

CLERK OF THE DISTRICT COURT MANUAL

6.0 CIVIL CASES

Revised June 2009

6.1 PURPOSE

The purpose of this section is to give an overview of how the typical civil case proceeds. Civil cases involve the resolution of disputes usually by the payment of money from one party to another. Civil cases are initiated by the filing of a complaint by a party (plaintiff) with the clerk of the district court. The clerk stamps and files the complaint, conforms copies, and issues a summons to the defendant. The defendant then may file an answer, cross-complaint, counterclaim, or in some other way respond to the plaintiff's claim. As the issues in the case are developed, the court may be involved through the filing of motions.

The court may set the case for a pre-trial hearing and trial, to give all parties a deadline by which all pretrial activities, i.e.: interrogatories, depositions and motions, must be completed.

6.2 FILING THE COMPLAINT (IRCP 5(e))

Clerical Duties:

1. Enter the correct filing fee code, collect fee and issue a receipt. ISTARS will display the fee and generate a receipt.
2. ISTARS will automatically assign a civil case number, which will be printed on the receipt. Write the case number on all paperwork filed.
3. Judge assignments are made automatically by ISTARS at the time the case is created. If a Judge assigned needs to be changed, use the New Judge option from the Case screen.
4. Enter complete plaintiff, defendant, and attorney information in ISTARS. Enter attorney information and uncheck the send notice box on the defendant screen. If pro se, confirm that the answering party's address is entered in ISTARS and leave the send notice box checked.
5. File stamp the Complaint/Petition, and conform any copies.

Note: Prisoners may file pleadings that are legibly hand-printed in black ink in whole or in part.

6. Issue the Summons. The Summons is prepared by the plaintiff and presented to the court.
 - a. Write case number on Summons.
 - b. Stamp the name of the assigned judge on the Complaint, and, according to local practice, on the summons.
 - c. Sign and seal Summons.
 - d. Return original "Summons" to the party filing the Complaint or retain it in the Court file. I.R.C.P. 4(c)(2)
7. File stamp all other documents submitted with the Complaint/Petition, and enter in the ROA.

6.3 RECEIPT OF THE ANSWER OR APPEARANCE

After the Complaint and Summons have been issued, the defendant may file an Answer or Appearance. The answer is the defendant's written response to the plaintiff's claim. In an Answer, the defendant may file a Counterclaim in which damages are sought from the plaintiff. A defendant may also file a Cross-Claim against another defendant to the suit, or a Third-Party Complaint against someone who is not yet a party to the action. Sometimes a defendant may file a document entitled "Special Appearance". The purpose of this document is not to answer the Complaint but to contest personal jurisdiction. (See IRCP 4(i).

If the defendant does not file an Answer or an Appearance to the Complaint, the plaintiff may request that a Default Judgment be entered against the defendant.

Note: A defendant is only required to pay one filing fee for either an Appearance or Answer.

Clerical Duties:

1. Enter the correct filing fee code, collect fee and issue a receipt. ISTARS will display the fee and generate a receipt.
2. File stamp papers and enter in ROA.
3. Enter attorney information and uncheck the send notice box on the defendant screen. If pro se, confirm that the answering party's address is entered in ISTARS and leave the send notice box checked.

6.4 RECEIPT OF ADDITIONAL PLEADINGS AND DOCUMENTS

Additional documents and pleadings may be filed such as: Cross-Claims, Counterclaims, Third-Party Complaints, Amended Complaints (if Amended Complaint is filed after an Answer, court approval before filing is required), Motions, and Lis Pendens. Interrogatories or Answers to Interrogatories, Responses to Request for the Production of Documents, or Depositions are not to be received or filed with the court.

Clerical Duties:

1. File stamp and enter in ROA.
2. Certain documents, such as Stipulations, Proposed Orders, Application for Out of State Service or Service by Publication, or other documents that require a judge's signature should be placed in the case file and forwarded to the judge, according to local practice.
3. After the judge has taken appropriate action, file stamp, conform copies, and enter in the ROA.

Note:

- a. Court clerks make no determination regarding the filing of any pleadings presented for filing, as long as it is accompanied by the appropriate fee.
- b. Receipt of Pleadings by Judges in Chambers. A judge may receive any of the above documents in chambers by noting on the document the filing date, hour and minute and then transmitting them to the office of the clerk (I.R.C.P. Rule 5(e)). Upon receipt in the clerk's office, the clerk enters the date of receipt written on the document by the judge into the ROA.

6.5 MEDIATION

Civil cases are eligible for referral to mediation. Most civil cases are eligible for mediation under IRCP 16(k). However, this rule does not govern child custody and visitation disputes. Those cases are eligible for mediation under IRCP 16(j).

The parties either select a person to act as a mediator, or the court appoints a mediator from the Idaho Supreme Court Roster of Civil Case Mediators maintained pursuant to the rule. Each judge has his/her own forms and orders for the purpose of mediation. For a list of mediators, see Idaho Supreme Court Roster of Civil Case Mediators (I.R.C.P. 16(k)) at www.isc.idaho.gov/civilros.htm.

Clerical Duties:

1. File stamp documents and enter in ROA.

6.6 LAW AND MOTION CALENDAR

Motions are heard on Law and Motion Days by district court judges and magistrates. Scheduling of law and motion hearings is established by local rule or practice.

If an attorney wants to appear on Law and Motion Day, the attorney must file a Notice of Hearing and serve a copy on opposing counsel. The attorneys should call the court to obtain the date of that court's Law and Motion Day prior to filing the notice.

Clerical Duties:

1. Schedule hearing in ISTARs.
2. Pull case files and take into the courtroom, or other designated area.
3. File stamp court Minutes and papers in case file after hearing and enter in ROA. Post the hearing results in ISTARs.

6.7 SCHEDULING TRIALS OR HEARINGS

For actions at issue, the court may set the case for trial or pre-trial hearing. Additionally, either party at any time may request the court to set the case for a pretrial hearing or for trial. The Request for Trial Setting is served by the requesting party upon all other parties in the action.

Clerical Duties:

1. File stamp the document and enter in ROA.
2. Enter a reminder in ISTARs to check for a Response to the Request for a Trial Setting. (Within five (5) days after service of the request, the opposing attorney must file a written response containing the information required in the request (I.R.C.P. 40 (b).) The response is served by the responding party upon all parties in the action. If the opposing party fails to respond, the court may set the case for pre-trial conference or trial.
3. Schedule the requested hearing or trial in ISTARs, print out the notices, and send to the appropriate parties.

Trial: See section on Trial Procedures and Court Minutes.

6.8 PROCEDURES FOLLOWING TRIAL OR OTHER DISPOSITION

After the trial is completed or the case otherwise is disposed of, the clerk must carry out appropriate procedures to fulfill the orders of the court pertaining to the case. This may include any of the following:

1. Processing a Judgment (see Section 6.9);
2. Processing a memorandum of costs (see Section 6.11);
3. Issuing a Writ of Execution (see Section 6.19);
4. Receiving a "Notice of Appeal" (see Section 18.10);
5. For all of the above alternatives, enter required information in the ROA.

6.9 JUDGMENTS AND CLOSING THE CASE

Entry of Judgment: Judgment is entered when signed by the judge and file stamped. The Judgment is not effective until file stamped.

Clerical Duties:

1. File stamp the original Judgment and all copies, and enter in the ROA.

Note: A judgment of divorce or annulment is not filed until a certificate, provided by the Department of Vital Statistics, is completed and presented to the court along with a Child Support Transmittal form (only if child support has been ordered).

2. The prevailing party shall prepare an Order or Judgment, and sufficient copies for service on all parties together with stamped, addressed envelopes. (I.R.C.P. 77(d)) The clerk shall make a note in the court records of the mailing.
3. The completed certificate should be mailed to the Department of Vital Statistics.
4. If child support is ordered, send the completed child support transmittal form along with a certified copy of the judgment to the Department of Health and Welfare. (I.R.C.P. 58(a))

Note: If your local practice is to keep a copy of the child support transmittal form, it must be placed in a confidential envelope.

5. Make sure all hearings are resulted, all documents are entered in the ROA, all bonds are disposed.

6. Enter the civil disposition for the parties involved in the judgment in the civil disposition field in ISTARs. Confirm that the case is closed. (**Note:** It is possible to have multiple civil dispositions in a case with multiple parties.)

Note: Judgments are not automatically recorded with the County Recorder. They are recorded by the parties only upon submission of a certified copy of the original Judgment (or a certified Abstract of Judgment and payment of the recording fees).

6.10 CASE INFORMATION PRIOR TO ISTARs

To obtain information regarding cases that were filed with the court prior to the installation of the ISTARs computer system, a clerk should check with their supervisor regarding local practice in finding a case.

6.11 MEMORANDUM OF COSTS

A Memorandum of Costs lists the expenses that the prevailing party may be repaid as a result of winning the lawsuit. The memorandum must be filed no later than fourteen (14) days after entry of the judgment. (I.R.C.P. 54(d)(5)) Costs that may be repaid may include court filing fees, attorney fees, costs of service or other costs as allowed by the Court in I.R.C.P. 54(d)(1). The Court also has discretion to disallow costs.

Objection to Costs. The opposing party may file a motion to disallow costs within fourteen (14) days of service of the memorandum of cost. Such motion does not stay the execution on the Judgment, exclusive of costs.

Clerical Duties:

1. File stamp documents and enter in ROA. Note in the disposition comment field the amount and parties awarded, as per local practice. If no objection has been filed, the case does not need to be reopened to enter the Memorandum of Costs in the ROA.
2. If there are objections to the costs, the case may need to be reopened and scheduled for hearing if an objection to the Memorandum of Costs is filed.
3. Send judgment or court's order of costs to parties.

6.12 SATISFACTION OF JUDGMENT

The Judgment may be paid directly to the prevailing party or to the Clerk of the Court. (I.C. § 10-1115).

Clerical Duties – Payment of Judgment:

1. If the check is made out to the prevailing party, the clerk cannot accept payment. Advise them to deliver payment directly to the prevailing party or make the check payable to the Clerk of the Court.
2. If payment is made to the Clerk of the Court, enter the payment as a bond posted on behalf of the party paying the funds, and provide a copy of the receipt.
3. If these funds were in the form of a check, there will be a 20-day holding period before that money can be released to provide the court time for that check to be cleared. Convert the bond to pay the prevailing party.

Note: Upon full payment of the Judgment, the prevailing party has the duty to record a "Satisfaction of Judgment" in every county where the Judgment or Abstract is recorded. (I.R.C.P. 58 (b)) Satisfaction may be signed by the attorney of the prevailing party.

Clerical Duties – Satisfaction of Judgment:

1. File stamp the Satisfaction of Judgment and enter in the ROA. Go to the civil disposition screen and enter the Satisfaction of Judgment and the date.

Note: Case does not have to be reopened to file a satisfaction of judgment.

2. Send copies to the appropriate parties, if copies and self-addressed, stamped envelopes have been provided.

Note: If Judgment is recorded, party should have Satisfaction of Judgment recorded to release any lien on property.

6.13 ABSTRACT OF JUDGMENT

An "Abstract of Judgment" is a summary of information contained in the original Judgment, which is certified by the clerk and may be used (pursuant to I.C. § 10-1110) to perfect a lien on real property, which upon request and receipt of proper fees by the County Recorder may be recorded. Additionally, clerks may be required to certify an Abstract of Judgment that occurred in another state and is being recorded in this state--for additional information, see Foreign Judgments I.C. § 10-1302.

The "ABSTRACT OF JUDGMENT" contains:

1. Title of the Court
2. Case Number
3. Names of Judgment creditor(s) and debtor(s)

4. Date
5. Amount of Judgment

Clerical Duties:

1. Upon payment of the proper fee, issue and certify the "Abstract of Judgment".

6.14 DEFAULT JUDGMENTS

A default occurs and is entered by the judge when a defendant fails to plead or defend as provided by the rules, (I.R.C.P. 55(a)(1)). Typically, default cannot be entered less than 20 days from date of service, unless otherwise directed by the court.

The court can enter judgment after a person has defaulted. Clerks under limited circumstances, outlined in I.R.C.P. 55 (b)(1), can enter judgment.

(Some administrative judges require the clerk to insure that an Affidavit Re: Non-Military Service is filed before a default judgment is entered.)

Divorce or Annulment. In a divorce or annulment proceeding, the default judgment must be signed by a judge. In such proceedings, the application for default is accompanied by a certificate from the Department of Vital Statistics fully completed by the person or attorney seeking the divorce or annulment. I.R.C.P. 55(b)(1).

IF THERE IS ANY QUESTION ABOUT WHETHER THE CLERK SHOULD ENTER A DEFAULT JUDGMENT, CONTACT THE ASSIGNED JUDGE.

Clerical Duties:

1. Determine that the claim is for a sum certain, or for a sum which can by computation be made certain (as in the case of interest).

Note: Claim for damages in an auto wreck is not for a sum certain. A Request for "reasonable attorney's fees" is not for a sum certain.

2. Determine that the defendant was personally served within the State of Idaho, and that Proof of Service is filed in the case.
3. Make sure that the 20 days from the date of service has expired.
4. Determine if the defendant has never appeared in the action either in person or by an attorney.

If there has been an appearance, default shall not be entered, unless the party or his representative has been served with three (3) days written notice of the application for default.

5. Compare the submitted Judgment to the Complaint to make sure the relief requested does not exceed the amount originally requested.
6. Make sure the "Affidavit for Default and Application and Order for Default" is in the file. The "Affidavit for Default" must show the following statements:
 - a. The amount due and the method of computation. (The amount due can be in a document identified as "Affidavit of Amount Due" or in a verified Complaint.)
 - b. That the defendant is not in the military service, is not under 18 years old or an incompetent person.
 - c. The defendant has been personally served, other than by publication or personal service outside of the State of Idaho, and 20 days have elapsed since said service. (See I.R.C.P. 6(a) for definition of 20 days.)
 - d. Defendant has never appeared in person or represented by counsel.
 - e. Written certification of the name and address of the defendant, which will give party notice of such default judgment.
7. Require sufficient copies of the "Judgment", along with stamped envelopes, addressed to the parties, in which to mail the copy of the filed Judgment. (See I.R.C.P. 77(d)).
8. Enter the Judgment by placing the filing stamp on the Original and conform all copies, and enter in the ROA. Send copies to all the parties.
9. Enter the civil disposition for the parties involved in the judgment in the civil disposition field in ISTARs. Confirm that the case is closed.

Note: It is possible to have multiple civil dispositions in a case with multiple parties.

6.15 FOREIGN JUDGMENTS

A foreign judgment is any judgment from another court, or an administrative agency that is entitled to full faith and credit in Idaho (I.C. § 10-1301) and should be processed as if it were a new case.

Foreign judgments are treated in the same manner as a judgment of the courts of this state (I.C. § 10-1302), except in cases that involve the custody or the support of minor children.

Clerical Duties:

1. Receive a certified (in accordance with Idaho Code) copy of the Foreign Judgment and an affidavit setting forth the names and last known post office addresses of the Judgment debtor and Judgment creditor.
2. Enter the correct filing fee. File stamp the document and enter the party information in ISTARs.
3. Enter the civil disposition for the parties involved in the judgment in the civil disposition field in ISTARs. Confirm that the case is closed.
4. The clerk shall mail Notice of the Filing of the Foreign Judgment to the judgment debtor at the address given by the creditor or creditor's attorney (I.C. § 10-1303(a)(b)). The clerk shall make a note of the mailing in the court record.

Note: Judgment or an abstract of judgment may be recorded in the County Recorder's Office after five days upon payment of the proper fees by the judgment creditor.

Note: Execution on Foreign Judgment. No execution or other process for enforcement of a foreign judgment shall be issued until five (5) days after the date the judgment is filed. (I.C. § 10-1303(c))

6.16 DEBTORS EXAMINATIONS

When an execution on a judgment is returned unsatisfied in whole or in part, the judgment creditor is entitled to an order requiring the judgment debtor to appear in court and answer, under oath, any questions concerning his property. Hearing must be held in the county of the judgment debtor's residence. (I.C. § 11-501.)

Clerical Duties:

1. Schedule the hearing and reopen the case.
2. On the date of the hearing, administer oath to debtor.
3. Record proceedings if requested by either party and close the case on the date the hearing is held or vacated.
4. Upon request transmit a copy of the record to the county where the judgment is filed.

Note: If it is an out-of-county case, the clerk does not need to create a case in ISTARS.

6.17 JUDGMENTS AFFECTING REAL ESTATE (I.C. § 5-409)

Judgments affecting title or possession of real estate may result in a lien on real property in one or more counties. As a result, clerks must certify and transmit to the other counties a copy of the judgment.

Clerical Duties:

1. Transferring Clerk

Upon receipt of appropriate fees, certify and transmit a copy of the judgment to the county clerk of the county in which real estate is situated.

2. Receiving Clerk

Upon receipt shall file as a foreign judgment in ISTARS, docket, and send a certified copy to the county recorder of the county where the property is situated.

6.18 RENEWAL OF JUDGMENT

The purpose of renewing a judgment is to keep a valid judgment active.

In all cases other than for the recovery of money, the judgment may be enforced or carried into execution after the lapse of five (5) years from the date of its entry, upon motion or by judgment for that purpose. (I.C. § 10-1111 and § 11-105)

Clerical Duties:

1. Collect filing fee.

2. File stamp the Motion for renewed Judgment.

3. Have judge sign order.

4. File stamp order, enter in ROA, and send a copy to the parties.

5. Enter the civil disposition in ISTARS and close the case.

Note: These are timed documents. Judgments are good for 5 years and then must be renewed in order for the judgment to be valid.

6.19 EXECUTION OF JUDGMENTS

In a Civil case after a judgment is entered, the prevailing party has a right to obtain a "WRIT OF EXECUTION" from the Clerk. The prevailing party must file an affidavit as to the total amount of the judgment, including interest and costs. The writ is forwarded to the Sheriff for service. The writ authorizes the Sheriff to seize property to satisfy the judgment.

Unlike small claims appeals, if an appeal is filed, a stay of execution is not automatically provided for under I.A.R. 13. The judgment creditor may have a writ issued even if there has been an appeal, unless there is an order staying execution of the judgment.

Preparation of Writs of Execution

Clerical Duties:

1. Check that a judgment has been entered and that a stay of execution has not been issued.
2. Verify the filing contains an affidavit verifying the computation of the amount due under the judgment, IRCP 69. (It is the attorney's responsibility to correctly compute the amount due.)
3. Collect the appropriate fee.
4. Sign and seal the "Writ of Execution" which is prepared by the prevailing party.
5. Writ of Execution is given to the party to take to the Sheriff of any county in the State. If it requires delivery of real or personal property, it may be issued to the sheriff of the county where the property or some part thereof is situated. Executions may be issued at the same time to different counties. (I.C. § 11-107)
6. Enter on the Register of Actions that a writ has been issued.
7. After the Sheriff has seized the property, the writ is returned to the court for filing.

Clerical Duties on Return on Execution:

1. File the Original Writ and the Sheriff's return of service.
2. Enter "Return of Writ" into the Register of Actions.
3. Note the amount seized in the Register of Actions as per local practice.

6.20 CASE DISMISSAL FOR INACTIVITY

In all civil cases, except guardianship, conservatorship and probate proceedings, in which no action has taken place, or in which the summons has not been issued and served for a period of six months, the case shall be dismissed unless good cause is shown for retaining the case. (I.R.C.P. 40(c))

Clerical Duties:

1. Run ISTARS report that identifies cases eligible for inactivity dismissal.
2. Provide a Notice of Proposed Dismissal to all parties fourteen days prior to the dismissal of the case.
3. If a response is received from a party to retain the case, forward the response to the judge for review, along with the Order of Dismissal/Retention. If the judge decides to retain the case, enter that action into the Register of Actions on ISTARS.
4. For those cases where no response is received, prepare an Order of Dismissal/Retention for the judge to sign.
5. Once the Order of Dismissal/Retention is signed by the judge, file stamp, enter in ROA, and send a copy to parties.
6. Enter civil disposition in ISTARS and close the case.

**6.21 FILING FEE SCHEDULE
(Idaho Rules of Civil Procedure Appendix A)**

APPENDIX A. FILING FEE SCHEDULE--DISTRICT COURT AND MAGISTRATE DIVISION

6.22 EXTRAORDINARY WRITS

Extraordinary writs (or remedies) are court proceedings which take place when usual remedies are not adequate. Certiorari, mandamus and prohibition are the most common extraordinary writs.

1. *Certiorari* - writ of review. Certiorari is an extraordinary writ issued by an appellate court at its discretion directing a lower court to deliver the record in the case for review. It is used when there is no right to appeal so the party petitions for the writ to be issued. (I.A.R. 3)
2. *A writ of mandamus* (or mandate) is issued by a court to compel performance of an act by a public official; for example, mandamus will be issued to compel a court or a board to allow a person to assume an office to which the person is

entitled. Refer to local protocol to see if a copy needs to be sent to legal counsel for county. (I.C. § 7-302)

3. ***Prohibition.*** A writ of prohibition is issued to stop the performance of an act of a lower court or a board when the court or board is acting in excess of its jurisdiction. (I.C. § 7-401)

Filing the petition for the writ. Writ proceedings begin with the filing of a Petition for Writ. (I.R.C.P. 74)

Clerical Duties:

1. Open a case in ISTARS.
2. Create a case file and send directly to the judge.

Once the judge either grants or denies the petition:

Clerical Duties:

1. File stamp and enter in ROA the order granting or denying the petition.
2. Enter the civil disposition in ISTARS and close the case.

6.23 UNIFORM POST-CONVICTION RELIEF

A person who has been convicted of and sentenced for a crime can institute proceedings, without payment of a filing fee, to seek relief from the conviction or sentence. The grounds for this relief are outlined in the Uniform Post-Conviction Act (I.C. § 19-4901 et. seq.)

Defendant files a verified "Petition for Uniform Post-Conviction Relief." No fee is charged for filing.

Clerical Duties:

1. Open a case in ISTARS.
2. Deliver a copy of the petition to the prosecuting attorney and transmit to the sentencing judge immediately.
3. In the event the judge grants a hearing after the response by the state, the clerk schedules the hearing on ISTARS.

Closing the Case

Clerical Duties:

1. When the order granting or denying the petition is received from the judge, file stamp the order and enter in ROA.
2. Send copy of order to the parties. The clerk shall make a note in the court record of the mailing.
3. Enter the civil disposition in ISTARS and close the case.

6.24 HABEAS CORPUS

Any person who is confined, restrained or held unlawfully may file a "Petition for Writ of Habeas Corpus". (I.C. § 19-4203)

Clerical Duties:

1. Open a case in ISTARS.
2. File stamp the petition and enter in ROA.
3. Collect the filing fee from non-indigent prisoners. (Note: There may be a motion, affidavit and order for fee waiver. If the judge signs the order, the fees will be waived.)
4. Transmit to the judge immediately and deliver a copy to the prosecuting attorney or legal counsel for your sheriff.

Note: Persons incarcerated can submit written pleadings that are legibly hand printed in black ink. (IRCP 10 (a)(1))

If the judge grants the petition and signs an "Order for Writ of Habeas Corpus":

Clerical Duties:

1. Issue and place a seal on the writ and enter in ROA.
2. If the writ is directed against the sheriff or other officer of the court, serve the writ immediately on that officer. Otherwise, deliver it to the sheriff for service.
3. Mail copies of the order to the prosecuting attorney and public defender (if applicable).
4. Enter the civil disposition in ISTARS and close the case.

If the judge denies the writ:

Clerical Duties:

1. File stamp the order, enter in ROA, and send copies to parties.
2. Enter the civil disposition in ISTARS and close the case.

6.25 UNLAWFUL DETAINER

Disputes between landlords (owner of the property) and their tenants (renters of the property) are often brought to the court to be resolved. A tenant who has not paid rent, has violated a term of the lease or has been given proper notice but refuses to move out is guilty of unlawful detainer. A landlord has the legal right to evict such a tenant under I. C. § 6-303.

A tenant of real property is in unlawful detainer when:

1. The tenant stays on the property after the term of the lease expires.
2. The tenant stays on the property after not paying rent and the 3-day notice in writing requiring its payment is given.
3. The tenant stays after failing to perform other conditions of the lease and the 3-day notice in writing requiring the performance of the conditions is given.
4. When the tenant assigns, sublets or causes damage to the property contrary to the lease and the 3-day notice is given (I.C. § 6-303).

The Landlord must arrange for service of a three-day eviction notice upon the tenant. Service must be done in one of the three ways required by I.C. § 6-304. Within three (3) days after the service of the notice, the tenant may perform the conditions or covenants of the lease, or pay the stipulated rent and thereby save the lease from forfeiture. If the tenant does not comply with the lease in the three-day time period, the landlord can begin the process to evict the tenant.

Filing the complaint

The landlord or his attorney must prepare the Complaint for Unlawful Detainer and Possession and the Summons for Eviction. He/she will come to the court to file the documents with a copy of the 3-Day Notice, the Affidavit of Service or other proof of service and the written lease (if any) attached to the complaint. Don't refuse the filing if all the attachments are not there.

Clerical Duties:

1. Collect the filing fee.
2. File stamp the Complaint, conform two copies, and enter in ROA.
3. Issue the Summons and conform two copies.
4. Issue a Notice of Trial.
5. Set the trial date within 12 calendar days of the filing of the complaint, but at least 5 days after the tenant is served. I.C. § 6-310(5).
7. Return to the plaintiff the original Summons and two copies of both the Complaint and Summons.

Note: A jury trial can be requested in these cases. I.C. § 6-310.

The Trial

At the hearing, the property owner (landlord/plaintiff) must present testimony under oath and provide exhibits establishing a right to a Judgment and Order of Eviction. The tenant will then have an opportunity to present his/her case to the judge. If the tenant does not appear for the trial, a default judgment may be entered. In this Unlawful Detainer action, the plaintiff is entitled to only an order of eviction not a judgment for money (rent, late fees, damages to property).

Issuing the Judgment

If the judge rules for the landlord or a default judgment is entered in the landlord's favor, the judge issues a Judgment and Order of Eviction.

Clerical Duties:

1. File stamp the Judgment and Order of Eviction and enter in ROA.
2. Conform two copies of the judgment.
3. Provide a copy to both the plaintiff and defendant. If the defendant (tenant) is not present, mail a copy of the judgment to him/her.
4. Issue the Form of Execution directed to the sheriff in substantially the same form as in I.C. § 6-311C and conform two copies; provide the original and copies to the plaintiff.

Note: This may be called a writ of assistance, writ of ejectment or writ of restitution.

5. Enter the civil disposition in ISTARS and close the case.

Dismissing the Case

If the judge does not find in favor of the landlord, he/she will issue an Order of Dismissal.

Clerical Duties:

1. File stamp the order and enter in ROA.
2. Conform two copies for the landlord and tenant.
3. Enter the civil disposition in ISTARS and close the case.

6.26 CHANGE OF VENUE IN CIVIL CASES

Change of venue involves transferring the assignment of a case from one county to another. The change must be approved by the court based upon the grounds outlined in the rule. (I.R.C.P. 40(e))

The judge or magistrate must, on a motion pursuant to Rule 12(b), grant a change of venue or change the place of trial to another county when it appears by satisfactory proof that:

1. The county designated in the complaint is not the proper county, or
2. There is reason to believe that an impartial trial cannot be had therein, or
3. The convenience of witnesses and the ends of justice would be promoted by the change.

Filing a Motion for Change. The petitioner files a "Motion and Order for Change of Venue".

Clerical Duties:

1. Collect the fee for the receiving county and attach the fee to the order.
2. File stamp motion and enter in ROA.
3. Route the motion and order with the case file to the assigned judge.

Granting a Change of Venue Within the Same Judicial District. The court issues an "Order for Change of Venue" which transfers the case to the new county.

Clerical Duties:

1. Upon granting of the motion, file stamp the "Order for Change of Venue" and enter in ROA.
2. Send filing fee for new court and all original pleadings and papers and a certified copy of the order changing venue to the clerk of the court of new venue, by certified mail.
4. Enter the court of new venue in the ROA, enter the civil disposition in ISTARs and close the case.

Note: The same judge will remain on the case unless the administrative district judge or trial court administrator reassigns it.

Granting a Change of Venue Outside the Judicial District. The court issues an "Order of Change of Venue" which transfers the case to the new county. The judge may desire to continue assignment of the case. If the judge desires to continue assignment over the case, it will state this in the order.

Clerical Duties:

1. File stamp the "Order for Change of Venue" and enter in the ROA.
2. Route the motion and order with the case file to the assigned judge.
3. Upon granting of the motion, file stamp the "Order for Change of Venue" and enter in ROA.
4. Refer the case to the Administrative Director of the Court for assignment by the Supreme Court to a court of proper venue in another judicial district and assignment of a specific judge to preside in the proceeding by filling out a request form (attached). File a copy of the request.

Note: If the reason for the change of venue is filed on the grounds that the county designated in the complaint is not the proper county, you do not need to refer the case to the Administrative Director of the Courts.

5. Hold file until a "Designation of Venue and Assignment of Judge" is received from the Supreme Court.
6. Send all original pleadings and papers and a certified copy of the "Order for Change of Venue" and the "Designation of Venue and Assignment of Judge" along with the filing fee to the clerk of the new court.
7. Transfer materials by certified mail.

8. Enter the court of new venue in the ROA, enter the civil disposition in ISTARs and close the case.

Receiving County

Clerical Duties:

1. Open a case following the procedures for civil actions and open as a case transferred in from another county; process the filing fee.
2. If transferred from within the same judicial district, then the same judge should still be assigned to the case. If from a different judicial district, then there should be an order from the Supreme Court assigning it to the Administrative District Judge. Take this order to the Trial Court Administrator for assignment of the case.

REQUEST FOR ASSIGNMENT--CIVIL

Case No. _____ County: _____ Date Filed: _____

Plaintiff: _____ Attorney: _____

V.

Defendant: _____ Attorney: _____

BRIEFLY DESCRIBE THE ISSUES INVOLVED:

DISQUALIFICATIONS: JUDGE _____ BY _____
(attach copy of order) _____

REASON FOR DISQUALIFICATION:

IF CHANGE OF VENUE, ATTACH ORDER OR EXPLAIN:

ANYTHING UNUSUAL ABOUT CASE NEW JUDGE SHOULD BE TOLD:

ANY URGENCY TO SCHEDULE HEARING OR TRIAL: [] YES [] NO

EXPLAIN:

STATUS OF CASE:

EST. TRIAL TIME ___ DAYS [] Jury Trial [] Court Trial

DATE:

SIGNATURE:

SEND REQUEST TO:
STEVE KENYON
PO BOX 83720
BOISE ID 83720-0101

6.27 ISSUING OF SUBPOENA FOR INTERSTATE DEPOSITIONS AND DISCOVERY

I.R.C.P. 45 (i)(3) enables an attorney prosecuting or defending a lawsuit outside the jurisdiction of Idaho to conduct discovery within Idaho.

To request issuance of a subpoena under Rule 45(i), a party must submit a foreign subpoena to a clerk of court in the county in which discovery is sought to be conducted in this state. A request for the issuance of a subpoena under this rule does not constitute an appearance in the courts of this state.

An attorney may make application to the court for a protective order to enforce, quash, or modify subpoena issued under Rule 45(i)(3). See 45(i)(6).

Clerical Duties

1. Issue a subpoena, which has been provided by the requesting attorney, for service.

Note: The officer or individual responsible for service shall not return a certificate of service or affidavit to the court that issued the subpoena under Rule 45(i)(3).

2. The clerk shall not create a new file or collect a fee.

Note: If there is a petition to modify or quash a subpoena, then a new file is created and a hearing is set.

6.28 SMALL LAWSUIT RESOLUTION ACT

The Act was designed to reduce the cost of litigation and encourage swift, fair and cost-effective resolution of disputes. It applies only to civil actions in which the sole relief sought is a money judgment that does not exceed twenty-five thousand dollars (\$25,000). It also establishes a new alternative for resolution, evaluation, in which an evaluator essentially determines for the parties the value of the claims. Idaho Code § 7-1501 et. seq. and I.R.C.P. 85

Initiating the Act. To initiate the Act a party must file a notice with the court. The form may be filed in the magistrate court or the district court, depending on the amount of the claim. If the claim is under \$10,000, it is filed in the Magistrate Division; if the claim is \$10,000 or more, it is filed in the District Court.

In the Magistrate Court, the Act must be initiated at least 30 days after the Service of Complaint and at least 100 days before the scheduled trial. In District Court, the Act must be initiated at least 45 days after the Service of Complaint and at least 150 days before the trial. (I.C. § 7-1503 (2))

The form for this notice must be entitled "Notice of Initiation of Proceedings Under the Small Lawsuit Resolution Act". The parties must then decide if they want to attempt to resolve the case by evaluation or mediation.

Selecting an Evaluator

The Supreme Court maintains a list of approved evaluators on its website. Unless a judge has been assigned as an evaluator or the parties have agreed in advance to the selection of a particular evaluator, the clerk must provide each party a list containing the names of the same five randomly selected evaluators. The list must also include the evaluator's hourly rate. If more than two parties are involved, then the clerk must provide ten randomly selected names. The notice requesting the evaluation will designate the number of parties involved so the clerk will know how many names to provide. Requests for replacement list may be submitted within three days. Upon application of any party, made no sooner than 14 days after the filing of the notice of request for evaluation, the clerk shall assign by random lot any of the individuals on the list of evaluators. (I.C. § 7-1504)

After the case is assigned to an evaluator, documents used in the evaluation shall be filed with the evaluator instead of the court. Motions that require the court's assistance may still be filed with the court. During evaluation the court retains jurisdiction over the case and it remains on the court's active calendar as if it were going to trial. (I.C. § 7-1506)

Within 14 days following the evaluation, the evaluator files notice of the decision with the clerk of the court, but not the decision itself. (I.C. § 7-1509(1))

Trial de Novo

Any party who is not satisfied with the decision has 21 days from the filing of the notice of decision to request a trial de novo. The trial is conducted as if the evaluation never took place; however, if the party requesting the trial does not improve his or her position by 15% then that party will be assessed costs, fees and expenses. (I.C. § 7-1509(2))

Filing the Judgment and Evaluators Decision

If no request for a trial de novo is made, any party may present a judgment to the court accompanied by the evaluator's decision. At the end of the case, a statistical form must be filled out by the presiding judge and mailed to the Administrative Director of the Courts. (I.R.C.P. 85)

Clerical Duties:

1. File stamp "Notice of Initiation of Proceedings Under the Small Lawsuit Resolution Act" and enter ROA code: SLRA (for Small Lawsuit Resolution Act).

2. Unless a judge has already been assigned to act as the evaluator or the parties indicate they have already agreed upon an evaluator, provide a list of evaluators-Go to Supreme Court website (www2.state.id.us/judicial/litigros.htm) to find the evaluators for your county. If there are two parties to the lawsuit, then randomly select 5 evaluators and give a list of these 5 names to each party. (The notice will designate the number of parties in the lawsuit.) If there are more than two parties, the list should contain the names of 10 evaluators. The list should include the hourly rate of the evaluator along with the evaluator's name. This information will be on the website. (See attached suggested form.)
3. Each party may request a replacement list within three days and may continue to request replacement lists until they have chosen an evaluator. If asked for a replacement list, follow the same procedure to provide a new list of names to the parties.

Note: The parties may submit a motion for court assistance or clerk assistance in picking an evaluator. Each county should establish their own procedure for random selection of an evaluator by the court or clerk; ask your court supervisor about the procedure in your county.

4. The parties should file a notice of selected evaluator within 10 days of receiving the final list. File stamp the notice and enter in ROA. An ROA entry should be made naming the evaluator.
5. If the parties cannot agree on an evaluator, they may file an application for the court to select one. This should be sent to the court. No hearing is held on this motion.
6. Upon application by any party made no sooner than 14 days after the notice of initiation is filed, the clerk shall assign an evaluator by random lot from the list of evaluators and file notice of the evaluator selected. (See attached suggested form). An ROA entry should be made naming the evaluator.

Note: (After this point all documents relating to evaluation will be filed with the evaluator and not the court.)

7. If a notice of decision of evaluator is presented, file it and enter ROA code "SLDO" (Small Lawsuit Decision Order). This does not end the case. From this point on, all filings will be as in any other civil case.
8. If a "Request for Trial de Novo under the Small Lawsuit Resolution Act" is presented file it and enter ROA code: SLTP (Small Lawsuit Request for Trial Plaintiff) if the request is by the plaintiff, and SLTD (Small Lawsuit Request for Trial Defendant) if the request is by the defendant. Set the case for trial and proceed as in any other civil case.

9. The Statistical Information Form set out in Rule 85(m) of the Rules of Civil Procedure should be prepared by the presiding judge and sent to the Administrative Director of the Courts.
10. Enter the civil disposition in ISTARS and close the case.

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

Plaintiff,)	Case No. _____
V.)	SMALL LAWSUIT RESOLUTION ACT CASE INFORMATION SHEET
Defendant.)	

- Notice of Initiation of Proceedings Under the Small Lawsuit Resolution Act.
 Rule 85(c)
ISTARS ROA code – SLRA

- Request for trial de novo - Trial Requested by the Plaintiff.
 Rule 85(l)
ISTARS ROA Code – SLTP

- Request for trial de novo - Requested by the Defendant
 Rule 85(l)
ISTARS ROA Code – SLTD

- Statistical Information only as required by Rule 85(m):
 - Party requesting trial de novo:**
 - Improved position over evaluator's decision by at least 15%
ISTARS ROA Code – SLDI
 - Failed to improve position by at least 15%
ISTARS ROA Code – SLDF

Date: _____

Signature

SLRA Forms

- Notice of Initiation--District Court SLR 1
- Reply to Notice of Initiation--District Court SLR 1-1
- Notice of Initiation--Magistrate Court SLR 2
- Reply to Notice of Initiation--Magistrate Court SLR 2-1
- Agreement to Mediation/Evaluation SLR 3
- Notice of Completion of Mediation/Evaluation SLR 4
- Motion Seeking Court Assistance SLR 5
- Reply to Motion Seeking Court Assistance SLR 5-1
- Motion for Removal from Evaluation SLR 7
- List of Approved Evaluators SLR 8
- Request for Replacement List of Approved Evaluators SLR 9
- Replacement List of Approved Evaluators SLR 10-1
- Notice of Joint Selection of Evaluator SLR 11
- Motion Seeking Court Assistance in Evaluator Selection SLR 12
- Reply to Motion Seeking Court Assistance in Evaluator Selection SLR 13
- Notice of Selection of Evaluator by Clerk SLR 14
- Application for Evaluator Selection by Clerk SLR 15
- Motion to Challenge Service of Evaluator SLR 16
- Notice of Decline of Appointment by Evaluator SLR 17
- Request for Statement of Damages Sought SLR 19
- Response to Request for Statement of Damages Sought SLR 20

- Notice of Intent to Present Live Expert Testimony SLR 21
- Notice of Evaluation Hearing SLR 22
- Notice of Failure to Schedule Hearing During Prescribed Period SLR 23
- Notice of Issuance of the Evaluator's Decision SLR 24
- Request for Trial DeNovo SLR 25
- Acceptance of Offer of Compromise SLR 27