In the Supreme Court of the State of Idaho

IN RE: IDAHO JUVENILE RULES (I.J.R.) AMENDING RULES 44, 45, 46, AND 50, AND ADOPTING NEW RULE 55	)))))	ORDER

The Court having reviewed a recommendation from the Child Protection Committee and the Administrative Conference to amend Rules 44, 45, 46, and 50 of the Idaho Juvenile Rules to read as follows, and to adopt a new Rule 55 of the Idaho Juvenile Rules, and the Court being fully informed;

NOW, THEREFORE, IT IS HEREBY ORDERED, that the Idaho Juvenile Rules as they appear in the volume published by the Idaho Code Commission be, and they are hereby, amended as follows:

1. That Rule 44 be, and the same is hereby, amended to read as follows:

Rule 44. Case Plan Hearing/Permanency Hearing--Aggravated Circumstances (C.P.A.)

(a) If a case plan is ordered to be prepared, the court shall schedule a case plan hearing within 30 days after the adjudicatory hearing. The case plan shall include the following:

(1) The case plan shall identify the services to be provided to the child, including services to identify and meet any special educational, emotional, physical, or developmental needs the child may have, to assist the child in adjusting to the placement, or to ensure the stability of the placement. The plan shall also address options for maintaining the child's connection to the community, including individuals with a significant relationship to this child, and organizations or community activities with who the child has a significant connection.

(2) The case plan shall include a reunification plan. The reunification plan shall identify all issues that need to be addressed before the child can safely be returned home, without department supervision. The order may specifically identify such issues to be addressed by the plan. The reunification plan shall specifically identify the tasks to be completed by the department, each parent, or others to address each issue, including services to be made available by the agency to the parents and in which the parents are required to participate, and deadlines for

completion of each task. When appropriate the reunification plan should identify terms for visitation, supervision of visitation, and/or child support.

(3) The case plan shall include an alternative permanency plan. The permanency plan shall

(A) address all options for permanent placement of the child, including consideration of options for in-state and out-of-state placement of the child;

(B) address the advantages and disadvantages of each option, in light of the child's best interest;

(C) include recommendations as to which option is in the child's best interest;

(D) specifically identify the actions necessary to implement the recommended option, and schedules for accomplishing those actions, and in the case of a child who has attained the age of sixteen (16) years, the services needed to assist the child to make the transition from foster care to independent living;

(E) address options for maintaining the child's connection to the community, including individuals with a significant relationship to the child, and organizations or community activities with whom the child has a significant connection; and

(F) identify further investigation necessary to identify and/or assess other options for permanent placement, to identify actions necessary to implement the recommended placement, or to identify options for maintaining the child's significant connections.

(b) If ~~the court orders the preparation of a case plan because~~ the child has been placed in the child's own home under the protective supervision of the department, the case plan shall include the same information set forth in subsections (a)(1) and (2) above.

(c) If the court finds that the parent has subjected the child to aggravated circumstances, then the court shall order the department to prepare a written permanency plan, and the court shall schedule a permanency hearing within 30 days after the adjudicatory hearing. The permanency plan shall include the same information as the case plan described in subsections (a)(1) and (3) above.

2. That Rule 45 be, and the same is hereby, amended to read as follows:

Rule 45. Review Hearings (C.P.A.)

(a) At review hearings, the court shall review compliance with the case plan, and the progress of the department in achieving permanency for the child. The court may:

(1) modify the case plan or permanency plan as appropriate;

(2) modify disposition (provided that where a child was placed in the child's own home under the protective supervision of the department, modification is subject to the requirement of > I.C. § 16-1623);

(3) determine whether the department has made reasonable efforts to finalize a permanency plan for the child, and in the case of a child who will not be

returned to a parent, review the department's consideration of options for in-state and out-of-state placement of the child;

(4) enter further orders as necessary or appropriate to ensure the progress of the case towards achieving permanency for the child.

(b) The court may continue a review hearing for a short period of time to give the parties time to respond to substantive issues raised for the first time at a review hearing. The court may enter temporary orders as appropriate pending the continued hearing.

(c) If the next review hearing to be scheduled is the annual permanency hearing described at I.C. § 16-1622(4), the court shall order the department to prepare a written permanency plan, to be filed with the court and served upon the parties at least 5 days prior to the hearing.

(d) If the child has been in the custody of the department and placed in out-of-home care for 15 of the last 22 months, and a petition to terminate parental rights has not been filed, then the state shall file a motion for an order finding that the filing of the petition would not be in the best interest of the child, that reasonable efforts have not been provided to reunite the child with his family, or that the child is placed permanently with a relative. If the court denies the motion, the court may set a deadline for the filing of such a petition. If a motion has not been filed as required in this rule, the court may set a deadline, by which time the state must file either a petition to terminate parental rights or a motion as described above.

3. That Rule 46 be, and the same is hereby, amended to read as follows:

Rule 46. Permanency Hearings

(a) The permanency plan may be, but is not limited to, one of the following: continued efforts at reunification, termination of parental rights and adoption, guardianship, or long-term foster care. In the case of a child who will not be returned to a parent, the hearing shall include review of the department's consideration of the options for in-state and out-of-state placement of the child. The plan shall specifically identify the activities necessary to implement the plan, and set forth schedules for the accomplishment of those actions.

(b) The court may approve a permanency plan of long-term foster care only upon written case-specific findings that there are compelling reasons why a more permanent plan is not in the best interest of the child.

(c) The permanency plan, as approved by the court, shall be entered into the record as an order of the court. The court shall make written case-specific findings whether the department made reasonable efforts to finalize a permanency plan for the child. In the case of a child in an out-of-state placement, the court shall determine whether the out-of-state placement continues to be appropriate and in the best interests of the child. In the case of a child who has attained the age of 16 years, the hearing shall include a determination of the services needed to assist the child to make a transition from foster care to independent living.

4. That Rule 50 be, and the same is hereby, amended to read as follows:

Rule 50. Transfer of Venue (C.P.A.)

(a) Transfer of venue in a case under the Child Protective Act is governed by these rules and is not subject to the Idaho Rules of Civil Procedure.

(b) Venue in a case under Child Protective Act may not be transferred prior to the entry of a decree finding the child within the jurisdiction of the court under the Child Protective Act.

(c) In the discretion of the court, venue in a case arising under the Child Protective Act may be transferred when the following conditions exist:

(1) The court has entered a decree finding the child within the jurisdiction of the court under the Child Protective Act;

(2) It is in the best interest of the child;

(3) All parties either agree or do not object to the transfer;

(4) The Department of Health & Welfare is able and ready to provide services in case management in the new county;

(5) The parents or a parent who is the subject of a reunification plan lives in the receiving county;

(6) Prior to the transfer, the judge of the sending county court will communicate either verbally or in writing and obtain consent to the transfer from a judge of the receiving county court ~~the receiving county court either verbally or in writing agrees to receive the case~~; and

(7) All currently needed hearings and findings have been completed and transfer will not jeopardize the ability of the court or parties to comply with the time requirements of the Child Protective Act or these rules.

(d) Counsel of record and guardians ad litem shall continue in the case unless there is a stipulation for substitution of counsel and/or guardians ad litem with the new counsel or guardians ad litem or an order of the receiving court allowing withdrawal of counsel or guardians ad litem.

(e) If a case is transferred, the clerk shall forward the original file to the receiving court and shall maintain a copy of the file in the sending jurisdiction for record purposes and shall, if possible, transfer any ISTARS record to the receiving county.

(f) The receiving county will conduct a review hearing of the case status within sixty (60) days of receipt of the file.

5. That a **NEW** Rule 55 be, and the same is hereby, adopted to read as follows:

Rule 55. Review of Voluntary Out-of-Home Placements

(a) The department of health and welfare may petition the court for review of voluntary out-of-home placement of children.

(b) The petition shall be signed by the prosecutor or deputy attorney general before being filed with the court. The petition shall be entitled "In the Matter of _____, a child under the age of eighteen (18) years, and shall be verified and set forth with specificity:

1. The name, birthdate, sex and residence address of the child;

2. The name and residence addresses of the child's parents, custodian, or guardian,

3. The date the child entered the voluntary out-of-home placement, and the nature and location of that placement,

4. A statement that review is sought to ensure the child's eligibility for federal funding for the placement, or statement of such other reasons for which the review is requested.

5. The name of the parent, guardian, or custodian consenting to the placement, and in the case of a guardian or custodian, the basis for the guardian or custodian's authority to consent to treatment on behalf of the child, and a statement that the consent has not been withdrawn.

6. A statement that continued voluntary out-of-home placement is in the best interest of the child.

(c) In the case of a voluntary out-of-home placement, the petition shall be accompanied by an affidavit of the department setting forth the basis for the department's determination that continued voluntary out-of-home placement is in the best interest of the child. In the case of a voluntary placement pursuant to the Children's Mental Health Services Act, the petition shall also be accompanied by an affidavit of the child's clinician setting forth the basis for the clinician's determination that the child is seriously emotionally disturbed, and is in need of continued out-of-home placement.

(d) At or following the hearing, the court shall enter an order approving the placement if the court finds that:

1. A petition has been filed.

2. In the case of a voluntary out-of-home placement pursuant to the Children's Mental Health Services Act, the clinician's determination that the child is seriously emotionally disturbed and is in need of continued out-of-home

IT IS FURTHER ORDERED, that this order and these amendments shall be effective the 1 day of November, 2008.

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 Juvenile 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 9 day of September, 2008.

By Order of the Supreme Court

Daniel T. Eismann
Chief Justice

ATTEST: for Clerk

I, Stephen W. Kenyon, Clerk of the Supreme Court of the State of Idaho, do hereby certify that the above is a true and correct copy of the Order entered in the above entitled cause and now on record in my office.
WITNESS my hand and the Seal of this Court 9/9/08

STEPHEN W. KENYON
Clerk

By: Kimber Grove Deputy