I.A.R. 13. Stay of Proceedings Upon Appeal or Certifications

Idaho Appellate Rule 13. Stay of Proceedings Upon Appeal or Certifications.

(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. Any further stay 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 on 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(a)(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) Take any action and rule upon all matters, including conduct of a trial, during a permissive appeal under Rule 12 I.A.R. or during an appeal from a partial judgment certified as final under Rule 54(b) I.R.C.P., if approved by the Supreme Court under Rule 13.4.

(19) 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.

(20) Rule upon any motion pertaining to the taking of depositionspursuant 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 ß 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 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 county 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. 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, except as provided in subsections (a), (b), (c), (d) and (e) of this Rule. 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.

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