

Idaho Treatment Court Committee

January 4, 2022
1:30 pm – 3:30 pm (MST) Zoom Virtual Meeting
Minutes

<p><u>Members in Attendance</u> Justice Gregory Moeller, Chair Hon. Rick Carnaroli Hon. Darren Simpson Hon. Debra Orr Hon. Cynthia Meyer Hon. Nancy Baskin Commissioner Brent Reinke Ron Christian Lisa Martin Megan Roumanis Marilyn Miller Richard Neu Jennifer Romero Hon. Gregory Fitzmaurice Hon. David Hooste Dr. Magni Hamso Marreen Burton Kerry Hong Paul Meigio Jared Larsen</p>	<p><u>Members Not in Attendance</u> Hon. Eric Wildman Senator Patti Anne Lodge Scott Bandy Director David Jeppesen, DHW Director Monty Prow, IDJC Director Josh Tewalt, IDOC</p> <p><u>Guests</u> Hon. Scott Wayman</p> <p><u>Staff</u> Administrative Director of the Court, Sara Omundson Jason Spillman, Legal Counsel Scott Ronan Ryan Porter Jason Dye Lynn Proctor Lorrie Byerly Jana Filer</p>
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Meeting Convening and Minutes

The meeting was convened at 1:32 pm by the Chair, Justice Moeller, with a welcome to the special meeting to work on the rules drafted and worked upon by the Treatment Court Rules Workgroup (WG). He introduced Judge Meyer as a new member. Justice Moeller called for a motion on the draft minutes from the September 21, 2021 committee meeting. **Marilyn Miller moved and Commissioner Brent Reinke seconded adoption of the minutes from the September 21, 2021 committee meeting. Motion carried with none opposed.**

Review and Discuss WG Revisions to Treatment Court Rules

At the request of Justice Moeller, Scott outlined the intent of the meeting, including seeking a motion to adopt the treatment court rules, and provided a timeline of where we have been and where we are going moving forward. Should the committee move to approve the rules, Scott indicated the rules would be immediately submitted for public comment with the cataloged comments reviewed by the WG in two weeks and revisions submitted to the committee at the next Treatment Court Committee meeting in February. If the committee approves their adoption, they will be submitted to the Admin Conference and Oral Conference in April. Should the Idaho Supreme Court approve the rules, they will be effective July 1st unless the Court determines an alternative effective date.

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Justice Moeller called upon Judge Simpson, Judge Waymen, and Judge Hooste from the WG to comment on the rules to be reviewed by the Committee during the meeting. Judge Wayman said the rules are a good compromise between uniformity and flexibility, and all the comments made were thoroughly discussed by the WG. Judge Hooste provided an explanation on Rule 5. that addressed treatment courts being open to the public but allowing their closure for good cause. He stated the WG reviewed the Press Enterprise Rule and its 4-factor test and decided the first factor is an experience and logic test and is a springboard to applying the last 3 factors. The first part of the test is whether the places and process have been historically open to the press and general public, and the second test is whether public access plays a significantly positive role in the functioning of the courts. All of the Press Enterprise factors were considered but all four do not need to be expressed because, as a policy decision, the first one meets the criteria and findings on the other three factors are needed for a closed hearing. Judge Simpson informed the committee they took all the comments on the rules, went through them individually, considered and answered them. He acknowledged the valuable input Jason Spillman provided during the rules review.

Scott summarized the comments on the rules from multiple judges, defense attorneys, coordinators and others from within the jurisdiction that ranged from non-substantive but helpful to larger issues such as those in Rule 5. The Wood Court judges were provided an exhaustive rendering of the rules, gave feedback where they thought the rules applied to those courts, did not see any substantive changes. The WG reviewed and discussed comments about Rule 55, the record of treatment court proceedings and *Rogers* terminations, what a coordinator or deputy clerk can or cannot do, feedback on the Administrative Rule 32 WG efforts, and transfers between treatment courts within a county and to a different district.

Rule 2(h)

Scott informed the committee a new definition was added on page 2 of the revisions (rules for review are highlighted in red). There was not a definition of what a neutral discharge would be, so in addition to the language added in the rule, it was included in definitions as well:

Rule 2(h) “Neutral Discharge” means a participant is no longer able to participate in a Treatment Court because of factors outside the participant’s control.

The Committee discussed:

What type of factors are outside a participant’s control, whether the language “outside participant’s control” is too restrictive, factors to consider in making a decision, while allowing judges discretion to make decisions on a case-by-case basis, lack of comfort with the specific language of factors “outside the participant’s control,” and the addition of language “because of factors unknown to the treatment court at the time of acceptance and other circumstances outside the participant’s control” to take into account other scenarios.

The addition of “non-compliance” language, which does not apply to a neutral discharge due to mental health components, thereby excluding people needing protection.

That it cannot read like discharge is anything the court says it is and needs to be tighter. Preservation of neutrality preserves discretion but preserving discretion should not let the exception overcome the rule. After “non-compliance,” language was added “for reasons other than non-compliance or factors outside the participant’s control.”

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The addition of language “factors outside the participant’s control or not known to the treatment court at the time of acceptance.”

The addition of language, “participant is no longer able to successful participate in the treatment court” for when a participant can participate but it is no longer suitable for them to do so, after “factors outside the participant’s control or not known to the treatment court at the time of acceptance.”

The Honorable Nancy Baskin moved and the Honorable Cynthia Meyer seconded to accept the revised subsection Rule 2(h) definition of neutral discharge:

(h) “Neutral Discharge” means that, for reasons other than noncompliance, factors outside the participant’s control, or not known to the Treatment Court at time of acceptance, a participant is no longer able to successfully participate in a Treatment Court.

Motion carried.

Rule 5

Rule 5. Treatment Court Proceedings

Except as provided by the Idaho Court Administrative Rules, the Idaho Criminal Rules, Idaho Rules of Evidence, or statutes, all Treatment Court proceedings are open to the public. Upon any request to close a proceeding or upon the court’s own motion, the presiding judge shall consider whether: (1) the requested closure would serve a compelling interest; (2) there is a substantial probability that, in the absence of such closure, this compelling interest would be harmed, and (3) there are no alternatives to closure that would adequately protect the compelling interest at stake. Upon any order of closure of a participant’s proceedings, the presiding judge shall issue written findings supporting the closure order.

~~All Treatment Court proceedings are open to the public; however, a Treatment Court Judge, upon a finding of good cause, may order a proceeding in a participant’s case closed to the public.~~

The committee discussed:

The requirement under the Press Enterprise test that if an alternative to closure is ordered by the court, that alternative needs to be narrowly tailored and the addition of a sentence right before “upon any order of closure” that says, “if the presiding judge finds that an alternative to the closure would adequately protect the compelling interest, the alternative must be narrowly tailored to protect the compelling interest.” A written finding is still required.

The main focus is to make it easy for judges to see each step of the Press Enterprise test and breaking it down into subparts (a), (b) and (c) would be like a checklist for the judges. The added language needs to be a separate sentence (d) because the consideration is whether to do 1, 2 and 3 and the order is required upon the findings. There is a general provision, the next provision is the steps for closure, followed by the provision that is an alternative to closure, with the last provisions requiring written findings.

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Whether the language “upon any request or upon the court’s own motion, the presiding judge shall consider” is necessary for those conditions to apply. The court can do it on its own motion and a party can request it, so it is superfluous.

If (a) lays out the general rule, (b) lays out what happens if there is an exception, and everything is presumed open, what would trigger an order not to have something open? It is proposed to put “upon a finding that.” The Press Enterprise ruling is actually worded to require findings as to those three things.

Press Enterprise has a written finding for closure, and Justice Moeller has seen one federal case reversed for the lack of a written finding. Language should say “close the proceedings upon written findings,” putting “written” before “findings.”

The Honorable David Hooste moved and the Honorable Rick Carnaroli seconded to accept the amended revisions to rule 5 as currently indicated:

Rule 5. Treatment Court Proceedings

(a) All Treatment Court proceedings are open to the public, except as provided by the Idaho Court Administrative Rules, the Idaho Criminal Rules, the Idaho Rules of Evidence, or Idaho statutes.

(b) The presiding judge may only close a proceeding upon a finding that (1) closure would serve a compelling interest, and (2) there is a substantial probability that, in the absence of such closure, this compelling interest would be harmed, and (3) there are no alternatives to closure that would adequately protect the compelling interest at stake.

(c) If the presiding judge finds that an alternative to the closure would adequately protect the compelling interest, the alternative must be narrowly tailored to protect the compelling interest.

(d) Upon any order of closure or alternative to closure of a participant’s proceedings, the presiding judge shall issue written findings supporting the order.

Motion carried.

Rule 12

In Rule 12(e)(2) the word “other” in “All other fees, costs, fines and restitution . . .” was struck.

Justice Moeller deemed the change as approved by acclamation.

Rule 18(e)

(e) Due to the limited capacity and resources available for any Treatment Court, a participant who has absconded may be deemed to have forfeited their participation in a treatment court ~~and their position may be filled with another participant, and may be terminated.~~ In such cases, the Treatment Court Judge shall ~~enter an Order of Termination~~

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~~and~~ issue a bench warrant. Upon the participant's arrest or return, the Treatment Court Judge may proceed to a termination hearing. ~~notify the participant that they have been terminated for absconding and shall then proceed to disposition or sentencing.~~

The Committee discussed:

There are no slots dealing with financial capacity and is "limited capacity" language necessary since justification is not usually put into rules? Take out language that says, "may be filled with another participant."

That the language makes it seem like courts cannot terminate, but a participant's position can be deemed forfeited when they come back to court. It was suggested to take out everything and begin with, "[A] participant who has absconded." Does that make a finding at the time they abscond that we don't have room for them because there are not being an active participant in the court to count in the numbers? There is flexibility in "deemed to have forfeited."

That court's already have power to issue Bench Warrants so is it not necessary to include it in the rule. Courts have discretion on issuing Bench Warrants and absconding has a time frame that could cause problems with the issuance of a Bench Warrant. Drop the second sentence and add language "upon arrest or voluntary return."

The Honorable Nancy Baskin moved and the Honorable Cynthia Meyer seconded to accept the revised subsection (e):

(e) A participant who has absconded may be deemed to have forfeited their participation in a treatment court. Upon the participant's arrest or voluntary return, the participant's case may proceed to a termination hearing.

Motion carried.

Rule 21

Rule 21. Neutral Discharge

Upon the Treatment Court team's recommendation that a participant be neutrally discharged, the court shall provide notice to the parties. Upon any objection of a party to a neutral discharge of a participant, a hearing shall be held within fourteen (14) days, or as determined by the court.

If a participant is neutrally discharged, the court shall issue a Notice for Neutral Discharge or Termination from Treatment Court and Stopping Participant Fees.

The Committee discussed:

The definition in Rule 2(h) was written after adding the language in Rule 21. The capitalization in the second paragraph is for the name of the form the court shall issue.

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Time frames for filing objections, having hearings and providing flexibility with additional language such as “within 14 days if practicable,” “later if upon stipulation,” and “for good cause shown or as soon thereafter as practicable” were debated.

Who are parties, who gets notice and who objects?

The Honorable Nancy Baskin moved and the Honorable Rick Carnaroli seconded to accept the revised Rule 21:

Rule 21. Neutral Discharge

Upon the Treatment Court team’s recommendation that a participant be neutrally discharged, the court shall provide notice to the parties. A party has fourteen (14) days to file an objection to the neutral discharge. Upon the filing of an objection, a hearing shall be held within twenty-eight (28) days, or for good cause shown, as soon thereafter as practicable.

If a participant is neutrally discharged, the court shall issue a Notice for Neutral Discharge or Termination from Treatment Court and Stopping Participant Fees.

Motion carried.

Forms

The only change in the mandatory forms was to the word “neutral.” The notice for “neutral discharge” has the word “neutral” added to it. The title of the form was not changed but “neutral discharge” was allowed to be in the title already in the form.

Justice Moeller deemed the change as approved by acclamation.

Scott informed the committee if a motion to approve the rules in their entirety is approved, the rules will go out for public comment for two weeks and will be sent to everyone who is a stake holder and others. Deena would collect and categorize any comments, which the Committee would take up during its January 18, 2022 meeting and then they would come back to the Committee during the February 15, 2022 meeting.

Justice Moeller called for any concerns or approval. Judge Meyer said in the first page of the rules, Rule 1, part B, the sentence says “purpose of rules are” and should be changed to “is.” She inquired about the definition of “absconded” on the same page where mention is made to “failed to appear at treatment court for two or more consecutive weeks,” whether that was taken out in the previous meeting. Scott said he will check the minutes of the previous meeting. On page 14, right after subsection (f) at the top of the page, there is a comma after “a participant” but a comma is not necessary.

Megan Roumanis suggested in definition (n) “Termination” adding “after due process hearing” to the definition. The committee discussed various language changes and their necessity and clarity before concluding that Rule 18 provides the information which is superfluous and overly complicated in definitions. Megan’s suggestions will be incorporated to say, “[T]ermination means the full cessation, following a hearing if requested, of a Treatment Court participant’s involvement in a Treatment Court for noncompliance.”

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In definition (p) the 's' in Veteran's Treatment Court needs to be removed for consistency with the national standards.

The Honorable Rick Carnaroli moved, and the Richard Neu seconded to approve the rules for public review.

Motion Carried.

Scott previewed the upcoming state conference on February 15, 2022. The budget will be addressed. There is a budget summit at the end of the month. He said we would also review the strategic planning comments made at the September meeting, such as pulling together the annual educational survey and actionable items on what a strategic planning might look like.

Adjourned: 3:34 pm

Next Meeting(s):

February 15, 2022

September 13, 2022