

In the Supreme Court of the State of Idaho

IN RE: AMENDMENTS TO THE IDAHO)
JUVENILE RULES (C.P.A) AND IDAHO)
RULES FOR ELECTRONIC FILING AND)
SERVICE)
 _____)

ORDER

The Court, having reviewed a recommendation from the Child Protection Committee and the Administrative Conference to amend the Idaho Juvenile Rules and the Idaho Rules for Electronic Filing and Service, and the Court being fully informed;

IT IS ORDERED that the Idaho Juvenile Rules (I.J.R.) are amended as follows:

1. That Rule 33 be amended as follows:

I.J.R. 33. Summons (C.P.A.)

Idaho Juvenile Rule 33. Summons (C.P.A.)

(a) After a petition has been filed service of process shall be made as provided in Idaho Code §§ 16-1611 and 16-1612.

(b) Form of Child Protective Act Summons and Order of Removal. The summons and Order of Removal in Child Protective Act cases shall substantially conform to ~~the following format:~~ the Supreme Court forms found in Appendix A.

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT OF THE STATE OF IDAHO,
 IN AND FOR THE COUNTY OF _____ MAGISTRATE DIVISION

_____)
 _____)
 In the Interest of: _____) Case No. _____)
 _____)
 _____) CHILD PROTECTIVE ACT)
 _____) SUMMONS)
 A Child Under Eighteen _____)
 (18) Years of Age _____)

_____)
 (name) _____)
 _____)
 (address) _____)

(city & state)

YOU ARE HEREBY NOTIFIED THAT:

A Petition has been filed in the above entitled matter in the district court of _____ County, Idaho, alleging that the above named child/ren come/s within the jurisdiction of the Child Protective Act.

A copy of the Petition is attached hereto.

{If seeking an Order of Removal and children have not been removed} You, as the individual(s) who has/have the custody or control of said child/ren, are hereby directed to appear personally and bring said child/ren before this court for a/an _____ hearing at the _____ Courthouse, (address), (city), Idaho, on _____, 20____, at _____ o'clock ____m.

{If not seeking Order of Removal/or if children are already removed} You, as parent, legal guardian, custodian or _____(other) of the child/ren is/are hereby directed to appear personally before this court for (type of) hearing at the _____ Courthouse (address), (city), Idaho, on _____, 20____, at _____ o'clock ____m.

You are hereby notified that service of the attached petition upon you, as the parent(s), legal guardian, or custodian of this/these child/ren, confers personal jurisdiction of the court over you and subjects you to the provisions of the Child Protective Act.

If you fail to appear without reasonable cause, the court may proceed in your absence or proceed against you for contempt of court. If the court proceeds without your presence, you may forfeit all of your rights.

As the parent(s), legal guardian, or custodian, you may be financially liable for the support and/or treatment of the child/ren.

If you are the parent(s), legal guardian, or custodian, you have the right to be represented by counsel. If you are unable to afford an attorney, you have the right to have an attorney appointed by the court to represent you at state county expense. If you request to have an attorney appointed at state county expense, contact the court in advance of the hearing which is scheduled on the _____ date of _____, 20____ at _____ a.m./p.m. at the following number: _____.

You are further notified that when a child has been placed in the temporary and/ or legal custody of the Idaho Department of Health and Welfare for fifteen (15) out of the most recent twenty two (22) months the Department shall, prior to the last day of the fifteenth month, file a petition for termination of parental rights unless the child has been permanently placed with a relative, there are compelling reasons why termination of parental rights is not in the best interest of the child(ren), or, the Department has failed to provide reasonable efforts to reunify the child(ren) with his/her /their family.

DATED _____

CLERK OF THE DISTRICT COURT

by _____
Deputy Clerk

(Title)

STATE OF IDAHO _____)
_____) ss.
COUNTY OF _____)

I HEREBY CERTIFY AND RETURN that I have received the above Summons and copy of the petition in the above entitled matter on the ____ day of _____, 20____, and personally served the same on _____ by delivering to _____ in _____ County, state of Idaho, a copy of said Summons duly attested by the clerk of the above entitled court, together with a copy of the petition and a copy of the Order Setting Time and Place of Hearing.

DATED this ____ day of _____, 20____.

by _____
(Deputy Marshal/Deputy Sheriff)

2. That Rule 34 be amended as follows:

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, Aa 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 child/ren 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.

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

ORDER OF REMOVAL

~~It is contrary to the welfare of the child/ren to remain in the child/ren's present condition or surroundings, and it is in the best interest of the child/ren to place the child/ren in the legal custody of the Idaho Department of Health and Welfare until the shelter care hearing. This finding is made based on the information set forth in the verified Petition Under the Child Protective Act, and the affidavit attached to and incorporated in the Petition, that have been filed in this case.~~

~~[Insert additional case factual findings.]~~

~~IT IS HEREBY ORDERED that a peace officer or other authorized person promptly take [child(ren)'s name(s)] to an authorized place of shelter care until the shelter care hearing. (The date, time, and place of the shelter care hearing scheduled before this court at the _____ Courthouse, (address), (city), Idaho,~~

~~on _____, 20____, at _____ o'clock ____m.~~

~~DATED: _____~~

~~_____~~

~~JUDGE~~

Committee Comments. As to subsection (eb), 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 funding 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.

3. That Appendix A to the Idaho Juvenile Rules, including the forms attached to this order, be adopted as follows:

APPENDIX A: FORMS

Rule 33- Summons

Rule 33 & 34- Order of Removal

IT IS FURTHER ORDERED that the Idaho Rules for Electronic Filing and Service are amended as follows:

1. That Rule 5 be amended as follows:

I.R.E.F.S. 5. Exceptions to Electronic Filing of Documents

Idaho Rules for Electronic Filing and Service Rule 5: Exceptions to Electronic Filing of Documents

The documents identified in this rule are exceptions to the requirement for electronic filing.

(l) Order of Removal Upon Issuance of a Summons (C.P.A.). A document delivered pursuant to Idaho Juvenile Rule 34 after office hours, during the weekend, or on a holiday, will be filed in accordance with the procedure set out in Idaho Juvenile Rule 34.

(m) Other Documents that cannot be Filed Electronically. Any document or thing that cannot be scanned or otherwise converted to a Portable Document Format (.pdf) format must be filed conventionally. Upon a showing of good cause, the court may accept for conventional filing a document that would otherwise be required to be filed through the electronic filing system.

2. That Rule 9 be amended as follows:

I.R.E.F.S. 9. Electronic Signatures

Idaho Rules for Electronic Filing and Service Rule 9: Electronic Signatures

(b) **Judge's signature.** All electronically filed documents signed by the court must be scanned or otherwise electronically produced so the judge's original signature or a digital image of the judge's signature is shown; provided, however, a temporary custody order, or order of removal and summons issued after office hours, during the weekend, or on a holiday pursuant to Idaho Court Administrative Rule 100 (b)(3) or Idaho Juvenile Rule 34, respectively, may alternatively be signed with any reliable type of electronic or digital signature that has built-in protective features, including embedded information, qualification, identity verification, or cryptographic security.

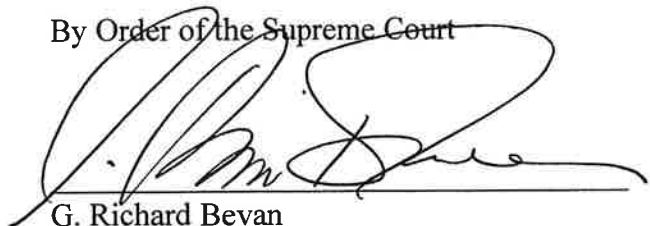
IT IS FURTHER ORDERED that this order and these amendments shall be effective upon the signing of this order.

IT IS FURTHER ORDERED that the above designation of the striking of words from the 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 Juvenile Rules and Idaho Rules for Electronic Filing and Service.

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 24th day of January, 2025.

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 1-24-25
Melanie Gagnepain, Clerk

By  Deputy

ORDER OF REMOVAL

It is contrary to the welfare of the child/ren to remain in the child's/ren's home, present condition or surroundings, and it is in the best interest of the child/ren to place the child/ren in the temporary legal custody of the Idaho Department of Health and Welfare (I.D.H.W.) until the Shelter Care Hearing. This finding is based on the information set forth in the verified petition under the Child Protective Act (C.P.A.), based on the sworn oral statements that have been or will be filed with the court, and/or the affidavit attached to and incorporated in the petition that has been filed in this case and/or the following factual findings:

- The child/ren is an Indian child, or there is reason to believe that the child/ren is an Indian child, within the meaning of the Indian Child Welfare Act. Removal of the child/ren is necessary to prevent imminent physical damage or harm to the child/ren. If I.D.H.W. receives information that the removal or placement is no longer necessary to prevent imminent physical damage or harm to the Indian child/ren, the state will file a motion with the court to review whether the removal of the Indian child/ren continues to be necessary.

IT IS HEREBY ORDERED that a peace officer or other authorized person promptly take the following child/ren to an authorized place of shelter care until the Shelter Care Hearing:

Name(s) of child/ren to be removed:

Dated: _____

Magistrate Judge

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF _____

In the Matter of:

a child/ren under the age of eighteen
(18) years.

Case No.

Child Protective Act (C.P.A.)
Summons

Order of Removal

Protective Order

Idaho Code § 16-1611 and
Idaho Juvenile Rule 33, 34

YOU ARE HEREBY NOTIFIED THAT:

A petition has been filed in this case in the district court of _____ County, Idaho, alleging that the child/ren named above comes within the jurisdiction of the Child Protective Act (C.P.A). A copy of the petition is attached.

[If child/ren are already removed or an order of removal has been issued] You, as the parent, legal guardian, or custodian of the child/ren are directed to appear personally before the court for a Shelter Care Hearing at following time and location:

<u>Hearing</u>	<u>Date</u>	<u>Time</u>	<u>Location</u>
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Order of Removal. The court has entered an Order of Removal directing a peace officer or other suitable person to take the child/ren to an authorized place of shelter care until the Shelter Care Hearing. A copy of the Order of Removal is attached.

[If child/ren has not been removed] You, as the individual(s) who has/have the custody or control of said child/ren, are hereby directed to appear personally and bring said child/ren before the court for an Adjudicatory Hearing at the following time and location:

Hearing

Date

Time

Location

Protective Order. The Court has issued a Protective Order specifying your rights and responsibilities until the Adjudicatory Hearing is held. A copy of the Protective Order is attached.

Service of the petition upon you, as the parent(s), guardian(s), or custodian(s) of the child, confers the personal jurisdiction of the court upon you and subjects you to the provisions of the C.P.A.

If you fail to appear without reasonable cause, the Court may proceed in your absence or may proceed against you for contempt of court. If the Court proceeds without your presence, you may forfeit all of your rights. You may be financially liable for the support of the child(ren).

You have the right to be represented by counsel. If you are unable to afford an attorney, you have the right to have an attorney appointed by the court at state expense.

If you want to ask to have an attorney appointed for you at public expense, call the court before the hearing at this phone number: _____.

An attorney has been appointed for you at public expense. Call the court before the hearing at this phone number for your attorney's contact information: _____.

When a child has been placed in the temporary and/or legal custody of the Idaho Department of Health and Welfare (I.D.H.W.) for 15 of the most recent 22 months, I.D.H.W. shall, prior to the last day of the 15th month, file a petition to terminate parental rights, unless the child has been permanently placed with a relative, there are compelling reasons why termination of parental rights is not in the best interest of the child, or the Department has failed to provide reasonable efforts to reunify the child with his/her family.

Dated: _____

By: _____

STATE OF IDAHO)
) ss.
County of _____)

I hereby certify and return that I have received the above summons and copy of the petition in the above-entitled matter on the _____ day of _____, 20____, and personally served the same on _____ by delivering to _____ in _____ County, state of Idaho, a copy of said summons duly attested by the clerk of the above-entitled court, together with a copy of the petition.

Date: _____

By: _____
(Deputy Marshal / Deputy Sheriff)