

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME**

STATE OF IDAHO,	)	
	)	
Plaintiff/[Respondent],	)	
vs.	)	Case No. «Case»
	)	
	)	<b>PROCEDURAL ORDER GOVERNING</b>
«Defendant»,	)	<b>CRIMINAL APPEAL FROM</b>
	)	<b>MAGISTRATE DIVISION TO</b>
Defendant/[Appellant].	)	<b>DISTRICT COURT</b>

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A Notice of Appeal has been filed in the above-entitled District Court seeking appellate review of judgments or orders of the Magistrate Division. This Order, together with Rules 54.1 through 54.5, Idaho Criminal Rules, and applicable provisions of the *Idaho Appellate Rules* shall govern all further proceedings before this Court.

**1. Notices of Appeal or Cross-Appeal:** The appellant’s notice of appeal was filed \_\_\_\_\_, \_\_\_\_\_. A notice of cross-appeal [was filed \_\_\_\_\_, \_\_\_\_\_.] [has not been filed.]

**2. Stays of Execution; Bail on Appeal:** The filing of the appeal shall not serve to automatically stay the execution of sentence, and any stay shall be only by order of the Magistrate or this Court pursuant to I.C.R. 54.5. Motions for release on bail or own-recognition shall be governed by I.C.R. 46(b). Any motion for the entry of a stay or for release during pendency of the appeal shall first be made to the Magistrate from whose decision the appeal has been taken. Any party aggrieved by the Magistrate’s decision granting or denying a stay or order of release may thereafter challenge such decision by motion to this Court pursuant to I.C.R. 46(b). Notwithstanding pendency of the appeal, unless otherwise ordered, the Magistrate shall retain the jurisdictional authority specified in I.C.R. 54.5(b).

**3. Indigent Defendants:** In the event that the defendant was previously deemed financially indigent as evidenced by the appointment of counsel in the trial court, appointed counsel shall continue to represent the defendant in connection with this appeal. In addition, the subsequent provisions of this order requiring payment for preparation of a transcript shall not apply. However, it remains the responsibility of the appellant to place a timely order for preparation of a transcript.

**4. Form of Appeal:** Pursuant to I.C.R. 54/6(a), this matter will proceed as an appeal on the record rather than as a trial *de novo*. It is the sole responsibility of the

appellant (or cross-appellant, as the case may be) to arrange for the timely preparation and lodging of an appellate record sufficient to facilitate review.

**5. Clerk's Record:** Pursuant to I.C.R. 54.8, the clerk's record shall consist of the original case file maintained by the Clerk, along with any exhibits offered or admitted. No separately-bound clerk's record is required, but any party may submit an optional appendix or addendum containing important or frequently-referenced documents. It shall be the responsibility of the party relying upon the contents of the record to review the original clerk's file and confirm that all necessary materials were filed and are included in the clerk's record on appeal.

**6. Transcript on Appeal:** The Court requires the provision of a written transcript prepared from the recorded tapes of proceedings in the Magistrate Division. It is the responsibility of the appellant (or cross-appellant, as the case may be) to timely arrange and pay for preparation of all portions of the transcript reasonably necessary for review. Pursuant to I.C.R. 54.7, the responsible party shall contact the appellate clerk, determine the estimated cost of the transcript and, within fourteen (14) days after filing of the notice of appeal (or cross-appeal), pay such estimated cost to the appellate clerk. Any balance in excess of the estimate shall be payable upon completion of the transcript. The transcript will not be served upon the parties until all fees for preparation have been paid in full. Failure to timely remit the estimated and/or final preparation costs shall be grounds for dismissal of the ordering party's appeal or cross-appeal. Absent an order enlarging time, the transcript shall be lodged within thirty-five (35) days after payment of the estimated cost of preparation.

**7. Augmentation of Record:** Pursuant to I.C.R. 54.11, the clerk's record and/or transcript on appeal may be augmented in the manner prescribed by I.A.R. 30.

**8. Appellate Briefs:** The initial Appellant's Brief shall be filed with the clerk within thirty-five (35) days after lodging of the transcript, or, in cases in which no transcript is to be furnished, within thirty-five (35) days after filing of the notice of appeal. The Respondent's (and Cross-Appellant's) Brief shall be filed within twenty-eight (28) days after service of the Appellant's Brief. The appellant may file a Reply (and Cross-Respondent's) Brief within twenty-one (21) days after service of the Respondent's (or Cross-Appellant's) Brief. The organization and content of briefs shall be governed by I.A.R. 35 and 36. In accordance with I.C.R. 54.15, only one signed original brief need be filed, and only one copy must be served upon each opposing party.

**9. Extensions of Time:** Motions to extend the time for filing an appellate brief shall be submitted in conformity with I.A.R. 34(e). All other requests for extension of time shall be submitted in conformity with I.A.R. 46.

**10. Motions:** All motions shall be submitted in conformity with I.C.R. 54.14, provided that only one original motion, affidavit or brief shall be filed, and further provided that all motions shall be scheduled for hearing by the moving party on the court's regular civil law and motion calendar.

**11. Oral Argument:** After all briefs are filed (or the time for filing briefs has expired, either party may, within fourteen (14) days, contact the appellate clerk to request that the case be set for oral argument pursuant to I.C.R. 54.16. If neither party does so, the Court will deem oral argument waived, and the case will be decided on the briefs, transcript and record. If the case is set for oral argument, the form and order of argument shall be the same as that before the Idaho Supreme Court, and shall be governed by I.A.R. 37.

**12. Appellate Decision:** The Court's decision will be by written memorandum opinion.

**13. Petitions for Rehearing:** A party desiring to file a petition for rehearing must do so within twenty-one (21) days after filing of the court's opinion, and must lodge a supporting brief within fourteen (14) days after filing the petition. Proceedings relating to petitions for rehearing shall be governed by I.A.R. 42.

**14. Remittitur to the Magistrate Division:** If no notice of appeal to the Idaho Supreme Court is filed within forty-two (42) days after filing of the Court's written decision, the clerk shall issue a remittitur remanding the matter to the Magistrate Division as provided in I.A.R. 38(c)..

**15. Failure to Comply:** Failure by either party to timely comply with the requirement of this Order or applicable provisions of the Idaho Criminal Rules or Idaho Appellate Rules shall be grounds for imposition of sanctions, including, but not limited to the allowance of attorneys fees, striking of briefs or dismissal of the appeal pursuant to I.C.R. 54.13 and I.A.R. 11.1 and 21.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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John K. Butler, District Judge

CERTIFICATE OF SERVICE

I, undersigned, hereby certify that on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, I caused to be served a true and correct copy of the foregoing, by the method indicated below, and addressed to the following:

Hon. \_\_\_\_\_, Magistrate  
Jerome County Courthouse  
Jerome, Idaho 83338