



I.R.C.P. 4. Summons

Idaho Rules of Civil Procedure Rule 4. Summons.

(a) Contents; Amendments.

(1) *Contents.* A summons must:

(A) name the court;

(B) state the assigned number of the case;

(C) name the parties;

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

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

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

(G) be directed to the defendant;

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

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

(J) be signed by the clerk; and

(K) bear the court's seal.

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



(3) Forms of Summons.

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

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

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

(b) Issuance; Time for Service.

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

(2) *Time Limit for Service.* If a defendant is not served within 182 days after the complaint is filed, the court, on motion or on its own after 14 days' notice to the plaintiff, must dismiss the action without prejudice against that defendant. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

(c) Service.

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

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

(d) Upon Whom Served.

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

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

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



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

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

(A) Minor.

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

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

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

(B) Incompetent Person.

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

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

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

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

(3) Serving a Corporation, Partnership or Association.

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

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



(C) Agent for Service Unavailable.

(i) When the agent designated for service by a foreign corporation, partnership or association which has qualified in this state by filing with the Secretary of State or a domestic corporation, partnership or association is unavailable, service of the summons and complaint may be made by mailing copies of the summons and complaint by registered or certified mail to the corporation addressed to its registered place of business and to the president or secretary of the corporation at the addresses shown on the most current annual statement filed with the Secretary of State. The service is complete on mailing by registered or certified mail. The person serving the corporation under this subdivision must make a return certificate indicating compliance with this subdivision and attach a receipt of the mailing.

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

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

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

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

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

(C) Additional Service Required by Statute. In all actions brought under specific statutes requiring service on specific individuals or officials, service must be made pursuant to the statute in addition to service as provided in this subdivision (4).

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

(e) Summons – Other Service.

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

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

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



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

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

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

(g) Proving Service.

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

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

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

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

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

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

(F) the party's acknowledged written admission that service of process was received, as provided by subsection 4(d)(5).

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

(Adopted March 1, 2016, effective July 1, 2016; amended September 9, 2016, effective September 9, 2016; amended April 25, 2018, effective July 1, 2018; amended May 14, 2019, effective July 1, 2019.)



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