

CLERK OF THE DISTRICT COURT MANUAL

18.0 APPEALS

Revised September 2009

18.1 Magistrate Appeals and Judicial Reviews Defined (Small Claims Appeals: See Section 8.20)

Appeals from the Magistrate Division

Appeals from the Magistrate Division of the District Court are outlined in Idaho Rule of Civil Procedure (IRCP) 83 (including special proceedings except Juvenile Correction Act cases) and Idaho Criminal Rule (ICR) 54.1 - 54.19 (including Juvenile Correction Act cases)

The District Court may order trial de novo, which is a new trial held in front of the judge that is hearing the appeal. If a trial de novo is ordered or if the court elects to hear additional evidence or testimony, the court renders a decision as though the matters were initially brought in the district court.

Judicial Review of Agency Actions (Administrative appeals)(IRCP 84)

This process is used when statutes provide for the District Court's judicial review of actions of state agencies or officers not in the judicial department or of actions of a local government, its officers or its units, but no procedure for review is set out in the statute. Appeals from certain state agencies such as the Industrial Commission and the Public Utilities Commission are made directly to the Supreme Court.

18.2 TIME LIMITS FOR FILING AN APPEAL (IRCP 83(e); ICR 54.3)

An appeal must be filed with the District Court within forty-two (42) days of entry of judgment or within forty-two (42) days after a decision has been signed by the officer of an administrative agency. The time for appeal from a final judgment is computed from the filing stamp date of the order and includes weekends and holidays.

The appellant files "Notice of Appeal" with the District Court containing information prescribed in IRCP 83(f) or ICR 54.4. The appellant also serves copies of the "Notice of Appeal" upon the Magistrate Division and all parties to the action.

Cross-appeals may be filed by opposing party within fourteen (14) days from the date opposing party is served with "Notice of Appeal". (IRCP 83(g)) (ICR 54.3(b)) If the cross appeal is made on the 15th day or thereafter the respondent must pay for any additions to the Clerk's Record and/or the reporter's transcript which the appellant did not originally request in the Notice of Appeal.

Clerical Duties for Appeals to District Court:

1. Collect the appeal fee giving a receipt for same. (There is no filing fee for criminal appeals. However, in the event the appeal is filed by a private attorney, the private attorney is required to pay the cost of the transcript and the clerk's record.)
2. File stamp and enter in the ROA the "Notice of Appeal".
3. Immediately assign the case to a District Judge pursuant to procedures established for your district, or refer to the Administrative Judge or his designee for assignment.
4. The case shall then be referred to the judge assigned for his review and actions.
5. If a private attorney seeks a transcript, an estimated transcript must be paid. The estimated transcript fee is determined by county practice.
Note: Transcripts requested by public defenders and prosecutors are covered at county expense per local practice.
6. If the assigned judge enters any interim orders the clerk shall immediately file and serve the orders on all parties.
7. When the estimated transcript fee has been paid, the clerk shall immediately notify the transcriber and instruct the transcriber to prepare the transcript.
8. When the transcript is completed, the transcriber shall lodge the transcript with the Clerk, who shall mail or deliver a notice of lodging to all attorneys of record or parties appearing pro se. The Clerk retains the original of the transcript and advises Plaintiff and Defendant that they may pick up a copy of the transcript within twenty one (21) days from the date of the mailing of the notice of lodging (IRCP 83(o) or ICR 54.9).

The parties have 21 days from the date of mailing of notice of lodging to object to contents of the transcript. (IRCP 83(o) or ICR 54.9)
9. Within seven (7) days of settlement of the transcript, the Clerk of the Court shall file the following with the District Court pursuant to IRCP 83(p) or ICR 54.10: (a) Transcript, (b) Clerk's Record, and (c) All exhibits offered or admitted. The Clerk shall notify all parties or their attorneys that the documents have been filed per local practice.

10. The parties may move to augment the transcript or the record with additional materials (IRCP 83(q)). File the motion and refer it to the assigned judge.
11. If the judge grants oral argument, the clerk shall schedule the hearing and send out notice to the parties.
12. The clerk shall file stamp and enter in the ROA the district court's ruling and mail copies to the parties and the presiding magistrate.
13. If no appeal to the Supreme Court is filed within forty-two (42) days after the clerk files the appellate ruling, the clerk shall 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 shall advise the magistrate judge that the opinion has become final and that the magistrate shall forthwith comply with the directive of the opinion (IRCP 83(z)(2)(A)).
14. If a Notice of Appeal is filed to the Supreme Court, file stamp and enter in the ROA. See Section 18.9 for appeals to the Supreme Court.
15. 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 shall mail a copy of such remittitur to the presiding magistrate (IRCP 83(z)(2)(B)).

Clerical Duties for Judicial Review of Agency Actions by the District Court. (IRCP 84):

1. Collect the filing fee.
2. File stamp and enter in the ROA the "Petition for Judicial Review" in the District Court. Follow the procedures for opening a new case file.
3. Immediately assign the case to a District Judge pursuant to procedures established for your district, or refer to the Administrative Judge or his designee for assignment.
4. Per local practice, when the assigned judge enters any interim orders or briefing schedules, the clerk shall immediately file and serve the orders on all parties and the agency.
5. The clerk files the agency record and/or transcript (IRCP 84(k)).

Note: It is the clerk of the agency subject to review who prepares the agency record and/or transcript in accordance with IRCP 84(j). The

agency transmits the record and/or transcript to the district court within forty-two (42) days of the service of the petition for judicial review.

6. The parties may move to augment the transcript or the record with additional materials (IRCP 84(l)). File the motion and refer it to the assigned judge.
7. If the judge grants oral argument, schedule the hearing and send out the notices to all parties and the agency (IRCP 84(q)).
8. File stamp and enter in the ROA the district court's ruling and/or judgment. Send copies to the parties and the agency (IRCP 84(t)(1)).
9. If a Notice of Appeal is filed to the Supreme Court, file stamp and enter in the ROA (IRCP 84(t)(2)). See Section 18.9 for appeals to the Supreme Court.
10. If a notice of appeal is not filed, then the judgment or decision of the district court shall become final forty-two (42) days after the file stamp date on the judgment. The clerk of the court shall issue a remittitur, mail copies to all parties to the petition for judicial review, and mail a certified copy to the agency (IRCP 84(t)(4)).
11. Upon determination of the petition for judicial review by the district court, and the expiration of the time for appeal to the Supreme Court, any original agency's record shall be returned to the agency together with the order and other disposition rendered by the district court on judicial review (IRCP 84(f)(2)).

18.3 SUMMARY OF TIME PERIODS REGARDING APPEALS (IRCP 83 and ICR 54.6)

With Transcript: Unless otherwise ordered by the court, a transcript shall be prepared and the appeal shall be heard as an appellate proceeding. IRCP 83(j) or ICR 54.6. Estimated Transcript fees must be paid within fourteen (14) days, unless otherwise ordered by the judge, and the appellant shall pay the balance of the fee upon its completion.

The transcriber has thirty five (35) days to prepare the transcript from the time the estimated fee is paid or from the time transcript is ordered in criminal cases if defendant is indigent, unless an extension is granted. The transcript is to be lodged with the Clerk when completed and parties have twenty one (21) days to pick up transcript; the same twenty one (21) days within which to file objections to transcript. The appellant has thirty five (35) days from settlement of the transcript to file their brief; respondent has twenty eight (28) days to file their brief; appellant has twenty one (21) days to file a rebuttal brief.

Without Transcript: If there is no transcript, the judge enters an order establishing time for filing of briefs. The appellant has thirty five (35) days to file a brief; then the respondent has twenty eight (28) days to file a brief and the appellant has twenty one (21) days to file a rebuttal brief.

18.4 TRANSCRIPT OF TRIAL COURT (IRCP 83(j); ICR 54.6)

A transcript is prepared unless otherwise ordered by the judge. A transcript of the original trial or hearing on an appeal to the District Court shall be required unless otherwise ordered by the District Judge.

Fees for Preparation of Transcript (IRCP 83(k); ICR 54.7(a); IC § 1-1105)

1. Within fourteen (14) days after the filing of the Notice of Appeal, the transcriber must estimate the length of the transcript and the appellant must pay the estimated cost of the transcript to the clerk. This cost is to be adjusted to the actual cost after the preparation of the transcript and a refund or additional charge is made. (In criminal appeals and in appeals of juvenile correction act cases, the court may order the transcript prepared at county expense in cases of indigence.)
2. Give the appellant or moving party, a receipt for the fees and transmit the same to the auditor for deposit in the court trust funds. Following final computation of the fees, if the party paid more than the transcript actually cost, the excess money is returned to the party. If the transcript cost more than originally posted, the party must pay the difference.

Preparation of Transcript

1. The transcript must be prepared within thirty-five (35) days of payment of the estimated fees for the same unless an application is made to the court, and granted, for an extension. (IRCP 83(k)(2); ICR 54.7(b))
2. The transcript consists of an original and two (2) copies.
3. Multiple parties may jointly use a transcript on appeal. In civil cases, a party desiring a separate copy must pay the transcriber (or clerk of the district court) \$1.00 per page. (IRCP 83(r)).

Form of Transcript. The form of the transcript is the same as the form for appeal to the Idaho Supreme Court. (IRCP 83(1), ICR 54.7(d) and IAR 26)

Completion of Transcript. The completed transcript must be examined and certified by the party who took the transcription if available. (IRCP 83(k)(3); ICR 54.7(d)) The last

page of the transcript should contain such a certificate of certification. Compute the final fee for preparation of the transcript.

The judge assigned the case may, on the court's own motion or motion of any party, enter an order that:

1. The appeal involves questions of law alone without the necessity of a transcript or a trial de novo, or
2. The appeal can be determined by listening to the recording tapes, or
3. The appeal is to be heard as a trial de novo.

Clerical Duties: *(When No Transcript Required.)*

1. If the district court determines that no transcript is required, file stamp and enter in the ROA the order of the district court that no transcript is required. Immediately serve copies of the order on all parties.

Note: Although the district judge may not require a transcript, a transcript will be required by order of the district judge upon the motion of any party to the appeal. (IRCP 83(j)(5); I.C.R. 54.6(e))

Clerical Duties: *(When Appeal to Be Heard by Listening to the Tapes.)*

1. File the order of the district court that the appeal is to be heard by listening to the tapes of the original trial or proceeding.
2. Serve copies, immediately, of the order on all parties or their attorneys.
3. Complete and file a Certificate of Mailing (or Service) of the order.
4. Operate the electronic equipment for the parties to listen to the tapes.
5. Fees for Listening to Tapes. (IRCP 83(y); ICR 54.19)
6. Collect the fee to be charged as directed by rule of the judicial district.

18.5 CLERK'S RECORD (IRCP 83(n); ICR 54.8)

The official court file of any court proceeding appealed to the district court, including any minute entries or orders together with the exhibits offered or admitted shall constitute the clerk's record in such appeal. Upon the determination of any appeal to the district court, and the expiration of the time for appeal to the Supreme Court, the original clerk's record shall be returned to the magistrate division together with the order or other disposition

rendered by the district court on the appeal. No copies of the clerk's record need be prepared unless ordered by the district court.

18.6 APPEALS TO THE SUPREME COURT

Appeals to the Supreme Court are governed by the Idaho Appellate Rules (IAR). These rules establish the Clerk of the District Court as the designated depository of all initiating appellate pleadings and the collector of all appellate fees. These rules also standardize appellate practice by the use of official forms.

18.7 FILING AN APPEAL

Clerical Duties:

1. Estimated Fees
 - a. Estimate the fee for the preparation of the Clerk's Record. I.A.R. 27(b) If the estimated fee has not been made within two (2) days after conclusion of the trial or proceedings, the estimated fee shall be one hundred dollars (\$100) until the actual fee is computed. When the clerk's record is completed, and prior to serving counsel, the clerk will contact the appellant with a computation of the balance due, including the cost of the record covers. If the computation falls short of the estimated amount, the clerk will need to calculate the difference and issue the appropriate refund to the appellant.
 - b. The appellant deposits the court reporter's transcript fee with the clerk. Ascertain the amount of the estimated fee from the case file. I.A.R. 24(c) If the reporter fails to estimate the fee, the estimate is deemed to be two hundred dollars (\$200).
 - c. Accept the estimated fee(s), giving the appealing party a receipt for the same. Route the fees to the county auditor for deposit in the court trust account. These fees will be distributed upon completion of the clerk's record and the reporter's transcript.
2. File stamp the "Notice of Appeal" along with any other documents submitted and complete standard filing procedures. Collect the district and supreme court filing fees. (See filing fee schedule.) (There are no filing fees in criminal appeals, however, the estimated fees for the Reporter's Transcript and Clerk's Record are paid unless the appellant is indigent.)

NOTE: The appellant should pay the filing fee or file a motion for waiver of the filing fee or show a motion for waiver of the filing fee is pending in

order for the appeal to be filed. HOWEVER, the time limit on filing an appeal is jurisdictional, meaning that even if it is a day late the court won't hear the appeal. Thus, the clerk should file stamp the appeal and if the filing fee is not paid or the fees for the record and transcript have not been paid, this should be so indicated to the Supreme Court clerk on the form sent to the Supreme Court. The Supreme Court will then conditionally dismiss the appeal for nonpayment of fees.

3. Begin a checklist. (Sample attached)
4. Notify the Supreme Court.
 - a. Prepare and file with the Clerk of the Supreme Court a "Clerk's Certificate of Appeal" (I.A.R. 23(e)). Make sure to follow the form set out in I.A.R. 23 (g) and to fill in the names of all court reporters of whom a transcript has been requested and the estimate of the number of pages to be transcribed. This estimate from the reporter should be in the file and will be used to set the due date for the transcript. The reporter may submit an estimate at the end of trial or at the end of a hearing as part of the minutes. If no estimate was submitted, then write in "no estimate in file". Send this to the Supreme Court along with certified copies of:
 - (1) The Notice of Appeal.
 - (2) The document from which the appellant is appealing (example: Judgment of Conviction and Order of Commitment).
 - (3) The Order Appointing State Appellate Public Defender (if ordered).
 - (4) The Supreme Court filing is found in the civil filing fee listing.
 - b. The title of the case in the "Clerk's Certificate of Appeal" should contain all parties but specifically identify appellant and respondent. The clerk should carefully read the Notice of Appeal and identify the appellant and respondent. If there is any question, the clerk should call the Supreme Court Clerk concerning the correct title. The District Court may, by order, correct the title of an appeal or cross-appeal at any time before the Clerk's Record is prepared and served on counsel. The Supreme Court may also correct the title.

- c. If an "Amended Notice of Appeal", "Notice of Cross-Appeal", or "Amended Notice of Cross-Appeal" is filed, the Clerk will need to prepare certified copies of these and send them to the Supreme Court along with an Amended Clerk's Certificate of Appeal to the Supreme Court, and a receipt for any associated fees.
5. Send documents to State Appellate Public Defender. The local public defender or appellant may file a motion to appoint the State Appellate Public Defender. If the court appoints the State Appellate Public Defender, the clerk will need to send them the following things:
 - a. Copy of the Order Appointing the State Appellate Public Defender; also send a certified copy of this order to the Supreme Court Clerk's Office.
 - b. Copy of the Notice of Appeal.
 - c. Copy of the order that is being appealed.
 - d. The computer printout of the case detail report (Register of Action).
 - e. Clerks Certificate of Appeal.
6. In civil cases only, if the respondent, within fourteen days of filing the notice of appeal, requests additions to the clerk's record or reporter's transcript, the appellant must pay the costs for the additions. If the request was made on the 15th day or thereafter, the respondent must pay for the additions.
7. Prepare the Clerk's record. See Section 18.11.
8. Lodge the transcript. After the "Notice of Appeal" is filed, the number of days in which to prepare the transcript will depend on its length. Transcripts less than 100 pages will be due in 30 days, transcripts between 100 and 500 pages will be due in 63 days and due dates for transcripts over 500 pages in length will be set by the Supreme Court upon the filing by Reporter of a Motion for Extension of Time. The Supreme Court will establish and notify the parties of due dates. Only the Supreme Court can grant an extension. When the transcript has been prepared, it is lodged with the court from which the appeal is taken.

18.8 THE CLERK'S RECORD

Time Limits on Preparing the Clerk's Record: The Supreme Court will send the clerk a notice that will give the Supreme Court Case Number and inform the clerk when the Clerk's Record and transcript are due in their office. After receiving the Notice of Appeal, the clerk must prepare a record and have it ready for service on the parties within 30 days of the date of the filing of the notice of appeal. (I.A.R. 27 (d)).

1. If the clerk needs additional time to complete and file the Clerk's Record, the clerk must file a motion for extension of time with the Supreme Court at least five days before the record is due unless good cause is shown for the failure to file a timely motion. The motion for extension shall be on a form approved by the Supreme Court. The form is on the Supreme Court's website.
2. The clerk shall retain the copies of the clerk's record until the reporter's transcript, if any, is finished at which point service on the parties will take place as detailed in 18.13.

Contents of the Clerks Record (I.A.R. 28):

In Civil Cases and proceedings:

1. Any order sealing all or any portion of the record.
2. The original and any amended complaint or petition.
3. The original and any amended answer or response to the complaint or petition.
4. The original and any amended counterclaim, third party claim, or cross claim.
5. The original and any amended answer or response to a counterclaim.
6. The jury verdict rendered in a jury trial.
7. The findings of fact and conclusions of law and any memorandum decision entered by the court.
8. All judgments and decrees.
9. A list of all exhibits offered, whether or not admitted.
10. Notice of appeal and cross-appeal.
11. Any request for additional reporter's transcript or clerk's record.

12. Table of contents and index, which shall be placed at the beginning of each volume of the record.
13. Register of Actions (ROA).
14. A court reporter's notice of lodging with the district court. If the clerk has not received a notice of lodging, note that fact on the table of contents and index and serve the record.

Note: If the affidavits, exhibits, or attachments are voluminous and it would be costly to reproduce the documents in the Clerk's Record, the Clerk needs to call the requesting party and request that the documents be sent as Exhibits to the Record. If the party is in agreement, the Clerk will not have to include those documents in the record but shall list in the Certificate of Exhibits that they are being sent as Exhibits to the Record.

In criminal cases and proceedings:

1. Any order sealing all or any portion of the record.
2. Register of Actions (ROA).
3. All court minutes.
4. All uniform citations, complaints, information and indictments.
5. All orders of the court.
6. All motions filed by either the state or the defendant.
7. All written plea agreements.
8. The jury verdict.
9. The judgment or order withholding judgment.
10. A list of all exhibits offered, whether admitted or not.
11. Pre-sentence Investigation Reports; however, this report shall be forwarded as a confidential exhibit and shall not be placed in the bound clerk's record.
12. Notice of appeal and any notice of cross appeal.
13. Any request for additional reporter's transcript or clerk's record.

14. Any court reporters' notices of lodging with the district court. If the clerk has not received a notice of lodging, note that fact on the table of contents and index and serve the record.

Note: In appeals from criminal cases in which the death penalty is imposed, all documents filed or lodged of every nature, kind and description shall be automatically included as the standard record. The presentence investigation report shall be forwarded as a confidential exhibit.

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.

Cover of the Record:

1. The Clerk's Record shall be bound with a cover of sixty five (65) pound paper cover stock or heavier material and shall not have a plastic or acetate cover. The record shall be fastened at the top edge so it will open as flatly as possible.
2. Affixed to the cover of each volume should be a label, which shows the title of the case, the attorneys, the court from which the appeal is taken and the volume number. The label should be 6 " inches wide by 11" high.

Arrangement and Numbering:

1. All pleadings, documents, and papers required to be in the Clerk's Record are inserted chronologically as indicated by the date of filing.
2. The record should be made up of legible photocopies or the reproductions of all documents included in the record.
3. In the rare instance that a document cannot be reproduced in a distinctly legible form, it should be re-typed and should include all information (file stamp, dates, signature, seals, etc.) Additionally, the District Court Clerk must note on the re-typed document that the original document has been included with the exhibits. The original document should also be listed in the Clerk's Certificate of Exhibits.
4. Each page of the Clerk's Record is to be numbered consecutively at the bottom of the page.
5. Each volume of the Clerk's Record should contain no more than two hundred (200) pages unless the record can be completed in two hundred and fifty (250) pages.

Table of Contents and Index of Record:

1. At the beginning of each volume, the Clerk's Record is to contain a chronological table of contents of all the documents included in the record.
2. Each volume of the Clerk's Record shall have an alphabetical Index indicating the volume and page where each pleading, document or paper may be found. The Index shall be at the beginning of each volume after the Table of Contents.

18.9 CERTIFICATES

Certificate of Exhibits:

1. The parties are responsible for requesting in the notice of appeal the exhibits that are to be sent to the Supreme Court and all other exhibits are to be retained unless requested by the Supreme Court in civil cases. 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 documents which have been requested and lodged with the Supreme Court, and listing and describing those exhibits which are retained by the clerk or secretary. IAR 31(a)(1)

All exhibits must be clearly marked and identified on the Clerk's Certificate of Exhibits. It is not sufficient to simply state "Plaintiff's Exhibit 1." The Certificate should clearly state "Plaintiff's Exhibit 1 – Articles of Incorporation of XXX Company, dated January 5, 2007." If there are additional exhibits that are not marked, they should be put in order by filing date and listed separately. All exhibits should be submitted in order so that they clearly match the Clerk's Certificate of Exhibits. They should be boxed or submitted in a manila envelope. Additionally, the Certificate of Exhibits should include a list of those exhibits being retained at the District Court. If there are no Exhibits, the Clerk's Certificate of Exhibits should indicate "NONE." One (1) additional copy of the Clerk's Certificate of Exhibits must be included with the Exhibits.

2. The Supreme Court is unable to accept certain exhibits. The following are items at this time that the District Clerk will retain: clothing, firearms, ammunition, drugs, sex crime kits or perishable exhibits. In addition, pictures or depictions of child pornography are not to be copied and sent to the parties or the Supreme Court unless specifically ordered by the Supreme Court. If there are very large exhibits, for example a diagram, that have been requested you need to take a picture. On the Certificate of Exhibits, you will need to clearly identify the exhibits and indicate which exhibits have been retained and (that a picture) has been sent in its place.

Note: In any criminal case where a documentary exhibit, including a pre-sentence to the Supreme Court, a copy of the documentary exhibit must also be sent to the attorney general and appellate counsel for the defendant, subject to the confidentiality provisions of ICAR 32. IAR 31(b). Pictures or depictions of child pornography that are separately identified as such shall not be transmitted to the parties or the Supreme Court unless specifically requested.

3. At the end of the appeal, the Supreme Court will destroy the copies of exhibits provided by the District Court, with the exception of those exhibits which counsel has requested be submitted to the Supreme Court in their original form. Such exhibits will be returned to the District Court.

Note: Refer to Rules 37 (Civil) and 38 (Criminal) before disposing of any exhibits. See Clerks Manual Section on Destruction of Records.

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 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. IAR 28(h)

Certificate of Service: The clerk shall include in the Clerk's Record a certificate indicating that the parties or counsel were served with a copy of the record and reporter's transcript (if requested), including the date of service. IAR 28(i)

18.10 SERVICE OF NOTICE

Service of Notice of Lodging of Transcript and completion of Clerk's Record (IAR 29): When the Transcript is lodged and the Clerk's Record is complete, the clerk serves copies on both the appellant and the respondent. You must advise the parties or counsel of the twenty eight (28)-day settlement period required by IAR 29, and also advise them that they should file any objection to the record and transcript, including any requests for corrections, deletions, or additions with the District Court, together with a Notice of Hearing.

However, if there are multiple parties, either appellant or respondent, the clerk must mail or deliver a "Notice of Lodging of the Reporter's Transcript and Clerk's Record" on all parties, advising that the Transcript and Clerk's Record have been lodged and that the clerk will serve the parties upon receipt of a stipulation by the parties or an order from the District Court designating which party is to receive service of the Transcript and Record. If no stipulation or order is filed within fourteen (14) days, the clerk will serve the party whose name appears first in the case title.

In all appeals from criminal prosecutions and post-conviction relief proceedings, service shall be made upon the Idaho Attorney General, as a representative of the state, and not upon the local prosecuting attorney. The clerk will also serve counsel with a copy of all written exhibits. Any confidential exhibits should be enclosed in a separate envelope and marked "confidential".

Objections to the Record (before the twenty eight (28)-day settlement period: Any party may file an objection to the Record before the twenty eight (28) day settlement period is over. When an Objection to the Record is filed, forward it to the District Judge and **send a certified copy to the Supreme Court.** The judge may sign an Order granting the motion or set it for a hearing. If the judge signs an order, **forward a certified copy of the order to the Supreme Court.** If the court sets a hearing, the clerk will need to forward that information to the Supreme Court. When there is an order issued, **send a certified copy to the Supreme Court.**

If the court orders documents to be deleted from the Clerk's Record after the clerk has provided copies to counsel, the clerk shall delete the documents from the Clerk's Record as ordered and insert blank pages with the following information typed on them: "That the pages of the Clerk's record numbered have been deleted pursuant to court order, and the court order deleting the documents may be found in the Clerk's Record at page ____."

When the twenty eight (28) day settlement period has expired (and no objection has been filed), send the following items to the Supreme Court within the next seven (7) days IAR 29 (b):

1. The original and two (2) copies of the Clerk's Record.
2. The original hard copy, one additional hard copy and the electronic copy of the transcript.
3. All documents and copies of exhibits listed in the Certificate of Exhibits.

Supplemental Clerk's Record:

If a supplemental volume of the Clerk's Record is ordered, the supplemental volume of the Clerk's record should be prepared in the same manner as the original Clerk's Record.

If an order supplementing the record provides that a document shall be sent as an exhibit, a certified copy of the document shall be sent to the Supreme Court.

If a supplemental volume of the Reporter's Transcript is ordered, the court reporter will lodge the supplemental transcript with the clerk. The clerk will need to send counsel copies of the lodged supplemental transcript. The clerk will need to observe the twenty eight (28)-day settlement period, unless otherwise directed by the Supreme Court. When the twenty eight (28)-day period is over or there is a waiver of the twenty eight (28)-day settlement period, the clerk will file the supplemental transcript with the Supreme Court.

18.11 STEP BY STEP CHECKLIST ON PREPARING A CLERK'S RECORD

1. Run a Case Detail Report or Register of Action list for the case that you are working on.
2. Highlight the documents that you will need to include in the Clerk's Record.
3. Go through the file page by page to retrieve the documents that you have highlighted. If you find documents that need to be included in the record but are not on the Case Detail Report, include those documents also. (Correct the Register of Action on ISTARs)
4. Now that you have all the documents that are needed for the Clerk's Record, put the remainder of the file aside. Go through the documents taking the staples out.
5. You need to prepare the following and you will need to properly seal and sign them:
 - a. Clerk's Record on Appeal
 - b. Certificate of Exhibits
 - c. Certificate of Service
 - d. Clerk's Certificate
6. Prepare the Table of Contents and Index. If there is more than one volume, you will need to note the volume number.
7. You will need to put the Clerk's Record in this format.
 - a. Title Page (Clerk's Record on Appeal)
 - b. Table of Contents
 - c. Index
 - d. ROA (criminal cases only)
 - e. Documents from the file

- f. Certificate of Exhibits
 - g. Certificate of Clerk
 - h. Certificate of Service
 - i. Notice(s) of Lodging
8. Now you are ready to number the Clerk's Record, starting with number 1 for the title page.

Note: If the record is two hundred and fifty (250) pages or less, you will only have one (1) volume. If the record is over two hundred and fifty (250) pages, you will need to make more than one volume. Only put two hundred (200) pages in a volume in records with two (2) or more volumes.

9. Compute the final fees for the record. Take the number of pages you have in the Clerk's Record and multiply it by \$1.25, add the cost of the binders to get your total for the Clerk's record. Request any additional fees needed from the appellant or refund any fees which have been overpaid.

Note: DO NOT SERVE COUNSEL WITH COPIES OF THE TRANSCRIPT OR THE RECORD UNLESS ALL FEES ARE PAID. If the fees are not paid, write a letter to the attorney demanding payment in fourteen (14) days and send a copy of the letter to the Supreme Court.

10. You are now ready to make copies.
- a. You will need five (5) copies of the Clerk's Record. Designate one as the original to contain the original Title Page (Clerk's Record on Appeal), Table of Contents, Index, Certificate of Exhibits, Certificate of Service, and Clerk's Certificate.
 - b. The designated original and two (2) copies will be sent to the Supreme Court, one (1) copy will be sent to each counsel.
11. Assemble the Clerk's Record in the binders. When all the pages are in the binders, prepare five (5) Supreme Court labels and place one (1) on the front of the each binder and mark the original.

18.12 AUGMENTATION OF THE RECORD OR TRANSCRIPT

Even after the settlement period has passed, any party may later move the Supreme Court to augment or delete from the settled record or transcript. According to Rule 30, a file stamped copy of the document sought to be augmented is to be attached to the motion filed with the Supreme Court so the court can determine if augmentation is proper. Thus,

you may have requests for these additional documents. If a party wants to augment with an additional transcript and the transcript has not yet been prepared you may also get requests to allow the party to listen to tapes so that it can be determined whether a transcript of the hearing is relevant.

The documents attached to the Motion to Augment will be used to augment the record and there is seldom any additional documentation required from the district court clerk.

If a supplemental reporter's transcript is requested, the Supreme Court will issue an order requesting that the reporter prepare the transcript within a time certain and lodge the transcript with the district court clerk. The clerk will serve the parties and send the original and one (1) copy to the Supreme Court immediately. Settlement will be as provided by IAR 30.1.

18.13 CONTACT NAMES AND ADDRESSES

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18.14 FORMS

(Appellant's Attorney's Name)

Attorney for Appellant

Post Office Address

Phone Number

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF _____ IN THE (PUBLIC UTILITIES COMMISSION) (INDUSTRIAL COMMISSION) OF THE STATE OF IDAHO

(Title of original action or)
proceeding together with)
the)
additional designation of)
parties as appellant and)
respondent)

Case No. _____
NOTICE OF APPEAL

TO: THE ABOVE NAMED RESPONDENT(S), (Names), AND THE PARTY'S ATTORNEYS, (Names and Addresses), AND THE CLERK OF THE ABOVE-ENTITLED COURT (ADMINISTRATIVE AGENCY).

NOTICE IS HEREBY GIVEN THAT:

1. The above named appellant(s), (Name), appeal(s) against the above-named respondent(s) to the Idaho Supreme Court from (the final judgment) (the order, describing it) _____ entered in the above-entitled action (proceeding) on the _____ day of _____, (Honorable Judge _____) (Chairman _____) presiding.
2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule [e.g. (11(a)(2)) or (12(a))] I.A.R.
3. 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.
4. Has an order been entered sealing all or any portion of the record? If so, what portion?
5. (a) Is a reporter's transcript requested? _____

(b) The appellant requests the preparation of the following portions of the reporter's transcript: e.g.
(Specific proceedings identified by date and title of hearing if less than a standard transcript is being requested)
or
(The reporter's standard transcript as defined in Rule 25(c), I.A.R.)
or
(The reporter's standard transcript as defined in Rule 25©, I.A.R. supplemented by the following:)

(Voir dire examination of jury)

(Closing arguments of counsel)

(The following reporter's partial transcript :)

(The testimony of witness "X")

(Conferences on requested instructions)

(Instructions verbally given by court)

6. The appellant requests the following documents to be included in the clerk's (agency's) record in addition to those automatically included under Rule 28, I.A.R.

e.g. (All requested and given jury instructions)

(The deposition of "X")

(Plaintiff's motion for continuance of trial)

7. I certify:

(a) that a copy of this notice of appeal has been served on each reporter of whom a transcript has been requested as named below at the address set out below:

Name and address: _____

Name and address: _____

Name and address: _____

(b) (1) That the clerk of the district court or administrative agency has been paid the estimated fee for preparation of the reporter's transcript.

(2) That the appellant is exempt from paying the estimated transcript fee because

(c) (1) That the estimated fee for preparation of the clerk's or agency's record has been paid.

(2) That appellant is exempt from paying the estimated fee for preparation of the record because

(d) (1) That the appellate filing fee has been paid.

(2) That appellant is exempt from paying the appellate filing fee because

(e) That service has been made upon all parties required to be served pursuant to Rule 20 (and the attorney general of Idaho pursuant to § 67-1401(1), Idaho Code).

DATED THIS _____ day of _____, 20 ____.

(Cross-Appellant's Attorney's Name)

Attorney for Cross-Appellant

Post Office Address

Phone Number

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF _____ IN THE (PUBLIC UTILITIES COMMISSION) (INDUSTRIAL COMMISSION) OF THE STATE OF IDAHO

(Title of original action or proceeding together with the additional designation of parties as cross-appellant and cross-respondent)

Case No. _____
NOTICE OF CROSS-APPEAL

TO: THE ABOVE NAMED CROSS-RESPONDENT(S), (Names), AND THE PARTY'S ATTORNEYS, (Names and Addresses, AND THE CLERK OF THE ABOVE-ENTITLED COURT (ADMINISTRATIVE AGENCY).

NOTICE IS HEREBY GIVEN THAT:

1. The above-named cross-appellant(s), (Name), appeal(s) against the above-named cross-respondent(s) to the Idaho Supreme Court from (the final judgment) (the order, describing it) entered in the above-entitled action (proceeding) on the _____ day of _____, (Honorable Judge _____) (Chairman _____) presiding.
2. That the party has a right to cross-appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule [e.g.(11(a)(5)), or (12(a))] I.A.R.
3. A preliminary statement 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.
4. (a) Is additional reporter's transcript requested? ____

(b) The cross-appellant requests the preparation of the following portions of the reporter's transcript:

e.g. (The entire reporter's standard transcript as defined in Rule 25(a), I.A.R.)

(The entire reporter's standard transcript supplemented by the following:)

(Voir dire examination of jury)

(Closing arguments of counsel)

(The following reporter's partial transcript:)

(The testimony of witness "X")

(Conferences on requested instructions)

(Instructions verbally given by court)

5. The cross-appellant requests the following documents to be included in the clerk's (agency's) record in addition to those automatically included under Rule 28, I.A.R. and those designated by the appellant in the initial notice of appeal:

e.g. (All requested and given jury instructions)

(The deposition of "X")

(Plaintiff's motion for continuance of trial)

6. I certify:

(a) That a copy of this notice of cross-appeal and any request for additional transcript has been served on each reporter of whom an additional transcript has been requested as named below at the address set out below:

Name and address: _____

Name and address: _____

Name and address: _____

(b) (1) [] That the clerk of the district court or administrative agency has been paid the estimated fee for preparation of the reporter's transcript and any additional documents requested in the cross-appeal.

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR _____ COUNTY

(Title of original action or) Court No.
proceeding together with additional)
designation of parties as appellant) CLERK'S CERTIFICATE
and respondent)) OF APPEAL

Appeal from: _____ Judicial District, _____ County. Honorable _____ presiding.

Case number from court: _____

Order or judgment appealed from: (Date and Description)

Attorney for Appellant: _(name)_____

Attorney for Respondent: __ (name)_____

Appealed by: _____

Appealed against: _____

Notice of Appeal filed: (Date)

Amended Notice of Appeal filed: (Date)

Notice of Cross-Appeal filed: (Date)

Amended Notice of Cross-Appeal filed: (Date)

Appellate fee paid: (Date and Amount) (None--explanation)

Respondent or Cross-Respondent's Request for additional record filed: (Date)

Respondent or Cross-Respondent's Request for additional transcript filed: (Date)

Transcript filed: (Date)

Was District Court Reporter's Transcript requested? _____

Estimated number of pages _____

If so name of each reporter of whom a transcript has been requested as named below at the address below:

Name and address: _____

Name and address: _____

Name and address: _____

Dated _____

Clerk of the District Court

(SEAL)

IN THE DISTRICT COURT OF THE ____ JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ____

(Title of original action of) Case No.
proceeding together with the)
additional designation of) CLERK'S CERTIFICATE
parties as appellant and respondent)

I, _____, Clerk of the District Court of the _____ Judicial District of the State of Idaho, in and for the County of _____ do hereby certify that the above and foregoing Record in the above-entitled cause was compiled and bound under my direction and is a true, full and correct Record of, the pleadings and documents under Rule 28 of the Idaho Appellate Rules.

I do further certify that all documents, x-rays, charts and pictures offered or admitted in the above-entitled cause will be duly lodged with the Clerk of the Supreme Court along with the Court Reporter's Transcript and Clerk's Record (except for Exhibits _____, which are to be retained in the possession of the undersigned), as required by Rule 31 of the Idaho Appellate Rules. (See Clerk's Certificate of Exhibits if there are exhibits and no Reporter's Transcript or not listed in the Reporter's Transcript.)

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at _____ Idaho, this ___ day of _____, 20 __.

(Name of District Court Clerk)

Clerk of the District Court

(SEAL)

By _____
(Signature of Deputy Clerk)

FORM FOR CLERK OF DISTRICT COURT OR ADMINISTRATIVE AGENCY FILING A MOTION FOR
EXTENSION OF TIME TO FILE APPELLATE RECORD

IN THE SUPREME COURT OF THE STATE OF IDAHO

Plaintiff-)	
v.)	Supreme Court No. _____
Defendant-)	District Court No. _____
)	MOTION FOR EXTENSION OF
)	TIME BY CLERK OF DISTRICT
)	COURT OR ADMINISTRATIVE
)	AGENCY

_____, the clerk for the district court or administrative agency, who is preparing the record in this case, hereby moves this Court for an extension of time to prepare and lodge the record until _____.

1. The date for lodging the record is _____.
2. Were any previous extensions granted in whole or in part? _____.
3. I have completed _____ pages of the record out of an estimated total of _____ pages.
4. I am requesting and extension of _____ days for the following reasons:

_____.

5. I have contacted counsel for the parties and there is (_____) no objection (_____) objection by _____ counsel to the request for the extension.

6. I was unable to file this motion five days before the record was due because:

DATED this ____ day of _____, ____.

Clerk of Court or Agency

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF _____

(Title of original action or _____) Court No.
proceeding, together with the _____)
additional designation of parties) CERTIFICATE OF SERVICE
as appellant and respondent) _____)

I, _____, Deputy Clerk of the District Court of the _____ Judicial District of the
State of Idaho, in and for the County of _____, do hereby certify that I have personally
served or mailed, by United States mail, postage prepaid, one copy of the Clerk's Record
and any Reporter's Transcript to each of the parties or their Attorney of Record as
follows:

(List Attorneys for the parties or the party, if appearing pro se)

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said
Court this ___ day of _____, 20 __.

(Clerk's Name)
(SEAL)

By _____
(Name), Deputy
Clerk of the District Court