs and other appellate documents, other than the initial notice of appeal, shall be filed with the Clerk of the Supreme Court as required by the Idaho Appellate Rules with the court heading of the Supreme Court of the State of Idaho as provided by Rule 6. In the event of an assignment of a case to the Court of Appeals, the title of the proceeding and the identifying number thereof shall not be changed except that the Clerk of the Supreme Court may add additional letters or other notations to the case number so as to identify the assignment of the case. All case files shall be maintained in the office of the Clerk of the Supreme Court.

History

(Adopted April 17, 1981, effective July 1, 1981; amended June 20, 2013, effective July 1, 2013.)

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Rule 111. Argument by telephone conference call.

Oral argument to the Court of Appeals may be held by telephone conference call of all members of the court, all attorneys for the parties and the clerk by stipulation of all parties and approval by the court. If oral argument has been held or waived by stipulation, the court, upon finding that additional dialogue would be useful, may order argument by telephone conference call. Any argument under this rule shall follow the general format established for oral argument under Rule 37, to the extent practicable. The court may limit oral argument under this rule to particular questions or issues. The clerk shall record oral argument made by telephone conference call under this rule.

History

(Adopted March 27, 1989, effective July 1, 1989.)

I.A.R. Rule 112

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Rule 112. Determination of appeals.

The Court of Appeals may reverse, affirm or modify any order or judgment appealed from, and may direct the proper judgment or order to be entered, or direct a new trial or further proceedings to be had in the trial court. All opinions, decisions, orders and remittiturs of the Court of Appeals shall be as prescribed by the Idaho Appellate Rules. If a new trial be granted, the Court of Appeals shall pass upon and determine all questions of law involved in the case presented upon such appeal and necessary to the final determination of the case.

History

(Adopted April 17, 1981, effective July 1, 1981.)

Annotations

Case Notes

Cited in:

State v. Allen, 123 Idaho 880, 853 P.2d 625 (Ct. App. 1993).

End of Document

Rule 113. [Reserved.]

Rule 114. Re-transfer of case to Supreme Court.

At any time the Supreme Court may order the assignment of a case to the Court of Appeals revoked. Upon the entry of an order revoking the assignment, the Court of Appeals shall take no further action in the case.

History

(Adopted April 17, 1981, effective July 1, 1981.)

Rule 115. [Reserved.]

I.A.R. Rule 116

State and Federal through Rules promulgated through January 31, 2022

ID - Idaho State & Federal Court Rules > IDAHO APPELLATE RULES > IDAHO COURT OF APPEALS

Rule 116. Petition for rehearing before Court of Appeals.

Any party to a proceeding aggrieved by opinion or order of the Court of Appeals may thereafter petition to that court for a rehearing in the same manner, within the same time limits, upon the same grounds, and with the same effect as a petition for rehearing to the Supreme Court under the Idaho Appellate Rules. The determination of whether to grant the rehearing, and the determination on rehearing if granted, shall be made by the Court of Appeals.

History

(Adopted April 17, 1981, effective July 1, 1981; amended March 24, 1982, effective July 1, 1982.)

Annotations

Case Notes

Cited in:

Ustick v. Ustick, 104 Idaho 215, 657 P.2d 1083 (Ct. App. 1983).

End of Document

Rule 117. [Reserved.]

Rule 118. Petition for review by the Supreme Court.

(a) Petition, Time for Filing, Ruling by Supreme Court. Any party to a proceeding aggrieved by opinion or order of the Court of Appeals may physically file a petition for review with the Clerk of the Supreme Court within twenty-one (21) days after the announcement of the opinion or order, or after the announcement of an order denying rehearing, or after the announcement of an opinion on rehearing or after an opinion is modified without rehearing in a manner other than to correct a clerical error. It is not necessary to file a petition for rehearing with the Court of Appeals before filing a petition for review under this rule. A brief in support of the petition for review must be filed with the petition or within fourteen (14) days thereafter; however, if the appeal was expedited pursuant to Rule 12.2, the brief in support of the petition shall be filed with the petition or the petition will be summarily dismissed. Such petition shall be processed within the time limits and in the manner prescribed for a petition for rehearing of a Supreme Court opinion as provided by Rule 42. The filing of a petition for review under this rule does not preclude the filing of a timely petition for rehearing under Rule 116; and no action will be taken by the Supreme Court on a petition for review until the Court of Appeals has made a final ruling upon and determination of all petitions for rehearing.

(b) Criteria for Granting Petitions for Review by the Supreme Court. Granting a petition for review from a final decision of the Court of Appeals is discretionary on the part of the Supreme Court, and will be granted only when there are special and important reasons and a majority of the Justices direct that the petition be granted. The following, while neither controlling nor fully measuring the Supreme Court's discretion, are factors that will be considered in the exercise of the Court's discretion:

(1) Whether the Court of Appeals has decided a question of substance not heretofore determined by the Supreme Court;

(2) Whether the Court of Appeals has decided a question of substance probably not in accord with applicable decisions of the Idaho Supreme Court or of the United States Supreme Court;

(3) Whether the Court of Appeals has rendered a decision in conflict with a previous decision of the Court of Appeals;

(4) Whether the Court of Appeals has so far departed from the accepted and usual course of judicial proceedings or so far sanctioned such procedure by a trial court as to call for the exercise of the Supreme Court's power of supervision;

(5) Whether a majority of the judges of the Court of Appeals, after decision, certifies that the public interest or the interests of justice make desirable a further appellate review.

(c) Briefing.

(1) In support of review. The brief in support of the petition for review must address the criteria for review set out in subsection (b) of this rule, and discussion and argument should be limited to the criteria for review. There is no response to a petition for review unless the Supreme Court requests a party to respond to the petition for review before granting or denying the petition. A brief in support of or in opposition to a petition for review does not need to be bound or have any colored cover.

(2) After review is granted. If a petition for review is granted, the Supreme Court will rely on the original briefs filed by the parties and considered by the Court of Appeals. There will be no additional briefing unless it is ordered by the Supreme Court.

History

(Adopted April 17, 1981, effective July 1, 1981; amended March 24, 1982, effective July 1, 1982; amended March 28, 1986, effective July 1, 1986; amended March 23, 1990, effective July 1, 1990; amended January 4, 2010, effective February 1, 2010; amended March 18, 2011, effective July 1, 2011; amended November 20, 2012, effective January 1, 2013; amended September 1, 2015, effective January 1, 2016.)

Annotations

Case Notes

Exhaustion of State Remedies.
Ineffective Assistance of Counsel Claims.
Matters Considered.
Mootness.
Scope of Review.
Time Limitations.

Exhaustion of State Remedies.

The habeas corpus petitioner failed to exhaust state remedies when he did not petition the Supreme Court for review of the Court of Appeals' decision; under this rule, he had a right to petition for Supreme Court review of the Court of Appeals' decision regardless of the fact that the case was originally appealed to the Supreme Court and then assigned to the Court of Appeals under *I.A.R. 108. McNeeley v. Arave, 842 F.2d 230 (9th Cir. 1988)*.

Ineffective Assistance of Counsel Claims.

In order to prevail on a claim a defendant has been denied his constitutional right to effective assistance of counsel, the defendant must show that his counsel's performance was deficient and that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. These principles also apply to claims of ineffectiveness in appeals. However, when the attorney's deficiency is a failure to file an appeal as requested by the client, the loss of the opportunity to appeal is itself sufficient prejudice to meet the second prong of the *Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)* test. *Hernandez v. State, 127 Idaho 690, 905 P.2d 91 (Ct. App. 1995)*.

Review by the Idaho Supreme Court of a decision by the Court of Appeals is not something to which a party is entitled as a matter of right; rather, granting a petition for review is discretionary with the Supreme Court. Where a defendant has no constitutional right to counsel in a discretionary appeal, he cannot be deprived of constitutionally mandated effective assistance of counsel by his counsel's failure to timely file an application for review to the state *Supreme Court. Hernandez v. State, 127 Idaho 690, 905 P.2d 91 (Ct. App. 1995)*.

Appeal for post-conviction relief on ground of ineffective assistance of counsel in that counsel was not effective because he failed to file a petition for review to the Supreme Court following Court of Appeals' opinion arguing that his conviction should be reentered anew since he has not been denied an appeal as the stage of appellate process he challenges is the last discretionary step, not the first step, which is a matter of right. *Hernandez v. State, 127 Idaho 690, 905 P.2d 91 (Ct. App. 1995)*.

Petitioner suffered no prejudice from his appellate counsel's failure to consult with him about filing a petition for review within the time period specified in Idaho Appellate Rule 118, because the time period for filing a petition for review is not jurisdictional. *Pierce v. State, 142 Idaho 32, 121 P.3d 963 (2005)*.

Matters Considered.

On a petition for review, the Supreme Court is not called upon to either affirm or reverse the decision of the Court of Appeals, but rather it must rule on the appropriateness of the sentence imposed by the trial court on the same record as that presented to the *Court of Appeals. State v. Martinez, 111 Idaho 281, 723 P.2d 825 (1986)*.

Mootness.

Where defendant served his entire prison term following a sentence for possession of methamphetamine in violation of I.C. *§ 37-2732*, State's jurisdictional challenge to lower court decision was moot since outcome would have no effect on defendant. *State v. Barclay, 149 Idaho 6, 232 P.3d 327 (2010)*.

Scope of Review.

Idaho Appellate Rules, Rule 108 provides that the Court of Appeals shall hear and decide all cases assigned to it by the Supreme Court of Idaho. This rule allows any party to a proceeding aggrieved by an opinion or order of the Court of Appeals to petition the Supreme Court of Idaho to review the opinion or order. Review is granted, if a majority of the Supreme Court of Idaho votes to grant the petition. The court may also grant review of an opinion or order of the Court of Appeals on its own motion pursuant to *Idaho Appellate Rules, Rule 120. Sato v. Schossberger, 117 Idaho 771, 792 P.2d 336 (1990)*.

Time Limitations.

Appeal for post-conviction relief on ground of ineffective assistance of counsel in that counsel was not effective because he failed to file a petition for review to the Supreme Court following Court of Appeals' opinion seeking an extension of the time limit for filing petition of review with Supreme Court was denied for Court of Appeals could not waive the time constraints of I.A.R. 118 on behalf of the Supreme Court which alone has the authority to suspend the time limits surrounding the filing of a petition for review. *Hernandez v. State, 127 Idaho 690, 905 P.2d 91 (Ct. App. 1995)*.

Cited in:

Ustick v. Ustick, 104 Idaho 215, 657 P.2d 1083 (Ct. App. 1983); *State v. Nield, 106 Idaho 665, 682 P.2d 618 (1984)*; *State v. Rice, 109 Idaho 985, 712 P.2d 686 (Ct. App. 1985)*; *Ernst v. Hemenway & Moser Co., 120 Idaho 940, 821 P.2d 995 (1991)*; *State v. Loomis, 146 Idaho 700, 201 P.3d 1277 (2009)*; *State v. Wegner, 148 Idaho 270, 220 P.3d 1089 (2009)*; *State v. Lampien, 148 Idaho 367 223 P.3d 750 (2009)*.

Rule 119. [Reserved.]

I.A.R. Rule 120

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ID - Idaho State & Federal Court Rules > IDAHO APPELLATE RULES > IDAHO COURT OF APPEALS

Rule 120. Review of decisions on initiative of Supreme Court.

Within twenty-one (21) days after the announcement of an opinion or order of the Court of Appeals, or the announcement of an opinion or order on rehearing or a modified opinion or order without a rehearing, the Supreme Court may, on its own motion, enter an order directing a review of the case before the Supreme Court. The entry of such an order shall constitute and have the same effect as an order granting a petition for review before the Supreme Court.

History

(Adopted April 17, 1981, effective July 1, 1981.)

Annotations

Case Notes

Exhaustion of State Remedies.
Scope of Review.

Exhaustion of State Remedies.

The power of the Supreme Court to review any decision of the Court of Appeals on its own motion does not relieve a habeas corpus petitioner of the duty to petition for review in order to exhaust his or her state remedies. *Roberts v. Arave, 847 F.2d 528 (9th Cir. 1988)*.

Scope of Review.

Idaho Appellate Rules, Rule 108 provides that the Court of Appeals shall hear and decide all cases assigned to it by the Supreme Court of Idaho. Idaho Appellate Rules, Rule 118 allows any party to a proceeding aggrieved by an opinion or order of the Court of Appeals to petition the Supreme Court of Idaho to review the opinion or order. Review is granted, if a majority of the Supreme Court of Idaho votes to grant the petition. The court may also grant review of an opinion or order of the Court of Appeals on its own motion pursuant to this rule. *Sato v. Schossberger, 117 Idaho 771, 792 P.2d 336 (1990)*.

Cited in:

State v. Rice, 109 Idaho 985, 712 P.2d 686 (Ct. App. 1985).

Rule 121. [Reserved.]

Rule 122. Opinions and remittiturs.

Opinions and remittiturs shall issue from the Court of Appeals in accordance with Rule 38 of these rules except in those cases in which the Supreme Court grants a petition for review of the opinion of the Court of Appeals. In the event the Supreme Court grants a petition for review, the assignment of the case to the Court of Appeals shall terminate and no remittitur shall issue on the opinion of the Court of Appeals. Upon final determination of the appeal pursuant to the order granting review, the Supreme Court will enter an opinion and remittitur to the district court in accordance with Rule 38 of these rules, unless otherwise ordered by the Supreme Court.

History

(Adopted March 24, 1982, effective July 1, 1982.)

Annotations

Case Notes

Cited in:

Ustick v. Ustick, 104 Idaho 215, 657 P.2d 1083 (Ct. App. 1983).

Note

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Note

Annotations

Notes

Compiler's Notes.

For additional procedural rules applicable to appeals of Snake River Basin Adjudication matters to the Idaho Supreme Court, see the supplementary provisions of Idaho Appellate Rules 25, 27, 28 and the unnumbered provision "Filing a notice of appeal in multiple subcases or in consolidated subcases" set forth in Administrative Order 13 (June 25, 2001) in this appendix.

End of Document

I.A.R. PROCEDURES IN THE SRBA

State and Federal through Rules promulgated through January 31, 2022

ID - Idaho State & Federal Court Rules > IDAHO APPELLATE RULES > SRBA ADMINISTRATIVE ORDERS > SNAKE RIVER BASIN ADJUDICATION District Court RULES OF PROCEDURE (Amended 10/16/97) Daniel C. Hurlbutt, Jr. Presiding Judge

PROCEDURES IN THE SRBA

1. SCOPE AND PURPOSE

a. The litigation of the SRBA will be governed by the Idaho Rules of Civil Procedure (I.R.C.P.), Idaho Rules of Evidence (I.R.E.) and the Idaho Appellate Rules (I.A.R.).

b. These procedures supplement the I.R.C.P., I.A.R. and any other applicable laws or orders of this court only to the extent necessary to allow for the fair and expeditious resolution of all claims or issues in the SRBA.

c. Provisions setting forth the manner of service and notice are adopted under the authority granted by *Supplemental Order Granting Additional Powers to District Judge,* Idaho S.Ct. 99143 (February 20, 1988). (Adopted October 10, 1997.)

2. DEFINITIONS

a. Abstract The abstract of each notice of claim or negotiated agreement for water rights under federal law.

b. AO1 SRBA Administrative Order 1, Rules of Procedure.

c. Basin-Wide Issue An issue designated by the Presiding Judge as potentially affecting the interests of a large number of claimants to the sue of water within the SRBA and the resolution of which will promote judicial economy.

d. Claimant Any person who has filed a claim to the use of water in the SRBA.

e. Clerk of the Court The Clerk of the SRBA Court.

f. Court The SRBA Court located at 253 Third Avenue North, Twin Falls, Idaho 83301. Mailing address PO Box 2707, Twin Falls, ID 83303-2707; Telephone (208) 736-3011; FAX (208) 736-2121; Internet *www.srba.state.id.us*.

g. Director The Director of the Idaho Department of Water Resources.

h. Docket Sheet Procedure The procedure established to give notice of proceedings on nonsubcase matters to SRBA claimants and parties.

i. Domestic Use Domestic water use is defined by I.C. *§§ 42-111* and *42-1401A(5)*.

j, Error Correction Procedure

The procedure established to correct errors in a Director's Report prior to the filing of that Director's Report with the court.

k. IDWR The Idaho Department of Water Resources.

l. Initial Hearing The first hearing before the court in a Class One Subcase.

m. IWATRS The court's automated registry of actions that lists all pleadings and documents filed or lodged with the court, all orders entered by the Presiding Judge or Special Masters, and that provides additional information such as lists of upcoming hearings.

n. Objector/Respondent Unless the context indicates otherwise, a party to the adjudication filing an objection or response to a water right recommendation reported in a Director's Report as provided by I.C. *§§ 42-1411* and *42-1412* or claimed under federal law as provided by I.C. *§ 42-1411A*.

o. Partial Decree/Judgment The final determination of the elements of a water right.

p. Party to a Subcase The claimant, any objector or respondent to a water right recommendation, any party to a subcase which has been consolidated with another subcase, any party to the adjudication granted leave to participate in a subcase by the Presiding Judge or a Special Master, and any party to the adjudication filing a *Motion to Alter or Amend the Special Master's Recommendation.*

q. Party to the Adjudication Any claimant as defined in I.C. *§§ 42-1401A(1)* and (6).

r. Pleadings All documents defined as pleadings by the I.R.C.P., objections, responses to objections, and notices of claims.

s. Pro Se Claimants representing themselves without legal counsel.

t. Recommendation The statements by the Director, as set out in a Director's Report, as to elements of a water right claim.

u. Special Master A person appointed by the Presiding Judge through an ***Order of Reference*** to hear subcases or other matters and who reports to the Presiding Judge.

v. Special Master's Recommendation A final written submission to the Presiding Judge containing the decisions and recommendations of the Special Master under the ***Order of Reference.***

w. SRBA The Snake River Basin Adjudication.

x. Stock Watering Use Stock watering use as defined by I.C. *§ 42-1401A(12)*.

y. Subcase A water right which is the subject of any post-Director's Report pleading.

(1) Class One Subcase Subcases where the difference between the Director's Report and the claim is less than 40 acres and/or the difference in quantity is less than 0.80 cts and all claims where the objection relates only to owner identification, priority date, source or point of diversion.

(2) Class Two Subcase Subcases not included in the definition of Class One Subcase.

NOTE: The purpose of separating subcases into two classifications is to expedite the SRBA and provide claimants a speedy and cost-effective method to litigate cases where the difference between the Director's Report and the claim is less significant, as in the Class One Subcases. This allows the court, the parties and IDWR to focus more time and resources on resolving the more significant issues associated with Class Two subcases. (Adopted October 10, 1997.)

3. PLEADINGS

a. All pleadings shall comply with the I.R.C.P. and these ***Rules of Procedure.***

b. Documents or pleadings filed in any courthouse other than the SRBA Courthouse will not be accepted and will not be deemed "filed" until received by the Clerk of the SRBA Court.

c. Pleadings shall be signed by counsel as required by I.R.C.P. 11(a)(1) or by *pro se* claimants.

d. Caption The following caption shall be used on all pleadings in the SRBA and must begin 2 inches from the top of the page. Pleadings filed in the individual subcases shall include the subcase (water right) number inserted above the document name. Pleadings filed in the basin-wide issues shall include the basin-wide issue number inserted above the document name. Click here to view form

e. The document name shall identify the specific type of document and the action or relief requested.

f. All documents or pleadings hall include the name of the document typed at the bottom of each page, including all attachments or exhibits, pursuant to I.A.R. 28(e).

g. All attached exhibits must be legible and subject to reproduction or must be accompanied by a typewritten duplicate. All handwritten exhibits shall be accompanied by a typewritten duplicate. I.R.C.P. 10(a)(1)

h. Filing By FAX

Documents and pleadings may be filed by FAX pursuant to I.R.C.P. 5(e)(2):

(1) FAX filings are only accepted for filing during the normal working hours of the Clerk of the SRBA Court: 8 a.m. to 5 p.m., Monday through Friday. Any FAX transmission not **completed** by 5 p.m. will be file stamped the next business day.

(2) Documents or pleadings filed by FAX are limited to 10 pages, **including** attachments and exhibits.

(3) The signature on the FAXed copy shall constitute the required signature under I.R.C.P. 11(a)(1). It is not necessary to send the original by mail.

(4) Except for Standard Form 5, SRBA Standard Forms **will not** be accepted for filing by FAX.

(5) The Clerk of the SRBA Court shall accept for filing a copy of any FAXed document or pleading not transmitted directly to the court. The signature on the FAXed copy shall constituted the required signature under I.R.C.P. 11(a)(1) and there is not limit to the number of pages filed I.R.C.P. 5(e)(3)

i. Injunctive Relief Any action for injunctive relief brought pursuant to I.R.C.P. 65 or I.R.C.P. 74 shall be heard by the Presiding Judge or the Special Master who by **Order of Reference,** has been assigned the subcase(s) affected by the motion. The Presiding Judge, or a Special Master if assigned, will hear actions for injunctive relief in the SRBA generally or relating to uncontested recommendations.

On receipt of any motion or petition for injunctive relief, the Clerk of the Court shall assign a separate subcase file to the matter. This new subcase file number shall be included on all documents filed regarding the injunctive relief matter.

Injunctive relief matters will be handled on an expedited basis and will be reported in the Docket Sheet.

j. Multiple Subcases When filing a pleading affecting multiple subcases, the filing party shall provide the court a copy of the pleading for each subcase affected. If the pleading is filed by FAX, the copies shall be mailed to the court the same day. When subcases are consolidated by court order and a lead subcase is designated, only one pleading needs to be filed in the lead subcase; however, service is still required on all parties in each subcase.

k. IDWR Central Depositories IDWR shall maintain copies of all pleadings and other documents filed or lodged in the SRBA and which appear on the Docket Sheet. Copies shall be available for inspection and copying during normal business hours at its central office located at 1301 North Orchard, Boise Idaho. The mailing address is: IDWR Document Depository, PO Box 83720, Boise, Idaho 83720-0098; telephone (800) 451-4129; FAX (208) 327-5400).

l. IDWR Regional Depositories

IDWR's regional offices shall maintain copies of objections, responses and supporting documents, if any, for all water rights reported in that region. These pleadings and IDWR's investigative files for reported water rights shall be available for inspection and copying during normal business hours. IDWR claim files for Reporting Area 22, Clearwater River Drainage, are maintained at IDWR's central office. (Adopted October 10, 1997.)

4. STANDARD PLEADING FORMS

a. Parties must use the following standard forms:

(1) Objection (Standard Form 1)

(2) Response to Objection (Standard Form 2)

(3) Motion to File a Late Notice of Claim or a Motion to File an Amended Notice of Claim (Standard Form 4)

(4) Stipulated Elements of a Water Right (Standard Form 5)

b. The standard forms may be obtained from IDWR or the SRBA Court. A copy of each standard form is attached to these rules.

c. A party may copy or reproduce any standard form. The form may be electronically modified to include only those sections being used. The text of the forms must be on the front and back of each page (see attachments). No other portion of the forms may

be modified unless ordered by the court. The court will not accept incorrect or incomplete forms. Refiling of returned incorrect or incomplete forms must be made under the original filing deadline or pursuant to a motion and order for a late filing.

d. Use of standard forms:

(1) Objection (Standard Form 1) and Response to Objection (Standard Form 2)

(a) Objections and responses to a recommendation or abstract in a Director's Report shall be on SRBA Standard Forms 1 and 2. No other form of objection or response may be filed with the court.

(b) A claimant **may not** amend a claim by filing an objection or a response (see Section 4d(2)).

(c) The Director shall notify claimants that the court requires the use of standard objection or response forms. This notice may be included in the *Notice of Filing the Director's Report.*

(d) Deadlines for Filing an Objection or a Response Form The *Notice of Filing the Director's Report*, filed by IDWR, shall set out the dates when objections and responses are due and shall be computed to include weekends and holidays. The objection or response must be **received** by the court by the deadline specified.

(e) Any party filing 25 or more objections or responses must make an appointment with the Clerk of the SRBA Court at least 14 days prior to the deadline for filing their pleadings.

(f) Service of an Objection or a Response Form A party filing an objection or a response must send the original with supporting documents, if any, to the Clerk of the SRBA Court and a copy, including supporting documents, to each individual identified on that form's certificate of mailing.

(2) Motion to File a Late Notice of Claim or a Motion to File an Amended Notice of Claim (Standard Form 4)

(a) In reporting areas where a Director's Report **has not** been filed, a late notice of claim or an amended notice of claim shall be filed with IDWR. A Motion to File a Late Notice of Claim or a Motion to File an Amended Notice of Claim with the court is not required.

(b) In reporting areas where a Director's Report **has** been filed, a *Motion to File a Late Notice of Claim or a Motion to File an Amended Notice of Claim* must be filed with the court.

(c) A *Motion to File a Late Notice of Claim* or a *Motion to File an Amended Notice of Claim* must be filed using Standard Form 4 and must be used for a single water right only.

(d) A *Motion to File a Late Notice of Claim* shall proceed before the Presiding Judge and shall follow the Docket Sheet Procedure (Section 6) and will be reviewed under the criteria of I.R.C.P. 55(c).

(e) A *Motion to File an Amended Notice of Claim* shall proceed before the Presiding Judge or the Special Master assigned to the subcase and will be reviewed under the criteria of I.R.C.P. 55(c).

(f) A *Motion to File a Late Notice of Claim* shall have attached:

1) A completed Notice of Claim (available from IDWR) and

2) The claim filing fee and late claim fee for claims other than a domestic or stock watering use for which a notice of claim was not filed. Payment shall be in the form of a check made payable to: State of Idaho Department of Water Resources. To determine the exact amount of these fees, call IDWR at (800) 451-4129.

(g) When a *Motion to File a Late Notice of Claim* is granted, the Clerk of the Court shall forward the check and completed Notice of Claim to IDWR. If the motion is denied, the Clerk of the Court shall return the claim filing fee and the late claim fee.

(h) IDWR shall file a Director's Report for all late-filed claims within 60 days following the granting of the *Motion to File a Late Notice of Claim.*

(i) Notice of the filing of the Director's Report for a late claim shall be reported in the Docket Sheet.

(j) Objections or responses to Director's Reports for late claims must be received by the court as follows:

(1) Objections must be filed within 21 days from the appearance of the filing of the Director's Report in the Docket Sheet.

(2) Responses must be filed within 14 days following the close of the objection period.

(k) Leave to amend a notice of claim shall be freely given when justice so requires.

(l) The Presiding Judge or Special Master shall determine how to proceed when an amendment is granted and whether a supplemental Director's Report is required.

(m) Pursuant to I.C. *§§ 42-1414* and *42-1415*, additional costs may apply to late notices of claim or to amended notices of claim other than for domestic and stock watering rights.

(3) Stipulated Elements of a Water Right (Standard Form 5) --

Where parties reach an agreement on a contested water right recommendation, they shall file either a stipulation with the court using Standard Form 5 or some other stipulation acceptable to the court. Subcases may also be resolved orally on the record.

(a) Standard Form 5 may only be used if **all** parties have stipulated to **all** elements of **one** water right and may be submitted at any time following the close of the statutory response period.

(b) Standard Form 5 is used to report the stipulated elements of **one** water right acquired under state law or **one** federal reserved water right.

(c) When IDWR does not concur with a proposed settlement, the Presiding Judge or Special Master shall conduct any hearing necessary to determine whether the facts, data, expert opinions and law support the issuance of a partial decree for the water right as stipulated in the Standard Form 5 or proposed settlement. (Adopted October 10, 1997.)

5. EVIDENCE AND DOCUMENT PRESERVATION

a. After a Director's Report has been filed, employees or contractors of IDWR may go on a claimant's property in that reporting area to further investigate a reported claim only with permission from the claimant or leave of the SRBA Court.

b. No party to the SRBA may destroy any document or evidence kept in any medium which relates to a pending claim in the SRBA or has been prepared for use in the SRBA, except on motion and order by the SRBA Court. This order is intended to override any records management or document destruction program used by any party. This order does not apply to documents protected by the attorney-client privilege or to attorney work product.

c. IDWR may not destroy any document or evidence, in any medium, relating to a water right or which has been used or relied upon in making a recommendation in a Director's Report. Further, IDWR shall keep all policies and procedures, past or current, in draft or final form, which were actually relied upon by IDWR, its employees or agents in making any recommendation in a Director's Report. (Adopted October 10, 1997.)

6. DOCKET SHEET PROCEDURE

a. The Docket Sheet Procedure shall be used to give notice to parties in the adjudication about matters not a part of a subcase and shall be used when required by these ***Rules of Procedure.***

b. The Docket Sheet shall include the following sections:

(1) A chronological list of all orders, pleadings (except objections, responses, pleadings or orders filed in subcases) and other documents (i.e., motions for late or amended claims or motions for late objections) filed with the court since the last docket sheet including:

(a) The SRBA case number;

(b) The document name;

(c) The name of the party and the party's attorney, if any; and

(d) The date the document was filed.

(2) A chronological list of all objections and responses filed since the last Docket Sheet including:

(a) The subcase number;

(b) The name of the claimant, objector or respondent;

(c) The address of the objector or respondent if not represented by an attorney;

(d) The name and address of the attorney representing the objector or respondent;

(e) The box number(s) checked on the objection or response form;

(f) The date the document was filed; and

(g) The source of the water right as stated in the Director's Report.

(3) A chronological list of the hearings scheduled for the next three months (except hearings in subcases) including:

(a) The SRBA case number;

(b) The date and time of the hearing;

(c) The subject; and

(d) The names of the parties.

(4) A list of all Special Master's Reports and Recommendations since the last Docket Sheet;

(5) A list of all Amended Director's Reports; and

(6) A list of all Partial Decrees issued since the last Docket Sheet.

c. The SRBA Court shall compile the Docket Sheet and send copies to:

(1) The Clerk of the District Court in each county located within the boundaries of the SRBA. The Docket Sheet shall be posted by the Clerk of the District Court in each county or the clerk shall post a notice telling where in the county building the Docket Sheet is available for inspection.

(2) One copy to IDWR for inclusion in the document depository:

IDWR
Document Depository
PO Box 83720
Boise, ID 83720-0098

IDWR shall make the Docket Sheet available for inspection at its central and regional offices.

d. The court charges an annual subscription fee based on the actual cost of copying and mailing. The court shall maintain a Docket Sheet mailing list.

e. Service of pleadings and other documents under the Docket Sheet Procedure.

(1) The original of any pleading or other document shall be filed with the Clerk of the SRBA Court, 253 Third Avenue North, PO Box 2707, Twin Falls, Idaho 83303-2707.

(2) Copies of any pleading or other document shall be delivered or mailed to:

(a) IDWR Document Depository, PO Box 83720, Boise, Idaho 83720-0098;

(b) Chief, Natural Resources Division, Office of the Attorney General, State of Idaho, PO Box 44449, Boise, Idaho 83711-4449;

(c) The United States Department of Justice, Environment and Natural Resources Division, 550 West Fort Street, MSC 033, Boise, Idaho 83724. Documents served by messenger or overnight delivery service should be sent to the U.S. Department of Justice, 380 Park Center Blvd., Suite 330, Boise, ID 83706; and

(d) All parties identified in the pleading from whom relief is sought. If relief is sought against a class or group, service shall be made on the representative of that class or group.

f. Motion practice under the Docket Sheet Procedure.

(1) Hearing Date Unless otherwise ordered, a motion will be heard on the third Tuesday of the second month following its appearance on the Docket Sheet. Any motion filed with the court before 5 p.m. of the last working day of a month will be placed on the Docket Sheet for that month. (For example, a document filed before 5 p.m. on September 30, 1997 will appear on the Docket Sheet on October 7. The hearing will be held on Tuesday, December 16, 1997.)

(2) Expedited Hearings Any party moving for an order to expedite a hearing shall send a copy of the motion and supporting documents to all parties listed in Section 6e(2) and each person on the current copy of the ***Court Certificate of Mailing for Expedited Hearings*** which is available from the Clerk of the SRBA Court.

(3) Notice of hearings under the Docket Sheet Procedure:

(a) Service of a notice of hearing shall be made pursuant to Section 6e(2). A party requesting and receiving an expedited hearing shall meet the service requirements of Section 6f(2).

(b) Compliance with the Docket Sheet Procedure constitutes notice to all parties to the adjudication.

(4) Briefing schedule under the Docket Sheet Procedure.

(a) Documents in Support of a Motion All documents and briefs in support of motion shall be filed with the motion and served on the parties listed in Sections 6e(2) or 6f(2).

(b) Responses to Motions Parties may file documents and briefs supporting or opposing a motion by the fifteenth day of the month following the motion's first appearance on the Docket Sheet. Service shall be made on the movant and the parties identified in Sections 6e(2) or 6f(2). If a motion is to be heard on an expedited basis, a response shall be filed with the court at least one day prior to hearing and served on the ***Court Certificate of Mailing for Expedited Hearings.***

(c) Replies to Responses Documents or briefs in reply to responses must be filed before the last working day of the month following the motion's first appearance on the Docket Sheet, unless the matter is set on an expedited basis. Service shall be made on the party who filed the response and on the parties identified in Sections 6e(2) or 6f(2). A matter set on an expedited basis will rarely allow time for a reply to be filed prior to hearing.

(d) Extensions For good cause a party may move for an extension of time to file a response or reply to a motion. A *Motion for Extension of Time* shall be filed with the court and served as provided in Sections 6e(2) or 6f(2), prior to the date the brief is due. If the motion is granted, the movant shall serve a copy of the order as provided in Sections 6e(2) or 6f(2). (Adopted October 10, 1997.)

7. COURT FEES The following fees apply in the SRBA. You must contact the Clerk of the SRBA Court for the amount of the fee.

a. Transcript fee A per-page fee is charged for the preparation of any transcript of any SRBA hearing. Arrangements for transcripts must be made through the SRBA Court Reporter. Fees must be paid **prior** to preparation of the transcript.

b. Appellate fees

(1) The Idaho Supreme Court requires payment of a filing fee for all appeals. This fee must accompany any notice of appeal.

(2) All appeals to the Idaho Supreme Court must include a clerk's record. Payment of a per-page fee for the preparation of the clerk's record is required. An estimate of this fee must be paid at the time the notice of appeal is filed.

c. Fees for services The following fees are required for services (I.C. *§ 31-3201*): Click here to view image.

(Adopted October 10, 1997.)

8. ERROR CORRECTION PROCEDURE This section is reserved.

9. SPECIAL MASTERS

a. The Presiding Judge may refer matters, including subcases, to a Special Master by an ***Order of Reference*** pursuant to I.R.C.P. 53.

b. Subcases referred to a Special Master will proceed in accordance with the I.R.C.P. and these ***Rules of Procedure.*** Each subcase shall proceed in the same manner as any court case. Special Masters are exempt from the time requirements of I.R.C.P. 53(d)(1).

c. A Special Master shall file reports with the Presiding Judge on the matters submitted by the ***Order of Reference*** and, if required, shall include findings of fact and conclusions of law. I.R.C.P. 53(e)(1). Service shall be made on the parties to the subcases covered. Notice of the filing of the ***Special Master's Recommendation*** shall be reported in the Docket Sheet.

d. The form of water rights included in the ***Special Master's Recommendation*** will be consistent with the ***Order of Reference.*** The grouping of water rights in the

Special Master's Recommendation is left to the discretion of the Special Master. No water right claim which has not had full resolution of every element of the right shall be included in a ***Special Master's Recommendation,*** unless the Special Master, simultaneously with the filing of the report, certifies to the Presiding Judge that there has been an express determination that there is no just reason for delay for submission to the Presiding Judge. Notice of the filing of such certification shall be reported in the Docket Sheet.

e. Permissive Review A Special Master or any party to the subcase may seek permissive review by the Presiding Judge of the Special Master's interlocutory determination which involves a controlling question of law as to which there are substantial grounds for difference of opinion and on which immediate consideration of the determination may advance the orderly resolution of the litigation following the procedures set forth in I.A.R. 12. The Special Master shall review the motion and responses and recommend, with findings, whether it should be granted or denied. The motion and the Special Master's recommendation shall be forwarded to the Presiding Judge for determination. (Adopted October 10, 1997.)

10. PROCEDURE FOR WATER RIGHTS WHERE AN OBJECTION HAS BEEN FILED

a. When the first objection to a recommendation or abstract is filed, a subcase file shall be opened and separately docketed on IWATRS. The water right number becomes the subcase number. All subsequent filings for that water right, including objections and responses, will be docketed under that subcase.

b. Subcases will generally be referred to a Special Master by an ***Order of Reference.***

c. Unless otherwise ordered by the Presiding Judge or a Special Master, each subcase shall proceed separately from other subcases or matters at issue in the SRBA.

d. No later than 30 days after the objection period has expired, IDWR shall file a case management report with the court dividing each reporting area into Class One and Class Two Subcases.

e. Scheduling

(1) Class One Subcases --

(a) At the end of the objection period, the court may hold an Initial Hearing for each subcase. At the Initial Hearing, each claimant and/or objector shall be given an opportunity to meet with IDWR in an attempt to reconcile the difference between the Director's Report, the claim and the objection(s) for each subcase. If the objection(s) cannot be reconciled, the court shall set the matter for trial. The claimant and objecting party, if any, must be present at the Initial Hearing.

(b) The trial should be held within 45 days of the Initial Hearing unless otherwise ordered by the Special Master.

(2) Class Two Subcases At the end of the objection period, the court shall hold a Scheduling Conference under I.R.C.P. 16(b). These subcases shall proceed under the court's scheduling or pre-trial order.

(3) Discretion of the Presiding Judge or Special Master On motion of any party to the subcase or as ordered by the Presiding Judge or Special Master, a subcase may be reclassified and proceed accordingly.

f. Amendment of Claims

(1) Class One Subcases Absent leave of court, claims shall be amended at or before the Initial Hearing except for the name and address of the claimant which may be amended at any time.

(2) Class Two Subcases Absent leave of court, claims shall be amended no later than 14 days after the Scheduling Conference except for the name and address of the claimant which may be amended at any time.

(3) IDWR investigation of amended claim The court may request that IDWR prepare an Amended Director's Report for any amended claim, including claims amended at trial to conform to the evidence. The claimant may be ordered to pay all necessary costs associated with investigating and reporting the amended claim.

g. IDWR Involvement

(1) Class One Subcases Except where a party calls a representative of IDWR as its own witness, the role of IDWR will be limited to presenting geographic information (GIS) in the form of an illustration depicting the place of use and point of diversion. IDWR may also provide any documents such as permits, licenses, decrees or transfers which may be relevant to a claim. A party calling IDWR as its own witness must notify IDWR, in writing, 7 days prior to trial.

(2) Class Two Subcases

(a) Within 14 days following the Scheduling Conference, IDWR shall serve on each party an affidavit setting forth the factual basis of IDWR's recommendation on the disputed element(s). IDWR shall file the affidavit with the court. The court may consider the affidavit for any pre-trial matter or in lieu of any direct testimony by the IDWR affiant at trial.

(b) IDWR must be notified, in writing, at or before the pre-trial conference, should any party choose to cross-examine the IDWR affiant or call a witness from IDWR at trial.

(3) Discretion of the Presiding Judge or Special Master Nothing herein shall prevent the Presiding Judge or Special Master from calling a representative of IDWR as its own witness consistent with I.R.E. 706 or 614 for Class One or Class Two Subcases.

h. Service of documents in a subcase need be made only on parties to the subcase and IDWR. When a document is filed in a subcase, the Docket Sheet Procedure **is not required to be followed,** except for: motions and notices of hearings to designate basin-wide issues; proceedings on basin-wide issues; ***Special Master's***

Recommendations; notices of challenge to a ***Special Master's Recommendation;*** motions and notices of hearings for entry of partial decrees; proceedings by the Presiding Judge on decrees; motions or orders for I.R.C.P. 54(b) certification or permissive review; notices of appeal; and any other matter ordered by the court to follow the Docket Sheet Procedure.

i. The Director of IDWR or a representative shall attend all hearings in contested subcases to serve as a disinterested, nonparty fact witness consistent with the I.R.C.P. and as directed by the Presiding Judge or Special Master.

j. When a *Motion to File a Late Objection* is filed to a previously "unobjected-to" recommendation or abstract:

(1) The motion shall be reported in the Docket Sheet; and

(2) A hearing on the motion shall be scheduled by the Special Master assigned to that reporting area and notice of the hearing shall be reported in the Docket Sheet.

k. Any party to the adjudication who is not a party to a subcase may seek leave to participate in a subcase by filing a timely *Motion to Participate.* A *Motion to Participate* shall be treated like a motion to intervene under I.R.C.P. 24 and shall be decided by the Presiding Judge or the assigned Special Master. A party to the adjudication who does not file an objection, a response or a timely *Motion to Participate* waives the right to be a party to the subcase and to receive notice of further proceedings before the Special Master, except for *Motions to Alter or Amend.*

l. Resetting Subcase Hearing Dates All hearing dates will be set by the SRBA Court. Any party to the SRBA who requests that a hearing be reset shall comply with the following requirements at least 21 days prior to the scheduled hearing:

(1) Contact the Clerk of the SRBA Court to obtain alternative dates and times;

(2) Contact each party to the subcase(s) or their attorney, if any, and reach an agreement on an alternative date and time provided by the clerk; and

(3) Prepare and file with the court a *Stipulation to Reset* the hearing. The hearing must be reset on one of the dates and times provided by the clerk or it will not be accepted for filing. The stipulation must specify the agreed upon date and time and must contain a statement that the party moving to reset the hearing has contacted each party or their attorney and that all have agreed on the alternate date and time. If granted, the court will send a notice resetting the hearing.

(4) If the parties cannot reach agreement, the party wishing to change the date and time must file an *Expedited Motion to Reset* at least 14 days prior to the scheduled hearing.

m. Participation in Hearings by Telephone Permission to participate in a hearing by telephone must be given in advance by the Presiding Judge or Special Master.

(1) Telephone participation will not be allowed in summary judgment hearings or trials.

(2) Telephone participation in settlement conferences, scheduling conferences and other hearings is discouraged and only allowed with leave of the court.

(3) No oral testimony will be allowed by telephone.

(4) For hearings before the Presiding Judge, the first person to request participation by telephone will be responsible for initiating the call to the court and for making certain all parties are connected.

(5) For hearings before the Special Masters:

(a) The order/notice setting the hearing will state if telephone participation is allowed.

(b) The parties must decide among themselves who will initiate the call.

(c) The Clerk of the SRBA Court must be notified at least 24 hours **prior** to the hearing as to who will be participating by telephone and who will be initiating the call.

(6) Place your call to the court at least 5 minutes prior to the scheduled start of your hearing. No hearing will be delayed or interrupted because of telephone participation. If you have not called by the time the Presiding Judge or Special Master is ready to begin, your call will not be connected to the courtroom.

(7) When initiating a call to the court which involves more than one party from different locations, you must use the services of a teleconference operator. Do not use your telephone system conference call feature. (Check with your telephone service or long-distance provider.)

(8) Speaker phones are not recommended. Many times there is too much background noise or the signal is too weak to be transmitted clearly in the courtroom.

n. If all parties to a subcase stipulate to the dismissal of any objection to a water right recommendation, a *Stipulation for Dismissal of Objection* shall be filed; and, if accepted, the dismissal shall be with prejudice.

o. If **all** parties to a subcase stipulate to **all** elements of **one** water right, a Standard Form may be submitted at any time following the close of the statutory response period.

p. If a party must correspond with the SRBA Court, the party shall identify the subcase involved and must include a statement that all parties to the subcase have been sent a copy of the correspondence and any attachments. If these procedures are not followed, the correspondence will not be accepted by the court. (Adopted October 10, 1997.)

11. CONSOLIDATION OR SEPARATION OF SUBCASES AND ISSUES Any matter at issue in any proceeding in the adjudication, including portions of or entire subcases, may be consolidated with or separated from any other matter at issue in the adjudication. Any party to a subcase may move for consolidation or separation of claims or issues. The Presiding Judge or Special Master may order consolidation or separation on the basis of

such motion or on their own. I.R.C.P. 42. If a motion to consolidate concerns issues from subcases which are all before the same Special Master, it shall be served only on parties to those subcases and shall be decided by the Special Master. If such a motion concerns basin-wide issues or issues from subcases which are not all before the same Special Master, it shall be served on all parties to those subcases, noticed through the Docket Sheet Procedure and decided by the Presiding Judge or a Special Master by ***Special Order of Reference.***

NOTE: A motion to consolidate subcases is appropriate in situations where common issues of law or fact present themselves in more than one subcase and resolution of those issues can be most expeditiously and effectively achieved through presentation to the Presiding Judge or a Special Master in consolidated hearings. (Adopted October 10, 1997.)

12. SETTLEMENT CONFERENCES Settlement conferences may be held at the discretion of the court. Such conferences shall be held in conformance with any pre-trial or scheduling order issued by the court. Parties and their attorney(s) of record must be personally present. No one may attend by proxy or by telephone. Each party is required to be present with the individual(s) possessing full settlement authority on every aspect of the contested subcase. (Adopted October 10, 1997.)

13. PROCEEDINGS ON A SPECIAL MASTERS RECOMMENDATION

a. The Special Master shall prepare and file with the court a ***Special Master's Recommendation*** which shall be served on the parties to the subcase and notice of its entry shall be reported in the Docket Sheet. Any party to the adjudication, including parties to the subcase, may file a *Motion to Alter or Amend* within 21 days from the date the ***Special Master's Recommendation*** appears on the Docket Sheet. Any party to the adjudication not already a party to the subcase may respond to a *Motion to Alter or Amend* by filing a *Notice of Participation* which shall set forth the party's name; the water right number; the name, address and telephone number of the attorney; and a short statement of the party's position on the issues presented in the *Motion to Alter or Amend.***Failure of any party in the adjudication to pursue or participate in a *Motion to Alter or Amend* the *Special Master's Recommendation*shall constitute a waiver of the right to challenge it before the Presiding Judge.** This waiver shall also apply to further proceedings in the subcase if remanded back to the Special Master.

b. Where a *Motion to Alter or Amend* is filed in a subcase, notice will be reported in the Docket Sheet and the motion will be decided by the Special Master with or without hearing. No second *Motion to Alter or Amend* may be filed on the decision granting or denying a *Motion to Alter or Amend.*

c. Any party who first filed or participated in a *Motion to Alter or Amend before the Special Master may file a Notice of Challenge to the decision on a Motion to Alter or Amend. A Notice of Challenge shall be filed within 14 days following the date of the filing of the decision on a Motion to Alter or Amend.* The *Notice of Challenge* shall include a detailed statement of the issue(s) and a detailed description, including hearing dates and times, of any transcript(s) requested. Once raised and detailed, the

issue(s) on challenge **may not** be amended to include additional issue(s) not specifically identified in the *Notice of Challenge* except on motion and leave of court. The *Notice of Challenge* shall be reported in the Docket Sheet and shall be served on all parties to the subcase(s) challenged, the SRBA court reporter and the parties listed in Section 6e(2).

d. If a transcript is requested in a *Notice of Challenge,* the party filing the *Notice of Challenge* must contact the court reporter for an estimate of the cost for preparation of the transcript. The estimated fee must accompany the *Notice of Challenge.*

(1) The transcript shall be lodged with the court within 35 days following the deadline for filing a *Notice of Challenge.*

(2) There will be no time for settlement of the transcript. If the transcript is incomplete or erroneous, the requesting party may file the appropriate motion to correct the transcript.

(3) One copy of the transcript shall be served on the challenger and the opposing party. When multiple parties are involved, the parties are required to submit a stipulation to the court stating which parties are to receive the transcript copies.

e. At the close of the time period for filing a *Notice of Challenge,* the court will issue a scheduling order. Unless otherwise ordered, the following schedule for briefing and oral argument shall be set:

(1) Opening briefs shall be filed simultaneously within 21 days following the deadline for filing *Notice of Challenge.* If a reporter's transcript is requested, opening briefs shall be filed simultaneously within 21 days following lodging of the transcript. Briefs shall be limited to 25 pages and shall be served on the parties to the subcase and any party filing a *Notice of Challenge.*

(2) Rebuttal briefs shall be filed within 14 days after the deadline for filing responsive briefs. Rebuttal briefs shall be limited to 25 pages and shall be served on the parties to the subcase and any party filing a *Notice of Challenge.*

(3) All parties lodging briefs in response to a *Notice of Challenge* are required to submit an original and one copy to the court.

(4) Oral argument on a challenge to a ***Special Master's Recommendation*** shall be held not earlier than 7 days after the deadline for filing rebuttal briefs. Only those parties filing briefs will be allowed oral argument and each party will be limited to 30 minutes.

f. The court shall accept the Special Master's findings of fact unless clearly erroneous. The court may, in whole or in part, adopt, modify, reject, receive further evidence, or remand it with instructions. I.R.C.P. 53(e)(2). (Adopted October 10, 1997.)

14. ENTRY OF PARTIAL DECREES

a. The Presiding Judge shall enter a partial decree for uncontested water rights or any water right not referred to a Special Master by an ***Order of Reference.***

b. Following review of a ***Special Master's Recommendation*** and the resolution of any challenges, the Presiding Judge shall enter a partial decree. The partial decree shall be served only on parties to the subcase and notice of its entry shall be reported in the Docket Sheet. A certified copy of the partial decree shall be served on IDWR in compliance with I.C. *§§ 42-1403* and *42-1412(6)*.

c. The form of the partial decrees and the maintenance of partial decrees as the sole legal record of title to the water right shall be decided by the Presiding Judge.

d. Parties seeking to modify a partial decree shall comply with I.R.C.P. 60(a) or 60(b). Partial decrees are final judgments and cannot be modified by an administrative proceeding except as provided in I.C. *§ 42-222*. (Adopted October 10, 1997.)

15. APPEALS FROM PARTIAL DECREES

a. Appeals from a partial decree by a party to a subcase may be brought pursuant to I.R.C.P. 54(b) or I.A.R. 12.

b. Motions and proceedings for certification of a judgment as final shall follow motion practice rules. (Adopted October 10, 1997.)

16. BASIN-WIDE ISSUES

a. Designation

(1) Any party to the adjudication may file a *Motion to Designate Basin-Wide Issue* if that party believes an issue materially affects a large number of parties to the adjudication. The motion to designate shall be decided by the Presiding Judge or a Special Master by ***Special Order of Reference.*** A motion to designate shall state:

(a) The issue, in 20 words or less;

(b) Why the issue is broadly significant and is better resolved as a basin-wide issue;

(c) The need for its early resolution;

(d) The type of right(s) affected by the issue; and

(e) A description of how those rights will be affected.

(2) The Presiding Judge may enter a ***Notice of Intent to Designate Basin-Wide Issue.***

(3) Unless otherwise ordered, a motion or notice of intent to designate shall follow the Docket Sheet Procedure.

(4) Any party to the adjudication may respond to a motion or notice of intent to designate. The response shall be served on the movant, if any, and the parties listed in Section 6e(2) or, if being heard on an expedited basis, to the addresses on the ***Court Certificate of Mailing for Expedited Hearings*** which is available from the Clerk of the SRBA Court.

(5) A motion or notice of intent to designate may be filed at any time after the filing of a Director's Report which raises the issues that are the subject of the motion.

The motion shall not be heard until after the objection and response periods to the Director's Report have run.

(6) On receipt of a motion or notice of intent to designate, the Clerk of the Court shall assign a separate subcase number to the basin-wide issue. This new subcase file number shall be included on all documents filed in the basin-wide issue and all entries reported on the Docket Sheet.

(7) When basin-wide issues are designated by the Presiding Judge, hearings may be expedited, and all parties to the adjudication will be given notice of proceedings through the Docket Sheet Procedure.

b. Service --

(1) When the Presiding Judge issues an ***Order Designating Basin-Wide Issue,*** a separate certificate of mailing shall be created for each basin-wide issue. This basin-wide issue certificate of mailing will consist of the parties who filed the motion to designate or a response thereto, a response to the notice of intent or a brief in response to the order designating. Parties to the adjudication may also become parties to the basin-wide issue by filing a *Notice of Intent to Participate* no later than 30 days after publication of the order designating in the Docket Sheet or within the time specified on the order designating.

(2) Any pleading filed in the basin-wide issue shall be served on the parties listed on the basin-wide issue certificate of mailing. Parties to the adjudication will be given notice of further proceedings through the Docket Sheet.

(3) Only those parties listed on the basin-wide issue certificate of mailing will be permitted to file pleadings or participate in oral argument on the basin-wide issue.

c. Proceedings on Basin-Wide Issues to be Heard by the Presiding Judge A basin-wide issue will proceed as specified in the order designating, which will state the briefing schedule and the date for oral argument. Once the hearing has been held, the Presiding Judge will issue a memorandum decision.

d. Proceedings on Basin-Wide Issues Assigned to a Special Master

(1) A basin-wide issue, once designated, may be assigned by the Presiding Judge to a Special Master by a ***Special Order of Reference.*** The Special Master shall:

(a) Issue a scheduling order stating the briefing schedule and the date for oral argument and

(b) After hearing, file a ***Special Master's Recommendation*** with the Presiding Judge.

(2) Challenges to a Special Master's Recommendation on a Basin-Wide Issue Any party to the basin-wide issue may file a *Notice of Challenge* within 30 days after the issuance of the ***Special Master's Recommendation.*** When a challenge has been filed, the Presiding Judge shall issue a scheduling order setting a briefing schedule and the date for oral argument. (Adopted October 10, 1997.)

17. IDWR ADMINISTRATIVE PROCEEDINGS TO CHANGE REPORTED WATER RIGHTS

a. In a reporting area where a Director's Report **has not** been filed or where a partial decree has been issued, a claimant requesting an administrative change to their water right claim(s) must contact IDWR. Notice to the SRBA Court is not required.

b. In a reporting area where a Director's Report **has** been filed and prior to the issuance of the partial decree, claimants seeking to change their address or the ownership of a water right claim shall follow the procedures outlined under subsections (1) and (2) below. Claimants seeking to change point of diversion, place of use and period of use shall follow the procedures outlined under subsection (3).

(1) Change of Address, Change of Ownership (*Idaho Code §§ 42-248* and *42-1409(6)*) -- Unless the court orders otherwise, water right claimants are required to notify IDWR of any change of address or ownership. When notified of such a change, IDWR shall file with the court a *Notice of Completed Administrative Proceeding* and shall attach a copy of the Amended Director's Report reflecting the change of address or ownership.

(2) Split Water Rights Unless the court orders otherwise, when notice is given to IDWR for a change in ownership of a water right proposing to split a water right, IDWR shall immediately notify the court by submitting a *Notice of Administrative Proceeding.* Upon receipt of the *Notice of Administrative Proceeding,* the court may stay SRBA proceedings for that water right during the pendency of the administrative proceeding. Once the administrative proceeding is complete and all appeal times have run, IDWR shall file with the court a *Notice of Completed Administrative Proceeding* with an attached Amended Director's Report reflecting the division or split that has occurred. IDWR must also attach a copy of an Amended Director's Report for any and all overlapping water right claims. This procedure cannot be used to accomplish an enlargement as provided by I.C. *§§ 42-1425*, 1426 or 1427.

(3) Other Changes - Period/Place/Purpose of Use/Nature of Use and Point of Diversion Proceedings Under I.C. *§ 42-222*.

Claimants seeking a change in their claimed water right under I.C. *§ 42-222* shall contact IDWR. When an application is made with IDWR for a change **pursuant to I.C. *§ 42-222*.** for a water right which has been reported in a Director's Report but where a partial decree has not been entered, IDWR shall immediately notify the court by submitting a *Notice of Administrative Proceeding* stating the type of change sought. Upon receipt of the *Notice of Administrative Proceeding,* the court may stay SRBA proceedings for that water right during the pendency of the administrative proceeding. Once the administrative proceeding is complete and all appeal times have run, IDWR shall submit a *Notice of Completed Administrative Proceeding* with an attached Amended Director's Report which shall report all administrative changes made pursuant to I.C. *§ 42-222*. IDWR shall include Amended Director's Reports for any and all overlapping water right claims.

c. Amended Director's Reports shall be docketed in the subcases indicating the type of amendment made and will be reported in the Docket Sheet. Any party wishing to file an objection to an Amended Director's Report may do so by filing a *Motion to File a Late Objection* within 21 days following the notice of filing the Amended Director's Report in the Docket Sheet. (Adopted October 10, 1997.)

18. COURT INFORMATION FOR THE PUBLIC AND PARTIES The IWATRS computerized register of actions (ROA) is available to the parties to the adjudication and the public. The SRBA Court's home page and electronic records can be accessed via the Internet at URL: *www.srba.state.id.us*. (Adopted October 10, 1997.)