

In the Supreme Court of the State of Idaho

IN RE: AMENDMENT OF IDAHO)
CRIMINAL RULES (I.C.R.) 4, 5.3,) ORDER
16, 44.1, 46, 46.2 and 54.17)
_____)

The Court having reviewed a recommendation from the Criminal Rules Advisory Committee to amend the Idaho Criminal Rules, and the Court being fully informed;

NOW, THEREFORE, IT IS HEREBY ORDERED that the Idaho Criminal Rules as they appear in the volume published by the Idaho Code Commission be, and they are hereby, amended as follows:

1. That Rule 4 be, and the same is hereby, amended as follows:

Rule 4. Arrest Warrant – Summons – Determination of probable cause.

(a) **Issuance of arrest warrant.** After a complaint is laid before a magistrate, (which may be in the form of the Idaho Uniform Citation for a misdemeanor), the magistrate may issue a warrant for the arrest of the defendant only after making a determination that there is probable cause to believe that an offense has been committed and that the defendant committed it.

(c) **Issuing arrest warrant or summons, preference for summons.** If the magistrate finds such probable cause for a complaint, in determining whether a warrant or summons should issue, the magistrate shall give preference to the issuance of a summons....

(g) **Form; Transmission.**

(1) **Arrest Warrant.** The arrest warrant shall be signed by the magistrate and shall set forth the name of the defendant or, if the defendant's name is unknown, any name or description by which the defendant can be identified with reasonable certainty. It shall identify the offense charged in the complaint. It shall command that the defendant be arrested and brought before

the nearest available magistrate. The amount of bail may be fixed by the issuing magistrate and endorsed on the warrant at the time of its issuance.

2) **Transmission Telegraphic or facsimile copy of a warrant of arrest.**

~~After the issuance of a warrant in the form set forth in sub paragraph (g)(1) above, a copy of that A warrant of arrest may be sent by telecommunication process email or by facsimile process to any peace officer or other officer serving the warrant. A telegraphic copy should be in the following form:~~
(Eliminate form found in rule)

2. That Rule 5.3 be, and the same is hereby, amended as follows:

Rule 5.3. Initial Appearance on Probation Violations.

(a) **Time and Place for Initial Appearance.** A probation violator may be arrested on an ~~arrest~~ a bench warrant issued by the sentencing court after a finding of probable cause to believe the probationer has violated a condition of probation, or on an agent's warrant pursuant to I.C. § 20-227.

3. That Rule 16 be, and the same is hereby, amended as follows:

Rule 16. Discovery and inspection.

(b) **Disclosure of evidence and materials by the prosecution upon written request.** Except as otherwise hereinafter provided in this rule, the prosecuting attorney shall at any time following the filing of charges, upon written request by the defendant, disclose the following information, evidence and material to the defendant, which shall not be filed with the court, unless otherwise ordered.

(9) Digital Media Recordings (Audio and Video Files). Upon request, the State shall release to defense counsel digital media that may or may not contain protected information as defined by this Rule. The State shall declare whether the disclosure contains protected information.

(A) Unredacted digital media. The State may release unredacted digital media to defense counsel for the purpose of expediting a resolution in a case prior to trial or hearing. The obligation of defense counsel is as follows:

(1) Defense counsel, including agents of defense counsel, may review the unredacted digital media and discuss the content of the recording with the

defendant but shall not share the unredacted digital media in any manner with the defendant without prior consent of the State or an order of the court.

(2) With prior consent of the State or an order of the court, defense counsel may allow the defendant to view the unredacted digital media in the presence of defense counsel or defense counsel's agent, but defense counsel shall not allow the defendant to retain a copy of the digital media in any version, to take photographs, or to otherwise duplicate the digital media in any form.

(3) Defense counsel shall take reasonable steps to ensure the unredacted digital media is safely stored and cannot be accessed by anyone other than defense counsel or defense counsel's agents.

(B) Redacted digital media. If the State determines that the digital media contains protected information that requires redaction prior to disclosure, the State shall provide a redacted version of the digital media, along with a written explanation of the information that was redacted. Defense counsel may allow the defendant to view and retain a copy of any media which is redacted by the State. If defense counsel disagrees with any of the State's redactions, then prior to allowing the defendant to review any unredacted media, a Motion to Compel shall be filed and argued in accordance with these Rules.

(C) Pro se Defendants. When a defendant chooses to proceed pro se, the State may release unredacted digital media to the defendant but, if the State determines that digital media should not be disclosed because it contains protected information, the State shall seek a Protective Order pursuant to section (d)(2)(B) of this Rule.

(9-10) Disclosure by order of the court. Upon motion....

(d) Redacting protected information from responses to discovery.

(4) Print on colored paper. In any case where the State provides discovery to defense counsel in an electronic format, if the attorney receiving the electronic discovery desires to print the discovery, the attorney shall print the unredacted discovery on colored paper as required by section (d)(3) of this rule.

4. That Rule 44.1 be, and the same is hereby, amended as follows:

Rule 44.1 Withdrawal and Substitution of Counsel.

(a) No attorney may withdraw as an attorney of record for any defendant in any criminal action without first obtaining leave and order of the court upon notice to the prosecuting attorney and the defendant except as provided in this rule. Leave to withdraw as the attorney of record for a defendant may be granted by the court for good cause.

(b) When an attorney is being or has been appointed to represent a defendant in any criminal action, the court may provide in the order of appointment that the attorney's representation of the defendant shall be automatically withdrawn, without leave of the court, upon the occurrence of any specified events or the expiration of a specified period of time.

(c) Provided, an attorney may withdraw at any time after the ~~dismissal final determination and disposition of the criminal action by the dismissal~~ of the complaint or information, the acquittal of the defendant, or the entry of a judgment of conviction and sentence; but in the event of conviction an attorney may not withdraw without leave of the court until the expiration of the time for appeal from the judgment of conviction. Notice of the return of service of an arrest warrant for a probation violation must be served by the court upon counsel of record if counsel has not withdrawn from representation pursuant to this rule.

(d) The attorney of record of a party to an action may be changed or a new attorney substituted by notice to the court and to all parties signed by both the withdrawing attorney and the new attorney without first obtaining leave of the court. If a new attorney appears in an action, the action shall proceed in all respects as though the new attorney of record had initially appeared for that party, unless the court finds good cause for delay of the proceedings.

5. That Rule 46 be, and the same is hereby, amended as follows:

Rule 46. Bail or Release on Own Recognizance.

(i) Revocation of bail.

(1) Upon a verified application alleging that the defendant has willfully violated conditions of the defendant's release on bail, other than failure to appear, the court may issue a bench warrant directing that the defendant be arrested and brought before the court for hearing, or the court may order the defendant to appear before the court at a time certain.

(l) Increasing or reducing bail.

(1) The court before which a case is pending may, after a defendant has been admitted to bail, increase or reduce the amount of bail. Upon its own motion, or upon a verified petition for an increase in bail, the court shall order the defendant to appear for a hearing on the application. The court shall also notify the person posting the undertaking of the date and time of the hearing. If the defendant fails to appear at the hearing after being properly notified of the date and the time of said hearing, the court shall, absent evidence of sufficient excuse for his absence, immediately forfeit the bail and shall issue a bench warrant for arrest of the defendant.

6. That Rule 46.2 be, and the same is hereby, amended as follows:

Rule 46.2. No Contact Orders.

(a) No contact orders issued pursuant to Idaho Code § 18-920 shall be in writing and served on or signed by the defendant. Each judicial district shall adopt by administrative order a form for no contact orders for that district. No contact orders must contain, at a minimum, the following information:

(1) The case number, defendant's name and victim's protected person's name;
(2) A distance restriction;
(3) That the order will expire at 11:59 p.m. on a specific date, or upon dismissal of the case;

(4) An advisory that:

(a) A violation of the order may be prosecuted as a separate crime under I.C. § 18-920 for which no bail will be set until an appearance before a judge, and the possible penalties for this crime,

(b) The no contact order can only be modified by a judge, and

(c) When more than one domestic violence protection order is in place, the most restrictive provision will control any conflicting terms of any other civil or criminal protection order. Whenever a no contact order is issued, modified or terminated by the court, or the criminal case is dismissed, the clerk shall give written notification to the records department of the sheriff's office in the county in which the order was originally issued, immediately. No contact orders shall be entered into the Idaho Law Enforcement Telecommunications System (ILETS).

(b) A victim of protected person in a criminal offense case for which a no contact order has issued may request modification or termination of that order by filing a written and signed request with the clerk of the court in which the criminal offense is filed. Forms for such a request shall be available from the clerk. The court shall provide for a hearing within fourteen days of the request and shall provide notification of the hearing to the victim protected person and the parties.

7. That Rule 54.17 be, and the same is hereby, amended as follows:

Rule 54.17. Appellate review.

(a) Scope of appellate review. All appeals from a magistrate shall be heard by the district court as an appellate proceeding unless the district court orders a trial de novo as provided in these rules. The scope of appellate review on appeal to the district court shall be as follows:

(a1) Appeal on the record. Upon an appeal from a magistrate to the district court, not involving a trial de novo, the district court shall review the case on the record and determine the appeal as an appellate court in the same manner and upon the same standards of review as an appeal from the district court to the Supreme Court under the Idaho appellate rules.

(b2) Trial de novo. Upon an appeal from a magistrate to the district court in which a trial de novo is ordered, such appeal shall be by trial in the district court in the same manner as a trial upon information in the district court.

(b) Remittiturs.

(1) Remittitur from district court. If no appeal to the Supreme Court is filed within forty-two (42) days after the clerk files the appellate ruling, the clerk shall issue and file a remittitur with the magistrate court from which the appeal was taken and mail copies to the parties and the presiding magistrate. The remittitur shall advise the magistrate judge that the opinion has become final and that the magistrate shall forthwith comply with the directive of the opinion.

(2) Remittitur from Supreme Court or Court of Appeals. When the Supreme Court or Court of Appeals files a remittitur with the district court in a case that was initially appealed from the magistrate division of the district court, the clerk of the district court shall mail a copy of such remittitur to the presiding magistrate.

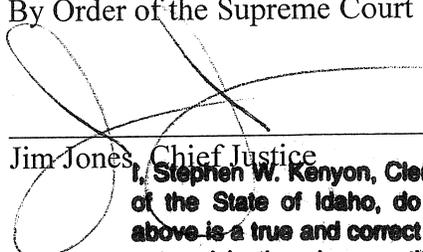
IT IS FURTHER ORDERED, that this order and these amendments shall be effective immediately.

IT IS FURTHER ORDERED, that the above designation of the striking of words from the Rules by lining through them, and the designation of the addition of new portions of the Rules by underlining such new portion is for the purposes of information only as amended, and NO OTHER AMENDMENTS ARE INTENDED. The lining through and underlining shall not be considered a part of the permanent Idaho Criminal Rules.

IT IS FURTHER ORDERED, that the Clerk of the Court shall cause notice of this Order to be published in one issue of *The Advocate*.

DATED this 25th day of February, 2016.

By Order of the Supreme Court



Jim Jones, Chief Justice

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 2/26/16

STEPHEN W. KENYON

Clerk

By: Kimber Grove Deputy

ATTEST:

Stephen Kugel
Clerk