

In the Supreme Court of the State of Idaho

IN RE: AMENDMENT OF IDAHO)
CRIMINAL RULEs (I.C.R.) 25.1, 33(a) and 34)

ORDER AMENDING
RULES

The Court, being fully informed,

NOW, THEREFORE, IT IS HEREBY ORDERED that Idaho Criminal Rule 25.1 be, and the same is hereby, amended as follows:

Rule 25.1. Death or Disability of Judge.

(a) **During Trial.** Any qualified judge may, on agreement of the parties, complete a jury trial if:

(1) the judge before whom the trial began cannot proceed because of death, sickness, or other disability; and

(2) the judge completing the trial certifies familiarity with the trial record.

If the parties do not agree to a substitute judge, the administrative district judge must order a new trial.

(b) **After Verdict or Finding of Guilty.**

(1) **In General.** After a verdict or finding of guilty, any qualified judge may complete the court's duties if the judge who presided at trial cannot perform those duties because of absence, death, sickness, or other disability.

(2) **Granting a New Trial.** The successor judge may grant a new trial if satisfied that:

(A) a judge other than the one who presided at the trial cannot perform the post-trial duties; or

(B) a new trial is necessary for some other reason.

IT IS FURTHER ORDERED, that subsection (a) of Idaho Criminal Rule 33 be, and the same is hereby, amended as follows:

Rule 33. Sentence and Judgment

(a) **Sentence.**

(1) **Time for Judgment and Sentence.** After a plea or verdict of guilty, if the judgment is not stayed or a new trial granted, the court must set a time for pronouncing judgment and sentencing. When sentence is being imposed as a result of a trial resulting in a verdict of guilty, the judge who presided over the trial must also preside over the sentencing unless: (1) the judge who presided over the trial no longer holds the same judicial office that the judge held at the time of the trial; or (2) other extraordinary circumstances exist, such as the judge's disqualification, death, illness, or other disability. In felony cases, the time for pronouncing judgment and sentencing must be at least two days after the verdict unless this time is waived by the defendant. Before imposing sentence the court must give counsel an opportunity to speak on behalf of the defendant and must ask the defendant personally if the defendant wishes to make a statement and

to present any information in mitigation of punishment. While awaiting sentencing the court may commit the defendant to custody or may continue or alter the bail.

(2) Method of Securing Defendant's Appearance at Sentencing.

(A) If a defendant is in custody the custodial officer must bring the defendant into court for sentencing.

(B) If a defendant, who is at liberty on defendant's 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. On taking the defendant into custody pursuant to the 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 must 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 waiver of those costs.

* * *

IT IS FURTHER ORDERED, that subsection Idaho Criminal Rule 34 be, and the same is hereby, amended as follows:

Rule 34. New Trial.

(a) In General. On the defendant's motion, the court may vacate any judgment and grant a new trial on any ground permitted by statute. If the case was tried without a jury, the court may take additional testimony and enter a new judgment.

(b) Time to File.

(1) **Newly Discovered Evidence.** Any motion for a new trial grounded on newly discovered evidence must be filed within two years after final judgment, if an appeal is pending, the court may not grant a motion for a new trial until the appellate court remands the case.

(2) **Other Grounds.** Any motion for a new trial grounded on any reason other than newly discovered evidence must be filed within 14 days after the verdict, finding of guilty, or imposition of sentence, or within any further time the court may set during the 14-day period.

(c) Presiding Judge. The motion must be considered and ruled upon by the judge who presided over the trial unless: (1) the judge who presided over the trial no longer holds the same judicial office that the judge held at the time of the trial; or (2) other extraordinary circumstances exist, such as the judge's disqualification, death, illness, or other disability.

IT IS FURTHER ORDERED, that this order and these amendments shall be effective the 1 day of Jan, 2018.

IT IS FURTHER ORDERED, that the above designation of the striking of words from the Rules by lining through them, and the designation of the addition of new portions of the Rules by underlining such new portion is for the purposes of information only as amended, and

NO OTHER AMENDMENTS ARE INTENDED. The lining through and underlining shall not be considered a part of the permanent Idaho Criminal Rules.

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

DATED this 14 day of Sept., 2017.

By Order of the Supreme Court



Roger S. Burdick,
Chief Justice

ATTEST:

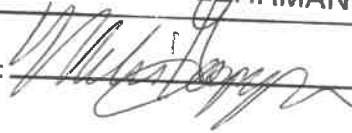

Clerk

, Karel A. Lehrman, Clerk of the Supreme Court/
Court of Appeals of the State of Idaho, do hereby
certify that the above is a true and correct copy of
the Order Amending Rules
entered in the above entitled cause and now on
record in my office.
WITNESS my hand and the Seal of this Court.

KAREL A. LEHRMAN

Clerk

By:



Chief Deputy