

In the Supreme Court of the State of Idaho

IN RE: AMENDMENTS TO IDAHO)
COURT ADMINISTRATIVE RULE 32)
_____)

ORDER

The Court, having reviewed a recommendation to amend Idaho Court Administrative Rule 32, and the Court being fully informed;

NOW, THEREFORE, IT IS ORDERED that Idaho Court Administrative Rule 32(c) be amended as follows:

Idaho Court Administrative Rule 32(c)

(c) Applications. This Rule shall apply to all court records existing on or after the date of adoption of this Rule. Provided, this Rule shall not prevent examination, inspection and copying to records, otherwise exempt from disclosure by the following persons in the following situations:

- (1) If approved by the custodian judge, or the custodian in the case of any record in the judicial council, federal, state and local officials or their agent accessing a judicial record in the exercise of their official duties and powers; however, requests for numerous records or records from more than one county must be approved by the Chief Justice.
- (2) Parties to an action and their attorney accessing the court file of the action, unless restricted by order of the court, except as limited in paragraphs (g)(12), (15) and (17)(F). In addition, parties may authorize release of their own court records directly to a third party.
- (3) Disclosure by the custodian of statistical information that is not descriptive of identifiable persons.
- (4) Employees shall have access to their own personnel files.
- (5) Judges, clerks, trial court administrators, or other staff employed by or working under the supervision of the courts who need to access specific court records for the performance of their job duties.
- (6) Guardians ad litem and court visitors in guardianship and conservatorship cases shall have access to the case information sheet in those cases, unless restricted by order of the court.

IT IS FURTHER ORDERED that Idaho Court Administrative Rule 32(i) be replaced with the following new Idaho Court Administrative Rule 32(i) – preserving core concepts of the rule while modifying and adding to its language:

Idaho Court Administrative Rule 32(i)

- (i) ~~Other Prohibitions or Limitations on Disclosure and Motions Regarding the Sealing of Records. Physical and electronic records, may be disclosed, or temporarily or permanently sealed or redacted by order of the court on a case-by-case basis.~~
- (1) ~~Any person or the court on its own motion may move to disclose, redact, seal or unseal a part or all of the records in any judicial proceeding. The court shall hold a hearing on the motion after the moving party gives notice of the hearing to all parties to the judicial proceeding and any other interested party designated by the court. The court~~

may order that the record immediately be redacted or sealed pending the hearing if the court finds that doing so may be necessary to prevent harm to any person or persons. In ruling on whether specific records should be disclosed, redacted or sealed by order of the court, the court shall determine and make a finding of fact as to whether the interest in privacy or public disclosure predominates. If the court redacts or seals records to protect predominating privacy interests, it must fashion the least restrictive exception from disclosure consistent with privacy interests.

- (2) Before a court may enter an order redacting or sealing records, it must also make one or more of the following determinations in writing:
 - (A) That the documents or materials contain highly intimate facts or statements, the publication of which would be highly objectionable to a reasonable person, or
 - (B) That the documents or materials contain facts or statements that the court finds might be libelous, or
 - (C) That the documents or materials contain facts or statements, the dissemination or publication of which may compromise the financial security of, or could reasonably result in economic or financial loss or harm to a person having an interest in the documents or materials, or compromise the security of personnel, records or public property of or used by the judicial department, or
 - (D) That the documents or materials contain facts or statements that might threaten or endanger the life or safety of individuals, or
 - (E) That it is necessary to temporarily seal or redact the documents or materials to preserve the right to a fair trial, or
 - (F) That the documents contain personal data identifiers that should have been redacted pursuant to Idaho Rule of Electronic Filing and Service 15, Idaho Rule of Civil Procedure 2.6, or Idaho Rule of Family Law Procedure 218 in which case the court shall order that the documents be redacted in a manner consistent with the provisions of that rule.
- (3) In applying these rules, the court is referred to the traditional legal concepts in the law of the right to a fair trial, invasion of privacy, defamation, and invasion of proprietary business records as well as common sense respect for shielding highly intimate material about persons.
- (4) When a record is sealed under this rule, it shall not be subject to examination, inspection or copying by the public. When the court issues an order sealing or redacting records, the court shall also inform the Clerk of the District Court of which specific files, documents and case management system records are to be sealed or redacted. When the court issues an order sealing or redacting records for purposes of public disclosure, the original records in the court file shall not be altered in any fashion.
- (5) If the court maintains physical files, sealed files shall be marked "sealed" on the outside of the file. The originals of records that have been ordered to be sealed or redacted shall be placed in a manila envelope marked "sealed" with a general description of the records, their filing date and the date they were sealed or redacted. When the court has

issued an order redacting a record, a redacted copy, so marked, shall be substituted for the originals in the court file.

- (6) ~~If the court maintains electronic files, the clerk shall designate the security group of the sealed or redacted records as sealed, thereby limiting access in accordance with the court's order. A redacted copy, so marked, shall be substituted for the originals in the court file.~~
- (7) ~~An order directing that records be redacted or sealed shall be subject to examination, inspection or copying by the public to the extent that such disclosure does not reveal the information that the court sought to protect in issuing the order. The decision on a motion to redact, seal or unseal records may be reconsidered, altered or amended by the court at any time. When the court issues an order disclosing otherwise exempt records, it shall place appropriate limitations on the dissemination of that information.~~

(i) Redaction and Sealing of Court Records.

- (1) **Filing a motion.** Parties to a case, or non-parties whose rights are affected by or who otherwise have a right to access information contained in a court file, may move to redact, disclose, seal, or unseal records in a case file. The court at its own discretion may also move to redact, disclose, seal, or unseal records in a case file in accordance with this rule.
- (2) **When a hearing must be held.** When a motion is filed under this rule, the court shall hold a hearing on the motion if one is requested by a party to the case, or if one is requested by a non-party whose rights are affected. The court may also hold a hearing at its own discretion. The court is not required to hold a hearing if the court concludes redaction is necessary to prevent the disclosure of personal data identifiers under subsection (i)(3)(A)(7) of this rule.
 - (A) If the motion seeks to redact or seal newly filed records, the records will be temporarily sealed for three days. In those three days, the court will review the motion and records to decide if they should remain temporarily sealed. The court may order the records to remain temporarily sealed pending a decision on the motion if the records appear to contain information that falls under subsection (i)(3) of this rule. Any order to continue the temporary sealing must be in writing and identify the applicable provisions of subsection (i)(3) of this rule. The written order will be publicly available.
 - (B) If the motion seeks to redact or seal previously filed records, the court at its discretion may temporarily seal the records pending a hearing or a final decision, utilizing the same criteria and requirements contained above with regard to temporarily sealing newly filed records.
 - (C) An order to redact or seal records may be challenged by a non-party whose rights may be affected by the decision.
- (3) **Orders to redact or seal.** Consistent with the presumption in these rules of public access to information, when entering an order redacting or sealing records in a case file, a court must fashion the least restrictive exception from disclosure and provide the reason for the redaction or sealing.
 - (A) Prior to entering an order redacting or sealing records, the court must make one or more of the following determinations:
 - 1. The records contain highly intimate facts or statements, the publication of

which would be highly objectionable to a reasonable person.

2. The records contain facts or statements that the court finds might be libelous.
 3. The records contain facts or statements that may compromise a person's financial security or could reasonably result in economic or financial loss or harm to a person who has an interest in the records.
 4. The records contain facts or statements that could compromise the security of Judicial Branch personnel, property, or sealed or exempt court records maintained by the Judicial Branch.
 5. The records contain facts or statements that might endanger a person's life or safety.
 6. That it is necessary to temporarily seal or redact the records to preserve the right to a fair trial.
 7. The records contain personal data identifiers that should have been redacted pursuant to Idaho Rule of Electronic Filing and Service 15, Idaho Rule of Civil Procedure 2.6, or Idaho Rule of Family Law Procedure 218.
- (B) Regardless of whether a motion is filed or a hearing occurs, no record can be redacted or sealed (aside from presentence investigation reports) unless the court first enters a written order that includes the determinations made under subsection (i)(3)(A) above. The order must specifically identify the records to be redacted or sealed, and a copy of the order must be served on the Clerk of the District Court. The order shall remain publicly available and subject to examination, inspection or copying by the public, but should not reveal the content of the information protected from disclosure.
- (C) When a record is redacted under this rule, the original, unaltered record must be preserved under seal. A redacted copy, so marked, shall be substituted for the original in the court file and only the redacted copy shall be subject to examination, inspection or copying by the public.
- (D) When a record is sealed under this rule, it shall not be subject to examination, inspection or copying by the public except as otherwise provided in these rules.
- (E) Presentence investigation reports are presumptively sealed as described in Idaho Criminal Rule 32 and unless a court orders otherwise, may only be disclosed in the manner identified by that rule. No order or hearing is required to seal a presentence investigation report.
- (4) **Orders to unredact or unseal.**
- (A) In any order removing redactions or unsealing records, the court must explain its reasoning for the decision. Those reasons may include, but are not limited to:
1. A determination that none of the factors listed under subsection (i)(3)(A) preclude release of the records.
 2. A determination that release is permitted elsewhere in court rule, including other subsections of Idaho Court Administrative Rule 32.
- The order must also specifically identify the records to be changed, and a copy of the order must be served on the Clerk of the District Court.
- (B) When the court issues an order for a limited disclosure of records that will otherwise remain sealed or exempt from disclosure, its order shall contain

appropriate limitations on disseminating the disclosed information.

- (5) **Filing under seal.** Sealed records and records requested to be sealed must be filed in compliance with Idaho Rules for Electronic Filing and Service 5 and 6.
- (6) **Changes to orders.** The court may reconsider, alter, or amend any order issued under the provisions of this rule at any time.
- (7) **Provisions concerning exempt records.** Exempt records are different than sealed or redacted records and are addressed in Idaho Court Administrative Rule 32(f) and (g). Access to records otherwise exempt from disclosure is addressed in Idaho Court Administrative Rule 32(c) and (h).

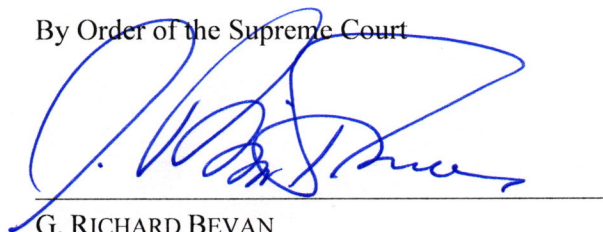
IT IS FURTHER ORDERED that this order and these amendments shall be effective January 1, 2025.

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 Court Administrative Rules.

IT IS FURTHER ORDERED that notice of this Order shall be published for three consecutive weeks on the Idaho State Bar's website and in its weekly E-Bulletin, and that as soon as practicable, a summary of the amendment(s) effected by this Order shall be published in one issue of *The Advocate*.

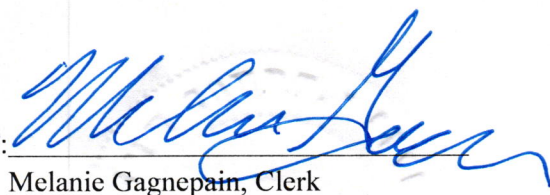
DATED this 13th day of September, 2024.

By Order of the Supreme Court



G. RICHARD BEVAN
Chief Justice, Idaho Supreme Court

ATTEST:



Melanie Gagnepain, Clerk