

## **I.C.R. 29.1. Motion for Mistrial**

### **Idaho Criminal Rule 29.1. Motion for Mistrial**

At any time during a trial, the court may declare a mistrial and order a new trial under the following circumstances:

**(a) On Motion of Defendant.** A mistrial may be declared on motion of the defendant when there occurs during the trial, either inside or outside the courtroom, an error or legal defect in the proceedings, or conduct that is prejudicial to the defendant and deprives the defendant of a fair trial. When the error, defect or conduct occurs during the joint trial of two or more defendants, and a mistrial motion is made by one or more, but not by all, the court must declare a mistrial only as to the defendant or defendants making or joining in the motion, and the trial of the other defendant or defendants must proceed.

**(b) On Motion of the Prosecution.** A mistrial may be declared on motion of the prosecution when there occurs during the trial, either inside or outside the courtroom, misconduct by the defendant, the defendant's attorney or attorneys, or some other person acting on defendant's behalf, resulting in substantial prejudice to the prosecution's case. When the misconduct occurs during a joint trial of two or more defendants, and when the court is satisfied that it did not result in substantial prejudice to the prosecution's case as against a particular defendant, and that such defendant was in no way responsible for the misconduct, it may proceed with the trial with respect to that defendant.

**(c) When Verdict Not Possible.** A mistrial may be declared on motion of either party or on the court's own motion when it is impossible to proceed with the trial in conformity with law, or when, after jury advice, the court is convinced that the jury cannot reach a verdict.

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

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