

In the Supreme Court of the State of Idaho

IN RE: ADOPTION OF THE
IDAHO RULES FOR TREATMENT
COURTS

ORDER

The Court has reviewed a recommendation from the Treatment Court Committee to adopt the Idaho Rules for Treatment Courts. The Treatment Court Committee has advanced these rules in order to align the administration of and procedures for Treatment Courts throughout all of Idaho.

NOW, THEREFORE, IT IS HEREBY ORDERED that the attached Idaho Rules for Treatment Courts be, and are hereby adopted.

IT IS FURTHER ORDERED, that this order and the Idaho Rules for Treatment Courts shall be effective July 1, 2022.

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 29th day of April, 2022.

By Order of the Supreme Court



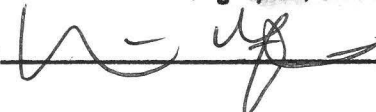
G. Richard Bevan
Chief Justice, Idaho Supreme Court

ATTEST:



Melanie Gagnepain, Clerk

I, Melanie Gagnepain, Clerk of the Supreme Court/
Court of Appeals 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 4-29-22
Melanie Gagnepain, Clerk

By  Deputy

Idaho Rules for Treatment Courts

PART 1 - General Administration

Rule 1. Title; Purpose; Scope; District Court Rules

(a) Title. These rules are to be known and cited as the Idaho Rules for Treatment Courts (I.R.T.C.).

(b) Purpose. The purpose of these rules is to uniformly administer the Treatment Courts throughout Idaho as authorized pursuant to the Idaho Drug Court and Mental Health Court Act, section 19-5601, Idaho Code.

(c) Scope. These rules govern the procedure and apply uniformly to all proceedings in the State of Idaho related to the operations of a Treatment Court. The Idaho Criminal Rules and Idaho Misdemeanor Criminal Rules shall apply to the extent they are not in conflict with these specific rules. Where they are in conflict, the Idaho Rules for Treatment Courts control.

(d) District Court Rules. Any local rules enacted by the administrative district judge regarding any Treatment Court must be consistent with these rules, and approved by the Idaho Supreme Court before they are effective.

Rule 2. Definitions

Unless the context clearly indicates a different meaning, the following terms mean:

(a) "Absconded" means the status when a Treatment Court participant's whereabouts are not known or when a Treatment Court participant is known to have left the designated or approved residence, county, judicial district or state without permission of the court or probation officer. There shall be a rebuttable presumption that a participant has absconded from Treatment Court supervision when that participant has failed to appear at a Treatment Court hearing for two or more consecutive court sessions.

(b) "Case Management" means goal-oriented case plan activities that facilitate, coordinate, or monitor the full range of basic human needs, treatment, and service resources and delivery for individual Treatment Court participants in accordance with the policies and procedures of the Treatment Court or other service providers.

(c) "Case Plan" means a plan that documents case management activities that the participant must complete as a condition of Treatment Court participation. These activities should be based upon the results of a risk and needs assessment, in conjunction with any other assessments, the Treatment Court's participation agreement and any applicable court orders.

(d) "Criminal Case File" means the court records kept by the clerk of the court in the court's case management system.

(e) "Eligibility Screening" means a procedure for determining a potential participant's eligibility for admission to Treatment Court.

(f) "Idaho Treatment Court Best Practice Standards" means those practices and standards approved by the Idaho Supreme Court.

(g) "Incentives and Sanctions" means intangible or tangible rewards or punitive responses to increase desirable behaviors or decrease undesirable behaviors.

(h) "Neutral Discharge" means that, for reasons other than noncompliance, factors outside the participant's control, or not known to the Treatment Court at time of acceptance, a participant is no longer able to successfully participate in a Treatment Court.

(i) "Participant" means any person who meets the eligibility criteria, has signed a Treatment Court participant agreement, and has been admitted to the Treatment Court by the Treatment Court Judge.

(j) "Participation Agreement" means the document signed by a participant evidencing the participant's agreement to follow the conditions of Treatment Court participation.

(k) "Receiving Court" means any Treatment Court that presides over a case transferred from another court.

(l) "Risk and needs assessment" means the procedure used to determine the participant's criminogenic risk and needs using appropriate empirically validated instruments for the purpose of determining eligibility or developing a case plan.

(m) "Staffing" means a gathering of Treatment Court Team members that share timely information on the behaviors and progress of a participant and may make recommendations to the judge for responses to behaviors to discourage noncompliance and encourage compliance. Participants are not to attend staffings.

(n) "Termination" means the full cessation of a Treatment Court participant's involvement in a Treatment Court for noncompliance.

(o) "Therapeutic Adjustment" means alterations to a participant's treatment requirements that are intended to address unmet clinical or social service needs, and are not intended as an incentive or sanction.

(p) "Treatment Court" means a court that follows the Idaho Treatment Court Best Practice Standards, and utilizes judicial monitoring, close supervision, testing and treatment of high risk and high need criminal justice involved individuals with behavioral health issues. As used in these Rules, Treatment Court includes all adult Drug Courts, DUI Courts, Mental Health Courts, Wood Courts, Young Adult Courts, Domestic Violence Drug Courts, and Veterans Treatment Courts, but shall not include Domestic Violence Courts, Juvenile Drug Courts, or Child Protection Drug Courts.

(q) "Treatment Court Coordinator" means the Treatment Court Team member responsible for the administration, management, and coordination of Treatment Court services and operations. These responsibilities may include, overseeing Treatment Court staff activities, assisting the Treatment Court's compliance with Standards, statutes, and rules, developing and implementing Treatment Court policies and procedures, managing the Treatment Court Program File, managing team member memoranda of understanding, making applications and managing program grants, managing service provider contracts, making referral for any ancillary services, serving as a liaison to local service providers and community groups, monitoring participant compliance with the participation agreement, case plan, and other applicable agreements, and coordinating the provision of participant progress and compliance information to the Treatment Court Team.

(r) "Treatment Court Judge" means the judicial officer who presides over a Treatment Court.

(s) "Treatment Court Proceeding" means the hearings held in furtherance of the Treatment Court program held on the record before the Treatment Court Judge.

(t) "Treatment Court Supervision Module Records" means participant information related to the participant's diagnosis, treatment, progress, and related medical and psychological information kept by the Treatment Court Coordinator.

(u) "Treatment Court Team" means the interdisciplinary group of professionals that provides specific assistance to the Treatment Court Program and works together to address the issues facing the participants. Team members may include the Treatment Court Judge, Court Clerk, Treatment Court Coordinator, representatives from the prosecuting attorney's office, defense counsel, community supervision, law enforcement, treatment providers, case managers, Department of Health and Welfare staff, mentors, or others.

Rule 3. Treatment Court Formation and Dissolution

(a) The Idaho Drug Court and Mental Health Court Act specifies the goals, purposes, policies for acceptance and related operating guidance for the operation of Treatment Courts in Idaho. In addition, the Act establishes a statewide Treatment Court Committee and vests it with the responsibility for establishing standards and guidelines and providing ongoing oversight of the operation of Treatment Courts in Idaho. This rule provides additional direction for the development, establishment, operations, and termination of Treatment Courts. The provisions of this rule apply to all Treatment Courts, including those addressing adult felony or misdemeanor cases. This rule acknowledges that an Executive Committee may be formed consisting of sitting Committee members and be authorized to act on their behalf for the provisions identified in this rule.

(b) The judicial district must submit an operations application, on a form to be prescribed by the Treatment Court Committee, prior to beginning operations of a new Treatment Court. This application shall be signed by the Administrative District Judge, Trial Court Administrator, and Treatment Court District Manager, and submitted to the Treatment Court Committee no less

than sixty (60) days in advance of a proposed starting date. The operations application shall include the following:

(1) A memorandum of agreement (MOA) signed by the Administrative District Judge, Trial Court Administrator, Treatment Court District Manager, the proposed presiding judge, the prosecuting attorney(s) or city attorneys for the participating jurisdictions, the public defender(s) for the participating jurisdictions, the community supervision agency, law enforcement, and the treatment provider. This MOA will describe each person's or entity's participation and specific commitments to the Treatment Court.

(2) Documentation of training for all team members for the Treatment Court that would include one or more of the following:

(A) A certification of completion for an online training;

(B) A training hosted and conducted by the Treatment Court District Manager or Administrative Office of the Court;

(C) Documentation of attendance to a national, state, or local conference.

(3) The policy and procedures manual and separate participant handbook.

(c) Judicial districts that are requesting to create multiple Treatment Courts or combining Treatment Courts within existing resources will only need to submit an MOA if there are any new team members in the proposed additional Treatment Court.

(d) Upon receiving the completed operations application, the Treatment Court Committee shall recommend for approval or disapproval to the Idaho Supreme Court. The Court will review the application, the Committee's recommendation, and make a final determination. If the operations application is approved by the Idaho Supreme Court, the Administrative Director of the Court is authorized to sign all necessary documents.

(e) If there is no substantive change to the MOA, any successor to the role of any signatory to the MOA electing to abide by the agreement may separately acknowledge and agree to the terms of the MOA. Any substantive change to the MOA requires all persons or entities outlined in I.R.T.C. 3(b)(1) to sign a new MOA. For purposes of this rule, a change in the person or entity occupying any of the roles outlined in I.R.T.C. 3(b)(1) is not considered a substantive change.

(f) A judicial district planning to dissolve a Treatment Court must submit a letter of planned dissolution to the Statewide Treatment Court Coordinator for communication to the Treatment Court Committee, signed by the Administrative District Judge, Trial Court Administrator, and Treatment Court District Manager, as soon as reasonably possible and prior to the proposed ending date.

Rule 4. Treatment Court Program File

(a) The Treatment Court Program File, whether electronically or physically stored, shall be kept by the Treatment Court Coordinator throughout the existence of the Treatment Court, and maintained continually subject to modifications when necessary.

(b) The Treatment Court Program File shall include documentation related to the general administration of the Treatment Court, which may include:

- (1) The Treatment Court's policy and procedures;
- (2) Original version of that Treatment Court's Handbook and all subsequently amended versions of that handbook;
- (3) Memorandum of Agreement/Understanding;
- (4) Confidentiality agreements;
- (5) Budget reports;
- (6) Application and management documentation for any program grants;
- (7) Service provider contracts;
- (8) Contact information for ancillary services referrals; and/or
- (9) Any data collected for performance and outcomes of the Treatment Court's stated goals.

(c) Upon termination of the operations of a Treatment Court, the Treatment Court Program File will be retained by the Trial Court Administrator or designee for not less than five years.

Rule 5. Treatment Court Proceedings

(a) Scheduling and Court Case Management.

- (1) Staffings and Treatment Court proceedings should be held at the same time and on the same day or same week, as consistently as possible.
- (2) Staffings are not required to be scheduled in Idaho's court case management system.
- (3) Treatment Court proceedings do not need to be scheduled in Idaho's court case management system. However, the Treatment Court Judge may require that the Treatment Court proceedings be scheduled in Idaho's court case management system, but only upon the approval and order of the Judicial District's Administrative Judge. Prior to any approval or order requiring the scheduling of Treatment Court proceedings in Idaho's court case management system by the Administrative District Judge, the

Administrative District Judge must consult with the county's elected clerk and the Judicial District's Trial Court Administrator.

(b) Treatment Court Proceedings Presumed to be Open to the Public

(1) All Treatment Court proceedings are open to the public, except as provided by the Idaho Court Administrative Rules, the Idaho Criminal Rules, the Idaho Rules of Evidence, or Idaho statutes.

(2) The presiding judge may only close a proceeding upon a finding that (1) closure would serve a compelling interest, and (2) there is a substantial probability that, in the absence of such closure, this compelling interest would be harmed, and (3) there are no alternatives to closure that would adequately protect the compelling interest at stake.

(3) If the presiding judge finds that an alternative to the closure would adequately protect the compelling interest, the alternative must be narrowly tailored to protect the compelling interest.

(4) Upon any order of closure or alternative to closure of a participant's proceedings, the presiding judge shall issue written findings supporting the order.

(c) Treatment Court Staffings Closed to the Public

(1) All Treatment Court staffings shall be closed to the public, except as provided herein.

(2) A Treatment Court Judge shall have discretion to allow any non-Treatment Court Team member to attend staffing to address the needs of a participant.

(3) Treatment Court staffings are presumptively closed to participants unless the Treatment Court has good reason for a participant to attend discussions related to that participant's case.

(4) Treatment Court staffings shall not be on the record.

(5) Any notes, files, documents or other writings used exclusively in, or for purposes of, staffing individual cases shall be exempt from public disclosure.

Rule 5.1. Record of Treatment Court Proceedings

(a) **Electronic Recording.** An electronic recording shall be made of all Treatment Court proceedings in accordance with Idaho Court Administrative Rule 27.

(b) **Court Reporters.** A court reporter's attendance is not required for Treatment Court proceedings. At the discretion of the presiding Judge, a court reporter may be used in termination hearings.

(c) **Court Clerks.** A court clerk or deputy clerk must be present during Treatment Court proceedings. During Treatment Court proceedings the court's clerk or deputy clerk:

- (1) shall operate a fully functional electronic recording device or application that is recording all oral communications made in the presence of the Treatment Court Judge, including, but not limited to, communications of the parties, counsel, witnesses and the Treatment Court Judge;
- (2) may, at the discretion and direction of the Treatment Court Judge, maintain and draft minutes of the Treatment Court proceeding and include therein any information the Treatment Court Judge requires;
- (3) shall enter, or forward for entry, any orders signed by the Treatment Court Judge;
- (4) shall, in a Treatment Court termination hearing, draft a sequential record of the judicial events in such proceeding. The minutes shall include:
 - (A) The title of the proceeding, case number, date, start, and ending time of the hearing;
 - (B) The name of the participant, the attorneys, any witnesses who testify, and the Treatment Court Judge;
 - (C) A list of any exhibits offered and admitted at the termination hearing; and
 - (D) A description of all rulings of the judge in respect to the admission or rejection of evidence and objections thereto.

Rule 6. Criminal Case File

(a) The criminal case file shall be kept by the clerk of court. The criminal case file shall adequately document the progress of the Treatment Court proceedings in relation to the criminal case and shall contain a record of any judicial action taken in the case.

(b) In addition to the items usually found in the court's criminal case file, the records pertinent to Treatment Court should include:

- (1) Any order referring a defendant for an assessment for Treatment Court;
- (2) Any notice admitting or rejecting a defendant to Treatment Court;
- (3) Any order staying the criminal court proceedings;
- (4) Any order or judgment imposing participation in a Treatment Court as a term or condition of a defendant's probation or diversion program;

- (5) Any waiver or acknowledgment pertaining to court proceedings, such as a waiver of confidentiality regarding discussion of treatment-related issues, or acknowledgment of ex parte contact between the Treatment Court Team members and the Treatment Court Judge;
- (6) Any proceedings or orders regarding sanctions;
- (7) Any notice, proceedings, or order of participant's voluntary or involuntary termination from a Treatment Court;
- (8) Any orders or acknowledgement of successful completion of the program.

Rule 7. Treatment Court Application

The Treatment Court Coordinator shall maintain a record of each applicant's Treatment Court Application and any documentation in support thereof. Such record shall contain sufficient information to justify the Treatment Court's acceptance or denial of the application, and may include:

- (1) A written application for admission to the Treatment Court;
- (2) Any risk and needs assessments related to the applicant;
- (3) Any substance abuse or mental health screening or assessment reports related to the applicant;
- (4) The decision of the Treatment Court as found in the Notice of Eligibility for Treatment Court form.

Rule 8. Treatment Court Supervision Module Records

(a) The Treatment Court Supervision Module Records shall be kept by the Treatment Court Coordinator.

(b) The Treatment Court Supervision Module Records shall contain a copy of the application to participate in the Treatment Court, an acknowledgment of the Treatment Court Participant's orientation, as required by I.R.T.C. 10, and the participant confidentiality agreement or consent that acknowledges treatment information shall be used only for purposes of Treatment Court. The Treatment Court Supervision Module Records shall also contain information related to the participant's diagnosis, treatment, progress, and related medical and psychological information, which may include:

- (1) Information gathered to evaluate the application;
- (2) Relevant medical information and history of substance abuse, diagnosis, drug and alcohol use, monitoring, medical and psychological reports, prescriptions;

- (3) Treatment team progress reports; and
- (4) Information regarding case management provided to the Treatment Court Coordinator.

PART 2 – Treatment Court Procedure

Rule 9. Admission to Treatment Court

- (a) No person has a right to be admitted to a Treatment Court.
- (b) A person desiring to participate in a Treatment Court shall submit an application for admission, developed and approved by the judicial district or Treatment Court program, and a Consent for Disclosure of Confidential Information to the Treatment Court Coordinator and shall submit any information required by the Treatment Court to evaluate whether the person meets the criteria for admission.
- (c) The Treatment Court Judge may issue an Order for Assessment for Treatment Court if the applicant does not have a current substance use disorder assessment, mental health assessment, or LSI-R.
- (d) Treatment Court personnel may review the applicant's Pre-Sentence Investigation report for purposes of screening the applicant, notwithstanding any limitations pursuant to Idaho Criminal Rule 32.
- (e) The Treatment Court Team shall screen each applicant to determine if the applicant meets eligibility requirements and criteria for admission into the particular Treatment Court.
- (f) Once the Treatment Court Judge, in consultation with the Treatment Court Team, determines the applicant's eligibility or ineligibility for participation in the Treatment Court, the Treatment Court Judge or designee shall issue a Notice of Eligibility for Treatment Court to be provided to the presiding judge and filed in the underlying criminal case.
- (g) Parolees may apply to a Treatment Court. A parolee must meet eligibility requirements of the Treatment Court, must have pled or been found guilty of a new felony or misdemeanor charge, and must have permission of the Parole Commission.
- (h) If an applicant is ordered into a Treatment Court, the presiding Judge will enter an Order for Participation in a Treatment Court and an Order for Payment of Treatment Court Fees.
- (i) A Treatment Court Judge may adjust the participant's Treatment Court fees. If fees are adjusted, the Treatment Court Judge shall enter an Order to Adjust Treatment Court Fees.

Rule 10. Orientation and Advance Notice to Participants

(a) Each Treatment Court shall develop and observe a written policy and procedure for conducting an orientation with each new participant, and when appropriate, the participant's family.

(b) Each Treatment Court's written policy and procedure for conducting an orientation shall include a requirement that the Treatment Court shall provide each participant with a participant handbook or agreement and any supplemental written documentation that provides notice of the following:

- (1) Eligibility requirements for participation in that Treatment Court;
- (2) That a person does not have a right to participate in any Treatment Court;
- (3) That once accepted into a Treatment Court, a participant's continued participation is voluntary, subject to any consequences provided in I.R.T.C. 17 (Termination) and I.R.T.C. 20 (Neutral Discharge);
- (4) Any rights the participant must waive in order to participate in the Treatment Court;
- (5) The financial obligations of the participant while in the Treatment Court;
- (6) The estimated length of required participation in the Treatment Court;
- (7) That the participant may be required to undergo assessments as directed by the Treatment Court, including but not limited to substance abuse or mental health evaluations;
- (8) The services offered by the Treatment Court either directly, by contract, or by referral;
- (9) The attendance requirements for court sessions, appointments with Treatment Court Team members, self-help peer groups, and any other required treatment sessions;
- (10) That information related to the participant's case and compliance, including information that might otherwise be confidential, will be discussed in open court;
- (11) Information about the treatment providers used by the Treatment Court, including name, address, telephone number, and services provided;
- (12) The participant's rights and responsibilities related to drug and alcohol testing;
- (13) The criteria for phase advancement and graduation from the Treatment Court;
- (14) A non-exhaustive list of examples of behaviors that may elicit an incentive or sanction from the Treatment Court;

- (15) The range of incentives for compliance and sanctions for non-compliance with Treatment Court requirements;
- (16) The circumstances under which a therapeutic adjustment, as determined by the Treatment Court Team in consultation with a treatment provider, may be imposed;
- (17) A non-exhaustive list of examples of criteria for termination from the Treatment Court;
- (18) The potential legal consequences to the participant as a result of termination from the Treatment Court;
- (19) The impact of successfully completing Treatment Court on the case(s) under which the participant was admitted into Treatment Court;
- (20) Any additional specific rules or requirements of the Treatment Court; and
- (21) That the participant shall acknowledge that the participant has been provided an opportunity to review the requirements of the Treatment Court and any related document requiring the participant's signature with an attorney.

(c) A Treatment Court shall use a document indicating the participant has participated in the orientation. The document shall contain a signature line for the participant to indicate that the participant understands the information provided during the orientation, that the participant agrees to comply with all of the Treatment Court requirements, and acknowledges that the participant has been provided a copy of the signed document.

Rule 11. Participation in a Treatment Court Outside of the Originating County

(a) For the purpose of allowing a defendant to participate in a Treatment Court in a different county, including any county outside of the originating judicial district, the court may elect between a change of venue or a transfer of supervision.

(1) Change of Venue. The court may change venue in the underlying criminal case after:

- (A) the defendant has plead guilty in the originating county;
- (B) the Treatment Court Judge and coordinator in the receiving county have stipulated to the change of venue; and
- (C) the prosecuting attorneys from each county involved stipulate to the change of venue.

(2) Transfer of Supervision. If a defendant has been accepted into the out-of-county Treatment Court, the sentencing judge can, without the need of a change of venue;

(A) order as a condition of probation (in post-sentencing Treatment Courts), or

(B) order (in presentence Treatment Courts) that the defendant participate and successfully complete an out-of-county Treatment Court.

(b) The Notice of Eligibility for Treatment Court shall only be entered by a Treatment Court Judge or designee after a Treatment Court Team's assessment of the defendant's eligibility, and in the circumstance where a change of venue is desired, there is consent to the change of venue by all necessary parties as set forth in I.R.T.C. 11(a)(1).

(c) If a defendant is ordered to participate in an out-of-county Treatment Court, the Treatment Court Judge in the receiving court shall have the authority to impose incentives and sanctions, including jail time, upon the participant. If a participant is terminated from the Treatment Court, the procedures outlined in I.R.T.C. 17 shall be followed.

(d) Clerk's Duties.

(1) Upon entry of an order for change of venue, the clerk of the originating court reassigns the case within the court's case management system.

(2) In cases where a transfer of supervision occurs, the clerk in the receiving county shall forward all signed court orders to the originating county.

(3) In cases where a transfer of supervision occurs, the clerk in the originating county shall post the charge(s) for out-of-county Treatment Court fees as ordered by the judge.

(e) Treatment Court Fees

(1) Change of Venue: In the case where a change of venue has occurred, all fees, fines, court costs, and restitution shall be paid in and distributed by the receiving county.

(2) Transfer of Supervision: Where there has been a transfer of supervision, the originating judge or Treatment Court Judge shall order the payment of Treatment Court fees to the county of the applicable Treatment Court. All other fees, costs, fines and restitution shall be paid in the originating county, which shall then forward the amount of Treatment Court fees to the county of the applicable Treatment Court. Upon graduation or termination, the originating Court shall enter an order stopping the assessment of Treatment Court fees.

Rule 11.1 Transfers between Treatment Courts

(a) After a participant has started a specific Treatment Court and the Treatment Court Team determines that another Treatment Court can better meet the participant's needs or provide additional or more appropriate resources, a transfer from one Treatment Court to another may occur.

- (b) A transfer of a participant's case from one Treatment Court to another requires an agreement between both Treatment Courts. If the participant objects to the transfer, the current Treatment Court shall hold a hearing to determine whether the transfer is appropriate.
- (c) Upon a transfer, the order or judgment imposing participation in a Treatment Court as a term or condition of a defendant's probation or diversion program need not be modified.
- (d) Treatment court fees shall be assessed according to I.R.T.C. 11(e).

Rule 12. Disqualification of Treatment Court Judge

- (a) Participants in a Treatment Court do not have a right to disqualify the Treatment Court Judge, an assigned Treatment Court Judge, or any other judge assigned to temporarily preside over the Treatment Court.
- (b) Notwithstanding Idaho Criminal Rule 25, any prior disqualification of a Judge shall not operate as a disqualification of that judge as the Treatment Court Judge or as the judge assigned to temporarily preside over a Treatment Court.
- (c) The State or the participant may move to disqualify a Judge assigned to termination or disposition proceedings only as provided in Idaho Criminal Rule 25(b).

Rule 13. Ex Parte Communication and Staffing

- (a) A Treatment Court Judge may initiate, permit, and consider an ex parte communication with participants, attorneys, Treatment Court staff, Treatment Court Team members and others in preparation for or during a Treatment Court staffing.
- (b) If a judge receives an ex parte communication relating to a participant not contemplated under subsection (a) of this Rule, the judge shall promptly notify the parties of the substance of the communication. If the communication was in writing, the judge shall promptly provide a copy to the parties. A record shall be made of the relevant substance of the ex parte communication and the parties shall be provided with an opportunity to respond.

Rule 14. Appearances and Attorneys

- (a) Attorneys assigned as members of the Treatment Court Team, or designated attorney, shall attend all Treatment Court staffings and proceedings, unless excused by the Treatment Court Judge.
- (b) The defense attorney assigned to a Treatment Court, or designated attorney, represents the interest of all participants. However,
 - (1) Retained or appointed legal counsel for a participant may appear at a Treatment Court staffing or Treatment Court proceeding for review of that participant's case.

(2) In the absence of any defense attorney at a Treatment Court staffing or Treatment Court proceeding, the Treatment Court Team may continue to discuss a participant's progress without the requirement of defense counsel being present.

(c) Upon approval of the Treatment Court Judge, any member of the Treatment Court Team or an attorney for an applicant or participant, may attend staffings and proceedings telephonically or through other electronic means.

Rule 15. Judgments and Orders

A Treatment Court Judge has authority to enter any orders necessary to accomplish the goals and objectives of the Treatment Court, including, but not limited to, orders for payment of fees and costs, transport orders, and warrants of arrest. If a participant's case has been assigned to the Treatment Court Judge for all further proceedings, the court may enter any orders and judgments as are necessary upon successful completion of the program or upon termination from the program. If the Treatment Court Judge is presiding pursuant to a transfer of supervision, then the originally assigned judge may enter any orders and judgments as are necessary upon successful completion of the program or termination from the program.

Rule 16. Vacating, Reconsidering, or Correcting Clerical Errors of a Judgment or Order

(a) The Treatment Court Judge may at any time correct a clerical error in a judgment, order, or other part of the record, or correct an error in the record arising from oversight or omission. The Treatment Court Judge may vacate, reconsider, or modify any order imposing a sanction upon a participant.

(b) Notwithstanding the limitations of Idaho Criminal Rule 35, any notice or order terminating a participant from a Treatment Court may be reconsidered by the Treatment Court Judge, upon request or motion, made within fourteen (14) days of the entry of the order of termination.

Rule 17. Terminations from Treatment Courts

(a) If a Treatment Court Judge, after consultation with the Treatment Court Team, finds that a participant may no longer be amenable to supervision within the Treatment Court, the Treatment Court Judge shall advise the participant that it has been proposed that they may be terminated from the Treatment Court.

(b) A termination hearing shall be held within twenty-one (21) days of the filing of a motion to terminate. The time limit in this subsection may be extended on a showing of good cause. Good cause may include the assignment of another judge to preside over a termination hearing.

(c) The Treatment Court Judge may preside over the termination proceedings. If the Treatment Court Judge elects not to preside over the termination hearing, the Treatment Court Judge shall forward the matter for reassignment.

(d) Pending a termination hearing, a participant may be ordered into custody and may be admitted to bail in the discretion of the Treatment Court Judge, and a participant who is also a parolee may be subject to any hold imposed by the parole commission.

(e) Upon an absconded participant's arrest or voluntary return, the Treatment Court Judge may continue the participant in the Treatment Court program or the participant's case may proceed to a termination hearing.

(f) A participant shall be advised by the Treatment Court Judge of the proposal to terminate the participant from that Treatment Court. After the filing of a motion to terminate, the participant shall be advised of the alleged grounds for termination, the date and time set for the termination hearing, and any terms of bail imposed, pending the termination hearing.

(g) Prior to a termination hearing, the court must advise the participant of the following Notification of Rights for Termination Hearing:

(1) that the participant has the right to require the State to disclose the evidence against the participant;

(2) that the participant is not required to make a statement and that any statement made may be used against the participant;

(3) that the participant has the right to be self-represented and to present the case without the aid of an attorney;

(4) that the participant has the right to hire counsel of the participant's own selection, or if indigent, have counsel by court appointment;

(5) that the participant may admit or deny any allegation presented against the participant;

(6) that if the participant denies the allegation(s), the case will proceed with an evidentiary hearing;

(7) that if the case proceeds to an evidentiary hearing, the following will apply:

(A) the burden will be upon the State to prove by a preponderance of the evidence that the participant willfully violated one or more terms of the participant's conditions of participation in the Treatment Court; and

(B) the participant has the right to confront and cross examine witnesses, to call the participant's own witnesses, to present evidence, and to the subpoena power at no cost to the participant.

(8) that if the participant admits the allegation(s), the participant is waiving the rights herein and there is no need for the State to prove the allegation(s) in support of the

proposed termination from Treatment Court, and the matter will proceed to sentencing or disposition (see I.R.T.C. 18(b));

(9) that any recommendation of the parties is not binding on the court, but can be considered by the court in rendering its decision; and

(10) that the participant's exercise of any of the rights herein will not be held against the participant.

(h) A participant subject to a proposed termination from a Treatment Court may waive, either orally on the record or in writing, the notification of the grounds upon which termination is proposed and the participant's right to a termination hearing, and may consent to proceed directly to sentencing or disposition.

(i) If a participant waives their right to a termination hearing, a participant enters an admission, or the participant is found to have willfully violated a condition of the Treatment Court, the judge presiding over the termination hearing shall enter the Notice of Termination from Treatment Court and Stopping Participant Fees.

(j) If a participant is not found to have willfully violated a condition of the Treatment Court, the judge presiding over the termination hearing shall enter an order documenting such finding and continuing the participant's prior condition(s) of Treatment Court supervision.

Rule 18. Sentencing or Disposition upon Termination from Treatment Court

(a) Except for the provisions found in this rule applicable only to a participant's termination from a Treatment Court, sentencing and disposition proceedings will be conducted as set forth in applicable statute and rule.

(b) The judge presiding over a participant's termination proceedings may preside over the sentencing or disposition proceedings, so long as that judge has authority to do so.

(c) If the judge that presided over a participant's termination proceedings elects not to preside over a participant's sentencing or disposition proceedings or the judge does not have the authority to preside over a felony sentencing or disposition proceedings, the judge shall recuse and refer the matter for reassignment.

(d) If the participant was admitted into a Treatment Court by means of a transfer of supervision as set forth in I.R.T.C. 11(a)(2), the case shall be set before the original sentencing judge or referred for reassignment. A motion for a probation violation is not required to be filed if an order of termination has already been entered in the record and the court may proceed directly to disposition.

(e) A judge presiding over a sentencing or disposition may not re-admit, admit, or order the participant back into a Treatment Court unless the participant has applied for participation in a

Treatment Court and the sentencing court has been provided the Notice of Eligibility for Treatment Court form accepting the participant into a Treatment Court (see I.R.T.C. 18(b)).

Rule 19. Graduation from Treatment Court

- (a) When a participant successfully completes a Treatment Court, the Treatment Court Judge shall enter a "Notice of Graduation from Treatment Court".
- (b) If a participant was admitted into a Treatment Court on a new criminal charge, upon motion or stipulation of the parties the Treatment Court Judge may enter a judgment consistent with the agreement of participation in the Treatment Court and pursuant to the relief afforded to the participant by Idaho Code § 19-2604.
- (c) If a participant was admitted into a Treatment Court on a probation violation or a stipulation for amendment of the terms of probation in lieu of a probation violation, the matter will be referred to the assigned sentencing court for purposes of determining when the participant may be fully discharged from probation and determining any relief afforded to the participant by Idaho Code § 19-2604.
- (d) If a participant was admitted into a Treatment Court through a change of venue as set forth in I.R.T.C. 11(a)(1), the Treatment Court Judge shall continue to preside over the case for purposes of determining any relief afforded to the participant.
- (e) If a participant was admitted into a Treatment Court by means of a transfer of supervision as set forth in I.R.T.C. 11(a)(2), the matter shall be referred back to the original court for any final disposition.
- (f) In post-sentence Treatment Courts, when a defendant continues on probation after graduating from a Treatment Court, and when it is alleged that a defendant thereafter violated any term or condition of probation, the probation violation will be heard by the assigned judge.

Rule 20. Neutral Discharge

- (a) Upon the Treatment Court Team's recommendation that a participant be neutrally discharged, the court shall provide notice to the parties. A party has fourteen (14) days to file an objection to the neutral discharge. Upon the filing of an objection, a hearing shall be held within twenty-eight (28) days, or for good cause shown, as soon thereafter as practicable.
- (b) If a participant is neutrally discharged, the court shall issue a Notice of Neutral Discharge from Treatment Court and Stopping Participant Fees