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## FAQs

### Frequently Asked Questions

Click on a question below to display the answer. Click the question again to close the answer.

- [What is an appeal?](#)

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If you are unsatisfied with a court decision, you may appeal the decision to attempt to get a different result. An appeal asks a higher court to examine the trial court's decision and determine whether the trial court was correct in its reasoning or procedure.

- [Who can appeal?](#)

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Generally, anyone who loses at trial can appeal, with or without the help of an attorney. But because the appeals process is difficult and complex, you should hire an attorney experienced and educated in appellate litigation. If an appellant chooses to represent himself or herself, the courts will not give the appellant any special treatment. Pro se or self-represented appellants must also follow the Idaho Appellate Rules.

- [Where can I find the Idaho Appellate Rules?](#)

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The Idaho Appellate Rules are in the Idaho Court Rules, available at law libraries and some public libraries, and on the Idaho Supreme Court's website [here](#) [1].

- [What appellate courts are there in Idaho?](#)

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There are two appellate courts above the magistrate and district trial courts, the Idaho Court of Appeals and the Idaho Supreme Court. Different types of cases are assigned to each appellate court.

- [Can the courts appoint an attorney to represent me?](#)

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No, the Court of Appeals and the Supreme Court do not appoint attorneys. If you are financially unable to hire a lawyer, you can file a motion with the trial court asking for pauper status, and/or the appointment of an attorney in a criminal case.

- [How much does it cost to appeal a decision?](#)

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An appeal involves costs from paying the filing fee, for the transcript and record, and for preparing and copying court documents. The filing fee for a notice of appeal, the document that starts the appeal process, is usually \$86.00. This filing fee may be waived in certain cases. If a transcript is requested, there will be fees payable to the court reporter for preparing the transcript. The clerk will also charge fees to prepare the clerk's record of documents from the trial. Fees for the transcript and record may also be waived. In addition, there are costs involved with preparing and copying documents for the appeal. Most appellate documents require multiple copies, for the court and for other parties.

- [Is there any difference between how civil cases and criminal cases are handled on appeal?](#)



- - Most of the filing deadlines and other requirements are the same, but there are some differences.
- [If I want to appeal the trial court's decision, what should I do first?](#)
  - The trial court must be finished with your case before you can appeal, meaning the trial court must have issued a final judgment. You will then be able to file a notice of appeal.
- [What is a notice of appeal?](#)
  - A notice of appeal is a written document filed with the trial court, naming the final judgment or order you wish to appeal, stating the issues you intend to use to argue that the appellate court should change the decision, and requesting transcripts and record documents from the trial.
- [How do I file a document?](#)
  - You file a document in the appellate process when you give it to the clerk. A notice of appeal must be physically received by the clerk to be filed. All other documents for an appeal are filed once they are mailed. Applications for stay of execution of a criminal or civil judgment, and petitions for review, can be filed using a fax machine. Other documents may be filed by fax machine, but only in emergencies, with oral permission of the clerk, and if they are 10 pages or less in length.
- [When must I file a notice of appeal?](#)
  - Normally, a notice of appeal must be physically filed with the trial court within 42 days from the day the final judgment or order was entered and filed. That date is shown on the filing stamp of the clerk of the trial court.
- [How do you calculate the time for filing of documents with the clerk?](#)
  - In computing the time period prescribed or allowed for any appellate document, you do not include the day of the filing. For example, if the appellant's brief was filed on Monday, you begin to count the 28 days for filing the respondent's brief on Tuesday. If the deadline is on a Saturday, Sunday or legal holiday, the document is not due until the end of the next business day after that date.
- [How do you calculate the time for filing of documents with the clerk?](#)
  - Yes, they can be. In a child custody case where the best interest of the child would be served by an immediate appeal, any party or the magistrate judge hearing the case may petition the Supreme Court for a direct appeal of a judgment or order affecting a minor, a Child Protective Act proceeding, the termination of parental rights, or an adoption. A direct appeal means the case would not be first heard on appeal by the district court. If you wish to have a direct appeal, you must file a motion for permission to appeal with the magistrate court within 14 days from the date of entry of the order. The magistrate judge will then enter an order approving or disapproving the motion within 14 days from the date the motion has its hearing. Then any party must file a motion with the Supreme Court requesting acceptance of the appeal within 14 days from the date the magistrate judge entered the order approving or disapproving of the motion. If the Supreme Court accepts the appeal, it will give you permission to file a notice of appeal within a set time period, and then the appeal will proceed in an expedited or faster manner.



- [Where must I file a notice of appeal?](#)
  - A notice of appeal must be filed with the trial court that decided the original case.
- [How much does it cost to file a notice of appeal?](#)
  - For most civil cases, the filing fee is \$86.00. There is no appellate filing fee for criminal cases.
- [What if I cannot afford the filing fee?](#)
  - If you cannot afford the appellate filing fee, you can request a waiver from the Supreme Court. You must first apply with the trial court for a waiver, and the trial court will then issue an order recommending either waiver or no waiver. You must then file the trial court's order with your notice of appeal. You will also need to file a verified petition, motion or affidavit requesting the waiver and stating the factual basis for why you are unable to afford the filing fee. If you are represented by Idaho Legal Aid Services, the filing fee will be automatically waived.
- [Do I need to request a transcript?](#)
  - You should request a reporter's transcript when filing your notice of appeal if what was said at the trial or hearing is relevant to the issues you intend to use to argue that the trial court's decision should be changed. If you are requesting a transcript, you should specify the name and date of the relevant proceedings in the notice of appeal.
- [When do I need to pay for the transcript?](#)
  - If you request a reporter's transcript, you must serve the reporter a copy of the notice of appeal by mail before you file the notice of appeal. The reporter will then estimate the cost of preparing a transcript. You must then pay the estimated reporter's fees to the clerk of the trial court.
- [What if I cannot afford the estimated reporter's fees for the transcript?](#)
  - If you cannot afford the estimated fees, the trial court may waive payment.
- [What is the record?](#)
  - The clerk's record includes filed trial documents and any orders or judgments made by the trial court.
- [Will the trial court clerk send me copies of the documents in the clerk's record?](#)
  - The clerk will only make copies for an appellate party if the party specially requests the documents, and the clerk will charge fees for copying.
- [When do I need to pay for the record?](#)
  - You must pay the clerk the estimated fee for the record before filing the notice of appeal. The clerk charges a fee of \$1.25 per page to prepare the record.
- [What is a certificate of service?](#)
  - Any filed document must also be served on the other party or the attorney of the other



party, by delivering a copy of the document to them. The certificate of service shows to whom you gave the document, on what date the document was served, and how the document was delivered. All filed documents with the court must be accompanied by a certificate of service, and failure to serve documents on the other party may lead to dismissal of your appeal.

- [What is involved in the certification of the notice of appeal?](#)

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As a self-represented appellant filing a notice of appeal, you must prepare an affidavit showing or certifying that the filing fees and estimated fees for the transcript and record have been paid or waived, that the trial court's reporter has been served, and that all other required parties have been served.

- [When I file a notice of appeal, must I file any other document?](#)

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No cost bond is required in Idaho appeals. If the judgment or order concerns money or property, you will need to apply for a supersedeas bond to stay enforcement of the judgment or order while the appeal is pending. No supersedeas bond would be necessary if the party who won the judgment or order agrees in writing not to execute while the appeal is pending.

- [What happens after I file my notice of appeal with the trial court?](#)

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Once the notice of appeal is filed and all related fees are paid or waived, the reporter will usually have either 30 or 63 days to complete the court transcript, depending on the estimate length. The clerk will have 30 days to prepare the clerk's records from the day the notice of appeal is filed. After the transcript and record are finished, the clerk will serve the parties with copies of the transcript and record. Each party then has 28 days from the day of service to file objections to the transcript or the record. If there are no objections, the transcript and record are settled, and the clerk then has 7 days to file the transcript and records with the Supreme Court. Filing the transcript and records sets the deadlines for the parties to complete the next set of required documents, their briefs.

- [What is an extraordinary writ?](#)

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An extraordinary writ is a different way for an appellate court to review a trial court's decision, distinct from an appeal. They are extraordinary because they are very unusual and hard to secure. Examples of extraordinary writs include writs of prohibition and writs of mandamus.

- [What is a writ of prohibition?](#)

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A writ of prohibition is an extraordinary writ that an appellate court issues to stop a lower court from doing something unlawful or improper.

- [What is a writ of mandamus?](#)

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A writ of mandamus is an extraordinary writ that an appellate court issues to command a lower court or official to do something.

- [What is a motion?](#)

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A motion is a request made by a party for the court to perform some action.

- [What kinds of motions are allowed in the appellate courts, and when can they be made?](#)



- - A respondent, or party that did not file for appeal, may make a motion for involuntary dismissal under certain situations in order to stop the appeal. Motions for involuntary dismissal are allowed for failure to comply with the Idaho Appellate Rules, but must be filed at least 21 days before oral arguments are scheduled. Motions for involuntary dismissal for failure to file the notice of appeal or time, or failure to file the petition for rehearing on time, may be made at any time. An appellant may make a motion for voluntary dismissal and stop the appeal at any time. All other motions allowed under the Idaho Appellate Rules may be made at any time.
- [What is a brief?](#)
  - A brief is a filed document stating the legal arguments a party will make in support of their position. Because some appellate cases will not have access to oral arguments, the brief is very important.
- [When must I file a brief?](#)
  - The deadlines for filing a brief are based on when the clerk filed the transcript and record with the Supreme Court. The appellant must file the appellant's brief within 35 days of the date when the clerk filed the transcript and record. The respondent must file the respondent's brief within 28 days of the service of appellant's brief. If there is a reply brief, that must be filed within 21 days of the service of respondent's brief.
- [Where must I file a brief?](#)
  - Briefs must be filed with the clerk of the Idaho Supreme Court.
- [Who must I serve the brief upon?](#)
  - You must serve all parties to the appeal with two copies of your appellate briefs.
- [Can I include new evidence in my brief, which was not brought up at trial?](#)
  - No, appellate parties are not allowed to introduce new evidence. The appellate courts are limited to reviewing the evidence on record from the original trial.
- [What is a standard of review?](#)
  - A standard of review is a guideline used by an appellate court to examine the trial court's decision. The standard of review also determines how much deference the appellate court will pay to the decision of the trial court, which may have a large impact on the chance that the appeal will be successful.
- [How should I format my citations?](#)
  - For the transcript, reference it with the designation "Tr" followed by the volume, page and line number abbreviated as "Vol. I, p. 14, L. 16". For the record, reference it with the designation "R" followed by the by the volume, page and line number abbreviated as "Vol. I, p. 14, L. 16". Examples for the transcript, record, and other legal authorities follow below:
    - Transcript: (Tr., Vol. I, p. 14, L. 16)
    - Record: (R., Vol. I, p. 14, L. 16)
    - Exhibit: (Ex. 23)



- Idaho Code: I.C. § 49-801(1)
- Idaho Appellate Court Decision: Nicholls v. Blaser, 102 Idaho 559 (1981)
- Idaho Appellate Rules: I.A.R. 35(e)
- Idaho Constitution: Idaho Const. Art. I, § 2
- [What are oral arguments?](#)
  - Oral arguments give each party to an appeal the chance to present their legal arguments before a panel of judges from the appellate court handling the case. If your appeal has oral arguments, they will be scheduled by the Supreme Court.
- [How long do oral arguments last?](#)
  - Each party is typically given 30 minutes to argue their side of the appeal, but the appellate court may shorten or lengthen the time given.
- [What happens after briefs and oral arguments?](#)
  - The appellate court will announce its opinion on the appeal, normally within about six months after all briefs have been filed. Certified copies of the opinion will be sent to each party and to the trial court. After 21 days from the announcement of the opinion, the opinion becomes final.
- [What is a remittitur?](#)
  - A remittitur is a document issued by the clerk of the Supreme Court, advising the trial court that the opinion has become final and that the trial court must follow the opinion. The remittitur is filed with the trial court, and copies are sent to all parties to the appeal and the presiding judge at the trial court.

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### Links

[1] <http://www.isc.idaho.gov/iar>