

**IDAHO  
CRIMINAL RULES**

**Idaho Supreme Court**

**Effective July 2015**

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### **I.C.R. 1. Scope - Courts - Exceptions**

These rules apply to all criminal proceedings in the district courts and the magistrates divisions thereof of the state of Idaho with the following exceptions:

- (a) Extradition and fugitives from justice;
- (b) Forfeiture of property for violation of a statute of the State of Idaho;
- (c) Collection of fines and penalties;
- (d) Juveniles under the Youth Rehabilitation Act;
- (e) Juveniles under the Child Protective Act;
- (f) Habeas corpus;
- (g) Uniform post-conviction proceedings, except as provided in Rule 57;
- (h) Coroner and coroner's inquests;
- (i) Proceedings in quo warrant to.

(Adopted December 27, 1979, effective July 1, 1980; amended March 18, 1998, effective July 1, 1998.)

### **I.C.R. 2. Purpose and Constructions - Title - District Court Rules**

(a) Purpose and construction. These rules are intended to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration and elimination of unjustifiable expense and delay.

(b) Title. These rules shall be known and cited as the Idaho Criminal Rules (I.C.R.).

(c) District court rules. No district court or magistrate division of the state shall make rules of procedure except as expressly authorized by these rules. The district courts of each judicial district by a majority vote of all district judges may make rules governing the internal case management and procedure of the district court including procedures for setting the time and place for trial of criminal actions and the hearing of all other proceedings and motions. Such rules shall be consistent with these rules, and must be approved and published by order of the Supreme Court before the effective date thereof, except in cases declared by the Supreme Court to be an emergency, in which case the order may be declared to be effective immediately.

(Adopted December 27, 1979, effective July 1, 1980; amended June 15, 1987, effective November 1, 1987.)

#### **I.C.R. 2.1. Declarations**

Whenever these rules require or permit a written statement to be made under oath or affirmation, such statement may be made as provided in Idaho Code Section 9-1406. An affidavit includes a written certification or declaration made as provided in Idaho Code section 9-1406.

(Amended June 20, 2013, effective July 1, 2013.)

#### **I.C.R. 2.2. Jurisdiction of Magistrates**

(a) Jurisdiction of All Non-attorney Magistrates. The jurisdiction over the following criminal proceedings, when approved by a majority of the district judges in a judicial district, may be assigned to any magistrate pursuant to section 1-2208, Idaho Code:

- (1) The arraignment, trial and sentencing of any misdemeanor.
- (2) Proceedings pertaining to warrants for arrest or for searches and seizures when a certified non-attorney magistrate, as defined by subsection (b) of this rule, or an attorney magistrate is not available.
- (3) The first appearance and setting of bail in other misdemeanor complaints or in a felony complaint when a certified non-attorney magistrate, as defined in subsection (b) of this rule, or an attorney magistrate is not available.

(b) Jurisdiction of Certified Non-attorney Magistrates. The jurisdiction over the following criminal proceedings, when approved by a majority of the district judges in a judicial district, may be assigned to non-attorney magistrates pursuant to section 1-2208, Idaho Code, when such magistrate has received written certification by the Supreme Court that said non-attorney magistrate is qualified to handle criminal proceedings involving incarceration:

- (1) The arraignment and trial of any misdemeanor and sentencing upon conviction, whether or not incarceration is involved.
- (2) The first appearance, the setting of bail, and the preliminary examination on a criminal complaint for a felony to determine probable cause, commitment prior to trial, or the release on bail of persons charged with a felony.
- (3) Proceedings pertaining to warrants for arrest or for searches and seizures.

(c) Assignment of Additional Cases to Attorney Magistrates. The jurisdiction of an attorney magistrate is the same as that of a district judge, but the cases assignable to an attorney magistrate shall be those assignable to magistrates in subsections (a) and (b) above and the following additional cases may be assigned to attorney magistrates when approved by the administrative district judges of a judicial district:

- (1) The trial and related hearings, and sentencing upon conviction, of felony proceedings when approved by order of the Supreme Court upon application by the administrative judge of a judicial district.
- (2) Extradition proceedings.
- (3) Proceedings regarding fugitives from justice.
- (4) The performance of any function of a United States magistrate when requested by federal authorities or courts as provided by law. The assignment of this authority and jurisdiction shall be recommended by order of the administrative district judge to specific attorney magistrates and shall be effective when approved by order of the Supreme Court.

(d) Objection to Assignment to Magistrates. Any irregularity in the method or scope of assignment of a criminal proceeding or action to any magistrate under this Rule 2.2 and sections 1-2208 and 1-2210, Idaho Code, and all objections to the propriety of an assignment to a magistrate are waived unless a written objection is filed not later than 7 days after a notice setting the action for trial, pre-trial or hearing on a contested motion and before any contested matter has been submitted to the judge for decision. No order or judgment is void or subject to collateral attack merely because rendered pursuant to an improper assignment to a magistrate.

(e) Special Assignment to Attorney Magistrates. The administrative district judge of a judicial district may by order appoint a specific attorney magistrate to hear and try one or more specific actions which are otherwise triable only by a district judge. The appointed magistrate shall cause an order of the assignment to be served upon all parties to that action.

(f) Enlargement of Cases Assignable. The administrative district judge of a judicial district may by order enlarge categories of cases assignable under Rule 2.2(c) as to the attorney magistrates of the judicial district or of a county within the district, or as to specified attorney magistrates.

(Adopted December 27, 1979, effective July 1, 1980; amended March 23, 1983, effective July 1, 1983; amended March 28, 1986, effective July 1, 1986; amended June 15, 1987, effective November 1, 1987; amended April 2, 1991, effective July 1, 1991; amended April 4, 2008, effective July 1, 2008)

### **I.C.R. 2.3. Electronic signatures.**

An electronic signature may be used on any document that is required or permitted under these rules and that is transmitted electronically, including a search or arrest warrant, a written certification or declaration under penalty of perjury, or an affidavit, and a notary's seal may be in electronic form.

(Amended June 20, 2013, effective July 1, 2013.)

### **I.C.R. 3. Initiation and Prosecution.**

The complaint is a written statement of the essential facts constituting the offense charged. It shall be made upon oath before a magistrate; provided, a prosecuting attorney may, without oath or affirmation, sign a complaint before a magistrate based upon the sworn affidavit, which includes a written certification or declaration under penalty of perjury of a complainant, which shall be filed with the court. Except as otherwise provided by law or rule, all criminal proceedings shall be initiated by complaint or indictment and prosecuted thereafter by complaint, indictment or information as hereinafter provided by these rules.

(Adopted December 27, 1979, effective July 1, 1980; amended March 9, 1999, effective July 1, 1999; amended June 20, 2013, effective July 1, 2013.)

#### **I.C.R. 3.1. Idaho Uniform Citation.**

Any misdemeanor may be charged and prosecuted by an Idaho Uniform Citation (Summons and Complaint) as provided in the Misdemeanor Criminal Rules (M.C.R.).

(Adopted December 27, 1979, effective July 1, 1980.)

#### **I.C.R. 3.2. Additional Service on the Court.**

If the office of a presiding judge or magistrate judge in any action is outside the county in which an action is pending, each party to such action shall, when reasonably possible, lodge with the presiding judge, at least five (5) days prior to the trial or hearing, at his or her office, respective briefs and copies of motions, notices, orders to show cause, proposed instructions, or any other pleadings or documents which are reasonably necessary to advise the court of the nature of any proceeding or hearing to be held in the action. The lodging of copies of such pleadings or documents with the presiding judge shall be in addition to the lodging or filing of the originals with the court of record and the service of copies upon the parties if required by these rules.

(Adopted March 9, 1999, effective July 1, 1999.)

### **I.C.R. 4. Warrant - Summons - Determination of Probable Cause.**

(a) Issuance of warrant. After a complaint is laid before a magistrate, (which may be in the form of the Idaho Uniform Citation for a misdemeanor), the magistrate may issue a warrant for the arrest of the defendant only after making a determination that there is probable cause to believe that an offense has been committed and that the defendant committed it.

(b) Issuance of summons. After a complaint is filed with a court, (which may be in the form of the Idaho Uniform Citation for a misdemeanor), the magistrate, or the clerk of the court, may issue a summons requiring the defendant to appear before the court at a time certain without first making a determination of whether there is such probable cause.

(c) Issuing warrant or summons, preference for summons. If the magistrate finds such probable cause for a complaint, in determining whether a warrant or summons should issue, the magistrate shall give preference to the issuance of a summons. In making such determination as to whether a warrant or summons shall issue, the magistrate shall consider the following factors:

- (1) The residence of the defendant.
- (2) The employment of the defendant.
- (3) The family relationships of the defendant in the community.
- (4) The past history of response of the defendant to legal process.
- (5) The past criminal record of the defendant.
- (6) The nature of the offense charged.
- (7) Whether there is reasonable cause to believe that the defendant will flee prosecution or will fail to respond to a summons.

(d) Determination of probable cause after arrest without warrant, or upon appearance or failure to appear by a defendant pursuant to a summons. If a defendant is arrested without a warrant or appears before the court pursuant to a summons, the magistrate before whom the defendant first appears shall not order the defendant retained or ordered into custody nor require the defendant to post bond unless the magistrate shall determine there is such probable cause as defined in subsection (a) of this Rule at or before the time of the first appearance of the defendant. The defendant must be released upon the defendant's own recognizance unless and until such determination of probable cause has been made by a magistrate or unless immediate disposition of the complaint has been made; but the complaint shall not be dismissed pending such determination or disposition. If a defendant fails to appear in response to a summons a warrant shall issue if probable cause has been shown.

(e) Hearing to determine probable cause. The probable cause hearing is an informal nonadversary proceeding. The finding of probable cause shall be based upon substantial evidence, which may be hearsay in whole or in part, provided there is a substantial basis for believing that there is a factual basis for the information furnished. It shall not be necessary for the defendant to be present at such hearing or to have the right to confrontation and cross-examination of witnesses, nor shall it be necessary to permit the defendant to have or to provide the defendant with counsel. Before making the determination of whether there is such probable cause, the magistrate may require any person, other than the defendant, who appears likely to have knowledge relevant to the offense charged to appear personally and give testimony under oath. The facts which the magistrate considers in determining probable cause shall be placed either in affidavit form, which includes a written certification or declaration under penalty of perjury or shall be testimony under oath placed upon the record. In making the determination of probable cause, the magistrate shall consider all facts as to whether an offense has been committed and whether the defendant has committed it.

(f) Disposition on finding of no probable cause. If the magistrate finds there is no such probable cause, the magistrate shall refuse to issue a warrant, and shall exonerate any bond posted, and shall order the release of the defendant if the defendant is in custody. A finding of a lack of probable cause shall not require the dismissal of the complaint.

(g) Form.

(1) Warrant. The warrant shall be signed by the magistrate and shall set forth the name of the defendant or, if the defendant's name is unknown, any name or description by which the defendant can be identified with reasonable certainty. It shall identify the offense charged in the complaint. It shall command that the defendant be arrested and brought before the nearest available magistrate. The amount of bail may be fixed by the issuing magistrate and endorsed on the warrant at the time of its issuance.

(2) Telegraphic or facsimile copy of a warrant of arrest. After the issuance of a warrant in the form set forth in sub-paragraph (g)(1) above, a copy of that warrant of arrest may be sent by telecommunication process or by facsimile process to any peace officer or other officer serving the warrant. A telegraphic copy should be in the following form: (*Available at <http://www.isc.idaho.gov/icr4>*)

WARRANT OF ARREST  
TELEGRAPHIC COPY

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

TO ANY SHERIFF, CONSTABLE, MARSHAL, OR PEACE OFFICER  
OF THE STATE OF IDAHO:

A complaint, upon oath, having been laid this day before me by \_\_\_\_\_, stating that the crime of \_\_\_\_\_ has been committed in the county of \_\_\_\_\_ and accusing \_\_\_\_\_.

Thereof, the above-named defendant, and probable cause having been found, you are, therefore, commanded to forthwith arrest the said defendant named above and bring the defendant before me at my office in said county of \_\_\_\_\_, or in case of my absence or inability to act, or arrest outside of this county, before the nearest available magistrate within the judicial district where the defendant is arrested.

Dated at my office in said county of \_\_\_\_\_.

This \_\_\_\_\_ Day of \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_  
Magistrate

Bond ..... Felony ..... Misdemeanor ..... Day Only ..... Day Or Night .....

This telegraphic copy is an abstract of an official signed warrant on file in \_\_\_\_\_ county.

(3) Summons. The summons shall be signed by either the magistrate or the clerk of the court and shall contain the same information as the warrant except that it shall summon the defendant to appear before a magistrate at a stated time and place and advise the defendant that if the defendant fails to appear at said time and place that a warrant will issue for the defendant's arrest.

(h) Execution or service, and return.

(1) By whom. The warrant shall be executed by a peace officer or other officer authorized by law. The summons may be served by any person authorized to serve a summons in a civil action, or by mail.

(2) Territorial limits. The warrant may be executed or the summons may be served at any place within the jurisdiction of the state of Idaho.

(3) Manner of service of warrant. The warrant shall be executed by the arrest of the defendant. The officer need not have the warrant in possession at the time of the arrest, but the officer shall show the warrant to the defendant as soon as possible. A telegraphic or other copy of the warrant of arrest may be used by the officer at the time of the arrest or for the purpose of showing the warrant to the defendant after the defendant's arrest. If the officer does not have the warrant in possession at the time of arrest, the officer shall then inform the defendant of the offense charged and of the fact that a warrant has been issued.

(4) Manner of service of summons. The summons shall be served upon a defendant by delivering a copy of the summons and complaint to the defendant personally, or by leaving copies thereof at the defendant's dwelling house or usual place of abode with some person over the age of eighteen (18) years then residing therein, or by mailing it to the defendant by mail to the defendant's last known address. A summons to a corporation shall be served in the same manner as service of a summons on a corporation in a civil action.

(5) Return on warrant. The officer executing a warrant shall make return thereof to the issuing magistrate or any other magistrate before whom the defendant is brought pursuant to Rule 5. At the request of the prosecuting attorney any unexecuted warrant shall be returned to the magistrate by whom it was issued and shall be canceled by the magistrate.

(6) Return on summons. On or before the return date, the person who made service of a summons shall make return thereof to the magistrate before whom the summons is returnable. At the request of the prosecuting attorney, made at any time while the complaint is pending, a warrant returned unexecuted and not canceled, or an unserved summons or a duplicate original thereof, may be delivered by the magistrate to an officer or other authorized person for execution or service.

(Adopted December 27, 1979, effective July 1, 1980; amended April 3, 1981, effective July 1, 1981; amended June 15, 1987, effective November 1, 1987; amended March 27, 1989, effective July 1, 1989; amended June 20, 2013, effective July 1, 2013.)

## **I.C.R. 5. Initial Appearance Before Magistrate - Advice To Defendant - Plea in Misdemeanors - Initial Appearance on Grand Jury Indictment.**

(a) Initial appearance. The "initial appearance" before a magistrate shall be the first appearance of the defendant before any magistrate. In the event a defendant appears before more than one magistrate, the first appearance before the first magistrate shall constitute the "initial appearance."

(b) Place of initial appearance. A defendant arrested, whether or not pursuant to a warrant, shall be taken before a magistrate in that judicial district without unreasonable delay. In no event shall the delay be more than twenty-four (24) hours following the arrest excluding Saturdays, Sundays, and holidays. Provided, the court may delay the initial appearance if the defendant is hospitalized or otherwise in a condition which prevents the defendant being taken before the magistrate. The court may immediately, in such instances, appoint counsel for the defendant. In the event it is not possible to take a defendant before a magistrate within the county where the alleged offense occurred within the said time limit, then the defendant shall be taken to any available magistrate within the judicial district without unnecessary delay within the time limit described above.

(c) Determination of probable cause. In the event the defendant was arrested without a warrant, the magistrate before whom the defendant first appears shall not hold the defendant in custody nor require bail without first making a determination as to whether there is probable cause to believe that an offense has been committed and that the defendant committed it as provided in Rule 4 unless such a finding has been made by a magistrate in a county in which the offense is alleged to have been committed. The probable cause hearing may be an ex parte hearing which does not require the presence of the defendant and shall be held within forty-eight (48) hours, including Saturdays, Sundays, and holidays, after a defendant is arrested without a warrant. The magistrate may hold the hearing on sworn statements, which includes written certifications or declarations under penalty of perjury, without the officer or witness present.

(d) Advice to defendant on initial appearance outside. In the event a defendant is taken before a magistrate in a county other than the county in which the alleged offense occurred, the magistrate shall advise the defendant:

- (1) That the defendant is not required to make a statement and that any statement made may be used against the defendant;
- (2) The charge or charges against the defendant;
- (3) Defendant's right to bail;
- (4) Defendant's right to counsel as provided by law;
- (5) Defendant's right to proceed under Rule 20 of these rules;
- (6) That defendant has a right to communicate with counsel and immediate family, and that reasonable means will be provided for the defendant to do so.

(e) Setting bail. Upon advising the defendant of the above rights, the magistrate shall set bail for the defendant, and in the event the arrest is pursuant to a warrant, said bail shall be in the amount endorsed upon the warrant unless the magistrate finds good cause to alter the amount of the bail. In the event the defendant posts bail, the magistrate shall certify that fact upon the warrant, order the defendant to appear before the court issuing the warrant at a time and place certain, discharge the defendant, and transmit the warrant and undertaking of bail to the court in which the defendant is required to appear.

(f) Advice to defendant on initial appearance in county where alleged offense occurred. In the event a defendant is taken before a magistrate in the county where the alleged offense occurred, the magistrate shall advise the defendant:

- (1) That the defendant is not required to make a statement and that any statement made may be used against the defendant;
- (2) The charge or charges against the defendant;
- (3) Defendant's right to bail;
- (4) Defendant's right to counsel as provided by law;

(5) Defendant's right to a preliminary hearing, if provided by law, the nature of a preliminary hearing and the effect of a waiver thereof;

(6) That the defendant has a right to communicate with counsel, or immediate family, and that reasonable means will be provided for the defendant to do so.

(g) Right to Counsel.

(1) If a defendant is charged with an offense the penalty for which includes the possibility of confinement, incarceration, imprisonment, or detention in a correctional facility regardless of whether actually imposed, and the defendant appears without counsel, the court shall advise the defendant of:

(A) the right to counsel;

(B) the right to apply for court appointed counsel if the defendant cannot afford to hire private counsel; and

(C) the right to request counsel at any stage of the proceedings.

(2) If the defendant wishes to represent himself or herself, the court shall ensure that a knowing, voluntary, and intelligent waiver of the right to counsel is entered on the record.

(3) Prior to accepting any waiver pursuant to subsection (2), the trial court shall advise the defendant of the following:

(A) the nature of the charges;

(B) the range of allowable punishments;

(C) that there may be defenses;

(D) that there may be mitigating circumstances; and

(E) all other facts essential to a broad understanding of the consequences of the waiver of the right to counsel, including the dangers and disadvantages of the decision to waive counsel.

(4) The court may appoint counsel for the limited purpose of advising and consulting with the defendant as to the waiver.

(h) Arraignment on misdemeanor complaint. The arraignment upon a misdemeanor complaint is the reading of the complaint to the defendant, unless waived by the defendant, and taking a plea of the defendant to the complaint. The arraignment upon a complaint for a misdemeanor may take place at the initial appearance, or at such later time as ordered by the court. A plea of the defendant at the arraignment in a county other than the county where the alleged offense occurred may be taken by the magistrate only as provided by Rule 20. The defendant may appear in person at the arraignment and enter a plea to the complaint or the defendant may appear at the arraignment through counsel who shall either appear in person or shall file, at or before arraignment, a written appearance and plea on behalf of the defendant.

(i) First appearance on indictment by grand jury. A defendant arrested on a warrant issued pursuant to an indictment by grand jury shall be taken before a magistrate judge or district court judge in that judicial district without unreasonable delay. In no event shall the delay be more than twenty-four (24) hours following the arrest excluding Saturdays, Sundays and holidays. The magistrate judge or district court judge shall have the authority to set bail and shall advise the defendant:

(1) That the defendant is not required to make a statement and that any statement made by defendant may be used against the defendant;

(2) The charge or charges against the defendant;

(3) The defendant's right to bail;

(4) The defendant's right to counsel as provided by law;

(5) The date that defendant will be arraigned in the district court.

(Adopted December 27, 1979, effective July 1, 1980; amended March 28, 1986, effective July 1, 1986; amended June 15, 1987, effective November 1, 1987; amended effective August 21, 1991; amended February 10, 1993, effective July 1, 1993; amended April 22, 2004, effective July 1, 2004; amended March 28, 2007; effective July 1, 2007; amended June 20, 2013; effective July 1, 2013.)

### **I.C.R. 5.1. Preliminary Hearing - Probable Cause Hearing - Discharge or Commitment of Defendant - Procedure.**

(a) Preliminary hearing. Unless indicted by a grand jury, a defendant, when charged in a complaint with any felony, is entitled to a preliminary hearing. If the defendant waives the preliminary hearing, the magistrate shall forthwith file a written order in the district court holding the defendant to answer. If the defendant does not waive the preliminary hearing, the magistrate shall fix a time for the preliminary hearing to be held within a reasonable time, but in any event not later than fourteen (14) days following the defendant's initial appearance if the defendant is in custody and no later than twenty-one (21) days after the initial appearance if the defendant is not in custody. With the consent of the defendant and upon showing of good cause, taking into account the public interest and prompt disposition of criminal cases, time limits in this subsection may be extended. In the absence of such consent by the defendant, time limits may be extended only upon a showing that extraordinary circumstances exist, including disqualification of the magistrate by the defendant pursuant to Rule 25.

(b) If from the evidence the magistrate determines that a public offense has been committed and that there is probable or sufficient cause to believe that the defendant committed such offense, the magistrate shall forthwith hold the defendant to answer in the district court. The finding of probable cause shall be based upon substantial evidence upon every material element of the offense charged; provided that hearsay in the form of testimony, or affidavits, including written certifications or declarations under penalty of perjury, may be admitted to show the existence or nonexistence of business or medical facts and records, judgments and convictions of courts, ownership of real or personal property and reports of scientific examinations of evidence by state or federal agencies or officials or by state-certified laboratories, provided the magistrate determines the source of said evidence to be credible. Provided, nothing in this rule shall prevent the admission of evidence under any recognized exception to the hearsay rule of evidence. The defendant shall be entitled to cross-examine witnesses produced against the defendant at the hearing and may introduce evidence in defendant's own behalf. Motions to suppress must be made in a trial court as provided in Rule 12; provided, if at the preliminary hearing the evidence shows facts which would ultimately require the suppression of evidence sought to be used against the defendant, such evidence shall be excluded and shall not be considered by the magistrate in his determining probable cause. A record of the proceedings shall be made by stenographic means or recording devices.

(c) Discharge of defendant. If from the evidence the magistrate does not determine that a public offense has been committed or that there is not probable or sufficient cause to believe that the defendant committed such offense, the magistrate shall dismiss the complaint and discharge the defendant.

(d) Records. After concluding the proceeding, the magistrate shall transmit forthwith to the clerk of the district court all papers in the proceeding.

(Adopted December 27, 1979, effective July 1, 1980; amended March 20, 1985, effective July 1, 1985; amended March 28, 1986, effective July 1, 1986; amended March 9, 1999, effective July 1, 1999; amended November 20, 2012, effective January 1, 2013; amended June 20, 2013, effective July 1, 2013)

### **I.C.R. 5.2. Transcript of Hearings - Copies for Parties.**

(a) Transcript of proceedings. On timely motion to the district court by either the prosecuting attorney or the defendant or defendant's attorney the court shall order a typewritten transcript and copies of exhibits or affidavits to be made for such party. The cost for the preparation of such a transcript on motion of the defendant shall be at the cost of the defendant, unless the court finds the defendant to be an indigent or needy person and orders the preparation of the transcript at county expense in the same manner as a transcript on appeal. Transcripts may be requested of any hearing or proceeding before the court including the following:

- (1) The record of any probable cause hearing for the issuance of a complaint, a warrant for arrest or a search warrant.
- (2) The record of any preliminary hearing.
- (3) The record of any hearing on a motion to suppress evidence.

(b) Listening to a recording. In the event that a record was made by a recording device, upon request by any party, the court shall order that the recorded tape or other recorded means be replayed for the benefit of counsel, and the court may fix the time and place and set the conditions under which such replay may be afforded.

(c) Preparation of transcript, costs, number of copies, filing with court and service upon parties. Whenever a transcript of a hearing or proceeding is ordered by the court to be prepared under this rule, such transcript shall be prepared in the same manner, with the same number of copies and at the same costs as a transcript in an appeal from the magistrate's division to the district court under Rule 54.1 of these rules. After the original and two copies of the transcript are lodged with the clerk of the court, the clerk shall file the original in the court file and forthwith serve the copies on the parties to the proceeding as provided by Rule 54.9, but there shall be no settlement of the transcript as provided by Rule 54.9 of these rules. In the event of a subsequent appeal, no party shall be precluded from raising objections as to the form and content of such transcript.

(d) Requesting recording in lieu of transcript. Should any counsel desire a copy of the record made by a recording device, the provisions concerning written transcripts shall be applicable to the furnishing of such copy, but the district court shall determine, in its discretion, whether a recording will be furnished in lieu of a written transcript.

(e) Certification of transcripts. All typewritten transcripts shall be duly certified by the appropriate magistrate or the clerk.

(Adopted December 27, 1979, effective July 1, 1980; amended April 3, 1981, effective July 1, 1981.)

### **I.C.R. 5.3. Initial Appearance on Probation Violations.**

(a) Time and Place for Initial Appearance. A probation violator may be arrested on an arrest warrant issued by the sentencing court after a finding of probable cause to believe the probationer has violated a condition of probation, or on an agent's warrant pursuant to I.C. § 20-227. In either case, the probationer shall be taken before a magistrate or district judge in that judicial district without unreasonable delay. In no event shall the delay be more than twenty-four (24) hours following the arrest excluding Saturdays, Sundays, and holidays. Provided, the court may delay the initial appearance if the probationer is hospitalized or otherwise in a condition which prevents the probationer being taken before the court. The court may immediately, in such instances, appoint counsel for the probationer.

(b) Determination of Probable Cause in agent's Warrant. In the event the probationer is arrested pursuant to an agent's warrant, the court before whom the probationer first appears shall not hold the probationer in custody nor require bail without first making a determination as to whether there is probable cause to believe that a probation violation has been committed and that the probationer committed it. The court shall determine probable cause in a manner consistent with I.C.R. 4(e). The agent's warrant shall contain the underlying offense for which the probationer was placed on probation, the name of the sentencing judge, the date the probationer was placed on probation and the length of probation, the term of probation that was violated and a brief description of how it was violated and the date the probationer was taken into custody.

(c) Initial Appearance. At the arraignment on the alleged probation violation, the court shall:

- (1) Advise the probationer that he or she is not required to make a statement and that any statement made may be used against the probationer;
- (2) Advise as to the nature of the probation violation(s) filed against the probationer and ensure the probationer receives written notice of the alleged violation(s);
- (3) Advise that the probationer has a right to counsel as provided by law, and if requested and appropriate, appoint counsel
- (4) Advise that the probationer has a right to communicate with counsel and immediate family, and that reasonable means will be provided for the probationer to do so;
- (5) Determine what form of release, if any, is appropriate;

(6) If the probationer is arrested in the county where placed on probation, set a time certain for the probationer to appear before the sentencing court.

(7) If the probationer is arrested outside the county where placed on probation:

(a) Advise that if the probationer remains in custody, he or she will be transported and arraigned in the sentencing county within a reasonable time not to exceed fourteen (14) days. This time period may only be extended upon a showing of good cause.

(b) Further advise that if the probationer posts bond, he or she will be given a date to appear before a magistrate for arraignment in the county of sentencing. At the arraignment in the sentencing county, counsel will be appointed if requested and appropriate, and the probationer will be given a time to appear before the sentencing court.

(c) Cause the clerk to provide written notice to the clerk of the county where the probationer was placed on probation of the dates of the probationer's arrest and appearance before the court so that timely transport can be provided to the sentencing county. Upon receipt of the written notice, the clerk of the county where the probationer was placed on probation shall provide a copy of the notice to the parties in the case.

(d) Setting Bail. Upon advising the probationer of the above rights, the court may set bail for the probationer.

(1) In the event the arrest is pursuant to a warrant issued by the sentencing court any direction of the sentencing court endorsed upon the warrant shall be followed as to the denial of bail or the setting of bail in a certain amount. In the event the probationer posts bail, that fact shall be certified upon the warrant, the probationer discharged and the warrant and undertaking of bail transmitted to the court in which the probationer is required to appear. Bail set at the initial appearance may only be altered upon motion pursuant to I.C.R. 46(l).

(2) In the event the arrest is pursuant to an agent's warrant, or no amount of bail is endorsed on the warrant issued by the sentencing court, then the court may set bail and, if set, bail may only be altered upon motion pursuant to I.C.R. 46(l). In the event the probationer posts bail, that fact shall be certified upon the warrant, the probationer discharged, and the warrant and undertaking of bail shall be transmitted to the court in which the probationer is required to appear.

(Adopted March 19, 2009, effective July 1, 2009; amended March 9, 2015, effective July 1, 2015.)

### **I.C.R. 6.1. Formation of the Grand Jury.**

(a) Number of Jurors. A grand jury shall consist of sixteen (16) qualified jurors of the county wherein the grand jury is sitting, but twelve (12) or more members constitute a quorum. A grand jury can deliberate and take action if a quorum is present.

(b) Summoning Grand Juries. Upon motion by the prosecuting attorney to summon a grand jury, a district judge assigned by the Administrative District Judge may order that a grand jury be impaneled within any county of the judicial district at such times as the public interest requires. Sixteen (16) grand jurors shall be selected as provided in the Uniform Jury Selection and Service Act, Chapter 2 of Title 2, Idaho Code. The selection of the grand jury shall take place in a closed session with only a district judge, the prosecuting attorneys, the prospective jurors, the reporter or recorder, a clerk of the court, and any required interpreter present.

(c) Impaneling a Grand Jury. A district judge shall impanel a grand jury of sixteen (16) jurors. The district judge shall preside over the impaneling of the grand jury and in doing so shall have the power and duty to:

(1) Administer, or direct the clerk to administer, an oath or affirmation to all prospective jurors that each of them will truthfully answer all questions propounded to them as to their qualifications to sit as jurors on the grand jury.

(2) Select, or direct the clerk to select, at random the names of sixteen (16) prospective jurors.

(3) Inquire of the prospective grand jurors to determine whether they are qualified to act as jurors and whether there are any facts which would constitute grounds for challenge against any of such jurors. In the event the court finds any prospective juror to be unqualified or subject to challenge as provided by the

Uniform Jury Selection and Service Act, Chapter 2, of Title 2 and Section 19-1003, Idaho Code, the court shall dismiss such prospective juror and choose another prospective juror at random from the panel summoned for the grand jury. The sixteen (16) selected jurors shall be sworn to the following oath:

“Do each of you, as jurors of the grand jury, affirm that you will diligently inquire into and true presentment make of all public offenses against the state of Idaho, committed or triable within this county, of which you shall have or can obtain legal evidence? That you will keep your own counsel, and that of the other members of the grand jury, and of the government and will not, except when required in the due course of judicial proceeding, disclose the testimony of any witness examined before you, nor anything which you or any other grand juror may have said nor the manner in which you or any other grand juror may have voted in any matter before you? That you will present no person through malice, hatred, or ill will, nor leave any unpresented through fear, favor or affection, or for any reward or the promise of hope thereof? Do you therefore affirm that you will in all your presentments follow these instructions and present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding, so help you God?”

(4) The impaneling of the grand jury shall be recorded, either stenographically or electronically.

(d) Grand Jury Presiding Juror - Oath - Duties. After the grand jury is impaneled, the court shall select one of the jurors as the presiding juror of the grand jury and administer an oath in the form of the oath in Rule 6.1(c)(3), only it will refer to the person as the presiding juror of the grand jury. The presiding juror shall have the following powers and duties:

- (1) Preside over the grand jury until it is adjourned and discharged.
- (2) Determine the time and place of commencement of each session of the grand jury and the time of adjournment of each session.
- (3) Take roll of the jurors of the grand jury at the commencement of each session.
- (4) Rule upon the disqualification of a grand juror.
- (5) Convey to the court any requests of the grand jury for further advice or instructions during the sessions of the grand jury.
- (6) Upon majority vote of the grand jury, direct the issuance of subpoenas for additional witnesses called to testify before the grand jury.
- (7) Determine the sequence of the witnesses to be examined by the grand jury, with the advice of the prosecuting attorney, and discharge the witness when no further testimony of the witness is desired by the grand jury.
- (8) Administer an oath or affirmation to all witnesses appearing before the grand jury by asking the witness, "Do you solemnly swear or affirm that the testimony that you shall give in the issue pending before this jury shall be the truth, the whole truth and nothing but the trust, so help you God?"
- (9) Advise target witnesses prior to testifying, or as soon as their status becomes known, by reading the following advice:

“You are advised that you are one of the subjects or suspects in this grand jury investigation. You therefore have the right against self-incrimination which includes the right to remain silent and the right to refuse to answer any question which might incriminate you. You have the right to request permission to leave the jury and consult with your attorney or counsel at any time, but you do not have the right to have your counsel with you before the grand jury. Any statements made by you may be used against you in any subsequent prosecution. If you give any false answers to questions you may be prosecuted for the felony crime of perjury. Do you understand these rights? “

- (10) Prepare or cause to be prepared and sign any indictment found by the grand jury and transmit the same to the court.
- (11) Perform such other duties as prescribed by these rules or as directed by the court.

(e) Deputy Presiding Juror - Oath - Duties. The court shall select one or more deputy presiding jurors and administer the presiding juror's oath to them as deputy presiding jurors. In the absence of the presiding juror, the deputy presiding juror shall act as the presiding juror in the sequence directed by the district judge, if more than one has been selected, without further order of the court.

(f) Charge to Jury. After the grand jury has been sworn, the court shall give a charge to the jury setting forth in detail their powers, duties and authority and any other information which the court deems proper. Such charge shall be given orally to the jurors and a written copy shall be given to the presiding juror.

(g) Excuse of a Juror. At any time, for good cause shown, the court or the presiding juror may excuse a juror temporarily or permanently.

(Adopted March 30, 1994, effective July 1, 1994.)

### **I.C.R. 6.2. Prosecuting Attorney.**

Powers and Duties. The prosecuting attorney of the county wherein the grand jury is sitting, or one or more deputies, or a special prosecuting attorney may attend all sessions of the grand jury, except during the deliberations of the grand jury after the presentation of evidence. The prosecuting attorney shall have the power and duty to:

(a) Present to the grand jury evidence of any public offense, however, when a prosecutor conducting a grand jury inquiry is personally aware of substantial evidence which directly negates the guilt of the subject of the investigation the prosecutor must present or otherwise disclose such evidence to the grand jury.

(b) At the commencement of a presentation of an investigation to the grand jury, inquire as to whether there are any grounds for disqualification of any grand juror and advise the presiding juror of the possible disqualification of a juror.

(c) List the elements of an offense being investigated by the grand jury, before, during or after the testimony of witnesses.

(d) Advise the grand jury as to the standard for probable cause, and tell them that if a person refuses to testify this fact cannot be used against him or her.

(e) Issue and have served grand jury subpoenas for witnesses.

(f) Present opening statements and/or instruct jury on applicable law.

(g) Prepare an indictment for consideration by or at the request of the grand jury.

(Adopted March 30, 1994, effective July 1, 1994.)

### **I.C.R. 6.3. Transcript of Grand Jury Proceedings.**

(a) Reporting Grand Jury Proceedings. All proceedings of the grand jury, except deliberations, shall be recorded, either stenographically or electronically.

(b) Record of Proceedings. The district judge or the presiding juror shall designate someone to report or electronically record all of the proceedings of the grand jury, except its deliberations. Such person shall be sworn to correctly report all of such proceedings and not to divulge any of such information to any person except on order of the district judge. Upon taking such an oath, such person shall be permitted to attend all sessions, except deliberations, of the grand jury. Upon the conclusion of each matter presented to the grand jury the court clerk shall seal the record of the grand jury proceedings which shall not be examined by any person or transcribed except upon order of the district judge.

(c) Availability of Record of Grand Jury Proceedings. The district judge by motion shall permit a prosecuting attorney, a person charged in an indictment or the attorney for the person charged, or a person charged with perjury by reason of the person's testimony before the grand jury to listen to the record of the proceedings of the grand jury or to obtain a transcript of such proceedings, in the same manner as a transcript of a preliminary hearing. The district judge may place conditions upon the use, dissemination or publication of the proceedings of the grand jury, and any violation of any such condition by a party granted access to the record shall constitute contempt of the order of the district judge.

(Adopted March 30, 1994, effective July 1, 1994.)

#### **I.C.R. 6.4. Secrecy and Confidentiality of Grand Jury Proceedings.**

(a) Who May be Present at Grand Jury Sessions. The grand jury may, at all reasonable times, request the presence and advice of the district judge but unless such advice is asked, the district judge shall not be present during any session of the grand jury after it has been impaneled. No other person shall be permitted to be present during the sessions of the grand jury except:

- (1) Jurors of the grand jury.
- (2) The prosecuting attorney of the county in which the grand jury sitting, or a designated deputy or specially appointed deputy.
- (3) A witness physically present before the grand jury and under questioning and such person requested by the prosecuting attorney as authorized by section 19-3023, Idaho Code.
- (4) The person designated by the district judge or the presiding juror to report the proceedings.
- (5) An interpreter designated by the district judge or presiding juror and sworn to correctly interpret the proceedings and sworn to secrecy.

(b) Presence of Persons During Jury Deliberations Prohibited. No person other than the acting grand jurors shall be permitted to be present during the deliberations of the grand jury.

(c) Secrecy of Proceedings and Disclosure. Every member of the grand jury must keep secret whatever was said or done in the grand jury proceedings and which manner each grand juror may have voted on a matter before them; but a grand juror may be required by the district judge to disclose matters occurring before the grand jury which may constitute grounds for dismissal of an indictment or grounds for a challenge to a juror or the array of jurors. No other person present in a grand jury proceeding shall disclose to any other person what was said or done in the proceeding, except by order of any court for good cause shown.

(d) Disclosure of Indictment. The court may seal the indictment and while sealed, no person shall disclose the finding of the indictment.

(Adopted March 30, 1994, effective July 1, 1994.)

#### **I.C.R. 6.5. Grand Jury Proceedings.**

(a) Grand Jury Subpoenas. A grand jury subpoena or subpoena duces tecum may be issued by either the presiding juror or the prosecutor in the manner provided by law.

(b) Questioning of Witnesses. Witnesses may be questioned by the prosecuting attorney, the presiding juror, and other members of the grand jury under the direction of the presiding juror.

(c) Evidence for Defendant. The grand jury is not bound to hear evidence for the defendant, but it is their duty to weigh all the evidence submitted to them, and when they have reason to believe that other evidence within their reach will explain away the charge, they should order such evidence to be produced, and for that purpose may require the prosecuting attorney to issue process for the witnesses.

(Adopted March 30, 1994, effective July 1, 1994.)

#### **I.C.R. 6.6. Indictment.**

(a) Sufficiency of Evidence to Warrant Indictment. If it appears to the grand jury after evidence has been presented to it that an offense has been committed and that there is probable cause to believe that the accused committed it, the jury ought to find an indictment. Probable cause exists when the grand jury has before it such evidence as would lead a reasonable person to believe an offense has been committed and that the accused party has probably committed the offense.

(b) Multiple Charges of Indictment. There may be two or more separate charges in a grand jury indictment, but each shall be voted upon separately by the grand jury.

(c) Finding and Return of Indictment. An indictment may be found only upon the concurrence of twelve (12) or more jurors, shall be signed by the presiding juror, and shall be returned by the grand jury to a district judge. The indictment shall be in writing and have endorsed thereupon the names of all witnesses examined before the grand jury with regard to the subject matter of the indictment.

(d) Listing of Juror's Vote. The presiding juror shall prepare a separate list of all jurors voting in favor and against the indictment which shall remain sealed but can be disclosed to the prosecuting attorney, the defendant and defendant's counsel by order of the court.

(e) Return of no bill. If the grand jury concludes that probable cause is lacking and no indictment shall be returned, that fact shall be placed in writing and maintained under seal by the court as part of the record of that proceeding.

(Adopted March 30, 1994, effective July 1, 1994; amended February 9, 2012, effective July 1, 2012.)

### **I.C.R. 6.7. Motion to Dismiss Indictment.**

Grounds for Motion. A motion to dismiss the indictment may be granted by the district court upon any of the following grounds:

(a) A valid challenge to the array of grand jurors.

(b) A valid challenge to an individual juror who served upon the grand jury which found the indictment; provided, the finding of the valid challenge to one or more members of the grand jury shall not be grounds for dismissal of the indictment if there were twelve or more qualified jurors concurring in the finding of the indictment.

(c) That the charge contained within the indictment was previously submitted to a magistrate at preliminary hearing and dismissed for lack of probable cause.

(d) That the indictment was not properly found, endorsed and presented as required by these rules or by the statutes of the state of Idaho.

(Adopted March 30, 1994, effective July 1, 1994; amended March 1, 2000, effective July 1, 2000.)

### **I.C.R. 6.8. Discharge of Jury.**

A grand jury shall serve until discharged by the court but no grand jury shall serve more than six (6) months unless specifically ordered by the court which summoned the grand jury.

(Adopted March 30, 1994, effective July 1, 1994.)

### **I.C.R. 6.9. Other Prosecution.**

The fact that a grand jury is in session in a county shall not bar prosecution of other offenses by way of complaint or information in that county.

(Adopted March 30, 1994, effective July 1, 1994.)

### **I.C.R. 7. Indictment and Information.**

(a) Use of indictment or information. All felony offenses shall be prosecuted by indictment or information.

(b) Nature and contents. The indictment or the information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. The information shall be signed by the prosecuting attorney. It need not contain a formal commencement, a formal conclusion or any other matter not necessary to such

statement and it shall not contain any reference to the procedural history of the action. Allegations made in one (1) count may be incorporated by reference in another count. It may be alleged in a single count that the means by which the defendant committed the offense are unknown or that he committed it by one or more specific means. The indictment or information shall state for each count the official or customary citation of the statute, rule or regulation or other provision of law which the defendant is alleged to have violated. Error in the citation or its omission shall not be grounds for dismissal of the indictment or information or for reversal of the conviction if the error or omission did not mislead the defendant to the defendant's prejudice.

(c) Two-part informations. In all cases wherein an extended term of imprisonment is sought as the result of a prior conviction or convictions, the indictment or information shall set forth the facts on which the extended term of imprisonment is sought. The facts so alleged shall not be read to the jury unless the defendant has been found guilty of the primary charge. If the defendant is found guilty of the primary charge, the issue or issues involving the extended term of imprisonment shall then be tried.

(d) Surplusage. The court on motion by either party may strike surplusage from the indictment or information.

(e) Amendment of information or indictment. The court may permit a complaint, an information or indictment to be amended at any time before the prosecution rests if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced.

(f) Filing of information. The prosecuting attorney must file an information within fourteen (14) days after an order has been filed by the magistrate in the district court holding the defendant to answer, unless more time is granted by the court for good cause shown.

(Adopted December 27, 1979, effective July 1, 1980; amended June 15, 1987, effective November 1, 1987; amended March 23, 1990, effective July 1, 1990.)

### **I.C.R. 8. Joinder of Offenses and of Defendants.**

(a) Joinder of offenses. Two (2) or more offenses may be charged on the same complaint, indictment or information and a separate count for each offense if the offenses charged, whether felonies or misdemeanors or both, are based on the same act or transaction or on two (2) or more acts or transactions connected together or constituting parts of a common scheme or plan.

(b) Joinder of defendants. Two (2) or more defendants may be charged on the same complaint, indictment or information if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately and all of the defendants need not be charged in each count.

(Adopted December 27, 1979, effective July 1, 1980.) Cited in *State v. Dambrell*, 120 Idaho 532, 817 P.2d 646 (1991); *State v. Smith*, 121 Idaho 20, 822 P.2d 539 (Ct. App. 1991)

### **I.C.R. 9. Warrant or Summons Upon Indictment.**

The form of a warrant or summons upon an indictment, and their issuance, execution, service and return shall be made in the same manner and upon the same conditions as a warrant or summons upon a complaint as provided in Rule 4 of these rules.

(Adopted December 27, 1979, effective July 1, 1980.)

### **I.C.R. 10. Arraignment on Indictment or Information.**

(a) In general. After an indictment or an information has been filed with the district court, the defendant must be arraigned thereon by the court. The defendant must appear in person at such arraignment. The arraignment shall

take place within thirty (30) days following the filing of an information. If an indictment has been filed, the arraignment shall take place:

- (1) if a summons has been issued following the indictment, within thirty (30) days of service of the summons;
- (2) if a warrant has been issued following the indictment, and if the defendant is not in custody in the county in which the indictment is filed, within thirty (30) days of the defendant's initial appearance in the county issuing the indictment;
- (3) in all other cases, within thirty (30) days of the filing of the indictment.

(b) Right to counsel. If the defendant appears for arraignment without counsel, before arraigned, the defendant must be informed by the court that it is defendant's right to have counsel either of defendant's own selection, or if indigent, by court appointment. The defendant must be asked if defendant desires counsel and if defendant is able to provide such counsel. If the defendant desires counsel and is found to be a indigent person as defined by section 19-854, Idaho Code, the court shall appoint counsel to represent the defendant. No proceedings may take place prior to the appointment of counsel or until the defendant has had a reasonable period of time to obtain counsel, or unless the defendant waives the right to counsel.

(c) Arraignment. Arraignment shall be conducted in open court and shall consist of reading the indictment or information to the defendant or stating to the defendant the substance of the charge and calling on the defendant to plead thereto. The defendant may waive the reading of the indictment or information. The defendant shall be given a copy of the indictment or information before the defendant is called upon to plead. The defendant must be informed that if the name which appears on the indictment or information is not defendant's true name, the defendant must then declare defendant's true name or be proceeded against by the name in the indictment or information. If on the arraignment the defendant requires time to enter a plea, the defendant must be allowed a reasonable time, not less than one (1) day, within which to answer the indictment or information.

(d) Method of securing defendant's appearance.

- (1) When the defendant's appearance is necessary, and the defendant is in custody, the court may direct the officer who has custody of the defendant to produce the defendant.
- (2) If the defendant is at liberty on defendant's own recognizance or on bail pursuant to a court order issued in the same criminal action, the prosecuting attorney must, upon at least three (3) days' notice to the defendant and to defendant's attorney, notify the defendant and defendant's attorney that an information or indictment has been filed against the defendant and the time and place set before the court for arraignment. Notice shall be given to the defendant either in person or by mail at the defendant's last known address.
- (3) If the defendant, who is at liberty on defendant's own recognizance or on bail pursuant to a previous court order issued in that same criminal action, does not appear to be arraigned, the court, in addition to the forfeiture of the undertaking or bail, may issue a bench warrant for defendant's arrest. Upon taking the defendant into custody pursuant to such bench warrant, the executing peace officer must, without unnecessary delay, bring the defendant into such district court for arraignment.

(Adopted December 27, 1979, effective July 1, 1980; amended June 20, 2013, effective July 1, 2013; amended March 9, 2015, effective July 1, 2015.)

## **I.C.R. 11. Pleas.**

(a) Alternatives.

- (1) In General. A defendant may plead guilty or not guilty. If a defendant refuses to plead or if a defendant corporation fails to appear, the court shall direct the entry of a plea of not guilty.
- (2) Conditional Pleas. With the approval of the court and the consent of the prosecuting attorney, a defendant may enter a conditional plea of guilty reserving in writing the right, on appeal from the judgment, to review any specified adverse ruling. If the defendant prevails on appeal, the defendant shall be allowed to withdraw defendant's plea.

(b) Inadmissibility of pleas, offers of pleas, and related statements. The admissibility of pleas, offers of pleas, and related statements shall be governed by Rule 410 of the Idaho Rules of Evidence.

(c) Acceptance of plea of guilty. Before a plea of guilty is accepted, the record of the entire proceedings, including reasonable inferences drawn therefrom, must show:

- (1) The voluntariness of the plea.
- (2) The defendant was informed of the consequences of the plea, including minimum and maximum punishments, and other direct consequences which may apply.
- (3) The defendant was advised that by pleading guilty the defendant would waive the right against compulsory self-incrimination, the right to trial by jury, and the right to confront witnesses against the defendant.
- (4) The defendant was informed of the nature of the charge against the defendant.
- (5) Whether any promises have been made to the defendant, or whether the plea is a result of any plea bargaining agreement, and if so, the nature of the agreement and that the defendant was informed that the court is not bound by any promises or recommendation from either party as to punishment.

(d) Other advisories upon acceptance of plea. The district judge shall, prior to entry of a guilty plea or the making of factual admissions during a plea colloquy, instruct on the following:

- (1) The court shall inform all defendants that if the defendant is not a citizen of the United States, the entry of a plea or making of factual admissions could have consequences of deportation or removal, inability to obtain legal status in the United States, or denial of an application for United States citizenship.
- (2) If the defendant is pleading guilty to any offense requiring registration on the sex offender registry, the court shall inform the defendant of such registration requirements.
- (3) If the defendant is waiving his right to appeal or other post-conviction proceedings as part of his guilty plea, and such condition of the plea has been called to the attention of the court, the court shall confirm with the defendant his awareness of the waiver of appeal or other proceedings.

(e) Plea Advisory Form. As an aid in taking a plea of guilty, the court may require the defendant to fill out and submit the plea advisory form found in Appendix A of these rules. In addition to the form, the court must make a record showing:

- (1) The defendant understands the nature of the charge(s), including any mental element such as intent, knowledge, state of mind;
- (2) The defendant understands the maximum and minimum punishments, and any other direct consequences which may apply;
- (3) The defendant understood the contents of the guilty plea advisory form, and the defendant's plea is voluntary.

(f) Plea agreement procedure.

(1) In general. The prosecuting attorney and the attorney for the defendant or the defendant when acting pro se may engage in discussions with a view toward reaching an agreement, which may include a waiver of the defendant's right to appeal the judgment and sentence of the court, that upon the entering of a plea of guilty to a charged offense or to a lesser or related offense, the prosecuting attorney will do any of the following:

- (A) move for dismissal of other charges; or
- (B) make a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that such recommendation or request shall not be binding upon the court; or
- (C) agree that a specific sentence is the appropriate disposition of the case; or
- (D) agree to any other disposition of the case.

The court may participate in any such discussions.

(2) Notice of Such Agreement. If a plea agreement has been reached by the parties, the court shall, on the record, require the disclosure of the agreement in open court or, on a showing of good cause, in camera, at the time the plea is offered. If the agreement is of the type specified in subdivision (f)(1)(A), (C) or (D), the court may accept or reject the agreement, or may defer its decision as to the acceptance or rejection until there has been an opportunity to consider the presentence report. If the agreement is of the type specified in subdivision (f)(1)(B), the court shall advise the defendant that if the court does not accept the recommendation or request the defendant nevertheless has no right to withdraw his plea.

(3) Acceptance of a Plea Agreement. If the court accepts the plea agreement, the court shall inform the defendant that it will implement the disposition provided for in the plea agreement.

(4) Rejection of a Plea Agreement. If the court rejects the plea agreement, the court shall, on the record, inform the parties of this fact, advise the defendant personally in open court, or, on a showing of good cause, in camera, that the court is not bound by the plea agreement, afford the defendant the opportunity to then withdraw the defendant's plea, and advise the defendant that if the defendant persists in the guilty plea the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.

(Adopted December 27, 1979, effective July 1, 1980; amended March 30, 1984, effective July 1, 1984; amended March 20, 1985, effective July 1, 1985; amended June 15, 1987, effective November 1, 1987; amended March 30, 1988, effective July 1, 1988; amended March 21, 1991, effective July 1, 1991; amended March 28, 2007, effective July 1, 2007; amended April 4, 2008, effective July 1, 2008)

## **I.C.R. 12. Pleadings and Motions Before Trial - Form of Pleadings - Defenses and Objections.**

(a) Pleadings and motions. Pleadings in criminal proceedings shall be the complaint, indictment or the information, and the pleas of guilty and not guilty. All other pleas, and demurrers and motions to quash are abolished, and the defenses and objections raised before trial which heretofore could have been raised by one or more of them shall be raised only by motion to dismiss or to grant appropriate relief as provided in these rules.

(b) Pretrial motions. Any defense objection or request which is capable of determination without trial of the general issue may be raised before the trial by motion. The following must be raised prior to trial:

(c) Motions to suppress. A motion to suppress evidence shall describe the evidence sought to be suppressed and the legal basis for its suppression sufficiently to give the opposing party reasonable notice of the issues.

(1) Defenses and objections based on defects in the prior proceedings in the prosecution; or

(2) Defenses and objections based on defects in the complaint, indictment or information (other than it fails to show jurisdiction of the court or to charge an offense which objection shall be noticed by the court at any time during the pendency of the proceedings); or

(3) Motions to suppress evidence on the ground that it was illegally obtained; or

(4) Request for discovery under Rule 16; or

(5) Request for a severance of charges or defendants under Rule 14; or

(6) Motion to dismiss based upon former jeopardy.

(d) Form of pleading and documents. Every pleading, motion, notice, or judgment or order of the court shall be typed with black ribbon or produced by a computer or word processor type printer of letter quality on white paper and contain a caption setting forth the names of the parties, the title of the district court, together with the assigned number of the action, the designation of the document or pleading and the names, addresses and phone numbers of the attorneys appearing of record for the party filing the document or pleading. All pleadings, motions, notices, judgments, or other documents must be filed with the court and must be typed on 8 1/2 x 11 inch paper. The body of all such documents may be typed with double line spacing or one-and-one-half (1 1/2) line spacing with pica standard typing of not more than 10 letters to the inch. Every pleading shall have the name or designation thereof typed at the bottom of each page, and all attached exhibits must be legible and subject to reproduction by copying processes or be accompanied by a typewritten duplicate, and all handwritten exhibits shall be accompanied by a typewritten duplicate. The title of the court shall commence four (4) inches from the top of the first page. The

name, address and telephone number of the attorney, or person appearing in propria persona, shall be typewritten or printed above the title of the court in the space to the left of the center of the page and beginning at least two (2) inches below the top edge thereof. This rule does not apply to printed forms approved by the Supreme Court or the Administrative District Judge or distributed through the Court Assistance Office in the county where the lawsuit is pending. Such forms may be completed by legibly hand-printing in black ink or by typing.

(e) Motion date. Motions pursuant to Rule 12(b) must be filed within twenty-eight (28) days after the entry of a plea of not guilty or seven (7) days before trial whichever is earlier. In felony cases, such motions must be brought on for hearing within fourteen (14) days after filing or forty-eight (48) hours before trial whichever is earlier. The court in its discretion may shorten or enlarge the time provided herein, and for good cause shown, or for excusable neglect, may relieve a party of failure to comply with this rule.

(f) Ruling on motion. A motion made before trial shall be determined before trial unless the court orders that it be deferred for determination at the trial of the general issue. Where factual issues are involved in determining a motion, the court shall state its essential findings on the record.

(g) Effect of failure to raise defenses or objections. Failure by the defendant to raise defenses or objections or to make requests which must be made prior to trial, or at the time set by the court pursuant to subsection (d), or prior to any extension thereof made by the court, shall constitute waiver thereof, but the court for cause shown may grant relief from the waiver.

(h) Records. A verbatim record shall be made of all proceedings at the hearings including such findings of fact and conclusions of law as are made orally.

(Adopted December 27, 1979, effective July 1, 1980; amended March 23, 1983, effective July 1, 1983; amended March 20, 1985, effective July 1, 1985; amended March 28, 1986, effective July 1, 1986; amended March 27, 1989, effective July 1, 1989; amended March 30, 1994, effective July 1, 1994; amended April 3, 1996, effective July 1, 1996; amended March 9, 1999, effective July 1, 1999; amended April 22, 2004, effective July 1, 2004; amended March 9, 2015, effective July 1, 2015).

### **I.C.R. 12.1. Notice of Alibi.**

If the defendant intends to rely upon the defense of alibi, the defendant shall comply with section 19-519, Idaho Code.

(Adopted December 27, 1979, effective July 1, 1980.)

### **I.C.R. 12.2. Motions requesting additional defense services.**

(a) A defendant may submit a motion seeking public funds to pay for investigative, expert, or other services that he believes to be necessary for his defense. The motion must be made in advance of the defense incurring the costs and requires prior approval of the court.

(b) The motion shall include:

- (1) The scope and details of the services requested.
- (2) The reasons the requested services are relevant and necessary to the defense based upon the specific facts of the case.
- (3) The name and location of the proposed providers of the services.
- (4) The qualifications of the proposed providers of the services.
- (5) An estimate of the total cost of the services being requested, including the hourly rate or other charges of the providers of the services, and any additional expenses, such as travel costs, that will be incurred.
- (6) If the proposed providers of the services are located outside of the judicial district or the state of Idaho, an explanation of why the proposed providers should be utilized and what efforts have been made to locate providers of the requested services in the judicial district or in the state of Idaho.

(c) The court shall not grant a request for public funds to obtain such additional services in the absence of a finding of indigency, which shall be made on the basis of the standards set forth in Idaho Code § 19-854. The fact that a defendant has retained private counsel, or has been found not to be indigent for the purposes of appointing counsel at public expense, shall not necessarily preclude a finding that a defendant is indigent with regard to the obtaining of the additional services requested. In making the finding of indigency, the court may require the defendant to provide any relevant information concerning his finances, income, property, and expenses, or any other information relevant to standards for a finding of indigency set forth in Idaho Code § 19-854.

(d) The motion seeking public funds shall be submitted to the court ex parte, except as provided in subsection (g) of this rule. The court shall decide the motion on the basis of the record in the case and the information submitted by the defendant.

(e) The court, in its discretion, may request that the Administrative District Judge appoint another judge to consider and conduct any hearing on the motion and to decide upon the motion.

(f) In the event the motion is granted in whole or in part, the court may order such additional conditions as it finds appropriate to control costs and expenses. An order granting such motion shall specifically state the amount authorized and that any expenditure above that amount will not be approved for payment unless additional authorization is sought from the court, under the procedures set forth in this rule, prior to the added charge being occurred. Payment for services provided under the provisions of this rule shall be made only upon the submission of a detailed billing setting forth each of the services provided and the cost of such services.

(g) If the motion for additional defense services is filed by private counsel for the defendant, and the additional defense services are to be provided through funds budgeted to the public defender, the public defender shall be served with a copy of any motion under this rule for additional resources and shall be served notice by the moving party of any hearing on the matter. If the motion for additional defense services is granted the court shall provide a copy of the order granting the motion to the public defender.

(Adopted June 26, 2014, effective August 1, 2014)

### **I.C.R. 13. Trial Together of Complaints, Indictments and Informations.**

The court may order two (2) or more complaints, indictments or informations to be tried together if the offenses, and the defendants if there is more than one (1), could have been joined in a single complaint, indictment or information. The procedure shall be the same as if the prosecution were under such single complaint, indictment or information.

(Adopted December 27, 1979, effective July 1, 1980.)

### **I.C.R. 14. Relief From Prejudicial Joinder.**

If it appears that a defendant or the state is prejudiced by a joinder of offenses or of defendants in a complaint, indictment or information or by such joinder for trial together, the court may order the state to elect between counts, grant separate trials of counts, grant a severance of defendants, or provide whatever other relief justice requires. In ruling on a motion by a defendant for severance the court may order the attorney for the state to deliver to the court for inspection in camera any statements or confessions made by the defendants which the state intends to introduce in evidence at the trial.

(Adopted December 27, 1979, effective July 1, 1980.)

### **I.C.R. 15. Depositions.**

(a) When taken. If it appears that a prospective witness may be unable to attend or prevented from attending a trial or hearing, that the testimony of the witness is material and that it is necessary to take the deposition of the witness

in order to prevent a failure of justice, the court at any time after the filing of a complaint, indictment or information may upon motion of the prosecution or the defendant and after notice to all parties, order that the testimony of the witness be taken by deposition and that any designated books, papers, documents or tangible objects, not privileged, be produced at the same time and place. If a witness is committed for failure to give bail to appear to testify at a trial or hearing, the court on written motion of the witness or any party and upon notice to the parties may direct that the deposition of the witness be taken. After the deposition has been subscribed the court may discharge the witness.

(b) Notice of taking. The party at whose instance the deposition is to be taken shall give to every other party a reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time or change the place for taking the deposition. The officer having custody of a defendant shall be notified of the time and place set for the examination and shall, unless the defendant waives in writing the right to be present, produce the defendant at the examination and keep the defendant in the presence of the witness during the examination, unless, after being warned by the court that disruptive conduct will cause the defendant to be removed from the place of the taking of the deposition, the defendant persists in conduct which is such as to justify the defendant being excluded from that place. A defendant not in custody shall have the right to be present at the examination upon request subject to such terms as may be fixed by the court, but defendant's failure, absent good cause shown, to appear after notice and tender of expenses in accordance with subdivision (c) of this rule shall constitute a waiver of that right and of any objection to the taking and use of the deposition based upon that right.

(c) Payment of expenses. Whenever a deposition is taken, the court may, in its discretion, direct that the expense of travel and subsistence of the defendant and defendant's attorney for attendance at the examination and the cost of the transcript of the deposition shall be paid by the county.

(d) How taken. Subject to such additional conditions as the court shall provide, a deposition shall be taken and filed in the manner provided in civil actions except as otherwise provided in these rules, provided that

- (1) in no event shall a deposition be taken of a party defendant without the defendant's consent, and
- (2) the scope and manner of examination and cross-examination shall be such as would be allowed in the trial itself. The state shall make available to the defendant or defendant's counsel for examination and use at the taking of the deposition any statement of the witness being deposed which is in the possession of the state and to which the defendant would be entitled at the trial. A deposition shall be taken as provided by the Idaho Rules of Civil Procedure. The court at the request of a defendant may direct that a deposition may be taken on written interrogatories in the manner provided in the Idaho Rules of Civil Procedure.

(e) Use. At the trial or upon any hearing, a part or all of a deposition so far as otherwise admissible under the rules of evidence, may be used as substantive evidence if the witness is unavailable, as the term unavailability is defined in Rule 804(a) of the Idaho Rules of Evidence.

(f) Objections to deposition testimony. Objections to deposition testimony or evidence or parts thereof and the grounds for the objection shall be stated at the time of the taking of the deposition, unless otherwise agreed by the parties.

(g) Deposition by agreement not precluded. Nothing in this rule shall preclude the taking of a deposition orally or upon written questions, or the use of a deposition by agreement of the parties with the consent of the court.

(Adopted December 27, 1979, effective July 1, 1980; amended March 20, 1985, effective July 1, 1985.)

## **I.C.R. 16. Discovery and Inspection.**

(a) Automatic disclosure of evidence and material by the prosecution. As soon as practicable following the filing of charges against the accused, the prosecuting attorney shall disclose to defense counsel any material or information

within the prosecuting attorney's possession or control, or which thereafter comes into the prosecuting attorney's possession or control, which tends to negate the guilt of the accused as to the offense charged or which would tend to reduce the punishment therefor. The prosecuting attorney's obligations under this paragraph extend to material and information in the possession or control of members of prosecuting attorney's staff and of any others who have participated in the investigation or evaluation of the case who either regularly report, or with reference to the particular case have reported, to the office of the prosecuting attorney. In addition, the office of the prosecuting attorney shall disclose the general nature of evidence of other crimes, wrongs, or acts, it intends to introduce at trial in accordance with the provisions of Rule 404(b) of the Idaho Rules of Evidence.

(b) Disclosure of evidence and materials by the prosecution upon written request. Except as otherwise hereinafter provided in this rule, the prosecuting attorney shall at any time following the filing of charges, upon written request by the defendant, disclose the following information, evidence and material to the defendant, which shall not be filed with the court, unless otherwise ordered.

(1) Statement of defendant. Upon written request of a defendant the prosecuting attorney shall permit the defendant to inspect and copy or photograph: any relevant written or recorded statements made by the defendant, or copies thereof, within the possession, custody or control of the state, the existence of which is known or is available to the prosecuting attorney by the exercise of due diligence; and also the substance of any relevant, oral statement made by the defendant whether before or after arrest to a peace officer, prosecuting attorney or the prosecuting attorney's agent; and the recorded testimony of the defendant before a grand jury which relates to the offense charged.

(2) Statement of a co-defendant. Upon written request of a defendant the prosecuting attorney shall permit the defendant to inspect and copy or photograph any written or recorded statements of a co-defendant; and the substance of any relevant oral statement made by a co-defendant whether before or after arrest in response to interrogation by any person known by the co-defendant to be a peace officer or agent of the prosecuting attorney.

(3) Defendant's prior record. Upon written request of the defendant, the prosecuting attorney shall furnish the defendant such copy of the defendant's prior criminal record, if any, as is then or may become available to the prosecuting attorney.

(4) Documents and tangible objects. Upon written request of the defendant, the prosecuting attorney shall permit the defendant to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings, or places, or copies or portions thereof, which are in the possession, custody or control of the prosecuting attorney and which are material to the preparation of the defense, or intended for use by the prosecutor as evidence at trial, or obtained from or belonging to the defendant.

(5) Reports of examinations and tests. Upon written request of the defendant the prosecuting attorney shall permit the defendant to inspect and copy or photograph any results or reports of physical or mental examinations, and of scientific tests or experiments, made in connection with the particular case, or copies thereof, within the possession, custody or control of the prosecuting attorney, the existence of which is known or is available to the prosecuting attorney by the exercise of due diligence.

(6) State witnesses. Upon written request of the defendant the prosecuting attorney shall furnish to the defendant a written list of the names and addresses of all persons having knowledge of relevant facts who may be called by the state as witnesses at the trial, together with any record of prior felony convictions of any such person which is within the knowledge of the prosecuting attorney. The prosecuting attorney shall also furnish upon written request the statements made by the prosecution witnesses or prospective prosecution witnesses to the prosecuting attorney or the prosecuting attorney's agents or to any official involved in the investigatory process of the case unless a protective order is issued as provided in Rule 16(k).

(7) Expert witnesses. Upon written request of the defendant the prosecutor shall provide a written summary or report of any testimony that the state intends to introduce pursuant to Rules 702, 703 or 705 of the Idaho Rules of Evidence at trial or hearing. The summary provided must describe the witness's opinions, the facts and data for those opinions, and the witness's qualifications. Disclosure of expert opinions regarding mental health shall also comply with the requirements of I.C. § 18-207. The prosecution is not required to produce any materials not subject to disclosure under paragraph (f) of this Rule. This subsection does not require disclosure of expert witnesses, their opinions, the facts and data for

those opinions, or the witness's qualifications, intended only to rebut evidence or theories that have not been disclosed under this Rule prior to trial.

(8) Police reports. Upon written request of the defendant the prosecuting attorney shall furnish to the defendant reports and memoranda in possession of the prosecuting attorney which were made by a police officer or investigator in connection with the investigation or prosecution of the case.

(9) Disclosure by order of the court. Upon motion of the defendant showing substantial need in the preparation of the defendant's case for additional material or information not otherwise covered by this Rule 16(b), and that the defendant is unable without undue hardship to obtain the substantial equivalent by other means, the court in its discretion may order the additional material or information to be made available to the defendant. The court may, upon the request of any person affected by the order, vacate or modify the order if compliance would be unreasonable or oppressive.

(c) Disclosure of evidence by the defendant upon written request. Except as otherwise hereinafter provided in this rule, the defendant shall at any time following the filing of charges against the defendant, upon written request by the prosecuting attorney, disclose the following information, evidence and material to the prosecuting attorney, which shall not be filed with the court, unless otherwise noted.

(1) Documents and tangible objects. Upon written request of the prosecuting attorney, the defendant shall permit the prosecutor to inspect and copy or photograph books, papers, documents, photographs, tangible objects or copies or portions thereof, which are within the possession, custody or control of the defendant, and which the defendant intends to introduce in evidence at the trial.

(2) Reports of examinations and tests. Upon written request of the prosecuting attorney, the defendant shall permit the state to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the defendant, which the defendant intends to introduce in evidence at the trial, or which were prepared by a witness whom the defendant intends to call at the trial when the results or reports relate to testimony of the witness.

(3) Defense witness. Upon written request of the prosecuting attorney, the defendant shall furnish the state a list of names and addresses of witnesses the defendant intends to call at trial.

(4) Expert witnesses. Upon written request of the prosecutor the defendant shall provide a written summary or report of any testimony that the defense intends to introduce pursuant to Rules 702, 703 or 705 of the Idaho Rules of Evidence at trial or hearing. The summary provided must describe the witness's opinions, the facts and data for those opinions and the witness's qualifications. Disclosure of expert opinions regarding mental health shall also comply with the requirements of I.C. § 18-207. The defense is not required to produce any materials not subject to disclosure under paragraph (g) (h) of this Rule, or any material otherwise protected from disclosure by his constitutional rights.

(d) Redacting protected information from responses to discovery. The party providing discovery may redact protected information from the information or material provided.

(1) Protected information means:

A. Contact information. The home addresses, business addresses, telephone numbers (including cell phones), and email addresses of an alleged victim, or of a witness, or of the spouse, children, or other close family members of the alleged victim or witness, and the places where any of such persons regularly go, such as schools and places of employment and worship.

B. Personal identifying information. The dates of birth and social security numbers of any persons other than the defendant.

C. Private information. Personal identification numbers (PINs), passwords, financial account numbers, information relating to financial transaction cards, and medical information protected by federal law that is not directly related to the crime charged.

(2) A prosecuting attorney who redacts protected information shall follow the following procedure:

A. If the defendant is represented by counsel, the prosecuting attorney shall serve defendant's counsel with a redacted copy of the discovery printed on white paper simultaneously with an unredacted copy of the discovery printed on paper of a color that is clearly distinguishable from

white. The defendant's attorney, including appellate counsel, shall not disclose the protected information to the defendant or to a member of the defendant's family without the consent of the prosecuting attorney or an order of the court upon a showing of need.

B. If the defendant is not represented by counsel, the prosecuting attorney shall serve the defendant with a redacted copy of the discovery and, within seven (7) days of doing so, even if the disclosure was not in response to a discovery request, shall file with the court and serve upon the defendant a motion for a protective order with respect to the redacted information.

(3) A defense attorney or defendant who redacts protected information shall serve the prosecuting attorney with a redacted copy of the discovery printed on white paper simultaneously with an unredacted copy of the discovery printed on paper of a color that is clearly distinguishable from white. The state's attorney, including appellate counsel, shall not disclose the protected information to the alleged victim or to a member of the alleged victim's family without the consent of the defendant or an order of the court upon a showing of need.

(e) Failure to make written request, waiver.

(1) Any request by a party for information, evidence or material under subsections (b) and (c) of this rule must be in writing with the original document filed with the court and a copy served upon the prosecuting attorney or the defense attorney. Failure to so file and serve such request in writing, shall constitute a waiver of the right to discovery under subsections (b) and (c) of this rule. If no written request for discovery is so filed and served by the defendant, the defendant shall not be permitted to raise as error in any subsequent proceeding the failure of the prosecution to disclose the information described in subsection (b) of this rule.

(2) Form of request. A request for the information, evidence and material under subsection (b) of this rule shall be in substantially the following form: (*Available at* <http://www.isc.idaho.gov/icr16>)

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

\_\_\_\_\_) )  
Plaintiff, ) Case No. \_\_\_\_\_  
 ) REQUEST FOR DISCOVERY  
v. )  
\_\_\_\_\_) )  
Defendant. )

TO: THE (PROSECUTING ATTORNEY OF \_\_\_\_\_ COUNTY) (DEFENDANT):

PLEASE TAKE NOTICE that the undersigned pursuant to Rule 16 of the Idaho Criminal Rules request discovery and inspection of the following information, evidence and materials:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_

- 7. \_\_\_\_\_
- 8. \_\_\_\_\_
- 9. \_\_\_\_\_
- 10. \_\_\_\_\_

The undersigned further requests permission to inspect and copy said information, evidence and materials on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
 Attorney for the (Plaintiff) (Defendant)

(CERTIFICATE OF SERVICE)

(f) Response to request, failure to file a response.

(1) Response to request. The party upon whom a request has been served shall file and serve a written response within fourteen (14) days of service of the request by filing the original copy with the court and serving a copy upon the opposing party which shall state one or more of the following:

A. That the response has already been complied with and that the inquiring party has been furnished the information, evidence and material listed in the request.

B. That there is no objection to the discovery of the information, evidence and materials sought by the request and that the opposing party shall be permitted discovery at a time and place certain.

C. That the responding party objects to part or all of the information, evidence and materials sought to be discovered in the response, which objection shall be specific and shall state the grounds for the objection.

(2) Failure to comply. Unless otherwise ordered by the court upon the showing of good cause or excusable neglect, the failure to file and serve a response within the time prescribed by this rule shall constitute a waiver of any objections to the request and shall be grounds for the imposition of sanctions by the court.

(3) A response to a request shall be in substantially the following form: (*Available at* <http://www.isc.idaho.gov/icr16>)

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

_____	)
Plaintiff,	) Case No. _____
	)
v.	) RESPONSE TO REQUEST FOR DISCOVERY
	)
_____	)
Defendant.	

COMES NOW the (Plaintiff) (Defendant) and submits the following Response to the Request for Discovery:  
 (Plaintiff) (Defendant) has complied with such request by \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(or)

(Plaintiff) (Defendant) will comply with such request by \_\_\_\_\_

\_\_\_\_\_

(and/or)

(Plaintiff) (Defendant) objects to (all of the request) (that part of the request for the discovery of

\_\_\_\_\_.)

The grounds for this objection are as follows: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. \_\_\_\_\_

Attorney for (Plaintiff) (Defendant)

(CERTIFICATE OF SERVICE)

ACKNOWLEDGMENT OF DISCOVERY

(Optional)

The undersigned hereby acknowledges that discovery has been permitted of the following information, evidence and materials pursuant to the Request for Discovery.

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. \_\_\_\_\_

Attorney for (Plaintiff) (Defendant)

(g) Prosecution information not subject to disclosure.

- (1) Work product. Disclosure shall not be required of legal research or of records, correspondence, reports of memoranda to the extent that they contain the opinions, theories or conclusions of the prosecuting attorney or members of the prosecuting attorney's legal staff.
- (2) Informants. Disclosure shall not be required of an informant's identity unless such informant is to be produced as a witness at a hearing or trial, subject to any protective order under Rule 16(k) or a disclosure order under Rule 16(b)(8).

(h) Defense information not subject to disclosure. Except as to scientific or medical reports, this rule does not authorize the discovery or inspection of reports, memoranda, or other internal defense documents made by the defendant, or defendant's attorneys or agents in connection with the investigation or defense of the case, or of statements made by the defendant or state or defense witnesses, or prospective state or defense witnesses to the defendant, defendant's agents or attorneys.

(i) Failure to call witnesses. The fact that a witness's name is on a list furnished under this rule and that witness is not called shall not be commented upon at the trial.

(j) Continuing duty to disclose. If, subsequent to compliance with a request issued pursuant to this rule, and prior to or during trial, a party discovers additional evidence or the evidence of an additional witness or witnesses, or decides to use additional evidence, witness or witnesses, such evidence is automatically subject to discovery and inspection under such prior request and such party shall promptly notify the other party or that party's attorney and the court of the existence of such additional evidence or the names of such additional witness or witnesses in order to allow the other party to make an appropriate request for additional discovery or inspection.

(k) Orders for discovery. If a party has failed to comply with a request for discovery under this rule, the court upon motion of a party, may, order a party to permit the discovery or inspection, prohibit the discovery of part or all of the information, evidence or material sought to be discovered, or enter such other order as it deems just in the circumstances. An order of the court granting discovery under this rule shall specify the time, place and manner of making the discovery and inspection permitted and prescribe such terms and conditions as are just.

(l) Protective orders. Upon a sufficient showing, after notice and hearing, the court may at any time order that the discovery or inspection be denied, restricted or deferred, or make such other order as is appropriate, including an order denying a request for disclosure of names and addresses of witnesses or others who may be subjected to economic, physical or other harm or coercion. The court may permit a party to make such showing in whole or in part, in the form of a written statement to be inspected by the judge alone. If the court enters an order granting relief after such showing, the entire text of the party's statement shall be sealed and preserved in the record of the court to be made available to the appellate court in the event of an appeal.

(m) Sexually exploitative material.

(1) Any property or material that constitutes or is alleged to constitute sexually exploitative material as defined in I.C. § 18-1505B or I.C. § 18-1507 shall remain in the care custody, and control of either the court or a law enforcement agency.

(2) A court shall deny any request by a defendant to copy, photograph, duplicate, or otherwise reproduce any property or material that constitutes or is alleged to constitute sexually exploitative material as defined in I. C. § 18-1505B or I. C. § 18-1507, so long as the state makes the property or material reasonably available to the defendant.

(3) For purposes of subsection (m)(2) of this rule, property or material shall be deemed to be reasonably available to the defendant if the state provides ample opportunity for inspection, viewing, and examination of the property or material by the defendant, defense counsel, and any individual the defendant may seek to qualify to furnish expert testimony at trial.

(Adopted December 27, 1979, effective July 1, 1980; am. February 20, 1980, effective July 1, 1980; amended March 27, 1989, effective July 1, 1989; amended March 9, 1999, effective July 1, 1999; amended March 28, 2007, effective July 1, 2007; amended February 9, 2012, effective July 1, 2012; amended November 20, 2012, effective January 1, 2013; amended October 6, 2013, effective January 1, 2014.)

### **I.C.R. 17. Subpoena.**

(a) For attendance of witnesses, form, issuance. A subpoena shall be issued by the clerk of the court or the judge thereof, and shall command each person to whom it is directed to attend and give testimony at the time and place specified therein. The clerk may issue a subpoena, signed and sealed, but otherwise in blank to a party requesting it who shall fill in the blanks before it is served.

(b) For production of documentary evidence and of objects. A subpoena may also command the person to whom it is directed to produce the books, papers, documents or other objects designated therein. The court on motion may quash or modify the subpoena if compliance would be unreasonable or oppressive. The court may direct that books, papers, documents or objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence and may upon their production permit the books, papers, documents or objects or portions thereof to be inspected by the parties and their attorneys.

(c) Service. A subpoena may be served by a peace officer, by the officer's deputy, or by any other person who is not a party and who is not less than eighteen (18) years of age. Service of a subpoena shall be made by delivering a copy thereof to the person named.

(d) Place of service.

(1) In the State of Idaho. A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place in the state of Idaho.

(2) Outside the state of Idaho. A subpoena directed to a witness outside the state of Idaho shall be issued under the circumstances and in the manner and be served as provided by law.

(3) Prisoners or persons in confinement. A subpoena directed to a witness who is a prisoner or a person held in confinement shall be issued and served as provided by law.

(e) For taking deposition, place of examination. When an order has been entered by the district court authorizing the taking of a deposition the clerk of said court shall issue a subpoena requiring the attendance of the deponent witness; provided that such deposition shall be taken only in the county within which the deponent resides, is employed or conducts business in person, or at such other place as fixed by the district court in such order.

(f) Contempt. Failure by any person to obey a subpoena served upon the person may be deemed in contempt of the court from which the subpoena issued.

(Adopted December 27, 1979, effective July 1, 1980.)

### **I.C.R. 18. Felony Pretrial Conference.**

(a) At any time prior to trial, the court, upon motion of any party or upon its own motion, may order one or more pretrial conferences to consider such matters as would promote a fair and expeditious trial. At the conclusion of the pretrial conference the court shall make a written record of the matters decided.

(b) The court may hold an informal settlement conference off the record. No admissions made by the defendant or the defendant's attorney at the settlement conference shall be used against the defendant unless the admissions are reduced to writing and signed by the defendant and the defendant's attorney or signed by the defendant if the defendant is self-represented.

(Adopted December 27, 1979, effective July 1, 1980; amended March 9, 2015, effective July 1, 2015.)

### **I.C.R. 18.1. Mediation in Criminal Cases.**

In any criminal proceeding, any party or the court may initiate a request for the parties to participate in mediation to resolve some or all of the issues presented in the case. Participation in mediation is voluntary and will take place only upon agreement of the parties. Not all defendants in a multi-defendant case need join in the request or in the settlement conference/mediation. Decision making authority remains with the parties and not the mediator.

(1) Definition of "Mediation." Mediation under this rule is the process by which a neutral mediator assists the parties (defined as the prosecuting attorney on behalf of the State and the Defendant) in reaching a mutually acceptable agreement as to issues in the case, which may include sentencing options, restitution awards, admissibility of evidence and any other issues which will facilitate the resolution of the case.

Unless otherwise ordered, mediation shall not stay any other proceeding.

(2) Matters Subject to Mediation. All misdemeanor and felony cases shall be subject to mediation if the court deems that it may be beneficial in resolving the case entirely. Issues related, but not limited to, the possibility of reduced charges, agreements about sentencing recommendations or possible Rule 11 agreements, the handling of restitution and continuing relationship with any victim, are all matters which may be referred to mediation.

(3) Selection of Mediator. The court shall select a mediator from those maintained on a roster provided by the Administrative Office of the Courts, after considering the recommendations of the parties. That roster will include senior or sitting judges or justices who have indicated a willingness to conduct criminal mediations and who have completed 12 hours of criminal mediation training within the previous two years. If the selected mediator is a senior judge or justice, the mediator will be compensated as with any senior judge service, and approval from the trial court administrator must be obtained by the court prior to the mediation.

(4) Role of the Mediator. The role of the mediator shall be limited to facilitating a voluntary settlement between parties in criminal cases. The role of the mediator is to aid the parties in identifying the issues, reducing misunderstandings, exploring options and discussing areas of agreement which can expedite the trial or resolution of the case. The mediator shall not preside over any future aspect of the case, other than facilitation of a voluntary settlement according to this rule. The mediator shall not take a guilty plea from nor sentence any defendant in the case.

(5) Persons to be Present at Mediation. Participants shall be determined by the attorneys and the mediator. The government attorney participating in the settlement discussions shall have authority to agree to a disposition of the case.

(6) Confidentiality. Except as provided in I.C. § 16-1605, mediation proceedings shall in all respects be confidential and not reported or recorded.

(7) Mediator Privilege. Mediator privilege is governed by Idaho Rule of Evidence 507.

(8) Communications Between Mediator and the Court. The mediator and the court shall have no contact or communication except that the mediator may, without comment or observation, report to the court:

(a) that the parties are at an impasse;

(b) that the parties have reached an agreement. In such case, however, the agreement so reached may be reduced to writing, signed by the prosecuting attorney, the Defendant and defense counsel, and submitted to the court for approval;

(c) that meaningful mediation is ongoing;

(d) that the mediator withdraws from the mediation.

(9) Communications Between Mediator and Attorneys. The mediator may communicate in advance of the mediation with the attorneys to become better acquainted with the current state of negotiations and the issues to be resolved in the mediation. This communication may be conducted separately with each of the attorneys and without the presence of the defendant.

(10) Termination of Mediation. The court, the mediator, or any party may terminate the mediation at any time if further progress toward a reasonable agreement is unlikely or concerns or issues arise which make mediation no longer appropriate.

(Adopted March 18, 2011, effective July 1, 2011; amended April 27, 2012, effective July 1, 2012; amended February 27, 2013, effective July 1, 2013.)

#### **I.C.R. 19. Place of Prosecution and Trial.**

Except as otherwise permitted by statute or by these rules, the prosecution shall be had in the county in which the alleged offense was committed.

(Adopted December 27, 1979, effective July 1, 1980.)

#### **I.C.R. 20. Transfer From the County for Plea and Sentence.**

(a) Complaint or indictment or information pending. A defendant arrested, held, or present in a county other than that in which the complaint, information, or indictment is pending against the defendant may state in writing that the defendant wishes to plead guilty to the complaint, information, or indictment which is pending and to consent to disposition of the case in the county in which the defendant was arrested, or is held, or is present, subject to the approval of the transfer by the prosecuting attorney from each county involved and the trial court where the case is pending.

(b) Clerk's duties. Upon receipt of the defendant's request and consent and of the written approval of the prosecuting attorneys, and the trial court where the case is pending, the clerk of the court in which the complaint is pending shall transfer the papers and the proceeding or certified copies thereof to the clerk of the court for the county in which the defendant was arrested, or is held or is present; and the prosecution shall continue in that county.

(c) Effect of not guilty plea or failure to abide by conditions of transfer. If after the proceeding has been transferred pursuant to subsection (a) of this rule the defendant pleads not guilty or fails to abide by the conditions of the transfer, if any, the clerk shall return the papers to the court in which the prosecution was commenced and the proceeding shall be restored to the docket of the court. The defendant's statement that the defendant wished to plead guilty shall not be used against the defendant.

(d) Summons. For the purpose of initiating a transfer under this rule a person who appeared in response to the summons issued under Rule 4 shall be treated as if that person had been arrested or held on a warrant in the county of such appearance.

(Adopted December 27, 1979, effective July 1, 1980; amended April 22, 2004, effective July 1, 2004.)

### **I.C.R. 21. Change of Venue.**

(a) For prejudice. The court upon motion of either party shall transfer the proceeding to another county if the court is satisfied that a fair and impartial trial cannot be had in the county where the case is pending.

(b) Other cases. For the convenience of parties and witnesses, and in the interest of justice, the court upon motion of the defendant may transfer the proceedings as to the defendant to another county.

(c) Proceedings on transfer. In the event a trial judge grants a change of venue pursuant to this rule to a court of proper venue within the same judicial district, the trial judge granting the change of venue shall order the case transferred to a specific court of proper venue within the judicial district and shall continue the assignment over the case, unless the administrative district judge shall reassign the case to another judge of the judicial district. In the event a trial judge desires to transfer a case to a court of proper venue outside of the judicial district in which the action is filed and desires to continue the assignment over the case, the trial judge may enter an order granting the change of venue and indicate therein a suggested court of proper venue in another judicial district and the judge's desire to preside over the case, and then refer the case to the administrative director of the courts for assignment by the Supreme Court to a court of proper venue in another judicial district and assignment of a specific judge to preside in the proceeding. In the event a trial judge desires to transfer a case to a court of proper venue outside of the judicial district in which the action is filed and the trial judge does not desire to continue the assignment over the case, the trial judge shall enter an order granting the change of venue without specifying the new place of venue, and then refer the case to the administrative director of the courts for assignment by the Supreme Court to a court of proper venue in another judicial district and assignment of a specific judge to preside in the criminal proceeding.

(d) Disqualification of Judge. In the event a judge is disqualified from further handling of a proceeding in which a change of venue has been granted to a court of proper venue within the same judicial district, the administrative district judge shall reassign the case to another judge of the judicial district. In the event that a judge is disqualified from further handling of a proceeding in which a change of venue has been granted from an originating court outside of the judicial district, the administrative district judge of the judicial district to which venue has been removed shall refer case to the administrative director of the courts for assignment by the Supreme Court to a court of proper venue and assignment of a specific judge to preside in the criminal proceeding.

(e) [Rescinded.]

(Adopted December 27, 1979, effective July 1, 1980; amended April 3, 1981, effective July 1, 1981; amended March 30, 1984, effective July 1, 1984.)

## **I.C.R. 22. Time of Motion for Change of Venue.**

A motion for change of venue under these rules may be made at or before arraignment or at such other time as the court or these rules may prescribe.

(Adopted December 27, 1979, effective July 1, 1980.)

## **I.C.R. 23. Trial by Jury or by the Court - Waiver of Jury - Number of Jurors.**

(a) Felony cases. In felony cases issues of fact must be tried by a jury, unless a trial by jury is waived by a written waiver executed by the defendant in open court with the consent of the prosecutor expressed in open court and entered in the minutes.

(b) Misdemeanor cases. In criminal cases not amounting to a felony, issues of fact must be tried by a jury, unless a trial by jury is waived by the consent of both parties expressed in open court and entered in the minutes.

(c) Number of jurors. In a felony case the jury shall consist of twelve (12) jurors. In a misdemeanor case the jury shall consist of six (6) jurors. However, if felony and misdemeanor charges are charged together in the same information or indictment in a consolidated case, as provided in I.C.R. 8(a), and at least one (1) felony and one (1) misdemeanor will be tried together before the jury, they shall be tried before the same twelve-person jury.

(Adopted March 28, 1986, effective July 1, 1986; amended March 9, 2015, effective July 1, 2015.)

### **I.C.R. 23.1 Juror Questionnaires - Confidentiality.**

In order to provide for open, complete and candid responses to juror questionnaires and to protect juror privacy, information derived from or answers to juror questionnaires shall be confidential and shall not be disclosed to anyone except pursuant to court order. For the limited purpose of trial preparation, copies of the juror questionnaires and answers may be made available by the clerk to an attorney for a party or to a party appearing pro se. Such disclosure shall be subject to the rule of juror confidentiality stated above and any further limiting order of the administrative or trial judge. Such a limiting order may include deletion of the name, address, phone number or any other information about a prospective juror that should remain confidential.

(Adopted May 4, 2001, effective July 1, 2001.)

## **I.C.R. 24. Trial Jurors.**

(a) Opening statements to the entire jury panel. The parties may, with the court's consent, present brief opening statements to the entire jury panel, prior to voir dire. On its own motion, the court may require counsel to do so. Following such statements, if any, the court shall conduct a thorough examination of prospective jurors.

(b) Examination. Voir dire examination of the prospective jurors drawn from the jury panel shall first be conducted by the court. The attorney for the plaintiff, and then the attorney for the defendant, and then the attorney for each other party to the action shall then be permitted to propound questions to prospective jurors concerning their qualifications to sit as jurors in the action. The voir dire examination shall be under the supervision of the court and subject to such limitations as the court may prescribe in the furtherance of justice and the expeditious disposition of the case. Any question propounded by an attorney to a prospective juror which is not directly relevant to the qualifications of the juror, or is not reasonably calculated to discover the possible existence of a ground for challenge, or has been previously answered, shall be disallowed by the court upon objection or upon the court's own initiative. Challenges for cause may be made by an attorney at any time while questioning a prospective juror, or not later than the conclusion of all questions propounded to an individual prospective juror, or the prospective jury if questioned as a whole, except that a challenge for cause may be permitted by the court at a later time upon a showing of good cause. Challenges for cause, as provided by law, must be tried by the court. The challenged juror, and any other person, may be examined as a witness on the trial of the challenge. Whenever a juror is excused by the court in sustaining a challenge for cause, the clerk shall immediately draw another name from the jury panel to

fill the vacancy. There shall be no limit upon the number of challenges which may be made for cause by any party, and it shall not be necessary for any co-parties to join in making such challenges. Unless otherwise stipulated in the record by all parties to the action, the entire voir dire examination of all prospective jurors and the court's rulings on all challenges shall be reported verbatim.

(c) Peremptory challenges. If the offense charged is punishable by death, or life imprisonment, each side, state or defense, regardless of the number of defendants, is entitled to ten (10) peremptory challenges. In all other felony cases each side, state or defense, regardless of the number of defendants, is entitled to six (6) peremptory challenges and in all misdemeanor cases each side, state or defense, regardless of the number of defendants, is entitled to four (4) peremptory challenges. In the event,

(1) there are co-defendants and the court determines that there is a conflict of interest between or among the co-defendants, or

(2) if there be alternate jurors, the court may allow any or all of the parties additional peremptory challenges and permit them to be exercised separately or jointly. Any party who waives a peremptory challenge shall be deemed to have waived only that particular peremptory challenge and may subsequently exercise any of that party's remaining challenges as to any juror, provided, if all parties consecutively waive their peremptory challenge, the trial jury shall be deemed accepted by the parties and any remaining peremptory challenges are waived.

(d) Additional jurors.

(1) Selection. The court may direct that one (1) or more jurors in addition to the regular panel be called and impaneled to sit as jurors. All jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath and shall have the same functions, powers, facilities and privileges prior to deliberations. If more than one additional juror is called, each party is entitled to two (2) peremptory challenges in addition to those otherwise allowed by law; provided, however, that if only one additional juror is called, each party shall be entitled to one (1) peremptory challenge in addition to those otherwise provided by law. At the conclusion of closing arguments, jurors exceeding the number required of a regular panel shall be removed by lot. Those removed by lot may be discharged after the jury retires to consider its verdict, unless the court otherwise directs as provided below.

(2) Jurors removed by lot. If the court determines that those jurors removed by lot must be available to replace any jurors who may be excused during deliberations due to death, illness or otherwise as determined by the court, then the bailiff, sheriff or other person appointed by the court shall take custody of the removed jurors until discharged by the court; however, if the jury has not been sequestered then the jurors removed by lot may be released by the court with appropriate instructions. In the event a deliberating juror is removed, the court shall order the juror discharged and draw the name of an alternate juror who shall then take the discharged juror's place in the deliberations. The court shall instruct the panel to set aside and disregard all past deliberations and begin anew with the new juror as a member of the panel.

(3) Disability of juror. If at any time a juror dies or becomes ill, or upon other good cause shown to the court that the juror is found to be unable to perform jury duty, or if a juror requests a discharge and good cause appears therefor, the court may order the juror to be discharged and draw the name of an alternate juror who shall then take the discharged juror's place in the jury box and be subject to the same rules and regulations as though the juror had been selected as one (1) of the jurors.

(e) Use of a struck jury. The court may, in its discretion, cause a panel of jurors to be questioned and passed for cause in a number equal to the number of jurors and alternates required for the final jury and an additional number equal to the number of peremptory challenges of the parties. Such prospective jurors when chosen shall be seated in such manner as to be designated numerically with the lower numbered jurors constituting the initial panel and alternate jurors, and the subsequent numbered jurors becoming the replacement jurors in the event any of the jurors of the original panel are removed by a peremptory challenge.

(Adopted December 27, 1979, effective July 1, 1980; amended March 20, 1985, effective July 1, 1985; amended June 26, 1985, effective July 1, 1985; amended March 28, 1986, effective July 1, 1986; amended June 15, 1987, effective November 1, 1987; amended March 23, 1990, effective July 1, 1990; amended February 10, 1993, effective July 1, 1993; amended May 4, 2001, effective July 1, 2001; amended April 19, 2002, effective July 1, 2002; amended April 22, 2004, effective July 1, 2004)

#### **I.C.R. 24.1. Notes by Jurors- Juror Notebooks.**

(a) Jury notes. A juror may take or make written notes during a trial and take them with the juror when the jury retires for deliberation. The court shall give the jury appropriate instruction in how to exercise the right to take notes. At the conclusion of the proceedings, the Court shall take custody of the notes and provide for their destruction.

(b) Juror notebooks. In the discretion of the court, jurors may be provided notebooks containing documents for use by the jurors during trial to aid them in performing their duties. Notebooks may contain, but are not required to have or be limited to:

- (1) a copy of all jury instructions;
- (2) juror notes;
- (3) the names of witnesses, including photographs and biographies;
- (4) copies of exhibits, including an index thereto, but excepting depositions, and
- (5) a glossary of technical terms.

(Adopted May 4, 2001, effective July 1, 2001.)

#### **I.C.R. 25. Disqualification of Judge.**

(a) Disqualification of judge without cause. In all criminal actions, except actions before drug courts or mental health courts, the parties shall each have the right to one disqualification without cause of the judge or magistrate, except as herein provided, under the following conditions and procedures:

- (1) Motion to disqualify. In any criminal action in the district court or the magistrate's division thereof, excluding actions before drug courts or mental health courts, any party may disqualify one (1) judge or magistrate by filing a motion for disqualification without cause, which shall not require the stating of any grounds therefor, and the granting of such motion for disqualification without cause, if timely, shall be granted. Each party in a felony prosecution shall have one (1) disqualification without cause under this Rule as to the magistrate appointed to hear the preliminary hearing and another disqualification without cause as to the district judge appointed to hear the trial of the action.
- (2) Time for filing. A motion for disqualification without cause must be filed not later than seven (7) days after service of a written notice setting the action for status conference, pre-trial conference, trial or for hearing on the first contested motion, or not later than fourteen (14) days after the service of a written notice specifying who the presiding judge or magistrate to the action will be, whichever occurs first; and such motion must be filed before the commencement of a status conference, a pre-trial conference, a contested proceeding or trial in the action.
- (3) Multiple defendants. If there are multiple defendants the trial court shall determine whether such co-defendants have a sufficient interest in common in the action so as to be required to join in any disqualification without cause, or whether such parties have an adverse interest in the action such that each adverse co-defendant will have the right to file one (1) disqualification without cause.
- (4) New judge. If at any time during the course of the proceedings, except under circumstances involving alternate judges or magistrates as set forth below in subparagraph (6), a new judge or magistrate is assigned to preside over the case, each party shall have the right to file a motion for one (1) disqualification without cause as to the new judge or magistrate within the time limits set forth in subparagraph (2) of this Rule. Provided, if a party has previously exercised a disqualification without cause under this Rule 25(a) such party shall have no right of disqualification without cause of a new judge or magistrate under this subparagraph.

(5) Disqualification on new trial. After a trial has been held, if a new trial has been ordered by the trial court or by an appellate court, any party may file a motion for disqualification without cause of the presiding judge or magistrate within the time limits set forth in subparagraph (2) of this Rule; provided, a remand of a case for sentencing or resentencing does not reinstate the right to one disqualification without cause under this subparagraph.

(6) Alternate judges. If the presiding judge intends to have a panel of judges as alternates to preside at trial or at any other hearing or proceeding in the case, a notice or amended notice of trial setting shall include a list of judges who may alternatively be assigned to so preside if the presiding judge is unavailable. Upon service of the notice as to the panel, each party shall have the right to file one (1) motion for the disqualification without cause as to any alternate judge or magistrate not later than fourteen (14) days after service of written notice listing the alternate judge or magistrates. Provided, if a party has previously exercised the right to disqualification without cause under this Rule 25(a), that party shall have no right to disqualify an alternate judge or magistrate under this subparagraph.

(7) Service on judge. A party moving to disqualify a judge or magistrate under this Rule 25(a) shall mail a copy of the motion for disqualification to the presiding judge or magistrate at the judge's or magistrate's resident chambers.

(8) Hearings by new judge. If the presiding judge or magistrate is disqualified under this Rule and the newly appointed judge or magistrate resides in a county other than the county where the action is filed, then all hearings on motions and evidentiary hearings, except the primary trial of the action, can be heard by the newly appointed judge or magistrate in another county within the judicial district, at the discretion of the new presiding judge or magistrate.

(9) Exceptions. Notwithstanding the above provisions, the right to one (1) disqualification without cause shall not apply to:

(i) A judge when acting in an appellate capacity, unless the appeal is a trial de novo;

(ii) A judge or magistrate in a post-conviction proceeding, when that proceeding has been assigned to the judge or magistrate who entered the judgment of conviction or sentence being challenged by the post-conviction proceeding;

(iii) A judge or magistrate who has been appointed by the Supreme Court to preside over a specific criminal action.

(10) Speedy trial. If a defendant disqualifies a judge or magistrate under this Rule, the time within which that defendant must be given a speedy trial or trial pursuant to I.C. § 19-3501 shall commence to run anew on the date of such disqualification.

(11) Matters that may be heard by a disqualified judge. A judge who has been disqualified without cause in a case may preside over an initial appearance or arraignment in that case, and may also, when the parties and the disqualified judge have so agreed in writing or on the record, preside over any other hearing and decide any other issue in the case.

(12) Misuse of disqualification without cause. A motion for disqualification without cause shall not be made under this Rule to hinder, delay or obstruct the administration of justice. If it appears that an attorney, law firm, prosecuting attorney's officer or public defender's office is using disqualifications without cause for such purposes, or with such frequency as to impede the administration of justice, the Trial Court Administrator shall notify the Administrative Director of the Courts requesting a review of the possible misuse of disqualifications without cause. The Administrative Director shall review the possible misuse of this Rule and may take remedial measures. The Administrative Director, before or after taking such remedial measures, may refer the matter to the Chief Justice, who, upon determining that there has been misuse of disqualifications without cause, may take appropriate action to address the misuse, which may include an order providing that the attorney, firm, prosecuting attorney's office or public defender's office that has engaged in such misuse is prohibited from using disqualifications without cause for such period of time as is set forth in the order or until further order of the Chief Justice.

(b) Disqualification for cause. Any party to an action may disqualify a judge or magistrate from presiding in any action upon any of the following grounds:

(1) That the judge or magistrate is a party, or is interested, in the action or proceeding.

- (2) That judge or magistrate is related to either party by consanguinity or affinity within the third degree, computed according to the rules of law.
- (3) That judge or magistrate has been attorney or counsel for any party in the action or proceeding.
- (4) That judge or magistrate is biased or prejudiced for or against any party or that party's case in the action.

(c) Motion for disqualification. Any such disqualification for cause shall be made by a motion to disqualify accompanied by an affidavit of the party or that party's attorney stating distinctly the grounds upon which disqualification is based and the facts relied upon in support of the motion. Such motion for disqualification for cause may be made at any time. The presiding judge or magistrate sought to be disqualified shall grant or deny the motion for disqualification upon notice and hearing in the manner prescribed by these rules for motions.

(d) Voluntary disqualification. This rule shall not prevent any presiding judge in an action from voluntarily disqualifying himself or herself without stating any reason therefore.

(e) Disqualification and assignment of new judge. Upon the filing of a motion for disqualification, the presiding judge shall be without authority to act further in such action except to grant or deny such motion for disqualification or to act as provided in subparagraph (a)(11) of this Rule. Upon disqualification of a judge for any reason, the administrative judge of the judicial district, or designee, shall appoint any other qualified judge in the judicial district to act or preside in the action. In lieu of such direct appointment procedure, the administrative district judge, or designee, may make application to the Supreme Court for appointment of a new judge from outside of the judicial district to act or preside in the action.

(Adopted March 24, 1982, effective July 1, 1982; amended March 23, 1983, effective July 1, 1983; amended March 28, 1986, effective July 1, 1986; amended June 15, 1987, effective November 1, 1987; amended March 23, 1990, effective July 1, 1990; amended April 19, 1995; amended August 24, 1995; amended November 1, 1995; amended November 22, 1995; amended January 24, 1997, effective February 1, 1997, repeals former Rule 25(a) - disqualification of a judge without cause; amended April 22, 2004, effective July 1, 2004; amended June 21, 2004, effective July 1, 2004; amended November 20, 2006, effective January 1, 2007; amended August 28, 2008, effective August 28, 2008; amended on July 23 2010, effective July 23, 2010; amended December 27, 2010, effective January 1, 2011; amended June 3, 2011, effective July 1, 2011; amended February 9, 2012, effective July 1, 2012.)

### **I.C.R. 25.1. Death or Disability of Judge.**

(a) During trial. If by reason of death, sickness or other disability, the judge or magistrate before whom a jury trial has commenced is unable to proceed with the trial, any other qualified judge or magistrate, upon agreement of the parties and upon certifying that the judge or magistrate has familiarized himself or herself with the record of the trial, may proceed with and finish the trial. If the parties do not agree to a substitute judge or magistrate, the administrative district judge shall order a new trial.

(b) After verdict or finding of guilt. If by reason of absence, death, sickness or other disability, the judge or magistrate before whom a defendant has been tried is unable to perform the duties to be performed by the court after a verdict or finding of guilt, any other qualified judge or magistrate may perform those duties; but if such other judge or magistrate is satisfied that he or she cannot perform those duties because he or she did not preside at the trial or for any other reason, the judge or magistrate may in his or her discretion grant a new trial.

(Adopted March 30, 1984, effective July 1, 1984.)

### **I.C.R. 26. Evidence.**

In all trials the testimony of witnesses shall be taken orally in open court unless otherwise provided by statute or by these rules, the Idaho Rules of Evidence, or other rules adopted by the Supreme Court of Idaho.

(Adopted December 27, 1979, effective July 1, 1980; amended March 20, 1985, effective July 1, 1985; amended March 28, 1986, effective July 1, 1986.)

### **I.C.R. 27. Stipulations Not Binding on Court - Continuance of Trial or Hearing.**

The parties to any action may present to the court a stipulation as to any procedural matter involved in any proceeding, including a stipulation to vacate or continue a hearing or trial, but such stipulation shall be considered as a joint motion by the parties to the court for its consideration, and shall not be binding upon the court. The court may approve or disapprove the stipulation in the same manner as the court rules upon a motion. The court may by oral or written notice to the parties limit the time within which a motion or stipulation to vacate or continue a hearing or trial must be made in order to be considered by the court.

(Adopted March 30, 1984, effective July 1, 1984.)

### **I.C.R. 28. Interpreters.**

In any criminal action in which any witness or a party does not understand or speak the English language, or who has a physical handicap which prevents the witness or party from fully hearing or speaking the English language, then the court shall appoint a qualified interpreter to interpret the proceedings and the testimony of such witness or party. Upon appointment of such interpreter, the court shall cause to have the interpreter served with a subpoena as other witnesses, and such interpreter shall be sworn to accurately and fully interpret the testimony given at the hearing or trial to the best of the interpreter's ability before assuming duties as an interpreter. The court shall determine a reasonable fee for all such interpreter services which shall be paid for by the county.

(Adopted December 27, 1979, effective July 1, 1980.)

### **I.C.R. 29. Motion for Judgment of Acquittal.**

(a) Motion before submission to jury. The court on motion of the defendant or on its own motion shall order the entry of judgment of acquittal of one or more offenses charged in the indictment, information or complaint after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses. If a defendant's motion for judgment of acquittal at the close of the evidence offered by the state is not granted, the defendant may offer evidence. In the event the court dismisses the charged offense, the court must consider whether the evidence would be sufficient to sustain a conviction on a lesser included offense.

(b) Reservation of decision on motion. If a motion for judgment of acquittal is made at the close of all the evidence, the court may reserve decision on the motion, submit the case to the jury, and decide the motion either before the jury returns a verdict or after it returns a verdict of guilty or is discharged without having returned a verdict.

(c) Motion after discharge of jury. If the jury returns a verdict of guilty or is discharged without having returned a verdict, a motion for judgment of acquittal may be made or renewed within fourteen (14) days after the jury is discharged or within such further time as the court may fix during the fourteen (14) day period. If a verdict of guilty is returned the court may, on such motion, set aside the verdict and enter judgment of acquittal. If no verdict is returned the court may enter a judgment of acquittal. It shall not be necessary to the making of such a motion that a similar motion has been made prior to the submission of the case to the jury.

(Adopted December 27, 1979, effective July 1, 1980; amended March 19, 2009, effective July 1, 2009.)

#### **I.C.R. 29.1. Motion for Mistrial.**

At any time during a trial, the court may declare a mistrial and order a new trial of the indictment, information or complaint under the following circumstances:

(a) Upon motion of defendant. A mistrial may be declared upon motion of the defendant, when there occurs during the trial an error or legal defect in the proceedings, or conduct inside or outside the courtroom, which is prejudicial to the defendant and deprives the defendant of a fair trial. When such an error, defect or conduct occurs during the joint trial of two (2) or more defendants, and a mistrial motion is made by one or more, but not by all, the court must

declare a mistrial only as to the defendant or defendants making or joining in the motion, and the trial of the other defendant or defendants must proceed.

(b) Upon motion of state. A mistrial may be declared upon motion of the state, when there occurs during the trial, either inside or outside the courtroom, misconduct by the defendant, the defendant's attorney or attorneys, or some other person acting on defendant's behalf, resulting in substantial prejudice to the state's case. When such misconduct occurs during a joint trial of two (2) or more defendants, and when the court is satisfied that it did not result in substantial prejudice to the state's case as against a particular defendant, and that such defendant was in no way responsible for the misconduct, it may proceed with the trial with respect to that defendant.

(c) When verdict not possible. A mistrial may be declared upon motion of either party or upon the court's own motion when it is impossible to proceed with the trial in conformity with law, or when, after jury advice, the court is convinced that the jury cannot reach a verdict.

(Adopted December 27, 1979, effective July 1, 1980.)

### **I.C.R. 30. Instructions and Communications With Jury.**

(a) Jury instructions conference. Prior to the presentation of evidence, the court may instruct the jury on the role of the court, counsel and jury, the elements of all claims in dispute and any known defenses, and any other matter it believes necessary and appropriate to aid in resolution of the issues at hand. The Court shall hold an instruction conference prior to trial to consider these initial instructions to the jury.

(b) Final Instructions. No later than five (5) days before the commencement of any trial by jury, any party may file written requests that the court instruct the jury on the law as set forth in the request. The Court may grant an exception for unanticipated issues or matters constituting fundamental errors. At the same time, copies of such requested instructions shall be furnished to all parties. The court shall inform counsel of its proposed actions upon the requested instructions and shall allow counsel a reasonable time within which to examine and make objections outside the presence of the jury to such instructions or the failure to give requested instructions. No party may assign as error the giving of or failure to give an instruction unless the party objects thereto before the jury retires to consider its verdict, stating distinctly the instruction to which the party objects and the grounds of the objection. The court shall read the instructions to the jury prior to final argument; but if all parties consent, it may read part or all of the instructions after final argument. The written instructions, or a copy thereof, shall be given to each juror to take when the jury retires for deliberation.

(c) Communications with the jury. Any request by the jury to be further informed of any point concerning the action shall be communicated to the court in writing, at which time the attorneys for the parties shall be given the opportunity to be present, if the attorney is available and can be present within a reasonable period of time, and the court in its discretion may further instruct the jury in writing or explain the instructions in open court which shall be made part of the record.

(Adopted December 27, 1979, effective July 1, 1980; amended March 28, 1986, effective July 1, 1986; amended March 1, 2000, effective July 1, 2000, amended May 4, 2001, effective July 1, 2001; amended April 22, 2004, effective July 1, 2004)

### **I.C.R. 30.1. Juror Questioning of Witnesses.**

In the discretion of the court, jurors may be instructed that they are individually permitted to submit to the court a written question directed to any witness. If questions are submitted, the parties or counsel shall be given the opportunity to object to such questions outside the presence of the jury. If the questions are not objectionable, the court shall read the question to the witness. The parties or counsel may then be given the opportunity to ask follow-up questions as necessary.

(Adopted May 4, 2001, effective July 1, 2001.)

### **I.C.R. 31. Verdict.**

(a) Return. The verdict shall be unanimous and shall be returned by the jury to the judge in open court.

(b) Several defendants. If there are two (2) or more defendants the jury at any time during its deliberations may return a verdict or verdicts with respect to a defendant or defendants as to whom it has agreed; if the jury cannot agree with respect to all, the defendant or defendants as to whom it does not agree may be tried again.

(c) Conviction of lesser offense. The defendant may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein if the attempt is an offense.

(d) Poll of jury. When a verdict is returned and before it is recorded the jury shall be polled at the request of any party or upon the court's own motion. If upon the poll there is not unanimous concurrence, the jury may be directed to retire for further deliberations or it may be discharged.

(Adopted December 27, 1979, effective July 1, 1980.)

### **I.C.R. 32. Standards and Procedures Governing Presentence Investigations and Reports.**

The following standards and procedures shall govern presentence investigations and reports in the Idaho courts:

(a) When presentence investigations are to be ordered. The trial judge need not require a presentence investigation report in every criminal case. The ordering of such a report is within the discretion of the court. With respect to felony convictions, if the trial court does not require a presentence investigation and report, the record must show affirmatively why such an investigation was not ordered.

(b) Contents of presentence report. A trial judge may request a record check and other background information concerning the defendant prior to sentence without conducting a full presentence investigation of the defendant. However, whenever a full presentence report is ordered, it shall contain the following elements:

- (1) The description of the situation surrounding the criminal activity with which the defendant has been charged, including the defendant's version of the criminal act and the defendant's explanation for the act, the arresting officer's version or report of the offense, where available, and the victim's version, where relevant to the sentencing decision.
- (2) Any prior criminal record of the defendant.
- (3) The defendant's social history, including family relationships, marital status, age, interests and activities.
- (4) The defendant's educational background.
- (5) The defendant's employment background, including any military record, and defendant's present employment status and capabilities.
- (6) Residence history of the defendant.
- (7) Financial status of defendant.
- (8) Health of the defendant.
- (9) The defendant's sense of values and outlook on life in general.
- (10) The results of any substance abuse evaluation, mental health evaluation, domestic assault and battery evaluation, or psychosexual evaluation, including any report prepared pursuant to I.C. § 19-2522 or I.C. § 19-2524, but excluding content of any evaluation or report prepared pursuant to I.C. § 18-211 or I.C. § 18-212.
- (11) The presentence investigator's analysis of the defendant's condition. The analysis of the defendant's condition contained in the presentence report should include a complete summary of the presentence investigator's view of the psychological factors surrounding the commission of the crime or regarding the defendant individually which the investigator discovers. Where appropriate, the analysis should also include a specific recommendation regarding a psychological examination and a plan of rehabilitation.

(c) Recommendations concerning sentence. The presentence report may recommend incarceration but it should not contain specific recommendations concerning the length of incarceration, the imposition of a fine or the amount of a fine, or the length of probation or other matters which are within the province of the court. Provided, however, the presentence report may recommend programs or treatment for the defendant and comment as to the length of time that may be required for the defendant to complete any recommended programs or treatment. The presentence report may also comment generally on the probability of the defendant's successfully completing the term of probation or the defendant's financial ability to pay a fine imposed by the court.

(d) Psychological evaluations. The presentence investigator may recommend a psychological evaluation, but the decision as to whether to order a psychological evaluation is to be made by the sentencing judge.

(e) Information which may be included in the presentence report.

(1) Content. The presentence report may include information of a hearsay nature where the presentence investigator believes that the information is reliable, and the court may consider such information. In the trial judge's discretion, the judge may consider material contained in the presentence report which would have been inadmissible under the rules of evidence applicable at a trial. However, while not all information in a presentence report need be in the form of sworn testimony and be admissible in trial, conjecture and speculation should not be included in the presentence report. Any pictures or depictions of child pornography that are included as attachments to the report must be placed in a separate envelope and marked as such, with access restricted to only those allowed by the trial court.

(2) Previous charges against defendant. It is permissible for the sentencing judge to consider information in a presentence report regarding a previous charge against the defendant which had been dismissed after a successful probation period.

(3) Idaho Sentencing Information Database. The presentence report may include a report generated from use of the Sentencing Tool of the Idaho Sentencing Information Database (<http://sentencing.isc.idaho.gov/>), and may contain a narrative description of the database results.

(f) Additional report may be ordered. The sentencing judge may order an additional investigation of the case if the judge deems it necessary and use such results in considering the disposition.

(g) Access to presentence report.

(1) Disclosure of report, exceptions. Full disclosure of the contents of the presentence report shall be made to the defendant, defendant's counsel, and the prosecuting attorney prior to any hearing on the sentence except as hereinafter provided. The defendant and defendant's attorney shall be given a full opportunity to examine the presentence investigation report so that, if the defendant desires, the defendant may explain and defend adverse matters therein. The defendant shall be afforded a full opportunity to present favorable evidence in defendant's behalf during the proceeding involving the determination of sentence. Provided, however, the trial court may withhold from disclosure parts of the presentence report which contain diagnostic opinion which might seriously disrupt a program of rehabilitation, or information which in the court's discretion may prove harmful to an individual not a party in the proceeding, or pictures or depictions of child pornography that are separately identified pursuant to subsection (e)(1).

(2) Explanation of non-disclosure. Where the trial court chooses to withhold from disclosure to the defendant information in the presentence report, the court must state for the record the reasons for its action, inform the defendant and defendant's attorney that information has not been disclosed, and explain the general nature of the information being withheld. Further, if requested, the defendant's attorney, if the defendant is represented by counsel, shall be allowed to review any information in the presentence report which is so withheld from disclosure so as to allow the attorney a full opportunity to explain and rebut the information contained therein.

(3) Time of disclosure. Disclosure of the information contained in the presentence report under the conditions mentioned above shall be made at a sufficient time prior to the imposition of sentence so as to afford a reasonable opportunity for the defendant or defendant's attorney to verify or rebut any

information contained in the report. Reasonable requests for a continuance of the sentence proceeding, when based on lack of sufficient time to examine or offer rebuttal to information contained in the presentence report, may be granted by the sentencing judge.

(h) Disclosure of presentence reports.

(1) Custody of presentence report. Any presentence report shall be available for the purpose of assisting a sentencing court and once prepared may be released to any district judge for that purpose. After use in the sentencing procedure, the presentence report shall be sealed by court order, and thereafter cannot be opened without a court order authorizing release of the report or parts thereof to a specific agency or individual. Provided, the presentence report shall be 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. If probation or parole supervision is transferred to another state, the Department may provide a copy of the presentence report to the supervising entity in that state. In addition, when preparing a report on a defendant, a presentence investigator shall have access to previous presentence reports, including all attachments and addendums, prepared on that defendant, whether in the same case or in previous cases. The pre-sentence investigator's own copy of the presentence report similarly is restricted from use by all but authorized court personnel. Neither the defendant, defendant's counsel, the prosecuting attorney nor any person authorized by the sentencing court to receive a copy of the presentence report shall release to any other person or agency the report itself or any information contained therein. However, as provided in Article 1, Section 22(9) of the Idaho Constitution, the victim has a right to read, but not to have a copy of, the presentence report. Any violation of this rule shall be deemed contempt of court and subject to appropriate sanctions.

(2) Availability of presentence information to evaluators. The presentence investigator may release information relating to the defendant's criminal history and law enforcement reports related to the offense for which the defendant is to be sentenced to persons preparing reports to assist the court in sentencing pursuant to a court-ordered evaluation. Any person receiving such information shall not release that information to any other person or agency. Any violation of this rule shall be deemed contempt of court and subject to appropriate sanctions.

(3) Availability of presentence report to third parties. With the permission of the sentencing judge, the presentence report may be available to persons or agencies having a legitimate professional interest in the information likely to be contained therein, if it appears that such availability will further the plan or rehabilitation of the defendant or further the interests of public protection, and that appropriate safeguards or the confidentiality of information contained in the presentence report will be provided by the persons or agencies receiving such information. Such persons or agencies may include a physician or psychiatrist appointed to assist the court in sentencing, an examining facility, a correctional institution, a probation or parole department, or the supervisors of a public or private rehabilitation program.

(4) Availability of presentence report to problem-solving court personnel. With the permission of the sentencing judge, the presentence report may be made available to problem-solving court personnel for purposes of screening the defendant to determine the defendant's suitability for admission into a problem-solving court program.

(5) Availability of presentence report on appeal. When relevant to an issue on which an appeal has been taken, the report shall be available for review in courts of appeal when requested by a party or ordered by the court pursuant to Idaho Appellate Rule 31 (b). Pictures and depictions of child pornography contained in the report that are placed in a separate envelope pursuant to subsection (e )(1) of this rule shall not be transmitted to the parties or the court as part of the appeal unless specifically requested.

(Adopted December 27, 1979, effective July 1, 1980; amended June 15, 1987, effective November 1, 1987; amended March 1, 2000, effective July 1, 2000; amended January 30, 2001, effective July 1, 2001; amended April 4, 2008, effective July 1, 2008; amended March 18, 2011, effective July 1, 2011; amended February 27, 2013, effective July 1, 2013; amended March 9, 2015, effective July 1, 2015.)

### **I.C.R. 33. Sentence and Judgment.**

(a) Sentence.

(1) Time for judgment and sentence. After a plea or verdict of guilty, if the judgment be not arrested nor a new trial granted, the court must appoint a time for pronouncing judgment and sentence, which, in cases of felony, must, unless waived by the defendant, be at least two (2) days after the verdict. Before imposing sentence the court shall afford counsel an opportunity to speak on behalf of the defendant and shall address the defendant personally to ask if the defendant wishes to make a statement and to present any information in mitigation of punishment. Pending sentence the court may commit the defendant or continue or alter the bail.

(2) Method of securing defendant's appearance at sentencing.

A. If a defendant is in custody the custodial officer shall present the defendant before the court for sentencing.

B. If a defendant, who is at liberty on own recognizance or on bail pursuant to a previous court order issued in the same criminal action, does not appear for sentencing when defendant's personal attendance is necessary, the court, in addition to the forfeiture of the undertaking of bail, or of money deposited may issue a bench warrant for defendant's arrest. Upon taking the defendant into custody pursuant to such bench warrant the executing peace officer must, without unnecessary delay, cause defendant to be brought into court for sentencing.

(3) Notification of right to appeal. After imposing sentence the court shall advise the defendant of the right to appeal and of the right of a person who is unable to pay the costs of an appeal to apply for leave to appeal in forma pauperis.

(b) Judgment. The judgment of conviction shall set forth the plea, the verdict or findings, and the adjudication and sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. The judgment shall be signed by the judge and entered by the clerk.

(c) Withdrawal of plea of guilty. A motion to withdraw a plea of guilty may be made only before sentence is imposed or imposition of sentence is suspended; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw defendant's plea.

(d) Commutation of sentence and suspending or withholding judgment, conditions. For an offense not punishable by death, the district court or the magistrates division may commute the sentence, suspend the execution of the judgment, or withhold judgment, and place the defendant upon probation as provided by law and these rules. Provided, however, that the conditions of a withheld judgment or of probation shall not include any requirement of the contribution of money or property to any charity or other nongovernmental organization, but may include the rendering of labor and services to charities, governmental agencies, needy citizens and nonprofit organizations. The conditions of a withheld judgment or probation may also include, among other lawful provisions, the following:

(1) A requirement that the defendant make restitution to a party injured by the defendant's action.

(2) A requirement that the defendant pay a specific sum of money to the court for the prosecution of the criminal proceedings against the defendant, or a sum of money not to exceed the fine and court costs which could otherwise be assessed if the sentence were not suspended or withheld, which funds shall be distributed in the manner provided for the distribution of fines and forfeitures under section 19-4705, Idaho Code.

(3) A requirement that the defendant perform voluntary services for self-education purposes as part of a positive program of rehabilitation.

(e) Discretionary jail time. As used herein, "discretionary jail time" means jail time to be served at the discretion of the probation officer as a sanction for violating a term or condition of probation. It does not include incarceration in jail in order for a defendant to obtain treatment or programming provided in the jail, even if the probation officer determined that such treatment or programming was needed because of the defendant's violation of a term or condition of probation.

As a condition of probation, the sentencing court may provide for the service of a specified period of discretionary jail time, to be served as follows:

- (1) Upon receipt of a written statement of facts made under oath or affirmation by the probation officer showing probable cause to believe that the defendant violated any term or condition of probation, a court may order in writing that the defendant serve a specified number of days of the discretionary jail time.
- (2) If, without a court order issued pursuant to subsection (1), a defendant is arrested pursuant to Idaho Code Section 20-227 for violating a term or condition of probation, there shall be a judicial determination of probable cause within forty-eight (48) hours of the arrest. If, within that time period, there is no judicial finding that there was probable cause for the arrest, the defendant shall be released. If there is a judicial finding of probable cause within that time period, the defendant shall be released seventy-two (72) hours after the arrest unless the sentencing court has ordered a longer period of jail time. If, when delivering the defendant to the jail, the probation officer informs the jail authorities in writing that the defendant is to serve a specific period of time in jail that is less than forty-eight (48) hours, the defendant may be released upon the conclusion of that specific period without further court approval.
- (3) The number of consecutive days served as discretionary jail time shall not exceed three (3) days.
- (4) Any time served in jail as discretionary jail time shall be credited against the period of discretionary jail time specified as a condition of probation.
- (5) If the defendant is arrested pursuant to Idaho Code Section 20-227 for violating the conditions of probation and a motion seeking a judicial finding of a probation violation is not filed with respect to the conditions allegedly violated, the time served in jail pursuant to that arrest shall be credited against such period of discretionary jail time.
- (6) Nothing herein shall limit a sentencing court's authority to impose additional terms and conditions of probation including jail time.

(f) Revocation of probation. The court shall not revoke probation except after a hearing at which the defendant shall be present and apprised of the grounds on which such action is proposed. The defendant may be admitted to bail pending such hearing. The court shall not revoke probation unless there is an admission by the defendant or a finding by the court, following a hearing, that the defendant willfully violated a condition of probation.

(g) Waiver of fees and costs.

- (1) A person who has been sentenced by the court following a plea of guilty or finding of guilt may have his or her probation revoked or be found to be in contempt for failure to pay a fine, fee, or costs only if the court finds that the person has willfully refused to make such payment, or has failed to make sufficient bona fide efforts to legally acquire the resources to make such payment.
- (2) A fee or cost imposed by statute on persons who plead guilty to or are found guilty of any offense may be waived in whole or part by the court only when there is a specific provision in statute allowing for the waiver of such fee or cost.
- (3) A court may waive all or part of a fee or costs imposed by statute only upon making findings in writing or on the record that each statutory standard for the waiver of such fee or costs has been satisfied. If the court decides to waive such fee or costs in whole or in part, the court shall make such determination with regard to each offense on which the defendant is or has been sentenced, and shall determine whether such fee or costs shall be waived in whole or in part.

(Adopted December 27, 1979, effective July 1, 1980; amended March 20, 1985, effective July 1, 1985; amended March 23, 1990, effective July 1, 1990; amended March 28, 2007, effective July 1, 2007; amended April 4, 2008, effective July 1, 2008; amended February 9, 2012, effective July 1, 2012; amended April 23, 2015, effective July 1, 2015.)

### **I.C.R. 33.1. Procedure Where Death Penalty is Authorized and Jury is Waived for Special Sentencing Proceeding.**

(a) Findings of the trial court in capital offenses. In special sentencing proceedings in capital cases where a jury has been waived the trial court shall make written findings as required by section 19-2515(8)(b), Idaho Code. The trial court shall serve copies of these written findings upon the defendant or defendant's counsel and the prosecuting attorney.

(b) Form of findings. The written findings of the trial court to be made after the special sentencing proceeding shall be in substantially the following form: (*Available at* <http://www.isc.idaho.gov/icr33-1>)

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

STATE OF IDAHO	)	
_____	)	
Plaintiff,	)	FINDINGS OF THE COURT IN
vs.	)	CONSIDERING DEATH PENALTY
_____	)	UNDER SECTION 19-2515,
Defendant.	)	IDAHO CODE.

The above defendant having (been found guilty by a jury) (entered a plea of guilty) of the criminal offense of murder in the first degree, which under the law authorizes the imposition of the death penalty, the jury having been waived, and the court having held a special sentencing proceeding for the purpose of hearing all relevant evidence and argument of counsel in aggravation and mitigation of the offense; NOW THEREFORE the court hereby makes the following findings:

1. Conviction. That the defendant while represented by counsel was found guilty of the offense of murder in the first degree (by jury verdict) (pursuant to a plea of guilty).
  2. Sentencing Hearing. That a sentencing hearing was held on \_\_\_\_\_, and that at said hearing, in the presence of the defendant, the court heard relevant evidence in aggravation and mitigation of the offense and arguments of counsel.
  3. Facts and Arguments Found in Mitigation.  
[Summarize and Itemize]
  4. Facts and Arguments Found in Aggravation.  
[Summarize and Itemize]
  5. Statutory Aggravating Circumstances Found Under Section 19-2515(9), Idaho Code.  
[Describe in detail if any are found.]
  6. Reasons Why Death Penalty Was Imposed.  
[Set forth the finding and reasons why the court finds no mitigating circumstances would make the imposition of the death penalty unjust.]
- OR
7. Reasons Why Death Penalty Was Not Imposed.  
[Set forth finding why court finds the mitigating circumstances outweigh the gravity of any aggravating circumstances so as to make unjust the imposition of the death penalty.]

CONCLUSION

That the death penalty (should) (should not) be imposed on the defendant for the capital offense of which he was convicted.

DATED \_\_\_\_\_

/s/ \_\_\_\_\_

District Judge

(Adopted December 27, 1979, effective July 1, 1980; amended April 22, 2004, effective July 1, 2004)

**I.C.R. 33.2. Report of Imposition of Death Penalty.**

(a) Sentencing report. Whenever a trial court imposes the sentence of death upon a defendant, the sentencing trial court shall forthwith prepare a written report with regard to the imposition of the death penalty as required by section 19-2827, Idaho Code. Upon preparation of the report, the trial court shall file the original thereof with the Supreme Court of the State of Idaho, file a signed copy in the district court file of the criminal action, and serve copies of the report upon the defendant, the defendant's counsel, the prosecutor and the Attorney General and the Governor of the state of Idaho.

(b) Form of report. The sentencing report to be prepared by the sentencing trial court with regard to the imposition of the death penalty as required by this rule shall be in substantially the following form: (*Available at <http://www.isc.idaho.gov/icr33-2>*)

IN THE SUPREME COURT OF THE STATE OF IDAHO

State of Idaho,	)
	) REPORT ON IMPOSITION
Plaintiff,	) OF
	) DEATH PENALTY
vs.	) UNDER SECTION 19-2827,
	) IDAHO CODE
_____	)
	)
Defendant,	)

The court having sentenced the above defendant to death for the conviction of the offense of \_\_\_\_\_

NOW, THEREFORE, the court hereby makes a report to the Idaho Supreme Court pursuant to section 19-2827, Idaho Code, as follows:

1. Facts regarding defendant:

(a) Age \_\_\_\_\_

(b) Sex \_\_\_\_\_

(c) Race \_\_\_\_\_

(d) Marital Status \_\_\_\_\_

(e) Family Relationships \_\_\_\_\_

(f) Dependents \_\_\_\_\_

(g) Occupation or Trade \_\_\_\_\_

(h) Educational Background \_\_\_\_\_

(i) Relationship to Victim of Offense \_\_\_\_\_

(j)

(k)

(l)

(m)

(n)

2. Name and Address of Counsel Representing Defendant.

\_\_\_\_\_

3. Summary of any Prior Convictions of Defendant.

\_\_\_\_\_

4. Findings in Support of Imposition of Death Penalty Made Pursuant to Section 19-2515, Idaho Code. A copy is attached.

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

/s/ \_\_\_\_\_

District Judge

(Adopted December 27, 1979, effective July 1, 1980; amended March 28, 1986, effective July 1, 1986.)

**I.C.R. 33.3. Evaluation of Persons Guilty of Domestic Assault or Domestic Battery.**

(a) Evaluators. Evaluators of persons who plead guilty or are found guilty of domestic assault or domestic battery under Idaho Code Section 18-918 shall be approved and shall serve under the following provisions:

(1) *Qualifications.* An evaluator under Idaho Code Section 18-918(7)(a) shall have the following qualifications:

(A) Licensed physician, licensed psychologist, licensed master social worker, licensed social worker if approved prior to July 1, 2008, licensed professional counselor, licensed marriage and family therapist, licensed registered nurse, licensed nurse practitioner or physician's assistant under the laws of the state of Idaho; an evaluator may be licensed in the state of Idaho or any other state;

(B) Twenty (20) hours of specialized education or training in domestic violence within the previous two years that meets the criteria set out in subsection (2), as evidenced by an attached certificate of completion or other supporting documentation. Up to ten (10) hours may be satisfied through approved participatory online CEU programs.;

(C) One year experience after licensure in assessment or treatment of domestic violence related issues;

(D) Approved by the Domestic Assault and Battery Evaluator Advisory Board and maintained on a roster by the Administrative Director of the Courts as persons eligible to conduct evaluations of persons guilty of assault or domestic battery. In the event there is no evaluator approved within the judicial district, then the requirements of (B), (C), and (D) may be waived by the court; and

(E) The evaluator must, at his or her own expense, submit to a criminal history check as provided for in Rule 47, I.C.A.R. Further, the evaluator must sign an Indirect Access Agreement and any other confidentiality agreements required by the Idaho State Police to allow the evaluator access to criminal justice information as required by subsection (c)(2)(K) of this rule.

(2) *Continuing Education of Evaluators.* Beginning the next July 1 after an evaluator has been approved by the Domestic Assault and Battery Evaluator Advisory Board, the evaluator must take at least sixteen (16) hours of specialized training in domestic violence, or related topics in courses approved by the Domestic Assault and Battery Evaluator Advisory Board, in each and every two (2) year period following the July 1 date. An evaluator must file proof of compliance with this requirement with the Administrative Director of the Courts by July first of the year the continuing education is due. Along with proof of compliance, an evaluator must also send proof of current licensing.

(A) The sixteen (16) hours of training required in this section shall be in one or more of the following areas: (a) domestic violence; (b) violence in families; (c) child abuse; (d) anger management; (e) risk factors for future dangerousness; (f) psychiatric causes of violence; or (g) drug and alcohol abuse. No more than four (4) of the sixteen (16) required hours may be in the area of drug and alcohol abuse. Up to eight (8) of the sixteen (16) required hours may be satisfied through approved participatory online CEU programs.

(B) The sixteen (16) hours of required training in this section shall be acquired by completing a program approved or sponsored by one of the following associations:

- (a) Idaho Psychiatric Association;
- (b) Idaho Psychologists Association;
- (c) Idaho Nursing Association;
- (d) Idaho Association of Social Workers;
- (e) Idaho Counselors Association;
- (f) Council on Domestic Violence and Victim Assistance;
- (g) Idaho Coalition Against Sexual Assault and Domestic Violence, or the national equivalent of any of these organizations; or
- (h) the Idaho Supreme Court

(C) Any program that does not meet the criteria set out in both section (a)(2)(A) and section (a)(2)(B) may be submitted to the board for approval either prior to or after completion.

(3) *Appointment Approval.* All evaluators under Idaho Code Section 18-918(8)(a) must be appointed approved by order of the Domestic Assault and Battery Evaluator Advisory Board. Any person desiring to be approved as an evaluator shall file an application for approval with the Administrative Director of the Courts indicating the qualifications of the applicant and the dates and content of relevant training courses attended. An evaluator approved by order of the Domestic Assault and Battery Evaluator Advisory Board may continue in service from one calendar year to the next unless otherwise ordered by the Domestic Assault and Battery Evaluator Advisory Board. The Administrative Director of the Courts shall maintain a statewide list of approved evaluators by the Domestic Assault and Battery Evaluator Advisory Board.

(b) Advisory Board.

(1) *Members.* There is hereby created a Domestic Assault and Battery Evaluator Advisory Board consisting of six (6) members with experience and training in domestic violence, as follows:

(A) A district judge or magistrate judge appointed by the Supreme Court for a term of two years, who shall serve as chair,

(B) The Administrative Director of the Courts, or his or her designee,

(C) A social worker appointed by the Supreme Court for a term of two years, upon submission of three (3) names by the Idaho State Counselors Licensing Board or appropriate association,

(D) A counselor appointed by the Supreme Court for a term of two years, upon submission of three (3) names by the Idaho State Counselors Licensing Board or appropriate association,

(E) A psychologist appointed by the Supreme Court for a term of two years, upon submission of three (3) names by the Idaho State Board of Psychologist Examiners or appropriate association, and

(F) A psychiatrist appointed by the Supreme Court for a term of two years, upon submission of three (3) names by the State Board of Medicine or appropriate association.

(2) Powers of Advisory Board. The Domestic Assault and Battery Evaluator Advisory Board shall have the power to make the following recommendations to the Supreme Court:

(A) Recommend qualifications and continuing education of evaluators under Rule 33.3(a).

(B) Review and recommend for appointment approval or rejection applications of persons to be evaluators under this rule.

(C) Recommend the required content and scope of reports of evaluators under this rule.

(c) The scope and content of the evaluator's report shall be as follows:

(1) Identifying information.

(A) Name

(B) Address

(C) Date of Birth

(D) Occupation

(E) Current Incident

(F) Marital Status

(G) Children

(H) Military Service

(2) Risk Assessment.

(A) Current and past violent behavior

(B) Exposure

(C) Threats of homicide/suicide/violence

(D) Ideation of homicide/suicide/violence

(E) Weapons access

(F) Obsessed with or dependent upon victim (Sociopathic Traits)

(G) History of rage and impulsivity

(H) History of sexual abuse (perpetrator or victim)

(I) History of child abuse (perpetrator or victim)

(J) Access to victim

(K) Criminal History Record Information (CHRI) through a National Criminal History Background Check System from local law enforcement or any other authorized individual or agency.

(L) Cultural issues

(M) History of domestic violence protection orders

(N) Prior treatment for aggressive violence

(O) Danger of reoffending

(3) Substance Abuse.

(A) Present usage of drugs

(B) Prior treatment for drug abuse or addiction

(C) Involvement of substance abuse in incident

(D) Assessment

(4) Self-Assessment.

(A) Description of current incident in person's own words

(B) Person's acceptance of responsibility for incident

(C) Remorse evidenced by person

(D) Person's own view of need for treatment

(E) Person's willingness to get treatment

(5) Test Results. (if any - substance abuse testing, psychological testing, I.Q., etc.)

- (6) Collateral information.
  - (A) Police Report
  - (B) Victim interview
  - (C) Prior treatment -- review of past records
- (7) Personality/Character Assessment.
- (8) Behavioral Observations/Mental Status.
  - (A) Level of cooperativeness
  - (B) Victim interview
  - (C) General present mental status
- (9) Recommendation.
  - (A) A summary formulation that identifies the factors causing and/or contributing to the defendant's domestic violence that form the basis for the evaluator's opinion as to the treatment recommendation.
  - (B) Further assessment opinions and if needed
  - (C) Treatment recommendations
  - (D) Providers available to treat
  - (E) Cost of treatment (estimate)
  - (F) Cost of alternate treatment
  - (G) Resources available to defendant

(d) In the event the evaluator submits an evaluation that is not in compliance with subsection (c) of this rule, the court may return the evaluation with instructions to prepare an evaluation in compliance with the rule at no additional cost to the defendant. In the event an evaluator fails to submit an evaluation in compliance with this rule after such an instruction, the court may forward the evaluation to the Board as a sealed confidential document along with a written request that the evaluator be removed from the roster for failure to comply with the rule. If the Board determines the evaluation fails to meet the requirements of the rule, the evaluator may be removed from the roster.

(Adopted effective August 8, 1995; amended August 23, 1996; effective November 1, 1996; amended January 30, 1997, effective February 1, 1997; amended August 3, 1998, effective August 4, 1998; amended March 9, 1999, effective July 1, 1999; amended January 30, 2001, effective July 1, 2001; amended April 22, 2004, effective July 1, 2004; amended May 22, 2006, effective July 1, 2006; amended, effective January 22, 2009; amended and effective January 3, 2011; amended May 9, 2011, effective July 1, 2011.)

#### **I.C.R. 34. New Trial.**

The court on motion of a defendant may grant a new trial to the defendant if required in the interest of justice. If the trial was by court without a jury the court on motion of a defendant for new trial may vacate the judgment if entered, take additional testimony and direct the entry of a new judgment. A motion for a new trial based upon the ground of newly discovered evidence may be made only before or within two (2) years after final judgment. A motion for a new trial based on any other ground may be made at any time within fourteen (14) days after verdict, finding of guilt or imposition of sentence, or within such further time as the court may fix during the fourteen (14) day period.

(Adopted December 27, 1979, effective July 1, 1980.)

#### **I.C.R. 35. Correction or Reduction of Sentence.**

(a) Illegal sentences. The court may correct a sentence that is illegal from the face of the record at any time.

(b) Sentences imposed in an illegal manner or reduction of sentence. The court may correct a sentence within 120 days after the filing of a judgment of conviction or within 120 days after the court releases retained jurisdiction. The court may also reduce a sentence upon revocation of probation or upon motion made within fourteen (14) days after the filing of the order revoking probation. Motions to correct or modify sentences under this rule must be filed within 120 days of the entry of the judgment imposing sentence or order releasing retained jurisdiction and shall be

considered and determined by the court without the admission of additional testimony and without oral argument, unless otherwise ordered by the court in its discretion; provided, however that no defendant may file more than one motion seeking a reduction of sentence under this Rule.

(c) Credit for time served. A motion to correct a court's computation of credit for time served, granted pursuant to Idaho Code Sections 18-309 or 19-2603, may be made at any time.

(Adopted December 27, 1979, effective July 1, 1980; amended April 3, 1981, effective July 1, 1981; amended March 23, 1983, effective July 1, 1983; amended May 2, 1986, effective July 1, 1986; amended June 15, 1987, effective November 1, 1987; amended March 23, 1990, effective July 1, 1990; amended February 10, 1993, effective July 1, 1993; amended December 9, 2009, effective December 9, 2009; amended March 18, 2011, effective July 1, 2011.)

### **I.C.R. 36. Clerical Mistakes.**

Clerical mistakes in judgments, orders or other parts of the record and errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court orders.

(Adopted December 27, 1979, effective July 1, 1980.)

### **I.C.R. 38. Stay of Execution - Relief Pending Review.**

(a) Death. A sentence of death shall be stayed pending any appeal or review.

(b) Imprisonment. The judgment of imprisonment shall be stayed if an appeal is taken and the defendant is admitted to bail. In the event a defendant is not admitted to bail following conviction and during pendency of the appeal, any sentence of imprisonment shall commence on the date of entry of judgment. If the defendant is incarcerated pending appeal the court in which the conviction was entered may order the defendant returned to the county in which the conviction was had for the purpose of assisting in the preparation of the defendant's appeal. Such return shall not stay the running of the sentence.

(c) Fine. A judgment to pay a fine or a fine and costs, if appeal is taken, may be stayed by the court in which the judgment was entered upon such terms as the court deems proper. The court may require the defendant pending appeal to deposit the whole or any part of the fine and costs with the clerk of the district court, or to give bond for the payment thereof, or to submit to an examination of assets, and it may make any appropriate order to restrain the defendant from dissipating the defendant's assets.

(Adopted December 27, 1979, effective July 1, 1980.)

### **I.C.R. 41. Search and Seizure.**

(a) Authority to issue warrant. A search warrant authorized by this rule or by the Idaho Code may be issued by a district judge or magistrate within the judicial district wherein the county of proper venue is located upon request of a law enforcement officer or any attorney for the state of Idaho. Where it does not appear that the property or person sought is currently within the territorial boundaries of the state of Idaho, such warrant may still be issued; however, no such issuance will be deemed as granting authority to serve said warrant outside the territorial boundaries of the State.

(b) Property or person which may be seized with a warrant. A warrant may be issued under this rule to search for and seize

- (1) evidence of the commission of a criminal offense; or
- (2) contraband, the fruits of crime, or things otherwise criminally possessed; or
- (3) weapons or other things by means of which a crime has been committed or reasonably appears about to be committed, or
- (4) a person named in an arrest warrant issued pursuant to Rule 4 of these rules.

(c) Issuance and content. A warrant shall issue only on an affidavit or affidavits, which include written certifications or declarations under penalty of perjury, or by testimony under oath and recorded and establishing the grounds for issuing a warrant. If the district judge or magistrate is satisfied that there is probable cause to believe that the grounds for the application exist, the judge or magistrate shall issue a warrant identifying the property or person and naming or describing the person or place to be searched. The finding of probable cause shall be based upon substantial evidence, which may be hearsay in whole or in part, provided there is a substantial basis, considering the totality of the circumstances, to believe probable cause exists. Before ruling on a request for a warrant the district judge or magistrate may require the affiant to appear personally and may examine under oath the affiant and any witnesses affiant may produce, provided that such proceeding shall be taken down by recording equipment and shall be considered a part of the affidavit. The warrant shall be directed to any peace officer authorized to enforce or assist in enforcing any law of the state of Idaho. It shall command the officer to search, within the specified period of time, not to exceed fourteen (14) days, the person or place named for the property or person specified. The warrant shall be served in the daytime, unless the issuing authority, by appropriate provision in the warrant, and for reasonable cause shown, authorizes its execution at times other than daytime. "Daytime" means the hours between 6:00 a.m. and 10:00 p.m. according to local time.

(d) Execution and return with inventory. The officer taking property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for property taken or shall leave a copy and receipt at the place from which the property was taken. A verified return, which may be a written certification or declaration under penalty of perjury, shall be promptly made to a district court judge or magistrate in the county where a warrant for the seizure of property or a person was issued. The inventory shall be made by one of the officers executing the warrant in the presence of the person from whose possession or premises the property was taken; provided, if such person is not present, the executing officer shall make the inventory in the presence of at least one (1) credible person of age. The district judge or magistrate shall, upon request, deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant. The district judge or magistrate before whom the warrant is returned shall attach to the warrant a copy of the return, inventory and all other papers in connection therewith and shall file them with the clerk of the district court for the county in which the warrant was issued or served.

(e) Motion for return of property. A person aggrieved by a search and seizure may move the district court for the return of the property on the ground that the person is entitled to lawful possession of the property and that it was illegally seized. The motion for the return of the property shall be made only in the criminal action if one is pending, but if no action is pending a civil proceedings may be filed in the county where the property is seized or located. The court shall receive evidence on any issue of fact necessary to the decision on the motion. If the motion is granted the property shall be restored and it shall not be admissible in evidence at any hearing or trial. If a motion for return of property is made or comes on for hearing after a complaint, indictment or information is filed, it shall be treated also as a motion to suppress under Rule 12.

(f) Motion to suppress. A motion to suppress evidence shall be made in the trial court as provided in Rules 5.1(b) and 12.

(g) Telegraphic or facsimile copy of a search warrant. After the issuance of a search warrant in the form set forth in subsection (c) above, a copy of the search warrant may be sent by telecommunication process or by facsimile process to any peace officer or other officer serving the search warrant.

(Adopted December 27, 1979, effective July 1, 1980; amended March 30, 1984, effective July 1, 1984; amended March 20, 1985, effective July 1, 1985; amended June 15, 1987, effective November 1, 1978; amended March 23, 1990, effective July 1, 1990; amended March 18, 2011, effective July 1, 2011; amended February 9, 2012, effective July 1, 2012; amended June 20, 2013, effective July 1, 2013.)

### **I.C.R. 41.1. Reclaiming Exhibits - Documents or Property.**

At any time after the commencement of a criminal action, any interested party or person may apply to the trial court for an order permitting a reclamation by such party or person of exhibits offered or admitted in evidence, documents or property displayed or considered in connection with the action, or any property in the possession of any department, agency or official who is holding such property in connection with the trial of the criminal action. The trial court in its discretion may grant such an order on such conditions and under such circumstances as it deems appropriate, including but not limited to the substitution of a copy, photograph, drawing, facsimile, or other reproduction of the original exhibit, document or property, or the posting of a bond that the exhibit, document or property will be returned to the court if the court later orders that such exhibit, document or property be returned to the court for any purpose in connection with the criminal action.

(Adopted December 27, 1979, effective July 1, 1980.)

### **I.C.R. 42. Contempt.**

This rule shall govern all contempt proceedings brought in connection with a criminal proceeding. It shall not apply to the prosecution of misdemeanor contempt under section 18-1801, Idaho Code, or any other criminal statute.

(Prior Rule 42 RESCINDED; New Rule 42 Adopted March 24, 2005, effective July, 2005.)

#### **I.C.R. 42(a). Definitions.**

The following definitions apply to this rule.

- (1) Petitioner. A petitioner is the person or legal entity initiating a nonsummary contempt proceeding.
- (2) Respondent. A respondent is the person or legal entity alleged to have committed an act of contempt.
- (3) Contemnor. A contemnor is a person or legal entity adjudged to have committed an act of contempt.
- (4) Summary proceeding. A summary proceeding is one in which the contemnor is not given prior notice of the charge of contempt and an opportunity for a hearing to determine whether the charge is true.
- (5) Nonsummary proceeding. A nonsummary proceeding is one in which the contemnor is given prior notice of the contempt charge and an opportunity for a hearing.
- (6) Civil sanction. A civil sanction is one that is conditional. The contemnor can avoid the sanction entirely or have it cease by doing what the contemnor had previously been ordered by the court to do. A civil sanction can only be imposed if the contempt consists of failing to do what the contemnor had previously been ordered by the court to do.
- (7) Criminal sanction. A criminal sanction is one that is unconditional. The contemnor cannot avoid the sanction entirely or have it cease by doing what the contemnor had been previously ordered by the court to do. A suspended sanction with probationary conditions is a criminal sanction, as is a sanction that includes provisions that are both conditional (civil) and unconditional (criminal). A criminal sanction may be imposed for any contempt.

(Prior Rule 42 RESCINDED; New Rule 42 Adopted March 24, 2005, effective July, 2005.)

#### **I.C.R. 42(b). Summary Proceedings.**

- (1) A summary proceeding may be used only if the contempt was committed in the presence of the court. A contempt is committed in the presence of the court if:
  - a. The conduct occurs in open court in the immediate presence of the judge;
  - b. The judge has personal knowledge, based upon personally observing and/or hearing the conduct, of the facts establishing all elements of the contempt; and
  - c. The conduct disturbs the court's business.
- (2) The court may summarily impose a sanction for contempt that is committed in its presence. Before doing so, the court must:
  - a. Give the contemnor notice of the alleged contempt, which can be oral; and

- b. Give the contemnor a brief opportunity to be heard in order to present matters in mitigation or to otherwise attempt to make amends with the court.

(3) Promptly after announcing the sanction, the court must enter in the record a written order, signed by the judge, which:

- a. States that the judge saw and/or heard all of the conduct constituting the contempt and that it was committed in the actual presence of the court;
- b. Recites each of the specific facts upon which the contempt conviction rests;
- c. Adjudges that the contemnor is guilty of contempt; and
- d. Sets forth the sanction for that contempt.

Before imposing incarceration as a sanction for summary contempt, the court should consider whether a lesser sanction would be effective. If the sanction includes incarceration, the court may immediately remand the contemnor into custody to begin serving such incarceration and later file the written order. If the sanction includes a civil sanction, the written order must recite precisely what the contemnor must do in order to avoid the sanction or have it cease.

(Prior Rule 42 RESCINDED; New Rule 42 Adopted March 24, 2005, effective July, 2005.)

### **I.C.R. 42(c). Nonsummary Proceedings -- Commencement.**

Nonsummary contempt proceedings may be commenced only as provided herein.

(1) Order to show cause. If the alleged contempt consists of failing to appear in court, the contempt proceedings may be commenced by an order to show cause directed to the respondent. The order to show cause must be supported by an affidavit unless it is prepared by or at the direction of the judge and the facts recited in it are based upon the judge's personal knowledge and/or upon information from the court file contained in documents prepared by court personnel. The order to show cause must:

- a. Notify the respondent of the charge of contempt;
- b. Recite all facts constituting the alleged contempt, other than that the respondent's failure to appear in court was willful; and
- c. Set a time, date, and place for the respondent to appear to answer to the charge of contempt.

The order to show cause may be prepared by the court or by a party at the court's direction.

(2) Motion and affidavit. All contempt proceedings, except those initiated by an order to show cause for the failure to appear in court, must be commenced by a motion and affidavit. The affidavit must allege the specific facts constituting the alleged contempt. Each instance of alleged contempt, if there is more than one, must be set forth separately. If the alleged contempt is the violation of a court order, the affidavit must allege that either the respondent or the respondent's attorney was served with a copy of the order or had actual knowledge of it. The affidavit need not allege facts showing that the respondent's failure to comply with the court order was willful.

(Prior Rule 42 RESCINDED; New Rule 42 Adopted March 24, 2005, effective July, 2005.)

### **I.C.R. 42(d). Nonsummary Proceedings - Service.**

If the contempt proceedings are initiated in connection with a pending action to which the respondent is a party, the order to show cause or the motion, affidavit, and written notice of the time, date, and place to appear may be served upon the respondent as provided in Rule 5(b) of the Idaho Rules of Civil Procedure unless the court orders personal service. If the respondent is not a party to the pending action in which the contempt proceedings are brought, service shall be as provided in Rule 4 of the Idaho Rules of Civil Procedure.

(Prior Rule 42 RESCINDED; New Rule 42 Adopted March 24, 2005, effective July, 2005.)

### **I.C.R. 42(e). Nonsummary Proceedings - warrant of Attachment and Bail.**

(1) Warrant of attachment. The court shall not issue a warrant of attachment unless the court finds that there is probable cause to believe that the respondent committed the contempt and determines that there are

reasonable grounds to believe that the respondent will disregard a written notice to appear. The form of the warrant may be the same as a warrant of arrest.

(2) Bail. When issuing a warrant of attachment, the court shall set a reasonable bail, to be endorsed upon the warrant at the time it is issued.

(3) Execution and return. The execution and return of the warrant shall be in the same manner as a warrant of arrest.

(Prior Rule 42 RESCINDED; New Rule 42 Adopted March 24, 2005, effective July, 2005.)

#### **I.C.R. 42(f). Nonsummary Proceedings - Initial Appearance of Respondent.**

(1) Advice to respondent. At the respondent's first appearance in court to answer to the charge of contempt in nonsummary proceedings, the court shall inform the respondent of:

- a. The charge(s) of contempt against the respondent;
- b. The possible sanctions for contempt;
- c. That the respondent is not required to make a statement and that any statement made may be used against the respondent;
- d. The respondent's right to a trial;
- e. The respondent's right to confront the witnesses against the respondent, including watching the witnesses testify in court and questioning them; and
- f. The respondent's right to bail, if the respondent has been arrested under a warrant of attachment.

(2) Additional advice in order to impose incarceration as a sanction. If the respondent appears without counsel and the court desires to have the option of imposing incarceration as a sanction, the court must inform the respondent that the respondent has the right to be represented by an attorney and that if the respondent desires an attorney and cannot afford one, an attorney will be appointed at public expense.

(Prior Rule 42 RESCINDED; New Rule 42 Adopted March 24, 2005, effective July, 2005.)

#### **I.C.R. 42(g). Nonsummary Proceedings - Plea.**

After being informed of the applicable rights, the respondent shall admit or deny the charge of contempt.

(1) Admission of contempt. Before an admission of the charge can be accepted, the record of the entire proceedings, including reasonable inferences drawn therefrom, must show:

- a. The respondent was informed of the nature of the charge(s) of contempt;
- b. The respondent was informed of the maximum sanctions, including the possibility, if applicable, that sanctions for multiple contempts could be consecutive;
- c. The voluntariness of the admission; and
- d. The respondent was advised that by admitting the contempt, the respondent would be waiving the applicable rights specified in subsection (f) above.

(2) Denial of contempt. If the respondent denies the charge of contempt, the matter shall be set for a trial. The respondent must be given at least fourteen (14) days to prepare for trial, unless otherwise ordered by the court.

(Prior Rule 42 RESCINDED; New Rule 42 Adopted March 24, 2005, effective July, 2005.)

#### **I.C.R. 42(h). Nonsummary Proceedings -- Defenses to the Contempt.**

Defenses to the charge of contempt must be raised as follows:

(1) Written response. In order to assert an affirmative defense to the contempt, the respondent must file and serve a written response stating such defense, including any of the following: the respondent was unable to comply with the court order at the time of the alleged violation (only a defense to a criminal sanction), the respondent lacks the present ability to comply with the court order (only a defense to a civil sanction), the respondent was unaware of the order allegedly violated, the court lacks personal jurisdiction over the respondent, or the court lacked jurisdiction to issue the order allegedly violated. The written response must be filed within seven (7) days after entering a plea denying the contempt charged, unless otherwise ordered by the court.

(2) Burden of proof regarding affirmative defenses. In order to prevent a civil sanction from being imposed, the respondent must prove the affirmative defense by a preponderance of the evidence. In order to prevent a criminal sanction from being imposed, the respondent need only create a reasonable doubt as to whether the respondent is guilty of the contempt.

(Prior Rule 42 RESCINDED; New Rule 42 Adopted March 24, 2005, effective July, 2005.)

#### **I.C.R. 42(i). Nonsummary Proceedings - Trial.**

(1) Court trial or jury trial. The trial shall be before the court without a jury, provided, that if the respondent is charged with multiple counts tried in one proceeding, the court cannot impose consecutive criminal sanctions totaling more than six months in jail unless the respondent was given, or voluntarily waived, the right to a jury trial.

(2) Trial rights required to impose a criminal sanction. The court cannot impose a criminal sanction following a trial unless the respondent was provided the following rights: a public trial, compulsory process, the presumption of innocence, the privilege against self-incrimination, the right to call and cross-examine witnesses, the right to testify in one's own behalf, the right to exclude evidence that was obtained in violation of the respondent's Fourth Amendment rights, the right to counsel, if applicable, and the right to a unanimous verdict if there was a jury trial.

(Prior Rule 42 RESCINDED; New Rule 42 Adopted March 24, 2005, effective July, 2005.)

#### **I.C.R. 42(j). Nonsummary Proceedings - Burden of Proof.**

(1) Civil sanction. In order to impose a civil sanction, the court must find, by a preponderance of the evidence, that all of the elements of contempt have been proven and that the contemnor has the present ability to comply with the order violated, or with that portion of it required by the sanction.

(2) Criminal sanction. In order to impose a criminal sanction, the trier of fact must find that all of the elements of contempt were proven beyond a reasonable doubt.

(Prior Rule 42 RESCINDED; New Rule 42 Adopted March 24, 2005, effective July, 2005.)

#### **I.C.R. 42(k). Nonsummary Proceedings - Findings of Fact.**

If the contempt allegation is tried to the court without a jury, the court shall make specific findings of fact. In order to impose either a civil sanction or a conditional (civil) provision as part of a criminal sanction, the findings must include the facts upon which the court bases its determination that the contemnor has the present ability to comply with the order violated, or with that portion of it required by the sanction.

(Prior Rule 42 RESCINDED; New Rule 42 Adopted March 24, 2005, effective July, 2005.)

#### **I.C.R. 42(l). Nonsummary Proceedings - Imposition of Sanctions.**

If the respondent admits the contempt or is found in contempt following a trial, the court may impose sanctions as permitted by law.

(1) Right to counsel. The court cannot impose incarceration as a sanction unless the contemnor was represented by counsel or had knowingly and voluntarily waived the right to counsel.

(2) Right to call witnesses and speak regarding the sanction. The court cannot impose a criminal sanction without first giving the contemnor the right to call witnesses in mitigation of the sanction and the right to be heard in order to present matters in mitigation or to otherwise attempt to make amends with the court.

(3) Written order. The court shall issue a written order reciting the conduct upon which the contempt conviction rests; adjudging that the contemnor is guilty of contempt; and setting forth the sanction for that contempt. If the sanction is civil or includes a conditional provision, the order must specify precisely what the contemnor must do in order to avoid that sanction or have it cease.

(Prior Rule 42 RESCINDED; New Rule 42 Adopted March 24, 2005, effective July, 2005.)

### **I.C.R. 42(m). Nonsummary Proceedings - Attorney Fees.**

In any contempt proceeding, the court may award the prevailing party costs and reasonable attorney fees under Idaho Code § 7-610, regardless of whether the court imposes a civil sanction, a criminal sanction, or no sanction. The procedure for awarding such costs and fees shall be as provided in Rule 54(e) of the Idaho Rules of Civil Procedure, except that the determination of the prevailing party shall be based upon who prevailed in the contempt proceeding.

(Prior Rule 42 RESCINDED; New Rule 42 Adopted March 24, 2005, effective July, 2005.)

### **I.C.R. 42(n). Other Rules of Criminal Procedure.**

Rules regarding discovery and other rules of criminal procedure, to the extent that they are not in conflict with this rule, shall apply to nonsummary contempt proceedings.

(Prior Rule 42 RESCINDED; New Rule 42 Adopted March 24, 2005, effective July, 2005.)

### **I.C.R. 43. Presence of the Defendant.**

(a) Presence required. The defendant shall be present at the arraignment, at the time of the plea, at every stage of the trial including the impaneling of the jury and the return of the verdict, and at the imposition of sentence, except as otherwise provided by this rule.

(b) Continued presence not required. The further progress of the trial to and including the return of the verdict, or the progress of any other proceeding, shall not be prevented and the defendant shall be considered to have waived defendant's right to be present whenever a defendant, initially present:

(1) Is voluntarily absent after the trial has commenced (whether or not the defendant has been informed by the court of the obligation to remain during the trial), or

(2) Who has previously been warned by the court, acts in a manner so disorderly, disruptive and disrespectful as to substantially impede or makes impossible orderly conduct of the trial or other proceeding, and the court may:

- A. Bind and gag the defendant.
- B. Cite the defendant for contempt.
- C. Remove defendant from the courtroom until the defendant agrees to act properly.
- D. Take other appropriate action, and continue to proceed with the trial.

(c) Presence not required. A defendant need not be present in the following situations unless otherwise ordered by the court:

(1) A corporation may appear by counsel for all purposes.

(2) In prosecutions of misdemeanors the defendant may appear by counsel or the court, with the written consent of the defendant, may permit arraignment, plea, trial, and imposition of sentence without the defendant being physically present.

(3) At a conference or argument upon a question of law.

(4) At a reduction of sentence under Rule 35.

(Adopted December 27, 1979, effective July 1, 1980; amended February 9, 2012, effective July 1, 2012.)

### **I.C.R. 43.1. Proceedings by Telephone Conference or Video Teleconference.**

Whenever the law or these rules require that a defendant in a misdemeanor or felony case be taken before a district judge or magistrate for a first or subsequent appearance, bail hearing, arraignment and plea in a misdemeanor case, or arraignment and plea of not guilty in a felony case, this requirement can be satisfied by the defendant's appearance before a district judge or magistrate either in person or by telephone conference or video teleconference in the discretion of the district judge or magistrate. Such device must operate so that both the

defendant and a district judge or magistrate can see or hear each other simultaneously and converse with each other. Such additional hearings and proceedings may be conducted under this rule as deemed appropriate by the court. The audio of the telephone conference, or video teleconferences shall be recorded by the court and the court shall cause minutes of the hearing to be prepared and filed in the action.

(Adopted December 27, 1979, effective July 1, 1980; amended April 3, 1981, effective July 1, 1981; amended March 2, 2001, effective April 1, 2001.)

### **I.C.R. 43.3. Forensic Testimony by Video Teleconference.**

Forensic testimony may be offered by video teleconference via simultaneous electronic transmission. For testimony via video teleconference to be admissible:

1) The forensic scientist must be visible to the court, defendant, counsel, jury, and others physically present in the courtroom.

a. The court and the forensic scientist must be able to see and hear each other simultaneously and communicate with each other during the proceeding.

b. The defendant, counsel from both sides, and the forensic scientist must be able to see and hear each other simultaneously and communicate with each other during the proceeding.

c. A defendant who is represented by counsel must be able to consult privately with defense counsel during the proceeding.

2) The party intending to submit testimony via video teleconference shall give written notice to the court and opposing party twenty eight (28) days in advance of the proceeding date.

3) A party in opposition to testimony being given via video teleconference shall give the court and opposing party written notification of his or her objection or affirmative consent no later than fourteen (14) days prior to the proceeding date.

4) The party seeking to introduce testimony via video teleconference shall be responsible for coordinating the audiovisual feed into the courtroom. Nothing in this rule shall be construed to require court personnel to assist in the preparation or presentation of the testimony provided by the provisions of this rule.

The testimony shall be recorded in the same manner as any other testimony in the proceeding.

(Adopted March 18, 2011, effective July 1, 2011.)

### **I.C.R. 44. Right to Assignment of Counsel.**

(a) Right to assigned counsel. Every defendant, who according to law is entitled to appointed counsel, shall have counsel assigned to represent the defendant, from initial appearance before the magistrate or district court, unless the defendant waives such appointment.

(b) Assignment procedures. The procedures for implementing the right set out in subsection (a) above shall be those provided by law.

(Adopted December 27, 1979, effective July 1, 1980.)

### **I.C.R. 44.1. Withdrawal of Counsel.**

No attorney may withdraw as an attorney of record for any defendant in any criminal action without first obtaining leave and order of the court upon notice to the prosecuting attorney and the defendant except as provided in this rule. Leave to withdraw as the attorney of record for a defendant may be granted by the court for good cause. Provided, an attorney may withdraw at any time after the final determination and disposition of the criminal action by the dismissal of the complaint or information, the acquittal of the defendant, or the entry of a judgment of conviction and sentence; but in the event of conviction an attorney may not withdraw without leave of the court until the expiration of the time for appeal from the judgment of conviction.

(Adopted December 27, 1979, effective July 1, 1980.)

## **I.C.R. 44.2. Mandatory Appointment of Counsel for Post-Conviction Review After Imposition of Death Penalty.**

(1). Immediately following the imposition of the death penalty, the district judge who sentenced the defendant shall appoint at least one attorney to represent the defendant for the purpose of seeking any post-conviction remedy referred to in I.C. Section 19-2719(4) that the defendant may choose to seek. This appointment shall be made in compliance with the standards set forth in Idaho Criminal rule 44.3, and the attorney appointed shall be someone other than counsel who represented the defendant prior to the imposition of the death penalty. This new counsel shall not be considered to be co-counsel with any other attorney who represents the defendant, but may also be appointed to pursue the direct appeal for the defendant.

(2). Compensation and Payment of Expenses.

(a) Unless counsel is employed by a publicly funded office, lead counsel appointed to represent a capital defendant in post-conviction proceedings shall be paid an hourly rate of one hundred dollars (\$100.00) per hour.

(b) The trial court shall authorize additional payments for expenses incidental to representation (including, but not limited to, investigative, expert and other preparation expenses) necessary to adequately litigate those post-conviction claims that are allowed pursuant to I.C. Section 19-2719, to the same extent as a person having retained his own counsel is entitled.

(c) Compensation and payment of expenses shall be made pursuant to the provisions of I.C. § 19-860(b). Counsel shall submit timely claims for compensation and payment of expenses in the manner provided in I.C. Section 31-1501 et seq.

(Adopted effective August 8, 1995; amended January 7, 2003, effective February 1, 2003.)

## **I.C.R. 44.3. Standards for the Qualification of Appointed Counsel in Capital Cases.**

### 1. Applicability

The provisions for the appointment of counsel set forth in this Order apply only in cases where the defendant is needy, as defined in I.C. Section 19-851 et seq., counsel is not privately retained by or for the defendant, and the death penalty may be or has been imposed upon the defendant.

### 2. Number of Attorneys per Case

(a). In a case in which the death penalty may be imposed:

(1). At the initial appearance in the magistrate division, two qualified trial attorneys shall be appointed to represent an indigent defendant, unless the administrative district judge or his/her designee makes specific findings that two attorneys are not necessary.

(2). In the district court upon an indictment, two qualified trial attorneys shall be appointed to represent an indigent defendant, unless the administrative district judge or the assigned district judge makes specific findings that two attorneys are not necessary.

(3). In the event that more than one attorney is appointed, one appointed attorney shall be designated "lead counsel" and the second as "co-counsel."

(b). In a case in which the death penalty has been imposed:

(1). The district judge who sentenced the defendant shall comply with Idaho Criminal Rule 44.2.

(2). In the event that more than one attorney is appointed, one appointed attorney shall be designated "lead counsel" and the second as "co-counsel."

### 3. Attorney Qualifications

(a). Trial

(1). Lead trial counsel assignments shall be made to attorneys who:

(A). Are members in good standing of the Idaho State Bar, admitted to practice in Idaho or admitted to practice pro hac vice; and

(B). Are experienced and active trial practitioners with at least five (5) years litigation experience in criminal defense or prosecution; and

(C). Have served as lead counsel in no fewer than four (4) felony jury trials of cases which were tried to completion; and have served either as lead or co-counsel in one case in which the death penalty might have been imposed and which was tried through to completion, or served as lead counsel in the sentencing phase of a death penalty case.

(D). Are familiar with the rules, practice and procedure of the district courts of the state of Idaho; and

(E). Are familiar with and experienced in the utilization of expert witnesses and evidence, including, but not limited to, psychiatric and forensic evidence; and

(F). Have attended and successfully completed at least twelve (12) hours of Idaho State Bar approved training or educational programs which focus on capital cases, within the last two (2) years; and

(G). Have demonstrated the necessary proficiency and commitment which exemplify the quality of representation appropriate to capital cases.

(2). Co-counsel assignments shall be assigned to attorneys who:

(A). Are members in good standing of the Idaho State Bar, admitted to practice in Idaho or admitted to practice pro hac vice; and

(B). Qualify as lead counsel under paragraph 3 (a) of this Order or meet the following requirements:

(i). Are experienced and active trial practitioners with at least three (3) years litigation experience in criminal defense or prosecution; and

(ii). Have prior experience as lead counsel in no fewer than three (3) felony jury trials of cases which were tried to completion; and

(iii). Are familiar with the rules, practice and procedure of the district courts of the state of Idaho; and

(iv). Have attended and successfully completed at least six (6) hours of Idaho State Bar approved training or educational programs which focus on capital cases, within the last two years; and

(v). Have demonstrated the necessary proficiency and commitment which exemplify the quality of representation appropriate to capital cases.

(3). Alternate Procedures.

Applications for lead and co-counsel assignments may be made by persons with extensive criminal trial experience or extensive civil litigation experience, if it is clearly demonstrated to the Idaho Supreme Court or the Court's designee that competent representation will be provided in a capital case. Lawyers appointed under this paragraph shall meet either of the following qualifications:

(A). Experience in some stage of death penalty litigation which does not meet the levels required in paragraphs (a)(1) or (a)(2) above, or,

(B). Specialized post-graduate training in the defense or prosecution of persons accused of capital crimes.

(b). Appeal/Post-Conviction

(1). Appellate or post convictions counsel must either qualify as "lead trial counsel" under Section 3 (a) or meet the following requirements:

(A). Be a member in good standing of the Idaho State Bar, be admitted to practice in Idaho or admitted to practice pro hac vice.

(B). Be familiar with the rules, practice and procedure of the appellate courts of the State of Idaho.

(C). Be experienced and active post-conviction and appellate practitioners with at least three (3) years experience in criminal defense or prosecution.

(D). Have served as court appointed or retained counsel in the appeal or the post conviction review of a case in which the death penalty was imposed, or have served as counsel in a habeas corpus death penalty case in Federal Court.

(E). Have attended and successfully completed at least twelve (12) hours of Idaho State Bar approved training or educational programs which focus on capital cases, within the last two (2) years.

(F). Have demonstrated the necessary proficiency and commitment which exemplify the quality of representation appropriate to capital cases. If the court in its discretion appoints co-counsel for appeal or post conviction, these requirements do not apply to co-counsel.

(2). Alternate Procedures.

Application for lead assignments may be made by persons with extensive criminal trial experience or extensive civil litigation experience, if it is clearly demonstrated to the Idaho Supreme Court or the Court's designee that competent representation will be provided in a capital case. Lawyers appointed under this paragraph shall meet either of the following qualifications:

(A). Experience with the appeal and/or post-conviction litigation of death penalty cases which does not meet the levels detailed in paragraph (1) above, or

(B). Specialized post-graduate training in the defense or prosecution of persons accused of capital crimes.

#### 4. Workload

Appointments pursuant to this Order should provide each client with quality representation in accordance with constitutional and professional standards. The appointing authority shall not make an appointment without assessing the impact of the appointment on the attorney's workload.

#### 5. Compensation and Payment of Expenses

Compensation and payment of expenses shall be made pursuant to the provisions of I.C. 19-860(b). Counsel shall submit timely claims for compensation and payment of expenses in the manner provided in I.C. Section 31-1501 et seq.

#### 6. Procedures for Maintaining Rosters of Qualified Counsel

(a). The Supreme Court of the State of Idaho or the Court's designee shall maintain rosters of attorneys who are competent and eligible to represent capital defendants. The first roster shall contain the names of attorneys eligible for appointment as lead counsel for trial and appeal/post-conviction cases, pursuant to the qualification requirements specified in this Order. The second roster shall contain the names of attorneys eligible for appointment as co-counsel for trial and appeal/post-conviction cases, pursuant to the qualification requirements specified in this Order.

(1). Application

(A). Attorneys may obtain an application form from the Supreme Court of the State of Idaho or the Court's designee.

(B). Completed applications shall be submitted to the Supreme Court of the State of Idaho or the Court's designee. The Court or its designee shall review the application for completeness. If the application is incomplete, it shall be returned to the applicant, explaining what further information is required.

(2). Review and Recommendation

(A). A standing Death Penalty Counsel Review and Recommendation Committee shall be established with membership appointed by the Supreme Court of the State of Idaho.

(B). The Supreme Court or its designee shall forward completed applications to the Death Penalty Counsel Review and Recommendation Committee. Upon receipt, a thorough investigation of the applicant's background, experience, training and an assessment of whether the applicant is competent to provide adequate legal counsel to a capital defendant shall be completed.

(C). The application and recommendation will then be forwarded to the Supreme Court of the State of Idaho or its designee who will determine whether or not to include the applicant on a roster.

(3). Term of Eligibility

Once included on a roster, the attorney's name shall remain on the roster for two (2) years from the notice of inclusion on the roster. It shall be the attorney's responsibility to forward to the Supreme Court of the State of Idaho or the Court's designee, one month prior to the expiration of their term of eligibility, proof of compliance with the qualification requirements of this Order to remain on a roster.

7. The Supreme Court of the State of Idaho or the Court's designee shall maintain the rosters of qualified capital defense counsel. The Court or the Court's designee shall distribute to all district court judges, at least annually, rosters of qualified capital defense counsel.

8. Notwithstanding the requirement of this rule that all appointments shall be from the court-maintained rosters, if an appointment of counsel from the rosters cannot practically and expeditiously be made, the appointing court may appoint one or more counsel who are not on the roster but who otherwise meet the qualifications set out in this rule. The order of appointment shall contain findings related to each attorney's qualifications under the applicable section of this rule, and shall also require each attorney to file an application under subsection (6)(a)(1) of this rule within thirty (30) days of his or her appointment. Any placement on the roster after such an appointment shall relate back to the date of appointment for all purposes.

(Adopted March 31, 1998; effective January 1, 1999; amended February 12, 1999, effective January 1, 1999; amended and effective May 20, 1999; amended and effective February 14, 2000; amended and effective March 15, 2001; amended January 7, 2003, effective February 1, 2003.)

#### **I.C.R. 45. Time.**

(a) Computation of time periods. In computing the time period prescribed or allowed for the filing or service of any document in these rules, the day of the act or event after which such designated period of time begins to run is not to be included, but the last day of the period so computed is to be included unless it is a Saturday, Sunday or non-judicial day, as defined by section 1-1607, Idaho Code, in which event the period runs until the end of the next day which is neither a Saturday, Sunday or non-judicial day as defined in section 1-1607, Idaho Code.

(b) Enlargement. When an act, other than the filing of a notice of appeal, is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion:

(1) With or without motion or notice, order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order,

(2) Enlarge the time upon motion made after the expiration of the specified period and permit the act to be done if the failure to act was the result of excusable neglect, or

(3) Enlarge the time upon stipulation of the parties; but the court may not extend the time for taking any action under Rules 29, 34 and 35, or for the perfecting of an appeal, except to the extent and under the condition stated therein.

(c) For motion, affidavits. A written motion, other than one which may be heard ex parte, and notice of hearing thereof, shall be served not later than seven (7) days before the time specified for the hearing unless a different period of time is fixed by rule or by order of the court. For cause shown such an order may be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion and opposing affidavits must be served not less than one (1) day before the hearing unless the court permits them to be served at a later time.

(d) Additional time after service by mail. Whenever a party has the right or is required to do an act within a prescribed period after the service of a notice or other paper upon the party and a notice or other paper is served upon the party by mail, three (3) days shall be added to the prescribed period.

(Adopted December 27, 1979, effective July 1, 1980.)

#### **I.C.R. 46. Bail or Release on Own Recognizance.**

(a) Bail or release in non-capital cases. A defendant who is charged with a crime that is not punishable by death shall be admitted to bail or released on the defendant's own recognizance at any time before a guilty plea or verdict of guilt. In the discretion of the court, bail or release on the defendant's own recognizance may be allowed in the following cases:

- (1) After the defendant pleads guilty or is found guilty and before sentencing.
- (2) While an appeal is pending from a judgment of conviction, an order withholding judgment, or an order imposing sentence, except that a court shall not allow bail when the defendant has been sentenced to death or life imprisonment.
- (3) Upon a charge of a violation of the terms of probation.
- (4) Upon a finding of a violation of the conditions of release, subject to the provisions of Idaho Code § 19-2919.

(b) Bail where offense is punishable by death. A person arrested for an offense punishable by death may be admitted to bail in the exercise of discretion by any magistrate or district court authorized by law to set bail in accordance with the standard set forth in article I, section 6 of the Idaho Constitution.

(c) Factors to be considered. The determination of whether a defendant should be released upon the defendant's own recognizance or admitted to bail, and the determination of the amount and conditions of bail, if any, can be made after considering any of the following factors:

- (1) Defendant's employment status and history, and financial condition.
- (2) The nature and extent of defendant's family relationships.
- (3) Defendant's past and present residences.
- (4) Defendant's character and reputation.
- (5) The persons who agree to assist the defendant in attending court at the proper time.
- (6) The nature of the current charge and any mitigating or aggravating factors that may bear on the likelihood of conviction and the possible penalty.
- (7) Defendant's prior criminal record, if any, and, if defendant has previously been released pending a trial or hearing, whether defendant appeared as required.
- (8) Any facts indicating the possibility of violations of law if defendant is released without restrictions.
- (9) Any other facts tending to indicate that defendant has strong ties to the community and is not likely to flee the jurisdiction.
- (10) What reasonable restrictions, conditions and prohibitions should be placed upon defendant's activities, movements, associations and residences. Upon its own motion or upon a verified petition the court may from time to time re-evaluate the above factors and add to or modify the conditions of bail or revoke the defendant's admission to bail.

(d) Right to bail or release pending appeal. A defendant may be admitted to bail or released upon the defendant's own recognizance by the court in which the defendant was convicted pending an appeal upon consideration of the factors set forth in subsection (c) of this rule unless it appears that the appeal is frivolous or taken for delay. Application for admittance to bail or release upon the defendant's own recognizance may be made by the defendant to the appellate court upon a showing in the application that the court in which the defendant was convicted has refused to admit the defendant to bail or release the defendant on the defendant's own recognizance.

(e) Terms and prohibitions of bail or release.

(1) If a defendant is admitted to bail or released upon the defendant's own recognizance, the court making such determination may impose such reasonable terms, conditions and prohibitions as the court finds necessary in the exercise of its discretion.

(2) Whenever no contact is ordered pursuant to Idaho Code § 18-920, a no contact order shall be issued in accord with the standards set out in Criminal Rule 46.2.

(3) If one of the conditions of bail or release upon the defendant's own recognizance is an area of restriction monitored by electronic or global positioning system tracking, then the court shall notify the defendant in writing at the time of the setting of bail or release that intentionally leaving the area of restriction, except for the purpose of obtaining emergency medical care, may be prosecuted as the crime of escape and subject the defendant to the penalties set forth in I.C. § 18-2505 or I.C. § 18-2506.

(4) The court may, as a condition of release, require an agreement to comply with other terms and conditions of release.

(f) Bail, form, conditions and place of deposit.

(1) Bail may be posted in the form of cash deposit, property bond, or a bail bond issued by a surety insurance company qualified by law to do business in the state of Idaho. The surety shall clearly identify on the bond the name and mailing address of the person designated to receive all notices. The court shall not require that bail be posted only in cash, nor shall the court specify differing amounts for bail depending upon whether it is posted in the form of cash deposit, a property bond, or a bail bond. A cash deposit shall consist of payment in the form of United States currency, money order, certified check or cashier's check. Cash deposit may also be made by personal check payable to the clerk of the court where the acceptance of the personal check has been approved by a magistrate judge or district judge, or by credit card or debit card in those counties where procedures for the acceptance of such payment have been approved by the administrative district judge.

(2) When issuing a warrant of attachment for contempt regarding the nonpayment of any sum ordered by the court, the court may endorse upon the warrant that upon payment of a specified sum of money, not exceeding the amount owing, the contempt will be purged, the defendant shall be released, and the defendant need not appear in court in the contempt proceeding.

(g) Property bonds.

(1) The title owner(s) of the property shall execute and deliver a promissory note payable to the county in the amount of the bail. The promissory note shall require the promisor pay to the county the amount of bail, should the defendant fail to appear as required by the court and all attorney fees and costs over and above the amount of bail should the property be sold to satisfy the bail.

(2) The person pledging the property shall provide the tax assessed value and any other documentation required by the court and must disclose, under oath, all liens and encumbrances.

(3) The court, in its discretion, shall determine if the amount of equity in the property is adequate to cover the amount of bail and any other costs associated with liquidating the property to satisfy the obligation to the court.

(4) For real property to qualify as adequate security it must be located within the State of Idaho and must have an equity value, after deducting the outstanding balance of any existing lien or encumbrance, in an amount not less than the principal amount of the bail set.

(5) If the court accepts the real property as security the property bond shall be promptly recorded in the county in which the property is situated prior to the release of the defendant. Evidence of such recording shall be provided to the court. All recording fees and costs shall be paid by the person posting the bond.

(6) The property bond and promissory note shall be on forms approved by the Supreme Court.

(h) Forfeiture and enforcement of bail bond.

(1) The court which has forfeited bail, upon a motion filed within one hundred eighty (180) days after an order of forfeiture, may direct that the forfeiture be set aside, in whole or in part, upon such conditions as the court may impose, if it appears that justice does not require the enforcement of the forfeiture. In ruling upon such a motion, the court shall consider all relevant factors, which may include but not be limited to the following:

(A) the willfulness of the defendant's violation of the obligation to appear;

(B) the participation of the person posting bail in locating and apprehending the defendant;

(C) the costs, inconvenience, and prejudice suffered by the state as a result of the defendant's violation of the obligation to appear;

(D) any intangible costs;

(E) the public's interest in insuring a defendant's appearance;

(F) any mitigating factors;

(G) whether the state exhibited any actual interest in regaining custody of the defendant through prompt efforts to extradite him;

(H) whether the bonding company has attempted to assist or persuade the defendant to expedite his return to Idaho by exercising his rights under the Interstate Agreement on Detainers, Idaho Code § 19-5001 et seq.; and

(I) the need to deter the defendant and others from future violations.

(2) If the court sets aside the forfeiture, in whole or in part, it may reinstate the bail, or the court may exonerate the bail, or the court may recommit the defendant to the custody of the sheriff and set new bail or may release the defendant on his or her own recognizance. The court shall, within five (5) business days, give written notice to the person posting the bail. If the bail consists of a surety bond, such notice shall be sent to the surety, or to the agent designated by the surety to receive such notice as reflected in the records of the Department of Insurance, and shall constitute notice to both the surety and the person posting the bond, if they are different persons.

(3) After the court enters the order forfeiting bail, the clerk must, within five (5) business days, mail a written notice of forfeiture to the last known address of the person posting. If the bail consists of a surety bond, such notice shall be sent to the surety, or to the agent designated by the surety to receive such notice as reflected in the records of the Department of Insurance, and shall constitute notice to both the surety and the person posting the bond, if they are different persons. If the defendant does not appear or is not brought before the court within one hundred eighty (180) days after the entry of the order forfeiting bail, the clerk, upon receiving payment of the forfeited bail, shall remit such forfeiture to the county auditor for distribution and apportionment as provided by I. C. § 19-4705.

(i) Revocation of bail.

(1) Upon a verified application alleging that the defendant has willfully violated conditions of the defendant's release on bail, other than failure to appear, the court may issue a warrant directing that the defendant be arrested and brought before the court for hearing, or the court may order the defendant to appear before the court at a time certain.

(2) Upon a bail revocation hearing, at which the defendant shall appear if the defendant can be found, if the court finds that there has been a willful breach of conditions of bail, and if the defendant is present before the court, it may revoke the bail and remand the bailed person to the custody of the sheriff, and may at any time thereafter reconsider the issue of bail and may set new bail and impose other or additional conditions of release.

(j) Re-admittance to bail. After the order of recommitment of a defendant the court may again determine the amount of bail and order that the defendant be admitted to bail in the sum determined and released upon such conditions and prohibitions as the court determines in its discretion.

(k) Exoneration of bail.

(1) If the defendant appears before the court where the charge is pending, within one hundred eighty (180) days after the order forfeiting bail, upon motion of the person posting bond, if the court has not set aside the forfeiture, the court shall rescind the order of forfeiture and shall exonerate the bond; provided, that in those cases where the defendant was not returned by the person posting bail to the sheriff of the county where the action is pending, the court may condition the exoneration of bail and the setting aside of the forfeiture on payment by the person posting bail of the actual and reasonable costs incurred by state or local authorities arising from the transport of the defendant to the jail facility of the county where the charges are pending. Such costs shall be determined by the court following filing within fourteen (14) days of the defendant's return, by either the prosecuting attorney or a representative of the state or local law enforcement entity, of documentation of the costs actually incurred. The request for costs and supporting documentation shall also be served upon the person posting bail, who may file an objection to the request within fourteen (14) days of the filing of the request for costs. Any amounts ordered under this rule shall be paid directly to the appropriate law enforcement agency or agencies.

(2) A defendant appears before the court when the defendant physically appears in the court where the charge is pending, or, while in the custody of the sheriff of the county in which the charge is pending, appears in such court by video or audio, or by other appearance authorized by the court.

(3) Where a property bond has been posted the order exonerating the bond shall release the lien.

(l) Increasing or reducing bail.

(1) The court before which a case is pending may, after a defendant has been admitted to bail, increase or reduce the amount of bail. Upon its own motion, or upon a verified petition for an increase in bail, the court shall order the defendant to appear for a hearing on the application. The court shall also notify the person posting the undertaking of the date and time of the hearing. If the defendant fails to appear at the hearing after being

properly notified of the date and the time of said hearing, the court shall, absent evidence of sufficient excuse for his absence, immediately forfeit the bail and shall issue a warrant for arrest of the defendant.

(2) Upon application of the defendant, and timely notice to the prosecuting attorney and the person posting bail of said application, the court may reduce the existing bail, in its discretion. If the court finds good cause to reduce the bail of the defendant, the court may enter such an order and may continue the defendant on the original bail, with the court record properly reflecting the reduced amount of the bail obligation. The court shall give notice of such reduction to the person posting bail within five (5) business days of the entry of the order reducing bail.

(Adopted December 27, 1979, effective July 1, 1980; amended March 21, 1991, effective July 1, 1991; amended March 30, 1994, effective July 1, 1994; amended April 19, 1995, effective July 1, 1995; amended April 3, 1996, effective July 1, 1996; amended March 22, 2002, effective July 1, 2002; amended November 7, 2002, effective December 1, 2002 amended April 26, 2007, effective July 1, 2007; repealed & amended March 19, 2009, effective July 1, 2009; amended April 2, 2014; effective July 1, 2014.)

### **I.C.R. 46.1. Bail for Witnesses.**

If it appears by affidavit that the testimony of a person is material in any criminal proceedings and if it is shown that it may become impracticable to secure the person's presence by subpoena for a hearing or trial, the court may require such witness to give bail for the person's appearance as a witness in an amount fixed by the court. Such bail may be deposited in the same manner as bail of a person charged under Rule 46. If the person fails to give bail to appear as a witness, the court may commit the person to the custody of the sheriff pending final disposition of the proceedings in which the party's testimony is needed but the court may order the person released if the person has been detained for an unreasonable length of time and may at any time modify or eliminate the requirements as to bail. Bail of a witness may be forfeited as bail in other cases pursuant to section 19-3011, Idaho Code.

(Adopted December 27, 1979, effective July 1, 1980.)

### **I.C.R. 46.2. No Contact Orders.**

(a) No contact orders issued pursuant to Idaho Code § 18-920 shall be in writing and served on or signed by the defendant. Each judicial district shall adopt by administrative order a form for no contact orders for that district. No contact orders must contain, at a minimum, the following information:

- (1) The case number, defendant's name and victim's name;
- (2) A distance restriction;
- (3) That the order will expire at 11:59 p.m. on a specific date, or upon dismissal of the case;
- (4) An advisory that:
  - (a) A violation of the order may be prosecuted as a separate crime under I.C. § 18-920 for which no bail will be set until an appearance before a judge, and the possible penalties for this crime,
  - (b) The no contact order can only be modified by a judge, and
  - (c) When more than one domestic violence protection order is in place, the most restrictive provision will control any conflicting terms of any other civil or criminal protection order. Whenever a no contact order is issued, modified or terminated by the court, or the criminal case is dismissed, the clerk shall give written notification to the records department of the sheriff's office in the county in which the order was originally issued, immediately. No contact orders shall be entered into the Idaho Law Enforcement Telecommunications System (ILETS).

(b) A victim of a criminal offense for which a no contact order has issued may request modification or termination of that order by filing a written and signed request with the clerk of the court in which the criminal offense is filed. Forms for such a request shall be available from the clerk. The court shall provide for a hearing within fourteen days of the request and shall provide notification of the hearing to the victim and the parties.

(Adopted March 22, 2002, effective July 1, 2002; amended April 22, 2004, effective July 1, 2004; Amended June 30, 2004, effective July 1, 2004.)

### **I.C.R. 47. Motions.**

An application to the court for an order shall be by motion. A motion other than one made during a trial or hearing shall be in writing unless the court permits it to be made orally. It shall state the grounds upon which the motion is made and shall set forth the relief or order sought. It may be supported by affidavit. Any written order entered shall be on a separate document.

(Adopted December 27, 1979, effective July 1, 1980; amended March 18, 1998, effective July 1, 1998.)

### **I.C.R. 48. Dismissal by the Court.**

(a) Dismissal on motion and notice. The court, on notice to all parties, may dismiss a criminal action upon its own motion or upon motion of any party upon either of the following grounds:

(1) For unnecessary delay in presenting the charge to the grand jury or if an information is not filed within the time period prescribed by Rule 7(f) of these rules, or for unnecessary delay in bringing the defendant to trial, or

(2) For any other reason, the court concludes that such dismissal will serve the ends of justice and the effective administration of the court's business.

(b) Order of dismissal. When a court dismisses a criminal action upon its own motion or upon the motion of any party under this rule, it shall state in the order of dismissal its reasons for such dismissal.

(c) Effect of dismissal. An order for dismissal of a criminal action is a bar to any other prosecution for the same offense if it is a misdemeanor, but it is not a bar if the offense is a felony.

(Adopted December 27, 1979, effective July 1, 1980.)

### **I.C.R. 49. Service and Filing of Papers.**

(a) Service, when required. Written motions, other than those which may be properly heard ex parte, written notices, and similar papers shall be served upon each party and filed within the time and in the manner provided by the civil rules. Service may be made upon an attorney for a party by transmittal of a copy of the document to the office of the attorney by a facsimile machine process. This rule shall not require a facsimile machine to be maintained in the office of an attorney.

(b) Notice of orders. Immediately upon the entry of an appealable order or judgment the clerk of the district court, or magistrate's division, shall serve a copy thereof, with the clerk's filing stamp thereon indicating the date of filing, by mail on the prosecuting attorney and on each defendant or the attorney for the defendant; or said appealable judgment or order may be delivered directly to said parties or their attorney. Service may be made upon an attorney for a party by transmittal of a copy of the document to the office of the attorney by a facsimile machine process. The clerk shall make a note in the court records of such mailing or delivery. Such mailing or delivery is sufficient notice for all purposes under these rules. Lack of notice of entry of an appealable order or judgment does not affect the time to appeal or to file a post-trial motion within the time allowed, except where there is no showing of mailing or delivery by the clerk in the court records and the party affected thereby had no actual notice. This rule shall not require a facsimile machine to be maintained in the office of an attorney.

(c) Filing. Documents required to be served shall be filed with the court. Documents shall be filed in the manner provided in civil actions. Any document, except an information or complaint, a search warrant, a warrant of arrest, or a return on a warrant or service of a search warrant, or any document filed as proof of incarceration of a party to the action, may be transmitted to the court for filing by a facsimile machine process. The clerk shall file stamp the facsimile copy as an original and the signatures on the facsimile copy shall constitute the required signature of a party or the attorney. Filings may be made only during the normal working hours of the clerk and only if there is a facsimile machine in the offices of the filing clerk of the court. Provided, documents over ten (10) pages in length cannot be filed by the facsimile machine process. Following the service of a subpoena, the person serving the subpoena may make return thereof to the person who requested the subpoena rather than making return with the court.

(Adopted December 27, 1979, effective July 1, 1980; amended March 20, 1985, effective July 1, 1985; amended November 15, 1989, effective January 1, 1990; amended March 18, 1998, effective July 1, 1998; amended April 22, 2004, effective July 1, 2004.)

**I.C.R. 50. Terms Abolished and Calendars.**

(a) Terms of court abolished. All district courts and magistrates divisions thereof shall be deemed in continuous session. Any hearings or proceedings may be continued at a time and place certain by order of the court upon motion of any party, upon stipulation of the parties, or upon motion of the court. For purposes of these rules governing procedure in criminal actions, the definitions of chambers of court, terms of court, vacations of court and adjournments of hearings are hereby abolished.

(b) Calendars. Courts may provide for placing criminal proceedings upon appropriate calendars. Preference shall be given to criminal proceedings as far as practicable.

(Adopted December 27, 1979, effective July 1, 1980.)

**I.C.R. 51. Exceptions Unnecessary.**

Exceptions to the rulings of the court are unnecessary.

(Adopted December 27, 1979, effective July 1, 1980.)

**I.C.R. 52. Harmless Error.**

Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.

(Adopted December 27, 1979, effective July 1, 1980.)

**I.C.R. 54.1. Appeals From a Magistrate to a District Court - Appealable Judgments and Orders.**

There shall be no direct appeal from an order or decision of a magistrate to the Supreme Court. Provided, however, that whenever an attorney magistrate is assigned by an order issued pursuant to Rule 2.2(e) or Rule 2.2(f) to hear any action which may otherwise be tried only by a district judge, any appeal taken from a judgment of such magistrate acting under such order shall be made to the Supreme Court unless otherwise provided by the original order of assignment. An appeal may be taken to the district judge's division of the district court from any of the following judgments, orders or decisions rendered by a magistrate:

- (a) A final judgment of conviction.
- (b) By a defendant only, from an order granting or denying a withheld judgment on a verdict or plea of guilty.
- (c) An order granting a motion to dismiss a complaint.
- (d) An order granting a motion to suppress evidence in a misdemeanor criminal action.
- (e) An order denying a motion for new trial.
- (f) An order made after judgment affecting the substantial rights of the defendant or the state.
- (g) Any order, judgment or decree in a special criminal proceeding in which an appeal is provided by statute.
- (h) Any order holding a person in contempt of court other than those contempts defined in Rule 42(a).
- (i) An interlocutory order when processed in the manner provided by Rule 12 of the Idaho Appellate Rules and accepted by the district court.
- (j) Any order granting or denying a motion to set aside the forfeiture of bail or to exonerate bail. An appeal from such an order shall not deprive the magistrate court of jurisdiction over other proceedings involving the case or stay such proceedings.

(Adopted June 15, 1987, effective November 1, 1987, amended April 27, 2011, effective July 1, 2011; amended February 9, 2012, effective July 1, 2012.)

#### **I.C.R. 54.2. Magistrate Appeals - Judicial Review.**

All appeals from the magistrate's division shall be heard by the district court as an appellate proceeding unless the district court orders a trial de novo.

(Adopted June 15, 1987, effective November 1, 1987.)

#### **I.C.R. 54.3. Time for Filing Appeals.**

(a) All appeals permitted or authorized by these rules, may be made only by the physical filing of a notice of appeal with the clerk of the district court of the county wherein the magistrate trial was held, within forty-two (42) days from the date evidenced by the filing stamp of the clerk of the court on the judgment, order or decree appealed. The time to appeal from any criminal judgment, order or decree in an action is terminated by the filing of a motion within fourteen (14) days of the entry of the judgment which, if granted, could affect the judgment or sentence in the action, in which case the appeal period commences to run upon the date of the clerk's filing stamp on the order deciding such motion.

(b) Time for filing cross-appeal. When a timely appeal is filed as matter of right, a cross-appeal may be filed by the opposing party within the time prescribed by these rules or within fourteen (14) days from the date the original notice of appeal is served, whichever is later.

(Adopted June 15, 1987, effective November 1, 1987.)

#### **I.C.R. 54.4. Notice of Appeal.**

A notice of appeal to the district court filed pursuant to these rules shall contain the following information and statements:

- (a) The title of the action or proceedings.
- (b) The title of the court which heard the trial or proceedings appealed from and the name of the presiding magistrate.
- (c) The number assigned to the action or proceedings by the trial court.
- (d) The title of the court to which the appeal is taken.
- (e) The date and heading of the judgment, decision or order from which the appeal is taken.
- (f) A statement as to whether the appeal is taken upon matters of law, or upon matters of fact, or both.
- (g) A statement as to whether the testimony and proceedings in the original trial or hearing were recorded or reported, together with an identification of the method of recording or reporting and the name of the party or person in whose possession such recording or reporting is located.
- (h) A certificate that the notice of appeal has been served personally or by mailing upon the opposing party or the party's attorney.
- (i) A statement of the issues on appeal which the appellant then intends to assert in the appeal; provided, such statement may be filed separately within fourteen (14) days after the filing of the notice of appeal and any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal thereafter discovered by the appellant.

(Adopted June 15, 1987, effective November 1, 1987.)

#### **I.C.R. 54.5. Stay on Appeal - Powers of Magistrate During Appeal.**

(a) Stay in Criminal Appeals. Execution of the sentence, if any, imposed by the trial court, shall be stayed when ordered by the magistrate or by the district court as provided in Rule 46 and this rule.

(b) Powers of Magistrate. The magistrate shall have the following powers and authorities to rule upon the following motions and to take the following actions during the pendency of appeal unless otherwise prohibited by order of the district court:

- (1) Settle the transcript on appeal.
- (2) Rule upon any motion for new trial.
- (3) Rule upon any motion for arrest of judgment.
- (4) Conduct any hearing, and make any order, decision or judgment allowed or permitted by section 19-2601, Idaho Code.
- (5) Conduct any hearing and make any order, decision or judgment with regard to a withheld judgment entered upon a plea or verdict of guilty.
- (6) Place a defendant upon probation, modify or revoke such probation, or sentence a defendant upon revocation of probation.
- (7) In the event bail is not posted pursuant to section 19-3941, Idaho Code, the court may determine and order whether there shall be a stay of execution of the sentence upon a judgment of conviction during the pendency of an appeal to the district court; provided, however, any order of the district court with regard to such a stay shall take precedence over and supersede any order made by the magistrate.
- (8) Enter any other order after judgment affecting the substantial rights of the defendant as authorized by law. Provided, however, in the event the district court shall enter an order affecting a stay of execution of a sentence, provisions concerning bail, or any of the other matters set forth above, such order of the district court shall take precedence over and supersede the order of the magistrate.

(Adopted June 15, 1987, effective November 1, 1987; amended October 6, 2013, effective January 1, 2014.)

#### **I.C.R. 54.6. Method of Appeal - Transcript of Proceedings - Listening to Recording Tapes - Trial De Novo.**

(a) Transcript Required. Unless otherwise ordered by the district judge, a transcript shall be prepared as provided in Rule 54.7 and the appeal shall be heard as an appellate proceeding.

(b) Alternate Methods of Hearing Appeal. The district judge assigned the appeal may, on the judge's own motion or motion of a party, order an alternate method of hearing the appeal by ordering:

- (1) That the appeal involves a question of law only so that no transcript is required and the appeal will be decided on the clerk's record, the briefs of the parties and oral argument; or
- (2) That the appeal should be heard as an appellate proceeding by listening to the recording tapes without a transcript; or
- (3) That the appeal should be heard as a trial de novo without a transcript.

(c) Hearing on Question of Law. If the district judge determines that the appeal can be heard as a question of law alone, without the necessity of a transcript or a trial de novo, the judge shall enter an order to that effect stating the issue of law to be determined on appeal and set a day certain for the filing of the appellant's opening brief based upon the clerk's file and the order of the court.

(d) Listening to Tapes. If the district judge determines that the appeal should be heard by listening to the tapes of the trial or proceedings of the trial court, the judge shall enter an order to that effect and direct a time within which the parties shall review or listen to the recording tapes and set a date certain for the filing of appellant's opening appellate brief.

(e) Special Transcript. If the district judge does not require the preparation of a transcript on appeal, the district judge shall nevertheless, upon motion of any party to the appeal, order the preparation of a transcript of the proceedings at the cost of the moving party which shall require the moving party to pay the estimated transcript fees within fourteen (14) days of entry of such order and the clerk of the court shall serve a copy of such order upon the transcriber of the trial or proceedings of the trial court.

(Adopted June 15, 1987, effective November 1, 1987.)

**I.C.R. 54.7. Payment of Fees - Preparation of Transcript.**

Unless otherwise ordered by the district judge, the transcript shall be prepared in the following manner:

(a) Payment of Transcript Fee. Unless otherwise ordered by the district judge, the appellant shall pay the estimated fee for preparation of the transcript as determined by the transcriber within 14 days after the filing of the notice of appeal, and the appellant shall pay the balance of the fee for the transcript upon its completion. The appellant shall pay a sum per page for the original and two (2) copies of the transcript to be prepared by the transcriber equal to the dollar amount per page provided for the cost of a transcript prepared by a court reporter under Section 1-1105, Idaho Code. Such sum shall be paid to the clerk of the court of the magistrate's division and deposited in the district court fund, or such other fund which incurred the expense of the person who prepared the transcript. If the transcript is prepared by a transcriber or reporter privately retained by appellant, the cost therefor shall be paid by the appellant as agreed, but for purposes of taxing costs, the cost shall be deemed to be the same as provided in this rule. The district judge may order a transcript prepared at county expense if the appellant is exempt from paying such fee as provided by statute or law.

(b) Preparation of Transcript. Upon the payment of the estimated transcript fees, the transcriber shall give a receipt to the party paying such fees and shall thereafter prepare the transcript and lodge the same with the clerk of the trial court within thirty-five (35) days from the date of payment of the estimated fee. The transcriber may make application to the district judge for an extension of time in which to prepare the transcript, which shall be granted only for good cause shown.

(c) Certificate. The transcript must be examined and certified by the typist by a certificate in substantially the following form:

**CERTIFICATE OF TRANSCRIPTION**

The undersigned does hereby certify that he or she correctly and accurately transcribed and typed the above transcript from the recording of the \_\_\_\_\_

[Describe hearing: e.g. trial, hearing on motion for summary judgment, etc.]

which was recorded on (date) in the above entitled action or proceeding.

Dated and certified this \_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Transcriber

(d) Form of Transcript. All transcripts of the testimony and proceedings prepared for an appeal to the district court shall be in such form and arrangement as required for appeals to the Supreme Court under the Idaho Appellate Rules.

(Adopted June 15, 1987, effective November 1, 1987.)

**I.C.R. 54.8. Clerk's Record.**

The official court file of any criminal action appealed to the district court, including the minute entries or orders, together with the exhibits offered or admitted, shall constitute the clerk's record in such appeal. Provided, however,

the trial court may file with the district court a certified copy of its official file and retain its original file if ordered by the magistrate. Upon determination of any appeal to the district court, the original clerk's record shall be returned to the trial court together with a certified copy of the order or other disposition rendered by the district court on appeal. No copies of the clerk's record need be prepared unless ordered by the magistrate or by the district court.

(Adopted June 15, 1987, effective November 1, 1987.)

**I.C.R. 54.9. Settlement of Transcript.**

Upon receipt of the transcript of the testimony and proceedings, the clerk of the trial court shall mail or deliver a notice of lodging of the transcript to all attorneys of record, or parties appearing in person. The original of the transcript shall be retained by the clerk of the trial court, but the notice shall advise the plaintiff and defendant that they may pick up a copy of the transcript at the clerk's office and that the parties have twenty-one (21) days from the date of notice in which to file any objections to the content thereof. If there are multiple defendants appealing, and the court has not ordered separate transcripts for each defendant and the defendants have not ordered separate transcripts, they shall determine by agreement the manner and time of use of the transcript by each party, or failing such agreement, such determination shall be made by the trial court upon application of any party. Any party may file a written objection to the content of the transcript within twenty-one (21) days from the date of mailing of the notice to the parties that the transcript has been lodged with the trial court. Upon failure of the parties to file any objection with such time period, the transcript shall be deemed settled. Any objection made to a trial transcript shall be heard and determined by the trial court in the same manner as a motion. The determination by the trial court of any objection to the transcript shall be deemed a settlement of the transcript for all purposes.

(Adopted June 15, 1987, effective November 1, 1987.)

**I.C.R. 54.10. Filing of Transcript and Record.**

Within seven (7) days of the settlement of the transcript, or within seven (7) days of the receipt of an order of the district court that no transcript is needed or required, the clerk of the trial court shall file with the district court the transcript, if any, and the clerk's record, or a certified copy thereof, and all exhibits offered or admitted in the trial proceeding. The clerk of the trial court shall give notification of such filing to all parties or their attorneys. Any electronic recording, tape or belt used to record or transcribe the testimony and proceedings need not be forwarded to the clerk of the district court unless ordered by the district court.

(Adopted June 15, 1987, effective November 1, 1987.)

**I.C.R. 54.11. Augmentation of the Record.**

Any party desiring to augment the transcript or record may file a motion with the district court in the same manner and pursuant to the same procedure provided for augmentation of the record in appeals to the Supreme Court.

(Adopted June 15, 1987, effective November 1, 1987.)

**I.C.R. 54.12. Exhibits on Appeal.**

All exhibits offered or admitted in a trial proceeding shall be lodged with the clerk of the district court by the clerk of the trial court together with a certificate that said exhibits include all exhibits offered or admitted in the trial or proceedings. All such exhibits shall be lodged with the clerk of the district court at the time that the transcript and clerk's record is lodged with the district court. If an exhibit is incapable of being transmitted to the district court, the magistrate may order the clerk of the trial court to photograph or otherwise describe or make a facsimile thereof and forward it to the district court and retain the original until determination of the appeal. Upon determination of the appeal, the district court shall return all exhibits to the trial court.

(Adopted June 15, 1987, effective November 1, 1987.)

**I.C.R. 54.13. Effect of Failure to Comply With Time Limits.**

The failure to physically file a notice of appeal or notice of cross-appeal with the district court within the time limits prescribed by these rules shall be jurisdictional and shall be grounds for automatic dismissal of such appeal upon motion of any party, or upon initiative of the district court. Failure of a party to timely take any other step in the appellate process shall not be deemed jurisdictional, but may be grounds only for such other action or sanction as the district court deems appropriate, which may include dismissal of the appeal.

(Adopted June 15, 1987, effective November 1, 1987.)

**I.C.R. 54.14. Motions on Appeal.**

All motions on appeal shall be filed with the district court, except those expressly required to be filed with the trial court, and served upon all parties to the action. All motions must be accompanied by a brief. The opposing party shall have fourteen (14) days from service of a motion to file a response or brief and the motion shall be determined without oral argument unless ordered by the court.

(Adopted June 15, 1987, effective November 1, 1987.)

**I.C.R. 54.15. Appellate Briefs.**

Briefs shall be in the form and arrangement, and filed and served within the times provided for appeals to the Supreme Court by the Idaho Appellate Rules, unless otherwise ordered by the district court; provided, that such briefs may be typewritten and copies may be carbon copies or photocopies. Only one (1) original signed brief need be filed with the district court, and copies shall be served upon all other parties.

(Adopted June 15, 1987, effective November 1, 1987.)

**I.C.R. 54.16. Appellate Argument.**

Appellate argument may be heard by the district court after notice to the parties in the same manner as a notice of hearing of a motion before a trial court.

(Adopted June 15, 1987, effective November 1, 1987.)

**I.C.R. 54.17. Appellate Review.**

All appeals from a magistrate shall be heard by the district court as an appellate proceeding unless the district court orders a trial de novo as provided in these rules. The scope of appellate review on appeal to the district court shall be as follows:

- (a) Upon an appeal from a magistrate to the district court, not involving a trial de novo, the district court shall review the case on the record and determine the appeal as an appellate court in the same manner and upon the same standards of review as an appeal from the district court to the Supreme Court under the Idaho appellate rules.
- (b) Upon an appeal from a magistrate to the district court in which a trial de novo is ordered, such appeal shall be by trial in the district court in the same manner as a trial upon information in the district court.

(Adopted June 15, 1987, effective November 1, 1987.)

**I.C.R. 54.18. Other Appellate Rules.**

Any appellate procedure not specified or covered by these rules shall be; in accordance with the appropriate appellate rule, (I.A.R.), or the appropriate rules of these criminal rules, (I.C.R.), to the extent that they are not contrary to this Rule 54. These rules shall be construed to provide a just, speedy and inexpensive determination of all appeals.

(Adopted June 15, 1987, effective November 1, 1987.)

**I.C.R. 54.19. Listening to or Copying Recording Tapes.**

Any party to an action in the magistrates division may listen to or copy an electronic tape or belt recording of the trial or hearing proceedings under such rules and for such fee as adopted by the majority of the district judges of the judicial district. All fees received from a party for listening or copying recording tapes under this rule shall be transmitted to the county treasurer for deposit in the current expense fund of the county and credited back to the clerk's budget.

(Adopted June 15, 1987, effective November 1, 1987.)

**I.C.R. 57. Uniform Post-Conviction Procedure Act.**

(a) Application for relief. An application for relief from a judgment of conviction and/or sentence shall be in the form of a petition and shall be filed in the district court wherein the conviction was entered and be in substantially the following form: (*Available at* <http://www.isc.idaho.gov/icr57> )

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

STATE OF IDAHO )  
\_\_\_\_\_, )  
Plaintiff, ) PETITION FOR  
vs. ) POST-CONVICTION RELIEF  
\_\_\_\_\_, )  
Defendant. )

The petitioner alleges:

1. Place of detention if in custody: \_\_\_\_\_

2. Name and location of court which imposed judgment/sentence:  
\_\_\_\_\_

3. The case number and the offense or offenses for which sentence was imposed:

(a) Case Number. \_\_\_\_\_

(b) Offense Convicted. \_\_\_\_\_

4. The date upon which sentence was imposed and the terms of sentence:

(a) Date of sentence. \_\_\_\_\_

(b) Terms of sentence.  
\_\_\_\_\_

5. Check whether a finding of guilty was made after a plea:

(a) Of guilty. \_\_\_\_\_

(b) Of not guilty. \_\_\_\_\_

6. Did you appeal from the judgment of conviction or the imposition of sentence?

7. State concisely all the grounds on which you base your application for post-conviction relief:

(a) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(b) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(c) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(d) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(e) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

8. Prior to this motion have you filed with respect to this conviction:

(a) Any petitions in state or federal courts for habeas corpus?

\_\_\_\_\_

(b) Any other petitions, motions or application in this or any other court?

(c) If you answered "yes" to (a) or (b) state with respect to each petition, motion or application the nature of each motion or application and the name and location of the court in which each was filed.

\_\_\_\_\_

\_\_\_\_\_

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

9. If your application is based upon the failure of counsel to adequately represent you, state concisely and in detail what counsel failed to do in representing your interests:

(a) \_\_\_\_\_

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

(b) \_\_\_\_\_

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

(c) \_\_\_\_\_

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

10. (a) Are you seeking leave to proceed in forma pauperis, that is, requesting the proceeding to be at county expense? \_\_\_\_\_

(b) Are you requesting the appointment of counsel to represent you in this application?

\_\_\_\_\_

(c) If your answer to either of the above questions was "yes" fill out an affidavit of indigency in the form required by the trial court.

11. State specifically the relief you seek. \_\_\_\_\_

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

12. This petition may be accompanied by affidavits in support of the petition.

\_\_\_\_\_  
Signature of Petitioner

STATE OF \_\_\_\_\_

ss.

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing petition; that I know the contents thereof; and that the matters and allegations therein set forth are true.

\_\_\_\_\_  
Signature of Petitioner

SUBSCRIBED and SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

\_\_\_\_\_  
Notary Public For \_\_\_\_\_  
Residing at \_\_\_\_\_

My commission expires:

\_\_\_\_\_  
(month)(day)(year)

(b) Filing and processing. The petition for post-conviction relief shall be filed by the clerk of the court as a separate civil case and be processed under the Idaho Rules of Civil Procedure except as otherwise ordered by the trial court; provided the provisions for discovery in the Idaho Rules of Civil Procedure shall not apply to the proceedings unless and only to the extent ordered by the trial court.

(c) Burden of proof. The petitioner shall have the burden of proving the petitioner's grounds for relief by a preponderance of the evidence.

(Adopted December 27, 1979, effective July 1, 1980.)

**I.C.R. 59. Effective Date.**

These rules shall take effect on the 1st day of July, 1980, and shall apply to all criminal actions thereafter filed. The trial courts shall apply these rules to actions pending on the effective date unless it finds that such application would prejudice the rights of any party.

(Adopted December 27, 1979, effective July 1, 1980.)

**APPENDIX A**

Guilty Plea Advisory and Form

Available at [http://www.isc.idaho.gov/rules/forms/Guilty\\_Plea\\_Advisory\\_Form\\_7.15.pdf](http://www.isc.idaho.gov/rules/forms/Guilty_Plea_Advisory_Form_7.15.pdf)