

Debora K. Kristensen
Direct Dial: (208) 388-1287
E-Mail: dkk@givenspursley.com

Betsy Z. Russell
Direct Dial: (208) 336-2854
E-Mail: bzrussell@gmail.com

November 16, 2012

Via email: ptobias@idcourts.net

Patti Tobias
Administrative Director, Idaho Supreme Court
451 West State Street
Boise, ID 83720-0101

Re: Recent changes to Idaho Court Administrative Rule 32

Dear Patti:

As discussed at this week's Media/Courts Committee meeting, we would like to formally request that the Court reconsider the recent changes to Idaho Court Administrative Rule ("ICAR") 32 which exempt from public disclosure all court cases involving child custody, child support and paternity. We strongly object to this sweeping closure of a large percentage of Idaho's court records, which is directly counter to the Court's articulated policy that "[t]he public has a right to examine and copy the judicial department's declarations of law and public policy and to examine and copy the records of all proceedings open to the public." ICAR 32(a).

The reason that was advanced for this blanket closure was the need to comply with Idaho Rule of Civil Procedure 3(c) requiring redaction of personal/private information, such as social security numbers, financial account numbers, and names of minor children, and that many of these cases are filed pro-se, so the filers might not be capable of redacting that information – all causing court clerks extra work and problems when addressing those filings. This redaction requirement is not unlike the redaction requirement imposed by state and federal courts around the country, who have implemented administrative changes to filing procedures and educational opportunities for litigants to ensure its compliance. Instead of advancing a viable and efficient way to ensure that such items are redacted here in Idaho, such as modifying forms to include clear notices and warnings about redaction, the recent changes to ICAR 32 choose, instead, to indiscriminately close every file for every case involving children.

Problems already are surfacing around the state with reporters and members of the public being denied access to files in cases that previously were open. We don't have a public policy in this state that, for example, all divorce cases should be sealed - nor should we. The idea that members of the public can be denied access to public records, and then must go before a judge and/or file a motion to gain access, is directly antithetical to the underlying presumption of openness in all court documents. Moreover such a policy of

“seal everything and consider opening on a case-by-case basis” is logistically and practically difficult, if not impossible, for most citizens. Our long-standing open court system provides the greatest access possible to court records and only seals cases and denies public access in narrowly defined circumstances. This rule change doesn't fit Idaho, and it doesn't fit an open court system.

The changes to ICAR 32 came out of a very contentious March 2012 meeting of the Rule 32 committee on a tied, 3-3 vote, at which one of us, Betsy Russell, was unable to attend as she was covering the legislative session. We were concerned then that this rule change would have a huge and negative impact on public access to court records in Idaho, and that concern has proven to be well founded.

Since the enactment of this law, the provisions of ICAR 32 have been erroneously applied to cases filed before the rule's effective date and to cases not even in the categories mentioned in the rule. For example, in a Kootenai County civil case filed over management of a trust fund for crime survivor Shasta Groene, *Steve Groene vs. Brandy Hoagland*, Judge Lansing Haynes told a reporter the case was sealed entirely for a month under the new rule while it was gone through for redaction (it later was unsealed with redactions). The rule has caused confusion and denials of public records throughout our state. The rule itself is written to apply "to records in cases filed on or after July 1, 2012, and to records in cases in which a motion to modify an order, decree, or judgment was filed on or after July 1, 2012." This means, for example, that any divorce case in the state of Idaho that involves children is now sealed, no matter how old it is and how long it's been public, if any new motion is filed in the case.

We respectfully request that the committee be reconvened to reconsider this rule, at a time when all members are able to attend; or, in the alternative, that the Idaho Supreme Court reconsider and reject this rule change *sua sponte*. A better solution to the redacting issue is one of education, training, and appropriate notification to pro-se filers through forms and other assistance - not blanket closure of a large category of public records in Idaho.

Thank you very much for considering this request. We appreciate the Court's commitment to openness, and hope that this issue can be resolved so that our court system can remain the open, accessible institution that we all cherish.

Sincerely,

Debora K. Kristensen
Betsy Z. Russell

DKK/sp