

CLERK OF THE DISTRICT COURT MANUAL

28.0 FORM OF PLEADINGS AND FILING REQUIREMENTS OF COURT

Revised October 2006

28.1 FILING REQUIREMENTS OF COURT DOCUMENT

The Idaho Rules of Civil Procedure specify the requirements for documents filed with the court. I.R.C.P. 10(a)(1) details the required form of the documents filed:

- Every pleading, motion, notice, or judgment or order of the court shall be typed with black ribbon or produced by a computer or word processor type printer of letter quality on white paper;
- It must contain a caption setting forth the names of the parties, the title of the district court, together with the assigned number of the action, the designation of the document or pleading and the names, addresses and phone numbers of the attorneys and the typewritten name of the person signing the pleading;
- All pleadings, motions, notices, judgments, or other documents filed with the court shall be typed on 8 1/2 x 11 inch paper;
- The body of all documents may be typed with double line spacing or one-and-one-half line spacing with a font size of not more than 10 letters per inch.
- Every pleading shall have the name or designation typed at the bottom of each page, and all attached exhibits must be legible and in a form that can be copied or be accompanied by a typewritten duplicate, and all handwritten exhibits shall be accompanied by a typewritten duplicate;
- In the complaint the title of the action shall include the names of the parties, but in subsequent pleadings it is sufficient to state the name of the party on each side with an appropriate indication of other parties;
- The title of the court shall begin four (4) inches from the top of the first page. The name, address and telephone number of the attorney, or person appearing shall be typewritten or printed above the title of the court in the space to the left of the center of the page and beginning at least two (2) inches below the top edge. The currently valid Idaho State Bar Number of the attorney shall be typewritten or printed immediately below the attorney's telephone number;
- Pleadings or motions requiring filing fees shall also contain designations of the category of the action, the nature of the document and filing fee category and filing fee.

Note: Many courts do accept documents that do not meet the requirements of the rule and you should not refuse to accept them for filing. If unsure, check with your supervisor or the judge.

- Prisoners incarcerated or detained in a state prison or county jail may file documents under this rule that are legibly hand-printed in black ink, in whole or in part, that otherwise conform to the requirement of this rule.

This rule does not apply to printed forms approved by the Supreme Court or the Administrative District Judge or distributed through the Court Assistance Office in the county where the lawsuit is pending. Such forms may be completed by legibly hand-printing in black ink or by typing. (I.R.C.P. 10(a)(1))

28.2 FILING WITH THE COURT

The documents can be filed with either the clerk or the judge as stated by the rule.

All papers brought to the court after the complaint required to be served upon a party shall be filed with the court either before service or within a reasonable time after service. Large documents, such as briefs, may be treated like an exhibit and do not have to be placed in the actual file folder. I.R.C.P. 5(d) (I.R.C.P. 7(b)(3); ICR 49(c))

The filing of pleadings and other papers with the court rules shall be made by filing them with the clerk or the judge. If the judge accepts the paperwork, he/she shall note the filing date, hour and minute and transmit them to the office of the clerk. The judge or clerk shall indorse upon every pleading and other paper the hour and minute of its filing. (I.R.C.P. 5(e))

Filing by Facsimile:

Any pleading or document except those documents requiring a filing fee or filed as proof of incarceration of a party to the action may be transmitted to the court for filing by a facsimile machine process. The clerk shall file stamp the facsimile copy as an original and the signature, court seal, and notary seal on the copy shall constitute the required signature and be considered as originals under Rule 11(a)(1). After a document is filed by facsimile, there is no need to mail that document to the court. Filings may be made to the court only during the normal working hours of the clerk and only if there is a facsimile machine in the office of the filing clerk of the court. Provided, documents over ten (10) pages in length cannot be filed by the facsimile machine process. (I.R.C.P. 5(e)(2))

Note: Consult your supervisor for the handling of identical copies received in the mail. The facsimile is the original and a procedure should be established in your court to prevent duplicate filings when copies of the original fax are subsequently sent in the mail.

Any facsimile machine process copy that is not transmitted directly to the court may be filed with the court. The clerk shall file stamp the facsimile copy as an original and the signature on the copy shall constitute the required signature under Rule 11(a)(1). There shall be no limit as to the number of pages of a facsimile copy which was not transmitted directly to the court by the facsimile machine process. (I.R.C.P. 5(e)(3))

Each county, on an individual basis, may elect to waive any or all of the restrictions of I.R.C.P. 5(e)(2) to the extent that (a) documents requiring a filing fee may be transmitted to the court for filing by a facsimile machine process provided that the fee is prepaid by credit card in accordance with the county's credit card acceptance policy; (b) filings may be made at any time, provided that filings received outside normal working hours or on any non-judicial day will be file stamped at 9:00 a.m. on the next judicial day; (c) documents of any length may be faxed. (I.R.C.P. 5(e)(4))

Exceptions for Faxing Documents in Criminal Cases (I.C.R. 49):

The following documents cannot be filed with the court by facsimile:

- Information or Complaint
- Search Warrant
- Warrant of Arrest
- Return on a Warrant or Service of a Warrant
- Any document filed as proof of incarceration of a party to the action

28.3 APOSTILLE

Definition: An apostille is a special seal applied by an authority to certify that a document is a true copy of an original. An apostille certifies the authenticity of the issuing official's or notary public's signature on the document, the capacity in which the person has acted, and identifies the seal/stamp which the document bears.

Purpose: Apostilles are available in countries, which signed the *Hague Convention Abolishing the Requirement of Legalization of Foreign Public Documents*, popularly known as *The Hague Convention*. This convention, created in 1961, replaced the time consuming chain certification process, where you had to go to four different authorities to get a document certified. Each country party to the Hague Convention designates an authority within its territory that can issue apostilles; for example, in the USA, it is the office of the state's secretary. Documents issued in a Convention Country which have been certified by an apostille are entitled to legal recognition in any other Convention Country. An apostille can be used whenever a copy of an official document from another country is needed.

Convention Apostille Certificate: If you have a document which you want legalized for use in another Convention country, the Convention certification called an "apostille" must be affixed to the document by a competent authority. The apostille is a pre-printed form prescribed by the Convention.

Clerical Duties:

If a person requests an APOSTILLE for the purpose of obtaining citizenship in another country or for any other reason, the procedure is:

1. Make a certified copy of the document requested from the court file for the required fee.
2. The person requesting the Apostille then will send the certified copy with a \$10.00 fee to the Secretary of State at the address below. The person should provide the name of the country to which the documents will be sent so the Secretary of State will be sure to provide the appropriate certification format for the receiving country.

MAILING ADDRESS:

State of Idaho
Office of the Secretary of State
Attn: Notary Department
P.O. Box 83720
Boise, ID 83720-0080

EXPRESS MAIL:

State of Idaho
Office of the Secretary of State
Attn: Notary Department
700 West Jefferson, Room 203
Boise, ID 83702

3. The clerk should make a cover sheet with the printed name and the correct spelling of the clerk who signed the certification seal to accompany the certified copy.

If questions, phone the Office of the Secretary of State at: (208) 334-2300, or see www.idsos.state.id.us/notary/apostill.htm.