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IRFLP 204 Summons

Idaho Rules of Family Law Procedure Rule 204. Summons.

(a) **Issuance.** On or after the filing of the petition in a family law action, the moving party 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 moving party for service on the responding party.

(b) **Time Limit for Service.** If a responding party is not served within 182 days after the filing of the petition, the court, on motion or on its own after 14 days' notice to the moving party, must dismiss the action without prejudice against the responding party. But if the moving party shows good cause for the failure to serve, the court must extend the time for service for an appropriate period.

(c) **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 moving party's attorney, or, if unrepresented, the address, phone number, and email address (if any) of the moving party;

(G) be directed to the responding party;

(H) state the time in which the responding party must appear and defend;

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

(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) **Form of Summons.**

(A) **Generally.** The summons must be in substantially the form found in Appendix A.

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

(d) **Service.**

(1) **Personal service.** A copy of the summons must be served with the petition, except when the service is by publication as provided in subsection (f). The moving party 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 18, not a party to the action may serve the summons and petition.

(e) Upon Whom Served.

(1) **Service upon individuals.** An individual, other than a person under age 18 or incompetent person, may be served by doing any of the following:

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

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

(C) delivering a copy of the summons and petition to an agent authorized by appointment or by law to receive service of process.

(2) Serving a Person Under Age 18; Incompetent Person.

(A) Minor.

(i) **Guardian Appointed.** A person less than 18 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 otherwise orders, the minor must also be served. Service must be in the same manner set forth in subsection (e)(1).

(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 upon 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 made 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 upon any of them, then 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. Service must be in the same manner set forth in subsection (e)(1).

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

(3) Serving the State and its Agencies or 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 petition to the attorney general or any deputy attorney general.

(B) **Other Governmental Subdivisions.** To serve any other governmental subdivision, municipal corporation, or quasi-municipal corporation or public board service, service must be made pursuant to the statute in addition to service provided in this subsection.

(4) **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.

(f) 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 subsection (e).



(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) (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 petition 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.

(g) **Territorial Limits of Effective Service.** All process, other than a subpoena under Rule 409, may be served anywhere within territorial limits of the state and, when a statute or rule provides, beyond the territorial limits of the state.

(h) **Providing 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 subsection (h)(1)(A), 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 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;

(D) 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, and 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; or

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

(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 29, 2021, effective July 1, 2021.)

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