

CLERK OF THE DISTRICT COURT MANUAL

9.0 DOMESTIC RELATIONS

Revised October 2006

9.1 OVERVIEW

Domestic relations cases deal with matters of the household or family, including divorce, separation and custody. These proceedings usually are handled in the magistrate court.

9.2 DIVORCE

Filing a Complaint: The complaint must be accompanied by a family law case information sheet before it is filed. The sheet is to be confidential and must be kept in a sealed envelope.

Clerical Duties:

1. Check fee schedule for correct code and fee category, collect fee and issue a receipt.
2. ISTARS will automatically assign a case number, which will be printed on the receipt. Write the case number on all paperwork filed.
3. Judge assignments are automatic with most filing types. If a county has various judges who are selected by the clerk this may be done at the time the case is created.
4. Create the ISTARS case record. Enter complete Plaintiff and Defendant information in the appropriate screens.
5. File stamp the Complaint, and conform any copies.
6. File stamp the family law case information sheet and enter it in the ROA. The sheet is confidential and must be kept in a sealed envelope.
7. Issue the Summons.
 - a. Write case number on Summons.
 - b. Stamp the name of the assigned judge.
 - c. Sign and seal Summons.
 - d. Return original of Summons and conformed copies of Complaint and Summons to the party filing the complaint.

- e. If required by local procedure, attach a preliminary injunction and any orders to attend parenting or other classes signed by the Judge to the back of each Summons.
8. ISTARs will index the case in the Civil Name Index by each name entered as Plaintiff/Defendant as each party is entered when forming the case.
9. If ISTARs is preparing a case file label, attach label to front of file jacket, and the case number label on the file tab.
10. File the documents in the case file and place the case file numerically in the proper place.

If no answer is received within 20 days of service, default divorce proceedings may be followed as with defaults in other civil cases. However, a decree or judgment of divorce cannot be completed until the prevailing party provides the clerk with a completed certificate of divorce or annulment and child support form where applicable (IRCP 58)

Clerical Duties:

1. Forward the completed certificate of divorce or annulment to the Department of Vital Statistics, Department of Health and Welfare.
2. Forward the Child Support form to the Department of Health and Welfare, Child Support Division with a certified copy of the decree.
3. Enter the appropriate disposition in ISTARs.
4. Close the file.
5. If appropriate, update the party master to include an alias that reflects any name change ordered.

9.3 MEDIATION

Mediation under this rule is the process by which a neutral mediator appointed by the court or agreed to by the parties assists the parties in reaching a mutually acceptable agreement as to issues of child custody and visitation. The role of the mediator is to aid the parties in identifying the issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise and finding points of agreement. An agreement reached by the parties is to be based on the decisions of the parties, and not the decisions of the mediator. (IRCP 16 (j))

Matters Subject to Mediation:

All domestic relations actions involving a controversy over custody or visitation of minor children at the trial and post-decree stages in the courts of this state shall be subject to mediation regarding issues of custody, visitation or both.

Selection of a Mediator:

The court shall permit the parties to select a mediator. An approved list of qualified mediators is maintained by the Idaho Supreme Court. If the parties are unable to select a mediator, the court shall appoint one.

Requirement to Attend Orientation:

The district court of any judicial district may provide by local rule that all parties to any domestic relations case involving children, whether or not a trial or contested case has been scheduled, be required to attend such parent mediation orientation, unless excused by the court.

Authority of the Court:

A court shall order mediation if, in the court's discretion, it finds that mediation is in the best interest of the children and is not otherwise inappropriate under the facts of the particular case.

Clerical Duties:

1. Retain a current list of approved mediators as provided by the Idaho Supreme Court.
2. Advise parties of how to contact the Mediators for more information.
3. File the order to attend mediation orientation and order to mediate in the Register of Actions for the case.
4. File other documents, such as certificate of completion of mediation, request for exemption in case file.
5. If there is an Alternative Dispute Resolution Screening Report, it should be file stamped and it must be kept in a sealed envelope.

9.4 PERMISSION TO MARRY

Juveniles under 16 years of age are required to have the court's permission to marry. (IC § 32-202)

Filing a Petition to Marry: The petitioning party files a "Petition for Authority to Marry" along with a "Certificate of Physician" and "Consent of Parent or Guardian."

Clerical Duties:

1. Open a case file following procedures for civil cases.
2. Assign the case to a judge.
3. Collect filing fee.
4. Set a hearing as directed by the assigned judge.

Hearing: A hearing is held in which the judge determines if permission to marry should be given. If so, an Order Allowing Minor Marriage" is signed by the judge. If not, an order denying permission is entered.

If the parties desire a waiver of the three (3) day waiting period before marrying and the judge orders the waiver, the order is presented to the recorder so the marriage license may be issued immediately.

Post-Hearing: Issue certified copies of the "Order Allowing Minor Marriage" to the parties.

Waiver of Waiting Period for Minor Marriage: In cases involving marriage of minors, the court may waive the required three (3) day waiting period, medical examination, laboratory tests and certificates if an emergency or other cause exists and the public health or welfare will not be injuriously affected. (IC § 32-414)

Any hearing to waive the waiting period is confidential. No fees or court costs are assessed. The order of court is filed by the licensing authority in lieu of a certificate.

Clerical Duties:

1. Transmit to the Department of Health and Welfare a transcript of the record and the court order.
2. Close the case.

9.5 FOREIGN JUDGMENT

You may receive a decree or judgment from another state or country, follow the procedures in 6.15.

9.6 UNIFORM CHILD CUSTODY JURISDICTION ENFORCEMENT ACT

Registration of a Child Custody Order: In 2000, the Uniform Child Custody Jurisdiction Enforcement Act was adopted in Idaho. (Idaho Code § 32-11-305)

This Act provides that a "child custody determination issued by a court of another state may be registered in this state, with or without a simultaneous request for enforcement, by sending it to the office of the clerk of any district court in this state." (Idaho Code § 32-11-305(a))

The act requires the registering party to send to the office of the clerk of the district court:

1. A letter or other document requesting registration;
2. Two (2) copies, including one (1) certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and
3. The name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child custody determination sought to be registered.

Clerical Duties:

1. File stamp the certified judgment and all copies.
2. Create a case file in ISTARS.
3. Serve the notice of registration on all parties named in the order.
4. File the certified copy and certificate of mailing in the case file.
5. Enter the civil disposition and close the case in ISTARS.

Note: A person seeking to contest the validity of a registered order must request a hearing within twenty (20) days after service of the notice.

6. If a hearing is requested, reopen the case and charge the appropriate fee.

Request for Enforcement: In some cases, the party will want to obtain a court order enforcing the terms of the custody order. The party will need to file a petition outlining the violations that have occurred to be served on the other parent or parties acting as a parent. The clerk will need to serve the petition and schedule a hearing.

9.7 FAMILY COURT SERVICES EVALUATION

Go to Word Processor

9.8 PETITION FOR STERILIZATION

CLERKS PROCEDURES

Idaho Code § 39-3901 et seq

Background: The legislature of the state of Idaho acknowledges that sterilization procedures are highly intrusive, generally irreversible and represent potentially permanent and highly significant consequences for individuals incapable of giving informed consent. The legislature recognizes that certain legal safeguards are required to prevent indiscriminate and unnecessary sterilization of such individuals, and to assure equal access to desired medical procedures for all Idaho citizens. (I.C. 39-3901 et. seq.)

Initiation of the Proceeding: Any person may file a petition in the district court alleging that the petitioner or another party meets the requirements for sterilization. The petition shall be filed in the district court where the party resides.

Referral to the Evaluation Committee: The court shall refer the petition to an evaluation committee composed of persons contracted by or employees of the department of health and welfare for review and recommendation. The committee shall submit a report in writing to the court containing its recommendations together with supporting documents. The case will be heard by a District Judge who will issue an order approving, denying or otherwise disposing of the petition.

Appeal: The decision shall be appealable to the Supreme Court of Idaho in the same manner as in civil actions.

Statistical Reporting: The administrative director of the courts shall compile statistics for each calendar year, accessible to the public, including the number of petitions filed. The number of petitions in which the evaluation committee recommended or recommended against a procedure and the number of petitions granted by the court as well as the number of appeals filed.

Clerical Duties:

1. **Receipt of Filing:** Upon receipt of a petition for sterilization the clerk will file the case in ISTARs with the filing Code K8-Juvenile and Family Petition for Sterilization. No filing fee is required. (A new subtype of 'ST' is used in the new ISTARs Program.)
2. **Sealed Record:** The entire record is to be sealed and made exempt from disclosure pursuant to chapter 3, title 9, Idaho Code.

3. ***Jurisdiction:*** The completed petition shall be filed in District Court. Assign the case to a District Judge and send the file to the judge for review and consideration of service, appointment of counsel and appointment of guardian ad litem.
4. ***Service of Copy of Petition:*** The petition must be served personally upon the party who is being considered for sterilization, his or her guardian or parent, his or her counsel, his or her guardian ad litem, and such other persons as the court may designate. The clerk will need to prepare copies of the petition for service to the appropriate parties and arrange for service as directed by the Court.
5. ***Referral to the Evaluation Committee:*** The court shall refer the petition to an evaluation committee.
6. ***Schedule a Hearing:*** Upon receipt of the recommendation of the evaluation committee the court shall set a hearing on the petition and shall order that copies of the evaluation committee's reports and notice of the time and place of the hearing be provided the person subject to this chapter, their guardian, their counsel, their guardian ad litem, and such other persons as the court may designate.
7. ***Closing the Case:*** The case will be closed by the clerk after the hearing and upon receipt of the final order or judgment of the court.