

In the Supreme Court of the State of Idaho

IN RE: ADOPTION OF IDAHO COURT)
ADMINISTRATIVE RULE 101;)
AMENDMENTS TO IDAHO RULES OF)
CIVIL PROCEDURE 1, and IDAHO RULES)
FOR ELECTRONIC FILING AND)
SERVICE 5)

AMENDED ORDER

The Court, having reviewed a recommendation to amend the following rules, and the Court being fully informed;

IT IS ORDERED that the Idaho Court Administrative Rule 100 is ADOPTED as follows:

Part X. Procedural Rules for Involuntary Hospitalizations and Treatment Commitments to the Director of the Department of Health and Welfare.

Idaho Court Administrative Rule 101. Persons with Neurocognitive Disorders, Protective Custody Without a Hearing.

(a) **Notice to Court of Protective Custody Without a Hearing.** Whenever a person is taken into custody or detained by a peace officer or medical staff member without a court order pursuant to Idaho Code section 56-2104, the evidence supporting the claim that a person with a neurocognitive disorder is likely to injure themselves or others as provided in Idaho Code section 56-2104(1), must be electronically filed with the court by the prosecuting attorney within twenty four (24) hours of the time the person was placed in custody or detained.

(b) **Order; Transmission; After Hours, Weekends, and Holidays.**

(1) *Order.* If the court finds there is reason to believe the person is likely to have a neurocognitive disorder and is likely to injure themselves or others, as defined in I.C. § 56-2103(5), as:

- (A) posing a substantial risk that serious physical harm will be inflicted by the person upon their own person, as evidenced by threats of suicide or threats to inflict serious physical harm on themselves,
- (B) posing a substantial risk that serious harm will be inflicted by the person upon another person as evidenced by behavior that has caused such harm or that places another person or persons in reasonable fear of sustaining such harm, or

- (C) the person lacks insight into the need for treatment and is unable or unwilling to comply with treatment based on the person's medical history, clinical observation, or other clinical evidence, and if the person does not receive and comply with treatment, there is a substantial risk that the person will continue to physically, emotionally, or cognitively deteriorate to the point that the person will, in the reasonably near future, inflict serious physical harm on themselves or another person,

the court will issue a temporary protective placement custody order requiring the person to be held in a hospital and requiring an examination of the person by a health care provider in such hospital within twenty-four (24) hours of the entry of the order of the court.

(2) *Transmission.*

(A) A temporary protective placement custody order may be issued electronically to the prosecuting attorney, the peace officer or medical staff member who initiated the detention, or the hospital charged with facilitating or conducting the examination.

(B) If the prosecuting attorney seeks a temporary protective placement custody order after office hours, during the weekend, or on a holiday pursuant to paragraph (b)(3) of this rule, the court may issue the order based on information communicated by telephone or other reliable electronic means. When the court's findings are based on a sworn oral statement, the statement must be recorded and is considered part of the record. All sworn oral statements given in support of an application for a temporary protective placement custody order must be given on oath or affirmation and must identify the speaker. The judge may then verbally authorize the prosecuting attorney to sign the judge's name, which verbal authorization must be recorded.

(3) *After Hours, Weekends, and Holidays.* If the prosecuting attorney seeks a temporary protective placement custody order after office hours, during the weekend, or on a holiday, the prosecuting attorney will contact the on-call judge and present the evidence supporting the claim. If the judge issues a temporary protective placement custody order, the prosecuting attorney will serve it on the peace officer or medical staff member who initiated the detention and on the hospital charged with facilitating or conducting the examination. On the next judicial day, the prosecuting attorney will file the evidence supporting the claim and temporary protective placement custody order. The clerk will accept the evidence supporting the claim and previously signed temporary protective placement custody order and will affix a date stamp that reflects the original issuance of the order. If the previously signed temporary protective placement custody order was signed by the prosecuting attorney on behalf of the judge upon verbal authorization pursuant to paragraph (b)(2)(B) of this rule, the sworn oral statement as recorded must also be filed with the court and the order must be returned to the judge who authorized the signing of his or her name on it. The judge must then endorse his or her name on the

previously signed order. Any failure of the judge to make such an endorsement does not in itself invalidate the order.

(c) **Examination and Report.** If the court issues a temporary protective placement custody order requiring the person to be held in a hospital and requiring an examination of the person by a health care provider in such hospital, the health care provider shall make findings and report those findings to the prosecuting attorney within twenty-four (24) hours of the examination. Upon receipt of the findings and report, the prosecuting attorney shall file such findings with the court, as soon as reasonably practicable but in no event no later than 24 hours following receipt.

(d) **Electronic Signatures.** An electronic signature may be used on any document that is required or permitted under this rule and that is transmitted electronically, including a temporary protective placement custody order requiring the person to be held in a hospital and requiring an examination of the person by a health care provider, a written certification or declaration under penalty of perjury, an affidavit, or a notary's seal, in accordance with Rule 9 of the Idaho Rules for Electronic Filing and Service.

IT IS ORDERED that the Idaho Court Administrative Rules, Rules of Civil Procedure, and the Idaho Rules for Electronic Filing and Service, are AMENDED as follows:

Idaho Court Administrative Rule 32. Records of the judicial department--Examination and copying--Exemption from and limitations on disclosure

(g) **Court records exempt from disclosure.** Except as provided in paragraph (h) of this rule, court records specified below are exempt from disclosure. Any willful or intentional disclosure or accessing of a sealed or exempt court record, not otherwise authorized under this rule, may be treated as a contempt of court.

(10) All records of proceedings relating to hospitalizations pursuant to Idaho Code sections, 66-326, 66-329, 66-406, 16-2413, ~~and 16-2414, 56-2104 and 56-2105.~~ Provided, the court may disclose these records when consented to by the person identified or his or her legal guardian, or the parent if the individual is a minor. The court in its discretion may make such records available to the spouse, or the immediate family of the person who is the subject of the proceedings;

Idaho Rules of Civil Procedure Rule 1. Scope of Rules; District Court Rules.

(b) Scope of Rules. These rules govern the procedure and apply uniformly in the district courts and the magistrate's divisions of the district courts in the State of Idaho in all actions, proceedings and appeals of a civil nature; except that proceedings in the small claims department are governed by these rules only as provided by ~~the~~ Idaho Small Claims Rules; proceedings regarding the hospitalization of the mentally ill pursuant to Idaho Code section 66-326(1), and Idaho Code section 16-2413 are governed by the Idaho Court Administrative Rules (ICAR); proceedings regarding the treatment of persons with neurocognitive disorders pursuant to Idaho Code section 56-2104, are governed by the Idaho Court Administrative Rules (ICAR); and family law proceedings as identified in Rule 101, Idaho Rules of Family Law Procedure (IRFLP) are governed by the IRFLP. All references in these rules to the court or district court include the magistrate's division, and all references to judges or clerks include magistrates and their clerks and a judge pro tempore appointed pursuant to Idaho Court Administrative Rule 4. These rules should be construed and administered to secure the just, speedy and inexpensive determination of every action and proceeding.

Idaho Rules for Electronic Filing and Service

Rule 5: Exceptions to Electronic Filing of Documents

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

(l) Persons with Neurocognitive Disorders, Protective Custody Without a Hearing. A document delivered pursuant to Idaho Court Administrative Rule 101 after office hours, during the weekend, or on a holiday, will be filed in accordance with the procedure set out in Idaho Court Administrative Rule 101.

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

Rule 9: Electronic Signatures

(b) Judge's signature. All electronically filed documents signed by the court must be scanned or otherwise electronically produced so the judge's original signature or a digital image of the

judge's signature is shown; provided, however, a temporary custody order issued after office hours, during the weekend, or on a holiday pursuant to Idaho Court Administrative Rule 100 (b)(3) or Idaho Court Administrative Rule 101(b)(3) may alternatively be signed with any reliable type of electronic or digital signature that has built-in protective features, including embedded information, qualification, identity verification, or cryptographic security.

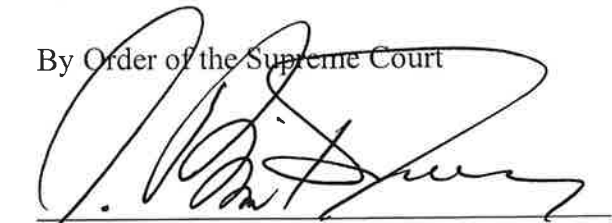
IT IS FURTHER ORDERED that this order and these amendments shall be effective October 1, 2024.

IT IS FURTHER ORDERED that the above designation of the striking of words from the Rules by lining through them, and the designation of the addition of new portions of the Rules by underlining such new portion is for the purposes of information only as amended, and NO OTHER AMENDMENTS ARE INTENDED. The lining through and underlining shall not be considered a part of the permanent Idaho Court Administrative Rules, Idaho Rules of Civil Procedure, and Idaho Rules for Electronic Filing and Service.

IT IS FURTHER ORDERED, that notice of this Order shall be published for three consecutive weeks on the Idaho State Bar's website and in its weekly E-Bulletin, and that as soon as practicable, a summary of the amendment(s) effected by this Order shall be published in one issue of *The Advocate*.

DATED this 20th day of September, 2024.

By Order of the Supreme Court



G. Richard Bevan
Chief Justice, Idaho Supreme Court

ATTEST:



Melanie Gagnepain, Clerk

I, Melanie Gagnepain, Clerk of the Supreme Court/
Court of Appeals of the State of Idaho, do hereby
Certify that the above is a true and correct copy of the
Admin Rule 101 Amend entered in the above entitled
cause and now on record in my office. WITNESS my
hand and the Seal of this Court September 30, 2024
Melanie Gagnepain, Clerk

By Corby Clark Deputy