

PROPOSED AMENDMENTS

Idaho Appellate Rule 7.1. Intervention.

Any person or entity who is a real party in interest to an appeal or proceeding governed by these rules or whose interest would be affected by the outcome of an appeal or proceeding under these rules may file a verified petition with the Supreme Court asking for leave to intervene as a party to the appeal or proceeding and serve a copy thereof upon all parties to the appeal or proceeding. The petition shall be processed as a motion in accordance with Rule 32 of these rules, and if the Supreme Court finds that such petitioning person or entity is a real party in interest or would be affected by the outcome of the appeal or proceeding, the Court may, in its discretion, grant leave to the petitioning party to intervene as a party appellant or respondent. In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights. ~~and if leave to intervene is granted~~ such petitioning party shall thereafter be a party to the appeal or proceedings for all purposes under these rules.

Idaho Appellate Rule 11. Appealable Judgments and Orders.

An appeal as a matter of right may be taken to the Supreme Court from the following judgments and orders, a copy of which must be attached to the notice of appeal:

(a) **Civil Actions.** From the following judgments and orders of a district court in a civil action:

(8) Any order expressly made appealable by statute~~under the Uniform Arbitration Act, Title Seven, Chapter 9 of the Idaho Code.~~

Idaho Appellate Rule 17. Notice of Appeal – Contents.

A notice of appeal shall contain substantially the following information:

(g) **Jurisdictional Statement.** A statement as to the basis for the right to appeal to the Idaho Supreme Court from the judgments or orders described in paragraph 1 of the notice of appeal, including citation to any statute under which the order is made appealable.

Idaho Rule of Civil Procedure 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 a permissive appeal has been granted by the district court, which must be processed in the ~~same~~ manner ~~as provided by Rule 42 of the Idaho Appellate Rules~~ 83.1 of the Idaho Rules of Civil Procedure; 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. Pursuant to Idaho Court Administrative Rule 6, An administrative district judge may petition the Supreme Court to assign a magistrate judge to hear an action that would otherwise be triable only by a district judge. An appeal from the magistrate's decision any final or interlocutory order or judgment entered by the magistrate judge in the assigned case must be taken to the Supreme Court, unless the original order of assignment states differently. An application for permission to appeal to the Supreme Court from an interlocutory order entered by the magistrate judge in the assigned case must be processed in the manner provided by Rule 12 of the Idaho Appellate Rules.

(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 Rules 13(b) and 13.4, Idaho Appellate Rules, during an appeal to the Supreme court.

[NEW RULE]

Idaho Rule of Civil Procedure 83.1. Appeal by Permission from Interlocutory Orders of Magistrates.

(a) **Criteria for permission to appeal.** Permission may be granted by the district court to appeal from an interlocutory order or judgment of a magistrate court in a civil action, which is not otherwise appealable under these rules, but which involves a controlling question of law as to which there is substantial grounds for difference of opinion and in which an immediate appeal from the order or decree may materially advance the orderly resolution of the litigation.

(b) **Motion to Magistrate Court--Order.** A motion for permission to appeal from an interlocutory order or judgment, upon the grounds set forth in subdivision (a) of this rule, shall be filed with the magistrate court within fourteen (14) days from date of entry of the order or judgment. The motion shall be filed, served, noticed for hearing and processed in the same manner as any other motion, and hearing of the motion shall be expedited. The magistrate court shall, within fourteen (14) days after the hearing, enter an order setting forth its reasoning for approving or disapproving the motion.

(c) **Motion to District Court for Permission to Appeal.**

(1) **Motion of a Party.** Within fourteen (14) days from entry by the magistrate court of an order approving or disapproving a motion for permission to appeal under subdivision (b) of this rule, any party may file a motion with the district court requesting acceptance of the appeal by permission. A copy of the interlocutory order or judgment being appealed shall be attached to the motion, along with a copy of the order of the magistrate court approving or disapproving the request for permission to appeal. If the magistrate court fails to rule upon a motion for permission to appeal within twenty-one (21) days from the date of the filing of the motion, any party may file a motion with the district court for permission to appeal without any order of the magistrate court.

(2) **Motion by order of court.** A magistrate court may enter, on its own initiative, an order recommending permission to appeal from an interlocutory order or judgment. The magistrate court shall file a certified copy of its order with the district court and serve copies on all parties. The order recommending permission to appeal shall constitute and be treated as a motion for permission to appeal from the interlocutory order or decree under this rule.

(3) **Procedure.** A motion to the district court for permission to appeal under this rule shall be filed, served, and processed in the same manner as any other motion under Rule 7 of these rules.

(d) **Acceptance by District Court.** Any appeal by permission of an interlocutory order or judgment under this rule shall not be valid and effective unless and until the district court shall enter an order accepting such interlocutory order or decree as appealable and granting leave to a party to file a notice of appeal within a time certain. Unless otherwise ordered by the district court in its order of acceptance, such appeal shall thereafter proceed in the same manner as an appeal as a matter of right to the district court. The clerk of the district court shall serve a copy of the order of the granting permission to appeal on the magistrate court and on all parties to the action or proceeding.

(e) **Denial by District Court.** An order of the district court denying permission to appeal from an interlocutory order or judgment entered by the magistrate court shall be final. Except as expressly provided in Rule 83(a) of these rules and Rule 12.1 of the Idaho Appellate Rules, no request for permission to appeal from a magistrate court decision may be made to the Supreme Court.

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 a permissive appeal has been granted by the district court, which must be processed in the same manner as provided by Rule 42 of the Idaho Appellate Rules~~54.1 of the Idaho Criminal 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.** Pursuant to Idaho Court Administrative Rule 6, An administrative district judge may petition the Supreme Court to assign a magistrate judge to hear an action that would otherwise be triable only by a district judge. An appeal from the magistrate's decision any final or interlocutory order or judgment entered by the magistrate judge in the assigned case must be taken to the Supreme Court, unless the original order of assignment states differently. An application for permission to appeal to the Supreme Court from an interlocutory order entered by the magistrate judge in the assigned case must be processed in the manner provided by Rule 12 of the Idaho Appellate Rules.

[NEW RULE]

Idaho Criminal Rule 54.1. Appeal by Permission from Interlocutory Orders of Magistrates.

(a) **Criteria for permission to appeal.** Permission may be granted by the district court to appeal from an interlocutory order or judgment of a magistrate court in a criminal action, which is not otherwise appealable under these rules, but which involves a controlling question of law as to which there is substantial grounds for difference of opinion and in which an immediate appeal from the order or decree may materially advance the orderly resolution of the litigation.

(b) **Motion to Magistrate Court--Order.** A motion for permission to appeal from an interlocutory order or judgment, upon the grounds set forth in subdivision (a) of this rule, shall be filed with the magistrate court within fourteen (14) days from date of entry of the order or judgment. The motion shall be filed, served, noticed for hearing and processed in the same manner as any other motion, and hearing of the motion shall be expedited. The magistrate court shall, within fourteen (14) days after the hearing, enter an order setting forth its reasoning for approving or disapproving the motion.

(c) **Motion to District Court for Permission to Appeal.**

(1) **Motion of a Party.** Within fourteen (14) days from entry by the magistrate court of an order approving or disapproving a motion for permission to appeal under subdivision (b) of this rule, any party may file a motion with the district court requesting acceptance of the appeal by permission. A copy of the interlocutory order or judgment being appealed shall be attached to the motion, along with a copy of the order of the magistrate court approving or disapproving the request for permission to appeal. If the magistrate court fails to rule upon a motion for permission to appeal within twenty-one (21) days from the date of the filing of the motion, any party may file a motion with the district court for permission to appeal without any order of the magistrate court.

(2) **Motion by order of court.** A magistrate court may enter, on its own initiative, an order recommending permission to appeal from an interlocutory order or judgment. The magistrate court shall file a certified copy of its order with the district court and serve copies on all parties. The order recommending permission to appeal shall constitute and be treated as a motion for permission to appeal from the interlocutory order or decree under this rule.

(3) **Procedure.** A motion to the district court for permission to appeal under this rule shall be made and processed in the same manner as any other motion under Rule 47 of these rules and must be served upon all parties to the action.

(d) **Acceptance by District Court.** Any appeal by permission of an interlocutory order or judgment under this rule shall not be valid and effective unless and until the district court shall enter an order accepting such interlocutory order or decree as appealable and granting leave to a party to file a notice of appeal within a time certain. Unless otherwise ordered by the district court in its order of acceptance, such appeal shall thereafter proceed in the same manner as an appeal as a matter of right to the district court. The clerk of the district court shall serve a copy of the order of the granting permission to appeal on the magistrate court and on all parties to the action.

(e) **Denial by District Court.** An order of the district court denying permission to appeal from an interlocutory order or judgment entered by the magistrate court shall be final. No request for permission to appeal from an order or judgment entered by a magistrate court in a criminal action may be made to the Supreme Court.

Idaho Appellate Rule 14. Time for Filing Appeals.

All appeals permitted or authorized by these rules, except as provided in Rule 12, shall be taken and made in the manner and within the time limits as follows:

(a) **Appeals From the District Court.** Any appeal as a matter of right from the district court may be made only by physically filing a notice of appeal with the clerk of the district court within 42 days from the date evidenced by the filing stamp of the clerk of the court on any judgment or order of the district court appealable as a matter of right in any civil or criminal action. As used in these rules, "physical filing" includes electronic filing in conformance with the Idaho Rules of Electronic Filing and Service. The time for an appeal from any civil judgment or order in an action is terminated by the filing of a timely motion which, if granted, could affect any findings of fact, conclusions of law or any judgment in the action (except motions under Rule 60 of the Idaho Rules of Civil Procedure or motions regarding costs or attorneys fees), in which case the appeal period for all judgments or orders commences to run upon the date of the clerk's filing stamp on the order deciding such motion. The time for an appeal from any criminal judgment, order or sentence in an action is terminated by the filing of a motion within fourteen (14) days of the entry of the judgment which, if granted, could affect the judgment, order or sentence in the action, in which case the appeal period for the judgment and sentence commences to run upon the date of the clerk's filing stamp on the order deciding such motion. If, at the time of judgment, the district court retains jurisdiction pursuant to Idaho Code § 19-2601(4), the length of time to file an appeal from the sentence contained in the criminal judgment shall be enlarged by the length of time between entry of the judgment of conviction and entry of the order relinquishing jurisdiction or placing the defendant on probation; provided, however, that all other appeals challenging the judgment must be brought within 42 days of that judgment. Provided, if a criminal judgment imposes the sentence of death, the time within which to file a notice of appeal does not commence to run until the death warrant is signed and filed by the court.

Idaho Appellate Rule 28. Preparation of Clerk's or Agency's Record – Content and Arrangement.

(b) **Content – Standard Record.** The clerk's or agency's record shall automatically include the following pleadings and documents, including the following pleadings and documents filed in the magistrates division:

(1) In civil cases and proceedings, unless limited by designation in the notice of appeal or amended notice of appeal:

- A. Register of actions.
- B. Any order sealing all or any portion of the record.
- C. The original and any amended complaint or petition.
- D. The original and any amended answer or response to the complaint or petition.
- E. The original and any amended counterclaim, third party claim, or cross-claim.
- F. The original and any amended answer or response to a counter claims.
- G. The jury verdict rendered in a jury trial.
- H. The findings of fact and conclusions of law and any memorandum decision entered by the court.
 - I. All judgments and decrees.
- J. A list of all exhibits offered, whether or not admitted.
- K. Notice of appeal and cross-appeal.
- L. Any briefs filed by the parties in an appeal from the magistrates division to the district court.
- LM. Any request for additional reporter's transcript or clerk's record.
- MN. A court reporter's notice of lodging with the district court.
- NO. Table of contents and index, which shall be placed at the beginning of each volume of the record.

(2) In criminal cases and proceedings:

- A. Any order sealing all or any portion of the record.
- B. Register of actions.
- C. All court minutes.
- D. All uniform citations, complaints, information and indictments.
- E. All orders of the court.
- F. All motions filed by either the state or the defendant.
- G. All written plea agreements.
- H. The jury verdict.
 - I. The judgment or order withholding judgment.
- J. A list of all exhibits offered, whether admitted or not.
- K. Presentence Investigation Reports; however, this report shall be forwarded as a confidential exhibit and shall not be placed in the bound clerk's record.
- L. Notice of appeal and any notice of cross-appeal.
- M. Any briefs filed by the parties in an appeal from the magistrates division to the district court.
- MN. Any request for additional reporter's transcript or clerk's record.
- NO. A court reporter's notice of lodging with the district court.
- OP. In criminal appeals in which the death penalty was imposed, all documents in the trial court file of every nature, kind and description, except that the presentence investigation report shall be forwarded as an exhibit to the record.
