In the Supreme Court of the State of Idaho

IN RE: AMENDMENT TO FOURTH JUDICIAL DISTRICT LOCAL RULES) **ORDER**

The District Judges of the Fourth Judicial District having amended the Local Rules of the District Court and Magistrate Division for the Fourth Judicial District and having submitted the amendment to the Court for its consideration and approval;

NOW, THEREFORE, IT IS HEREBY ORDERED that the amended Local Rules of the District Court and Magistrate Division for the Fourth Judicial District be, and the same are hereby, adopted in the form attached to this order.

IT IS FURTHER ORDERED that said Order shall be effective upon signature.

IT IS FURTHER ORDERED that said Order shall be sent to the trial court administrator of the Fourth Judicial District for publication and dissemination.

IT IS FURTHER ORDERED that the Fourth Judicial District is hereby authorized to submit the Order to the editors of *The Advocate* for publication and inclusion in the *Idaho State Bar Desk Book.*

DATED this 14 day of May, 2008.

By Order of the Supreme Court

Daniel T. Eismann
Chief Justice

ATTEST: Stephen Kenyon
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 5/14/08

STEPHEN W. KENYON Clerk

By: Kimberly Grove Deputy

Local Rules of the District Court and Magistrate Division for the Fourth Judicial District

Rule 1. Authority for the Rules. These local rules are promulgated under the authority of Rule 1(c), I.R.C.P., and Rule 2, I.C.R. and they will govern the procedures of the District Court including procedures for setting the time and place for the trial of actions and the hearing of all other proceedings and motions. These local rules apply unless in conflict with I.R.C.P. and I.C.R.

Rule 2. Calendars and Calendaring Matters. Each judge shall control and set his or her own calendar.

2.1 Scheduling Court Hearings or Proceedings. To schedule or re-schedule any court hearing or proceeding, counsel must contact the clerk of the presiding judge to arrange a time certain. If a hearing or proceeding is re-scheduled at the request of counsel, counsel is responsible for noticing opposing counsel. The general schedules for each judge are located on the web site for the Fourth Judicial District, www2.state.id.us/fourthjudicial.

2.2 Civil Matters. In all counties of this District, only those civil matters which have been scheduled for hearing by the clerks as provided by this rule and noticed for hearing pursuant to Rules 5(a) and 7(b), I.R.C.P., will be heard by the court. Prior to filing notice of hearing upon any matter requiring service and notice under Rules 5(a) and 7(b), I.R.C.P., or any other adversary or contested matter requiring hearing or appearing to present proof for default judgment or other non-adversary matter requiring proof, counsel shall contact the clerk of the presiding judge who will assign a time certain for hearing of the matter, and such time and day shall be used by counsel in all notices and shall be the time of hearing. Motions and Orders to Show Cause shall be brought on for hearing in conformance with Rule 7(b), I.R.C.P.

2.3. Civil Motions to be Heard Outside County. Civil motion matters may be heard at chambers in any county within the Fourth Judicial District upon agreement of counsel by making application to the judge to whom the case has been assigned.

2.4. Default proceedings. All motions, notices of hearing, and returns of service showing default must be filed on or before 12:00 o'clock noon of the day preceding the day set for the hearing, if a hearing is required.

Rule 3. Proposed Orders or Judgments. When a matter is resolved by stipulation of the parties or by decision of the court announced in open court, the court may direct one party or the party's counsel to prepare a proposed form of order or judgment, together with any other documents necessary to complete the case, and may make such orders governing further proceedings as may be required to ensure the expeditious conclusion of the case.

Rule 4. Service on Non-Resident Judge. If the office of the presiding judge is outside the county in which an action is pending, the parties shall comply with the requirements of Rule 5(d)(3), I.R.C.P., with respect to lodging of all briefs, motions, notices of hearing, orders to show cause and proposed jury instructions with the presiding judge. Failure to comply with Rule 5(d)(3), I.R.C.P., may, in the court's discretion, result in the postponement of any scheduled hearings or other proceedings to be held in the action.

Rule 5. Appearance of Counsel - Contested Motions. In the absence of a stipulation or court order granting a continuance, if the moving party or his attorney fails to personally appear to present an adversary motion at the time set the court may summarily deny the motion for failure to prosecute pursuant to 41(b), I.R.C.P., or may deem the motion withdrawn.

If the moving party or his attorney appears to present the motion and the opposing party or his attorney does not appear and the motion has been properly and timely noticed for hearing with proof of due service thereof, the court may render its decision on the merits of the motion.

Rule 6. Time for Argument. Unless a different time is allowed by the presiding judge or a different time is fixed by other controlling rule, arguments on contested motions shall be limited to 15 minutes for each side.

Rule 7. Ex Parte Orders. All applications for ex parte orders, except for applications made pursuant to the Domestic Violence Crime Prevention Act, must be made in propria persona or by an attorney of this court. Ex parte orders will be granted only if (1) it clearly appears from specific facts shown by affidavit or verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or the party's attorney can be heard in opposition, and, (2) the applicant's attorney or the pro se applicant has certified to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the party's claim that notice should not be required. Every order granting a motion ex parte shall expire by its terms within such time after entry, not to exceed 14 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. Upon the granting of a motion ex parte, the motion shall immediately be set for hearing not later than 14 days after the granting of the ex parte order and the moving party shall serve the motion, supporting affidavits and memoranda, and notice of hearing on the opposing party or counsel. On 2 days' notice to the party who obtained the ex parte order or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its retraction or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

Rule 8. Civil and Criminal Motion Practice.

8.1 Motions. Unless ordered otherwise by the court, each motion and response to such motion, other than a routine or uncontested matter, must be accompanied by a separate memorandum, not to exceed twenty-five (25) pages, containing all of the reasons and points and authorities relied upon by the moving party.

8.1.1 To the extent, a party relies on facts in the record in support of or in opposition to a motion, the party must specifically cite to the record, affidavits or documentary evidence.

8.1.2 The moving party may submit a reply brief, not to exceed fifteen (15) pages, as provided by the rules, no later than three days before the hearing, unless otherwise ordered by the court or as required by I.R.C.P. and I.C.R.

8.2 Proposed Orders. Proposed orders on routine or uncontested matters must be submitted as a separate document at the time the motion is filed. A proposed order is not required when filing dispositive motions and preliminary injunctions. When a proposed order is required to be submitted, it must be accompanied by envelopes with sufficient postage, addressed to all parties, and include a certificate of service reflecting the addresses on the envelopes provided.

8.3 Lodging Copies of Motions and Memoranda. If the parties file documents within seven (7) days of a scheduled hearing, the parties shall deliver courtesy copies to the Court's chambers.

8.4. Amendments to Pleadings. A party who moves to amend a pleading must describe the type of the proposed amended pleading in the motion (i.e., motion to amend answer, motion to amend counterclaim). Any amendment to a pleading, whether filed as a matter of course or upon a motion to amend, must reproduce the entire pleading as amended. Failure to comply with this rule is not grounds for denial of the motion. The amended document will be lodged at the time of filing the motion and filed if approved by the court.

8.5. Motions for Temporary Orders in Family Court – Mandatory Disclosure.

8.5.a. Scope. This rule is limited in application to the following cases filed in the Fourth Judicial District: divorce (including claims for spousal maintenance and attorney's fees), paternity, child custody, child support, and modification of child custody and child support orders.

8.5.b. Form of Motion. A party seeking temporary orders pursuant to Idaho Code Sections 32-704 and 32-717 shall file a separate verified motion with the court setting forth the legal and jurisdictional basis for the motion and the specific relief requested. The motion shall include the following information and documents where relevant:

8.5.b.1. Custody and Parenting Time. If a party seeks an order for temporary custody, parenting time, or visitation, the motion shall set forth a proposed parenting plan specifically stating the custody, parenting time, and visitation requested for all parties to the action. If not contained in a separate affidavit or pleading previously filed in the case, the motion shall set forth all facts that are required to be disclosed by Idaho Code Section 32-11-209. The motion shall further set forth the following additional information:

(i) the name and date of birth of each child who is subject to the motion;

(ii) the nature and extent of any special needs of each child;

(iii) a description of the manner in which the parents are currently caring for the child/ren. If the parties live separately, then include a description of the manner in which they have cared for the child/ren, both before and after separation;

(iv) each parent's current work schedule; and

(v) the nature and extent of any circumstances known to the moving party that would subject the child/ren to a risk of neglect or abuse in either parent's custody including, but not limited to, substance abuse or dependence, and domestic violence.

8.5.b.2. Child Support, Spousal Maintenance and Attorney's Fees. If a party seeks a temporary child support order, the motion shall be accompanied by a completed Affidavit Verifying Income and Child Support Worksheet setting forth the amount requested in accordance with the Idaho Child Support Guidelines set forth in Rule 6(c)(6) of the Idaho Rules of Civil Procedure. All motions for temporary orders of child support, spousal maintenance, attorney's fees, and the division of community income shall set forth the specific amount requested and shall provide the following information to the best of the moving party's knowledge:

(i) the name of each party's employer;

(ii) the amount of each party's monthly income, both gross and net, supported by an accurate photocopy of the moving party's most recent pay stub;

(iii) an itemization of the amount of each party's reasonable monthly living expenses; and

(iv) if reasonable monthly expenses exceed the parties' combined net income, the identity of each and every community asset, including a statement of its fair market value, which is available to sell or borrow against in order to meet the reasonable needs of the parties and their child/ren.

8.5.c. Response to Motion. A party who wishes to file a response to a verified motion for temporary orders shall file an affidavit containing the same information that is required of the motion.

8.5.d. Hearing, Time Limits, and Service. Motions for temporary orders shall be heard and decided exclusively on the motion and affidavits unless, at the hearing on the motion for temporary orders, the court determines that the parties should be allowed to present evidence. In such case, the court shall schedule an evidentiary hearing within a reasonable time. Service of the motion, affidavits, and legal memoranda, if any, shall continue to be governed by Rule 7(b)(3) of the Idaho Rules of Civil Procedure.

Rule 9. Continuances, Vacation, and Waiver of Jury Trials. Any case set for trial shall be tried on the date set unless by order or consent of the court, for good cause shown, the same is continued, vacated, or the jury is waived.

Rule 10. Trial Exhibits. Prior to any proceeding, all documents and things expected to be offered as exhibits shall be marked by the party or attorney offering them, and such party shall have sufficient copies available at the proceeding for the court and each party. The method for marking the exhibits is within the trial court's discretion.

Rule 11. Consolidation of Cases.

11.1. Civil Cases. Motions to consolidate pending civil actions pursuant to Rule 42(a), I.R.C.P., shall be presented to

and ruled upon by the judge to whom the lowest numbered case or first filed case has been assigned among those matters sought to be consolidated, except for domestic relations cases as provided in Rule 11.1.a. Notice shall be given to all parties in each action involved and a copy filed in each case involved. In the event the motion is granted, the order shall specify the case number under which all future papers shall be filed, which shall be the lowest of the case numbers involved. Thereafter, that number shall be used exclusively for all papers filed only in the designated case file. If a motion to consolidate is granted, all further action with regard to the consolidated cases shall be heard by the judge who is assigned the lowest numbered case or first filed cases involved.

11.1.a. Domestic Relations Cases. A motion to consolidate a case involving only child support with a domestic relations case involving custody may be presented to and ruled upon by the judge to whom either action has been assigned. In the event the motion is granted, the order shall specify that the actions are consolidated under the case number assigned to the action involving custody and all future papers shall be filed under that case number. All further action with regard to the consolidated cases shall be heard by the judge who is assigned the action involving custody.

11.2. Criminal Cases. Motions to consolidate pending criminal actions shall be presented to and ruled upon by the judge to whom the lowest numbered case or first filed case has been assigned among those matters sought to be consolidated. Notice shall be given to all parties in each action involved and a copy filed in each case involved. If a motion to consolidate is granted, all further action with regard to the consolidated cases shall be heard by the judge assigned to the lowest numbered case or first filed case involved.

Rule 12. Domestic Violence Hearings. In any hearing respecting an action for an order of protection pursuant to the Domestic Violence Crime Prevention Act, the court may allow a friend, relative, or advocate for an unrepresented party to sit at counsel table with a party. The friend, relative or advocate may not represent the party before the court and may not advise the party on matters of law, but may, in the discretion of the presiding judge, be allowed to speak to the party to assist in understanding the court's ruling and ask questions of the court for the purpose of clarifying a ruling for the party. The presiding judge may deny or revoke permission for a person to sit at counsel table if, in the judge's discretion, it appears that the person is improperly advocating or practicing law or is disruptive to the orderly disposition of the case or for other cause.