

# In the Supreme Court of the State of Idaho

IN RE: AMENDMENT OF IDAHO COURT  
ADMINISTRATIVE RULES (I.C.A.R.) 5, 7,  
55(d) and 75 AND ADOPTION OF NEW  
RULE 43b

ORDER AMENDING  
RULES

The Court having received a recommendation to amend the Idaho Court Administrative Rules, and the Court being fully informed;

NOW, THEREFORE, IT IS HEREBY ORDERED that the Idaho Court Administrative Rules as they appear in the volume published by the Idaho Code Commission be, and they are hereby, amended as follows:

1. That Rule 5 be, and the same is hereby, amended as follows:

**Rule 5. Civil Jurisdiction of Magistrates; Assignment of Cases.**

(a) Jurisdiction; Assignment by Order. Jurisdiction of magistrates is the same as that of district judges but assignment of cases to magistrates must be approved by order of a majority of the district judges in the district. The order of the district judges stating the assignment of cases to magistrates must be posted in a conspicuous place in the clerk's office in each county in the district and published in the Idaho State Bar Desk Book.

(b) Assignment Pursuant to Idaho Code Section 1-2208. Assignment of cases to magistrates may be granted pursuant to Idaho Code Section 1-2208, as follows:

1. All of the matters and actions designated in ~~section 1-2208~~, Idaho Code Section 1-2208, including any proceeding under title 66, chapter 3, Idaho Code relating to the hospitalization of the mentally ill or title 66, chapter 4, Idaho Code, relating to the care of the developmentally disabled;

2. Proceedings under the Child Protective Act, title 16, chapter 16, Idaho Code, (~~in sections 16-1628 through 16-1634~~); and the Safe Haven Act, title 39, chapter 82, Idaho Code;

3. Proceedings under the ~~Youth Rehabilitation Act~~ Juvenile Corrections Act, title 20 ~~16~~, chapter 5 ~~18~~, Idaho Code (~~in sections 16-1807 through 16-1812~~);

4. Proceedings under the Termination of Parent-Child Relationship Act, title 16, chapter 20, Idaho Code (~~in sections 16-2007 and 16-2008~~);

5. All proceedings under Idaho Code Section 18-8002(4) to determine whether a person refused to take an evidentiary test for concentration of alcohol, drugs or other intoxicating substances when properly requested by a police officer.

(c) Assignment Pursuant to Idaho Code Section 1-2210. Additional cases may be assigned to magistrates pursuant to Idaho Code Section 1-2210 when approved by the administrative district judge of a judicial district. The additional cases assigned to magistrates may include:

1. Civil actions regardless of the nature of the action, where the amount of damages or value of the property claimed does not exceed \$10,000;

2. All proceedings involving the custody of minors incidental to divorce proceedings, all adoption proceedings pursuant to ~~chapter 15~~, title 16, chapter 15, Idaho Code, ~~all termination of parent-child relationship pursuant to chapter 20, title 16, Idaho Code~~, all paternity proceedings, and all actions for change of name;

3. All proceedings for divorce, separate maintenance or annulment, including orders to show cause, hearings and issuance of restraining orders; ~~and including all child support and maintenance proceedings pursuant to title 32, chapter 7, Idaho Code~~ proceedings pursuant to the revised Uniform Reciprocal Enforcement of Support Act and Idaho Code, section 32-710A; and

proceedings pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act, title 32, chapter 11, Idaho Code.

4. All habeas corpus proceedings regardless of the nature or origin, including all habeas corpus proceedings involved in a criminal proceeding or conviction.

~~(d) Assignment of Additional Criminal Cases. The administrative district judge of a judicial district may by order enlarge categories of criminal cases assignable under Rule 2.2(c), Idaho Criminal Rules, as to the magistrates of the judicial district or of a county within the district, or as to specified magistrates.~~

2. That Rule 7 be, and the same is hereby, amended as follows:

**Rule 7. Enlargement of Civil Cases Assignable.**

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3. That a NEW Rule 43b be, and the same is hereby, ADOPTED as follows:

**Rule 43b. Memorandums of agreement and memorandums of understanding.**

Any memorandum of agreement or memorandum of understanding entered into or proposed to be entered into by an administrative judge, trial court administrator, or any other person acting on behalf of the courts or any court, with any department, agency, official, or employee of any governmental or private entity, shall be submitted to the administrative director of the courts for review, and shall not become effective until it has been approved and signed by the administrative director of the courts or the chief justice.

4. That Rule 55 be, and the same is hereby, amended as follows:

**Rule 55. Drug courts and mental health courts.**

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(d) The judicial district must submit an operations application, on a form to be prescribed by the Drug Court and Mental Health Court Coordinating Committee, prior to beginning operations of a new drug court and/or mental health court. This application shall be signed by the Administrative District Judge and the Trial Court Administrator and shall be submitted to the

Drug Court and Mental Health Court Coordinating Committee no less than sixty days in advance of a proposed starting date. The Drug Court and Mental Health Court Coordinating Committee shall approve or disapprove the application and may adjust the proposed starting date, consistent with available resources. The operations application shall include the following:

(1) A memorandum of agreement (MOA) signed by the Administrative Director of the Courts, Administrative District Judge, Trial Court Administrator, one or more proposed presiding judges, the prosecuting attorney(s) and city attorneys for the participating jurisdictions, the public defender(s) for the participating jurisdictions, the community supervision agency, and other community entities such as the Regional Substance Abuse Authority and/or Regional Mental Health Council. This MOA will describe each agency or organization's participation and specific commitments to the drug or mental health court.

(2) Documentation of training of the core team for the drug court and/or mental health court either through the National Drug Court Planning Initiative or by the Statewide Drug and Mental Health Court Coordinator.

(3) Assurance of understanding and a plan for addressing the applicable Statewide Guidelines For Effectiveness And Evaluation.

(4) Assurance of understanding and plan for collecting and reporting required data, including utilization of the ISTARs Drug Court system.

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5. That Rule 75 be, and the same is hereby, amended as follows:

**Rule 75. Domestic Violence Evaluators; Advisory Board**

(a) Evaluators. Evaluators of persons who plead guilty or are found guilty of domestic assault or domestic battery under Idaho Code Section 18-918 shall be approved and shall serve under the following provisions:

(1) Qualifications. An evaluator under Idaho Code Section 18-918(7)(a) shall have the following qualifications:

(A) Licensed physician, licensed psychologist, licensed master social worker, licensed social worker if approved prior to July 1, 2008, licensed professional counselor, licensed marriage and family therapist, licensed registered nurse, licensed nurse practitioner or physician's assistant under the laws of the state of Idaho; an evaluator may be licensed in the state of Idaho or any other state;

(B) ~~Twenty~~ Thirty (30) hours of specialized education or training in domestic violence within the previous two years ~~that meets the criteria set out in subsection (2), as evidenced by an attached certificate of completion or other supporting documentation~~ including intimate partner violence and training or education in one or more of the following areas: violence in families; child abuse; anger management; risk factors for future dangerousness; risk factors for lethality; causes of violence; or drug and alcohol abuse. At least four (4) hours must be in the area of intimate partner violence and no more than four (4) of the thirty (30) hours may be in the area of drug and alcohol abuse. The thirty (30) hours must also include an orientation course

offered or approved by the Domestic Assault and Battery Evaluator Advisory Board and training in the utilization and interpretation of domestic violence assessment tools. Up to ~~ten~~ fifteen (15) hours of the thirty (30) hours may be satisfied through approved participatory online CEU programs. Ethics or supervisor training will not count toward the required thirty (30) hours of training. The thirty (30) hours shall be acquired by completing program(s) approved or sponsored by one of the associations as listed in section (a)(2)(B);

(C) One year experience after licensure in assessment or treatment of domestic violence related issues. The Domestic Assault and Battery Evaluator Advisory Board may request further consultation or training based upon the evaluator's experience;

(D) Approved by the Domestic Assault and Battery Evaluator Advisory Board and maintained on a roster by the Administrative Director of the Courts as persons eligible to conduct evaluations of persons guilty of domestic assault or domestic battery. In the event there is no evaluator approved within the judicial district, then the requirements of (B), (C), and (D) may be waived by the court; and

(E) The evaluator must, at his or her own expense, submit to a criminal history check as provided for in Rule 47, I.C.A.R. Further, the evaluator must sign an Indirect Access Agreement and any other confidentiality agreements required by the Idaho State Police to allow the evaluator access to criminal justice information as required by Rule 33.3(a)(2)(K), Idaho Criminal Rules.

(2) Continuing Education of Evaluators. Beginning the next July 1 after an evaluator has been approved by the Domestic Assault and Battery Evaluator Advisory Board, the evaluator must take at least sixteen (16) hours of specialized training in domestic violence, or related topics in courses approved by the Domestic Assault and Battery Evaluator Advisory Board, in each and every two (2) year period following the July 1 date. An evaluator must file proof of compliance with this requirement with the Administrative Director of the Courts by July first of the year the continuing education is due. Along with proof of compliance, an evaluator must also send proof of current licensing. The Domestic Assault and Battery Evaluator Advisory Board may request further consultation or training based upon the quality of the evaluations or assessments submitted to the court or continuing education obtained.

(A) The sixteen (16) hours of training required in this section shall be in one or more of the following areas: ~~(a) domestic intimate partner violence;~~ ~~(b) violence in families;~~ ~~(c) child abuse;~~ ~~(d) anger management;~~ ~~(e) risk factors for future dangerousness; risk factors for lethality;~~ ~~(f) psychiatric causes of violence;~~ or ~~(g) drug and alcohol abuse.~~ Ethics or supervisor training will not count toward the required sixteen (16) hours of training. No more than four (4) of the sixteen (16) required hours may be in the area of drug and alcohol abuse. Up to eight (8) of the sixteen (16) required hours may be satisfied through approved participatory online CEU programs.

(B) The sixteen (16) hours of required training in this section shall be acquired by completing a program approved or sponsored by one of the following associations or the national equivalent of any of these organizations: ~~(a) Idaho Psychiatric Association;~~ ~~(b) Idaho Psychologists Psychological Association;~~ ~~(c) Idaho Nursing Association;~~ ~~(d) Idaho Association of Social Workers;~~ ~~(e) Idaho Counselors Association;~~ ~~(f) Idaho Council on Domestic Violence and Victim Assistance;~~ ~~(g)~~

Idaho Coalition Against Sexual Assault and Domestic Violence, ~~or the national equivalent of any of these organizations;~~ or ~~(h)~~ the Idaho Supreme Court.

(C) Any program that does not meet the criteria set out in both section (a)(2)(A) and section (a)(2)(B) may be submitted to the board for approval either prior to or after completion.

(3) ~~Appointment~~ Evaluator Approval. All evaluators under Idaho Code Section 18-918 must be approved by ~~order~~ of the Domestic Assault and Battery Evaluator Advisory Board. Any person desiring to be approved as an evaluator shall file an application for approval with the Administrative Director of the Courts indicating the qualifications of the applicant and the dates and content of relevant training courses attended. An evaluator approved by ~~order~~ of the Domestic Assault and Battery Evaluator Advisory Board may continue in service from one calendar year to the next unless otherwise ~~ordered~~ determined by the Domestic Assault and Battery Evaluator Advisory Board. The Administrative Director of the Courts shall maintain a statewide list of approved evaluators by the Domestic Assault and Battery Evaluator Advisory Board. The administrative district judge in each judicial district may, by administrative order, require evaluators to comply with additional criteria beyond those stated in subsections (a)(1), (a)(2) and Rule 33.3, Idaho Criminal Rules.

(b) Advisory Board.

(1) Members. There is hereby created a Domestic Assault and Battery Evaluator Advisory Board consisting of ~~six~~ nine (9) members with experience and training in domestic violence. as follows Membership shall consist of at least one member from subsections (A) and (B) and a combination of members from the following:

(A) A district judge or magistrate judge appointed by the Supreme Court for a term of two (2) years, who shall serve as chair;

(B) The Administrative Director of the Courts, or his or her designee;

(C) A social worker with experience in working with victims of domestic violence appointed by the Supreme Court for a term of two (2) years, upon submission of ~~three~~ three (3) names by the Idaho State Counselors Social Work Licensing Board and/or other appropriate associations or entities;

(D) A counselor with experience in working with victims of domestic violence appointed by the Supreme Court for a term of two (2) years, upon submission of ~~three~~ three (3) names by the Idaho State Counselors Licensing Board and/or other appropriate associations or entities;

(E) A psychologist appointed by the Supreme Court for a term of two (2) years, upon submission of ~~three~~ three (3) names by the Idaho State Board of Psychologist Examiners and/or appropriate association; and

(F) ~~A psychiatrist appointed by the Supreme Court for a term of two years, upon submission of three (3) names by the State Board of Medicine or appropriate association. A judge presiding over a domestic violence court appointed by the~~ Supreme Court for a term of two (2) years;

(G) A domestic violence court coordinator appointed by the Supreme Court for a term of two (2) years;

(H) A domestic violence offender intervention program provider appointed by the Supreme Court for a term of two (2) years, upon submission of names from the Idaho

Council on Domestic Violence and Victim Assistance and/or other appropriate associations or entities;

(I) A current or past domestic assault and battery evaluator appointed by the Supreme Court for a term of two (2) years; or

(J) A health care provider with experience in working with victims of domestic violence appointed by the Supreme Court for a term of two (2) years, upon submission of names from appropriate associations or entities.

(2) Powers of Advisory Board. The Domestic Assault and Battery Evaluator Advisory Board shall have the power to make the following recommendations to the Supreme Court:

(A) Recommend qualifications and continuing education of evaluators under subsection (a) of this rule.

(B) Review and recommend for ~~appointment~~ approval or rejection applications of persons to be evaluators under this rule.

(C) Recommend the required content and scope of reports of evaluators under ~~Idaho Criminal Rule~~ Rule 33.3, Idaho Criminal Rules.

IT IS FURTHER ORDERED, that this order and the amendments to Rules 5, 7, 55(d) and adoption of new Rule 43b shall be effective January 1, 2018, and amendments to Rule 75 shall be effective July 1, 2018.

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 Court Administrative Rules.

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 14<sup>th</sup> day of December, 2017.

By Order of the Supreme Court

R. Burdick  
Roger S. Burdick,  
Chief Justice

ATTEST:

Karel A. Lehrman  
Clerk

I, Karel A. Lehrman, 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 12/15/2017  
Karel A. Lehrman, Clerk

By Judy Clark Deputy