

Highlights of Rule Amendments For 2015

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The following is a list of rule amendments that will go into effect on July 1, 2015, unless otherwise noted. 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.

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

Rule 11. Appealable judgments and orders. Subsection (d) of this rule addresses appeals from the Industrial Commission. A new provision has been added that allows for a direct appeal from any order of the Commission deciding compensability that the Commission determines should be immediately appealable pursuant to new Rule 12.4. These appeals will be expedited as set out in Rule 12.4.

Rule 12.4. Expedited procedure for Industrial Commission Appeals Pursuant to Rule 11(d)(2). This new rule sets out the procedure for moving the Industrial Commission to make a determination as to whether an order deciding compensability that resolves less than all issues regarding a claim for benefits should be immediately appealable and the criteria for such a determination. It also sets out the time limits for such a motion, as well as the time limits for filing the notice of appeal and the briefing should the Commission determine that an appeal is appropriate.

Idaho Rules of Civil Procedure. The Civil Rules Advisory Committee is chaired by Justice Jim Jones.

The statewide adoption of the Idaho Rules of Family Law Procedure necessitated a number of amendments to the Rules of Civil Procedure for July 2015. Some rules were modified to delete references to matters that are now governed by the IRFLP, and rules addressing matters exclusively governed by the IRFLP were eliminated, such as the rule setting out the child support guidelines and many sections of Rule 16 that addressed family law matters. These rules are now found only in the IRFLP.

Rule 16(a). Scheduling conferences and scheduling orders. In 2014, Rule 16 was amended at the recommendation of the Advancing Justice Committee. After additional review and consideration, the rule has been amended again. The rule still requires the court to take action within 30 days after an answer or notice of appearance has been filed, or within 90 days after a complaint has been filed, if one or more defendants have been served but no appearance has been made. However, the amendment allows more discretion on the part of the court as to what action to take.

Idaho Criminal Rules. The Criminal Rules Advisory Committee is chaired by Justice Daniel Eismann. Many of the amendments to these rules were recommended in conjunction with the Advancing Justice Committee chaired by Senior Judge Barry Wood.

Rule 5.3(c)(7). Initial Appearance on Probation Violations. This subsection was amended to address the issue of timely transport when a probationer is arrested in a county different from the one in which he or she was originally sentenced. The clerk of the arresting county will provide written notice of the dates of the probationer's arrest and appearance before the court to the clerk of the county where the probationer was placed on probation so that timely transport can be provided to the sentencing county. Upon receipt of the written notice, the clerk of the county where the probationer was placed on probation must provide a copy of the notice to the parties in the case.

Rule 10. Arraignment on Indictment or Information. This rule now requires that persons be arraigned within 30 days of the filing of an information or indictment. Recognizing that there are situations where an indictment is issued but the defendant is not in custody, the rule also provides time frames for when a summons is issued or the defendant is arrested in another county pursuant to a warrant following an indictment.

Rule 12. Pleadings and Motions before Trial. A new subsection on motions to suppress has been added requiring that the motion describe the evidence sought to be suppressed and the legal basis for its suppression sufficiently to give the opposing party reasonable notice of the issues. The motion should give enough information to alert the prosecutor and the court as to what items or statements the defendant seeks to suppress, and to give the prosecutor notice as to which witnesses are required to be present at a hearing. In addition, the subsection on motion date was amended to state that lack of access to relevant discovery may be considered good cause for the court to enlarge the time to file a pretrial motion.

Rule 18. Felony Pretrial Conference. This rule now applies only to felonies and it makes a distinction between pretrial conferences and informal settlement conferences, requiring a written record of matters decided at a pretrial conference. The existing statement in the rule that "no admissions made by the defendant or defense counsel at the conference may be used against the defendant unless reduced to writing and signed by the defendant" only applies to admissions made in the course of an informal settlement conference.

Rule 23. Trial by jury or by the court--Waiver of jury--Number of jurors. This rule was amended to allow trial before the same twelve person jury in cases involving both misdemeanor and felony charges arising out of the same incident that have been consolidated.

Rule 32. Standards and Procedures Governing Presentence Investigations and Reports. When supervision of a probationer or a parolee is transferred to another state under the Interstate Compact, the Idaho Department of Correction transfers a copy of the PSI. Language was added to Subsection 32(h)(1) to clarify that the IDOC does not need the approval of the custodian judge in each of these cases. This subsection was also amended to be more specific as to the victim's right to read a presentence report.

Rule 33. Sentence and Judgment. A new subsection has been added on discretionary jail time, which is defined as jail time to be served at the discretion of the probation officer as a sanction for violating a term or condition of probation. Discretionary jail time does not include incarceration in jail in order for a defendant to obtain treatment or programming provided in the jail. The new subsection sets out a procedure for imposing discretionary jail time and limits it to no more than three consecutive days. It also provides that any time served in jail as discretionary jail time shall be credited against the period of discretionary jail time specified as a condition of probation.

Plea Advisory Form. Rule 11 refers to a plea advisory form, though its use is not mandatory. Recently a District Judges Workgroup made suggested revisions to the form as part of a committee looking at best practices, forms and formatting for the upcoming new court technology system. The suggested revisions were sent to the Criminal Rules Advisory Committee for review and further recommendations and then adopted by the Supreme Court. The form appears in the appendix to the Criminal Rules.

Idaho Rules of Family Law Procedure. The Children and Families in the Courts Committee is chaired by Judge Russell Comstock.

The following amendments were effective April 15, 2015.

Rule 106. Consolidation. In many domestic relations cases there is a previous case involving only child support in the same or a different county. Since child support is likely to be modified in the new case, consolidation is preferred. In order to make that easier, the new amendment provides that, if the domestic relations case is filed in the proper county, a motion to consolidate may be filed in the new case and the judge assigned to the new case may rule on the motion.

Rule 201. Commencement of Action. Subsection C on proceedings to modify child custody, child support or spousal maintenance was amended to clarify that this proceeding is commenced by filing a petition in the original action. The petition must be in a form similar to an original petition and the method of service is the same as for an original action. Service must be on the opposing party rather than on the previous attorney of record for the party. It also states that there is no right for an existing party in the lawsuit to disqualify the judge without cause pursuant to Rule 107 if that judge had previously presided in the lawsuit and had not been disqualified. The amendment also clarifies that a petition to modify shall be resolved by the entry of a judgment as provided in Rule 803(B), and that all orders issued in adjudicating the motion to modify prior to the entry of the judgment are interlocutory orders.

Rule 504. Motions for Temporary Orders – Mandatory Disclosure. The amendment clarifies that a temporary order issued pursuant to Idaho Code Sections 32-704 or 32-717 is not a judgment and cannot be certified as final pursuant to Rule 804.

Rule 803. Judgments. This rule mirrored I.R.C.P. 54 on judgments, but concerns were raised about strict enforcement of the rule in family law cases. If the judgment is not appealed, any problem in the judgment may not be noticed until years later when a modification is sought. If errors in the form of the judgment mean it was never final, there are serious consequences,

especially for parties that have remarried and had additional children in reliance upon it. Thus, the rule has been amended to replace the word “shall” with “should” so that in family law cases the judgment should not contain a recital of pleadings, the report of a master, the record of prior proceedings, courts legal reasoning, findings of fact, or conclusions of law and should begin with the words “Judgment is entered as follows”.

A new subsection was added to the rule, stating that an order granting or denying a motion to modify a child custody, child support, or spousal maintenance provision in a prior judgment shall not be final until an appropriate judgment granting or denying relief regarding the motion has been entered. If the motion is granted, the court must enter a judgment setting forth the modification to the prior judgment, but the judgment granting the modification need not include the provisions in the prior judgment that were not modified. If the motion is denied, the court must enter a judgment denying the requested modification. In either case, the judgment regarding the motion to modify may identify and refer to the prior judgment.

The following amendments are effective July 1, 2015.

Rule 101. Scope of Rules. Legal separation has been added to the actions governed by these rules.

Rule 112. Appearance and withdrawal of counsel. I.R.C.P. 11(b)(3) was recently amended to require the clerk to serve the order to withdraw on all parties. The amendment to this rule mirrors the language in the civil rule.

Rule 115. Access to proceedings. The provision found in I.R.C.P. 77(d) on notice of orders or judgments was added to the family law rules.

Rule 126. Child Support Guidelines. The affidavit verifying income and child support worksheets have been added to the appendix.

Rule 127. Reclaiming Exhibits. I.R.C.P. 79(e) on reclaiming exhibits has applicability to family law cases but was not included in the family law rules initially so it has now been added.

Rule 210. Third Party Practice. I.R.C.P. 19(a)(1), 19(a)(2), 20(a) and 21 regarding joinder and misjoinder of parties were inadvertently left out of the family law rules and are now found in Rule 210 subsections C, D, E and F.

Rule 413. Uniform and Non-Uniform Interrogatories; Limitations; Procedure. I.R.C.P. 33(a)(2) provides that a party has 30 days to respond to discovery and that the court may allow a shorter or longer time to respond. This language on allowing a shorter or longer time was added to Rule 413.

Rule 443. Sanctions for Violation of Orders - Motion for Order Compelling Discovery. The title of this rule now includes a reference to violation of mandatory disclosure and provides a mechanism to bypass the motion to compel for mandatory disclosure by allowing a direct motion for sanctions. The rule was also amended to clarify that motions to compel apply to additional discovery.

Rule 504. Motions for Temporary Orders - Mandatory Disclosure. The amendment limits the number of pages per affidavit to twenty and the number of affidavits to four.

Rule 511. Bond or Notice Discretionary in Prohibitive or Mandatory Orders. Legal separation was added to the types of cases to which this rule applies and language added that the hearing, notice and expiration periods set forth in Rule 508 apply to any order issued under this rule.

Idaho Juvenile Rules. The Child Protection Committee is chaired by Judge Bryan Murray.

Rule 37. Right to Counsel (C.P.A.). Language was added to make this rule consistent with recent amendments to Idaho Code Section 16-1614, including that for a child under the age of twelve years the court shall appoint a guardian ad litem for the child or children and shall appoint counsel to represent the guardian ad litem unless the guardian ad litem is already represented by counsel.

Misdemeanor/Infraction Rules. The Misdemeanor/Infraction Rules Advisory Committee is chaired by Judge Michael Oths.

Rule 9.4. Alcohol-drug evaluation report. This evaluation must now include whether the evaluator is the person or facility recommended to provide the treatment and, if so, the evaluator must certify that conflict of interests provisions found in Idaho Code Section 18-8005(11) have been complied with for any court ordered treatment beyond any treatment that may have been provided prior to sentencing. If an evaluator provides treatment in violation of the conflict of interest provision, the court may decline further evaluations from that evaluator.

Bail Bond Schedule. Several changes were made to the bail bond schedule to reflect recent legislation. Tampering with a vehicle was removed. Littering the highway from a vehicle was amended to reflect it is only a misdemeanor if a third offense or charged under subsection (3) of Idaho Code Section 18-3906, and flooding a highway was amended to reflect that it is only a misdemeanor if a second or subsequent offense in the same calendar year.

Infraction Penalty Schedule. Due to recent legislation changing some misdemeanors to infractions and setting the penalties for those infractions, several new infractions were added to the infraction penalty schedule. These include littering from a vehicle (first and second offense), placing debris on public or private property (first offense), flooding a highway (first offense), curfew violation by a minor, tobacco or electronic cigarette violations by a minor, altering fireworks or selling or using fireworks at any time not permitted, as well as several new fish and game offenses that are set out in Idaho Code Section 36-1401(a)1.

Idaho Court Administrative Rules. The Rule 32 Committee is chaired by Justice Jim Jones.

Rule 32. Records of the Judicial Department. Examination and Copying - Exemption From and Limitations on Disclosure. A number of amendments have been made to Rule 32,

including the definition of court record as any document, information or other thing that is filed, docketed or lodged.

Subsection (g) of this rule addresses court records exempt from disclosure and subsection(g)(9) addresses juvenile records. Subsection (g)(9)(E) made an exception in cases where a juvenile is adjudicated guilty of an act which would be a criminal offense if committed by an adult, providing that in those cases the name, offense, and disposition of the court was open to the public. This subsection has now been deleted as inconsistent with the rest of the rule and because it could subject juveniles to severe and needless adverse consequences.

Subsection (g)(20) addresses records in cases involving child custody, child support, and paternity and provides that these records are exempt from disclosure, with the exception that the register of actions and a redacted copy of any order decree or judgment are available to the public. The rule was creating confusion as to whether the full names, birthdates and social security numbers should be included in the original order, decree or judgment; however, this information is required for identification of the children and collection of support. To clarify this issue the rule was amended to state that 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 I.R.C.P. 3(c)(1)(a) - (d). In addition, language was added that a person may request the court to make other records in the case available for examination and copying at which point the court must review and make the records available subject to the criteria set out in the rule.

Subsection (i) addresses other prohibitions or limitations on disclosure and motions regarding the sealing of records and has been amended to provide that when there is a motion to seal a record the court may order that the record be immediately redacted or sealed pending the hearing if the court finds that doing so may be necessary to prevent harm to any person or persons.

For other amendments to this rule, please consult the order that can be found on the Supreme Court webpage.