



## **I.R.C.P. 84. Judicial Review of Agency Actions by the District Court**

### **Idaho Rules of Civil Procedure Rule 84. Judicial Review of Agency Actions by the District Court.**

(a) Judicial Review of State Agency and Local Government Actions.

(1) Scope of Rule. This rule addresses judicial review of the actions of state agencies or officers, or actions of a local government, its officers or its units when judicial review is expressly authorized by statute. This rule does not apply to the issuance of writs of mandate, prohibition, quo warranto, certiorari, review, or other common law or equitable writs, but petitions for judicial review under this rule may be filed with or in the alternative to petitions for these common law or equitable writs.

(2) Procedures and Standards of Judicial Review. The procedures and standards of review applicable to judicial review of state agency and local government actions must be as provided by statute. If no stated procedure or standard of review is provided in the statute, then this rule provides the procedure and standard of review by the district court.

(3) Definitions. The term "action," "agency," "judicial review," "petitioner" and "respondent" have the following meaning in this Rule:

(A) "Action" means any rule, order, ordinance or other decision or lack of decision of an agency made reviewable by statute.

(B) "Agency" means any nonjudicial board, commission, department, or officer for which statute provides for the district court's judicial review of the agency's action.

(C) "Judicial review" means the district court's review pursuant to statute of actions of agencies, whether the statutory term for review is appeal or judicial review or some other term, and the term judicial review includes other terms like appeal.

(D) "Petitioner" means the person seeking judicial review and includes other terms like "appellant".



(E) "Respondent" means any person responding to the petitioner's request for judicial review of the agency's actions before the district court, including the agency itself.

(b) Filing a Petition or Cross-Petition.

(1) Petition. Judicial review is commenced only by filing a petition for judicial review with the clerk of the appropriate district court.

(A) Time to File. The petition must be filed within 28 days after the agency action is ripe for judicial review under the statute authorizing judicial review, unless a different time or procedure is prescribed by statute.

(B) Suspension of Time to File. If the decision to be reviewed is issued by an agency with authority to reconsider its decision and a timely motion for reconsideration is filed, then the time for filing the petition for judicial review is terminated and commences to run from

(i) the date of any decision on reconsideration,

(ii) the date of any decision denying reconsideration, or

(iii) the date that reconsideration is deemed to be denied by statute because of inaction on the motion for reconsideration.

(2) Cross-Petitions. Unless otherwise provided by statute, when a petition for judicial review is filed, any party or other person with a right to participate in the judicial review may cross-petition for judicial review within 14 days from the date the party or other person is served with a copy of the petition for judicial review or within the time prescribed for initially petitioning for judicial review, whichever is later.

(3) Preservation of Agency Record. When a petition for judicial review has been filed the verbatim record or recording of hearings and oral presentations conducted by the agency must be preserved for purposes of judicial review.

(c) Petition for Judicial Review – Contents. Unless a different procedure is provided by statute, a petition for judicial review from an agency to the district court filed pursuant to this rule must contain the following information and statement:



- (1) the name of the agency for which judicial review is sought;
- (2) the title of the district court to which the petition is taken;
- (3) the date and the heading, case caption or other designation of the agency and the action for which judicial review is sought;
- (4) a statement whether there was a hearing or oral presentation before the agency that was recorded or reported, together with an identification of the method of recording or reporting the hearing and the name and address of the person with possession of such recording or reporting when there was one;
- (5) a statement of the issues for judicial review that the petitioner then intends to assert on judicial review; provided, the statement of issues may be filed separately within 14 days after the filing of the petition for judicial review and the statement does not prevent the petitioner from asserting other issues later discovered;
- (6) a designation as to whether a transcript is requested; and
- (7) a certification by the attorney for the petitioner, or an affidavit by the petitioner if self-represented that:
  - (A) service of the petition has been made upon the state agency or local government rendering the decision, and
  - (B) the clerk of the agency has been paid the estimated fee for preparation of the transcript if one has been requested, and
  - (C) the clerk of the agency has been paid the estimated fee for the preparation of the record.
- (d) Serving the Petition. When the petition for judicial review is filed, the petitioner must serve copies of the notice of petition for judicial review upon the agency whose action will be reviewed and all other parties to the proceeding before the agency (if there were parties to the proceeding). Proof of service on the agency and all parties must be filed with the court in as required by Rule 5(e).
- (e) Method and Scope of Review.



(1) Method of Review.

(A) Existing Record Only. When judicial review is authorized by statute but the statute does not provide the procedure or standard for judicial review, judicial review of agency action must be based upon the record created before the agency.

(B) Additional Record. When the authorizing statute provides that the district court may take additional evidence on judicial review, the district court may order the taking of additional evidence on its own motion or motion of any party to the judicial review.

(C) De Novo. When the statute provides that review is de novo, the review must be tried in the district court on any and all issues, on a new record.

(2) Scope of Review. The scope of judicial review on petition from an agency to the district court must be as provided by statute.

(f) Preparation of Record - Payment of Fee - Lodging of Record.

(1) Record to be Prepared.

(A) Content Set Out in Statute. When statute provides what must be contained in the official record of the agency on judicial review, the agency must prepare the record as provided by statute. The parties may stipulate or the district court may order that a partial record be prepared for judicial review.

(B) Content When Not Set Out in Statute. The agency's record must contain the following when the record is not otherwise prescribed by statute, unless the parties stipulate or the district court orders that a partial record be prepared for judicial review:

(i) all original or amended complaints, petitions, applications, claims or other initial pleadings,

(ii) all answers or responses to initial pleadings,



(iii) all documents relating to an application or petition to intervene,

(iv) all protests or other oppositions filed by a party or persons not parties,

(v) a certificate listing all exhibits identified at hearing,

(vi) the findings of fact and conclusions of law, or, if none, any memorandum decision entered by the agency,

(vii) the final decision, order or award,

(viii) all petitions for rehearing or reconsideration and related orders,

(ix) all petitions for review and cross-petitions for review,

(x) all requests for additional reporter's transcript or agency's record,

(xi) a table of contents, and

(xii) an index.

(C) Use of Original or Copies. The agency may prepare the originals contained in its official file or a certified copy of its official file, retaining the originals for its records. On 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 must be returned to the agency together with the order and other disposition rendered by the district court on judicial review.

(2) Fees for Preparation of Agency's Record.

(A) Calculation of Fee. If the agency has a statute, rule, ordinance, or other provision setting forth a fee for preparation of the agency's record on petition for judicial review, then the agency must charge that fee for preparation



of the agency's record. Otherwise, the agency must charge the fee for copying of public records.

(B) **Payment of Estimated Fee.** The petitioner must pay the agency an estimated fee for preparation of the agency record, at the time of filing of the petition for review.

(C) **Payment of Balance of Fee.** The petitioner must pay the balance due for preparation of the record, if any, when notice is received that the record has been lodged.

(D) **Indigent Petitioner.** The district court may order a copy of the record prepared at agency expense if governing statutes so provide or may order the transcript paid from district court funds upon a finding of indigency.

(3) **Lodging of Record.** The clerk of the agency must prepare the record in accordance with this rule and lodge it with the agency within 14 days of the filing of the petition for judicial review for the purpose of settlement of the record in accordance with rule 84(j). The agency may apply to the district court for an extension of time in which to prepare the record, which will be granted only for good cause shown.

(g) **Transcripts – Payment of Fee – Certification.**

(1) **Transcript Not Previously Transcribed.** Unless otherwise ordered by the district court, any transcript required by this rule to be prepared from previously untranscribed proceedings must be prepared in the following manner.

(A) **Payment of Transcript Fee.** Unless otherwise ordered by the district court, the petitioner must:

(i) pay the estimated fee for preparation of the transcript as determined by the transcriber prior to filing of the petition for judicial review;

(ii) pay the amount to the person preparing the transcript or other person as designated by the agency;

(iii) pay the estimated amount as determined by statute, rule, ordinance or other provision, if the agency has one, setting a fee for preparation of transcripts, otherwise, pay the estimated amount for preparation of the original and 2 copies of the transcript equal to the dollar amount per page provided for the cost of a transcript prepared by a court reporter under Idaho Code Section 1-1105;



(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 Section 1-1105; and

(v) pay the balance of the fee for the transcript upon its completion.

(B) Indigent Petitioner. The district judge may order a transcript prepared at agency expense if the governing statute provides or may order the transcript paid from district court funds upon a finding of indigency.

(C) Preparation of Transcript. The transcriber must give a receipt to the person paying the fees and must prepare the transcript and lodge it with the agency within 14 days from the date of the filing of the petition. The transcriber may apply to the district court for an extension of time in which to prepare the transcript, which must be granted only for good cause shown.

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

(2) Transcript Previously Transcribed. Unless otherwise ordered by the district court, if a transcript was prepared for use of the agency in making its decision, a copy of that transcript may be used upon judicial review to the district court subject to the following conditions:

(A) Payment of Transcript Fee. Unless otherwise ordered by the district court, the petitioner must:

(i) pay the estimated fee for preparation of a copy of the transcript prior to filing of the petition for judicial review,

(ii) pay the amount to the person copying transcript or other person as designated by the agency,

(iii) pay the estimated amount as determined by statute, rule, ordinance or other provision, if the agency has one, setting forth a fee for the copying of a previously prepared transcript; otherwise, \$1.00 per page.

(iv) pay the balance of the fee for the copy of the transcript upon its completion.

(B) Indigent Petitioner. The district court may order a copy of the transcript prepared at agency expense if governing statutes so provide or may order the transcript paid from district court funds upon a finding of indigency.



(C) Preparation of Copy of Transcript. Upon the payment of the estimated copying fees, the transcriber must give a receipt to the party paying such fees and must prepare the transcript and lodge it with the agency within 14 days from the date of the filing of the petition. The transcriber may apply to the district court for an extension of time in which to prepare the copy of the transcript, which must be granted only for good cause shown.

(D) Certificate. The transcript must be examined and certified by the person furnishing the copy by a certificate in substantially the form found in Appendix B.

(h) Joint Use of Transcripts. Multiple parties may jointly use a transcript on judicial review. Any party desiring a separate copy may obtain one by paying the transcriber the fee prescribed by statute, rule, ordinance or other provision of the agency; otherwise \$1.00 per page.

(i) Form of Transcript. All transcripts of testimony and proceedings prepared for judicial review by the district court must be in the same form and arrangement as required for appeals to the Supreme Court under the Idaho Appellate Rules. All transcripts of testimony and proceedings copied for judicial review by the district court must contain new cover sheets in the form and arrangement as required for appeals to the Supreme Court under the Idaho Appellate Rules.

(j) Settlement of Transcript and Record.

(1) Notice of Lodging with Agency. On receipt of the transcript and on completion of the record, the agency must mail or deliver a notice of lodging of transcript and record to all attorneys of record, or parties appearing in person. The notice must advise that:

(A) the parties may pick up a copy of the transcript and record at the agency;

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

(C) the parties have 14 days from the date of the mailing of the notice in which to file any objections to the transcript or record.

(2) Multiple Parties. If there are multiple parties, they must determine by agreement the manner and time of use of the transcript and record by each party, or if they cannot agree, any party may move the trial court to make this





determination.

(3) Objections. Any party may object to the transcript and record with 14 days from the date of mailing of the notice of the parties that the transcript and record has been lodged with the agency. If no objection is filed to the transcript or record within the 14 day period, they are deemed settled. Any objection made to a transcript and record must be determined by the agency within 14 days. The agency's decision on the objection and all evidence, exhibits, and written presentations on the objection must be included in the record on petition for review.

(k) Filing of Settled Transcript and Record with the District Court. Unless otherwise provided by statute or order of the district court, the agency must transmit the settled transcript and record to the district court within 42 days of the service of the petition for judicial review. The agency must notify all parties or their attorneys of the agency's filing. No recordings of the hearings before the agency need be forwarded unless ordered by the district court.

(l) Augmentation of Record; Additional Evidence; Remand to Agency. A motion to augment the transcript or record may be filed with the district court within 21 days of the filing of the settled transcript and record. The motion is filed in the same manner and pursuant to the same procedure as provided in the Idaho Appellate Rules. Where statute provides for the district court itself to take additional evidence, the party desiring to present additional evidence must move the court to do so within 21 days of the filing of the transcript and record with the district court. Where statute provides for the district court to remand the matter for the agency to take further evidence before the district court renders its decisions on judicial review, the district court may remand the matter to the agency.

(m) Stay During Consideration of Petition for Judicial Review. Unless otherwise provided by statute, the filing of a petition for judicial review with the district court does not automatically stay the proceedings and enforcement of the action of an agency that is subject to the petition. Unless prohibited by statute, the agency may grant, or the reviewing court may order, a stay upon appropriate terms.

(n) Effect of Failure to Comply with Time Limits. The failure to physically file a petition for judicial review or cross-petition for judicial review with the district court within the time limits prescribed by statute and these rules is jurisdictional and will cause automatic dismissal of the petition for judicial review on motion of any party, or on initiative of the district court. Failure of a party to timely take any other step in the process for judicial review will not be deemed jurisdictional, but may be grounds only for such other action or sanction as the district court deems appropriate, which may include dismissal of the petition for review.

(o) Motions. All motions must be filed with the district court, except those expressly required to be filed before the agency, and must be served upon the parties in the same manner as motions before the district court. All motions must be accompanied with a supporting memorandum or brief. The opposing party has 14 days from the service to file a response or reply brief. The motion will be determined without oral argument unless ordered by the court.

(p) Briefs and Memoranda. Briefs and memoranda must be in the form and arrangement and filed and served within the time provided by the Idaho Appellate Rules unless otherwise ordered by the district court; provided that such briefs may be typewritten and copies may be photo copies. Only one original signed brief need be filed with the court and



copies must be served on all parties.

(q) Oral Argument. Oral 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.

(r) Other Procedural Rules. Any procedure for judicial review not specified or covered by these rules must be in accordance with the appropriate rule of the Idaho Appellate Rules to the extent not contrary to this Rule 84. This Rule 84 must be construed to provide a just, speedy and inexpensive determination of all petitions for review. If review is de novo or the court orders an evidentiary hearing, the Idaho Rules of Civil Procedure apply to the de novo or evidentiary hearing.

(s) Listening to, Watching or Copying Recording Tapes. Any party may listen to, watch or copy any recording of the proceedings before the agency according to applicable agency rules and after payment of fees set by statute, rule, ordinance or other provision. If no fees are set, the district court may set a reasonable fee if the parties and the agency are unable to agree on a fee.

(t) Finality of Judgments or Decisions – Remittiturs.

(1) Judgment or Decision on Petition for Judicial Review. The clerk must file stamp the district court's ruling and judgment and mail copies to the parties and to the agency.

(2) Finality of Judgment Where District Court Does Not Take Additional Evidence.

(A) If a notice of appeal is not filed, then the judgment is final 42 days after the date file stamped by the clerk of the court on the judgment.

(B) If, after the judgment, a party timely files a petition for rehearing then the judgment is final 42 days after the date file stamped by the clerk of the court on the order denying the rehearing or on any modified judgment, unless a notice of appeal is filed.

(C) If a timely notice of appeal is filed, then the judgment or decision of the district becomes final on the issuance of a remittitur by the Clerk of the Supreme Court or Court of Appeals.

(3) Finality of Judgment Where the District Court Does Take Additional Evidence.



(A) If a notice of appeal is not filed, then the judgment is final 42 days after the date file stamped by the clerk of the court on the judgment.

(B) If, after the judgment, a party timely files a motion which, if granted, could affect the findings of fact or conclusions of law or the judgment (except a motion under Rule 60 of the Idaho Rules of Civil Procedure or a motion regarding costs or attorney fees), then the judgment becomes final forty-two (42) days after the date file stamped by the clerk of the court on the order deciding that motion, if a notice of appeal is not filed.

(C) If a timely notice of appeal is filed from the judgment, or from an order deciding a motion that could affect the judgment, then the judgment becomes final on the issuance of a remittitur by the Clerk of the Supreme Court or Court of Appeals on an opinion that does not remand the case for further proceedings in the district court.

(4) Remittiturs. When the judgment has become final, the clerk of the court must issue a remittitur, mail copies to all parties to the petition for judicial review, and mail a certified copy to the agency. The remittitur must advise the agency that the judgment has become final and that the agency must immediately comply with the directive of the judgment.

[\(Adopted March 1, 2016, effective July 1, 2016 \[1\].\)](#)

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#### **Links**

[1] <https://isc.idaho.gov/rules/IRCP/03012016-Adoption-Newly-Formatted.pdf>