

In the Supreme Court of the State of Idaho

IN RE: AMENDMENTS TO IDAHO)
RULES OF CIVIL PROCEDURE (I.R.C.P.)) ORDER
_____)

The Court having received a recommendation to amend the Idaho Civil Rules of Procedure, and the Court being fully informed;

NOW, THEREFORE, IT IS HEREBY ORDERED that the Idaho Rules of Civil Procedure, be and hereby are amended as follows:

1. That Rule 2.2(b)(3) be, and the same is hereby, amended as follows:

Rule 2.2. Computing and extending time.

(b) Extending time.

(3) **Exceptions.** A court must not extend the time to act under Rules 50(b) and ~~(d)~~, 52(b), 59(b), (d), and (e), and 60(b).

2. That Rule 4(g)(1) be, and the same is hereby, amended as follows:

Rule 4. Summons.

(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:

(F) the party's acknowledged written admission that service of process was received, as provided by ~~rule 4(d)(6)~~ subsection 4(d)(5).

3. That Rule 4.1(b)(2) be, and the same is hereby, amended as follows:

Rule 4.1. General or special appearance.

(b) **Motion or special appearance to contest personal jurisdiction.** The following do not constitute a voluntary appearance by a party under this Rule:

- (1) a motion under Rule 12(b)(2), (4) or (5), whether raised before or after judgment;
- (2) a motion under Rule 40(a) or (b) ~~(d)(1) or (2)~~;
- (3) a motion for an extension of time to answer or otherwise appear;

4. That Rule 11.2(b)(1) be, and the same is hereby, amended as follows:

Rule 11.2. Successive applications for orders or writs; Motions for reconsideration.

(b) **Motion for Reconsideration.**

(1) **In General.** A motion to reconsider any order of the trial court entered before final judgment may be made at any time prior to or within 14 days after the entry of a final judgment. A motion to reconsider an order entered after the entry of final judgment must be made within 14 days after entry of the order.

5. That Rule 11.3(c)(1) be, and the same is hereby, amended as follows:

Rule 11.3. Substitution and withdrawal of attorneys.

(c) **Service; Content of order; Stay of action; Dismissal or default judgment.**

(1) **Service; Content of order.** The clerk of the court will serve on all parties, including the party represented by the withdrawing attorney, an order permitting an attorney to withdraw. Service must be in the same manner as provided in Rule ~~77(d)~~ 2.3(b). The order allowing withdrawal must notify the party whose attorney is withdrawing that the party's claims will be subject to dismissal with prejudice or default judgment may be entered against the party if the party does not, within 21 days after service of the order, either appoint another attorney to appear or file notice with the court that the party will be self-represented in the action.

6. That Rule 12(b)(8) and 12(h) be, and the same are hereby, amended as follows:

Rule 12. Defenses and objections: When and how presented; Motion for judgment on the pleadings; Consolidating motions; Waiving defenses; Hearings before trial.

(b) **How to present defenses.** Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim or third party claim, must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

- (1) lack of subject-matter jurisdiction;
- (2) lack of personal jurisdiction;
- (3) improper venue;
- (4) insufficient process;
- (5) insufficient service of process;
- (6) failure to state a claim upon which relief can be granted;
- (7) failure to join a party under Rule 19; and
- (8) another action pending between the same parties for the same cause.

~~A motion asserting any of these defenses must be made before a pleading if~~ If a pleading states a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. ~~No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.~~

(h) **Waiving and Preserving Certain Defenses.**

(1) **When some are waived.** A party waives any defense listed in Rule ~~12~~ subsections (b)(2),(4) and (5) by ~~÷failing to make it by motion before filing a responsive pleading or filing any other motion, except a motion for an extension of time to answer or otherwise appear or a motion to disqualify a judge under Rule 40(a) or (b).~~

(A) ~~omitting it from a motion in the circumstances described in Rule 12(g)(2); or~~

(B) ~~failing to either:~~

~~(i) make it by motion under this rule; or~~

~~(ii) include it in a responsive pleading or in an amendment allowed by Rule 15(a)(1) as a matter of course.~~

7. That Rule 15(c)(1)(C) be, and the same is hereby, amended as follows:

Rule 15. Amended and supplemental pleadings.

(c) Relation back of amendments.

- (1) *When an Amendment Relates Back.* An amendment to a pleading relates back to the date of the original pleading when:
- (A) the law that provides the applicable statute of limitations allows relation back;
 - (B) the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out, or attempted to be set out, in the original pleading; or
 - (C) the amendment changes the party or the naming of the party against whom a claim is asserted, if Rule 15(c)(1)(B) is satisfied and if, within the period provided by Rule ~~4(m)~~ 4(b)(2) for serving the summons and complaint, the party to be brought in by amendment:

8. That Rule 30(c)(1) be, and the same is hereby, amended as follows:

Rule 30. Depositions by oral examination.

(c) Examination and cross-examination; Record of the examination; Objections; Written questions.

(1) **Examination and cross-examination.** The examination and cross-examination of a deponent proceed as they would at trial under Rule 43(~~d~~)(~~b~~) and the Idaho Rules of Evidence. After putting the deponent under oath or affirmation, the officer must record the testimony by the method designated under Rule 30(b)(3)(A). The testimony must be recorded by the officer personally or by a person acting in the presence and under the direction of the officer. If requested by a party the officer must transcribe the testimony at that party's expense.

9. That Rule 37.1(d)(3) be, and the same is hereby, amended as follows:

Rule 37.1. Mediation of Civil Lawsuits.

- (d) **Referral to Mediation.** In its discretion a court may order a case to mediation, as follows:
- (1) upon motion by a party;
 - (2) at any Rule 16 conference;
 - (3) upon consideration of request for trial setting, pursuant to Rule 40~~(b)~~ 16(b), if all parties indicate that mediation would be beneficial; or
 - (4) at any other time upon 7 days' notice to the parties if the court determines mediation is appropriate

10. That Rule 40.1(a)(3) and (4) be, and the same are hereby, amended as follows:

Rule 40.1. Change of Venue

- (a) **Motion for Change of Venue.** A judge may change venue only upon motion by any party.
- (1) **Discretionary.** A judge may grant a change of venue or change the place of trial to another county as provided by statute or when it appears by affidavit or other satisfactory proof that:
 - (A) there is reason to believe that an impartial trial cannot be had in the county in which the action is filed, or
 - (B) the convenience of witnesses and the ends of justice would be promoted by the change.
 - (2) **Mandatory.** The judge must change the venue of a trial when it appears by affidavit or other satisfactory proof that the county designated in the complaint is not the proper county, which motion must be made no later than 14 days after the party files a responsive pleading.
 - (3) **Objection to Change of Venue.** Upon a motion for change of venue under subsection (2)(A), the court may consider an objection based upon subsections ~~(2)(B) or (2)(C)~~ (1)(A) or (1)(B). The court may deny an otherwise proper motion for change of venue under subsection (2)(A) if it finds that an impartial trial cannot be had in the proper venue or that the convenience of witnesses and the ends of justice would be promoted by retaining jurisdiction in the county where the action is filed.
 - (4) **Sanctions.** When a judge grants a motion for change of venue pursuant to subsection (2)(A), the court may assess sanctions against the party who filed the action or the party's attorney if the court finds that the action was filed in the improper venue without good cause.

11. That Rule 54(e)(2) be, and the same is hereby, rescinded as follows:

Rule 54. Judgments; Costs.

(e) Attorney fees.

~~(2) Pursuant to Idaho Code Section 12-121. Attorney fees under Idaho Code Section 12-121 may be awarded by the court only when it finds that the case was brought, pursued or defended frivolously, unreasonably or without foundation, which finding must be in writing and include the basis and reasons for the award. No attorney fees may be awarded pursuant to Idaho Code Section 12-121 on a default judgment.~~

(32) Amount of attorney fees.

(43) Pleading; Default judgments.

(54) Attorney fees as costs.

(65) Objection to attorney fees.

(76) Settlement of attorney fees...

(87) Claims to which rule applies.

12. That Rule 55(b)(1) be, and the same is hereby, amended as follows:

Rule 55. Default; Default judgment.

(b) Entering a Default Judgment.

(1) **For Sum Certain.** If a claim is for a sum certain or a sum that can be made certain by computation, the court, on the claimant's request, with an affidavit showing the amount due, must order judgment for that amount and costs against the party who has been defaulted for not appearing and who is neither a minor nor an incompetent person and has been personally served, other than by publication or personal service outside of this state. The affidavit must show the method of computation, together with any original instrument evidencing the claim unless otherwise permitted by the court. An application for a default judgment must also contain written certification of the name of the party against whom judgment is requested and the address most likely to give the defendant notice of the default judgment. The clerk must use this address in giving the party notice of judgment.

13. That Filing Fee Schedule H.2, found in APPENDIX A be, and the same is hereby, amended as follows:

A. All initial case filings in Magistrate Division of any type not listed in categories B, C, D, G and H(2):

1. Adoptions
2. Adoption and Termination of parental rights
3. Termination of parental rights
4. Personal injury or other claims (\$10,000 or less)
5. Petition for formal probate
6. Application for informal probate
7. Name change
8. Permission to marry
9. Child Support / Custody (unless filed by DHW)
10. Habeas by prisoners
11. Paternity action
12. Unlawful detainer / Eviction
13. Defacto custodian
14. Relief from firearm disability
15. Legal separation
 - a. with minor children
 - b. without minor children

14. That two forms found in APPENDIX B be, and the same are hereby, amended as follows:

Rule 4(a)(3)(B). Summons – Other Civil Proceedings

ATTORNEY’S NAME OR SELF-REPRESENTED PARTY

FIRM NAME

STREET ADDRESS

MAILING ADDRESS

CITY, STATE & ZIP CODE

TELEPHONE NUMBER

EMAIL ADDRESS (if any)

IDAHO STATE BAR NUMBER

Attorney(s) for Plaintiff(s)

I, Stephen W. Kenyon, Clerk of the Supreme Court of the State of Idaho, do hereby certify that the above is a true and correct copy of the _____ entered in the above entitled cause and now on record in my office.

WITNESS my hand and the Seal of this Court _____ 9-13-16

STEPHEN W. KENYON

Clerk

By: _____ Chief Deputy

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

_____,
Plaintiff,
vs.
_____,
Defendant.

) CASE NO. _____
)
)
) SUMMONS
)
)
)

NOTICE: YOU HAVE BEEN SUED BY THE ABOVE-NAMED PLAINTIFF(S): THE COURT MAY ENTER JUDGMENT AGAINST YOU WITHOUT FURTHER NOTICE UNLESS YOU RESPOND WITHIN ~~20~~ 21 DAYS. READ THE INFORMATION BELOW.

TO: _____

You are hereby notified that in order to defend this lawsuit, an appropriate written response must be filed with the above designated court at [mailing address, physical address (if different) and telephone number of the clerk] within ~~20~~ 21 days after service of this Summons on you. If you fail to so respond the court may enter judgment against you as demanded by the plaintiff(s) in the Complaint.

A copy of the Complaint is served with this Summons. If you wish to seek the advice of or representation by an attorney in this matter, you should do so promptly so that your written response, if any, may be filed in time and other legal rights protected.

An appropriate written response requires compliance with Rule ~~10(a)(1)~~ 2 and other Idaho Rules of Civil Procedure and must also include:

1. The title and number of this case.
2. If your response is an Answer to the Complaint, it must contain admissions or denials of the separate allegations of the Complaint and other defenses you may claim.
3. Your signature, mailing address and telephone number, or the signature, mailing address and telephone number of your attorney.
4. Proof of mailing or delivery of a copy of your response to plaintiff's attorney, as designated above. To determine whether you must pay a filing fee with your response, contact the Clerk of the above-named court.

DATED this _____ day of _____, 19 ____.

CLERK OF THE DISTRICT COURT

By _____
Deputy Clerk

Rule 4(a)(3)(C). Summons Publication

SUMMONS

To: [Defendant's Name]

You have been sued by [Plaintiff's Name], the Plaintiff, in the District Court in and for [Name of County] County, Idaho, Case No. [Case No.].

The nature of the claim against you is [nature of claim].

Any time after ~~20~~ 21 days following the last publication of this summons, the court may enter a judgment against you without further notice, unless prior to that time you have filed a written response in the proper form, including the Case No., and paid any required filing fee to the Clerk of the Court at [mailing address, physical address (if different) and telephone number of the clerk] and served a copy of your response on the Plaintiff's attorney at [name, address, and phone number of Plaintiff's attorney].

A copy of the Summons and Complaint can be obtained by contacting either the Clerk of the Court or the attorney for Plaintiff. If you wish legal assistance, you should immediately retain an attorney to advise you in this matter.

Dated: _____

[Name of County] County District Court

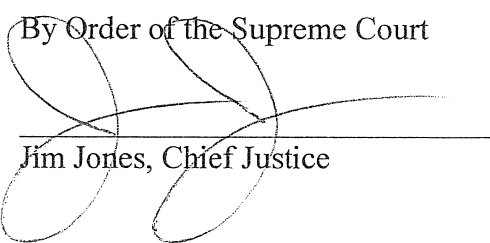
By _____, Deputy Clerk

IT IS FURTHER ORDERED, that this order and these amendments shall be effective immediately.

IT IS FURTHER ORDERED, that the above designation of the striking of words from the Rules by lining through them, and the designation of the addition of new portions of the Rules by underlining such new portion is for the purposes of information only as amended, and NO OTHER AMENDMENTS ARE INTENDED. The lining through and underlining shall not be considered a part of the permanent Idaho Rules of Civil Procedure.

IT IS FURTHER ORDERED, that the Clerk of the Court shall cause notice of this Order to be published in one issue of The Advocate.

DATED this 9th day of September, 2016.

By Order of the Supreme Court


Jim Jones, Chief Justice

ATTEST: Stephen Kuyon
Clerk