In the Supreme Court of the State of Idaho

IN RE: AMENDMENTS TO IDAHO APPELLATE RULE (I.A.R.) 11 and ADOPTION OF NEW IDAHO APPELLATE RULE (I.A.R.) 12.3	)	ORDER

The Court having reviewed a recommendation from an ad hoc committee on Industrial Commission appeals to amend the Idaho Appellate Rules, and the Court being fully informed;

NOW, THEREFORE, IT IS HEREBY ORDERED that the Idaho Appellate Rules as they appear in the volume published by the Idaho Code Commission be, and they are hereby, amended as follows:

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

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:

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(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 12.3. 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 12.3. 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.

2. That a NEW Rule 12.3 be, and the same is hereby, ADOPTED as follows:

Rule 12.3. 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, except the clerk of the Industrial Commission shall have it ready for service on the parties within twenty-eight (28) days of the date of the filing of the notice of appeal.

(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.

IT IS FURTHER ORDERED, that this order and these amendments shall be effective the 1st day of July, 2015.

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

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

DATED this 23 day of April, 2015.

By Order of the Supreme Court

R Burdick

Roger S. Burdick, Chief Justice

ATTEST: Stephen Kenyon

Clerk

I, Stephen W. Kenyon, Clerk of the Supreme Court of the State of Idaho, do hereby certify that the above is a true and correct copy of the Order entered in the above entitled cause and now on record in my office.
WITNESS my hand and the Seal of this Court 4-28-15

STEPHEN W. KENYON Clerk

By: Chief Deputy