

Highlights of Rule Amendments For 2019

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The following is a list of rule amendments for 2019. The orders amending these rules can be found on the Idaho Supreme Court website at <http://www.isc.idaho.gov/recent-amendments>. Be sure to check the Idaho State Bar e-bulletin for your chance to comment on proposed amendments before adoption. All amendments and new rules are effective July 1, 2019, unless otherwise indicated.

Idaho Appellate Rules. The Idaho Appellate Rules Advisory Committee is chaired by Chief Justice Roger Burdick.

Effective January 24, 2019, a number of appellate rules were updated to delete requirements for more than one copy of motions, briefs, and original petitions, as well as binding of briefs, when these are submitted in paper format by filers who are not required to file electronically. The paper copy is scanned into the Odyssey system.

Rules 24 and 27 were also amended to reflect that, even when the appellant is paper filing the appeal, the transcript and record will be in electronic format for the Supreme Court. The parties may still request a hard copy, electronic copy or both.

Idaho Criminal Rules. The Idaho Criminal Rules Advisory Committee is chaired by Justice Richard Bevan.

Rule 32. Presentence Investigations and Reports. The rule currently provides that the PSI is 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. A few years ago the IDOC and the Idaho Commission of Pardons and Parole separated, which has resulted in limited access by the Commission to the PSI when considering persons eligible for parole. The rule was amended to make the PSI available to the Commission.

Rule 33. Sentence and Judgment. The rule has been amended to clarify that, when giving credit for time served, any portion of a calendar day spent in custody must be credited as a day served.

Rule 35. Correcting or Reducing a Sentence. The reference to “a sentence imposed in an illegal manner”, which was inadvertently omitted when the rules were updated in 2017, was added back to the rule.

Rule 37. Reimbursement pursuant to I.C. § 37-2732(k); prosecuting attorney fees. This is a new rule that addresses what information must be submitted by the prosecutor in support of the request for fees as cost incurred that are reimbursable pursuant to the statute.

Rule 48. Dismissal by the Court. Generally an order for dismissal is a bar to any other prosecution for the same offense if it is a misdemeanor. In accord with recent legislation, the rule has been amended to provide an exception when the dismissal is due to the defendant's agreement to participate in a diversion program pursuant to I.C. § 19-3509, in which case the action may be refiled for failure to complete the diversion program.

In addition, the Supreme Court has adopted several mandatory forms that are now referenced in the court rules and found in Appendix A to the rules. These are the arrest warrant (both felony and misdemeanor), summons (both felony and misdemeanor), notification of rights (felony), waiver of preliminary hearing, and notification of rights (probation violation). A guilty plea advisory form is already in the appendix to the criminal rules but the form has been updated. While the use of a plea advisory form is not mandated, if a form is used by the court, the rule now states that it must be the Supreme Court plea advisory form found in the appendix.

Idaho Rules for Electronic Filing and Service. Now that all counties are on Odyssey the Rule on Electronic Filing and Service has become a more manageable set of rules, the "Idaho Rules for Electronic Filing and Service." There is some slight re-organization along with a few substantive additions and amendments, which are outlined below.

Rule 1. Applicability of These Rules. This new rule addresses the applicability of the rules and is similar to language that was contained in the order adopting the Electronic Filing and Service Rule.

Rule 3. Official Court Record. This new rule clarifies that the electronic record is the official court record, which includes documents that have been submitted in paper format and then scanned in by the court.

Rule 5. Exceptions to Electronic Filing of Documents. The rule allows for conventional filing of certain documents and has a new subsection on exceptions for filings by law enforcement.

Rule 8. Party Information. There is a new requirement that the filer must identify the filing party's attorney of record if represented by an attorney.

Rule 12. Time of Filing. The amendment clarifies that, for purposes of filing by electronic transmission, a "day" begins at 12:01 a.m. and ends at midnight in the time zone where the court is located on the day the document must be filed.

Rule 15. Privacy Protections for Filings Made with the Court. This rule on redaction of personal data identifiers has been revised. Previously the subsection on exceptions to the redaction requirement stated the redaction requirement did not apply to documents that are required by statute or rule to include personal data identifiers. That statement has been removed because it is exactly when these identifiers are needed that privacy protections and redaction come into play.

The rule now reads that personal data identifiers should not be included in any document filed with the court unless such inclusion is required by the court, by statute or court rule, or is

material to the proceedings. If they are necessary they must be redacted and the filer must then comply with the subsection on options when personal identifiers are necessary. The options subsection still begins with the phrase: “A party filing a redacted document need not also file an unredacted version of the document,” and an example of this might be a document that references a minor by initials but no reference list or unredacted version is needed by the court. It then states that, where inclusion of the unredacted personal data identifiers is required by the court, by statute or court rule, or is material to the proceedings in a document that is open to the public, the party must choose the most appropriate of two options, which are the same options that currently appear in the I.R.C.P. 2.6 and I.R.F.L.P. 218 and were in the previous electronic filing rule. Option one is to file a reference list identifying the redacted information. The reference list is exempt from public disclosure. Option two is to file an unredacted copy with the redacted copy. The unredacted copy is exempt from public disclosure.

Thus, it is up to the filer to decide the best way to get the needed unredacted information to the court and the parties. This will likely depend upon the type of document filed. In most instances a reference list is the easiest and most appropriate. A minor’s full name or a financial account number or a birth date can be redacted and a reference list filed with the court setting forth the minor’s full name or the full account number or the full date of birth. However, in other circumstances, the appropriate option may be to file a redacted and an unredacted copy of the document. Regardless of which option is selected, the filer must file the exempt from public disclosure document as a separate pdf. as required by what is now Rule 6. In addition, the section on sanctions for knowingly violating this rule on privacy protections has been expanded.

Rule 16. Privacy protection in Orders, Judgments, and Decrees. Like the parties, the court must refrain from including personal data identifiers if possible. This does not apply to documents that are exempt from public disclosure under I.C.A.R. 32. However, there are times that unredacted personal identifiers are needed in a document that is public. The rule clarifies that when the unredacted personal data identifiers are required by statute or court rule, or are material to the proceedings and must be included in an order, judgment, or decree that is open to the public, then the unredacted document will be *protected* from public access. This is not the same as the document being exempt from public disclosure under I.C.A.R. 32, because Rule 16 also states that a redacted copy must be prepared and available to the public upon request.

Rule 20. Appeals to the Supreme Court. The references to sections of the appellate rules that do not apply when electronically filing in the Supreme Court were deleted based on the amendments to the Idaho Appellate Rules.

Idaho Rules of Civil Procedure. The Civil Rules Advisory Committee is chaired by Justice Robyn Brody.

Rule 4. Summons. Subsection 4(b)(2), time limit for service, governs the time in which a plaintiff must serve a summons after filing a complaint. The reference to six months has been replaced with 182 days so that the timing is more exact. It also follows the practice of using seven day increments to track time.

Rule 2.6. Privacy Protections for Filings Made with the Court. The current rule was repealed and a new rule adopted that reads the same as Idaho Rule of Electronic Filing and Service 15 so that those persons who are not required to electronically file documents have the same responsibility to redact the same identifiers.

Idaho Rules of Family Law Procedure. The Children and Families in the Courts Committee is chaired by Judge Diane Walker. The Child Support Guidelines Advisory Committee is chaired by Judge Todd Garbett.

Several rules were amended to conform dates to seven day increments in accord with the Idaho Civil Rules of Procedure. These include Rule 112, on appearance and withdrawal of counsel, Rule 211 on intervention, Rule 502 on Defenses and Objections, Rule 505 on summary judgments, and Rule 704 on final pre-trial procedure.

Rule 120. Dismissal of Inactive Cases. The amended rule is similar to I.R.C.P. 41(e) in that it reduces the time frame for dismissal of inactive cases to 90 days instead of six months and provides the case “may” be dismissed for inactivity instead of “shall” be dismissed. In addition, the amendment deletes the reference to the summons not being served so that it is clear that a Rule 120 dismissal is for no action in the case after service has taken place. Notice is always given before a dismissal pursuant to this rule and the parties have a chance to respond and let the court know the status of the case.

Rule 126. Child Support Guidelines. Several amendments were made to this rule. First the language in Section (J)(4) was amended from a maximum combined Guidelines income of \$300,000 to \$440,000. The language in Section (L) on “expression of child support” was also amended to change “Order” to “Judgment” and to require that the judgment state the due date for support. In addition, citations have been corrected in the form “Affidavit Verifying Income”.

Rule 201. Commencement of Action. Subsection D of the rule has been amended to include a petition for legal separation and to provide provisions for seeking judgment on “unpaid child support or spousal maintenance or any other payments ordered”, as well as reimbursement of other expenses ordered to be paid by the parties. If the petition to obtain a money judgement is initiated in an action currently pending, the Petition for Money Judgment may now be served as provided in Rule 205.C., unless the court orders personal service. There is also a provision to allow for an expedited case as directed by the court.

Rule 204. Service on Opposing Party or Additional Parties of Initial Pleadings. Subsection B governs the time limit for service of the summons for initial pleadings. Like I.R.C.P. 4, the reference to six months has been replaced with 182 days so that the timing is more exact and so that it follows the practice of using seven day increments to track time.

Rule 212. Signing of Pleadings, Motions, and Other Papers. The amendment mandates that a written certification or declaration be submitted electronically.

Rule 218. Privacy Protection for Filings Made with the Court. The current rule was repealed and a new rule adopted that reads the same as Idaho Rule of Electronic Filing and Service 15 so that those persons who are not required to electronically file documents have the same responsibility to redact the same identifiers.

Rule 711. Subpoenas. The rule has been amended to conform to Idaho Rule of Civil Procedure 45 for interstate subpoenas, dispositions and discovery.

Rule 719. Parenting Time Evaluation. The section on Qualification of Evaluator has been amended to require a minimum of a master's degree and the evaluator must possess the same or similar qualifications, expertise and trainings as outlined in the Association of Family and Conciliation Courts Model Standards of Practice for Child Custody Evaluations.

Idaho Juvenile Rules. The Juvenile Justice Advisory Committee is chaired by Judge Mark Ingram.

Rule 10. Change of Venue. A new rule 10 has been adopted that will replace the former Rule 10, 10A and 10B to simplify the process for change of venue in juvenile cases.

Rule 17A. Correction or Modification of Juvenile Sentence (J.C.A.). This new rule extends jurisdiction for the court to correct an illegal sentence, to modify terms and conditions of probation or informal adjustment based on a change of circumstances, and to correct a court's computation of credit for time served.

Rule 19. Standards and Procedures for Commitment to the Department of Juvenile Corrections (J.C.A.) Rule 19 now requires that parents, custodians, or guardians be included in the screening team process.

Idaho Misdemeanor Criminal Rules. The Misdemeanor/Infraction Rules Advisory Committee is chaired by Judge Michael Oths.

Rule 5. Uniform citation. The language on the citation itself was updated to reflect 2018 legislation providing that a driver's license may not be suspended for failure to pay an infraction penalty. Other updates include language clarifying that when a person is found guilty of the infraction for failure to have insurance the Idaho Transportation Department will send the person a notice that that the driver's license is suspended until proof of insurance is provided to the ITD and a reinstatement fee paid. Citations were to be amended with the new language no later than March 1, 2019.

Rule 6. First Appearance of Defendant. The rule now requires that the defendant sign and submit a form entitled "Notification of Rights-Misdemeanor", which can be found in the rule.

Idaho Court Administrative Rules.

Rule 32. Records of the Judicial Department. With electronic filing the goal is to one day have public documents available online. With this in mind, the pretrial risk assessment and the

Uniform Citation have been added to the list of documents exempt from public disclosure due to the amount of personal identifying information. Please note that a member of the public who goes on the Portal will still be able to see that John Doe got a uniform citation, when it was issued, the offense cited and the disposition. Citation information is automatically sent to the Idaho Transportation Department so the ITD has a full record of a driving offense.

In addition, (g)(18), which provides that a reference list of personal data identifiers or an unredacted copy of a document filed pursuant to Idaho Rule of Electronic Filing and Service 15, Idaho Rule of Civil Procedure 2.6 or Idaho Rule of Family Law Procedure 218 is exempt from disclosure, now contains the additional language found in each of those rules that courts will share the reference list or unredacted copy with other government agencies as required or allowed by law without court order or application for purposes of the business of those agencies. A definition of redaction was also added to the rule.

Rule 66. Reimbursement for Lengthy Trial Juror Compensation. This new rule provides that any county seeking to obtain reimbursement for lengthy trial juror compensation pursuant to I.C. § 2-222 must submit a written application to the Administrative Director of the Courts. Any application for reimbursement must be received on or between September 30 and November 30 and be in substantially the new form set out in Appendix A to the rules. The rule also sets out what information must be provided, and was effective on March 7, 2019.