In the Supreme Court of the State of Idaho

IN RE: ORDER AMENDING RULE ON ELECTRONIC FILING AND SERVICE) **ORDER**

The Court having received recommendations for amendments to the new rule on electronic filing and service and having reviewed those recommendations:

NOW THEREFORE IT IS ORDERED THAT:

1. The attached rule regarding electronic filing and electronic service is adopted as amended for use in those counties and district courts that have approval from the Supreme Court to accept filings electronically. This rule shall apply, in those designated courts, to all actions or proceedings after the effective date of this order.

2. Upon the effective date of this order and implementation of electronic filing, any court rules in conflict with this rule are superseded, and the terms of the attached rule as it relates to electronic filing, electronic service and the electronic trial courts shall prevail.

3. No court may make or enforce any local rule, other than those local rules authorized by the Idaho Supreme Court, governing the electronic filing and electronic service of documents in conflict with this newly adopted rule.

4. Rules for electronic filings of appeals to the Supreme Court will be under a separate order.

DATED this 30th day of March, 2016.

By Order of the Supreme Court

Jim Jones, Chief Justice

ATTEST:

Stephen W. Kenyon, Clerk

I, Stephen W. Kenyon, Clerk of the Supreme Court of the State of Idaho, do hereby certify that the above is a true and correct copy of the Order entered in the above entitled cause and now on record in my office.

WITNESS my hand and the Seal of this Court 3.31.16

Stephen Kenyon
Clerk

By: Dana D. Thomas
Deputy

Rule ELECTRONIC FILING AND ELECTRONIC SERVICE

(a) Definitions. The following definitions apply to this chapter:

1. "Conventional filing" means a process whereby a filer files a paper document with the court.

2. "Document" means a pleading, a paper, a motion, a declaration, an application, a request, a brief, a memorandum, an exhibit, or other instrument submitted by a filer, including any exhibit or attachment referred to in the instrument. Depending on the context, as used in this chapter, "document" may refer to an instrument in either paper or electronic form.

3. "Electronic filing" means the process whereby a filer electronically transmits documents to a court in an electronic form to initiate an action or to be included in the court file for an action.

4. "Electronic filing system" means the system provided by the Idaho Judicial Branch for the electronic filing and the electronic service of a document via the Internet, excluding the electronic filing of criminal citations by a method approved of by the Administrative Office of the Supreme Court.

5. "Electronic service" means the electronic transmission of a notice of filing by the electronic filing system to the electronic mail (email) address of a party who has consented to electronic service per subsection (h)(1)(A) of this rule. The notice will contain a hyperlink to access a document that was filed electronically for the purpose of accomplishing service. When the serving entity is the court, electronic service may be completed through the electronic filing system or through conventional email.

6. "Filer" means a person registered with the electronic filing system who submits a document for filing with the court. The filer may be an attorney representing a party in the case, a party, or anyone authorized to submit documents for filing on their behalf.

7. "Service contact" means any party and their email address designated for electronic service and notification through the electronic filing system.

8. "Other service contact" means any person associated with the filer for purposes of an action whom the filer wishes to receive email notification from the electronic filing system of documents electronically served in the action. An "other service contact" includes another lawyer, administrator, or staff from the filer's place of business, or another person who is associated with the filer regarding the action or otherwise has a legitimate connection to the action.

9. "Accept" refers to the determination that a document electronically filed has met the standards set forth in the rules below. The court has the discretion to later reject such a filing if it deems it appropriate to do so.

10. "Confidential" in reference to documents or information means documents or information that will not be accessible to the public as it is exempt from disclosure or sealed by court order pursuant to Idaho Court Administrative Rule 32 or information barred from disclosure to the public under federal or state law. The information or document that is confidential may be accessible to certain court personnel and where applicable, to certain governmental entities as authorized by law, court rule, or court order.

11. "Conventionally signed document" means a paper document with a handwritten signature.

(b) Requirement / Format of Documents to be Filed Electronically

1. **Requirement.** Except for those documents that must be filed conventionally pursuant to subsection (f) of this rule, attorneys must electronically file documents in courts where electronic filing has been mandated. Self-represented parties may elect to electronically file documents but are not required to do so.

2. **Electronic Format and Limited Size.**

   A. A document, other than those excluded in subsections (b)(2)(B) and (C) below, submitted electronically to the court must be in the form of a text-searchable Portable Document Format (PDF) or a text-searchable Portable Document Format/A (PDF/A) file, be directly converted to PDF rather than scanned (if possible), and not exceed 25 megabytes. A document that exceeds the size limit must be broken down and submitted as separate files that do not exceed 25 megabytes each. Separate files under this section must include in the Filing Comments field for each submission a description that clearly identifies the part of the document that the file represents, for example, "Motion for Summary Judgment, part 1 of 2."

   B. A document that is an attachment or exhibit (not motion, brief, memorandum, etc.) that is a scanned image of its original form, may be in standard PDF format and need not be text searchable as required in subsection (b)(2)(A) above.

   C. Current Court Assistance Office forms approved by the Idaho Supreme Court may ~~also~~ be filed in Portable Document Format (.pdf) and need not be text searchable as required in subsection (b)(2)(A) above.

3. **Supplemental Attachments Added as Single File.** Except as provided in subsections (A) through (C) of this subsection, a document that includes attachments must be submitted as a unified single PDF file to the extent practicable. An electronic filing submitted under this section that exceeds 25 megabytes must comply with subsection (b)(2) of this rule.

A. A proposed order, judgment, or other document that requires court signature must be submitted as a separate document.

B. An attachment that is confidential must be submitted as a separate document. A filer submitting a confidential document under this subsection must identify the document as confidential after attaching the confidential document.

C. An application for fee waiver must be submitted as a separate document.

D. A filer submitting separate documents under this subsection must include in the Filing Comments field a description that clearly identifies each document. The filer must also identify whether a document is "confidential" when prompted by the electronic filing system.

4. **Party Information.** When submitting an electronic filing that creates a new action or adds a party to an existing action, the filer must:

A. enter into the "Add Party" screen the names of all known parties or all parties being added;

B. enter party names in proper case, for example, "John Doe" and not "JOHN DOE" and should include all known name information, including middle name and suffix;

C. enter the address and phone number of all parties, if known;

D. select the "Party is a Business" indicator if the party is not an individual.

5. **Additional Technical / Format Requirements.** Documents filed with the court must comply with the additional technical and format requirements contained in the Court's approved Electronic Filing Guide. Note, however, that documents that are exhibits as described above in subsection (b)(2)(B) will not be rejected for format requirements.

6. **Rejected documents.** Documents that do not comply with this rule, or the requirements of the aforementioned Electronic Filing Guide, or court policy, may be returned to the filer for correction. If the document is not corrected as requested within the time frame provided for in subsection (e)(4) of this rule, the document will be deemed to have not been filed.

(c) Electronic Signatures

1. **Forms of signature.** A document may be electronically signed by:

A. inserting a digital image of the signing party's handwritten signature into the document; or

B. scanning the individual's handwritten signature after the document has been signed; or

C. using a signature block that includes the typed name of the individual preceded by a "/s/" in the space where the signature would otherwise appear. An example of a signature block with "/s/" is:

/s/ John Q. Smith
JOHN Q. SMITH

If the person signing is not either an attorney representing a party in the case or a party in the case and the document is signed using the person's name preceded by "/s/," a duplicate of the document must be conventionally signed by the person signing and maintained by the attorney or party submitting the document until the expiration of the time to appeal or the determination of the appeal, whichever is longer.

2. **Judge's signature.** All electronically filed documents signed by the court must be scanned or otherwise electronically produced so the judge's original signature or a digital image of the judge's signature is shown.

3. **Conventionally signed documents.** To file a document that was conventionally signed, the filer must either:

A. scan and OCR (Optical Character Recognition) the document; or

B. create a Word document that substitutes the /s/ signature block in place of the handwritten signature(s) and convert that document to a PDF. If the signature replaced is that of opposing counsel or a third party then the attorney or party who submitted the document must maintain the conventionally signed document or a scanned copy of the conventionally signed document until the expiration of the time for appeal or determination of the appeal.

(d) Payment and Fee Waiver

1. **Payment Due on Filing.** A party must pay the fees for filing a document electronically at the time of electronic filing. Acceptance of the document triggers payment to be captured. In the event the payment funds are not available, at the time of filing or the acceptance, the filing will be rejected.

2. **Fee Waivers and Deferrals.** A party may apply for a waiver of the filing fee by submitting an application for waiver with the document to be filed.

A. **If Fee Waiver Granted - Date of Filing.** If the party's fee waiver application is granted, the document is deemed to have been filed on the date of the original submission.

B. **If Fee Waiver Denied.** If the party's fee waiver application is denied, the document will be rejected and deemed to have not been filed.

Notice of fee waiver application denial will be forwarded to the filer per subsection (e)(4) of this rule. The applicable statute of limitations will therefore continue to run unless the filer resubmits the document with payment as described below.

i. Resubmitting a document with full payment within 3 business days (excluding legal holidays) of the date of notice of denial of fee waiver application denial, will result in the filing date related back to the date of the original submission to meet filing requirements.

ii. A filer who resubmits a document under this subsection must include in the Filing Comment field notification for an electronic resubmission the following words: "RESUBMISSION OF FILING WITH PAYMENT AFTER DENIAL OF FEE WAIVER, REQUEST FILING RELATE BACK TO _____, THE DATE OF ORIGINAL SUBMISSION."

(e) Electronic Filing

1. **Electronic Filing.**

   A. The electronic filing of a document is accomplished when a filer submits a document electronically to the court and the electronic filing system receives the document.

   B. When the electronic document is accepted for filing, the electronic document constitutes the court's record of the document.

2. **Converting a Conventional Filing into an Electronic Format.** The court may digitize, record, scan, or otherwise reproduce a document that is filed conventionally, but not identified in subparagraph (f) of this rule, into an electronic record, document, or image.

3. **Time of Filing.**

   A. For purposes of filing by electronic transmission, a "day" begins at 12:01 a.m. and ends at midnight. If electronic transmission of a document is received before midnight it will be considered filed on that day. For any questions of timeliness, the time and date registered by the electronic filing system will be determinative. For purposes of electronic filing only, the date and time that the filer submits the electronic filing will serve as the filing date and time for purposes of meeting the statute of limitations or any other filing deadlines, even if placed into an error queue for additional processing. If a document is filed on a Saturday, a Sunday or a legal holiday, is it deemed filed on the next available business day.

   B. If the document is accepted for filing, the date and time of filing

entered in the register of actions relate back to the date and time the electronic filing system received the document. When the document is accepted for filing, the electronic filing system will affix the date and time of submission on the document as the date and time of filing of the document. When the document is accepted for filing, the electronic filing system will electronically notify the filer.

C. A proposed order is not filed unless it is signed by the judge after review.

4. Request for Correction / Rejected Filings / Relief.

A. If a document submitted electronically for filing is not accepted, the electronic filing system will send notification to the filer that explains why the document was rejected or will describe an error or irregularity and request correction and resubmission by the filer.

B. A filer who resubmits a document within 3 business days (excluding legal holidays) of the date of the request for correction under this section may request, as part of the resubmission, that the date of filing of the resubmitted document relate back to the date of submission of the original document to meet filing requirements. If the third day following request for correction is not a judicial day, then the filer may resubmit the filing with a request under this subsection on the next judicial day. A filer who resubmits a document under this subsection must include in the Filing Comment field notification for an electronic resubmission the following words: "RESUBMISSION OF CORRECTED FILING, REQUEST FILING RELATE BACK TO _____, THE DATE OF ORIGINAL SUBMISSION."

5. Technical Error / Relief.

A. Any party may obtain relief if the electronic filing system is temporarily unavailable or if an error in the transmission of the document or other technical problem prevents the electronic filing system from receiving a document. Upon satisfactory proof of such an occurrence, the court shall permit the filing date of the document to relate back to the date the filer first attempted to file the document to meet filing requirements. If appropriate, the court may adjust the schedule for responding to these documents or the court's hearing, or provide other relief.

B. A filer who resubmits a document under this subsection:

i. Must include in the Filing Comment field notification for an electronic resubmission the following words: "RESUBMISSION OF FILING, SUBMISSION UNSUCCESSFUL, REQUEST FILING DATE RELATE BACK TO _____, DATE OF ORIGINAL SUBMISSION."

ii. Must also provide the date of the original attempted submission, the date the filer was notified the submission was not successful, and explain the reason for requesting that the date of filing relate back to the original submission. The request for original filing date must be resubmitted within 7 business days (excluding legal holidays) of the date the filer was notified the submission was not successful. If the seventh day following notice of error is not a judicial day, then the filer may resubmit the filing with a request under this subsection on the next judicial day.

iii. May also include supporting exhibits that substantiate the system malfunction together with the resubmission.

C. Technical errors on the part of the filer's equipment or attempted transmission within the filer's control will not generally excuse an untimely filing. Counsel error in connection with electronic filing requirements in a civil matter must be addressed under Idaho Rules of Civil Procedure Rule 60(b).

6. **Privacy protection for Filings Made with the Court.** Parties must refrain from including or must partially redact, where inclusion is necessary, the following personal data identifiers from all pleadings filed with the court, including exhibits, unless otherwise ordered by the court or required by federal or state law or court rule (see subsection (e)(6)(F-H) below for procedure when identifiers are required):

A. **Social Security Numbers.** If an individual's social security number must be included in a pleading, only the last four (4) digits of that number are used.

B. **Names of Minor Children.** If the involvement of a minor child must be mentioned, only the initials of that child are used.

C. **Dates of Birth.** If an individual's date of birth must be included in a pleading, only the year is to be used and the date specified in the following format: XX/XX/1998.

D. **Financial Account Numbers.** If financial account numbers are relevant, only the last four digits of these numbers are to be used and the number specified in substantially the following format: XXXXX1234.

E. **Driver's License Numbers and State-Issued Personal Identification Card Numbers.** A person's full driver's license number and state-issued personal identification number must not be included in electronic filings. If an individual's driver's license number or state-issued personal identification card number must be referenced in an electronic filing, only the last four digits of that number are to be used and the number specified in substantially the following format: XXXXX350F.

F. Exceptions

i. The redaction requirement does not apply to the record of a court, tribunal, administrative or agency proceeding if that record was filed before the effective date of this rule.

ii. The redaction requirement does not apply to documents that are exempt from disclosure pursuant to Idaho Court Administrative Rule 32.

iii. The redaction requirement does not apply to documents that are required by statute or rule to include personal data identifiers.

G. Options when personal data identifiers are necessary. A party filing a redacted document need not also file an unredacted version of the document; however, where inclusion of the unredacted personal data identifiers is necessary, a party may:

i. File the redacted document together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item listed. The list must be clearly identified as a reference list filed pursuant to this rule and may be amended as of right. Any reference in the action to a listed identifier will be construed to refer to the corresponding item of information. The reference list is exempt from disclosure pursuant to Idaho Court Administrative Rule 32; however, courts will share the reference list with other government agencies as required or allowed by law without court order or application for purposes of the business of those agencies.

ii. File the redacted document together with an unredacted copy of the document. The unredacted copy must be clearly identified as an unredacted copy filed pursuant to this rule. The unredacted copy is exempt from disclosure pursuant to Idaho Court Administrative Rule 32; however, courts will share the unredacted copy with other government agencies as required or allowed by law without court order or application for purposes of the business of those agencies.

H. Orders, Judgments, and Decrees of the Court.

i. If possible, the court must refrain from including in a court order, decree, or judgment, the personal data identifiers set forth in subsections (e)(6)(A) through (e)(6)(G) of this rule.

ii. If personal data identifiers are included in the order, decree, or judgment, the order, decree, or judgment must be exempt from disclosure pursuant to Idaho Court Administrative Rule 32. Copies of the order, decree, or judgment must be served on the parties and must be available to the parties and other government agencies without court order, decree, or judgment

for purposes of the business of those agencies. Upon request a redacted copy must be prepared. However, no redacted copy of any order, decree or judgment must be prepared until there is a specific request for the document, in which case the document should be redacted in the manner specified in Idaho Rule of Civil Procedure 3(c)(1)(a)-(b) and section (e)(6)(A)-(E) of this rule.

iii. Exceptions. The court may include personal data identifiers in orders that are exempt from disclosure pursuant to Idaho Court Administrative Rule 32, or that are required by statute to include personal data identifiers.

I. **Responsibility for Compliance.** The parties and counsel are solely responsible for redacting personal data identifiers. The clerk will not review each document for compliance with the rule. Failure to comply with this rule is grounds for contempt.

J. **Parties to Use Caution.** Parties should exercise caution when filing papers that contain private or confidential information, including, but not limited to, the information covered above and listed below:

i. Medical records, treatment and diagnosis;

ii. Employment history;

iii. Individual financial information;

iv. Insurance information;

v. Proprietary or trade secret information;

vi. Information regarding an individual's cooperation with the government; and

vii. Personal information regarding the victim of any criminal activity.

K. **Inform Clients.** Counsel is strongly urged to share this information with all clients so that an informed decision about the inclusion of certain materials may be made. If a redacted document is filed, it is the sole responsibility of counsel and the parties to be sure the redaction of personal identifiers is done. The clerk will not review each pleading for redaction.

(f) Documents that must be Filed Conventionally

1. **Probate / Wills.** Probate matters must be filed electronically. However, any original will, along with any pleading to which it is attached, must be filed both electronically and conventionally. The conventional filing must be made no more than seven business days, excluding legal holidays, from the date of electronic filing.

2. **Warrant.** A document delivered to the court to secure a warrant pursuant to Idaho Criminal Rule 4.

3. **Limits on Exhibits.** A demonstrative or oversized exhibit.

4. **Grand Jury material.** Grand jury materials, which should also be accompanied by a disk or CD-ROM containing the documents in .pdf format, if possible.

5. **Charging documents.** Charging documents in a criminal action including complaints and indictments unless filed through an electronic system approved by the Supreme Court.

6. **Federally restricted storage.** A document or image that is barred from electronic storage, including but not limited to sexually explicit images of a minor.

7. **Document submitted for *in camera* inspection.** A document filed subject to *in camera* inspection.

8. **Motion to Seal Document.** A motion to seal by court order and document that is the subject of the motion (which is treated as sealed until the court rules on the motion).

9. **Notice of Appeal to Supreme Court.** A notice of appeal to the Idaho Supreme Court. In addition, original actions filed under Idaho Appellate Rule 5.

10. **Other documents that cannot be filed electronically.** Any document that cannot be scanned or otherwise converted to electronic format. Upon a showing of good cause, the court may accept for conventional filing a document that would otherwise be required to be file through the electronic filing system.

(g) Sealed and Confidential Documents / Records

1. A document marked as "confidential" will not be accessible to the public, but will be accessible to court staff and, where applicable, to certain governmental entities as authorized by law, court rule, or court order.

2. Upon review, the court may modify the designation of any document incorrectly designated as confidential and must provide prompt notice of any such change to the filing party.

(h) Electronic Service

1. **Consent to Electronic Service and Withdrawal of Consent.**

   A. A party who electronically appears in the action by filing a document

through the electronic filing system, that the court has accepted, is deemed to have given consent to accept electronic service of any document filed by any other registered filer in an action or the court, except for any document that requires personal service, pursuant to the Idaho Rules of Civil Procedure. Service by electronic means upon this filer is thereafter mandatory unless exempted by rule or court order.

B. A filer who is dismissed as a party from the action or withdraws as an attorney of record in the action, may withdraw consent to electronic service in that specific action.

C. Service may be accomplished by conventional means in cases that were active prior to the implementation of electronic filing and service. Once a party electronically appears in the matter by filing through the electronic file and serve system, however, that party has given consent to electronic service in the matter per paragraph (h)(1)(A) above and future service by electronic means in the matter is thereafter mandatory unless exempted by rule or court order.

2. Contact Information

A. At the time of preparing the party's first electronic filing in the action, a filer must enter the name and service email address designated as a service contact on behalf of the party in the action.

B. A party described in subsection (h)(1)(A) of this rule may enter in the electronic filing system, as an other service contact in the action:

i. an alternative email address for the party; and

ii. the name and email address of any additional person whom the party wishes to receive electronic notification of documents electronically served in the action, as defined in subsection (a)(8) of this rule. If a lawyer enters a client's name and contact information as an other service contact under this subsection, then the lawyer is deemed to have consented for purposes of Rule of Professional Conduct 4.2 to delivery to the client of documents electronically served by other filers in the action.

C. A party is responsible for updating any contact information for any person whom the party has entered in the electronic filing system as either a service contact for a party or as an other service contact in an action.

D. A party in the action may seek court approval to remove a person entered by another party in the action as an other service contact in an action if the person does not qualify as an other service contact

under subsection (a)(8) of this rule.

3. **Selecting Service Contacts and Other Service Contacts**

When preparing an electronic filing submission with electronic service, a filer is responsible for selecting:

A. The appropriate service contacts in the action, for the purpose of accomplishing electronic service as required by law of any document being electronically filed; and

B. The appropriate other service contacts in the action, if any, for the purpose of delivering an electronic copy of any document being electronically filed.

4. **Court Notification and Transmission Constituting Service**

When the filer submits, and again when the document is accepted for filing under subsection (e)(1)(a) of this rule, the electronic filing system sends an email to the email address of each person whom the filer selected as a service contact or other service contact under subsection (h)(3) of this rule. The email contains a hyperlink to access the document or documents that have been filed electronically. Transmission of the email by the electronic filing system to the selected service contacts in the action constitutes service.

5. **Completion and Time of Electronic Service**

Electronic service is complete when the electronic filing system sends the email to the selected service contacts in the action.

6. **Additional Time After Late Service**

If electronic service is accomplished after 5:00 p.m. local time on the day of service, one (1) additional day will be added to the prescribed period.

7. **Service Other than by Electronic Means**

The filing party is responsible for accomplishing service in any manner permitted by the applicable Idaho Rules of Civil Procedure or Idaho Criminal Rule and for filing a proof of service with the court for the following documents:

A. A document required to be filed conventionally under this chapter;

B. A document that cannot be served electronically on a party who is listed in the action; and

C. A civil protective order or criminal no contact order.

8. Service of Documents by the Court at the Request of Parties

Filers who submit proposed pleadings for the court's review, signature, and service (such as an order, notice of hearing, judgement, decree, etc.) must:

A. include a certificate of service that identifies the email address necessary for the court to complete electronic service of those parties who have electronically appeared in the action; and / or

B. for those parties who have not electronically appeared and require paper / mail service, the filer must pay designated service fees found in "Optional Services."

(i) Protected Information

The use of information contained in a document filed electronically or information accessed through the electronic filing system must be consistent with state and federal law.