In the Supreme Court of the State of Idaho

IN RE: ADOPTION OF NEWLY FORMATTED IDAHO CRIMINAL RULES) **ORDER**

The Court appointed a special committee to review the Idaho Criminal Rules, to simplify, clarify and modernize the language, and to create a consistent structure and format along with a more useful table of contents. The Committee has completed its work and the Court has reviewed the recommendations.

NOW THEREFORE IT IS ORDERED that the existing Idaho Criminal Rules be, and hereby are, rescinded and the attached Idaho Criminal Rules are hereby adopted.

IT IS FURTHER ORDERED that this order shall be effective July 1, 2017.

IT IS FURTHER ORDERED that notice of this Order shall be published in one issue of The Advocate.

DATED this 22nd day of February, 2017.

By Order of the Supreme Court

R. Burdick

Roger S. Burdick, Chief Justice

ATTEST: Stephen Kenyon
Clerk

I, Stephen W. Kenyon, Clerk of the Supreme Court 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. 2-23-17
WITNESS my hand and the Seal of this Court.
STEPHEN W. KENYON
Clerk
By Chief Deputy

IDAHO CRIMINAL RULES

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Idaho Criminal Rules

TITLE I – APPLICABILITY; DOCUMENTS

Rule 1. Scope; Courts; Exceptions

These rules apply to all criminal proceedings in the district courts and the magistrate division of the district courts of the state of Idaho with the following exceptions:

(a) Extradition and Fugitives from Justice;

(b) Forfeiture of Property for Violation of a Statute of the State of Idaho;

(c) Collection of Fines and Penalties;

(d) Juveniles Under the Youth Rehabilitation Act;

(e) Juveniles Under the Child Protective Act;

(f) Habeas Corpus;

(g) Uniform Post-Conviction Proceedings, Except as Provided in Rule 39;

(h) Coroner and Coroner's Inquests;

(i) Proceedings in Quo Warranto.

Rule 2. Purpose and Construction; Title; Effective Date; District Court Rules

(a) Purpose and Construction. These rules are intended to provide for the just determination of every criminal proceeding. They must be construed to secure simplicity in procedure, fairness in administration and elimination of unjustifiable expense and delay.

(b) Title. These rules are to be known and cited as the Idaho Criminal Rules (I.C.R.).

(c) District Court Rules. No district court or magistrate division may make rules of procedure except as expressly authorized by these rules. The district courts of each judicial district by a majority vote of all district judges may make rules governing the internal case management and procedure of the district court including procedures for setting the time and place for trial of criminal actions and the hearing of all other proceedings and motions. Any local rules must be consistent with these rules, and must be approved and published by order of the Supreme Court before they are effective, except in cases declared by the Supreme Court to be an emergency, in which case the order may be declared to be effective immediately.

Rule 2.1. Declarations

Whenever these rules require or permit a written statement to be made under oath or affirmation, the statement may be made as provided in Idaho Code § 9-1406. An affidavit includes a written certification or declaration made as provided in Idaho Code § 9-1406.

Rule 2.2. Electronic Signatures

An electronic signature may be used on any document that is required or permitted under these rules and that is transmitted electronically, including a search or arrest warrant, a written certification or declaration under penalty of perjury, or an affidavit. A notary's seal may be in electronic form.

Rule 2.3. Form of Pleadings and Documents; Language; Abbreviation and Numbers

(a) Form, Caption and Name – Generally. The following requirements apply to all documents filed with the court:

(1) they must be printed in black ink using a computer printer, word processor or typewriter on 8 ½" by 11" white paper, except that:

(A) prisoners held in a state prison or county jail may file documents that are legibly hand-printed in black ink, and

(B) forms approved by the Supreme Court or the Administrative District Judge or distributed through the Court Assistance Office in the county where the action is pending may be completed by legibly hand-printing in black ink or by typing;

(2) they must contain a caption containing the names of the parties, the title of the court, the case number and the title of the document;

(3) the title of the court must begin not less than 3 inches from the top of the first page;

(4) the name, address, telephone number, e-mail address and currently valid Idaho State Bar number of the attorney appearing of record or, if unrepresented, the address, phone number and email address (if any) of the self-represented party must appear above the title of the court in the space to the left of the center of the page and beginning at least 1.2 inches below the top of the page;

(5) the body of the document must be printed with double line spacing or one-and-one-half (1 1/2) line spacing with a font of not less than 11-point size and with margins of not less than 1.2 inches at the top and sides and not less than 1 inch at the bottom unless slightly smaller margins will allow a document to fit on a single page;

(6) the title of the document must appear at the bottom of each page;

(7) all attached exhibits must be clearly legible;

(8) all handwritten exhibits must be accompanied by a machine-printed duplicate.

(b) Language of Pleadings. Pleadings must be in the English language.

(c) Abbreviations and Numbers. Common abbreviations may be used, and numbers may be expressed by words or numerals.

TITLE II – PRELIMINARY PROCEEDINGS

Rule 3. Complaint; Initiation and Prosecution

The complaint is a written statement of the essential facts constituting the offense charged. It must be made on oath before a magistrate; except that, a prosecuting attorney may sign a complaint before a magistrate, without oath or affirmation, based on a sworn affidavit or declaration. Any affidavit or declaration supporting an unsworn complaint must be filed with the court. Except as otherwise provided by law or rule, all criminal proceedings must be initiated by complaint or indictment and prosecuted by complaint, indictment or information as provided by these rules.

Rule 3.1. Idaho Uniform Citation

Any misdemeanor may be charged and prosecuted by an Idaho Uniform Citation (Summons and Complaint) as provided in the Misdemeanor Criminal Rules (M.C.R.).

Rule 4. Arrest Warrant; Summons; Determination of Probable Cause

(a) Issuance of Arrest Warrant. After a complaint is presented to a magistrate, (which may be in the form of the Idaho Uniform Citation for a misdemeanor), the magistrate may issue a warrant for the arrest of the defendant only after making a determination that there is probable cause to believe that an offense has been committed and that the defendant committed it.

(b) Issuance of Summons. After a complaint is filed with a court, (which may be in the form of the Idaho Uniform Citation for a misdemeanor), the magistrate, or the clerk of the court, may issue a summons requiring the defendant to appear before the court at a time certain without first making a determination of whether there is probable cause.

(c) Issuing Arrest Warrant or Summons, Preference for Summons. If the magistrate finds probable cause for a complaint, in determining whether a warrant or summons should issue, the magistrate must give preference to the issuance of a summons. In making the determination as to whether to issue a warrant or summons, the magistrate must consider the following factors:

(1) the residence of the defendant,

(2) the employment of the defendant,

(3) the family relationships of the defendant in the community,

(4) the past history of response of the defendant to legal process,

(5) the past criminal record of the defendant,

(6) the nature of the offense charged, and

(7) whether there is reasonable cause to believe that the defendant will flee prosecution or will fail to respond to a summons.

(d) Form; Transmission.

(1) *Arrest Warrant*. The arrest warrant must be signed by the magistrate and must:

(A) state the name of the defendant or, if the defendant's name is unknown, any name or description by which the defendant can be identified with reasonable certainty;

(B) state the offense charged in the complaint; and

(C) command that the defendant be arrested and brought before the nearest available magistrate.

The amount of bail may be determined by the issuing magistrate and stated on the warrant at the time of its issuance.

(2) *Transmission of a Warrant of Arrest.* A warrant of arrest may be sent by email or by facsimile process to any peace officer or other officer serving the warrant.

(3) *Summons*. The summons must be signed by either the magistrate or the clerk of the court and must contain the same information as the warrant. The summons must require the defendant to appear before a magistrate at a stated time and place and advise the defendant that if the defendant fails to appear at that time and place a warrant will issue for the defendant's arrest.

(e) Execution or Service, and Return.

(1) *By Whom*. The warrant must be executed by a peace officer or other officer authorized by law. The summons may be served by any person authorized to serve a summons in a civil action, or by mail.

(2) *Territorial Limits*. The warrant may be executed or the summons may be served at any place within the state of Idaho.

(3) *Manner of Service of Warrant*. The warrant must be executed by the arrest of the defendant. The officer need not have the warrant in possession at the time of the arrest, but the officer must show the warrant to the defendant as soon as possible. If the officer does not have the warrant in possession at the time of arrest, the officer must then inform the defendant of the offense charged and of the fact that a warrant has been issued. A copy of the warrant of arrest may be used by the officer at the time of the arrest or for the purpose of showing the warrant to the defendant after the defendant's arrest.

(4) *Manner of Service of Summons*. The summons must be served on a defendant by delivering a copy of the summons and complaint to the defendant personally, or by leaving copies at the defendant's dwelling or usual place of abode with some person over the age of eighteen (18) years residing there, or by mailing it to the defendant's last known address. A summons to a corporation must be served in the same manner as service of a summons on a corporation in a civil action.

(5) *Return on Warrant*. The officer executing a warrant must return it to the issuing magistrate or any other magistrate before whom the defendant is brought pursuant to Rule 5. At the request of the prosecuting attorney any unexecuted warrant must be returned to the magistrate by whom it was issued and must be canceled by the magistrate.

(6) *Return on Summons*. On or before the return date, the person who made service of a summons must return it to the magistrate as provided in subsection (e)(5). At the request of the prosecuting attorney, made at any time while the complaint is pending, a warrant returned unexecuted and not canceled, or an unserved summons or a duplicate original, may be delivered by the magistrate to an officer or other authorized person for execution or service.

Rule 5. Initial Appearance Before Magistrate; Determination of Probable Cause; Advice to Defendant; Plea in Misdemeanors; Initial Appearance on Grand Jury Indictment

(a) **Initial Appearance.** The "initial appearance" before a magistrate is the first appearance of the defendant before any magistrate. In the event a defendant appears before more than one magistrate, the first appearance before the first magistrate constitutes the "initial appearance."

(b) **Place of Initial Appearance.** A defendant arrested, whether or not pursuant to a warrant, must be taken before a magistrate in the judicial district of the arrest without unreasonable delay. In no event may the delay be more than 24 hours following the arrest, excluding Saturdays, Sundays, and holidays. The court may, however, delay the initial appearance if the defendant is hospitalized or otherwise in a condition that prevents the defendant being taken before the magistrate. The court may immediately, in that event, appoint counsel for the defendant. In the event it is not possible to take a defendant before a magistrate in the county where the alleged offense occurred within the time limit, then the defendant must be taken to any available magistrate in the judicial district without unnecessary delay within the time limit described above.

(c) **Determination of Probable Cause.** At or before the first appearance of a defendant who is arrested without a warrant or appears pursuant to a summons, the magistrate must determine there is probable cause as defined in Rule 4(a) before the defendant is retained, ordered into custody or required to post bond. The defendant must be released on the defendant's own recognizance unless and until a determination of probable cause has been made by a magistrate or unless immediate disposition of the complaint has been made; but the complaint must not be dismissed pending a determination or disposition. If a defendant fails to appear in response to a summons, a warrant must be issued if probable cause has been shown.

(d) **Probable Cause Hearing.** The probable cause hearing is an informal non-adversary proceeding. It may be an ex parte hearing which does not require the presence of the defendant. The defendant does not have the right to confrontation and cross-examination of witnesses or the right to counsel. The hearing must be held within 48 hours, including Saturdays, Sundays, and holidays, after a defendant is arrested without a warrant. The magistrate may hold the hearing on sworn statements, which includes written certifications or declarations under penalty of perjury, without the officer or witness present. The finding of probable cause must be based on substantial evidence that there is a factual basis for the information furnished. Before making the determination of probable cause, the magistrate may require any person, other than the defendant, who appears likely to have knowledge relevant to the offense charged, to appear personally and give testimony under oath. In making the determination of probable cause, the magistrate must consider all facts as to whether an offense has been committed and whether the defendant has committed it. If the magistrate finds there is no probable cause, the magistrate must exonerate any bond posted and order the release of the defendant if the defendant is in custody. A finding of a lack of probable cause does not require the dismissal of the complaint.

(e) **Advice to Defendant on Initial Appearance.** At the initial appearance, the magistrate must advise the defendant of the following:

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

(2) the nature of the charge or charges against the defendant;

(3) the defendant's right to bail;

(4) the defendant's right to counsel as provided by law;

(5) if in a county other than that in which the offense occurred, of the defendant's right to proceed under Rule 20 of these rules;

(6) if in the county in which the offense occurred, of defendant's right to a preliminary hearing, if provided by law, the nature of a preliminary hearing, and the effect of a waiver of a preliminary hearing, and

(7) the defendant's right to communicate with counsel and immediate family, and that reasonable means will be provided for the defendant to do so.

(f) Setting Bail. On advising the defendant of the above rights, the magistrate must set bail for the defendant, and in the event the arrest is pursuant to a warrant, bail must be in the amount stated on the warrant unless the magistrate finds good cause to alter the amount of the bail. In the event the defendant posts bail, the magistrate must certify that fact on the warrant, order the defendant to appear before the court issuing the warrant at a time and place certain, discharge the defendant, and transmit the warrant and undertaking of bail to the court in which the defendant is required to appear.

(g) Right to Counsel.

(1) If a defendant is charged with an offense the penalty for which includes the possibility of confinement in a correctional facility, regardless of whether actually imposed, and the defendant appears without counsel, the court must advise the defendant of:

(A) the right to counsel;

(B) the right to apply for court-appointed counsel if the defendant cannot afford to hire private counsel; and

(C) the right to request counsel at any stage of the proceedings.

(2) If the defendant wishes to represent himself or herself, the court must ensure that a knowing, voluntary, and intelligent waiver of the right to counsel is entered on the record.

(3) Prior to accepting any waiver pursuant to subsection (2), the trial court must advise the defendant of the following:

(A) the nature of the charges;

(B) the range of allowable punishments;

(C) that there may be defenses;

(D) that there may be mitigating circumstances; and

(E) all other facts essential to a broad understanding of the consequences of the waiver of the right to counsel, including the dangers and disadvantages of the decision to waive counsel.

(4) The court may appoint counsel for the limited purpose of advising and consulting with the defendant as to the waiver.

(h) Arraignment on Misdemeanor Complaint. The arraignment on a misdemeanor complaint is the reading of the complaint to the defendant, unless waived by the defendant, and taking a plea of the defendant to the complaint. It may take place at the initial appearance or at any later time as ordered by the court. A plea of the defendant at the arraignment in a county other than the county where the alleged offense occurred may be taken by the magistrate only as provided by Rule 20. The defendant may appear in person at the arraignment and enter a plea to the complaint or the defendant may appear at the arraignment through counsel who must either appear in person or file, at or before arraignment, a written appearance and plea on behalf of the defendant.

(i) **First Appearance on Indictment by Grand Jury.** A defendant arrested on a warrant issued pursuant to an indictment by grand jury must be taken before a magistrate judge or district court judge in that judicial district within 24 hours (substantive change?) following the arrest, excluding Saturdays, Sundays and holidays. The magistrate judge or district court judge has the authority to set bail and must advise the defendant of the following:

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

(2) the nature of the charge or charges against the defendant;

(3) the defendant's right to bail;

(4) the defendant's right to counsel as provided by law;

(5) the date that defendant will be arraigned in the district court.

Rule 5.1. Preliminary Hearing; Probable Cause Finding; Discharge or Commitment of Defendant; Procedure

(a) **Preliminary Hearing.** Unless indicted by a grand jury, a defendant charged in a complaint with any felony is entitled to a preliminary hearing. If the defendant waives the preliminary hearing, the magistrate must immediately file a written order in the district court requiring the defendant to answer. If the defendant does not waive the preliminary hearing, the magistrate must schedule a preliminary hearing within a reasonable time, but in any event not later than 14 days following the defendant's initial appearance if the defendant is in custody and no later than 21 days after the initial appearance if the defendant is not in custody. Time limits in this subsection may be extended with the consent of the defendant and on showing of good cause, taking into account the public interest and prompt disposition of criminal cases. In the absence of consent by the defendant, time limits may be extended only on a showing that extraordinary circumstances exist. Extraordinary circumstances include disqualification of the magistrate by the defendant pursuant to Rule 25.

(b) **Probable Cause Finding.** If the magistrate finds that a public offense has been committed and that there is probable or sufficient cause to believe that the defendant committed the offense, the magistrate must immediately require the defendant to answer in the district court. The finding of probable cause must be based on substantial evidence on every material element of the offense charged. Hearsay in the form of testimony or affidavits, including written certifications or declarations under penalty of perjury, may be admitted to show the following:

(1) the existence or nonexistence of business or medical facts and records,

(2) judgments and convictions of courts,

(3) ownership of real or personal property, and

(4) reports of scientific examinations of evidence by state or federal agencies or officials or by state-certified laboratories, provided the magistrate determines the source of said evidence to be credible. Nothing in this rule prevents the admission of evidence under any recognized exception to the hearsay rule of evidence. The defendant is entitled to cross-examine witnesses produced against the defendant at the hearing and may introduce evidence in the defendant's own behalf. Motions to suppress must be made in a trial court as provided in Rule 12. However, if at the preliminary hearing the evidence shows facts which would ultimately require the suppression of evidence sought to be used against the defendant, the evidence must be excluded and must not be considered by the magistrate in determining

probable cause. A record of the proceedings must be made by stenographic means or recording devices.

(c) Discharge of Defendant. If the magistrate determines that a public offense has not been committed or that there is not probable or sufficient cause to believe that the defendant committed the offense, the magistrate must dismiss the complaint and discharge the defendant.

(d) Records. After concluding the proceeding, the magistrate must immediately deliver all papers in the proceeding to the clerk of the district court.

Rule 5.2. Transcript of Hearings - Copies for Parties

(a) Transcript of Proceedings. On timely motion to the district court by either the prosecuting attorney or the defendant or defendant's attorney the court must order a printed transcript and copies of exhibits or affidavits to be made for the party. The cost for the preparation of a transcript on motion of the defendant must be paid by the defendant, unless the court finds the defendant to be indigent and orders the preparation of the transcript at county expense in the same manner as a transcript on appeal. Transcripts may be requested of any hearing or proceeding before the court including the following:

(1) the record of any probable cause hearing for the issuance of a complaint, a warrant for arrest or a search warrant;

(2) the record of any preliminary hearing; or

(3) the record of any hearing on a motion to suppress evidence.

(b) Listening to a Recording. In the event that a record was made by a recording device, on request by any party, the court must order that the recording be replayed, and the court may set the time, place and conditions for the replay.

(c) Preparation of Transcript, Costs, Number of Copies, Filing with Court and Service on Parties. Whenever a transcript of a hearing or proceeding is ordered by the court to be prepared under this rule, the transcript must be prepared in the same manner, with the same number of copies and at the same costs as a transcript in an appeal from the magistrate's division to the district court under Rule 54 of these rules. After the original and two copies of the transcript are lodged with the clerk of the court, the clerk must file the original in the court file and immediately serve the copies on the parties to the proceeding as provided by Rule 54(i). There will be no settlement of the transcript as provided by Rule 54(i). In the event of a subsequent appeal, no party may be precluded from raising objections as to the form and content of the transcript.

(d) Requesting Transcript of Recording. The provisions concerning written transcripts are also applicable to requests for a transcript of a record made by a recording device, but the district court may determine that a copy of the recording will be furnished instead of a written transcript.

(e) Certification of Transcripts. All transcripts must be certified by the appropriate magistrate or the clerk.

Rule 5.3. Initial Appearance on Probation Violations

(a) Time and Place for Initial Appearance. A probation violator may be arrested on a bench warrant issued by the sentencing court after a finding of probable cause to believe the probationer has violated a condition of probation, or on an agent's warrant pursuant to Idaho Code § 20-227. In either case, the probationer must be taken before a magistrate or district judge in that judicial district without unreasonable delay. In no event may the delay be more than 24 hours following the arrest excluding Saturdays, Sundays, and holidays. However, the court may delay the initial

appearance if the probationer is hospitalized or in a condition which prevents the probationer being taken before the court. The court may immediately, in such instances, appoint counsel for the probationer.

(b) Determination of Probable Cause in Arrest on Agent's Warrant. If a probationer is arrested pursuant to an agent's warrant, the court before whom the probationer first appears must make a determination of probable cause to believe that a probation violation has been committed and that the probationer committed it before holding the probationer in custody or requiring bail. The court must determine probable cause in a manner consistent with Rule 5(c). The agent's warrant must state:

(1) the underlying offense for which the probationer was placed on probation,

(2) the name of the sentencing judge,

(3) the date the probationer was placed on probation and the length of probation,

(4) the term of probation that was violated and a brief description of how it was violated, and

(5) the date the probationer was taken into custody.

(c) Initial Appearance. At the arraignment on the alleged probation violation, the court must:

(1) advise the probationer that he or she is not required to make a statement and that any statement made may be used against the probationer;

(2) advise as to the nature of the probation violation(s) filed against the probationer and ensure the probationer receives written notice of the alleged violation(s);

(3) advise that the probationer has a right to counsel as provided by law, and if requested and appropriate, appoint counsel;

(4) advise that the probationer has a right to communicate with counsel and immediate family, and that reasonable means will be provided for the probationer to do so;

(5) determine what form of release, if any, is appropriate;

(6) if the probationer is arrested in the county where placed on probation, set a time certain for the probationer to appear before the sentencing court;

(7) if the probationer is arrested outside the county where placed on probation, the court must also:

(A) advise that, if the probationer remains in custody, he or she will be transported and arraigned in the sentencing county within a reasonable time not to exceed 14 days, unless the time is extended on a showing of good cause;

(B) advise that, if the probationer posts bond, he or she will be given a date to appear before a magistrate for arraignment in the county of sentencing, where counsel will be appointed if requested and appropriate, and the probationer will be given a time to appear before the sentencing court; and

(C) cause the clerk to provide written notice to the clerk of the county where the probationer was placed on probation of the dates of the probationer's arrest and appearance before the court so that timely transport can be provided to the sentencing county. On receipt of the written notice, the clerk of the county where the probationer was placed on probation must provide a copy of the notice to the parties in the case.

(d) Setting Bail. On advising the probationer of the above rights, the court may set bail for the probationer.

(1) If the arrest is pursuant to a warrant issued by the sentencing court any direction of the sentencing court stated on the warrant must be followed as to the denial of bail or the setting of bail in a certain amount. In the event the probationer posts bail, that fact must be certified on the warrant, the probationer discharged and the warrant and undertaking of bail transmitted to the court in which the probationer is required to appear. Bail set at the initial appearance may only be altered on motion pursuant to Rule 46(l).

(2) If the arrest is pursuant to an agent's warrant, or no amount of bail is stated on the warrant issued by the sentencing court, then the court may set bail and, if set, bail may only be altered on motion pursuant to Rule 46(l). If the probationer posts bail, that fact must be certified on the warrant, the probationer discharged, and the warrant and undertaking of bail must be transmitted to the court in which the probationer is required to appear.

TITLE III – THE GRAND JURY, THE INDICTMENT AND THE INFORMATION

Rule 6. Formation of the Grand Jury

(a) Number of Jurors. A grand jury must consist of 16 qualified jurors of the county in which the grand jury sits, but 12 or more members constitute a quorum. A grand jury can deliberate and take action if a quorum is present.

(b) Summoning Grand Juries. On motion by the prosecuting attorney to summon a grand jury, a district judge assigned by the Administrative District Judge may order that a grand jury be impaneled within any county of the judicial district at such times as the public interest requires. Sixteen grand jurors must be selected as provided in the Uniform Jury Selection and Service Act, Chapter 2 of Title 2, Idaho Code. The selection of the grand jury must take place in a closed session with only a district judge, the prosecuting attorneys, the prospective jurors, the reporter or recorder, a clerk of the court, and any required interpreter present.

(c) Impaneling a Grand Jury. A district judge must impanel a grand jury of 16 jurors. The district judge must preside over the impaneling of the grand jury and in doing so has the power and duty to:

(1) administer, or direct the clerk to administer, an oath or affirmation to all prospective jurors that each of them will truthfully answer all questions as to their qualifications to sit as jurors on the grand jury;

(2) select, or direct the clerk to select, at random the names of 16 prospective jurors;

(3) inquire of the prospective grand jurors to determine whether they are qualified to act as jurors and whether there are any facts which would constitute grounds for challenge against any of them. If the court finds any prospective juror to be unqualified or subject to challenge as provided by the Uniform Jury Selection and Service Act, Chapter 2, of Title 2 and § 19-1003, Idaho Code, the court must dismiss that prospective juror and choose another prospective juror at random from the panel summoned for the grand jury. The 16 selected jurors must be sworn to the following oath:

> Do each of you, as jurors of the grand jury, affirm that you will diligently inquire into and true presentment make of all public offenses against the state of Idaho, committed or triable within this county, of which you shall have or can obtain legal evidence? That you will keep your own counsel, and that of the other members of the grand jury, and of the government and will not, except when required in the due course of judicial proceeding, disclose the testimony of any witness examined before you, nor anything which you or any other grand juror may have said nor the manner in which you or any other grand juror may have voted in any matter before you? That you will present no person through malice, hatred, or ill will, nor leave any unpresented through fear, favor or affection, or for any reward or the promise of hope thereof? Do you therefore affirm that you will in all your presentments follow these instructions and present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding, so help you God?

(4) The impaneling of the grand jury must be recorded, either stenographically or electronically.

(d) Grand Jury Presiding Juror; Oath; Duties. After the grand jury is impaneled, the court must select one of the jurors as the presiding juror of the grand jury and administer an oath in the form of the

oath in Rule 6.1(c)(3), only it will refer to the person as the presiding juror of the grand jury. The presiding juror has the following powers and duties:

(1) preside over the grand jury until it is adjourned and discharged;

(2) determine the time and place of commencement of each session of the grand jury and the time of adjournment of each session;

(3) take roll of the jurors of the grand jury at the commencement of each session;

(4) rule on the disqualification of a grand juror;

(5) convey to the court any requests of the grand jury for further advice or instructions during the sessions of the grand jury;

(6) on majority vote of the grand jury, direct the issuance of subpoenas for additional witnesses called to testify before the grand jury;

(7) determine the sequence of the witnesses to be examined by the grand jury, with the advice of the prosecuting attorney, and discharge the witness when no further testimony of the witness is desired by the grand jury;

(8) administer an oath or affirmation to all witnesses appearing before the grand jury by asking the witness, "Do you solemnly swear or affirm that the testimony that you shall give in the issue pending before this jury will be the truth, the whole truth and nothing but the truth, so help you God?";

(9) advise target witnesses prior to testifying, or as soon as their status becomes known, by reading the following advice:

> You are advised that you are one of the subjects or suspects in this grand jury investigation. You have the right not to incriminate yourself which includes the right to remain silent and the right to refuse to answer any question that might incriminate you. You have the right to request permission to leave the jury and consult with your attorney or counsel at any time, but you do not have the right to have your counsel with you before the grand jury. Any statements made by you may be used against you in any subsequent prosecution. If you give any false answers to questions you may be prosecuted for the felony crime of perjury. Do you understand these rights?

(10) prepare or cause to be prepared and sign any indictment found by the grand jury and file it with the court; and

(11) perform any other duties as prescribed by these rules or as directed by the court.

(e) Deputy Presiding Juror; Oath; Duties. The court must select one or more deputy presiding jurors and administer the presiding juror's oath to them. In the absence of the presiding juror, the deputy presiding juror acts as the presiding juror in the sequence directed by the district judge, if more than one has been selected, without further order of the court.

(f) Charge to Jury. After the grand jury has been sworn, the court must give a charge to the jury stating in detail their powers, duties and authority and any other information which the court deems proper. The charge must be given orally to the jurors and a written copy must be given to the presiding juror.

(g) Excuse of a Juror. At any time the court or the presiding juror may temporarily or permanently excuse a juror for good cause shown.

Rule 6.1. Prosecuting Attorney's Role with Grand Jury

(a) Attend Grand Jury Sessions. The prosecuting attorney of the county in which the grand jury is sitting, or one or more deputies, or a special prosecuting attorney may attend all sessions of the grand jury, except during the deliberations of the grand jury after the presentation of evidence.

(b) Powers and Duties. The prosecuting attorney has the power and duty to:

(1) present to the grand jury evidence of any public offense, however, when a prosecutor conducting a grand jury inquiry is personally aware of substantial evidence which directly negates the guilt of the subject of the investigation the prosecutor must present or otherwise disclose that evidence to the grand jury;

(2) at the commencement of a presentation of an investigation to the grand jury, inquire as to whether there are any grounds for disqualification of any grand juror and advise the presiding juror of the possible disqualification of a juror;

(3) list the elements of an offense being investigated by the grand jury, before, during or after the testimony of witnesses;

(4) advise the grand jury as to the standard for probable cause, and tell them that if a person refuses to testify this fact cannot be used against him or her;

(5) issue and have served grand jury subpoenas for witnesses;

(6) present opening statements and/or instruct the grand jury on applicable law; and

(7) prepare an indictment for consideration by or at the request of the grand jury.

Rule 6.2. Transcript of Grand Jury Proceedings

(a) Reporting Grand Jury Proceedings. All proceedings of the grand jury, except deliberations, must be recorded, either stenographically or electronically.

(b) Record of Proceedings. The district judge or the presiding juror must designate someone to report or electronically record all of the proceedings of the grand jury, except its deliberations. That person must be sworn to correctly report all of the proceedings and not to divulge any of the information to any person except on order of the district judge. On taking the oath, the person must be permitted to attend all sessions, except deliberations, of the grand jury. On the conclusion of each matter presented to the grand jury, the court clerk must seal the record of the grand jury proceedings and the record must not be examined by any person or transcribed except on order of the district judge.

(c) Availability of Record of Grand Jury Proceedings. The district judge, by motion, must permit the following persons to listen to the record of the proceedings of the grand jury or to obtain a transcript of the proceedings in the same manner as a transcript of a preliminary hearing:

(1) a prosecuting attorney,

(2) a person charged in an indictment or the attorney for the person charged, or

(3) a person charged with perjury because of the person's testimony before the grand jury.

The district judge may place conditions on the use, dissemination or publication of the record of proceedings of the grand jury, and any violation of any condition by a party granted access to the record will constitute contempt of the order of the district judge.

Rule 6.3. Secrecy and Confidentiality of Grand Jury Proceedings

(a) **Who May be Present at Grand Jury Sessions.** The grand jury may, at all reasonable times, request the presence and advice of the district judge; but, unless advice is asked, the district judge must not be present during any session of the grand jury after it has been impaneled. No other person may be permitted to be present during the sessions of the grand jury except:

(1) jurors of the grand jury;

(2) the prosecuting attorney of the county in which the grand jury is sitting, or a designated deputy or specially appointed deputy;

(3) a witness physically present before the grand jury and under questioning;

(4) a supporting person for a child witness requested by the prosecuting attorney as authorized by Idaho Code § 19-3023;

(5) the person designated by the district judge or the presiding juror to report the proceedings; and

(6) an interpreter designated by the district judge or presiding juror and sworn to correctly interpret the proceedings and sworn to secrecy.

(b) **Presence of Persons During Jury Deliberations** Prohibited. No person other than the acting grand jurors may be present during the deliberations of the grand jury.

(c) **Secrecy of Proceedings and Disclosure.** Every member of the grand jury must keep secret whatever was said or done in the grand jury proceedings and the vote of each grand juror on a matter before them; but a grand juror may be required by the district judge to disclose matters occurring before the grand jury which may constitute grounds for dismissal of an indictment or grounds for a challenge to a juror or the array of jurors. No other person present in a grand jury proceeding may disclose to any other person what was said or done in the proceeding, except by order of any court for good cause shown.

(d) **Disclosure of Indictment.** The court may seal the indictment and, while sealed, no person may disclose the finding of the indictment.

Rule 6.4. Grand Jury Proceedings

(a) **Grand Jury Subpoenas.** A grand jury subpoena or subpoena duces tecum may be issued by either the presiding juror or the prosecutor in the manner provided by law.

(b) **Questioning of Witnesses.** Witnesses may be questioned by the prosecuting attorney, the presiding juror, and other members of the grand jury under the direction of the presiding juror.

(c) **Evidence for Defendant.** The grand jury is not bound to hear evidence for the defendant, but it is their duty to weigh all the evidence submitted to them, and when they have reason to believe that other evidence within their reach will explain away the charge, they should order such evidence to be produced, and for that purpose may require the prosecuting attorney to issue process for the witnesses.

Rule 6.5. Indictment

(a) **Sufficiency of Evidence to Warrant Indictment.** If the grand jury finds, after evidence has been presented to it, that an offense has been committed and that there is probable cause to believe that the accused committed it, the jury ought to find an indictment. Probable cause exists when the grand jury has before it evidence that would lead a reasonable person to believe an offense has been committed and that the accused party has probably committed the offense.

(b) **Multiple Charges of Indictment.** There may be two or more separate charges in a grand jury indictment, but each must be voted on separately by the grand jury.

(c) **Finding and Return of Indictment.** An indictment may be found only by agreement of 12 or more jurors. It must be signed by the presiding juror and must be returned by the grand jury to a district judge. The indictment must be in writing and have endorsed on it the names of all witnesses examined before the grand jury about the subject matter of the indictment.

(d) **List of Jurors' Votes.** The presiding juror must prepare separate lists of all jurors voting in favor of and jurors voting against the indictment. The lists must remain sealed but may be disclosed to the prosecuting attorney, the defendant and defendant's counsel by order of the court.

(e) **Return of No Bill.** If the grand jury concludes that there is no probable cause and that no indictment will be returned, that fact must be placed in writing and maintained under seal by the court as part of the record of that proceeding.

Rule 6.6. Grounds for Motion to Dismiss Indictment

A motion to dismiss the indictment may be granted by the district court on any of the following grounds:

- a valid challenge to the array of grand jurors;
- a valid challenge to an individual juror who served on the grand jury that found the indictment, except that finding of the valid challenge to one or more members of the grand jury is not grounds for dismissal of the indictment if there were 12 or more qualified jurors concurring in the finding of the indictment;
- that the charge in the indictment was previously submitted to a magistrate at preliminary hearing and dismissed for lack of probable cause; or
- that the indictment was not properly found, endorsed and presented as required by these rules or by the statutes of the state of Idaho.

Rule 6.7. Discharge of Grand Jury

A grand jury must serve until discharged by the court but no grand jury may serve more than six months unless specifically ordered by the court that summoned the grand jury.

Rule 6.8. Other Prosecution

The fact that a grand jury is in session in a county does not bar prosecution of other offenses by way of complaint or information in that county.

Rule 7. Indictment and Information

(a) **Use of Indictment or Information.** All felony offenses must be prosecuted by indictment or information.

(b) **Nature and Contents.** The indictment or information:

(1) must be a plain, concise and definite written statement of the essential facts constituting the offense charged;

(2) need not contain a formal commencement, a formal conclusion or any other matter not necessary to the statement;

(3) must not contain any reference to the procedural history of the action; and

(4) must state, for each count, the official or customary citation of the statute, rule or regulation or other provision of law that the defendant is alleged to have violated, but error in the citation or its omission is not grounds for dismissal of the indictment or information or for

reversal of the conviction if the error or omission did not mislead the defendant to the defendant's prejudice.

Allegations made in one count may be incorporated by reference in another count. A single count may allege that the means by which the defendant committed the offense are unknown or that he committed it by one or more specific means. The information must be signed by the prosecuting attorney.

(c) Two-Part Indictments or Informations. In all cases in which an extended term of imprisonment is sought because of a prior conviction or convictions, the indictment or information must state the facts on which the extended term of imprisonment is sought. Those facts must not be read to the jury unless the defendant has been found guilty of the primary charge. If the defendant is found guilty of the primary charge, the issue or issues involving the extended term of imprisonment must then be tried.

(d) Surplusage. The court, on motion by either party, may strike surplusage from the indictment or information.

(e) Amendment of Information or Indictment. The court may permit amendment of a complaint, an information or indictment at any time before the prosecution rests if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced.

(f) Filing of Information. The prosecuting attorney must file an information within 14 days after an order has been filed by the magistrate in the district court holding the defendant to answer, unless more time is granted by the court for good cause shown.

Rule 8. Joinder of Offenses and of Defendants

(a) Joinder of Offenses. Two or more offenses may be charged on the same complaint, indictment or information if the offenses charged, whether felonies or misdemeanors or both, are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan. The complaint, indictment or information must state a separate count for each offense.

(b) Joinder of Defendants. Two or more defendants may be charged on the same complaint, indictment or information if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. The defendants may be charged in one or more counts together or separately and all of the defendants need not be charged in each count.

Rule 9. Warrant or Summons on Indictment

The form of a warrant or summons on an indictment, and its issuance, execution, service and return, must be made in the same manner and on the same conditions as a warrant or summons on a complaint as provided in Rule 4 of these rules.

TITLE IV – ARRAIGNMENT AND PREPARATION FOR TRIAL

Rule 10. Arraignment on Indictment or Information

(a) In General. After an indictment or an information has been filed with the district court, the defendant must be arraigned on it by the court. The defendant must appear in person at the arraignment. The arraignment must be within 30 days after the filing of an information. If an indictment has been filed, the arraignment must take place:

(1) within 30 days of service of the summons if a summons has been issued;

(2) within 30 days of the defendant's initial appearance in the county issuing the indictment if a warrant has been issued following the indictment, and if the defendant is not in custody in the county in which the indictment is filed; or

(3) within 30 days of the filing of the indictment in all other cases.

(b) Right to Counsel. If the defendant appears for arraignment without counsel, before being arraigned, the defendant must be informed by the court that defendant has the right to have counsel either of defendant's own selection, or if indigent, by court appointment. The defendant must be asked if defendant desires counsel and if defendant is able to provide his own counsel. If the defendant desires counsel and is found to be indigent as defined by Idaho Code § 19-854, the court must appoint counsel to represent the defendant. No proceedings may take place before the appointment of counsel or until the defendant has had a reasonable period of time to obtain counsel unless the defendant waives the right to counsel.

(c) Arraignment. Arraignment must be conducted in open court and consist of reading the indictment or information to the defendant or stating to the defendant the substance of the charge and requiring the defendant to plead to it. The defendant may waive the reading of the indictment or information. The defendant must be given a copy of the indictment or information before the defendant is required to plead. The defendant must be informed that if the name that appears on the indictment or information is not defendant's true name, the defendant must then state defendant's true name or be proceeded against by the name in the indictment or information. If, on the arraignment, the defendant requires time to enter a plea, the defendant must be allowed a reasonable time, not less than one day, in which to answer the indictment or information.

(d) Method of Securing Defendant's Appearance.

(1) When the defendant's appearance is necessary and the defendant is in custody, the court may direct the officer who has custody of the defendant to bring the defendant to court.

(2) If the defendant is at liberty on defendant's own recognizance or on bail pursuant to a court order issued in the same criminal action, the prosecuting attorney must, on at least three days' notice to the defendant and to defendant's attorney, notify the defendant and defendant's attorney that an information or indictment has been filed against the defendant and the time and place set for arraignment. Notice must be given to the defendant either in person or by mail at the defendant's last known address.

(3) If the defendant, who is at liberty on defendant's own recognizance or on bail pursuant to a previous court order issued in that same criminal action, does not appear to be arraigned, the court, in addition to the forfeiture of the undertaking or bail, may issue a bench warrant for defendant's arrest. On taking the defendant into custody pursuant to a bench warrant, the

executing peace officer must, without unnecessary delay, bring the defendant for arraignment before the district court that issued the bench warrant.

Rule 11. Pleas

(a) Alternatives.

(1) *In General*. A defendant may plead guilty or not guilty. If a defendant refuses to plead or if a defendant corporation fails to appear, the court must direct the entry of a plea of not guilty.

(2) *Conditional Pleas*. With the approval of the court and the consent of the prosecuting attorney, a defendant may enter a conditional plea of guilty, reserving in writing the right, on appeal from the judgment, to review any specified adverse ruling. If the defendant prevails on appeal, the defendant must be allowed to withdraw defendant's plea.

(b) Inadmissibility of Pleas, Offers of Pleas, and Related Statements. The admissibility of pleas, offers of pleas, and related statements is governed by Rule 410 of the Idaho Rules of Evidence.

(c) Acceptance of Plea of Guilty. Before a plea of guilty is accepted, the record of the entire proceedings, including reasonable inferences, must show:

(1) the voluntariness of the plea;

(2) that the defendant was informed of the consequences of the plea, including minimum and maximum punishments, and other direct consequences that may apply;

(3) that the defendant was advised that, by pleading guilty, the defendant would waive the right against compulsory self-incrimination, the right to trial by jury, and the right to confront witnesses against the defendant;

(4) that the defendant was informed of the nature of the charge against the defendant; and

(5) whether any promises have been made to the defendant, or whether the plea is a result of any plea bargaining agreement, and if so, the nature of the agreement and that the defendant was informed that the court is not bound by any promises or recommendation from either party as to punishment.

(d) Other Advisories on Acceptance of Plea. The district judge must, prior to entry of a guilty plea or the making of factual admissions during a plea discussion, inform the defendant of the following:

(1) The court must inform all defendants that, if a defendant is not a citizen of the United States, the entry of a plea or making of factual admissions could have consequences of deportation or removal, inability to obtain legal status in the United States, or denial of an application for United States citizenship.

(2) If the defendant is pleading guilty to any offense requiring registration on the sex offender registry, the court must inform the defendant of the registration requirements.

(3) If the defendant is waiving the right to appeal or other post-conviction proceedings as part of a guilty plea, and the court is aware of this waiver, the court must ask the defendant if defendant is aware of the waiver of appeal or other proceedings.

(e) Plea Advisory Form. As an aid in taking a plea of guilty, the court may require the defendant to fill out and submit the plea advisory form found in Appendix A of these rules. In addition to the form, the court must make a record showing:

(1) the defendant understands the nature of the charge(s), including any mental element such as intent, knowledge, state of mind;

(2) the defendant understands the maximum and minimum punishments, and any other direct consequences that may apply;

(3) the defendant understood the contents of the guilty plea advisory form, and the defendant's plea is voluntary.

(f) Plea Agreement Procedure.

(1) *In General.* The prosecuting attorney and the attorney for the defendant or the defendant when acting without an attorney may discuss an agreement that may include a waiver of the defendant's right to appeal the judgment and sentence of the court and that, on the entering of a plea of guilty to a charged offense or to a lesser or related offense, the prosecuting attorney will do any of the following:

(A) move for dismissal of other charges;

(B) make a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that the recommendation or request is not binding on the court;

(C) agree that a specific sentence is the appropriate disposition of the case; or

(D) agree to any other disposition of the case.

The court may participate in this discussion.

(2) *Notice of Plea Agreement.* If a plea agreement is reached by the parties, the court must, on the record, require the disclosure of the agreement in open court or, on a showing of good cause, in camera, at the time the plea is offered. If the agreement has the terms of subdivision (f)(1)(A), (C) or (D), the court may accept or reject the agreement, or may defer its decision as to the acceptance or rejection until there has been an opportunity to consider the presentence report. If the agreement has the term stated in subdivision (f)(1)(B), the court must advise the defendant that, even if the court does not accept the recommendation or request, the defendant has no right to withdraw his plea.

(3) *Acceptance of a Plea Agreement.* If the court accepts the plea agreement, the court must inform the defendant that it will be bound by the terms of the plea agreement in the final disposition of the case.

(4) *Rejection of a Plea Agreement.* If the court rejects the plea agreement, the court must, on the record:

(A) inform the parties of the rejection;

(B) advise the defendant personally in open court or, on a showing of good cause, in camera, that the court is not bound by the plea agreement;

(C) afford the defendant the opportunity to withdraw the defendant's plea; and

(D) advise the defendant that if the defendant persists in the guilty plea the disposition of the case may be less favorable to the defendant than the terms of the plea agreement.

Rule 12. Pleadings and Motions Before Trial; Defenses and Objections

(a) Pleadings and Motions. The only pleadings in criminal proceedings are the complaint, indictment or information, and the pleas of guilty and not guilty. Defenses and objections before trial must be raised by motion to dismiss or to grant appropriate relief as provided in these rules.

(b) Pretrial Motions. Any defense objection or request which can be determined without trial of the general issue may be raised before the trial by motion. The following must be raised prior to trial:

(1) defenses and objections based on defects in the prior proceedings in the prosecution;

(2) defenses and objections based on defects in the complaint, indictment or information (other than that it fails to show jurisdiction of the court or to charge an offense, which objections may be made at any time during the pendency of the proceedings);

(3) motions to suppress evidence because it was illegally obtained;

(4) request for discovery under Rule 16;

(5) request for a severance of charges or defendants under Rule 14; or

(6) motion to dismiss based on former jeopardy.

(c) Motions to Suppress. A motion to suppress evidence must describe the evidence sought to be suppressed and the legal basis for its suppression sufficiently to give the opposing party reasonable notice of the issues.

(d) Motion Date. Motions under Rule 12(b) must be filed within 28 days after the entry of a plea of not guilty or seven days before trial whichever is earlier. In felony cases, motions under Rule 12(b) must be brought on for hearing within 14 days after filing or 48 hours before trial, whichever is earlier. The court may shorten or enlarge the time and, for good cause shown or for excusable neglect, may relieve a party of failure to comply with this rule.

(e) Ruling on Motion. A motion made before trial must be determined before trial unless the court orders that it be deferred for determination at the trial of the general issue. Where factual issues are involved in determining a motion, the court must state its essential findings on the record.

(f) Effect of Failure to Raise Defenses or Objections. Failure by the defendant to raise defenses or objections or to make requests that must be made prior to trial, or at the time set by the court pursuant to subsection (d), or prior to any extension of time granted by the court, constitutes waiver of the defenses, objections or requests, but the court, for cause shown, may grant relief from the waiver.

(g) Records. A verbatim record must be made of all proceedings at the hearings, including all findings of fact and conclusions of law that are made orally.

Rule 12.1. Notice of Alibi

If the defendant intends to rely on the defense of alibi, the defendant must comply with Idaho Code § 19-519.

Rule 12.2. Motions Requesting Additional Defense Services

(a) In General; Time. A defendant may submit a motion requesting public funds to pay for investigative, expert, or other services that he believes are necessary for his defense. The motion seeking public funds must be submitted to the court ex parte, except as provided in subsection (f) of this rule. The motion must be made before the defense incurs the costs and requires prior approval of the court. The court must decide the motion on the basis of the record in the case and the information submitted by the defendant.

(b) Content of Motion. The motion must include:

(1) the scope and details of the services requested;

(2) the reasons the requested services are relevant and necessary to the defense based on the specific facts of the case;

(3) the name and location of the proposed providers of the services;

(4) the qualifications of the proposed providers of the services;

(5) an estimate of the total cost of the services being requested, including the hourly rate or other charges of the providers of the services, and any additional expenses, such as travel costs, that will be incurred; and

(6) if the proposed providers of the services are located outside of the judicial district or the state of Idaho, an explanation of why the proposed providers should be utilized and what efforts have been made to locate providers of the requested services in the judicial district or in the state of Idaho.

(c) Finding of Indigency. The court must not grant a request for public funds to obtain additional services in the absence of a finding of indigency, which must be made on the basis of the standards in Idaho Code § 19-854. The fact that a defendant has private counsel, or has been found not to be indigent for the purpose of appointing counsel at public expense, does not necessarily preclude a finding that a defendant is indigent with regard to obtaining the additional services requested. In making the finding of indigency, the court may require the defendant to provide any relevant information concerning his finances, income, property, and expenses, or any other information relevant to standards for a finding of indigency in Idaho Code § 19-854.

(d) Consideration by Another Judge. The court may request that the Administrative District Judge appoint another judge to consider and conduct any hearing on the motion and to decide on the motion.

(e) Controlling Costs; Billing. If the motion is granted in whole or in part, the court may order any additional conditions that it finds appropriate to control costs and expenses. An order granting a motion must specifically state the amount authorized and that any cost above that amount will not be approved for payment unless additional authorization is obtained from the court, under the procedures in this rule, before the additional cost is incurred. Payment for services provided under this rule must be made only on the submission of a detailed billing stating each of the services provided and the cost of the services.

(f) Notice to Public Defender. If the motion for additional defense services is filed by private counsel for the defendant, and the additional defense services are to be provided through funds budgeted to the public defender, the public defender must be served with a copy of any motion for additional resources and the moving party must serve notice on the public defender of any hearing on the matter. If the motion for additional defense services is granted the court must provide to the public defender a copy of the order granting the motion.

Rule 13. Trial Together of Complaints, Indictments and Informations

The court may order that two or more complaints, indictments or informations be tried together if the offenses, and the defendants if there is more than one, could have been joined in a single complaint, indictment or information. The procedure is the same as if the prosecution were under a single complaint, indictment or information.

Rule 14. Relief from Prejudicial Joinder

If it appears that a defendant or the state is prejudiced by a joinder of offenses or of defendants in a complaint, indictment or information, the court may order the state to elect between counts, grant separate

trials of counts, grant a severance of defendants, or provide whatever other relief justice requires. In ruling on a motion by a defendant for severance the court may order the attorney for the state to deliver to the court for inspection in camera any statements or confessions made by the defendants that the state intends to introduce in evidence at the trial.

Rule 15. Depositions

(a) When Taken.

(1) *In General.* At any time after the filing of the complaint, indictment or information, and on notice to all parties, a party may move that a prospective witness be deposed in order to preserve testimony for trial. The court may grant the motion if the testimony of the witness is material and it is necessary to take the deposition of the witness in order to prevent a failure of justice. If the court orders the deposition to be taken, it may also require the deponent to produce at the deposition any designated material that is not privileged, including any book, paper, document, record, recording, or data.

(2) *Detained Witness.* If a witness is detained for failure to give bail to appear to testify at a trial or hearing, the witness or any party may request that the witness be deposed by filing a written motion and giving notice to the parties. The court may then order that the deposition be taken and may discharge the witness after the witness has signed under oath the deposition transcript.

(b) Notice of Taking. The party at whose request the deposition is to be taken must give reasonable written notice of the time and place for taking the deposition to every other party, and to the officer having custody of a defendant. The notice must state the name and address of each person to be examined. On motion of a party on whom the notice is served, the court, for cause shown, may extend or shorten the time or change the place for taking the deposition.

(c) Defendant's Presence.

(1) *Defendant in Custody.* The officer who has custody of the defendant must produce the defendant at the deposition and keep the defendant in the witness's presence during the examination, unless the defendant:

(A) waives in writing the right to be present; or

(B) persists in disruptive conduct justifying exclusion after being warned by the court that disruptive conduct will result in the defendant's exclusion.

(2) *Defendant Not in Custody.* A defendant who is not in custody has the right on request to be present at the deposition, subject to any conditions imposed by the court. If the government tenders the defendant's expenses as provided in subsection(d) of this rule but the defendant still fails to appear, the defendant, absent good cause, waives both the right to appear and any objection to the taking and use of the deposition based on that right.

(d) Payment of Expenses. When a deposition is taken, the court may direct that the county pay the expense of travel and subsistence of the defendant and defendant's attorney for attendance at the examination and the cost of the transcript of the deposition.

(e) How Taken. Subject to any additional conditions that the court may provide, a deposition must be taken and filed in the manner provided in the Idaho Rules of Civil Procedure except as otherwise provided in these rules, except that:

(1) in no event may a deposition be taken of a defendant without the defendant's consent, and

(2) the scope and manner of examination and cross-examination must be such as would be allowed in the trial itself.

The state must make available to the defendant or defendant's counsel for examination and use at the taking of the deposition any statement of the witness being deposed that is in the possession of the state and to which the defendant would be entitled at the trial. The court, at the request of a defendant, may direct that a deposition may be taken on written interrogatories in the manner provided in the Idaho Rules of Civil Procedure.

(f) Use. At the trial or on any hearing, a part or all of a deposition that is admissible under the rules of evidence may be used as substantive evidence if the witness is unavailable, as the term unavailability is defined in Rule 804(a) of the Idaho Rules of Evidence.

(g) Objections to Deposition Testimony. Objections to deposition testimony or evidence or parts of it and the grounds for the objection must be stated at the time of the taking of the deposition, unless otherwise agreed by the parties.

(h) Deposition by Agreement Not Precluded. Nothing in this rule precludes the taking of a deposition orally or on written questions, or the use of a deposition, by agreement of the parties with the consent of the court.

Rule 16. Discovery and Inspection

(a) Mandatory Disclosure of Evidence and Material by the Prosecution. As soon as practicable after the filing of charges against the accused, the prosecuting attorney must disclose to defendant or defendant's counsel any material or information in the prosecuting attorney's possession or control, or that later comes into the prosecuting attorney's possession or control, that tends to negate the guilt of the accused as to the offense charged or that would tend to reduce the punishment for the offense. The prosecuting attorney's obligations under this paragraph extend to material and information in the possession or control of members of prosecuting attorney's staff and of any others who have participated in the investigation or evaluation of the case who either regularly report, or have reported in that case, to the office of the prosecuting attorney. The prosecuting attorney must also disclose the general nature of evidence of other crimes, wrongs, or acts, it intends to introduce at trial as required by Rule 404(b) of the Idaho Rules of Evidence.

(b) Disclosure of Evidence and Materials by the Prosecution on Written Request. Except as otherwise provided in this rule, the prosecuting attorney must, at any time following the filing of charges, on written request by the defendant, disclose the following information, evidence and material to the defendant:

(1) *Statement of Defendant*. On written request of a defendant, the prosecuting attorney must permit the defendant to inspect and copy or photograph:

(A) any relevant written or recorded statements made by the defendant in the possession, custody or control of the state, the existence of which is known or is available to the prosecuting attorney by the exercise of due diligence;

(B) the substance of any relevant, oral statement made by the defendant, whether before or after arrest, to a peace officer, prosecuting attorney or agent of the prosecuting attorney; and

(C) the recorded testimony of the defendant before a grand jury that relates to the offense charged.

(2) *Statement of a Co-Defendant*. On written request of a defendant, the prosecuting attorney must permit the defendant to inspect and copy or photograph:

(A) any written or recorded statements of a co-defendant; and

(B) the substance of any relevant oral statement made by a co-defendant, whether before or after arrest, in response to interrogation by any person known by the co-defendant to be a peace officer or agent of the prosecuting attorney.

(3) *Defendant's Prior Record*. On written request of the defendant, the prosecuting attorney must furnish the defendant copy of the defendant's prior criminal record, if any, if it is then or may become available to the prosecuting attorney.

(4) *Documents and Tangible Objects*. On written request of the defendant, the prosecuting attorney must permit the defendant to inspect and copy or photograph:

(A) books,

(B) papers,

(C) documents,

(D) photographs,

(E) tangible objects,

(F) buildings or places,

or copies or portions of them, that are in the possession, custody or control of the prosecuting attorney and that:

(A) are material to the preparation of the defense,

(B) are intended for use by the prosecutor as evidence at trial, or

(C) were obtained from the defendant or belong to the defendant.

(5) *Reports of Examinations and Tests*. On written request of the defendant, the prosecuting attorney must permit the defendant to inspect and copy any results or reports of physical or mental examinations, and of scientific tests or experiments, made in connection with the particular case, that are in the possession, custody or control of the prosecuting attorney or the existence of which is known or is available to the prosecuting attorney by the exercise of due diligence.

(6) *State Witnesses*. On written request of the defendant, the prosecuting attorney must furnish to the defendant a written list of the names and addresses of all persons having knowledge of relevant facts who may be called by the state as witnesses at the trial, together with any record of prior felony convictions of any of them, that is within the knowledge of the prosecuting attorney. The prosecuting attorney must also furnish, on written request, the statements made by the prosecution witnesses or prospective prosecution witnesses to the prosecuting attorney or the prosecuting attorney's agents or to any official involved in the investigation of the case unless a protective order is issued as provided in subsection (l) of this rule.

(7) *Expert Witnesses*. On written request of the defendant, the prosecutor must provide a written summary or report of any testimony that the state intends to introduce at trial or at a hearing pursuant to Rules 702, 703 or 705 of the Idaho Rules of Evidence. The summary

provided must describe the witness's opinions, the facts and data for those opinions, and the witness's qualifications. Disclosure of expert opinions regarding mental health must also comply with the requirements of Idaho Code § 18-207. The prosecution is not required to produce any materials not subject to disclosure under subsection (g) of this Rule. This subsection does not require disclosure of expert witnesses, their opinions, the facts and data for those opinions, or the witness's qualifications, intended only to rebut evidence or theories that have not been disclosed under this Rule prior to trial.

(8) *Police Reports*. On written request of the defendant, the prosecuting attorney must furnish to the defendant reports and memoranda in possession of the prosecuting attorney that were made by a police officer or investigator in connection with the investigation or prosecution of the case.

(9) *Digital Media Recordings (Audio and Video Files)*. On request, the prosecuting attorney must release to defendant digital media that may or may not contain protected information as defined by this Rule. The prosecuting attorney must state whether the disclosure contains protected information.

(A) Unredacted Digital Media. The prosecuting attorney may release unredacted digital media to defense counsel for the purpose of expediting a resolution in a case prior to trial or hearing. The obligation of defense counsel is as follows:

(i) Defense counsel, including agents of defense counsel, may review the unredacted digital media and discuss the content of the recording with the defendant but must not share the unredacted digital media in any manner with the defendant without prior consent of the prosecuting attorney or an order of the court.

(ii) With prior consent of the prosecuting attorney or an order of the court, defense counsel may allow the defendant to view the unredacted digital media in the presence of defense counsel or defense counsel's agent, but defense counsel must not allow the defendant to retain a copy of the digital media in any version, to take photographs, or to otherwise duplicate the digital media in any form.

(iii) Defense counsel must take reasonable steps to ensure that the unredacted digital media is safely stored and cannot be accessed by anyone other than defense counsel or defense counsel's agents.

(B) Redacted Digital Media. If the prosecuting attorney determines that the digital media contains protected information that requires redaction prior to disclosure, the prosecuting attorney must provide a redacted version of the digital media, along with a written explanation of the information that was redacted. Defense counsel may allow the defendant to view and retain a copy of any media that is redacted by the prosecuting attorney. If defense counsel disagrees with any of the prosecuting attorney's redactions, before allowing the defendant to review any unredacted media, a Motion to Compel must be filed and argued in accordance with these Rules.

(C) Self-Represented Defendants. When a defendant chooses to proceed without counsel, the prosecuting attorney may release unredacted digital media to the defendant but, if the prosecuting attorney determines that digital media should not be disclosed because it contains protected information, the prosecuting attorney must seek a Protective Order pursuant to subsection (d)(2)(B) of this Rule.

(10) *Disclosure by Order of the Court*. On motion of the defendant showing substantial need in the preparation of the defendant's case for additional material or information not otherwise covered by this Rule, and that the defendant is unable without undue hardship to obtain the substantial equivalent by other means, the court may order the additional material or information to be made available to the defendant. The court may, on the request of any person affected by the order, vacate or modify the order if compliance would be unreasonable or oppressive.

(c) Disclosure of Evidence by the Defendant on Written Request. Except as otherwise provided in this rule, the defendant must, at any time following the filing of charges against the defendant, on written request by the prosecuting attorney, disclose the following information, evidence and material to the prosecuting attorney:

(1) *Documents and Tangible Objects*. On written request of the prosecuting attorney, the defendant must permit the prosecuting attorney to inspect and copy or photograph:

(A) books,

(B) papers,

(C) documents,

(D) photographs, and

(E) tangible objects,

or copies or portions of them, that are in the possession, custody or control of the defendant, and that the defendant intends to introduce in evidence at the trial.

(2) *Reports of Examinations and Tests*. On written request of the prosecuting attorney, the defendant must permit the prosecuting attorney to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case if they are within the possession or control of the defendant, that the defendant intends to introduce in evidence at the trial, or that were prepared by a witness whom the defendant intends to call at the trial when the results or reports relate to testimony of the witness.

(3) *Defense Witness*. On written request of the prosecuting attorney, the defendant must furnish the prosecuting attorney a list of names and addresses of witnesses the defendant intends to call at trial.

(4) *Expert Witnesses*. On written request of the prosecuting attorney, the defendant must provide a written summary or report of any testimony that the defense intends to introduce pursuant to Rules 702, 703 or 705 of the Idaho Rules of Evidence at trial or hearing. The summary provided must describe the witness's opinions, the facts and data for those opinions and the witness's qualifications. Disclosure of expert opinions regarding mental health must also comply with the requirements of Idaho Code § 18-207. The defense is not required to produce any materials not subject to disclosure under subsection (h) of this Rule, or any material otherwise protected from disclosure by defendant's constitutional rights.

(d) Redacting Protected Information from Responses to Discovery. The party providing discovery may redact protected information from the information or material provided.

(1) Protected information means:

(A) Contact Information. The home addresses, business addresses, telephone numbers (including cell phones), and email addresses of an alleged victim, or of a witness, or of the spouse, children, or other close family members of the alleged victim or witness, and the places where any of those persons regularly go, such as schools and places of employment and worship.

(B) Personal Identifying Information. The dates of birth and social security numbers of any persons other than the defendant.

(C) Private Information. Personal identification numbers (PINs), passwords, financial account numbers, information relating to financial transaction cards, and medical information protected by federal law that is not directly related to the crime charged.

(2) A prosecuting attorney who redacts protected information must follow the following procedure:

(A) If the defendant is represented by counsel, the prosecuting attorney must serve defendant's counsel with a redacted copy of the discovery printed on white paper at the same time as an unredacted copy of the discovery printed on paper of a color that is clearly distinguishable from white. The defendant's attorney, including appellate counsel, must not disclose the protected information to the defendant or to a member of the defendant's family without the consent of the prosecuting attorney or an order of the court on a showing of need.

(B) If the defendant is not represented by counsel, the prosecuting attorney must serve the defendant with a redacted copy of the discovery and, within seven days of doing so, even if the disclosure was not in response to a discovery request, must file with the court and serve on the defendant a motion for a protective order with respect to the redacted information.

(3) A defense attorney or defendant who redacts protected information must serve the prosecuting attorney with a redacted copy of the discovery printed on white paper at the same time as an unredacted copy of the discovery printed on paper of a color that is clearly distinguishable from white. The State's attorney, including appellate counsel, must not disclose the protected information to the alleged victim or to a member of the alleged victim's family without the consent of the defendant or an order of the court on a showing of need.

(4) *Print on Colored Paper*. In any case where the prosecuting attorney provides discovery to defense counsel in an electronic format, if the attorney receiving the electronic discovery desires to print the discovery, the attorney must print the unredacted discovery on colored paper as required by subsection (d)(3) of this rule.

(e) Failure to Make Written Request, Waiver.

(1) Any request by a party for information, evidence or material under subsections (b) and (c) of this rule must be in writing with the original request filed with the court and a copy served on the prosecuting attorney or the defense attorney or self-represented defendant. Failure to file and serve the request constitutes a waiver of the right to discovery under subsections (b) and (c) of this rule. If no written request for discovery is filed and served by the defendant, the defendant will not be permitted to raise as error in any subsequent proceeding the failure of the prosecution to disclose the information described in subsection (b) of this rule.

(2) *Form of Request*. A request for the information, evidence and material under subsection (b) of this rule must be in substantially the form found in Appendix A.

(f) Response to Request, Failure to File a Response.

(1) *Response to Request*. The attorney or defendant on whom a request has been served must file and serve a written response within 14 days of service of the request by filing the original copy with the court and serving a copy on the opposing party, which must state one or more of the following:

(A) that the response has already been complied with and that the inquiring party has been furnished the information, evidence and material listed in the request;

(B) that there is no objection to the discovery of the information, evidence and materials sought by the request and that the opposing party will be permitted discovery at a time and place certain; and

(C) that the responding party objects to part or all of the information, evidence and materials sought to be discovered, which objection must be specific and state all grounds for the objection.

(2) *Failure to Comply*. Unless otherwise ordered by the court on a showing of good cause or excusable neglect, the failure to file and serve a response within the time required by this rule constitutes a waiver of any objections to the request and is grounds for the imposition of sanctions by the court.

(3) A response to a request must be in the form found in Appendix A.

(g) Prosecution Information Not Subject to Disclosure.

(1) *Work Product*. Disclosure must not be required of:

(A) legal research or of records,

(B) correspondence, or

(C) reports of memoranda to the extent that they contain the opinions, theories or conclusions of the prosecuting attorney or members of the prosecuting attorney's legal staff.

(2) *Informants*. Disclosure must not be required of an informant's identity unless the informant is to be produced as a witness at a hearing or trial, subject to any protective order under subsection (l) of this rule or a disclosure order under subsection (b)(6) of this rule.

(h) Defense Information Not Subject to Disclosure. Except as to scientific or medical reports, this rule does not authorize the discovery or inspection of reports, memoranda, or other internal defense documents made by the defendant, or defendant's attorneys or agents in connection with the investigation or defense of the case, or of statements made by the defendant or prosecuting attorney or defense witnesses, or prospective state or defense witnesses to the defendant, defendant's agents or attorneys.

(i) Failure to Call Witnesses. The fact that a witness's name is on a list furnished under this rule and that witness is not called must not be commented on at the trial.

(j) Continuing Duty to Disclose. If, after compliance with a request issued pursuant to this rule, and prior to or during trial, a party discovers additional evidence or the evidence of an additional witness or witnesses, or decides to use additional evidence, witness or witnesses, the evidence is

automatically subject to discovery and inspection under the prior request. The party must immediately notify the other party or that party's attorney and the court of the existence of the additional evidence or the names of the additional witness or witnesses in order to allow the other party to make an appropriate request for additional discovery or inspection.

(k) Orders for Discovery. If a party has failed to comply with a request for discovery under this rule, the court, on motion of a party, may:

(1) order a party to permit the discovery or inspection,

(2) prohibit the discovery of part or all of the information, evidence or material sought to be discovered, or

(3) enter such other order as it deems just in the circumstances.

An order of the court granting discovery under this rule must specify the time, place and manner of making the discovery and inspection and provide reasonable terms and conditions.

(l) Protective Orders. At any time the court may, for good cause, deny, restrict, or defer discovery or inspection, or grant other appropriate relief. The court may permit a party to show good cause by a written statement that the court will inspect ex parte. If relief is granted, the court must preserve and seal the entire text of the party's statement.

(m) Sexually Exploitative Material.

(1) Any property or material that constitutes or is alleged to constitute sexually exploitative material as defined in Idaho Code § 18-1505B or Idaho Code § 18-1507 must remain in the care, custody, and control of either the court or a law enforcement agency.

(2) A court must deny any request by a defendant to copy, photograph, duplicate, or otherwise reproduce any property or material that constitutes or is alleged to constitute sexually exploitative material as defined in I. C. § 18-1505B or I. C. § 18-1507, so long as the prosecuting attorney makes the property or material reasonably available to the defendant.

(3) For purposes of subsection (m)(2) of this rule, property or material is deemed to be reasonably available to the defendant if the prosecuting attorney provides ample opportunity for inspection, viewing, and examination of the property or material by the defendant, defense counsel, and any individual the defendant may seek to qualify to furnish expert testimony at trial.

Rule 17. Subpoena

(a) For Attendance of Witnesses, Form, Issuance. A subpoena must be issued by the clerk of the court or the judge, and must command each person to whom it is directed to attend and give testimony at the time and place specified in it. The clerk may issue a subpoena, signed and sealed, but otherwise in blank to a party requesting it who must fill in the blanks before it is served.

(b) For Production of Documentary Evidence and of Objects. A subpoena may also command the person to whom it is directed to produce the books, papers, documents or other objects designated in it. The court, on motion, may quash or modify the subpoena if compliance would be unreasonable or oppressive. The court may direct that books, papers, documents or objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence and may, on their production, permit the books, papers, documents or objects or portions of them to be inspected by the parties and their attorneys.

(c) Service. A subpoena may be served by a peace officer, by the officer's deputy, or by any other person who is not a party and who is at least 18 years old. Service of a subpoena must be made by delivering a copy of it to the person named.

(d) Place of Service.

(1) *In the State of Idaho*. A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place in the state of Idaho.

(2) *Outside the State of Idaho*. A subpoena directed to a witness outside the state of Idaho must be issued under the circumstances and in the manner and be served as provided by law.

(3) *Prisoners or Persons in Confinement*. A subpoena directed to a witness who is a prisoner or a person held in confinement must be issued and served as provided by law.

(e) For Taking Deposition, Place of Examination. When an order has been entered by the district court authorizing the taking of a deposition, the clerk of must issue a subpoena requiring the attendance of the deponent witness. The deposition must be taken only in the county is which the deponent resides, is employed or conducts business in person, or at any other place as stated by the district court in the order.

(f) Contempt. Failure by any person to obey a subpoena served on that person may be deemed a contempt of the court from which the subpoena issued.

Rule 18. Felony Pretrial Conference

(a) Conference on the Record. At any time prior to trial, the court, on motion of any party or on its own motion, may order one or more pretrial conferences to consider any matters that would promote a fair and expeditious trial. At the conclusion of the pretrial conference the court must make a written record of the matters decided.

(b) Informal Conference off the Record. The court may hold an informal settlement conference off the record. No admissions made by the defendant or the defendant's attorney at the settlement conference may be used against the defendant unless the admissions are written and signed by the defendant and the defendant's attorney or signed by the defendant if the defendant is self-represented.

Rule 18.1. Mediation in Criminal Cases

In any criminal proceeding, any party or the court may make a request for the parties to participate in mediation to resolve some or all of the issues presented in the case. Participation in mediation is voluntary and will take place only on agreement of the parties. Not all defendants in a multi-defendant case need join in the request or in the settlement conference or mediation. Decision-making authority remains with the parties and not the mediator.

Unless otherwise ordered, mediation must not stay any other proceeding.

(a) Definition of "Mediation". Mediation under this rule is the process by which a neutral mediator assists the parties (defined as the prosecuting attorney on behalf of the State and the Defendant) in reaching a mutually acceptable agreement as to issues in the case. The issues may include sentencing options, restitution awards, admissibility of evidence and any other issues which will facilitate the resolution of the case.

(b) Matters Subject to Mediation. All misdemeanor and felony cases are subject to mediation if the court determines that it may be beneficial in resolving the case entirely. Issues that may be referred to mediation include, without limitation:

(1) the possibility of reduced charges,

(2) agreements about sentencing recommendations or possible Rule 11 agreements,

(3) the handling of restitution, and

(4) continuing relationship with any victim.

(c) Selection of Mediator. The court must select a mediator from those on a roster maintained by the Administrative Office of the Courts, after considering the recommendations of the parties. That roster will include senior or sitting judges or justices who have indicated a willingness to conduct criminal mediations and who have completed 12 hours of criminal mediation training within the previous two years. If the selected mediator is a senior judge or justice, the mediator will be compensated as with any senior judge service, and approval from the trial court administrator must be obtained by the court prior to the mediation.

(d) Role of the Mediator. The role of the mediator is limited to facilitating a voluntary settlement between parties in criminal cases. The mediator is to aid the parties in identifying the issues, reducing misunderstandings, exploring options and discussing areas of agreement that can expedite the trial or resolution of the case. The mediator must not preside over any future aspect of the case, other than facilitation of a voluntary settlement according to this rule. The mediator must not take a guilty plea from nor sentence any defendant in the case.

(e) Persons to be Present at Mediation. Participants must be determined by the attorneys and the mediator. The government attorney participating in the settlement discussions must have authority to agree to a disposition of the case.

(f) Confidentiality. Except as provided in Idaho Code § 16-1605, mediation proceedings must, in all respects, be confidential and not reported or recorded.

(g) Mediator Privilege. Mediator privilege is governed by Idaho Rule of Evidence 507.

(h) Communications Between Mediator and the Court. The mediator and the court must have no contact or communication except that the mediator may, without comment or observation, report to the court:

(1) that the parties are at an impasse;

(2) that the parties have reached an agreement, and the agreement reached may be reduced to writing, signed by the prosecuting attorney, the Defendant and defense counsel, and submitted to the court for approval;

(3) that meaningful mediation is ongoing; or

(4) that the mediator withdraws from the mediation.

(i) Communications Between Mediator and Attorneys. The mediator may communicate with the attorneys before the mediation to become better acquainted with the current state of negotiations and the issues to be resolved in the mediation. This communication may be conducted separately with each of the attorneys and without the presence of the defendant.

(j) Termination of Mediation. The court, the mediator, or any party may terminate the mediation at any time if further progress toward a reasonable agreement is unlikely or concerns or issues arise that make mediation no longer appropriate.

TITLE V – VENUE

Rule 19. Place of Prosecution and Trial

Unless a statute or these rules permit otherwise, the government must prosecute an offense in the county in which the alleged offense was committed.

Rule 20. Transfer from the County for Plea and Sentence.

(a) Consent to Transfer. A prosecution may be transferred from the county where the complaint, information or indictment is pending to the county where the defendant is arrested, held, or present if:

(1) the defendant states in writing a wish to plead guilty and consents in writing to the court's disposing of the case in the county where the defendant was arrested, is held or is present; and

(2) the prosecuting attorneys from each county involved, as well as the trial court where the case is pending, approve the transfer in writing.

(b) Clerk's Duties. After receiving the defendant's statement and the required approvals, the clerk of the court in the county where the complaint, information, or indictment is pending must send the file, or a certified copy, to the clerk in the county where the prosecution is transferred.

(c) Effect of Not Guilty Plea or Failure to Abide by Conditions of Transfer. If the defendant pleads not guilty or fails to abide by the conditions of the transfer after the case has been transferred under subsection (a) of this rule, the clerk must return the papers to the court where the prosecution began, and that court must restore the proceeding to its docket. The defendant's statement that the defendant wished to plead guilty must not be used against the defendant.

(d) Summons. For the purpose of initiating a transfer under this rule a person who appeared in response to the summons issued under Rule 4 is treated as if that person had been arrested or held on a warrant in the county of the appearance.

Rule 21. Transfer for Trial

A motion for transfer may be made at or before arraignment or at any other time the court or these rules prescribe.

(a) For Prejudice. On motion of either party, the court must transfer the proceeding to another county if the court is satisfied that a fair and impartial trial cannot be had in the county where the case is pending.

(b) For Convenience. On motion of the defendant, the court may transfer the proceeding to another county, for the convenience of parties and witnesses, and in the interest of justice.

(c) Proceedings on Transfer.

(1) *Transfer Within a Judicial District*. If the proceeding is transferred to a court of proper venue within the same judicial district, the judge granting the transfer must:

(A) order the case transferred to a specific court of proper venue within the judicial district; and

(B) continue the assignment over the case, unless the administrative district judge reassigns the case to another judge of the judicial district.

(2) *Transfer to a Different Judicial District*. If the proceeding is transferred to a court of proper venue in a different judicial district, a new presiding judge is assigned as follows:

(A) If the original judge desires to continue the assignment over the case, the judge may so indicate in the order, suggesting a court of proper venue, and refer to the administrative director of the courts for assignment by the Supreme Court to a court of proper venue and for assignment of a specific judge to preside; or

(B) if the original judge does not desire to continue the assignment over the case, the judge must enter an order transferring the case without specifying the new place of venue, and then refer the case to the administrative director of the courts for assignment by the Supreme Court to a court of proper venue in another judicial district and assignment of a specific judge to preside in the criminal proceeding.

(d) Disqualification of Judge.

(1) *Transfer Within a Judicial District*. If a judge is disqualified from further handling of a proceeding which has been transferred to a court of proper venue within the same judicial district, the administrative district judge must reassign the case to another judge of the judicial district.

(2) *Transfer to a Different Judicial District*. If a judge is disqualified from further handling of a proceeding that has been transferred to a different judicial district, the administrative district judge of the receiving judicial district must refer the case to the administrative director of the courts for assignment by the Supreme Court to a court of proper venue and assignment of a specific judge.

Rule 22. Reserved

TITLE VI – TRIAL

Rule 23. Trial by Jury or by the Court; Waiver of Jury; Number of Jurors

(a) Felony Cases. In felony cases issues of fact must be tried by a jury, unless, in open court, a trial by jury is waived in writing by the defendant and the consent of the prosecutor is expressed and entered in the minutes.

(b) Misdemeanor Cases. In criminal cases not amounting to a felony, issues of fact must be tried by a jury, unless a trial by jury is waived by the consent of both parties expressed in open court and entered in the minutes.

(c) Number of Jurors. In a felony case the jury must consist of 12 jurors. In a misdemeanor case the jury must consist of six jurors. However, if felony and misdemeanor charges are charged together in the same information or indictment in a consolidated case, as provided in Rule 8(a), and at least one felony and one misdemeanor will be tried together before the jury, they must be tried before the same 12-person jury.

Rule 23.1. Juror Questionnaires; Confidentiality

In order to provide for open, complete and candid responses to juror questionnaires and to protect juror privacy, the answers to juror questionnaires are confidential and must not be disclosed to anyone except pursuant to court order. For the limited purpose of trial preparation, copies of the juror questionnaires and answers may be made available by the clerk to an attorney for a party or to a self-represented party. Disclosure is subject to the rule of juror confidentiality stated above and any further limiting order of the administrative or trial judge. A limiting order may include deletion of the name, address, phone number or any other information about a prospective juror that should remain confidential.

Rule 24. Trial Jurors

(a) Opening Statements to the Entire Jury Panel. The parties may, with the court's consent, present brief opening statements to the entire jury panel, prior to voir dire. On its own motion, the court may require counsel to do so. Following these statements, if any, the court must conduct a thorough examination of prospective jurors.

(b) Examination. Voir dire examination of the prospective jurors drawn from the jury panel must first be conducted by the court. The prosecuting attorney, and then the attorneys for each defendant, must be permitted to ask about the qualifications of members of the panel to sit as jurors in the action. The voir dire examination is under the supervision of the court and subject to such limitations as the court may order. The court must disallow any question asked by an attorney that is not directly relevant to the qualifications of the juror, or is not reasonably calculated to discover the possible existence of a ground for challenge, or has been previously answered. Unless otherwise stipulated in the record by all parties to the action, the entire voir dire examination of all prospective jurors and the court's rulings on all challenges must be reported verbatim.

(c) Challenges for Cause. Challenges for cause may be made by an attorney

(1) at any time while questioning a prospective juror,

(2) at the conclusion of all questions to an individual prospective juror, or to the panel as a whole, or

(3) at a later time as permitted by the court on a showing of good cause.

Challenges for cause, as provided by law, must be tried by the court. The challenged juror, and any other person, may be examined as a witness on the trial of the challenge. Whenever a juror is excused by the court in sustaining a challenge for cause, the clerk must immediately draw another name from the jury panel to fill the vacancy. There is no limit on the number of challenges that may be made for cause by any party, and it is not necessary for any co-parties to join in making a challenge for cause.

(d) Peremptory Challenges. If the offense charged is punishable by death, or life imprisonment, each party, regardless of the number of defendants, is entitled to 10 peremptory challenges. In all other felony cases each party, regardless of the number of defendants, is entitled to six peremptory challenges and in all misdemeanor cases each party, regardless of the number of defendants, is entitled to four peremptory challenges. If there are codefendants and the court determines that there is a conflict of interest between or among them, or if there are alternate jurors, the court may allow any or all of the parties additional peremptory challenges, and permit them to be exercised separately or jointly. Any party who waives a peremptory challenge will be deemed to have waived only that particular peremptory challenge and may exercise any of that party's remaining challenges as to any juror. If all parties consecutively waive their peremptory challenge, the trial jury will be deemed accepted by the parties and any remaining peremptory challenges are waived.

(e) Additional Jurors.

(1) *Selection*. The court may direct that one or more jurors in addition to the regular panel be called and impaneled to sit as jurors. All jurors must:

(A) be drawn in the same manner,

(B) have the same qualifications,

(C) be subject to the same examination and challenges,

(D) take the same oath, and

(E) have the same functions, powers, facilities and privileges prior to deliberations.

If more than one additional juror is called, each party is entitled to two peremptory challenges in addition to those otherwise allowed by law; but if only one additional juror is called, each party is entitled to one peremptory challenge in addition to those otherwise provided by law.

(2) *Disability of Juror*. If a juror is unable to perform or disqualified from performing jury duty, or requests to be discharged and shows good cause, the court may order the juror to be discharged and draw the name of an alternate juror who must then take the discharged juror's place in the jury box. An Alternate juror is subject to the same rules and regulations as though the juror had been selected as one of the jurors.

(3) *Jurors Removed by Lot*. At the conclusion of closing arguments, jurors exceeding the number required of a regular panel must be removed by lot. Those removed by lot may be discharged after the jury retires to consider its verdict, unless the court otherwise directs. If the jury is sequestered and the court determines that jurors removed by lot must be available to replace any jurors excused during deliberations, the bailiff, sheriff or other person appointed by the court must take custody of the removed jurors until discharged by the court. If the jury has not been sequestered, then the jurors removed by lot may be released by the court with appropriate instructions. If a juror is removed, the court must draw the name of an alternate

juror who must then take the discharged juror's place. If an alternate replaces a juror after deliberations have begun, the court must instruct the jury to begin its deliberations anew.

(f) Use of a Struck Jury. The court may cause a panel of jurors to be questioned and passed for cause in a number equal to the number of jurors and alternates required for the final jury and an additional number equal to the number of peremptory challenges of the parties. Prospective jurors when chosen must be seated in a manner so as to be numbered with the lower numbered jurors constituting the initial panel and alternate jurors, and the subsequent numbered jurors becoming the replacement jurors if any of the jurors of the original panel are removed by a peremptory challenge.

Rule 24.1. Notes of Jurors; Jury Notebooks

(a) Jury Notes. A juror may make written notes during a trial and take them with the juror when the jury retires for deliberation. The court must instruct the jury in how to exercise the right to take notes. At the conclusion of the proceedings, the court must take custody of the notes and provide for their destruction.

(b) Juror Notebooks. In the discretion of the court, jurors may be provided notebooks containing documents for use by the jurors during trial to aid them in performing their duties. Notebooks may contain, but are not required to have or be limited to:

(1) a copy of all jury instructions;

(2) juror notes;

(3) the names of witnesses, including photographs and biographies;

(4) copies of exhibits, including an index, but excluding depositions; and

(5) a glossary of technical terms.

Rule 25. Disqualification of Judge

(a) Disqualification of Judge Without Cause. In all criminal actions, except actions before drug courts or mental health courts, the parties each have the right to one disqualification without cause of the judge, except as provided in this rule, under the following conditions and procedures:

(1) *Motion to Disqualify*. In any criminal action, excluding actions before drug courts or mental health courts, any party may disqualify one judge by filing a motion for disqualification without stating any grounds, and the motion must be granted if timely filed. Each party in a felony prosecution will have one disqualification without cause of the magistrate appointed to hear the preliminary hearing and another disqualification without cause of the district judge appointed to hear the trial of the action.

(2) *Time for Filing*. A motion for disqualification without cause must be filed within seven days after service of a written notice setting the action for status conference, pre-trial conference, trial or for hearing on the first contested motion, or within 14 days after the service of a written notice specifying who the presiding judge or magistrate to the action will be, whichever occurs first. The motion must be filed before the commencement of a status conference, a pre-trial conference, a contested proceeding or trial in the action.

(3) *Multiple Defendants*. If there are multiple defendants the trial court must determine whether the co-defendants have a sufficient interest in common in the action so as to be required to join in any disqualification without cause, or whether they have an adverse interest in the

action such that each adverse co-defendant will have the right to file one disqualification without cause.

(4) *New Judge*. If a new judge or magistrate is assigned to preside over the case, except under circumstances involving alternate judges as set forth in subsection (6) below, each party will have the right to file a motion for one disqualification without cause of the new judge or magistrate within the time limits set in subparagraph (2) above. However, if a party has previously exercised a disqualification without cause, that party has no right of disqualification without cause of a new judge under this subparagraph.

(5) *Disqualification on New Trial*. After a trial has been held, if a new trial has been ordered by the trial court or by an appellate court, any party may file a motion for disqualification without cause of the presiding judge within the time limits set forth in subparagraph (2) of this Rule. A party does not have a right to disqualification without cause if a case is remanded only for sentencing or resentencing.

(6) *Alternate Judges*. If the presiding judge intends to have a panel of judges as alternates to preside at trial or at any other hearing or proceeding in the case, a notice or amended notice of trial setting must include a list of judges who may alternatively be assigned to preside if the presiding judge is unavailable. On service of the notice as to the panel, each party has the right to file one motion for disqualification without cause of any alternate judge within 14 days after service of written notice listing the alternate judges. If a party has previously exercised the right to disqualification without cause, that party has no right to disqualify an alternate judge under this subparagraph.

(7) *Service on Judge*. A party moving to disqualify a judge under this Rule 25 (a) must mail a copy of the motion for disqualification to the presiding judge at the judge's resident chambers.

(8) *Hearings by New Judge*. If the presiding judge is disqualified without cause and the newly appointed judge resides in a county other than the county where the action is filed, then all hearings on motions and evidentiary hearings, except the primary trial of the action, may be heard by the newly appointed judge in another county within the judicial district, at the discretion of the new presiding judge.

(9) *Exceptions*. The right to one disqualification without cause does not apply to:

(A) A judge when acting in an appellate capacity, unless the appeal is a trial de novo;

(B) A judge in a post-conviction proceeding, when that proceeding has been assigned to the judge who entered the judgment of conviction or sentence being challenged by the post-conviction proceeding;

(C) A judge who has been appointed by the Supreme Court to preside over a specific criminal action.

(10) *Speedy Trial*. If a defendant disqualifies a judge without cause, the time within which that defendant must be given a speedy trial or trial pursuant to Idaho Code § 19-3501 begins to run anew on the date of the disqualification.

(11) *Matters That May be Heard by a Disqualified Judge*. A judge who has been disqualified without cause in a case may preside over an initial appearance or arraignment in that case. When the parties and the disqualified judge have agreed in writing or on the record, the disqualified judge may preside over any other hearing and decide any other issue in the case.

(12) *Misuse of Disqualification Without Cause*. A motion for disqualification without cause must not be made to hinder, delay or obstruct the administration of justice. If it appears that an attorney, law firm, prosecuting attorney's office or public defender's office is using disqualifications without cause:

(A) with intent to hinder, delay or obstruct the administration of justice or

(B) with such frequency as to impede the administration of justice, the Trial Court Administrator must notify the Administrative Director of the Courts and request a review of the possible misuse of disqualifications without cause. The Administrative Director must review the possible misuse of this Rule and may take remedial measures. The Administrative Director, before or after taking remedial measures, may refer the matter to the Chief Justice, who, on determining that there has been misuse of disqualifications without cause, may take appropriate action to address the misuse. Appropriate action may include an order providing that the attorney, firm, prosecuting attorney's office or public defender's office that has engaged in misuse is prohibited from using disqualifications without cause for such period of time as is set in the order or until further order of the Chief Justice.

(b) Disqualification for Cause. Any party to an action may disqualify a judge from presiding in any action on any of the following grounds:

(1) that the judge is a party, or is interested, in the action or proceeding;

(2) that the judge is related to either party by consanguinity or affinity within the third degree;

(3) that the judge has been attorney or counsel for any party in the action or proceeding; or

(4) that the judge is biased or prejudiced for or against any party or that party's case.

(c) Motion for Disqualification. A disqualification for cause must be made by a motion to disqualify accompanied by an affidavit of the party or that party's attorney stating distinctly the grounds on which disqualification is based and the facts relied on in support of the motion. The motion for disqualification for cause may be made at any time. The presiding judge sought to be disqualified must grant or deny the motion for disqualification on notice and hearing in the manner prescribed by these Rules for motions.

(d) Voluntary Disqualification. This Rule does not prevent any presiding judge in an action from voluntarily disqualifying himself or herself without stating any reason.

(e) Disqualification and Assignment of New Judge. On the filing of a motion for disqualification, the presiding judge has no authority to act further in the action except to grant or deny the motion for disqualification or to act as provided in subsection (a)(11). On disqualification of a judge for any reason, the administrative judge of the judicial district, or designee, must appoint any other qualified judge in the judicial district to act or preside in the action. Instead of direct appointment, the administrative district judge, or designee, may make application to the Supreme Court for appointment of a new judge from outside of the judicial district to act or preside in the action.

Rule 25.1. Death or Disability of Judge

(a) During Trial. Any qualified judge may, on agreement of the parties, complete a jury trial if:

(1) the judge before whom the trial began cannot proceed because of death, sickness, or other disability; and

(2) the judge completing the trial certifies familiarity with the trial record.

If the parties do not agree to a substitute judge, the administrative district judge must order a new trial.

(b) After Verdict or Finding of Guilty.

(1) *In General.* After a verdict or finding of guilty, any qualified judge may complete the court's duties if the judge who presided at trial cannot perform those duties because of absence, death, sickness, or other disability.

(2) *Granting a New Trial.* The successor judge may grant a new trial if satisfied that:

(A) a judge other than the one who presided at the trial cannot perform the post-trial duties; or

(B) a new trial is necessary for some other reason.

Rule 26. Evidence

In every trial the testimony of witnesses must be taken orally in open court, unless otherwise provided by a statute or by these rules, the Idaho Rules of Evidence, or other rules adopted by the Idaho Supreme Court.

Rule 27. Stipulations Not Binding on Court; Continuance of Trial or Hearing

The parties to any action may present to the court a stipulation about any procedural matter involved in any proceeding, including a stipulation to vacate or continue a hearing or trial. A stipulation is considered as a joint motion by the parties to the court for its consideration, and is not binding on the court. The court may approve or disapprove the stipulation in the same manner as the court rules on a motion. The court may, by oral or written notice to the parties, limit the time within which a motion or stipulation to vacate or continue a hearing or trial must be made in order to be considered by the court.

Rule 28. Reserved.

Rule 29. Motion for Judgment of Acquittal

(a) Before Submission to the Jury. After the prosecution closes its evidence or after the close of all the evidence, the court on defendant's motion or on its own motion, must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction. If the court denies a motion for a judgment of acquittal at the close of the prosecution's evidence, the defendant may offer evidence. If the court dismisses an offense, the court must consider whether the evidence would be sufficient to sustain a conviction on a lesser included offense.

(b) Reserving Decision. If a motion for judgment of acquittal is made at the close of all the evidence, the court may reserve decision on the motion, submit the case to the jury, and decide the motion either before the jury returns a verdict or after it returns a verdict of guilty or is discharged without having returned a verdict.

(c) After Jury Verdict or Discharge.

(1) A defendant may move for a judgment of acquittal, or renew the motion, within 14 days after the jury is discharged or within such further time as the court orders during that 14-day period.

(2) If the jury has returned a guilty verdict, the court may set aside the verdict and enter an acquittal. If the jury has failed to return a verdict, the court may enter a judgment of acquittal.

(3) A defendant is not required to move for a judgment of acquittal before the court submits the case to a jury as a prerequisite to making such a motion after jury discharge.

Rule 29.1. Motion for Mistrial

At any time during a trial, the court may declare a mistrial and order a new trial under the following circumstances:

(a) On Motion of Defendant. A mistrial may be declared on motion of the defendant when there occurs during the trial, either inside or outside the courtroom, an error or legal defect in the proceedings, or conduct that is prejudicial to the defendant and deprives the defendant of a fair trial. When the error, defect or conduct occurs during the joint trial of two or more defendants, and a mistrial motion is made by one or more, but not by all, the court must declare a mistrial only as to the defendant or defendants making or joining in the motion, and the trial of the other defendant or defendants must proceed.

(b) On Motion of the Prosecution. A mistrial may be declared on motion of the prosecution when there occurs during the trial, either inside or outside the courtroom, misconduct by the defendant, the defendant's attorney or attorneys, or some other person acting on defendant's behalf, resulting in substantial prejudice to the prosecution's case. When the misconduct occurs during a joint trial of two or more defendants, and when the court is satisfied that it did not result in substantial prejudice to the prosecution's case as against a particular defendant, and that such defendant was in no way responsible for the misconduct, it may proceed with the trial with respect to that defendant.

(c) When Verdict Not Possible. A mistrial may be declared on motion of either party or on the court's own motion when it is impossible to proceed with the trial in conformity with law, or when, after jury advice, the court is convinced that the jury cannot reach a verdict.

Rule 30. Instructions to the Jury; Communications with Jury

(a) Jury Instructions Conference. Before the presentation of evidence, the court may instruct the jury on:

(1) the role of the court, counsel and jury,

(2) the elements of all claims in dispute,

(3) any known defenses, and

(4) any other matter it believes necessary and appropriate to aid in resolution of the issues at hand.

The Court must hold an instruction conference prior to trial to consider these initial instructions to the jury.

(b) Final Instructions.

(1) *Time for Request for Instructions, Exceptions*. No later than five days before the commencement of any jury trial, any party may file written requests that the court instruct the jury on the law as set forth in the request. The Court may grant an exception for unanticipated issues or matters constituting fundamental errors.

(2) *Copies to all Parties*. Copies of requested instructions must be furnished to all parties at the same time they are filed with the court.

(3) *Decision by the Court; Time to Object*. The court must inform counsel of its proposed actions on the requested instructions and allow a reasonable time within which to examine and make objections outside the presence of the jury to the instructions or the failure to give requested instructions.

(4) *No Error Without Objection*. No party may assign as error the giving of or failure to give an instruction unless the party objects to the action before the jury retires to consider its verdict. The objection must distinctly state the instruction to which the party objects and the grounds of the objection.

(5) *Reading to the Jury*. The court must read the instructions to the jury prior to final argument; but if all parties agree, it may read part or all of the instructions after final argument.

(6) *Written Instruction Given to Jurors*. The written instructions must be given to each juror to take when the jury retires for deliberation.

(c) Communications with the Jury. Any request by the jury to be further informed of any point concerning the action must be communicated to the court in writing. The attorneys for the parties must be given the opportunity to be present, if they are available and can be present within a reasonable period of time. The court may further instruct the jury in writing or explain the instructions in open court and the further instruction or explanation must be made part of the record.

Rule 30.1. Jury Questioning of Witness

The court may instruct jurors that they are individually permitted to submit to the court a written question directed to any witness. If questions are submitted, the parties or counsel must be given the opportunity to object to the questions outside the presence of the jury. If the questions are not objectionable, the court must read the question to the witness. The parties or counsel may then be given the opportunity to ask follow-up questions as necessary.

Rule 31. Jury Verdict

(a) Return. The jury must return its verdict to a judge in open court. The verdict must be unanimous.

(b) Partial Verdicts, Mistrial and Retrial.

(1) *Multiple Defendants*. If there are multiple defendants, the jury may return a verdict at any time during deliberation as to any defendant about whom it has agreed. If the jury cannot agree with respect to all, the defendant or defendants as to whom it does not agree may be tried again.

(2) *Multiple Counts*. If the jury cannot agree on all counts as to any defendant, the jury may return a verdict on those counts on which it has agreed and the court may declare a mistrial as to the other counts. The prosecution may retry any defendant on any count on which the jury could not agree.

(c) Lesser Offense or Attempt. A defendant may be found guilty of any of the following:

(1) an offense necessarily included in the offense charged;

(2) an attempt to commit the offense charged; or

(3) an attempt to commit an offense necessarily included in the offense charged, if the attempt is an offense in its own right.

(d) Poll of Jury. After a verdict is returned but before the jury is discharged, the court must on a party's request, or may on its own, poll the jurors. If the poll reveals a lack of unanimity, the court may direct the jury to deliberate further or may declare a mistrial and discharge the jury.

TITLE VII – POST-CONVICTION PROCEDURES

Rule 32. Presentence Investigations and Reports

The following standards and procedures govern presentence investigations and reports in the Idaho courts:

(a) When Presentence Investigations are to be Ordered. The trial judge may, but is not required to, order a presentence investigation. With respect to felony convictions, if the trial court does not require a presentence investigation, the record must show affirmatively why such an investigation was not ordered.

(b) Contents of Presentence Investigation Report. A trial judge may request a record check and other background information concerning the defendant prior to sentence without ordering a full presentence investigation of the defendant. However, when a full presentence investigation is ordered, the report of the investigation must contain the following elements:

(1) the description of the situation surrounding the criminal activity with which the defendant has been charged, including the defendant's version of the criminal act and the defendant's explanation for the act, the arresting officer's version or report of the offense, where available, and the victim's version, where relevant to the sentencing decision;

(2) any prior criminal record of the defendant;

(3) the defendant's social history, including family relationships, marital status, age, interests and activities;

(4) the defendant's educational background;

(5) the defendant's employment background, including any military record, and defendant's present employment status and capabilities;

(6) the residence history of the defendant;

(7) the financial status of defendant;

(8) the health of the defendant;

(9) the defendant's sense of values and outlook on life in general;

(10) the results of any substance abuse evaluation, mental health evaluation, domestic assault and battery evaluation, or psychosexual evaluation, including any report prepared under Idaho Code § 19-2522 or § 19-2524, but excluding content of any evaluation or report prepared under Idaho Code § 18-211 or §18-212; and

(11) the presentence investigator's analysis of the defendant's condition. The analysis of the defendant's condition contained in the presentence report should include a complete summary of the presentence investigator's view of the psychological factors surrounding the commission of the crime or regarding the defendant individually which the investigator discovers. Where appropriate, the analysis should also include a specific recommendation regarding a psychological examination and a plan of rehabilitation.

(c) Recommendations Concerning Sentence. The presentence report may recommend incarceration but it should not contain specific recommendations concerning the length of incarceration, the imposition of a fine or the amount of a fine, or the length of probation or other matters that are within the province of the court. The presentence report may, however, recommend programs or treatment for the defendant and comment as to the length of time that may be required for the

defendant to complete any recommended programs or treatment. The presentence report may also comment generally on the probability of the defendant's successfully completing the term of probation or the defendant's financial ability to pay a fine imposed by the court.

(d) Psychological Evaluations. The presentence investigator may recommend a psychological evaluation, but the decision as to whether to order a psychological evaluation is to be made by the sentencing judge.

(e) Information That May be Included in the Presentence Report.

(1) *Content*. The presentence report may include information of a hearsay nature where the presentence investigator believes that the information is reliable, and the court may consider that information. The judge may consider material contained in the presentence report that would have been inadmissible under the rules of evidence applicable at a trial. While not all information in a presentence report need be in the form of sworn testimony and be admissible in trial, conjecture and speculation should not be included in the presentence report. Any pictures or depictions of child pornography that are included as attachments to the report must be placed in a separate envelope and marked as such, with access restricted to only those allowed by the trial court.

(2) *Previous Charges Against Defendant*. The sentencing judge may consider information in a presentence report regarding a previous charge against the defendant that was dismissed after a successful probation period.

(3) *Idaho Sentencing Information Database*. The presentence report may include a report generated from use of the Sentencing Tool of the Idaho Sentencing Information Database (http://sentencing.isc.idaho.gov/), and may contain a narrative description of the database results.

(f) Additional Report May be Ordered. The sentencing judge may order an additional investigation of the case, if the judge deems it necessary, and use such results in considering the disposition.

(g) Access to Presentence Report.

(1) *Disclosure of Report, Exceptions*. Full disclosure of the contents of the presentence report must be made to the defendant, defendant's counsel, and the prosecuting attorney prior to any hearing on the sentence except as provided in this Rule. The defendant and defendant's attorney must be given a full opportunity to examine the presentence investigation report so that, if the defendant desires, the defendant may explain and defend adverse matters in it. The defendant must be afforded a full opportunity to present favorable evidence in defendant's behalf during the proceeding involving the determination of sentence. The trial court may, however, withhold from disclosure:

(A) parts of the presentence report that contain diagnostic opinion that might seriously disrupt a program of rehabilitation,

(B) information that in the court's discretion may prove harmful to an individual not a party in the proceeding, or

(C) pictures or depictions of child pornography that are separately identified pursuant to subsection (e)(1).

(2) *Explanation of Non-Disclosure*. Where the trial court chooses to withhold from disclosure to the defendant information in the presentence report, the court must state for the record the

reasons for its action, inform the defendant and defendant's attorney that information has not been disclosed, and explain the general nature of the information being withheld. Further, if requested, the defendant's attorney, if any, must be allowed to review any information in the presentence report that is so withheld from disclosure so as to allow the attorney a full opportunity to explain and rebut the information contained in it.

(3) *Time of Disclosure*. Disclosure of the information contained in the presentence report under the conditions mentioned above must be made at a sufficient time prior to sentencing so as to afford a reasonable opportunity for the defendant or defendant's attorney to verify or rebut any information contained in the report. Reasonable requests for a continuance of sentencing, when based on lack of sufficient time to examine or offer rebuttal to information contained in the presentence report, may be granted by the sentencing judge.

(h) Disclosure of Presentence Reports.

(1) *Custody of Presentence Report*. Any presentence report must be available for the purpose of assisting a sentencing court and once prepared may be released to any district judge for that purpose. After use in the sentencing procedure, the presentence report must be sealed by court order, after which it cannot be opened without a court order authorizing release of the report or parts of it to a specific agency or individual. The presentence report must, however, be available to the Idaho Department of Corrections so long as the defendant is committed to or supervised by the Department, and may be retained by the Department for three years after the defendant is discharged. If probation or parole supervision is transferred to another state, the Department may provide a copy of the presentence report to the supervising entity in that state. In addition, when preparing a report on a defendant, a presentence investigator must have access to previous presentence reports, including all attachments and addendums, prepared on that defendant, whether in the same case or in previous cases. The presentence investigator's own copy of the presentence report is restricted from use by all but authorized court personnel. Neither the defendant, defendant's counsel, the prosecuting attorney nor any person authorized by the sentencing court to receive a copy of the presentence report may release to any other person or agency the report itself or any information contained in it. As provided in Article 1, Section 22(9) of the Idaho Constitution, the victim has a right to read, but not to have a copy of, the presentence report. Any violation of this rule is a contempt of court and subject to appropriate sanctions.

(2) *Availability of Presentence Information to Evaluators*. The presentence investigator may release information relating to the defendant's criminal history and law enforcement reports related to the offense for which the defendant is to be sentenced to persons preparing reports to assist the court in sentencing pursuant to a court-ordered evaluation. Any person receiving this information must not release it to any other person or agency. Any violation of this rule is a contempt of court and subject to appropriate sanctions.

(3) *Availability of Presentence Report to Third Parties*. With the permission of the sentencing judge, the presentence report may be available to persons or agencies having a legitimate professional interest in the information likely to be contained in it, if it appears that making the report available will further the plan or rehabilitation of the defendant, or further the interests of public protection and that appropriate safeguards for the confidentiality of information contained in the presentence report will be provided by the persons or agencies receiving the information. Such persons or agencies may include:

(A) a physician or psychiatrist appointed to assist the court in sentencing,

(B) an examining facility,

(C) a correctional institution,

(D) a probation or parole department, or

(E) the supervisors of a public or private rehabilitation program.

(4) *Availability of Presentence Report to Problem-Solving Court Personnel.* With the permission of the sentencing judge, the presentence report may be made available to problem-solving court personnel for purposes of screening the defendant to determine the defendant's suitability for admission into a problem-solving court program.

(5) *Availability of Presentence Report on Appeal.* When relevant to an issue on which an appeal has been taken, the report must be available for review in courts of appeal when requested by a party or ordered by the court pursuant to Idaho Appellate Rule 31 (b). Pictures and depictions of child pornography contained in the report that are placed in a separate envelope pursuant to subsection (e)(1) of this rule must not be transmitted to the parties or the court as part of the appeal unless specifically requested.

Rule 33. Sentence and Judgment

(a) Sentence.

(1) *Time for Judgment and Sentence.* After a plea or verdict of guilty, if the judgment is not stayed or a new trial granted, the court must set a time for pronouncing judgment and sentencing. In felony cases, the time for pronouncing judgment and sentencing must be at least two days after the verdict unless this time is waived by the defendant. Before imposing sentence the court must give counsel an opportunity to speak on behalf of the defendant and must ask the defendant personally if the defendant wishes to make a statement and to present any information in mitigation of punishment. While awaiting sentencing the court may commit the defendant to custody or may continue or alter the bail.

(2) *Method of Securing Defendant's Appearance at Sentencing.*

(A) If a defendant is in custody the custodial officer must bring the defendant into court for sentencing.

(B) If a defendant, who is at liberty on defendant's own recognizance or on bail pursuant to a previous court order issued in the same criminal action, does not appear for sentencing when defendant's personal attendance is necessary, the court, in addition to the forfeiture of the undertaking of bail or of money deposited, may issue a bench warrant for defendant's arrest. On taking the defendant into custody pursuant to the bench warrant the executing peace officer must, without unnecessary delay, cause defendant to be brought into court for sentencing.

(3) *Notification of Right to Appeal.* After imposing sentence the court must advise the defendant of the right to appeal and of the right of a person who is unable to pay the costs of an appeal to apply for waiver of those costs.

(b) Judgment. The judgment of conviction must state:

(1) the plea,

(2) the verdict or findings,

(3) the adjudication and sentence, and

(4) the terms of probation, if any.

If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment must be entered accordingly. The judgment must be signed by the judge and entered by the clerk.

(c) Withdrawal of Plea of Guilty. A motion to withdraw a plea of guilty may be made only before sentence is imposed or imposition of sentence is suspended; but to correct manifest injustice the court may set aside the judgment of conviction after sentence and may permit the defendant to withdraw a plea of guilty.

(d) Commutation of Sentence and Suspending or Withholding Judgment; Conditions. For an offense not punishable by death, the court may commute the sentence, suspend the execution of the judgment, or withhold judgment, and place the defendant on probation as provided by law and these rules. An order withholding judgment must include the terms of probation, if any. The conditions of a withheld judgment or of probation must not include any requirement of the contribution of money or property to any charity or other nongovernmental organization, but may include the rendering of labor and services to charities, governmental agencies, needy citizens and nonprofit organizations. The conditions of a withheld judgment or probation may include, among other lawful provisions, the following:

(1) a requirement that the defendant make restitution to a party injured by the defendant's action;

(2) a requirement that the defendant pay a specific sum of money to the court for the prosecution of the criminal action against the defendant, or a sum of money not to exceed the fine and court costs that could be assessed if the judgment were not suspended or withheld, (to be distributed in the manner provided in Idaho Code § 19-4705 for the distribution of fines and forfeitures); and

(3) a requirement that the defendant perform voluntary services for self-education purposes as part of a positive program of rehabilitation.

(e) Discretionary Jail Time. "Discretionary jail time" means jail time to be served at the discretion of the probation officer as a sanction for violating a term or condition of probation. It does not include incarceration in jail in order for a defendant to obtain treatment or programming provided in the jail, even if the probation officer determines that the treatment or programing is needed because of the defendant's violation of a term or condition of probation.

As a condition of probation, the sentencing court may provide for the service of a specified period of discretionary jail time, to be served as follows:

(1) On receipt of a written statement of facts made under oath or affirmation by the probation officer showing probable cause to believe that the defendant violated any term or condition of probation, a court may order in writing that the defendant serve a specified number of days of the discretionary jail time.

(2) If, without a court order issued under subsection (1), a defendant is arrested under Idaho Code § 20-227 for violating a term or condition of probation, there must be a judicial determination of probable cause within 48 hours after the arrest. If, within that time period, there is no judicial finding that there was probable cause for the arrest, the defendant must be released. If there is a judicial finding of probable cause within that time period, the defendant must be released 72 hours after the arrest unless the sentencing court has ordered a longer period of jail time. If, when delivering the defendant to the jail, the

probation officer informs the jail authorities in writing that the defendant is to serve a specific period of time in jail that is less than 48 hours, the defendant may be released on the conclusion of that specific period without further court approval.

(3) The number of consecutive days served as discretionary jail time must not exceed three days.

(4) Any time served in jail as discretionary jail time must be credited against the period of discretionary jail time specified as a condition of probation.

(5) If the defendant is arrested under Idaho Code § 20-227 for violating the conditions of probation and a motion seeking a judicial finding of a probation violation is not filed with respect to the conditions allegedly violated, the time served in jail because of that arrest must be credited against the period of discretionary jail time.

(6) Nothing in this Rule limits the authority of a sentencing court to impose additional terms and conditions of probation including jail time.

(f) Revocation of Probation. The court must not revoke probation except after a hearing at which the defendant is present and apprised of the grounds on which revocation is proposed. The defendant may be admitted to bail pending the hearing. The court must not revoke probation unless there is an admission by the defendant or a finding by the court, following a hearing, that the defendant willfully violated a condition of probation.

(g) Waiver of Fees and Costs.

(1) A person who has been sentenced by the court following a plea of guilty or finding of guilt may have probation revoked or may be found in contempt for failure to pay a fine, fee, or costs only if the court finds that the person has willfully refused to make payment, or has failed to make sufficient bona fide efforts to legally acquire the resources to make payment.

(2) A fee or cost imposed by statute on persons who plead guilty to, or are found guilty of, any offense may be waived in whole or part by the court only when there is a specific provision in statute allowing for the waiver of the fee or cost.

(3) A court may waive all or part of a fee or costs imposed by statute only on making findings in writing or on the record that each statutory standard for the waiver of the fee or costs has been satisfied. If the court decides to waive a fee or costs in whole or in part, the court must make this finding with regard to each offense on which the defendant is or has been sentenced, and must determine whether the fee or costs will be waived in whole or in part.

Rule 33.1. Sentencing Procedure When Death Penalty is Authorized and Jury is Waived

(a) Findings of the Court in Capital Offenses. In special sentencing proceedings in capital cases in which a jury has been waived, the court must make written findings as required by Idaho Code § 19-2515(8)(b). The court must serve copies of these written findings on the defendant or defendant's counsel and the prosecuting attorney.

(b) Form of Findings. The written findings of the trial court after the special sentencing proceeding must be in substantially the form found in Appendix A.

Rule 33.2. Report of Imposition of Death Penalty

(a) Sentencing Report. When a trial court imposes the sentence of death on a defendant, the sentencing trial court must immediately prepare a written report about the imposition of the death penalty as required by Idaho Code § 19-2827. The court must file the original report with the Idaho Supreme Court, file a signed copy in the district court file of the criminal action, and serve copies of

the report on the defendant, the defendant's counsel, the prosecutor and the Attorney General and the Governor of the state of Idaho.

(b) Form of Report. The sentencing report about the imposition of the death penalty as required by this rule must be in substantially the form found in Appendix A.

Rule 33.3. Evaluation of Persons Guilty of Domestic Assault or Domestic Battery

Persons who plead guilty or are found guilty of domestic assault or domestic battery may be ordered to undergo an evaluation under Idaho Code § 18-918(7) by an evaluator approved by the Domestic Assault and Battery Evaluator Advisory Board.

(a) Scope of Report. The scope and content of the evaluator's report must be as follows:

(1) *Identifying Information*. The report must contain the following identifying information about the defendant:

(A) name;

(B) address;

(C) date of birth;

(D) occupation;

(E) current Incident;

(F) marital status;

(G) children; and

(H) military service.

(2) *Risk Assessment*. The report must include a risk assessment containing the following information:

(A) current and past violent behavior;

(B) exposure;

(C) threats of homicide, suicide, or violence;

(D) ideation of homicide, suicide, or violence;

(E) weapons access;

(F) obsession with or dependent on the victim (sociopathic traits);

(G) history of rage and impulsivity;

(H) history of sexual abuse (as perpetrator or victim);

(I) history of child abuse (as perpetrator or victim);

(J) access to the victim;

(K) Criminal History Record Information (CHRI) through a National Criminal History Background Check System from local law enforcement or any other authorized individual or agency;

(L) cultural issues;

(M) history of domestic violence protection orders;

(N) prior treatment for aggressive violence; and

(O) danger of reoffending.

(3) *Substance Abuse*. The report must include the following information about substance abuse:

(A) present usage of drugs;

(B) prior treatment for drug abuse or addiction;

(C) involvement of substance use in the incident; and

(D) a substance abuse assessment.

(4) *Self-Assessment*. The report must include the defendant's self-assessment, including:

(A) description of current incident in person's own words;

(B) person's acceptance of responsibility for incident;

(C) remorse evidenced by person;

(D) person's own view of need for treatment; and

(E) person's willingness to get treatment.

(5) *Test Results*. If there has been any testing of the defendant for substance use or abuse, psychological disorders, I.Q., etc., the report must contain the results of that testing.

(6) *Collateral Information*. The report must contain the following collateral information:

(A) police report;

(B) victim interview; and

(C) review of past treatment records.

(7) *Personality or Character Assessment*. The report must contain information about any personality or character assessment conducted.

(8) *Behavioral Observations and Mental Status*. The report must contain the evaluator statement of observations of behavior and mental status, including:

(A) level of cooperativeness;

(B) victim interview; and

(C) general present mental status.

(9) *Recommendation*. The evaluators recommendation must include:

(A) a summary formulation that identifies the factors causing or contributing to the defendant's domestic violence that form the basis for the evaluator's opinion as to the treatment recommendation;

(B) further assessment opinions and if needed;

(C) treatment recommendations;

(D) providers available to treat;

(E) cost of treatment (estimate); and

(F) cost of alternate treatment resources available to defendant.

(b) Non-Compliant Reports. If the evaluator submits an evaluation that is not in compliance with subsection (a), the court may return the evaluation with instructions to prepare an evaluation in compliance with this Rule at no additional cost to the defendant. In the event an evaluator fails to submit an evaluation in compliance with this Rule after such an instruction, the court may forward the evaluation to the Board as a sealed confidential document along with a written request that the evaluator be removed from the roster for failure to comply with this Rule. If the Board determines the evaluation fails to meet the requirements of this Rule, the evaluator may be removed from the roster.

Rule 34. New Trial

(a) In General. On the defendant's motion, the court may vacate any judgment and grant a new trial on any ground permitted by statute. If the case was tried without a jury, the court may take additional testimony and enter a new judgment.

(b) Time to File.

(1) *Newly Discovered Evidence.* Any motion for a new trial grounded on newly discovered evidence must be filed within two years after final judgment. If an appeal is pending, the court may not grant a motion for a new trial until the appellate court remands the case.

(2) *Other Grounds.* Any motion for a new trial grounded on any reason other than newly discovered evidence must be filed within 14 days after the verdict, finding of guilty, or imposition of sentence, or within any further time the court may set during the 14-day period.

Rule 35. Correcting or Reducing a Sentence

(a) Illegal Sentences. The court may correct a sentence that is illegal from the face of the record at any time.

(b) Sentences Imposed in an Illegal Manner or Reduction of Sentence. Within 120 days of the entry of the judgment imposing sentence or order releasing retained jurisdiction, a motion may be filed to correct or reduce a sentence and the court may correct or reduce the sentence. The court may also reduce a sentence on revocation of probation or on motion made within 14 days after the filing of the order revoking probation. Motions are considered and determined by the court without additional testimony and without oral argument, unless otherwise ordered. A defendant may only file one motion seeking a reduction of sentence.

(c) Credit for Time Served. A motion to correct a court's computation of credit for time served, granted pursuant to Idaho Code § 18-309 or 19-2603, may be made at any time.

Rule 36. Clerical Mistakes

After giving any notice it considers appropriate, the court 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.

Rule 37. Reserved

Rule 38. Stay of Execution; Relief Pending Review

(a) Death Sentence. The court must stay a death sentence if the defendant appeals the conviction or sentence.

(b) Imprisonment.

(1) *Stay Granted.* If the defendant is released pending appeal, the court must stay a sentence of imprisonment.

(2) *Stay Denied; Place of Confinement.* If the defendant is not released pending appeal, any sentence of imprisonment begins on the date of entry of judgment. If the defendant is incarcerated, the court in which the conviction was entered may order the defendant returned to the county in which the conviction was entered to permit the defendant to assist in preparing the appeal, and this does not stay the running of the sentence.

(c) Fine. If the defendant appeals, the court in which judgment was entered may stay a sentence to pay a fine or a fine and costs. The court may stay the sentence on any terms considered appropriate and may require the defendant to:

(A) deposit all or part of the fine and costs with the clerk of the district court;

(B) post a bond to pay the fine and costs; or

(C) submit to an examination concerning the defendant's assets and, if appropriate, order the defendant to refrain from dissipating assets.

Rule 39. Uniform Post-Conviction Procedure Act

(a) Application for Relief. An application for post-conviction relief from a judgment of conviction or sentence must be in the form of a petition and filed in the district court where the defendant was convicted. The petition must be in substantially the form found in Appendix A.

(b) Filing and Processing. The petition for post-conviction relief must be filed as a separate civil case and be processed under the Idaho Rules of Civil Procedure except as otherwise ordered by the trial court. The provisions for discovery in the Idaho Rules of Civil Procedure do not apply except as and only to the extent ordered by the trial court.

(c) Burden of Proof. The petitioner has the burden of proving grounds for relief by a preponderance of the evidence.

Rule 40. Reserved

TITLE VIII – SUPPLEMENTAL AND SPECIAL PROCEEDINGS

Rule 41. Search and Seizure

(a) Authority to Issue Warrant. At the request of a law enforcement officer or any attorney for the state of Idaho, a search warrant may be issued by a district judge or magistrate within the judicial district where the county of proper venue is located. If it does not appear that the property or person sought is currently within the State of Idaho, the warrant may still be issued; however, the fact the warrant is issued is not deemed as granting authority to serve the warrant outside the territorial boundaries of the State.

(b) Property or Person Subject to Search and Seizure. A warrant may be issued for any of the following:

(1) evidence of a crime;

(2) contraband, fruits of crime, or other items illegally possessed;

(3) weapons or other things by means of which a crime has been committed or reasonably appears about to be committed; or

(4) a person named in an arrest warrant issued pursuant to Rule 4 of these rules.

(c) Issuance of Warrant.

(1) *In General*. After receiving an affidavit or other information, a judge may issue a warrant if the judge finds there is probable cause to believe that the grounds for the application exist. The finding of probable cause must be based on substantial evidence, which may be hearsay in whole or in part, provided there is a substantial basis, considering the totality of the circumstances, to believe probable cause exists for the warrant.

(2) *Warrant on an Affidavit*. When a law enforcement officer or an attorney for the government presents an affidavit or declaration in support of a warrant, the judge may require the affiant to appear personally and may examine under oath the affiant and any witness the affiant produces.

(3) *Warrant on Sworn Testimony*. The judge may wholly or partially dispense with a written affidavit and base a warrant on sworn testimony if doing so is reasonable under the circumstances. Testimony taken in support of a warrant must be recorded and is considered part of the affidavit.

(4) *Requesting a Warrant by Telephonic or Other Reliable Electronic Means*. A judge may issue a warrant based on information communicated by telephone or other reliable electronic means.

(d) Content and Service. The warrant must:

(1) identify the property or person by naming or describing the person or place to be searched;

(2) be directed to any peace officer authorized to enforce or assist in enforcing any law of the state of Idaho;

(3) command the officer to search, within a specified period of time, not to exceed 14 days; and

(4) be served in the daytime, unless for reasonable cause shown, the judge by appropriate provision in the warrant authorizes its execution at times other than daytime. "Daytime" means the hours between 6:00 a.m. and 10:00 p.m. according to local time.

(e) Executing and Returning the Warrant with Inventory.

(1) *Inventory*. An officer present during the execution of the warrant must prepare and verify an inventory of any property seized. The officer must do so in the presence of the person from whom, or from whose premises, the property was taken. If this person is not present, the officer must prepare and verify the inventory in the presence of at least one other credible person of age.

(2) *Receipt*. The officer executing the warrant must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken or leave a copy of the warrant and receipt at the place where the officer took the property.

(3) *Return*. The officer executing the warrant must promptly return it, together with a copy of the inventory, to a judge in the county where the warrant was issued. The officer may do so by reliable electronic means. The magistrate judge to whom the warrant is returned must attach to the warrant a copy of the return, the inventory, and of all other related papers and must deliver them to the clerk in the county where the warrant was issued or served. On request, the judge must give a copy of the inventory to the person from whom, or from whose premises, the property was taken and to the applicant for the warrant.

(f) Motion to Return Property. A person aggrieved by an unlawful search and seizure of property may move for the property's return. The motion must be filed in the criminal action if one is pending, but if no action is pending then a civil proceeding may be filed in the county where the property is seized or located. The court must receive evidence on any factual issue necessary to decide the motion. If it grants the motion, the court must return the property to the movant and it is not admissible in evidence at any hearing or trial. A motion for return of property made or heard after a complaint, indictment or information is filed, must also be treated as a motion to suppress under Rule 12.

(g) Motion to Suppress. A defendant may move to suppress evidence in the court where the trial will occur as provided in Rules 5.1(b) and 12.

(h) Electronic Transmission of a Search Warrant. After a search warrant is issued, a copy of the warrant may be sent electronically to any peace officer or other officer serving the search warrant.

Rule 41.1. Reclaiming Exhibits, Documents or Property

(a) Items to be Reclaimed. At any time after a criminal action begins, any interested party or person may apply to the trial court for an order permitting the party or person to reclaim:

(1) exhibits offered or admitted in evidence;

(2) documents or property displayed or considered in connection with the action; or

(3) any property in the possession of any department, agency or official who is holding the property in connection with the trial of the criminal action.

(b) Conditions and Circumstances. The trial court may grant the motion on any conditions and under any circumstances it deems appropriate, including but not limited to:

(1) the substitution of a copy, photograph, drawing, facsimile, or other reproduction of the original exhibit, document or property; or

(2) the posting of a bond that the exhibit, document or property will be returned to the court if the court later orders its return in connection with the criminal action.

Rule 42. Contempt

This rule governs all contempt proceedings brought in connection with a criminal proceeding. It does not apply to contempt charged under Idaho Code § 18-1801, or any other criminal statute.

(a) Definitions. The following definitions apply to this rule.

(1) *Petitioner*. A petitioner is the person or legal entity initiating a nonsummary contempt proceeding.

(2) *Respondent*. A respondent is the person or legal entity alleged to have committed an act of contempt.

(3) *Contemnor*. A contemnor is a person or legal entity adjudged to have committed an act of contempt.

(4) *Summary Proceeding*. A summary proceeding is one in which the contemnor is not given prior notice of the charge of contempt and an opportunity for a hearing to determine whether the charge is true.

(5) *Nonsummary Proceeding*. A nonsummary proceeding is one in which the contemnor is given prior notice of the contempt charge and an opportunity for a hearing.

(6) *Civil Sanction*. A civil sanction is one that is conditional. The contemnor can avoid the sanction entirely or have it cease by doing what the contemnor had previously been ordered by the court to do. A civil sanction can only be imposed if the contempt consists of failing to do what the contemnor had previously been ordered by the court to do.

(7) *Criminal Sanction*. A criminal sanction is one that is unconditional. The contemnor cannot avoid the sanction entirely or have it cease by doing what the contemnor had been previously ordered by the court to do. A suspended sanction with probationary conditions is a criminal sanction, as is a sanction that includes provisions that are both conditional (civil) and unconditional (criminal). A criminal sanction may be imposed for any contempt.

(b) Summary Proceedings. A summary proceeding may be used only if the contempt was committed in the presence of the court.

(1) *Presence of the Court*. A contempt is committed in the presence of the court if:

(A) the conduct occurs in open court in the immediate presence of the judge;

(B) the judge has personal knowledge, based on personally observing and/or hearing the conduct, of the facts establishing all elements of the contempt; and

(C) the conduct disturbs the court's business.

(2) *Requirements Before a Sanction May Be Imposed*. The court may summarily impose a sanction for contempt that is committed in its presence. Before doing so, the court must:

(A) give the contemnor notice of the alleged contempt, which can be oral; and

(B) give the contemnor a brief opportunity to be heard in order to present matters in mitigation or to otherwise attempt to make amends with the court.

(3) *Order Announcing Sanction*. Promptly after announcing the sanction, the court must enter in the record a written order, signed by the judge, which:

(A) states that the judge saw and/or heard all of the conduct constituting the contempt and that it was committed in the actual presence of the court;

(B) recites each of the specific facts on which the contempt conviction rests;

(C) adjudges that the contemnor is guilty of contempt; and

(D) sets forth the sanction for that contempt.

Before imposing incarceration as a sanction for summary contempt, the court should consider whether a lesser sanction would be effective. If the sanction includes incarceration, the court may immediately remand the contemnor into custody to begin serving the period of incarceration and later file the written order. If the sanction includes a civil sanction, the written order must recite precisely what the contemnor must do in order to avoid the sanction or have it cease.

(c) Nonsummary Proceedings; Commencement. Nonsummary contempt proceedings may be commenced only as provided herein.

(1) *Order to Show Cause*. If the alleged contempt consists of failing to appear in court, the contempt proceedings may be commenced by an order to show cause directed to the respondent. The order to show cause must be supported by an affidavit unless it is prepared by or at the direction of the judge and the facts recited in it are based on the judge's personal knowledge and/or on information from the court file contained in documents prepared by court personnel. The order to show cause must:

(A) notify the respondent of the charge of contempt;

(B) recite all facts constituting the alleged contempt, other than that the respondent's failure to appear in court was willful; and

(C) set a time, date, and place for the respondent to appear to answer to the charge of contempt.

The order to show cause may be prepared by the court or by a party at the court's direction.

(2) *Motion and Affidavit*. All contempt proceedings, except those initiated by an order to show cause for the failure to appear in court, must be commenced by a motion and affidavit. The affidavit must allege the specific facts constituting the alleged contempt. Each instance of alleged contempt, if there is more than one, must be set forth separately. If the alleged contempt is the violation of a court order, the affidavit must allege that either the respondent or the respondent's attorney was served with a copy of the order or had actual knowledge of it. The affidavit need not allege facts showing that the respondent's failure to comply with the court order was willful.

(d) Nonsummary Proceedings; Service.

(1) *Respondent a Party to the Pending Action*. If the contempt proceedings are initiated in connection with a pending action to which the respondent is a party, the order to show cause or the motion, affidavit and written notice of the time, date and place to appear may be served on the respondent as provided in Rule 5(b) of the Idaho Rules of Civil Procedure, unless the court orders personal service.

(2) *Respondent Not a Party to the Pending Action*. If the respondent is not a party to the pending action in which the contempt proceedings are brought, service must be as provided in Rule 4 of the Idaho Rules of Civil Procedure.

(e) Nonsummary Proceedings; Warrant of Attachment and Bail.

(1) *Warrant of Attachment*. The form of the warrant may be the same as a warrant of arrest. A warrant of attachment must not be issued unless the court determines:

(A) there is probable cause to believe that the respondent committed the contempt, and

(B) there are reasonable grounds to believe that the respondent will disregard a written notice to appear.

(2) *Bail*. When issuing a warrant of attachment, the court must set a reasonable bail, to be endorsed on the warrant at the time it is issued.

(3) *Warrant of attachment when contempt is for nonpayment of an ordered sum*. When issuing a warrant of attachment for contempt regarding the nonpayment of any sum ordered by the court, the court may endorse on the warrant that on payment of a specified sum of money, not exceeding the amount owing, the contempt will be purged, the defendant must be released, and the defendant need not appear in court in the contempt proceeding

(4) *Execution and Return*. The execution and return of the warrant must be in the same manner as a warrant of arrest.

(f) Nonsummary Proceedings; Initial Appearance of Respondent.

(1) *Advice to Respondent*. At the respondent's first appearance in court to answer to the charge of contempt in nonsummary proceedings, the court must inform the respondent:

(A) of the charge(s) of contempt against the respondent;

(B) of the possible sanctions for contempt;

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

(D) of the respondent's right to a trial;

(E) of the respondent's right to confront the witnesses against the respondent, including watching the witnesses testify in court and questioning them; and

(F) of the respondent's right to bail, if the respondent has been arrested under a warrant of attachment.

(2) *Additional Advice in Order to Impose Incarceration as a Sanction*. If the respondent appears without counsel and the court desires to have the option of imposing incarceration as a sanction, the court must inform the respondent that the respondent has the right to be represented by an attorney and that if the respondent desires an attorney and cannot afford one, an attorney will be appointed at public expense.

(g) Nonsummary Proceedings; Plea. The respondent must admit or deny the charge of contempt after being informed of the applicable rights.

(1) *Admission of Contempt*. Before an admission of the charge can be accepted, the record of the entire proceedings, including reasonable inferences drawn therefrom, must show:

(A) the respondent was informed of the nature of the charge(s) of contempt;

(B) the respondent was informed of the maximum sanctions, including the possibility, if applicable, that sanctions for multiple contempts could be consecutive;

(C) the voluntariness of the admission; and

(D) the respondent was advised that by admitting the contempt, the respondent would be waiving the applicable rights specified in subsection (f) above.

(2) *Denial of Contempt*. If the respondent denies the charge of contempt, the matter must be set for a trial. The respondent must be given at least 14 days to prepare for trial, unless otherwise ordered by the court.

(h) Nonsummary Proceedings; Defenses to the Contempt. Defenses to the charge of contempt must be raised as follows:

(1) *Written Response*. In order to assert an affirmative defense to the contempt, the respondent must file and serve a written response within 7 days after entering a plea denying the contempt charged, unless otherwise ordered by the court. Defenses include:

(A) the respondent was unable to comply with the court order at the time of the alleged violation (only a defense to a criminal sanction),

(B) the respondent lacks the present ability to comply with the court order (only a defense to a civil sanction),

(C) the respondent was unaware of the order allegedly violated,

(D) the court lacks personal jurisdiction over the respondent, or

(E) the court lacked jurisdiction to issue the order allegedly violated.

(2) *Burden of Proof Regarding Affirmative Defenses*. In order to prevent a civil sanction from being imposed, the respondent must prove the affirmative defense by a preponderance of the evidence. In order to prevent a criminal sanction from being imposed, there need only be a reasonable doubt as to whether the respondent is guilty of the contempt.

(i) Nonsummary Proceedings; Trial.

(1) *Court Trial or Jury Trial*. The trial will be before the court without a jury, provided that if the respondent is charged with multiple counts tried in one proceeding, the court cannot impose consecutive criminal sanctions totaling more than 6 months in jail unless the respondent was given, or voluntarily waived, the right to a jury trial.

(2) *Trial Rights Required to Impose a Criminal Sanction*. The court cannot impose a criminal sanction following a trial unless the respondent was provided the following rights:

(A) a public trial,

(B) compulsory process,

(C) the presumption of innocence,

(D) the privilege against self-incrimination,

(E) the right to call and cross-examine witnesses,

(F) the right to testify in his or her own behalf,

(G) the right to exclude evidence that was obtained in violation of the respondent's Fourth Amendment rights,

(H) the right to counsel, if applicable, and

(I) the right to a unanimous verdict if there was a jury trial.

(j) Nonsummary Proceedings; Burden of Proof.

(1) *Civil Sanction*. In order to impose a civil sanction, the court must find, by a preponderance of the evidence, that all of the elements of contempt have been proved and that the contemnor has the present ability to comply with the order violated, or with that portion of it required by the sanction.

(2) *Criminal Sanction*. In order to impose a criminal sanction, the trier of fact must find that all of the elements of contempt have been proved beyond a reasonable doubt.

(k) Nonsummary Proceedings; Findings of Fact. If the contempt allegation is tried to the court without a jury, the court must make specific findings of fact. In order to impose either a civil sanction or a conditional (civil) provision as part of a criminal sanction, the findings must include the facts on which the court bases its determination that the contemnor has the present ability to comply with the order violated, or with that portion of it required by the sanction.

(l) Nonsummary Proceedings; Imposition of Sanctions. If the respondent admits the contempt or is found in contempt following a trial, the court may impose sanctions as permitted by law, under the following conditions:

(1) *Right to Counsel*. The court cannot impose incarceration as a sanction unless the contemnor was represented by counsel or had knowingly and voluntarily waived the right to counsel.

(2) *Right to Call Witnesses and Speak Regarding the Sanction*. The court cannot impose a criminal sanction without first giving the contemnor the right to call witnesses in mitigation of the sanction and the right to be heard in order to present matters in mitigation or to otherwise attempt to make amends with the court.

(3) *Written Order*. The court must issue a written order reciting the conduct on which the contempt conviction rests; adjudging that the contemnor is guilty of contempt; and setting forth the sanction for that contempt. If the sanction is civil or includes a conditional provision, the order must specify precisely what the contemnor must do in order to avoid that sanction or have it cease.

(m) Nonsummary Proceedings; Attorney Fees. In any contempt proceeding, the court may award the prevailing party costs and reasonable attorney fees under Idaho Code § 7-610, regardless of whether the court imposes a civil sanction, a criminal sanction, or no sanction. The procedure for awarding costs and fees is as provided in Rule 54(e) of the Idaho Rules of Civil Procedure, except that the determination of the prevailing party is based on who prevailed in the contempt proceeding.

(n) Other Rules of Criminal Procedure. Rules regarding discovery and other rules of criminal procedure, to the extent that they are not in conflict with this rule, apply to nonsummary contempt proceedings.

TITLE IX – GENERAL PROVISIONS

Rule 43. Presence of the Defendant

(a) Presence Required. Except as otherwise provided by this rule, the defendant must be present at:

(1) the arraignment,

(2) the time of the plea,

(3) every stage of the trial including the impaneling of the jury and the return of the verdict, and

(4) the imposition of sentence.

(b) Presence Not Required. A defendant need not be present under any of the following circumstances:

(1) The defendant is a corporation represented by counsel who is present.

(2) The defendant is charged only with misdemeanors and is represented by counsel who is present or defendant has given written consent to proceeding without the defendant's physical presence at arraignment, plea, trial or imposition of sentence.

(3) The proceeding involves only a conference or hearing on a question of law.

(4) The proceeding involves only the reduction of sentence under Rule 35.

(c) Waiving Continued Presence.

(1) *In General.* A defendant who was initially present at trial or other proceeding waives the right to be present under the following circumstances:

(A) when the defendant is voluntarily absent after the trial has begun, regardless of whether the court informed the defendant of an obligation to remain during trial; or

(B) when the court warns the defendant that it will remove the defendant from the courtroom for disruptive behavior and the defendant continues to act in a manner so disorderly, disruptive and disrespectful as to substantially impede or make impossible the orderly conduct of the trial or other proceeding. Alternatively, the court may:

(i) bind and gag the defendant;

(ii) cite the defendant for contempt; or

(iii) take other appropriate action.

(2) *Waiver's Effect.* If the defendant waives the right to be present, the proceeding may continue to completion, including the verdict's return and sentencing, during the defendant's absence.

Rule 43.1. Proceedings by Telephone Conference or Video Conference

Whenever the law or these rules require that a defendant be taken before a judge for a first or subsequent appearance, bail hearing, arraignment and plea in a misdemeanor case, or arraignment and plea of not guilty in a felony case, this requirement can be satisfied by the defendant's appearance before a judge either in person or by telephone conference or video teleconference in the discretion of the judge. The communication device must operate so that both the defendant and judge can see or hear each other simultaneously and converse with each other. Any additional hearings and proceedings may be conducted under this rule as deemed appropriate by the court. The audio of the telephone conference or video teleconference must be recorded by the court and the court must cause minutes of the hearing to be prepared and filed in the action.

Rule 43.2. Forensic Testimony by Video Teleconference

Forensic testimony may be offered by video teleconference. For testimony by video teleconference to be admissible:

(a) Witness Visible to Participants. The forensic scientist must be visible to the court, defendant, counsel, jury, and others physically present in the courtroom.

(1) The court and the forensic scientist must be able to see and hear each other simultaneously and communicate with each other during the proceeding.

(2) The defendant, counsel from both sides, and the forensic scientist must be able to see and hear each other simultaneously and communicate with each other during the proceeding.

(3) A defendant who is represented by counsel must be able to consult privately with defense counsel during the proceeding.

(b) Written Notice Required. The party intending to submit testimony by video teleconference must give written notice to the court and opposing party 28 days before the proceeding date.

(c) Written Notice of Objection or Affirmative Consent. A party opposing the giving of testimony by video teleconference must give the court and opposing party written notification of objection or affirmative consent at least 14 days before the proceeding date.

(d) Party Responsible for Coordinating. The party seeking to introduce testimony by video teleconference is responsible for coordinating the audiovisual feed into the courtroom. Nothing in this rule requires court personnel to assist in the preparation or presentation of the testimony provided by the provisions of this rule.

The testimony must be recorded in the same manner as any other testimony in the proceeding.

Rule 44. Right to and Appointment of Counsel

(a) Right to Appointed Counsel. Every defendant who is entitled to appointed counsel under law must have counsel assigned to represent the defendant at every stage of the proceeding from initial appearance before the magistrate or district court, unless the defendant waives such appointment.

(b) Assignment Procedures. The procedures for implementing the right set out in subsection (a) are those provided by law.

Rule 44.1. Withdrawal and Substitution of Counsel

(a) Leave to Withdraw. No attorney may withdraw as an attorney of record for any defendant in any criminal action without first obtaining leave and order of the court on notice to the prosecuting attorney and the defendant except as provided in this rule. Leave to withdraw as the attorney of record for a defendant may be granted by the court for good cause.

(b) Automatic Withdrawal. When an attorney is being or has been appointed to represent a defendant in any criminal action, the court may provide in the order of appointment that the attorney's representation of the defendant will be automatically withdrawn, without leave of the court, on the occurrence of any specified events or the expiration of a specified period of time.

(c) Withdrawal Without Leave. An attorney may withdraw at any time after the dismissal of the complaint or information, the acquittal of the defendant, or the entry of a judgment of conviction and sentence; but, in the event of conviction, an attorney may not withdraw without leave of the court until the expiration of the time for appeal from the judgment of conviction. Notice of the return of service of an arrest warrant for a probation violation must be served by the court on counsel of record if counsel has not withdrawn from representation pursuant to this rule.

(d) Substitution of Attorney. The attorney of record of a party to an action may be changed or a new attorney substituted by notice to the court and to all parties signed by both the withdrawing attorney and the new attorney without first obtaining leave of the court. If a new attorney appears in an action, the action must proceed in all respects as though the new attorney of record had initially appeared for that party, unless the court finds good cause for delay of the proceedings.

Rule 44.2. Mandatory Appointment of Counsel for Post-Conviction Review After Imposition of Death Penalty

(a) Appointment of Attorney. Immediately following the imposition of the death penalty, the district judge who sentenced the defendant must appoint at least one attorney to represent the defendant for the purpose of seeking any post-conviction remedy referred to in Idaho Code § 19-2719(4) that the defendant may choose to seek. This appointment must be made in compliance with the standards in Rule 44.3, and the attorney appointed must be someone other than counsel who represented the defendant prior to the imposition of the death penalty. This new counsel will not be considered to be co-counsel with any other attorney who represents the defendant, but may also be appointed to pursue the direct appeal for the defendant.

(b) Compensation and Payment of Expenses.

(1) Unless counsel is employed by a publicly-funded office, lead counsel appointed to represent a capital defendant in post-conviction proceedings must be paid an hourly rate of one hundred dollars ($100.00) per hour.

(2) The trial court must authorize additional payments for expenses incidental to representation (including, but not limited to, investigative, expert and other preparation expenses) necessary to adequately litigate those post-conviction claims that are allowed by Idaho Code § 19-2719, to the same extent as a person having retained his or her own counsel is entitled.

(3) Compensation and payment of expenses must be made pursuant to the provisions of Idaho Code § 19-860(b). Counsel must submit timely claims for compensation and payment of expenses in the manner provided in Idaho Code § 31-1501 et seq.

Rule 44.3. Standards for the Qualification of Appointed Counsel in Capital Cases

(a) Applicability. The provisions for the appointment of counsel in this rule apply only in cases where the defendant is needy, as defined in Idaho Code § 19-851 et seq., counsel is not privately retained by or for the defendant, and the death penalty may be or has been imposed on the defendant.

(b) Number of Attorneys Per Case.

(1) In a case in which the death penalty may be imposed:

(A) At the initial appearance in the magistrate division, two qualified trial attorneys must be appointed to represent an indigent defendant, unless the administrative district judge or designee makes specific findings that two attorneys are not necessary.

(B) In the district court on an indictment, two qualified trial attorneys must be appointed to represent an indigent defendant, unless the administrative district judge or the assigned district judge makes specific findings that two attorneys are not necessary.

(C) In the event that more than one attorney is appointed, one appointed attorney must be designated "lead counsel" and the second as "co-counsel."

(2) In a case in which the death penalty has been imposed:

(A) The district judge who sentenced the defendant must comply with Rule 44.2.

(B) In the event that more than one attorney is appointed, one appointed attorney must be designated "lead counsel" and the second as "co-counsel."

(c) Attorney Qualifications.

(1) *Trial.*

(A) Lead trial counsel assignments must be made to attorneys who:

(i) are members in good standing of the Idaho State Bar, admitted to practice in Idaho or admitted to practice *pro hac vice*;

(ii) are experienced and active trial practitioners with at least five years' litigation experience in criminal defense or prosecution;

(iii) have served as lead counsel in no fewer than four felony jury trials of cases that were tried to completion and have served either as lead or co-counsel in one case in which the death penalty might have been imposed and which was tried through to completion, or served as lead counsel in the sentencing phase of a death penalty case;

(iv) are familiar with the rules, practice and procedure of the district courts of the state of Idaho;

(v) are familiar with and experienced in the utilization of expert witnesses and evidence, including, but not limited to, psychiatric and forensic evidence;

(vi) have attended and successfully completed at least 12 hours of Idaho State Bar approved training or educational programs focusing on capital cases, within the last two years; and

(vii) have demonstrated the proficiency and commitment necessary for the quality of representation appropriate to capital cases.

(B) Co-counsel assignments must be assigned to attorneys who:

(i) are members in good standing of the Idaho State Bar, admitted to practice in Idaho or admitted to practice *pro hac vice*; and

(ii) qualify as lead counsel under subsection (c)(1) or meet the following requirements:

(1) are experienced and active trial practitioners with at least three years' litigation experience in criminal defense or prosecution;
(2) have prior experience as lead counsel in at least three felony jury trials of cases which were tried to completion;
(3) are familiar with the rules, practice and procedure of the district courts of the state of Idaho;
(4) have attended and successfully completed at least six hours of Idaho State Bar approved training or educational programs focusing on capital cases, within the last two years; and
(5) have demonstrated the proficiency and commitment necessary for the quality of representation appropriate to capital cases.

(C) Alternate Procedures. Applications for lead and co-counsel assignments may be made by persons with extensive criminal trial experience or extensive civil litigation experience, if

it is clearly demonstrated to the Idaho Supreme Court or the Court's designee that competent representation will be provided in a capital case. Lawyers appointed under this paragraph must meet either of the following qualifications:

(i) experience in some stage of death penalty litigation that does not meet the levels required in subsections (c)(1)(A) or (c)(1)(B), or,

(ii) specialized post-graduate training in the defense or prosecution of persons accused of capital crimes.

(2) *Appeal/Post-Conviction.*

(A) Appellate or post-conviction counsel must either qualify as "lead trial counsel" under subsection (c)(1)(A) or meet the following requirements:

(i) be a member in good standing of the Idaho State Bar, admitted to practice in Idaho or admitted to practice *pro hac vice*;

(ii) be familiar with the rules, practice and procedure of the appellate courts of the State of Idaho;

(iii) be experienced and active post-conviction and appellate practitioners with at least three years' experience in criminal defense or prosecution;

(iv) have served as court appointed or retained counsel in the appeal or the post-conviction review of a case in which the death penalty was imposed, or have served as counsel in a habeas corpus death penalty case in Federal Court;

(v) have attended and successfully completed at least 12 hours of Idaho State Bar approved training or educational programs focusing on capital cases, within the last two years; and

(vi) have demonstrated the proficiency and commitment necessary for the quality of representation appropriate to capital cases.

If the court in its discretion appoints co-counsel for appeal or post-conviction, these requirements do not apply to co-counsel.

(B) Alternate Procedures. Application for lead assignments may be made by persons with extensive criminal trial experience or extensive civil litigation experience, if it is clearly demonstrated to the Idaho Supreme Court or the Court's designee that competent representation will be provided in a capital case. Lawyers appointed under this subsection must meet either of the following qualifications:

(i) have experience with the appeal and/or post-conviction litigation of death penalty cases that does not meet the levels detailed in (c)(2)(A), or

(ii) have specialized post-graduate training in the defense or prosecution of persons accused of capital crimes.

(d) Workload. Appointments pursuant to this rule should provide each client with quality representation in accordance with constitutional and professional standards. The appointing authority must not make an appointment without assessing the impact of the appointment on the attorney's workload.

(e) Compensation and Payment of Expenses. Compensation and payment of expenses must be made pursuant to the provisions of Idaho Code § 19-860(b). Counsel must submit timely claims for compensation and payment of expenses in the manner provided in Idaho Code § 31-1501 et seq.

(f) Procedures for Maintaining Rosters of Qualified Counsel.

(1) The Supreme Court of the State of Idaho or the Court's designee must maintain rosters of attorneys who are competent and eligible to represent capital defendants. The first roster will contain the names of attorneys eligible for appointment as lead counsel for trial and appeal/post-conviction cases, pursuant to the qualification requirements specified in this rule. The second roster will contain the names of attorneys eligible for appointment as co-counsel for trial and appeal/post-conviction cases, pursuant to the qualification requirements specified in this rule.

(A) Application.

(i) Attorneys may obtain an application form from the Supreme Court of the State of Idaho or the Court's designee.

(ii) Completed applications must be submitted to the Supreme Court of the State of Idaho or the Court's designee. The Court or its designee will review the application for completeness. If the application is incomplete, it must be returned to the applicant, explaining what further information is required.

(B) Review and Recommendation.

(i) A standing Death Penalty Counsel Review and Recommendation Committee will be established with membership appointed by the Supreme Court of the State of Idaho.

(ii) The Supreme Court or its designee must forward completed applications to the Death Penalty Counsel Review and Recommendation Committee. On receipt, a thorough investigation of the applicant's background, experience and training, and an assessment of whether the applicant is competent to provide adequate legal counsel to a capital defendant must be completed.

(iii) The application and recommendation will then be forwarded to the Supreme Court of the State of Idaho or its designee who will determine whether or not to include the applicant on a roster.

(C) Term of Eligibility. Once included on a roster, the attorney's name will remain on the roster for two years from the notice of inclusion on the roster. In order to remain on a roster, the attorneys must forward to the Supreme Court of the State of Idaho or the Court's designee, one month before the expiration of the term of eligibility, proof of compliance with the qualification requirements of this rule.

(g) Roster of Qualified Capital Defense Counsel. The Supreme Court of the State of Idaho or the Court's designee will maintain the rosters of qualified capital defense counsel. The Court or the Court's designee must distribute to all district court judges, at least annually, rosters of qualified capital defense counsel.

(h) Appointment of Counsel Not on Roster. Notwithstanding the requirement of this rule that all appointments must be from the court-maintained rosters, if an appointment of counsel from the rosters cannot practically and expeditiously be made, the appointing court may appoint one or

more counsel who are not on the roster but who otherwise meet the qualifications set out in this rule. The order of appointment must contain findings related to each attorney's qualifications under the applicable section of this rule, and must also require each attorney to file an application under subsection (f)(1)(A) within 30 days of his or her appointment. Any placement on the roster after such an appointment will relate back to the date of appointment for all purposes.

Rule 45. Computing and Extending Time

(a) Computation of Time Periods. In computing any time period specified in these rules, in any local rule or court order, or in any statute that does not specify a method of computing time:

(1) exclude the day of the event that triggers the period;

(2) count every day, including intermediate Saturdays, Sundays and non-judicial days as defined in Idaho Code § 1-1607; and

(3) include the last day of the period, but if the last day is a Saturday, Sunday, or non-judicial day, the period continues to run until the next day that is not a Saturday, Sunday or non-judicial day.

(b) Extending Time.

(1) *In General.* When an act must or may be done within a specified period, the court on its own may extend the time, or for good cause may do so on a party's motion made:

(A) before the originally prescribed or previously extended time expires; or

(B) after the time expires if the party failed to act because of excusable neglect.

(2) *Exception.* The court may not extend the time to take any action under Rules 29, 34 and 35, or for the perfecting of an appeal, except to the extent and under the condition stated in those rules.

(c) Time for Filing Motions and Affidavits. A written motion, other than one which may be heard ex parte, and notice of hearing must be served at least seven days before the time specified for the hearing unless a different period of time is set by rule or by order of the court. For cause shown such an order may be made on ex parte application. When a motion is supported by affidavit, the affidavit must be served with the motion and opposing affidavits must be served at least one day before the hearing unless the court permits them to be served at a later time.

(d) Additional Time After Service by Mail. Whenever a party must or may act within a specified period after service and service is made by mail, three days are added after the period would otherwise expire under subparagraph (a).

Rule 46. Bail or Release on Own Recognizance

(a) Bail or Release in Non-Capital Cases. A defendant who is charged with a crime that is not punishable by death must be admitted to bail or released on the defendant's own recognizance at any time before a guilty plea or verdict of guilt. In the discretion of the court, bail or release on the defendant's own recognizance may be allowed in the following cases:

(1) after the defendant pleads guilty or is found guilty and before sentencing;

(2) while an appeal is pending from a judgment of conviction, an order withholding judgment, or an order imposing sentence, except that a court must not allow bail when the defendant has been sentenced to death or life imprisonment;

(3) on a charge of a violation of the terms of probation; or

(4) on a finding of a violation of the conditions of release, subject to the provisions of Idaho Code § 19-2919.

(b) Bail Where Offense is Punishable by Death. A person arrested for an offense punishable by death may be admitted to bail by any magistrate or district court authorized by law to set bail in accordance with the standard set forth in Article I, Section 6 of the Idaho Constitution.

(c) Factors to be Considered. The determination of whether a defendant should be released on the defendant's own recognizance or admitted to bail, and the determination of the amount and conditions of bail, if any, may be made after considering any of the following factors:

(1) defendant's employment status and history, and financial condition;

(2) the nature and extent of defendant's family relationships;

(3) defendant's past and present residences;

(4) defendant's character and reputation;

(5) the persons who agree to assist the defendant in attending court at the proper time;

(6) the nature of the current charge and any mitigating or aggravating factors that may bear on the likelihood of conviction and the possible penalty;

(7) defendant's prior criminal record, if any, and, if defendant has previously been released pending a trial or hearing, whether defendant appeared as required;

(8) any facts indicating the possibility of violations of law if defendant is released without restrictions;

(9) any other facts tending to indicate that defendant has strong ties to the community and is not likely to flee the jurisdiction; and

(10) what reasonable restrictions, conditions and prohibitions should be placed on defendant's activities, movements, associations and residences.

On its own motion or on a verified petition the court may from time to time re-evaluate the above factors and add to or modify the conditions of bail or revoke the defendant's admission to bail.

(d) Right to Bail or Release Pending Appeal. A defendant may be admitted to bail or released on the defendant's own recognizance by the court in which the defendant was convicted pending an appeal on consideration of the factors set forth in subsection (c) of this rule unless it appears that the appeal is frivolous or taken for delay. Application for admittance to bail or release on the defendant's own recognizance may be made by the defendant to the appellate court on a showing in the application that the court in which the defendant was convicted has refused to admit the defendant to bail or release the defendant on the defendant's own recognizance.

(e) Terms and Prohibitions of Bail or Release.

(1) If a defendant is admitted to bail or released on the defendant's own recognizance, the court making such determination may impose such reasonable terms, conditions and prohibitions as the court finds necessary in the exercise of its discretion.

(2) Whenever no contact is ordered pursuant to Idaho Code § 18-920, a no contact order must be issued in accord with the standards set out in Rule 46.2.

(3) If one of the conditions of bail or release on the defendant's own recognizance is an area of restriction monitored by electronic or global positioning system tracking, then the court must

notify the defendant in writing at the time of the setting of bail or release that intentionally leaving the area of restriction, except for the purpose of obtaining emergency medical care, may be prosecuted as the crime of escape and subject the defendant to the penalties in Idaho Code § 18-2505 or Idaho Code § 18-2506.

(4) The court may, as a condition of release, require an agreement to comply with other terms and conditions of release.

(f) Bail, Form, Conditions and Place of Deposit.

Bail may be posted in the form of cash deposit, property bond, or a bail bond issued by a surety insurance company qualified by law to do business in the state of Idaho. The surety must clearly identify on the bond the name and mailing address of the person designated to receive all notices. The court must not require that bail be posted only in cash, nor may the court specify differing amounts for bail depending on whether it is posted in the form of cash deposit, a property bond, or a bail bond. A cash deposit must consist of payment in the form of United States currency, money order, certified check or cashier's check. Cash deposit may also be made by personal check payable to the clerk of the court where the acceptance of the personal check has been approved by a magistrate judge or district judge, or by credit card or debit card in those counties where procedures for the acceptance of such payment have been approved by the administrative district judge.

(g) Property Bonds.

(1) The title owner(s) of the property must execute and deliver a promissory note payable to the county in the amount of the bail. The promissory note must require that the promisor pay to the county the amount of bail, should the defendant fail to appear as required by the court and all attorney fees and costs over and above the amount of bail if the property is sold to satisfy the bail.

(2) The person pledging the property must provide the tax assessed value and any other documentation required by the court and must disclose, under oath, all liens and encumbrances.

(3) The court must determine if the amount of equity in the property is adequate to cover the amount of bail and any other costs associated with liquidating the property to satisfy the obligation to the court.

(4) For real property to qualify as adequate security it must be located within the State of Idaho and must have an equity value, after deducting the outstanding balance of any existing lien or encumbrance, in an amount not less than the principal amount of the bail set.

(5) If the court accepts the real property as security the property bond must be promptly recorded in the county in which the property is located prior to the release of the defendant. Evidence of the recording must be provided to the court. All recording fees and costs must be paid by the person posting the bond.

(6) The property bond and promissory note must be on forms approved by the Supreme Court.

(h) Forfeiture and Enforcement of Bail Bond.

(1) The court which has forfeited bail, on a motion filed within 180 days after an order of forfeiture, may direct that the forfeiture be set aside, in whole or in part, on such conditions as the court may impose, if it appears that justice does not require the enforcement of the

forfeiture. In ruling on such a motion, the court must consider all relevant factors, which may include but are not limited to, the following:

(A) the willfulness of the defendant's violation of the obligation to appear;

(B) the participation of the person posting bail in locating and apprehending the defendant;

(C) the costs, inconvenience, and prejudice suffered by the state as a result of the defendant's violation of the obligation to appear;

(D) any intangible costs;

(E) the public's interest in ensuring a defendant's appearance;

(F) any mitigating factors;

(G) whether the state exhibited any actual interest in regaining custody of the defendant through prompt efforts to extradite;

(H) whether the bonding company has attempted to assist or persuade the defendant to expedite his return to Idaho by exercising his rights under the Interstate Agreement on Detainers, Idaho Code § 19-5001 *et seq.*; and

(I) the need to deter the defendant and others from future violations.

(2) If the court sets aside the forfeiture, in whole or in part, it may reinstate the bail, or the court may exonerate the bail, or the court may recommit the defendant to the custody of the sheriff and set new bail or may release the defendant on his or her own recognizance. The court must, within five business days, give written notice to the person posting the bail. If the bail consists of a surety bond, the notice must be sent to the surety, or to the agent designated by the surety to receive notice as reflected in the records of the Department of Insurance, and will constitute notice to both the surety and the person posting the bond, if they are different persons.

(3) After the court enters the order forfeiting bail, the clerk must, within five business days, mail a written notice of forfeiture to the last known address of the person posting. If the bail consists of a surety bond, notice must be sent to the surety, or to the agent designated by the surety to receive such notice as reflected in the records of the Department of Insurance, and will constitute notice to both the surety and the person posting the bond, if they are different persons. If the defendant does not appear or is not brought before the court within 180 days after the entry of the order forfeiting bail, the clerk, on receiving payment of the forfeited bail, must remit the forfeiture to the county auditor for distribution and apportionment as provided by Idaho Code § 19-4705.

(i) Revocation of Bail.

(1) On a verified application alleging that the defendant has willfully violated conditions of the defendant's release on bail, other than failure to appear, the court may issue a bench warrant directing that the defendant be arrested and brought before the court for hearing, or the court may order the defendant to appear before the court at a time certain.

(2) On a bail revocation hearing, if the court finds that there has been a willful breach of conditions of bail, and if the defendant is present before the court, it may revoke the bail and remand the bailed person to the custody of the sheriff. The defendant must appear at the revocation hearing if the defendant can be found. The court may reconsider the issue of bail

at any time after revocation and may set new bail and impose other or additional conditions of release.

(j) Re-Admittance to Bail. After the order of recommitment of a defendant the court may again determine the amount of bail and order that the defendant be admitted to bail in the sum determined and released on such conditions and prohibitions as the court determines.

(k) Exoneration of Bail.

(1) If, within 180 days after the order forfeiting bail, the defendant appears before the court where the charge is pending, if the court has not set aside the forfeiture, the person posting bond may move the court to rescind the order of forfeiture and exonerate the bond. The court must grant the motion, but, if the defendant was not returned by the person posting bail to the sheriff of the county where the action is pending, the court may condition the exoneration of bail and the setting aside of the forfeiture on payment of the reasonable amount of costs actually incurred by state or local authorities for the transport of the defendant to the jail facility of the county where the charges are pending. Either the prosecuting attorney or a representative of the state or local law enforcement entity must file, within 14 days of the defendant's return, documentation of the costs actually incurred, after which the costs must be determined by the court. The request for costs and supporting documentation must also be served on the person posting bail, who may file an objection to the request within 14 days of the filing of the request for costs. Any amounts ordered under this rule must be paid directly to the appropriate law enforcement agency or agencies.

(2) A defendant appears before the court when the defendant physically appears in the court where the charge is pending, or, while in the custody of the sheriff of the county in which the charge is pending, appears in that court by video or audio, or by other appearance authorized by the court.

(3) Where a property bond has been posted the order exonerating the bond must release the lien.

(l) Increasing or Reducing Bail.

(1) The court before which a case is pending may, after a defendant has been admitted to bail, increase or reduce the amount of bail. On its own motion, or on a verified petition for an increase in bail, the court must order the defendant to appear for a hearing on the application. The court must also notify the person posting the undertaking of the date and time of the hearing. If the defendant fails to appear at the hearing after being properly notified of the date and the time of the hearing, the court must immediately forfeit the bail and issue a bench warrant for arrest of the defendant unless there is evidence of sufficient excuse for defendant's absence.

(2) On application of the defendant, and timely notice to the prosecuting attorney and the person posting bail, the court may reduce the existing bail. If the court finds good cause to reduce the bail of the defendant, the court may enter such an order and may continue the defendant on the original bail, with the court record properly reflecting the reduced amount of the bail obligation. The court must give notice of the reduction to the person posting bail within five business days of the entry of the order reducing bail.

Rule 46.1. Bail for Witnesses

If it appears by affidavit that the testimony of a person is material in any criminal proceedings and if it is shown that it may become impracticable to secure the person's presence by subpoena for a hearing or trial,

the court may require the witness to give bail for the person's appearance as a witness in an amount fixed by the court. The bail may be deposited in the same manner as bail of a person charged under Rule 46. If the person fails to give bail to appear as a witness, the court may commit the person to the custody of the sheriff pending final disposition of the proceedings in which the party's testimony is needed, but the court may order the person released if the person has been detained for an unreasonable length of time and may at any time modify or eliminate the requirements as to bail. Bail of a witness may be forfeited as bail in other cases pursuant to Idaho Code § 19-3011.

Rule 46.2. No Contact Orders

(a) Orders in Writing; Service; Form; Contents. No contact orders issued pursuant to Idaho Code § 18-920 must be in writing and served on or signed by the defendant. Each judicial district must adopt by administrative order a form for no contact orders for that district. No contact orders must contain, at a minimum, the following information:

(1) the case number, defendant's name and protected person's name;

(2) a distance restriction;

(3) notice that the order will expire at 11:59 p.m. on a specific date, or on dismissal of the case; and

(4) an advisory that:

(A) a violation of the order may be prosecuted as a separate crime under Idaho Code § 18-920 for which no bail will be set until an appearance before a judge, and the possible penalties for this crime,

(B) the no contact order can only be modified by a judge, and

(C) when more than one no contact order or domestic violence protection order is in place, the most restrictive provisions of each will control any conflicting terms of any other civil or criminal protection order.

Whenever a no contact order is issued, modified or terminated by the court, or the criminal case is dismissed, the clerk must immediately give written notification to the records department of the sheriff's office in the county in which the order was originally issued. No contact orders must be entered into the Idaho Law Enforcement Telecommunications System (ILETS).

(b) Modification or Termination at Request of Protected Person. A protected person in a criminal case for which a no contact order has issued may request modification or termination of that order by filing a written and signed request with the clerk of the court in which the criminal offense is filed. Forms for such a request must be available from the clerk. The court must provide for a hearing within fourteen days of the request and must provide notice of the hearing to the protected person and the parties.

Rule 47. Motions

(a) In General. A party applying to the court for an order must do so by motion.

(b) Form and Content of a Motion. A motion, except when made during a trial or hearing, must be in writing, unless the court permits the party to make the motion by other means. A motion must state the grounds on which it is based and the relief or order sought. A motion may be supported by affidavit.

(c) Separate Document. Any written order entered must be on a document separate from the motion.

Rule 48. Dismissal by the Court

(a) Dismissal on Motion and Notice. The court, on notice to all parties, may dismiss a criminal action on its own motion or on motion of any party on either of the following grounds:

(1) for unnecessary delay in presenting the charge to the grand jury or if an information is not filed within the time period prescribed by Rule 7(f), or for unnecessary delay in bringing the defendant to trial, or

(2) for any other reason if the court concludes that dismissal will serve the ends of justice and the effective administration of the court's business.

(b) Order of Dismissal. When a court dismisses a criminal action, the order of dismissal must state the court's reasons for dismissal.

(c) Effect of Dismissal. An order for dismissal is a bar to any other prosecution for the same offense if it is a misdemeanor, but it is not a bar if the offense is a felony.

Rule 49. Service and Filing of Papers

(a) Service, When Required. Written motions, other than those which may be properly heard ex parte, written notices, and similar papers must be served on each party and filed within the time and in the manner provided by the Idaho Rules of Civil Procedure.

(b) Service by Electronic Means. Service may be made on an attorney for a party by transmittal of a copy of the document to the office of the attorney by electronic means, including by email or facsimile. This rule does not require an attorney to have a facsimile machine.

(c) Notice of Orders. Immediately on the entry of an appealable order or judgment the clerk of the court must serve a copy of it, with the clerk's filing stamp indicating the date of filing, on the prosecuting attorney and on each defendant or the attorney for the defendant. Service may be by mail or personal delivery, or to an attorney by electronic means. Mailing or personal delivery, or service by electronic means on an attorney, is sufficient notice for all purposes under these rules. Lack of notice of entry of an appealable order or judgment does not affect the time to appeal or to file a post-trial motion within the time allowed, except where there is no showing of mailing or delivery by the clerk in the court records and the party affected thereby had no actual notice.

(d) Filing. Documents required to be served must be filed with the court in the manner provided in for civil actions in the Idaho Rules of Civil Procedure. Any document, except an information or complaint, a search warrant, a warrant of arrest, or a return on a warrant or service of a search warrant, or any document filed as proof of incarceration of a party to the action, may be transmitted to the court for filing by a facsimile machine process. The clerk must file stamp the facsimile copy as an original and the signatures on the facsimile copy will constitute the required signature of a party or the attorney. Filings may be made only during the normal working hours of the clerk and only if there is a facsimile machine in the offices of the filing clerk of the court. Provided, documents over 10 pages in length may not be filed by facsimile machine. Following the service of a subpoena, the person serving the subpoena may make return of it to the person who requested the subpoena rather than making return with the court.

(e) Additional Service on Out-of-County Judge. If the office of a presiding judge is outside the county in which an action is pending, each party to the action must, when reasonably possible, lodge with the presiding judge, at least five days before the trial or hearing, at his or her office, all briefs and copies of motions, notices, orders to show cause, proposed instructions, or any other pleadings or documents that are reasonably necessary to advise the court of the nature of any proceeding or

hearing to be held in the action. This requirement is in addition to the lodging or filing of the originals with the court of record and the service of copies on the parties if required by these rules.

Rule 50. Calendars. Courts may provide for placing criminal proceedings on appropriate calendars and must give preference to criminal proceedings as far as practicable.

Rule 51. Reserved

Rule 52. Harmless Error

Any error, defect, irregularity or variance that does not affect substantial rights must be disregarded.

Rule 53. Reserved

TITLE X – APPEALS FROM THE MAGISTRATE DIVISION

Rule 54. Appeals from the Magistrate Division

(a) Where an Appeal Must be Taken.

(1) *Appeals from the Magistrate Court to the District Court.* An appeal from the following judgments or orders entered by the magistrate court must be taken to the district court:

(A) a final judgment of conviction;

(B) by a defendant only, an order granting or denying a withheld judgment on a verdict or plea of guilty;

(C) an order granting a motion to dismiss a complaint;

(D) an order granting a motion to suppress evidence in a misdemeanor action;

(E) an order denying a motion for new trial;

(F) an order made after judgment affecting the substantial rights of the defendant or the State;

(G) any order, judgment or decree by a magistrate in a special criminal proceeding for which an appeal is provided by statute;

(H) any order holding a person in contempt of court other than those contempts defined in Rule 42(a);

(I) interlocutory orders, if permissive appeal has been granted by the district court, which must be processed in the same manner as provided by Rule 12 of the Idaho Appellate Rules; or

(J) any order granting or denying a motion to set aside the forfeiture of bail or to exonerate bail. An appeal from this order does not deprive the magistrate court of jurisdiction over other proceedings involving the case or stay other proceedings.

(2) *Appeals from Magistrate Court to the Supreme Court When it is Acting as District Court.* An administrative district judge may petition the Supreme Court to assign a magistrate judge to hear an action that would otherwise be tried only by a district judge. An appeal from the magistrate's decision in the assigned case must be taken to the Supreme Court, unless the original order of assignment states differently.

(b) Time for Filing an Appeal or Cross Appeal.

(1) *Appeal.* An appeal is commenced only by filing a notice of appeal with the clerk of the district court in the county where the magistrate trial was held.

(A) In General. The notice of appeal must be filed within 42 days from the date file stamped by the clerk of the court on the judgment or order being appealed.

(B) Suspension of Time to File. The time to file the appeal is terminated by the filing of a motion within 14 days of the entry of judgment, which, if granted, could affect the judgment or sentence in the action. The time to appeal begins to run from the date file stamped by the clerk of the district court on the order granting or denying the motion.

(2) *Cross Appeal*. When an appeal is filed as a matter of right, a cross appeal may be filed by the opposing party within the time for an appeal, or within 14 days from the date the party is served with a copy of the notice of appeal, whichever is later.

(c) Service of the Notice of Appeal. The party filing the appeal must immediately serve copies of the notice of appeal on the magistrate court appealed from and all other parties to the action.

(d) Contents of the Notice of Appeal. A notice of appeal to the district court must contain the following information:

(1) the title of the court from which the appeal is taken and the name of the presiding judge;

(2) the title of the court to which the appeal is taken;

(3) the date and heading of the judgment or order being appealed;

(4) the title of the action and the case number assigned to the action;

(5) a statement as to whether the appeal is taken on matters of law, or on matters of fact, or both;

(6) whether the testimony and proceedings of the original trial or hearing were recorded or reported, the method of recording or reporting, and the name of the party or person who has the recording or reporting;

(7) a certificate of service that the notice of appeal has been served personally or by mailing on the opposing party or the party's attorney, and

(8) a preliminary statement of the issues the appellant intends to assert in the appeal, which may be filed separately within 14 days after the filing of the notice of appeal and which does not prevent the appellant from asserting other issues on appeal.

(e) Stay During Appeal; Powers of Magistrate.

(1) *Stay*. Execution of any sentence imposed must be stayed when ordered by the magistrate or district court as provided in Rule 46 and this rule.

(2) *Powers of Magistrate*. While the appeal is pending before the district court or pending on further appeal to the Supreme Court, and unless otherwise prohibited by order of the district court, the magistrate has the power to take the following actions:

(A) settle the transcript on appeal;

(B) rule on any motion for new trial;

(C) rule on any motion for arrest of judgment;

(D) conduct any hearing, and make any order, decision or judgment allowed or permitted by Idaho Code § 19-2601;

(E) conduct any hearing and make any order, decision or judgment with regard to a withheld judgment entered on a plea or verdict of guilty;

(F) place a defendant on probation, modify or revoke probation, or sentence a defendant on revocation of probation;

(G) if bail has not been posted, determine whether to stay execution of the sentence during the pendency of the appeal court, or

(H) enter any other order after judgment affecting the substantial rights of the defendant as authorized by law.

In the event the district court enters an order affecting a stay of execution of a sentence, provisions concerning bail, or any of the other matters set forth above, the order of the district court controls over the order of the magistrate.

(f) Manner of Review by District Court.

(1) *Appellate Review with Transcript.* Unless otherwise ordered by the district court, the district court must hear appeals from the magistrate court as an appellate proceeding and a transcript must be prepared as provided in Rule 54(g). The district court must review the case on the record and determine the appeal in the same manner and on the same standards of review as an appeal from the district court to the Supreme Court under the statutes and law of this state, and the Idaho Appellate Rules.

(2) *Appellate Review without Transcript.* The district judge assigned the appeal may, on the court's own motion or motion of a party, order an alternate method of hearing the appeal that does not require a transcript. Even if the district judge does not require the preparation of a transcript, the court must, on motion of any party to the appeal, order the preparation of a transcript of the proceedings at the cost of the moving party and order the moving party to pay the estimated transcript fees within 14 days of entry of the order. The clerk of the court must serve a copy of the order on the transcriber of the trial or proceedings of the trial court.

(A) Hearing on Question of Law. If the district judge determines that the appeal involves only a question of law, the district judge may determine the appeal without a transcript. It must then enter an order stating:

(i) the appeal involves a question of law only,

(ii) the issue of law to be determined on appeal,

(iii) no transcript is required,

(iv) the appeal will be decided on the clerk's record, the briefs of the parties and oral argument, and

(v) the date for the filing of the appellant's opening brief.

(B) Hearing by Listening to or Viewing Electronic Record. If the district judge determines that the appeal may be heard as an appellate proceeding by listening to or viewing the electronic record of the trial or proceedings of the trial court, it may determine the appeal without a transcript. It must then enter an order stating:

(i) that no transcript is required,

(ii) the appeal will proceed by listening to or viewing the electronic record of the trial or proceedings of the trial court,

(iii) a time within which the parties must review, view, or listen to the electronic record, and

(iv) the date for the filing of the appellant's opening brief.

(3) *Trial de Novo or Remand.* If the district court determines that the record of the proceedings in the magistrate court is inadequate for an appellate proceeding, the district court must order that the appeal be heard as a trial de novo or remand the matter to the magistrate's

division. If the appeal is heard as a trial de novo, the appeal must be by trial in the district court in the same manner as a trial on information in the district court.

(g) Transcripts.

(1) *Transcript Fee.*

(A) Payment of Fee. The Appellant must:

(i) within 14 days of the filing of the notice of appeal, pay the estimated fee for preparation of the original and 2 copies of the transcript, as determined by the transcriber pursuant to Idaho Code § 1-1105;

(ii) pay the balance of the transcript fee on completion of the transcript;

(iii) pay the amount to the clerk of the court, who will deposit it in the district court fund, or any other fund that incurred the expense of the person who prepared the transcript; and

(iv) pay any agreed on amount if the transcript is prepared by a transcriber or reporter privately retained by appellant; however, for purposes of taxing costs, the cost is the same per page cost set out in Idaho Code § 1-1105.

(B) Exemption from Payment. The district judge may order a transcript prepared at county expense if the appellant is exempt from paying the fee as provided by statute or law.

(2) *Preparation of Transcript*. After the estimated fee for the transcript is paid, the transcriber must give a receipt to the party paying the fee and must prepare the transcript and lodge it with the clerk of the trial court within 35 days from the date the estimated fee was paid. The district court may grant an extension of time to prepare the transcript if the transcriber applies for an extension and the district court finds there is good cause to grant an extension.

(3) *Certificate*. The transcript must be examined and certified by the transcriber by a certificate in substantially the form found in Appendix A.

(4) *Form of Transcript*. All transcripts of testimony and proceedings prepared for an appeal to the district court must be in the same form and arrangement required for appeals to the Supreme Court under the Idaho Appellate Rules.

(h) Clerk's Record. The clerk's record is the official court file of the criminal proceeding appealed to the district court, including any minute entries or orders together with the exhibits offered or admitted. Alternatively, on order of the magistrate, a certified copy of the official file may be filed with the district court and the magistrate may retain the original file. After the appeal is determined and the time for an appeal to the Supreme Court has expired, the original clerk's record must be returned to the magistrate division together with the order or other disposition made by the district court on the appeal. The clerk need not prepare a copy of the record unless ordered by the district court.

(i) Settlement of Transcript. On receipt of the transcript of the testimony and proceedings, the clerk of the trial court must mail or deliver a notice of lodging of transcript to all attorneys of record, or parties appearing in person. The clerk of the court must retain the original of the transcript and advise that:

(1) the parties may pick up a copy of the transcript at the clerk's office;

(2) the appellant must pay the balance of the fees for the preparation of the transcript, if any, before the copy of the transcript will be delivered to the appellant; and

(3) the parties have 21 days from the date of the mailing of the notice in which to file any objections to the transcript.

If there are multiple defendants appealing and the court or the parties have not ordered separate transcripts for each defendant, they must determine by agreement the manner and time of use of the transcript by each party, or if they cannot agree, any party may move the trial court to make this determination. If an objection is made to a trial transcript, the objection is heard and determined by the trial court in the same manner as a motion. The determination of the trial court of any objection to the transcript is a settlement of the transcript. If no objection is filed to the transcript within the 21-day period, it is deemed settled.

(j) **Filing of Record and Transcript.** The clerk of the trial court must file the clerk's record or a certified copy of the record, the transcript, if any, and all exhibits offered or admitted in the proceeding within 7 days of the settlement of the transcript, or within 7 days of receipt of an order of the district court that no transcript is needed or required. The clerk of the trial court must notify all parties of the filing. Any electronic recording used to transcribe the testimony and proceedings need not be forwarded to the clerk of the district court unless ordered by the district court.

(k) **Augmentation of the Record.** A motion to augment the transcript or record may be filed with the district court in the same manner and pursuant to the same procedure as provided in the Idaho Appellate Rules.

(l) **Exhibits on Appeal.** All exhibits offered or admitted in a trial proceeding must be lodged with the clerk of the district court by the clerk of the trial court together with a certificate that the exhibits include all exhibits offered or admitted in the trial or proceedings. All exhibits must be lodged with the clerk of the district court at the time that the transcript and clerk's record is lodged with the district court. If an exhibit is incapable of being transmitted to the district court, the magistrate may order the clerk of the trial court to photograph or otherwise describe or make a facsimile of it and forward it to the district court and retain the original until determination of the appeal. On determination of the appeal, the district court must return all exhibits to the trial court.

(m) **Effect of Failure to Comply with Time Limits.** The failure to file a notice of appeal or notice of cross-appeal with the district court within the time limits set out in this rule is jurisdictional and will cause automatic dismissal of the appeal. This dismissal may be pursuant to a motion by any party, or on the district court's initiative. Failure of a party to timely take any other step in the appellate process is not jurisdictional, but may be grounds for other action or sanction as the district court deems appropriate, which may include dismissal of the appeal.

(n) **Motions.** All motions on appeal must be filed with the district court, except those expressly required to be filed in the trial court, and served on the parties in the same manner as motions before a trial court under these rules. All motions must be accompanied by a brief in support. The opposing party has 14 days from service of the motion to file a response or brief. The motion will be determined without oral argument unless ordered by the court.

(o) **Appellate Briefs.** Briefs must be in the same content and arrangement, and must be filed and served within the time provided by, the Idaho Appellate Rules unless otherwise ordered by the district court. Only one original signed brief must be filed with the court and copies must be served on all other parties.

(p) Appellate Argument. Appellate argument may be heard by the district court after notice to the parties in the same manner as notice of hearing of a motion before a trial court under these rules.

(q) Other Appellate Rules. Any appellate procedure not specified in this rule must be in accordance with the Idaho Criminal Rules or the Idaho Appellate Rules.

(r) Decision Entered on Appeal.

(1) *Appellate Review.* If an appeal is heard on the record, on determination of the appeal the district judge must enter an appellate decision which must include instruction to the magistrate. The clerk must file stamp the appellate ruling and mail copies to the parties and the presiding magistrate. The original appellate ruling must be filed in the court file which is returned to the magistrate division as provided by Rule 54(h).

(A) Remittitur from District Court. If no appeal to the Supreme Court is filed within 42 days after the clerk files the appellate decision, the clerk must issue and file a remittitur with the magistrate court from which the appeal was taken and mail copies to the parties and the presiding magistrate. The remittitur must advise the magistrate judge that the decision has become final and that the magistrate must immediately comply with the directive of the decision.

(B) Remittitur from Supreme Court or Court of Appeals. When the Supreme Court or Court of Appeals files a remittitur with the district court in a case that was initially appealed from the magistrate division of the district court, the clerk of the district court must mail a copy of the remittitur to the presiding magistrate.

(2) *Trial de Novo.* If an appeal is heard as a trial de novo, on determination of the appeal the district judge must enter a judgment.

APPENDIX A: FORMS

Rule 11(e) – Guilty Plea Advisory and Form

Rule 16(e)(2) – Request for Discovery

Rule 16(f)(3) – Response to Request for Discovery

Rule 33.1(b) – Findings of the Court in Considering Death Penalty

Rule 33.2(b) – Report on Imposition of Death Penalty

Rule 39(a) – Petition for Post-Conviction Relief

Rule 54(g)(3) – Certificate of Transcription

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

GUILTY PLEA ADVISORY AND FORM

TO BE FILLED OUT BY THE DEFENDANT

Defendant's Name: _____ **Signature** _____

Date: _____ Case Number: _____

Age: _____ Date of Birth: _____

Event Code: GPAF

STATEMENT OF CONSTITUTIONAL RIGHTS
(Please initial each response)

1. You have the right to remain silent. You do not have to say anything about the crime(s) you are accused of committing. If you elect to have a trial, the State may not call you as a witness or ask you any questions. If you do decide to testify the State will be permitted to ask you questions and anything you say can be used as evidence against you in court.

   I understand that by pleading guilty I am **waiving** my right to remain silent as to the elements of the crime(s) to which I am entering this plea. _____

2. The waiver of your right to remain silent only applies to your plea of guilty to the crime(s) in this case. Even after pleading guilty, you will still have the right to refuse to answer any question or to provide any information that might tend to show you committed some other crime(s). You can also refuse to answer or provide any information that might tend to increase the punishment for the crime(s) to which you are pleading guilty.

   I understand that by pleading guilty to the crime(s) in this case, I still have the right to remain silent with respect to any other crime(s) and with respect to answering questions or providing information that may increase my sentence._____

3. You have the right to be represented by an attorney. If you want an attorney and cannot pay for one, you can ask the Judge for an attorney who will be paid by the county. You may be required to reimburse the county for the cost of this representation. _____

4. You are presumed to be innocent. You will be found guilty if: 1) you plead guilty in front of the Judge; or 2) you are found guilty at a jury trial.

   I understand that by pleading guilty I am **waiving** my right to be presumed innocent. _____

5. You have the right to a speedy and public jury trial before twelve persons. A jury trial is a court hearing to determine whether you are guilty or not guilty of the charge(s) brought against you. In a jury trial, you have the right to present evidence in your defense and to testify in your own defense. You are not required to do so, however. The State must convince all of the jurors of your guilt beyond a reasonable doubt.

I understand that by pleading guilty I am **waiving** my right to a speedy and public jury trial. _____

6. You have the right to question (confront) the witnesses testifying against you. This occurs during a jury trial. At trial, the State must prove its case by calling witnesses to testify under oath in front of you, the jury, and your attorney. Your attorney could then cross-examine (question) each witness. You could also call witnesses of your choosing to testify on your behalf. If you do not have the funds to bring those witnesses to court, the State will pay the cost of bringing your witnesses to court and will compel their attendance by the use of the subpoena power of the court.

   I understand that by pleading guilty I am waiving my right to question (confront) the witnesses against me, and present witnesses and evidence in my defense. _____

7. The State has the burden of proving you guilty beyond a reasonable doubt.
   I understand that by pleading guilty, I am waiving my right to require the State to prove my guilt beyond a reasonable doubt. _____

QUESTIONS REGARDING ABILITY TO ENTER PLEA

(Please answer every question. If you do not understand a question, consult your attorney before answering.)

Please check the correct answer

1. Do you read and write the English language? **YES____ NO____**

   If not, have you been provided with an interpreter to help you fill out this form? **YES____ NO____**

   Do you want an Interpreter? **YES____ NO____**

2. What is your true and legal name? _____

3. What was the highest grade of school you completed? _____

4. If you did not complete high school, have you received either a general education diploma or high school equivalency diploma? **YES____ NO____**

5. Are you currently under the care of a mental health professional? YES____ **NO____**

6. Have you ever been diagnosed with a mental health disorder? **YES____ NO____**

   If so, what was the diagnosis and when was it made? _____

   _____

7. Are you currently prescribed any medication? **YES____ NO____**

   If yes, what medications are you taking at this time? _____

   _____

If you answered "yes," have you taken your prescription medication during the past 24 hours? **YES____ NO____**

8. In the last 48 hours, have you taken any medication or drugs, **including over the counter**, or have you consumed any alcoholic beverages which you believe affect your ability to understand these questions and to make a reasoned and informed decision in this case? **YES____ NO____**

9. Are you under the influence of any alcohol, drugs, or other medication at this time? **YES____ NO____**

10. Are you capable of understanding these proceedings? **YES____ NO____**

11. Do you claim that you are mentally incapable of understanding these proceedings or what it means to plead guilty to a crime? **YES____ NO____**

12. Is there anything going on in your life that affects your ability to enter a voluntary guilty plea? **YES____ NO____**

13. Are you having any difficulty in understanding what you are doing by filling out this form? **YES____ NO____**

14. Is there any other reason that you cannot make a reasoned and informed decision in this case? **YES____ NO____**

If yes, what is the reason?_____

_____

_____

_____

_____

_____

_____

_____

PLEA AGREEMENT

15. Is your guilty plea the result of a plea agreement? **YES____ NO____**

If so, what are the terms of that plea agreement?
(If available, a written plea agreement **must** be attached hereto as "Addendum 'A'")

_____

_____

_____

_____

If a written plea agreement was done, have you read this plea agreement? **YES____ NO____**

16. Do you understand your plea agreement? **YES____ NO____**

17. There are two types of plea agreements. Please initial the <u>one</u> paragraph below which describes the type of plea agreement:

    a. I understand that my plea agreement is a **non-binding** plea agreement. This means that the Court is not bound by the agreement or any sentencing recommendations, and may impose any sentence authorized by law, up to the maximum sentence. Because the Court is not bound by the agreement, if the District Court chooses not to follow the agreement, I will not have the right to withdraw my guilty plea. _____

    b. I understand that my plea agreement is a **binding** plea agreement. This means that if the District Court does not impose the specific sentence as recommended by both parties, I will be allowed to withdraw my plea of guilty and proceed to a jury trial. _____

18. Has your attorney or anyone else forced or coerced you in any way into accepting this plea agreement? **YES____ NO____**

19. Have any other promises been made to you that have influenced your decision to plead guilty? **YES____ NO____**

20. Has anyone told you what your sentence will be? **YES____ NO____**

    If so, what have you been promised?

    _____

    _____

21. Is this a conditional guilty plea in which you are reserving your right to appeal any pre-trial issues? **YES____ NO____**

22. Have you waived your right to appeal your **judgment of conviction** as part of your plea agreement? **YES____ NO____**

23. Have you waived your right to appeal your sentence as part of your plea agreement? **YES____ NO____**

    Under what condition can you appeal your sentence?

    _____

    _____

24. Do you understand that by pleading guilty you will waive (or give up) any defenses, both factual and legal, that you believe you may have in this case? **YES____NO____**

25. Have you discussed the elements of the offense(s) for which you are charged with your attorney? **YES____ NO____**

POTENTIAL SENTENCE

I am charged with the crime(s) of:

_____

_____

_____

_____

I understand the Minimum & Maximum - Fine and Imprisonment:

_____

_____

_____

_____

26. If you plead guilty to more than one crime do you understand that your sentences for each crime could be ordered to be served either **concurrently** (at the same time) or **consecutively** (one after the other)? **YES____ NO____**

27. Do you understand that if you plead guilty and you commit crimes in the future, this conviction could be considered in the future case and could cause more severe penalty in the future case? **YES____ NO____**

ADDITIONAL CONSEQUENCES OF A GUILTY PLEA

28. Are you currently on probation or parole? **YES____ NO____**

    If so, do you understand that a plea of guilty in this case could be the basis of a violation of that probation or parole **(WHICH MEANS THAT ANY SUSPENDED SENTENCE COULD BE IMPOSED AND ANY PAROLE REVOKED)**? **YES____ NO____**

29. Are you aware that if you are not a citizen of the United States, the entry of a plea or making of factual admissions could have consequences of deportation or removal, inability to obtain legal status in the United States, and or denial of an application for United States citizenship? **YES____ NO____**

30. Does the crime to which you will plead guilty require you to register as a **sex offender?** (I.C. § 18-8304) **YES____ NO____**

31. Are you aware that if you plead guilty you may be required to pay **restitution** in this case? (I.C. §19-5304) **YES____ NO____**

32. Are you pleading guilty to a crime for which you may be required to pay the **costs of prosecution and investigation?** (I.C. § 37-2732 (k)), (I.C.R. 33(d)(2)) **YES____ NO____**

    If so, have you and the State agreed upon the amount of this reimbursement? **YES____ NO____**

    If you have, what is the amount? _____

33. Have you agreed to pay restitution as a condition of your plea agreement? **YES____ NO____**

34. If the amount of restitution has not been agreed upon, do you understand that you cannot withdraw your guilty plea even if the restitution amount is determined to be higher than you thought it might be or should be? **YES____ NO____**

35. Is a **license suspension** required as a result of a guilty plea in this case? **YES____ NO____**

36. Do you understand that if you plead guilty you will be required to submit a **DNA sample** and **Right Thumbprint impression** to the State? (I.C. § 19-5506) **YES____ NO____**

37. Are you pleading guilty to a crime for which the Court could impose a **fine** for a crime of violence of up to $5,000, payable to the victim of the crime? (I.C § 19-5307) **YES____ NO____**

38. Do you understand that if you plead guilty to a felony, you will lose your right to **vote** in Idaho during the period of your sentence? (Id. Const. art.6, §3) **YES____ NO____**

39. Do you understand that if you plead guilty to a felony, you will lose your right to hold **public office** in Idaho during the period of your sentence? (Id. Const. art.6, §3) **YES____ NO____**

40. Do you understand that if you plead guilty to a felony, you will lose your right to perform **jury service** in Idaho during the period of your sentence? (Id. Const. art.6, §3) **YES____ NO____**

41. Do you understand that if you plead guilty to a felony and or to a misdemeanor crime of domestic violence you will lose your right to purchase, possess, or carry **firearms**? (I.C. § 18-310, 18 U.S.C. § 922(g)(9)) **YES____ NO____**

42. Do you understand that by pleading guilty to a felony, you run the risk that if you have new felony charges in the future, you could be charged as a Persistent Violator? (I.C §§ 19-2514, 37-2739) **YES____ NO____**

RELATIONSHIP WITH YOUR ATTORNEY

43. Have you had sufficient time to discuss your case with your attorney? **YES____ NO____**

44. Have you had adequate time to fill out this form? **YES____ NO____**

45. Have you had adequate access to your attorney's assistance in filling out this form? **YES____ NO____**

46. Your attorney can obtain various items from the prosecutor relating to your case. This may include police reports, witness statements, tape recordings, photographs, reports of scientific testing, etc. This is called **"discovery."** Have you had the opportunity to review the discovery provided by your attorney? **YES____ NO____**

47. Do you want your attorney to take any further action in this case? **YES____ NO____**

48. If you are not a **citizen** of the United States, have you talked to your attorney about the impact of your guilty plea on deportation, on your legal status in the United States and on obtaining United States citizenship? **YES____ NO____**

49. Do you understand that no one, including your attorney, can force you to plead guilty in this case? **YES____ NO____**

50. Are you satisfied with your attorney's representation? **YES____ NO____**

If not, please state why you are dissatisfied?

_____

_____

IF YOUR GUILTY PLEA IS THE RESULT OF A PLEA AGREEMENT REACHED THROUGH MEDIATION:

51. Did you voluntarily enter mediation? **YES____ NO____**

52. Did anyone force you, or coerce you, to enter into the plea agreement in the mediation? **YES____ NO____**

53. Were you satisfied with the conduct of the mediation? **YES____ NO____**

ENTRY OF PLEA

54. Are the answers throughout this form your own answers? **YES____ NO____**

55. Are you entering your plea freely and voluntarily? **YES____ NO____**

56. Do you understand the consequences of entering a guilty plea? **YES____ NO____**

57. Are you admitting to all the elements of the crime(s) to which you are pleading guilty? **YES____ NO____**

Or are you pleading guilty because you are entering an Alford Plea? **YES____ NO____**

58. If you are entering an Alford Plea, do you understand that the Court will consider you just as guilty as if you enter a non-Alford plea? **YES____ NO____**

59. Have you had any trouble answering any of the questions in his form which you could not resolve by discussing the issue(s) with you attorney? **YES____ NO____**

60. If you were provided with an interpreter to help you fill out this form, have you had any trouble understanding your interpreter? **YES____ NO____**

61. Do you need any additional time before you enter your guilty plea(s)? **YES____ NO____**

62. **Do you understand that if the Court accepts your guilty plea(s) that you may not be able to withdraw your plea(s) at a later date?** **YES____ NO____**

63. Is there anything else you want to tell the court about why you are pleading guilty? **YES____ NO____**

I have answered the questions on pages 1-8 of this Guilty Plea Advisory Form truthfully, I understand all of the questions and answers herein, I have had the opportunity to discuss each question and answer with my attorney, and I have completed this form freely and voluntarily **WITH A COMPLETE UNDERSTANDING OF THE CHARGE(S) TO WHICH I AM PLEADING GUILTY AND WITH KNOWLEDGE OF THE POTENTIAL CONSEQUENCES OF THIS PLEA.** Furthermore, no one has forced me or threatened me to plead guilty.

DATE: _____

_____
DEFENDANT

POST PLEA RIGHTS

A presentence investigation will be ordered by the Court unless both you and the State waive that report and the Court approves that waiver. The Court may order evaluations as part of this investigation **AND THESE REPORTS WILL BE USED TO DETERMINE YOUR SENTENCE**. You have **the right to remain silent during all proceedings and interviews from now until sentencing** WHICH INCLUDES THE PRESENTENCE INVESTIGATION AND ANY COURT ORDERED EVALUATIONS.

The information in the presentence interview and any evaluations (which will include any statements you make in these processes) will be used by the Court in determining your sentence. In particular if you are ordered to undergo a psychosexual evaluation (which can include a polygraph examination), a domestic violence evaluation, a substance abuse evaluation or a mental health examination (which can include a psychological or psychiatric examination) you will be asked extensive questions and your answers to those questions may be used against you during sentencing.

1. Have you discussed the right to remain silent with your attorney? **YES____ NO____**
2. Do you understand the nature of these rights? **YES____ NO____**
3. Do you understand that you may waive these rights? **YES____ NO____**
4. Have you waived any of these rights in your plea agreement? **YES____ NO____**
5. Do you have any questions concerning either these rights or the waiver of these rights? **YES____ NO____**
6. Have you discussed with your attorney your rights regarding your attorney's attendance and presence during the presentence investigation or these various evaluations? **YES____ NO____**
7. Do you want the Court to order any particular evaluations to assist the Court in determining your sentence in this case? **YES____ NO____**

If yes, which evaluations and why?

_____

_____

_____

I ACKNOWLEDGE THE FOREGOING POST PLEA RIGHTS.

DATE: _____

_____
DEFENDANT

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

_____)
Plaintiff,) Case No. _____
) REQUEST FOR DISCOVERY
v.)
_____)
Defendant.

TO: THE (PROSECUTING ATTORNEY OF _____ COUNTY) (DEFENDANT):

PLEASE TAKE NOTICE that the undersigned pursuant to Rule 16 of the Idaho Criminal Rules requests discovery and inspection of the following information, evidence and materials:

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____

The undersigned further requests permission to inspect and copy the information, evidence and materials on the _____ day of _____, 20____, at _____.

Dated this _____ day of _____, 20____.

_____
Attorney for the (Plaintiff) (Defendant)

CERTIFICATE OF SERVICE

I certify that on (date) _____, I served a copy to: (name all parties in the case other than yourself)

_____
(Name)

☐ By mail
☐ By personal delivery
☐ By fax (number) _____

_____
(Street or Post Office Address)

_____
(City, State, and Zip Code)

_____
(Name)

☐ By mail
☐ By personal delivery
☐ By fax (number) _____

_____
(Street or Post Office Address)

_____
(City, State, and Zip Code)

_____
Typed/printed name

_____
Signature

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

_____	)
Plaintiff,	) Case No. _____
	)
v.	) RESPONSE TO REQUEST FOR DISCOVERY
	)
_____	)
Defendant.	

COMES NOW the (Plaintiff) (Defendant) and submits the following Response to the Request for Discovery:

(Plaintiff) (Defendant) has complied with the request by _____ _____

_____

_____

(or)

(Plaintiff) (Defendant) will comply with the request by _____ _____

_____

_____

(and/or)

(Plaintiff) (Defendant) objects to (all of the request) (that part of the request for the discovery of

_____

_____.)

The grounds for this objection are as follows: _____

_____

_____

_____

_____

Dated this _____ day of _____, 20____. _____

Attorney for (Plaintiff) (Defendant)

ACKNOWLEDGMENT OF DISCOVERY

(Optional)

The undersigned hereby acknowledges that discovery has been permitted of the following information, evidence and materials pursuant to the Request for Discovery.

_____

_____

_____

_____

_____

Dated this _____ day of _____, 20____. _____

Attorney for (Plaintiff) (Defendant)

CERTIFICATE OF SERVICE

I certify that on (date) _____, I served a copy to: (name all parties in the case other than yourself)

_____
(Name)

_____
(Street or Post Office Address)

_____
(City, State, and Zip Code)

☐ By mail
☐ By personal delivery
☐ By fax (number) _____

_____
(Name)

_____
(Street or Post Office Address)

_____
(City, State, and Zip Code)

☐ By mail
☐ By personal delivery
☐ By fax (number) _____

_____
Typed/printed name

_____
Signature

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

STATE OF IDAHO	)	
_____,	)	
Plaintiff,	)	FINDINGS OF THE COURT IN
vs.	)	CONSIDERING DEATH PENALTY
	)	UNDER SECTION 19-2515,
_____,	)	IDAHO CODE.
Defendant.	)	

Defendant having (been found guilty by a jury) (entered a plea of guilty) of the criminal offense of murder in the first degree, which under the law authorizes the imposition of the death penalty, the jury having been waived, and the court having held a special sentencing proceeding for the purpose of hearing all relevant evidence and argument of counsel in aggravation and mitigation of the offense; NOW THEREFORE the court hereby makes the following findings:

1. Conviction. That the defendant while represented by counsel was found guilty of the offense of murder in the first degree (by jury verdict) (pursuant to a plea of guilty).

2. Sentencing Hearing. That a sentencing hearing was held on _____, and that at the hearing, in the presence of the defendant, the court heard relevant evidence in aggravation and mitigation of the offense and arguments of counsel.

3. Facts and Arguments Found in Mitigation.
[Summarize and Itemize]

4. Facts and Arguments Found in Aggravation.
[Summarize and Itemize]

5. Statutory Aggravating Circumstances Found Under Section 19-2515(9), Idaho Code.
[Describe in detail if any are found.]

6. Reasons Why Death Penalty Was Imposed.
[State the findings and reasons why the court finds no mitigating circumstances would make the imposition of the death penalty unjust.]

OR

7. Reasons Why Death Penalty Was Not Imposed.
[State the findings and reasons why the court finds the mitigating circumstances outweigh the gravity of any aggravating circumstances so as to make unjust the imposition of the death penalty.]

CONCLUSION

The death penalty (should) (should not) be imposed on the defendant for the capital offense of which he was convicted.

DATED _____

_____

District Judge

IN THE SUPREME COURT OF THE STATE OF IDAHO

State of Idaho,	) District Court Case No. _____
	)
Plaintiff,	) REPORT ON IMPOSITION OF
	) DEATH PENALTY
vs.	) UNDER SECTION 19-2827,
	) IDAHO CODE
_____,	)
	)
Defendant,	)

The court having sentenced Defendant to death for the conviction of the offense of _____,

NOW, THEREFORE, the court hereby makes a report to the Idaho Supreme Court pursuant to section 19-2827, Idaho Code, as follows:

1. Facts regarding defendant:

(a) Age _____

(b) Sex _____

(c) Race _____

(d) Marital Status _____

(e) Family Relationships _____

(f) Dependents _____

(g) Occupation or Trade _____

(h) Educational Background _____

(i) Relationship to Victim of Offense _____

(k) _____

(l) _____

(m) _____

(n) _____

2. Name and Address of Counsel Representing Defendant.

_____,

3. Summary of any Prior Convictions of Defendant.

_____

4. Findings in Support of Imposition of Death Penalty Made Pursuant to Section 19-2515, Idaho Code. A copy is attached.

DATED: _____

_____
District Judge

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

STATE OF IDAHO	)	
_____,	)	Case No. _____
Plaintiff,	)	PETITION FOR
vs.	)	POST-CONVICTION RELIEF
_____,	)	
Defendant.	)	

The petitioner alleges:

1. Place of detention if in custody: _____

2. Name and location of court that imposed judgment/sentence:

_____

3. The case number and the offense or offenses for which sentence was imposed:

(a) Case Number. _____

(b) Offense Convicted. _____

4. The date on which sentence was imposed and the terms of sentence:

(a) Date of sentence. _____

(b) Terms of sentence.

_____

5. A finding of guilty was made after a plea of ☐guilty or ☐not guilty.

6. Did you appeal the judgment of conviction or the imposition of sentence? ☐Yes ☐No

7. State concisely all the grounds on which you base your application for post-conviction relief:
(a) _____

_____

_____

(b) _____

(c) _____

(d) _____

(e) _____

8. Prior to this motion have you filed with respect to this conviction:

(a) Any petitions in state or federal courts for habeas corpus? ☐Yes ☐No

(b) Any other petitions, motions or application in this or any other court? ☐Yes ☐No

(c) If you answered "yes" to (a) or (b) state with respect to each petition, motion or application the nature of each and the name and location of the court in which each was filed.

9. If your application is based on the failure of counsel to adequately represent you, state concisely and in detail what counsel failed to do in representing your interests:

(a) _____

(b) _____

_____

_____

(c) _____

_____

_____

10. (a) Are you asking to proceed in forma pauperis, that is, requesting the proceeding to be at county expense? ☐Yes ☐No

(b) Are you requesting the appointment of counsel to represent you in this application? ☐Yes ☐No

(c) If your answer to either of the above questions was "yes" fill out an affidavit of indigency in the form required by the trial court.

11. State specifically the relief you seek. _____

_____

_____

_____

12. This petition may be accompanied by affidavits in support of the petition.

_____
Signature of Petitioner

STATE OF _____

COUNTY OF _____

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to this petition; that I know the contents of it; and that the matters and allegations set forth are true.

_____
Signature of Petitioner

SUBSCRIBED and SWORN to before me this _____ day of _____, 20 ____.

_____
Notary Public For _____
Residing at _____

My commission expires:

_____

(month)(day)(year)

CERTIFICATE OF TRANSCRIPTION

The undersigned certifies that he or she correctly and accurately transcribed the above transcript from the recording of the [Describe hearing: e.g., trial, motion hearing, etc.] which was recorded on (date) in the above entitled action or proceeding.

Dated and certified this ____ day of _____.

_____
Transcriber