

## Appeals from Magistrate Court to Circuit Court

Note: You are strongly encouraged to consult with a lawyer in the preparation of these documents and the presentation of your case to the court. If you decide to proceed without a lawyer, you must complete all the necessary steps applicable to your situation. If you do not, the court may dismiss your case. Court staff can provide general information about court rules, procedures, and practices, but cannot provide legal advice or interpretations.

You are encouraged to read the statutes relating to magistrate appeals before starting your appeal. SDCL 15-38-22 through 15-38-40. Appeals mean a higher court will review a lower court's decision. This guide is intended to provide general information only and is not intended to provide legal advice or opinions.

**Unless waived by the Court, you will be required to pay a filing fee and post bond as set forth below.**

1. Unless the appeal is denied by law, a magistrate order or judgment can be appealed to the circuit court. The appeal must be filed within 10 days of the attestation and filing of the order or judgment that is being appealed. SDCL 15-38-22
2. To appeal, a notice of appeal must be filed. The notice must state the parties appealing and the order or judgment being appealed. The notice must be signed by the person appealing or their attorney if they have one. SDCL 15-38-23
  - a. The notice must be filed with the clerk before the 10 days to appeal has expired. It must be filed in the court where the appeal is to be heard. SDCL 15-38-25
  - b. The person appealing must serve the notice of appeal on all the other parties involved. If those parties were represented by attorneys, the attorney should be served. If the parties were not represented by attorneys, they should be served at their last known address. SDCL 15-38-24
  - c. Proof of service on the other parties must also be filed with the clerk before the 10 days to appeal has expired. The clerk will not accept your notice of appeal unless you also have the proof of service (i.e. Affidavit of Mailing) for each party. SDCL 15-38-25
    - i. Proof of service is a document proving how and when the legal documents were provided to the other parties in a lawsuit. An example would be the Affidavit of Mailing.
  - d. To complete the appeal filing, the person appealing must also pay a filing fee and cost bond before the ten days for appeal has expired. SDCL 15-38-27
    - i. The filing fee is \$10. SDCL 15-38-27
    - ii. **The cost bond is approved by the court and the greater of \$100 or the amount of the judgment/costs in case the appeal is dismissed or the order/judgment is affirmed.** SDCL 15-38-27
    - iii. If the person appealing wins, the court will give the filing fee back to the person appealing as court costs. SDCL 15-38-27
    - iv. The cash bond can be waived if written consent is received from each party. 15-38-28
    - v. Both the cash bond and filing fee can be waived by filing an affidavit of indigency. 15-38-28, see UJS Form 305

1. The affidavit of indigency is used by the court to determine if someone meets the income guidelines so that they are not required to pay court fees.
3. Once the notice of appeal and proof of service has been filed with the clerk, the clerk will transmit a certified copy of the notice of appeal to the magistrate whose order or judgment is being appealed. SDCL 15-38-26
  - a. The clerk will also send the record of pleadings, documents, papers, and exhibits filed in the case to the circuit court within 10 days of the notice of appeal being filed. SDCL 15-38-30
4. If the person appealing does not take any steps after filing the initial notice of appeal, the court may dismiss the appeal. SDCL 15-38-29
5. After the appeal is filed, the person appealing must petition the circuit court for an order that a transcript of the verbatim record of the proceedings be prepared. The transcript will be filed within 30 days of service upon the court reporter. The transcript can be waived if a stipulation is filed showing that all parties agree. SDCL 15-38-33
  - a. The transcript is the written record taken down by a court reporter of what was said in court proceedings.
  - b. If not waived, the cost of the transcript is the responsibility of the person filing the appeal and payment is due upon filing. SDCL 15-38-34
6. A brief must be prepared in the form and manner for appeals before the Supreme Court unless circuit court rules direct otherwise. SDCL 15-26A-60 to 15-26A-81
  - a. Unless the circuit court says otherwise, the person appealing must serve and file the brief within 30 days after the transcript is filed or within 30 days after notice of appeal if there is no transcript. SDCL 15-38-37, see SDCL 15-26A-60
  - b. The other party must serve their brief within 30 days after service of the appealing person's brief. SDCL 15-38-37, see SDCL 15-26A-61
  - c. The person appealing must file their reply brief within 10 days after receiving the brief from the other party. SDCL 15-38-37, see SDCL 15-26A-62
7. When the appeal is heard before the circuit court, the circuit court can review anything in the record that relates to whether the judgment being appealed is erroneous. The circuit court may choose to affirm, reverse, remand, or modify the judgment. SDCL 15-38-38.
  - a. Affirming means the higher court confirms the decision of a lower court. Reversing means the higher court rejects the decision of the lower court. Remanding means the higher court sends the case back to the lower court to review a certain issue. Modifying means the higher court will change the decision.
  - b. If an appeal is taken to the circuit court and no verbatim record of the proceedings is available, the circuit court will direct that the case be tried de novo, or by way of a new trial. SDCL 15-38-40