


ADJUDICATION MEMORANDUM #22

TO: Adjudication Bureau Staff

FROM: Don Shaff, Adjudication Bureau Chief 

SUBJECT: Notice of Appearance by Attorney

REVISED: March 18, 2009

A. Prior to Filing the Director's Report

1. What is the significance of the notice of appearance on the claim form?

When the notice of appearance on the claim form is completed, any communication from IDWR regarding the claim should be directed to the attorney, and not the claimant, unless the attorney indicates otherwise. However, a courtesy copy of any communication can be mailed to the claimant. This includes not only the legal notices IDWR is required to make, but also communications regarding the claim.

One exception to this policy is claimant contact to schedule a field exam, since the claimant's presence is needed at the field exam. In this instance, the attorney should be notified that IDWR will be contacting the claimant to schedule the exam. This will enable the attorney to make arrangements to be present if the attorney so desires.

2. What if a claimant has filed a notice of claim form with a completed notice of appearance, and also one or more other claims, which do not have a notice of appearance section?

Generally speaking, a notice of appearance on one claim does not apply to other claims filed by the same claimant. The attorney for the claimant is responsible for providing IDWR with a list of applicable claim numbers.

3. What does IDWR consider sufficient notice to a) add an attorney to the notice of claim form, b) change the attorney listed on the notice of claim form, or c) remove an attorney listed on a notice of claim form?

a. A letter signed by an attorney licensed to practice law in Idaho, indicating further notice should be sent to that attorney is sufficient. The letter should list the claimant's name and the claim numbers for which the attorney is appearing.

b. A letter to IDWR from the attorney requesting change or removal is sufficient to change the attorney of record. If a notice of appearance has been filed with the district court, then that attorney is the attorney of record for the claimant until the

district court grants the attorney leave to withdraw as counsel of record for that claimant. This is true regardless of whether an attorney is listed on the claim form. Notices of appearance filed with the district court are listed on the docket sheet and notice is sent to IDWR.

- c. A letter to IDWR from the attorney requesting change or removal is sufficient to change the attorney of record. An Order Granting Leave to Withdraw, issued by the district court, is sufficient if a notice of appearance was filed with the district court. If the court issues an order granting an attorney leave to withdraw as attorney of record for the claimant, then the attorney's name should be deleted and all notices should go to the claimant. If IDWR receives written communication identifying a new attorney or a new attorney files a notice of appearance with the district court, the records should be updated appropriately.
- d. When a change of ownership is filed during the adjudication and a notice of appearance was filed previously, the attorney for the previous owner is expected to file a notice of appearance for the new owner's claims. Otherwise, the previous attorney is deleted from the adjudication record.

NOTE: A power of attorney is different from an attorney at law. A power of attorney is a written authorization by the claimant to another person giving the other person the authority to act on the claimant's behalf to the extent specified in the power of attorney (for example, to sign a notice of claim form). A power of attorney can be given to someone who is not a lawyer.

B. After the Director's Report is filed

When a notice of appearance is filed with the court for a claimant (the owner of record, not the objector), the database should be updated. Only the data in the water right numbers or the objection subcase numbers as indicated on the notice of appearance should be updated. The notice of appearance is scanned and profiled to the applicable subcase(s). The original form is filed with the claim.

What if a document other than a notice of appearance is filed with the court by an attorney who is appearing for the first time in the subcase? (No notice of appearance has been filed.)

- a. If the document is an objection or response by the claimant's attorney to the claimant's water right, the database should be updated with the new attorney information for the claimant. If the document is an objection or response filed by an attorney representing someone other than the claimant, the attorney is not data entered in the adjudication record. However, the notice of appearance is scanned and profiled to the applicable subcase(s).
- b. If IDWR receives a document indicating an attorney will represent a party but the district court has not been notified, the attorney should be directed to notify the court

they will appear on behalf of their client. The database should be updated to reflect the attorney's information.