

FIRST JUDICIAL DISTRICT

www.co.kootenai.id.us/departments/districtcourt

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Rules of the District Court and Magistrates Division for the First Judicial District
Covering Benewah, Bonner, Boundary, Kootenai and Shoshone Counties
IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO

ORDER RESCINDING LOCAL DISTRICT RULES AND
CREATING LOCAL RULES FOR THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT, IN AND FOR THE COUNTIES OF
BENEWAH, BONNER, BOUNDARY, KOOTENAI AND SHOSHONE.

WHEREAS the Local Rules as they now exist for the First Judicial District in the State of Idaho appear to be in need of amendment: and

WHEREAS a review of those Local Rules has been conducted by the District Judges of the First Judicial District, now, therefore,

IT IS HEREBY ORDERED that the Local Rules of the First Judicial District as they are hereinafter set forth be and are hereby adopted as the Local Rules of the First Judicial District and that they will replace and supersede all prior Local Rules for the counties of Benewah, Bonner, Boundary, Kootenai and Shoshone and are supplemental to the Idaho Rules of Civil Procedure; the Idaho Rules of Evidence; the Idaho Criminal Rules; the Idaho Misdemeanor Criminal Rules; the Idaho Infraction Rules; the Idaho Juvenile Rules; the Idaho Court Administrative Rules; and the Idaho Appellate Rules.

RULE 1: Jurisdiction and Case Assignment

Cases within the jurisdiction of Magistrates will be as established by the Order of the majority of the District Judges. The allocation of caseload assignments by a division of cases among the Magistrates shall be as directed by the order of the Administrative District Judge. If approved by the Administrative District Judge, where there is more than one resident Magistrate, the method of allocating the caseload of that county between Magistrates may be by consensus among resident Magistrates.

All other cases shall be assigned to the District Judges, with the allocation of caseloads by a division of cases between the District Judges to be as directed by the Administrative District Judge.

Assignments upon disqualification of a judge shall be as directed by the Administrative District Judge.

RULE 2: Scheduling

Each District Judge shall control and set his own schedule for civil and criminal trials and for law and motion matters, subject to the authority of the Administrative District Judge pursuant to §1-907.

Cases assigned to Judges of the Magistrate Division shall be scheduled pursuant to the Magistrate Assignment Schedule of the First Judicial District established by the Trial Court Administrator, as directed by the Administrative District Judge.

A rotation schedule within each county consistent with the Magistrate Assignment Schedule of the First Judicial District may be established by the resident Magistrate (if only one) or by a consensus of the resident Magistrates (if two or more), subject to the approval of the Administrative District Judge.

RULE 3: Calendaring

Judges of the District Court: Each District Judge shall establish and control the calendaring of cases to be heard at times set aside for civil, criminal and special proceedings and for Law and Motion matters.

Judges of the Magistrate Division: Each Judge of the Magistrate Division shall control the calendaring of cases to be heard at times set aside for civil, criminal and special proceedings pursuant to the Magistrate Assignment Schedule of the First Judicial District.

RULE 4: Minutes

Minutes of all proceedings in District Court shall consist of the log of electronic recording prepared by the deputy clerk operating the electronic recording device used to record the proceeding. The log shall be in the format prescribed by Idaho Court Administrative Rule 25(c) and shall additionally include the name of any court reporter who is reporting the proceedings. The completed log, which shall be in legible handwriting, shall be placed in the court file.

Minutes of all proceedings in the Magistrate Division of the District Court shall consist of the log of electronic recording prepared by the deputy clerk operating the electronic recording device used to record the proceeding. The log shall be in the format prescribed by Idaho Court Administrative Rule 25(c). The completed log, which shall be in legible handwriting, shall be placed in the court file.

RULE 5: Transcript of Electronically Recorded Proceedings in the Trial Court

APPEALS: Transcripts for appeals from the Magistrate Division to the District Court shall be prepared at the discretion of the District Judge assigned to the appeal in accordance with Idaho Civil Rule 83 and Idaho Criminal Rule 54. Appeals from the District Court shall be governed by I.A.R. 24.

OTHER THAN APPEAL PURPOSES -- Transcripts of proceedings for other than appeals purposes shall be prepared only on order of the Judge conducting the proceeding for which a transcript is being requested.

If an order of a transcript is entered, it will be necessary for the party securing such order to present to the Court, with the original, a copy of the Order for service on the transcriber and a check for the estimated fees for the transcript, unless fees have been waived by court order or the matter is a criminal or special proceedings case involving an indigent.

RULE 6: Notice of Trial Setting

When a case has been assigned a trial date, the Clerk will forthwith prepare a Notice of Trial Setting, and mail copies of the notice to the attorneys involved, or to the parties if not represented by counsel.

RULE 7: Prohibition Against Preparation of Complaints or Pleadings by Judges and/or Clerks

Except as otherwise provided by statute or Supreme Court Rule, judges and/or clerks shall not prepare a criminal, civil or special proceeding complaints or pleadings

RULE 8: Supplemental Order for Custody, etc.

Unless otherwise ordered by the Court, all divorce decrees or temporary orders filed involving child custody, child support or alimony will contain the following paragraph:

“It is Further Ordered, Adjudged and Decreed Appendix A, attached hereto, is by this reference made a part here of as if fully set forth herein.”

Upon presentation of the Decree for signature, a copy of Appendix A will be attached to said Decree. The form of Appendix A is as follows:

Supplemental Order for Parental and Child Support Responsibilities

Best Interests of Children: Divorce is an unfortunate part of modern life and is particularly difficult for children. The jurisdiction of the Court to control custody and child support is intended to allow the Court to make rulings in the best interests of the children and to minimize the negative impact of divorce or separation upon children. You and your former spouse have divorced or separated; that is your right. However, you cannot divorce your children. You both have continuing duties and responsibilities as parents to your children. No matter how carefully the Court crafts custody and child support orders, the success of the order and the well-being of your children will be limited unless both parents make a firm commitment to serve the best interests of their children. Please commit yourself to working with your former spouse to promote the well-being of your children.

Mediation: If you are unable to agree upon parenting issues between yourselves, the Court strongly recommends that you consider mediation before resorting to Court intervention. Mediation is a problem-solving process in which you can discuss alternatives and assess options with the assistance of an independent, neutral and qualified mediator.

On-Duty/Off-Duty Parent: A parent is "on duty" when the child(ren) are in his or her care pursuant to agreement of the parents or any court order, including: a parenting plan; custody or residential schedule; or visitation schedule. A parent is "off duty" when the other parent is "on duty."

You have the following rights and responsibilities regarding the child(ren) of your marriage unless the court orders otherwise:

1. **Affirmative Basic Duties:** When "on duty" each parent shall provide the child(ren) with: (a) regular and nutritious food; (b) clean and appropriate clothing; (c) reasonably private living and sleeping quarters; and (d) appropriate health care.

Both parents shall instruct in and promote: (a) ethical and moral principles; (b) respect for the law and the rights of others; (c) conscientious attendance at all regular sessions of school until graduation, unless excused for medical reasons, by the school, by the Court, or by law.

Neither parent will engage in, permit the child(ren) to engage in, or allow the child(ren) to be present during the use of any illegal drug, excessive alcohol use, violence, or disrespect for law and order. If the "on duty" parent does not prevent the use of illegal drugs, the excessive use of alcohol, violence or disrespect for law and order by other persons in the child(ren)'s presence, then the "on duty" parent shall remove the child(ren) from the environment where that conduct is occurring.

Each parent shall pursue and support the provisions of any Court order including: a parenting plan; custody or residential schedule; or visitation schedule. The "on duty" parent will personally supervise, control, and assume responsibility for the conduct and activities of the child(ren), and will advise the "off duty" parent of: (a) the scheduling of routine medical or dental care appointments; (b) medical emergencies as soon as possible after the child(ren) receive appropriate medical care; (c) all school disciplinary or law enforcement contacts as soon as possible so as to allow the "off duty" parent an opportunity to become involved in the resolution of such contact.

Each parent shall deliver their child(ren)'s clothing, school supplies and other personal belongings at the same time that the children are delivered. All clothing shall be delivered in a clean condition.

2. **Transportation:** The receiving parent shall provide transportation and shall arrive on time (no more than 10 minutes early or late).

3. **Neither parent** shall schedule activities for their child(ren) during the time the other parent is "on duty" without the prior agreement of the other parent.

4. **Address and Telephone Information:** Each parent shall provide to the other his or her current telephone number, Physical and mailing addresses and, if different from parent's, the telephone number, Physical and mailing address of where the child(ren) live.

5. **Move from Current Address:** Each parent shall provide the other not less than **60** days prior written notice of a decision to move. A move requiring more than 2 hours automobile travel between the homes of the parents ("two hour travel zone") will require modification of the parenting plan, custody or residential schedule, or visitation schedule. The moving parent shall not move the child(ren) to a location outside the "two hour travel zone" until a new order is in place.

6. **During "on duty" periods** the child support obligor shall remain liable for child support payments unless the decree or child support order specifically provides otherwise. Child support may not be withheld for failure to comply with any Court order including: a parenting plan; custody or residential schedule; visitation schedule; or for any other reason. Parenting time shall not be withheld for nonpayment of child support or other financial obligations.

7. **Support/Method of Payment:** All child support payments shall be paid to the State of Idaho Child Support Receiving, P.O. Box 7008, Boise, ID 83707. Any amount not paid through the State of Idaho will be considered a gift and will not be credited as child support. The State may report a failure to pay child support to the prosecuting attorney, who may enforce payment. The child support obligee may request forms for entry of a Wage Withholding Order from the Clerk's office.

Payment Due Date: If the decree or child support order is entered on or before the 15th day of the month, child support payments shall be due on or before the last day of the month in which the decree or child support order is entered and on the 10th day of each and every month following. If the decree or child support order is entered after the 15th day of the month, the child support payment shall be due on the 10th day of each calendar month following the month in which the decree of child support order is entered.

8. **Notices: Notice of Automatic and Immediate Income Withholding:** This support order is enforceable by automatic and immediate income withholding as of the effective date of this order under chapter 12, title 32, Idaho Code. This automatic and immediate income withholding order shall be issued by the department of health and welfare or other obligee to your employer or other person who pays your income, without additional notice to you.

Notice of Medical Enforcement: Failure to provide medical insurance coverage may result in the direct enforcement of a medical support order by either the obligee or the Department of Health and Welfare. A national medical support notice will be sent to your employer, requiring your employer to enroll the child(ren) in a health benefit plan as provided by Sections 32-1214A through 32-1214K, Idaho Code, and applicable rules of the Department. Any claimed health care expense for the child, whether or not covered by insurance, which would result in an out-of-pocket expense of \$500 or more to the parent who did not incur or consent to the expense, must be approved in advance,

in writing, by both parties or by prior court order. Relief may be granted by the Court for failure to comply under extraordinary circumstances, and the Court may, in its discretion, apportion the incurred expense in some percentage other than the existing support order, and in so doing, may consider whether consent was unreasonably requested or withheld.

Notice of Lien: This support order shall be enforced by the filing of a statewide lien upon all real and personal property of the obligor *if* the delinquency in the support obligation is equal to \$2,000 or 90 days of support, whichever is less, pursuant to Idaho Code 7-1206 and 45-1901, et seq.

9. **Failure to comply with court orders** may result in civil contempt proceedings pursuant to Idaho Code §7-601 et seq. and/or license suspensions pursuant to Idaho Code §7-1401 et seq. Either parent’s willful failure or refusal to return the children to the other parent in accordance with the court ordered parenting plan, custody or residential schedule or visitation schedule may subject that parent to criminal prosecution for custodial interference.

10. **Interference:** Neither parent will intrude on the privacy of the other nor make unkind statements about the other to or in the presence of the children. Neither parent will interfere in any way, or encourage or permit any other person to interfere in any way, with the other parent’s rights granted by the decree or other order of the Court.

11. **Injunction:** This order restrains and enjoins both parents from doing, attempting, or threatening to do harm of any kind to the other parent or to the child(ren), or permitting another to so act on their behalf.

By Order of the District Court of the First Judicial District of the State of Idaho
Revised: July 1997; Superseded: March 2005

RULE 9: Excuse From Jury Service

Except for emergency excuses considered by the District Judge or a Magistrate, all requests from jury service or excuse from such services shall initially be referred to the Jury Commissioner for recommendation to the Court.

RULE 10: Appointment of Counsel in Criminal Cases

Unless a Public Defender has been appointment by the Board of County Commissioners, or when the Public Defender cannot act, the District Court, including the Magistrate Division, will appoint attorneys to represent needy persons in all cases required by law in such Court. The clerk shall keep a list of attorneys, in alphabetical order, who are residents within the County and such appointments shall be made from such list in rotation, except those that the Court may appoint an attorney out of regular order, or whose name does not appear on such list, if, in the Court’s opinion, the circumstances warrant such action.

When a person contends that he is a “needy person” and requests appointment of counsel, the Court or Clerk thereof will require such a person to fill out in detail a Financial Statement and execute the same before the Clerk of this Court. Based upon such statement and further interrogation of such person, by or under the direction of the Court, the Court will then determine if the Defendant is entitled to counsel and if so, the Order Appointing Counsel will be executed by this Court.

If the Court appointed counsel is demanded by any person during the accusatory state of interrogation, or at any time prior to the filing of a criminal complaint and arraignment, under circumstances were such counsel otherwise would be appointed, the Clerk of this Court may temporarily appoint counsel without such Financial Statement, to act until the Magistrate or District Judge is available to consider this question and the Financial Statement prepared.

Withdrawal of attorney’s name: If any attorney does not wish to have his name appear on such list, application in writing, stating his reasons, may be made to the Court, when approval by a majority of the District Judges in this Judicial District, such name shall be deleted.

Compensation: Each month, while the case is pending, the attorney shall submit a written statement, under oath, listing separately the time spent in legal research, investigation, consultation with his client, or in open Court, an itemized statement of out-of-pocket expense, and any other information deemed necessary or helpful by the attorney, together with an original and copy of an Order in the following form:

(Title of the Court and Cause)

IT IS HEREBY ORDERED that in accordance with Idaho Code §19-860, the above named County shall pay to _____, a licensed attorney and practicing attorney of the State of Idaho, the sum of \$_____, forthwith, and for attorney fees and expenses in the above entitled action for his representation of the defendant, a needy person.

Dated this _____ day of _____, _____.

District /Magistrate Judge

Such Order and Affidavit shall be filed by the Clerk in the Court file, and the copy of such Order shall be attached to the voucher form, which shall be signed by such attorney where required, and processed for payment.

Disqualification of Public Defender: In any county in which a Public Defender has been appointed, and in the event such defender is disqualified to represent a needy person, counsel will be appointed and compensated in the same manner as heretofore set forth.

Evaluation of Evidence: In the event assigned counsel other than a Public Defender deem it necessary to employ an investigator, other professional specialists, or private facilities for the evaluation of evidence, as authorized by Idaho Code §19-861, for which service a charge will be made to the county, such attorney shall first make a written petition to the Court and secure an order from the Judge authorizing such additional help.

DATED this 19th day of July, 2004.

/s/ _____
Charles W. Hosack,
Administrative Judge

/s/ _____
John P. Luster, District Judge

/s/ _____
Fred M. Gibler, District Judge

/s/ _____
John T. Mitchell, District Judge

/s/ _____
Steve Verby, District Judge