

Highlights of Rule Amendments For 2018
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The following is a list of rule amendments for 2018, 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>. Be sure to check the Idaho State Bar e-bulletin for your chance to comment on proposed amendments before adoption.

Electronic Filing Rule. The rule on electronic filing has undergone several amendments since last July as needed to address new issues arising from the implementation of Odyssey, and the new electronic file and serve system. Several revisions were made effective April 30, 2018, and at the time of this writing a new section on electronic filing for appeals in the Supreme Court is expected. Please make sure you check the website for the most up to date version of this rule.

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

Rule 12.3. Certification of a Question of Law From a United States Court. In an effort to avoid considerable delay in the federal proceeding, briefing is now on an expedited schedule. The appellant's brief is due within 28 days from the date of the order accepting the question, the respondent's brief is due within 21 days of the filing of the appellant's brief and any reply brief is due within 14 days of the respondent's brief. In addition, if oral argument is held, it must be given priority on the court's calendar behind arguments in custody appeals that are filed pursuant to I.A.R. 11.1 or 12.1, which are appeals involving termination of parental rights, adoption and custody matters. This amendment was effective January 1, 2018.

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

Rule 54. Judgment; Costs. Effective January 1, 2018, subsection (d), costs as a matter of right, was amended so that recovery of court filing fees includes any fees incidental to electronic filing.

Form for Summons- Eviction. Effective July 1, 2018, this form found in Appendix B to the rules contains a notification that failure to appear and defend will result in a default judgment against the defendant for the relief demanded in the complaint, as required by Rule 4(a)(1)(I), on the contents of a summons.

Idaho Criminal Rules. The Criminal Rules Advisory Committee was chaired by Justice Daniel Eismann when the following amendments were considered and is now chaired by Justice Richard Bevan. The amendments to Rules 25.1, 33 and 34 were effective January 1, 2018. The amendment to Rule 33.3 is effective July 1, 2018.

Rule 25.1. Death or Disability of Judge. The amendment to this rule corresponds to the amendment to Rule 33 on sentencing. Subsection (d) provides that, after a verdict of guilty, any qualified judge may complete the court's duties if the judge who presided at trial cannot perform those duties because of "death, sickness, or other disability". The word "absence" was struck from this list.

Rule 33 Sentence. This rule was amended to require the judge who presides over trial to also preside over the sentencing in the absence of extraordinary circumstances, such as death, sickness or other disability.

Rule 34 New Trial. A new subsection (c) was added to this rule, entitled "Presiding Judge" and provides that the motion for new trial must be considered and ruled upon by the judge who presided over the trial unless: (1) the judge who presided over the trial no longer holds the same judicial office that the judge held at the time of the trial; or (2) other extraordinary circumstances exist, such as the judge's disqualification, death, illness, or other disability.

Rule 33.3. Evaluation of Persons Guilty of Domestic Assault or Domestic Battery. Clarification and much more detail has been added to the section on Scope and Content of the Report. The rule provides that evaluators must use at least one risk assessment tool and one personality assessment tool in their evaluation. A new subsection addresses distribution of the evaluation since evaluations contain NCIC information protected by federal law that can only be released by the court and not the evaluator. In addition, there is a new subsection on conflict of interest adding language from I.C. § 18-918 stating that, with the exception of federally recognized Indian tribes or federal military installations, the person, agency or organization conducting the evaluation shall not provide the counseling or other treatment recommended or court-ordered unless the court waives this requirement. The section on non-compliant reports has been amended to provide that an evaluation may be forwarded to the Board for review of compliance with the rule.

Idaho Rules of Evidence. The Evidence Rules Advisory Committee is chaired by Judge Molly Huskey; however, a special ad hoc committee tasked with updating and reformatting the rules was chaired by Senior Judge Karen Lansing. The Idaho Rules of Evidence have been restyled with the goal of simplifying, clarifying and modernizing the language. As part of this review, a number of substantive changes were identified, primarily to be consistent with the Federal Rules of Evidence. These were referred to the Idaho Evidence Rules Advisory Committee, and later adopted by the Supreme Court as part of the newly formatted rules. These new rules are effective July 1, 2018, and the substantive changes are summarized below.

Rule 103. Rulings on Evidence. A new subsection (b) as found in the federal rules has been added that provides once the court rules definitively on the record, either before or at trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal. This subsection was added to the federal rules in 2000 and is consistent with Idaho case law.

Rule 104. Preliminary Questions. Consistent with the federal rule, the reference to "criminal" in subsection (c) has been deleted so that the requirement that a hearing on the admissibility of a confession be conducted outside the hearing of the jury applies to civil as well as criminal cases.

Rule 408. Compromise and Offers to Compromise. Consistent with the federal rule, language has been added to subsection (a), “Prohibited Uses”, to provide that “evidence of the following is not admissible – on behalf of any party – either to prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or a contradiction”. The addition of the phrase “or to impeach by prior inconsistent statement or contradiction” was added to the federal rule in 2006 with the comment that such “broad impeachment would tend to swallow the exclusionary rule and would impair the public policy of promoting settlements.” The Idaho rule contains no reference to impeachment, and the Idaho Supreme Court has held that such statements can be used for impeachment. The Evidence Rules Advisory Committee noted that when a settlement is being negotiated it may be more about resolution than defining the facts of what really happened and was concerned that allowing impeachment with an inconsistent statement could open it to very trivial matters.

Rule 412. Sex Crime Cases; Relevance of Victim's Past Behavior. The phrase “or other physical evidence” has been added so that in a criminal case in which a defendant is accused of a sex crime, evidence of an alleged victim’s past sexual behavior may be admitted if offered to prove that someone other than the defendant was the source of semen or injury or other physical evidence. The addition is consistent with the federal rule.

Rule 604. Interpreters. This rule on interpreters will be deleted since I.C.A.R. 52 governs the qualifications and assignments of interpreters.

Rule 606. Competency of Juror as Witness. Consistent with the federal rule, another exception has been added to the rule that jurors generally cannot testify about their deliberations during an inquiry into the validity of a verdict or indictment. The new exception allows a juror to testify about whether a mistake was made in entering the verdict on the verdict form.

Rule 801. Definitions. Consistent with the federal rule, the word “opposing” has been added to subsection (d)(2) so that it reads: “Statement by Party-Opponent. The statement is offered against an opposing party. . . .” In addition, the following language has been added at the end of subsection (d)(2): “The statement must be considered but does not by itself establish the declarant’s authority under (C); the existence or scope of the relationship under (D); or the existence of the conspiracy or participation in it under (E).” This language was added to the federal rule in 1997.

Rule 1003. Admissibility of Duplicates. The words “or continuing effectiveness”, have been stricken from this rule so that it now provides that a duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original. The federal rule, from the time of its adoption in 1975, has omitted the words “or continuing effectiveness”, and at least fourteen states have also chosen to omit these words. The Committee noted that continuing effectiveness of an original document or instrument is either a legal or factual issue to be resolved by the judge or jury and found it difficult to see why the mere raising of a genuine question as to continuing effectiveness should bar admission of the duplicate altogether.

Idaho Rules of Family Law Procedure. The Children and Families in the Courts Committee is chaired by Judge Diane Walker. The following amendments are all effective on July 1, 2018.

Rule 112. Appearance and Withdrawal of Counsel; Rule 211, Intervention; Rule 704. Final Pre-trial Procedure. To conform to the use of seven day increments in the Idaho Rules of Civil Procedure, all references to 20 days have been changed to 21 days.

Rule 212. Signing of Pleadings, Motions, and Other Papers ***. The amendment to subsection “C. Electronic Signatures” mandates that a written certification or declaration be submitted electronically.

Rule 502. Defenses and Objections; When and How Presented***. To conform to the use of seven day increments, the reference to 20 days has been changed to 21 days, and the reference to 10 days has been changed to 14 days. For example, under the rule as amended, a response must be served within 21 days after the service of the summons upon the party, or within such longer period as is provided by statute.

Rule 505. Summary Judgment. To conform to the use of seven day increments, the reference to 20 days has been changed to 21 days so that a “party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 21 days from the service of process upon the adverse party or that party's appearance in the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in that party's favor upon all or any part thereof.” In addition, subsection (c), as amended, strikes the statement; “A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.”

Rule 511. Bond or Notice Discretionary in Prohibitive or Mandatory Orders. This rule is simply revised with the addition of subsections to make it easier to read.

Rule 717. Supervised Access to Children. The amendment to this rule clarifies language regarding criminal history background checks in accordance with Idaho Court Administrative Rule 47.

Rule 901. Costs - Items Allowed. Costs recoverable as a matter of right for court filing fees will now include any fees incidental to electronic filing.

Rule 910. Amount of Attorney Fees. This rule is repealed on the basis that Rule 908 on attorney fees adequately addresses this issue.

Idaho Infraction Rules. The Misdemeanor/Infraction Rules Advisory Committee is chaired by Judge Michael Oths. HB599 was signed into law effective July 1, 2018, and based on the statutory amendments in that legislation a number of amendments are being made to the Infraction Rules.

Rule 8. Failure to Appear - Default Judgment ***. Effective July 1, 2018, I.C. § 49-328 is amended so that a driver's license can no longer be suspended for failure to pay an infraction penalty. Thus, subsection (c) of Rule 8 on default judgment and the form on default judgment and notice of non-compliance are amended to delete any references to suspension of driver's licenses for non-payment.

Rule 9. Judgment - Fixed Penalty Plus Court Costs for Infractions ***. Like Rule 8, all references to suspension of a driver's license for non-payment are deleted from the rule and the form on deferred payment agreement.

The Infraction Penalty Schedule found in Rule 9 is amended to reflect amendments to I.C. § 49-301, Drivers to be Licensed, and I.C. § 18-8001, Driving Without Privileges. A violation of § 49-301 is currently on the misdemeanor bond schedule and applies to all types of driver's license. The statute has been amended so that a person operating a vehicle that requires a class A, B or C commercial license without a current and valid license required to drive that vehicle is guilty of a misdemeanor. However, as to a Class D license, the first conviction is an infraction and a second conviction within 5 years of the first conviction is also an infraction. A third or subsequent offense with a Class D license within five years of the first conviction is a misdemeanor. Penalties for these offenses are set out in the legislation. In addition, a violation of I.C. § 18-8001 is now an infraction if the suspension was for any reason outlined in sections 18-1502, 49-326(1)(g), 49-1204 or 49-1207. I.C. § 18-1502 is the statute on beer, wine or other alcohol age violations and the other three statutes relate to suspension for non-payment of judgments.

HB 599 also amended a number of statutes dealing with fees so that infractions under I.C. § 18-8001 and I.C. § 49-301 still have the higher court costs associated with a misdemeanor. Thus, a violation of § 49-301 for no license or invalid license, Class D license, is on the infraction penalty schedule with a total penalty of \$307.50 for a first offense and \$457.50 for a second offense within five years. A violation of I.C. § 18-8001, for driving without privileges if the suspension is pursuant to I.C. §§ 18-1502, 49-326(1)(g), 49-1204, or 49-1207 is on the schedule with a total penalty of \$307.50.

Rule 10. Failure to Pay Infraction - Suspension of Driver's License ***. Most of this rule has been deleted due to statutory changes.

Rule 11. Driver's License Suspension Hearing***. This rule is repealed in its entirety.

Idaho Misdemeanor Criminal Rules. The Misdemeanor/Infraction Rules Advisory Committee is chaired by Judge Michael Oths. HB599 was signed into law effective July 1, 2018, and based on the statutory amendments in that legislation several amendments were also required to the Misdemeanor Bail Bond Schedule.

Rule 13. Bail bond schedule. I.C. § 18-8001 was amended so that driving without privileges is an infraction rather than a misdemeanor if the suspension was pursuant to I.C. §§ 18-1502, 49-326(1)(g), 49-1204 or 49-1207, so the misdemeanor bail bond schedule references this fact. The

statute was also amended to delete mandatory penalties for subsequent offenses so the bond schedule no longer sets forth higher bonds for subsequent DWP offenses.

In addition, pursuant to the amendment to I.C. § 49-301, Drivers to be Licensed, a violation of this statute is only a misdemeanor if it involves a commercial driver's A, B or C license or if it is a third conviction within five years of a first conviction involving a Class D license. This fact is reflected on the bail bond schedule. A violation of § 49-301 was on the bond schedule as a payable misdemeanor in the amount of \$226. Because the statute dictates a higher total penalty amount for the instances where a violation is an infraction, the bond amount has been raised to \$500 when the violation is a misdemeanor but it will still be a payable misdemeanor.

Rule 14. Disposition of Citations by Written Plea of Guilty - Limitations ***. Subsection (b) of this rule allows a written plea of guilty to be accepted and for the amount of the fine and court costs to be the bond amount provided in Rule 13 if the required bond amount does not exceed certain amounts for certain offenses. A violation of I.C. § 49-301 was added so that the \$500 bond for this misdemeanor offense is one where a written plea of guilty may be taken.

Idaho Court Administrative Rules. The amendments to these rules were all effective January 1, 2018.

Rule 5. Civil Jurisdiction of Magistrate. Assignment of cases. The statutory references in the rule were updated and a statutory reference to proceedings under the Safe Haven Act was added since those hearings are being conducted by magistrates.

Rule 43(b). Memorandums of agreement and memorandums of understanding. This new rule provides that any memorandum of agreement or of understanding entered into or proposed to be entered into by an administrative judge, trial court administrator, or any other person acting on behalf of the courts or any court, with any department, agency, official, or employee of any governmental or private entity, shall be submitted to the administrative director of the courts for review, and shall not become effective until it has been approved and signed by the administrative director of the courts or the chief justice.

Rule 55 Drug courts and Mental Health Courts. Before beginning operation of a new drug or mental health court, a judicial district must submit an operations application which includes a memorandum of agreement signed by each agency or organization participating. Subsection (d) of the rule was amended to add the Administrative Director of the Courts to the list of persons who must sign the memorandum of agreement.

Rule 75. Domestic Violence Evaluators; Advisory Board. Effective July 1, 2018, the number of hours of education or training required to apply to be an evaluator is increasing from 20 to 30 hours, which must include an orientation. However, the Board intends to offer 10 hours of online orientation training to lessen the impact/cost on new evaluators. In addition, the Advisory Board Membership will increase from six members to nine, providing additional expertise to the Board. Members who may be added to the Board include: a domestic violence court judge, domestic violence court coordinator, domestic violence offender intervention program provider, current or past domestic assault and battery evaluator, or health care provider with experience in

working with victims of domestic violence. The rule also provides that judicial districts may require evaluators to comply with additional criteria.