

A top-down view of a wooden desk. In the upper left is a dark wooden sound block. In the upper right is a white tablet. In the lower right is a silver keyboard. In the lower center is a wooden gavel with a brass band. A blue banner with white text is overlaid on the left side of the image.

Media Guide

TO THE IDAHO COURTS

The Media Guide to the Idaho Courts is designed to provide a quick source of basic information for journalists covering the Idaho court system. It contains links to numerous relevant laws and rules, as well as to other online sources of legal information.

Table of Contents

IDAHO COURTS: RESOURCES	3
COURTHOUSE ETIQUETTE FOR MEDIA	4
SPECIAL RULES: CAMERAS AND RECORDING EQUIPMENT	6
WHAT TO DO IF ACCESS TO COURT PROCEEDINGS IS DENIED	8
IDAHO'S COURT STRUCTURE	9
JUDICIAL SELECTION AND ELECTION	12
COMPLAINTS AGAINST JUDGES	14
COMPLAINTS AGAINST ATTORNEYS	16
ACCESS TO COURT RECORDS	17
TRIAL COURT PROCESS	19
APPELLATE PROCESS	31
OTHER RESOURCES	32
APPENDIX	34



Idaho Courts: Resources

Online Accessibility to Information

The Idaho State Judiciary wants to make it easy to access court information, and invites you to visit its website at: <http://www.isc.idaho.gov>, which contains information about the Idaho courts and its many services, as well as a compilation of court information contained in this Media Guide.

The Supreme Court encourages and invites you to submit suggestions for improvements to the Idaho court system to suggestions@idcourts.net. The judiciary strives to increase access and service to the public, improve the timely and impartial resolution of court cases, provide equal access to justice, promote excellence in service, and increase the public's trust and confidence in the Idaho courts.

You may also submit any suggestions to improve the administration and operations of the Idaho courts to:

Sara Thomas
Administrative Director of the Courts
Idaho Supreme Court
P.O. Box 83720
Boise, ID 83720-0101
Email: stthomas@idcourts.net
Phone: (208) 334-2246

Courthouse Etiquette for Media

- Clothing must be suitable to the professional atmosphere of the courtroom and the seriousness of the proceedings.
- The presiding judge controls what happens in the courtroom. Ask a court clerk or bailiff or the trial court administrator if the court has a written list of rules for the media. Special rules govern the use of cameras and recording equipment in the courtroom. Judges are bound by the “Code of Judicial Conduct.” As a result, they cannot generally comment on any ongoing or pending case in any court. This rule extends to court personnel under the judge’s control (i.e., clerks, bailiffs, reporters, law clerks and probation officers).
- Judges generally explain their reasons for handing down a particular punishment when the defendant is sentenced. The trial court administrator or other authorized court personnel can provide a copy of the order, but cannot, for example, interpret or analyze the judge’s decision.
- Electronic devices in court facilities are governed by Idaho Court Administrative Rule 49. It states:
 - (a) ‘Electronic devices,’ as used in this rule, means cell phones, personal computers, personal digital assistants, and other similar devices capable of transmitting, receiving, recording or storing messages, images, sounds, data or other information by electronic means.
 - (b) Unless the administrative district judge or the presiding judge in a case issues an order prohibiting or restricting the carrying or use of electronic devices:
 - (1) Electronic devices may be carried in court facilities or courtrooms.
 - (2) Electronic devices may be used for the purpose of note taking in courtrooms or court facilities, and such notes may be transmitted from the courtroom or court facility.
 - (c) Electronic devices may not be used for the recording or transmission of sounds or images in or from courtrooms except as permitted under Rule 45, Rule 46(a), or Rule 46(b) of the Idaho Court Administrative Rules. The transmission of sounds or images in or from court facilities outside of the courtroom shall be permitted only when consistent with the provisions of Rule 45 of the Idaho Court Administrative Rules and with any orders issued by the administrative district judge pursuant to Rule 45(e) of the Idaho Court Administrative Rules. If an electronic device is capable of recording or transmitting sounds or images, these functions shall not be activated while the electronic device is in the courtroom unless approval for the recording or transmission of sounds or images has been obtained pursuant to Rule 45, Rule 46(a), or Rule 46(b) of the Idaho Court Administrative Rules.
 - (d) Electronic devices shall not be used in a manner that interferes with court proceedings or the work of court personnel. Any electronic device capable of emitting sounds that would be audible in the courtroom must be set to a silent or vibrate mode. Cell phone calls shall neither be made from nor answered in the courtroom.
 - (e) The administrative district judge or the presiding judge in any case may restrict the carrying or use of electronic devices in the courtroom by court personnel.
 - (f) Attorneys in a matter before the court and their employees and agents may make reasonable and lawful use of electronic devices in connection with the proceeding unless such use is restricted or

Courthouse Etiquette for Media *(continued)*

prohibited by the administrative district judge or presiding judge.

(g) Jurors shall not possess or carry electronic devices during deliberations. The use of electronic devices by jurors or prospective jurors during their jury service shall be subject to other restrictions as provided by court rules, orders, or instructions.

(h) The provisions of this rule, and of any order prohibiting or restricting the use of electronic devices, shall apply to all members of the public including members of the news media, and shall be communicated to members of the news media and to members of the public entering court facilities by signs or other appropriate means.

(i) Any person who violates the provisions of this rule or any order of the Administrative District Judge or order of the court regarding the possession or use of electronic devices may be found in contempt of court. Court personnel may confiscate and retain an electronic device that is used in violation of this rule or of such order, subject to further order of the court or until the owner of the electronic device leaves the building.

Why a Judge May Abstain from Public Comment

Our legal system is based on the principle that an independent, fair, and competent judiciary will interpret and apply the laws that govern us. Judges, individually and collectively, respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

It is vitally important to the perception of justice that the sole source of information regarding court proceedings be “on the record” in the courtroom and the records filed in a court case. A single source of information improves the participant’s and the public’s sense of fairness in the judicial system, ensures the accuracy of coverage of proceedings, and captures, as part of the record, all matters and statements that could be considered on appeal.

The Code of Judicial Conduct establishes standards for ethical conduct of Idaho judges. It consists of broad statements called canons, specific rules set forth in sections under each canon, a terminology section, an application section, and commentary. Canon 2 provides that a judge shall perform the duties of judicial office impartially, competently, and diligently. Addressed as part of this canon is the requirement that:

10. (B) A judge shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial* performance of the adjudicative duties of judicial office.

The requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition. A judge may make public statements in the course of their official duties and may explain the procedures of the court.

Judges are guided by the ethical standards articulated in the Code of Judicial Conduct (https://judicialcouncil.idaho.gov/pdf/Idaho_Code_Judicial_Conduct_06_17.pdf).

The conduct of lawyers relating to trial publicity is governed by Rule 3.6 of the Idaho Rules of Professional Conduct, which may be found at <http://isb.idaho.gov/general/rules/irpc.html>.

Special Rules:

Cameras and Recording Equipment

The Idaho Supreme Court has adopted Idaho Court Administrative Rule 45 and Idaho Court Administrative Rule 46 for the use of all cameras and any recording equipment in the courtroom, including cell phones. The presiding judge authorizes and may revoke the use of cameras and other recording equipment at any time without prior notice. The judge's decision cannot be appealed. Additionally:

- Approval to photograph or video, audio record, and/or broadcast a court proceeding must be obtained in advance from the presiding judge. A form requesting permission to photograph proceedings, video record, and/or broadcast a proceeding can be found at Appendix B.
- Unless the judge specifically allows for more, only one still photographer and one camera operator will be allowed in the courtroom. Be sure that news organizations have arranged for pooling before a proceeding begins.
- The judge will indicate where to sit. Be in position at least 15 minutes before court begins. Do not move around during the proceeding.
- Never photograph or videotape the jury, including during jury selection ("voir dire").
- Photographers may not use artificial lighting, electronic flashes, external motor drives on cameras, or do fast, random shooting.
- The judge will determine where audio equipment is placed. Only one set of microphones for all the media present will be allowed.
- Video or television cameras cannot indicate when they are running.
- Conversations in the courtroom between attorneys and their clients, between attorneys for a client, or between attorneys and the presiding judge at the bench ("sidebars") may not be broadcast.
- Media may not photograph or record exhibits or notes on the counsel's table before they are admitted into evidence.
- Sessions in the judge's chambers or the jurors' deliberations may not be recorded or broadcast.
- Special rules apply to appellate courts. Contact the clerk of the Supreme Court at (208) 334-2210 for specifics.
- Photographers are requested to utilize equipment that will minimize noise to reduce the possibility of a disruption of the proceedings. Motor drive cameras, for example, could potentially be very noticeable to courtroom participants and should be avoided.
- Idaho's trial courtrooms will have certain areas that lend themselves to placing a still or television camera. The objective of camera placement will be to facilitate reasonable coverage of the courtroom without unduly intruding on the proceedings.
- The Idaho Supreme Court courtroom includes a second level balcony, which faces the bench and from which cameras may cover the entire courtroom.

Special Rules:

Cameras and Recording Equipment *(continued)*

The Idaho Supreme Court has adopted Idaho Court Administrative Rule 49 for the use of electronic devices in the courtroom. Unless the administrative district judge or the presiding judge in a case issues an order prohibiting or restricting the carrying or use of electronic devices, electronic devices may be carried in court facilities or courtrooms, and electronic devices may be used for the purpose of note taking in courtrooms or court facilities, and such notes may be transmitted from the courtroom or court facility.

- Electronic devices as used in Rule 49 means: cell phones, personal computers, and other similar devices capable of transmitting, receiving, recording or storing messages, images, sounds, data, or other information by electronic means.
- Electronic devices may not be used for the recording or transmission of sounds or images in or from courtrooms except as permitted under Rule 45, Rule 46(a), or Rule 46(b) of the Idaho Court Administrative Rules. If an electronic device is capable of recording or transmitting sounds or images, these functions shall not be activated while the electronic device is in the courtroom unless approval for the recording or transmission of sounds or images has been obtained pursuant to Rule 45, Rule 46(a), or Rule 46(b) of the Idaho Court Administrative Rules.
- The transmission of sounds or images in or from court facilities outside the courtroom shall be permitted only when consistent with the provisions of Rule 45 of the Idaho Court Administrative Rules and with any orders issued by the administrative district judge pursuant to Rule 45(e).
- Electronic devices shall not be used in a manner that interferes with court proceedings or the work of court personnel. Any electronic device capable of emitting sounds that would be audible in the courtroom must be set to a silent or vibrate mode. Cell phone calls shall neither be made from nor answered in the courtroom.
- The provisions of Rule 49, and of any order prohibiting or restricting the use of electronic devices, shall apply to all members of the public including members of the news media, and shall be communicated to members of the news media and to members of the public entering court facilities by signs or other appropriate means.
- Court personnel may confiscate and retain an electronic device that is used in violation of Rule 49 or of any order of the administrative district judge or presiding judge, subject to further order of the court or until the owner of the electronic device leaves the building.
- Any person who violates the provisions of Rule 49 or any order of the administrative district judge or order of the court regarding the possession or use of electronic devices may be found in contempt of court.

What to do if:

Access to Court Proceedings is Denied

The U.S. Supreme Court has held that a judge considering closing a proceeding must follow certain procedures to ensure that closing the proceeding will not infringe upon First Amendment rights. See *Press-Enterprise v. Superior Ct.*, 464 U.S. 501 (1984).

The judge must hold a hearing on the need for closure, and allow the media and others to argue against closure. A presumption of openness under the First Amendment right of access requires courts to grant access unless confidentiality is “necessitated by a compelling governmental interest, and is narrowly tailored to serve that interest.” Thus, if a compelling interest is at stake (e.g., criminal defendant’s right to a fair trial) the judge must consider alternatives to court closure (e.g., change of venue, sequestering the jury, postponing the trial until the effects of publicity have diminished). A judge who determines that no alternative will work must also determine that closure will protect the party’s interest and must tailor the closure order to protect that interest without unduly restricting public access. Finally, the judge must present written findings supporting the closure decision in order to allow appellate review.

In the scenario where a judge orders the media to leave a hearing that has so far been public:

- If a news organization is prepared to send a lawyer to argue against closure, politely ask the judge for permission to speak for a moment.
- If allowed, tell the judge that the news organization objects to the closure and would like an opportunity to argue against it. Ask for a brief recess so that the organization’s lawyer may come to court to argue the case and ask that an objection be made part of the court record.
- If not allowed to address the court, do not refuse to leave or shout an objection. Leave the courtroom and write a brief note to the judge. Explain that the news organization wants to oppose the closure and that the editor or lawyer will be contacted immediately. Ask a court officer to give the note to the judge and get in touch with superiors immediately.

If a closed court proceeding is in progress or has already taken place, try to determine:

- Who sought closure and on what grounds,
- The nature of the proceeding (i.e., criminal, civil, pre-trial, trial, etc.),
- Whether a hearing was held on the closure order and, if so, what findings the judge made justifying the closed proceeding,
- Whether the proceeding is still going on, and
- Consult an editor about challenging the order. A challenge may be as simple as requesting a meeting with the judge to point out the procedural requirements mandated by the Supreme Court. Be sure to ask for access to future proceedings and transcripts of past proceedings (note: be prepared to pay for past transcripts). If a judge does not agree to resolve the issue informally, a motion to intervene in the matter can be filed for purposes of formally challenging the closure order (including a possible appeal).

Idaho's Court Structure

The *Supreme Court of Idaho* is the State's court of last resort. The Court hears appeals from final decisions of the district courts, as well as from orders of the Public Utilities Commission and the Industrial Commission. It has original jurisdiction to hear claims against the state and to issue writs of review, mandamus, prohibition, and habeas corpus, and all writs necessary for complete exercise of its appellate jurisdiction. The Court may also review decisions of the Court of Appeals upon petition of the parties or its own motion.

The Supreme Court is also responsible for the administration and supervision of the trial courts and Court of Appeals, as well as the operations of the Administrative Office of the Courts, the combined Supreme Court and Court of Appeals Clerk's Office and the State Law Library. The State Law Library is located at the Idaho Law & Justice Learning Center at 514 W. Jefferson Boise, Idaho; the Justices' offices and courtroom are located in the Supreme Court Building in Boise.

Five justices serve on the Supreme Court. They are elected at large, on a non-partisan ballot, for a term of six years with their terms being staggered so continuity on the Court will be maintained. A candidate for Justice must be a qualified elector and a duly qualified attorney-at-law. See Idaho Constitution, Article V, Section 6; Idaho Constitution, Article V, Section 8; Idaho Revised Code § 34-905; and Idaho Code § 34-615(2). The Chief Justice is selected by a majority of the members of the court to serve a four-year term, with the responsibility of presiding over Court activities during this term.

Specific information about Idaho's justices and judges may be found on the Court's website (<http://www.isc.idaho.gov>). For a detailed description of the operation of the Court, see the "Internal Rules of the Idaho Supreme Court": https://isc.idaho.gov/rules/INTERNAL_RULES_%2011.16.pdf.

The Supreme Court employs an administrative director of the courts, supervised by the chief justice, whose duties include acting as the public information officer for the Court. Contact information for the administrative director is as follows:

Sara Thomas
Administrative Director of the Courts
Idaho Supreme Court
P.O. Box 83720
Boise, ID 83720-0101
Email: sthas@idcourts.net
Phone: (208) 334-2246

Idaho's Court Structure *(continued)*

The *Court of Appeals* has jurisdiction to hear all cases assigned to it by the Supreme Court. However, the Supreme Court may not assign cases involving claims against any state, extraordinary writs, appeals from the imposition of capital punishment nor appeals from the Industrial Commission or Public Utilities Commission. While an appellant may petition the Idaho Supreme Court to rehear a Court of Appeals decision, the supreme court is not required to grant such a petition.

The Court of Appeals is comprised of a chief judge and three other judges, with cases being heard by three-judge panels. They too are elected at large, on a non-partisan ballot, for a term of six years, staggered to provide continuity. The description of the election and selection process for Supreme Court Justices also applies to the judges of the Court of Appeals. See Idaho Code § 1-2404. You may link to specific information about the Court of Appeals judges at <https://isc.idaho.gov/appeals-court/handbook>.

The supreme court clerk of the courts can provide basic information, including the schedule of briefs and oral arguments, regarding the status of appellate cases before the Idaho Supreme Court and Court of Appeals. Contact information for the supreme court clerk of the courts is as follows:

Karel Lehrman
Interim Clerk of the Idaho Supreme Court & Court of Appeals
P.O. Box 83720
Boise, ID 83720-0101
Phone: (208) 334-2210

The state is divided into seven *judicial districts*, each encompassing four to ten counties. This regional structure is designed to delegate authority to the judicial districts and to ensure their participation in policy decisions while maintaining uniform, statewide rules and procedures. An administrative district judge, chosen by the other district judges in the district, performs a number of administrative duties in addition to handling a judicial caseload. The administrative district judge manages court operations in the district, assigns judges to cases, and coordinates activities of the clerks of the district courts.

Each judicial district employs a trial court administrator, supervised by the administrative district judge and the administrative director of the courts. The trial court administrator assists the administrative district judge in managing district court operations, and often handles media contacts with court personnel and judges. Contact information for each judicial district's trial court administrator is available in the directory located at <https://isc.idaho.gov/district-courts>.

A judicial district map is included in this Guide as Appendix B. Contact information for the state's judicial districts and courts can be found online at: <https://isc.idaho.gov/main/local-district-courts>. See also a statewide County Courthouse Directory at: https://isc.idaho.gov/files/county_courthouse_directory.pdf

District judges have jurisdiction over civil and criminal cases. They decide cases involving the most serious criminal cases (felonies), and typically hear civil cases where the amount of money in dispute exceeds \$10,000. Civil damage actions usually involve personal injury such as automobile negligence cases and contractual disputes between parties. District judges also hear post-conviction relief actions in which

Idaho's Court Structure *(continued)*

a defendant is challenging his or her conviction or incarceration. District judges also hear appeals of decisions made by magistrate judges. Each district judge employs a court reporter who is responsible for capturing the record of proceedings in that judge's court.

Each county has a district court, which includes a magistrate division. Idaho has 45 district court judges, who sit in the 44 counties. They are Idaho attorneys, elected by nonpartisan ballot within the judicial district in which they serve. A district court judge is elected for a four-year term by the electorate of the judicial district in which the judge serves. District judges stand for election within their judicial districts. A qualified lawyer may challenge a district judge during the May primary election, on a non-partisan, contested ballot. If a vacancy occurs, the same selection procedures described above apply.

Magistrate judges hear criminal matters known as misdemeanors, and can handle civil cases where the amount of money involved does not exceed \$10,000. Magistrate judges also hold preliminary hearings to determine whether to send a defendant to district court for trial on a felony charge. Magistrate judges may also issue warrants of arrest and search warrants. Magistrate judges hear habeas corpus proceedings, probate cases (wills and estates), Juvenile Correction Act cases and domestic relations cases (such as divorce, child support and child custody). Magistrate judges also hear small claims cases where less than \$5,000 is in controversy. These cases are heard informally without attorneys being present, or without the involvement of juries.

Idaho has 92 magistrate judges, with at least one judge resident within each county. See Idaho Code § 1-2201. A District Magistrates Commission exists in each judicial district, comprised of county commissioners, a mayor, citizens, lawyers, a magistrate judge, and chaired by the administrative district judge. To fill a vacancy, the District Magistrates Commission interviews eligible applicants and makes an appointment to an initial 18-month term of office. A qualifications questionnaire is mailed to all attorneys, with evaluations compiled for use by the District Magistrates Commission. Just prior to the conclusion of the first 18 months, the Magistrates Commission evaluates the performance of the new magistrate judge and may determine that the judge has successfully completed the probationary period, or it may extend the probationary period, and/or it can remove the magistrate judge from office. Magistrate judges stand for a retention election every four years on a non-partisan judicial ballot, where the registered voters are asked whether they wish to retain the magistrate judge in office.

Senior judges are those who have retired from full-time work. They provide an important service to the state's judicial branch by continuing to make themselves available to hear cases on an as needed basis. By employing senior judges, the state court system has had additional flexibility in managing caseload increases in a cost-effective manner.

The elected clerk of the district court (the "county clerk") is an important link between the judiciary and county government. District court clerks and their deputies provide crucial services to district judges and magistrate judges. One important role of the elected clerk is to serve as one of the county's jury commissioners, a group responsible for managing the jury selection process under supervision of the court. See Idaho Code § 2-205 and Idaho Code § 2-207 for more information on the jury commission and its operation.

Judicial Selection and Election

When there is a vacancy during the term of office for a Supreme Court justice, Court of Appeals judge, or district judge, the Idaho Judicial Council advertises to all attorneys licensed to practice law in the state of Idaho the existence of the vacancy and solicits applications for the position. After the applications are received, a survey is circulated to all members of the Bar, soliciting their opinions about the applicants. Notice is also given to the public, inviting them to comment on the applicants. The results of the survey are compiled and are used by members of the Judicial Council when they interview the candidates. The Judicial Council considers the integrity and moral courage of the candidates, legal ability and experience, wisdom, intelligence, capacity to be fair-minded and deliberate, industriousness and promptness in performing duties, compatibility of personal habits and outside activities with judicial offices, capacity to be courteous and considerate on the bench, and legal research and writing abilities. At the conclusion of the interview process, the Judicial Council submits the names of not less than two or more than four qualified persons to the Governor. The Governor then appoints the justice to fill the remainder of the elected term. Thereafter, the appointed justices stand for popular election on a non-partisan ballot. See Idaho Code § 1-2102; Idaho Code § 34-615

A qualified lawyer may challenge a sitting justice, court of appeals judge, or district judge at election time. Elections for justices are held during the May primary election. The Canons of Judicial Ethics guide judges and candidates during elections. Canon 4 of the “Idaho Code of Judicial Conduct” requires that a judge or judicial candidate refrain from inappropriate political activity, maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary. The Canon also requires candidates for judicial office to encourage members of the candidate’s family to adhere to the same standards of political conduct in support of the candidate as applied to the candidate. No judges or candidates for judicial office shall make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office. They cannot make statements that commit or appear to commit the candidate with respect to cases, controversies, or issues that are likely to come before the court, nor can they knowingly misrepresent the identity, qualifications, present position or facts concerning the candidate or an appointment. As a corollary, a candidate should emphasize in any public statements the duty to uphold the law, regardless of his or her personal views. A candidate may not personally solicit campaign contributions. A campaign committee, acting on the candidate’s behalf, may solicit and obtain contributions, but the candidate must avoid obtaining the names of the contributors. See the “Idaho Code of Judicial Conduct” for more information regarding the Code of Conduct and its application to candidates for judicial office. See also Idaho Code § 34-615.

Idaho State Bar Survey in Contested Judicial Elections

The Idaho State Bar and its Committee on Judicial Integrity and Judicial Independence agreed that Surveys of Judicial Candidate Qualifications are useful to inform the public about judicial candidates in contested elections (when there is more than one candidate per position). Administered by the Idaho State Bar, the survey is sent to the voting members of the Idaho State Bar, asking for input based on each member’s personal knowledge and/or professional experience with the candidates. The survey and the results are anonymous, and evaluate the candidates based upon integrity and independence; knowledge and understanding of the law; judicial temperament and demeanor; and legal ability and experience.

Judicial Selection and Election *(continued)*

The Idaho State Bar provides the survey results to the public to help them make informed decisions about the judicial candidates running for a contested judicial position. The Idaho State Bar does not interpret or express any opinion about the results of the survey. For further information please contact the ISB Communications Director, (208) 334-4500, or see the ISB Resolution to establish, implement and administer surveys of judicial candidate qualifications in contested judicial elections.

Complaints Against Judges

The Idaho Judicial Council is responsible for managing complaints of judicial misconduct against judges. The council is comprised of three citizen members, two attorneys, one district judge and the Chief Justice of the Supreme Court.

Judicial misconduct is any violation of the Code of Judicial Conduct, which may include but is not limited to the following:

- Failure to perform duties impartially and diligently
- Failure to dispose promptly of the business of the court
- Conflict of interest
- Conduct prejudicial to the administration of justice that brings the office into disrepute

A complaint must be filed in writing. It may be in letter format or the complaint form, which can be accessed at <http://www.judicialcouncil.idaho.gov/discplin.htm> and filled out. The complaint must identify the judge and the specifics of the conduct or action believed to be improper. Names and addresses of witnesses should be included, as well as any documents or correspondence that substantiate the allegations. The letter or complaint form must be verified and notarized.

By statute, complaints and the identity of complainants are confidential. If the council conducts a preliminary investigation, the judge will receive a copy of the complaint. When a council recommendation is filed with the Supreme Court, it becomes a public document, which can be reviewed in the Supreme Court clerk's office. The Supreme Court has disciplinary authority, and reviews any recommendation from the council for censure, suspension, removal of a judge for misconduct, or retirement of a judge for disability seriously interfering with the performance of judicial duties. The Supreme Court is not required to follow the council's recommendations.

When a complaint is received by the judicial council, it is reviewed to determine that it is within the council's jurisdiction. A confidential inquiry may be made or preliminary investigation conducted to verify allegations. The council carefully reviews all allegations. If an allegation involves legal issues, or for some other reason is not within the council's jurisdiction, it will be dismissed. If the council believes it has sufficient evidence to proceed, it will require the filing of a formal complaint and hold a fact-finding hearing. At such a hearing, the judge has a right to defend against the charges and be represented by legal counsel. Witnesses and documents may be subpoenaed. If no violation is found, the complaint will be dismissed. If a violation of the Code of Judicial Conduct is found, or there is evidence of a disability that is seriously interfering with the judge's ability to perform judicial duties, the council may take the following action:

- Recommend a remedial course of action, and require the judge's acquiescence
- Require a personal appearance before the council
- Recommend that the Supreme Court retire, discipline, or remove the judge

For further information regarding the judicial council, go to the judicial council's website at <http://www.judicialcouncil.idaho.gov>.

Complaints Against Judges *(continued)*

The Idaho State Bar has developed a “Program for the Appropriate Response to Criticism of Judges and Courts” that carefully indicates situations in which the Bar will respond to criticism of a judge, the courts, or the justice system in the news media. The policy statement outlines referral and investigation procedures by the Bar, guidelines for determining when the Bar should respond, and the form that responses by the Bar usually follow.

Since it is generally undesirable for a judge to respond to criticism of his or her own actions in the news media, the Bar established the policy so that the effectiveness of the administration of justice could be maintained through fair investigation of critical statements and appropriate responses.

Complaints Against Attorneys

The Idaho State Bar is responsible for managing complaints against Idaho attorneys.

If a person believes an attorney has acted unethically, he or she may file a complaint against the attorney with the bar counsel's office of the Idaho State Bar. Bar counsel's office reviews the complaint to determine if the attorney has violated the Idaho Rules of Professional Conduct and disciplinary action needs to be initiated.

The membership of the Idaho State Bar consists of all attorneys licensed to practice law in Idaho. Bar counsel is the disciplinary counsel to the Idaho State Bar. A complaint against an attorney must be submitted in writing, unless prior approval is received in special circumstances. Attorney misconduct is any violation of the Idaho State Bar Rules of Professional Conduct, which may include, but is not limited to, the following:

- Improper use of trust account money
- Conflict of interest, breach of confidentiality
- Neglect, lack of communication, etc.

When a complaint is received, it is reviewed by bar counsel to determine if a violation of the Rules of Professional Conduct has occurred. Bar counsel informs the complainant that either: (1) the complaint does not appear to involve unethical conduct; (2) more information is needed; or (3) an investigation has been initiated. For further information, call the Idaho State Bar at (208) 334-4500.

Access to Court Records

Idaho Court Administrative Rule (ICAR) 32 governs access to judicial records. This is not the same as Idaho's public records law, Idaho Code § 74-101 to 74-126. ICAR 32 covers all court records, which includes almost everything in the possession of the court or its staff, whether or not it is filed in a case.

The Idaho statewide case management system, known as Odyssey, is a computer system used by Idaho's trial courts to assist in the processing of all cases filed at the trial court level. The case file serves as the official court record and includes all documents filed in that case. Information on individual cases, including the register of actions, is accessible through the iCourt Portal at <https://mycourts.idaho.gov>.

The Odyssey court management system has been deployed to all counties and has provided improved access to electronic court records, hearing schedules, court documents, e-filing and more. This new system also provided tools to improve business practices amongst justice partners by providing around-the-clock access to court information, reducing costs from handling and storing paper files, streamlining court processes, and delivering better information for judicial decision-making.

Individuals can access public documents and individual case information at local kiosks located within the county courthouse. If there are any questions regarding case information, contact the office of the elected clerk of the district court in the county where the case is pending for further clarification.

Access to Court Records *(continued)*

Trial transcripts and recordings:

Typewritten transcripts of proceedings are sometimes part of the court record. If a transcript exists, a request may be made to the court clerk to obtain a copy, and the clerk may charge fees associated with reproduction. As provided for in Idaho Criminal Rule 5.2 (d), the court may determine that a copy of the recording will be furnished instead of a written transcript. This rule can be accessed at: <https://isc.idaho.gov/icr5-2>.

Requesting a court record:

A detailed description of the court rules regarding access to records may be found in Idaho Court Administrative Rule 32 and can be accessed at: <https://isc.idaho.gov/icar32>. A records request may be submitted to the official custodian of a court record, as outlined in the rule. Custodians are those persons who have primary responsibility for maintenance and distribution of a record. Further, the Administrative District Judge may assign the local Trial Court Administrator to manage media requests as necessary. The custodian of the record may require a written request for documents. If a record is not readily available, or if there is doubt as to its openness, put your request in writing. The custodian has up to three working days to either disclose the record; notify the requestor that it will take more than three days to determine if the request should be granted (in this case the custodian has ten working days to respond); refer the request to the appropriate custodian judge; or deny the request in writing. If a custodian denies a request, the requestor has the right to appeal to the custodian judge. If the custodian judge also denies access, the matter can be pursued in court in accordance with Idaho Code § 74-115.

Trial Court Process

Criminal Proceedings

A proceeding is “criminal” when the defendant is alleged to have violated a criminal statute. There are two basic types of crimes: misdemeanors and felonies. An “infraction,” such as most speeding tickets, is not technically a crime, but a civil public offense punishable only by a fine of up to \$300 (plus court costs) and no imprisonment. General misdemeanors have a maximum fine of \$1,000 and incarceration of not more than six months in the county jail. A felony may be punished by imprisonment in a state correctional facility of more than a year or, in some instances, by death (a “capital crime”). The Idaho Criminal Rules apply to criminal cases. Most of the steps in the process described below apply to felony charges. See Idaho Code § 18-111 for basic definitions.

Pre-Filing: The police investigation: This first stage of the criminal proceeding typically involves the investigation of a crime by law enforcement. This may include the issuance of a search warrant by a magistrate judge, and/or interrogation of the defendant by law enforcement, and may include arrest of the defendant.

Filing the complaint: The complaint describes the formal charge against the defendant and is usually signed by a prosecutor or police officer. If the defendant has not already been arrested, the court may issue an arrest warrant directing police to take custody of the person charged, or the court may issue a summons requiring the person to appear before the court.

The first appearance in the magistrate division: This is the first time the defendant is before a judge regarding the complaint. Don’t confuse first appearance with preliminary hearing or arraignment. The defendant is advised of his or her rights and the judge explains the legal procedure that will be followed in the case. At this stage, bond will be addressed if the defendant is incarcerated. If the defendant cannot afford an attorney, the court will appoint one. A defendant charged with a felony may not enter a plea at this stage of the process, but if it is a misdemeanor case, the first appearance is combined with the arraignment, where the defendant must enter a plea. If this is a felony case, the defendant is entitled to a preliminary hearing where the prosecutor must show there is probable cause to believe a crime has been committed and the defendant committed it. A defendant may waive the right to a preliminary hearing.

Bail bond: Bond may be addressed at any time if the defendant is incarcerated. A bail bond is an obligation signed by the accused, with sureties, to secure his presence in court. If the defendant fails to appear, the bondsman has a period of time to deliver the defendant to the court. If this is not done, the bond is forfeited.

The preliminary hearing: At this hearing, the magistrate judge determines if there is probable cause to believe that a felony crime has been committed and that the defendant committed it. If so, the defendant is “bound over,” that is, the case is sent to district court for arraignment and other future proceedings. If the prosecutor fails to make an adequate showing at the preliminary hearing, the magistrate judge may dismiss the case or the charge may be amended. A defendant may request that the preliminary hearing be closed to the public. The court may then exclude the public, but only if the court makes specific findings that: (1) there is a substantial probability that the defendant’s right to a fair trial will be prejudiced by publicity that closure would prevent; and (2) reasonable alternatives to closure cannot adequately protect the defendant’s right to a fair trial. See *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1 (1986); *Cowles Publishing Co. v.*

Trial Court Process *(continued)*

Magistrate Court, 118 Idaho 753, 800 P.2d 640 (1990); and Idaho Code § 19-811.

The arraignment in a felony case: This proceeding is held before a district judge. The defendant is again advised of his or her rights and the procedures the court will follow, and enters a plea. At this stage, the court may again consider bond. If the defendant pleads not guilty or remains silent, the case will be set for trial. If the defendant pleads guilty, the judge will order a presentence investigation and set a sentencing date.

The grand jury process: This is an alternative to the process described above, which is authorized in Idaho Code § 19-901 and the Idaho Constitution. The grand jury is a panel of citizens called together to hear evidence and decide if criminal charges should be brought by its indictment (rather than the prosecutor's complaint). The grand jury has broad investigative powers to gather evidence, and can call witnesses and compel them to testify. Grand jury proceedings are conducted in secret. If the grand jury returns an indictment, the court issues an arrest warrant or summons for the person indicted, and that person appears before the district court for arraignment and consideration of bail. See Idaho Criminal Rule 6.5.

Pre-trial motions: During the post-arraignment, pre-trial period, the judge may consider and rule on any number of motions, often involving whether certain evidence may be introduced. The judge may schedule pre-trial hearings to hear attorneys argue the motions. Additionally, a pre-trial conference with the judge and the attorneys for both sides will be held to set the ground rules for the trial.

Plea agreements: Most criminal cases do not go to trial. In criminal cases, the prosecutor and the defendant may come to an agreement about the resolution of the case, including what the defendant will plead guilty to, what, if any, charges will be dismissed, and what the prosecutor will recommend as a sentence. Plea agreements in criminal cases are governed by Idaho Criminal Rule 11.

The trial: When deciding whether to call a jury or hold a court trial before a judge: generally, unless there is a waiver of the right to a jury trial, a jury will be called. Felony trials are conducted before a twelve-person jury. A six-person jury hears misdemeanors. See Idaho Criminal Rule 23.

Jury selection: This stage begins with voir dire—when attorneys for both sides question potential jury members under oath. An attorney may challenge a prospective juror for cause (meaning the attorney has found a demonstrable reason why a person should not serve) or use a “peremptory” challenge in which case the attorney need not state why this person should not be on the jury. Attorneys will have a certain number of peremptory challenges. See Idaho Criminal Rule 24.

Instructions: The judge explains the rules of law that the jury must apply, including the elements of the crimes with which the defendant is charged.

Opening statements: After the jury has been impaneled, each side has the opportunity to make an opening statement in which the attorneys talk to the jurors about what they will hear in the case. A defendant's attorney may choose to wait to give an opening statement until it is the defense's turn to present its case.

Prosecution's case: The prosecution calls its witnesses and questions them--this is direct examination--and the defense attorney will cross-examine them. Attorneys are not supposed to “lead” their own witnesses; that is, they may not provide answers to the questions they ask. On cross-examination, however, an attorney is allowed to lead the witness. Throughout the case, attorneys will make objections to what the

Trial Court Process *(continued)*

other side attempts to do--the form of questioning, or the introduction of certain evidence, for example. The judge may overrule or sustain the objection. “Overrule” means the objection is not correct under the law. “Sustain” means the judge agrees that the objection is correct under the law. Once the state presents its witnesses (also known as its “case in chief”), the state rests.

Defendant’s case: The defense attorney may begin with an opening statement if one has not already been given. The defense may then present its witnesses. Because the state has the burden of proof, the defense may elect not to present any witnesses, instead challenging the state’s evidence through cross-examination of the state’s witnesses. The defendant in a criminal case also has a constitutional right not to testify. After both sides have questioned the defendant’s witnesses, the defense rests.

Rebuttal witnesses: The prosecution may call rebuttal witnesses, to explain or contradict testimony that previously has been heard. The defense may also call rebuttal witnesses in response to any rebuttal witnesses presented by the prosecution.

The judge instructs the jury: The judge instructs the jury on the law.

Closing arguments: This is the lawyers’ opportunity to convince jurors to see the evidence their way.

Jury deliberates: After the judge instructs the jury and the parties deliver their closing arguments, the jury is sworn and is excused from the courtroom to begin its deliberations. When the jury reaches a verdict, the judge, attorneys and defendant come back into the courtroom to hear it read. Afterward, upon the request of either counsel, the judge may poll the jury; that is, inquire of each juror individually if this is his or her verdict. Verdicts must be unanimous; if the jury cannot reach a unanimous verdict (a “hung jury”), the judge may declare a mistrial and the prosecutor will determine whether to retry the case. If the defendant is acquitted, the defendant is released from custody. If the defendant is convicted, a new part of the process begins. See Idaho Criminal Rule 31.

Post-Trial/Guilty Plea: If a defendant is convicted at trial, the defense attorney may file certain post-trial motions asking for reconsideration and/or relief despite the decision of the jury. If these are denied, the sentencing process comes into play.

Sentencing hearing: The date for a sentencing hearing is set after a defendant pleads guilty or after a jury returns a guilty verdict -- usually from 30 to 60 days after the guilty plea or the jury’s verdict. At the hearing, attorneys for both sides may present evidence, testimony, and oral arguments regarding what would be an appropriate sentence.

The following documents and statements may be considered at the sentencing hearing:

Pre-sentence investigation report: This report is based upon the pre-sentence investigator’s interviews of the defendant and other individuals, including any victims, and those who know the defendant. It includes a social history of the defendant including education, employment, family situation, physical and mental health and community ties. The report also describes the defendant’s prior criminal record, the defendant’s version of the crime, and police and other witnesses’ versions. The prosecution and defense typically have access to the pre-sentence investigator’s report, but it is not available to the media or the public. These reports are confidential and will not be released to anyone except those indicated in Idaho Criminal Rule 32 and Idaho Court Administrative Rule 32.

Trial Court Process *(continued)*

Psychosexual evaluation: The judge may order this evaluation of the defendant if the conviction involves certain sex-related crimes. See Idaho Code § 18-8316 for more information. The evaluation assists the judge in arriving at the most appropriate sentence. It must be performed by a licensed psychiatrist or a licensed master's or doctoral level mental health professional approved by the court. These evaluations are also confidential. See Idaho Criminal Rule 32.

Defendant speaks ("right of allocution"): The judge must allow the defendant the opportunity to speak on his or her own behalf at sentencing. See Idaho Criminal Rule 33 for more information.

Victim impact statements: Victims of crime are allowed by the 1994 Victim's Rights Amendment to the Idaho Constitution, Article I, Section 22, and by state law to present a victim impact statement at a sentencing hearing. Victims may provide a written or oral statement to the court regarding the impact the crime has had upon them, but they are not to recommend punishment for the crime in a capital case.

Judge pronounces sentence: Most sentences are pronounced at the end of the sentencing hearing because the defendant must be present when sentence is pronounced.

Possible Sentences:

Fine: A monetary amount based on the relevant statute may be assessed, as well as restitution and court costs.

Withheld Judgment: No judgment of conviction is entered. If the defendant successfully completes the probationary period, complying with the conditions ordered by the judge, the case may be dismissed.

Suspended Sentence: The judge enters a judgment of conviction and imposes a sentence but does not send the defendant to prison for the imposed term. Instead, all or part of the incarceration term is suspended, usually in conjunction with a term of probation.

Probation: The judge enters a judgment of conviction and imposes a sentence but puts the defendant on probation under specified conditions, which may include some jail time. If the defendant violates probation, the defendant may be ordered to serve out the remainder of the original sentence in incarceration.

Retained Jurisdiction ("rider"): In a felony case, the judge may enter a judgment of conviction and impose sentence, but retain jurisdiction over the defendant for up to 365 days. During this retained jurisdiction, the defendant undergoes two weeks of diagnosis in the state prison system, and if determined not to be dangerous to society, will be sent to the North Idaho Correctional Institution at Cottonwood, Idaho, or other facilities in the state.

The defendant may undergo rehabilitation programs and psychiatric testing. At the end of the period, the institution will send reports to the judge. These reports are considered pre-sentence investigation reports and are confidential. The judge will determine whether to suspend the rest of the sentence, placing the defendant on probation, or whether to relinquish jurisdiction and send the defendant to prison.

Prison Term: The judge may forego the above options and simply impose a prison term for the defendant. The maximum term for any crime is set by statute. For some crimes, the statutes also set a mandatory

Trial Court Process *(continued)*

minimum sentence that the court must impose. Idaho's Unified Sentence statute requires that the judge specify a minimum period of confinement, during which the defendant is not eligible for parole. See Idaho Code § 19-2513. The portion of the sentence during which the defendant is not eligible for parole is referred to as the "fixed" or "determinate" portion of the sentence. The rest of the sentence, during which the defendant is eligible for parole, is referred to as the "indeterminate" portion of the sentence. Whether the defendant will serve "concurrent" or "consecutive" sentences becomes an issue if the defendant already is under sentence, or has been found guilty of multiple offenses. If the defendant is sentenced to two or more concurrent sentences, they will run at the same time; the defendant will not serve more than the longest of those. If ordered to serve consecutive sentences, the terms are cumulative; the defendant will not begin to serve the later one until the earlier one has been completed or paroled.

Death Penalty: First-degree murder is a "capital offense"-- meaning it carries a possible death penalty in Idaho. The jury decides whether the defendant should receive the death penalty. Following a guilty verdict or guilty plea, the court holds a sentencing hearing at which the state and the defendant can present evidence. The jury can impose the death penalty if it finds that: (1) at least one of the eleven aggravating circumstances set out in Idaho Code Section 19-2515(9) is present; and (2) the mitigating circumstances, weighed separately against any aggravating circumstance found, are not so compelling that they make the death penalty unjust. If the jury finds one or more aggravating circumstance, but decides that the mitigating circumstances make the death penalty unjust, the defendant gets a life sentence without parole. If the jury does not find any aggravating circumstances, the judge imposes a life sentence with a fixed term of at least ten years.

Post Sentencing/Incarceration: Post-conviction process in the district court: Following trial, the defendant may file a motion for a new trial under Idaho Criminal Rule 34. A motion for a new trial based on newly discovered evidence may be made within two years after the final judgment; a motion based on any other reason generally must be made within 14 days after the imposition of sentence.

Following sentencing, the defendant may file a motion to reduce the sentence under Idaho Criminal Rule 35. Idaho Criminal Rule 35 also allows a defendant to file a motion to correct an illegal sentence. A motion for a reduced sentence must be filed within 120 days of the entry of the judgment imposing sentence or order relinquishing retained jurisdiction. A motion to correct an illegal sentence may be made at any time.

Appeals: Decisions in district court are appealed to the Supreme Court and, with some exceptions, the Supreme Court may assign that case to the Court of Appeals. The Supreme Court may review Court of Appeals decisions, or may decline to grant review. Most often decisions of the Court of Appeals are final. See "The Appellate Process" section of this Guide for more information.

Parole: When sentencing a defendant to prison, the judge must indicate what the minimum and maximum term of confinement will be; the defendant generally is not eligible for parole (a conditional release from prison) until the minimum term has been served. See discussion under "Prison Term" in this Guide. A prisoner eligible for parole may petition the State Commission of Pardons and Parole, which meets at least four times a year to consider inmates' applications. The commission must publish notice of its meetings, and include the names of all persons applying for pardon or parole.

Trial Court Process *(continued)*

Parole/Probation Violations Procedure: A parolee or probationer may be immediately arrested and detained in the county jail if there is cause to believe that the parolee/probationer has violated the conditions of parole or probation. See Idaho Code § 20-227. For parolees, a parole revocation hearing must be held before one or more members of the commission, or its hearing officer, to determine whether to revoke parole. See Idaho Code § 20-229. If the commission member(s) or hearing officer determines that parole has been violated, the entire commission executes an order of parole revocation. See Idaho Code § 20-229B. Probationers alleged to have violated a condition of probation will be subject to a probation violation hearing in the district court, at which time the court may (1) revoke probation and order that the defendant serve the sentence that was previously suspended, (2) continue probation, or (3) revoke probation and retain jurisdiction. See Idaho Code § 19-2603 and Idaho Code § 20-222.

Sexual Offender Registration Requirement: Convicted sex offenders, including juveniles, allowed to return to the community must register with the county sheriff's office where they live. This registration applies to sex offenders who have been incarcerated, received a suspended sentence and probation or even a withheld judgment. Failure to register is a felony for an adult offender, with penalties of up to ten years in prison and a fine of \$5,000. A juvenile offender is subject to a misdemeanor for failing to register; additionally, the juvenile's parent or guardian is subject to a misdemeanor offense for failure to supervise a child, which carries a fine of up to \$1,000. See Idaho Code §§ 18-8302 et seq., Idaho Code §§ 18-8402 et seq. for more information about this process and about accessing sexual offender registration information.

Civil Proceedings

A civil proceeding involves disputes between private parties, or between a private party and a public agency, and could be a dispute over a contract, a lease, a divorce, or because one of the parties is alleged to have wrongfully injured the other (this type of wrongful injury is called a "tort").

Usually a person filing a civil suit wants money damages, but may ask the court to order the other party to do something or stop doing something; this is known as "injunctive relief." The Idaho Rules of Civil Procedure apply to these cases.

The process in a civil suit follows this order:

Complaint Filed: The filing of a complaint details the facts of the situation as seen by the plaintiff, the person desiring the court's assistance. When the complaint and summons (notifying the defendant of the suit) have been filed with the court, copies of these documents must be delivered to (served on) the other party.

Answer: The defendant has 20 days after being served to respond in writing to the complaint--this is called the "answer." At the same time, the defendant may file a counterclaim as part of the answer. The counterclaim describes why the defendant feels entitled to relief (money or an injunction) from the plaintiff. The plaintiff then has 20 days to file an answer to the counterclaim. If either side does not file answers or other pleadings in the time required, the other party may ask the court for a default judgment in which the judge decides the case in favor of that party. Time limits may be extended by an agreement of the

Trial Court Process *(continued)*

parties (a stipulation) or for other reasons approved by the court.

Pre-Trial Discovery and Motions: In the period between filing the initial papers and the trial, the parties are probably negotiating to determine if they can settle their dispute while, at the same time, conducting discovery (a process in which the parties request and are given information about the case known by the other side). Discovery includes submitting written questions for the other side to answer (interrogatories), conducting oral questioning of sworn witnesses (depositions) and requesting the production of documents and other things related to the case. Either side may also make pre-trial motions regarding what may be presented at trial. In the pre-trial phase, attorneys often file motions for summary judgment, which if granted will eliminate the need for a trial. To win on a summary judgment motion, a party must show that there are no material issues of fact in dispute and that the case can be decided by the judge as a matter of law.

Pre-Trial Conference and Trial: If it appears the case will not settle, the judge will hold a pre-trial hearing to determine the conduct of the trial. The conduct of a civil trial follows essentially the same order as a criminal trial, discussed above. When either the judge or jury renders its decision, the case may be appealed by the losing party.

Mediation: The court may appoint, or the parties may agree to, a neutral mediator who assists them in reaching a mutually acceptable agreement. All civil cases are eligible for referral to mediation. See Idaho Rule of Civil Procedure 37.1.

Out of Court Settlement: If the parties come to an agreement about settling the case, they may present their agreement to the judge.

Court Assistance Services

Court assistance offices provide self-help legal information and court forms online. Idaho courts increase the public's access to justice by providing information, referral, and standard forms for persons who are representing themselves in non-criminal court cases. Court forms and instructions are available at no charge at: www.courtselfhelp.idaho.gov.

Idaho's Court Assistance Office is making it easier for you to navigate the legal process with a free online tool for those without legal representation. Guide & File allows you to complete and e-file your court assistance forms online in counties where e-filing is available. Guide & File (<https://guideandfile.idaho.gov>) is a self-guided online tool that will ask you specific questions about your potential legal filing, to generate the documents you need to submit to the appropriate Idaho court. Small claims lawsuits will be available in February 2018; additional topics will be added throughout the year, including Minor Guardianship, Civil Protection Order petitions, and Divorce filings.

Trial Court Process *(continued)*

Juvenile Proceedings

Juvenile proceedings exist for persons under the age of 18 who violate any federal, state or local law, with the exception of certain alcohol, tobacco, and most traffic and watercraft violations. The Idaho Juvenile Corrections Act, Idaho Code § 20-501 et seq., governs a juvenile case. See also Idaho Juvenile Rules, adopted by the Supreme Court. A juvenile may also be tried as an adult in certain very serious crimes, as described below. A magistrate judge handles juvenile cases. The process is generally as follows:

Report of a Wrongdoing; the Filing of a Petition: An officer who believes that a juvenile has broken the law files a report concerning the alleged offense. If it is determined that further action is needed, the report is submitted to the prosecuting attorney, requesting that a petition be filed with the Juvenile Court. A petition is the formal document that describes the specific act the juvenile is alleged to have committed. Unless such a petition is filed, the juvenile may not be brought before the court except to be released from detention.

Probation Officer's Recommendation: If the prosecutor chooses to file a petition, the court may make a preliminary investigation to determine whether further action shall be taken. The juvenile's probation officer then may recommend that the case be dismissed or that the juvenile be diverted into a community program. The judge may accept or reject the recommendation. "Diversion" efforts address the problem through non-legal processes such as counseling and special youth programs, and may occur informally whether or not a petition is filed.

The Admit/Deny Hearing: The initial admit/deny court hearing in a juvenile proceeding is closed to the public. See, Idaho Juvenile Rule 52. Usually only the judge, the in-court clerk, probation officer, the juvenile, parents and attorneys are admitted, but other persons who have an interest in the case may also attend with the judge's permission. At the hearing, the judge reviews the petition, explains the constitutional and legal rights of the parties and determines whether the facts in the petition are true. If the juvenile denies the charge, the case is set for another hearing. At the admit/deny hearing, the judge decides whether the proceedings will be opened or closed. The proceedings are open unless the court enters an order closing them. Proceedings brought against a juvenile fourteen years or older who is charged with an act that would be a felony if committed by an adult are open to the public unless the judge orders that "extraordinary circumstances" justify closing the proceedings.

If a denial to a petition is entered, the court shall set the matter for evidentiary hearing and may set a pretrial conference. An evidentiary hearing may immediately follow entry of a denial with the consent of the juvenile, defense counsel, and the prosecuting attorney, or may otherwise be set for hearing at a later date pursuant to notice of hearing to all parties.

Evidentiary Hearing: If the juvenile denies the allegations in the petition, the court shall conduct a full evidentiary hearing. Unlike criminal trials for adults, juveniles do not have a right to a jury trial and all evidentiary hearings are conducted before a judge. The juvenile has the right to call witnesses on his/her own behalf. A record must be made in all proceedings connected with the case and must be preserved in the event of appeal. If at the conclusion of the evidentiary hearing, the court finds the juvenile comes within the purview of the act, the court will rule on the record that the juvenile comes within the act, and then set the matter for sentencing. The court may, in the interest of time, hold a sentencing hearing at the

Trial Court Process *(continued)*

conclusion of the evidentiary hearing if all necessary information is available.

The Sentencing and Alternatives: If a juvenile admits an act or is found by the court to have committed it, the court proceeds to hold a sentencing hearing. This sentence may include one or more of several alternative possible actions. See, Idaho Code § 20-520 for all of the possible sentencing alternatives.

- Place the juvenile on formal probation for a period not to exceed three (3) years from the date of the order, except for crimes of a sexual nature, the court may place a juvenile on formal probation for a period not to exceed the juvenile's twenty-first birthday.
- A juvenile may be ordered to make restitution.
- A juvenile may be ordered into treatment or probation or sentenced to a juvenile detention facility for a period of 90 days or less for misdemeanor offenses and 180 days or less for felony offenses.
- A juvenile may be committed to the Department of Juvenile Corrections, which could place a juvenile in a juvenile corrections center.

A juvenile at least 14 years old who is alleged to have committed certain serious felonies, such as murder, robbery or forcible rape, is charged and tried as an adult. See Idaho Code § 20-509. In certain other cases, the Juvenile Court may transfer the case to district court to be processed under adult criminal law. This may be done if the juvenile is at least 14 years old, or is under 14 and has committed a serious felony, and certain other standards are met. See Idaho Code § 20-508.

Idaho law also contains provisions for the parents of juvenile offenders to provide reimbursement for the costs of their child's. See, Idaho Code § 20-524.

Access to Juvenile Court Records: In Juvenile Corrections Act cases filed before July 1, 2017, all court records of Juvenile Corrections Act proceedings on a petition filed under I.C. § 20-510 pending an admit/deny hearing are confidential and exempt from disclosure. Thereafter, the court records are open unless the court enters an order exempting them from disclosure. See, Idaho Court Administrative Rule 32(g)(9)(B).

In Juvenile Corrections Act cases filed on or after July 1, 2017, all court records of Juvenile Corrections Act proceedings on a petition filed under I.C. § 20-510 are confidential and exempt from disclosure, unless the court finds, upon motion by the prosecuting attorney, interested party, or other interested persons, that the public's interest in the right to know outweighs the adverse effect of the release of the records on the juvenile's rehabilitation and competency development. See, Idaho Court Administrative Rule 32(g)(9)(C).

Trial Court Process *(continued)*

Child Protection Proceedings

Two systems deal with child abuse -- the child protection system of the Idaho Department of Health and Welfare, which operates pursuant to the Child Protective Act (CPA) (Title 16, Chapter 16 of the Idaho Code) and the criminal justice system, which prosecutes people accused of crimes involving child abuse. The Child Protective Act focuses on the protection of endangered children but encourages the preservation of family unity and privacy if possible. A child may be removed from the home and placed in foster care or some other setting or the alleged offender may be removed from the home.

With the exception of duly ordained ministers of religion, under Idaho Code § 16-1605 all persons “having reason to believe that a child has been abused, abandoned or neglected” are required to report suspected child abuse, neglect or abandonment to the Department of Health and Welfare or law enforcement. When the Department receives information that a child is being or has been abused, neglected or abandoned, it is required to investigate the report. A child may be removed from the home without a court order only by a police officer that determines that the child is in immediate danger if allowed to stay there.

A shelter care hearing must be scheduled within 48 hours of the child’s removal, or 24 hours of the alleged offender’s removal. At the hearing, the court will determine whether the child should remain in the care of the state or be allowed to return home, or if the alleged offender may return home. If the court allows the state to retain custody of the child or refuses to allow the alleged offender to return home, the judge will order an adjudicatory hearing to determine if the child needs protection.

The court may appoint a guardian ad litem for the child, that is, a trained volunteer who will act as a special advocate for the child during the proceedings. At the adjudicatory hearing, the judge will determine a more permanent plan for the child, which may include remaining in foster care, returning to the home under certain conditions, or returning home with no restrictions.

In certain cases, the Department may ask the court to terminate the parent-child relationship legally. Termination is a separate action that frees the child for adoption if approved by the court.

Idaho’s laws concerning child abuse generally are found in Title 18 of the Idaho Code, along with other crimes. The county prosecutor may become involved in a case after receiving a report from the Department of Health and Welfare or local law enforcement. If the prosecutor decides to prosecute the alleged offender, the proceeding follows essentially the same course as outlined above for criminal proceedings. The issue of taking child testimony, however, makes these cases somewhat different from adult-on-adult crime prosecutions. Idaho law allows a child to testify via closed-circuit television or the child may have a friend with him or her when giving testimony. See Idaho Code § 19-3023. The judge may also, as a matter of discretion, order the courtroom closed to the public during a child’s testimony.

Access to CPA proceedings and court records:

All CPA proceedings and court records are confidential and exempt from disclosure by Idaho Court Administrative Rule 32(g)(9) and Idaho Juvenile Rule 52. The judge may allow a friend, counselor or supporter of the child to remain in court during the proceeding, particularly when the child testifies.

“Domestic violence” is a term used generally to describe an act of violence perpetrated by one member

Trial Court Process *(continued)*

of a household on another as well as in certain dating relationships. Idaho's criminal code provides for prosecution of, for example, assault, battery, rape, murder, domestic battery or the attempt of such a crime. However, the state justice system has developed a more immediate response to domestic violence in the form of a "protection order" aimed at restraining the activities of the alleged perpetrator.

The "Domestic Violence Crime Prevention Act" (Title 39, Chapter 63 of the Idaho Code) provides a way for victims of domestic violence to obtain a protection order from the court to exclude the perpetrator from the house, require the perpetrator to get counseling, or restrain the perpetrator from places where the victim may be. Minors can also receive protection through petitions filed by their parents and/or guardians. A petition for a protection order is filed with the local District Court, Magistrate Division. A temporary (14-day) protection order may be obtained almost at once with an ex-parte hearing (the alleged perpetrator need not be at this hearing) if the judge is convinced that "irreparable injury" could otherwise occur. A full hearing including both parties must be held within 14 days to determine if there is cause for the court to issue a protection order for a period up to one full year. This order is then also subject to one-year renewals. See the Idaho Council on Domestic Violence and Victim Assistance site. If the person being restrained by the protection order violates it, he or she is subject to a fine not to exceed \$5,000 and up to one year in jail. Furthermore, federal statutes prohibit an offender from having a firearm of any kind, or ammunition, for the duration of the civil protection order. Failure to comply with this federal law carries significant penalties.

In the case of convictions of misdemeanor crimes of domestic violence (domestic battery and certain related offenses), and also of certain domestic violence felony offenses, the federal firearms prohibitions not only apply, but are permanent for the life of the offender.

Capital Crimes

First-degree murder is a crime that carries the death penalty as a possible punishment. If the prosecutor intends to seek the death penalty, he must file a written notice of intent to do so with the district court within sixty days after the defendant has entered a plea unless the court extends this time for good cause. See Idaho Code § 18- 4004A. There also are special requirements for court-appointed attorneys in death penalty cases. See Idaho Criminal Rule 44.3. If a defendant is convicted of first-degree murder in a case in which the state is seeking the death penalty, the court must hold a hearing during which attorneys for the state and defendant present evidence regarding aggravating and mitigating circumstances. The jury decides whether the defendant should receive the death penalty, unless both the state and the defendant waive the jury. In that case, the judge decides. Idaho law requires that the death penalty cannot be imposed unless the jury or judge finds at least one aggravating circumstance attending the crime. These are described in Idaho Code § 19-2515 and include (1) a previous conviction for murder, (2) multiple murders at the same time, (3) knowingly creating a great risk of death to many persons in the commission of the murder, (4) murder for remuneration, (5) an "especially heinous, atrocious or cruel" murder; (6), the defendant exhibited utter disregard for human life, (7) the murder was committed in the perpetration of, or attempt to perpetrate arson, rape, robbery, burglary, kidnapping or mayhem and the defendant killed, intended a killing, or acted with reckless indifference to human life, (8) the murder was committed in the perpetration

Trial Court Process *(continued)*

of, or attempt to perpetrate an infamous crime against nature, lewd conduct, sexual abuse of a child under 16, ritualized abuse of a child, sexual exploitation of a child, sexual battery of a 16 or 17 year old, forcible sexual penetration with a foreign object, and the defendant killed, intended a killing, or acted with reckless indifference to human life, (9) the defendant has exhibited a propensity to commit murder which will probably constitute a continuing threat to society, (10) the murder was committed against a former or present peace officer, executive officer, officer of the court, judicial officer or prosecuting attorney because of the exercise of official duty or because of the victim's former or present official status, and (11) the murder was committed against a witness or potential witness in a criminal or civil legal proceeding because of such proceeding. If the jury or judge finds that there is at least one statutory aggravating circumstance and the mitigating circumstances, weighed collectively against any aggravating circumstances, do not make the imposition of the death penalty unjust, then the defendant is sentenced to death.

When a defendant is sentenced to death, a number of requirements automatically come into play. The sentence is stayed pending appeals and reviews, and the district court must immediately appoint an attorney, other than the lawyer who represented the defendant before the death penalty was imposed, for the purpose of seeking post-conviction relief from the court.

Under Idaho Code § 19-2827 the state supreme court automatically reviews the imposition of the death penalty in a district court case. The court must consider whether the sentence was lawfully imposed (for example, whether the evidence supports the finding that an aggravating circumstance warranting the death penalty was present). Attorneys for the defendant and the state may submit briefs on the issue and present oral arguments before the court. The court may affirm the sentence or set it aside and remand the case for re-sentencing. Additional appeals to the Idaho and United States Supreme Courts may be made, and as a last resort, the governor of the state may be petitioned to delay or halt the death penalty process. An application for commutation of a death sentence must be made to the Commission of Pardons and Parole, which makes a recommendation to the governor. The governor makes the final decision on commutations in death penalty cases. See Idaho Code § 20-240.

The death penalty in Idaho is by law administered by lethal injection. See Idaho Code § 19-2716.

Access to Jurors

At the conclusion of all jury trials, judges instruct jurors on a number of matters. Among other things, these instructions guide jurors as to whether or not they choose to respond to any media inquiries. The instructions follow:

“You have now completed your duties as jurors in this case, and are discharged with the sincere thanks of this court. The question may arise as to whether you may discuss this case with the attorneys or with anyone else. For your guidance, the court instructs you that whether you talk to the attorneys or to anyone else is entirely your own decision. It is proper for you to discuss this case if you wish to, but you are not required to do so and you may choose not to discuss the case with anyone at all. If you choose to talk to someone about this case, you may tell them as much or as little as you like about your deliberations or the facts that influenced your decisions. If anyone persists in discussing the case over your objections or becomes critical of your service, either before or after discussion has begun, you may report it to me.”

Appellate Court Process

The Appellate Process

In Idaho, all appellate cases come to the Idaho Supreme Court, which at its discretion assigns a number of these to the Idaho Court of Appeals. The Supreme Court must hear death penalty case appeals. The Idaho Supreme Court hears disciplinary actions involving attorneys, and writs when filed directly with the Supreme Court. (A writ is a legal order to do or not do something, i.e., a writ of mandamus, prohibition or habeas corpus.) The appellate process is governed by the Idaho Appellate Rules (IAR). The parties in an appellate case are designated as the appellant and the respondent.

In most cases, an attorney must file a notice of appeal within 42 days of the official filing of the disputed judgment, order or decree, or in criminal cases, 42 days from entry of the judgment, which may be enlarged if the court retains jurisdiction or places the defendant on probation. In death penalty cases, the time for filing a notice of appeal does not begin until the death warrant is signed and filed by the District Court. See Idaho Appellate Rules (IAR) 14 for more information. It is important to understand that the purpose of the appellate process is not simply to second-guess the lower court. The purpose of the appellate process is to determine if there was sufficient legal error made by the lower court, which would warrant a reversal or other legal direction from the Supreme Court.

Once the District Court has issued a final appealable order, then the parties can seek relief from the Idaho Supreme Court. When an appeal is filed, the District Court provides the appellate court with a record of the proceeding below, as designated by the parties, who then submit written briefs detailing their arguments. Most appeals are heard in Boise. The Idaho Constitution requires the Supreme Court to hear cases in Lewiston at least once a year. In addition to the Lewiston term, the Supreme Court hears cases annually in Coeur d'Alene, Moscow, Idaho Falls, Pocatello and Twin Falls. The Court of Appeals has heard cases in these same cities.

A schedule and summary of the cases to be heard by both the Supreme Court and Idaho Court of Appeals can be found at <http://www.isc.idaho.gov/>. In oral argument, each party is allowed 30 minutes for its presentation. The justices or judges may ask questions of the speaker at any time during oral argument. After hearing arguments, the appellate court will issue its written opinion, usually within a few months. Most appellate decisions are published in "Idaho Reports," the official record of Idaho appellate cases (at <http://www.isc.idaho.gov/>). Depending on the nature of the case, the decision may be appealed to the U.S. Supreme Court.

Other Resources

Finding a Subject Matter Expert

For accuracy in their reporting, journalists covering the courts often need insight and explanation of legal issues from attorneys who are experts in specific areas of the law. The April issue of the Idaho State Bar publication “The Advocate” is the “Annual Deskbook Directory.” The Deskbook is a great source of information about the legal community. Non-members of the Idaho State Bar pay \$40 for a copy of the publication. The Idaho State Bar website has access to order forms for the Deskbook Directory.

The Idaho State Bar also provides a call-in lawyer referral service. The service is designed to help members of the Idaho public find an attorney in a specific field of law in an area of the state convenient to them. The service does not give out lists of attorneys, and it only provides one referral at a time. A referral to a lawyer is free to the caller. To contact the Lawyer Referral Service, call (208) 334-4500 between 8 AM and 4PM Mountain Time.

Law Library Information

Location: 514 W. Jefferson, 2nd Floor, Boise, Idaho 83702

Hours: Monday - Friday 8:00 am - 5:00 pm

Closed Weekends and Legal Holidays

Website: <http://www.isll.idaho.gov>

Phone: 208-364-4555

FAX: 208-334-2467

Email: lawlibrary@idcourts.net

A Short list of Online Legal Resources

- The Idaho Supreme Court homepage, located at: <http://www.isc.idaho.gov> links to a variety of sources of information, including an overview of the courts, state and federal appellate opinions, and information on appeals pending in state courts.
- The On-Line Catalog of the Idaho State Law Library at <http://www.isll.idaho.gov/> allows an author / title / subject / word search of the holdings of the law library.
- The National Center for State Courts: <http://www.ncsc.org/>
- The Idaho Press Club: <http://www.idahopressclub.org>
- The Thomas home page, <http://thomas.loc.gov> allows monitoring legislation in Congress, access to the Congressional Record, the House and Senate Committee Web pages and links to the Library of Congress, among other sites.
- The Library of Congress' State and Local Government page, <http://www.loc.gov/rr/news/stategov/stategov.html> links to the constitutions and laws of any states, state maps, and a variety of other resources.

Other Resources

- The Martindale-Hubble Lawyer Locator page, <http://www.martindale.com/> allows a search for attorneys listed in the Martindale-Hubble directory, a nationwide list.
- The National Law Journal page, <http://www.nlj.com> , is an online edition of the current weekly legal publication covering legal news from around the country.
- LAW.COM, <http://www.law.com> links to a variety of legal resources, including a dictionary of legal terms

Appendix

Appendix A

*** SAMPLE FORM ***

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF _____

PLAINTIFF(S)

V.

DEFENDANT(S)

)

) REQUEST TO OBTAIN APPROVAL TO
) VIDEO/AUDIO RECORD, BROADCAST OR
) PHOTOGRAPH A COURT PROCEEDING

)

I hereby request approval to:

☐ video/audio record ☐ broadcast ☐ photograph the following court proceeding:

Case No.: _____

Date: _____

Time: _____

Location: _____

Presiding Judge: _____

I have read Rule 45 of the Idaho Court Administrative Rules permitting cameras in the courtroom, and will comply in all respects with the provisions of that rule, and will also make certain that all other persons from my organization participating in video or audio recording or broadcasting or photographing of the court proceedings have read Rule 45 of the Idaho Court Administrative Rules and will comply in all respects with the provisions of that rule.

Print Name

Signature

News Organization Represented

Phone Number

Appendix B: District Map



