



## **I.R.C.P. 5. Serving and Filing Pleadings and Other Papers**

### **Idaho Rules of Civil Procedure 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.

([Adopted March 1, 2016, effective July 1, 2016](#) [1].)



### **Links**

[1] <https://isc.idaho.gov/./rules/IRCP/03012016-Adoption-Newly-Formatted.pdf>