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## **I.C.R. 54.Appeals from the Magistrate Division.**

### **Idaho Criminal Rule 54. Appeals from the Magistrate Division**

#### **(a) Where an Appeal Must be Taken.**

(1) *Appeals from the Magistrate Court to the District Court.* An appeal from the following judgments or orders entered by the magistrate court must be taken to the district court:

- (A) a final judgment of conviction;
- (B) by a defendant only, an order granting or denying a withheld judgment on a verdict or plea of guilty;
- (C) an order granting a motion to dismiss a complaint;
- (D) an order granting a motion to suppress evidence in a misdemeanor action;
- (E) an order denying a motion for new trial;
- (F) an order made after judgment affecting the substantial rights of the defendant or the State;
- (G) any order, judgment or decree by a magistrate in a special criminal proceeding for which an appeal is provided by statute;
- (H) any order holding a person in contempt of court other than those contempts defined in Rule 42(a);
- (I) interlocutory orders, if permissive appeal has been granted by the district court, which must be processed in the same manner as provided by Rule 12 of the Idaho Appellate Rules; or
- (J) any order granting or denying a motion to set aside the forfeiture of bail or to exonerate bail. An appeal from this order does not deprive the magistrate court of jurisdiction over other proceedings involving the case or stay other proceedings.



(2) *Appeals from Magistrate Court to the Supreme Court When it is Acting as District Court.* An administrative district judge may petition the Supreme Court to assign a magistrate judge to hear an action that would otherwise be tried only by a district judge. An appeal from the magistrate's decision in the assigned case must be taken to the Supreme Court, unless the original order of assignment states differently.

**(b) Time for Filing an Appeal or Cross Appeal.**

(1) *Appeal.* An appeal is commenced only by filing a notice of appeal with the clerk of the district court in the county where the magistrate trial was held.

(A) *In General.* The notice of appeal must be filed within 42 days from the date file stamped by the clerk of the court on the judgment or order being appealed.

(B) *Suspension of Time to File.* The time to file the appeal is terminated by the filing of a motion within 14 days of the entry of judgment, which, if granted, could affect the judgment or sentence in the action. The time to appeal begins to run from the date file stamped by the clerk of the district court on the order granting or denying the motion.

(2) *Cross Appeal.* When an appeal is filed as a matter of right, a cross appeal may be filed by the opposing party within the time for an appeal, or within 14 days from the date the party is served with a copy of the notice of appeal, whichever is later.

**(c) Service of the Notice of Appeal.** The party filing the appeal must immediately serve copies of the notice of appeal on the magistrate court appealed from and all other parties to the action.

**(d) Contents of the Notice of Appeal.** A notice of appeal to the district court must contain the following information:

(1) the title of the court from which the appeal is taken and the name of the presiding judge;

(2) the title of the court to which the appeal is taken;

(3) the date and heading of the judgment or order being appealed;

(4) the title of the action and the case number assigned to the action;



- (5) a statement as to whether the appeal is taken on matters of law, or on matters of fact, or both;
- (6) whether the testimony and proceedings of the original trial or hearing were recorded or reported, the method of recording or reporting, and the name of the party or person who has the recording or reporting;
- (7) a certificate of service that the notice of appeal has been served personally or by mailing on the opposing party or the party's attorney, and
- (8) a preliminary statement of the issues the appellant intends to assert in the appeal, which may be filed separately within 14 days after the filing of the notice of appeal and which does not prevent the appellant from asserting other issues on appeal.

**(e) Stay During Appeal; Powers of Magistrate.**

- (1) *Stay*. Execution of any sentence imposed must be stayed when ordered by the magistrate or district court as provided in Rule 46 and this rule.
- (2) *Powers of Magistrate*. While the appeal is pending before the district court or pending on further appeal to the Supreme Court, and unless otherwise prohibited by order of the district court, the magistrate has the power to take the following actions:
  - (A) settle the transcript on appeal;
  - (B) rule on any motion for new trial;
  - (C) rule on any motion for arrest of judgment;
  - (D) conduct any hearing, and make any order, decision or judgment allowed or permitted by Idaho Code § 19-2601;
  - (E) conduct any hearing and make any order, decision or judgment with regard to a withheld judgment entered on a plea or verdict of guilty;
  - (F) place a defendant on probation, modify or revoke probation, or sentence a defendant on revocation of probation;



(G) if bail has not been posted, determine whether to stay execution of the sentence during the pendency of the appeal, or

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

In the event the district court enters an order affecting a stay of execution of a sentence, provisions concerning bail, or any of the other matters set forth above, the order of the district court controls over the order of the magistrate.

**(f) Manner of Review by District Court.**

(1) *Appellate Review with Transcript.* Unless otherwise ordered by the district court, the district court must hear appeals from the magistrate court as an appellate proceeding and a transcript must be prepared as provided in Rule 54(g). The district court must review the case on the record and determine the appeal in the same manner and on the same standards of review as an appeal from the district court to the Supreme Court under the statutes and law of this state, and the Idaho Appellate Rules.

(2) *Appellate Review without Transcript.* The district judge assigned the appeal may, on the court's own motion or motion of a party, order an alternate method of hearing the appeal that does not require a transcript. Even if the district judge does not require the preparation of a transcript, the court must, on motion of any party to the appeal, order the preparation of a transcript of the proceedings at the cost of the moving party and order the moving party to pay the estimated transcript fees within 14 days of entry of the order. The clerk of the court must serve a copy of the order on the transcriber of the trial or proceedings of the trial court.

(A) *Hearing on Question of Law.* If the district judge determines that the appeal involves only a question of law, the district judge may determine the appeal without a transcript. It must then enter an order stating:

(i) the appeal involves a question of law only,

(ii) the issue of law to be determined on appeal,

(iii) no transcript is required,

(iv) the appeal will be decided on the clerk's record, the briefs of the parties and oral argument, and

(v) the date for the filing of the appellant's opening brief.



(B) Hearing by Listening to or Viewing Electronic Record. If the district judge determines that the appeal may be heard as an appellate proceeding by listening to or viewing the electronic record of the trial or proceedings of the trial court, it may determine the appeal without a transcript. It must then enter an order stating:

- (i) that no transcript is required,
- (ii) the appeal will proceed by listening to or viewing the electronic record of the trial or proceedings of the trial court,
- (iii) a time within which the parties must review, view, or listen to the electronic record, and
- (iv) the date for the filing of the appellant's opening brief.

(3) *Trial de Novo or Remand*. If the district court determines that the record of the proceedings in the magistrate court is inadequate for an appellate proceeding, the district court must order that the appeal be heard as a trial de novo or remand the matter to the magistrate's division. If the appeal is heard as a trial de novo, the appeal must be by trial in the district court in the same manner as a trial on information in the district court.

#### **(g) Transcripts.**

##### **(1) Transcript Fee.**

(A) Payment of Fee. The Appellant must:

(i) within 14 days of the filing of the notice of appeal, pay the estimated fee for preparation of the original and 2 copies of the transcript, as determined by the transcriber pursuant to Idaho Code § 1-1105;

(ii) pay the balance of the transcript fee on completion of the transcript;

(iii) pay the amount to the clerk of the court, who will deposit it in the district court fund, or any other fund that incurred the expense of the person who prepared the transcript; and



(iv) pay any agreed on amount if the transcript is prepared by a transcriber or reporter privately retained by appellant; however, for purposes of taxing costs, the cost is the same per page cost set out in Idaho Code § 1-1105.

(B) **Exemption from Payment.** The district judge may order a transcript prepared at county expense if the appellant is exempt from paying the fee as provided by statute or law.

(2) *Preparation of Transcript.* After the estimated fee for the transcript is paid, the transcriber must give a receipt to the party paying the fee and must prepare the transcript and lodge it with the clerk of the trial court within 35 days from the date the estimated fee was paid. The district court may grant an extension of time to prepare the transcript if the transcriber applies for an extension and the district court finds there is good cause to grant an extension.

(3) *Certificate.* The transcript must be examined and certified by the transcriber by a certificate in substantially the form found in Appendix A.

(4) *Form of Transcript.* All transcripts of testimony and proceedings prepared for an appeal to the district court must be in the same form and arrangement required for appeals to the Supreme Court under the Idaho Appellate Rules.

**(h) Clerk's Record.** The clerk's record is the official court file of the criminal proceeding appealed to the district court, including any minute entries or orders together with the exhibits offered or admitted. Alternatively, on order of the magistrate, a certified copy of the official file may be filed with the district court and the magistrate may retain the original file. After the appeal is determined and the time for an appeal to the Supreme Court has expired, the original clerk's record must be returned to the magistrate division together with the order or other disposition made by the district court on the appeal. The clerk need not prepare a copy of the record unless ordered by the district court.

**(i) Settlement of Transcript.** On receipt of the transcript of the testimony and proceedings, the clerk of the trial court must mail or deliver a notice of lodging of transcript to all attorneys of record, or parties appearing in person. The clerk of the court must retain the original of the transcript and advise that:

(1) the parties may pick up a copy of the transcript at the clerk's office;

(2) the appellant must pay the balance of the fees for the preparation of the transcript, if any, before the copy of the transcript will be delivered to the appellant; and

(3) the parties have 21 days from the date of the mailing of the notice in which to file any objections to the transcript.



If there are multiple defendants appealing and the court or the parties have not ordered separate transcripts for each defendant, they must determine by agreement the manner and time of use of the transcript by each party, or if they cannot agree, any party may move the trial court to make this determination. If an objection is made to a trial transcript, the objection is heard and determined by the trial court in the same manner as a motion. The determination of the trial court of any objection to the transcript is a settlement of the transcript. If no objection is filed to the transcript within the 21-day period, it is deemed settled.

**(j) Filing of Record and Transcript.** The clerk of the trial court must file the clerk's record or a certified copy of the record, the transcript, if any, and all exhibits offered or admitted in the proceeding within 7 days of the settlement of the transcript, or within 7 days of receipt of an order of the district court that no transcript is needed or required. The clerk of the trial court must notify all parties of the filing. Any electronic recording used to transcribe the testimony and proceedings need not be forwarded to the clerk of the district court unless ordered by the district court.

**(k) Augmentation of the Record.** A motion to augment the transcript or record may be filed with the district court in the same manner and pursuant to the same procedure as provided in the Idaho Appellate Rules.

**(l) Exhibits on Appeal.** All exhibits offered or admitted in a trial proceeding must be lodged with the clerk of the district court by the clerk of the trial court together with a certificate that the exhibits include all exhibits offered or admitted in the trial or proceedings. All exhibits must be lodged with the clerk of the district court at the time that the transcript and clerk's record is lodged with the district court. If an exhibit is incapable of being transmitted to the district court, the magistrate may order the clerk of the trial court to photograph or otherwise describe or make a facsimile of it and forward it to the district court and retain the original until determination of the appeal. On determination of the appeal, the district court must return all exhibits to the trial court.

**(m) Effect of Failure to Comply with Time Limits.** The failure to file a notice of appeal or notice of cross-appeal with the district court within the time limits set out in this rule is jurisdictional and will cause automatic dismissal of the appeal. This dismissal may be pursuant to a motion by any party, or on the district court's initiative. Failure of a party to timely take any other step in the appellate process is not jurisdictional, but may be grounds for other action or sanction as the district court deems appropriate, which may include dismissal of the appeal.

**(n) Motions.** All motions on appeal must be filed with the district court, except those expressly required to be filed in the trial court, and served on the parties in the same manner as motions before a trial court under these rules. All motions must be accompanied by a brief in support. The opposing party has 14 days from service of the motion to file a response or brief. The motion will be determined without oral argument unless ordered by the court.

**(o) Appellate Briefs.** Briefs must be in the same content and arrangement, and must be filed and served within the time provided by, the Idaho Appellate Rules unless otherwise ordered by the district



court. Only one original signed brief must be filed with the court and copies must be served on all other parties.

**(p) Appellate Argument.** Appellate argument may be heard by the district court after notice to the parties in the same manner as notice of hearing of a motion before a trial court under these rules.

**(q) Other Appellate Rules.** Any appellate procedure not specified in this rule must be in accordance with the Idaho Criminal Rules or the Idaho Appellate Rules.

**(r) Decision Entered on Appeal.**

(1) *Appellate Review.* If an appeal is heard on the record, on determination of the appeal the district judge must enter an appellate decision which must include instruction to the magistrate. The clerk must file stamp the appellate ruling and mail copies to the parties and the presiding magistrate. The original appellate ruling must be filed in the court file which is returned to the magistrate division as provided by Rule 54(h).

(A) Remittitur from District Court. If no appeal to the Supreme Court is filed within 42 days after the clerk files the appellate decision, the clerk must issue and file a remittitur with the magistrate court from which the appeal was taken and mail copies to the parties and the presiding magistrate. The remittitur must advise the magistrate judge that the decision has become final and that the magistrate must immediately comply with the directive of the decision.

(B) Remittitur from Supreme Court or Court of Appeals. When the Supreme Court or Court of Appeals files a remittitur with the district court in a case that was initially appealed from the magistrate division of the district court, the clerk of the district court must mail a copy of the remittitur to the presiding magistrate.

(2) *Trial de Novo.* If an appeal is heard as a trial de novo, on determination of the appeal the district judge must enter a judgment.

(Approved February 22, 2017, effective July 1, 2017.)