



## **I.J.R. 34. Order of Removal of Child Upon Issuance of the Summons (C.P.A.).**

Idaho Juvenile Rule 34. Order of Removal of Child Upon Issuance of the Summons (C.P.A.).

(a) *Order.* The court may order the removal of the child/ren from the home, in accordance with I.C. § 16-1611(4), at the time the Summons is issued, or upon separate motion. Except as provided in subsection (c) of this rule, a request for an Order of Removal must be made in writing, either in the petition or by separate motion of the petitioner. Determination shall be made on facts presented to the court ex parte, either by testimony or affidavit.

(b) *First Order Sanctioning Removal.* If the Order of Removal of Child is the first court order sanctioning removal of the children from the home, the court shall make written, case-specific findings that remaining in the home is contrary to the child/ren's welfare and that vesting legal custody with the Department of Health and Welfare or other authorized agency is in the best interest of the child/ren.

(c) *After Hours, Weekends, and Holidays.* If a prosecuting attorney or deputy attorney general seeks an order of removal of the child/ren from the home, after office hours, during the weekend, or on a holiday, the court may issue the order and summons based on information communicated in person, by telephone or other reliable electronic means or affidavit. When the court's findings are based on a sworn oral statement, the statement must be recorded, filed with the clerk of the court, and is considered part of the record; these statements need not be filed prior to the issuance of the order. All sworn oral statements given in support of an order for removal must be given on oath or affirmation and must identify the speaker. If the court is unable to provide an electronic signature on the order of removal in accordance with Idaho Rules for Electronic Filing and Service (I.R.E.F.S.) 9 the court may verbally authorize the prosecuting attorney or deputy attorney general to sign on behalf of the court, which verbal authorization must be recorded.

(d) *Electronic Signatures.* An electronic signature may be used on any document that is required or permitted under this rule and that is transmitted electronically, including an order of removal, a written certification or declaration under penalty of perjury, an affidavit, or a notary's seal, in accordance with I.R.E.F.S. 9.

(e) *Form of Order of Removal to accompany the Summons.* The Order of Removal accompanying the summons shall substantially conform to the Supreme Court form found in Appendix A.

Committee Comments. As to subsection (c), federal law requires the court to make a written, case-specific finding that remaining in the home is contrary to the child's welfare. See 45



CFR § 1356.21(c). Idaho Code § 16-1611(4) requires the court to find that remaining in the home is contrary to the child's welfare and that vesting legal custody in IDHW is in the child's best interests. The policy of the rule is to require written case specific findings on both best interest and contrary to the welfare. Failure to timely make the federal finding will result in loss of federal funding for an otherwise eligible child. If the case-specific finding is not made, or not made at the required time, the error cannot be corrected at a later date to restore funding. The finding cannot be a simple recitation of the language of the statute; however, if the case-specific information upon which the finding is based is set forth in a document in the court record (such as an affidavit), the finding can incorporate the document by reference without reiterating the facts set forth in the document.

(Revised Rule 34 - adopted August 21, 2006, amended April 27, 2011, effective July 1, 2011; amended effective January 24, 2025.)

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