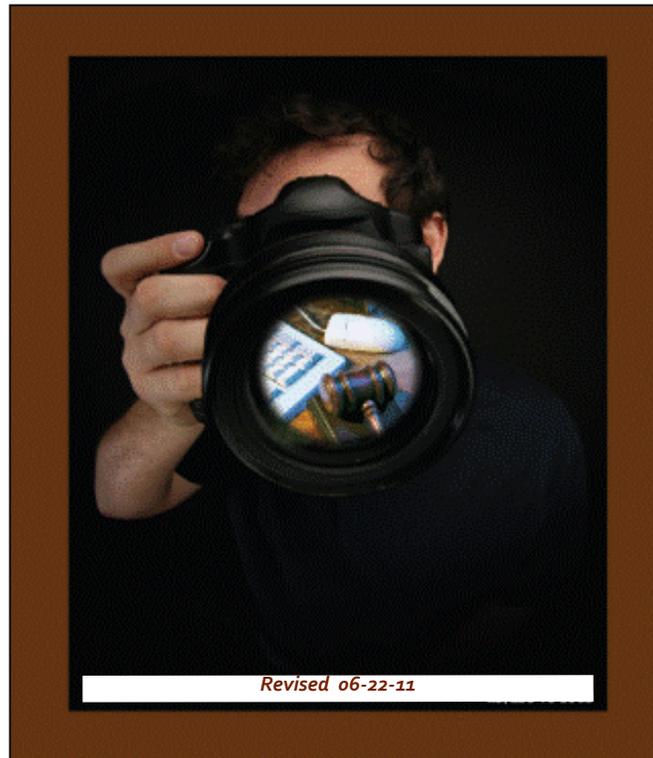


The Media Guide to the Idaho Courts



The Media Guide to the Idaho Courts is designed to provide a quick source of basic information for journalists covering the Idaho court system. It contains links to numerous relevant laws and rules, as well as to other Internet sources of legal information.



Index

Introduction.....	Page 3
Promoting Openness and Accountability through the expanded use of the Idaho Court’s Web site	Page 3
Preface: A View from the Bench	Page 4
Preface: Why a Judge May Abstain from Public Comment.....	Page 5
Idaho’s Judicial Structure	Page 5
Federal Judiciary	Page 6
Courthouse Etiquette for the Media.....	Page 8
Special Rules for Cameras, Recording Equipment	Page 8
Getting Court Records	Page 9
Criminal Proceedings	Page 11
Civil Proceedings	Page 15
Juvenile Proceedings	Page 15
High-Interest Proceedings	
Covering High-Interest Proceedings.....	Page 16
Child Protection Proceedings.....	Page 17
Domestic Violence Cases	Page 18
Capital Crimes.....	Page 18
The Snake River Basin Adjudication	Page 18
The Appellate Process	Page 19
Judicial Selection and Election.....	Page 19
Idaho State Bar Survey in Contested Judicial Elections.....	Page 20
Chief Justice Writes Letter to Editors Regarding Contested Judicial Elections	Page 20
Protocol for Communications Regarding Unwarranted or Unfair Attacks on the Judicial System.....	Page 20
Access to Jurors	Page 23
Other Resources	
Law Library Information.....	Page 23
What to do if Access to Court Proceedings is Denied	Page 23
Media and the Courts Conflict Resolution Panel.....	Page 24
Complaints Against Judges	Page 25
Complaints Against Attorneys	Page 25
Response to Criticism of Judges or the Courts	Page 26
Finding a Subject Matter Expert.....	Page 26
A Short List of Internet Legal Resources	Page 26
Appendix	
Map of Judicial Districts	Page 27
Telephone and Fax Directory to County Courthouses.....	Page 28
Sample Request Form: Court Records	Page 28
Sample Request Form: Cameras in the Courtroom	Page 29
Understanding Legal Citations.....	Page 31
Glossary of Legal Jargon	Page 31
Glossary of Legal Terms.....	Page 32
Public Access Terminals	Page 38
A Note on “Privilege” and Reporting Court Proceedings.....	Page 37

NOTE: If the meaning of a legal term used in this Guide is unclear or confusing, please refer to the “Glossary of Legal Jargon” and the “Glossary of Legal Terms” at the end of the Guide. Definitions can also be found at <http://dictionary.law.com/>.



Introduction

The Idaho Supreme Court's Media/Courts Committee is chaired by the chief justice of the Idaho Supreme Court. A current list of committee members can be found by going to <http://www.isc.idaho.gov/commlist.html> and selecting "Media/Courts Committee."

Promoting Openness and Accountability through the expanded use of the Idaho Court's Web Site

- **Supreme Court and Court of Appeals opinions are available online.** All opinions issued, as well as orders of significant statewide interest, are posted on the Court's Web site the day of release, at: <http://www.isc.idaho.gov/>.
- **District Court case information is available online.** A data repository of all district court cases is available at: <https://www.idcourts.us/repository/start.do>. District court case information is available for examination from all 44 counties.
- **Court Assistance self-help information and forms available online.** Idaho courts increase the public's access to justice by providing information, referral, and standard forms for persons who are representing themselves in non-criminal court cases. Interactive forms and instructions are available at no charge at: <http://www.courtselfhelp.idaho.gov/>. Guided interviews are available to assist you in completing many of the forms.
- **Information about the Idaho Courts is assessible online.** The Idaho State Judiciary wants to make it easy to access court information, and invites you to visit its Web site at: <http://www.isc.idaho.gov>, which contains information about the Idaho courts and its many services, as well as a compilation of court information contained in this *Media Guide*. You may request additional information about court services information online, by FAX, by telephone, by email, or by writing a letter. Contact information is available online at: <http://www.isc.idaho.gov/policy.htm>.

> **"Mission Statement of the Idaho Courts" and Performance Measures published annually:** The Supreme Court, upon recommendation of the Court's Administrative Conference, publishes the "Mission Statement of the Idaho Courts" and objectives to accomplish those goals (<http://www.isc.idaho.gov/mission.htm>). Court performance measures are set and published annually, along with court caseload trends, and are available with the Idaho Court's annual report at: http://www.isc.idaho.gov/annual_cov.htm.

> **Supreme Court rules and amendments are available for public comment prior to adoption.** All proposed Supreme Court rules or amendments to the rules and any explanatory materials are posted online at http://www.isc.idaho.gov/rulesamd_publiccomment.htm for comment at least 14 business days before the Supreme Court considers the proposed rules or amendments to the rules.

All proposed Supreme Court rules or amendments to rules are conveyed to members of the Idaho State Bar for comment through the [Bar's Web site](#) or E-Bulletin.

Highlights of Supreme Court rule amendments are published annually in *The Advocate*, a publication of the Idaho State Bar.

A list of the Supreme Court advisory committees that recommend proposed Supreme Court rules or amendments is available on the Supreme Court's website at: <http://www.isc.idaho.gov/commlist.html>. The various Supreme Court advisory committees meet as the need dictates, and budgets for travel permit. Agenda items may be submitted to the Chair or the Reporter for the particular committee.

- **The Supreme Court encourages and invites you to submit suggested improvements to the Idaho Court System.** The judiciary strives to increase access and service to the public, improve the fast and fair resolution of court cases, provide equal access to justice, promote excellence in service, and increase the public's trust and confidence in the Idaho courts. Please submit any suggestions to improve the administration and operations of the Idaho courts:
 - > In writing: Patricia Tobias, Administrative Director of the Courts, Idaho Supreme Court, P.O. Box 83720, Boise, ID 83720-0101
 - > By FAX: 208-947-7590 By Email: suggestions@idcourts.net By phone: 208-334-2246



Preface

A View from the Bench

Judge Ronald E. Bush
Magistrate Judge, U.S. Courts - District of Idaho

Judges are -- sometimes by nature, but more often by design -- solitary, mysterious creatures. We are given the responsibility to decide disputes of all sorts, to mete out sentences to convicted criminals and to unravel the most prickly and thorny problems of our communities. In addition, we are expected to be scrupulously fair and unbiased as we do that work. We try to meet those expectations every day.

The ethical canons that govern our work tend to foster our cloistered existence. A judge's most important responsibility is to uphold the integrity and independence of the judiciary. We must avoid not only impropriety, but also that which could have the appearance of impropriety. We must conduct ourselves at all times in a manner that does not detract from public confidence in the integrity and impartiality of the judiciary. We are to decide our cases on evidence and argument brought before us in an open and fair manner, so that our decisions and the record they are based upon can be reviewed by higher courts and citizens alike. As a rule, we are not to initiate, permit or consider information or communications that are made outside the presence of the parties to the cases before us.

We are not to make any public comment about a pending or forthcoming proceeding that might reasonably be expected to affect the outcome of the case or otherwise impair its fairness, or even to make any non-public statement that might substantially interfere with a fair trial or hearing. Generally, that means that we do not ever comment about a case. In most instances, even if we have made a decision that ends the case in our particular court, there is always the possibility that some higher court might take up the case on appeal, or the case might come back to us again if a higher court disagreed with our ruling. Usually, even if we are raked across the coals for some decision we have made along the way, we will still stand mute rather than reply.

So, most of the time we either have nothing to say or, even if we did, we think it is inappropriate for us to say anything. Most cases that come before a judge have a good deal of gray and not a lot of black and white. Civil lawsuit and criminal cases may not always lend themselves well to short descriptions, sound bites or simple answers. Often the cases that draw the most public attention are complicated, both factually and legally. Some-times when the media reports on those cases, we think that the reporting needs more detail or that the description of the legal issues is confusing. When we draw those conclusions,

we may not fully understand that news reporting does not always have the luxury of days and sometimes weeks of thought and consideration that the judge may have applied to the case. We may overlook that fact that print journalism and radio/television journalism have limited "space" or "time" to report about the case. We may forget that most reporters have no training in the law. We should remember that, much like our own jobs, the best reporting sometimes hides the fact that it is much harder than it may appear.

We circle each other a bit warily sometimes, like the previously acquainted skunk and dog who want to be cordial with each other, but not necessarily hiking buddies. You would like to have more information, because you want your reporting to be complete. You are used to getting an "inside" scoop from other sources. What's so special about the court system to think that such inside information shouldn't be available from the courthouse? We, on the other hand, want the people involved in our cases and the public to know that we make decisions on the record in the file and as presented in the courtroom and nothing more. We want the parties to a case and the public to understand that our court is not a court of public opinion. Our court is a court that seeks justice based upon the rule of law.

If you ask, we will try to make sure you know how to follow when and where proceedings will occur in open court and when we issue our decisions. If you ask, we may try to explain the nature of the judicial procedures, without commenting upon the issues or the results in a particular case. Perhaps, if you ask, we will summarize our decisions in writing, so that you can be more assured that you are reporting on the effect of the decision and the nature of the legal rulings is more complete and accurate. Perhaps, if you ask, you can bring your camera into the courtroom, making sure you follow the rules intended to make cameras an inanimate tool of your reporting rather than the center of attention.

Each judge may approach these issues differently, but an open line of communication on such matters is always a good thing. There are many good sources for you to draw upon. The administrative office of the Idaho courts, located in Boise, has information about the organization of Idaho courts, the judges, and how to access opinions of the Idaho Supreme Court and the Idaho Court of Appeals. Each judicial district has a trial court administrator who is familiar with the operations of the local courts. Similarly, each judicial district has an administrative district judge who is responsible, along with the trial court administrator, for the management of the courts in that district. "The Media Guide to the Idaho Courts" you are now reading is filled with useful information for the journalist.

The power and strength of our judicial system as a co-equal third branch of government rest in large part upon the public's



confidence that our courts are fair and open. The work of the media in reporting the work of our courts is vitally important to maintaining that public confidence. Therefore, we have a shared interest in ensuring that your work accurately describes our work, for everyone to see. So, we will try to walk down the courtroom corridors with you as far as we can properly do so. And, we will keep our skunk tails tucked away if you will do the same.

Preface

Why a Judge May Abstain from Public Comment

Although judges may make public statements in the course of their official duties and may explain for public information, the procedures of the court, a judge may abstain from public comment while a court case is pending.

Our legal system is based on the principle that an independent, fair, and competent judiciary will interpret and apply the laws that govern us. Judges, individually and collectively, respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

It is vitally important to the perception of justice that the sole source of information regarding court proceedings be “on the record” in the courtroom and the records filed in a court case. A single source of information improves the participant’s and the public’s sense of fairness in the judicial system, ensures the accuracy of coverage of proceedings, and captures, as part of the record, all matters and statements that could be considered on appeal.

The Code of Judicial Conduct establishes standards for ethical conduct of Idaho judges. It consists of broad statements called Canons, specific rules set forth in Sections under each Canon, a Terminology Section, an Application Section, and Commentary. Canon 3 provides that a judge shall perform the duties of judicial office impartially and diligently. Addressed as part of this Canon is the requirement that:

B. (9) A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing. The judge shall require similar abstention on the part*

of court personnel subject to the judge’s direction and control. This Section does not prohibit judges from making public statement in the course of their official duties or from explaining for public information the procedures of the court. This Section does not apply to proceedings in which the judge is a litigant in a personal capacity.*

The requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition.

Judges are guided by the ethical standards articulated in the Canons of Judicial Conduct, which may be found at http://www.judicialcouncil.idaho.gov/code_cov.htm.

The conduct of lawyers relating to trial publicity is governed by Rule 3.6 of the Idaho Rules of Professional Conduct, which may be found at <http://isb.idaho.gov/general/rules/irpc.html>.

Idaho’s Judicial Structure

The **Supreme Court**, the state’s top appellate court, includes the chief justice and four other justices. Specific information about Idaho’s justices and judges may be found on the Court’s Web site at <http://www.isc.idaho.gov>. For a detailed description of the operation of the court, see the “Internal Rules of the Idaho Supreme Court”: <http://www.isc.idaho.gov/rules/internal108.pdf>.

The Supreme Court employs an administrative director of the courts, supervised by the chief justice, whose duties include acting as the public information officer for the Court. Contact information for the administrative director of the courts may be found at <http://www.isc.idaho.gov/policy.htm>.

The Supreme Court hears appeals from District Courts and from the Idaho Public Utilities Commission and the Industrial Commission. The Court of Appeals hears cases assigned by the Supreme Court except capital murder convictions and appeals from the Public Utilities Commission or Industrial Commission which must be heard by the Supreme Court. The Court of Appeals includes a chief judge and three other judges, with cases being heard by three-judge panels. You may link to specific information about the Court of Appeals judges at <http://www.isc.idaho.gov/directry.pdf>.



The Supreme Court clerk of the courts can provide basic information, including the schedule of briefs and oral arguments, regarding the status of appellate cases before the Idaho Supreme Court and Court of Appeals. Contact information for the Supreme Court clerk of the courts may be found on the Court's Web site at <http://www.isc.idaho.gov/policy.htm>.

Idaho is divided into seven judicial districts, each with an administrative district judge chosen by the other district judges in the district. A judicial district map, a chart depicting Idaho's judicial structure, is included in this Guide and is available online <http://www.isc.idaho.gov/mguide/map.html>. Contact information for the state's judicial districts and courts can be found online at <http://www.isc.idaho.gov/directry.pdf>.

Each county has a District Court, which includes a Magistrate Division. There are 42 district judges and 87 magistrate judges in the state. District judges hear felony criminal cases and civil actions if the amount involved is more than \$10,000 and appeals of decisions of the Magistrate Division. Each district judge employs a court reporter who is responsible for capturing the record of proceedings in that judge's court. The Web sites of several of Idaho's district courts may be found at: <http://www.isc.idaho.gov/district.htm>. See also a statewide County Courthouse Directory at: <http://www.isc.idaho.gov/courthse.htm>.

The Magistrate Division hears probate matters, divorce proceedings, juvenile proceedings, initial felony proceedings through the preliminary hearing, criminal misdemeanors, infractions, civil cases when the amount in dispute does not exceed \$10,000 and cases in Small Claims Court that is established for disputes of \$5,000 or less.

Senior judges are those who have retired from full-time work. They provide an important service to the state's judicial branch by continuing to make themselves available to hear cases on an as needed basis. By employing senior judges, the state court system has had additional flexibility in managing caseload increases in a cost-effective manner.

Each judicial district employs a trial court administrator, supervised by the administrative district judge and the administrative director of the courts. The trial court administrator helps to manage the District Court operations, and often handles media contacts with court personnel and judges. Contact information for each judicial district's trial court administrator is available in the directory located at <http://www.isc.idaho.gov/directry.pdf>.

The elected clerk of the District Court (the "county clerk") is an important link between the judiciary and county government. District Court clerks and their deputies provide crucial services to district magistrates and judges. One important role of the

elected clerk is to serve as one of the county's jury commissioners, a group responsible for managing the jury selection process under supervision of the court. See Idaho Code § 2-205 and Idaho Code § 2-207 for more information on the jury commission and its operation.

The county prosecutor is responsible for charging and prosecuting crimes and usually serves as the attorney for the county commission in civil matters. The county prosecutor handles all felony prosecutions. City attorneys similarly handle city criminal and civil matters. Public defenders are appointed for defendants unable to afford private attorneys. To contact county prosecutors, city attorneys and public defenders, refer to the listing of telephone and fax numbers for county courthouses in Idaho at www.isc.idaho.gov/courthse.htm.

Federal Judiciary

Information and Records Available From the Federal Court

The Federal Court Web site in Idaho can be found at <http://www.id.uscourts.gov/>. At this site, you can access Local Rules, Federal Rules, written opinions, calendars, statistical information, announcements, chambers procedures, court forms and procedures, a glossary of legal terms, as well as other information about specific court processes (i.e. bankruptcy, pro se civil cases, and available programs for the public). You can also access the Court's Electronic Case Filing System (ECF) which provides images of all public documents filed in each District and Bankruptcy Court proceeding. To obtain access to court records, you need to have a login and password available at <http://pacer.psc.uscourts.gov/>. You may also call the court Voice Case Information System (VCIS) to obtain information about bankruptcy cases. This includes the status of the case, scheduled hearings and the parties involved in the case including the judge, attorneys, and trustee. The telephone number to access this system is 208-334-9386.

Contacting the Court by Telephone

Any questions about the Federal Court, case information or procedures may be directed to:

- Boise clerk's office 208-334-1361
- Coeur d'Alene clerk's office 208-664-4925
- Pocatello clerk's office 208-478-4123
- Moscow clerk's office..... 208-882-7612
- ECF help desk..... 800-699-9842

Courthouse Technology

The Federal Court has a WI-FI network set up in the courthouses in Boise, Pocatello and Coeur d'Alene, which allows litigants to access the Internet for business purposes. There are also guides regarding the use of evidence presentation systems available at

The Media Guide to the Idaho Courts



the courthouses. For example, the guide for Boise is available at: <http://www.id.uscourts.gov/docs/ecourtm-boi.pdf>. Visitors to the clerk's offices may also use public terminals to look at Court documents in civil, criminal and bankruptcy proceedings. There is no charge for these services.

Media Tips

The status of cases and the court calendar are available on the Court's Web site: <http://www.id.uscourts.gov>. If you have a question about the business of the court, you may contact the Court Executive at 208-334-1373.

Written decisions can be downloaded free by accessing the Court Web site under "Attorney Resources." The link for District Court decisions is http://www.id.uscourts.gov/dc_decisions.htm and the link for Bankruptcy Court decisions are available at: http://www.id.uscourts.gov/cfCourt/Decisions/BK_DecisionIndex.cfm.

Pursuant to District Court, Local Rule 83.1, courthouse supporting personnel cannot disclose to any person information relating to any pending criminal or civil proceeding that is not part of the public records of the Court without specific authorization of the Court.

In a widely publicized or sensational case likely to receive massive publicity, the Court generally meets with the litigants and the media to establish procedures for the trial. Media rooms are also available at the courthouses for extended trials.

All forms, means, and manner of taking photographs, tape recordings, videotaping, broadcasting, or televising are prohibited in a United States courtroom or its environs during the course of, or in connection with, any judicial proceedings whether the Court is actually in session or not. The Court may permit photographs of exhibits or use of videotapes or tape recordings under the supervision of counsel. However, a judge may permit (A) the use of electronic or photographic means for the presentation of evidence or the perpetuation of a record, and (B) the broadcasting, televising, recording, or photographing of investiture, ceremonial, naturalization proceedings, or for other purposes.

The Structure of the Federal Courts

The Supreme Court is the highest court in the federal judiciary. Congress has established two levels of federal courts under the Supreme Court: the trial courts and the appellate courts.

Trial Courts: The United States District Courts are the trial courts of the federal court system. Within limits set by Congress and the Constitution, the District Courts have jurisdiction to hear nearly all categories of federal cases, including both civil and criminal matters. There are 94 federal judicial districts, including at least one district in each state, the District of Columbia and

Puerto Rico. In the District of Idaho, the District and Bankruptcy Courts have been consolidated for administrative purposes since 1984. The Federal Court in Idaho has two circuit judges, two district judges, two bankruptcy judges and two magistrate judges. All the judges conduct business in the courthouses located in Boise, Moscow, Coeur d'Alene and Pocatello.

Justices and Judges: Justices of the Supreme Court, judges of the Courts of Appeals and the District Courts are appointed for life under Article III of the Constitution by the president of the United States with the advice and consent of the Senate. Bankruptcy judges are judicial officers of the District Courts and are appointed by the Courts of Appeals for 14-year terms. Magistrate judges are judicial officers of the District Courts and are appointed by the judges of the District Court for eight-year terms.

Appeals Court: The 94 judicial districts are organized into 12 regional circuits, each of which has a United States Court of Appeals. A Court of Appeals hears appeals from the District Courts located within its circuit, as well as appeals from decisions of federal administrative agencies. Appeals from the District of Idaho are generally filed in the 9th Circuit Court of Appeals located in San Francisco.

Supreme Court: The United States Supreme Court consists of the chief justice of the United States and eight associate justices. At its discretion, and within certain guidelines established by Congress, the Supreme Court each year hears a limited number of the cases it is asked to decide. Those cases may begin in the federal or state courts, and they usually involve important questions about the Constitution or federal law. More information about the Federal Courts is available at: <http://www.id.uscourts.gov/outreach/Materials/UFC99.pdf>.



Courthouse Etiquette for the Media

- Clothing must be suitable to the professional atmosphere of the courtroom and the seriousness of the proceedings.
- The presiding judge controls what happens in the courtroom. Ask a court clerk or bailiff or the trial court administrator if the court has a written list of rules for the media. Special rules govern the use of cameras and recording equipment in the courtroom. A general guideline is available in the section of this Guide titled “Special Rules for Cameras, Recording Equipment.” The Idaho Press Club Web site includes a page titled “Cameras in the Idaho Courtroom” at <http://idahopressclub.org>.
- Judges are bound by the “Code of Judicial Conduct.” As a result, they cannot generally comment on any ongoing or pending case in any court. This rule extends to court personnel under the judge’s control (i.e., clerks, bailiffs, reporters, law clerks and probation officers.) The code can be found at <http://www.judicialcouncil.idaho.gov/code.pdf>. See also, “Why A Judge May Abstain from Public Comment” located in the “Preface” section of this Guide.
- Judges explain their reasons for handing down a particular punishment when the defendant is sentenced. If there are procedural questions about a judge’s ruling, order or sentence, the judge may be able to explain. The trial court administrator or other authorized court personnel can provide a copy of the order, but cannot, for example, interpret or analyze the judge’s decision.
- Turn off beepers and/or cell phones or put them on “vibrate” mode. Find out ahead of time if the use of laptop computers is permitted in the courtroom and, if so, where to sit. Never conduct interviews inside the courtroom while a proceeding is in session.

Special Rules for Cameras, Recording Equipment

The Idaho Supreme Court has adopted Idaho Court Administrative Rule 45 and Idaho Court Administrative Rule 46 for the use of cameras and recording equipment in the courtroom. The presiding judge authorizes and may revoke the use of cameras and other recording equipment at any time without prior notice. The judge’s decision cannot be appealed.

Additionally:

- Approval to photograph or video, audio record and/or broadcast a court proceeding must be obtained in advance from the presiding judge. A sample request form for reference only is included in the Appendix to this Guide. A form requesting permission to photograph proceedings, video record and/or broadcast a proceeding can be found online at <http://www.isc.idaho.gov/mguide/Cameras-NewForm-Jan-2010.pdf>.
- Unless the judge specifically allows for more, only one still photographer and one camera operator will be allowed in the courtroom. Be sure that news organizations have arranged for pooling before a proceeding begins.
- The judge will indicate where to sit. Be in position at least 15 minutes before court begins. Do not move around during the proceeding.
- Never photograph or videotape the jury, including during jury selection (“voir dire”).
- Photographers may not use artificial lighting, electronic flashes, external motor drives on cameras, or do fast, random shooting.
- The judge will determine where audio equipment is placed. Only one set of microphones for all the media present will be allowed.
- Video or television cameras cannot indicate when they are running.
- Conversations in the courtroom between attorneys and their clients, between attorneys for a client, or between attorneys and the presiding judge at the bench (“sidebars”) may not be broadcast.
- Media may not photograph or record exhibits or notes on the counsel’s table before they are admitted into evidence.
- Sessions in the judge’s chambers or the jurors’ deliberations may not be recorded or broadcast.
- Special rules apply to appellate courts. Contact the clerk of the Supreme Court at (208) 334-2210 for specifics.
- Photographers are requested to utilize equipment that will minimize noise to reduce the possibility of a disruption of the proceedings. Motor drive cameras for example, could potentially be very noticeable to courtroom participants and should be avoided.
- The Idaho Press Club Web site includes a page titled “Cameras in the Idaho Courtroom” which is available for further guidance -- <http://idahopressclub.org>.



- Idaho's trial courtrooms will have certain areas that lend themselves to placing a still or television camera. The objective of camera placement will be to facilitate reasonable coverage of the courtroom without unduly intruding on the proceedings.
- The Idaho Supreme Court courtroom includes a second level balcony, which faces the bench and from which cameras may cover the entire courtroom.

Getting Court Records

Idaho Court Administrative Rule 32 governs access to judicial records. This is not the same as Idaho's public records law, Idaho Code § 9-337 to 9-342. ICAR 32 covers all court records, which includes almost everything in the possession of the court or its staff, whether or not it is filed in a case.

The Idaho Statewide Trial Court Record System, known as ISTARs, is a computer system used by Idaho's trial courts to assist in the processing of all cases filed at the trial court level. The case file serves as the official court record and includes all documents filed in that case. Information on individual cases, including the register of actions, is accessible on the Idaho Judiciary's Web site at: <https://www.idcourts.us/repository/start.do>.

Ask a clerk for assistance in using ISTARs on a public access terminal if one is available. A county-by-county list of public access terminals is included in the Appendix to this Guide.

Idaho Supreme Court Data Repository

In January 2008, the Idaho Supreme Court opened the Data Repository Web site to the public, to provide information on the status of trial court cases in all 44 counties in the state of Idaho. Electronic records are available from 1995 forward, although some information for older cases may be available.

This information is displayed according to Idaho Administrative Rule 32. The status of both pending and closed cases is available to the public. However, to ensure personal privacy, the following information is not given out to the public: The first six characters of social security numbers, street addresses, telephone numbers, and any personal identification numbers (including motor vehicle operator's license numbers and financial account numbers). Every effort will be made to update the Web site each night to reflect changes made to the court record during the previous working day by trial court personnel. The Web site is provided as a convenience for your use and if there are any questions regarding case information, please contact the office of the clerk of the District Court in the county where the case occurred for further clarification. The Repository is available at: <https://www.idcourts.us/repository/start.do>.

Open Records

- Minutes
- Orders
- Opinions
- Findings of fact
- Conclusions of law
- Judgments and notices
- Warrants after they have been served and returned
- Pleadings
- Motions
- Records offered or introduced as exhibits in trials or hearings
- Affidavits for search warrants and arrest warrants after they have been served and returned
- Responses
- Memoranda
- Briefs
- Other records not exempt from disclosure by law or rule

Closed Records

- Child Protection Act Proceedings
- Pre-sentence Investigation Reports
- Mental Commitment Case Records
- Records relating to unserved search and arrest warrants
- Records relating to identity of Grand Jurors or Trial Jurors in certain cases
- Adoption Records
- Parental Rights Termination Records
- Domestic Violence Protection Files except orders of the Court Records
- Records gathered at the request or under the auspices of the court:
 - > to determine an individual's need for counseling/rehabilitation
 - > to determine appropriate custody of minor children
 - > to provide the court with a psychological evaluation
 - > to assist in assigning an appropriate disposition
- Judicial Work Product or Drafts
- Personnel Records Including Applications for Employment (Some employment records of a public official are open)
- Computer Programs and related intellectual property records
- State Law Library records linking patrons to materials borrowed
- Grand Jury records
- Records of the Idaho State Bar relating to attorney discipline
- Records relating to judge performance or discipline, unless formal charges are filed with the Supreme Court
- Juror qualification forms and questionnaires
- Applications and test scores of persons seeking to be placed on the Supreme Court's roster of persons providing court services

The Media Guide to the Idaho Courts



<i>Location of Record</i>	<i>Custodian</i>
Supreme Court or Court of Appeals case file	Clerk of the Supreme Court or a deputy clerk designated in writing
Supreme Court or Court of Appeals, but not in a case file	Administrative director of the courts or other person designated in writing by the chief justice
District Court or magistrate division, but not in a case file	Clerk of the District Court or a deputy clerk designated in writing
District Court or magistrate division, but not in a case file	Trial court administrator of the judicial district, or judge or magistrate designated by the administrative district judge
Judicial Council	Executive director of the Judicial Council
Idaho State Bar	Executive director of the Idaho State Bar or other person designated in writing by the Idaho State Bar Commissioners

Custodian Judges: Custodian judges are those who hear appeals after a records request has been denied by a custodian. The custodian judge will vary depending upon the location of the requested record.

<i>Location of Record</i>	<i>Custodian Judges</i>
Supreme Court or Judicial Council	Chief justice of the Idaho Supreme Court, or the vice-chief justice in the absence of the chief justice
Court of Appeals	Chief judge of the Court of Appeals, or a judge of the Court of Appeals designated in writing
District Court or magistrate division	The presiding magistrate or judge of that case, or judge or magistrate designated in writing by the administrative district judge
Idaho State Bar	Administrative district judge of the 4th Judicial District of the State of Idaho or a district judge designated in writing by the administrative district judge

Records, whose release would endanger innocents, invade privacy, defame, humiliate or ridicule innocent individuals, disclose proprietary business records or trade secrets, or otherwise make public certain private facts may be sealed or redacted by the court.

Juvenile records: Access to Juvenile Correction Act records is governed by [Idaho Court Administrative Rule 32](#). Following the juvenile's admit/deny hearing, case records and files are open unless the court enters an order exempting them from disclosure. If a juvenile is adjudicated guilty of an act that would be a criminal offense if committed by an adult, the name, offense, and disposition of the court are open to the public. However, if the juvenile is found not to have committed the act or the charge is reduced to less than a felony if committed by an adult, the court may close all those case records and documents.

Trial transcripts and recordings: Typewritten transcripts of proceedings are sometimes part of the court record. A copy may be obtained for the cost of reproduction. A special request can be made for a typewritten transcript of a proceeding; however, the cost could be significant. Audio records of a proceeding can be reproduced, but listening to extensive real-time proceedings may be less efficient than buying a transcript.

Requesting a court record: A detailed description of the court rules regarding access to records may be found in [Idaho Court Administrative Rule 32](#). An initial records request should be submitted to the official custodian of a court record, identified above. Most requests to see a court record need not be in writing; simply ask the clerk for a record by its case number, or if you do not know that, the case name. If the record is not readily available, or if there is doubt as to its openness, put your request in writing. A sample request form is included in the Appendix to this Guide. A records request form that can be downloaded, filled out and submitted for approval can be found



on the Court's Web site at <http://www.isc.idaho.gov/recordrq.rtf>. The custodian has up to three working days to either disclose the record; notify the requestor that it will take more than three days to determine if the request should be granted (in this case the custodian has ten working days to respond); refer the request to the appropriate custodian judge; or deny the request in writing.

Alternate: If a custodian denies a request, the requestor has the right to appeal to the custodian judge. If the custodian judge also denies access, the matter can be pursued in court under [Idaho Code § 9-343](#).

Custodians: Custodians are those persons who have primary responsibility for maintenance and distribution of a record.

Criminal Proceedings

A proceeding is "criminal" when the defendant is alleged to have violated a criminal statute. There are two basic types of crimes: misdemeanors and felonies. An "infraction," such as most speeding tickets, is not technically a crime, but a civil public offense punishable only by a fine of up to \$100 (plus court costs) and no imprisonment. General misdemeanors have a maximum fine of \$1,000 and incarceration of not more than six months in the county jail. A felony may be punished by imprisonment in a state correctional facility of more than a year or, in some instances, by death (a "capital crime"). The [Idaho Criminal Rules](#) apply to criminal cases. Most of the steps in the process described below apply to felony charges. See [Idaho Code § 18-111](#) for basic definitions.

Pre-Trial

The police investigation: This first stage of the criminal proceeding often involves the investigation of a crime by law enforcement. This may include the issuance of a search warrant by a magistrate judge, and/or interrogation of the defendant by law enforcement, and may include arrest of the defendant.

Filing the complaint: The complaint describes the formal charge against the defendant and is usually signed by a prosecutor or police officer. If the defendant has not already been arrested, the court may order an arrest warrant allowing police to take custody of the person charged, or a summons requiring the person to appear before the court.

The first appearance in the magistrate division: This is the first time the defendant is before a judge regarding the complaint. Don't confuse first appearance with preliminary hearing or arraignment. The defendant is advised of his or her rights and the judge explains the legal procedure that will be followed in the case. At this stage, bond will be addressed if

the defendant is incarcerated. If the defendant cannot afford an attorney, the court will consider whether to appoint one. A defendant charged with a felony may not enter a plea at this stage of the process, but if this is a misdemeanor case, the first appearance is combined with the arraignment, where the defendant must enter a plea. If this is a felony case, the defendant is entitled to a preliminary hearing, unless the defendant waives this later proceeding, where the prosecutor must show there is probable cause to believe a crime has been committed and the defendant committed it.

Bail bond: Bond may be addressed at any time if the defendant is incarcerated. A bail bond is an obligation signed by the accused, with sureties, to secure his presence in court. If the defendant fails to appear, the bondsman has a period of time to deliver the defendant to the court. If this is not done, the bond is forfeited.

The preliminary hearing: At this hearing, the magistrate judge determines if there is probable cause to believe that a felony crime has been committed and that the defendant committed it. If so, the defendant is "bound over," that is, the case is sent to District Court for arraignment and other future proceedings. If the prosecutor fails to make an adequate showing at the preliminary hearing, the magistrate judge may dismiss the case or the charge may be reduced to a less serious offense.

A defendant may request that the preliminary hearing be closed to the public. The court may then exclude the public, but only if the court makes specific findings that: (1) there is a substantial probability that the defendant's right to a fair trial will be prejudiced by publicity that closure would prevent; and (2) reasonable alternatives to closure cannot adequately protect the defendant's right to a fair trial. See *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1 (1986); *Cowles Publishing Co. v. Magistrate Court*, 118 Idaho 753, 800 P.2d 640 (1990); and Idaho Code § 19-811.

The arraignment in a felony case: This proceeding is held before a district judge. The defendant is again advised of his or her rights and the procedures the court will follow, and enters a plea. At this stage, the court may again consider bond. If the defendant pleads not guilty or remains silent, the case will be set for trial. If the defendant pleads guilty, the judge will order a pre-sentence investigation and set a sentencing date.

The grand jury process: This is an alternative to the process described above, which is authorized in [Idaho Code § 19-1001](#) and the Idaho Constitution. The grand jury is a panel of citizens called together to hear evidence and decide if criminal charges should be brought by its indictment (rather than the prosecutor's complaint). The grand jury has broad investigative powers



to gather evidence, and can call witnesses and compel them to testify. Grand jury proceedings are conducted in secret. If the grand jury returns an indictment, the court issues an arrest warrant or summons for the person indicted, and that person appears before the District Court for arraignment and consideration of bail. See [Idaho Criminal Rule 6.5](#).

Pre-trial motions: During the post-arraignment, pre-trial period, the judge may consider and rule on any number of motions, often involving whether certain evidence may be introduced. The judge may schedule pre-trial hearings to hear attorneys argue the motions. Additionally, a pre-trial conference with the judge and the attorneys for both sides will be held to set the ground rules for the trial.

Plea agreements: Most criminal cases do not go to trial. In criminal actions, the prosecutor and the defendant's attorney may come to an agreement about what the defendant will admit to and what the prosecutor will recommend as a sentence. Some plea agreements are informal agreements between the defendant and prosecutor, which do not bind the judge. In plea agreements made pursuant to Idaho Criminal Rule 11, the judge will then hold a hearing to determine whether to accept the agreement. The judge is not bound by the plea agreement, and if the judge doesn't follow it, the defendant may be allowed to withdraw his plea. See [Idaho Criminal Rule 11](#).

The Trial

Deciding whether to call a jury or hold a court trial before a judge: Generally, unless there is a waiver of the right to a jury trial, a jury will be called. Felony trials are conducted before a twelve-person jury. A six-person jury hears misdemeanors. See [Idaho Criminal Rule 23](#).

Jury selection: This stage begins with voir dire (vwor deer) -- when attorneys for both sides question potential jury members under oath. An attorney may challenge a prospective juror for cause (meaning the attorney has found a demonstrable reason why a person should not serve) or use a "peremptory" challenge in which case the attorney need not state why this person should not be on the jury. Attorneys will have a certain number of peremptory challenges. See [Idaho Criminal Rule 24](#).

Instructions: The judge explains the rules of law that the jury must apply, including the elements of the crimes with which the defendant is charged.

Opening statements: After the jury has been impaneled, each side has the opportunity to make an opening statement in which the attorneys talk to the jury about what they will hear in

the case. A defendant's attorney may choose to wait to give an opening statement until it is the defense's turn to present their case.

Prosecution's case: The prosecution calls its witnesses and questions them--this is direct examination--and the defense attorney will cross-examine them. Attorneys are not supposed to "lead" their own witnesses; that is, they may not provide answers to the questions they ask. On cross-examination, however, an attorney is allowed to lead the witness. Throughout the case, attorneys will make objections to what the other side attempts to do--the form of questioning, or the introduction of certain evidence, for example. The judge may overrule or sustain the objection. "Overrule" means the objection is not correct under the law. "Sustain" means the judge agrees that the objection is correct under the rules of the law.

Defendant's case: The defense attorney may begin with an opening statement if one has not already been given. After both sides have questioned the defendant's witnesses, the defense rests.

Rebuttal witnesses: At this time, attorneys may call rebuttal witnesses, to explain or contradict testimony that previously has been heard.

The judge instructs the jury: The judge may give the jury additional instructions on the law.

Closing arguments: This is the lawyers' last chance to convince jurors to see the evidence their way.

Jury retires and reaches a verdict: When the jury reaches a verdict, the judge, attorneys and defendant come back into the courtroom to hear it read. Afterward, upon the request of either counsel, the judge may poll the jury; that is, inquire of each juror individually if this is his or her verdict. Verdicts must be unanimous; if the jury cannot reach a unanimous verdict (a "hung jury"), the judge may declare a mistrial and the prosecutor will determine whether to retry the case. If the defendant is acquitted, the defendant is released from the custody of the court. If the defendant is convicted, a new part of the process begins. See [Idaho Criminal Rule 31](#).



Post-Trial/Guilty Plea

If a defendant is convicted at trial, the defense attorney may file certain post-trial motions asking for reconsideration and/or relief despite the decision of the jury. If these are denied, the sentencing process comes into play.

Sentencing hearing: The date for a sentencing hearing is set at the end of the trial--usually from 30 to 60 days after judgment has been rendered by the jury. At the hearing, attorneys for both sides may present evidence, testimony, and oral arguments regarding what would be an appropriate sentence. Pursuant to [Idaho Criminal Rule 11](#), the judge need not impose the sentence recommended in any plea agreement. See Idaho Criminal Rule 11.

The following documents and statements may be considered at the hearing:

- *Pre-sentence investigation report:* This report is based upon the pre-sentence investigator's interviews of the defendant and other individuals who know the defendant. It includes a social history of the defendant including education, employment, family situation, physical and mental health and community ties. The report also describes the defendant's prior criminal record, the defendants' version of the crime, and police and other witnesses' versions. The prosecution and defense typically have access to the pre-sentence investigator's report, but it is not available to the media or the public. These reports are confidential and will not be released to anyone except those indicated in [Idaho Criminal Rule 32](#) and [Idaho Administrative Court Rule 32](#).
- *Psychosexual evaluation:* The judge may order this evaluation of the defendant if the conviction involves certain sex-related crimes. See [Idaho Code § 18-8316](#) for more information. The evaluation assists the judge in arriving at the most appropriate sentence. It must be performed by a licensed psychiatrist, a licensed master's or doctoral level mental health professional approved by the court. These evaluations also are confidential. See [Idaho Criminal Rule 32](#).
- *Defendant speaks ("right of allocution"):* The judge must allow the defendant the opportunity to speak on his or her own behalf at sentencing. See [Idaho Criminal Rule 33](#) for more information.
- *Victim impact statements:* Victims of crime are allowed by the 1994 Victim's Rights Amendment to the [Idaho Constitution, Article I, Section 22](#), and by state law to present a victim impact statement at a sentencing hearing. Victims may provide a written or oral statement to the

court regarding the impact the crime has had upon them, but they are not to recommend punishment for the crime in a capital case.

Judge pronounces sentence: Most sentences are pronounced at the end of the sentencing hearing; however, judges may release their decisions at a later time.

Possible Sentences:

- *Fine:* A monetary amount based on the relevant statute may be assessed, as well as restitution and court costs.
- *Withheld Judgment:* No judgment of conviction is entered. If the defendant successfully completes the probationary period, complying with the conditions ordered by the judge, the case may be dismissed.
- *Suspended Sentence:* The judge enters a judgment of conviction and imposes a sentence but does not send the defendant to prison for the imposed term. Instead, all or part of the incarceration term is suspended, usually in conjunction with a term of probation.
- *Probation:* The judge enters a judgment of conviction and imposes a sentence but puts the defendant on probation under specified conditions, which may include some jail time. If the defendant violates probation, the defendant may be ordered to serve out the remainder of the probationary period in incarceration as stated in the original sentence.
- *Retained Jurisdiction ("rider"):* In a felony case, the judge may enter a judgment of conviction and impose sentence, but retain jurisdiction over the defendant for up to 180 days. During this retained jurisdiction, the defendant undergoes two weeks of diagnosis in the state prison system, and if determined not to be dangerous to society, will be sent to the North Idaho Correctional Institution at Cottonwood, Idaho, or other facilities in the state. The defendant may undergo rehabilitation programs and psychiatric testing. At the end of the period the judge will determine whether to suspend the rest of the sentence or release jurisdiction (send defendant to prison).
- *Prison Term:* The judge may forego the above options and simply impose a prison term for the defendant. The maximum term for any crime is set by statute. For some crimes, the statutes also set a mandatory minimum sentence that the court must impose. Idaho's Unified Sentence statute (known generally as the "Truth in Sentencing Act") requires that the judge specify a minimum period of confinement, during which the defendant is not eligible for parole. See [Idaho Code § 19-2513](#). The portion



of the sentence during which the defendant is not eligible for parole is referred to as the “fixed” or “determinate” portion of the sentence. The rest of the sentence, during which the defendant is eligible for parole, is referred to as the “indeterminate” portion of the sentence. Whether the defendant will serve “concurrent” or “consecutive” sentences becomes an issue if the defendant already is under sentence, or has been found guilty of multiple offenses. If the defendant is sentenced to two or more concurrent sentences, they will run at the same time; the defendant will not serve more than the longest of those. If ordered to serve consecutive sentences, the terms are cumulative; the defendant will not begin to serve the later one until the earlier one has been completed or paroled.

- **Death Penalty:** First-degree murder and first-degree kidnapping are “capital offenses”—that is, they carry a possible death penalty in Idaho. The jury decides whether the defendant should receive the death penalty. Following a guilty verdict or guilty plea, the court holds a sentencing hearing at which the state and the defendant can present evidence. The jury can impose the death penalty if it finds that: (1) at least one of the ten aggravating circumstances set out in statute is present; and (2) the mitigating circumstances are not so compelling that they make the death penalty unjust. If the jury finds one or more aggravating circumstances, but decides that the mitigating circumstances make the death penalty unjust, the defendant gets a life sentence without parole. If the jury does not find any aggravating circumstances, the judge imposes a life sentence with a fixed term (during which the defendant is not eligible for parole) of at least ten years.

Post Sentencing/Incarceration

Post Conviction Process in the District Court: Following sentencing, the defendant may file a motion for a new trial under [Idaho Criminal Rule 34](#), or to reduce the sentence under [Idaho Criminal Rule 35](#). A motion for a new trial based on newly discovered evidence may be made within two years after the final judgment; a motion based on any other reason generally must be made within 14 days after the imposition of sentence. A motion for a reduced sentence must be filed within 120 days of the entry of the judgment-imposing sentence. A motion to correct an illegal sentence may be made at any time.

Appeals: Decisions in District Court are appealed to the Supreme Court, and except in capital cases, the Supreme Court may assign that case to the Court of Appeals. The Supreme Court may review Court of Appeals decisions, or may decline to grant review. Most often decisions of the Court of Appeals are final. See “The Appellate Process” section of this Guide for more information.

Parole: When sentencing a defendant to prison, the judge must indicate what the minimum and maximum term of confinement will be; the defendant generally is not eligible for parole (a conditional release from prison) until the minimum term has been served. See discussion under “Prison Term” in this Guide. A prisoner eligible for parole may petition the State Commission of Pardons and Parole, which meets at least four times a year to consider inmates’ applications. The commission must publish notice of its meetings, and include the names of all persons applying for pardon or parole.

Parole/Probation Violations Procedure: A parolee or probationer may be immediately arrested and detained in the county jail if there is cause to believe that the parolee/probationer has violated the conditions of parole or probation.

See [Idaho Code § 20-227](#). For parolees, a parole revocation hearing must be held before one or more members of the commission, or its hearing officer, to determine whether to revoke parole. See [Idaho Code § 20-229](#). If the commission member(s) or hearing officer determines that parole has been violated, the entire commission executes an order of parole revocation. See [Idaho Code § 20-229B](#). Probationers alleged to have violated a condition of probation will be subject to a probation violation hearing in the District Court, at which time the court may revoke probation and order that the defendant serve the sentence that was previously suspended. See [Idaho Code § 19-2603](#) and [Idaho Code § 20-222](#).

Sexual Offender Registration Requirement: Convicted sex offenders, including juveniles, allowed to return to the community must register with the county sheriff’s office where they live. This registration applies to sex offenders who have been incarcerated, received a suspended sentence and probation or even a withheld judgment. Failure to register is a felony for an adult offender, with penalties of up to ten years in prison and a fine of \$5,000. A juvenile offender is subject to a misdemeanor for failing to register; additionally, the juvenile’s parent or guardian is subject to a misdemeanor offense for failure to supervise a child, which carries a fine of up to \$1,000. See [Idaho Code §§ 18-8302 et seq.](#), [Idaho Code §§ 18-8402 et seq.](#) for more information about this process and about accessing sexual offender registration information.



Civil Proceedings

A civil proceeding involves disputes between private parties, or between a private party and a public agency, and could be a dispute over a contract, a lease, a divorce, or because one of the parties is alleged to have wrongfully injured the other (this type of wrongful injury is called a “tort”).

Usually a person filing a civil suit wants money damages, but may ask the court to order the other party to do something or stop doing something; this is known as “injunctive relief.” The [Idaho Rules of Civil Procedure](#) apply to these cases.

The process in a civil suit follows this order:

Complaint Filed

The filing of a complaint details the facts of the situation as seen by the plaintiff, the person desiring the court’s assistance. When the complaint and summons (notifying the defendant of the suit) have been filed with the court, copies of these documents must be delivered to (served on) the other party.

Answer

The defendant has 20 days after being served to respond in writing to the complaint--this is called the “answer.” At the same time, the defendant may file a counterclaim as part of the answer. The counterclaim describes why the defendant feels entitled to relief (money or an injunction) from the plaintiff. The plaintiff then has 20 days to file an answer to the counterclaim. If either side does not file answers or other pleadings in the time required, the other party may ask the court for a default judgment in which the judge decides the case in favor of that party. Time limits may be extended by an agreement of the parties (a stipulation) or for other reasons approved by the court.

Pre-Trial Discovery and Motions

In the period between filing the initial papers and the trial, the parties probably are negotiating to determine if they can settle their dispute while, at the same time, conducting discovery (a proceeding in which the parties request and are given information about the case known by the other side). Discovery includes submitting written questions for the other side to answer (interrogatories), conducting oral questioning of sworn witnesses (depositions) and requesting the production of documents and other things related to the case. Either side may also make pre-trial motions regarding what may be presented at trial. In the pre-trial phase, attorneys often file motions for summary judgment, which if granted will eliminate the need for a trial. To win on a summary judgment motion, a party must show that there are no material issues of fact in dispute and that the case can be decided by the judge as a matter of law.

Pre-Trial Hearing and Trial

If it appears the case will not settle, the judge will hold a pre-trial hearing to determine the conduct of the trial. The conduct of a civil trial follows essentially the same order as a criminal trial, discussed above. When either the judge or jury renders its decision, the case may be appealed by the losing party.

Mediation

The court may appoint, or the parties may agree to, a neutral mediator who assists them in reaching a mutually acceptable agreement. All civil cases are eligible for referral to mediation. See [Rule 16\(k\) Mediation of Civil Lawsuits](#).

Out of Court Settlement

If the parties come to an agreement about settling the case, they may present their agreement to the judge.

Juvenile Proceedings

Juvenile proceedings exist for persons under the age of 18 who violate any federal, state or local law, with the exception of certain alcohol, tobacco, most traffic and watercraft violations. The Idaho Juvenile Corrections Act, [Idaho Code § 20-501](#) et seq., governs a juvenile case. See also [Idaho Juvenile Rules](#), adopted by the Supreme Court. A juvenile may also be tried as an adult in certain very serious crimes, as described below. A magistrate judge handles juvenile cases. The process is generally as follows:

Report of a Wrongdoing; the Filing of a Petition

An officer who believes that a juvenile has broken the law files a report concerning the alleged offense. If it is determined that further action is needed, the report is submitted to the prosecuting attorney, requesting that a petition be filed with the Juvenile Court. A petition is the formal document that describes the specific act the juvenile is alleged to have committed. Unless such a petition is filed, the juvenile may not be brought before the court except to be released from detention.

Probation Officer’s Recommendation

If the prosecutor chooses to file a petition, the court may make a preliminary investigation to determine whether further action shall be taken. The juvenile’s probation officer then may recommend that the case be dismissed or that the juvenile be diverted into a community program. The judge may accept or reject the recommendation. “Diversion” efforts address the problem through non-legal processes such as counseling and special youth programs, and may occur informally whether or not a petition is filed.



The Admit/Deny Hearing

The initial admit/deny court hearing in a juvenile proceeding is never open to the press or the public. Usually only the judge, the in-court clerk, probation officer, the juvenile, parents and attorneys are admitted, but other persons who have an interest in the case may also attend with the judge's permission. The judge reviews the petition, explains the constitutional and legal rights of the parties and determines whether the facts in the petition are true. If the juvenile denies the charge, the case is set for another hearing. At the admit/deny hearing, the judge decides whether the proceedings will be opened or closed. The proceedings are open unless the court enters an order closing them. Proceedings brought against a juvenile fourteen years or older who is charged with an act that would be a felony if committed by an adult are open to the public unless the judge orders that "extraordinary circumstances" justify closing the proceedings.

The Sentencing and Alternatives

If a juvenile admits an act or is found by the court to have committed it, the court proceeds to hold a sentencing hearing. This sentence may include one or more of several alternative possible actions. See [Idaho Code § 20-520](#).

- The juvenile may be ordered into counseling, after which the case will be dismissed.
- A juvenile may be ordered to make restitution.
- A juvenile may be ordered into treatment or probation or committed to a juvenile detention facility for a period of 90 days or less.
- A juvenile may be committed to the Department of Juvenile Corrections, which could place a juvenile in a juvenile corrections center or in some cases, a state mental hospital.

A juvenile at least 14 years old who is alleged to have committed certain serious felonies, such as murder, robbery or forcible rape, is charged and tried as an adult.

See [Idaho Code § 20-509](#). In certain other cases, the Juvenile Court may transfer the case to District Court to be processed under adult criminal law. This may be done if the juvenile is at least 14 years old, or is under 14 and has committed a serious felony, and certain other standards are met.

See [Idaho Code § 20-508](#). Idaho law also contains provisions for the parents of juvenile offenders to provide reimbursement for the costs of their child's offense. See [Idaho Code § 20-524](#).

High-Interest Proceedings

Covering High-Interest Proceedings – Lessons Learned from Other States ¹

- Whatever method the judge ultimately chooses for dealing with the media, the most important thing to remember is to be comfortable with that method.
- Establish an effective communication method between the court and the media about the basic procedural and legal aspects of the proceedings.
- No matter who is assigned to deal with any particular problem, the judge will ultimately be held responsible for what happens, particularly when things go wrong. The trial judge must, therefore, think through each decision or problem before acting.
- The judge must also be aware that he or she will be the direct focus of much of the media's attention.
- The judge, court administrative staff and media liaison should plan for all foreseeable contingencies in dealing with the media and the public. Well in advance of the trial, the judge should meet with key staff (the court administrator, jury administrator, sheriff, police), counsel for the parties and news media representatives to resolve as many media concerns as possible.
- The trial judge and court administrative staff should treat all members of the media equally and fairly and ensure each media representative the same degree of access as every other media representative.
- Before the trial begins, the judge should establish in writing explicit, clear, and fair ground rules for the media regarding trial procedures and access to proceedings and trial participants.
- The court should make reasonable efforts to accommodate the media's needs and provide them with the essential information they require to do their job. The judge should ensure that members of the media obtain timely responses to their questions. Information concerning the court's schedule, timing of decisions, and other procedural matters should be provided daily.
- There should be a single, reliable source of information for all of the media.

¹ Taken from "Managing Notorious Trials" by Timothy R. Murphy, Paula L. Hannaford, Genevra Kay Loveland, and G. Thomas Munsterman / National Center for State Courts



- Anyone who communicates with the media on behalf of the judge should have the judge's full confidence and support. This person should not continually have to seek authority before speaking or acting. This person should be fully informed about all matters communicated to the media.
- To the extent reasonably possible, the judge should avoid making rulings from the bench that can be misconstrued or taken out of context in media reports.
- The trial judge should be careful not to say or do anything that would generate additional publicity or cause him or her to become the focus of personal attention. Choice of words and demeanor are very important.
- The judge should avoid the appearance of unnecessarily withholding information or excluding the media from proceedings by keeping them informed and providing the reasons for the court's actions. All hearings, including pretrial hearings, should be conducted in court, rather than by telephone. Frequent sidebar and in camera discussions should be avoided, if at all possible.
- The court should provide a separate media room in which telephone lines and video feeds can be set up for the media. The costs of leasing any facilities, or making any technological arrangements or modifications for the media, should be borne by the media representatives making the request.
- The trial judge should be aware of increased pressures on the courtroom staff caused by the intense public interest and media focus on the proceedings. If possible, court and trial staff should be trained in dealing with the media and the public for notorious cases.
- The trial judge, in coordination with the Clerk of the District Court and the Trial Court Administrator, should explore making all court records and documents immediately available electronically.
- An email alert service to the media of significant developments, filings, and court rulings is suggested.

Child Protection Proceedings

Child Protection Cases

Two systems deal with child abuse--the child protection system of the Idaho Department of Health and Welfare, which operates pursuant to the Child Protective Act (CPA) ([Title 16, Chapter 16 of the Idaho Code](#)) and the criminal justice system, which prosecutes people accused of crimes involving child abuse. The Child Protective Act focuses on the protection of endangered children but encourages the preservation of family unity and privacy if possible. A child may be removed from the home an

and placed in foster care or some other setting or the alleged offender may be removed from the home.

The Child Protective Act

Under [Idaho Code § 16-1619](#), most people are required to report suspected child abuse, neglect or abandonment to the Department of Health and Welfare. When the Department receives information that a child is being or has been abused, neglected or abandoned, it is required to investigate the report. A child may be removed from the home without a court order only by a police officer that determines that the child is in immediate danger if allowed to stay there.

A shelter care hearing must be scheduled within 48 hours of the child's removal, or 24 hours of the alleged offender's removal. At the hearing, the court will determine whether the child should remain in the care of the state or be allowed to return home, or if the alleged offender may return home. If the court allows the state to retain custody of the child or refuses to allow the alleged offender to return home, the judge will order a full adjudication hearing to determine if the child needs protection.

The court may appoint a guardian ad litem for the child, that is, a trained volunteer who will act as a special advocate for the child during the proceedings. At the adjudication hearing, the judge will determine a more permanent plan for the child, which may include remaining in foster care, returning to the home under certain conditions, or returning home with no restrictions.

In certain cases, the department may ask the court to terminate the parent-child relationship legally. Termination is a separate action that frees the child for adoption if approved by the court.

All CPA proceedings are confidential and exempt from disclosure by Idaho Court Administrative Rule 32(d)(7). The judge may allow a friend, counselor or supporter of the child to remain in court during the proceeding, particularly when the child testifies.

The Criminal Justice System

Idaho's laws concerning child abuse generally are found in [Title 18 of the Idaho Code](#), along with other crimes. The county prosecutor may become involved in a case after receiving a report from the Department of Health and Welfare or local law enforcement. If the prosecutor decides to prosecute the alleged offender, the proceeding follows essentially the same course as outlined above for criminal proceedings. The issue of taking child testimony, however, makes these cases somewhat different from adult-on-adult crime prosecutions. Idaho law allows a child to testify via closed-circuit television or the child may have a friend with him or her when giving testimony. See [Idaho Code § 19-3024](#).



The judge may also, as a matter of discretion, order the courtroom closed to the public during a child's testimony.

Domestic Violence Cases

"Domestic violence" is a term used generally to describe an act of violence perpetrated by one member of a household on another as well as in certain dating relationships. Minors can also receive protection through petitions filed by their parents and/or guardians. Idaho's criminal code provides for prosecution of, for example, assault, battery, rape, murder, domestic battery or the attempt of such a crime. However, the state justice system has developed a more immediate response to domestic violence in the form of a "protection order" aimed at restraining the activities of the alleged perpetrator.

The "Domestic Violence Crime Prevention Act" ([Title 39, Chapter 63 of the Idaho Code](#)) provides a way for victims of domestic violence to obtain a protection order from the court to exclude the perpetrator from the house, require the perpetrator to get counseling, or restrain the perpetrator from places where the victim may be. A petition for a protection order is filed with the local District Court, Magistrate Division. A temporary (14-day) protection order may be obtained almost at once with an ex-parte hearing (the alleged perpetrator need not be at this hearing) if the judge is convinced that "irreparable injury" could otherwise occur. A full hearing including both parties must be held within the 14 days to determine if there is cause for the court to issue a protection order for a period up to one full year. This order is then also subject to one-year renewals. See the [Idaho Council on Domestic Violence and Victim Assistance](#) site. If the person being restrained by the protection order violates it, he or she is subject to a fine not to exceed \$5,000 and up to one year in jail. Furthermore, federal statutes prohibit an offender from having a firearm of any kind, or ammunition, for the duration of the civil protection order. Failure to comply with this federal law carries significant penalties.

In the case of convictions of misdemeanor crimes of domestic violence (domestic battery and certain related offenses), and also of certain domestic violence felony offenses, the federal firearms prohibitions not only apply, but are permanent for the life of the offender.

Capital Crimes

First-degree murder and first-degree kidnapping are crimes that carry the death penalty as a possible punishment. If the prosecutor intends to seek the death penalty, he must file a written notice of intent to do so with the District Court within sixty days after the defendant has entered a plea unless the court extends this time for good cause. See [Idaho Code § 18-4004A](#). There also are special requirements for court-appointed attorneys in death penalty cases. See [Idaho Criminal Rule 44.3](#).

The court must hold a hearing during which attorneys for the state and defendant present evidence regarding aggravating and mitigating circumstances. The jury decides whether the defendant should receive the death penalty, unless both the state and the defendant waive the jury; in that case, the judge decides. Idaho law requires that the death penalty cannot be imposed unless the jury or judge finds at least one aggravating circumstance attending the crime. These are described in [Idaho Code § 19-2515](#) and include a previous conviction for murder, multiple murders at the same time, knowingly creating a great risk of death to many persons in the commission of the murder, murder for hire, and an "especially heinous, atrocious or cruel" murder. If the jury or judge finds that there is at least one statutory aggravating circumstance and no mitigating circumstances that would make the imposition of the death penalty unjust, then the defendant is sentenced to death.

When a defendant is sentenced to death, a number of requirements automatically come into play. The sentence is stayed pending appeals and reviews, and the District Court must immediately appoint an attorney, other than the lawyer who represented the defendant before the death penalty was imposed, for the purpose of seeking post-conviction relief from the court.

Under Idaho law [Idaho Code § 19-2827](#) the state Supreme Court automatically reviews the imposition of the death penalty in a District Court case. The court must consider whether the sentence was lawfully imposed (for example, whether the evidence supports the finding that an aggravating circumstance warranting the death penalty was present). Attorneys for the defendant and the state may submit briefs on the issue and present oral arguments before the court. The court may affirm the sentence or set it aside and remand the case for re-sentencing. Additional appeals to the Idaho and United States Supreme Courts may be made, and as a last resort, the governor of the state may be petitioned to delay or halt the death penalty process. An application for commutation of a death sentence must be made to the Commission of Pardons and Parole, which makes a recommendation to the governor. The governor makes the final decision on commutations in death penalty cases. See [Idaho Code § 20-240](#).

The death penalty in Idaho is by law administered by lethal injection. See [Idaho Code § 19-2716](#).

The Snake River Basin Adjudication

The Snake River Basin Adjudication Court (SRBA), a special District Court in Twin Falls, was created by the Idaho Legislature to allocate all water rights in the Snake River Basin. The workload is extensive, as thousands of water rights claims have been filed there. The SRBA's Web site is <http://www.srba.state.id.us/>.



The Appellate Process

In Idaho, all appellate cases come to the Idaho Supreme Court, which at its discretion assigns a number of these to the Idaho Court of Appeals. The Supreme Court must hear appeals from the Idaho Public Utilities Commission, the Industrial Commission and all death penalty case appeals. The Idaho Supreme Court hears disciplinary actions involving attorneys, and writs when filed directly with the Supreme Court. (A writ is a legal order to do or not do something, i.e., a writ of mandamus, prohibition or habeas corpus.) The appellate process is governed by the [Idaho Appellate Rules \(IAR\)](#). The parties in an appellate case are designated as the appellant and the respondent.

In most cases, an attorney must file a notice of appeal within 42 days of the official filing of the disputed judgment, order or decree, or in criminal cases, 42 days from entry of the judgment, which may be enlarged if the court retains jurisdiction or places the defendant on probation. In death penalty cases, the time for filing a notice of appeal does not begin until the death warrant is signed and filed by the District Court. See [Idaho Appellate Rules \(IAR\) 14](#) for more information. It is important to understand that the purpose of the appellate process is not simply to second-guess the lower court. The purpose of the appellate process is to determine if there was sufficient legal error made by the lower court, which would warrant a reversal or other legal direction from the Supreme Court.

Once the District Court has issued a final appealable order, then the parties can seek relief from the Idaho Supreme Court. When an appeal is filed, the District Court provides the appellate court with a record of the proceeding below, as designated by the parties, who then submit written briefs detailing their arguments. Most appeals are heard in Boise. The Idaho Constitution requires the Supreme Court hear cases in Lewiston at least once a year. In addition to the Lewiston term, the Supreme Court hears cases annually in Coeur d'Alene, Moscow, Idaho Falls, Pocatello and Twin Falls. The Court of Appeals has heard cases in these same cities.

A schedule and summary of the cases to be heard by both the Supreme Court and Idaho Court of Appeals can be found at <http://www.isc.idaho.gov/>. In oral argument, each party is allowed 30 minutes for its presentation. The justices may ask questions of the speaker at any time during oral argument. After hearing arguments, the appellate court will issue its written opinion, usually within a few months. Most appellate decisions are published in "Idaho Reports," the official record of Idaho appellate cases (at <http://www.isc.idaho.gov/>). Depending on the nature of the case, the decision may be appealed to the U.S. Supreme Court.

Judicial Selection and Election

The Idaho Supreme Court

Five justices serve on the Supreme Court. They are elected at large, on a nonpartisan ballot, for a term of six years with their terms being staggered so continuity on the Court will be maintained. A Supreme Court Justice must be a qualified elector, at least 30 years of age, who has resided in Idaho for at least two years preceding his or her election and been admitted to the practice of law for at least ten years. See Idaho Constitution, [Article V, Section 6](#); Idaho Constitution, [Article V, Section 7](#); Idaho Revised Code § 34-905; and [Idaho Code § 34-615\(2\)](#).

The Supreme Court is the state's court of last resort. The Court hears appeals of final decisions of the District Courts, as well as orders of the Public Utilities Commission and the Industrial Commission. It has original jurisdiction to hear claims against the state, and to issue writs of review, mandamus, prohibition and habeas corpus, and all writs necessary for complete exercise of its appellate jurisdiction. The Court may also review decisions of the Court of Appeals, upon petition of the parties or upon its own motion. See Idaho Constitution, [Article V, Section 9](#) and [Idaho Code § 1-2409](#).

When there is a vacancy during the term of office, the Idaho Judicial Council advertises to all attorneys licensed to practice law in the state of Idaho the existence of the vacancy and solicits applications for the position. After the applications are received, a survey is circulated to all members of the Bar, soliciting their opinions about the applicants. Notice is also given to the public, inviting them to comment on the applicants as well. The results of the survey are compiled and are used by members of the Judicial Council when they interview the candidates. The Judicial Council considers the integrity and moral courage of the candidates, legal ability and experience, wisdom, intelligence, capacity to be fair-minded and deliberate, industriousness and promptness in performing duties, compatibility of personal habits and outside activities with judicial offices, capacity to be courteous and considerate on the bench, and legal research and writing abilities. At the conclusion of the interview process, the Judicial Council submits the names of not less than two or more than four qualified persons to the Governor. The Governor then appoints the justice to fill the remainder of the elected term. Thereafter, the appointed justices stand for popular election on a non-partisan ballot. See [Idaho Code § 1-2102](#).

A qualified lawyer may challenge a sitting justice at election time. Elections for justices are held during the May primary election. The Canons of Judicial Ethics guide judges and candidates during elections. Canon 5 of the [Idaho Code of](#)



Judicial Conduct” requires that a judge or judicial candidate refrain from inappropriate political activity, maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary. The Canon also requires candidates for judicial office to encourage members of the candidate’s family to adhere to the same standards of political conduct in support of the candidate as applied to the candidate. No judges or candidates for judicial office shall make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office. They cannot make statements that commit or appear to commit the candidate with respect to cases, controversies, or issues that are likely to come before the Court, nor can they knowingly misrepresent the identity, qualifications, present position or facts concerning the candidate or an appointment. As a corollary, a candidate should emphasize in any public statements the duty to uphold the law, regardless of his or her personal views. A candidate may not personally solicit campaign contributions. A campaign committee, acting on the candidate’s behalf, may solicit and obtain contributions, but the candidate must avoid obtaining the names of the contributors. See the [“Idaho Code of Judicial Conduct”](#) for more information regarding the Code of Conduct and its application to candidates for judicial office. See [Idaho Code § 34-615](#).

Idaho State Bar Survey in Contested Judicial Elections

The Idaho State Bar and its Committee on Judicial Integrity and Judicial Independence agreed that Surveys of Judicial Candidate Qualifications are useful to inform the public about judicial candidates in contested elections (when there is more than one candidate per position).

Administered by the Idaho State Bar, the survey is sent to the voting members of the Idaho State Bar, asking for input based on each member’s personal knowledge and/or professional experience with the candidates. The survey and the results are anonymous, and evaluate the candidates based upon integrity and independence; knowledge and understanding of the law; judicial temperament and demeanor; and legal ability and experience.

The Idaho State Bar provides the survey results to the public to help them make informed decisions about the judicial candidates running for a contested judicial position. The Idaho State Bar does not interpret or express any opinion about the results of the survey. For further information please contact the ISB Communications Director, (208) 334-4500, or see the [ISB Resolution](#) to establish, implement and administer surveys of judicial candidate qualifications in contested judicial elections.

Chief Justice Writes Letter to Editors Regarding Contested Judicial Elections

In April 2010, Chief Justice Eismann wrote the following:

Note to Editors:

Contested judicial elections, such as we have in Idaho from time-to-time, present certain challenges to the candidates and to the voters.

Unlike strictly political contests for statewide office or the Idaho Legislature, standards of judicial ethics apply in judicial contests. Candidates are prohibited, for example, from soliciting campaign contributions and, in fact, are prohibited from even knowing who might support their campaigns financially. Candidates can discuss their qualifications, but must refrain from discussing cases that reasonably might come before them in their judicial capacity.

I have asked three former Chief Justices of the Idaho Supreme Court to collaborate on a Guest Opinion piece – I hope you will consider the piece for publication – that discusses the standards and rules that govern judicial contests in Idaho. We offer these thoughts in the interest of a better informed electorate, able to make considered judgments about judicial candidates and issues. Thank you for your consideration.

Also see:

[Former Chief Justices offer thoughts on Idaho’s judicial elections](#)

Protocol for Communications Regarding Unwarranted or Unfair Attacks on the Judicial System*

(As recommended by the Administrative Conference and adopted by the Idaho Supreme Court 11-24-09)

Occasionally during judicial election campaigns or sometimes simply as a part of the daily news, a judicial candidate, private citizen, media reporter or third party group will make an accusation about the operations of the court system in Idaho or within a particular judicial district. While it is not part of the responsibility of the Administrative Director of the Idaho Courts to respond to criticisms levied against a particular judicial candidate during an election campaign, it is most definitely a responsibility to respond to and defend the operations of the court system from unwarranted, unfair or incorrect attacks. Indeed, it is one of the responsibilities of the Administrative Director to act as the public information officer for the Idaho courts to prepare and disseminate accurate information about the courts in order to enhance the public’s understanding of the important role of the courts in Idaho.



To avoid any concerns that the Administrative Office is engaging in “electioneering” or being overly defensive, there should be a standard protocol followed each time the court system is under attack. In addition, unless it is not feasible to do so under the particular circumstances, any response should be considered in coordination and in consultation with the Chief Justice of the Idaho Supreme Court.

The purpose of this protocol is to deal with errors and misinformation pertaining to judicial proceedings; to indicate to news media our willingness to provide information about judicial activities or the operation of the courts; and to provide a means to improve the public’s perception of the justice system and the role of the courts and judges. That standardized response must necessarily address four questions:

- Is this an attack which merits a response?
- Does it attack the court system, as opposed to a particular judicial candidate?
- What is the best and most appropriate type of response?
- What should be the timing for a response?

Is this an attack which merits a response?

Not every single criticism of the courts merits a response and analysis should be made of the magnitude or seriousness of the attack. An attack which receives wide dissemination, or which goes to the very core of the judiciary’s role, or which could erode the public’s trust and confidence in the court system, likely demands a response. Moreover, the attack or criticism should be materially inaccurate, so the response does not appear to be “nitpicking,” overly defensive or self-serving. Likewise, when the criticism, although generally accurate, does not contain all or enough of the facts of the event or procedure reported so as to misinform the public, it is appropriate to respond to point out the omitted facts. On the other hand, if it is a criticism of a particular judicial candidate levied during an election campaign, a response is best left to the judicial candidate attacked.

It is appropriate to respond when judges are simply carrying out their responsibilities mandated by the Idaho Constitution, statutes or rules, the Canons of Judicial Ethics or the Code of Professional Responsibility. This is a “teachable moment” at which the public can be helped to better understand the constraints under which judges operate.

Even if it is a criticism which would ordinarily not deserve a response, some consideration should be given to whether this is an opportunity for a press release, letter to the editor or interview with the local paper, to address, in general, some aspect of the operation of the courts which may be misunderstood.

If the criticism is made privately to a particular judge or other individual, or if it does not receive public dissemination, or if it appears in a source which is generally not considered reputable, it is likely unnecessary to respond, even to correct misinformation.

Consideration should also be given to whether some other organization or entity will likely respond, or would be the better source for accurate information to correct the misinformation. If the criticism is vague or difficult to understand, a response is probably unnecessary.

Does it attack the court system?

Attacks against a judicial candidate’s qualifications, or which raise issues of judicial ethics appropriate for consideration by the Judicial Council, or relating to a particular court case or decision, are not within the purview of this protocol. Matters which relate to political or social issues, are likewise not appropriate for response. On the other hand, when the media or a person criticize the way the courts operate, court programs or initiatives (or the lack thereof), the proper role of the judiciary, the administration of the unified courts in Idaho and other topics which relate to the judiciary or court system, it is entirely appropriate that the public hear a response from the courts which corrects an unwarranted or unfair characterization. Attacks which impugn the integrity of the judiciary in general or which are based on a misunderstanding of the judicial system, deserve a response, even if they arise during the course of a judicial election campaign. It is important in that instance to make clear the response is directed to the criticism of the judicial system and is not intended as a defense of a particular candidate.

Even if the comments being made are not specifically critical of the judiciary or court system, if the comments are untruthful or reflect a basic misunderstanding of the courts, a response may be appropriate to provide correct information. Likewise, if the criticism is directed at the courts, but is misdirected and should really relate to another branch of government, agency or organization, it may be appropriate to tactfully point out that the court system is not at fault.

What is the best response?

Typically, the response should come in the same format as the initial criticism. Thus, a letter to the editor should be corrected by a letter from the Chief Justice, Administrative Director, or other appropriate and knowledgeable person. Attacks in the print or electronic media, should be responded to through that same source, although that may not always be possible if the media is not willing to cooperate. It is also appropriate to explore whether simply contacting the reporter, the publisher



or the general manager will suffice to get the information corrected, a retraction printed, or an accurate story prepared. If those options are unavailing, then an op-ed piece with a more in-depth discussion of the topic may suffice. Finally, it may be necessary to call a press conference, in order to get out the message quickly and accurately.

If at all possible, this should be a “teachable moment.” In other words, this should be an opportunity to not only counteract the wrongful information or criticism, but to present accurate information on the important role of an impartial judiciary or a strong court system. Every effort should be made to “take the high road” and simply respond by correcting the misinformation, rather than criticizing the person making the comment or the organization they represent. The statement should be concise, accurate, to the point, devoid of emotional or subjective terms and in lay-persons’ terms.

What should be the timing of the response?

Typically, the response time to an unwarranted attack is critical. In waiting a week or longer to respond, it is very possible that the damage has been done and, because there was no immediate response, the public will remember only the negative information. Moreover, bringing the subject up again after an extended period of time, allows additional opportunities to disseminate negative information. If possible, a response should be made within forty-eight hours. An exception would be if this is an ongoing matter – it may very well be, in that instance, that a response would be premature and the passage of time will enable all of the facts to be resolved.

If it is a criticism of a particular program or court initiative, it may be appropriate to take extra time to formulate a more detailed response because of the complexity of the issue. In other words, considerations relating to the “teachable moment” concept may outweigh a quick and timely response.

** Several of the suggestions or ideas in this protocol come from the document “Rapid Response to Unfair and Unjust Criticism of Judges” from the ABA Standing Committee on Judicial Independence.*

The Idaho Court of Appeals

The Court of Appeals currently has four judges, and cases will be heard by three-judge panels. They too are elected at large, on a non-partisan ballot, for a term of six years, staggered to provide continuity. The description of the election and selection process for Supreme Court Justices also applies to the judges of the Court of Appeals. See [Idaho Code § 1-2404](#).

The Court of Appeals has jurisdiction to hear all cases assigned to it by the Supreme Court. However, the Supreme Court may not assign cases involving claims against any state, extraordinary writs, appeals from the imposition of capital punishment nor appeals from the Industrial Commission or Public Utilities Commission. While an appellant may petition the Supreme Court to rehear a Court of Appeals decision, the Supreme Court is not required to grant such a petition.

District Judges

Idaho has 42 District Court judges, who sit in the 44 counties. They are Idaho attorneys, elected by nonpartisan ballot within the judicial district in which they serve. A District Court judge is elected for a four-year term by the electorate of the judicial district in which the judge serves. District judges stand for election within their judicial districts. A qualified lawyer may challenge a district judge during the May primary election, on a non-partisan, contested ballot. If a vacancy occurs, the same selection procedures described above apply.

District judges have jurisdiction over civil and criminal cases. They decide cases involving the most serious criminal cases (felonies), and typically hear civil cases where the amount of money in dispute exceeds \$10,000. Civil damage actions usually involve personal injury such as automobile negligence cases and contractual disputes between parties. District judges also hear post-conviction relief actions in which a defendant is challenging his or her conviction or incarceration. District judges also hear appeals of decisions made by magistrate judges.

Magistrate Judges

Idaho has 87 magistrate judges, with at least one judge resident within each county. See [Idaho Code § 1-2201](#). A District Magistrates Commission exists in each judicial district, comprised of county commissioners, mayor, citizens, lawyers, a magistrate judge, and chaired by the administrative district judge. To fill a vacancy, the District Magistrates Commission interviews eligible applicants and makes an appointment to an initial 18-month term of office. A qualifications questionnaire is mailed to all attorneys, with evaluations compiled for use by the District Magistrates Commission. Just prior to the conclusion of the first 18-months, the Magistrates Commission evaluates the performance of the new magistrate judge and may determine



that the judge has successfully completed the probationary period, or they may extend the probationary period, and/or can remove the magistrate judge from office. Magistrate judges stand for a retention election every four years on a non-partisan judicial ballot, where the registered voters are asked whether they wish to retain the magistrate judge in office, or not.

Magistrate judges hear less serious criminal matters known as misdemeanors, and can handle civil cases where the amount of money involved does not exceed \$10,000. Magistrate judges also hold preliminary hearings to determine whether to bind over and send a defendant to District Court for trial on a felony charge. Magistrate judges may also issue warrants of arrest and search warrants. Magistrate judges hear habeas corpus proceedings, probate cases (wills and estates), Juvenile Correction Act cases and domestic relations cases (such as divorce, child support and child custody). Magistrate judges also hear small claims cases where less than \$5,000 is in controversy. These cases are heard informally without attorneys being present, or without the involvement of juries.

Senior Judges

Senior judges are those who have retired from full-time work. They provide an important service to the state's judicial branch by continuing to make themselves available to hear cases on an as needed basis. By employing senior judges, the state court system has additional flexibility in managing caseload increases in a cost effective manner.

Access to Jurors

At the conclusion of all jury trials, judges instruct jurors on a number of matters. Among other things, these instructions guide jurors as to whether or not they choose to respond to any media inquiries. The instructions follow:

"You have now completed your duties as jurors in this case, and are discharged with the sincere thanks of this court. The question may arise as to whether you may discuss this case with the attorneys or with anyone else. For your guidance, the court instructs you that whether you talk to the attorneys or to anyone else is entirely your own decision. It is proper for you to discuss this case if you wish to, but you are not required to do so and you may choose not to discuss the case with anyone at all. If you choose to talk to someone about this case, you may tell them as much or as little as you like about your deliberations or the facts that influenced your decisions. If anyone persists in discussing the case over your objections or becomes critical of your service, either before or after discussion has begun, you may report it to me."

Other Resources

Law Library Information

Location:322 E. Front Street, Suite 560
Boise, Idaho 83702

Hours:Monday - Friday 8:00 am - 5:00 pm
Closed Weekends and Legal Holidays

Web site:<http://www.isll.idaho.gov>

Phone:208-364-4555

FAX:208-334-2467

What to do if Access to Court Proceedings is Denied

The U.S. Supreme Court has held that a judge considering closing proceeding must follow certain procedures to ensure that closing the proceeding will not infringe upon First Amendment rights. See *Press-Enterprise v. Superior Ct.*, 464 U.S. 501 (1984).

The judge must hold a hearing on the need for closure, and allow the media and others to argue against closure. A presumption of disclosure under the First Amendment right of access requires courts to grant access unless confidentiality is "necessitated by a compelling governmental interest, and is narrowly tailored to serve that interest." Thus, if a compelling interest is at stake (e.g., criminal defendant's right to a fair trial) the judge must consider alternatives to court closure (e.g., change of venue, sequestering the jury, postponing the trial until the effects of publicity have diminished). A judge who determines that no alternative will work must also determine that closure will protect the party's interest and must tailor the closure order to protect that interest without unduly restricting public access. Finally, the judge must present written findings supporting the closure decision in order to allow appellate review.

If a judge orders the media to leave a hearing that has so far been public:

- If a news organization is prepared to send a lawyer to argue against closure, politely ask the judge for permission to speak for a moment.
- If allowed, tell the judge that the news organization objects to the closure and would like an opportunity to argue against it. Ask for a brief recess so that the organization's lawyer may come to court to argue the case and ask that an objection be made part of the court record.



- If not allowed to address the court, do not refuse to leave or shout an objection. Leave the courtroom and write a brief note to the judge. Explain that the news organization wants to oppose the closure and that the editor or lawyer will be contacted immediately. Ask a court officer to give the note to the judge and get in touch with superiors immediately.

If a closed court proceeding is in progress or has already taken place, try to determine:

- Who sought closure and on what grounds
- The nature of the proceeding (i.e., criminal, civil, pre-trial, trial, etc.)
- Whether a hearing was held on the closure order and, if so, what findings the judge made justifying the closed proceeding
- Whether the proceeding is still going on
- Consult an editor about challenging the order; a challenge may be as simple as requesting a meeting with the judge to point out the procedural requirements mandated by the Supreme Court. Be sure to ask for access to future proceedings and transcripts of past proceedings (note: be prepared to pay for past transcripts). If a judge does not agree to resolve the issue informally, a motion to intervene in the matter can be filed for purposes of formally challenging the closure order (including a possible appeal).

Media and the Courts Conflict Resolution Panel

A blue-ribbon Media and the Courts Conflict Resolution Panel can be called upon by any member of the media or any judge at any time to offer advice or serve as a resource to resolve significant conflict that might arise among the media and the Idaho courts. This panel has been established by the Media/Courts Committee to help sort out significant conflicts of courtroom coverage on a case-by-case basis. The panel can speak with or mediate on behalf of any lawyer, judge or journalist facing a "free press/fair trial issue." The Conflict Resolution Panel can readily suggest ways that fair trial concerns can be addressed while preserving public access to the courts.

The following people have agreed to serve on the Conflict Resolution Panel:

Allen Derr
200 N. 3rd Street, Suite 8
Boise ID 83702
Phone: 208-342-2674
Fax: 208-342-2676
Email: derrallen@aol.com

Joan Cartan-Hansen
1455 N Orchard
Boise ID 83706
Phone: 208-373-7220
Fax: 208-373-7245
Email: Joan.Cartan-Hansen@idahoptv.org

Fred Hoopes
428 Park Avenue
Idaho Falls, ID 83405
Phone: 208-523-4445
Fax: 208-523-4474
Email: fredhoopes@hopkinsroden.com

Deb Kristensen
601 W. Bannock Street
Boise ID 83701
Phone: 208-388-1200
Fax: 208-388-1300
Email: dkk@givenspursley.com

Ron Schilling
P.O. Box 1251
Meridian ID 83680-1251
Phone: 208-898-0338
Fax: 208-898-9051
Email: adresolutions@cablone.net

Linda Copple Trout
P.O. Box 83720
Boise, ID 83720-0101
Phone: 208-334-2246
Fax: 208-947-7590
Email: ltrout@idcourts.net

To convene the Conflict Resolution Panel, you may contact any one of the members, or you may contact:

Patti Tobias
Administrative Director of the Courts
P.O. Box 83720
Boise, ID 83720-0101
Phone: 208-334-2246
Fax: 208-947-7590
Email: ptobias@idcourts.net

Betsy Russell
Idaho Press Club
2601 Hillway Drive
Boise, ID 83702
Phone: 208-336-2854
Fax: 208-336-0021
Email: bzrussell@gmail.com



Complaints Against Judges

The Idaho Judicial Council is responsible for managing complaints of judicial misconduct against judges. The council is comprised of three citizen members, two attorneys, one district judge and the Chief Justice of the Supreme Court.

Judicial misconduct is any violation of the [Code of Judicial Conduct](#), which may include but is not limited to the following:

- Failure to perform duties impartially and diligently
- Failure to dispose promptly of the business of the court
- Conflict of interest
- Conduct prejudicial to the administration of justice that brings the office into disrepute

A complaint must be filed in writing. It may be in letter format or the complaint form, which can be accessed at <http://www.judicialcouncil.idaho.gov/discplin.htm> and filled out. The complaint must identify the judge and the specifics of the conduct or action believed to be improper. Names and addresses of witnesses should be included, as well as any documents or correspondence that substantiate the allegations. The letter or complaint form must be verified and notarized.

By statute, complaints and the identity of complainants are confidential. If the council conducts a preliminary investigation, the judge will receive a copy of the complaint. When a council recommendation is filed with the Supreme Court, it becomes a public document, which can be reviewed in the Supreme Court clerk's office. The Supreme Court has disciplinary authority, and reviews any recommendation from the council for censure, suspension, removal of a judge for misconduct, or retirement of a judge for disability seriously interfering with the performance of judicial duties. The Supreme Court is not required to follow the council's recommendations.

When a complaint is received by the judicial council, it is reviewed to determine that it is within the council's jurisdiction. A confidential inquiry may be made or preliminary investigation conducted to verify allegations. The council carefully reviews all allegations. If an allegation involves legal issues, or for some other reason is not within the council's jurisdiction, it will be dismissed. If the council believes it has sufficient evidence to proceed, it will require the filing of a formal complaint and hold a fact-finding hearing. At such a hearing, the judge has a right to defend against the charges and be represented by counsel. Witnesses and documents may be subpoenaed. If no violation is found, the complaint will be dismissed. If a violation of the Code of Judicial Conduct is found, or there is evidence of a

disability that is seriously interfering with the judge's ability to perform judicial duties, the council may take the following action:

- Recommend a remedial course of action, and require the judge's acquiescence
- Require a personal appearance before the council
- Recommend that the Supreme Court retire, discipline, or remove the judge

For further information regarding the judicial council, go to the judicial council's Web site at <http://www.judicialcouncil.idaho.gov> where a "Judicial Complaint Form," the "Idaho Code of Judicial Conduct," the status of judicial vacancies, the rules of procedure, members of the Idaho Judicial Council, and the council's current "Annual Report" can be found.

Complaints Against Attorneys

The [Idaho State Bar](#) is responsible for managing complaints against Idaho attorneys.

If a person believes an attorney has acted unethically, he or she [may file a complaint against the attorney](#) with the bar counsel's office of the Idaho State Bar. The bar counsel's office reviews the complaint to determine if the attorney has violated the Idaho Rules of Professional Conduct and disciplinary action needs to be initiated.

The Idaho State Bar is the administrative agency of the judicial branch of the State of Idaho. The membership of the Idaho State Bar consists of all attorneys licensed to practice law in Idaho. The bar counsel is the disciplinary counsel to the Idaho State Bar. A complaint against an attorney must be submitted in writing, unless prior approval is received in special circumstances. Attorney misconduct is any violation of the Idaho State Bar Rules of Professional Conduct, which may include, but is not limited to, the following:

- Improper use of trust account money
- Conflict of interest, breach of confidentiality
- Neglect, lack of communication, etc.

When a complaint is received, it is reviewed by the bar counsel to determine if a violation of the Rules of Professional Conduct has occurred. The bar counsel informs the complainant that either: (1) The complaint does not appear to involve unethical conduct; (2) More information is needed; or (3) An investigation has been initiated. For further information, call the Idaho State Bar and Idaho Law Foundation, Inc. at (208) 334-4500, or go to <http://www2.state.id.us/isb/bc/discipline.htm>.



Response to Criticism of Judges or the Courts

The Idaho State Bar has developed a "Program for the Appropriate Response to Criticism of Judges and Courts" that carefully indicates situations in which the bar will respond to criticism of a judge, the courts or the justice system in the news media. The [policy statement](#) outlines referral and investigation procedures by the bar, guidelines for determining when the bar should respond, and the form that responses by the bar usually follow.

Since it is generally undesirable for a judge to respond to criticism of his or her own actions in the news media, the bar established the policy so that the effectiveness of the administration of justice could be maintained through fair investigation of critical statements and appropriate responses.

Finding A Subject Matter Expert

For accuracy in their reporting, journalists covering the courts often need insight and explanation of legal issues from attorneys who are experts in specific areas of the law. The April issue of the Idaho State Bar publication "The Advocate" is the "Annual DeskBook Directory." The DeskBook is a great source of information about the legal community. Non-members of the Idaho State Bar pay \$40 for a copy of the publication. The [Idaho State Bar Web site](#) has access to order forms for the DeskBook Directory.

The Idaho State Bar also provides a call-in lawyer referral service. The service is designed to help members of the Idaho public find an attorney in a specific field of law in an area of the state convenient to them. The service does not give out lists of attorneys, and it only provides one referral at a time. A referral to a lawyer is free to the caller. To contact the Lawyer Referral Service, call (208) 334-4500 between 8 AM and 4 PM Mountain Time.

A Short List of Internet Legal Resources

The Idaho Supreme Court home page, located at: <http://www.isc.idaho.gov> links to a variety of sources of information, including an overview of the courts, state and federal appellate opinions and information on appeals pending in state courts.

The Idaho Court Rules at <http://www.isc.idaho.gov/rulestxt.htm> provide a search engine for the Idaho Rules of Civil Procedure, Rules of Evidence, Criminal Rules and Appellate Rules, among others.

The Idaho Statutes, Constitution and Legislative Session Data Internet Server Home Page, <http://www3.state.id.us/> provides a link to each category of documents with a search feature at the bottom of each accessed section.

The On-Line Catalog of the Idaho State Law Library at <http://www.isll.idaho.gov/> allows an author / title / subject / word search of the holdings of the law library.

The Idaho State Bar and Idaho Law Foundation home page at <http://www2.state.id.us/isb> includes information about Idaho law-related events.

The Idaho Attorney Roster at http://www2.state.id.us/isb/mem/attorney_roster.asp is a searchable index of the addresses, e-mail addresses, phone numbers, and fax numbers of all attorneys licensed to practice in Idaho.

The Idaho Attorney General's "Resource Links" page, <http://www2.state.id.us/ag> links to a variety of sources of state and federal laws and regulations.

The National Center for State Courts: <http://stage.ncsc.org/>

The Idaho Press Club: <http://www.idahopressclub.org>

The Thomas home page, <http://thomas.loc.gov> allows monitoring legislation in Congress, access to the Congressional Record, the House and Senate Committee Web pages and links to the Library of Congress, among other sites.

The Library of Congress' State and Local Government page, <http://www.loc.gov/rr/news/stategov/stategov.html> links to the constitutions and laws of any states, state maps, and a variety of other resources.

The Martindale-Hubble Lawyer Locator page, <http://www.martindale.com/> allows a search for attorneys listed in the Martindale-Hubble directory, a nationwide list.

The National Law Journal page, <http://www.nlj.com>, is an online edition of the current weekly legal publication covering legal news from around the country.

LAW.COM, <http://www.law.com> links to a variety of legal resources, including a dictionary of legal terms.



Telephone and Fax Directory to County Courthosues

For a listing of telephone and fax numbers for Idaho county courthouses see <http://www.isc.idaho.gov/directry.pdf> or <http://www.isc.idaho.gov/courthse.htm>.

Sample Request Form: Court Records

The form below is for sample purposes only. The actual form is available at <http://www.isc.idaho.gov/forms.htm>. It should be downloaded and filled out. It should then be emailed or faxed to the appropriate court for fulfillment.

COURT RECORDS REQUEST FORM

PERSON REQUESTING RECORDS _____

ADDRESS _____

PHONE _____ FAX _____ CELL PHONE _____

RECORD REQUESTED OF (COURT) _____

CASE NUMBER _____

CASE NAME _____

SPECIFIC DOCUMENTS REQUESTED (IF NONE LISTED, ENTIRE FILE IS REQUESTED)

SAMPLE

SIGNED:

DATE:



Sample Request Form: Cameras in the Courtroom

The Idaho Supreme Court has adopted Idaho Court Administrative Rule 45 and Idaho Court Administrative Rule 46 for the use of cameras and recording equipment in the courtroom. The presiding judge authorizes and may revoke the use of cameras and other recording equipment at any time without prior notice. The judge's decision cannot be appealed.

Approval to photograph or video, audio record and/or broadcast a court proceeding must be obtained in advance from the presiding judge. This Sample request form is for reference only. A form requesting permission to photograph proceedings, video record and/or broadcast a proceeding can be found online at <http://www.isc.idaho.gov/mguide/Cameras-NewForm-03-09.pdf>.

*** SAMPLE FORM ***

Request for Approval and Judge's Proposed Order

Request to obtain approval to video record, broadcast, or photograph a court proceeding.
 Directions: Complete the form, and present both the signed Request for Approval and proposed Order to the presiding judge's office.

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF _____

_____)	
PLAINTIFF(S))	
)	
)	REQUEST TO OBTAIN
)	APPROVAL TO VIDEO
V.)	RECORD, BROADCAST
)	OR
)	PHOTOGRAPH A COURT
_____)	PROCEEDING
DEFENDANT(S))	

I hereby request approval to:
 video record broadcast photograph the following court proceeding:
 Case No.: _____
 Date: _____
 Time: _____
 Location: _____
 Presiding Judge: _____

I have read Rule 45 of the Idaho Court Administrative Rules permitting cameras in the courtroom, and will comply in all respects with the provisions of that rule, and will also make certain that all other persons from my organization participating in video or audio recording or broadcasting or photographing of the court proceedings have read Rule 45 of the Idaho Court Administrative Rules and will comply in all respects with the provisions of that rule.

 Print Name

 Signature

 News Organization Represented Phone Number

 Date

REQUEST TO OBTAIN APPROVAL TO VIDEO RECORD,
 BROADCAST, OR PHOTOGRAPH A COURT PROCEEDING



The Media Guide to the Idaho Courts

***** SAMPLE FORM *****

ORDER

THE COURT, having considered the above Request for Approval under Rule 45 of the Idaho Court Administrative Rules, hereby orders that permission to video record the above hearing is:

GRANTED under the following restrictions in addition to those set forth in Rule 45 of the Idaho Court Administrative Rules:

DENIED.

THE COURT, having considered the above Request for Approval under Rule 45 of the Idaho Court Administrative Rules, hereby orders that permission to broadcast the above hearing is:

GRANTED under the following restrictions in addition to those set forth in Rule 45 of the Idaho Court Administrative Rules:

DENIED.

THE COURT, having considered the above Request for Approval under Rule 45 of the Idaho Court Administrative Rules, hereby orders that permission to photograph the above hearing is:

GRANTED under the following restrictions in addition to those set forth in Rule 45 of the Idaho Court Administrative Rules:

DENIED.

All images and audio recordings captured in the courtroom, whether before, during, or after the actual court proceedings, by any pool photographer or video and broadcast camera operator shall be shared with other media organizations as required by Rule 45 of the Idaho Court Administrative Rules.

DATED this _____ day of _____, _____

Justice / Judge



Understanding Legal Citations

All reported court decisions may be found in law books called reporters. The reporters have two main divisions: Federal and State. Federal reporters include decisions from the U.S. Supreme Court, the Federal Circuit Courts, the Federal District Courts and the Bankruptcy Courts.

U.S. Supreme Court decisions are reported in three different reporters: U.S. Reports, Supreme Court Reporter and Lawyers' Edition (every reported decision may be found in each of these reporters). The U.S. Circuit Courts' decisions are reported in the Federal Reporter. The U.S. District Courts' decisions are reported in the Federal Supplement and in the Federal Rules Decisions. U.S. Bankruptcy decisions are reported in the Bankruptcy Reporter.

State appellate decisions that are reported can be found in the National Reporter System. This system divides the United States into seven regions. A map of the National Reporter System can be found at <http://lawschool.westlaw.com/federalcourt/NationalReporterPage.asp>.

Decisions from 48 states are reported in these regional reporters California and New York decisions are only reported in their own state reporters. Some states, including Idaho, have their decisions reported in regional and state reporters.

Every reported decision will have a citation. This citation is used to help one find the case. The common citation format is as follows: volume, reporter and series, page number.

For instance, "985 P.2d 1137" means:

- 985 refers to the volume number found on the spine of the book
- P.2d refers to the name of the reporter and series, in this case, the "Pacific Reporter, series 2d" also found on the spine of the book
- 1137 refers to the page number

The federal reporters have the following abbreviations and reporters:

Abbreviation	Reporter
U.S.	U.S. Reports
S.Ct	Supreme Court Reporter
L.Ed	Lawyers' Edition
F., F.2d	Federal Reporter
F.Supp., F.Supp.2d	Federal Supplement
F.R.D.	Federal Rules Decisions

Glossary of Legal Jargon

a.l.s. (administrative license suspension): under Idaho Code [§ 18-8002A](#), a person charged with driving under the influence of alcohol or a controlled substance (see below) may have his or her driver's license automatically suspended in a civil proceeding separate from any criminal prosecution. See "Administrative License Suspension" in the Glossary of Legal Terms.

d.u.i. (driving under the influence): operating a motor vehicle while under the influence of alcohol or a controlled substance. In Idaho, it is unlawful to operate a vehicle with an alcohol concentration of .08 or above, unless the operator is under 21, when the permissible alcohol concentration level is exceeded at .02.

I and I (lewd and lascivious conduct): the most serious form of child sexual abuse, prohibited by Idaho Code [§ 18-1508](#), which provides for a sentence of up to life imprisonment for a convicted offender.

noticed up: a process by which one party in a civil or criminal case provides notice to the other party of the time and date of a hearing on a matter which the case involves.

o.s.c. (order to show cause): an order issued by a court, requiring a party to show cause, at an o.s.c. hearing, why that party should not be required to do an act or refrain from doing an act.

Prelim (preliminary hearing): shorthand for preliminary hearing, see definition in the Glossary of Legal Terms.

p.c. (probable cause): sufficient reason based upon known facts to believe a crime has been committed or that certain property is connected with a crime. See "probable cause" in the Glossary of Legal Terms.

p.c.r. (post conviction relief): following a conviction, an application for relief of the judgment and/or sentence. See [Idaho Criminal Rule 57](#) and Idaho Code [§ 19-4901](#)

p.v. (probation violation): An act of violating probation which will result in a p.v. hearing. See "probation violation" in the Glossary of Legal Terms.

Rider: also known as a "180-day rider," this mechanism allows a judge to retain jurisdiction over someone who has been convicted in order to send that individual to a correctional institution (usually at the Department of Correction facility at Cottonwood) for evaluation--this process typically lasts 180 days. At the end of that time, the prisoner is returned to the



court where his/her progress is evaluated to determine whether the prisoner should be placed on probation or required to serve out the sentence originally imposed. See “retained jurisdiction” in the Glossary of Legal Terms.

Rule 35: a reference to Idaho Criminal Rule 35, a provision that allows a court to reduce a sentence within 120 days after the filing of a judgment of conviction or within 120 days after the court releases retained jurisdiction. Under this rule, the court may also reduce a sentence upon revocation of probation or upon motion made within fourteen (14) days after the filing of the order revoking probation. A defendant may file no more than one motion seeking a reduction of sentence under this Rule.

Withheld: meaning “withheld judgment,” this is a criminal disposition in which a judge withholds the judgment of conviction upon conditions deemed appropriate. If the defendant successfully completes the conditions as outlined by the judge, the judge will then dismiss the case resulting in the defendant having a clean record.

Glossary of Legal Terms

abstract of record: a complete history in short, abbreviated form of the case as found in the record.

administrative license suspension(ALS): a law enforcement officer may seize the driver’s license of an individual believed to be driving under the influence. If the person’s test results show an alcohol concentration higher than the legal limit or the presence of drugs or other intoxicating substances. That individual has seven days after receiving the notice of suspension to petition the court to challenge the suspension.

alford plea: a plea entered by a defendant while maintaining his/her innocence in order to gain the benefit of a plea agreement.

alternative dispute resolution (ADR): a process by which an independent party is asked to review the issues in dispute between two other parties in hopes of bringing the dispute to a resolution before the court is required to conduct a formal hearing or trial. This process may occur prior to the filing of the civil action or may occur after the case is filed. A judge may choose to refer a case for alternative dispute resolution.

amicus curiae: literally, “friend of the court;” one who interposes and volunteers information or argument upon some matter of law.

arraignment: the defendant is advised of the charge against

him or her and the rights he or she has. Bail is set. If the charge is a misdemeanor the defendant enters a plea in the Magistrate’s Division. If the charge is a felony, the defendant appears first in the Magistrate’s Division, but the defendant cannot enter a plea-- the defendant determines whether he or she desires a preliminary hearing. If the defendant is bound over on a felony to answer the charge in District Court, the defendant enters a plea in the District Court.

arrest of judgment: the act of staying the effect of a judgment already entered.

attachment: a remedy by which a plaintiff is enabled to acquire possession of property of a defendant for satisfaction of judgment which a plaintiff may obtain in the future.

bail bond: an obligation signed by the accused, with sureties, to secure his presence in court. If the defendant fails to appear, the bondsman has a period of time to deliver the defendant to the court. If this is not done, the bond is forfeited.

bail bond forfeiture: the process in which the court requires the surety to pay over the amount of bail.

bail bond exoneration: a process by which the bond money paid to the court to ensure an individual’s appearance in court is returned to that individual, typically when the case is concluded.

bailiff: a court attendant whose duties are to keep order in the courtroom and to have custody of the jury.

banc-(bangk) bench: the place where a court permanently or regularly sits. A “sitting en banc” is a hearing with all the judges of a court, as distinguished from the sitting of a single judge.

bench warrant: process issued by the court itself, or “from the bench,” for the attachment or arrest of a person.

binding instruction: one in which the jury is told if they find certain conditions to be true, they must find for the plaintiff, or defendant, as the case may be.

burden of proof: the necessity or duty of affirmatively proving a fact or facts in dispute.

caption: the caption of a pleading, or other papers connected with a case in court, is the heading or introductory clause which shows the names of the parties, name of the court, number of the case, etc.

certiorari-(ser’shi-o-ra’ri): an original writ commanding judges or officers of inferior courts to certify or to return records of



proceedings in a cause for judicial review. Proceedings for a writ of certiorari are not applicable in the Idaho judicial system, except as the United States Supreme Court may grant certiorari on a case decided by the Idaho Supreme Court.

change of venue: the removal of a case begun in one county or district to another, typically done for the convenience of the parties, or when the news coverage of the circumstances associated with a case make it difficult to find a jury that can put aside what they have heard about the case and judge it fairly on the evidence presented in court.

Child Protective Act: (commonly referred to as CPA) the statutory law dealing with the protection of neglected or abused children.

codicil (kod'i-sil): a supplement or addition to a will.
common law: the body of law arising from decisions made by the courts. Also called "case law".

common law: the body of law arising from decisions made by the courts. Also called "case law."

concurrent sentence: sentences for more than one crime in which the time of each is to be served at the same time, rather than successively.

consecutive sentence: a sentence, additional to others, imposed for another offense, one sentence to begin at the expiration of another.

contempt of court: any act calculated to embarrass, hinder, or obstruct a court in the administration of justice, or a willful violation of a court order.

corroborating evidence: evidence supplementary to that already given and tending to strengthen or confirm it.

counterclaim: a claim presented by a defendant against the plaintiff.

de novo (de no'vo): anew, afresh. A "trial de novo" is the retrial of a case.

declaratory judgment: one which declares the rights of the parties or expresses the opinion of the court on a question of law, without ordering anything to be done.

default: a "default" in an action of law occurs when a party omits to plead within the time allowed or fails to appear at the trial.

default judgment: the entry of a judgment against a defendant

in a civil case in his/her absence or in the event they have failed to complete the filing of required documents within a specified time.

directed verdict: an instruction by the judge to the jury to return a specific verdict.

discovery: a process in which one party to an action may be informed as to facts known by other parties or witnesses. In Idaho, the usual modes of discovery are depositions, interrogatories, requests for production of documents, and requests for admission.

dismissal without prejudice: permits the plaintiff to sue again on the same cause of action, while dismissal "with prejudice" bars the right to bring or maintain an action on the same claim or cause.

domicile: that place where a person has his true and permanent home. A person may have several residences, but only one domicile.

eminent domain: the power to take private property for public use by condemnation.

en banc: on the bench; all judges of the court sitting together to hear a cause.

enjoin: to require a person, by writ of injunction from a court to perform, or to abstain from or stop some act.

equitable action: an action which may be brought for the purpose of restraining the threatened infliction of wrongs or injuries, and the prevention of threatened illegal action.

escheat (es-cheet): the right of the state to an estate to which no one is able to make a valid claim.

estoppel (es-top'el): a person's own act, or acceptance of facts, which preclude that person from later making claims to the contrary.

et al.: an abbreviation for et alii, meaning "and others."

et seq.: an abbreviation of et sequentes, or et sequentia, meaning "and the following."

ex parte (ex par'te): by or for one party; done for, in behalf of, or on the application of, one party only.

ex post facto (ex post fak'to): after the fact; an act or fact occurring after some previous act or fact, but which relates back thereto. In criminal law, an ex post facto law is one that imposes



or increases punishment for an act that was committed before the law was passed; such a law is forbidden by the U.S. and Idaho Constitutions.

fugitive warrant: a judge in one state may issue a warrant for the arrest of an individual being held in custody in another state. The fugitive may then be returned to the state where he is charged through the process of extradition.

garnishment: a proceeding whereby property, money or credits of a debtor, in possession of another (the garnishee), are applied to the debts of the debtor. Most often, it involved taking part of the wages of a debtor to satisfy a debt.

guardian ad litem (ad li'tum): a person appointed by a court to look after the interests of a child or incompetent whose property or rights are involved in litigation.

habeas corpus (ha'be-as kor' pus): "you have the body." The name given a variety of writs whose object is to bring a person before a court or judge. In most common usage, it is directed to the official or person detaining another, commanding him to produce the body of the prisoner or person detained so the court may determine if such person has been denied liberty without due process of law.

harmless error: in appellate practice, an error committed by a lower court during a trial, but not prejudicial to the rights of the party or the outcome of the case and for which the court will not reverse the judgment.

hearsay: evidence of a statement made out of court and offered to prove the truth of the statement, e.g., "I didn't see the accident myself, but my friend told me the light was red." Hearsay is one of the more complicated areas of the law of evidence with many qualifications and exceptions.

holographic will: a testamentary instrument, will, in the handwriting of the testator. Idaho allows holographic wills; not all states do. The technical requirements for a valid holographic vary from state to state.

hung jury: in a criminal trial, a hopelessly deadlocked jury in which neither side is able to prevail.

impeachment of witness: an attack on the credibility of a witness by the testimony of other witnesses or evidence.

in camera (in kam'e-ra): in chambers; in private.

indeterminate sentence: an indefinite sentence of "not to exceed" so many years, the exact term to be served being afterwards determined by parole authorities within the maximum limits set by the court or by statute.

indictment: an accusation in writing found and presented by a grand jury, charging that a person has committed a crime.

information: an accusation for a felony criminal offense which is presented by a prosecuting attorney instead of a grand jury.

Infraction: a minor offense that is not criminal in nature but rather is a civil public offense punishable by a fine only. Examples of infractions include: speeding, failure to fasten a safety belt.

injunction: a mandatory or prohibitive writ issued by a court.

instruction: a direction given by the judge to the jury concerning the law of the case.

interlocutory: provisional; temporary; not final; refers to orders and decrees of a court.

interrogatories: written questions propounded by one party and served on an adversary, who must provide written answers under oath.

in testate: one who dies without leaving a will.

ISTARS: an acronym for Idaho Statewide Trial Court Automated Record System. ISTARS is a computer system used by Idaho's trial courts to assist in the processing of all cases filed at the trial court level.

jurisdiction: the power of a court to hear and determine a given class of cases; the power to act over a particular defendant. Referred to as subject matter jurisdiction (jurisdiction over the subject of the case) or personal jurisdiction (jurisdiction over the parties).

jury, grand: a jury of inquiry whose duty is to receive complaints and accusations in criminal cases, hear the evidence and return an indictment when they are satisfied that there is a probable cause that a crime was committed and the defendant committed it.

jury, petit: the ordinary jury of twelve (or fewer) persons for the trial of a civil or criminal case. So called to distinguish it from the grand jury.

Juvenile Corrections Act: (commonly referred to as the JCA)- the statutory law dealing with children charged with violations of the law other than traffic offenses.

libel: a method of defamation expressed by print, writing, pictures, or signs. In its most general sense, any publication that



is injurious to the reputation of another.

mandamus: the name of a writ which issues from a court commanding the performance of a particular act.

manslaughter: the unlawful killing of another without malice; may be either voluntary, upon a sudden impulse, or involuntary in the commission of some unlawful act.

misdemeanor: offenses less than felonies; generally those punishable by fine or imprisonment in a county jail, rather than in the state prison.

mistrial: an erroneous or invalid trial, a trial which cannot stand in law because of lack of jurisdiction, wrong drawing of jurors, deadlocked jury or failure of some other fundamental requisite.

moot: unsettled; undecided. A moot point is one not settled by judicial decisions.

next friend: one acting for the benefit of an infant or other person without being regularly appointed as guardian.

no bill: this phrase, endorsed by a grand jury on the indictment, is equivalent to "not found" or "not a true bill." It means that in the opinion of the jury, evidence was insufficient to warrant the return of a formal charge.

of counsel: a phrase commonly applied to counsel employed to assist in the preparation or management of the case, or its presentation on appeal, but who is not the principal attorney of record.

order to show cause hearing: a hearing in which a person is ordered to court to show cause why they did not comply with the order of the court.

peremptory challenge: the challenge which the parties may use to reject a certain number of prospective jurors without assigning any reason.

petition: in the context of juvenile case processing, the petition is the formal document filed with the court outlining the charges against the juvenile.

pleading: the process by which the parties in a suit or action alternately present written statements of their contentions, to narrow the field of controversy.

post conviction relief: a court hearing in which a defendant convicted of a crime petitions the court set aside the conviction or modify or reduce the sentence imposed by court.

power of attorney: an instrument authorizing another to act as

one's agent or attorney.

prejudicial error: synonymous with "reversible error"; an error which warrants the appellate court to reverse the judgment before it.

preliminary hearing: a hearing held in the Magistrate's Division on a felony charge to determine if the defendant should be bound over to the District Court to stand trial. If the magistrate determines that there is probable cause to believe that an offense has been committed and that the defendant committed the offense, the case is then presented to the District Court.

pretrial hearing: a court hearing that occurs before trial in which the judge sits down with the parties to the matter to review issues associated with the case. A hearing that attempts to ensure that all proceedings and documents have been completed and efforts to resolve the matter have been exhausted.

preponderance of evidence: greater weight of evidence, or evidence which is more credible and convincing to the mind; not the greater number of witnesses.

probable cause: The amount of information needed to justify the issuance of an arrest warrant or search warrant, or to allow an officer to make an arrest without a warrant, or to permit a defendant to be bound over to the District Court on a felony charge at a preliminary hearing. It is defined as facts and circumstances sufficient to allow a prudent person to believe that a person committed a crime, or that contraband or evidence of a crime is present at a particular location.

probable cause hearing: a hearing to determine if there is sufficient evidence to warrant the filing of a charge or to bind a defendant over for trial.

probate: the act or process of proving a will, or in general the legal process of settlement of a decedent's estate through the court process.

probation: a sentence whereby a defendant is permitted to avoid serving the full sentence under specified conditions.

probation violation: a person who has been found guilty or has admitted to committing a crime is often placed on probation by a judge. Typically, there are conditions attached to probation that if not fulfilled or violated by the defendant, may result in probation being revoked.

pro se: representing himself or herself.

proximate cause: a cause which, in natural or probable



sequence, produced the damage complained of. It need not be the only cause. It is sufficient if it concurs with some other cause acting at the same time, which in combination with it, causes damage.

punitive damages: are damages in excess of those required to compensate the plaintiff for the wrong done which are imposed to punish the defendant because of the particularly wanton or willful character or his or her wrongdoing.

quash: to vacate; to annul or void.

reasonable doubt: an accused person is entitled to acquittal if, in the minds of the jury, his guilt has not been proved beyond a "reasonable doubt"; that state of the minds of jurors in which they cannot say they feel an abiding conviction as to the truth of the charge.

remanded: ordered back to custody, or sent back; e.g., a defendant being remanded to the custody of the sheriff or an appeal being remanded to the lower court.

retained jurisdiction: a judge, after sentencing an individual to a correctional institution may retain jurisdiction over that individual, which typically lasts 180 days. At the end of that time, the prisoner is returned to the court where his/her progress is evaluated to determine whether the prisoner should be placed on probation or required to serve out the sentence originally imposed.

sequestration: holding a jury separate and apart from outside contact.

small claims: known as the "peoples' court," the small claims court handles disputes between people that involve monetary amounts of less than \$5,000. No jury trials are available in small claims nor are attorneys allowed to represent parties in small claims court.

specific performance: a mandatory order in equity. Where damages would be inadequate compensation for the breach of a contract, the contractor will be compelled to perform specifically what he has agreed to do.

stare decisis (sta're de-si'sis): the doctrine that when a court has once laid down a principle of law as applicable to a certain set of facts, it will adhere to that same principle and apply it to future cases where the facts are substantially the same.

statute of limitations: the statutory provisions limiting the amount of time within which a claim must be filed.

stay: a stopping or arresting of a judicial proceeding by order of

the court.

stipulation: an agreement by the opposing parties or attorney pertaining to the proceedings that is binding on the parties to the stipulation.

subpoena: a notice or process served upon a witness to compel the witness to appear and give testimony before a court or agency authorized to issue subpoenas.

subpoena duces tecum: a notice or process by which the court commands a witness to produce certain documents or records.

summons: a court document used to require a person's appearance in Court.

tort: an injury or wrong committed, either with or without force, to the person or property of another.

Tort Claims Act: statutory provisions setting forth the conditions for bringing actions against the state, and other governmental entities and their employees.

trial de novo (de no'vo): a new trial or retrial held in a higher court in which the whole case is heard as if no trial had been held in a lower court.

under advisement: if during the course of a hearing, a question is posed that requires the judge to give more thought or do further research before making a decision, the judge takes the matter under advisement to review the matter and to render a decision.

unlawful detainer: a detention of real estate without the consent of the owner or other person entitled to its possession.

venire-(ve-ni're): technically, a writ summoning persons to court to act as jurors; popularly used as meaning the body of names thus summoned.

venue-(ven'u): the particular county, city or geographical area in which a court with jurisdiction may hear and determine a case.

voir dire-(vwor der): to speak the truth - the process by which potential jurors are questioned to determine if they may serve on a jury.

waiver of speedy trial: State law requires that a defendant be tried within a specified period of time. The U.S. and Idaho Constitutions also provide every defendant with the right to a speedy trial. A defendant may waive that right to allow the proceeding to continue beyond the speedy trial deadline.



with prejudice: The dismissal of an action that prevents further proceedings on the same claim.

withheld judgment: A criminal disposition in which a judge does not impose a judgment of conviction but grants probation and imposes other conditions deemed appropriate. If the defendant successfully completes the conditions as outlined by the judge, the judge will then dismiss the case, resulting in the defendant having a clean record.

without prejudice: a dismissal “without prejudice” allows a new suit to be brought on the same cause of action.

writ: an order issued from a court requiring the performance of a specified act, or giving authority to have it done.

A Note on “Privilege” and Reporting Court Proceedings

It is generally true that news media cannot be successfully sued for publishing (either in print or by broadcasting) what would otherwise be a defamatory statement, even though the statement may have been made maliciously by the speaker or writer, so long as the statement is brought out in the due course of a judicial proceeding, and is reasonably related to that proceeding. Idaho courts recognize that such communications are “privileged” (meaning that they cannot be used as the basis of a defamation or libel suit). A “judicial proceeding” is not restricted to trials, but includes every proceeding of a judicial nature before a court or official clothed with judicial or quasi-judicial power. Reporters who are uncertain about whether this privilege applies to a potentially defamatory statement that they may publish should contact their editors regarding the specific application of the law.

The Media Guide to the Idaho Courts



Public Access Terminals

<i>District</i>	<i>County</i>	<i># of Public Terminals</i>	<i>Location</i>
1	Benewah		Deputy Clerks provide information
1	Bonner	2 terminals	Clerk's Office; Court Assistance Office
1	Boundary	2 terminals	Clerk's Office; Vault
1	Kootenai	2 terminals	Court Records Department
1	Shoshone	1 terminal	Clerk's Office (3rd Floor)
2	Clearwater		Deputy Clerks provide information
2	Idaho	1 terminal	Clerk's Office
2	Latah	2 terminals	Clerk's Office; Court Assistance Office
2	Lewis		Deputy Clerks provide information
2	Nez Perce	1 terminal	Clerk's Office (2nd Floor Main Courthouse)
3	Adams	1 terminal	Public Service Counter - Clerk's Office
3	Canyon	3 terminals	Civil Counter; Criminal Counter; Court Assistance Office
3	Gem	1 terminal	Clerk's Office (2nd Floor)
3	Owyhee		Deputy Clerks provide information
3	Payette	1 terminal	Clerk's Office
3	Washington	1 terminal	Clerk's Office - Main Courthouse
4	Ada	5 terminals	Clerk's Office (Front Street Courthouse)
4	Boise	1 terminal	Clerk's Office
4	Elmore	1 terminal	Waiting area outside Clerk's Office
4	Valley	1 terminal	Clerk's Office
5	Blaine	2 terminals	Clerk's Office; Law Library
5	Camas		Deputy Clerks provide information
5	Cassia	1 terminal	Court Assistance Office
5	Gooding	2 terminals	Magistrate Clerk's Office & Copy Room
5	Jerome	1 terminal	Clerk's Office
5	Lincoln	1 terminal	Courtroom machine available
5	Minidoka	1 terminal	District Court Clerk's Office
5	Twin Falls	3 terminals	Clerk's Office and 2 in Law Library
6	Bannock	1 terminal	Clerk's Office (Room 211)
6	Bear Lake	1 terminal	Magistrate Clerk's Office
6	Caribou	2 terminals	Clerk's Counter; Court Assistance Office
6	Franklin	1 terminal	Clerk's Counter
6	Oneida	1 terminal	Deputy Clerks provide information
6	Power	1 terminal	Court Clerk's Office
7	Bingham	1 terminal	Law Library
7	Bonneville	2 terminals	Law Library
7	Butte		Deputy Clerks provide information
7	Clark	1 terminal	Clerk's Office
7	Custer	1 terminal	Law Library
7	Fremont	1 terminal	Court Assistance Office
7	Jefferson	1 terminal	Clerk's Office
7	Lemhi	1 terminal	Law Library
7	Madison	1 terminal	Clerk's Office
7	Teton	2 terminals	Recorder's Office