

**IDAHO MISDEMEANOR  
CRIMINAL RULES  
(I.M.C.R.)**

**Idaho Supreme Court**

**Effective July 2015**

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## IDAHO MISDEMEANOR CRIMINAL RULES

### **Idaho Misdemeanor Criminal Rule 1. Application and Designation of Rules.**

These rules shall govern the procedure in the magistrates division of the district courts of the state of Idaho in all misdemeanor criminal proceedings which are triable by the magistrates division whether brought before the court by an Idaho Uniform Citation or a sworn complaint. Provided, the general Idaho Criminal Rules shall apply to the processing of misdemeanor complaints and citations to the extent they are not in conflict with these specific rules regarding the processing of misdemeanor charges. These rules shall be denominated as the Misdemeanor Criminal Rules, (M.C.R.).

(Adopted December 27, 1979, effective July 1, 1980; amended March 24, 1982, effective July 1, 1982; amended April 18, 1983, effective July 1, 1983; amended April 3, 1984, effective March 1, 1984; amended June 15, 1987, effective November 1, 1987.)

### **Idaho Misdemeanor Criminal Rule 2. Definitions.**

As used in these rules, unless the context clearly requires otherwise:

(a) "Citable offense" shall mean any misdemeanor triable by a magistrate under the law, and rules of the Idaho Supreme Court.

(b) "Uniform citation" or "citation" means the Idaho Uniform Citation in the form prescribed by these rules used to bring a citable offense before a court. The uniform citation shall be and constitute a summons and complaint against the person charged.

(c) "Bail" means money or its equivalent, a property bail bond executed by sureties as provided by law, or a surety bond issued by a surety or fidelity company authorized to issue bail bonds under the law of the state of Idaho, deposited with the court, court clerk, or other public officer by a defendant to secure the defendant's appearance on a uniform citation or a sworn misdemeanor complaint.

(d) "Clerk" or "clerk of the court" means a deputy district court clerk or any person appointed under Rule 12.

(e) "Court" means any tribunal with jurisdiction to hear and determine uniform citations or sworn misdemeanor complaints and the magistrate or judge thereof.

(f) "Magistrate" or "judge" includes any officer authorized by law to sit as a court with jurisdiction to hear and determine citable offenses as defined by these rules.

(g) "Police officer" or "peace officer" includes a member of the Idaho State Police, a sheriff or deputy sheriff, a city policeman or marshal, a constable or any other officer duly authorized to enforce municipal, county, or state laws.

(Adopted December 27, 1979, effective July 1, 1980; amended April 18, 1983, effective July 1, 1983.)

### **Idaho Misdemeanor Criminal Rule 2.1. Social Security Numbers.**

If an individual's social security number is included in a document filed with the court, only the last four digits of that number should be used.

### **Idaho Misdemeanor Criminal Rule 2.2. 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.

(Adopted December 3, 2013, effective immediately.)

### **Idaho Misdemeanor Criminal Rule 3. Citable Offenses - Methods of Initiating Prosecution - Trial - Consolidation.**

(a) Charging a citable offense. A person may be charged and brought before a court for any citable offense upon the filing of an Idaho Uniform Citation as provided by these rules.

(b) Use of citation. The complaint in a uniform citation may be used as the complaint to prosecute a misdemeanor, whether or not there is an arrest without a warrant, an arrest pursuant to a warrant issued on a uniform citation, or a complaint and summons to appear by a uniform citation.

(c) Determination of probable cause. In the event a defendant is arrested without a warrant, or appears pursuant to a summons, or in the event application is made for the issuance of a warrant pursuant to a uniform citation or sworn complaint, the determination of whether there is probable cause that an offense has been committed and probable cause that the defendant committed it shall be made at the time and in the manner prescribed by Rules 4 and 5 of the Idaho Criminal Rules.

(d) Trial of uniform citation, demand for sworn complaint, amendments. In the event of a plea of not guilty to a uniform citation, a trial may be held on the complaint contained in the citation without making a sworn complaint, unless a sworn complaint is demanded by any party within 28 days after the entry of a plea of not guilty or 7 days before trial, whichever is earlier. The court may amend or permit to be amended any process or pleading at any time before the prosecution rests including the alleging of a lesser included offense, but no greater or different offense may be charged if substantial rights of the defendant are prejudiced. If an amendment of a citation complaint is made, the court may, in its discretion, grant a continuance of the trial for good cause.

(e) Offenses charged in each citation, consolidation of trials. Only one person may be charged by a complaint of a single citation, but more than one misdemeanor may be charged in one citation. A misdemeanor may not be charged with an infraction in a citation. Provided, if the offenses charged by separate citation complaints or other complaints are of the same or similar character or are based on the same act or transaction or connected series of transactions, or are based on two or more acts or transactions connected together or constituting part of a common scheme or plan, the separate complaints may be consolidated by the court upon motion of any party or upon the court's own initiative.

(Adopted December 27, 1979, effective July 1, 1980; amended March 20, 1991, effective July 1, 1991; amended March 18, 1998, effective July 1, 1998; amended April 4, 2008, effective July 1, 2008)

### **Idaho Misdemeanor Criminal Rule 3.1. 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 April 3, 1984, effective March 1, 1984.)

### **Idaho Misdemeanor Criminal Rule 4. Jurisdiction - Venue - Distribution of Fines.**

(a) Jurisdiction. Every magistrate in the state of Idaho is hereby assigned and granted the authority and jurisdiction to hear, process and determine, pursuant to judicial district rule of assignment, any citable offense alleged to have occurred within the state of Idaho, subject to the provisions of this rule.

(b) Primary jurisdiction and venue. All citable offenses shall be heard, processed and determined by a magistrate or judge in the county in which such violation is alleged to have occurred, except that citable offenses may be heard, processed and determined by the magistrates division of the district court of the county to which such alleged violation is assigned or transferred under this rule.

(c) Transfer of misdemeanor citation or complaint to convenient county.

(1) Transfer of citation by issuing officer. At the time of issuance of a citation or complaint, the person charged and the officer issuing the citation or complaint may mutually agree that the citation or complaint may be processed by a court in a more convenient county than the county in which the alleged violation occurred. In case of such agreement, the officer shall indicate upon the face of the citation or complaint the county and court before which the person charged must appear at a time certain, which date shall be not less than seven (7) nor more than twenty one (21) days after the date of issuance of the citation or complaint. The signatures of the officer and the party charged upon the citation or complaint shall be deemed consent to such transfer of the citation or complaint. At the time of the issuance of a citation or complaint, the officer shall discuss with the party charged as to which county would be most convenient for processing the citation or complaint. It is the intent of these rules to allow transfers except in extraordinary circumstances.

(2) Transfer of citation or complaint by stipulation. At any time prior to the entry of a guilty plea, the parties may file a written stipulation to transfer the citation or complaint to a more convenient county. The stipulation must state the appearance date for the defendant in the more convenient county, which must be not less than fourteen (14) days after execution of the stipulation.

(d) Transmittal of original citation or complaint. In the event the processing of a citation or complaint is transferred to a more convenient county by agreement or stipulation, the issuing officer or clerk of the transmitting court shall have the responsibility of delivering the citation or complaint with the stipulation to the court to which the transfer is made so as to be received no later than the date upon which the party charged is to appear before such court. In the event the party charged appears before such court at the time agreed upon and set forth on the citation or complaint or in the stipulation, and the citation or complaint has not been delivered to the court, no action shall be taken upon the citation or complaint; but if the citation or complaint is later filed in any court, it may be dismissed by the court without requiring another appearance of the party charged.

(e) Appearance by person charged. In the event a citation or complaint is transferred to a court other than in the county of violation, as authorized by this rule, upon appearance before the court the defendant may post bond, enter a plea of not guilty or enter a plea of guilty, all in accordance with the procedure of such court. The court shall thereupon process such citation or complaint in the same manner as citations or complaints for violations occurring within that county; except that if the defendant enters a plea of not guilty, the court shall indicate the plea of not guilty on the face of the citation or complaint, determine the amount of bail bond, if any, required of the person charged, and endorse on the citation or complaint the amount of the bond, and a time and place certain for the defendant to appear before a court in the county in which the violation is alleged to have occurred. The court accepting the plea of not guilty shall thereupon forward all copies of the citation or complaint, together with any bond money collected from the person charged, to the court in the county wherein the violation occurred. Thereafter, all further proceedings and jurisdiction for the proceeding and determination of the citation or complaint shall be in the court of the county wherein the violation is alleged to have occurred.

(f) Failure to appear. If a citation or complaint has been transferred under the provisions of this rule and thereafter the party charged fails to appear before such court at the time and place specified in the endorsement on the citation or complaint or in the stipulation, then and in such event the court to which such transfer was made shall have the primary authority and jurisdiction to issue a citation or complaint for failure to appear, or a bench warrant if the defendant has previously appeared, as may be necessary to bring the party charged before such court for any entry of plea to the citation or complaint.

(g) Distribution of fines, costs and forfeitures. The fines, forfeitures and costs imposed by the court to which a citation or complaint was transferred shall be remitted to the auditor of such county in which such judgment was rendered or the forfeiture was made, and shall be distributed by said auditor as follows: All costs are to be retained by the county in which the judgment was rendered or the forfeiture was made, to be apportioned as provided by law. All fines and forfeitures shall be remitted to the auditor of the county in which the violation occurred to be apportioned as provided in section 19-4705, Idaho Code. When that portion of the fines and forfeitures is remitted to the county auditor of the county in which the violation occurred, it shall be accompanied by copies of the citation or complaint and judgment of conviction or forfeiture. Provided, any fines, forfeitures or costs assessed by the court of the county to which the citation or complaint was transferred for failure of the party charged to appear before the court at the time agreed, shall not be transmitted to the county in which the violation occurred, but shall be processed by the county enforcing the failure to appear in the same manner as an original citation or complaint.

(h) Jurisdiction upon re-transfer. In the event a citation or complaint is re-transferred to the county wherein the alleged violation occurred by reason of a plea of not guilty by the party charged, then such citation or complaint is hereby assigned to the magistrates division of the district court of the county wherein the violation is alleged to have occurred. This rule shall not, however, prevent a change of venue pursuant to law or rule, nor shall it prohibit a change of venue by stipulation of all parties with the approval of all courts involved.

(Adopted December 27, 1979, effective July 1, 1980; amended March 27, 1989, effective July 1, 1989.)

#### **Idaho Misdemeanor Criminal Rule 5. Uniform citation - Issuance - Service - Form - Number - Distribution.**

(a) Peace Officer Citation. A peace officer may issue a uniform citation for a citable offense in which the officer shall certify that the officer has reasonable grounds to believe, and does believe, that the person cited committed the offense contrary to law. The citation shall require the defendant to appear in court on the citation at the time certain which shall not be less than five (5) nor more than twenty-one (21) days after the date of the citation; provided, the administrative district judge may order that in specific counties that the appearance date shall be on or after one day and on or before a second date, and the Idaho Uniform Citation form may be amended accordingly. If a defendant appears on a citation within the time stated in the citation and the citation has not been delivered to the court, the court may dismiss the citation.

(b) Exception - Second Offense or Enhanced DUI. Notwithstanding subsection (a), a defendant arrested or cited and subsequently released for Driving Under the Influence (Second Offense), Idaho Code § 18-8005(4), or Driving Under the Influence (Enhanced Penalty), Idaho Code § 18-8004C, shall personally appear before a magistrate, for arraignment, within forty-eight (48) hours following the arrest or citation excluding Saturdays, Sundays, and holidays. Provided, the court may postpone the arraignment if the defendant is hospitalized or otherwise in a condition which prevents the defendant being taken before the magistrate. At the arraignment, the court may order any appropriate conditions of release, pursuant to Idaho Criminal Rule 46. Failure to conduct the arraignment within forty-eight (48) hours shall not constitute grounds for dismissal. A person arrested or cited who remains in custody shall make an initial appearance before a magistrate as provided in Idaho Criminal Rule 5.

(c) Citizen Citation. The uniform citation may be signed by any person in whose presence an alleged offense occurred and be witnessed by a peace officer whose name shall be endorsed on the citation.

(d) Service of Citation. Service of a citation may be made by the defendant signing a written promise to appear on the citation at the time indicated, but if the defendant fails or refuses to sign the written promise to appear, or an electronic citation is issued, a peace officer may serve the citation on the defendant by personal delivery to the defendant and indicate such service on the face of the citation.

(e) Citation After Arrest. The peace officer may arrest a defendant when permitted by law and thereafter sign the complaint in a uniform citation which shall constitute the complaint for prosecution of the criminal action.

(f) Warrant of Arrest. The peace officer may sign the complaint in a uniform citation and present it to a magistrate for the issuance of a warrant of arrest upon the showing of probable cause as provided in Rules 4 and 5 of the Idaho Criminal Rules. In determining probable cause for the issuance of a warrant, the magistrate shall give preference to the issuance of a summons, which can be the summons in the citation.

(g) Form. With the exception of electronically issued citations, all citations in the courts of Idaho shall be processed on the Idaho Uniform Citation which shall be of the size of 5 1/2 inches wide by 8 1/2 inches long which shall be printed in black, and shall have black NCR copies, with at least four copies which shall be in the following form: (See <http://www.isc.idaho.gov/imcr5> for a copy of the form.)

(h) Color and Distribution. With the exception of electronically issued citations, the first copy of the citation shall be white and deposited with and retained by the court; the second copy shall have pink borders at the top and bottom and be delivered to the defendant; the third copy shall have yellow borders at the top and bottom and be delivered by the police officer initially to the court and thereafter forwarded by the court to the appropriate department upon disposition of the citation. Additional copies of the citation may be prepared with additional information required by the issuing governmental department, agency or unit for its internal use.

(i) Electronic Citations. Citations may be electronically issued. Electronic citations do not need to meet the formatting requirements set out in subsections (g) and (h) of this rule, but must otherwise provide the same information that is required by subsections (g) and (j) of this rule.

(j) Failure to Appear. The citation shall state and notify the defendant that in the event he fails to appear on the citation at the time indicated, a warrant may be issued for his arrest. In the event the defendant does not appear as required by the citation, action may be taken against him as provided in Rule 11.

(Adopted April 18, 1983, effective July 1, 1983; amended March 20, 1991, effective July 1, 1991; amended March 26, 1992, effective July 1, 1992; amended March 9, 1999, effective July 1, 1999; amended March 21, 2007, effective July 1, 2007, amended April 2, 2010, effective April 15, 2010 amended March 18, 2011, effective July 1, 2011; amended April 27, 2012, effective July 1, 2012.)

### **Idaho Misdemeanor Criminal Rule 6. First Appearance of Defendant - Plea of Defendant - Trial Date Notice or Continuance Notice.**

(a) First Appearance and Plea Before Clerk of the Court. Except as provided in Rule 5(b), the defendant shall first appear before the clerk on or before the appearance date to enter a plea to a misdemeanor citation or complaint.

(1) Continuance. If, at the first appearance, the defendant desires additional time before entering a plea to the charge, the clerk shall continue the proceeding to a time certain and issue a continuance notice to the defendant in the form prescribed in this rule.

(2) Plea of Not Guilty. If the defendant enters a plea of not guilty, the clerk shall register the same and issue to the defendant a trial date notice in the form prescribed by this rule.

(3) Plea of Guilty to Citation. If the defendant desires to enter a plea of guilty to a misdemeanor citation, and if the clerk is authorized to accept such a plea and fine under Rule 14, the clerk shall accept the plea of guilty by having the defendant sign a written plea of guilty on the face of the court's copy of the citation and collect the fine and court costs as provided by Rule 14. The defendant must first acknowledge that he has read the advice on the backside of the defendant's copy of the citation. All other pleas of guilty may be filed with the clerk, but must be accepted by the court.

(b) Plea Before the Court. The defendant shall have the right to enter a plea to a misdemeanor citation or complaint before the court. If the defendant enters a plea of not guilty, a trial date notice shall be issued to the defendant in the form provided by this rule, and the bail bond, if any, shall be set by the court. If the defendant enters a plea of guilty, the court may thereupon impose the sentence or may appoint a later time for imposing sentence.

(c) Duties of Court to Advise Defendant of Rights. At the first appearance of the defendant before the court on a uniform citation or sworn complaint, the court shall inform the defendant of his constitutional rights and the rights provided in the Idaho Criminal Rules, and these rules. Such advice of rights may be announced to all defendants at each session of court at the commencement of the court hearing, rather than advising each of the defendants individually when they come before the court. If the offense has a permissible penalty of imprisonment, or if the conviction of the offense could cause a subsequent conviction to be enhanced from a misdemeanor to a felony, then or in either of such events the defendant shall be advised that he has the right to court appointed counsel at public expense if he is indigent. If the defendant is found by the court to be entitled to court appointed counsel, the court shall appoint such counsel unless the defendant voluntarily waives his right to counsel.

(d) Appearance by Defendant Through Attorney. Except as provided in Rule 5(b) a defendant may also appear, answer and have judgment entered through an attorney, who shall either appear in person or shall file, at or before the time for appearance, a written appearance and answer on behalf of the defendant. The court may, in its discretion, require the presence of the defendant at any stage of the proceeding not otherwise required by these rules.

(e) Trial Date Notice or Continuance Notice. Whenever a defendant is given a trial date setting or a continuance at or after the defendant's first appearance, such notice shall be given by a written notice delivered to the defendant in substantially the following form:

(See <http://www.isc.idaho.gov/imcr6> for a copy of the form.)

(Adopted April 18, 1983, effective July 1, 1983; amended February 10, 1993, effective July 1, 1993; amended March 9, 1999, effective July 1, 1999; amended March 5, 2002, effective July 1, 2002, amended April 2, 2010, effective April 15, 2010; amended March 18, 2011, effective July 1, 2011; amended June 20, 2013, effective July 1, 2013.)

### **Idaho Misdemeanor Criminal Rule 6.1. Voluntary Appearance Under Warrant of Arrest.**

If a person voluntarily appears before a magistrate while a warrant for the defendant's arrest is outstanding for a misdemeanor or contempt of court, the magistrate shall have the discretion either, (1) to require the person to appear before an arresting authority for arrest and booking before the person can appear before the magistrate or, (2) to enter an order quashing the warrant and cause a copy of the order to be sent to the agency holding the original warrant and deliver a copy of the order to the defendant.

(Adopted March 28, 1986, effective July 1, 1986.)

### **Idaho Misdemeanor Criminal Rule 8. Deferred Payment Agreement - Form.**

(a) Deferred Payment Agreement. After the entry of a judgment for a misdemeanor, the court, or the clerk within the guidelines set by the court, may enter into an agreement with the defendant for the deferred payment of the fine and court costs. Such agreement shall be signed by the defendant and the court, or the clerk on behalf of the court, and shall state that failure of the defendant to make the payments when agreed may result in the issuance of a warrant for the arrest of the defendant. Subsequent extensions of time to pay a fixed penalty may be granted by the execution of a new agreement by the defendant and the court or the clerk.

(b) Form of Agreement. A deferred payment agreement under this rule shall be in substantially the following form: (See <http://www.isc.idaho.gov/imcr8> for a copy of the form.)

(Adopted April 18, 1983, effective July 1, 1983; amended February 10, 1993, effective July 1, 1993.)

### **Idaho Misdemeanor Criminal Rule 9. Judgment of Conviction and Sentence - Judgment of Acquittal.**

(a) Judgment of Conviction and Sentence. Upon appearance by the defendant and entry of a plea of guilty, or upon conviction following a plea of not guilty, the court may enter an appropriate judgment of conviction,

impose sentence, direct that any fine, restitution, costs and fees be paid out of the bail deposited by the defendant or on defendant's behalf and remit to the party posting the bail any amount by which the bail exceeds these amounts. Provided the court may suspend the sentence and place the defendant on probation as provided by law, or may withhold judgment as provided in the following Rule 10.

(b) Acquittal of defendant. In the event the defendant is acquitted, the court shall enter a judgment of acquittal, exonerate any bail which has been posted, and return such bail to the person posting the same and shall discharge the defendant.

(c) Discharge of Judgment. If, after entry of a judgment for the payment of a penalty, court costs or payment of money to any person or entity, the court determines that the unpaid portion of the judgment is not reasonably collectible for any reason, the court may enter an order discharging the judgment and close the file. A discharge of a judgment on a citation may be entered by endorsing the word "discharged" on the face of the citation together with the date and the signature of the court. Such discharge may be signed and entered by the clerk at the direction of the court. The entry of a discharge of judgment shall not affect the judgment other than to satisfy the duty to pay the balance of the penalty, court costs and the payment of money to any person or entity; provided, such discharge does not satisfy the duty of the defendant to pay victim's restitution ordered pursuant to Chapter 53 of Title 19, Idaho Code, nor prevent the victim from enforcing the order by execution pursuant to section 19-5305, Idaho Code.

(Adopted December 27, 1979, effective July 1, 1980; amended April 18, 1983, effective July 1, 1983; amended June 15, 1987, effective November 1, 1987; amended March 23, 1990, effective July 1, 1990.)

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

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

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

(See <http://www.isc.idaho.gov/imcr9-1> for a copy of the form.)

(Adopted April 3, 1984, effective March 1, 1984; amended February 10, 1993, effective July 1, 1993; amended April 19, 1995, effective July 1, 1995, amended April 2, 2010, effective April 15, 2010.)

### **Idaho Misdemeanor Criminal Rule 9.2. Suspension of Driver's License for Failure to Take Alcohol Test.**

(a)(1) Sworn Statement of Officer. The court shall not accept a license seized under Section 18-8002, Idaho Code, without an accompanying affidavit of the officer in substantially either of the following forms:

(See <http://www.isc.idaho.gov/imcr9-2> for a copy of the form.)

or in the alternative:

(a)(2)

(See <http://www.isc.idaho.gov/imcr9-2> for a copy of the form.)

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

(c) Show Cause Hearing. If a show cause hearing is timely requested by the defendant, the court shall notice it for hearing within the time provided by law. The hearing shall be limited to those issues provided by Section 18-8002(4)(b), Idaho Code. If the court enters an order of suspension, it shall cause copies of the suspension order to be filed with the Department of Transportation and served upon the defendant by personal delivery or mailing to the address indicated on the driver's license or other address furnished by the defendant. If the court makes the determination that there is not grounds for suspension of driving privileges and driver's license under this rule, it shall enter an order to that effect and return the license to the defendant.

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

(See <http://www.isc.idaho.gov/imcr9-2> for a copy of the form.)

(e) Procedure and Evidence. A hearing under Idaho Code Section 18-8002 described above is a civil hearing and will be governed by the Idaho Rules of Civil Procedure except that the discovery rules, Rules 26 through 37 I.R.C.P., will not apply and Rule 16 of the Idaho Criminal Rules will govern all discovery. Provided, there shall be no right to a jury trial in these hearings.

(Adopted April 3, 1984, effective March 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 February 10, 1993, effective July 1, 1993; amended February 26, 1997, effective July 1, 1997; amended March 28, 2000, effective July 1, 2000.)

### **Idaho Misdemeanor Criminal Rule 9.3. Seizure of Driver's License Upon Suspension - Stay Upon Appeal.**

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

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

(Adopted April 3, 1984, effective March 1, 1984.)

### **Idaho Misdemeanor Criminal Rule 9.4. Alcohol-drug Evaluation Report.**

The alcohol-drug evaluation report received by the court pursuant to Section 18-8005(11), Idaho Code, shall remain confidential in the same manner and to the same extent as a presentence investigation report under the Idaho Criminal Rules; provided the defendant shall always be entitled to retain his copy of the report. The report of an individual alcohol-drug evaluation submitted to a sentencing court under Section 18-8005(11), Idaho Code,

shall consist of the following components and be presented in a standardized format approved by the Idaho Supreme Court:

(a) Face Sheet. All alcohol-drug evaluation reports shall have a one (1) page typed summary face sheet attached to the report which shall be in the following form:  
(See <http://www.isc.idaho.gov/imcr9-4> for a copy of the form.)

(b) Evaluation Report. The report of the alcohol-drug evaluation shall be attached to the face sheet and shall contain the following information in the following order (See <http://www.isc.idaho.gov/imcr9-2> for a copy of the form):

(1) Final disposition of any drug or alcohol related offenses or charges including any offenses or charges where drugs or alcohol were a factor.

(2) Any information of the defendant's blood alcohol content or refusals for any drug or alcohol related incidents.

(3) Any information of the defendant's driver license record.

(4) Previous alcohol or substance abuse education or treatment and whether the program was completed.

(5) Identification of primary substances of abuse or dependency to include listings of primary, secondary or other substances if appropriate and indications of defendant's history of I.V. drug use.

(6) Defendant's version of the current incident.

(7) Defendant's self-assessment of substance use.

(8) Evaluator's description of the defendant's use of alcohol/drugs and the extent to which they have contributed to problems within the defendant's major life areas, including:

(I) Family

(II) Social

(III) Financial

(IV) Employment/Education

(V) Health

(VI) Legal

The results and explanation of the screening tools administered by the evaluator must be included.

(9) A listing of the screening tools utilized in the evaluation together with the scores. The use of at least three (3) screening tools approved by the Department of Health and Welfare is mandatory and shall include:

(A) A GAIN SS;

(B) A criminogenic risk needs screening tool; and

(C) Any other approved alcohol-drug screening tool.

(10) Evaluator's impressions and recommendations for further assessment and/or appropriate ASAM level of care for treatment, including specific reasons for recommendations and the factors considered.

(11) Recommendations as to the most appropriate treatment program together with the estimated costs.

(12) Recommendations for suitable alternative treatment programs together with the estimated costs.

(13) Whether the evaluator is the person or facility recommended to provide the treatment. If so, the evaluator must certify that the conflict of interest provision in Idaho Code § 18-8005(11) has been and will be complied with in all respects. The certification shall be in the following form:

**Certification pursuant to I.C. § 18-8005(11).**

I hereby certify under penalty of perjury that:

(a) I am aware of the conflict of interest provision in Idaho Code § 18-8005(11), which provides that "[i]f treatment is ordered, in no event shall the person or facility doing the evaluation be the person or facility that provides the treatment unless this requirement is waived by the sentencing court."

(b) I understand that if the court orders treatment or additional treatment beyond that which has been provided prior to sentencing that the ordered treatment may not be provided by me unless I first obtain a waiver from the sentencing court.

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

\_\_\_\_\_  
Evaluator

(14) Identification of any source used to verify any information provided in the evaluation.

(15) In the event an evaluator submits an evaluation that is not in compliance with 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. If the evaluator fails to submit an evaluation in compliance with this rule after such an instruction, the court may decline any future evaluations from the evaluator.

(16) If an evaluator provides treatment to a defendant in violation of the provisions of Idaho Code § 18-8005(11), the court may decline any further evaluations from that evaluator.

(Adopted March 20, 1985, effective July 1, 1985; amended March 18, 1998, effective July 1, 1998; amended March 9, 1999, effective July 1, 1999; amended January 25, 2013, effective July 1, 2013; amended March 9, 2015, effective July 1, 2015.)

### **Idaho Misdemeanor Criminal Rule 10. Withheld Judgments in the Magistrates Division - Conditions.**

#### Rules Text

(a) Conditions considered in granting withheld judgments. Before granting any withheld judgment pursuant to section 19-2601, Idaho Code, in the magistrates division, the court must consider:

- (1) All the facts and circumstances surrounding the offense with which the defendant is charged; and,
- (2) Whether the defendant is a first offender; and,
- (3) The previous actions and character of the defendant; and,
- (4) Whether the defendant might reasonably be expected to be rehabilitated; and,
- (5) Whether it reasonably appears that the defendant will abide by the terms of the probation; and,
- (6) The interests of society in being protected from possible future criminal conduct of the defendant; and,
- (7) The impact a record of a criminal conviction would have upon the defendant's future development and/or employment status.

(b) Second and subsequent withheld judgments. No second or any subsequent withheld judgment may be granted to the same defendant in the magistrates division unless the court in its discretion finds there to exist extraordinary circumstances, and the court in determining whether extraordinary circumstances exist, shall consider, in addition to the foregoing, the following factors:

- (1) Whether or not the defendant is before the court charged with the same or a related offense for which the defendant has received a prior withheld judgment; and,
- (2) Whether or not the defendant has received a prior withheld judgment in any court proceeding within five (5) years of the date on which the defendant appears before the court for sentencing; and,
- (3) Whether or not the defendant has ever been convicted of a felony offense.

(c) Extraordinary circumstances for withheld judgments. In making a determination that extraordinary circumstances exist, so as to allow the entry of a second or any subsequent withheld judgment for the same defendant in the magistrates division, the judge making this determination and awarding a second or subsequent withheld judgment shall make specific findings as to what factors have been considered in reaching this decision.

(Adopted December 27, 1979, effective July 1, 1980; amended April 2, 1981, effective July 1, 1981; amended April 18, 1983, effective July 1, 1983; amended June 3, 1988, effective July 1, 1988; amended March 23, 1990, effective July 1, 1990; amended April 19, 1995, effective July 1, 1995; amended December 3, 2013, effective immediately.)

### **Idaho Misdemeanor Criminal Rule 11. Failure to Appear.**

(a) Failure to appear on citation. In the event the defendant fails to appear at the time promised in the citation, the court may take one or more of the following actions:

(1) Notice to appear or pay fine. Mail a notice to the defendant at the address stated in the citation requesting the defendant to appear before the court as promised on the uniform traffic citation or to pay the fine to the court.

(2) A warrant of arrest. Issue a warrant of arrest on the basis of the citation if the defendant fails to appear or pay the fine within the time set in the citation if probable cause has been shown as required by Rules 4 and 5 of the Idaho Criminal Rules.

(3) Additional citation or complaint under oath. Accept and file a citation or a complaint made under oath for the offense of failure to appear on a citation as provided by statute and these rules and issue a summons to appear or issue a warrant of arrest upon the showing of probable cause as required in subsection (a)(2) above.

(b) Failure to appear after first appearance. If a defendant fails to appear at the time fixed by the court, or at the time fixed by a continuance or trial date notice issued by the clerk, the court may order any bond forfeited and may issue a bench warrant for the arrest of the defendant.

(Adopted December 27, 1979, effective July 1, 1980; amended April 3, 1981, effective July 1, 1981; amended April 18, 1983, effective July 1, 1983.)

### **Idaho Misdemeanor Criminal Rule 12. Appointment of Persons to Receive Filings, Fees, Fines, Forfeitures and Bail Moneys.**

(a) Appointment. The administrative district judge may appoint such person or persons to administer oaths, accept pleas to misdemeanor citations and complaints, receive bail, fines, forfeitures, and court costs, execute deferred payment agreements within guidelines set by the court, and perform all duties assigned to the clerk under these rules. All persons appointed under this rule to accept bail bonds shall be deemed acting as gratuitous bailees. Unless such persons are covered by a public employee bond, they shall be required to execute official surety bonds in the sum of not less than \$1,000 issued by a surety company authorized to do business in Idaho, or be executed by two (2) sufficient sureties approved by the administrative district judge, insuring that such person will faithfully perform the duties of the office and appointment and at all times account for and pay over all moneys in his hands as appointive clerk.

(b) Appointment of law enforcement officer. Duly appointed law enforcement officers may be appointed by the administrative district judge to receive fines within the limits of Rule 14 and cash deposits as bail in all cases provided for in Rule 13, provided they execute an official surety bond in the sum of \$1,000, or such officers are covered by an existing blanket fidelity bond and such bond coverage includes any moneys received pursuant to this rule. The cash deposit shall be made at the office of the law enforcement agency or at the appropriate court, or at such other place, which may be the place of issuance of a citation, as directed by the administrative district judge in an appropriate case occasioned by extreme circumstances or remoteness. An adequate record shall be kept of the deposit paid, which shall be transmitted in kind or check to the clerk's office within 24 hours after receipt. The record shall consist of the amount of deposits paid, whether paid in cash or otherwise, the offense involved, person charged, the person paying the said deposit and the date, hour and minute paid. A triplicate receipt shall be made; one (1) copy shall be given to the person paying the deposit, one (1) copy shall be transmitted to the clerk's office, and one (1) copy shall remain in the issuing agency's office.

(Adopted December 27, 1979, effective July 1, 1980; amended April 18, 1983, effective July 1, 1983; amended January 24, 1989, effective January 24, 1989.)

### **Idaho Misdemeanor Criminal Rule 13. Bail Bond Schedule.**

(a) Amount of bail. The amount of bail for misdemeanor traffic offenses and other criminal offenses shall be as set forth herein. Such bail schedules shall not govern when a person charged appears before a judge or magistrate, or

the defendant's case is reviewed by a judge or magistrate, in which case such bail schedules are advisory only and bail may be raised, lowered or eliminated at the magistrate's discretion based upon the circumstances of that particular case. Any judge may also designate a bond schedule for offenses not listed below.

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

(See [http://www.isc.idaho.gov/files/Bond\\_Schedule\\_Effective\\_7.15.pdf](http://www.isc.idaho.gov/files/Bond_Schedule_Effective_7.15.pdf) for a copy of the bail bond schedule effective July 2015.)

(c) Method of posting bond. The bail bond required above under subsection (b) of this rule, or any other bail bond set by a judge, may be posted, and a receipt given therefore indicating thereon the time and place for appearance by the defendant, in any of the following manners:

(1) Cash bail bond. By depositing an amount in cash equal to the bail bond.

(2) Checks and money orders. By depositing a cashier's check, money order, or a personal check payable to the clerk of the court under such procedures as shall be established by the administrative district judge or where acceptance of the personal check has been approved by a magistrate or district judge.

(3) Surety bail bond. By depositing, in lieu of cash, a bond or bond certificate which guarantees payment of the amount of the bail bond in the event the person charged fails to appear when required by the court. A fidelity, surety, guaranty, title or trust company authorized to do business in the state of Idaho and authorized to become and be accepted as sole surety on undertakings and bonds may execute the written undertakings provided for in these rules, which may be accepted by the person receiving the bond without prior approval by a judge unless otherwise ordered by the administrative judge of the judicial district.

(4) Property bail bond. By depositing a property bail bond of property owners for the amount of bail, as provided by law. (This method may be used only if a magistrate approves and accepts the bond.)

(d) Bail for violation of municipal or county ordinances. Bail for the above described offenses defined by municipal or county ordinances which are similar to those described in this rule shall be in the same amounts as provided above.

(Adopted April 18, 1983, effective July 1, 1983; amended July 9, 1984, effective September 1, 1984; amended March 20, 1985, effective July 1, 1985; amended March 28, 1986, effective July 1, 1986; amended June 15, 18, 1987, effective July 1, 1987; amended March 30, 1988, effective July 1, 1988; amended April 12, 1988, effective July 1, 1988; amended March 27, 1989, effective July 1, 1989; amended March 23, 1990, effective July 1, 1990; amended March 20, 1991, effective July 1, 1991; amended April 15, 1991, effective July 1, 1991; amended September 16, 1991, effective January 1, 1992; amended March 26, 1992, effective July 1, 1992; amended February 10, 1993, effective July 1, 1993; amended April 21, 1993, effective July 1, 1993; 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 February 26, 1997, effective July 1, 1997; amended April 10, 1997, effective July 1, 1997; amended March 18, 1998, effective July 1, 1998; amended December 30, 1998, effective January 1, 1999; amended March 9, 1999, effective July 1, 1999; amended June 7, 1999, effective July 1, 1999; amended March 28, 2000, effective July 1, 2000; amended June 7, 2000, effective July 1, 2000; amended April 13, 2001, effective July 1, 2001; amended March 5, 2002, effective July 1, 2002; amended April 22, 2004, effective July 1, 2004; amended July 19, 2005, effective September 1, 2005; amended April 26, 2007, effective July 1, 2007; amended February 10, 2009, effective February 1, 2009; repealed in entirety September 4, 2009, effective October 1, 2009, amended April 2, 2010, effective April 15, 2010; amended March 18, 2011, effective July 1, 2011; amended June 19, 2012, effective July 1, 2012; amended June 27, 2014, effective August 1, 2014; amended May 6, 2015, effective July 1, 2015.)

#### **Idaho Misdemeanor Criminal Rule 14. Disposition of Citations by Written Plea of Guilty - Limitations - Deferred Payment Agreements.**

(a) Written Plea of Guilty. Subject to the limitations of subsection (b) of this rule, any person charged with a misdemeanor by a uniform citation or complaint may sign a written plea of guilty on the citation and pay the fine and court costs. The amount of the fine and court costs to be assessed for an offense under a written plea of guilty

shall be the bail bond amount provided in Rule 13. Upon the entry of a written plea of guilty under this rule, the clerk shall enter a judgment of conviction and shall collect the payment of the fine and court costs or enter into a deferred payment agreement with the defendant as provided in Rule 8. If a defendant appears before a judge or magistrate, or if a judge or magistrate reviews the file of a defendant and finds that summary disposition under this rule is not appropriate, in either event the summary disposition under this Rule 14(a) shall not apply and the Court shall make disposition of the case.

(b) Limitation on offenses for written plea of guilty. A written plea of guilty can be accepted under subsection (a) of this rule only if the required bail bond under Rule 13 does not exceed:

- (1) \$276.00 for a motor vehicle offense.
- (2) \$582.00 for offenses under I.C. Sections 49-432, 49-432(2)(a), 49-432(2)(b) and 63-2441.
- (3) \$4,103.50 for offenses under I.C. Sections 49-1001, 49-1002, 49-1004, and 49-1005; \$421.00 for violations of I.C. Sections 49-1427, and Rules under I.C. Section 67-2901A and \$276.00 for the other offenses listed under Rule 13(b)(3).
- (4) \$191.00 for any fish or game offense, except those where the citation indicates the offense requires suspension of a license or payment of a civil penalty.
- (5) \$276.00 for any other offense.

(Adopted April 18, 1983, effective July 1, 1983; 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 April 12, 1988, effective July 1, 1988; amended March 27, 1989, effective July 1, 1989; amended March 23, 1990, effective March 23, 1990; amended March 20, 1991, effective July 1, 1991; amended April 15, 1991, effective July 1, 1991; amended October 11, 1991, effective January 1, 1992; amended March 26, 1992, effective July 1, 1992; amended February 10, 1993, effective July 1, 1993; amended April 21, 1993, effective July 1, 1993; amended March 30, 1994, effective July 1, 1994; amended April 19, 1995, effective July 1, 1995; amended April 3, 1996, effective July 1, 1996; February 26, 1997, effective July 1, 1997; amended April 10, 1997, effective July 1, 1997; amended July 1, 1998, effective July 1, 1998; amended June 7, 1999, effective July 1, 1999; amended July 19, 2005, effective September 1, 2005; amended April 26, 2007, effective July 1, 2007; amended February 10, 2009, effective February 1, 2009; amended September 4, 2009, effective October 1, 2009, amended April 2, 2010, effective April 15, 2010; amended April 27, 2012, effective July 1, 2012; amended June 27, 2014, effective August 1, 2014.)

### **Idaho Misdemeanor Criminal Rule 15. Method of Payment of Fines and Costs.**

Fines and costs may be paid by cash, money order, or cashier's check payable to the clerk of the court, or by major credit card or debit card where procedures for accepting such cards are available. In the discretion of the court, other fines and costs may also be paid by personal check payable to the clerk of the court under such procedures established by the administrative district judge for acceptance of such checks. Each administrative district judge, with the consultation of the district court clerks in the judicial district, shall develop guidelines and procedures for the acceptance of personal checks which should be in accordance with generally accepted business practices to reasonably assure that the check will be honored. Any administrative district judge may order that personal checks received for the payment of fines and costs be placed in a suspense fund and that the moneys from such checks not be delivered to the district court clerk until the checks have been honored. Any employee, deputy, official or agent of any court or any district court clerk accepting a personal check under the guidelines and procedures prescribed by the administrative district judge or by Supreme Court rule shall not in any case be liable for the payment or reimbursement of the funds represented by such personal check in the event it is dishonored. Provided, however, in the event that a check is dishonored and returned to the court for any reason, the defendant will be deemed not to have appeared nor to have posted bond under the citation and therefore may be prosecuted for failure to appear on the citation as well as for the violation of the citation; and in addition thereto, the maker of the check may be prosecuted for such other misdemeanor or felony for issuance of the check as may be provided by law.

(Adopted December 27, 1979, effective July 1, 1980; amended June 2, 1980, effective July 1, 1980; amended April 2, 1981, effective July 1, 1981; amended April 18, 1983, effective July 1, 1983; amended September 4, 2009, effective October 1, 2009.)

**Idaho Misdemeanor Criminal Rule 16. Reporting of Proceedings.**

All proceedings of the court with regard to the uniform citation, including all hearings, proceedings, and the trial, if any, shall be reported by a court reporter or recorded by a mechanical means as directed by the court. The citation and the reporter's notes or recording tape shall be preserved for the time prescribed by order or rule of the Supreme Court.

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

**Idaho Misdemeanor Criminal Rule 17. Appeal to the District Court.**

An appeal to the district court from a judgment of conviction or the suspension of a driver's license for a criminal offense may be taken within the time and processed in the manner prescribed for appeals from the magistrates division to the district court by the Idaho Criminal Rules; provided, an appeal from the suspension of a driver's license under I.C. Section 18-8002 may be taken within the time and processed in the manner prescribed for appeals from the magistrates division to the district court by the Idaho Rules of Civil Procedure.

(Adopted December 27, 1979, effective July 1, 1980; amended April 3, 1981, effective July 1, 1981; amended April 18, 1983, effective July 1, 1983; amended March 30, 1988, effective July 1, 1988.)

**Idaho Misdemeanor Criminal Rule 18. Effective Date.**

These rules shall take effect on the 1st day of July, 1980, and shall govern the processing of all citations and sworn misdemeanor complaints 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.