I.J.R. 34. Order of Removal of Child Upon Issuance of the Summons (C.P.A.).

Idaho Juvenile Rule 34. Order of Removal of Child Upon Issuance of the Summons (C.P.A.).

(a) The court may order the removal of the child/ren from the home, in accordance with I.C. § 16-1611(4), at the time the Summons is issued. A request for an Order of Removalmust be made in writing, either in the petition or by separate motion of the petitioner. Determination shall be made on facts presented to the court ex parte, either by testimony or affidavit.

(b) If the Order of Removal of Child is the first court order sanctioning removal of the children from the home, the court shall make written, case-specific findings that remaining in the home is contrary to the child/renís welfare and that vesting legal custody with the Department of Health and Welfare or other authorized agency is in the best interest of the child/ren.

(c) Form of Order of Removal to accompany the Summons. The Order of Removal accompanying the summons shall substantially conform to the following format:

ORDER OF REMOVAL

It is contrary to the welfare of the child/ren to remain in the child/renís present condition or surroundings, and it is in the best interest of the child/ren to place the child/ren in the legal custody of the Idaho Department of Health and Welfare until the shelter care hearing. This finding is made based on the information set forth in the verified Petition Under the Child Protective Act, and the affidavit attached to and incorporated in the Petition, that have been filed in this case.

[Insert additional case factual findings.]

IT IS HEREBY ORDERED that a peace officer or other authorized person promptly take [child(ren)'s name(s)] to an authorized place of shelter care until the shelter care hearing. (The date, time, and place of the shelter care hearing scheduled before this court at the _____ Courthouse, (address), (city), Idaho,

on _____, 20___, at _____ o'clock ____.m.

DATED: _____

_____

JUDGE

Committee Comments. As to subsection (c), federal law requires the court to make a written, case-specific finding that remaining in the home is contrary to the child's welfare. See 45 CFR § 1356.21(c). Idaho Code § 16-1611(4) requires the court to find that remaining in the home is contrary to the child's welfare and that vesting legal custody in IDHW is in the child's best interests. The policy of the rule is to require written case specific findings on both best interest and contrary to the welfare. Failure to timely make the federal finding will result in loss of federal funding for an otherwise eligible child. If the case-specific finding is not made, or not made at the required time, the error cannot be corrected at a later date to restore funding. The funding cannot be a simple recitation of the language of the statute; however, if the case-specific information upon which the finding is based is set forth in a document in the court record (such as an affidavit), the finding can incorporate the document by reference without reiterating the facts set forth in the document.

(Revised Rule 34 - adopted August 21, 2006, amended April 27, 2011, effective July 1, 2011.)

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