

## **IRFLP 205 Mandatory Responsive Filings and Service of Responsive Filings**

### **Idaho Rules of Family Law Procedure Rule 205. Mandatory Responsive Filings and Service of Responsive Filings.**

A. Responses. The opposing party in an action for annulment, divorce, legal separation, child custody or paternity who has been served with a petition and summons shall respond by filing a response to the petition. In the event the opposing party in one of these proceedings does not file a response, the party who filed the action will have the right to file for a default and receive a default judgment under Rules [301](#) [1] - [305](#) [2].

B. Service of responsive filings. Every order required by its terms to be served, every pleading subsequent to the original petition unless the court otherwise orders because of numerous respondents, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, brief and memorandum of law, and similar paper shall be served upon each of the parties affected thereby, but no service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in [Rule 204](#) [3].

C. Service - how made. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to such person or by mailing it to the last known address of such person or, if no address is known, by leaving it with the clerk of the court. Delivery of a copy within this rule means: transmitting the copy by a facsimile machine process, delivering the copy via e-mail if written permission to send via e-mail has been obtained from the intended recipient; handing it to the attorney or to the party; or leaving it at the attorney's office with the person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the dwelling house of the person or usual place of abode with some person over the age of eighteen years then residing therein. Service by mail is complete upon mailing. This rule shall not require a facsimile machine to be maintained in the office of an attorney.

D. Filing. All papers after the petition required to be served upon a party shall 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 shall be noted thereon.

E. Filing with the court.

1. Defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk, except that the judge may accept the papers for filing, in which event the judge shall note thereon the filing date, hour and minute and forthwith transmit them to the office of the clerk. The judge or clerk shall indorse upon every pleading and other paper the hour and minute of its filing.

2. Filing by facsimile. Any pleading or document except those documents requiring a filing fee or filed as proof of incarceration of a party to the action may be transmitted to the court for filing by a facsimile machine process. The clerk shall file stamp the facsimile copy as an original and the signature, court seal, and notary seal on the copy shall constitute the required signature and be considered as originals under [Rule 212](#) [4]. After a document is filed by facsimile, there is no need to mail that document to the court. Filings may be made to the court only during the normal working hours of the clerk and only if there is a facsimile machine in the office of the filing clerk of the court. Provided, documents over ten (10) pages in length cannot be filed by the facsimile machine process.

3. Other use of facsimile copies. Any facsimile machine process copy that is not transmitted directly to the court may be filed with the court. The clerk shall file stamp the facsimile copy as an original and the signature on the copy shall constitute the required signature under [Rule 212](#) [4]. There shall be no limit as to the number of pages of a facsimile copy which was not transmitted directly to the court by the facsimile machine process.

4. Additional filings by county. Each county, on an individual basis, may elect to waive any or all of the restrictions of subsection 2 above to the extent that (a) documents requiring a filing fee may be transmitted to the court for filing by a facsimile machine process provided that the fee is prepaid by credit card in accordance with the county's credit card acceptance policy; (b) filings may be made at any time, provided that filings received outside normal working hours or on any non-judicial day will be file stamped at 9:00 a.m. on the next judicial day; (c) documents of any length may be faxed.

F. Proof of service. Proof of service shall be made by a certificate of the attorney or the party making service. The certificate of service shall be attached to the copy of the document filed with the court, or if the document is not filed with the court, the certificate shall be filed within a reasonable time after service of the document. The certificate of service shall state the date and manner of service and the name and address of the person served. Failure to make proof of service does not affect the validity of the service.

G. Service on attorney-legislator suspended during sessions; emergency provisions. During such time as any attorney shall be serving as a legislator or legislative attaché while the legislature is in general or special session, the attorney shall not be required to attend in court at any trial or other proceeding, and in any pending matter in which the attorney appears as attorney of record, the time within which the attorney would normally be required to file any pleading or other paper shall be extended for a period of ten days following adjournment of such session of the legislature, provided, that such extension of time is not intended to, and shall not, toll or otherwise extend the running of any limitation period provided by statute and provided further, that upon motion by an aggrieved party or attorney, supported by appropriate affidavit, that an emergency exists or said party would be unduly prejudiced or irreparable damage would accrue, the court in which said action is pending may order, ex parte, such attorney to make appropriate arrangements to appear or for another member of the Idaho state bar to represent said attorney's clients in such pending matter, which said order shall be served upon the attorney by special delivery mail addressed to the attorney at the legislature.

(Adopted April 2, 2014, effective for early adopters July 1, 2014, effective statewide July 1, 2015.)

**Source URL:** <https://isc.idaho.gov/irflp205>

**Links:**

[1] <https://isc.idaho.gov/irflp301>

[2] <https://isc.idaho.gov/irflp305>

[3] <https://isc.idaho.gov/irflp204>

[4] <https://isc.idaho.gov/irflp212>