CLERK OF THE DISTRICT COURT MANUAL

SECTION 4.0 INFRACTIONS

Revised April 2007

4.1 INITIATION OF INFRACTIONS

An infraction is a civil public offense, not constituting a crime, which is punishable only by a penalty of a fine and for which no period of incarceration may be imposed. I.C. § 18-111, I.C. § 18-113A. Any Idaho peace officer or authorized employee of the Idaho Transportation Department may issue an Idaho uniform citation for an infraction. Additionally, infractions may be commenced by the filing of an unsworn formal complaint. I.C. § 49-1501; I.C. § 19-3901; I.I.R. Rules 3(a), 3(b) & 5(a). Only one person may be charged by the complaint of a single citation, but two infraction offenses may be charged in one citation involving the same defendant. An infraction may not be charged with a misdemeanor in the same citation. I.I.R. 3(d). Because an infraction has been declared by statute to be a civil public offense, not constituting a crime, the defendant charged with an infraction shall never be arrested for the infraction and shall never be required to post bail on the infraction. I.I.R. 7(c).

The infraction citation shall be served upon the defendant by obtaining his/her written promise to appear in court within the time provided on the citation or by physically delivering the citation to the defendant. I.C. § 19-3901; I.I.R. 5(c). The defendant must be cited in no sooner than 5 days and no later than 21 days from the date of the citation. I.I.R. 5(a). The officer or agency should turn the citation in prior to the appearance date.

Clerical Duties**:**

1. File stamp citation or complaint;

2. Enter citation or complaint in ISTARS.

3. Place citation or complaint in file folder or other location as per the practice of your jurisdiction.

Note: **Many jurisdictions simply place the citations in some sort of central file to wait and see if payment is sent in by mail. No official case file is required unless the matter will be tried in court**.

4.2 APPEARANCE BY DEFENDANT

The procedure for processing an infraction citation is established by Idaho Criminal Rules (I.C.R.) and Idaho Infraction Rules (I.I.R.). Infractions are processed in the magistrate's division. Any person charged with an infraction by a citation may enter an admission by paying the total amount due, which includes fixed penalty and court costs.

Payment of the total amount due shall constitute an admission of the charge. Payment must be received by the court on or before the appearance date set forth in the citation. I.I.R. 6(a). Unless the defendant pays the total amount due to the court as outlined above, the defendant shall appear before the clerk to answer the charge. All appearances by the defendant and the trial of an infraction shall be in the county where the alleged offense occurred. No infraction charge shall be transferred to the court of another county except in cases where the infraction is committed in a city that is located in two counties, the venue may be transferred in accord with I.C. 19-305; I.I.R. 7(b). The defendant may also appear through an attorney. I.I.R. 6(b), (d). If the defendant admits the charge before the clerk, judgment shall be entered by the clerk, which judgment shall order the defendant to pay the total amount established by the Supreme Court infraction penalty schedule as set forth in I.I.R. 9(b); I.I.R. 6(c) & 9(a).

If the case involves a Fish and Game infraction, the forms in the Idaho Infraction Rules shall be modified to accommodate fish and game infractions – provisions for license suspension shall refer to suspension of hunting, fishing and trapping privileges. I.I.R. 10.1. Any judgments shall be sent to the Idaho Department of Fish and Game.

Clerical Duties if a guilty plea is entered**:**

1. Enter the finding of guilty and assess the fines and fees in ISTARS;

2. Accept and receipt payment or set up acceptable terms for future payment;

3. Enter judgment against defendant on back of original citation (or on a separate judgment form if used in your jurisdiction);

4. Upon entering the disposition and payment for the final charge on the case allow ISTARS to close the case.

Note: **The total amount due cannot be increased or decreased by the clerk. If the defendant pays MORE than the amount due, do not increase the fine. Instead, enter the excess in ISTARS as an "overage" and send back to the defendant according to local procedure**.

Clerical Duties if a not guilty plea is entered:

1. Enter the not guilty plea in ISTARS either in the disposition tab or the charge tab

2. Set the matter for further proceedings as per local protocol (Court Trial or Pretrial conference). Jury Trials may not be held for infractions.

4.3 FAILURE TO APPEAR/BAD CHECKS (DEFAULT)

If the defendant fails to appear before the clerk at or before the time stated in the citation, the clerk shall enter default judgment without giving further notice to the defendant. ISTARS may do this in a batch process through Overdue Processing.

I.I.R. 6(a). If an infraction penalty is paid via a personal check and if the personal check is dishonored and returned to the court for any reason, the defendant will be deemed not to have appeared on the citation and default judgment may be entered against the defendant.

I.I.R. 8(a). If a defendant fails to appear at the time fixed by a pre-trial conference and/or trial date notice, the clerk or judge shall enter default judgment against the defendant for the infraction without giving further notice. I.I.R. 8(b). If a default judgment is entered against a defendant, the clerk shall mail a Notice of Default Judgment to the defendant at the address stated in the citation advising the defendant that the defendant must pay the judgment by a date certain (not less than 14 days after the date of the notice) I.I.R.8(c). The form for this Notice is set forth in I.I.R. 8(d). The notice shall state that failure to pay the judgment will result in suspension of the defendant's driver's license. I.I.R. 8(d).

Clerical Duties:

1. Prepare and send Notice of Default Judgment.
   This may either be done manually by the clerk at the time and date of the failure to appear, or by overdue processing, if the clerk does either of the following options: 1) leaves the hearing unanswered, or 2) checks the fail to appear box on the case front screen. The system will detect the unanswered hearing or activation of fail to appear processing by detecting the checked box, and will enter a finding of guilty, fines and fees and set a payment date 14 days in the future.

2. Make entries of failure to appear and default judgment.
   If entering the data manually, the clerk must enter the fines/fees and set the future money due date. The clerk then must produce and send out the notice of default judgment to the defendant. The next ITD report will detect the findings of guilty and report them accordingly.

3. Close out file.
   Change the status of the case to closed pending clerk action.

Note: **There is a separate administrative license suspension that is done by the Idaho Department of Transportation, upon receipt of a finding of guilty or a default judgment on a failure to maintain insurance infraction. This is somewhat confusing to the defendant, as the court will send a notice of "Default Judgment" which will advise them that they have two weeks to pay the citation or a suspension of driving privileges will be entered for FAIL TO PAY. That is a separate and secondary suspension. When the defendant gets the suspension letter from ITD on those offenses, they often call the court and are confused. Please advise them that**

the ITD suspension is a separate suspension done solely on the conviction of the offense.

If the defendant appears before the Court within the time set forth in the Notice of Default Judgment or requests a hearing within that time, a show cause hearing to determine whether a driver's license should be suspended for nonpayment of a penalty shall be scheduled. I.I.R. 11(a). If the court finds that the defendant has a complete and continuing financial inability to pay the penalty, no Notice of Nonpayment shall be sent to the Department of Transportation. I.I.R. 11(b).

Clerical Duties:

1. File stamp request for hearing and file.

2. Re-open case in ISTARS and schedule hearing (per local practice).

3. Send Notice of hearing to Prosecutor and Defendant.

4. After hearing, post appropriate hearing result(s) in ISTARS, file stamp and enter in ROA any order signed by judge.

5. If a complete and continuing financial inability to pay is established by the court, and there is an order stating such, the clerk will make the appropriate entries on the Register of Actions for the case and make the appropriate financial adjustments of the fines and fees as per the order of the court. And after there is a zero balance (whether by payment or adjustment) close the case.

6. If the court does not establish complete and continuing financial inability to pay, and the defendant cannot or will not pay by the money due date, and no further extension is granted by the court, after that date has gone by, the clerk prepares and sends Notice of Nonpayment to the Idaho Dept. of Transportation (ITD) if this is a “suspendable offense”. The clerk will indicate in the charge disposition screen that the license has been suspended and will check the box (for infractions) that says “Send license suspension notice”. The clerk will make sure that the document has been entered on the ROA. (Overdue processing in ISTARS will suspend the license, enter the dates and check the box, as well as make the appropriate ROA entries automatically with the next overdue run after the money due date and any possible extension date have gone by.) The clerk will then follow the local protocol for collecting fines and fees for infraction cases. The case will remain as “closed pending clerk action” until the fines/fees have been paid or adjusted.

7. If this is not a “driver’s license suspendable offense”, the court will follow local protocol for further action for collection of fines and fees for ‘other’ infractions.

8. When payment is made by the defendant on a suspended offense, the ISTARS system will prompt the user to print a “Receipt and notice of compliance”. For

infraction charges the receipting clerk should print that document and sign it and provide a copy of the same to the defendant. The next "overdue processing run" will detect the payment on the case and will enter the compliance information and will report it to ITD with the next ITD reporting.

9. Close the case in ISTARS.

If the court determines that the unpaid portion of any infraction judgment is not reasonably collectible for any reason, the court may enter an order discharging the judgment and close the file. I.I.R. 9(g). Such discharge may be signed and entered by the clerk at the direction of the court. The entry of the discharge shall not affect the judgment other than to satisfy the duty to pay the balance of the penalty.

Clerical Duties:

1. Adjust money due to zero balance.

4.4 SETTING ASIDE A DEFAULT

The court may set aside a default judgment pursuant to the Idaho Rules of Civil Procedure (I.R.C.P.). The defendant must file a written motion requesting that the default judgment be set aside stating the reason for the request. The judge will then decide, usually at a hearing, whether to grant the request or not. If the request is granted, the judge will order the default set aside and the matter will be set for trial. I.I.R. 8.1; I.R.C.P. 60 (a) and (b).

Clerical Duties:

1. Remove the finding of Guilty on the Charge disposition tab.

2. Adjust off any fines and fees which would have been entered in the default process.

3. Send or fax a copy of the "Order Setting Aside Default" to all agencies which would have received the default information. (Idaho Department of Transportation).

4. ROA the Order and other documents

5. Schedule the trial and send out notices.

4.5 DENIAL OF CHARGE AND TRIAL

If the defendant denies the charge, the clerk shall set the trial date for the citation or complaint and serve a copy of the written trial date notice upon the defendant and

prosecuting attorney. I.I.R. 6(c). If the defendant desires a continuance, the clerk shall issue a Continuance Notice with a new appearance date. I.I.R. 6(c). The forms for these Notices are provided for in I.I.R. 6(e)(1) and (2). **There is no right to trial by jury for an infraction**. I.C. § 19-1902; I.I.R. 7(d).
Note: Some jurisdictions have implemented a pre-trial conference procedure – some allow the clerk to conduct these conferences.

Clerical Duties:

1. Schedule court trial (or pre-trial conference) with assigned magistrate judge.

2. Send Notice set forth in I.I.R. 6(e) to Prosecutor (with a copy of the citation) and Defendant (Make sure Defendant's notice is sent to the address the defendant provided when the denial was entered – this is often different than that on the citation).

4.6 TRIAL/JUDGMENT

If the judge of the magistrate division does not find the defendant committed the infraction, the judge shall enter judgment for the defendant. I.I.R. 7(e). If the judge finds the defendant committed the infraction offense, the judge shall enter judgment against the defendant, and impose the fixed penalty provided for by the Supreme Court's infraction penalty schedule. I.C. § 49-1503(2); I.I.R. 7(e) and 9. The penalty includes court costs and cannot be suspended and no withheld judgment is allowed. I.I.R. 9(d). The defendant can either pay the penalty immediately or enter into a deferred payment agreement, the form for which is set forth in the Rules. I.I.R. 9(e).

Clerical Duties:

1. Make sure there is a judgment in the file – either on back of citation or a separate form.

2. If the defendant is found guilty, collect fixed penalty from defendant or have the defendant sign the deferred payment agreement form.

3. Post a hearing result for the hearing, enter the finding as determined in court, and post the fines and fees to the case. ISTARS will make the appropriate ROA entries for the clerk as they do the above actions. The clerk then will note on the ROA that a deferred payment agreement has been allowed.

4. When paid in full, close the case in ISTARS. Note: If deferred payment agreement is allowed, the case will stay at the status of "close pending clerk action" and will "close" upon the receipt of payment in full for the charge(s).

4.7 FAILURE TO PAY INFRACTION JUDGMENT

If a defendant fails to pay a traffic infraction penalty within the time allowed by (1) default judgment, (2) deferred payment agreement, or (3) within such time allowed by court order, the court (clerk) shall sign a Notice of Nonpayment of Penalty and send it to the Department of Transportation for suspension of the defendant's driver's license.

Note: It is sent electronically to the Department of Transportation via the overdue processing reporting and the I.T.D. electronic reporting. I.I.R. 10(a); IC § 49-1505. The form for this Notice is set forth in I.I.R. 10(b). Any late payment of an infraction penalty shall be accepted by the court or clerk at any time. I.I.R. 10(c). At the time that full payment is received, after the Notice of Nonpayment has been sent to the Dept. of Transportation, the clerk shall issue a Receipt and Notice of Payment, which shall be mailed to the defendant (not sent to the Department by the clerk because it is reported electronically through the overdue processing and I.T.D. reporting) for use in applying for reinstatement with the Department. The form for this Receipt and Notice is set forth in I.I.R. 10(d).

Clerical Duties:

1. Prepare and send Notice of Nonpayment to ITD, either manually or by the batch overdue processing procedure.

2. Place the case at the status of "Close pending clerk action" ISTARS. Enter Notice of NonPayment on the ROA. (If the notice of nonpayment was generated by overdue processing it will place the information on the ROA automatically).

3. When full payment is made for the previously suspended infraction charge, prepare and give the "Receipt and Notice of payment" to defendant, and document on the ROA.

4. Close the case.

4.8 APPEAL

An appeal from a judgment for an infraction may be taken to the district court and processed in the manner prescribed for criminal appeals from the Magistrate Division. I.I.R. 15.

Clerical Duties:

1. Re-open case in ISTARS;

2. File stamp Notice of Appeal and enter in ROA;

3. Mark the Appeal box on the case front screen, which will prompt a change of jurisdiction and judge on the case.

4. Provide the case file information and documentation to the District judge as per local protocol.

5. Await further instructions or "order" from the district judge re: hearings that may need to be set or other actions.

6. If the fines and fees have previously been paid then if the finding of guilty is overturned the fines/fees may need to be refunded to the defendant. If that is the order of the court the clerk will void the receipt wherein the payment(s) were made, and check the box indicating refund when performing that void. By doing that the system will generate a disbursement request to ask the appropriate department to create a check/warrant and pay back the defendant.

Note: An appeal of judgment or default judgment, does not excuse or forgive the payment due date on the charge. That money due date may be extended through the appeal time if so ordered by the court, or the clerk may accept the fines and fees as paid in full, and post them as a bond on the case until the decision is made re: the appeal.