



## **I.R.C.P. Rule 83. Appeals From Decisions of Magistrates**

### **Idaho Rules of Civil Procedure Rule 83. Appeals From Decisions of Magistrates.**

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

##### *(1) Appeals Taken from Magistrate Court to the Supreme Court.*

(A) As a Matter of Right. An appeal from the following final judgments, as defined in Rule 54(a), must be taken from the magistrate court to the Supreme Court:

(i) a final judgment that grants or denies a petition for termination of parental rights, or

(ii) a final judgment that grants or denies a petition for adoption.

(B) By Permission. When permission has been granted pursuant to Rule 12.1, Idaho Appellate Rules, an appeal from the following may be taken to the Supreme Court:

(i) a final judgment, as defined in Rule 802 of the Idaho Rules of Family Law Procedure, or an order made after final judgment, involving the custody of a minor, or

(ii) a final judgment in a Child Protective Act proceeding, or

(iii) those orders or decrees of the court in a Child Protective Act proceeding specified in section 16-1625, Idaho Code.

*(2) 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 in a civil action or a special proceeding commenced, or assigned to, the magistrate's division of the district court;
  - (B) any of the judgments or orders in an action in the magistrate's division which would be appealable from the district court to the Supreme Court under Rule 11, Idaho Appellate Rules;
  - (C) Domestic Violence Protection Orders issued pursuant to Idaho Code Section 39-6306;
  - (D) final judgments or entered upon current forms approved by the Idaho Supreme Court;
  - (E) 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
  - (F) any order, judgment or decree by a magistrate in a special proceeding for which an appeal is provided by statute.
- (3) *Appeals from Magistrate 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.
  - (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 timely filing of the following motions, and begins to run from the date file stamped by the clerk of the district court on the order granting or denying the motion:
    - (i) a motion for a judgment notwithstanding the verdict following a timely motion for a directed verdict;



(ii) a motion to amend or make additional findings of fact or conclusions of law, whether or not alteration of the judgment is required if the motion is granted;

(iii) a motion to alter or amend the judgment, not including motions under Rule 60 or motions regarding costs and attorney fees; or

(iv) a motion for new trial.

(2) *Cross Appeal*. When an appeal is filed and served upon all parties required by this rule more than 28 days from the entry of a judgment or order, a cross appeal may be filed by any opposing party within 14 days from the date such party is served with a copy of the notice of appeal.

**(c) Service of the Notice of Appeal.** The party filing the appeal must immediately serve copies of the notice of appeal upon the magistrate court appealed from and all other parties to the action. When a judgment or decision in a juvenile proceeding is appealed, a copy of the notice of appeal must be served upon the prosecuting attorney of the county in which the juvenile proceeding was held.

**(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;

(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) a statement as to whether the appeal is taken upon matters of law, or on matters of fact, or both;

(5) 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; and

(6) 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 of Proceedings.* The filing of an appeal to the district court automatically stays the proceeding and execution of any judgment or order appealed from by the appellant for a period of 14 days; provided, however, that there shall be no automatic stay of any civil protection order issued pursuant to Idaho Code Sections 18-7907 or 39-6306. Any further stay of proceedings and execution of judgments covered by this rule must be by order of the presiding magistrate court or the district court.

(2) *Powers of Magistrate.* While the appeal is pending before the district court or pending on further appeal to the Supreme Court, the magistrate has the same powers and authority granted to a district judge by Rule 13(b), Idaho Appellate Rules, during an appeal to the Supreme Court.

### **(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 83(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 upon 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 district court must render a decision in the action as a trial court as though the matter were initially brought 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 Section 1-1105;

(ii) pay the balance of the transcript fee upon 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 upon 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.

(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 B.

(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 any court proceeding appealed to the district court, including any minute entries or orders together with the exhibits offered or admitted. 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.** Upon 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 parties, 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. 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, 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 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.

**(l) Joint Use of Transcript.** Multiple parties may jointly use a transcript on appeal. Any party who wants a separate copy may obtain one by paying the transcriber \$1.00 per page.

**(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 upon 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 upon 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 reply brief. The motion will be determined without oral argument unless ordered by the court.



**(o) Appellate Briefs.** Briefs must be in the same form 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 Rules of Civil Procedure or the Idaho Appellate Rules.

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

(1) *Appellate Review.* If an appeal is heard on the record, upon 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 83(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, upon determination of the appeal the district judge must enter a judgment as required by Rule 58(a).

(Adopted March 1, 2016, effective July 1, 2016; amended April 28, 2021, effective July 1, 2021; amended April 28, 2022, effective April 28, 2022; amended August 31, 2023, effective nunc pro tunc March 2, 2023.)





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