

IRFLP 204 Service on the Opposing Party or Additional Parties of Initial Pleadings

Idaho Rules of Family Law Procedure Rule 204. Service on the Opposing Party or Additional Parties of Initial Pleadings.

A. Summons and petition. At the request of the petitioner, the clerk of the district court shall issue a summons for service. The petitioner shall personally serve upon all parties entitled to service (except when the service is by publication as provided in Rule 204. D) a copy of (1) the petition and the summons; and (2) any notices, forms and orders issued by the court at the time of filing of the petition.

B. Time limit for service. If a service of the summons and Petition is not made upon a Respondent within six (6) months after the filing of the Petition and the party on whose behalf such service was required cannot show good cause why such service was not made within that period, the action shall be dismissed as to that Respondent without prejudice upon the court's own initiative with 14 days notice to such party or upon motion.

C. Summons - form. The summons shall be signed by the clerk of the district court, be under the seal of the court, contain the name of the court, the assigned number of the case, the names of the parties, the county in which the action is brought, the mailing address, physical address (if different) and telephone number of the district court clerk, and state the name and address of the Petitioner's attorney, if any, otherwise, the Petitioner's address. The summons shall contain the time within which these rules require the Respondent to file a written response or written motion in defense to the Petition, and shall notify the Respondent that, in case of the Respondent's failure to do so, judgment by default will be rendered against the Respondent for the relief demanded in the Petition. The summons shall be in substantially the following form:

NAME OF PARTY OR ATTORNEY

ATTORNEYS BAR NUMBER

STREET OR PO BOX ADDRESS

CITY, STATE & ZIP CODE

TELEPHONE NUMBER

(Attorney for) Petitioner

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF _____

)

Petitioner,) Case No. _____

)

vs.) SUMMONS

)

Respondent.)

)

NOTICE: YOU HAVE BEEN SUED BY THE ABOVE-NAMED PETITIONER(S): THE COURT MAY ENTER JUDGMENT AGAINST YOU WITHOUT FURTHER NOTICE UNLESS YOU RESPOND WITHIN 21 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 district court clerk] within 21 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 Petitioner(s) in the Petition. A copy of the Petition 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 205](#) [1] of the Idaho Rules of Family Law Procedure and shall also include:

1. The title and number of this case.
2. If your response is a Response to the Petition, it must contain admissions or denials of the separate allegations of the Petition 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 Petitioner'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 _____, 20 ____.

CLERK OF THE DISTRICT COURT

By _____

Deputy Clerk

1. Personal service. A copy of the petition shall be served with the summons, except when the service is by publication as provided in Rule 204.G. The petitioner shall furnish the person making service with such copies as are necessary. Service shall be made as follows:

2. Service upon individuals. Upon an individual other than infants and incompetents, by delivering a copy of the summons and of the petition to the individual personally or by leaving copies thereof at the individual's dwelling house or usual place of abode with some person over the age of eighteen (18) years then residing therein or by delivering a copy of the summons and of the petition to an agent authorized by appointment or by law to receive service of process.

3. Service upon incompetents. Upon a minor less than fourteen (14) years of age, service shall be upon the guardian if one (1) has been appointed, and if there is none then upon either the father or mother, and if neither guardian, father or mother be found within the state then upon any person having the care and custody of such minor, and unless the court otherwise orders, also upon the minor, said service to be in the manner set forth in subdivision (2) of this rule. Upon an incompetent person who has been judicially declared to be of unsound mind or incapable of conducting the incompetent person's own affairs, service shall be had upon the guardian if one (1) has been appointed in this state, or if there is none by service upon a competent adult member of the family with whom the incompetent person resides, or if the incompetent person is living in an institution then upon the chief executive officer of the institution, or if service cannot be had upon any of them, then as provided by order of the court, and unless the court otherwise orders, also upon the incompetent. If any of the parties upon whom service is directed to be made is a plaintiff, then service shall be upon such other person as the court may designate.

4. Service upon state, agencies or governmental subdivisions. Upon the state of Idaho, or any agency thereof, service shall be made by delivering two (2) copies of the summons and complaint to the attorney general or any assistant attorney general. Upon any other governmental subdivision, municipal corporation, or quasi-municipal corporation or public board service shall be made by delivering a copy of the summons and complaint to the chief executive officer or the secretary or clerk thereof. In all actions brought under specific statutes requiring service to be made upon specific individuals or officials, service shall be made pursuant to the statute in addition to service as provided above.

D. Service by publication. Where service is to be made by publication, the Summons to be published shall be substantially as follows:

SUMMONS

To: [Respondent's Name]

You have been sued by [Petitioner's Name], the Petitioner, 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 21 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 Petitioner's attorney at [name, address, and phone number of Petitioner's attorney].

A copy of the Summons and Petition can be obtained by contacting either the Clerk of the Court or the attorney for Petitioner. 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

E. Process - by whom served. Service of all process shall be made by an officer authorized by law to serve process, or by some person over the age of eighteen (18), not a party to the action. A subpoena may be served as provided in [Rule 711](#) [2].

F. Receipt of service. In lieu of service upon an individual as provided above in this rule, service may be accomplished by an acknowledged written admission by the individual that the individual has received service of process, stating the capacity in which such service of process was received.

G. Summons - other service. Whenever a statute of this state provides for service of a summons, or of a notice, or of an order in lieu of summons, upon a party not an inhabitant of, or found within the state, or upon unknown persons, service shall be made under the circumstances and in the manner prescribed by the statute. Personal service outside of the state, when authorized by statute, shall be as provided by Rule 204.C. Whenever the summons, notice or order is served by publication it shall contain in general terms a statement of the nature of the grounds of the claim, and copies of the summons and complaint shall be mailed to the last known address most likely to give notice to the party.

H. Service - completion. Personal service within or without the state is complete on the date of delivery; service by publication is complete upon the date of the last publication.

I. Territorial limits of effective service. All process, other than a subpoena, may be served anywhere within territorial limits of the state and, when a statute or rule so provides, beyond the territorial limits of the state. A subpoena may be served as provided in [Rule 711](#) [2].

J. Return. Proof of service of process shall be in writing specifying the manner of service, the date and place of service and unless the party served files an appearance the return must be filed with the court:

1.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 indicating service as required by these rules.

2.If service is by any person other than those specified in (1) above, then by affidavit of such person indicating the person is over the age of 18 years and service as required by these rules.

3.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 such service indicating the documents mailed and the date and address to which they were mailed.

4.If service is by certified or registered mail, then by affidavit of a person over the age of 18 years who mailed such process together with postal receipts indicating whether the person received the service of process by mail.

5.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.

6.In lieu of any of the above, the party's acknowledged written admission that service of process was received, as provided by Rule 204.F.

The return of service shall list and identify all documents served.

K. Amendment. At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial right [rights] of the party against whom the process issued.

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Links:

[1] <https://isc.idaho.gov/irflp205>

[2] <https://isc.idaho.gov/irflp711>