

In the Supreme Court of the State of Idaho

IN RE: AMENDMENT OF)
MISDEMEANOR CRIMINAL) ORDER
RULES 8(a), 8(b), 9.1, 9.2, 9.3 and 13(b))
_____)

The Court having reviewed a recommendation to amend the Misdemeanor Criminal Rules, and the Court having fully considered the same;

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

1. That Misdemeanor Criminal Rule 8(a) be, and the same is hereby, amended as follows:

Rule 8. Deferred payment agreement -- Form.

(a) **Deferred Payment Agreement.** After the entry of a judgment for a misdemeanor, the court, or the clerk within the guidelines set by the court, may enter into an agreement with the defendant for the deferred payment of the fine, ~~and~~ court costs, and any other court ordered payment. Such agreement shall be signed by the defendant and the court, or the clerk on behalf of the court, and shall state that failure of the defendant to make the payments when agreed may result in the issuance of a warrant for the arrest of the defendant. Subsequent extensions of time to pay a fixed penalty may be granted by the execution of a new agreement by the defendant and the court or the clerk. The deferred payment agreement does not affect the ability of a victim to collect restitution as provided in Idaho Code § 19-5305(1).

2. That Misdemeanor Criminal Rule 8(b) be, and the same is hereby, RESCINDED and a NEW Rule 8(b) adopted as follows:

Rule 8. Deferred payment agreement -- Form.

(b) **Form of Agreement.** A deferred payment agreement under this rule shall be in substantially the following form:

RECEIPT

I acknowledge receipt of this Agreement and state that I have read and agree to the terms of this Agreement and acknowledge that A WARRANT MAY BE ISSUED FOR MY ARREST IF I FAIL TO MAKE THE PAYMENT AS AGREED.

Defendant _____ Dated _____

- 3. That Section (b) of Misdemeanor Criminal Rule 9.1 be, and the same is hereby, amended as follows; and that the FORMS found in Sections (b), (c) and (e) be, and the same are hereby RESCINDED and NEW FORMS are hereby adopted as follows:

Rule 9.1. Suspension of Driver's License Upon Conviction of Offense Authorizing or Requiring Suspension of License - Suspension Upon Plea or Finding of Guilty of Offense - Notice of Increased Penalty on Subsequent Violations - Temporary Restricted License.

(a) **Suspension of Driving Privileges.** The court shall include in a judgment of conviction and sentence the suspension of driving privileges and driver's license which is part of the sentence under a statute of the state. If the statute authorizes or requires the court to suspend driving privileges and driver's license by reason of a plea of guilty or finding of guilty of an offense, the court shall adjudicate the period of suspension in an order of suspension.

(b) **Order of Suspension.** Whenever the court suspends driving privileges and driver's license by reason of a plea of guilty or a finding of guilty to an offense, the court shall suspend the driving privileges by an order. A copy of the order shall be transmitted to and cause copies to be filed with the Department of Transportation and a copy served on the defendant by personal delivery or by mailing to the address indicated on the driver's license or other address furnished by the defendant. The suspension order shall be in substantially the following form:

[Court Heading]

IN THE MATTER OF

) Case No. _____

) Citation No. _____

)

DRIVER'S LICENSE OF

)

) ORDER SUSPENDING

) DRIVING PRIVILEGES

_____,

)

Defendant.

DOB: _____)
DL OR SSN: _____ (State) _____)
ADDRESS: _____)

TO THE DEPARTMENT OF TRANSPORTATION, STATE OF IDAHO AND THE ABOVE NAMED DEFENDANT.

The defendant [] entered a plea of guilty [] has been found guilty of the offense of _____ in violation of Section _____, Idaho Code, which authorizes or requires the suspension of the driving privileges of the defendant by the Court.

IT IS ORDERED that the driving privileges of the above named defendant are suspended for a period of _____ [] days _____ [] years

Commencing on _____. This suspension is to commence on the date of the defendant's release from incarceration.

This suspension is consecutive to any other driving privilege suspension.

This is an absolute suspension and no restricted driving privileges are allowed. However, if the defendant is accepted into a problem solving court the defendant may be eligible for restricted noncommercial driving privileges after 45 days. § I.C. 18-8005 (7).

The first ____ days of this suspension is absolute; thereafter the defendant may apply for restricted driving privileges if eligible.

If eligible the defendant may apply for restricted driving privileges after _____ [] years [] days.

The defendant shall not operate any vehicle that does not have a state approved functioning ignition interlock system. This requirement begins on _____ and expires on _____ or [] [date when probation expires] § I.C. 18-8008 (2).

YOU ARE FURTHER NOTIFIED that the expiration of the period of this suspension does not reinstate your driver's license. To reinstate your driver's license in the State of Idaho, you will need to pay a reinstatement fee to the Idaho Transportation Department. Payment may be mailed to the Idaho

Transportation Department, Driver Services Section, P.O. Box 34, Boise ID 83731-0034 or paid online via on-line services at dmv.idaho.gov. To reinstate your driver's license in another state, you must provide a copy of this notice to your home state as proof of payment and notice of compliance. Contact the Idaho Transportation Department at (208) 334-8736 for any additional reinstatement requirements.

Date _____
Judge _____

STATE OF IDAHO)
)
COUNTY OF _____)

The undersigned Clerk of the above entitled court certifies that this is a true and correct copy of the original order suspending driving privileges entered by the court and on file in this office.

[] Personally delivered to the defendant this date.

[] Mailed to the defendant this date.

Transmitted electronically to the Idaho Department of Transportation.

Dated _____
Clerk or Deputy _____

(c) Notification of penalties for subsequent violations. After plea or finding of guilty on an offense in violation of Section 18-8004, Idaho Code, the court shall at or before the time of sentencing or granting a withheld judgment deliver to the defendant a written notice advising the defendant as to the penalties that may be imposed for subsequent violations of that statute. The notice shall be signed by the defendant and retained by the court, a copy shall be mailed to the prosecuting attorney and a copy shall be delivered to the defendant which shall be in substantially the following form:

[Court Heading]

STATE OF IDAHO) Case No. _____
)
Plaintiff,) NOTIFICATION OF PENALTIES
) FOR SUBSEQUENT VIOLATION
v.)
_____,)
Defendant.)

TO: ABOVE NAMED DEFENDANT.

YOU ARE HEREBY NOTIFIED that if you plead guilty to or are found guilty of another violation of Driving under the Influence the penalties will be as follows:

1. A SECOND DUI VIOLATION within 10 years, including withheld judgments, is a misdemeanor and you:

- (a) Shall be sentenced to jail for at least 10 days, and up to 1 year, the first 48 hours of which must be consecutive and 5 days of which must be served in jail;
- (b) May be fined up to \$2,000.00;
- (c) Shall have your driving privileges suspended for a minimum of 1 year during which absolutely no driving privileges of any kind may be granted; and
- (d) Following the 1 year mandatory license suspension period, shall only drive a motor vehicle equipped with a functioning ignition interlock system for a minimum of 1 year.

2. A SECOND DUI VIOLATION within 5 years where in both cases there was an alcohol concentration of .20 or more IS A FELONY, and you:

- (a) Shall be sentenced to the custody of State Board of Corrections for up to 5 years, but if the court imposes a jail sentence instead of the state penitentiary it shall be for a minimum period of not less than 30 days; and
- (b) May be fined up to \$5,000.00;
- (c) Shall have your driving privileges suspended for at least 1 year and not more than 5 years after release from imprisonment, during which absolutely no driving privileges of any kind may be granted; and
- (d) Following the 1 year mandatory license suspension period, shall only drive a motor vehicle equipped with a functioning ignition interlock system for a minimum of 1 year.

3. A THIRD DUI VIOLATION within 10 years, OR a SUBSEQUENT DUI with a previous felony DUI or aggravated DUI within 15 years IS A FELONY, and you:

- (a) Shall be sentenced to the custody of State Board of Corrections for up to 10 years, but if the court imposes a jail sentence instead of the state penitentiary it shall be for a minimum period of not less than 30 days the first 48 hours of which must be consecutive and 10 days of which must be served in jail; and

The Defendant has applied to the court for a Temporary Restricted License, and the Court has determined that a Temporary Restricted License is appropriate and should be issued.

IT IS ORDERED that Defendant is granted a Temporary Restricted License to drive a motor vehicle for the balance of the suspension, commencing on the date of this order under the following restrictions and conditions:

Defendant shall carry current proof of liability insurance on any vehicle Defendant is driving.

While driving, Defendant shall have proof that Defendant is driving within the scope of the temporary restricted license.

If defendant has obtained a temporary restricted license in any other matter for which Defendant has been suspended; the most restrictive conditions apply.

- Defendant shall only drive a motor vehicle equipped with a functioning ignition interlock system
- Defendant shall not operate any motor vehicle after consuming ANY quantity of alcohol beverages or while being under the influence of any mood altering substances

Defendant may drive:

- directly to, during and from employment for employment purposes only at: _____ . Defendant must carry work schedule while driving.
- directly to and from school if enrolled in school. Defendant must carry school schedule while driving.
- for medical purposes.
- to and from court proceedings.
- to and from public service assignments.
- to and from Alcohol Treatment Facilities and/or Victims Panel.
- to and from any jail facility to serve any jail sentence imposed.
- to and from meetings with defendant's probation officer.
- to and from court ordered counseling or counseling scheduled by the probation officer.

Other: _____

Driving in violation of the restrictions and conditions on this temporary restricted license may be a violation of Idaho Code 18-8001, Driving Without Privileges.

Dated: _____
Judge

STATE OF IDAHO)
)
COUNTY OF [COUNTY])

The undersigned Clerk of the above-entitled court certifies that this is a true and correct copy of the Temporary Restricted Driving License entered by the court and on file in this office.

Dated: _____

Clerk of the Court

By: _____
Deputy Clerk

- 4. That Section (a) of Misdemeanor Criminal Rule 9.2 be, and the same is hereby, RESCINDED and that a NEW Section (a) is here by ADOPTED as follows; and that Sections (b) and (c) be, and the same are hereby, amended as follows; and that the FORM found in Section (d) be, and the same is hereby, RESCINDED and a NEW FORM adopted as follows:

Rule 9.2. Suspension of Driver's License for Failure to Take Evidentiary Test.

(a) **Sworn Statement of Officer.** The affidavit of refusal to take an evidentiary test must be submitted in substantially the following form:

[Court Heading]

IN THE MATTER OF) Case No. _____
) Citation No. _____
)
SUSPENSION OF THE) AFFIDAVIT OF REFUSAL TO TAKE
) EVIDENTIARY TEST
DRIVER'S LICENSE OF) I.C. 18-8002
) M.C.R. 9.2
)
_____,)
Defendant.)
DOB: _____)

DL OR SSN: _____ (State) _____)
ADDRESS: _____)

My name is: _____. I am an authorized peace officer, and on the _____ day of _____, 20____ at _____ o'clock _____.M., I had reasonable grounds to believe that _____, (hereinafter "defendant") had been driving or in actual physical control of a motor vehicle while under the influence of alcohol, drugs or other intoxicating substance.

I asked defendant to take an evidentiary test, informing him of the consequences of refusal as stated in Section 18-8002(3), Idaho Code. Defendant refused the test, as follows:

I certify (or declare) under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

Date

Signature

Typed/Printed Name

(b) **Suspension by Court.** After being presented with a sworn statement of an officer under this rule, if the person ~~whose license was seized~~ who refused evidentiary testing does not request a hearing within 7 days from the date of the refusal ~~the date of seizure of his license~~, as allowed by Section 18-8002, Idaho Code, the judge shall ~~thereupon~~ enter an order suspending the driver's license of the defendant for one year for a first refusal and two years for a second refusal within ten years ~~180 days~~ pursuant to Section 18-8002, Idaho Code, without further notice to the party. The order suspending driving privileges and driver's license shall be effective upon execution and shall apply to all driving privileges of the person, including those granted by any temporary license or permit issued by a police officer. The duty of the judge to enter such an order is a ministerial duty in which the judge has no discretion as to whether the order is to be entered.

(c) **Show Cause Hearing.** If a show cause hearing is timely requested by the defendant, the court shall ~~set a notice~~ it for hearing within the time provided by law. The hearing shall be limited to those issues provided by Section 18-8002(4)(b), Idaho Code. If the court enters an order of suspension, a copy shall be ~~it shall cause copies of the suspension order to be transmitted to~~ filed with the Department of Transportation and a copy served upon the defendant by personal delivery or mailing to the address indicated on the driver's license or other address furnished by the defendant. If the court

makes the determination that there is not grounds for suspension of driving privileges and driver's license under this rule, it shall enter an order to that effect. ~~and return the license to the defendant.~~

(d) **Form of Suspension Order.** An order suspending driving privileges under Section 18-8002, Idaho Code shall be in substantially the following form:

[Court Heading]

IN THE MATTER OF THE) Court Case No. _____
SUSPENSION OF THE)
DRIVER'S LICENSE OF) ORDER SUSPENDING DRIVING PRIVILEGES
) UNDER SECTION 18-8002, IDAHO CODE
vs.)
_____)
Defendant.)
DOB _____)
DL OR SS# _____ State _____)
CDL# _____)

TO THE DEPARTMENT OF TRANSPORTATION, STATE OF IDAHO AND THE ABOVE NAMED DEFENDANT.

A sworn statement of the police officer regarding the circumstances under which the defendant refused to submit to an evidentiary test for concentration of alcohol or for the presence of drugs or other intoxicating substances, after being requested to do so under Section 18-8002(3), Idaho Code, was delivered to the court, and

[] The defendant failed to request a hearing within 7 days from the date of the request to submit to evidentiary testing , such that the court determined the driving privileges of the defendant should be suspended under Section 18-8002(4)(c), Idaho Code.

[] A hearing was held at the request of the defendant - [] the defendant failed to appear- and the court determined that the driving privileges of the defendant should be suspended under Section 18-8002(4)(b), Idaho Code.

IT IS ORDERED that the driver's license and driving privileges of the above named defendant, including any driving privileges granted by a temporary license or permit, are hereby suspended for a period of

one year (first refusal) 2 years (second refusal within ten years) commencing on

_____.

AND THE DEFENDANT IS ORDERED to pay a civil penalty in the amount of two hundred fifty dollars (\$250). The defendant is to pay or enter into an agreement to pay this penalty within 30 days. Failure to do so will result in the account being turned over to a collection agency. There will be an additional charge of 33 1/3% if it is turned over to collections.

THE DEFENDANT IS HEREBY NOTIFIED THAT ALL OF YOUR DRIVING PRIVILEGES, INCLUDING ANY DRIVING PRIVILEGES UNDER A TEMPORARY LICENSE OR PERMIT ISSUED BY THE POLICE OFFICER, ARE SUSPENDED.

You do not have the right to obtain any temporary or restricted license or permit of any kind.

YOU ARE FURTHER NOTIFIED that the expiration of the period of this suspension does not reinstate your driver's license. To reinstate your driver's license in the State of Idaho, you will need to pay a reinstatement fee to the Idaho Transportation Department. Payment may be mailed to the Idaho Transportation Department, Driver Services Section, P.O. Box 34, Boise ID 83731-0034 or paid online via on-line services at dmv.idaho.gov. To reinstate your driver's license in another state, you must provide a copy of this notice to your home state as proof of payment and notice of compliance. Contact the Idaho Transportation Department at (208) 334-8736 for any additional reinstatement requirements.

Dated _____

Judge _____

STATE OF IDAHO)
)
COUNTY OF _____)

The undersigned Clerk of the above entitled court certifies that this is a true and correct copy of the original order suspending driver's license entered by the court and on file in this office.

Personally delivered to the defendant this date.

Mailed to the defendant this date.

Transmitted electronically to the Idaho Department of Transportation.

Dated _____
Clerk or Deputy _____

(e) Procedure and Evidence.

4. That Misdemeanor Criminal Rule 9.3 be, and the same is hereby, amended as follows:

Rule 9.3. Seizure of Driver's License Upon Suspension – Suspension of Driver's License - Stay Upon Appeal.

~~(a) Seizure of Driver's License. Upon the suspension of driving privileges and driver's license under these Misdemeanor Criminal Rules, the court shall seize the driver's license from the defendant, if possible, and upon entry of the order of suspension cause the driver's license to be delivered to the Department of Transportation with the order suspending the license. If the driver's license cannot be seized by the court for any reason, a notation to that effect shall be endorsed by the court or the clerk on the order of suspension. The driver's license shall not be automatically reinstated after the period of suspension, but upon the expiration of the period of suspension, the defendant may apply to the Department of Transportation for reinstatement of the license as provided by law.~~

~~(b) Stay on Appeal. In the event the defendant appeals the suspension of a driver's license or appeals a conviction which resulted in the suspension of a driver's license, the court imposing the suspension, or the appellate court, may stay the suspension of the driver's license pending the appeal upon such conditions as the staying court may impose.~~

5. That Misdemeanor Criminal Rule 13 be, and the same is hereby, amended as follows:

Rule 13.

(b) **Bail bond schedule.** Except as provided above, the bail bond required for specific alleged offenses pending arraignment or trial shall be as follows:

(3) SIZE, WEIGHT, AND D.L.E. OFFENSES:

63-2441 <u>63-2455</u>	Special Fuel Permit Violation	382.00
<u>63-2450</u>	Fuels tax violation	382.00

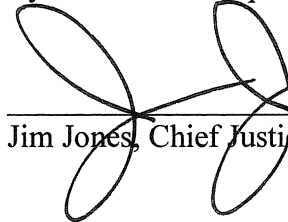
IT IS FURTHER ORDERED, that this order and these amendments shall be effective the first day of July, 2016.

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 Misdemeanor Criminal Rules.

IT IS FURTHER ORDERED, that the Clerk of the Court shall cause notice of this Order to be published in one issue of *The Advocate*.

DATED this 27th day of April, 2016.



By Order of the Supreme Court


Jim Jones, Chief Justice

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.

WITNESS my hand and the Seal of this Court 4.27.16

ATTEST: 
Clerk


Clerk
By: 
Deputy