

Highlights of Rule Amendments For 2014

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The following is a list of rule amendments that will go into effect on July 1, 2014, unless otherwise noted. The orders amending these rules can be found on the Idaho Judiciary's home page at <http://www.isc.idaho.gov/recent-amendments>. Please note that several other proposed amendments were not yet finalized as of the date this article was prepared. Orders amending the rules can always be found on the Supreme Court website. Be sure to check the Idaho State Bar e-bulletin for your chance to comment on proposed amendments before adoption.

Idaho Appellate Rules. The Idaho Appellate Rules Advisory Committee is chaired by Chief Justice Roger Burdick.

Rule 30. Augmentation or deletions from transcript or record. This rule has been amended to allow the Supreme Court Clerk to collect a \$2 per page fee for preparation of the augmentation of the record. The fee is set out in the order granting the motion to augment, and failure to pay within 14 days results in denial of the motion.

Rule 35. Content and arrangement of briefs. A new subsection has been added that states in cases involving easements or other types of boundary or real property disputes, the brief shall include a map, diagram, illustrative drawing, or other document depicting (i) the lay of the land, (ii) the location of the parcels or pieces of property in dispute, and (iii) the location of any features of or on the land that are pertinent to identify the matters in dispute, including but not limited to easements, roads, trails, boundaries, markers, fences, and structures. The parcels, pieces and features depicted shall be labeled so as to adequately identify them. The document shall be based upon testimony or evidence in the record with citations to such supporting evidence.

Idaho Criminal Rules. The Criminal Rules Advisory Committee is chaired by Justice Daniel Eismann. The Bail Bonds Guidelines Committee is chaired by Senior Judge Barry Wood.

Rule 16. Discovery and inspection. On January 1, 2014, a new rule took effect that is similar to 18 U.S.C. § 3509 and addresses sexually exploitative material. The rule provides that any property or material that constitutes or is alleged to constitute sexually exploitative material as defined in I.C. § 18-1505B or I.C. § 18-1507 shall remain in the care, custody, and control of either the court or a law enforcement agency, and the court is to deny any request by the defendant to duplicate it so long as the State makes the property or material reasonably available to the defendant.

Rule 46. Bail or release on own recognizance. The amendment addresses an inconsistency between the bail statutes and Rule 46. A provision has been added to the rule concerning notice when a bond is forfeited or a forfeiture is set aside, stating that, if the bail consists of a surety bond, such notice shall be sent to the surety, or to the agent designated by the surety to receive

such notice as reflected in the records of the Department of Insurance, and shall constitute notice to both the surety and the person posting bond, if they are different persons. This new provision enables clerks to send a single notice of forfeiture or the setting aside of forfeiture in cases of a surety bond.

Idaho Rules of Family Law Procedure. The Children and Families in the Courts Committee is chaired by Judge Russell Comstock.

In January 2013, at the recommendation of the CFCC, a pilot project was started in the Fourth Judicial District implementing this new set of family law rules. The rules have now been adopted statewide but implementation has been delayed until July 1, 2015. However, any Judicial District may implement the rules sooner by Administrative Order. These rules govern the procedure in all family law cases, including divorce, child support, child custody, paternity, proceedings related to the Domestic Violence Crime Prevention Act and all proceedings, judgments or decrees related to the establishment, modification or enforcement of such orders, excepting contempt. The rules do not apply to cases involving the Child Protection Act, Adoption, Termination or Guardianship.

Idaho Rules of Civil Procedure. The Civil Rules Advisory Committee is chaired by Justice Warren Jones.

Rule 3(a). Commencement of action. When a family law case is commenced, this rule requires that a family case information sheet be filed. Effective January 1, 2014, this rule was amended to require that an information cover sheet also be filed in all guardianship and conservatorship cases, as well as involuntary commitment cases. The sheet is used as an administrative tool to coordinate cases involving the same individual.

Rule 11(b)(3). Leave to withdraw - Notice to client. The amendment places the responsibility on the clerk to serve the order of withdrawal on the client in accord with Rule 77(d) in the same manner that other orders are served, and clarifies that the 20 day period for the client to respond begins after service of the order.

Rule 16(a). Scheduling conferences and scheduling orders. New Rules 16(a) and (b) replace the former Rules 16(a) through (g) and were proposed by the Advancing Justice Committee, chaired by Senior Judge Barry Wood. The current rules were reorganized and multiple sections combined to eliminate duplication. Scheduling conferences are to be held within 30 days after an answer or notice of appearance is filed. When one or more defendants have been served, but no appearance has been made, a scheduling conference or status conference shall be set no later than three months after a complaint is filed and a scheduling order entered that addresses dates for discovery, other pre-trial conferences and a trial date.

Rule 16(b). Final pre-trial procedure. A final pre-trial conference is to be held at least 30 days before trial and a list of subjects to be discussed is set out. No later than three (3) days prior to the date set for the final pre-trial conference all parties to an action may file a written stipulation regarding any matter to be discussed at the conference. The court shall enter a written pre-trial order which recites the action taken at the conference. Written objections to a pre-trial order

may be filed within 14 days from date of service, and shall be heard prior to trial in the same manner as a motion.

Rule 26(b)(4)(A). Trial Preparation – Experts. The amendments create two categories of expert witnesses: (1) those retained or specially employed to provide expert testimony in the case or who are employees of the party and (2) individuals with knowledge of relevant facts not acquired in preparation for trial and who have not been retained or specially employed to provide expert testimony in the case. There is no change in the current rule as to what must be disclosed upon interrogatory or court order as to witnesses that fall in the first category as specifically retained experts or employees. However, if an expert witness falls into the second category, then what must be disclosed is a statement of the subject matter on which the witness is expected to present evidence under Idaho Rule of Evidence 702, 703 or 705, and a summary of the facts and opinions to which the witness is expected to testify. The rule makes it clear that a party may depose any person who has been disclosed pursuant to this rule. In addition, a new provision similar to the federal rule has been added, which provides that any draft disclosure or draft report prepared in anticipation of litigation by any witness disclosed under this 26(b)(4)(A)(1)(i) as a retained expert or expert employee of a party is protected from disclosure.

Rule 33(a). Interrogatories to parties - Availability - Procedures for use. The amendment is in response to difficulty finding a person to sign answers to interrogatories when the answers come from an agency or company and not just one person.

Rule 40(e). Change of venue. The amendment provides that a change of venue may only be made upon motion of a party.

Rule 54(a). Judgments - Definition – Form. The rule, as amended, provides specific language for a final judgment. A judgment shall begin with the words “JUDGMENT IS ENTERED AS FOLLOWS: . . .,” and it shall not contain any other wording between those words and the caption.

Rule 56(a) and (b). Summary judgment- For claimant; Summary judgment-For defending party. The time for filing a motion for summary judgment has been changed so that it must be filed at least 90 days before trial date or filed within 7 days from the date of the order setting the case for trial, whichever is later, unless otherwise ordered by the court. The primary purpose of this rule change is to ensure efficient use of court time and parties’ time and costs in preparing for trial and is in line with the goal of I.R.C.P. 1 to secure an inexpensive determination of every action and proceeding. Under the current rule, if motions for summary judgment are filed 60 days before trial, it is likely that the court will be unable to make a ruling in advance of the trial and/or the pretrial deadlines. Thus, the parties and the court will be preparing for trial unnecessarily should summary judgment be granted thereby increasing the time and costs incurred by the parties. By moving the deadline to 90 days prior to trial, a ruling is likely to be made 30 days prior to trial, giving the parties, in most cases, sufficient time to prepare for trial and comply with pretrial deadlines.

Rule 57. Declaratory judgment. The amendment provides that a party having a claim against the insured subject to a declaratory judgment be given notice of the action rather than be joined in the action.

Rule 59(c). Form and time for serving affidavits on motion for new trial. The amendment requires that affidavits in support of a new trial comply with the form for affidavits provided in Rule 56 (e).

Rule 77(d). Notice of orders or judgments. The word “proposed” has been inserted in front of the word “order” to clarify that a party who drafts an order should serve a copy of the proposed order on the other party.

NEW Filing Fee Schedule. At the 2014 legislative session HB509 was passed and signed into law effective July 1, 2014. This law increases civil filing fees to provide necessary support for the implementation of the new Odyssey system that will replace the current “ISTARS” and will modernize case management and improve access to the courts and court records through the use of electronic filing, electronic storage of records, and video-conferencing. For cases filed in the district court, there is an increase of \$125; for cases filed in the magistrate division, an increase of \$70; and for appearances filed by defendants in either the district court or the magistrate division, an increase of \$70. A \$20 fee was also added for a few types of filings for which no technology fee is currently charged. Thus, most cases that are filed in district court will have a total filing fee of \$221.00, while most cases filed in the magistrate division will have a total filing fee of \$166.00.

Idaho Misdemeanor Criminal Rules. The Misdemeanor/Infraction Rules Advisory Committee is chaired by Judge Michael Oths.

Rule 2.2. Declarations. This new rule was adopted effective January 1, 2014, similar to a rule found in the Criminal Rules and Civil Rules of Procedure noting that whenever the rules require or permit a written statement to be made under oath or affirmation, such statement may be made as provided in Idaho Code Section 9-1406. An affidavit includes a written certification or declaration made as provided in Idaho Code Section 9-1406.

Rule 5. Uniform citation. A line has been added to the uniform citation advising that payments may be made over the Internet by going to <http://courtpay.idaho.gov>.

Rule 10(d). Form of withheld judgment. This subsection was deleted as the form was outdated and was not being used.

Idaho Court Administrative Rules.

Rule 32. Records of the judicial department – Examination and copying- Exemptions from and limitations on disclosure. Effective January 1, 2014, subsection (d), Access to Court Records, Examination and Copying, was amended and some restrictions placed on access to exhibits. Before final disposition of the action, access to any exhibit shall be allowed only with permission of the custodian judge subject to any conditions set by the custodian judge and shall take place

under the supervision of the office of the court clerk. It also adds a provision that the public shall not have access at any time to items of contraband or items that pose a health or safety hazard; for example, drugs, weapons, child pornography, toxic substances, bodily fluids, without permission of the custodian judge.

Effective July 1, 2014, subsection (b) of Rule 32, Definitions, was amended to expand the definition of court record from those relating to judicial proceedings to other types of records, such as records of the Administrative Office of the Courts, the Judicial Council, the Idaho State Bar, the Idaho Bar Commission, and the District Magistrates Commissions. In addition subsection (c) (6) of Rule 32 was amended to provide access to court information sheets by guardian ad litem and court visitors unless restricted by the court.

Rule 54.2. Guardianship Reports. This new rule is the result of the 2014 legislative sessions and deletions that were made from various statutes. The rule requires all guardians to file a report within 30 days following the anniversary of the appointment and at least annually thereafter. It also specifies the information that must be set out in the report.

Rule 54.3. Conservator Reports. This new rule is also the result of the 2014 legislative sessions and deletions that were made from various statutes. The rule requires all conservators to file an inventory within 90 days of appointment and an accounting within 30 days of the anniversary date of the appointment and at least annually thereafter. It also states with information should be in an inventory and in an accounting.

Rule 71. Exhibits. Effective January 1, 2014, this rule was repealed and replaced with a new rule addressing the handling and storing of exhibits to ensure all exhibits are properly accounted for both during and after trial.