

CLERK OF THE DISTRICT COURT MANUAL

15.0 JUDICIAL CONSENT FOR ABORTIONS UPON MINORS

Revised April 2008

15.1 PROCEDURES

Idaho Code 18-609A sets out a procedure that allows a minor to petition a court to allow an abortion without the minor obtaining parental consent.

These proceedings are **confidential** and every effort must be made to ensure that the anonymity of the minor is protected and that the contact with the clerk's office is as confidential and expeditious as possible. All records related to these proceedings must be kept confidential and are exempt from disclosure to the public pursuant to I.C.A.R. 32(g)(13). Court records shall be maintained and all court proceedings undertaken so that the names and identities of the parties to actions brought under this statute will not be disclosed to the public.

The petition may be filed in any county.

The minor may file her petition using a fictitious name.

Clerical duties:

1. Give the minor a packet of information that contains an information sheet, petition form and a form for the notice of appeal. A sample petition is attached. The petitioner can have someone help her fill out the petition. You may assist the minor, if necessary, by explaining any parts of the petition she does not understand.
2. Ask if she is represented by counsel. If she is not represented by counsel, inform her that one will be appointed at no cost to her. **Immediately** notify the judge so that an appointment can be made. Make sure she understands the contact phone number or address is where her appointed attorney, guardian ad litem or court personnel may contact her.
3. File the completed petition in district court. Filing code, J9, has been programmed in ISTARs for this Civil case type- Judicial Consent Abortion, ISTARs subtype. The entire record is to be sealed and is exempt from disclosure pursuant to I.C.A.R. 32(g)(13). ISTARs automatically seals the case.
4. A new party master will always be created for these filings. The petition will be filed with either a "Jane Doe" or using the initials of the petitioner. The minor's name shall not be entered on the party master or as an alias. The petitioner may even use a fictitious name. No link to that juvenile's other court records or party master (if known) is ever to be made.

5. No filing fee is required.
6. Assign a district judge to the case. **Immediately** hand deliver the petition to the judge. If the minor is not represented by counsel the court must enter an order appointing an attorney. The judge may also want to enter an order appointing a guardian ad litem. Forms for these appointments are available in the benchguide or you may want to have a court packet handy for these cases that includes these instructions for the clerk, the benchguide instructions for the judge as well as the forms the judge will need, including forms for appointment of an attorney, a guardian ad litem, and order forms.
7. Immediately call the clerk of the Supreme Court to advise that a petition has been filed so the court can be "on notice" in case an appeal is filed. No documents shall be transmitted unless an appeal of the court's decision is filed.
8. Schedule a hearing in ISTARs. The initial hearing must be held within 48 hours of the filing the petition, excluding weekends and holidays. This hearing takes precedence over other pending matters. The hearing is to be CLOSED.
9. The hearing must be audio recorded.
10. The court must issue a ruling at the conclusion of the hearing and must enter a written order with specific findings of fact and conclusions of law. The court will have form orders for this in the benchguide.
11. After the hearing is held, enter the appropriate hearing result ROA code in ISTARs.
12. The judge may either:
 - grant the petition giving the minor the right to self-consent, or
 - give judicial consent for the abortion, or
 - deny the petition.If the judge fails to rule at the end of the hearing the petition is deemed granted. Enter the appropriate civil disposition in ISTARs and ROA all documents.
13. Upon entry of the court's order the clerk shall immediately file stamp the order and hand it to the minor and/or her attorney. A copy of the order should also be given to the appointed guardian ad litem, if one was appointed.
14. If the court denies the petition, then along with a copy of the order the district court must advise the minor's attorney that she has five (5) days, excluding weekends and holidays, from the date of the denial to file an appeal. A notice of appeal form would have been included in the packet of information distributed earlier but have one available for the minor if the petition is denied. (Sample form attached.) (I.A.R. 44.1)

15.2 APPEAL

Appeals are expedited and governed by statute and I.A.R 44.1. The appeal is also confidential and all records related to the appeal must be **kept confidential and are exempt from disclosure to the public pursuant to I.C.A.R. 32(g)(13)**.

Clerical Duties:

1. Any appeal is to the Supreme Court and shall be filed within five (5) days, excluding weekends and holidays, from the date the petition is denied. This filing may be made by facsimile machine process.
2. There is no filing fee. The ISTARs entry for the appeal is made using the "T" filing fee code for "Civil Appeal to the Supreme Court." The clerk is to enter an Exception reason such as "Court Waived" and an amount of ".00".

The ROA Code of, "Filing: T - Civil Appeals To The Supreme Court (\$86.00 Directly to Supreme Court Plus this amount to the District Court) Paid by: Doe, Jane (subject) Receipt number: 7006026 Dated: 3/12/2007 Amount: \$.00 (Cash) For: Doe, Jane (subject)." would be modified to, "Filing: T - Civil Appeals To The Supreme Court

3. The same attorney who represented the minor in front of the district court should be representing the minor on appeal unless she substitutes counsel.
4. As soon as the notice of appeal is filed, the clerk's record should be immediately faxed to the Supreme Court because the Court has to hold a hearing and issue a decision within 48 hours of the notice of appeal being filed. The record shall include the notice of appeal, the order denying the petition, all pleadings and exhibits filed in the case, as well as the audio recording of the hearing before the district court.

When faxing, call the clerk of the Supreme Court to advise that these are confidential documents being faxed and to request that receipt be confirmed. Talk to the clerk of the Supreme Court about the best way for the court to listen to the audio recording of the hearing and whether the audio recording of the proceedings should be hand delivered, sent express mail overnight or whether arrangements should be made for the court to listen to the audio recording by phone conference or other means. Absolutely no extension of time will be granted by the Supreme Court for preparation of the record.

A complete copy of the record in the case shall also be made immediately available to the minor and/or her counsel including a copy of or access to the audio recording of the hearing.

5. The minor is exempt from paying all associated fees including the fee for the record and audio recording.

15.3 STATISTICAL REPORTING

The Supreme Court is required annually to produce statistical reports in reference to these filings. The Supreme Court will request that each county provide them a list of case filings along with the ISTARs “Case Detail Report” from each case that will be used for statistical compilation.

The clerk will provide this information to the Supreme Court upon request.