

Highlights of Rule Amendments For 2017

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The following is a list of rule amendments for 2017, with the effective dates designated. The orders amending these rules can be found on the Idaho Supreme Court website at <http://www.isc.idaho.gov/recent-amendments>.

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

Rule 12.1. Permissive Appeal in Custody Cases. This rule allows for a permissive appeal to the Supreme Court from a final judgment, or order made after final judgment, in the magistrate court involving the custody of a minor or a Child Protective Act proceeding and requires a motion to both the magistrate court and the Supreme Court. The standard for permission is the best interest of the child and these cases involve custody situations that need a quick resolution and finality. The rule has been amended so that, if the magistrate court grants the motion, the appeal may be filed with the Supreme Court without having to file a second motion with the Supreme Court. The motion to the Supreme Court would only be needed if the magistrate court denies the motion for permissive appeal. Note that these appeals are expedited pursuant to Rule 12.2. The appeal to the Supreme Court is not valid and effective unless a notice of appeal is physically filed with the clerk of the district court within fourteen days from the date file stamped on the order of the magistrate granting permission, or within fourteen days from the date of issuance of the Supreme Court order granting permission. Amendments to Rules 11.1 and 12.2 also reflect this change.

Rule 25. Reporter's Transcript - Contents. Subsection (d) on the standard transcript in criminal appeals has been amended to include the voir dire examination of the jury, the opening statements and closing arguments of counsel, the conference on requested instructions, the objections of the parties to the instructions, and the court's ruling on instructions. It also clarifies that there is no standard transcript in an appeal from post-judgment proceedings; rather, requested proceedings must be identified by the name of the court reporter, along with the date and title of the proceeding, and an estimated number of pages.

Rule 27. Clerk or Agency's Record. The amendment clarifies that in criminal cases the court is to apply the same requirement for fee waivers in civil cases as set out in I.C. §§ 31-3220 and 31-3220A.

Rule 28. Preparation of Clerk's or Agency's Record. The amendment clarifies an electronic copy of the record must contain bookmarks that link to each document in the electronic record rather than an index and table of contents.

Rule 32. Motions -Time for Filing- Briefs. Subsection (b) has been amended to provide that a voluntary motion to dismiss may be made at any point before issuance of an opinion.

Rule 34. Briefs on Appeal. With the exception of cases governed by Rule 35(h), an electronic copy of all appellate briefs must be filed along with the original bound brief and six bound copies. The electronic copy is in place of the requirement for one unbound, unstapled copy. Electronic copies of briefs are governed by Rule 34.1 which was also updated.

Rule 40. Taxation of Costs. As amended, this rule on costs as a matter of right to the prevailing party now makes an exception for post-conviction appeals and appeals from proceedings involving the termination of parental rights or an adoption.

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

Rule 3. Commencement of Action. Currently a case information sheet is required to be filed by the initiating party in certain types of civil cases, such as guardianship and adoption, and the sheet requests information about both the initiating and responding party. The Supreme Court has adopted a new civil case information sheet to be filed in all other civil cases. This sheet will be completed and filed by both the initiating and responding parties regarding that party's information. The information will be used to match parties and will be exempt from disclosure. The case information sheet can be found on the Supreme Court's website on the page containing the index to the Civil Rules of Procedure.

Rule 15. Amended and Supplemental Pleadings. The amendment restores the right of a party to amend a pleading once as a matter of right within 21 days after serving it or, if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

Rule 41(e). Dismissal of Inactive Cases. This proposed amendment originated with the Advancing Justice Committee and reduces the time frame for dismissal of inactive cases to 90 days instead of six months and provides the case "may" be dismissed for inactivity instead of "must" be dismissed. In addition, the amendment deletes the reference to the summons not being served so that it is clear that a Rule 41(e) dismissal is for no action in the case after service has taken place. Notice is always given before a dismissal pursuant to Rule 41(e) and the parties have a chance to respond and let the court know the status of the case.

Idaho Court Administrative Rules

Rule 5.1. Criminal Jurisdiction of Magistrates; Assignment of Cases. This new rule was formerly Idaho Criminal Rule 2.2 and was moved to the Administrative Rules as part of updating the criminal rules.

Rule 7. Enlargement of Cases Assignable. The rule now addresses enlargement of categories of both civil and criminal cases to magistrates.

Rule 54. Visitor Reports. The new rule outlines the qualifications of a court visitor in guardianship and conservatorship proceedings. It also includes and updates language on the requirements of the reports a court visitor must provide to the presiding judge. The rule attempts

to ensure the information a judge needs to craft specific guardianship and conservatorship orders to an individual's unique circumstances and abilities is provided.

Rule 54.5. Idaho Department of Health and Welfare Evaluation Committee Reports. The new rule outlines the report requirements of the Idaho Department of Health and Welfare Evaluation Committee in guardianship and conservatorship cases that fall under Title 66, Chapter 4, Treatment and Care of the Developmentally Disabled. The information required in reports expands on limited guardianships and conservatorships, changes the text to ensure 'person first' language and closely aligns with the findings that need to be made when appointing a guardian or conservator for a person with developmental disabilities.

Rule 75. Domestic Violence Evaluators; Advisory Board. Rule 75 was formerly part of I.C.R. 33.3 and addresses the roster for domestic violence evaluators. I.C.R. 33.3 still addresses evaluations of persons guilty of domestic assault or domestic battery but only in terms of ordering an evaluation and the scope of the report.

Idaho Criminal Rules. The Idaho Criminal Rules Advisory Committee is chaired by Justice Daniel Eismann.

The Supreme Court has adopted a new version of the Criminal Rules that updates the language of the rules. In addition the following substantive changes were made.

Rule 31. Jury Verdict. A new subsection on multiple counts was added stating that if the jury cannot agree on all counts as to any defendant, the jury may return a verdict on those counts on which it has agreed and the court may declare a mistrial as to the other counts. The prosecution may retry any defendant on any count on which the jury could not agree. The language is taken from the Federal Rules of Criminal Procedure and accurately reflects current procedure in Idaho.

Rule 28. Interpreters. This rule was deleted as the subject matter is already covered by Idaho Court Administrative Rule 52.

Rule 33. Sentence and Judgment. A requirement has been added that the judgment state the terms of probation, if any, and that an order withholding judgment include the terms of probation, if any.

Rule 33.3. Evaluation of persons guilty of domestic assault or domestic battery. The section of the rule addressing qualifications of domestic violence evaluators has been moved to the Idaho Court Administrative Rules.

Rule 34. New Trial. The rule has been amended to state a new trial may be granted on any ground permitted by statute rather than in the interest of justice.

Rule 41. Search and Seizure. The language has been updated to refer to requesting a warrant by telephonic or other reliable electronic means.

Rule 46. Bail or Release on Own Recognizance. Language in subsection (f)(2), addressing a warrant of attachment for contempt regarding the nonpayment of any sum ordered by the court, has been moved to Rule 42 on Contempt.

Rule 46.2. No Contact Orders. The rule now requires that all no contact orders issued pursuant to I.C. § 18-920 must be on the Supreme Court form found in Appendix A of the rule. The rule also specifies that a defendant, who was not present when the order was initially issued, may request a hearing on the order. This request must be filed within seven days of service of the order. The court must hold a hearing within fourteen days of the filing of the request and must provide notice of the hearing to the protected person and the parties. The fourteen days for a hearing only applies to this initial request and not to any later request for modification.

Rule 49. Service and Filing of Papers. The rule was updated to allow service on attorneys by email, and to allow service of court orders on attorneys by email.

Rule 54. Appeals from the Magistrate Division. A requirement for service of the notice of appeal on the magistrate court was added as is required in the Civil Rules of Procedure. The reference to appellate briefs being in the same “form and arrangement” as provided in the Idaho Appellate Rules is changed to say the same “content and arrangement”.

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

Rule 126. Idaho Child Support Guidelines. There are several amendments to this rule. The reference to “mother” in footnote 2 of section G.4., on adjusted gross income, has been replaced with “other parent”. In an effort to address problems associated with double claimed exemptions being filed with the Idaho State Tax Commission, Section H.3, on adjustments to the award of child support, was amended to include a reference to IRS Form 8332. The sample Basic Monthly Child Support Guidelines Schedule was removed from the guidelines under Section J on computations and that section now refers to the sample schedule on the Idaho Supreme Court’s website. In addition, “uninsured health care expenses” has been removed from section 6.b. on Form 6, the standard child support worksheet, and from Form 7, shared, split or mixed custody worksheet.

Rules 201. Commencement of Action. The rule was amended to allow a party to request a monetary judgment for reimbursement of the opposing party’s share of daycare, medical and debt expenses.

Rule 204. Service on the Opposing Party or Additional Parties of Initial Pleadings. Consistent with the recent change to the Civil Rules of Procedure, the time for filing an answer to a complaint was increased from 20 to 21 days.

Rule 214. Amended and Supplemental Pleadings. The amendment adopts recent amendments to the Civil Rules of Procedure that increased the time for filing a response to an amended complaint within the time remaining on the 20 days from service or 10 days, whichever came later. The time increased to 21 and 14 days respectively.

Rule 720. Brief Focused Assessments. The rule has been streamlined and simplified and contains two substantive changes: the requirement that assessments be conducted in accordance with the Association of Family and Conciliation Courts' (AFCC) guidelines has been removed and in section 720.D. (Qualification of Assessor) I.R.E. Rule 702 has been substituted for I.R.F.L.P. 719.D.1.

Rule 908. Attorney Fees. The amendments to this rule follow the 2016 updates to I.R.C.P. 54(e)(2) regarding attorney fees.