

Highlights of Rule Amendments for 2021

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Idaho Supreme Court Rules Advisory Committees

The following is a list of rule amendments approved by the Idaho Supreme Court in the past year. The orders amending these rules can be found on the Idaho Supreme Court website at <http://www.isc.idaho.gov/recent-amendments>. Be sure to check the Idaho State Bar E-bulletin for your chance to comment on proposed amendments before adoption. Unless otherwise indicated, all amendments and new rules are effective July 1, 2021.

Idaho Appellate Rules

The Idaho Appellate Rules Advisory Committee is chaired by Chief Justice G. Richard Bevan.

Rule 5. Special Writs and Proceedings. Because copies of petitions for special writs are no longer required, the word “Number” has been removed from the heading of subsection (c). No other amendments have been made to this rule.

Rule 13. Stay of Proceedings Upon Appeal or Certification. Idaho Appellate Rule 13(a) currently provides for an automatic 14-day stay of all district court judgments or orders in a civil action upon the filing of a notice of appeal. The rule has been amended to provide that civil protection orders issued pursuant to I.C. § 39-6306 (domestic violence) and I.C. § 18-7907 (malicious harassment/stalking) are not automatically stayed when a notice of appeal is filed. A similar amendment is being made to I.R.C.P. 83(e), which governs stays during appeals to the district court from the magistrate division.

Subsection (b) of Rule 13 currently states that, when an appeal is taken from a partial judgment that is certified as final under I.R.C.P. 54(b), the entirety of the district court case is stayed and the district court has no power to take action unless approved by the Supreme Court. The rule has been amended to provide that, during an appeal from a partial judgment certified as final under Rule 54(b), I.R.C.P., the district court shall have the power and authority to take any actions and rule upon any matters unaffected by the Rule 54(b) judgment, including conducting a trial of the issues remaining in the case, unless a stay is entered by either the district court or the Supreme Court pursuant Rule 13.4(b), I.A.R.

Rule 13.4. Delegation of Jurisdiction to District Court During an Appeal. Consistent with the amendment to Rule 13(b), this rule has been amended to provide that, during an appeal from a partial judgment certified as final under I.R.C.P. 54(b), the district court retains jurisdiction to take actions and rule upon matters unaffected by the Rule 54(b) judgment. The district court may enter an order staying the balance of the district court case, either on its own motion or on the motion of any party at any time during the pendency of the appeal. A motion for stay must be made and processed in the manner provided by subsection (b)(1) of the rule. If the district court denies the motion or fails to rule on it within 21 days, subsection (b)(2) permits the moving party to apply to the Supreme Court for a stay. Likewise, if the district court grants

the motion for a stay, subsection (b)(2) permits any party aggrieved by the ruling to apply to the Supreme Court to modify or vacate the stay.

Rule 24. Reporter's Transcript. The word “Number,” as it appears both in the main heading and in the heading of subsection (a), has been replaced with the word “Format” to more accurately reflect the substance of the rule. No other amendments have been made to this rule.

Rule 26. Preparation and Arrangement of Reporter's Transcripts. This rule has been amended to conform to the language of I.A.R. 24, which requires the court reporter to prepare one copy of the reporter's transcript in electronic format and to only prepare a hard copy of the transcript if requested by the parties. In an effort to eliminate discrepancies between the way electronic copies of transcripts are labeled and the way they are cited by the parties on appeal, the rule has also been amended to impose new formatting and pagination requirements for transcripts submitted in electronic form. Under new subsection (m)(1) of the rule, the electronic copy must be prepared in standard format, with no more than one page of regular transcript on one 8 ½ x 11 inch page of the electronic file. If a hard copy of the transcript is requested, subsection (m)(2) provides that it may be prepared in a compressed format, with no more than 12 pages of regular transcript on one page of compressed transcript, using both the front and back of each page.

Rule 27. Clerk's or Agency's Record. Subsection (b)(1) of this rule has been amended to clarify that the \$1.25 per page fee for preparation of a paper copy of the record applies only if a hard copy of the record has been requested by the parties.

Rule 29. Settlement and Filing of Reporter's Transcript and Clerk's or Agency's Record. Idaho Appellate Rule 29(a) states that any objection to the clerk's or agency's record must be noticed for hearing and must be heard and determined by the district court or administrative agency from which the appeal is taken. The rule has been amended to clarify that no hearing is required if the opposing party stipulates to, or otherwise indicates in writing that it does not oppose, the relief requested in the objection.

Rule 34. Briefs on Appeal. Idaho Appellate Rule 34(b) states that no appellate brief in excess of 50 pages shall be filed without consent of the Supreme Court. The rule has been amended to exclude from this page limit the covers, the caption page, the table of contents, the table of authorities, the certificate of service, and any addendums or exhibits. The heading of Rule 34 has also been amended to more accurately reflect the substance of the rule.

Idaho Juvenile Rules

The Juvenile Justice Advisory Committee is chaired by Judge Mark Ingram. The following amendments to the Idaho Juvenile Rules took effect January 1, 2021.

Rule 6. Admit/Deny Hearing (J.C.A.). A new subsection of this rule provides that, once a case is assigned to a magistrate at the admit/deny hearing on a petition filed under the Juvenile Corrections Act, the magistrate retains responsibility for the case until it is closed and all subsequent cases involving the same juvenile will be assigned to the same magistrate. A different

magistrate will only be assigned when (1) the judge who presided over the case no longer holds the same judicial office that the judge held at the initiation of the case, or (2) other extraordinary circumstances exist, such as the judge's disqualification, death, illness, or other disability.

Rule 39. Shelter Care Hearing (C.P.A.). Subsection (b) of this rule has been amended to provide that, once a C.P.A. case is assigned to a magistrate, the magistrate retains responsibility for the case until its conclusion. Again, a different magistrate will only be assigned when (1) the judge who presided over the case no longer holds the same judicial office that the judge held at the initiation of the case, or (2) other extraordinary circumstances exist, such as the judge's disqualification, death, illness, or other disability.

Rule 48. Termination of Parent Child Relationship (C.P.A.). A new subsection of this rule provides that a petition to terminate parental rights shall be assigned to the same magistrate who presided over the C.P.A. action and, with the same exceptions set forth in Rules 39 and 48, such magistrate shall retain responsibility for the case until its conclusion.

Idaho Misdemeanor Criminal Rules

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

Rule 5. Uniform Citation. Ordinarily, a defendant who is issued a Uniform Citation for a citable offense must appear in court on the citation not less than five nor more than 21 days after the date of the citation. Idaho Misdemeanor Criminal Rule 5(b) sets forth an exception to these time limits, requiring that, for certain offenses, the defendant must personally appear before a magistrate for arraignment within 48 hours following citation or arrest. Until recently, the expedited arraignment requirement only applied to second offense or enhanced driving under the influence charges. Effective March 1, 2021, Rule 5(b) was amended to include the following additional offenses to which the 48-hour arraignment requirement applies: Stalking in the Second Degree (I.C. § 18-7906); Domestic Assault or Battery (I.C. § 18-918); Violation of a Domestic Violence Protection Order (I.C. § 39-6312); Violation of No Contact Order (I.C. § 18-920); Sexual Battery (I.C. § 18-924); and Violation of a Protection Order for Malicious Harassment (I.C. § 18-7907).

Rule 14. Disposition of Citations by Written Plea of Guilty – Limitations – Deferred Payment Agreements. Subsection (b)(2) of this rule was amended to add I.C. § 63-2450 (fuels tax violations) to the list of misdemeanor offenses for which a written plea of guilty may be accepted when the required bail bond under Rule 13 does not exceed \$582.00. The amendment took effect January 13, 2021.

Revised DUI Evaluation Reporting Form. Section 10 of the standardized DUI Evaluation Reporting Form embedded in Rule 9.4, I.M.C.R., was amended to mirror the language of Rule 9.4(b)(10), which requires the evaluation report to contain the following information: "Evaluator's impressions and recommendations for further assessment and/or appropriate ASAM level of care for treatment, including specific reasons for recommendations and the factors considered." The amendment took effect January 13, 2021.

Idaho Rules of Civil Procedure

The Civil Rules Advisory Committee is chaired by Justice Robyn Brody.

Rule 54. Judgments. Idaho Rule of Civil Procedure 54(b)(2) currently states that, when an appeal is taken from a partial judgment that is certified as final under I.R.C.P. 54(b)(1), the trial court loses all jurisdiction over the entire action, except as provided in Rule 13 of the Idaho Appellate Rules. The rule has been amended to provide that, during an appeal from a partial judgment that is certified as final under I.R.C.P. 54(b)(1), the district court retains jurisdiction to take any actions and rule upon any matters unaffected by the Rule 54(b) judgment, including conducting a trial of the issues remaining in the case, unless a stay is entered by either the district court or the Supreme Court pursuant Rules 13 and 13.4 of the Idaho Appellate Rules.

Rule 83. Appeals from Decisions of Magistrates. Idaho Rule of Civil Procedure 83(e)(1) currently provides for an automatic 14-day stay of magistrate judgments or orders upon the filing of a notice of appeal to the district court. The rule has been amended to provide that civil protection orders issued pursuant to I.C. § 39-6306 (domestic violence) and I.C. § 18-7907 (malicious harassment/stalking) are not automatically stayed when a notice of appeal is filed. A similar amendment is being made to I.A.R. 13(a), which governs stays during appeals to the Supreme Court from the district court.

Idaho Rules of Evidence

The Evidence Rules Advisory Committee is chaired by Judge Molly Huskey. The following technical amendments to Rules 201 and 410, I.R.E., took effect January 13, 2021.

Rule 201. Judicial Notice. A period was inserted immediately following the word “information” in subsection (c)(2).

Rule 410. Pleas, Plea Discussions, and Related Statements. With the adoption of the most recent version of the Idaho Rules of Evidence in 2018, a paragraph discussing the admissibility of evidence relating to liability insurance was inadvertently included at the end of Rule 410, which sets forth the circumstances in which evidence of guilty pleas and plea discussions are admissible in a civil or criminal case. That paragraph has been deleted from Rule 410, but it is still included in Rule 411, which governs the admissibility of evidence that a person was or was not insured against liability.

Idaho Rules of Family Law Procedure

The Children and Families in the Courts Committee is chaired by Judge Diane Walker. The Committee was tasked with updating and restyling the Idaho Rules of Family Law Procedure to simplify, clarify and modernize the language, eliminate redundancies, and create a consistent structure and format. The newly formatted rules were adopted by the Supreme Court and are effective July 1, 2021. The rules are still divided by topic, but some of them have been renumbered. This is because a few of the former rules have been deleted, others have been consolidated by subject, and new rules have been added. A cross-reference table of the new and

former rules is available on the Idaho Supreme Court website. In addition to being renumbered, the rules have also been revised, generally, to make case processing times consistent with those required in cases governed by the Idaho Rules of Civil Procedure. A number of other procedural and substantive changes have been made. Some of the more significant amendments are summarized below.

Rule 102. Applicability of Other Rules. This rule differs from former Rule 102 in that it requires a party desiring strict compliance with the Idaho Rules of Evidence to file a motion requesting such strict compliance. In a family law action, the motion must be filed within 30 days after an answer or other responsive pleading is filed, or, if there is no responsive pleading, within 42 days from the filing of the motion or petition in the family law case. In a civil protection order action, the motion must be filed no later than two days before the 14-day civil protection order hearing. The court may deny the motion for strict compliance for good cause shown, including but not limited to a power imbalance in representation between the parties or the best interest of the child. If no motion for strict compliance is filed or if the motion is denied, all relevant evidence is admissible unless its probative value is outweighed by the danger of unfair prejudice.

Rule 103. Definitions. This rule now includes definitions of the following terms that were not specifically defined in former Rule 103: “Answer,” “Civil Protection Order Action,” “Confer,” “Family Law Action,” “Good Cause,” “Relevant Evidence,” and “Responding Party.”

Rule 106. Coordination of Related Family Cases. This new rule creates a preference that one judge be assigned to one family. Specifically, it states that all related family cases and civil protection order actions must be handled before one judge, unless impractical. A “related family case” is one that involves the same parties, child, or issues as any pending family law action, one that affects the court’s jurisdiction to proceed, or one in which an order may conflict with an order in another case. If it is not practical for one judge to handle all related family cases and civil protection order actions, the judges assigned to hear the related cases involving the same family or child may confer for the purpose of case management and coordination of the cases. Notwithstanding the provisions of I.C.A.R. 32, both a judge hearing a family law action and authorized court personnel may access and review the files of any related family case, but neither the judge nor authorized court personnel may disclose confidential information contained in the related family case files except in accordance with applicable state and federal confidentiality laws and rules.

Rules 108. Joint Hearings and Consolidation. This rule was formerly Rule 106. It has been revised to require that, in cases in which the court orders a joint hearing or trial of any matters at issue in related family cases or civil protection order actions, notice must be provided to all parties and to all attorneys of record in each related case, regardless of whether the party providing notice is a party in every case number that will be called for hearing.

Rule 109. Disqualification. All of the former rules relating to disqualification of judges are now combined in a single rule. The provisions of the rule governing the parties’ right to disqualify a judge without cause now state that such right does not apply to a judge who heard, joined, or consolidated a prior related family case.

Rule 115. Conduct of Proceedings. This rule was formerly Rule 117. Substantively, it has been amended to provide that, unless a different time is allowed by the presiding judge or fixed by another controlling rule, each party will have no more than 30 minutes to present evidence at evidentiary hearings conducted in family law actions and civil protection order actions. The limitation does not apply to trials in family law cases.

Rule 120. Idaho Child Support Guidelines. The Idaho Child Support Guidelines, formerly Rule 126, now appear in Rule 120 of the newly formatted Rules of Family Law Procedure. The Child Support Guidelines Committee is chaired by Judge R. Todd Garbett. As a result of the work of that Committee, the Guidelines have been updated and restyled to simplify, modernize, and clarify the language, and to create a consistent structure and format. No significant substantive changes were made, but the amended Guidelines are easier to read and understand.

Rule 201. Commencement of Actions. This rule governs the commencement of family law actions, civil protection order actions, family law modification actions, and actions to obtain a money judgment. The rule now states that, if a child is involved in an action commenced under Rule 102, the child's full name and date of birth must be included in the petition and in any subsequent order, decree, or judgment. In addition, both the petitioner and the respondent must complete and submit a family law case information sheet each time a case is commenced or reopened. Ordinarily, any petition that opens or reopens a case must be served on all parties. However, in cases in which the parties have filed a stipulation for entry of a decree or judgment, service is not required.

Rule 204. Summons. Former Rule 204 provided that service could be made on a minor child at least 14 years of age. The rule has been revised to require that the person being served be 18 years or older. If the person is less than 18 years old or has been judicially declared to be incompetent, service must be made on the person's guardian. Unless the court orders otherwise, service must also be made on the minor or incompetent person. Other revisions to the rule include the incorporation of statutory requirements for service by publication, and the removal of a provision allowing proof of service by mailing other than by evidence that such service was accomplished by certified or registered mail. Finally, the Summons forms that were previously included in Rule 204 are now contained in the Appendix to the I.R.F.L.P.

Rules 208 and 213. Form of Pleadings/Signing Pleadings, Motions, and Other Papers. Formerly Rules 207 and 212, respectively, these new rules have both been amended to permit a petitioner in a civil protection order action to omit his or her contact information from the petition or application as long as that contact information has been included on the family law case information sheet.

Rule 219. Contact Information. This new rule states that unrepresented parties must keep the court apprised of their current contact information. It also imposes a requirement upon attorneys and unrepresented parties to notify the court within 14 days of any changes in the attorney's or party's mailing address, phone number, or previously provided email address.

Rule 220. Attorney Appearance in Civil Protection Order Actions. This new rule governs the appearance and withdrawal of attorneys in civil protection order actions. Attorneys who intend to represent a party in such action must file a notice of appearance before the hearing on the case or as soon as practicable after the first hearing at which they appear. Attorneys who appear in civil protection order actions will be served with copies of any filings in the case. An attorney who has appeared in the action may file a notice of withdrawal after the case has been dismissed, but the withdrawal will not be effective until the time for appeal has expired and no proceedings are pending.

Rule 401. Mandatory Disclosure in Contested Proceedings. This rule has been amended to require the disclosure of all personal and business tax returns in any action in which child support is an issue. In addition, if parenting time is an issue in the case, each party must state with particularity his or her requested parenting plan. The requirements for expert witness disclosures also now appear in this rule.

Rule 402. Additional Discovery. A number of former rules relating to discovery in actions governed by the I.R.F.L.P. are now combined in new Rule 402. Significantly, the rule includes new requirements regarding the sequence and timing of discovery. Specifically, the rule states that, unless the court orders otherwise, a party may proceed with discovery only after that party has completed its mandatory disclosures required under Rule 401. Once mandatory disclosures are complete, methods of discovery may proceed in any sequence, but no party may request information or documents that were previously disclosed pursuant to the mandatory disclosure provisions of Rule 401. The new Rule 402 also imposes limits on discovery in civil protection order actions. The general rule is that discovery is not allowed. However, for good cause shown, a party may move the court to engage in discovery. The motion may be heard at the 14-day hearing. After hearing the motion, the court will determine the scope of discovery, if any is allowed. In the event the motion causes the 14-day hearing to be continued, such continuance may be for no more than 14 days, and the temporary protection order may remain in effect pending the continued hearing.

Rule 505. Temporary Order Issued Without Notice. This new rule provides that a court may issue a temporary order without notice to the responding party if (1) the facts in an affidavit or verified motion clearly show that immediate and irreparable injury, loss, or damage will result to the moving party or minor child of the party before the responding party can be heard in opposition, (2) the moving party or his or her attorney certifies in writing any efforts made to give notice and the reasons why it should not be required, and (3) the moving party submits a proposed temporary order that complies with the requirements of the rule. Pursuant to the rule, the temporary order must describe the injury and state why it is irreparable, state why the order was issued without notice, and state the date and time for the hearing. Unless a party receives an extension, the temporary order issued without notice is only effective for a fixed period not to exceed 14 days. The moving party must serve a copy of the motion, affidavits, and order on the responding party within the timeframes set forth in the rule, and an expedited hearing must be set. The responding party may seek a continuance of up to 14 days to respond, during which time the order issued without notice will remain in effect. On two days' notice to the moving party or on shorter notice set by the court, the responding party may appear and move to dissolve or modify the order.

Rule 602. Mediation of Child Custody and Visitation Disputes. Under former Rule 602, any person who possessed a bachelor's degree qualified for placement on the list of registered child custody mediators compiled by the Supreme Court. The rule has been revised so that only those applicants who hold at least one of the following professional credentials will qualify for placement on the approved mediator roster: (A) the applicant is recognized by the Idaho Mediation Association as a Certified Professional Mediator, or holds a membership in the Association for Conflict Resolution—or other national organization with equivalent membership standards—at an advanced practitioner level; or (B) the applicant is a member of the Idaho judiciary, a licensed member of the Idaho State Bar, or a licensed psychologist, counselor, social worker, or therapist. The purpose of the amendment is to ensure that new mediators meet the ethical standards required by their professional licenses or by their memberships in professional mediation and conflict resolution organizations.

Rule 802. Judgments. The rules on judgments and partial judgments contained in former Rules 803 and 804 have been combined into a single rule. Consistent with amendments to the Rules of Civil Procedure, subsection (b)(2) of new Rule 802, I.R.F.L.P., states that, if a certificate of final judgment is issued on a partial judgment and an appeal is filed, the court retains jurisdiction to take any actions and rule upon any matters unaffected by the partial judgment, including conducting a trial of the issues remaining in the case, except as provided in Idaho Appellate Rules 13 and 13.4.

Rule 1007. Receiver. This new rule clarifies that the I.R.F.L.P. govern actions in which the appointment of a receiver is sought or in which a receiver sues or is sued. The rule states that the appointment and administration of estates by receivers must be in accordance with Idaho Code. An action in which a receiver has been appointed may be dismissed only by court order.