

# In the Supreme Court of the State of Idaho

IN RE: AMENDMENT OF THE IDAHO )  
RULES FOR TREATMENT COURTS )  
(I.R.T.C.) )  
\_\_\_\_\_ )

ORDER

The Court, having received a recommendation from the Treatment Court Committee to amend the following Idaho Rules for Treatment Courts, and the Court being fully informed;

NOW, THEREFORE, IT IS ORDERED that the Idaho Rules for Treatment Courts (I.R.T.C) be AMENDED as follows:

## **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~~ person not a member of the Treatment Court Team to attend staffing ~~to address the needs of a participant.~~

(3) Any person not a member of the Treatment Court Team who attends staffing shall sign a non-disclosure agreement.

~~(34)~~ 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.

~~(45)~~ Treatment Court staffings shall not be on the record.

~~(56)~~ Any notes, files, documents or other writings used exclusively in, or for purposes of, staffing individual cases shall be exempt from public disclosure.

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**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 state filing a motion for termination. 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 within the same judicial district as the Treatment Court.

(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 the state's motion for termination, 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(c));
- (9) that if the participant is not satisfied with the decision of the court, the participant may appeal to the next higher court, so long as the notice of appeal is filed within forty-two (42) days of the entry of the final disposition judgment.
- (10) that any recommendation of the parties is not binding on the court, but can be considered by the court in rendering its decision; and

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

(h) The Idaho Rules of Evidence shall apply in a termination hearing to the same extent that the Idaho Rules of Evidence apply in a probation violation hearing.

(i) 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. A waiver of the hearing constitutes an admission to the allegations contained in the state's motion for termination. Upon waiver of the hearing, no additional hearing regarding violation of a term of probation or a violation of any condition of a presentence agreement of participation in Treatment Court is required.

(j) If a participant waives their right to a termination hearing, or 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 Order of Termination from Treatment Court and Stopping Participant Fees.

(k) 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~~ setting forth specific findings 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) A motion for a probation violation or a violation of any condition of a presentence agreement of participation in Treatment Court 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 sentencing or disposition.

(c) 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.

(d) 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 within the same judicial district as the Treatment Court.

(e) If the participant was admitted into a Treatment Court by means of a transfer of supervision from outside the district 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 within the original judicial district.

(f) 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(c)).

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**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.

(c) A neutral discharge shall not be grounds for termination nor alone be the finding of a probation violation.

(d) Upon a neutral discharge, the participant's underlying case will be assigned as follows:

(1) If the case is before the Treatment Court Judge by transfer of supervision, the case shall be referred back to the originating court or referred to the Administrative District Judge within the original judicial district for reassignment.

(2) If the case is before the Treatment Court Judge by assignment within the original judicial district or by change of venue, the case may remain assigned to the Treatment Court Judge or may be referred to the Administrative District Judge within the current judicial district for reassignment.

(e) The judge assigned to a participant's criminal case after the entry of a neutral discharge shall have the authority to modify the terms and conditions of probation.

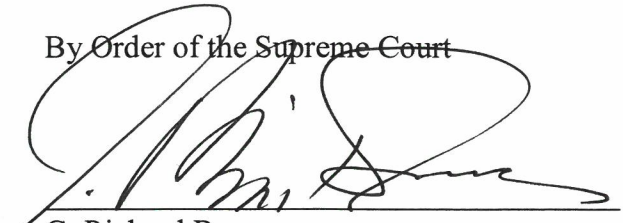
IT IS FURTHER ORDERED, that this order and these amendments shall be effective upon the signing of this order.

IT IS FURTHER ORDERED, that the above designation of the striking of words from the rule 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 Rules for Treatment Courts.

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 18 day of July, 2024.

By Order of the Supreme Court



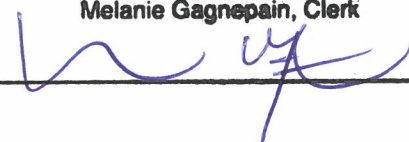
G. Richard Bevan  
Chief Justice, Idaho Supreme Court

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 7-18-24  
Melanie Gagnepain, Clerk

By  Deputy