

**Proposed Amendments to the Idaho Juvenile Rules and the Idaho Rules for  
Electronic Filing and Service (I.R.E.F.S.)**

**September 2024**

The Idaho Supreme Court’s Child Protection Committee is seeking input on proposed revisions to the Idaho Juvenile Rules and the Idaho Rules for Electronic Filing and Service. Please send your comments to **Deena Layne** at [dlayne@idcourts.net](mailto:dlayne@idcourts.net) by **Tuesday, September 17**. Thank you.

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**Proposed Amendments to I.J.R. 33:** Replace current Summons form provided in rule with an amended and updated form. Include a new form to be used as an attachment when an Order of Removal is entered.

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

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

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

(b) Form of Child Protective Act Summons and Order of Removal. The Summons and Order of Removal in Child Protective Act cases shall substantially conform to the following format:

[Click here \[1\] for forms.](#)

FORMS

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

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

(address)

\_\_\_\_\_

(city & state)

\_\_\_\_\_

YOU ARE HEREBY NOTIFIED THAT:

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

A copy of the Petition is attached hereto.

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

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

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

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

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

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

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

-DATED \_\_\_\_\_

-  
CLERK OF THE DISTRICT COURT  
-

by \_\_\_\_\_  
Deputy Clerk  
\_\_\_\_\_  
(Title)  
-

-  
STATE OF IDAHO \_\_\_\_\_ )  
\_\_\_\_\_ ) ss.  
COUNTY OF \_\_\_\_\_ )  
-

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

-DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

-  
by \_\_\_\_\_  
(Deputy Marshal/Deputy Sheriff)

IN THE DISTRICT COURT OF THE <\_DISTRICTNAME\_> JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF <\_COUNTYNAME\_>

In the Matter of:

<\_NameParam17\_>

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

<\_PartyConnType26\_>

Case No. <\_CaseNum\_>

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

Order for Removal

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

YOU ARE HEREBY NOTIFIED THAT:

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

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

[If not seeking Order of Removal/or if children are already removed] You, as the parent, legal guardian, or custodian of the child(ren) are directed to appear personally before the Court for a Shelter Care Hearing at following time and location:

<\_CountyName\_> County Courthouse  
<\_FormTokenSigText\_>, <\_FormTokenSigText\_>

<u>Hearing</u>	<u>Date</u>	<u>Time</u>	<u>Location</u>
<_HearType_>	<_HearDate_>	<_HearS Time_>	<_HearingLocation_>

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

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

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



**ORDER FOR REMOVAL**

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

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

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

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

Dated: \_\_\_\_\_

Magistrate Judge

**Proposed Amendments to I.J.R. 34:** Amended to provide a procedure for a prosecuting attorney or deputy attorney general to seek, and for a court to issue, an order of removal after court office hours, on weekends, or on a holiday. Replaces current Order of Removal form provided in rule with an amended and updated form.

### **I.J.R. 34. Order of Removal of Child Upon Issuance of the Summons (C.P.A.).**

Idaho Juvenile Rule 34. Order of Removal of Child Upon Issuance of the Summons (C.P.A.).

(a) Order. The court may order the removal of the child/ren from the home, in accordance with I.C. § 16-1611(4), at the time the Summons is issued, or upon separate motion. Except as provided in subsection (c) of this rule, A request for an Order of Removal must be made in writing, either in the petition or by separate motion of the petitioner. Determination shall be made on facts presented to the court ex parte, either by testimony or affidavit.

(b) First Order Sanctioning Removal. If the Order of Removal of Child is the first court order sanctioning removal of the child/ren from the home, the court shall make written, case-specific findings that remaining in the home is contrary to the child/ren's welfare and that vesting legal custody with the Department of Health and Welfare or other authorized agency is in the best interest of the child/ren.

(c) After Hours, Weekends, and Holidays. If a prosecuting attorney or deputy attorney general seeks an order of removal of the child/ren from the home, after office hours, during the weekend, or on a holiday, the magistrate may issue the order and summons based on information communicated in person, by telephone or other reliable electronic means. When the magistrate's findings are based on a sworn oral statement, the statement must be recorded, filed with the clerk of the court, and is considered part of the record, these statements need not be filed prior to the issuance of the order. All sworn oral statements given in support of an order for removal must be given on oath or affirmation and must identify the speaker. If the magistrate is unable to provide an electronic signature in accordance with IREFS 9 the magistrate may verbally authorize the prosecuting attorney or deputy attorney general to sign on behalf of the magistrate, which verbal authorization must be recorded.

(d) Electronic Signatures. An electronic signature may be used on any document that is required or permitted under this rule and that is transmitted electronically, including an order of removal, a written certification or declaration under penalty of perjury, an affidavit, or a notary's seal, in accordance with Idaho Rules for Electronic Filing and Service 9.

(ed) Form of Order of Removal to accompany the Summons. The Order of Removal accompanying the summons shall substantially conform to the following format:

**ORDER OF REMOVAL**

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

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

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

~~on \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_.m.~~

~~-~~

~~DATED: \_\_\_\_\_~~

~~—~~

~~\_\_\_\_\_~~

~~JUDGE~~

*Updated Form- Replaces current form in IJR 34*

**ORDER FOR REMOVAL**

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

\_\_\_\_\_  
\_\_\_\_\_

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

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

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

Dated: \_\_\_\_\_

Magistrate Judge

Committee Comments. As to subsection (c), federal law requires the court to make a written, case-specific finding that remaining in the home is contrary to the child's welfare. See 45 CFR § 1356.21(c). Idaho Code § 16-1611(4) requires the court to find that remaining in the home is contrary to the child's welfare and that vesting legal custody in IDHW is in the child's best interests. The policy of the rule is to require written case specific findings on both best interest and contrary to the welfare. Failure to timely make the federal finding will result in loss of federal funding for an otherwise eligible child. If the case-specific finding is not made, or not made at the required time, the error cannot be corrected at a later date to restore funding. The funding cannot be a simple recitation of the language of the statute; however, if the case-specific information upon which the finding is based is set forth in a document in the court record (such as an affidavit), the finding can incorporate the document by reference without reiterating the facts set forth in the document.

**Proposed Amendments to I.R.E.F.S. 5:** Amended to provide a procedure under I.J.R. 34, for a prosecuting attorney or deputy attorney general to seek, and for a court to issue, an order of removal after court office hours, on weekends, or on a holiday.

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

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

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

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

**(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.

**Proposed Amendments to I.R.E.F.S. 5:** Amended to provide a procedure under I.J.R. 34, for a prosecuting attorney or deputy attorney general to seek, and for a court to issue, an order of removal after court office hours, on weekends, or on a holiday.

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

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

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

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