In the Supreme Court of the State of Idaho

IN RE: ADOPTION OF NEWLY FORMATTED IDAHO RULES OF CIVIL PROCEDURE AND IDAHO RULES ON SMALL CLAIM ACTIONS) **ORDER**

The Court appointed a special committee to review the Idaho Rules of Civil Procedure, to simplify, clarify and modernize the language, and to create a consistent structure and format along with a more useful table of contents. The Committee has completed its work and the Court has reviewed the recommendations.

NOW THEREFORE IT IS ORDERED that the existing Idaho Rules of Civil Procedure be, and hereby are, rescinded and the attached Idaho Rules of Civil Procedure and Idaho Rules for Small Claim Actions are hereby adopted.

IT IS FURTHER ORDERED that this order shall be effective July 1, 2016.

IT IS FURTHER ORDERED that notice of this Order shall be published in one issue of The Advocate.

DATED this 1st day of March, 2016.

By Order of the Supreme Court

Jim Jones, Chief Justice

ATTEST: Stephen Kenyon
Clerk

Table of Contents

Idaho Rules of Civil Procedure

TITLE I - GENERAL ADMINISTRATION

Rule 1. Scope of Rules; District Court Rules

(a) **Title.** These rules may be known and cited as the Idaho Rules of Civil Procedure, or abbreviated I.R.C.P.

(b) **Scope of Rules.** These rules govern the procedure and apply uniformly in the district courts and the magistrate's divisions of the district courts in the State of Idaho in all actions, proceedings and appeals of a civil nature; except that proceedings in the small claims department are governed by these rules only as provided by The Idaho Small Claims Rules and family law proceedings as identified in Rule 101, Idaho Rules of Family Law Procedure (IRFLP) are governed by the IRFLP. All references in these rules to the court or district court include the magistrate's division, and all references to judges or clerks include magistrates and their clerks and a judge pro tempore appointed pursuant to Idaho Court Administrative Rule 4. These rules should be construed and administered to secure the just, speedy and inexpensive determination of every action and proceeding.

(c) **District Court Rules.** The district courts of each judicial district by majority vote of all district judges may make rules governing the internal case management and procedure of the district court including procedures for setting the time and place for the trial of actions and the hearing of all other proceedings and motions. District court rules must be consistent with these rules, and must be approved and published by order of the Supreme Court before the effective date, unless an emergency is declared by the Supreme Court, in which case the order may be declared to be effective immediately.

Rule 1.1. Jurisdiction and Venue Unaffected

These rules should not be construed to extend or limit the jurisdiction of any court of this state, or the venue of actions.

Rule 1.2. Jurisdictional Amounts for Assignment to Magistrates; Counterclaims and Cross-Claims

(a) **Determining Jurisdictional Amount.** The jurisdictional amounts in Idaho Code Sections 1-2208 and 1-2210, or in the Idaho Court Administrative Rules is exclusive of interest, costs, punitive damages and attorney fees, if any. In determining filing fees and jurisdictional amounts involved in an action, the total amount of all counts is added together to determine the amount claimed in the action. If, however, there are several counts asking for the same or similar relief, the assigned judge may determine by written order the actual amount in controversy for the purpose of determining whether the case is within the jurisdictional amount for assignment to a magistrate.

(b) **Counterclaim or Cross-Claim Exceeding Magistrate Jurisdiction.** If a counterclaim or cross-claim filed in the magistrate's division exceeds the jurisdiction of the magistrate, the original action and the counterclaim or cross-claim must be transferred to a district judge having jurisdiction.

Rule 1.3. Objection to Assignment to Magistrates

Any irregularity in the method or scope of assignment of a civil action or proceeding to any magistrate under the Idaho Court Administrative Rules and Idaho Code Sections 1-2208 and 1-2210, and all objections to the propriety of an assignment to a magistrate are waived unless a written objection is filed before the trial or hearing begins. No order or judgment is void or subject to collateral attack because it is rendered pursuant to an improper assignment to a magistrate.

Rule 2. Form of Documents; Caption; Name of Parties; Language; Abbreviation; and Numbers

(a) Form, Caption and Name – Generally. The following requirements apply to all documents filed with the court:

(1) they must be printed in black ink using a computer printer, word processor or typewriter on 8 ½" by 11" white paper, except that:

(A) 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; and

(B) forms approved by the Supreme Court or the Administrative District Judge or distributed through the Court Assistance Office in the county where the action is pending may be completed by legibly hand-printing in black ink or by typing;

(2) they must contain a caption setting forth the names of the parties, the title of the court, the case number, the title of the document;

(3) the title of the court must commence not less than 3 inches from the top of the first page;

(4) the name, address, phone number, email address and currently valid Idaho State Bar Number of the attorney appearing of record or, if unrepresented, the address, phone number and email address (if any) of the self-represented party, must appear above the title of the court in the space to the left of the center of the page and beginning at least 1.2 inches below the top of the page;

(5) the body of the document must be printed with double line spacing or one-and-one-half (1 1/2) line spacing with a sans serif font of not less than 11-point size and with margins of not less than 1.2 inches at the top and sides and not less than 1 inch at the bottom unless slightly smaller margins will allow a document to fit on a single page;

(6) the title of the document must appear at the bottom of each page;

(7) all attached exhibits must be clearly legible;

(8) all handwritten exhibits must be accompanied by a machine-printed duplicate;

(9) the nature of the document, filing fee category, and filing fee prescribed by Appendix "A" to these rules, must be stated if the document requires a filing fee; and

(10) the title of the action in the complaint must include the names of all of the parties, but in subsequent pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of the other parties.

(b) Language of Pleadings. Pleadings must be in the English language.

(c) Abbreviations and Numbers. Common abbreviations may be used, and numbers may be expressed by words or numerals.

Rule 2.1. Electronic Signatures

An electronic signature may be used on any document that is transmitted electronically, and a notary's seal may be in electronic form.

Rule 2.2. Computing and Extending Time

(a) Computing Time. The following apply in computing any time period specified in these rules, in any local rule or court order, or in any statute that does not specify a method of computing time.

(1) *Generally.* When the period is stated in days or a longer unit of time:

(A) exclude the day of the event that triggers the period;

(B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) *Inaccessibility of the Clerk's Office.* Unless the court orders otherwise, if the clerk's office is inaccessible, then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday.

(b) Extending Time.

(1) *In General.* When an act may or must be done within a specified time, the court may, for good cause, extend the time:

(A) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires; or

(B) on motion made after the time has expired if the party failed to act because of excusable neglect.

(2) *By Stipulation.* The parties may extend time by written stipulation, filed before or after expiration of the time period, if the extension does not disturb the orderly dispatch of business or the convenience of the court.

(3) *Exceptions.* A court must not extend the time to act under Rules 50(b) and (d), 52(b), 59(b), (d), and (e), and 60(b).

(c) Additional Time After Service by Mail. When a party may or must act within a specified time after service and service is made by mail, 3 days are added to the specified time.

Rule 2.3. Serving Notice of an Order or Judgment

(a) Proposed Order or Judgment. The prevailing party, or other party designated by the court to draft a proposed order or judgment, must serve a copy of the proposed order or judgment on each party and must provide to the clerk sufficient copies for service upon all parties, together with envelopes addressed to each party with sufficient postage attached, unless otherwise ordered by the court.

(b) Service of Entered Order or Judgment. Immediately after entering an order or judgment, the clerk of the district court, or magistrates division, must serve a copy of it on every party, with the clerk's filing stamp showing the date of filing. The order or judgment may be served by

mailing, emailing, or delivering it to the attorney of record for each party, or if the party is not represented by an attorney, by mailing to the party at the address designated by the prevailing party as most likely to give notice to that party. The clerk must make a note in the court records of the mailing of the entered order. Mailing is sufficient notice for all purposes for which notice of the entry of an order is required by these rules.

(c) **Time to Appeal Not Affected by Lack of Notice.** Lack of notice of entry of an order or judgment does not affect the time to appeal or to file a post-judgment motion, or relieve or authorize the court to relieve a party for failure to appeal or file a post-trial motion within the time allowed, except where there is no showing of mailing by the clerk in the court records and the affected party had no actual notice.

Rule 2.4. Setting Hearings by Court

The court on its own initiative may notice for hearing any motion, trial or proceeding which is pending before it by notice to all parties in conformance with these rules.

Rule 2.5. Stipulations Not Binding on Court – Continuance of Trial or Hearing

The parties to any action may present to the court a stipulation as to any procedural matter involved in any proceeding, including a stipulation to vacate or continue a hearing or trial, but the stipulation is to be considered as a joint motion by the parties to the court for its consideration, and is not binding on the court. The court may approve or disapprove the stipulation in the same manner as the court rules on a motion. The court may by oral or written notice to the parties limit the time within which a motion or stipulation to vacate or continue a hearing or trial must be made in order to be considered by the court.

Rule 2.6. Privacy Protection for Filings Made with the Court

(a) **Redacted Filings.** Unless the court orders otherwise, when filing documents with the court the parties must not include, or must partially redact, where inclusion is necessary, the following personal data identifiers. This rule applies to exhibits only if they are filed with the court.

(b) **Social Security Numbers.** If an individual's social security number must be included in a pleading, only the last three digits of that number may be used.

(c) **Names of Minor Children.** If the involvement of a minor child must be mentioned, only the initials of that child may be used.

(d) **Dates of Birth.** If an individual's date of birth must be included in a pleading, only the year may be used.

(e) **Financial Account Numbers.** If financial account numbers are relevant, only the last four digits of these numbers may be used.

(f) **Exceptions.**

(1) The redaction requirement does not apply to the record of a court, tribunal, administrative or agency proceeding if that record was filed before the effective date of this rule.

(2) The redaction requirement does not apply to documents that are exempt from disclosure pursuant to Idaho Court Administrative Rule 32.

(3) The redaction requirement does not apply to documents that are required by statute or rule to include personal data identifiers.

(g) **Options When Personal Data Identifiers are Necessary.** A party filing a redacted document need not also file an unredacted version of the document; however, where inclusion of the unredacted personal data identifiers is necessary, a party may:

(1) File the redacted document together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item listed. The list must be clearly identified as a reference list filed pursuant to this rule and may be amended as of right. Any reference in the case to a listed identifier will be construed to refer to the corresponding item of information. The reference list must be secured in the file and is exempt from disclosure pursuant to Idaho Court Administrative Rule 32; however, courts will share the reference list with other government agencies as required or allowed by law without court order or application for purposes of the business of those agencies.

(2) File the redacted document together with an unredacted copy of the document. The unredacted copy must be clearly identified as an unredacted copy filed pursuant to this rule and placed in an envelope marked "sealed" with a general description of the records, and the redacted copy placed in the court file. The unredacted copy is exempt from disclosure pursuant to Idaho Court Administrative Rule 32; however, courts will share the unredacted copy with other government agencies as required or allowed by law without court order or application for purposes of the business of those agencies.

(h) **Orders and Judgments of the Court.**

(1) If possible, the court must refrain from including in court orders and judgments the personal data identifiers set forth in subsections (b) through (e) of this rule. If personal data identifiers are included in the order or judgment, it must be placed in a manila envelope marked "sealed" and it is exempt from disclosure pursuant to Idaho Court Administrative Rule 32. Copies of the order or judgment must be served on the parties and must be available to the parties and other government agencies without court order for purposes of the business of those agencies. No redacted copy of any order or judgment must be prepared until there is a specific request for the document, in which case the document must be redacted in accordance with this Rule.

(2) *Exceptions.* The court may include personal data identifiers in orders or judgments that are exempt from disclosure pursuant to Idaho Court Administrative Rule 32, or that are required by statute to include personal data identifiers.

(i) **Responsibility for Compliance.** The parties and counsel are solely responsible for redacting personal data identifiers. The clerk will not review each document for compliance with the rule. Failure to comply with this rule is grounds for contempt.

Rule 2.7. Declarations

Whenever these rules require or permit a written statement to be made under oath or affirmation, the statement may be made as provided in Idaho Code Section 9-1406. An affidavit includes a written certification or declaration made as provided in Idaho Code section 9-1406.

Rule 2.8. Unsworn Foreign Declarations

This rule constitutes Idaho's implementation of the Uniform Unsworn Foreign Declarations Act as modified herein.

(a) **Definitions.** In this rule:

(1) *"Boundaries of the United States"* means the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

(2) *"Law"* includes the federal or a state constitution, a federal or state statute, a judicial decision or order, a rule of court, an executive order, and an administrative rule, regulation, or order.

(3) *"Record"* means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(4) *"Sign"* means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

(5) *"State"* means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(6) *"Sworn declaration"* means a declaration in a signed record given under oath. The term includes a sworn statement, verification, certificate, and affidavit.

(7) *"Unsworn declaration"* means a declaration in a signed record that is not given under oath, but is given under penalty of perjury.

Comment:

1. The District of Columbia is included in the definition of "boundaries of the United States" to eliminate any potential ambiguity.

2. The definition of "law" is drafted in an open-ended manner to give it the widest possible application. The term is not ordinarily defined in uniform acts but in this context it is important that judges applying the act be in no doubt about its breadth. The wording is taken from the definition contained in the Revised Model State Administrative Procedure Act.

3. A "record" includes information that is in intangible form (e.g., electronically stored) as well as tangible form (e.g., written on paper). It is consistent with the Uniform Electronic Transactions Act and the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001 et seq.).

4. The definition of "sign" is broad enough to cover any writing containing a traditional signature and any record containing an electronic signature. It is consistent with the Uniform Electronic Transactions Act and the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001 et seq.).

(b) Applicability. This rule applies to an unsworn declaration by a declarant who at the time of making the declaration is physically located outside the boundaries of the United States whether or not the location is subject to the jurisdiction of the United States. This rule does not apply to a declaration by a declarant who is physically located on property that is within the boundaries of the United States and subject to the jurisdiction of another country or a federally recognized Indian tribe.

Comment:

In keeping with the limited scope of the rule, an unsworn declaration made within the geographical boundaries of the United States, even if the location is under the control of another sovereign, such as foreign embassies or consulates or federally recognized Indian lands, should not be deemed "outside the boundaries of the United States" for the purposes of this rule. The rule, so limited, meets the immediate needs addressed by the rule. Moreover, notaries and officials authorized to administer oaths are more readily available in the United States.

(c) Validity of Unsworn Declaration.

(1) Except as otherwise provided in subsection (2), if a law of this state requires or permits use of a sworn declaration, an unsworn declaration meeting the requirements of this rule has the same effect as a sworn declaration.

(2) This rule does not apply to:

(A) a deposition;

(B) an oath of office;

(C) an oath required to be given before a specified official other than a notary public;

(D) a declaration to be recorded pursuant to Idaho Code Section 55-805; or

(E) an oath required by Idaho Code Section 15-2-504.

Comment:

The use of unsworn declarations is not limited to litigation. Unsworn declarations would be usable in civil, criminal, and regulatory proceedings and settings. However, there are certain contexts in which unsworn declarations should not be used, and these contexts are listed in this section. Except as provided in section (c) of this rule, pursuant to this section, an unsworn declaration meeting the requirements of this rule may be used in a state proceeding or transaction whenever other state law authorizes the use of a sworn declaration. Thus, if other state law permits the use of either sworn testimony or an affidavit, an unsworn declaration meeting the requirements of this rule would also suffice. Additionally, if other state law authorizes other substitutes for a sworn declaration, such as an affirmation, then as provided in subsection (1) of this section, an unsworn declaration meeting the requirements of this rule could serve as a substitute for an affirmation.

(d) Required Medium. If a law of this state requires that a sworn declaration be presented in a particular medium, an unsworn declaration must be presented in that medium.

Comment:

Courts and agencies often restrict the medium in which pleadings, motions, and other documents may be filed. This section recognizes that such a restriction is binding on a person seeking to introduce a foreign unsworn declaration.

(e) Form of Unsworn Declaration. An unsworn declaration under this rule must be in substantially the form found in Appendix B.

Comment:

Section (b) of this rule authorizes the use of unsworn declarations made outside the boundaries of the United States as defined in section (a)(1). The formal declaration in this

section recites the areas defined as within the boundaries and does not rely on the definition in section (a)(1) because the person making the formal declaration might believe, and therefore declare that he or she is outside the boundaries of the United States even though at the time of the declaration the person making the declaration is in the Virgin Islands, Puerto Rico, or one of the other territories or insular possessions of the United States. The form of the declaration lessens the opportunity for mistake or fraud.

(f) **Uniformity of Application and Construction.** In applying and construing this rule, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that have implemented the Uniform Foreign Declarations Act.

Comment:

This section recites the importance of uniformity among the adopting states when applying and construing the rule.

(g) **Relation to Electronic Signatures in Global and National Commerce Act.** This rule modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

Comment

This subsection responds to the specific language of the Electronic Signatures in Global and National Commerce Act and is designed to avoid preemption of state law under that federal legislation.

Rule 2.9. Lost Papers

If an original pleading or paper is lost, the court may authorize a copy of it to be filed and used instead of the original.

Rule 2.10. Reclaiming Exhibits, Documents or Property

Any party or any interested person may apply to the trial court for an order permitting return to the party of exhibits offered or admitted in evidence, or any other documents or property displayed or considered in connection with the action. The application must be filed after:

- the expiration of the time for appeal,
- the determination of an appeal, or
- the determination of a proceeding following an appeal and the expiration of the time for any appeal from that determination, whichever is later. The trial court may grant the application on conditions as it deems appropriate, including but not limited to the substitution of a copy, photograph, drawing, facsimile, or other reproduction of the original exhibit, document or property, or the posting of a bond that the exhibit, document or property will be returned to the court if the court later finds it necessary.

TITLE II – COMMENCEMENT OF ACTION; SERVICE

Rule 3. Commencement of Action

(a) Form of Action. There is one form of action to be known as "civil action".

(b) Filing of Action. A civil action must be commenced by filing a complaint, petition or application with the court.

(c) Designation of Parties. Any filing party must be designated as the plaintiff or petitioner, and any party against whom the same is filed must be designated as the defendant or respondent.

(d) Case Information Sheet. In the following actions, a completed Supreme Court approved case information sheet must be filed with the complaint or petition:

(1) guardianship,

(2) conservatorship,

(3) adoption,

(4) termination of parental rights,

(5) involuntary commitment, and

(6) child protection act proceedings.

This case information sheet is exempt from disclosure according to Rule 32, Idaho Court Administrative Rules.

Rule 4. Summons

(a) Contents; Amendments.

(1) *Contents.* A summons must:

(A) name the court;

(B) state the assigned number of the case;

(C) name the parties;

(D) identify the county in which the action is brought

(E) state the mailing address, physical address (if different) and phone number of the district court clerk;

(F) state the name, address, phone number email address and bar number of the plaintiff's attorney or, if unrepresented, the address, phone number and email address (if any) of the plaintiff;

(G) be directed to the defendant;

(H) state the time within which the defendant must appear and defend;

(I) notify the defendant that a failure to appear and defend will result in a default judgment against the defendant for the relief demanded in the complaint;

(J) be signed by the clerk; and

(K) bear the court's seal.

(2) *Amendments.* At any time in its discretion and upon such terms as it deems just, the court may allow the summons to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the summons issued.

(3) *Forms of Summons.*

(A) Eviction Proceedings. In an action exclusively for eviction where an expedited proceeding is contemplated under Idaho Code Section 6-310 the summons must be in substantially the form found in Appendix B.

(B) Other Civil Proceedings. In other civil proceedings the summons must be in substantially the form found in Appendix B.

(C) Publication. Where service is to be made by publication, the Summons to be published must be substantially in the form found in Appendix B.

(b) Issuance; Time for Service.

(1) *Issuance.* On or after filing the complaint, the plaintiff may present a summons to the clerk for signature and seal. If the summons is properly completed, the clerk must sign, seal, and issue it to the plaintiff for service on the defendant. A summons, or a copy of a summons that is addressed to multiple defendants, must be issued for each defendant to be served.

(2) *Time Limit for Service.* If a defendant is not served within 6 months after the complaint is filed, the court, on motion or on its own after 14 days' notice to the plaintiff, must dismiss the action without prejudice against that defendant. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

(c) Service.

(1) *Personal Service.* A copy of the summons must be served with a copy of the complaint except when service is by publication as provided in Rule (4)(e). The plaintiff is responsible for furnishing the necessary copies to the person who makes service.

(2) *By Whom.* An officer authorized by law to serve process, or any person over the age of eighteen (18), not a party to the action may serve a summons and complaint.

(d) Upon Whom Served.

(1) *Service on Individuals.* An individual, other than a person under age 14 or an incompetent person, may be served doing any of the following:

(A) delivering a copy of the summons and of the complaint to the individual personally;

(B) leaving a copy of each at the individual's dwelling or usual place of abode with someone at least 18 years old who resides there; or

(C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

(2) *Serving a Person Under Age 14; Incompetent Person.*

(A) Minor.

(i) Guardian Appointed. A person less than 14 years old must be served by service on the guardian, if one has been appointed.

(ii) No Guardian Appointed. If there is no guardian, service may be made on a parent. If no guardian or parent can be found within the state, service may be on any person having the care and custody of the minor.

(iii) Additional Service on Minor. Unless the court orders otherwise, the minor must also be served. Service must be in the manner set forth in subdivision (1) above.

(B) Incompetent Person.

(i) Guardian Appointed in this State. An incompetent person who has been judicially declared to be of unsound mind or incapable of conducting his or her own affairs, must be served by service on the guardian if one has been appointed in this state.

(ii) No Guardian Appointed in this State. If there is no guardian appointed in this state, service must be on a competent adult member of the family with whom the incompetent person resides. If the incompetent person is living in an institution, service must be on the chief executive officer of the institution. If service cannot be had on any of them, then service must be as provided by order of the court.

(iii) Additional Service on Incompetent Person. Unless the court otherwise orders, service must also be made on the incompetent person.

(iv) If Person to be Served is a Plaintiff. If any of the parties on whom service is directed to be made is a plaintiff, then service must be on such other person as the court designates.

(3) *Serving a Corporation, Partnership or Association.*

(A) In General. Unless Idaho law provides otherwise, a domestic or foreign corporation, or a partnership or other unincorporated association that is subject to suit under a common name, must be served by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process.

(B) On Statutory Agent. If service is upon a statutory agent, any statutory requirement as to the number of copies of summons and complaint to be served must be followed. If the agent is a state official, service may be made by registered or certified mail, and, if the statute requires, by mailing a copy to the defendant.

(C) Agent for Service Unavailable.

(i) When the agent designated for service by a foreign corporation, partnership or association which has qualified in this state by filing with the Secretary of State or a domestic corporation, partnership or association is unavailable, service of the summons and complaint may be made by mailing copies of the summons and complaint by registered or certified mail to the corporation addressed to its registered place of business and to the president or secretary

of the corporation at the addresses shown on the most current annual statement filed with the Secretary of State. The service is complete on mailing by registered or certified mail. The person serving the corporation under this subdivision must make a return certificate indicating compliance with this subdivision and attach a receipt of the mailing.

(ii) A designated agent is unavailable for purpose of this subdivision (C) if:

- no person actually residing in this state has been designated by the corporation, partnership or association for service of process;
- the agent has resigned, been removed from office, died or has moved from the state; or
- after due diligence neither the agent nor any officer or managing agent can be found within the state.

(4) *Serving the State and its Agencies and Governmental Subdivisions.*

(A) State of Idaho. To serve the State of Idaho or any of its agencies, a party must deliver 2 copies of the summons and complaint to the attorney general or any assistant attorney general.

(B) Other Governmental Subdivisions. To serve any other governmental subdivision, municipal corporation, or quasi-municipal corporation or public board, a party must deliver a copy of the summons and complaint to its chief executive officer, secretary or clerk.

(C) Additional Service Required by Statute. In all actions brought under specific statutes requiring service on specific individuals or officials, service must be made pursuant to the statute in addition to service as provided in this subdivision (5).

(5) *Admission of Service.* Service may be completed by a written admission, acknowledged by the person to be served, that the person has received service of process. The admission must state the capacity in which service of process was received.

(e) Summons – Other Service.

(1) *Service on Persons Outside the State; Unknown Persons.*

(A) Personal service outside of the state, when authorized by statute, must be as provided by Rule 4(d).

(B) When a statute of this state provides for service of a summons, or of a notice, or of an order in lieu of summons, on a party not an inhabitant of, or found within the state, or on unknown persons, service must be made as provided by the statute.

(C) When the summons, notice or order is served by publication it must contain, in general terms, a statement of the nature of the grounds of the claim, and copies of the summons and complaint must be mailed to the last known address most likely to give notice to the party.

(2) *Service – Completion.* Personal service within or outside the state is complete on the date of delivery; service by publication is complete on the date of the last publication.

(f) Territorial Limits of Effective Service. All process, other than a subpoena under Rule 45, may be served anywhere within territorial limits of the state and, when a statute or rule provides, beyond the territorial limits of the state.

(g) Proving Service.

(1) *Requirements of Proof of Service.* Proof of service of process must be in writing, identifying all documents served, specifying the manner of service and the date and place of service. Unless the party served files an appearance, proof of service must be filed with the court. Proof of service must be as follows:

(A) if service is made by a sheriff or deputy sheriff, or any peace officer or court marshall, anywhere within the state of Idaho, then by certificate of the officer stating how service was made as required by these rules;

(B) if service is by any person other than those specified in subdivision (1), then by affidavit of the person stating that the person is over the age of 18 years and how service was made as required by these rules;

(C) if service is by mailing, not requiring proof of receipt, then by affidavit of mailing by a person over the age of 18 years who mailed the process and stating the date and address to which they were mailed;

(D) if service is by certified or registered mail, then by affidavit of a person over the age of 18 years who mailed the process together with postal receipts indicating whether the person received the service of process by mail;

(E) if service is by publication, then by affidavit of the publisher of the newspaper, or the publisher's designated agent over the age of 18 years, stating the dates of publication and attaching a true copy of the publication; or

(F) the party's acknowledged written admission that service of process was received, as provided by rule 4(d)(6).

(2) *Amendment of Proof of Service.* At any time in its discretion and upon such terms as it deems just, the court may allow proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

Rule 4.1. General or Special Appearance

(a) General Appearance. The voluntary appearance of a party or service of any pleading by the party, except as provided in subsection (b) of this Rule, constitutes voluntary submission to the personal jurisdiction of the court.

(b) Motion or Special Appearance to Contest Personal Jurisdiction. The following do not constitute a voluntary appearance by a party under this Rule:

(1) a motion under Rule 12(b)(2), (4) or (5), whether raised before or after judgment;

(2) a motion under Rule 40(d)(1) or (2);

(3) a motion for an extension of time to answer or otherwise appear;

(4) the joinder of other defenses in a motion under Rule 12(b)(2), (4) or (5);

(5) a response to discovery or to a motion filed by another party after a party files a motion under Rule 12(b)(2), (4) or (5), action taken by that party in responding to discovery or to a motion filed by another party;

(6) pleading further and defending an action by a party whose motion under Rule 12(b)(2), (4), or (5) is denied; or

(7) filing a document entitled "special appearance," which does not seek relief but merely provides notice that the party is entering a special appearance to contest personal jurisdiction, if a motion under Rule 12(b)(2), (4), or (5) is filed within fourteen (14) days after filing the special appearance, or within such later time as the court permits.

Rule 5. Serving and Filing Pleadings and Other Papers

(a) Service: When Required.

(1) *In General.* Unless these rules provide otherwise, each of the following papers must be served on every party:

(A) an order stating that service is required;

(B) a pleading filed after the original complaint, unless the court orders otherwise under Rule 5(c) because there are numerous defendants;

(C) a discovery paper required to be served on a party, unless the court orders otherwise;

(D) a written motion, except one that may be heard ex parte; and

(E) a written notice, appearance, demand, or offer of judgment, or any similar paper.

(2) *If a Party Fails to Appear.* No service is required on a party who is in default for failing to appear. But a pleading that asserts a new claim for relief against such a party must be served on that party under Rule 4.

(b) Service: How Made.

(1) *Serving an Attorney.* If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party.

(2) *Service in General.* A paper is served under this rule by:

(A) handing it to the person;

(B) leaving it:

(i) at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or

(ii) if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone over the age of 18 years who resides there;

(C) mailing it to the person's last known address, in which event service is complete upon mailing;

(D) leaving it with the court clerk if the person has no known address;

(E) sending it by electronic means if the person consented in writing, in which event service is complete upon transmission, but is not effective if the serving party learns that it did not reach the person to be served;

(F) transmitting the copy by a facsimile machine process although this rule does not require a facsimile machine to be maintained in the office of an attorney; or

(G) delivering it by any other means that the person consented to in writing, in which event service is complete when the person making service delivers it to the agency designated to make delivery.

(c) Serving Numerous Defendants.

(1) *In General.* If an action involves an unusually large number of defendants, the court may, on motion or on its own, order that:

(A) defendants' pleadings and replies to them need not be served on other defendants;

(B) any crossclaim, counterclaim, avoidance, or affirmative defense in those pleadings and replies to them will be treated as denied or avoided by all other parties; and

(C) filing any such pleading and serving it on the plaintiff constitutes notice of the pleading to all parties.

(2) *Notifying Parties.* A copy of every such order must be served on the parties as the court directs.

(d) Filing. All papers after the complaint required to be served upon a party must be filed with the court either before service or within a reasonable time thereafter filed. If the papers have been filed before service, the filing date must be noted thereon.

(1) *Required Filings; Certificate of Service.* Any paper after the complaint that is required to be served, together with a certificate of service, must be filed within a reasonable time after service.

(2) *How Filing Is Made; In General.* A paper is filed by delivering it:

(A) to the clerk; or

(B) to a judge who agrees to accept it for filing, and who must then note the filing date on the paper and promptly send it to the clerk.

(3) *Filing by Facsimile.*

(A) A pleading or document for filing may be sent to the court by facsimile machine if there is a facsimile machine in the office of the filing clerk of the court. Documents may be fax filed if:

(i) no filing fee is required or the county allows the fee to be prepaid by credit card in accordance with the county's cred card acceptance policy;

(ii) the filing is made during normal business hours or the county allows filings to be received outside normal working hours or on any non-judicial day and file stamped at 9:00 a.m. on the next judicial day;

(iii) the document does not exceed ten pages or the county allows documents of any length to be faxed.

(B) The faxed document must be file stamped and treated as the original, such that the signature, court seal, and notary seal on the faxed document are considered as an original. A document filed by facsimile need not be also mailed to the court.

(C) A facsimile machine process copy of a document that is not transmitted directly to the court by facsimile machine may be filed with the court. The clerk must file stamp the facsimile copy as an original and the signature on the copy constitutes the required signature under Rule 11(a). There is no limit as to the number of pages.

(e) Proof of Service.

(1) Proof of service must:

(A) be made by a certificate of the attorney or the party making service;

(B) be attached to the copy of the document filed with the court, or if the document is not filed with the court, be filed within a reasonable time after service of the document; and

(C) state the date and manner of service and the name and address of the person served.

(2) Failure to make proof of service does not affect the validity of the service.

Rule 5.1. Attorney Legislators

(a) Appearance in Court Not Required. When an attorney is serving as a legislator while the legislature is in general or special session, the attorney is not required to appear at any trial or other proceeding.

(b) Extension of Time for Filing; Statute of Limitation Not Tolled. The time within which the attorney would normally be required to file any pleading or other paper is extended for a period of ten days following adjournment of the session of the legislature. The extension of time does not toll or otherwise extend the running of any limitation period provided by statute.

(c) Emergency Provisions. On a motion supported by affidavit, the court may order, ex parte, that the attorney-legislator appear or make arrangements for another attorney to represent the attorney-legislator's clients in the matter if the court finds that:

(1) an emergency exists,

(2) that the party will be unduly prejudiced, or

(3) irreparable damage will accrue.

The order must be served on the attorney-legislator by certified mail addressed to the attorney at the legislature.

Rule 6. Reserved

Rule 7. Pleadings Allowed; Form of Motions and Other Papers

(a) Pleadings. Only these pleadings are allowed:

(1) a complaint;

(2) an answer to a complaint;

(3) an answer to a counterclaim designated as a counterclaim;

(4) an answer to a cross claim;

(5) a third party complaint;

(6) an answer to a third party complaint; and

(7) if the court orders one, a reply to an answer.

(b) Motions and Other Papers.

(1) *In General.* A request for a court order must be made by motion. That motion must:

(A) be in writing unless made during a hearing or trial;

(B) state with particularity the grounds for the relief sought including the number of the applicable civil rule, if any;

(C) state the relief sought; and

(2) *Proposed Order.* A proposed form of order, if included, must be a separate document.

(3) *Filing and Serving Motions, Affidavits and Briefs; Time Limits.*

(A) A written motion, affidavit(s) supporting the motion, memoranda or briefs supporting the motion, if any, and, if a hearing is requested, the notice of hearing for the motion, must be filed with the court and served so as to be received by the parties at least 14 days prior to the day designated for hearing.

(B) Affidavit(s) opposing the motion and opposing memoranda or briefs, if any, must be filed with the court and served so as to be received by the parties at least 7 days before the hearing.

(C) The moving party may file a reply brief or memorandum, which must be filed with the court and served so as to be received by the parties at least 2 days prior to the hearing.

(D) The moving party must indicate on the face of the motion whether oral argument is desired. If a brief or memorandum is not filed with the motion, the motion must indicate on the face of the motion whether the party intends to file a brief or memorandum supporting the motion.

(E) If the moving party does not request oral argument or does not timely file a supporting memorandum or brief, the court may deny the motion without further notice if it determines the motion does not have merit.

(F) If oral argument has been requested on any motion, the court may deny oral argument by written or oral notice from the court at least 1 day prior to the hearing. The court may limit oral argument at any time.

(G) If the office of the presiding judge is outside of the county in which the action is pending, the parties must simultaneously provide a copy of any notice, motion, affidavit, brief, or other document relating to a motion to the presiding judge in addition to filing the materials with the court of record.

(H) Any exception to the time limits in this rule may be granted by the court for good cause shown. If time does not permit a hearing or response on a motion to extend or shorten time, the court may rule without opportunity for response or hearing.

(I) The time limits in this rule do not apply to motions and other matters if a different time limit is provided by statute or by another rule of civil procedure.

Rule 7.1. Evidence on a Motion

When a motion relies on facts outside the record, the court may hear the matter on affidavits or may hear it wholly or partly on oral testimony or on depositions.

Rule 7.2. Hearings by Telephone or Video Teleconference

(a) Hearings Allowed. The court may hold hearings by telephone or video teleconference on the following:

(1) any motion, except motions for summary judgment, unless the parties stipulate to allow a summary judgment motion to be heard by telephone or video teleconference;

(2) any evidentiary hearing, when no oral testimony is to be introduced at the hearing, except the court may allow testimony by video teleconference if the parties stipulate; or

(3) any other pretrial matter.

(b) Minutes; Recording; Costs.

(1) Minutes of any hearing or matter heard by telephone or video teleconference must be prepared and filed in the action.

(2) The hearing or matter to be audio recorded electronically with the recording to be made, retained and erased as the court may direct.

(3) The costs for the telephone or video teleconference may be allowed as discretionary costs to the party who paid for the costs if that party is the prevailing party in the action.

Rule 7.3. Video Teleconferencing for Mental Commitment Hearings

(a) Video Teleconferencing Allowed. Hearings related to involuntary mental commitment, including initial commitment hearings and hearings concerning continuing involuntary commitment, may be conducted by video teleconference under the following conditions:

(1) the proposed patient must be visible and audible to the court and others physically present in the courtroom;

(2) the proposed patient, if represented by counsel, must be able to communicate and consult privately with counsel during the proceeding; and

(3) the court, the proposed patient, counsel for all parties, and any witness while testifying, must be visible and audible with each other simultaneously and have the ability to communicate with each other during the proceeding.

(b) Recording; Minutes. The audio of the video teleconference must be recorded and minutes of the hearing must be prepared and filed in the action.

Rule 8. General Rules of Pleading

(a) Claim for Relief. A pleading that states a claim for relief must contain:

(1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;

(2) a short and plain statement of the claim showing that the pleader is entitled to relief; and

(3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

(b) Defenses; Admissions and Denials.

(1) *In General.* In responding to a pleading, a party must:

(A) state in short and plain terms its defenses to each claim asserted against it; and

(B) admit or deny the allegations asserted against it by an opposing party.

(2) *Denials; Responding to the Substance.* A denial must fairly respond to the substance of the allegation.

(3) *General and Specific Denials.* A party that intends in good faith to deny all the allegations of a pleading, including the jurisdictional grounds, may do so by a general denial. A party that does not intend to deny all the allegations must either specifically deny designated allegations or generally deny all except those specifically admitted.

(4) *Denying Part of an Allegation.* A party that intends in good faith to deny only part of an allegation must admit the part that is true and deny the rest.

(5) *Lacking Knowledge or Information.* A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial.

(6) *Effect of Failing to Deny.* An allegation, other than one relating to the amount of damages, is admitted if a responsive pleading is required and the allegation is not denied. If a responsive pleading is not required, an allegation is considered denied or avoided.

(c) Affirmative Defenses.

(1) *In General.* In responding to a pleading, a party must affirmatively state any avoidance or affirmative defense, including:

(A) accord and satisfaction;

(B) arbitration and award;

(C) assumption of risk;

(D) contributory or comparative responsibility;

(E) duress;

(F) estoppel;

(G) failure of consideration;

(H) fraud;

(I) illegality;

(J) injury by fellow servant;

(K) laches;

(L) license;

(M) payment;

(N) release;

(O) res judicata;

(P) statute of frauds;

(Q) statute of limitations;

(R) waiver; and

(S) discharge in bankruptcy.

(2) *Mistaken Designation.* If a party mistakenly designates a defense as a counterclaim, or a counterclaim as a defense, the court must, if justice requires, treat the pleading as though it were correctly designated, and may impose terms for doing so.

(d) Pleadings to be Concise and Direct; Alternative Statements; Inconsistency.

(1) *In General.* Each allegation must be simple, concise, and direct. No technical form is required.

(2) *Alternative Statements of a Claim or Defense.* A party may set out 2 or more statements of a claim or defense alternatively or hypothetically, either in a single count or defense or in separate ones. If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient.

(3) *Inconsistent Claims or Defenses.* A party may state as many separate claims or defenses as it has, regardless of consistency.

(e) Construing Pleadings. Pleadings must be construed so as to do justice.

Rule 9. Pleading Special Matters

(a) Capacity or Authority to Sue; Legal Existence.

(1) *In General.* Except when required to show that the court has jurisdiction, a pleading need not allege:

(A) a party's capacity to sue or be sued;

(B) a party's authority to sue or be sued in a representative capacity; or

(C) the legal existence of an organized association of persons that is made a party.

(2) *Raising Those Issues.* To raise any of those issues, a party must do so by a specific denial, which must state any supporting facts that are peculiarly within the party's knowledge.

(3) *Unknown Owner; Unknown Heirs or Devisees.* When persons are made parties by designation of unknown owners of property, the pleader must briefly allege such facts known by the pleader to identify the unknown owners and their connection to the claim, including a brief description of the property. When persons are made parties by designation of unknown heirs or devisees of any deceased person, the pleader must briefly allege such facts known by the pleader to identify the unknown heirs or devisees and their connection to the claim, including the name of the deceased person.

(b) Fraud or Mistake; Conditions of Mind; Violation of Rights. In alleging fraud or mistake, or a violation of civil or constitutional rights, a party must state with particularity the circumstances constituting the fraud or mistake or the violation of civil or constitutional rights. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.

(c) Conditions Precedent. In pleading conditions precedent, it suffices to allege generally that all conditions precedent have occurred or been performed. But when denying that a condition precedent has occurred or been performed, a party must do so with particularity.

(d) Official Document or Act. In pleading an official document or official act, it suffices to allege that the document was legally issued or the act legally done, and to refer to any statute, regulation or ordinance by appropriate designation in the official or a recognized compilation.

(e) Judgment. In pleading a judgment or decision of a domestic or foreign court, a judicial or quasi-judicial tribunal, or a board or officer, it suffices to plead the judgment or decision without showing jurisdiction to render it.

(f) Time and Place. An allegation of time or place is material when testing the sufficiency of a pleading.

(g) Damages. If an item of special damage is claimed, it must be specifically stated by category and specific dollar amounts may be alleged. When items of general damage or punitive damages are alleged, the pleading must not allege or state a dollar amount or figure, except that it may state that the amount claimed meets a jurisdictional threshold.

(h) Limitations. In pleading the statute of limitations it is sufficient to state generally that the action is barred, and the applicable statute or Session Law relied upon must be pled with particularity.

(i) Libel and Slander. In an action for libel or slander it is sufficient to state, generally, the defamatory matter that was published or spoken concerning the plaintiff. In such an action, the defendant may in his answer, allege both the truth of the alleged defamatory statement, and any mitigating circumstances to reduce the amount of damages.

(j) Description of Real Property. In an action for the recovery of real property, the property at issue must be described sufficiently as to enable an officer, upon execution, to identify it.

Rule 10. Form of Pleadings

(a) **Designation of Pleading.** Every pleading must comply with Rule 2 and must have a Rule 7(a) designation.

(b) **Paragraphs; Separate Statements.** A party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances. A later pleading may refer by number to a paragraph in an earlier pleading. If doing so would promote clarity, each claim founded on a separate transaction or occurrence—and each defense other than a denial, must be stated in a separate count or defense.

(c) **Adoption by Reference; Exhibits.** A statement in a pleading may be adopted by reference elsewhere in the same pleading or in any other pleading or motion. A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes.

(d) **Unknown Party.** When a party does not know the true name of another party, that fact may be stated, and that party may be designated by any name and the words, "whose true name is unknown." When the true name is discovered, the pleading must be amended accordingly.

Rule 10.1. Filing Fee-Waiver

The filing fee prescribed by Appendix "A" to these rules must be paid before the filing of a pleading or motion listed in the filing fee schedule. Any waiver of the filing fee must be made by the court upon verified application of a party and no filing fee is required for this application. Provided, the filing fees is automatically waived in any case in which a party is represented by an attorney under the Idaho Law Foundation Volunteer Lawyers Program, the University of Idaho Legal Aid Clinic, the Concordia University School of Law Housing Clinic, the Idaho Legal Aid Program, or an attorney under a private attorney contract with Legal Aid.

Rule 11. Signing Pleadings, Motions, and Other Papers; Representations to the Court; Sanctions

(a) **Signature.** Every pleading, written motion, and other paper must be signed by at least one attorney of record licensed in the State of Idaho, in the individual attorney's name, or by a party personally if the party is unrepresented. The paper must state the signer's address, e-mail address, and telephone number. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention.

(b) **Representations to the Court.** By presenting to the court a pleading, written motion, or other paper, whether by signing, filing, or submitting, or later advocating it, an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

(c) Sanctions.

(1) *In General.* If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court must impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. A law firm may be held jointly responsible for a violation committed by its partner, associate, or employee.

(2) *Motion for Sanction.* A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b). The motion must be served under Rule 5, but it must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets. If warranted, the court may award to the prevailing party on the motion, reasonable expenses, including attorney's fees and costs incurred for the motion.

(3) *On the Court's Initiative.* On its own, the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11(b).

(4) *Nature of the Sanction.* The sanction imposed under this rule may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee. The sanction may also include nonmonetary directives.

(5) *Vexatious Litigant.* In addition to any other sanction available under this rule, the court may also refer to the administrative district judge the question of whether to declare a person to be a vexatious litigant pursuant to Idaho Court Administrative Rule 59 and for relief under that rule.

(6) *Requirements for an Order.* An order imposing a sanction must describe the sanctioned conduct and explain the basis for the sanction.

(d) Inapplicability to Discovery. This rule does not apply to disclosures and discovery requests, responses, objections, and motions under Rules 26 through 37.

Rule 11.1. Verification

Verification of pleadings authorized or permitted under these rules or by law must be a written statement or declaration by a party or the party's attorney of record sworn to or affirmed before an officer authorized to take depositions by Rule 28, or that otherwise complies with Idaho Code Section 9-1406 and Rule 28 of these rules, that the affiant believes the facts stated to be true, unless a verification upon personal knowledge is required. When a corporation is a party, the verification may be made by an officer. When a partnership or other unincorporated association is the party under a common name, the verification may be made by a member or an officer.

Rule 11.2. Successive Applications for Orders or Writs; Motions for Reconsideration

(a) Successive Applications.

(1) *In General.* In any action, if an application for any order or writ is denied in whole or in part, neither the party nor the party's attorney may make any subsequent application to any other judge, except by appeal to a higher court.

(2) *Second Order Vacated; Sanctions.* A writ or order obtained in violation of this section must be immediately vacated by the judge who issued it. The court must sanction a party and the attorney seeking an order or writ in violation of this rule as it may determine appropriate, including by assessing costs and attorney's fees incurred by a party in defense of the writ or order.

(3) *Constitutional Writ After Disclosure Allowed.* A second application seeking a constitutional writ may be made if the first application and adverse ruling on the application are disclosed to the second judge. Likewise a constitutional writ may be sought from the same judge, or judge succeeding the same judge, in an action after the application was originally denied.

(4) *Application to the Same Judge or Successor.* A party or attorney may renew an application to the same judge, or a succeeding judge, in an action after the application was originally denied; but this rule does not create the right to file a motion for reconsideration except as provided in subsection (b) of this rule.

(b) Motion for Reconsideration.

(1) *In General.* A motion to reconsider any order of the trial court entered before final judgment may be made at any time prior to or within 14 days after the entry of a final judgment.

(2) *Certain Orders Not Subject to Reconsideration.* No motion to reconsider an order of the trial court entered on any motion filed under Rules 50(a), 52(b), 55(c), 59(a), 59(e), 59.1, 60(a), or 60(b) may be made.

Rule 11.3. Substitution and Withdrawal of Attorneys

(a) Substitution of Attorney.

(1) *In General.* An attorney may be substituted by filing written notice with the court. The notice must be signed by both the new attorney and the withdrawing attorney.

(2) *Effect of Substitution.* The substitution of attorneys or appearance of a new attorney must not delay the proceedings except for good cause.

(b) Withdrawal of Attorney.

(1) *Leave of Court Required.* To withdraw from an action, except by substitution, an attorney must first obtain leave of the court. The attorney seeking to withdraw must file a motion with the court and set the matter for hearing, and must provide notice to all parties, including the party the withdrawing attorney represents in the proceeding. The attorney must provide the last known address of the client in any notice of or motion for withdrawal.

(2) *When Granted.* By written order the court may grant leave to withdraw for good cause and upon such conditions or sanctions as will prevent delay or prejudice to the parties.

(3) *Withdrawal After Final Judgment.* After or with the entry of final judgment, an attorney may file notice of withdrawal, for which leave of court is not required. However, the

withdrawal will not be effective until the time for appeal has expired and no proceedings are pending.

(c) Service; Content of Order; Stay of Action; Dismissal or Default Judgment.

(1) *Service: Content of Order.* The clerk of the court will serve on all parties, including the party represented by the withdrawing attorney, an order permitting an attorney to withdraw. Service must be in the same manner as provided in Rule 77(d). The order allowing withdrawal must notify the party whose attorney is withdrawing that the party's claims will be subject to dismissal with prejudice or default judgment may be entered against the party if the party does not, within 21 days after service of the order, either appoint another attorney to appear or file notice with the court that the party will be self-represented in the action.

(2) *Stay of Action.* An action is stayed for 21 days after service by the court of an order allowing withdrawal of attorney.

(3) *Dismissal or Default Judgment.* If a notice of appearance of a new attorney or a notice of self-representation is not filed within 21 days after service of the order allowing withdrawal, the court may dismiss with prejudice any claims of the party or may enter default judgment against the party.

(d) Withdrawal Upon Death, Disbarment or Other Conditions. In the event of the death, extended illness, absence, suspension or disbarment from the practice of law of an attorney of record in an action, the court must stay the action from further proceedings, unless the attorney is associated with a firm, partnership, corporation or other attorney in the action. The court must then enter an order permitting withdrawal that is subject to the provisions of subsection (c) of this rule.

Rule 11.4. Limited Pro Bono Appearance

(a) In General. In accordance with Idaho Rule of Professional Conduct 1.2(c), an attorney may appear to provide limited unpaid assistance to a self-represented litigant in an action by filing and serving on all parties a notice of limited appearance specifying all matters that are to be undertaken on behalf of the party.

(b) Limited Authority. The attorney must only act on behalf of the party for those matters specified in the notice of limited appearance or any amended notice. Service on the attorney is valid only for those specific proceedings for which the attorney has appeared. Upon conclusion of the matters for which the attorney specifically appeared, the attorney must file a notice of completion of limited appearance which terminates the attorney's appearance in the action without need for leave of the court.

Rule 12. Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Hearings Before Trial

(a) Time to Serve a Responsive Pleading.

(1) *In General.* Unless another time is specified by rule or statute, the time for serving a responsive pleading is as follows:

(A) a defendant must serve an answer within 21 days after being served with the summons and complaint;

(B) a party must serve an answer to a counterclaim or crossclaim within 21 days after being served with the pleading that states the counterclaim or crossclaim;

(C) a party must serve a reply to an answer 21 days after being served with an order to reply, unless the court specifies a different time.

(2) *Effect of a Motion.* Unless the court sets a different time, serving a motion under this rule alters these periods as follows:

(A) if the court denies the motion or postpones its disposition until trial, the responsive pleading must be served within 14 days after notice of the court's action; or

(B) if the court grants a motion for a more definite statement, the responsive pleading must be served within 14 days after the more definite statement is served.

(b) How to Present Defenses. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim or third party claim, must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

(1) lack of subject-matter jurisdiction;

(2) lack of personal jurisdiction;

(3) improper venue;

(4) insufficient process;

(5) insufficient service of process;

(6) failure to state a claim upon which relief can be granted;

(7) failure to join a party under Rule 19; and

(8) another action pending between the same parties for the same cause.

A motion asserting any of these defenses must be made before pleading if a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.

(c) Motion for Judgment on the Pleadings. After the pleadings are closed, but early enough not to delay trial, a party may move for judgment on the pleadings.

(d) Result of Presenting Matters Outside the Pleadings. If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

(e) Motion for a More Definite Statement. A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion must be made before filing a responsive pleading and must point out the defects complained of and the details desired. If the court orders a more definite statement and the order is not obeyed within 14 days after notice of the order or within the time the court sets, the court may strike the pleading or issue any other appropriate order.

(f) Motion to Strike. The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act:

(1) on its own; or

(2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading.

(g) Joining Motions.

(1) *Right to Join.* A motion under this rule may be joined with any other motion allowed by this rule or by filing a special appearance under Rule 4.1.

(2) *Limitation on Further Motions.* Except as provided in Rule 12(h)(2) or (3), a party that makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion.

(h) Waiving and Preserving Certain Defenses.

(1) *When Some Are Waived.* A party waives any defense listed in Rule 12(b)(2),(4) and(5) by:

(A) omitting it from a motion in the circumstances described in Rule 12(g)(2); or

(B) failing to either:

(i) make it by motion under this rule; or

(ii) include it in a responsive pleading or in an amendment allowed by Rule 15(a)(1) as a matter of course.

(2) *When to Raise Others.* Failure to state a claim upon which relief can be granted, to join a person required by Rule 19 or 19.1, a defense of another action pending between the same parties for the same cause, or to state a legal defense to a claim may be raised:

(A) in any pleading allowed or ordered under Rule 7(a);

(B) by a motion under Rule 12(c); or

(C) at trial.

(3) *Lack of Subject Matter Jurisdiction.* If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.

(4) *Improper Venue.* An objection to improper venue is waived unless a timely motion for proper venue is made as provided in Rule 40.1.

(i) Hearing Before Trial. If a party so moves, any defense listed in Rule 12(b)(1)–(7), whether made in a pleading or by motion, and a motion under Rule 12(c) must be heard and decided before trial unless the court orders a deferral until trial.

Rule 13. Counterclaims and Crossclaims

(a) Compulsory Counterclaim.

(1) *In General.* A pleading must state as a counterclaim any claim that, at the time of its service, the pleader has against an opposing party if the claim:

(A) arises out of the transaction or occurrence that is the subject matter of the opposing party's claim; and

(B) does not require adding another party over whom the court cannot acquire jurisdiction.

(2) *Exceptions.* The pleader need not state the claim if:

(A) when the action was commenced, the claim was the subject of another pending action; or

(B) the opposing party sued on its claim by attachment or other process that did not establish personal jurisdiction over the pleader on that claim, and the pleader does not assert any counterclaim under this rule.

(b) Permissive Counterclaim. A pleading may state as a counterclaim against an opposing party any claim that is not compulsory.

(c) Relief Sought in a Counterclaim. A counterclaim need not diminish or defeat the recovery sought by the opposing party. It may request relief that exceeds in amount or differs in kind from the relief sought by the opposing party.

(d) Counterclaim Against Government Entities. These rules do not expand the right to assert a counterclaim, or to claim a credit, against the State of Idaho or any political subdivision, agency, or officer.

(e) Counterclaim Maturing or Acquired After Pleading. The court may permit a party to file a supplemental pleading asserting a counterclaim that matured or was acquired by the party after serving an earlier pleading.

(f) Reserved.

(g) Crossclaim Against a Coparty. A pleading may state as a crossclaim any claim by one party against a coparty if the claim arises out of the transaction or occurrence that is the subject matter of the original action or of a counterclaim, or if the claim relates to any property that is the subject matter of the original action. The crossclaim may include a claim that the coparty is or may be liable to the crossclaimant for all or part of a claim asserted in the action against the crossclaimant.

(h) Joining Additional Parties. Rules 19 and 20 govern the addition of a person as a party to a counterclaim or crossclaim.

(i) Separate Trials; Separate Judgments. If the court orders separate trials under Rule 42(b), it may enter judgment on a counterclaim or crossclaim under Rule 54(b) when it has jurisdiction to do so, even if the opposing party's claims have been dismissed or otherwise resolved.

Rule 14. Third-Party Practice

(a) When a Defending Party May Bring in a Third Party.

(1) *Timing of the Summons and Complaint.* A defending party may, as third-party plaintiff, serve a summons and complaint on a nonparty who is or may be liable to it for all or part of the claim against it. But the third-party plaintiff must, by motion, obtain the court's leave if it files the third-party complaint more than 14 days after serving its original answer.

(2) *Third-Party Defendant's Claims and Defenses.* The person served with the summons and third-party complaint, the "third-party defendant":

(A) must assert any defense against the third-party plaintiff's claim under Rule 12;

(B) must assert any counterclaim against the third-party plaintiff under Rule 13(a), and may assert any counterclaim against the third-party plaintiff under Rule 13(b) or any crossclaim against another third-party defendant under Rule 13(g);

(C) may assert against the plaintiff any defense that the third-party plaintiff has to the plaintiff's claim; and

(D) may also assert against the plaintiff any claim arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff.

(3) *Plaintiff's Claims Against a Third-Party Defendant.* The plaintiff may assert against the third-party defendant any claim arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The third-party defendant must then assert any defense under Rule 12 and any counterclaim under Rule 13(a), and may assert any counterclaim under Rule 13(b) or any crossclaim under Rule 13(g).

(4) *Motion to Strike, Sever, or Try Separately.* Any party may move to strike the third-party claim, to sever it, or to try it separately.

(5) *Third-Party Defendant's Claim Against a Nonparty.* A third-party defendant may proceed under this rule against a nonparty who is or may be liable to the third-party defendant for all or part of any claim against it.

(b) When a Plaintiff May Bring in a Third Party. When a claim is asserted against a plaintiff, the plaintiff may bring in a third party if this rule would allow a defendant to do so.

Rule 15. Amended and Supplemental Pleadings

(a) Amendments Before Trial.

(1) *Amending as a Matter of Course.* A party may amend its pleading once as a matter of course within:

(A) 21 days after serving it, or

(B) if the pleading is one to which a responsive pleading is required, before the party is served with the responsive pleading or a motion under Rule 12(b), (e), or (f), whichever is earlier.

(2) *Other Amendments.* In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

(3) *Time to Respond.* Unless the court orders otherwise, any required response to an amended pleading must be made within the time remaining to respond to the original pleading or within 14 days after service of the amended pleading, whichever is later.

(b) Amendments During and After Trial.

(1) *Based on an Objection at Trial.* If, at trial, a party objects that evidence is not within the issues raised in the pleadings, the court may permit the pleadings to be amended. The court should freely permit an amendment when doing so will aid in presenting the merits and the objecting party fails to satisfy the court that the evidence would prejudice that party's action or defense on the merits. The court may grant a continuance to enable the objecting party to meet the evidence.

(2) *For Issues Tried by Consent.* When an issue not raised by the pleadings is tried by the parties' express or implied consent, it must be treated in all respects as if raised in the pleadings. A party may move, at any time, even after judgment, to amend the pleadings to conform them to the evidence and to raise an unpleaded issue. But failure to amend does not affect the result of the trial of that issue.

(c) Relation Back of Amendments.

(1) *When an Amendment Relates Back.* An amendment to a pleading relates back to the date of the original pleading when:

(A) the law that provides the applicable statute of limitations allows relation back;

(B) the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out, or attempted to be set out, in the original pleading; or

(C) the amendment changes the party or the naming of the party against whom a claim is asserted, if Rule 15(c)(1)(B) is satisfied and if, within the period provided by Rule 4(m) for serving the summons and complaint, the party to be brought in by amendment:

(i) received such notice of the action that it will not be prejudiced in defending on the merits; and

(ii) knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity.

(2) *Notice to the State.* When the State of Idaho or any agency or officer of the State is added as a defendant by amendment, the notice requirements of Rule 15(c)(1)(C)(i) and (ii) are satisfied if, during the stated period, process was delivered or mailed to the Idaho attorney general or designee of the attorney general, or to the officer or agency.

(3) *Joining Real Party in Interest.* The relation back of an amendment joining or substituting a real party in interest is as provided in Rule 17(a).

(d) Supplemental Pleadings. On motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented. The court may permit supplementation even though the original pleading is defective in stating a claim or defense. The court may order that the opposing party plead to the supplemental pleading within a specified time.

Rule 16. Pretrial Conferences; Scheduling; Management

(a) Scheduling Conferences and Orders.

(1) *Scheduling Conferences; When Held.* Within 30 days after an answer or notice of appearance has been filed, or, within 90 days after a complaint has been filed, if one or

more defendants have been served but no appearance has been made, a court must take action, by setting a scheduling conference, requesting available trial dates, or by another method within the discretion of the presiding judge, which results in the filing of a scheduling order as soon as practicable after the action taken by the court.

(2) *Scheduling Order.* The scheduling order must address:

(A) the setting of date(s) for trial and any pre-trial conferences;

(B) the setting of deadlines for joining other parties and amending the pleadings; for filing and hearing dispositive motions; for completing discovery; and, for disclosing expert witnesses;

(C) the advisability of ordering mediation or ADR;

(D) the need for a special master where appropriate; and

(E) any other matter which would aid in the speedy, fair and efficient disposition of the case.

(3) *Modification of Scheduling Order.* The dates set by the court in section (A) above must not be modified except by leave of the court on a showing of good cause. The dates and deadlines in the scheduling order pursuant to subdivision (B) above must not be modified except by leave of the court on a showing of good cause or by stipulation of all the parties and approval of the court.

(b) Request for Trial Setting by a Party.

(1) *In General.* Should the court fail to set the matter for scheduling conference or otherwise to set the matter for trial, after all defendants have appeared, a party may request that the court set the matter for trial and that any other deadlines and pretrial conferences be established.

(2) *Information to be Included.* The request must indicate:

(A) the nature of the case;

(B) whether a jury trial has been demanded;

(C) whether referral to alternative dispute resolution would be beneficial;

(D) an estimate of the time required for trial;

(E) the name of the attorney who will appear at trial; and

(F) the dates upon which the attorney and party would not be available for trial.

(3) *Response to the Request by Other Parties.* A response must be filed and served within 7 days after being served with the request for trial setting. The response must contain the information required in subsection (b)(2) of this rule.

(4) *Action by the Court.* After the time for filing a response to the request has passed, the court must either issue a scheduling order pursuant to subsection (a)(2) of this rule or set the request for hearing.

(c) Final Pretrial Conference and Order.

(1) *Final Pretrial Procedure.* At least 30 days before trial, the court must engage in a pretrial process, which may include a formal pretrial conference, a pretrial

memorandum submitted by the parties, pretrial submissions by stipulation of the parties, or other methods within the discretion of the court, by which the parties are required to confirm that the matter is proceeding to trial in the manner required by the scheduling order. If a formal pretrial conference is held, at least one attorney for each represented party participating in the pretrial conference must have authority to enter into stipulations and to make admissions regarding all matters that may be reasonably anticipated. If a formal pretrial conference is held, it must be on the record.

(2) *Subjects to be Discussed at Pretrial Conference.* At a pretrial conference, the court may consider and resolve the following:

(A) the status of mediation or ADR;

(B) the disposition of any pending motions;

(C) the possibility of obtaining admissions of fact;

(D) stipulations regarding the authenticity of exhibits;

(E) the advisability of any advanced rulings from the court concerning the admissibility of evidence;

(F) the avoidance of unnecessary proof and of cumulative evidence;

(G) the necessity of amendments to the pleadings pursuant to Rule 15(b);

(H) the formulation and simplification of the issues to be presented at trial, including the elimination of abandoned or unsustainable claims and defenses;

(I) the identification of witnesses and exhibits;

(J) the pre-marking of exhibits and procedures for the handling of exhibits, in conformance with Idaho Court Administrative Rule 71;

(K) jury instructions and jury selection issues;

(L) the need for an interpreter for any party or witness;

(M) the need for pre-trial briefing, and filing deadlines, if necessary;

(N) the availability and use of any technology in the courtroom; and

(O) any other matter which would aid in the fair and efficient resolution of the case.

(d) Exhibits and Witnesses. The court may order the parties to file a list of all trial exhibits and names and addresses of witnesses who may testify, except impeachment exhibits and witnesses. Exhibits and witnesses discovered after the date set for disclosure must be supplemented, indicating the date the exhibit or witness was discovered. The court may exclude any untimely disclosed witness or exhibit, except for good cause and to prevent injustice.

(e) Sanctions.

(1) *Grounds.* The court may sanction any party or attorney if a party or attorney:

(A) fails to obey a scheduling or pretrial order;

(B) fails to appear at a scheduling or pretrial conference;

(C) is substantially unprepared to participate in a scheduling or pretrial conference; or

(D) fails to participate in good faith.

(2) *Sanctions Allowed.* The court may make such orders as are just, and may, along with any other sanction, make any of the orders allowed under Rule 37(b)(2)(A). Also, in addition to or in the place of any other sanction, the court must require the party or the party's attorney, or both, pay any expenses incurred because of noncompliance with this rule, including attorney's fees, unless the court finds noncompliance was substantially justified or that circumstance are such that such an award of expenses would be unjust.

TITLE IV - PARTIES

Rule 17. Plaintiff and Defendant; Capacity

(a) Real Party in Interest.

(1) *Designation in General.* An action must be prosecuted in the name of the real party in interest. The following may sue in their own names without joining the person for whose benefit the action is brought:

(A) an executor;

(B) an administrator;

(C) a personal representative

(D) a guardian;

(E) a bailee;

(F) a trustee of an express trust;

(G) a party with whom or in whose name a contract has been made for another's benefit; and

(H) a party authorized by statute.

(2) *Action in the Name of the State of Idaho for Another's Use or Benefit.* When a statute of the State of Idaho so provides, an action for another's use or benefit must be brought in the name of the State of Idaho.

(3) *Joinder of the Real Party in Interest.* The court may not dismiss an action for failure to prosecute in the name of the real party in interest until, after an objection, a reasonable time has been allowed for the real party in interest to ratify, join, or be substituted into the action. After ratification, joinder, or substitution, the action proceeds as if it had been originally commenced by the real party in interest.

(b) Capacity to Sue or be Sued. The capacity of a party, who is not acting in a representative capacity, to sue or be sued, is determined by the law of this state.

(c) Minor or Incompetent Person.

(1) *With a Representative.* The following representatives may sue or defend on behalf of a minor or an incompetent person:

(A) a general guardian;

(B) a committee;

(C) a conservator; or

(D) a like fiduciary.

(2) *Without a Representative.* A minor or an incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court must appoint a guardian ad litem, or issue another appropriate order, to protect a minor or incompetent person who is unrepresented in an action.

(d) Unknown Owners or Heirs as Parties. All persons who are or may be interested in the subject matter of an action whose names are unknown to the plaintiff may be made parties by being named and described as unknown owners or unknown heirs or unknown devisees of any deceased person. The unknown parties may be designated in the complaint, counterclaim or cross-claim, or in an amendment of any of these. This rule applies in all actions or proceedings:

(1) to obtain title or possession,

(2) to remove adverse claim or title or to quiet title,

(3) for partition,

(4) for sale,

(5) to foreclose any incumbrance,

(6) to enforce any trust,

(7) for specific performance of any contract, or

(8) for any other disposition of any property, real, personal, or mixed, situated within the State of Idaho, including causes of action, either situated within or due or claimed to be due from persons, firms or corporations resident within the State of Idaho.

Rule 18. Joinder of Claims

(a) In General. A party asserting a claim, counterclaim, cross-claim, or third-party claim may join, as independent or alternative claims, as many claims as it has against an opposing party.

(b) Joinder of Contingent Claims. A party may join two claims even though one of them is contingent on the disposition of the other; but the court may grant relief only in accordance with the parties' relative substantive rights. In particular, a plaintiff may state a claim for money and a claim to set aside a conveyance that is fraudulent as to that plaintiff, without first obtaining a judgment for the money.

Rule 19. Required Joinder of Parties

(a) Persons Required to be Joined if Feasible.

(1) *Required Party.* A person who is subject to service of process must be joined as a party in the action if:

(A) in that person's absence, the court cannot accord complete relief among existing parties; or

(B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:

(i) as a practical matter impair or impede the person's ability to protect the interest; or

(ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

(2) *Joinder by Court Order.* If a person has not been joined as required, the court must order that the person be made a party. A person who refuses to join as a plaintiff may be made either a defendant or, in a proper case, an involuntary plaintiff.

(b) When Joinder is Not Feasible. If a person who is required to be joined if feasible cannot be joined, the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed. The factors for the court to consider include:

(1) the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties;

(2) the extent to which any prejudice could be lessened or avoided by:

(A) protective provisions in the judgment;

(B) shaping the relief; or

(C) other measures;

(3) whether a judgment rendered in the person's absence would be adequate; and

(4) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder.

(c) Pleading Reasons for Nonjoinder. When asserting a claim for relief, a party must state:

(1) the name, if known, of any person who is required to be joined if feasible but is not joined; and

(2) the reasons for not joining that person.

(d) Exception for Class Actions. This rule is subject to Rule 77.

Rule 19.1. Motor Vehicle Operator

In an action against an owner of a motor vehicle under Idaho Code Section 49-2417, the operator of the vehicle whose negligence is imputed to the owner must be made a party defendant if the operator can be personally served in Idaho.

Rule 20. Permissive Joinder of Parties

(a) Persons Who May Join or be Joined.

(1) *Plaintiffs.* Persons may join in one action as plaintiffs if:

(A) they assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

(B) any question of law or fact common to all plaintiffs will arise in the action.

(2) *Defendants.* Persons may be joined in one action as defendants if:

(A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

(B) any question of law or fact common to all defendants will arise in the action.

(3) *Extent of Relief.* Neither a plaintiff nor a defendant need be interested in obtaining or defending against all the relief demanded. The court may grant judgment to one or more plaintiffs according to their rights, and against one or more defendants according to their liabilities.

(b) Protective Measures. The court may issue orders, including an order for separate trials, to protect a party against embarrassment, delay, expense, or other prejudice that arises from including a person against whom the party asserts no claim and who asserts no claim against the party. The court may also direct a final judgment on a claim of or against one or more parties as provided in Rule 54(b).

Rule 21. Misjoinder and Nonjoinder of Parties

Misjoinder of parties is not a ground for dismissing an action. On motion or on its own, the court may at any time, on just terms, add or drop a party. The court may also sever any claim against a party.

Rule 22. Interpleader

(a) Grounds.

(1) *By a Plaintiff.* Persons with claims that may expose a plaintiff to double or multiple liability may be joined as defendants and required to interplead. Joinder for interpleader is proper even though:

(A) the claims of the several claimants, or the titles on which their claims depend, lack a common origin or are adverse and independent rather than identical; or

(B) the plaintiff denies liability in whole or in part to any or all of the claimants.

(2) *By a Defendant.* A defendant exposed to similar liability may seek interpleader through a cross-claim or counterclaim.

(b) Relation to Other Rules. This rule supplements and does not limit the joinder of parties allowed by Rule 20.

Rule 23. Reserved

Rule 24. Intervention

(a) Intervention of Right. On timely motion, the court must permit anyone to intervene who:

(1) is given an unconditional right to intervene by an Idaho statute; or

(2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

(b) Permissive Intervention.

(1) *In General.* On timely motion, the court may permit anyone to intervene who:

(A) is given a conditional right to intervene by an Idaho statute; or

(B) has a claim or defense that shares with the main action a common question of law or fact.

(2) *By a Government Officer or Agency.* On timely motion, the court may permit a federal or state governmental officer or agency to intervene if a party's claim or defense is based on:

(A) a statute or executive order administered by the officer or agency; or

(B) any regulation, order, requirement, or agreement issued or made under the statute or executive order.

(3) *Delay or Prejudice.* In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.

(c) Notice and Pleading Required. A motion to intervene must be served on the parties as provided in Rule 5. The motion must state the grounds for intervention and be accompanied by a pleading that sets out the claim or defense for which intervention is sought.

Rule 25. Substitution of Parties

(a) Death.

(1) *Substitution if the Claim is Not Extinguished.* If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative party. If the motion is not made within a reasonable time, the action by or against the decedent may be dismissed.

(2) *Continuation Among the Remaining Parties.* After a party's death, if the right sought to be enforced survives only to or against the remaining parties, the action does not abate, but proceeds in favor of or against the remaining parties. The death should be noted on the record.

(3) *Service.* A motion to substitute, together with a notice of hearing, must be served on the parties as provided in Rule 5 and on nonparties as provided in Rule 4. A statement noting death must be served in the same manner. Service may be made in any judicial district.

(b) Incompetency. If a party becomes incompetent, the court may, on motion, permit the action to be continued by or against the party's representative. The motion must be served as provided in Rule 25(a)(3).

(c) Transfer of Interest. If an interest is transferred, the action may be continued by or against the original party unless the court, on motion, orders the transferee to be substituted in the action or joined with the original party. The motion must be served as provided in Rule 25(a)(3).

(d) Public Officers; Death or Separation from Office. An action does not abate when a public officer who is a party in an official capacity dies, resigns, or otherwise ceases to hold office while the action is pending. The officer's successor is automatically substituted as a party.

(e) Substitution at Any Stage. Substitution of parties under the provisions of this rule may be made by the trial court either before or after judgment or by the Supreme Court pending appeal.

TITLE V - DISCOVERY

Rule 26. General Provisions Governing Discovery

(a) Discovery Methods. Discovery may be made by:

(1) deposition upon oral examination or written questions;

(2) written interrogatories;

(3) production of documents, electronically stored information or tangible things;

(4) entry upon land or other property for inspection or other purposes;

(5) physical and mental examinations; and

(6) requests for admission.

(b) Discovery Scope and Limits.

(1) *In General.*

(A) General Scope of Discovery. Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense, including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.

(B) Limits on Electronically Stored Information. A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(1)(C). The court may specify conditions for the discovery.

(C) Limits on Frequency and Extent of Discovery. Unless limited by these rules or the court orders otherwise, the frequency of use of discovery is not limited. On motion or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules if it determines that:

(i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;

(ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or

(iii) the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties'

resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.

(2) *Insurance Agreements.* A party may obtain discovery of the existence and contents of any insurance agreement under which any insurer may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. An application for insurance is not subject to disclosure as part of an insurance agreement as provided by this rule.

(3) *Trial Preparation: Materials.*

(A) Documents and Tangible Things. Ordinarily, a party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent). But, subject to Rule 26(b)(4), those materials may be discovered if:

(i) they are otherwise discoverable under Rule 26(b)(1); and

(ii) the party shows that it has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means.

(B) Protection Against Disclosure. If the court orders discovery of those materials, it must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of a party's attorney or other representative concerning the litigation.

(C) Previous Statement. Any party or other person may, on request and without the required showing, obtain the person's own previous statement about the action or its subject matter. If the request is refused, the person may move for a court order, and Rule 37(a)(5) applies to the award of expenses. A previous statement is either:

(i) a written statement that the person has signed or otherwise adopted or approved; or

(ii) a contemporaneous stenographic, mechanical, electrical, or other recording, or a transcription of it, that recites substantially verbatim the person's oral statement.

(4) *Trial Preparation: Experts.*

(A) Discovery of an Expert Expected to Testify. A party must disclose to the other parties by answer to interrogatory, or if required by court order, the identity of any witness it expects to ask to present evidence under Rule 702, 703 and 705, Idaho Rules of Evidence.

(i) What Must be Disclosed: Retained Experts. For individuals retained or specially employed to provide expert testimony in the case or who are employees of the party:

- a complete statement of all opinions to be expressed and the basis and reasons for the opinion must be disclosed;
- the data or other information considered by the witness in forming the opinions;
- any exhibits to be used as a summary of or support for the opinions;
- any qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years;
- the compensation to be paid for the testimony; and
- a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

(ii) What Must be Disclosed: Non-Retained Experts. For individuals with knowledge of relevant facts not acquired in preparation for trial and who have not been retained or specially employed to provide expert testimony in the case:

- a statement of the subject matter on which the witness is expected to present evidence under Rule 702, 703 or 705, Idaho Rules of Evidence, and
- a summary of the facts and opinions to which the witness is expected to testify.

(iii) Deposition of Expert Allowed. A party may depose any person who has been disclosed as an expert witness.

(iv) Further Discovery. The court may order further discovery of experts by other means, subject to restrictions set bet the court as to the scope of discovery and the payment of expenses to the expert as provided by Rule 26(b)(4)(E).

(v) Limitation on Contact With Expert. A party must not contact a retained expert disclosed by another party pursuant to this Rule without first obtaining the permission of the party who retained the expert or by the court.

(B) Trial-Preparation Protection for Draft Reports or Disclosures. A draft disclosure or draft report prepared in anticipation of litigation by any witness disclosed under 26(b)(4)(A)(i) is protected from disclosure.

(C) Trial-Preparation Protection for Communications Between a Party's Attorney and an Expert Witness. Communications between the party's attorney and any witness required to be disclosed under 26(b)(4)(A)(i), regardless of the form of the communications, is protected from disclosure, except to the extent that the communications:

(i) state the amount of compensation for the expert's services;

(ii) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or

(iii) identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

(D) Expert Employed Only for Trial Preparation. Ordinarily, a party may not, by interrogatories or deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of

litigation or to prepare for trial and who is not expected to be called as a witness at trial. But a party may do so only:

(i) as provided in Rule 35(b); or

(ii) on showing exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.

(E) Payment. Unless manifest injustice would result, the court must require that the party seeking discovery:

(i) pay the expert a reasonable fee for time spent in responding to discovery under Rule 26(b)(4)(A)(ii) or 26(b)(4)(D);

(ii) or if by deposition of an expert pursuant to Rule 26(b)(4)(A)(i), pay the expert a reasonable fee for time spent testifying at the deposition; and

(iii) for discovery under Rule 26(b)(4)(D), also pay the other party a fair portion of the fees and expenses it reasonably incurred in obtaining the expert's facts and opinions, and for discovery under Rule 26(b)(4)(A)(ii) may require such payment.

(5) *Claiming Privilege or Protecting Trial-Preparation Materials.*

(A) Information Withheld. When a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as trial-preparation material, the party must:

(i) expressly make the claim; and

(ii) describe the nature of the documents, communications, or tangible things not produced or disclosed, and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.

(B) Information Produced. If information produced in discovery is subject to a claim of privilege or of protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it, and must preserve the information until the claim is resolved. After being notified, a party:

(i) must promptly return, sequester, or destroy the specified information and any copies it has;

(ii) must not use or disclose the information until the claim is resolved;

(iii) must take reasonable steps to retrieve the information if the party disclosed it before being notified; and

(iv) may promptly present the information to the court under seal for a determination of the claim.

(c) Protective Orders.

(1) *In General.* A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending, or as an alternative on matters relating to a deposition, in the court where the deposition will be taken. The

motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(A) forbidding the disclosure or discovery;

(B) specifying terms, including time and place, for the disclosure or discovery;

(C) prescribing a discovery method other than the one selected by the party seeking discovery;

(D) forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters;

(E) designating the persons who may be present while the discovery is conducted;

(F) requiring that a deposition be sealed and opened only on court order;

(G) requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way; and

(H) requiring that the parties simultaneously file specified documents or information in sealed envelopes, to be opened as the court directs.

(2) *Ordering Discovery.* If a motion for a protective order is wholly or partly denied, the court may, on just terms, order that any party or person provide or permit the discovery.

(3) *Awarding Expenses.* Rule 37(a)(5) applies to the award of expenses.

(d) Sequence of Discovery. Unless, on motion, the court orders otherwise for the parties' and witnesses' convenience and in the interests of justice:

(1) methods of discovery may be used in any sequence; and

(2) discovery by one party does not require any other party to delay its discovery.

(e) Supplementing Responses.

(1) *In General.* A party who has responded to an interrogatory, request for production, or request for admission, which response was complete when made, is under no duty to supplement the response to include information subsequently acquired, except:

(A) in a timely manner if the party learns that in some material respect the disclosure or response was incorrect when made or, if correct when made, is no longer true and a failure to amend the response is in substance a knowing concealment;

(B) a party is under a duty to supplement in a timely manner the identity and location of persons having knowledge of discoverable matters; and

(C) by agreement of the parties; upon timely submission of discovery requests for supplementation; or by order of the court.

(2) *Expert Witnesses.* A party must supplement in a timely manner the identity of each person expected to be called as an expert witness at trial, the subject matter on which the person is expected to testify, and the substance of the person's testimony.

(3) *Sanction for Failure to Supplement.* The court may exclude the testimony of any witness or the admission of evidence not disclosed by a supplementation required by this rule.

(f) Signing Discovery Requests, Responses and Objections.

(1) *Signature Required; Effect of Signature.* Every discovery request, response, or objection must be signed by at least one attorney of record in the attorney's own name, or by the party personally, if unrepresented, and must state the signer's address and e-mail address. By signing, an attorney or party certifies that to the best of the person's knowledge, information, and belief formed after a reasonable inquiry:

(A) with respect to a statement of fact, it is complete and correct as of the time it is made; and

(B) with respect to a discovery request, response, or objection, it is:

(i) consistent with these rules and warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law, or for establishing new law;

(ii) not interposed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and

(iii) neither unreasonable nor unduly burdensome or expensive, considering the needs of the case, prior discovery in the case, the amount in controversy, and the importance of the issues at stake in the action.

(2) *Failure to Sign.* Other parties have no duty to act on an unsigned disclosure, request, response, or objection until it is signed, and the court must strike it unless a signature is promptly supplied after the omission is called to the attorney's or party's attention.

(3) *Sanction for Improper Certification.* If a certification violates this rule without substantial justification, the court, on motion or on its own, must impose an appropriate sanction on the signer, the party on whose behalf the signer was acting, or both. The sanction may include an order to pay the reasonable expenses, including attorney's fees, caused by the violation.

Rule 27. Depositions to Perpetuate Testimony

(a) Before an Action is Filed.

(1) *Petition.* A person who wants to perpetuate testimony about any matter cognizable in any court in the state of Idaho may file a verified petition in the district court for the district where any expected adverse party resides. The petition must ask for an order authorizing the petitioner to depose the named persons in order to perpetuate their testimony. The petition must be titled in the petitioner's name and must show:

(A) that the petitioner expects to be a party to an action cognizable in a court of the state of Idaho but cannot presently bring it or cause it to be brought;

(B) the subject matter of the expected action and the petitioner's interest;

(C) the facts that the petitioner wants to establish by the proposed testimony and the reasons to perpetuate it;

(D) the names or a description of the persons whom the petitioner expects to be adverse parties and their addresses, so far as known; and

(E) the name, address, and expected substance of the testimony of each deponent.

(2) *Notice and Service; Appointment of Attorney.* At least 21 days before the hearing date, the petitioner must serve each expected adverse party with a copy of the petition and a notice stating the time and place of the hearing. The notice may be served either inside or outside the county or state in the manner provided in Rule 4. If that service cannot be made with reasonable diligence on an expected adverse party, the court may order service by publication or otherwise. The court must appoint an attorney to represent persons not served in the manner provided in Rule 4 and to cross-examine the deponent if an unserved person is not otherwise represented. If any expected adverse party is a minor or is incompetent, Rule 17(c) applies.

(3) *Order and Examination.* If satisfied that perpetuating the testimony may prevent a failure or delay of justice, the court must issue an order that designates or describes the persons whose depositions may be taken, specifies the subject matter of the examinations, and states whether the depositions will be taken orally or by written interrogatories. The depositions may then be taken under these rules, and the court may issue orders like those authorized by Rules 34 and 35. A reference in these rules to the court where an action is pending means, for purposes of this rule, the court where the petition for the deposition was filed.

(4) *Using the Deposition.* A deposition to perpetuate testimony may be used under Rule 32(a) in any later-filed district-court action involving the same subject matter if the deposition either was taken under these rules or, although not so taken, would be admissible in evidence in the courts of the state where it was taken.

(b) Pending Appeal.

(1) *In General.* The court where a judgment has been rendered may, if an appeal has been taken or may still be taken, permit a party to depose witnesses to perpetuate their testimony for use in the event of further proceedings in that court.

(2) *Motion.* The party who wants to perpetuate testimony may move for leave to take the depositions, on the same notice and service as if the action were pending in the district court. The motion must show:

(A) the name, address, and expected substance of the testimony of each deponent; and

(B) the reasons for perpetuating the testimony.

(3) *Court Order.* If the court finds that perpetuating the testimony may prevent a failure or delay of justice, the court may permit the depositions to be taken and may issue orders like those authorized by Rules 34 and 35. The depositions may be taken and used as any other deposition taken in a pending district-court action.

(c) Perpetuation by an Action. This rule does not limit a court's power to entertain an action to perpetuate testimony.

Rule 28. Persons Before Whom Depositions May Be Taken

(a) Within the United States.

(1) *In General.* Within Idaho, before a person authorized by the laws of this state to administer oaths. Outside Idaho, but within the United States or a territory or insular possession subject to United States jurisdiction, a deposition must be taken before:

(A) an officer authorized to administer oaths either by the laws of the state of Idaho, by federal law or by the law in the place of examination; or

(B) a person appointed by the court where the action is pending to administer oaths and take testimony.

(2) *Definition of "Officer."* The term "officer" in Rules 30, 31, and 32 includes a person appointed by the court under this rule or designated by the parties under Rule 29(a).

(b) In a Foreign Country.

(1) *In General.* A deposition may be taken in a foreign country:

(A) before a secretary of embassy or legation, consul, vice consul, or consular agent of the United States;

(B) before or any officer authorized to administer oaths under the laws of the State of Idaho, or of the United States; or

(C) before a person appointed by the court.

(2) *Power of Officer.* A person before whom a deposition may be taken by this rule is empowered to administer oaths and take testimony.

(3) *Commission.* A commission may be issued when necessary and convenient on appropriate terms after an application and notice of it. Officers may be designated in a notices or commissions by name or by descriptive title.

(c) Of Members of the Armed Forces.

(1) *In General.* The deposition of a member of the armed forces of the United States or of the State of Idaho or any other person subject to military or naval law, or their children or spouse, may be taken before any officer of any component of any branch of the armed forces of the United States or of Idaho.

(2) *Certificate of Office.* A statement in a certificate of an officer of the armed forces of the United States or of Idaho is prima facie proof that:

(A) the officer holds the office stated in the certificate; and

(B) the deponent is a member of the armed forces or subject to military law or is a spouse or child of such a member.

(d) Disqualification. A deposition must not be taken before a person who is any party's relative, employee, or attorney; who is related to or employed by any party's attorney; or who is financially interested in the action.

Rule 29. Stipulations About Discovery Procedure

Unless the court orders otherwise, the parties may stipulate that:

- a deposition may be taken before any person, at any time or place, on any notice, and in the manner specified, in which event it may be used in the same way as any other deposition; and
- other procedures governing or limiting discovery be modified, but a stipulation extending the time for any form of discovery must have court approval if it would interfere with the time set for trial or court approval is required by other order of the court.

Rule 30. Depositions by Oral Examination

(a) When a Deposition May Be Taken.

(1) *Without Leave.* A party may, by oral questions, depose any person, including a party, without leave of court except as provided in Rule 30(a)(2). The deponent's attendance may be compelled by subpoena under Rule 45.

(2) *With Leave.* A party must obtain leave of court:

(A) if the deponent is confined in prison; or

(B) the plaintiff seeks to take the deposition and more than thirty days have not passed since service of the summons and complaint on the defendant or since service has otherwise been made under Rule 4(e). However leave of court is not required if:

(i) the defendant has served a notice of taking deposition or otherwise sought discovery; or

(ii) the plaintiff or the attorney for the plaintiff certifies in the notice of deposition, with supporting facts, to the best of his or her knowledge, that the deponent is expected to leave the district where the action is pending and go more than 100 miles from the place of trial or leave the United States before the expiration of the 30 day period, and will be unavailable for examination after the time set for the deposition. The certification is subject to the sanctions provided by Rule 11. If a party shows that when the party was served with notice under this subdivision (a)(2)(B)(ii) the party was unable through the exercise of diligence to obtain counsel to represent the party at the taking of the deposition, the deposition may not be used against the party.

(b) Notice of the Deposition; Other Formal Requirements.

(1) *Notice in General.* A party who wants to depose a person by oral questions must give reasonable written notice to every other party. The notice must state the time and place of the deposition. The court may for cause shown enlarge or shorten the time for taking the deposition. If known, the notice must state the deponent's name and address. If the name of the deponent is unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs.

(2) *Producing Documents.* If a subpoena duces tecum is to be served on the deponent, the materials designated for production, as set out in the subpoena, must be listed in the notice or in an attachment. The notice to a party deponent may be accompanied by a request under Rule 34 to produce documents and tangible things at the deposition, and the procedures of Rule 34 will apply to the request.

(3) *Method of Recording.*

(A) Method Stated in the Notice. The party who notices the deposition must state in the notice the method for recording the testimony. Unless the court orders otherwise, testimony may be recorded by audio or audiovisual means, but must also be simultaneously recorded by stenographic means, as provided by Rule 30.1.

(B) Additional Method. With prior notice to the deponent and other parties, any party may designate another method for recording the testimony in addition to that specified in the original notice. That party bears the expense of the additional record or transcript unless the court orders otherwise.

(4) *By Remote Means.* The parties may stipulate, or the court may on motion order, that a deposition be taken by telephone or other remote means. For the purpose of this rule and Rules 28(a), 37(a)(2), 37(b)(1), and 45(f)(2), the deposition takes place where the deponent answers the questions.

(5) *Officer's Duties.*

(A) Before the Deposition. Unless the parties stipulate otherwise, a deposition must be conducted before an officer appointed or designated under Rule 28. The officer should begin the deposition with an on-the-record statement that includes:

(i) the officer's name and business address;

(ii) the date, time, and place of the deposition;

(iii) the deponent's name;

(iv) the officer's administration of the oath or affirmation to the deponent; and

(v) the identity of all persons present.

(B) After the Deposition. At the end of a deposition, the officer must state on the record that the deposition is complete and must set out any stipulations made by the attorneys about custody of the transcript or recording and of the exhibits, or about any other pertinent matters.

(6) *Notice or Subpoena Directed at an Organization.* In its notice or subpoena, a party may name as the deponent a public or private corporation, a partnership, an association, a governmental agency, or other entity and must describe with reasonable particularity the matters for examination. The named organization must then designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify. A subpoena must advise a nonparty organization of its duty to make this designation. The persons designated must testify about information known or reasonably available to the organization. This paragraph (6) does not preclude a deposition by any other procedure allowed by these rules.

(c) Examination and Cross-Examination; Record of the Examination; Objections; Written Questions.

(1) *Examination and Cross-Examination.* The examination and cross-examination of a deponent proceed as they would at trial under Rule 43(b) and the Idaho Rules of Evidence. After putting the deponent under oath or affirmation, the officer must record

the testimony by the method designated under Rule 30(b)(3)(A). The testimony must be recorded by the officer personally or by a person acting in the presence and under the direction of the officer. If requested by a party the officer must transcribe the testimony at that party's expense.

(2) *Objections.* An objection at the time of the examination, whether to evidence, to a party's conduct, to the officer's qualifications, to the manner of taking the deposition, or to any other aspect of the deposition, must be noted on the record, but the examination still proceeds; the testimony is taken subject to any objection.

(3) *Participation Through Written Questions.* Instead of participating in the oral examination, a party may serve written questions in a sealed envelope on the party noticing the deposition, who must deliver them to the officer. The officer must ask the deponent those questions and record the answers verbatim.

(d) Objections; Conduct; Sanction; Motion to Terminate or Limit Examination.

(1) *Objections.* An objection must be stated concisely in a nonargumentative and nonsuggestive manner. A person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation ordered by the court, or to present a motion under Rule 30(d)(4).

(2) *Conduct of Counsel and Party.* Counsel or any other person present during the deposition must not impede, delay or frustrate the fair examination of the deponent.

(3) *Sanction.* The court may impose an appropriate sanction, including the reasonable expenses and attorney's fees incurred by any party, or any other sanction listed in Rule 37(b), on a person who impedes, delays, or frustrates the fair examination of the deponent.

(4) *Motion to Terminate or Limit.*

(A) Grounds. At any time during a deposition, the deponent or a party may move to terminate or limit it on the ground that it is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses the deponent or party. The motion may be filed in the court where the action is pending or the deposition is being taken. If the objecting deponent or party so demands, the deposition must be suspended for the time necessary to obtain an order.

(B) Order. The court may order that the deposition be terminated or may limit its scope and manner as provided in Rule 26(c). If terminated, the deposition may be resumed only by order of the court where the action is pending.

(C) Award of Expenses. Rule 37(a)(5) applies to the award of expenses.

(e) Review by the Witness; Changes.

(1) *Review; Statement of Changes.* Unless waived by the deponent and the parties, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) *Changes Indicated in the Officer's Certificate.* The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

(3) *Witness Failure to Sign.*

(A) In General. If the deposition is not signed by the witness within the 30 days period, the officer must sign it and state on the record the fact of the waiver of signature, or of the illness or absence of the witness or the fact of the refusal to sign the deposition together with any reason given for not signing.

(B) Use of Unsigned Deposition. The deposition may be used as if it were signed, unless pursuant to Rule 32(d)(4) the court determines that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(f) Certification and Delivery; Exhibits; Copies of the Transcript or Recording; Notice of Completion; Inspection and Use.

(1) *Certification and Delivery.* The officer must certify in writing that the witness was duly sworn and that the deposition accurately records the witness's testimony. The certificate must accompany the record of the deposition. Unless the court orders otherwise, the officer must seal the deposition in an envelope or package bearing the title of the action and marked "Deposition of [witness's name]" and must promptly send it to the attorney who noticed the deposition. The attorney must store it under conditions that will protect it against loss, destruction, tampering, or deterioration. The transcript of a deposition must not be filed with the court. The attorney to whom the transcript of a deposition is transmitted by the officer must retain it until 1 year after final disposition of the action. After that time, the transcript may be destroyed unless the court orders that it be preserved for a longer period.

(2) *Documents and Tangible Things.*

(A) Originals and Copies. Documents and tangible things produced for inspection during a deposition must, on a party's request, be marked for identification and attached to the deposition. Any party may inspect and copy them. But if the person who produced them wants to keep the originals, the person may:

(i) offer copies to be marked, attached to the deposition, and then used as originals, after giving all parties a fair opportunity to verify the copies by comparing them with the originals; or

(ii) give all parties a fair opportunity to inspect and copy the originals after they are marked, in which event the originals may be used as if attached to the deposition.

(B) Order Regarding the Originals. Any party may move for an order that the originals be attached to the deposition pending final disposition of the case.

(3) *Copies of the Transcript or Recording.* Unless otherwise stipulated or ordered by the court, the officer must retain the stenographic notes of a deposition taken stenographically or a copy of the recording of a deposition taken by another method. When paid reasonable charges, the officer must furnish a copy of the transcript or recording to any party or the deponent.

(4) *Notice of Completion.* Upon completion of the transcript and delivery of it to the party noticing the deposition, the officer who prepared the transcript must promptly notify all the parties or their attorneys that the transcript has been completed and provided to the party noticing it.

(5) *Inspection of Original and Use of Deposition.*

(A) Inspection of Original. Unless otherwise ordered by the court, the attorney or party that custody of the original deposition must make it available for inspection by the other parties upon request.

(B) Use of Deposition with the Court. If any portion of a deposition is to be used at trial or in support or opposition to any motion, only the portion of the deposition relied should be submitted to the court. Unless a genuine issue of authenticity is raised, a party may submit excerpts from copies of the original deposition transcript and is not required to submit the original transcript to the court.

(C) Exhibits to Depositions. Exhibits to the deposition may be annexed to and returned with the deposition; or the officer must, if requested by the party producing the documentary evidence or exhibits, mark it as an exhibit in the case, and return it to the party offering it and must be treated as if annexed to and returned with the deposition.

(g) Failure to Attend a Deposition or Serve a Subpoena; Expenses. A party who, expecting a deposition to be taken, attends in person or by an attorney may recover reasonable expenses for attending, including attorney's fees, if the noticing party failed to:

(1) attend and proceed with the deposition; or

(2) serve a subpoena on a nonparty deponent, who consequently did not attend.

Rule 30.1. Audio-Visual Recording of Depositions

(a) In General. Upon notice, any deposition may be recorded by audio-visual means, but must also simultaneously be recorded as a stenographic record. The noticing party bears the recording and transcribing costs. Upon request and at the party's own expense, a party is entitled to a transcript and an audio or audio-visual copy of the recording.

(b) Official Record. Both the audio-visual recording and the transcript prepared by a reporter are official records of the deposition.

(c) Transcript. The court may order a party taking the deposition by audio-visual recording to furnish a transcript of the deposition at the party's expense.

(d) Use of Audio-Visual Deposition. An audio-visual recording of a deposition may be used for any purpose and under any circumstance as a stenographic deposition may be used.

(e) Notice of Audio-Visual Deposition. The notice for taking an audio-visual deposition and the subpoena for attendance must state that the deposition will be recorded by audio-visual means.

(f) Procedure for Taking. The following procedure must be used in recording an audio visual deposition:

(1) *Opening of Deposition.* The deposition must begin with an oral or written statement on camera which includes:

(A) the operator's name and business address;

(B) the name and business address of the operator's employer;

(C) the date, time, and place of the deposition;

(D) the caption of the case;

(E) the party on whose behalf the deposition is being taken; and

(F) any stipulations by the parties.

(2) *Identification of Counsel.* Counsel must identify themselves on the record.

(3) *Oath on Camera.* The administration of the oath to the witness must be audio-visually recorded.

(4) *Multiple Recording Units.* If an audio-visually recorded deposition is recorded on multiple units of film or data storage devises or recording units, the end of each unit and the beginning of each succeeding unit must be announced on camera.

(5) *Statement of Closing of Deposition.* A statement must be made on camera indicating that the conclusion of the deposition. A statement identifying any stipulations of counsel concerning the custody of the audio-visual recording and exhibits or regarding any other pertinent matters may be made on camera.

(6) *Time Index.* Depositions recorded by audio visual means must be indexed by a time generator or other method specified by Rule or order of the court.

(7) *Objections.* An objection must be made as it would in the case of stenographic depositions.

(8) *Editing.* If the court orders that the audio visual deposition must be edited for presentation or use, the original of the recording must not be altered.

(9) *Filing of Recording.* Unless ordered by court, the original audio-visual recording of a deposition, any copy edited pursuant to an order of the court, and exhibits must be maintained by the attorney who noticed the deposition, in the same manner as a transcript of a deposition.

(g) Costs. The reasonable expense of recording, editing, and using an audio-visual deposition may be taxed as costs.

Rule 31. Depositions by Written Questions

(a) When a Deposition May Be Taken.

(1) *Without Leave.* A party may, by written questions, depose any person, including a party, without leave of court except as provided in Rule 31(a)(2). The deponent's attendance may be compelled by subpoena under Rule 45.

(2) *With Leave.* A party must obtain leave of court, and the court must grant leave to the extent consistent with Rule 26(b)(1)(C) if:

(A) the parties have not stipulated to the deposition and the deponent has already been deposed in the case; or

(B) the deponent is confined in prison.

(3) *Service; Required Notice.* A party who wants to depose a person by written questions must serve them on every other party, with a notice stating, if known, the deponent's name and address. If the name is unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs. The notice must also state the name or descriptive title and the address of the officer before whom the deposition will be taken.

(4) *Questions Directed to an Organization.* A public or private corporation, a partnership, an association, or a governmental agency may be deposed by written questions in accordance with Rule 30(b)(6).

(5) *Questions from Other Parties.* Any questions to the deponent from other parties must be served on all parties as follows: cross-questions, within 14 days after being served with the notice and direct questions; redirect questions, within 7 days after being served with cross-questions; and recross-questions, within 7 days after being served with redirect questions. The court may, for good cause, extend or shorten these times.

(b) Delivery to the Officer; Officer's Duties. The party who noticed the deposition must deliver to the officer a copy of all the questions served and of the notice. The officer must promptly proceed in the manner provided in Rule 30(c), (e), and (f) to:

(1) take the deponent's testimony in response to the questions;

(2) prepare and certify the deposition; and

(3) send it to the party, attaching a copy of the questions and of the notice.

(c) Notice of Completion. The party who noticed the deposition must notify all other parties when it is completed.

(d) Protective Orders. After the service of written questions, the court in which the action is pending may make any order specified in Rule 30, or order that the deposition not be taken before the officer designated in the notice or that the deposition must be taken upon oral examination.

Rule 32. Using Depositions in Court Proceedings

(a) Using Depositions.

(1) *In General.* At a hearing, trial or upon an interlocutory proceeding, all or part of a deposition may be used against a party on these conditions:

(A) the party was present or represented at the taking of the deposition or had reasonable notice of it;

(B) it is used to the extent it would be admissible under the Idaho Rules of Evidence if the deponent were present and testifying; and

(C) the use is allowed by Rule 32(a)(2) through (8).

(2) *Impeachment and Other Uses.* Any party may use a deposition to contradict or impeach the testimony given by the deponent as a witness, or for any other purpose allowed by the Idaho Rules of Evidence.

(3) *Deposition of Party, Agent, or Designee.* An adverse party may use for any purpose the deposition of a party or anyone who, when deposed, was the party's officer, director, managing agent, or designee under Rule 30(b)(6) or 31(a)(4).

(4) *Unavailable Witness.* A party may use for any purpose the deposition of a witness, whether or not a party, if the court finds:

(A) that the witness is dead;

(B) that the witness is more than 100 miles from the place of hearing or trial or is outside the state of Idaho, unless it appears that the witness's absence was procured by the party offering the deposition;

(C) that the witness cannot attend or testify because of age, illness, infirmity, or imprisonment;

(D) that the party offering the deposition could not procure the witness's attendance by subpoena; or

(E) on motion and notice, that exceptional circumstances make it desirable, in the interest of justice and with due regard to the importance of live testimony in open court, to permit the deposition to be used.

(5) *Limitations on Use.*

(A) Deposition Taken on Short Notice. A deposition must not be used against a party who, having received less than 14 days' notice of the deposition, promptly moved for a protective order under Rule 26(c)(1)(B) requesting that it not be taken or be taken at a different time or place, and this motion was still pending when the deposition was taken.

(B) Unavailable Deponent; Party Could Not Obtain an Attorney. A deposition taken without leave of court under the unavailability provision of Rule 30(a)(2)(B)(ii) must not be used against a party who shows that, when served with the notice, it could not, despite diligent efforts, obtain an attorney to represent it at the deposition.

(6) *Using Part of a Deposition.* If a party offers in evidence only part of a deposition, an adverse party may require the offeror to introduce other parts that in fairness should be considered with the part introduced, and any party may itself introduce any other parts.

(7) *Substituting a Party.* Substituting a party under Rule 25 does not affect the right to use a deposition previously taken.

(8) *Deposition Taken in an Earlier Action.* A deposition lawfully taken in any federal- or state-court action may be used in a later action involving the same subject matter between the same parties, or their representatives or successors in interest, to the same extent as if taken in the later action. A deposition previously taken may also be used as allowed by the Idaho Rules of Evidence.

(b) Objections to Admissibility. Subject to Rule 32(d)(3), an objection may be made at a hearing or trial to the admission of any deposition testimony that would be inadmissible if the witness were present and testifying.

(c) Reserved.

(d) Waiver of Objections.

(1) *To the Notice.* An objection to an error or irregularity in a deposition notice is waived unless promptly served in writing on the party giving the notice.

(2) *To the Officer's Qualification.* An objection based on disqualification of the officer before whom a deposition is to be taken is waived if not made:

(A) before the deposition begins; or

(B) promptly after the basis for disqualification becomes known or, with reasonable diligence, could have been known.

(3) *To the Taking of the Deposition.*

(A) Objection to Competence, Relevance, or Materiality. An objection to a deponent's competence, or to the competence, relevance, or materiality of testimony, is not waived by a failure to make the objection before or during the deposition, unless the ground for it might have been corrected at that time.

(B) Objection to an Error or Irregularity. An objection to an error or irregularity at an oral examination is waived if:

(i) it relates to the manner of taking the deposition, the form of a question or answer, the oath or affirmation, a party's conduct, or other matters that might have been corrected at that time; and

(ii) it is not timely made during the deposition.

(C) Objection to a Written Question. An objection to the form of a written question under Rule 31 is waived if not served in writing on the party submitting the question within the time for serving responsive questions or, if the question is a recross-question, within 7 days after being served with it.

(4) *To Completing and Returning the Deposition.* An objection to how the officer transcribed the testimony, or prepared, signed, certified, sealed, endorsed, sent, or otherwise dealt with the deposition, is waived unless a motion to suppress is made promptly after the error or irregularity becomes known or, with reasonable diligence, could have been known.

Rule 33. Interrogatories to Parties

(a) In General.

(1) *Number.* Unless otherwise stipulated or ordered by the court for good cause allowing a specific additional number of interrogatories, a party may serve on any other party no more than 40 written interrogatories, including all discrete subparts.

(2) *Scope.* An interrogatory may relate to any matter that may be inquired into under Rule 26(b). An interrogatory is not objectionable merely because it asks for an opinion or contention that relates to fact or the application of law to fact, but the court may order that the interrogatory need not be answered until designated discovery is complete, or until a pretrial conference or some other time.

(3) *When May be Served.* Interrogatories may be served on the plaintiff after commencement of the suit and upon any other party with or after service of the summons and complaint.

(b) Answers and Objections.

(1) *Responding Party.* The interrogatories must be answered:

(A) by the party to whom they are directed; or

(B) if that party is a public or private corporation, a partnership, an association, or a governmental agency, by any officer or agent, who must furnish the information available to the party.

(2) *Time to Respond.* The responding party must serve its answers and any objections within 30 days after being served with the interrogatories. A shorter or longer time may be stipulated to under Rule 29 or be ordered by the court.

(3) *Answering Each Interrogatory.* Each interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath. The answers must first first set forth each interrogatory asked, followed by the answer or objection.

(4) *Objections.* The grounds for objecting to an interrogatory must be stated with specificity. Any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure.

(5) *Signature.* The person who makes the answers must sign them, and the attorney who objects must sign any objections.

(c) Use.

(1) *In General.* An answer to an interrogatory may be used to the extent allowed by the Idaho Rules of Evidence.

(2) *Use of Interrogatories with the Court.* If interrogatories or answers to them are to be used at trial or in support or opposition to any motion, only the portion of the interrogatory or answer relied should be submitted to the court. Unless a genuine issue of authenticity is raised, a party may submit excerpts from copies of the original interrogatories or answers and is not required to submit the originals to the court.

(d) Option to Produce Business Records. If the answer to an interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing a party's business records (including electronically stored information), and if the burden of deriving or ascertaining the answer will be substantially the same for either party, the responding party may answer by:

(1) specifying the records that must be reviewed, in sufficient detail to enable the interrogating party to locate and identify them as readily as the responding party could; and

(2) giving the interrogating party a reasonable opportunity to examine and audit the records and to make copies, compilations, abstracts, or summaries.

(e) Non-Filing; Notice of Serving.

(1) *Non-Filing.* Neither the interrogatories nor the answers are to be filed with the court. The propounding party must maintain the original interrogatories and the original answers, along with the original proof of service for 1 year following the final disposition of the action and expiration of any period for appeal, unless the court orders that they be retained for a longer period.

(2) *Notice of Serving.* The party serving interrogatories and answers to them must file with the court a notice of when and upon whom it was served.

Rule 34. Producing Documents, Electronically Stored Information, and Tangible Things, or Entering Onto Land, for Inspection and Other Purposes

(a) In General. Requests may be served on the plaintiff after commencement of the suit and upon any other party with or after service of the summons and complaint. A party may serve on any other party a request within the scope of Rule 26(b):

(1) to produce and permit the requesting party or its representative to inspect, copy, test, or sample the following items in the responding party's possession, custody, or control:

(A) any designated documents or electronically stored information, including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations, stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form; or

(B) any designated tangible things; or

(2) to permit entry onto designated land or other property possessed or controlled by the responding party, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

(b) Procedure.

(1) *Contents of the Request.* The request:

(A) must describe with reasonable particularity each item or category of items to be inspected;

(B) must specify a reasonable time, place, and manner for the inspection and for performing the related acts; and

(C) may specify the form or forms in which electronically stored information is to be produced.

(2) *Responses and Objections.*

(A) Time to Respond. The party to whom the request is directed must respond in writing within 30 days after being served. A shorter or longer time may be stipulated to under Rule 29 or be ordered by the court.

(B) Responding to Each Item. For each item or category, the response must either state that inspection and related activities will be permitted as requested or state an objection to the request, including the reasons. The response must first set forth each request asked, followed by the response or objection

(C) Objections. An objection to part of a request must specify the part and permit inspection of the rest.

(D) Responding to a Request for Production of Electronically Stored Information. The response may state an objection to a requested form for producing electronically stored information. If the responding party objects to a requested form, or if no form was specified in the request, the party must state the form or forms it intends to use.

(E) Producing the Documents or Electronically Stored Information. Unless otherwise stipulated or ordered by the court, these procedures apply to producing documents or electronically stored information:

(i) a party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request;

(ii) if a request does not specify a form for producing electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms;

(iii) a party need not produce the same electronically stored information in more than one form; and

(iv) if the court orders the responding party to comply with the request, the court may also order that the requesting party pay the reasonable expenses of any extraordinary steps required to retrieve and produce the information.

(c) Nonparties. As provided in Rule 45, a nonparty may be compelled to produce documents and tangible things or to permit an inspection. Also, this rule does not preclude an independent action against a nonparty for production of documents and tangible things or to permit an inspection.

(d) Non-Filing; Notice of Serving.

(1) *Non-Filing.* Neither the requests nor the responses are to be filed with the court. The propounding party must maintain the original requests and the original responses, along with the original proof of service for 1 year following the final disposition of the action and expiration of any period for appeal, unless the court orders that they be retained for a longer period.

(2) *Notice of Serving.* The party serving requests and responses to them must file with the court a notice of when and upon whom it was served.

Rule 35. Physical and Mental Examinations

(a) Order for an Examination.

(1) *In General.* The court where the action is pending may order a party whose mental or physical condition, including blood group, is in controversy to submit to a physical or mental examination by a suitably certified examiner, licensed physician, or a qualified mental health professional as defined in Idaho Code section 6-1901, excluding nurses. The court has the same authority to order a party to produce for examination a person who is in its custody or under its legal control.

(2) *Motion and Notice; Contents of the Order.* The order:

(A) may be made only on motion for good cause and on notice to all parties and the person to be examined; and

(B) must specify the time, place, manner, conditions, and scope of the examination, including any tests or procedures to be performed, as well as the person or persons who will perform it.

(3) *Representative at Examination.* Upon reasonable notice, the party being examined or the person having custody or legal control of the person being examined, must have the right to have a representative of his or her choice present for the examination.

(b) Examiner's Report.

(1) *Request by the Party or Person Examined.* The party who moved for the examination must, on request, deliver to the requester a copy of the examiner's report, together with like reports of all earlier examinations of the same condition. The request may be made by the party against whom the examination order was issued or by the person examined.

(2) *Contents.* The examiner's report must be in writing and must set out in detail the examiner's findings, including diagnoses, conclusions, and the results of any tests.

(3) *Request by the Moving Party.* After delivering the reports, the party who moved for the examination may request, and is entitled to receive, from the party against whom the examination order was issued all other writings or recordings created by the examiner or the party including the originals of forms and test score sheets and like reports of all earlier or later examinations of the same condition. But those reports need not be delivered by the party with custody or control of the person examined if the party shows that it could not obtain them.

(4) *Waiver of Privilege.* By requesting and obtaining the examiner's report, or by deposing the examiner, the party examined waives any privilege it may have, in that action or any other action involving the same controversy, concerning testimony about all examinations of the same condition.

(5) *Failure to Deliver a Report.* The court on motion may order, on just terms, that a party deliver the report of an examination. If the report is not provided, the court may exclude the examiner's testimony at trial.

(6) *Scope.* This subdivision (b) applies also to an examination made by the parties' agreement, unless the agreement states otherwise. This subdivision does not preclude obtaining an examiner's report or deposing an examiner under other rules.

Rule 36. Requests for Admission

(a) Scope and Procedure.

(1) *Scope.* A party may serve on any other party a written request to admit, for purposes of the pending action only, the truth of any matters within the scope of Rule 26(b)(1) relating to:

(A) facts, the application of law to fact, or opinions about either; and

(B) the genuineness of any described documents.

(2) *Form; Copy of a Document.* Each matter must be separately stated. A request to admit the genuineness of a document must be accompanied by a copy of the document unless it is, or has been, otherwise furnished or made available for inspection and copying.

(3) *When May be Served.* Requests for admission may be served on the plaintiff after commencement of the suit and upon any other party with or after service of the summons and complaint.

(4) *Time to Respond; Effect of Not Responding.* A matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney. A shorter or longer time for responding may be stipulated to under Rule 29 or be ordered by the court.

(5) *Answer.* If a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. A denial must fairly respond to the substance of the matter; and when good faith requires that a party qualify an answer or deny only a part of a matter, the answer must specify the part admitted and qualify or deny the rest. The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny. The answers must first set forth each request for admission made, followed by the answer, objection or other response of the party.

(6) *Objections.* The grounds for objecting to a request must be stated. A party must not object solely on the ground that the request presents a genuine issue for trial.

(7) *Motion Regarding the Sufficiency of an Answer or Objection.* The requesting party may move to determine the sufficiency of an answer or objection. Unless the court finds an objection justified, it must order that an answer be served. On finding that an answer does not comply with this rule, the court may order either that the matter is admitted or that an amended answer be served. The court may defer its final decision until a pretrial conference or a specified time before trial. Rule 37(a)(5) applies to an award of expenses.

(b) Effect of an Admission; Withdrawing or Amending It. A matter admitted under this rule is conclusively established unless the court, on motion, permits the admission to be withdrawn or amended. The court may permit withdrawal or amendment if it would promote the presentation of the merits of the action and if the court is not persuaded that it would prejudice the requesting party in maintaining or defending the action on the merits. An admission under this rule is not an admission for any other purpose and cannot be used against the party in any other proceeding.

(c) Documents Attached to Pleadings. The genuineness, accuracy or truth of any document attached to a pleading must not be deemed as admitted by the other party because of a failure to make a verified denial of it in a responsive pleading or affidavit.

(d) Use of Admissions with the Court. If admissions are to be used at trial or in support or opposition to any motion, only the portion of the admissions relied should be submitted to the court. Unless a genuine issue of authenticity is raised, a party may submit excerpts from copies of the original admissions or answers and is not required to submit the originals to the court.

(e) Non-Filing; Notice of Serving.

(1) *Non-Filing.* Neither the requests nor the responses are to be filed with the court. The propounding party must maintain the original requests and the original responses, along with the original proof of service for 1 year following the final disposition of the

action and expiration of any period for appeal, unless the court orders that they be retained for a longer period.

(2) *Notice of Serving.* The party serving requests and responses to them must file with the court a notice of when and upon whom it was served.

Rule 37. Failure to Cooperate in Discovery; Sanctions

(a) Motion for an Order Compelling Disclosure or Discovery.

(1) *In General.* On notice to other parties and all affected persons, a party may move for an order compelling disclosure or discovery. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action.

(2) *Appropriate Court.* A motion for an order to a party must be made in the court where the action is pending. A motion for an order to a nonparty must be made in the court where the discovery is or will be taken if outside of Idaho.

(3) *Specific Motions.*

(A) To Compel a Discovery Response. A party seeking discovery may move for an order compelling an answer, designation, production, or inspection. This motion may be made if:

(i) a deponent fails to answer a question asked under Rule 30 or 31;

(ii) a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a)(4);

(iii) a party fails to answer an interrogatory submitted under Rule 33; or

(iv) a party fails to respond that inspection will be permitted, or fails to permit inspection, as requested under Rule 34.

(B) Related to a Deposition. When taking an oral deposition, the party asking a question may complete or adjourn the examination before moving for an order.

(4) *Evasive or Incomplete Disclosure, Answer, or Response.* For purposes of this subdivision (a), an evasive or incomplete disclosure, answer, or response must be treated as a failure to disclose, answer, or respond.

(5) *Payment of Expenses; Protective Orders.*

(A) If the Motion Is Granted (or Discovery Is Provided After Filing). If the motion is granted, or if the requested discovery is provided after the motion was filed, the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees. But the court must not order this payment if:

(i) the movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action;

(ii) the opposing party's nondisclosure, response, or objection was substantially justified; or

(iii) other circumstances make an award of expenses unjust.

(B) If the Motion Is Denied. If the motion is denied, the court may issue any protective order authorized under Rule 26(c) and must, after giving an opportunity to be heard, require the movant, the attorney filing the motion, or both to pay the party or deponent who opposed the motion its reasonable expenses incurred in opposing the motion, including attorney's fees. But the court must not order this payment if the motion was substantially justified or other circumstances make an award of expenses unjust.

(C) If the Motion Is Granted in Part and Denied in Part. If the motion is granted in part and denied in part, the court may issue any protective order authorized under Rule 26(c) and may, after giving an opportunity to be heard, apportion the reasonable expenses for the motion.

(b) Failure to Comply with a Court Order.

(1) *Sanctions Where the Deposition is Taken.* If the court where the discovery outside of Idaho is taken orders a deponent to be sworn or to answer a question and the deponent fails to obey, the failure may be treated as contempt of either the court where the discovery is taken or the court where the action is pending.

(2) *Sanctions Where the Action is Pending.*

(A) For Not Obeying a Discovery Order. If a party or a party's officer, director, or managing agent, or a witness designated under Rule30(b)(6) or 31(a)(4), fails to obey an order to provide or permit discovery, including an order under Rule 35, or 37(a), the court where the action is pending may issue further just orders. They may include the following:

(i) directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims;

(ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;

(iii) striking pleadings in whole or in part;

(iv) staying further proceedings until the order is obeyed;

(v) dismissing the action or proceeding in whole or in part;

(vi) rendering a default judgment against the disobedient party; or

(vii) treating as contempt of court the failure to obey any order except an order to submit to a physical or mental examination and initiating contempt proceedings.

(B) For Not Producing a Person for Examination. If a party fails to comply with an order under Rule 35(a) requiring it to produce another person for examination, the court may issue any of the orders listed in Rule 37(b)(2)(A)(i)—(vi), unless the disobedient party shows that it cannot produce the other person.

(C) Payment of Expenses. Instead of or in addition to the orders above, the court must order the disobedient party, the attorney advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the

failure was substantially justified or other circumstances make an award of expenses unjust.

(c) Failure to Disclose, to Supplement an Earlier Response, or to Admit.

(1) *Failure to Disclose or Supplement.* If a party fails to supplement discovery responses when required or fails to comply with a disclosure requirement ordered by the court pursuant to a Rule 16 scheduling or pre-trial order, the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless. In addition to or instead of this sanction, the court, on motion and after giving an opportunity to be heard:

(A) may order payment of the reasonable expenses, including attorney's fees, caused by the failure;

(B) may impose other appropriate sanctions, including any of the orders listed in Rule 37(b)(2)(A)(i)—(vi).

(2) *Failure to Admit.* If a party fails to admit what is requested under Rule 36 and if the requesting party later proves a document to be genuine or the matter true, the requesting party may move that the party who failed to admit pay the reasonable expenses, including attorney's fees, incurred in making that proof. The court must so order unless:

(A) the request was held objectionable under Rule 36(a);

(B) the admission sought was of no substantial importance;

(C) the party failing to admit had a reasonable ground to believe that it might prevail on the matter; or

(D) there was other good reason for the failure to admit.

(d) Party's Failure to Attend Its Own Deposition, Serve Answers to Interrogatories, or Respond to a Request for Production or for Inspection.

(1) *In General.*

(A) Motion; Grounds for Sanctions. The court where the action is pending may, on motion, order sanctions if:

(i) a party or a party's officer, director, or managing agent, or a person designated under Rule 30(b)(6) or 31(a)(4), fails, after being served with proper notice, to appear for that person's deposition; or

(ii) a party, after being properly served with interrogatories under Rule 33 or a request for production or inspection under Rule 34, fails to serve its answers, objections, or written response.

(B) Certification. A motion for sanctions for failing to answer or respond must include a certification that the movant has in good faith conferred or attempted to confer with the party failing to act in an effort to obtain the answer or response without court action.

(2) *Unacceptable Excuse for Failing to Act.* A failure described in Rule 37(d)(1)(A) is not excused on the ground that the discovery sought was objectionable, unless the party failing to act has a pending motion for a protective order under Rule 26(c).

(3) *Types of Sanctions.* Sanctions may include any of the orders listed in Rule 37(b)(2)(A)(i)—(vi). Instead of or in addition to these sanctions, the court must require the party failing to act, the attorney advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

(e) Failure to Provide Electronically Stored Information. Absent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system.

(f) General Sanctions; Catch-All. In addition to the sanctions provided for in this rule for violation of discovery procedures, any court may impose sanctions or conditions, or assess attorney fees, costs or expenses against a party or the attorney advising that party for failure to comply with an order made pursuant to these rules.

Rule 37.1. Mediation of Civil Lawsuits

(a) **Definition of Mediation.** Mediation under this Rule is the process by which a neutral mediator assists the parties in reaching a mutually acceptable agreement. 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.

(b) **Matters Subject to Mediation.** All civil cases governed under these rules are eligible for referral to mediation.

(c) **Authority of the Courts.** The referral of a civil action to mediation does not divest the court of the authority to exercise management and control of the case during the pending mediation.

(d) **Referral to Mediation.** In its discretion a court may order a case to mediation, as follows:

(1) upon motion by a party;

(2) at any Rule 16 conference;

(3) upon consideration of request for trial setting, pursuant to Rule 40(b), if all parties indicate that mediation would be beneficial; or

(4) at any other time upon 7 days' notice to the parties if the court determines mediation is appropriate.

(e) **Selection of the Mediator.** If, within 28 days from entry of the mediation order or such other time as the court orders, the parties do not select a mediator and report their selection to the court, the court must appoint a mediator from the judicial district's list of mediators.

(f) **Scheduling of First Mediation Session.** Unless the court otherwise orders, the first mediation session must take place within 42 days of the reporting of the selection or the appointment of the mediator.

(g) **Reports.** Within 7 following the last mediation session, the mediator or the parties must advise the court, with a copy to the parties, whether the case has, in whole or in part, settled.

(h) **Compensation of Mediators.** Mediators must be compensated at their regular fees and expenses, which must be clearly set forth in the information and materials provided to the parties. Unless other arrangements are made among the parties or ordered by the court, the interested parties must be responsible for a prorata share of the mediator's fees and expenses. If a mediator is not paid, the court, upon motion of the mediator may order payment.

(i) **Impartiality.** The mediator has a duty to be impartial, and has a continuing duty to advise all parties of any circumstances bearing on possible bias, prejudice or partiality.

(j) **Attendance at Mediation.** The attorneys who will be primarily responsible for handling the actual trial of the matter, and all parties, or insurers, if applicable, with authority to settle, must attend the sessions, unless otherwise excused by the court, the agreement of the parties, or the mediator upon a showing of good cause.

(k) **Confidentiality.** The mediator must abide by the confidentiality rules agreed to by the parties. Confidentiality protections of Rules 408 and 507, Idaho Rules of Evidence, extend to mediations under this Rule.

(l) **Sanctions.** The mediator is subject to sanctions, including referral for removal from the roster of mediators, if the mediator fails to assume the responsibilities provided herein.

Rule 38. Jury Trial

(a) **Right to Jury Preserved.** The right of trial by jury as declared by the Constitution or as provided by a statute of the state of Idaho is preserved to the parties inviolate.

(b) **Demand for Jury.** On any issue triable of right by a jury, a party may demand a jury trial, stating in such demand whether the party will stipulate to a jury of less than 12 persons, but at least 6. The demand may be made by:

(1) serving the other parties with a written demand, which may be included in a pleading, no later than 14 days after the last pleading directed to the issue is served; and

(2) filing the demand in accordance with Rule 5(d)

(c) **Specifying Issues.** In its demand, a party may specify the issues that it wishes to have tried by a jury; otherwise, it is considered to have demanded a jury trial on all the issues so triable. If the party has demanded a jury trial on only some issues, any other party may, within 14 days after being served with the demand or within a shorter time ordered by the court, serve a demand for a jury trial on any other or all factual issues triable by jury.

(d) **Waiver; Withdrawal.** A party waives a jury trial unless its demand is properly served and filed. A proper demand may be withdrawn only if the parties consent.

Rule 39. Trial by Jury or by the Court

(a) **When a Demand is Made.** When a jury trial has been demanded under Rule 38, the action must be designated on the register of actions as a jury action. The trial on all issues so demanded must be by jury, unless:

(1) the parties or their attorneys file a stipulation to a nonjury trial or so stipulate on the record; or

(2) the court on motion or on its own finds that on some or all of those issues there is no right to a jury trial.

(b) **When No Demand is Made.** Issues on which a jury trial is not properly demanded are to be tried by the court. But the court may, on motion, order a jury trial on any issue for which a jury might have been demanded.

(c) **Advisory Jury; Jury Trial by Consent.** In an action not triable of right by a jury, the court, on motion or on its own:

(1) may try any issue with an advisory jury; or

(2) may, with the parties' consent, try any issue by a jury whose verdict has the same effect as if a jury trial had been a matter of right.

Rule 40. Disqualification

(a) **Disqualification Without Cause.** In all civil actions and petitions for judicial review, each party has the right to file one motion for disqualification of the judge, which does not require the statement of any grounds, under the following conditions and procedures:

(1) *Time for Filing.* The motion must be filed not later than 7 days after service of a written notice or order setting the action for status conference, pretrial conference, trial or for hearing on the first contested motion, or not later than 21 days after service or receipt of a complaint, summons, order or other leading indicating or specifying who the presiding judge to the action will be, whichever occurs first. The motion must also be filed before the judge sought to be disqualified has presided over a status conference, a pretrial conference, a contested proceeding or trial.

(2) *Multiple Parties.* If there are multiple co-parties, the trial court must determine whether the co-parties have sufficient interest in common so as to be required to join in a disqualification without cause, or whether they have an adverse interest such that each co-party is entitled to file one motion for disqualification without cause.

(3) *New Parties.* If a new party is joined in an action after the time for disqualification without cause of the presiding judge has passed, the new party may file a motion for disqualification without cause within 14 days after that party's first appearance or 14 days after that party's first responsive pleading is due, whichever occurs first.

(4) *New Judge.* If at any time during the course of the proceedings, except under circumstances involving alternate judges as set forth below in subparagraph (6), a new judge is assigned to preside over the case, each party may file one motion for disqualification without cause of the new judge, within the time limits in subparagraph (1) of this Rule. Provided, if a party has previously exercised a disqualification under this Rule 40(a), that party has no right of disqualification without cause of a new judge under this subparagraph.

(5) *Disqualification on New Trial.* After a trial has been held, if a new trial is ordered by the trial court or by an appellate court, each party may file a motion for disqualification without cause of the presiding judge within the time limits set forth in subparagraph (1) of this Rule.

(6) *Alternate Judges.* If the presiding judge intends to have a panel of judges as alternates to preside at trial or at any other hearing or proceeding in the case, a notice or amended notice of trial setting must include a list of judges who may alternatively be assigned to so preside if the presiding judge is unavailable. Upon service of the notice as to the panel, each party may file one motion for disqualification without cause as to any alternate judge not later than 14 days after service of written notice listing the alternate judges. Provided, if a party has previously exercised the right to disqualification without cause under this Rule 40(a), that party has no right to disqualify an alternate judge under this subparagraph.

(7) *Service on Judge.* A party moving to disqualify a judge under this Rule 40(a) must mail a copy of the motion for disqualification to the presiding judge at the judge's resident chambers.

(8) *Exceptions.* The right to disqualification without cause does not apply to:

(A) a judge when acting in an appellate capacity, from another court unless the appeal is a trial de novo;

(B) a judge in a post-conviction proceeding, when that proceeding has been assigned to the judge who entered the judgment of conviction or sentence being challenged by the post-conviction proceeding.

(C) a judge who has been appointed by the Supreme Court to preside over a specific civil action.

(9) *Misuse of Disqualification Without Cause.* A motion for disqualification without cause must not be made under this Rule to hinder, delay or obstruct the administration of justice. If it appears that an attorney or law firm is using disqualifications without cause for such purposes, or with such frequency as to impede the administration of justice, the Trial Court Administrator must notify the Administrative Director of the Courts requesting a review of the possible misuse of disqualifications without cause. The Administrative Director will review the possible misuse of this Rule and may take remedial measures. The Administrative Director, before or after taking such remedial measures, may refer the matter to the Chief Justice, who, upon determining that there has been misuse of disqualifications without cause, may take appropriate action to address the misuse, which may include an order providing that the attorney or firm that has engaged in such misuse is prohibited from using disqualifications without cause for such period of time as is set forth in the order or until further order of the Chief Justice.

(b) Disqualification for Cause.

(1) *Grounds.* A party to an action may disqualify a judge for cause upon any of the following grounds:

(A) the judge is a party, or is interested, in the action or proceeding;

(B) the judge is related to a party by consanguinity or affinity within the third degree, computed according to the rules of law;

(C) the judge has been attorney or counsel for any party in the action or proceeding;

(D) the judge is biased or prejudiced for or against any party or the subject matter of the action.

(2) *Motion for Disqualification.* A motion to disqualify for cause must be accompanied by an affidavit of the party or the party's attorney stating the specific grounds upon which disqualification is based and the facts relied upon in support of the motion. The motion for disqualification for cause may be made at any time. The presiding judge sought to be disqualified must grant or deny the motion upon notice and hearing in the same manner as other motions.

(c) Voluntary Disqualification. A presiding judge in an action may make a voluntary disqualification without stating any reason therefore.

(d) Disqualification and Assignment of New Judge. Upon the filing of a motion for disqualification, the presiding judge must not act further in the action except to grant or deny the motion for disqualification. Upon disqualification of a judge for any reason, the administrative judge of the judicial district, or designee, must appoint another qualified judge

in the judicial district, or apply to the Supreme Court for appointment of a new judge from outside of the judicial district.

Rule 40.1. Change of Venue

(a) **Motion for Change of Venue.** A judge may change venue only upon motion by any party.

(1) *Discretionary.* A judge may grant a change of venue or change the place of trial to another county as provided by statute or when it appears by affidavit or other satisfactory proof that:

(A) there is reason to believe that an impartial trial cannot be had in the county in which the action is filed, or

(B) the convenience of witnesses and the ends of justice would be promoted by the change.

(2) *Mandatory.* The judge must change the venue of a trial when it appears by affidavit or other satisfactory proof that the county designated in the complaint is not the proper county, which motion must be made no later than 14 days after the party files a responsive pleading.

(3) *Objection to Change of Venue.* Upon a motion for change of venue under subsection (2)(A), the court may consider an objection based upon subsections (2)(B) or (2)(C). The court may deny an otherwise proper motion for change of venue under section (2)(A) if it finds that an impartial trial cannot be had in the proper venue or that the convenience of witnesses and the ends of justice would be promoted by retaining jurisdiction in the county where the action is filed.

(4) *Sanctions.* When a judge grants a motion for change of venue pursuant to subsection (2)(A), the court may assess sanctions against the party who filed the action or the party's attorney if the court finds that the action was filed in the improper venue without good cause.

(b) Change of Venue in Same Judicial District. If venue is changed to a court of proper venue within the same judicial district, the judge granting the change of venue must:

(1) order the case transferred to a specific court of proper venue within the judicial district; and

(2) continue the assignment over the case, unless the administrative district judge reassigns the case to another judge of the judicial district.

(c) Change of Venue to a Different Judicial District.

(1) *Venue Changed Pursuant to Subsection (a)(1) or (a)(2)(A).* If change of venue to a different judicial district is granted pursuant to subsection (a)(1) or (a)(2)(A) a new presiding judge is assigned as follows:

(A) if the original judge desires to continue the assignment over the case, the judge may so indicate in the order, suggesting a court of proper venue, and refer to the administrative director of the courts for assignment by the Supreme Court to a court of proper venue and for assignment of a specific judge to preside; or

(B) if the original judge does not desire to continue the assignment over the case, the judge must enter an order transferring the case to a proper county and the

receiving judicial district must assign a judge pursuant to the assignment procedures of that district.

(2) *Venue Changed Pursuant to Subsection (a)(2)(B) or (C).* If change of venue is granted pursuant to subsection (a)(2)(B) or (C) to a different judicial district is granted, the court must enter an order changing venue and suggesting a court of proper venue and refer the case to the administrative director of the courts for assignment by the Supreme Court to a court of proper venue and for assignment of a specific judge to preside. If the original judge does not desire to continue the assignment over the case, the judge may so indicate in the order.

(d) Disqualification of Judge on Change of Venue.

(1) *Change of Venue Within a Judicial District.* If a judge is disqualified from further handling of a proceeding in which a change of venue has been granted to a court of proper venue within the same judicial district, the administrative district judge must reassign the case to another judge of the judicial district.

(2) *Change of Venue to a Different Judicial District.* If a judge is disqualified from further handling of a proceeding in which a change of venue has been granted to a different judicial district, the administrative district judge of the receiving judicial district must refer the case to the administrative director of the courts for assignment by the Supreme Court to a court of proper venue and assignment of a specific judge.

Rule 41. Dismissal of Actions

(a) Voluntary Dismissal.

(1) *By the Plaintiff.*

(A) Without a Court Order. Subject to Rules 73, and 77(e) and any applicable statute, the plaintiff may dismiss an action without a court order by filing:

(i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or

(ii) a stipulation of dismissal signed by all parties who have appeared.

(B) Effect. Unless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff previously dismissed any state or federal court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.

(2) *By Court Order; Effect.* Except as provided in subsection (a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under this subsection (2) is without prejudice.

(b) Involuntary Dismissal; Effect.

(1) *Failure to Prosecute or Comply With Rules.* If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it.

(2) *Dismissal in Court Trial.* In an action tried without a jury, after presentation of plaintiff's evidence, the defendant, without waiving the right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court may then determine the facts and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court must make findings as provided in Rule 52.

(3) *Effect of Dismissal.* Unless the dismissal order states otherwise, a dismissal under this subsection (b) and any dismissal not under this rule, except one for lack of jurisdiction or failure to join a party under Rule 19, operates as an adjudication on the merits.

(c) Dismissing a Counterclaim, Crossclaim, or Third-Party Claim. This rule applies to a dismissal of any counterclaim, crossclaim, or third-party claim. A claimant's voluntary dismissal under Rule 41(a)(1)(A)(i) must be made:

(1) before a responsive pleading is served; or

(2) if there is no responsive pleading, before evidence is introduced at a hearing or trial.

(d) Costs of a Previously Dismissed Action. If a plaintiff who previously dismissed an action in any court files an action based on or including the same claim against the same defendant, the court:

(1) may order the plaintiff to pay all or part of the costs of that previous action; and

(2) may stay the proceedings until the plaintiff has complied.

(e) Dismissal of Inactive Cases. Any action, appeal or proceeding, except for guardianships, conservatorships, and probate proceedings, in which no action has been taken or in which the summons has not been issued and served, for a period of 6 months must be dismissed unless there is a showing of good cause for retention.

(1) Dismissal pursuant to this rule is with prejudice in the case of appeals and without prejudice as to all other matters.

(2) At least 14 days prior to such dismissal, the clerk must give notice of the pending dismissal to all parties or their attorneys of record.

Rule 42. Consolidation; Separate Trials

(a) Consolidation. If actions before the court involve a common question of law or fact, the court may:

(1) join for hearing or trial any or all matters at issue in the actions;

(2) consolidate the actions; or

(3) issue any other orders to avoid unnecessary cost or delay.

(b) Separate Trials. For convenience, to avoid prejudice, or to expedite and economize, the court may order a separate trial of one or more separate issues, claims, crossclaims, counterclaims, or third-party claims. When ordering a separate trial, the court must preserve any right to a jury trial.

Rule 42.1. Trials and Hearings in Open Court; Where Held

(a) **Trials in Open Court; In Regular Courtroom.** All trials on the merits must be conducted in open court provided that the court may exclude witnesses as provided in the Idaho Rules of Evidence. So far as convenient, trials must be in a regular courtroom, but all trials or hearings and all judgments and orders issued by a court are deemed to have been done in open court regardless of the place held.

(b) **Hearings Outside the County.** Any hearing, except a trial or evidentiary hearing, may be held outside the county in which the action was filed or transferred for change of venue. By stipulation of the parties, a trial or evidentiary hearing may be held outside the county in which the action was filed or transferred for change of venue.

Rule 43. Taking Testimony

(a) **In Open Court.** At trial, the witnesses' testimony must be taken in open court unless a statute, these rules, the Idaho Rules of Evidence or other rules adopted by the Idaho Supreme Court provide otherwise. For good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location.

(b) **Affirmation Instead of an Oath.** When these rules require an oath, a solemn affirmation suffices.

(c) **Interpreter.** If any party, or person the party intends to call as a witness, needs an interpreter as provided in Idaho Court Administrative Rule 52, the party must notify the court at least 14 days before commencement of the court proceeding, or as soon as practicable in the event of an expedited hearing. If the party fails to do so without good cause and as a result the trial or hearing is postponed, the court may require the party to pay costs resulting from failing to give adequate notice.

(d) **Direct and Cross-Examination.** The examination of a witness by the party producing the witness is the direct examination; the examination of the same witness, by the adverse party is the cross-examination. The direct examination must be completed before the cross-examination begins, unless the court otherwise directs.

(e) **Reexamination and Recalling of Witnesses.** A witness once examined cannot be reexamined as to the same matter without leave of the court, but the witness may be reexamined as to any new matter upon which the witness has been examined by the adverse party. A witness, after being examined by the party producing the witness and the adverse party, cannot be recalled by the same party without leave of the court. This rule does not preclude the adverse party from calling the witness as that party's own witness for direct examination.

(f) **View of Premises, Property or Things.** During a trial, the court may order that the court or jury may view any property, place, item or circumstance relevant to the action.

(1) *Jury Trials.* The jury must be transported as a group, under the charge of an officer appointed by the court, to the place where the view is to be shown to them. No person may speak with the jurors on any subject connected with the trial of the action during the view, except as authorized by the court, and only the appointed officer may communicate with them in conducting the view pursuant to order of the court.

(2) *Court Trials.* A view by the court must be conducted personally by the court after notice to all parties. Counsel have the right to be present at any view by the court or jury.

(g) Inspection of Writings. Whenever a writing is shown to a witness it may be inspected by any other party.

Rule 44. Judicial Notice of Facts and Foreign Law

(a) In General. The court must take judicial notice as provided by law.

(b) Adjudicative Fact. When judicial notice is taken of an adjudicative fact, the court must instruct the jury as provided in Rule 201, Idaho Rules of Evidence.

(c) Foreign Law.

(1) *Notice.* If either party to an action intends to request the court to take judicial notice of the statutes or laws of a foreign state, a memorandum citing the foreign law must be submitted to the court and opposing counsel at least 14 days prior to trial or hearing. The court may deny the request for failure to submit a memorandum.

(2) *Objection.* Opposing counsel may file a reply within 7 days following service of the moving party's memorandum.

Rule 45. Subpoenas

(a) In General.

(1) *Form and Contents.*

(A) Requirements – In General. Every subpoena must be substantially in the form found in Appendix B and must:

(i) state the name of the court from which it issued;

(ii) state the title of the action and the case number; and

(iii) command each person to whom it is directed to appear to give testimony at trial, or at a hearing or deposition at a specified time and place. A command to produce or to permit inspection and copying of documents, electronically stored information or tangible things, or to permit inspection of premises, may be joined with a command to appear at trial, or at hearing or deposition, or may be issued separately; and

(iv) state the method of recording the testimony if the subpoena is commanding attendance at a deposition.

(2) *Issuing Court.* A subpoena must issue from the court where the action is pending.

(3) *Issued by Whom.* At the request of a party, the clerk must issue a subpoena, signed and under the seal of the court, but otherwise blank, and the party must complete it before service. An attorney licensed in Idaho as officer of the court may also issue and sign a subpoena.

(b) Service.

(1) *By Whom and How.* Any person who is at least 18 years old and not a party may serve a subpoena. Serving a subpoena requires delivering a copy to the named person and, if the subpoena requires that person's attendance, tendering the fees for 1 day's attendance and the mileage allowed by law if requested. Fees and mileage need not be tendered when the subpoena is issued by the Attorney General or any prosecuting attorney or on behalf of the State or any of its officers or agencies.

(2) *Tendering Fees.*

(A) If the subpoena requires the person's attendance, the fees for 1 day's attendance and the mileage allowed by law must be tendered, if requested, at the time the subpoena is served.

(B) Service of a subpoena upon a party to a legal action or proceeding can be made by service on the attorney of record for that party in such legal action or proceeding as provided in Rule 5(b) for attendance at a hearing or trial with or without the production of documents or other objects. No prepayment tender of fees and mileage is necessary to that party, but the court may, upon a hearing held at any time after service on that party's attorney, determine the reasonable amount of such fees and mileage to be paid, if any, to that party.

(C) Fees and mileage need not be tendered when the subpoena is issued by the Attorney General or any prosecuting attorney or on behalf of the State or any of its officers or agencies.

(3) *Proof of Service.* When service is by an officer it must be returned with the officer's certificate of service, and when served by any other person, it must be returned with the person's affidavit stating the date and manner of service and the names of the persons served.

(c) Subpoena for Production or Inspection of Premises.

(1) *Subpoena to Attend a Deposition, Trial or Hearing.* A subpoena to attend a deposition, trial or hearing may command the person to whom it is directed to produce or permit inspection and copy of designated books, papers, documents, electronically stored information or tangible things. If the subpoena is for a party to attend a deposition, the scope and procedure must comply with Rule 34, and the party must be allowed at least 30 days to comply.

(2) *Subpoena to a Non Attending Party.* A subpoena to command a person who is not a party to produce or to permit inspection and copying of documents, electronically stored information, or tangible things, or to permit inspection of premises may be served at any time after all parties have either appeared or have been defaulted, unless otherwise ordered. The party serving the subpoena must:

(A) serve a copy of the subpoena on the opposing party at least 7 days prior to service on the third party, unless otherwise specified by the court;

(B) pay the reasonable cost of producing or copying the documents, electronically stored information or tangible things, and

(C) upon request of any other party and the payment of reasonable costs, provide copies of all documents obtained in response to the subpoena.

(3) *Appearance Not Required.* A person commanded to produce or permit inspection and copying of documents, electronically stored information or tangible things or to permit inspection of premises need not appear in person at the place of production or inspection unless also commanded to appear at trial, at hearing or at deposition.

(4) *Organization of Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the usual course of business or must organize and label them to correspond with the categories in the demand.

(d) Relief from Subpoena. The court, upon timely motion, may:

(1) quash or modify the subpoena if it is unreasonable, oppressive, fails to allow time for compliance, requires disclosure of privileged or other protected matter and no exception or waiver applies, or subjects a person to undue burden; or

(2) condition compliance with the subpoena upon the prepayment of the reasonable cost of producing the books, papers, documents, electronically stored information or tangible things.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause. The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the

person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(f) Subpoena for Deposition.

(1) *Issuance.* The clerk of the district court for the county in which an action is pending or the county in which a deposition is being taken to be used in an action pending in another state or country, may issue a subpoena upon proof of service of a notice to take a deposition as provided by Rules 30 and 31 or by stipulation.

(2) *Place of Examination.* A resident of the state may be required to attend an examination only in the county where the resident resides or is employed or transacts business in person. A nonresident of the state may be required to attend in any county of the state where the nonresident is served with a subpoena.

(g) Subpoena for Hearing or Trial. At the request of any party, subpoenas for attendance at a hearing or trial must be issued as provided by Rule 45(a), and may be served at any place within the state.

(h) Witness Fees. Witness fees and expenses must be in the amounts provided for under Rule 54(d)(1).

(i) Failure to Obey Subpoena. Failure by any person without adequate excuse to obey a subpoena served upon the person may be deemed a contempt of the court from which the subpoena issued, in addition to the penalties provided by law.

(j) Interstate Depositions and Discovery. This rule governs depositions and discovery conducted in Idaho in connection with a civil lawsuit brought in another state.

(1) *Statement of Purpose.* This rule constitutes Idaho's implementation of the Uniform Interstate Depositions and Discovery Act as modified herein.

(2) *Definitions.* In this rule:

(A) 'Foreign jurisdiction' means a state other than this state.

(B) 'Foreign subpoena' means a subpoena issued under authority of a court of record of a foreign jurisdiction.

(C) 'Person' means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

(D) 'State' means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

(E) 'Subpoena' means a document, however denominated, issued under authority of a court of record requiring a person to:

(i) attend and give testimony at a deposition;

(ii) produce and permit inspection and copying of designated books, documents, records, electronically stored information, or tangible things in the possession, custody, or control of the person; or

(iii) permit inspection of premises under the control of the person.

Comment:

The Uniform Interstate Depositions and Discovery Act (the Act) has been adopted as Rule 45(j) of the Idaho Rules of Civil Procedure to enable an attorney prosecuting or defending a lawsuit outside the jurisdiction of Idaho to conduct discovery within Idaho. The rule does not apply to discovery arising out of litigation originating in foreign countries.

The term 'Subpoena' includes a subpoena duces tecum. The description of a subpoena is based on the language of Rule 45 of the FRCP.

The term 'Subpoena' does not include a subpoena for the inspection of a person (subsection 45(j)(2)(E)(iii) is limited to inspection of premises). Medical examinations in a personal injury case, for example, are separately controlled by state discovery rules (the corresponding State rule is Rule 35 of the IRCP).

The term 'Court of Record' was chosen to exclude non-court of record proceedings from the ambit of the rule. A 'Court of Record' includes anyone who is authorized to issue a subpoena under the laws of that state, which may include an attorney of record for a party in the proceeding.

(3) *Issuance of Subpoena for Interstate Depositions and Discovery.*

(A) To request issuance of a subpoena under this rule, 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. It does create the necessary jurisdiction in the State of Idaho to:

(i) enforce the subpoena;

(ii) quash or modify the subpoena;

(iii) issue any protective order or resolve any other dispute relating to the subpoena;

(iv) impose sanctions on the attorney requesting the issuance of the subpoena for any action which would constitute a violation of the Idaho Rules of Civil Procedure.

(B) When a party submits a foreign subpoena to a clerk of court in this state, the clerk shall promptly issue a subpoena for service upon the person to whom the foreign subpoena is directed.

(C) A subpoena under subsection (B) must:

(i) conform to the requirements of the Idaho Rules of Civil Procedure, including Rule 45, and conform substantially to the form provided in 45(c) but may otherwise incorporate the terms used in the foreign subpoena so long as they conform to the Idaho Rules of Civil Procedure;

(ii) advise the person to whom the subpoena is directed that such a person has a right to petition the Idaho court to quash or modify the subpoena under Rule 45(j)(6); and

(iii) contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

Comment:

Submitting a subpoena to the clerk of court in Idaho, so that a subpoena is then issued in the name of Idaho, is the necessary act that invokes the jurisdiction of Idaho, which in turn makes the newly issued subpoena both enforceable and challengeable in Idaho.

The standard procedure under this section will become as follows, using as an example a case filed in Kansas (the trial state) where the witness to be deposed lives in Idaho (the discovery state):

A lawyer of record for a party in the action pending in Kansas will issue a subpoena in Kansas (the same way lawyers in Kansas routinely issue subpoenas in pending actions). The lawyer will then prepare an Idaho subpoena so that it conforms to the requirements of the Idaho Rules of Civil Procedure and may also incorporate the same terms of the Kansas subpoena so long as they conform to the Idaho Rules of Civil Procedure. The lawyer will then hire a process server (or local counsel) in Idaho, who will take the completed and executed Kansas subpoena and the completed but not yet executed Idaho subpoena to the clerk's office in Idaho. In addition, the lawyer might prepare a short transmittal letter to accompany the Kansas subpoena, advising the clerk that an Idaho subpoena is being sought pursuant to Idaho Rule 45(j)(3). The clerk of court, upon being given the Kansas subpoena, will then issue the Idaho subpoena ('issue' includes signing and stamping). The process server (or other agent of the party) will then serve the Idaho subpoena on the deponent in accordance with Idaho law (which includes any applicable local rules).

The act of the clerk of court is ministerial, yet is sufficient to invoke the jurisdiction of Idaho over the deponent. The only documents that need to be presented to the clerk of court in Idaho are the subpoena issued in the trial state and the draft subpoena of Idaho. There is no requirement to hire local counsel to have the subpoena issued in Idaho, and there is no need to present the matter to a judge in Idaho before the subpoena can be issued. However, the rule requires that the Idaho subpoena 'conform to the requirements of the Idaho Rules of Civil Procedure, including Rule 45, and conform substantially to the form provided in Rule 45(c) . . . .' In effect, the clerk of court in Idaho issues the new subpoena which is then served on the deponent in accordance with the laws of Idaho. The process is simple and efficient, costs are kept to a minimum, and local counsel and judicial participation are unnecessary to have the subpoena issued and served in Idaho. The rule requires that, when the subpoena is served, it contain or be accompanied by the names, addresses, and telephone numbers

of all counsel of record and of any party not represented by counsel. This requirement imposes no significant burden on the lawyer obtaining the subpoena, given that the lawyer already has the obligation to send a notice of deposition to every counsel of record and any unrepresented parties. The benefits to Idaho, by contrast, are substantial. This requirement makes it easy for the deponent (or, as will frequently be the case, the deponent's lawyer) to learn the names of and contact the other lawyers in the case. This requirement can easily be met, since the subpoena will contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record and of any party not represented by counsel (which is the same information that will ordinarily be contained on a notice of deposition and proof of service).

(4) *Service of Subpoena for Interstate Depositions and Discovery.* A subpoena issued by a clerk of court under subdivision 45(j)(3) of this rule must be served in compliance with Rule 45(e)(2), except that the officer or individual responsible for service shall not return a certificate of service or affidavit to the court that issued the subpoena under subdivision 45(j)(3). In issuing the subpoena, the clerk shall not create a file, and shall not collect a fee. Instead, the officer or individual responsible for service shall deliver a certificate of service or affidavit to the attorney who requested the subpoena. That attorney must retain the certificate of service or affidavit and furnish a copy to any party or to the deponent upon request.

Comment:

The Idaho court clerk will not create a file when discovery is initiated nor collect a fee. This rule places the obligation of retaining the original subpoena and the proof of service on the lawyer initiating the discovery. A file will be created if a motion is brought to enforce, quash, or modify the subpoena.

(5) *Deposition, Production, Inspection, Witness Fees, Expenses, Place of Examination, Attendance Where Required.* Rules 45(a), 45(b), 45(e)(1), 45(f)(1) and 45(f)(2) shall also apply to subpoenas issued under subdivision 45(j)(3) of this rule.

(6) *Application to Court.* An application to the court for a protective order or to enforce, quash, or modify a subpoena issued by a clerk of court under subdivision 45(j)(3) of this rule must comply with the rules or laws of Idaho and be submitted to the court in the county in which discovery is to be conducted or the deponent resides, is employed or transacts business.

(A) Action to Enforce a Subpoena. An action to enforce a subpoena under this rule shall be brought in accordance with any applicable rule or law of Idaho.

(B) Action to Quash or Modify a Subpoena. An action to quash or modify a subpoena under this rule shall be instituted by the filing of a petition. The petition shall be made promptly, at or before the time for compliance specified in the subpoena. The court may:

(i) quash or modify the subpoena if it is unreasonable, oppressive, fails to allow time for compliance, requires disclosure of privileged or other protected matter and no exception or waiver applies, or subjects a person to undue burden; or

(ii) condition compliance with the subpoena upon the advancement of the reasonable cost of producing the books, papers, documents, electronically stored information or tangible things by the person in whose behalf the subpoena is issued; and

(iii) impose sanctions.

Comment:

The rule requires that any application to the court for a protective order, or to enforce, quash, or modify a subpoena, or for any other dispute relating to discovery under this rule, must comply with the law of Idaho. Those laws include Idaho's procedural, evidentiary, and conflict of laws rules. Idaho has a significant interest in protecting its residents who become non-party witnesses in an action pending in a foreign jurisdiction from any unreasonable or unduly burdensome discovery requests, and this is easily accomplished by requiring that any discovery motions must be decided under the laws of Idaho. This protects the deponent by requiring that all applications to the court that directly affect the deponent must be made in Idaho.

(7) *Uniformity of Application and Construction.* In applying and construing this rule, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that have implemented the Uniform Interstate Depositions and Discovery Act.

(8) *Application to Pending Action.* This rule applies to requests for discovery in cases pending on the effective date of this rule, July 1, 2009.

Rule 46. Objecting to a Ruling or Order

A formal exception to a ruling or order is unnecessary. When the ruling or order is requested or made, a party need only state the action that it wants the court to take or objects to, along with the grounds for the request or objection. Failing to object does not prejudice a party who had no opportunity to do so when the ruling or order was made.

Rule 47. Jury Procedure

(a) Use of Juror Questionnaires. Information derived from or answers to juror questionnaires is confidential and must not be disclosed to anyone except pursuant to court order. For the limited purpose of trial preparation, copies of the juror questionnaires and answers may be made available by the clerk to an attorney for a party or to a party appearing pro se. Disclosure is subject to the rule of juror confidentiality stated above and any further limiting order of the administrative or trial judge. A limiting order may include deletion of the name, address, phone number or any other information about a prospective juror that should remain confidential.

(b) Jury Roll Call Procedure. At the beginning of a trial by jury, the court must instruct the clerk to call the roll of the jury panel assigned for trial of that action. The court must take appropriate action with regard to any unexcused absences of prospective jurors, including but not limited to ordering that an absent juror be attached by the sheriff and compelled to attend the trial. The court must then determine the excuses of any jurors not previously determined.

(c) **Oath to Panel.** The clerk must administer an oath or affirmation to all prospective jurors of the entire jury panel, that each of them will truthfully answer all questions asked about their qualifications to sit as jurors in the action.

(d) **Initial Jury Selection.** The names of all prospective jurors on the jury panel present for the trial of an action constitutes the initial trial jury panel for that action. Under the direction of the court, the clerk must randomly select sufficient prospective jurors to complete jury selection. In consideration for the privacy of the jurors, the court may have the jurors referred to by name or by number.

(e) **Opening Statements.** The parties may, with the court's consent, present brief opening statements to the entire jury panel, prior to voir dire. On its own motion, the court may require the parties to do so. Following such statements, if any, the court must conduct a thorough examination of prospective jurors.

(f) **Voir Dire.**

(1) *Procedure.* Voir dire of the prospective jurors drawn from the jury panel must first be conducted by the court. The plaintiff, and then the defendant, and then each other party to the action must be permitted to question each prospective juror concerning qualifications to sit as a juror in the action.

(2) *Scope of Examination.* The voir dire must be under the supervision of the court and subject to limitations as the court may prescribe in the furtherance of justice and the expeditious disposition of the case. Any question by an attorney to a prospective juror which is not directly relevant to the qualifications of the juror, or is not reasonably calculated to discover the possible existence of a ground for challenge, or has been previously answered, must be disallowed by the court upon objection or upon the court's own initiative.

(g) **Use of Struck Jury.** The court may select an initial panel of prospective jurors equal in number to the number of final jurors and alternate jurors needed plus the total number of peremptory challenges of the parties. The prospective jurors must be seated in numerical order with the lower-numbered jurors being the initial panel, followed by the alternate jurors.

(h) **Challenges for Cause.**

(1) *When Made.* Challenges for cause may be made at any time while questioning a prospective juror, or no later than the conclusion of all questions to an individual prospective juror, or the prospective jury if questioned as a whole, except that a challenge for cause may be permitted by the court at a later time upon a showing of good cause. Challenges for cause, as provided by law, must be tried by the court. The challenged juror, and any other person, may be examined as a witness on the trial of the challenge.

(2) *Grounds for Challenge for Cause.* A challenge for cause may be made because a prospective juror:

(A) lacks any of the qualifications prescribed by the Idaho Code to render a person competent as a juror;

(B) is related by blood or marriage within the fourth degree to any party;

(C) is in the relation of debtor or creditor, guardian and ward, master and servant, employer and clerk, or principal and agent with any party, or is a member of the family of any party, or a partner, or united in business with any party, or surety on any bond or obligation for any party;

(D) has served as a juror or has been a witness or subpoenaed at a previous trial between the same parties for the same cause of action;

(E) has a monetary interest in the outcome of the action or in a main question involved in the action;

(F) has an unqualified opinion or belief as to the merits of the action, or a main question involved, based on knowledge or information of material facts;

(G) has a state of mind showing hostility or bias to or against any party.

(3) *When Granted.* Whenever a juror is excused for cause, the clerk must immediately draw another name from the jury panel to fill the vacancy. There is no limit on the number of challenges for cause a party may make, and it is not necessary for any co-parties to join in making challenges.

(4) *Preservation of the Record.* Unless otherwise stipulated in the record by all parties to the action, the entire voir dire of all prospective jurors and the court's rulings on all challenges must be reported verbatim.

(i) Peremptory Challenges.

(1) *Number.* After the court has ruled on all challenges for cause, each party will have 4 peremptory challenges which must be exercised in accordance with this rule. If there are co-parties, the court must determine the degree of conflict of interest, if any, among the co-parties and may allocate the full number of peremptory challenges authorized by this rule to each of the co-parties, or apportion the authorized peremptory challenges among the co-parties, or allocate an equal or unequal number of peremptory challenges to each of the co-parties.

(2) *Procedure.* Peremptory challenges must be exercised alternately, by the parties; first by the plaintiff, then by the defendant, and then by any other party as prescribed by the court. All peremptory challenges must be exercised as directed by the court so as not to indicate to the panel which party exercised a peremptory challenge. Any juror selected to replace an excused juror must first be examined for challenges for cause before continuing with the peremptory challenges, except when all prospective jurors have been previously passed or challenged for cause. Any party who waives a peremptory challenge waives only that particular peremptory challenge and may subsequently exercise any remaining challenges; provided, if all parties consecutively waive their peremptory challenges, the court must deem the jury accepted by the parties and any remaining peremptory challenges are waived.

(j) Additional Jurors.

(1) *Selection.* A court may direct that one or more jurors in addition to the regular panel be called and impaneled to sit as additional jurors. All jurors must be drawn in the same manner, must have the same qualifications, must be subject to the same examination and challenges, must take the same oath, and have the same functions, powers, facilities, and privileges prior to deliberations. If one or two additional jurors are called,

each party is entitled to 1 additional peremptory challenge. If more than 2 additional jurors are called, each party is entitled to 2 additional peremptory challenges. At the conclusion of closing arguments, jurors exceeding the number required of a regular panel must be removed by lot. Those removed may be discharged after the jury retires to consider its verdict, unless the court otherwise directs as indicated below.

(2) *Removal by Lot.* If the court determines that those jurors removed by lot must be available to replace any jurors who may be excused during deliberations due to death, illness or otherwise as determined by the court, the bailiff, sheriff or other person appointed by the court must take custody of them until discharged by the court. In the event a deliberating juror is removed, the court must order the juror discharged and draw the name of an alternate juror who will then take the discharged juror's place in the deliberations. The court must instruct the panel to set aside and disregard all past deliberations and begin anew with the new juror as a member of the panel.

(k) Managing Jurors in Trial.

(1) *Oath of Jurors.* After all peremptory challenges have been exercised or waived, the court must excuse all of the jury panel not selected. The clerk must then administer the jury oath or affirmation to the trial jury and alternates as prescribed by law.

(2) *Sequestration.* Sequestration means keeping the jury apart from others. The court must determine, in its discretion, whether a jury will be sequestered during a trial or during deliberations. The court must instruct the jurors not to talk to or associate in any way with the parties, their attorneys, agents, or witnesses, nor discuss the case with any person during the trial, and not to discuss the case among themselves until it has been submitted to them for deliberation.

(3) *Notes by Jurors.*

(A) Procedure. A juror may make written notes during a trial and keep them during deliberation. The court must give the jury appropriate instruction about the use of notes. At the conclusion of the proceedings, the court must take custody of the notes and provide for their destruction.

(B) Notebooks, When Permitted. In the discretion of the court, jurors may be provided notebooks containing documents for use by the jurors during trial to aid them in performing their duties. Notebooks may contain, but are not required to have or be limited to:

(i) a copy of all jury instructions;

(ii) juror notes;

(iii) the names of witnesses, including photographs and biographies;

(iv) copies of exhibits, including an index, but excluding depositions, and

(v) definitions of technical terms.

(4) *Questioning of Witnesses.* The court may instruct jurors that they are individually permitted to submit to the court written questions directed to any witness. If questions are submitted, the parties or counsel must be allowed to object to the questions outside the presence of the jury. Upon finding a question permissible, the court must

read the question to the witness. The parties may then be allowed to ask follow-up questions as necessary.

(5) *Permitted Documents During Deliberation.* During deliberations, the jury must have with them all written jury instructions and, if practical, admitted exhibits, excluding depositions.

(l) Number of Jurors; Majority Verdict. In civil actions that may be assigned to the magistrate division, whether tried to a district judge or a magistrate judge, the jury must consist of not more than 6. In all other cases the jury may consist of 12 or of any number less than 12 upon which the parties may agree in open court. Three-fourths (3/4) of the jury may render a verdict. The cost of a jury may not be taxed as costs to any party in any civil action.

(m) Polling the Jury after Verdict. When the jurors have agreed on their verdict, they must be brought into court and the verdict delivered to the court by their foreman. The verdict must be in writing and signed by the foreman if all the jurors agree, but if not all jurors agree, the written verdict must be signed by all agreeing jurors. The verdict must be read by the clerk to the jury and the inquiry made whether it is their verdict. If more than one-fourth (1/4) of the jury disagree with the verdict, the court must return the jury for further deliberation. Either party may require the jury to be polled, which is done by the court or clerk asking each juror if it is the juror's verdict. If three-fourths (3/4) of the jury acknowledge the verdict to be their decision, the verdict must be accepted and the jury discharged.

Rule 48. Mistrial

After trial is commenced, at any time prior to the rendering of a verdict, the court may declare a mistrial on its own motion or on motion of any party if it determines an occurrence at trial has prevented a fair trial. If the court determines that the deliberate misconduct of a party or an attorney caused a mistrial, the court may require the party or the attorney, or both, to pay the reasonable expenses including attorney fees incurred by the opposing party or parties resulting from the misconduct.

Rule 49. Verdicts

(a) Special Verdict.

(1) *In General.* The court may require a jury to return only a special verdict in the form of a special written finding on each issue of fact. The court may do so by:

(A) submitting written questions that may be answered by a categorical or other brief response;

(B) submitting written forms of the special findings that might properly be made under the pleadings and evidence; or

(C) using any other method that the court considers appropriate.

(2) *Instructions.* The court must give the instructions and explanations necessary to enable the jury to make its findings on each submitted issue.

(3) *Issues Not Submitted.* A party waives the right to a jury trial on any issue of fact raised by the pleadings or evidence but not submitted to the jury unless, before the jury retires, the party demands its submission to the jury. If the party does not demand submission, the court may make a finding on the issue. If the court makes no finding, it is considered to have made a finding consistent with its judgment on the special verdict.

(b) General Verdict with Answers to Written Questions.

(1) *In General.* The court may submit to the jury forms for a general verdict, together with written questions on one or more issues of fact that the jury must decide. The court must give the instructions and explanations necessary to enable the jury to render a general verdict and answer the questions in writing, and must direct the jury to do both.

(2) *Verdict and Answers Consistent.* When the general verdict and the answers are consistent, the court must direct the entry of an appropriate judgment on the verdict and answers. Answers Inconsistent with the Verdict. When the answers are consistent with each other but one or more is inconsistent with the general verdict, the court may:

(A) direct the entry of an appropriate judgment according to the answers, notwithstanding the general verdict;

(B) direct the jury to further consider its answers and verdict; or

(C) order a new trial.

(3) *Answers Inconsistent with Each Other and the Verdict.* When the answers are inconsistent with each other and one or more is also inconsistent with the general verdict, judgment must not be entered; instead, the court must direct the jury to further consider its answers and verdict, or must order a new trial.

Rule 50. Dispositive Trial Motions

(a) Motion for Directed Verdict. A motion for a directed verdict must state the specific grounds for the motion. A party who moves for a directed verdict at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted, without having reserved the right to do so and to the same extent as if the motion had not been made. A motion for a directed verdict which is not granted is not a waiver of trial by jury even though all parties to the action have moved for directed verdicts. The order of the court granting a motion for a directed verdict is effective without the agreement of the jury.

(b) Motion for Judgment Notwithstanding the Verdict.

(1) *Timing.* A motion for judgment notwithstanding the verdict must be served not later than 14 days after entry of the judgment and may be made whether or not the party moved for a directed verdict. If a verdict was not returned a motion for judgment notwithstanding the verdict must be served not later than 14 days after discharge of the jury.

(2) *Joined with Motion for New Trial.* A motion for a new trial may be joined with a motion for judgment notwithstanding the verdict, or a new trial may be requested in the alternative, in conformance with the requirements of Rule 59(a). A motion to set aside or otherwise nullify a verdict or for a new trial includes a motion notwithstanding the verdict as an alternative. If the jury returns a verdict, the court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment. If the jury does not return a verdict, the court may direct the entry of judgment or may order a new trial.

(3) *Preservation of Motion for Appellate Review.* The failure of a party to move for a directed verdict, for a judgment notwithstanding the verdict or for a new trial does not preclude appellate review of the sufficiency of the evidence when proper assignment of error is made in the appellate court.

(4) *Conditional Ruling.*

(A) Procedure. If the motion for judgment notwithstanding the verdict is granted, the court must rule on the motion for new trial by determining whether it should be granted if the judgment is later vacated or reversed. If the motion for new trial is conditionally granted, the court must specify the grounds, and the order does not affect the finality of the judgment.

(B) After Appeal. If the motion for new trial has been conditionally denied and the judgment is reversed on appeal, subsequent proceedings must be in accordance with the order of the appellate court. An appeal from a judgment granting or denying a motion for judgment notwithstanding the verdict presents for review all reviewable error against either the appellant or respondent.

(C) Effect on Prevailing Party. The party whose verdict has been set aside on motion for judgment notwithstanding the verdict may, not later than 14 days after entry of judgment, serve a motion for a new trial, which must be conditionally granted or denied, with the consequences stated above.

(D) Failure to Make Motion. Any party who fails to make a motion for a new trial as provided in this subsection waives the right to apply for a new trial.

(5) *Denial of Motion.* If the court denies the motion for judgment notwithstanding the verdict, the party who prevailed on that motion may, as respondent on appeal, assert grounds entitling that party to a new trial in the event the appellate court concludes that the trial court erred in denying the motion for judgment notwithstanding the verdict. If the appellate court reverses the judgment, nothing in this rule precludes it from determining that the respondent is entitled to a new trial, or from directing the trial court to determine whether a new trial will be granted.

Rule 51. Jury Instructions

(a) Pre-trial Conference. No later than 7 days before the commencement of any trial by jury, any party may file written requests that the court instruct the jury on the law as set forth in such request, and such requested instructions must be served upon and received by all parties to the action at least 7 days before the commencement of the trial.

(b) Consequences of Not Filing Requests. The court need not consider any requested instructions not filed and served upon the parties as required by this rule. However, if matters arise during the trial which could not reasonably have been anticipated, or if matters were overlooked in the original requested instructions, the court may permit a party to file and serve written requests for instructions at any time up to and including the close of the evidence.

(c) Instructions Proposed by the Court. The court may also prepare other written instructions to be given of its own motion, and must submit to the parties the instructions that will be given, and provide adequate time and opportunity to all parties to read and consider said

instructions, to discuss them with court and counsel off the record, and to make objections to them in the absence of the jury.

(d) How Instructions are Submitted. An original and a copy of all requested instructions must be submitted to the court. The citation of law the party relies in requesting the instruction must be indicated on only the copy. The originals must contain a blank space for numbering and the copies must be numbered by the party submitting them in consecutive numbers at the top of the first page of each requested instruction. The copies must also contain blanks at the bottom identified as "Given," "Refused," "Modified," "Covered," and "Other."

(e) Ruling on Proposed Instructions. The court must rule on the requested instructions at the close of the evidence and must either verbally state its ruling on the record or indorse on the duplicate copy of each requested instruction the court's ruling as to the request in the blanks provided.

(f) Record of Objections. All objections to instructions proposed by the court, and any objections to the giving or the failure to give an instruction, and the court's ruling on the objection, must be made a part of the record.

(g) Use of Idaho Jury Instructions. Whenever the latest edition of Idaho Jury Instructions (IDJI) contains an instruction applicable to a case and the court determines that the jury should be instructed on the subject, the court should use the IDJI instruction unless it finds that a different instruction more adequately, accurately or clearly states the law. Whenever the latest edition of IDJI does not contain an instruction on a subject upon which the court determines that the jury should be instructed, or when an IDJI instruction cannot be modified to submit the issue properly, the instruction given on that subject should be simple, brief, impartial and free from argument. When a party requests a modified IDJI instruction, the party must indicate the modification by use of parentheses or other appropriate means.

(h) Preliminary Instructions. Prior to the presentation of evidence, the court may instruct the jury on the role of the court, counsel and jury; the elements of all claims in dispute and any known defenses; and any other matter it believes necessary and appropriate to aid in resolution of the issues at hand. The court must hold an instruction conference prior to trial to consider these initial instructions to the jury.

(i) Procedure with the Jury.

(1) *Timing of Instructions.* The court may give instructions to the jury at any time, and at various times, during the trial.

(2) *Instructions Reduced to Writing.* All instructions must be reduced to writing and constitute part of the record. Prior to giving any preliminary or final instructions, the court must furnish copies of them to all parties and allow a reasonable time to examine them and make objections outside the presence of the jury.

(3) *Objections.* No party may assign as error the giving of or failure to give an instruction unless the party objects before the jury deliberates, stating distinctly the instruction to which that party objects and the grounds of the objection.

(4) *Providing Instructions to the Jury.* After the court makes all rulings on requested instructions and objections, and advises the parties of the final instructions to be given, the court must read to the jury the written instructions before the final arguments of

the parties are given. The court must give the jury the original and a minimum of two copies of the written instructions for use in deliberation.

(5) *Request for Further Instruction by the Jury.* If the jury request further instructions, the request must be made to the court in writing. The court may further instruct the jury in writing or explain the instructions in open court which explanation must be made part of the record. The parties must be given the opportunity to be present and heard regarding the request, if they are available and can be present within a reasonable period of time.

Rule 52. Findings and Conclusions by the Court

(a) In General.

(1) *For Actions Tried Without a Jury.* In an action tried on the facts without a jury or with an advisory jury, the court must find the facts specially and state its conclusions of law separately. The findings and conclusions may be stated on the record after the close of the evidence or may appear in an opinion or a memorandum of decision filed by the court. Judgment must be entered under Rule 58. A party may raise the question of the sufficiency of the evidence to support the findings whether or not the party raising the question has made an objection to the findings or a motion to amend them or a motion for judgment.

(2) *For an Interlocutory Injunction.* In granting or refusing an interlocutory injunction, the court must similarly state the findings and conclusions that support its action.

(3) *Judgment by Default.* The court is not required to state findings or conclusions in support of a judgment by default.

(4) *For a Motion.* The court is not required to state findings or conclusions when ruling on an interlocutory order made pursuant to a show cause hearing or on a motion under Rule 12 or 56 or, unless these rules provide otherwise, on any other motion.

(5) *Effect of a Master's Findings.* A master's findings, to the extent adopted by the court, must be considered the court's findings.

(6) *Questioning the Evidentiary Support.* A party may later question the sufficiency of the evidence supporting the findings, whether or not the party requested findings, objected to them, moved to amend them, or moved for partial findings.

(7) *Setting Aside the Findings.* Findings of fact, whether based on oral or other evidence, must not be set aside unless clearly erroneous, and the reviewing court must give due regard to the trial court's opportunity to judge the witnesses' credibility.

(b) Amended or Additional Findings. On a party's motion filed no later than 14 days after the entry of judgment, the court may amend its findings, or make additional findings, and may amend the judgment accordingly. The motion may accompany a motion for a new trial under Rule 59.

(c) Assignment of Error. No party may assign as error the lack of findings unless the party raised the issue to the trial court by an appropriate motion.

Rule 53. Masters

(a) **Appointment.** The court in which any action is pending may appoint a master. Except where these rules are inconsistent with the law, the word "master" includes a referee, a commissioner, an auditor, and an examiner.

(b) **Appointment is an Exception.** In a jury trial, a master must not be appointed unless the issues are complicated. In actions to be tried without a jury a master must not be appointed except to perform an accounting or on a showing that some exceptional condition requires it.

(c) **Compensation.** The compensation for a master must be set by the court and the court may direct payment by the parties or from a fund or subject matter of the action that is in the control of the court. The master must not retain the report as security for compensation; but when a party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, the master is entitled to a writ of execution against the party.

(d) **Disqualification of a Master.**

(1) *In General.* Any person appointed as a master must be disqualified on the finding of a relation or a condition that would be grounds for disqualification of a judge for cause as specified in statute or these rules.

(2) *Motion Practice.* At any time within 14 days after receipt of notice of the appointment of a master, any party may object to the qualification of the master by filing a motion to disqualify the master, stating grounds for disqualification. The motion may be supported by affidavit and must be heard and determined by the court in the same manner as other motions. The court may hear testimony on the motion or may determine it on the record, including affidavits filed by the parties or the master.

(e) **Authority and Duties of a Master.** The order appointing a master may:

(1) define the authority of the master;

(2) direct the master to report only on particular issues, to do or perform particular acts, or to receive and report evidence only; and

(3) fix the time and place for beginning and closing the hearings and for the filing of the master's report.

Unless the appointing order directs otherwise, a master may:

(1) regulate all proceedings;

(2) take all appropriate measures to perform the assigned duties fairly and efficiently;

(3) if conducting an evidentiary hearing, exercise the appointing court's power to compel, take, and record evidence;

(4) rule on the admissibility of evidence; and

(5) put witnesses on oath and may examine them and may call the parties to the action and examine them on oath.

On request of a party, the master must make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided in Rule 103 of the Idaho Rules of Evidence.

(f) **Meetings of Master.** When a master is appointed, the clerk must give the master a copy of the order of appointment. Unless the order provides otherwise, the master must set a time and place for the first meeting of the parties or their attorneys, which must be held within 21 days after the date of the order, and must notify the parties or their attorneys. The master must act promptly and diligently. Either party, on notice to the parties and master may apply for an order requiring the master to speed the proceedings and to make the report. If a party fails to appear at the time and place appointed, the master may proceed without the party or, in the master's discretion, postpone the proceedings to a certain date, giving notice to the parties.

(g) **Witnesses.** The parties may subpoena witnesses for proceedings before a master as provided in Rule 45. If, without adequate excuse, a witness fails to appear or give evidence, the witness may be sanctioned and is subject to the consequences, penalties, and remedies provided in Rules 37 and 45.

(h) **Statement of Accounts.** When accounting issues are before the master, the master may direct the form of statement of account to be submitted and may require the testimony of a certified public accountant. On objection of a party or if the master finds that the form of a statement is insufficient, the master may require a different form of statement, or the accounts or specific items to be proved by oral testimony or written interrogatories.

(i) **Master's Report.** The master must prepare and file a report of the matters submitted by the court and, if required to make findings of fact and conclusions of law, the master must separately state them in the report. In an action to be tried without a jury, unless otherwise directed by the order of appointment, the master must file with the report a transcript of the proceedings and the original exhibits. The clerk must promptly notify the parties of the filing.

(j) **Master's Findings in Actions Without a Jury.** In an action to be tried without a jury the court must accept the master's findings of fact unless clearly erroneous. Within 14 days after being served with notice of the filing of the report any party may file and serve on the other parties written objections to the report. Any party may file a motion for action on the report. The court, after hearing, may adopt, modify or reject the report in whole or in part, may receive further evidence, or may resubmit the matter to the master with instructions.

(k) **Master's Finding in Jury Actions.** In an action to be tried by a jury the master must not be required to report the testimony or evidence relied on. The master's findings on the issues submitted are admissible as evidence of the matters found and may be read to the jury, subject to the court's ruling on any legal objections to the report.

(l) **Stipulations as to Findings of Master.** The effect of a master's report is the same whether or not the parties have consented to the appointment; but, when the parties stipulate that a master's findings of fact will be final, only objections about conclusions of law will be considered.

(m) **Draft Report.** Before filing a report a master may submit a draft to the parties for review and comment.

TITLE VII - JUDGMENT

Rule 54. Judgments; Costs

(a) Definition – Form – Amendments.

(1) *Definition and Form of Judgment.* "Judgment" as used in these rules means a separate document entitled "Judgment" or "Decree". A judgment must state the relief to which a party is entitled on one or more claims for relief in the action, which may include dismissal with or without prejudice. A judgment must not contain a recital of pleadings, the report of a master, the record of prior proceedings, the court's legal reasoning, findings of fact, or conclusions of law. A judgment is final if either it is a partial judgment that has been certified as final pursuant to subsection (b)(1) of this rule or judgment has been entered on all claims for relief, except costs and fees, asserted by or against all parties in the action. A judgment or partial judgment must begin with the words "JUDGMENT IS ENTERED AS FOLLOWS: . . ," and it must not contain any other wording between those words and the caption. A judgment may include any findings of fact or conclusions of law expressly required by statute, rule, or regulation.

(2) *Amended Judgments.* If the court orders an amendment to a judgment, the amendment will be effective only after the court enters an amended judgment setting forth all of the terms of the new judgment, including those terms of the prior judgment that remain in effect.

(b) Partial Judgment Upon Multiple Claims or Involving Multiple Parties.

(1) *Certificate of Final Judgment.* When an action presents more than one claim for relief, whether as a claim, counterclaim, crossclaim, or third-party claim, or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities. In the event the trial court determines that a partial judgment should be certified as final under this Rule 54(b), the court must execute a certificate which must immediately follow the court's signature on the partial judgment and be in substantially the form found in Appendix B.

(2) *Jurisdiction if Appealed After Rule 54(b) Certificate.* If a Rule 54(b) Certificate is issued on a partial judgment and an appeal is filed, the trial court loses all jurisdiction over the entire action, except as provided in Rule 13 of the Idaho Appellate Rules.

(3) *Offsetting Judgments.* If any parties to an action are entitled to judgments against each other such as on a claim and counterclaim, or upon cross-claims, the judgments must be offset against each other and a single judgment for the difference between the entitlements must be entered in favor of the party entitled to the larger judgment.

(c) Demand for Judgment; Relief to be Granted. A default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings. Every other final judgment

should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings.

(d) Costs.

(1) *In General; Items Allowed.*

(A) Parties Entitled to Costs. Except when otherwise limited by these rules, costs are allowed as a matter of right to the prevailing party or parties, unless otherwise ordered by the court.

(B) Prevailing Party. In determining which party to an action is a prevailing party and entitled to costs, the trial court must, in its sound discretion, consider the final judgment or result of the action in relation to the relief sought by the respective parties. The trial court may determine that a party to an action prevailed in part and did not prevail in part, and on so finding may apportion the costs between and among the parties in a fair and equitable manner after considering all of the issues and claims involved in the action and the resulting judgment or judgments obtained.

(C) Costs as a Matter of Right. When costs are awarded to a party, that party is entitled to the following costs, actually paid, as a matter of right:

(i) court filing fees;

(ii) actual fees for service of any pleading or document in the action, whether served by a public officer or other person;

(iii) witness fees of $20.00 per day for each day that a witness, other than a party or expert, testifies at a deposition or in the trial of an action;

(iv) travel expenses of witnesses who travel by private transportation, other than a party, who testify in the trial of an action, computed at the rate of $.30 per mile, one way, from the place of residence, whether it is in or outside the state of Idaho;

(v) travel expenses of witnesses who travel other than by private transportation, other than a party, computed as the actual travel expenses of the witness, but not more than $.30 per mile, one way, from the place of residence of the witness, whether it is in or outside the state of Idaho;

(vi) expenses or charges of certified copies of documents admitted as evidence in a hearing or the trial of an action;

(vii) reasonable costs of the preparation of models, maps, pictures, photographs, or other exhibits admitted in evidence as exhibits in a hearing or trial of an action, but not more than $500 for all of such exhibits of each party;

(viii) cost of all bond premiums;

(ix) reasonable expert witness fees for an expert who testifies at a deposition or at a trial of an action, but not more than $2,000 for each expert witness for all appearances;

(x) charges for reporting and transcribing of a deposition taken in preparation for trial of an action, whether or not read into evidence in the trial of an action; and

(xi) charges for one (1) copy of any deposition taken by any of the parties to the action in preparation for trial of the action;

The trial court may, on objection, disallow any of the above-described costs on a finding that the costs were not reasonably incurred; were incurred for the purpose of harassment; were incurred in bad faith; or were incurred for the purpose of increasing the costs to any other party. The mere fact that a deposition is not used in the trial of an action, either as evidence read into the record or for the purposes of impeachment, does not indicate that the taking of the deposition was not reasonable, or that a copy of a deposition was not reasonably obtained, or that the cost of the deposition should otherwise be disallowed, so long as its taking was reasonable for trial preparation.

(D) Discretionary Costs. Additional items of cost not enumerated in, or in an amount in excess of that listed in subpart (C), may be allowed on a showing that the costs were necessary and exceptional costs, reasonably incurred, and should in the interest of justice be assessed against the adverse party. The trial court, in ruling on objections to discretionary costs, must make express findings as to why the item of discretionary cost should or should not be allowed. In the absence of any objection to an item of discretionary costs, the court may disallow on its own motion any items and must make express findings supporting such disallowance.

(E) Costs Incurred by the Court. The Court may assess and apportion as costs, between and among the parties to the action, all fees and expenses of masters, receivers or expert witnesses appointed by the court in the action.

(F) Costs and Attorney Fees - Fees on Execution of Judgment - Added to Judgment. All costs and attorney fees approved by the court and fees for the service of the writ of execution upon a judgment are automatically added to the judgment as costs and collected by the sheriff in addition to the amount of the judgment and other allowed costs. In the event the return of the sheriff on a writ of execution indicates that the service costs were not obtained through the service of the writ, the clerk of the court must automatically add the uncollected service fees to the judgment as additional costs.

(2) *Multiple Parties.* In the event judgment is entered in favor of multiple parties or coparties, costs must be allowed as a matter of course to each of the prevailing parties unless the court otherwise directs.

(3) *Costs on Extension of Time.* In the event any party to an action applies for an enlargement of time or postponement of a hearing or trial, the court may impose and tax costs and expenses caused by the delay against the moving party as a condition to granting the enlargement or postponement.

(4) *Memorandum of Costs.* At any time after the verdict of a jury or a decision of the court, but not later than 14 days after entry of judgment, any party who claims costs may file and serve on adverse parties a memorandum of costs, itemizing each claimed expense. The memorandum must state that to the best of the party's knowledge and belief the

items are correct and that the costs claimed are in compliance with this rule. Failure to timely file a memorandum of costs is a waiver of the right to costs. A memorandum of costs prematurely filed is considered as timely.

(5) *Objections to Costs.* Within 14 days of service of a memorandum of costs, any party may object by filing and serving a motion to disallow part or all of the costs. The motion does not stay execution on the judgment, exclusive of costs, and must be heard and determined by the court as other motions under these rules. Failure to timely object to the items in the memorandum of costs constitutes a waiver of all objections to the costs claimed.

(6) *Settlement of Costs by Order of Court.* After a hearing on a motion to disallow costs, or after the time for filing the motion has passed, the court must enter an order settling the dollar amount of costs, if any, awarded to any party to the action.

(e) Attorney Fees.

(1) *Pursuant to Contract or Statute.* In any civil action the court may award reasonable attorney fees, including paralegal fees, to the prevailing party or parties as defined in Rule 54(d)(1)(B), when provided for by any statute or contract.

(2) *Pursuant to Idaho Code Section 12-121.* Attorney fees under Idaho Code Section 12-121 may be awarded by the court only when it finds that the case was brought, pursued or defended frivolously, unreasonably or without foundation, which finding must be in writing and include the basis and reasons for the award. No attorney fees may be awarded pursuant to Idaho Code Section 12-121 on a default judgment.

(3) *Amount of Attorney Fees.* If the court grants attorney fees to a party or parties in a civil action it must consider the following in determining the amount of such fees:

(A) the time and labor required;

(B) the novelty and difficulty of the questions;

(C) the skill requisite to perform the legal service properly and the experience and ability of the attorney in the particular field of law;

(D) the prevailing charges for like work;

(E) whether the fee is fixed or contingent;

(F) the time limitations imposed by the client or the circumstances of the case;

(G) the amount involved and the results obtained;

(H) the undesirability of the case;

(I) the nature and length of the professional relationship with the client;

(J) awards in similar cases;

(K) the reasonable cost of automated legal research (Computer Assisted Legal Research), if the court finds it was reasonably necessary in preparing a party's case;

(L) any other factor which the court deems appropriate in the particular case.

(4) *Pleading; Default Judgments.*

(A) In General. It is not necessary for any party in a civil action to assert a claim for attorney fees in any pleading.

(B) In Default Judgment. When attorney fees are requested pursuant to contract or a statute other than Idaho Code section 12-121 in a judgment by default, the amount of attorney fees in the event of default must be included in the prayer for relief in the complaint and the award must not exceed the amount in the prayer. An award of attorney fees under Idaho Code section 12-120 in default judgments where the defendant has not appeared must not exceed the amount of the judgment for the claim, exclusive of costs.

(5) *Attorney Fees as Costs.* Attorney fees, when allowable by statute or contract, are costs in an action and processed in the same manner as other costs and included in the memorandum of costs. A claim for attorney fees as costs must be supported by an affidavit of the attorney stating the basis and method of computation.

(6) *Objection to Attorney Fees.* Any objection to a claim for attorney fees must be made in the same manner as an objection to costs as provided by Rule 54(d)(5). The court may conduct an evidentiary hearing, if it deems it necessary, regarding the award of attorney fees.

(7) *Settlement of Attorney Fees by Order of Court; Determination Not Binding on Attorney and Client.* After a hearing on an objection to attorney fees, or after the time for filing an objection has passed, the court must enter an order settling the dollar amount of attorney fees, if any, awarded to any party to the action. If there was a timely objection to the amount of attorney fees, the court must include in the order its reasoning and the factors it relied on in determining the amount of the award. The allowance of attorney fees by the court under this rule is not to be construed as fixing the fees between attorney and client.

(8) *Claims to Which Rule Applies.* Any claim for attorney fees, including claims pursuant to Idaho Code section 12-121, must be made pursuant to Rule 54(e) unless an applicable statute or contract provides otherwise.

Rule 55. Default; Default Judgment

(a) Entering a Default.

(1) *In General.* When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the court must order entry of the party's default. If a party has appeared in the action, that party must be served with 3 days' written notice of the application for entry of default before default may be entered.

(2) *Time Limitation.*

(A) In General. Default may not be entered, and proof of default may not be presented, before the expiration of the time allowed by these rules for appearance or defense.

(B) Shortened Time. Default may be entered earlier if (1) the party required to make the appearance or defense states in a written waiver under oath that the party waives the permitted time for appearance or defense, refuses to plead further, and consents to the immediate hearing of a default proceeding without further

notice, and (2) the court enters an order shortening the time for appearance or defense by such party for good cause shown by the affidavit or testimony of the moving party. Upon compliance with this rule, default may be entered, a default proceeding held and judgment by default entered without notice to the defaulting party as though the time for an appearance or defense had expired.

(3) *Uncontested Trial is Not a Default.* This rule does not prevent trial of an action if a responsive pleading has been filed even if the defendant does not participate in the trial or oppose the claim. A trial in this circumstance is not a default hearing.

(b) Entering a Default Judgment.

(1) *For Sum Certain.* If a claim is for a sum certain or a sum that can be made certain by computation, the court, on the claimant's request, with an affidavit showing the amount due, must order judgment for that amount and costs against the party who has been defaulted for not appearing and who is neither a minor nor an incompetent person.

(2) *Other Cases.* In all other cases, the party must apply to the court for a default judgment. A default judgment may be entered against a minor or incompetent person only if represented by a general guardian, conservator, or other like fiduciary who has appeared. If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 3 days before the hearing. The court may conduct hearings or make referrals when, to enter or effectuate judgment, it needs to:

(A) conduct an accounting;

(B) determine the amount of damages;

(C) establish the truth of any allegation by evidence; or

(D) investigate any other matter.

(3) *Name and Address of Defaulting Party.* Any application for a default judgment must contain written certification of the name of the party against whom the judgment is requested and the address most likely to give the party notice of default judgment. The clerk must use the address provided in giving the party notice of judgment.

(c) Setting Aside Default or Default Judgment. The court may set aside an entry of default for good cause, and it may set aside a default judgment under Rule 60(b).

(d) Default Judgment Against the State. A default judgment may be entered against the State of Idaho, its officers, its agencies, or its political subdivisions only if the claimant establishes a claim or right to relief by evidence that satisfies the court.

Rule 56. Summary Judgment

(a) Motion for Summary Judgment or Partial Summary Judgment. A party may move for summary judgment, identifying each claim or defense, or the part of each claim or defense, on which summary judgment is sought. The court must grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.

(b) Time.

(1) *Time for Filing.* The motion may be filed any time after the expiration of 21 days from the service of process upon the adverse party or that party's appearance in the action or after service of a motion for summary judgment by the adverse party, However, a motion for summary judgment must be filed at least 90 days before the trial date, or filed within 7 days from the date of the order setting the case for trial, whichever is later, unless otherwise ordered by the court.

(2) *Other Time Requirements.* The motion, supporting documents and brief must be served at least 28 days before the date of the hearing. If the adverse party wishes to oppose summary judgment, the party must serve an answering brief. The answering brief and any opposing documents must be served at least 14 days before the date of the hearing. Any reply brief of the moving party must be served at least 7 days before the date of the hearing.

(3) *Altering Time Requirements.* The court may alter or shorten the time periods and requirements of this rule for good cause shown, may continue the hearing, and may impose costs, attorney fees and sanctions against a party or the party's attorney, or both.

(c) Procedures.

(1) *Supporting Factual Positions.* A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

(A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

(B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(2) *Objection That a Fact Is Not Supported by Admissible Evidence.* A party may object that the material cited to support or dispute a fact is not admissible in evidence at the hearing.

(3) *Materials Not Cited.* The court need consider only the cited materials, but it may consider other materials in the record.

(4) *Affidavits.* An affidavit used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated. Sworn or certified copies of all papers or parts of papers referred to in an affidavit must be attached to or served with the affidavit. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits.

(d) When Facts are Unavailable to the Nonmovant. If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

(1) defer considering the motion or deny it;

(2) allow time to obtain affidavits or declarations or to take discovery; or

(3) issue any other appropriate order.

(e) Failing to Properly Support or Address a Fact. If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may:

(1) give an opportunity to properly support or address the fact;

(2) consider the fact undisputed for purposes of the motion;

(3) grant summary judgment if the motion and supporting materials, including the facts considered undisputed, show that the movant is entitled to it; or

(4) issue any other appropriate order.

(f) Failing to Grant all the Requested Relief. If the court does not grant all the relief requested by the motion, it may enter an order stating any material fact, including an item of damages or other relief, that is not genuinely in dispute and treating the fact as established in the case.

(g) Affidavit or Declaration Submitted in Bad Faith. If satisfied that an affidavit under this rule is submitted in bad faith or solely for delay, the court, after notice and a reasonable time to respond, must order the submitting party to pay the other party the reasonable expenses, including attorney's fees, it incurred as a result. An offending party or attorney may also be held in contempt or subjected to other appropriate sanctions.

Rule 57. Declaratory Judgments

(a) In General. These rules govern the procedure for obtaining a declaratory judgment pursuant to the statutes of this state. Rules 38 and 39 govern a demand for a jury trial. The existence of another adequate remedy does not preclude a declaratory judgment that is otherwise appropriate. The court may order a speedy hearing of a declaratory-judgment.

(b) Coverage Under Insurance Policy. A party seeking a declaratory judgment as to coverage under a policy of insurance must give notice of the action to any person known to have a claim against the insured relating to the incident that is the subject of the declaratory action.

Rule 58. Entry of Judgment

Every judgment and amended judgment must be set forth on a separate document as required in Rule 54(a). The filing of a judgment by the court as provided in Rule 5(d) or the placing of the clerk's filing stamp on the judgment constitutes the entry of the judgment, and the judgment is not effective before such entry. The entry of the judgment must not be delayed for the taxing of costs.

Rule 58.1. Satisfaction of Judgment

(a) Required on Full Payment. Upon full payment of a judgment, the party in whose favor the judgment was rendered must:

(1) file a satisfaction of judgment in the court in which the judgment was entered; and

(2) record it in every county where the judgment or abstract of the judgment is recorded.

(b) Signature Required. A satisfaction of judgment must be signed by the party in whose favor the judgment was entered or the party's attorney.

Rule 58.2. Certificate of Adoption

The court must not enter a decree of adoption until the adopting parents furnish to the court a completed certificate of adoption on the form furnished by the department of vital statistics.

TITLE VIII - POST-JUDGMENT PROCEDURE

Rule 59. New Trial; Altering or Amending a Judgment

(a) In General.

(1) *Grounds for a New Trial.* The court may, on motion, grant a new trial on all or some of the issues, and to any party, for any of the following reasons:

(A) irregularity in the proceedings of the court, jury or adverse party;

(B) any order of the court or abuse of discretion by which either party was prevented from having a fair trial;

(C) misconduct of the jury;

(D) accident or surprise, which ordinary prudence could not have guarded against;

(E) newly discovered evidence, material for the party making the application, which the party could not, with reasonable diligence, have discovered and produced at the trial;

(F) excessive damages or inadequate damages, appearing to have been given under the influence of passion or prejudice;

(G) insufficiency of the evidence to justify the verdict or other decision, or that it is against the law; or

(H) error in law, occurring at the trial.

(2) *Support for Motion.* Any motion for a new trial based upon any of the grounds set forth in subdivisions (A) – (E) must be accompanied by an affidavit stating in detail the facts relied upon in support of the motion. Any motion based on subdivisions (G) or (H) must set forth with particularity the factual grounds for the motion.

(3) *Further Action After a Non-Jury Trial.* On a motion for new trial in an action tried without a jury, the court may open the judgment, if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

(b) Time to File a Motion for a New Trial. A motion for a new trial must be filed and served within 14 days after the entry of the judgment.

(c) Time to Serve Affidavits. When a motion for a new trial is based on affidavits, they must be filed and served with the motion. The opposing party has 14 days after being served to file and serve opposing affidavits, which period may be extended for up to an additional 21 days by order of the court or written stipulation. The court may permit reply affidavits. All affidavits filed under this rule must meet the requirements of Rule 56(c)(4).

(d) New Trial on the Court's Initiative or for Reasons Not in the Motion.

(1) *On Court's Own Initiative.* No later than 14 days after entry of judgment the court, on its own, may give notice of its intent order a new trial for any reason for which it might have granted a new trial on motion of a party. A notice of intent pursuant to this subdivision is to be treated as a motion for new trial filed by a party for the purpose of these rules and the Idaho Appellate Rules.

(2) *For Grounds not Stated in Motion.* The court may grant a motion for a new trial, timely served, for a reason not stated in the motion.

The court must give the parties notice and an opportunity to be heard before entering an order for new trial. The court must specify in the order the grounds for granting a new trial.

(e) Motion to Alter or Amend a Judgment. A motion to alter or amend the judgment must be filed and served no later than 14 days after entry of the judgment.

Rule 59.1. Additurs or Remittiturs Instead of New Trial

(a) Acceptance or Rejection. If a trial court conditionally grants or denies a new trial subject to either an additur or remittitur, the party to whom it is directed has 42 days from entry of the order in which to accept or reject it. If the party files a notice of appeal, the appeal does not constitute an acceptance or a rejection of the additur or remittitur and the party is not required to accept or reject the additur or remittitur until the determination of the appeal.

(b) Effect of Appeal. If a party to whom an additur or remittitur is directed is successful on appeal, the case will proceed as provided in the opinion determining the appeal. If the order of the trial court granting a conditional new trial is affirmed, the party to whom the additur or remittitur was directed has 14 days from the date of issuance of the appellate remittitur in which to accept or reject the additur or remittitur consistent with the appellate opinion.

Rule 60. Relief From a Judgment or Order.

(a) Corrections Based on Clerical Mistakes; Oversights and Omissions. The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

(c) Timing and Effect of the Motion.

(1) *Timing.* A motion under Rule 60(b) must be made within a reasonable time, and for reasons (1), (2), and (3) no more than 6 months after the entry of the judgment or order or the date of the proceeding.

(2) *Effect on Finality.* The motion does not affect the judgment's finality or suspend its operation.

(d) Other Powers to Grant Relief. This rule does not limit a court's power to:

(1) entertain an independent action to relieve a party from a judgment, order, or proceeding;

(2) to set aside, as provided by law, within one year after judgment was entered, a judgment obtained against a party who was not personally served with summons and complaint either in the state of Idaho or in any other jurisdiction, and who has failed to appear in the action; or

(3) set aside a judgment for fraud on the court.

Rule 61. Harmless Error

Unless justice requires otherwise, no error in admitting or excluding evidence, or any other error by the court or a party, is ground for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order. At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights.

Rule 62. Stay of Proceedings to Enforce a Judgment

(a) No Automatic Stay on Entry of Judgment. Execution or other proceedings to enforce a judgment may issue immediately on the entry of judgment, unless the court in its discretion and on such conditions for the security of the adverse party as are proper, otherwise directs. Unless otherwise ordered by the court, an interlocutory or final judgment in an action for an injunction or writ of mandate, or in a receivership action, is not stayed during the period after its entry and until the appeal is filed or during the pendency of an appeal. The provisions of subdivision (c) govern the suspending, modifying, restoring, or granting of an injunction or writ of mandate during the pendency of an appeal.

(b) Stay Pending the Disposition of a Motion. On appropriate terms for the opposing party's security, the court may stay the execution of a judgment, or any proceedings to enforce it, pending disposition of any of the following motions:

(1) under Rule 50, for judgment as a matter of law;

(2) under Rule 52(b), to amend the findings or for additional findings;

(3) under Rule 59, for a new trial or to alter or amend a judgment; or

(4) under Rule 60, for relief from a judgment or order.

(c) Injunction or Writ of Mandate Pending an Appeal. While an appeal is pending from an interlocutory order or final judgment that grants, dissolves, or denies an injunction or writ of mandate, the court may suspend, modify, restore, or grant an injunction or writ of mandate on terms for bond or other terms that secure the opposing party's rights.

(d) Stay Upon Appeal. When an appeal is taken from the district court to the Supreme Court, the proceedings in the district court upon the judgment or order appealed from is stayed as provided by the Idaho Appellate Rules.

(e) Stay in Favor of the State, Subdivision, or Agency Thereof; Waiver. The court must not require a bond, obligation or other security from the appellant when granting a stay on an appeal by the state of Idaho or its officers, agencies or subdivisions.

(f) **Waiver of Security.** In all cases, the parties may waive the filing of security by written stipulation.

(g) **Appellate Court's Power not Limited.** This rule does not limit the power of the Supreme Court or a District Court acting in its appellate capacity or one of its justices or judges:

(1) to stay proceedings, or suspend, modify, restore, or grant an injunction, while an appeal is pending; or

(2) to issue an order to preserve the status quo or the effectiveness of the judgment to be entered.

(h) **Stay with Multiple Claims or Parties.** A court may stay the enforcement of a final judgment entered under Rule 54(b) until it enters a later judgment or judgments, and may prescribe terms necessary to secure the benefit of the stayed judgment for the party in whose favor it was entered.

Rule 63. Judge's Inability to Proceed

If the trial judge is unable to perform the duties required after a verdict is returned or findings of fact and conclusions of law are filed, because of death, sickness or other disability, then any other judge regularly sitting in or assigned to the court in which the action was tried may perform those duties. If the other judge is satisfied that the judge cannot perform those duties, the judge may grant a new trial.

Rule 64. Seizing a Person or Property

At the commencement of and during the course of an action, all remedies providing for seizure of person or property for the purpose of securing satisfaction of the potential judgment are available under the circumstances and in the manner provided by law.

Rule 65. Injunctions and Restraining Orders

(a) Preliminary Injunction.

(1) *Notice.* The court may issue a preliminary injunction only on notice to the adverse party.

(2) *Consolidating the Hearing with the Trial on the Merits.* Before or after beginning the hearing on a motion for a preliminary injunction, the court may advance the trial on the merits and consolidate it with the hearing. Even when consolidation is not ordered, evidence that is received on the motion and that would be admissible at trial becomes part of the trial record and need not be repeated at trial. But the court must preserve any party's right to a jury trial.

(b) Temporary Restraining Order.

(1) *Issuing Without Notice.* The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if:

(A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and

(B) the movant or the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

(2) *Contents; Expiration.* Every temporary restraining order issued without notice must state the date and hour it was issued; describe the injury and state why it is irreparable; state why the order was issued without notice; and be promptly filed in the clerk's office and entered in the record. The order expires at the time after entry, not to exceed 14 days, that the court sets, unless before that time the court, for good cause, extends it for a like period or the adverse party consents to a longer extension. The reasons for an extension must be entered in the record.

(3) *Expediting the Preliminary-Injunction Hearing.* If the order is issued without notice, the motion for a preliminary injunction must be set for hearing at the earliest possible time, taking precedence over all other matters except hearings on older matters of the same character. At the hearing, the party who obtained the order must proceed with the motion; if the party does not, the court must dissolve the order.

(4) *Motion to Dissolve.* On 2 days' notice to the party who obtained the order without notice, or on shorter notice set by the court, the adverse party may appear and move to dissolve or modify the order. The court must then hear and decide the motion as promptly as justice requires.

(c) **Security.** The court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages, including reasonable attorney's fees, sustained by any party found to have been wrongfully enjoined or restrained. The State of Idaho or any political subdivision, its officers, and its agencies are not required to give security.

(d) **Contents and Scope of Every Injunction and Restraining Order.**

(1) *Contents.* Every order granting an injunction and every restraining order must:

(A) state the reasons why it issued;

(B) state its terms specifically; and

(C) describe in reasonable detail, and not by referring to the complaint or other document, the act or acts restrained or required.

(2) *Persons Bound.* The order binds only the following who receive actual notice of it by personal service or otherwise:

(A) the parties;

(B) the parties' officers, agents, servants, employees, and attorneys; and

(C) other persons who are in active concert or participation with anyone described in Rule 65(d)(2)(A) or (B).

(e) **Grounds for Preliminary Injunction.** A preliminary injunction may be granted in the following cases:

(1) when it appears by the complaint that the plaintiff is entitled to the relief demanded, and that relief, or any part of it, consists of restraining the commission or continuance of the acts complained of, either for a limited period or perpetually;

(2) when it appears by the complaint or affidavit that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury to the plaintiff;

(3) when it appears during the litigation that the defendant is doing, threatening, procuring or allowing to be done, or is about to do, some act in violation of the plaintiff's rights, respecting the subject of the action, and the action may make the requested judgment ineffectual;

(4) when it appears, by affidavit, that the defendant is about to remove or to dispose of the defendant's property with intent to defraud the plaintiff;

(5) for the defendant upon filing of a counterclaim praying for affirmative relief upon any of the grounds mentioned above in this section, subject to the same rules and provisions provided for the issuance of injunctions on behalf of the plaintiff;

(f) **Restoring Possession of Real Property.** The district courts may issue a writ of injunction for affirmative relief having the force and effect of a writ of restitution, restoring any person to the possession of any real property from which the person was removed by force, violence, fraud, or stealth, or from which the person is kept out of possession by threats if possession was taken on Sunday, a legal holiday, or in the nighttime, or while the party in possession was temporarily absent. The granting of the writ extends only to the right of possession

under the facts of the case, in respect to the manner in which the possession was obtained, and does not resolve the legal rights of the parties on any other issue. This writ may only be issued on 7 days' notice in writing to the adverse party of the time and place of hearing on the application for writ.

(g) **Employer and Employee Actions Exempt.** These rules do not modify any statute of the state of Idaho relating to restraining orders or injunctions in actions affecting employer and employee in labor disputes.

Rule 66. Sureties on Bond

(a) **Form of Bond and Justification of Sureties.** If a bond or undertaking is required to be given by statute or these rules, the general form and the justification of the sureties must be in accordance with chapter 6 of title 12, Idaho Code.

(b) **Attorney Not Acceptable as Surety.** No attorney will be accepted as surety on any bond or undertaking furnished in any action or proceeding in which the attorney appears as an attorney of record, or is a member or associate of a firm or corporation that appears as the attorneys of record.

(c) **Proceedings Against a Surety.** Whenever these rules require or allow a party to give security, and security is given through a bond or other undertaking with one or more sureties, each surety submits to the court's jurisdiction and irrevocably appoints the court clerk as its agent for receiving service of any papers that affect its liability on the bond or undertaking. The surety's liability may be enforced on motion without an independent action. The motion and any notice that the court orders may be served on the court clerk, who must promptly mail a copy of each to every surety whose address is known.

Rule 67. Deposit Into Court

(a) **Depositing Money or Property.** If any part of the relief sought is a money judgment or the disposition of a sum of money or some other deliverable thing, a party, on notice to every other party and by leave of court, may deposit with the court all or part of the money or thing, whether or not that party claims any of it. The depositing party must deliver to the clerk a copy of the order permitting deposit.

(b) **Motion for Deposit.** When a party has possession or control of money or another thing capable of delivery that is the subject of the litigation, and which (1) is held as trustee for another party or (2) belongs or is due to another party, the court may, on motion, order that it be deposited in court or delivered to the other party on such conditions as are just.

(c) **Depositing and Withdrawing.** Money or any other thing deposited into court under this rule may only be deposited and withdrawn as directed by the court or as provided by the statutes of this state.

Rule 68. Offer of Judgment

(a) **Making an Offer; Judgment on an Accepted Offer.** At least 14 days before the date set for trial, a party defending against a claim may serve on an opposing party, but not file in court, an offer to allow judgment on specified terms, which offer is deemed to include all costs and fees accrued. If, within 14 days after being served, the opposing party serves written notice accepting the offer, either party may then file the offer and notice of acceptance, plus proof of service. The clerk must then enter judgment in the amount of the offer without costs.

(b) Unaccepted Offer. An unaccepted offer is considered withdrawn, but it does not preclude a later offer. Evidence of an unaccepted offer is not admissible except in a proceeding to determine costs.

(c) Offer After Liability is Determined. When one party's liability to another has been determined but the extent of liability remains to be determined by further proceedings, the party held liable may make an offer of judgment. It must be served within a reasonable time, but at least 14 days, before the date set for a hearing to determine the extent of liability.

(d) Paying Costs After an Unaccepted Offer.

(1) *Claims for Monetary Damages.* In cases involving claims for monetary damages, any costs under Rule 54(d)(1) awarded against the offeree must be based upon a comparison of the offer and the "adjusted award."

(A) Adjusted Award Definition. The adjusted award is defined as:

(i) the verdict in addition to,

(ii) the offeree's costs under Rule 54(d)(1) incurred before service of the offer of judgment and,

(iii) any attorney fees under Rule 54(e)(1) incurred before service of the offer of judgment. Provided, in contingent fee cases where attorney fees are awardable under Rule 54(e)(1), the court will pro rate the offeree's attorney fees to determine the amount incurred before the offer of judgment in reaching the adjusted award.

(B) Adjusted Award Less than Offer. If the adjusted award obtained by the offeree is less than the offer, then:

(i) the offeree must pay those costs of the offeror as allowed under Rule 54(d)(1), incurred after the making of the offer;

(ii) the offeror must pay those costs of the offeree, as allowed under Rule 54(d)(1), incurred before the making of the offer; and

(iii) the offeror is not be liable for costs and attorney fees of the offereee awardable under Rules 54(d)(1) and 54(e)(1) incurred after the making of the offer.

(C) Adjusted Award More than Offer. If the adjusted award obtained by the offeree is more than the offer, the offeror must pay those costs, as allowed under Rule 54(d)(1), incurred by the offeree both before and after the making of the offer.

(D) Judgment to be Entered. After a comparison of the offer and the adjusted award, in appropriate cases, the district court must order an amount which either the offeror or the offeree must ultimately pay separate and apart from the amount owed under the verdict. A total judgment must be entered taking into account both the verdict and the involved costs.

(2) *Claims for Non-Monetary Relief.* In cases involving claims for relief other than monetary damages, any costs under Rule 54(d)(1) must be based on a comparison of the offer and the judgment.

(A) Judgment Not More Favorable than Offer. If the judgment, including attorney fees awardable under Rule 54(e)(1) incurred before service of the offer of judgment, and costs incurred before service of the offer of judgment, finally obtained by the offeree is not more favorable than the offer, the offeree must pay the offeror's costs, as allowed under Rule 54(d)(1), incurred after the making of the offer.

(B) Judgment More Favorable than Offer. If the judgment including attorney fees and costs is more favorable than the offer, the offeror must pay all costs of the offeree allowable under Rule 54(d)(1) both before and after the making of the offer.

Rule 69. Execution

(a) In General. An appealable final judgment, or a partial judgment if certified as final under Rule 54(b), for the payment of money, or a court order for the payment of money, is enforced by a writ of execution unless the court directs otherwise. A writ of execution must not be issued for an amount other than the face amount of the judgment, and costs and attorney fees approved by the court, without an affidavit of the party or the party's attorney verifying the computation of the amount due under the judgment. The clerk may rely upon an affidavit in issuing a writ of execution. After service of the writ of execution, the sheriff must make a return to the clerk of the court and indicate the amount of the service fees and whether they were collected by the sheriff. Any balance of the service fees of the writ of execution not collected by the sheriff must be added to the judgment by the clerk as provided in Rule 54(d).

(b) Procedure on Execution. The procedure on execution, in proceedings supplementary to and in aid of judgment, and in proceedings on and in aid of execution must be in accordance with the statutes of the state of Idaho and as provided in these rules.

(c) Obtaining Discovery. In aid of the judgment or execution, the judgment creditor or successor in interest whose interest appears of record may obtain discovery from any person, including the judgment debtor, as provided in these rules and may examine any person, including the judgment debtor, in the manner provided by these rules.

Rule 70. Enforcing a Judgment for a Specific Act

(a) Party's Failure to Act; Ordering Another to Act. If a judgment requires a party to convey land, to deliver a deed or other document, or to perform any other specific act and the party fails to comply within the time specified, the court may order the act to be done at the disobedient party's expense by another person appointed by the court. When done, the act has the same effect as if done by the party.

(b) Vesting Title. If the real or personal property is within the district, the court, instead of ordering a conveyance, may enter a judgment divesting any party's title and vesting it in others. That judgment has the effect of a legally executed conveyance.

(c) Obtaining a Writ of Attachment or Sequestration. On application by a party entitled to performance of an act, the clerk must issue a writ of attachment or sequestration against the disobedient party's property to compel obedience.

(d) Obtaining a Writ of Execution or Assistant. On application by a party who obtains a judgment or order for possession, the clerk must issue a writ of execution or assistance.

(e) Motion for Contempt. Failure to comply with a judgment may also be the basis of a motion for contempt.

Rule 71. Enforcing Relief For or Against a Nonparty

When an order grants relief for a nonparty or may be enforced against a nonparty, the procedure for enforcing the order is the same as for a party.

Rule 72. Order to Show Cause

(a) **Procedure.** An application for an order to show cause must be by verified complaint, or accompanied by an affidavit, stating the facts and grounds on which the application is based. If the court finds that an application makes a prima facie showing for an order commanding a person to do or refrain from doing specific acts or to pay a sum of money, the court must enter an order to show cause to the opposing party to comply with the request or show cause before the court at a time and place certain why the order should not be entered. An order to show cause must be served on the party to whom it is directed, or the party's attorney of record in the action, at least 7 days before the date of the show cause hearing in the same manner as a notice for hearing of a motion. If the party to whom the order to show cause is directed opposes the entry of the order, the court must hear the show cause proceeding. Any proceeding for contempt must be brought pursuant to Rule 75.

(b) Notice of Intent to Present Evidence and Duty to Produce Designated Person.

(1) Any party may elect to produce testimony and evidence at the hearing, or to cross-examine the adverse party and affiants by giving notice to the court and the adverse party at least 24 hours before the hearing. The notice must designate the persons sought to be cross-examined. The party against whom relief is sought must be given written notice of the requirements of this subdivision when served with the order to show cause.

(2) If a party timely gives notice of the intent to cross-examine, the adverse party must have the persons designated in the notice present at the hearing, unless otherwise ordered by the court. If the adverse party or the party's affiants are not excused by the court and fail to appear as requested in the notice, the court may impose sanctions including awarding attorney fees to the requesting party.

Rule 73. Receivers

These rules govern an action in which the appointment of a receiver is sought or a receiver sues or is sued. The appointment and administration of estates by receivers or other similar officers must be in accordance with Idaho Code. An action in which a receiver has been appointed may be dismissed only by court order.

Rule 74. Actions for Writ of Mandate or Prohibition

The Rules of Civil Procedure apply to an action for a writ of mandate or a writ of prohibition.

(a) Definitions.

(1) *Writ of Mandate.* A writ of mandate is an order issued by the court to any inferior court, corporation, board or person that:

(A) compels the performance of an act which a party has a duty to perform as a result of an office, trust or station; or

(B) compels the admission of a party to the use and the enjoyment of a right or office to which the party is entitled and from which the party is unlawfully precluded by such inferior court, corporation, board or person.

(2) *Writ of Prohibition.* A writ of prohibition is an order that arrests the proceedings of any court, corporation, board or person, when such proceedings are without or in excess of the jurisdiction of the court, corporation, board or person.

(3) *Alternative Writ.* An alternative writ orders a party to:

(A) immediately after receipt of the writ or at some other specified time, do the act required to be performed or to stop doing or refrain from taking any other specified act until further order of the court, or

(B) show cause before the court at a specified time and place why the party has not done the mandated act or stopped the prohibited act.

(4) *Peremptory Writ.* A peremptory writ requires a party, immediately after receipt of the writ or at some other specified time, to do the act required to be performed or to stop doing or refrain from taking any other specified act.

(b) Procedure.

(1) *Alternative Writ.*

(A) When any complaint or petition for a peremptory writ of mandate or prohibition asks that an alternative writ be issued first, the court may issue the alternative writ based on a verified complaint or affidavit showing grounds.

(B) Copies of the summons, petition, any affidavits, and the alternative writ must be served upon the defendant at least 14 days before to the date of any show cause hearing.

(C) No contested trial of the petition for peremptory writ may be had at a show cause hearing pursuant to an alternative writ, and no peremptory writ may issue as a result of a contested show cause hearing.

(D) If the party on whom the alternative writ was served appears at the time specified to show cause, the court must, at the show cause hearing, set a time for the trial of the action on its merits and the court may hear limited testimony as to whether the alternative writ should remain in force pending trial on the merits.

(2) *Peremptory Writ.*

(A) A responsive pleading to the complaint or petition is filed and served in the same manner as an answer to any other complaint in a civil action.

(B) If an answer raises a question of fact essential to the determination of the motion and affecting the substantial rights of the parties, the court may order the question to be tried before a jury and postpone the final hearing until a jury trial can be had on the contested fact. The order for trial must clearly state the question to be tried and designate the county for the trial. If the jury finds for the plaintiff, the court may also direct the jury to assess any damages which the plaintiff may have sustained.

On entry of the judgment, if the writ is awarded it must be issued immediately as a peremptory writ.

TITLE X – SPECIAL PROCEEDINGS

Rule 75. Contempt

This rule governs all contempt proceedings brought in connection with a civil lawsuit or as a separate proceeding. It does not apply to contempt charged under Idaho Code Section 18-1801, or any other criminal statute.

(a) Definitions. The following definitions apply to this rule.

(1) *Petitioner.* A petitioner is the person or legal entity initiating a nonsummary contempt proceeding.

(2) *Respondent.* A respondent is the person or legal entity alleged to have committed an act of contempt.

(3) *Contemnor.* A contemnor is a person or legal entity adjudged to have committed an act of contempt.

(4) *Summary Proceeding.* A summary proceeding is one in which the contemnor is not given prior notice of the charge of contempt and an opportunity for a hearing to determine whether the charge is true.

(5) *Nonsummary Proceeding.* A nonsummary proceeding is one in which the contemnor is given prior notice of the contempt charge and an opportunity for a hearing.

(6) *Civil Sanction.* A civil sanction is one that is conditional. The contemnor can avoid the sanction entirely or have it cease by doing what the contemnor had previously been ordered by the court to do. A civil sanction can only be imposed if the contempt consists of failing to do what the contemnor had previously been ordered by the court to do.

(7) *Criminal Sanction.* A criminal sanction is one that is unconditional. The contemnor cannot avoid the sanction entirely or have it cease by doing what the contemnor had been previously ordered by the court to do. A suspended sanction with probationary conditions is a criminal sanction, as is a sanction that includes provisions that are both conditional (civil) and unconditional (criminal). A criminal sanction may be imposed for any contempt.

(b) Summary Proceedings. A summary proceeding may be used only if the contempt was committed in the presence of the court.

(1) *Presence of the Court Defined.* A contempt is committed in the presence of the court if:

(A) the conduct occurs in open court in the immediate presence of the judge;

(B) the judge has personal knowledge, based upon personally observing and/or hearing the conduct, of the facts establishing all elements of the contempt; and

(C) the conduct disturbs the court's business.

(2) *Requirements Before a Sanction May be Imposed.* The court may summarily impose a sanction for contempt that is committed in its presence. Before doing so, the court must:

(A) give the contemnor notice of the alleged contempt, which can be oral; and

(B) give the contemnor a brief opportunity to be heard in order to present matters in mitigation or to otherwise attempt to make amends with the court.

(3) *Order Announcing Sanction.* Promptly after announcing the sanction, the court must enter in the record a written order, signed by the judge, which:

(A) states that the judge saw and/or heard all of the conduct constituting the contempt and that it was committed in the actual presence of the court;

(B) recites each of the specific facts upon which the contempt conviction rests;

(C) adjudges that the contemnor is guilty of contempt; and

(D) sets forth the sanction for that contempt.

Before imposing incarceration as a sanction for summary contempt, the court should consider whether a lesser sanction would be effective. If the sanction includes incarceration, the court may immediately remand the contemnor into custody to begin serving the period of incarceration and later file the written order. If the sanction includes a civil sanction, the written order must recite precisely what the contemnor must do in order to avoid the sanction or have it cease.

(c) Nonsummary Proceedings; Commencement. Nonsummary contempt proceedings may be commenced only as provided in this rule.

(1) *Contempt Initiated by a Judge; Written Charge of Contempt.* A judge may initiate contempt proceedings by issuing a written charge of contempt and having it served upon the respondent. The charge may be prepared by the court or by a party at the court's direction. The written charge must be supported by an affidavit unless the facts recited in it are based upon the judge's personal knowledge and/or upon information from the court file contained in documents prepared by court personnel.

(2) *Contempt Not Initiated by a Judge; Motion and Affidavit.* All contempt proceedings, except those initiated by a judge as provided above, must be commenced by a motion and affidavit. Contempt proceedings may not be initiated by an order to show cause.

(3) *Factual Allegations.* The written charge of contempt or affidavit must allege the specific facts constituting the alleged contempt and set forth each instance of alleged contempt separately. The written charge or affidavit need not allege facts showing that the respondent's failure to comply with the court order was willful. If the alleged contempt is the violation of a court order, the written charge or affidavit must also allege that either respondent or the respondent's attorney was served with a copy of the court order or had actual knowledge of it.

(4) *Notice to Appear.* The respondent must be served with written notice of the time, date, and place to appear to answer to the charge of contempt.

(d) Nonsummary Proceedings; Service; Time Limits.

(1) *Respondent a Party to the Pending Action.* If the contempt proceedings are initiated in connection with a pending action to which the respondent is a party, the respondent may be served upon the respondent as provided in Rule 5(b), unless the court orders personal service.

(2) *Respondent Not a Party to the Pending Action.* If the respondent is not a party to the pending action in which the contempt proceedings are brought, service must be as provided in Rule 4, but the respondent need not be served with a summons.

(3) *Time Limit for Service.* Notice of the time, date, and place to appear, together with the documents commencing the contempt proceedings, must be served no later than 7 days before the date set for the initial appearance, unless otherwise ordered by the court.

(e) Nonsummary Proceedings; Warrant of Attachment and Bail.

(1) *Warrant of Attachment.* The form of the warrant may be the same as a warrant of arrest issued in a criminal case a warrant of attachment must not be issued unless the court determines:

(A) there is probable cause to believe that the respondent committed the contempt, and

(B) there are reasonable grounds to believe that the respondent will disregard a written notice to appear.

(2) *Bail.* When issuing a warrant of attachment, the court must set a reasonable bail, to be endorsed upon the warrant at the time it is issued.

(3) *Execution and Return.* The execution and return of the warrant must be in the same manner as a warrant of arrest issued in a criminal case.

(f) Nonsummary Proceedings; Initial Appearance of Respondent.

(1) *Advice to Respondent.* At the respondent's first appearance in court to answer to the charge of contempt in nonsummary proceedings, the court must inform the respondent of:

(A) the charge(s) of contempt against the respondent;

(B) the possible sanctions for contempt;

(C) that the respondent is not required to make a statement and that any statement made may be used against the respondent;

(D) the respondent's right to a trial;

(E) the respondent's right to confront the witnesses against the respondent, including watching the witnesses testify in court and questioning them; and

(F) the respondent's right to bail, if the respondent has been arrested under a warrant of attachment.

(2) *Additional Advice in Order to Impose Incarceration as a Sanction.* If the respondent appears without counsel and the court desires to have the option of imposing incarceration as a sanction, the court must inform the respondent that the respondent has the right to be represented by an attorney and that if the respondent desires an attorney and cannot afford one, an attorney will be appointed at public expense.

(3) *Appearance by Respondent Through Counsel.* A respondent may also appear and respond to the charge through an attorney, who must either appear in person or file a written appearance and response to the charge on behalf of the respondent at or

before the initial appearance. The court may, in its discretion, require the presence of the respondent at any stage of the proceeding.

(g) Nonsummary Proceedings; Plea. The respondent must admit or deny the charge of contempt, after being informed of the applicable rights.

(1) *Admission of Contempt.* Before an admission of the charge can be accepted, the record of the entire proceedings, including reasonable inferences drawn therefrom, must show:

(A) the respondent was informed of the nature of the charge(s) of contempt;

(B) the respondent was informed of the maximum sanctions, including the possibility, if applicable, that sanctions for multiple contempts could be consecutive;

(C) the voluntariness of the admission; and

(D) the respondent was advised that by admitting the contempt, the respondent would be waiving the applicable rights specified in subsection (f) above.

(2) *Denial of Contempt.* If the respondent denies the charge of contempt, the matter must be set for a trial. The respondent must be given at least 14 days to prepare for trial, unless otherwise ordered by the court.

(h) Nonsummary Proceedings; Defenses to the Contempt. Defenses to the charge of contempt must be raised as follows:

(1) *Written Response.* In order to assert an affirmative defense to the contempt, the respondent must file and serve a written response within 7 days after entering a plea denying the contempt charged, unless otherwise ordered by the court. Defenses include:

(A) the respondent was unable to comply with the court order at the time of the alleged violation (only a defense to a criminal sanction),

(B) the respondent lacks the present ability to comply with the court order (only a defense to a civil sanction),

(C) the respondent was unaware of the order allegedly violated,

(D) the court lacks personal jurisdiction over the respondent, or

(E) the court lacked jurisdiction to issue the order allegedly violated.

(2) *Burden of Proof Regarding Affirmative Defenses.* In order to prevent a civil sanction from being imposed, the respondent must prove the affirmative defense by a preponderance of the evidence. In order to prevent a criminal sanction from being imposed, there need only be a reasonable doubt as to whether the respondent is guilty of the contempt.

(i) Nonsummary Proceedings; Trial.

(1) *Court Trial or Jury Trial.* The trial will be before the court without a jury, provided that if the respondent is charged with multiple counts tried in one proceeding, the court cannot impose consecutive criminal sanctions totaling more than 6 months in jail unless the respondent was given, or voluntarily waived, the right to a jury trial.

(2) *Trial Rights Required to Impose a Criminal Sanction.* The court cannot impose a criminal sanction following a trial unless the respondent was provided the following rights:

(A) a public trial,

(B) compulsory process,

(C) the presumption of innocence,

(D) the privilege against self-incrimination,

(E) the right to call and cross-examine witnesses,

(F) the right to testify in his or her own behalf,

(G) the right to exclude evidence that was obtained in violation of the respondent's Fourth Amendment rights,

(H) the right to counsel, if applicable, and

(I) the right to a unanimous verdict if there was a jury trial.

(j) Nonsummary Proceedings; Burden of Proof.

(1) *Civil Sanction.* In order to impose a civil sanction, the court must find, by a preponderance of the evidence, that all of the elements of contempt have been proved and that the contemnor has the present ability to comply with the order violated, or with that portion of it required by the sanction.

(2) *Criminal Sanction.* In order to impose a criminal sanction, the trier of fact must find that all of the elements of contempt have been proved beyond a reasonable doubt.

(k) Nonsummary Proceedings; Findings of Fact. If the contempt allegation is tried to the court without a jury, the court must make specific findings of fact. In order to impose either a civil sanction or a conditional (civil) provision as part of a criminal sanction, the findings must include the facts upon which the court bases its determination that the contemnor has the present ability to comply with the order violated, or with that portion of it required by the sanction.

(l) Nonsummary Proceedings; Imposition of Sanctions. If the respondent admits the contempt or is found in contempt following a trial, the court may impose sanctions as permitted by law, under the following conditions:

(1) *Right to Counsel.* The court cannot impose incarceration as a sanction unless the contemnor was represented by counsel or had knowingly and voluntarily waived the right to counsel.

(2) *Right to Call Witnesses and Speak Regarding the Sanction.* The court cannot impose a criminal sanction without first giving the contemnor the right to call witnesses in mitigation of the sanction and the right to be heard in order to present matters in mitigation or to otherwise attempt to make amends with the court.

(3) *Written Order.* The court must issue a written order reciting the conduct upon which the contempt conviction rests; adjudging that the contemnor is guilty of contempt; and setting forth the sanction for that contempt. If the sanction is civil or includes a conditional provision, the order must specify precisely what the contemnor must do in order to avoid that sanction or have it cease.

(m) **Nonsummary Proceedings; Attorney Fees.** In any contempt proceeding, the court may award the prevailing party costs and reasonable attorney fees under Idaho Code Section 7-610, regardless of whether the court imposes a civil sanction, a criminal sanction, or no sanction. The procedure for awarding costs and fees is as provided in Rule 54(e), except that the determination of the prevailing party is based upon who prevailed in the contempt proceeding rather than in the civil action as a whole.

(n) **Other Rules.** Rules regarding discovery and other rules of civil procedure, to the extent that they are not in conflict with this rule, apply to nonsummary contempt proceedings. The Idaho Criminal Rules do not apply.

Rule 76. Small Lawsuit Resolution Act Procedure

(a) **Application of Rule.** This rule applies only to civil actions in which a party has initiated the provisions of the Small Lawsuit Resolution Act, Idaho Code Section 7-1501 et. seq. This rule is not intended to supersede Idaho Code Section 7-1501 et seq, and is only intended to provide additional rules regarding procedure relative to this resolution process. Unless otherwise precluded by Idaho Code Section 7-1501 et seq. or this rule, the Idaho Rules of Civil Procedure will also apply to this resolution process.

(b) **Computation of Amount of Claim.** For purposes of computing the amount of the claim as required by Idaho Code Section 7-1503(1), , the dollar limitation is applied separately to each party, regardless of how that party's claim is designated, and excludes requests for costs and attorney's fees. The complaint must contain a statement that the amount of the claim does not exceed the statutory limitation of the Act.

(c) **Initiation of the Small Lawsuit Resolution Act Process.** Any party to an action may initiate the provisions of the Small Lawsuit Resolution Act by filing notice with the court as required by, and within the time limits established in, Idaho Code Section 7-1503(2). This notice must be entitled, "Notice of Initiation of Proceedings Under the Small Lawsuit Resolution Act." The notice will not be filed unless it is accompanied by the filing of a completed case information sheet on a form adopted by the Supreme Court and furnished by the clerk.

(d) **Objection to Use of the Small Lawsuit Resolution Process.** If a party objects to the matter proceeding through the Small Lawsuit Resolution process, it must file a written objection within seven (7) days of the filing of the Notice of Initiation of Proceedings Under the Small Lawsuit Resolution Act. If no such objection is timely filed, the opposing party will be deemed to have agreed to the initiation of the Act.

(e) **Selection of Evaluator.** Unless the parties have agreed in advance to the selection of a particular evaluator, upon notice of initiation of the provisions of the Small Lawsuit Resolution Act, the clerk of the court must provide to each party a list containing the names of five (5) randomly selected evaluators willing to perform evaluations in the county where the lawsuit has been filed from the roster maintained by the Idaho Supreme Court. The clerk of the court must include the rate of hourly compensation, if any, for each evaluator and identify a website where the parties may obtain additional information about each evaluator's qualifications. If there are more than two parties to the litigation, the clerk must provide the names of ten (10) randomly selected evaluators to the parties.

(f) **Compensation of Evaluator.**

(1) *Compensation of a Private Evaluator.* Unless stipulated by the parties or ordered by the court, the parties must pay equal portions of the private civil litigation evaluator's fee

and any actual costs incurred by the evaluator. If any party fails to pay its share of the evaluator's fee and costs, the court may enter an order for payment upon motion of the evaluator.

(2) *Compensation of a Senior or Retired Judge Serving as an Evaluator.*

(A) If the parties select a retired or senior judge to serve as an evaluator from the list of private civil litigation evaluators, the parties must compensate the retired or senior judge pursuant to subsection 1. Such service shall not be considered judicial service subject to compensation by public funds.

(B) If the Supreme Court or an Administrative District Judge authorizes an appointment of a senior judge to serve as an evaluator, such appointment will be considered judicial service for which the judge will receive no compensation from the parties. A senior judge must be compensated for such service in accordance with Idaho Code Sections 1-2005 or 1-2221 or, if a Plan B senior judge, must receive credit for such service in accordance with the Supreme Court's Plan B rules for judicial retirement.

(g) Authority of Evaluator. A case proceeding under the Small Lawsuit Resolution Act remains under the jurisdiction of the court. An evaluator has only the authority expressly set forth in the Act. All other issues must be determined by the court.

(h) Impartiality. An evaluator has a duty to be impartial, and has a continuing duty to advise all parties of any circumstances bearing on possible bias, prejudice or partiality.

(i) Sanctions. The evaluator is subject to sanctions, including referral for removal from the roster of evaluators, if the evaluator fails to discharge the duties and responsibilities imposed by this rule or the Small Lawsuit Resolution Act.

(j) Notice of Request for Trial de Novo. Within 21 days after the notice of issuance of the evaluator's decision has been filed with the clerk of the court, any party may file with the clerk a request for a trial de novo in the district court on all issues of law and fact. This request must be entitled, "Request for Trial de Novo under the Small Lawsuit Resolution Act." The request will not be filed unless it is accompanied by the filing of a completed information sheet on a form adopted by the Supreme Court and furnished by the clerk.

(k) Statistical Information. In order to facilitate the gathering of statistical information pursuant to Idaho Code Section 7-1512, each party must file a completed case information sheet on a form adopted by the Supreme Court and furnished by the clerk whenever a judgment is entered in a case where the Small Lawsuit Resolution Act was initiated. This filing must be in addition to the cover sheet required when the case is initiated and the request for trial de novo made.

Rule 77. Class Actions

(a) Prerequisites to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if:

(1) the class is so numerous that joinder of all members is impracticable;

(2) there are questions of law or fact common to the class;

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

(4) the representative parties will fairly and adequately protect the interests of the class.

(b) Types of Class Actions. A class action may be maintained if subdivision (a) is satisfied and if:

(1) prosecuting separate actions by or against individual class members would create a risk of:

(A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or

(B) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the adjudications or would substantially impair or impede their ability to protect their interests; or

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole; or

(3) the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fairly and efficiently adjudicating the controversy. The matters pertinent to these findings include:

(A) the class members' interests in individually controlling the prosecution or defense of separate actions;

(B) the extent and nature of any litigation concerning the controversy already begun by or against class members;

(C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

(D) the difficulties in managing a class action.

(c) Certification Order; Notice to Class Members; Judgment; Issues Classes; Subclasses.

(1) *Certification Order.*

(A) Time to Issue. At an early practicable time after a person sues or is sued as a class representative, the court must determine by order whether to certify the action as a class action.

(B) Defining the Class; Appointing Class Counsel. An order that certifies a class action must define the class and the class claims, issues, or defenses, and must appoint class counsel under subdivision (g).

(C) Altering or Amending the Order. An order that grants or denies class certification may be altered or amended before final judgment.

(2) *Notice.*

(A) For (b)(1) or (b)(2) Classes. For any class certified under subdivision (b)(1) or (b)(2), the court may direct appropriate notice to the class.

(B) For (b)(3) Classes. For any class certified under subdivision (b)(3), the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must clearly and concisely state in plain, easily understood language:

(i) the nature of the action;

(ii) the definition of the class certified;

(iii) the class claims, issues, or defenses;

(iv) that a class member may enter an appearance through an attorney if the member so desires;

(v) that the court will exclude from the class any member who requests exclusion;

(vi) that the judgment, whether favorable or not, must include all members who do not request exclusion;

(vii) the time and manner for requesting exclusion; and

(viii) the binding effect of a class judgment on members under subdivision(c)(3).

(3) *Judgment.* Whether or not favorable to the class, the judgment in a class action must:

(A) for any class certified under subdivisions (b)(1) or (b)(2), include and describe those whom the court finds to be class members; and

(B) for any class certified under subdivision (b)(3), include and specify or describe those to whom the subdivision (c)(2) notice was directed, who have not requested exclusion, and whom the court finds to be class members.

(4) *Particular Issues.* When appropriate, an action may be brought or maintained as a class action with respect to particular issues.

(5) *Subclasses.* When appropriate, a class may be divided into subclasses that are each treated as a class under this rule.

(d) Conducting the Action.

(1) *In General.* In conducting an action under this rule, the court may issue orders that:

(A) determine the course of proceedings or prescribe measures to prevent undue repetition or complication in presenting evidence or argument;

(B) require--to protect class members and fairly conduct the action--giving appropriate notice to some or all class members of:

(i) any step in the action;

(ii) the proposed extent of the judgment; or

(iii) the members' opportunity to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or to otherwise come into the action;

(C) impose conditions on the representative parties or on intervenors;

(D) require that the pleadings be amended to eliminate allegations about representation of absent persons and that the action proceed accordingly; or

(E) deal with similar procedural matters.

(2) *Combining and Amending Orders.* An order under subdivision (d)(1) may be altered or amended from time to time and may be combined with an order under Rule 16.

(e) Settlement, Voluntary Dismissal, or Compromise. The claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court's approval. The following procedures apply to a proposed settlement, voluntary dismissal, or compromise:

(1) the court must direct notice in a reasonable manner to all class members who would be bound by the proposal;

(2) if the proposal would bind class members, the court may approve it only after a hearing and on finding that it is fair, reasonable, and adequate;

(3) the parties seeking approval must file a statement identifying any agreement made in connection with the proposal;

(4) if the class action was previously certified under subdivision (b)(3), the court may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion but did not do so;

(5) any class member may object to the proposal if it requires court approval under this subdivision (e); the objection may be withdrawn only with the court's approval.

(f) Reserved.

(g) Class Counsel.

(1) *Appointing Class Counsel.* Unless a statute provides otherwise, a court that certifies a class must appoint class counsel. In appointing class counsel, the court:

(A) must consider:

(i) the work counsel has done in identifying or investigating potential claims in the action;

(ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;

(iii) counsel's knowledge of the applicable law; and

(iv) the resources that counsel will commit to representing the class;

(B) may consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class;

(C) may order potential class counsel to provide information on any subject pertinent to the appointment and to propose terms for attorney's fees and nontaxable costs;

(D) may include in the appointing order provisions about the award of attorney's fees or nontaxable costs under Rule 23(h); and

(E) may make further orders in connection with the appointment.

(2) *Standard for Appointing Class Counsel.* When one applicant seeks appointment as class counsel, the court may appoint that applicant only if the applicant is adequate under Rule 77(g)(1) and (4). If more than one adequate applicant seeks appointment, the court must appoint the applicant best able to represent the interests of the class.

(3) *Interim Counsel.* The court may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action.

(4) *Duty of Class Counsel.* Class counsel must fairly and adequately represent the interests of the class

(h) Attorney's Fees and Nontaxable Costs. In a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement. The following procedures apply:

(1) a claim for an award must be made by motion under Rule 54, subject to the provisions of this subdivision (h), at a time the court sets. Notice of the motion must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner;

(2) a class member, or a party from whom payment is sought, may object to the motion;

(3) the court may hold a hearing and must find the facts and state its legal conclusions under Rule 52(a);

(4) the court may refer issues related to the amount of the award to a special master.

Rule 78. Derivative Actions

(a) Prerequisites. This rule applies when one or more shareholders or members of a corporation or an unincorporated association bring a derivative action to enforce a right that the corporation or association may properly assert but has failed to enforce. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of shareholders or members who are similarly situated in enforcing the right of the corporation or association.

(b) Pleading Requirements. The complaint must be verified and must:

(1) allege that the plaintiff was a shareholder or member at the time of the transaction complained of, or that the plaintiff's share or membership later devolved on it by operation of law;

(2) allege that the action is not a collusive one to confer jurisdiction that the court would otherwise lack; and

(3) state with particularity:

(A) any effort by the plaintiff to obtain the desired action from the directors or comparable authority and, if necessary, from the shareholders or members; and

(B) the reasons for not obtaining the action or not making the effort.

(c) Settlement, Dismissal, and Compromise. A derivative action may be settled, voluntarily dismissed, or compromised only with the court's approval. Notice of a proposed settlement,

voluntary dismissal, or compromise must be given to shareholders or members in the manner that the court orders.

Rule 79. Action Relating to Unincorporated Associations

This rule applies to an action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties. The action may be maintained only if it appears that those parties will fairly and adequately protect the interests of the association and its members. In conducting the action, the court may issue any appropriate orders corresponding with those in Rule 77 (d), and the procedure for settlement, voluntary dismissal, or compromise must correspond with the procedure in Rule 77 (e).

Rule 80. Reserved

Rule 81. Reserved

Rule 82. Reserved

Rule 83. Appeals From Decisions of Magistrates

(a) Where an Appeal Must be Taken.

(1) *Appeals Taken from Magistrate Court to the Supreme Court.*

(A) As a Matter of Right. An appeal from the following final judgments, as defined in Rule 54(a), must be taken from the magistrate court to the Supreme Court:

(i) a final judgment that grants or denies a petition for termination of parental rights, or

(ii) a final judgment that grants or denies a petition for adoption.

(B) By Permission. When permission has been granted pursuant to Rule 12.1, Idaho Appellate Rules, an appeal from the following may be taken to the Supreme Court:

(i) a final judgment, as defined in Rule 803 of the Idaho Rules of Family Law Procedure, or an order made after final judgment, involving the custody of a minor, or

(ii) a final judgment in a Child Protective Act proceeding.

(2) *Appeals from the Magistrate Court to the District Court.* An appeal from the following judgments or orders entered by the magistrate court must be taken to the district court:

(A) a final judgment in a civil action or a special proceeding commenced, or assigned to, the magistrate's division of the district court;

(B) any of the judgments or orders in an action in the magistrate's division which would be appealable from the district court to the Supreme Court under Rule 11, Idaho Appellate Rules;

(C) Domestic Violence Protection Orders issued pursuant to Idaho Code Section 39-6306;

(D) final judgments or entered upon current forms approved by the Idaho Supreme Court;

(E) interlocutory orders, if permissive appeal has been granted by the district court, which must be processed in the same manner as provided by Rule 12 of the Idaho Appellate Rules; or

(F) any order, judgment or decree by a magistrate in a special proceeding for which an appeal is provided by statute.

(3) *Appeals from Magistrate Court When it is Acting as District Court.* An administrative district judge may petition the Supreme Court to assign a magistrate judge to hear an action that would otherwise be tried only by a district judge. An appeal from the magistrate's decision in the assigned case must be taken to the Supreme Court, unless the original order of assignment states differently.

(b) Time for Filing an Appeal or Cross Appeal.

(1) *Appeal.* An appeal is commenced only by filing a notice of appeal with the clerk of the district court.

(A) In General. The notice of appeal must be filed within 42 days from the date file stamped by the clerk of the court on the judgment or order being appealed.

(B) Suspension of Time to File. The time to file the appeal is terminated by the timely filing of the following motions, and begins to run from the date file stamped by the clerk of the district court on the order granting or denying the motion:

(i) a motion for a judgment notwithstanding the verdict following a timely motion for a directed verdict;

(ii) a motion to amend or make additional findings of fact or conclusions of law, whether or not alteration of the judgment is required if the motion is granted;

(iii) a motion to alter or amend the judgment, not including motions under Rule 60 or motions regarding costs and attorney fees; or

(iv) a motion for new trial.

(2) *Cross Appeal.* When an appeal is filed and served upon all parties required by this rule more than 28 days from the entry of a judgment or order, a cross appeal may be filed by any opposing party within 14 days from the date such party is served with a copy of the notice of appeal.

(c) Service of the Notice of Appeal. The party filing the appeal must immediately serve copies of the notice of appeal upon the magistrate court appealed from and all other parties to the action. When a judgment or decision in a juvenile proceeding is appealed, a copy of the notice of appeal must be served upon the prosecuting attorney of the county in which the juvenile proceeding was held.

(d) Contents of the Notice of Appeal. A notice of appeal to the district court must contain the following information:

(1) the title of the court from which the appeal is taken;

(2) the title of the court to which the appeal is taken;

(3) the date and heading of the judgment or order being appealed;

(4) a statement as to whether the appeal is taken upon matters of law, or on matters of fact, or both;

(5) whether the testimony and proceedings of the original trial or hearing were recorded or reported, the method of recording or reporting, and the name of the party or person who has the recording or reporting; and

(6) a preliminary statement of the issues the appellant intends to assert in the appeal, which may be filed separately within 14 days after the filing of the notice of appeal and which does not prevent the appellant from asserting other issues on appeal.

(e) Stay During Appeal--Powers of Magistrate.

(1) *Stay of Proceedings.* The filing of an appeal to the district court automatically stays the proceeding and execution of any judgment or order appealed from by the appellant for a period of 14 days. Any further stay must be by order of the presiding magistrate court or the district court.

(2) *Powers of Magistrate.* While the appeal is pending before the district court or pending on further appeal to the Supreme Court, the magistrate has the same powers and authority granted to a district judge by Rule 13(b), Idaho Appellate Rules, during an appeal to the Supreme Court.

(f) Manner of Review by District Court.

(1) *Appellate Review with Transcript.* Unless otherwise ordered by the district court, the district court must hear appeals from the magistrate court as an appellate proceeding and a transcript must be prepared as provided in Rule 83(g),. The district court must review the case on the record and determine the appeal in the same manner and on the same standards of review as an appeal from the district court to the Supreme Court under the statutes and law of this state, and the Idaho Appellate Rules.

(2) *Appellate Review without Transcript.* The district judge assigned the appeal may, on the court's own motion or motion of a party, order an alternate method of hearing the appeal that does not require a transcript. Even if the district judge does not require the preparation of a transcript, the court must, on motion of any party to the appeal, order the preparation of a transcript of the proceedings at the cost of the moving party and order the moving party to pay the estimated transcript fees within 14 days of entry of the order. The clerk of the court must serve a copy of the order upon the transcriber of the trial or proceedings of the trial court.

(A) Hearing on Question of Law. If the district judge determines that the appeal involves only a question of law, the district judge may determine the appeal without a transcript. It must then enter an order stating:

(i) the appeal involves a question of law only,

(ii) the issue of law to be determined on appeal,

(iii) no transcript is required,

(iv) the appeal will be decided on the clerk's record, the briefs of the parties and oral argument, and

(v) the date for the filing of the appellant's opening brief.

(B) Hearing by Listening to or Viewing Electronic Record. If the district judge determines that the appeal may be heard as an appellate proceeding by listening to or viewing the electronic record of the trial or proceedings of the trial court, it may determine the appeal without a transcript. It must then enter an order stating:

(i) that no transcript is required,

(ii) the appeal will proceed by listening to or viewing the electronic record of the trial or proceedings of the trial court,

(iii) a time within which the parties must review, view, or listen to the electronic record, and

(iv) the date for the filing of the appellant's opening brief.

(3) *Trial de Novo or Remand.* If the district court determines that the record of the proceedings in the magistrate court is inadequate for an appellate proceeding, the district court must order that the appeal be heard as a trial de novo or remand the matter to the magistrate's division. If the appeal is heard as a trial de novo, the district court must render a decision in the action as a trial court as though the matter were initially brought in the district court.

(g) Transcripts.

(1) *Transcript Fee.*

(A) Payment of Fee. The Appellant must:

(i) within 14 days of the filing of the notice of appeal, pay the estimated fee for preparation of the original and 2 copies of the transcript, as determined by the transcriber pursuant to Idaho Code Section 1-1105;

(ii) pay the balance of the transcript fee upon completion of the transcript;

(iii) pay the amount to the clerk of the court, who will deposit it in the district court fund, or any other fund that incurred the expense of the person who prepared the transcript; and

(iv) pay any agreed upon amount if the transcript is prepared by a transcriber or reporter privately retained by appellant; however, for purposes of taxing costs, the cost is the same per page cost set out in Idaho Code Section 1-1105.

(B) Exemption from Payment. The district judge may order a transcript prepared at county expense if the appellant is exempt from paying the fee as provided by statute or law.

(2) *Preparation of Transcript.* After the estimated fee for the transcript is paid, the transcriber must give a receipt to the party paying the fee and must prepare the transcript and lodge it with the clerk of the trial court within 35 days from the date the

estimated fee was paid. The district court may grant an extension of time to prepare the transcript if the transcriber applies for an extension and the district court finds there is good cause to grant an extension.

(3) *Certificate.* The transcript must be examined and certified by the transcriber by a certificate in substantially the form found in Appendix B.

(4) *Form of Transcript.* All transcripts of testimony and proceedings prepared for an appeal to the district court must be in the same form and arrangement required for appeals to the Supreme Court under the Idaho Appellate Rules.

(h) Clerk's Record. The clerk's record is the official court file of any court proceeding appealed to the district court, including any minute entries or orders together with the exhibits offered or admitted. After the appeal is determined and the time for an appeal to the Supreme Court has expired, the original clerk's record must be returned to the magistrate division together with the order or other disposition made by the district court on the appeal. The clerk need not prepare a copy of the record unless ordered by the district court.

(i) Settlement of Transcript. Upon receipt of the transcript of the testimony and proceedings, the clerk of the trial court must mail or deliver a notice of lodging of transcript to all attorneys of record, or parties appearing in person. The clerk of the court must retain the original of the transcript and advise that:

(1) the parties may pick up a copy of the transcript at the clerk's office;

(2) the appellant must pay the balance of the fees for the preparation of the transcript, if any, before the copy of the transcript will be delivered to the appellant; and

(3) the parties have 21 days from the date of the mailing of the notice in which to file any objections to the transcript.

If there are multiple parties, they must determine by agreement the manner and time of use of the transcript by each party, or if they cannot agree, any party may move the trial court to make this determination. If an objection is made to a trial transcript, the objection is heard and determined by the trial court in the same manner as a motion. If no objection is filed to the transcript within the 21 day period, it is deemed settled.

(j) Filing of Record and Transcript. The clerk of the trial court must file the clerk's record, the transcript, if any, and all exhibits offered or admitted in the proceeding within 7 days of the settlement of the transcript, or within 7 days of receipt of an order of the district court that no transcript is needed or required. The clerk of the trial court must notify all parties of the filing. Any electronic recording used to transcribe the testimony and proceedings need not be forwarded to the clerk of the district court unless ordered by the district court.

(k) Augmentation of the Record. A motion to augment the transcript or record may be filed with the district court within 21 days of the filing of the settled transcript and record. The motion is filed in the same manner and pursuant to the same procedure as provided in the Idaho Appellate Rules.

(l) Joint Use of Transcript. Multiple parties may jointly use a transcript on appeal. Any party who wants a separate copy may obtain one by paying the transcriber $1.00 per page.

(m) Effect of Failure to Comply With Time Limits. The failure to file a notice of appeal or notice of cross-appeal with the district court within the time limits set out in this rule is jurisdictional

and will cause automatic dismissal of the appeal. This dismissal may be pursuant to a motion by any party, or upon the district court's initiative. Failure of a party to timely take any other step in the appellate process is not jurisdictional, but may be grounds for other action or sanction as the district court deems appropriate, which may include dismissal of the appeal.

(n) Motions. All motions on appeal must be filed with the district court, except those expressly required to be filed in the trial court, and served upon the parties in the same manner as motions before a trial court under these rules. All motions must be accompanied by a brief in support. The opposing party has 14 days from service of the motion to file a response or reply brief. The motion will be determined without oral argument unless ordered by the court.

(o) Appellate Briefs. Briefs must be in the same form and arrangement, and must be filed and served within the time provided by, the Idaho Appellate Rules unless otherwise ordered by the district court. Only one original signed brief must be filed with the court and copies must be served on all other parties.

(p) Appellate Argument. Appellate argument may be heard by the district court after notice to the parties in the same manner as notice of hearing of a motion before a trial court under these rules.

(q) Other Appellate Rules. Any appellate procedure not specified in this rule must be in accordance with the Idaho Rules of Civil Procedure or the Idaho Appellate Rules.

(r) Decision Entered on Appeal.

(1) *Appellate Review.* If an appeal is heard on the record, upon determination of the appeal the district judge must enter an appellate decision which must include instruction to the magistrate. The clerk must file stamp the appellate ruling and mail copies to the parties and the presiding magistrate. The original appellate ruling must be filed in the court file which is returned to the magistrate division as provided by Rule 83(h).

(A) Remittitur from District Court. If no appeal to the Supreme Court is filed within 42 days after the clerk files the appellate decision, the clerk must issue and file a remittitur with the magistrate court from which the appeal was taken and mail copies to the parties and the presiding magistrate. The remittitur must advise the magistrate judge that the decision has become final and that the magistrate must immediately comply with the directive of the decision.

(B) Remittitur from Supreme Court or Court of Appeals. When the Supreme Court or Court of Appeals files a remittitur with the district court in a case that was initially appealed from the magistrate division of the district court, the clerk of the district court must mail a copy of the remittitur to the presiding magistrate.

(2) *Trial de Novo.* If an appeal is heard as a trial de novo, upon determination of the appeal the district judge must enter a judgment as required by Rule 58(a).

Rule 84. Judicial Review of Agency Actions by the District Court

(a) Judicial Review of State Agency and Local Government Actions.

(1) *Scope of Rule.* This rule addresses judicial review of the actions of state agencies or officers, or actions of a local government, its officers or its units when judicial review is

expressly authorized by statute. This rule does not apply to the issuance of writs of mandate, prohibition, quo warranto, certiorari, review, or other common law or equitable writs, but petitions for judicial review under this rule may be filed with or in the alternative to petitions for these common law or equitable writs.

(2) *Procedures and Standards of Judicial Review.* The procedures and standards of review applicable to judicial review of state agency and local government actions must be as provided by statute. If no stated procedure or standard of review is provided in the statute, then this rule provides the procedure and standard of review by the district court.

(3) *Definitions.* The term "action," "agency," "judicial review," "petitioner" and "respondent" have the following meaning in this Rule:

(A) "Action" means any rule, order, ordinance or other decision or lack of decision of an agency made reviewable by statute.

(B) "Agency" means any nonjudicial board, commission, department, or officer for which statute provides for the district court's judicial review of the agency's action.

(C) "Judicial review" means the district court's review pursuant to statute of actions of agencies, whether the statutory term for review is appeal or judicial review or some other term, and the term judicial review includes other terms like appeal.

(D) "Petitioner" means the person seeking judicial review and includes other terms like "appellant".

(E) "Respondent" means any person responding to the petitioner's request for judicial review of the agency's actions before the district court, including the agency itself.

(b) Filing a Petition or Cross-Petition.

(1) *Petition.* Judicial review is commenced only by filing a petition for judicial review with the clerk of the appropriate district court.

(A) Time to File. The petition must be filed within 28 days after the agency action is ripe for judicial review under the statute authorizing judicial review, unless a different time or procedure is prescribed by statute.

(B) Suspension of Time to File. If the decision to be reviewed is issued by an agency with authority to reconsider its decision and a timely motion for reconsideration is filed, then the time for filing the petition for judicial review is terminated and commences to run from

(i) the date of any decision on reconsideration,

(ii) the date of any decision denying reconsideration, or

(iii) the date that reconsideration is deemed to be denied by statute because of inaction on the motion for reconsideration.

(2) *Cross-Petitions.* Unless otherwise provided by statute, when a petition for judicial review is filed, any party or other person with a right to participate in the judicial review may cross-petition for judicial review within 14 days from the date the party or other person is served with a copy of the petition for judicial review or within the time prescribed for initially petitioning for judicial review, whichever is later.

(3) *Preservation of Agency Record.* When a petition for judicial review has been filed the verbatim record or recording of hearings and oral presentations conducted by the agency must be preserved for purposes of judicial review.

(c) **Petition for Judicial Review – Contents.** Unless a different procedure is provided by statute, a petition for judicial review from an agency to the district court filed pursuant to this rule must contain the following information and statement:

(1) the name of the agency for which judicial review is sought;

(2) the title of the district court to which the petition is taken;

(3) the date and the heading, case caption or other designation of the agency and the action for which judicial review is sought;

(4) a statement whether there was a hearing or oral presentation before the agency that was recorded or reported, together with an identification of the method of recording or reporting the hearing and the name and address of the person with possession of such recording or reporting when there was one;

(5) a statement of the issues for judicial review that the petitioner then intends to assert on judicial review; provided, the statement of issues may be filed separately within 14 days after the filing of the petition for judicial review and the statement does not prevent the petitioner from asserting other issues later discovered;

(6) a designation as to whether a transcript is requested; and

(7) a certification by the attorney for the petitioner, or an affidavit by the petitioner if self-represented that:

(A) service of the petition has been made upon the state agency or local government rendering the decision, and

(B) the clerk of the agency has been paid the estimated fee for preparation of the transcript if one has been requested, and

(C) the clerk of the agency has been paid the estimated fee for the preparation of the record.

(d) Serving the Petition. When the petition for judicial review is filed, the petitioner must serve copies of the notice of petition for judicial review upon the agency whose action will be reviewed and all other parties to the proceeding before the agency (if there were parties to the proceeding). Proof of service on the agency and all parties must be filed with the court in as required by Rule 5(e).

(e) Method and Scope of Review.

(1) *Method of Review.*

(A) Existing Record Only. When judicial review is authorized by statute but the statute does not provide the procedure or standard for judicial review, judicial review of agency action must be based upon the record created before the agency.

(B) Additional Record. When the authorizing statute provides that the district court may take additional evidence on judicial review, the district court may order the

taking of additional evidence on its own motion or motion of any party to the judicial review.

(C) De Novo. When the statute provides that review is de novo, the review must be tried in the district court on any and all issues, on a new record.

(2) *Scope of Review.* The scope of judicial review on petition from an agency to the district court must be as provided by statute.

(f) Preparation of Record - Payment of Fee - Lodging of Record.

(1) *Record to be Prepared.*

(A) Content Set Out in Statute. When statute provides what must be contained in the official record of the agency on judicial review, the agency must prepare the record as provided by statute. The parties may stipulate or the district court may order that a partial record be prepared for judicial review.

(B) Content When Not Set Out in Statute. The agency's record must contain the following when the record is not otherwise prescribed by statute, unless the parties stipulate or the district court orders that a partial record be prepared for judicial review:

(i) all original or amended complaints, petitions, applications, claims or other initial pleadings,

(ii) all answers or responses to initial pleadings,

(iii) all documents relating to an application or petition to intervene,

(iv) all protests or other oppositions filed by a party or persons not parties,

(v) a certificate listing all exhibits identified at hearing,

(vi) the findings of fact and conclusions of law, or, if none, any memorandum decision entered by the agency,

(vii) the final decision, order or award,

(viii) all petitions for rehearing or reconsideration and related orders,

(ix) all petitions for review and cross-petitions for review,

(x) all requests for additional reporter's transcript or agency's record,

(xi) a table of contents, and

(xii) an index.

(C) Use of Original or Copies. The agency may prepare the originals contained in its official file or a certified copy of its official file, retaining the originals for its records. On determination of the petition for judicial review by the district court, and the expiration of the time for appeal to the Supreme Court, any original agency's record must be returned to the agency together with the order and other disposition rendered by the district court on judicial review.

(2) *Fees for Preparation of Agency's Record.*

(A) Calculation of Fee. If the agency has a statute, rule, ordinance, or other provision setting forth a fee for preparation of the agency's record on petition for judicial review, then the agency must charge that fee for preparation of the agency's record. Otherwise, the agency must charge the fee for copying of public records.

(B) Payment of Estimated Fee. The petitioner must pay the agency an estimated fee for preparation of the agency record, at the time of filing of the petition for review.

(C) Payment of Balance of Fee. The petitioner must pay the balance due for preparation of the record, if any, when notice is received that the record has been lodged.

(D) Indigent Petitioner. The district court may order a copy of the record prepared at agency expense if governing statutes so provide or may order the transcript paid from district court funds upon a finding of indigency.

(3) *Lodging of Record.* The clerk of the agency must prepare the record in accordance with this rule and lodge it with the agency within 14 days of the filing of the petition for judicial review for the purpose of settlement of the record in accordance with rule 84(j). The agency may apply to the district court for an extension of time in which to prepare the record, which will be granted only for good cause shown.

(g) Transcripts – Payment of Fee – Certification.

(1) *Transcript Not Previously Transcribed.* Unless otherwise ordered by the district court, any transcript required by this rule to be prepared from previously untranscribed proceedings must be prepared in the following manner.

(A) Payment of Transcript Fee. Unless otherwise ordered by the district court, the petitioner must:

(i) pay the estimated fee for preparation of the transcript as determined by the transcriber prior to filing of the petition for judicial review;

(ii) pay the amount to the person preparing the transcript or other person as designated by the agency;

(iii) pay the estimated amount as determined by statute, rule, ordinance or other provision, if the agency has one, setting a fee for preparation of transcripts, otherwise, pay the estimated amount for preparation of the original and 2 copies of the transcript equal to the dollar amount per page provided for the cost of a transcript prepared by a court reporter under Idaho Code Section 1-1105;

(iv) pay any agreed on amount if the transcript is prepared by a transcriber or reporter privately retained by appellant; however, for purposes of taxing costs, the cost is the same per page cost set out in Idaho Code Section 1-1105; and

(v) pay the balance of the fee for the transcript upon its completion.

(B) Indigent Petitioner. The district judge may order a transcript prepared at agency expense if the governing statute provides or may order the transcript paid from district court funds upon a finding of indigency.

(C) Preparation of Transcript. The transcriber must give a receipt to the person paying the fees and must prepare the transcript and lodge it with the agency within 14 days from the date of the filing of the petition. The transcriber may apply to the district court for an extension of time in which to prepare the transcript, which must be granted only for good cause shown.

(D) Certificate. The transcript must be examined and certified by the transcriber by a certificate in substantially the form found in Appendix B.

(2) *Transcript Previously Transcribed.* Unless otherwise ordered by the district court, if a transcript was prepared for use of the agency in making its decision, a copy of that transcript may be used upon judicial review to the district court subject to the following conditions:

(A) Payment of Transcript Fee. Unless otherwise ordered by the district court, the petitioner must:

(i) pay the estimated fee for preparation of a copy of the transcript prior to filing of the petition for judicial review,

(ii) pay the amount to the person copying transcript or other person as designated by the agency,

(iii) pay the estimated amount as determined by statute, rule, ordinance or other provision, if the agency has one, setting forth a fee for the copying of a previously prepared transcript; otherwise, $1.00 per page.

(iv) pay the balance of the fee for the copy of the transcript upon its completion.

(B) Indigent Petitioner. The district court may order a copy of the transcript prepared at agency expense if governing statutes so provide or may order the transcript paid from district court funds upon a finding of indigency.

(C) Preparation of Copy of Transcript. Upon the payment of the estimated copying fees, the transcriber must give a receipt to the party paying such fees and must prepare the transcript and lodge it with the agency within 14 days from the date of the filing of the petition. The transcriber may apply to the district court for an extension of time in which to prepare the copy of the transcript, which must be granted only for good cause shown.

(D) Certificate. The transcript must be examined and certified by the person furnishing the copy by a certificate in substantially the form found in Appendix B.

(h) Joint Use of Transcripts. Multiple parties may jointly use a transcript on judicial review. Any party desiring a separate copy may obtain one by paying the transcriber the fee prescribed by statute, rule, ordinance or other provision of the agency; otherwise $1.00 per page.

(i) Form of Transcript. All transcripts of testimony and proceedings prepared for judicial review by the district court must be in the same form and arrangement as required for appeals to the Supreme Court under the Idaho Appellate Rules. All transcripts of testimony and proceedings copied for judicial review by the district court must contain new cover sheets in the form and arrangement as required for appeals to the Supreme Court under the Idaho Appellate Rules.

(j) Settlement of Transcript and Record.

(1) *Notice of Lodging with Agency.* On receipt of the transcript and on completion of the record, the agency must mail or deliver a notice of lodging of transcript and record to all attorneys of record, or parties appearing in person. The notice must advise that:

(A) the parties may pick up a copy of the transcript and record at the agency;

(B) the petitioner must pay the balance of the fees for the preparation of the transcript and record, if any, before the copy of the transcript and record will be delivered to the petitioner; and

(C) the parties have 14 days from the date of the mailing of the notice in which to file any objections to the transcript or record.

(2) *Multiple Parties.* If there are multiple parties, they must determine by agreement the manner and time of use of the transcript and record by each party, or if they cannot agree, any party may move the trial court to make this determination.

(3) *Objections.* Any party may object to the transcript and record with 14 days from the date of mailing of the notice of the parties that the transcript and record has been lodged with the agency. If no objection is filed to the transcript or record within the 14 day period, they are deemed settled. Any objection made to a transcript and record must be determined by the agency within 14 days. The agency's decision on the objection and all evidence, exhibits, and written presentations on the objection must be included in the record on petition for review.

(k) Filing of Settled Transcript and Record with the District Court. Unless otherwise provided by statute or order of the district court, the agency must transmit the settled transcript and record to the district court within 42 days of the service of the petition for judicial review. The agency must notify all parties or their attorneys of the agency's filing. No recordings of the hearings before the agency need be forwarded unless ordered by the district court.

(l) Augmentation of Record; Additional Evidence; Remand to Agency. A motion to augment the transcript or record may be filed with the district court within 21 days of the filing of the settled transcript and record. The motion is filed in the same manner and pursuant to the same procedure as provided in the Idaho Appellate Rules. Where statute provides for the district court itself to take additional evidence, the party desiring to present additional evidence must move the court to do so within 21 days of the filing of the transcript and record with the district court. Where statute provides for the district court to remand the matter for the agency to take further evidence before the district court renders its decisions on judicial review, the district court may remand the matter to the agency.

(m) Stay During Consideration of Petition for Judicial Review. Unless otherwise provided by statute, the filing of a petition for judicial review with the district court does not automatically stay the proceedings and enforcement of the action of an agency that is subject to the petition. Unless prohibited by statute, the agency may grant, or the reviewing court may order, a stay upon appropriate terms.

(n) Effect of Failure to Comply with Time Limits. The failure to physically file a petition for judicial review or cross-petition for judicial review with the district court within the time limits prescribed by statute and these rules is jurisdictional and will cause automatic dismissal of the petition for judicial review on motion of any party, or on initiative of the district court. Failure of a party to timely take any other step in the process for judicial review will not be

deemed jurisdictional, but may be grounds only for such other action or sanction as the district court deems appropriate, which may include dismissal of the petition for review.

(o) Motions. All motions must be filed with the district court, except those expressly required to be filed before the agency, and must be served upon the parties in the same manner as motions before the district court. All motions must be accompanied with a supporting memorandum or brief. The opposing party has 14 days from the service to file a response or reply brief. The motion will be determined without oral argument unless ordered by the court.

(p) Briefs and Memoranda. Briefs and memoranda must be in the form and arrangement and filed and served within the time provided by the Idaho Appellate Rules unless otherwise ordered by the district court; provided that such briefs may be typewritten and copies may be photo copies. Only one original signed brief need be filed with the court and copies must be served on all parties.

(q) Oral Argument. Oral argument may be heard by the district court after notice to the parties in the same manner as notice of hearing of a motion before a trial court under these rules.

(r) Other Procedural Rules. Any procedure for judicial review not specified or covered by these rules must be in accordance with the appropriate rule of the Idaho Appellate Rules to the extent not contrary to this Rule 84. This Rule 84 must be construed to provide a just, speedy and inexpensive determination of all petitions for review. If review is de novo or the court orders an evidentiary hearing, the Idaho Rules of Civil Procedure apply to the de novo or evidentiary hearing.

(s) Listening to, Watching or Copying Recording Tapes. Any party may listen to, watch or copy any recording of the proceedings before the agency according to applicable agency rules and after payment of fees set by statute, rule, ordinance or other provision. If no fees are set, the district court may set a reasonable fee if the parties and the agency are unable to agree on a fee.

(t) Finality of Judgments or Decisions – Remittiturs.

(1) *Judgment or Decision on Petition for Judicial Review.* The clerk must file stamp the district court's ruling and judgment and mail copies to the parties and to the agency.

(2) *Finality of Judgment Where District Court Does Not Take Additional Evidence.*

(A) If a notice of appeal is not filed, then the judgment is final 42 days after the date file stamped by the clerk of the court on the judgment.

(B) If, after the judgment, a party timely files a petition for rehearing then the judgment is final 42 days after the date file stamped by the clerk of the court on the order denying the rehearing or on any modified judgment, unless a notice of appeal is filed.

(C) If a timely notice of appeal is filed, then the judgment or decision of the district becomes final on the issuance of a remittitur by the Clerk of the Supreme Court or Court of Appeals.

(3) *Finality of Judgment Where the District Court Does Take Additional Evidence.*

(A) If a notice of appeal is not filed, then the judgment is final 42 days after the date file stamped by the clerk of the court on the judgment.

(B) If, after the judgment, a party timely files a motion which, if granted, could affect the findings of fact or conclusions of law or the judgment (except a motion under Rule 60 of the Idaho Rules of Civil Procedure or a motion regarding costs or attorney fees), then the judgment becomes final forty-two (42) days after the date file stamped by the clerk of the court on the order deciding that motion, if a notice of appeal is not filed.

(C) If a timely notice of appeal is filed from the judgment, or from an order deciding a motion that could affect the judgment, then the judgment becomes final on the issuance of a remittitur by the Clerk of the Supreme Court or Court of Appeals on an opinion that does not remand the case for further proceedings in the district court.

(4) *Remittiturs.* When the judgment has become final, the clerk of the court must issue a remittitur, mail copies to all parties to the petition for judicial review, and mail a certified copy to the agency. The remittitur must advise the agency that the judgment has become final and that the agency must immediately comply with the directive of the judgment.

APPENDIX A: 2016 CIVIL FILING FEES SCHEDULE

COMMENCING A CIVIL ACTION

A civil action is commenced by filing a complaint, petition, application, or other document that begins a new civil lawsuit. A civil action is commenced if the clerk opens a new case file rather than filing the document in an existing case file. Whether a filing fee is charged does not depend upon the title or name of the document filed, but upon whether it commences a new case.

In a civil lawsuit, a party usually seeks to obtain an order or judgment from the court against another party. However, there are some times when a clerk will have to file a document, such as registering a trust, when it will not commence a lawsuit. In such instances, no filing fee will be charged.

Only one filing fee is charged even if the complaint, petition, or application includes two or more separate claims for relief. If the claims would have differing filing fees if they were filed as separate actions, then the appropriate fee is whichever is higher; for example, if one action was filed to have a marriage annulled or, if that were denied, to obtain a divorce, the appropriate filing fee would be the fee for filing a divorce action because it is higher than the filing fee for an annulment. Likewise, if one action was filed to compromise a minor's claim and to appoint a conservator, the appropriate filing fee would be for the appointment of a conservator.

The fee for opening any civil case in the District Court not found on this schedule is $221.00 and the correct filing fee code is AA. The fee for opening any civil case in the Magistrate Division not found on this schedule is $166.00 and the correct filing fee code is A.

APPEARING IN A CIVIL ACTION (Category I)

An appearance is the first document filed by a party (other than the plaintiff or petitioner) in an existing civil action, regardless of whether it is filed *pro se* or through counsel and regardless of the title of the document (e.g., "notice of appearance," "answer," "motion," or other title).

If a party acting *pro se* has already filed an appearance in an action and then an attorney later files a "notice of appearance" to appear on behalf of that party, the attorney's "notice of appearance" does not constitute an appearance for the purpose of assessing a filing fee because the party has already appeared in the action *pro se*.

Fee Category	Idaho Code Fund	Judges Retire. Fund	County Facility Fund	State	State/ Guard-ship Project Fund	County Dist. Ct. Fund	Court Tech. Fund	Senior Mag. Judges Fund	Total
A. A. All initial civil case filings in District Court of any type not listed in categories E, F and H(1).	10.00	26.00	10.00	17.00		17.00	135.00	6.00	221.00
A. All initial case filings in Magistrate Division of any type not listed in categories B, C, D, G and H(2): 1. Adoptions 2. Adoption and Termination of parental rights 3. Termination of parental rights 4. Personal injury or other claims ($10,000 or less) 5. Petition for formal probate 6. Application for informal probate 7. Name change 8. Permission to marry 9. Child Support / Custody (unless filed by DHW) 10. Habeas by prisoners 11. Paternity action 12. Unlawful detainer / Eviction 13. Defacto custodian 14. Relief from firearm disability	10.00	26.00	10.00	17.00		17.00	80.00	6.00	166.00
B. 1. Divorce State portion includes additional $20 displaced homemaker fund and additional $20 domestic violence fund district court fund includes $5.00 taken from the State General Fund fee, which must be separately identified and deposited in the District Court Fund, for establishing a uniform system of qualifying counselors in domestic violence cases. I.C. § 31-3201A(q) a. With minor children b. Without minor children	10.00	26.00	10.00	52.00		23.00	80.00	6.00	207.00
2. Motion to reopen or modify divorce a. With minor children b. Without minor children	10.00	26.00	10.00	15.00		17.00	70.00	6.00	154.00
3. Amended complaint to convert an action that was not one for divorce (e.g. separate maintenance) into an action for divorce ($1.00 for court clerk fees I.C. § 39-266 & $20 for the displaced homemaker account I.C. § 39-5009 & $20 domestic violence project, I.C. § 39-5213) a. With minor children b. Without minor children				41.00					41.00

C. Small claims		26.00	10.00			7.00	20.00	6.00	69.00
D. Summary administration of small estates			10.00	17.00		17.00	80.00	6.00	130.00
E. Petition for release from common law lien						35.00			35.00
F. Petition for entry of judgment on worker's comp award	10.00	26.00	10.00			9.00	20.00	6.00	81.00
G. 1.Guardianships a. Initial Petition motion or appearance by any person on behalf of a minor. b. Initial Petition motion or appearance by any person on behalf of an incapacitated person.	10.00	26.00	10.00	17.00	50.00	17.00	80.00	6.00	216.00
2. Conservatorship a. Initial Petition motion or appearance by any person on behalf of a minor. b. Initial Petition motion or appearance by any person on behalf of an incapacitated person.	10.00	26.00	10.00	17.00	50.00	17.00	80.00	6.00	216.00
3. Joint petition for guardianship/ conservatorship or joint petition for receipt and acceptance of foreign guardianship a. where same party is guardian and conservator of a minor person b. where same party is guardian and conservator of incapacitated person	10.00	26.00	10.00	17.00	50.00	17.00	80.00	6.00	216.00
c. where different parties are petitioners for guardian and conservator of a minor d. where different parties are petitioners for guardian and conservator of incapacitated person (considered two filings)	20.00	52.00	20.00	17.00	50.00	17.00	80.00	6.00	262.00
4. Status reports guardianship					25.00				25.00
5. Intermediate or final account of conservator					41.00	9.00			50.00
6. Petition for distribution of estate in conservatorship				13.00	41.00	6.00		6.00	66.00
7. Inventories by conservator					41.00				41.00

H. Case filings with no fee 1. In District Court a. Petition for sterilization b. Judicial consent for abortion petitions c. Post-conviction act proceedings* d. Stipulation for entry of judgment* e. Court initiated contempt* 2. In Magistrate Division a. Cases brought under Ch. 3, Title 66, I.C. for commitment of mentally ill persons b. Demand for bond before personal representative is appointed. c. Petition to compromise minor's claim d. Petition for civil protection order or to enforce foreign CPO pursuant to Ch. 63, Title 39, I.C. pleadings e. Post-conviction act proceedings* f. Stipulation for entry of judgment* g. BAC license suspension h. Child support proceedings filed by DHW i. Fugitive warrants j. Court initiated contempt* k. Child protective cases l. Proceeding to suspend a license for non-payment of child support 3. Registration of trusts and renunciations 4. Filing of a custody decree from another state *Whether filing is in district court or magistrate division depends upon individual case.									No fee
I. **The fees set out in Category I apply to the first document filed by a party <u>other</u> than the plaintiff or petitioner no matter what the document is entitled**									
1. Initial Appearance by persons other than the plaintiff or petitioner	10.00	26.00		10.00		4.00	80.00	6.00	136.00
a. Motion for Permissive Intervention – Defacto custodian	10.00	26.00		10.00		4.00	80.00	6.00	136.00
2. Small Claims									No fee
3. Stipulation for entry of judgment									No fee

4. Any objection or motion filed in a guardianship or conservatorship by the minor or alleged incapacitated person									No fee
5. Appearing after judgment when the party has not previously appeared	10.00	26.00	10.00			9.00	80.00	6.00	141.00
J. Additional filings in probate and trusts: the following fees must be collected from any person filing the following documents, whether or not the person has appeared previously:									
1. Probate a. petition for distribution of estate			13.00			6.00		6.00	25.00
b. demand for notice						9.00			9.00
c. demand for bond after appointment of personal						9.00			9.00
d. intermediate or final accounting of personal rep						9.00			9.00
e.petition for approval of compromise			10.00			4.00			14.00
f. filing of copy of appointment of foreign personal representative			10.00			17.00			27.00
2. Trusts and Renunciations a. intermediate or final accounting of trustee						9.00			9.00
b. petition for final distribution of estate			13.00			6.00		6.00	25.00
K. Special Filings									
1. Order granting change of venue (pay to new county).						9.00	20.00		29.00
2. Petition to reopen a case after no activity for one year	10.00	26.00	10.00			9.00	70.00	6.00	131.00
3. Third party complaint – This fee is *in addition* to any fee filed as a plaintiff initiating the case or as a defendant appearing in the case						8.00		6.00	14.00
4. Cross claim (defendant v. defendant or plaintiff v. plaintiff) This fee is in addition to any fee filed as a plaintiff to initiate the case or as a defendant appearing in the case						8.00		6.00	14.00

a. For divorce when the complaint did not allege a claim for divorce. The $41 fee is in addition to the fee for a general cross-claim. ($1 for court clerk fee, I.C. § 39-266 & $20 for displaced homemaker account, I.C. § 39-5009 & $20 domestic violence project, I.C. § 39-5213)									
1. With minor children			41.00			8.00		6.00	55.00
2. Without minor children									
5. Counterclaim for divorce when the complaint did not allege a claim for divorce *($1.00 for court clerk fees I.C. § 39-266 & $20 for the displaced homemaker account I.C. § 39-5009 & $20 domestic violence project, I.C. § 39-5213)									
a. With minor children									
b. Without minor children				41.00					41.00
6. Renewing a judgment						9.00	20.00		29.00
7. Filing a foreign judgment						7.00	20.00		27.00
L. Appeals									
1. Small claims Dept to magistrate	10.00	26.00	10.00			9.00	20.00	6.00	81.00
2. Magistrate Division to District court appeal or cross-appeal	10.00	26.00	10.00			9.00	20.00	6.00	81.00
3. Appeal or petition for judicial review or cross appeal or cross-petition from commission, board, or body to district court	10.00	26.00	10.00	17.00		17.00	135.00	6.00	221.00
a. Petition for judicial review of IDWR adjudication of water rights	10.00	26.00	10.00	17.00		17.00	135.00	6.00	221.00
4. Civil appeal or cross-appeal to Supreme Court (with exception of a. and b. below). The clerk of the district court must collect the entire fee and remit the $94.00 fee to the Supreme Court with a certified copy of the notice of appeal. Rule 23(b), I.A.R.)	94.00					9.00	20.00	6.00	129.00
a. Post-Conviction	Sup. Ct.								No fee
b. Habeas Corpus									No fee

APPENDIX B: FORMS

Rule 2.8(e). Unsworn Declaration

I certify or declare under penalty of perjury under the law of the State of Idaho that the foregoing is true and correct, and that I am physically located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States. By signing this declaration I am submitting myself to the jurisdiction of the State of Idaho for purposes of enforcing the penalty of perjury as it relates to this declaration.

Executed on the _____ day of, _____ , _____ ,at _____
(date) (month) (year) (city or other location, and state)
_____.
(country)

_____
(printed name)

_____
(signature)

Rule 4(a)(3)(A). Summons – Eviction Proceedings

ATTORNEY'S NAME OR SELF-REPRESENTED PARTY

FIRM NAME

STREET ADDRESS

MAILING ADDRESS

CITY, STATE & ZIP CODE

TELEPHONE NUMBER

EMAIL ADDRESS (IF ANY)

IDAHO STATE BAR NUMBER

Attorney(s) for Plaintiff(s)

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

	)	CASE NO. _____
_____,	)	
Plaintiff,	)	
vs.	)	SUMMONS FOR EVICTION PURSUANT TO

	)	IDAHO CODE Section 6-310
_____,	)	(Expedited Proceedings)
Defendant.	)	
	)	

TO THE ABOVE NAMED DEFENDANTS(S): YOU HAVE BEEN SUED BY THE ABOVE NAMED PLAINTIFF(S).

A trial will be held on _____, 20____, at _____ o'clock _ .m. at _____ (location) to determine if you should be evicted from the premises described in the Complaint which is served with this Summons. If the Court grants the request to evict you, it may also order you to pay costs of this proceeding. If you wish to seek the advice of or representation by an attorney in this matter, you should do so promptly, to allow adequate time for trial preparation.

This Summons and the Complaint must be served upon the Defendant(s) not less than five (5) days [computed pursuant to IRCP Rule 2.2(a)] prior to the date of the hearing.

CLERK OF THE DISTRICT COURT

[Mailing address, physical address (if different) and telephone number of the clerk]

DATED: _____ By _____

Deputy Clerk

Rule 4(a)(3)(B). Summons – Other Civil Proceedings

ATTORNEY'S NAME OR SELF-REPRESENTED PARTY

FIRM NAME

STREET ADDRESS

MAILING ADDRESS

CITY, STATE & ZIP CODE

TELEPHONE NUMBER

EMAIL ADDRESS (IF ANY)

IDAHO STATE BAR NUMBER

Attorney(s) for Plaintiff(s)

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

	)	CASE NO. _____
_____,	)	

Plaintiff,	)	
vs.	)	SUMMONS
	)	
_____,	)	
Defendant.	)	
	)	

NOTICE: YOU HAVE BEEN SUED BY THE ABOVE-NAMED PLAINTIFF(S): THE COURT MAY ENTER JUDGMENT AGAINST YOU WITHOUT FURTHER NOTICE UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.

TO: _____

You are hereby notified that in order to defend this lawsuit, an appropriate written response must be filed with the above designated court at [mailing address, physical address (if different) and telephone number of the clerk] within 20 days after service of this Summons on you. If you fail to so respond the court may enter judgment against you as demanded by the plaintiff(s) in the Complaint.

A copy of the Complaint is served with this Summons. If you wish to seek the advice of or representation by an attorney in this matter, you should do so promptly so that your written response, if any, may be filed in time and other legal rights protected.

An appropriate written response requires compliance with Rule 10(a)(1) and other Idaho Rules of Civil Procedure and must also include:

1. The title and number of this case.

2. If your response is an Answer to the Complaint, it must contain admissions or denials of the separate allegations of the Complaint and other defenses you may claim.

3. Your signature, mailing address and telephone number, or the signature, mailing address and telephone number of your attorney.

4. Proof of mailing or delivery of a copy of your response to plaintiff 's attorney, as designated above. To determine whether you must pay a filing fee with your response, contact the Clerk of the above-named court.

DATED this _____ day of _____, 19 ____.

CLERK OF THE DISTRICT COURT

By _____

Deputy Clerk

Rule 4(a)(3)(C). Summons – Publication

SUMMONS

To: [Defendant's Name]

You have been sued by [Plaintiff's Name], the Plaintiff, in the District Court in and for [Name of County] County, Idaho, Case No. [Case No.].

The nature of the claim against you is [nature of claim].

Any time after 20 days following the last publication of this summons, the court may enter a judgment against you without further notice, unless prior to that time you have filed a written response in the proper form, including the Case No., and paid any required filing fee to the Clerk of the Court at [mailing address, physical address (if different) and telephone number of the clerk] and served a copy of your response on the Plaintiff's attorney at [name, address, and phone number of Plaintiff's attorney].

A copy of the Summons and Complaint can be obtained by contacting either the Clerk of the Court or the attorney for Plaintiff. If you wish legal assistance, you should immediately retain an attorney to advise you in this matter.

Dated: _____

[Name of County] County District Court

By _____, Deputy Clerk

Rule 45(a)(1)(A). Subpoena

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR _____ COUNTY (MAGISTRATE DIVISION)

Party's name and designation,

_____

vs.

SUBPOENA

Party's name and designation.

_____

The State of Idaho to: _____:

YOU ARE COMMANDED:

[ ] to appear in the Court at the place, date and time specified below to testify in the above case.

[ ] to appear at the place, date and time specified below to testify at the taking of a deposition in the above case.

[ ] to produce or permit inspection and copying of the following documents or objects, including electronically stored information, at the place, date and time specified below. (list documents or objects)

[ ] to permit inspection of the following premises at the date and time specified below.

PLACE, DATE, AND TIME: _____

_____

_____

You are further notified that if you fail to appear at the place and time specified above, or to produce or permit copying or inspection as specified above that you may be held in contempt of court and that the aggrieved party may recover from you the sum of $100 and all damages which the party may sustain by your failure to comply with this subpoena.

Dated this _____ day of _____, 20__.

By order of the court.

_____

Clerk

_____

Deputy

(Court Seal)

Rule 54(b). Certificate of Final Partial Judgment

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment is a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

DATED this _____ day of _____, 20_____.

_____

(Signature - District Judge)

Rule 83(g)(3). Certificate of Transcription – Magistrate Appeal

CERTIFICATE OF TRANSCRIPTION

The undersigned certifies that he or she correctly and accurately transcribed the above transcript from the recording of the [Describe hearing: e.g., trial, hearing on motion for summary judgment, etc.] which was recorded on (date) in the above entitled action or proceeding.

Dated and certified this _____ day of _____.

_____

Transcriber

Rule 84(g)(1)(D). Certificate Transcription – Agency Review

CERTIFICATE OF TRANSCRIPTION

The undersigned does hereby certify that he or she correctly and accurately transcribed the recording of the _____ [describe hearing: e.g., hearing before hearing officer X, oral argument before Commission Y, etc.] which was recorded on _____(date)____ in the above entitled proceeding.

Dated and certified to this _____ day of _____.

_____

Transcriber

Rule 84(g)(2)(D) Certificate of Transcription – Agency Review (previously transcribed)

CERTIFICATE OF TRANSCRIPTION

The undersigned does hereby certify that he or she correctly and accurately copied the transcript previously furnished the (agency), which transcript was transcribed from the recording (or the reporter's notes) of the _____ [describe hearing: e.g., hearing before hearing officer X, oral argument before Commission Y, etc.] which was recorded (reported) on __(date)_____ in the above entitled proceeding.

Dated and certified this _____ day of _____.

_____

Reporter (or other person)

CROSS-REFERENCE TABLE – NEW TO OLD	
2016 IRCP	**2015 IRCP**
1(a)	87
1(b)	1(a)
1(c)	1(c)
1.1	82(a)
1.2	82(d), (e)
1.3	82(c)(3)
2(a)	10(a)
2(b)	10(a)
2(c)	10(a)
2.1	1(d)
2.2(a)	6(a)
2.2(b)	6(b)
2.2(c)	6(e)(1)
2.3	77(d)
2.4	6(e)(2)
2.5	6(e)(3)
2.6	3(c)
2.7	7(d)
2.8	28
2.9	10(a)(2)
2.10	79(e)
3	3(a)
3(a)	2
3(b)	
3(c)	3(b)
4(a)	4(b)
4(b)	4(a)
4(c)	4(c)(1)
4(c)(1)	4(d)(1)
4(c)(2)	4(c)(1)
4(d)(1)	4(d)(2)
4(d)(2)	4(d)(3)
4(d)(3)	4(d)(4)
4(d)(4)	4(d)(5)
4(d)(5)	4(d)(6)
4(e)(1)	4(e)(1)

4(e)(2)	4(e)(2)
4(f)	4(f)
4(g)(1)	4(g)
4(g)(2)	4(h)
4.1	4(i)
5(a)	5(a)
5(b)	5(b)
5(c)	5(c)
5(d)	5(d), (e)
5(e)	5(f)
5.1	5(g)
7(a)	7(a)
7(b)	7(b)(1), (3)
7.1	43(e)
7.2	7(b)(4)
7.3	7(b)(5)
8(a)	8(a)(1)
8(b)	8(b), (d)
8(c)	8(c)
8(d)(1)	8(e)(1)
8(d)(2)	8(e)(2)
8(d)(3)	8(e)(2)
8(e)	8(f)
9(a)	9(a), 10(a)(5)
9(b)	9(b)
9(c)	9(c)
9(d)	9(d)
9(e)	9(e)
9(f)	9(f)
9(g)	9(g)
9(h)	9(h)
9(i)	9(i)
9(j)	9(j)
10(a)	10(a)(1)
10(b)	10(b)
10(c)	10(c)
10(d)	10(a)(4)
10.1	10(a)(6)
11	11(a)(1)
11.1	11(c)
11.2	11(a)(2)
11.3	11(b)

11.4	11(b)(5)
12(a)	12(a)
12(b)	12(b)
12(c)	12(c)
12(d)	12(b)
12(e)	12(e)
12(f)	12(f)
12(g)	12(g)
12(h)	12(g)
12(i)	12(d)
13	13
14	14
15	15
16(a)	16(a)
16(b)	40(b)
16(c)	16(b)
16(d)	16(h)
16(e)	16(i)
17	17
18	18
19(a)	19(a)(1)
19(b)	19(a)(2)
19(c)	19(a)(3)
19(d)	19(a)(4)
19.1	19(b)
20	20
21	21
22	22
24	24
25	25
26	26
27	27
28(a)	28(a)
28(b)	28(b)
28(c)	28(c)
28(d)	28(d)
29	29
30(a)	30(a), (b)(2)
30(b)	30(b)
30(c)	30(c)
30(d)	30(d)
30(e)	30(e)

30(f)	30(f)
30(g)	30(g)
30.1	30(b)(4)
31	31
32	32
33(a)	33(a), (b)
33(b)	33(a)
33(c)	33(b)
33(d)	33(c)
34	34
35	35
36(a)	36(a)
36(b)	36(b)
36(c)	36(a)
36(d)	36(d)
36(e)	36(c)
37	37
38	38
39	39
40(a)	40(d)(1)
40(b)	40(d)(2)
40(c)	40(d)(4)
40(d)	40(d)(5)
40.1	40(e)
41	40(c), 41
42	42
42.1	77(b)
43(a)	43(a)
43(b)	43(d)
43(c)	43(b)(2)
43(d)	43(b)(1)
43(e)	43(b)(5)
43(f)	43(f)
43(g)	43(b)(12)
44	44(d)
45(a)	45(a), (c)
45(b)	45(e)(2)
45(c)	45(b)
45(d)	45(d)
45(e)	45(b), (d)
45(f)	45(f)
45(g)	45(g)

45(h)	45(e)(1)
45(i)	45(h)
45(j)	45(i)
46	46
47(a)	47(d)
47(b)	47(e)
47(c)	47(f)
47(d)	47(g)
47(e)	47(i)(1)
47(f)	47(i)(2)
47(g)	47(i)(3)
47(h)	47(h)
47(i)	47(j), (k)
47(j)	47(l)
47(k)	47(m), (n), (o), (p), (q)
47(l)	48(a)
47(m)	48(b)
48	47(u)
49	49
50(a)	50(a)
50(b)	50(b), (c), (d)
51(a)	51(a)(1)
51(b)	51(a)(1)
51(c)	51(a)(1)
51(d)	51(a)(1)
51(e)	51(a)(1), (b)
51(f)	51(a)(1)
51(g)	51(a)(2)
51(h)	51(a)(1)
51(i)	51(b)
52	52
53(a)	53(a)(1)
53(b)	53(b)
53(c)	53(a)(1)
53(d)	53(a)(2), (3)
53(e)	53(c)
53(f)	53(d)(1)
53(g)	53(d)(2)
53(h)	53(d)(3)
53(i)	53(e)(1)
53(j)	53(e)(2)
53(k)	53(e)(3)

53(l)	53(e)(4)
53(m)	53(e)(5)
54	54
55	55
56(a)	56(a), (b)
56(b)	56(c)
56(c)	56(e)
56(d)	56(f)
56(e)	56(e)
56(f)	56(b), (e)
56(g)	56(g)
57	57
58	58(a)
58.1	58(b)
58.2	76
59	59
59.1	59.1
60	60
61	61
62	62
63	63
64	64
65	65
66	66
67	67
68	68
69	69
70	70
71	71
72	6(c)(2)
73	73
74(b)	74(a), (b), (c), (d)
75	75
76	85
77	23
78	23(f)
79	23(g)
83(a)	83(a)
83(b)	83(e), (g)
83(c)	(83(e)
83(d)	83(f)
83(e)	83(i)

83(f)	83(j), (b), (u)
83(g)	83(k), (l)
83(h)	83(n)
83(i)	83(o)
83(j)	83(p)
83(k)	83(q)
83(l)	83(r)
83(m)	83(s)
83(n)	83(t)
83(o)	83(b)
83(p)	83(w)
83(q)	83(x)
83(r)	83(z)
84	84

CROSS-REFERENCE TABLE – OLD TO NEW	
2015 IRCP	**2016 IRCP**
1(a).	1(b)
1(b).	ICAR
1(c).	1(c)
1(d).	2.1
2.	3(a)
3(a).	3
3(b).	3(c)
3(c).	2.6
4(a).	4(b)
4(b).	4(a)
4(c)(1).	4(c)(2)
4(c)(2).	Deleted
4(c)(3).	Deleted
4(d)(1).	4(c)(1)
4(d)(2).	4(d)(1)
4(d)(3).	4(d)(2)
4(d)(4).	4(d)(3)
4(d)(5).	4(d)(4)
4(d)(6).	4(d)(5)
4(e)(1).	4(e)(1)
4(e)(2).	4(e)(2)
4(f).	4(f)
4(g).	4(g)(1)
4(h).	4(g)(2)
4(i).	4.1
5(a).	5(a)
5(b).	5(b)
5(c).	5(c)
5(d).	5(d)
5(e).	5(d)
5(f).	5(e)
5(g).	5.1
6(a).	2.2(a)
6(b).	2.2(b)
6(c)(2).	72
6(e)(1).	2.2(c)
6(e)(2).	2.4

6(e)(3).	2.5
7(a).	7(a)
7(b)(1).	7(b)
7(b)(2).	Deleted
7(b)(3).	7(b)(3)
7(b)(4).	7.2
7(b)(5).	7.3
7(c).	Deleted
7(d).	2.7
8(a)(1).	8(a)
8(a)(2).	ICAR
8(b).	8(b)
8(c).	8(c)
8(d).	8(b)(6)
8(e)(1).	8(d)(1)
8(e)(2).	8(d)(2), (3)
8(f).	8(e)
9(a).	9(a)
9(b).	9(b)
9(c).	9(c)
9(d).	9(d)
9(e).	9(e)
9(f).	9(f)
9(g).	9(g)
9(h).	9(h)
9(i).	9(i)
9(j).	9(j)
10(a)(1).	10(a); 2(a)
10(a)(2).	2.9
10(a)(3).	2(b), (c)
10(a)(4).	10(d)
10(a)(5).	9(a)(3)
10(a)(6).	10.1
10(b).	10(b)
10(c).	10(c)
11(a)(1).	11(a), (b), (c)
11(a)(2).	11.2
11(a)(3).	ICAR
11(b)(1).	11.3(a)
11(b)(2).	11.3(b)
11(b)(3).	11.3(c)
11(b)(4).	11.3(d)

11(b)(5).	11.4
11(c).	11.1
12(a).	12(a)
12(b).	12(b), (d)
12(c).	12(c)
12(d).	12(i)
12(e).	12(e)
12(f).	12(f)
12(g).	12(g), (h)
13(a).	13(a)
13(b).	13(b)
13(c).	13(c)
13(d).	13(d)
13(e).	13(e
13(f).	Deleted
13(g).	13(g)
13(h).	13(h)
13(i).	13(i)
14(a).	14(a)
14(b).	14(b)
15(a).	15(a)
15(b).	15(b)
15(c).	15(c)
15(d).	15(d)
16(a).	16(a)
16(b).	16(c)
16(h).	16(d)
16(i).	16(e)
16(k).	37.1, ICAR
16(n).	ICAR (duplicate of old 85(g))
17(a).	17(a)
17(b).	17(b)
17(c).	17(c)
17(d).	17(d)
18(a).	18(a)
18(b).	18(b)
19(a)(1).	19(a)
19(a)(2).	19(b)
19(a)(3).	19(c)
19(a)(4).	19(d)
19(b).	19.1
20(a).	20(a)

20(b).	20(b)
21.	21
22.	22
23(a).	77(a)
23(b).	77(b)
23(c).	77(c)
23(d).	77(d)
23(e).	77(e)
23(f).	78
23(g).	79
24(a).	24(a)
24(b).	24(b)
24(c).	24(c)
25(a)(1).	25(a)
25(a)(2).	25(a)
25(b).	25(b)
25(c).	25(c)
25(d).	25(d)
25(e).	25(e)
26(a).	26(a)
26(b)(1).	26(b)(1)
26(b)(2).	26(b)(2)
26(b)(3).	26(b)(3)
26(b)(4).	26(b)(4)
26(b)(4)(B).	26(b)(4)(D)
26(b)(4)(C).	26(b)(4)(E)
26(b)(5)(A).	26(b)(5)(A)
26(b)(5)(B).	26(b)(5)(B)
26(c).	26(c)
26(d).	26(d)
26(e).	26(e)
26(f).	26(f)
27(a)(1).	27(a)(1)
27(a)(2).	27(a)(2)
27(a)(3).	27(a)(3)
27(a)(4).	27(a)(4)
27(b).	27(b)
27(c).	27(c)
28(a).	28(a)
28(b).	28(b)
28(c).	28(c)
28(d).	28(d)

28(e)(1).	2.8
28(e)(2).	2.8(a)
28(e)(3).	2.8(b)
28(e)(4).	2.8(c)
28(e)(5).	2.8(d)
28(e)(6).	2.8(e)
28(e)(7).	2.8(f)
28(e)(8).	2.8(g)
29.	29
30(a).	30(a)
30(b)(1).	30(b)(1)
30(b)(2).	30(a)(2)
30(b)(3).	30(b)(1)
30(b)(4).	30.1
30(b)(5).	30(b)(2)
30(b)(6).	30(b)(6)
30(b)(7).	30(b)(4)
30(c).	30(c)
30(d).	30(d)
30(e).	30(e)
30(f)(1).	30(f)(1)
30(f)(2).	30(f)(2)
30(f)(3).	30(f)(4)
30(f)(4).	30(f)(5)(B)
30(f)(5).	30(f)(5)(C)
30(g)(1).	30(g)
30(g)(2).	30(g)
31(a).	31(a)
31(b).	31(b)
31(c).	31(c)
31(d).	31(d)
32(a).	32(a)
32(b).	32(b)
32(d).	32(d)
33(a).	33(a), (b)
33(b).	33(a), (c)
33(c).	33(d)
34(a).	34(a)
34(b).	34(b)
34(c).	34(c)
34(d).	34(d)
35(a).	35(a)

35(b).	35(b)
36(a).	36(a), (c)
36(b).	36(b)
36(c).	36(e)
36(d).	36(d)
37(a).	37(a)
37(b).	37(b)
37(c).	37(c)
37(d).	37(d)
37(e).	37(f)
37(f).	Deleted
38(a).	38(a)
38(b).	38(b)
38(c).	38(c)
38(d).	38(d)
39(a).	39(a)
39(b).	39(b)
39(c).	39(c)
40(b).	16(b)
40(c).	41
40(d)(1).	40(a)
40(d)(2).	40(b)
40(d)(4).	40(c)
40(d)(5).	40(d)
40(e).	40.1
41(a)(1).	41(a)(1)
41(a)(2).	41(a)(2)
41(b).	41(b)
41(c).	41(c)
41(d).	41(d)
42(a).	42(a)
42(b).	42(b)
43(a).	43(a)
43(b)(1).	43(d)
43(b)(2)	43(c)
43(b)(5).	43(e)
43(b)(12).	43(g)
43(d).	43(b)
43(e).	7.1
43(f).	43(f)
44(d).	44
45(a).	45(a)

45(b).	45(c)
45(c).	45(a)(1)(A)
45(d).	45(d)
45(e)(1).	45(h)
45(e)(2).	45(b)
45(f)(1).	45(f)(1)
45(f)(2).	45(f)(2)
45(g).	45(g)
45(h).	45(i)
45(i).	45(j)
45(i)(1).	45(j)(1)
45(i)(2).	45(j)(2)
45(i)(3).	45(j)(3)
45(i)(4).	45(j)(4)
45(i)(5).	45(j)(5)
45(i)(6).	45(j)(6)
45(i)(6)(A)	45(j)(6)(A)
45(i)(7).	45(j)(7)
45(i)(8).	45(j)(8)
46.	46
47(a).	ICAR
47(b).	ICAR
47(d).	47(a)
47(e).	47(b)
47(f).	47(c)
47(g).	47(d)
47(h).	47(h)
47(i).	47(f), (g)
47(j).	47(i)(1)
47(k).	47(i)(2)
47(l).	47(j)
47(m).	47(k)(1)
47(n).	45(k)(2)
47(o).	45(k)(3)
47(p).	45(k)(5)
47(q).	45(k)(4)
47(u).	48
48(a).	47(l)
48(b).	47(m)
49(a).	49(a)
49(b).	49(b)
50(a).	50(a)

50(b).	50(b)
50(c).	50(b)(4)
50(d).	50(b)(5)
51(a)(1).	51(a)-(f)
51(a)(2).	51(g)
51(b).	51(e), 51(i)
52(a).	52(a)
52(b).	52(b), (c)
53(a)(1).	53(a), (c)
53(a)(2).	53(d)
53(a)(3).	53(d)
53(b).	53(b)
53(c).	53(e)
53(d)(1).	53(f)
53(d)(2).	53(g)
53(d)(3).	53(h)
53(e)(1).	53(i)
53(e)(2).	53(j)
53(e)(3).	53(k)
53(e)(4).	53(l)
53(e)(5).	53(m)
54(a)(1).	54(a)(1)
54(a)(2).	54(a)(2)
54(b).	54(b)
54(c).	54(c)
54(d)(1).	54(d)(1)
54(d)(2).	54(d)(2)
54(d)(3).	54(d)(3)
54(d)(4).	Deleted
54(d)(5).	54(d)(4)
54(d)(6).	54(d)(5)
54(d)(7).	54(d)(6)
54(e)(1).	54(e)(1), (2)
54(e)(2).	54(e)(2)
54(e)(3).	54(e)(3)
54(e)(4).	54(e)(4)
54(e)(5).	54(e)(5)
54(e)(6).	54(e)(6)
54(e)(7).	54(e)(7)
54(e)(8).	54(e)(8)
54(e)(9).	Deleted
55(a)(1).	55(a)(1)

55(a)(2).	55(a)(2)
55(a)(3).	55(a)(3)
55(b)(1).	55(b)(1)
55(b)(2).	55(b)(2), (3)
55(c).	55(c)
55(d).	Deleted
55(e).	55(d)
56(a).	56(a)
56(b).	56(a)
56(c).	56(b), (g)
56(d).	56(f)
56(e).	56(c), (e)
56(f).	56(d)
56(g).	56(g)
57.	57
58(a).	58
58(b).	58.1
59(a)	59(a)
59(b).	59(b)
59(c).	59(c)
59(d).	59(d)
59(e).	59(e)
59.1.	59.1
60(a).	60(a)
60(b).	60(b), (c), (d)
61.	61
62(a).	62(a)
62(b).	62(b)
62(c).	62(c)
62(d).	62(d)
62(e).	62(e), (f)
62(f).	62(g)
62(g).	62(h)
63.	63
64.	64
65(a).	65(a)
65(b).	65(b)
65(c).	65(c)
65(d).	65(d)
65(e).	65(e), (f)
65(f).	65(g)
66(a).	66(a)

66(b).	66(b)
67.	67
68.	68
69.	69
70.	70
71.	71
72(a).	Deleted
73.	73
74(a).	74, 74(b)
74(b).	74(b)
74(c).	74(b)
74(d).	74(b)
75.	75
75(a).	75(a)
75(b).	75(b)
75(c).	75(c)
75(d).	75(d)
75(e).	75(e)
75(f).	75(f)
75(g).	75(g)
75(h).	75(h)
75(i).	75(i)
75(j).	75(j)
75(k).	75(k)
75(l).	75(l)
75(m).	75(m)
75(n).	75(n)
76.	58.2
77(a).	Deleted
77(b).	42.1
77(c).	ICAR
77(d).	2.3
78.	Deleted
79(e).	2.10
79(f).	Deleted
80.	Deleted
81(a).	IRSCA 2, 3, 4
81(b).	IRSCA 5, 6
81(c).	IRSCA 7
81(d).	IRSCA 8
81(e).	IRSCA 9
81(f).	IRSCA 10

81(g).	IRSCA 11
81(h).	IRSCA 12
81(i).	IRSCA 13
81(j).	IRSCA 14
81(k).	IRSCA 15
81(l).	IRSCA 15
81(n).	IRSCA 15
81(o).	IRSCA 15(d)
81(p).	IRSCA 15(e)
81(q).	IRSCA 15(f)
82(a).	1.1
82(b).	Deleted
82(c)(1).	ICAR
82(c)(2).	ICAR
82(c)(3).	1.3
82(c)(4).	ICAR
82(c)(5).	ICAR
82(d).	1.2
82(e).	1.2
83(a).	83(a)
83(b).	83(f)
83(d).	ICAR
83(e).	83(b)
83(f).	83(d)
83(g).	83(b)(2)
83(i).	83(e)
83(j).	83(f)
83(k).	83(g)
83(l).	83(g)(4)
83(n).	83(h)
83(o).	83(i)
83(p).	83(j)
83(q).	83(k)
83(r).	83(l)
83(s).	83(m)
83(t).	83(n)
83(u).	83(f)
83(v).	83(o)
83(w).	83(p)
83(x).	83(q)
83(y).	Deleted
83(z).	83(r)

84.	84.
84(a).	84(a)
84(b).	84(b), (d)
84(c).	84(b)
84(d).	84(c)
84(e).	84(e)
84(f).	84(f)
84(g).	84(g)
84(h).	84(h)
84(i).	84(i)
84(j).	84(j)
84(k).	84(k)
84(l).	84(l)
84(m).	84(m)
84(n).	84(n)
84(o).	84(o)
84(p).	84(p)
84(q).	84(q)
84(r).	84(r)
84(s).	84(s)
84(t).	84(t)
85.	76
85(a).	76(a)
85(b).	76(b)
85(c).	76(c), (d)
85(d).	76(e)
85(e).	76(e)
85(f).	76(e)
85(g).	ICAR
85(h).	76(f)
85(i).	76(g)
85(j).	76(h)
85(k).	76(i)
85(l).	76(j)
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IDAHO RULES FOR SMALL CLAIM ACTIONS

Rule 1. Title

These rules may be known and cited as the Idaho Rules for Small Claim Actions, or abbreviated I.R.S.C.A.

Rule 2. Forms

The court must provide to all persons interested in filing a small claims action approved "Complaint" and "Answer" forms, as well as "Instructions" on how to file an answer. The approved forms can be found at (web site). The plaintiff must use the court approved complaint form and pay the filing fee. The clerk of the court may help the plaintiff in preparing the form at the plaintiff's request. The instructions and answer forms must notify the defendant that the defendant must file the answer with the court and that if the defendant fails to file the answer with the court within 20 days of service, the court will enter judgment against defendant.

Rule 3. Who May be a Plaintiff

Any individual, partnership, corporation or association may file a small claim as a plaintiff in the action. An employee of the plaintiff may sign the pleadings.

Rule 4. Default Proceedings

(a) **Service.** In support of a request for default, Plaintiff must show by return of service or affidavit that the instructions and answer form were served on each defendant at the time of service of the complaint.

(b) **Proceedings.** Rule 55, Idaho Rules of Civil Procedure, controls default judgment proceedings in small claims actions.

(c) **Sufficiency of the Evidence.** The court must not enter a judgment by default unless the court is satisfied by the evidence presented in support of the claim.

(d) **Failure to Attend Hearing.** If the plaintiff or employee does not appear at the time set for any hearing on the matter, the court may dismiss the action with or without prejudice.

Rule 5. Counterclaims

Counterclaims are not permitted, however a separate action may be filed in the same court against the plaintiff in the original action.

Rule 6. Consolidating Cases for Hearing

The court may hear related actions together.

Rule 7. Transferring Action to District Court

When a defendant in an action under these rules files an action in the district court or the magistrate division which arises out of the same transaction or occurrence, or is similar to a compulsory counterclaim pursuant to Rule13(a), Idaho Rules of Civil Procedure, the judge presiding over the non-small claim action must order the small claim action transferred and consolidate the actions for trial.

Rule 8. Appearances, Attorneys, and Witnesses

(a) **Appearances.** Any party may appear in person or by an authorized non-attorney employee.

(b) **Attorneys.** No attorney may appear with or for a party in any hearing. However, after entry of a judgment, an attorney may appear in a proceeding relating to the execution of the

judgment, including any proceeding for the examination of the judgment debtor in aid of execution of the judgment. An attorney may also appear as a party to a proceeding, except when the attorney obtained the claim by assignment.

(c) **Witnesses.** Witnesses may be sworn and testify at hearing. Any party may subpoena and serve witnesses to a hearing as provided by the Idaho Rules of Civil Procedure. However, the party issuing and serving the subpoena must pay all of the witness and service costs. These costs may not be considered as costs awarded to the prevailing party.

Rule 9. Disqualification of Magistrate

A party may disqualify the assigned magistrate as provided in Rule 40, Idaho Rules of Civil Procedure.

Rule 10. Dismissal for Lack of Service or Inactivity

Dismissal pursuant to this rule is without prejudice. At least 14 days prior to dismissal, the clerk must give notice of the pending dismissal to all parties who have appeared.

(a) **For Lack of Service.** If the summons has not been issued and served for a period of 30 days, the action may be dismissed. The court may reopen the case without additional filing fees if the request is made within six months from the date the original claim was filed and it appears that the defendant can be served.

(b) **For Inactivity.** In the absence of a showing of good cause for retention, any action in which no action has been taken for a period of 6 months must be dismissed.

Rule 11. Informal Proceedings

The trial must be informal, and the court may adjourn the trial in the interest of justice and to allow the parties to present further relevant evidence. The court may allow the parties and any witnesses to appear telephonically. The court must make a verbatim record or recording of any proceeding or hearing.

Rule 12. Judgment

After a hearing, the court must enter judgment on a form furnished by the court. The clerk must serve copies of the judgment on both the plaintiff and the defendant either by personal delivery or by mailing to the address most likely to give notice to such parties.

Rule 13. Vacating, Reconsidering, or Correcting Clerical Errors of a Judgment

The court may vacate, reconsider, or correct clerical errors on its own or upon informal request of a party without formal notice or hearing. This may be done at any time, including during the pendency of an appeal, and may be on the grounds provided by Rule 55(c), 60(a) and (b), Idaho Rules of Civil Procedure, or for good cause shown. The court must issue a written decision and serve the parties in the same manner as for a judgment. If an appeal is pending in the action, the court must mail a copy to the clerk of the district court in which the appeal is pending.

Rule 14. Execution

Execution on a judgment must be in the same manner as in the district court and the plaintiff must prepare the execution. However, the clerk of the court may assist in the preparation of the execution when requested by the plaintiff. The clerk must issue the execution when requested by the successful party but not until any appeal is final or until the 30-day statutory appeal period has passed. However, if the court entered a default judgment, the clerk may issue execution immediately. The sheriff anywhere in the state may serve an execution. The party enforcing the judgment must pay the fees for the issuance, service and enforcement of the execution. Those fees will be added to the amount to be paid by the unsuccessful party.

Rule 15. Appeals

(a) Who May Appeal. Any aggrieved party may appeal to the district court as provided in these rules and by law; however, any party who defaults or does not appear will not have any right to appeal the judgment.

(b) Notice of Appeal. The party wishing to appeal a judgment must file a notice of appeal in the court that heard the matter within the 30-day statutory appeal period and in the form provided by law. The notice of appeal must be accompanied by the filing fee unless the fee is waived as provided by Idaho Code Section 31-3220.

(c) Trial de Novo. The court will conduct any appeal as a trial de novo.

(d) Procedure on Appeal.

(1) When a notice of appeal is filed, the clerk of the court where the action was filed will assign a file number and a magistrate in accordance with the assignment procedures of the county and serve copies of the notice of assignment on the parties or their attorneys by mail.

(2) Except as provided in this rule, the Idaho Rules of Civil Procedure apply to the trial de novo unless the court determines it is not appropriate.

(3) The court may permit or require the filing of amended or additional pleadings.

(4) The court may permit discovery as provided by the Idaho Rules of Civil Procedure only by written court order and only within such limitations as the court feels appropriate.

(5) A party may disqualify the court as provided by the Idaho Rules of Civil Procedure.

(6) If a party wants a jury, it must request a jury in the de novo trial within 14 days of service of the notice setting the appeal for a hearing. The jury must consist of 6 jurors, unless the parties agree to a lesser number.

(e) Costs on Appeal. Costs on appeal must be awarded to the prevailing party on appeal and may not exceed $50.00.

(f) Attorneys Fees on Appeal. A prevailing party represented by an attorney will be awarded $25.00 in attorney fees.