

Misdemeanor/Infractions Committee Meeting Minutes
January 29, 2016

Present: Judge Michael Oths, Chair; Christine Starr, Suzanne Johnson and Cathy Derden.

Due to a problem with the phone conferencing not enough members were in attendance to vote on recommendations; however, those present did begin reviewing some of the forms and make some preliminary recommendations. A new date will be set for the Committee to meet again.

Eighteen forms were sent from Judge Gaylen Box and the Magistrate Judges Workgroup for Odyssey. Some of the forms are in the rules and some are not.

Page 2. Order suspending driver's license. This form is currently found in MCR 9.1(b). In August 2015, this Committee was asked to amend this rule to eliminate this form and incorporate the language from this form on suspending the driver's license into the judgment. More detailed language on the suspension was suggested to be included in both the rule and the judgment form. The ITD wanted specific language on how to reinstate.

The recommendation in this packet was different in that it included the form for suspending the license as a separate order. Judge Box met back with the work group on January 12 and said the group now did want to consider the original idea of incorporating the language into the judgment.

The members present discussed whether the order should be kept separate or just incorporated into the judgment and voted to keep it separate. The order suspending the license contains a number of important advisories that may get lost in the judgment, especially in trying to get it all on one page and any changes in the order would require an amended judgment.

The new proposed order did not include the language that had been requested by ITD on how to reinstate and was not as specific as the earlier language that had been proposed in August 2015 to be added into the judgment. The members looked at adding the language proposed in August 2015 into this form.

The rule would be amended as originally suggested to require more specific advisories and more specific information would be included in the form.

The rule would be amended as follows:

Misdemeanor Criminal Rule 9.1. Suspension of Driver's License Upon Conviction of Offense Authorizing or Requiring Suspension of License - ~~Suspension Upon Plea or Finding of Guilty of Offense~~ - Notice of Increased Penalty on Subsequent Violations - Temporary Restricted License.

- (a) Suspension of Driving Privileges. The court shall include in a judgment of conviction and sentence the suspension of driving privileges and driver's license which is part of the sentence under a statute of the state. ~~If the statute authorizes or requires the court to suspend driving privileges and driver's license by reason of a plea of guilty or finding of~~

~~guilty of an offense, the court shall adjudicate the period of suspension in an order of suspension.~~

(b) Order of Suspension. If the statute authorizes or requires the court to suspend driving privileges and driver's license by reason of a plea of guilty or finding of guilty of an offense, the court shall enter an order of suspension. The order must be served on the defendant by personal delivery or by mailing to the address indicated on the driver's license or other address furnished by the defendant and the Idaho Department of Transportation shall be given notice of the suspension. The order must:

(1) state the period of suspension and the date it begins;

(2) state whether the suspension is consecutive to any other driver's license suspension;

(3) state whether the defendant may apply for a restricted license or whether the suspension is absolute;

(4) state whether the suspension is concurrent with any administrative driver's license suspension, and

(5) advise that expiration of the suspension period does not result in reinstatement of driving privileges and that the defendant must make application to the Department of Transportation in order for driving privileges to be reinstated.

The order must be in substantially the following form.

~~(b) Order of Suspension. Whenever the court suspends driving privileges and driver's license by reason of a plea of guilty or a finding of guilty to an offense, the court shall suspend the driving privileges by an order and cause copies to be filed with the Department of Transportation and served on the defendant by personal delivery or by mailing to the address indicated on the driver's license or other address furnished by the defendant. The suspension order shall be in substantially the following form:~~

~~[Click here](#) for form.~~

Page 4. Affidavit of refusal. This form is found in MCR 9.2(a)(1) and the workgroup proposed amending it. However, the language proposed at the end for the declaration does not meet the language required by rule or statute. This language must comply with I.C. § 19-1406. I.C. 18-5402 defines "oath" but does not set out the required wording. It must say:

I certify (or declare) under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct."

.....
(Date)

.....
(Signature)

Another question related to this form is whether the language in the rule should be amended to reference declarations and not just affidavit? MCR 2.2 on declarations states clearly that an affidavit includes a declaration, but does it need to be spelled out again?

Misdemeanor Criminal Rule 2.2. Declarations.

Whenever these rules require or permit a written statement to be made under oath or affirmation, such statement may be made as provided in Idaho Code Section 9-1406. An affidavit includes a written certification or declaration made as provided in Idaho Code Section 9-1406.

Idaho Misdemeanor Criminal Rule 9.2. Suspension of Driver's License for Failure to Take Alcohol Test.

(a)(1) Sworn Statement of Officer. The court shall not accept a license seized under Section 18-8002, Idaho Code, without an accompanying *affidavit* of the officer in substantially either of the following forms:

In addition, Christine Starr noted both the rule and the form refer to the officer seizing the driver's license and she stated it was her belief that this is no longer the practice followed. The officer gives the defendant the ALS advisory form and then the officer files this form. Until this question is resolved the members decided to wait on further review of this form. Christine will check with ITD and report back.

Page 6. Alternate form (probable cause affidavit) found in MCR 9.2(a)(2). The Magistrate's Workgroup submitted amendments to the form set out in this rule. Again the declaration language at the end of the form on page 9 is incorrect and must follow the wording of I.C. § 19-1406.

This form needs to be reviewed again by the Committee.

Page 10. Temporary restricted license. The proposed form would replace the one found in MCR 9.1(d). The District Judges workgroup sent a new proposed form on January 12 for this committee to review. The new form adds references to code provisions because the intent is to make this form one that can be used for both felonies and misdemeanors. It contained some differences from the one sent by Judge Box.

The members reviewed the form from the District Judges Workgroup and compared it with the form from the Magistrates Workgroup and made the following recommendations to the DJ form.

Add a check box for withheld judgment in the heading.

Change "dated" to "effective" in first line of license because the date of the order may be different from the effective date, and specify the number of days that are absolute, if there are any.

The members did not agree with the addition of language that "Failure to comply with any restriction and or conditions invalidates this restricted license", noting that this is not correct. If a defendant drives outside of the restrictions and does not get caught, then the license

is not invalid. The license is only invalid if a court revokes it. Thus, the members recommended the original language about the court cancelling the license be added back.

Page 13. Receipt and notice of payment. This form is found in IIR 10(d). The rule states the form is not sent to ITD but to the defendant so that he can apply to the ITD for reinstatement of his license. It currently begins: “To the Department of Transportation, State of Idaho.” It then acknowledges the payment and states “you are requested to immediately reinstate the driver’s license of the defendant upon payment of the reinstatement fee...” The new form drops the heading “To the Department of Transportation, State of Idaho” and it is not clear why since the form still states” you are requested to immediately reinstate ...” “You” has to refer to the ITD so that sentence should be added back.

The new advisory on how to reinstate is much clearer. On the certificate of service the checkbox for defendant was deleted and it appears that has been replaced by a place for Odyssey to insert name of party. However, it will be some time before all counties have Odyssey so the box for defendant should remain and counties on Odyssey can fill it in differently.

Page 15. Receipt and notice of payment –Odyssey Twin Falls. This appears to be an alternative to the form set out in IIR 10(d) and set out above in #5 that Odyssey is using in Twin Falls. It drops the request to ITD to immediately reinstate the license and does not include the information requested by ITD on how to pay the reinstatement fee.

Overall it is not as complete and is not as clear as the form set out in #5. If what is in form #5 is going to be the form in the rule, this does not appear to comply.

Page 17. Order setting aside default- Odyssey form. IIR 8.1 addresses setting aside a default but does not have a form so no rule amendment is needed. The Committee is just asked to review this proposed form for Odyssey.

The members noted that no affidavit is required to set aside a default. It found the alternative language set out under the heading “the motion is denied” was unnecessary as the second alternative was shorter and both stated essentially the same thing. Under the section on the motion being granted another box should be added “Default vacated and matte reset for further proceedings at __ o’clock, on _____, 20__ in courtroom number ____ at the [county] courthouse. “

It should be clear that setting a hearing on the motion to set aside is a third option.

Page 20. Affidavit and notice of failure to appear- proposed Odyssey form. This form is not in the rules and would be used in misdemeanor cases. The Committee is asked to review this proposed form for Odyssey. In this form the clerk is swearing before another clerk which is allowed pursuant to I.C. § 9-1401, but the members recommended using the declaration language instead.

Page 22. Affidavit and notice of failure to pay-proposed Odyssey form. This form is not in the rules and the Committee is asked to review. Again the declaration language at the end of the form on page 23 is incorrect and must follow the wording of I.C. § 19-1406.

Page 24. Infraction deferred payment agreement. This form is found in IIR 9(f) and the proposed form for Odyssey would replace it. The form does not give citations similar to what is found in the deferred payment agreement for misdemeanors; for example the statute that allows a \$2 handling charge for each partial payment. Citations let the defendant know this is not a charge the court decided to impose. Why does it give only the option of mailing when the misdemeanor form gives information on paying online or by phone? On page 25 under “receipt”, warnings are repeated about a possible suspended license or tax intercept but not being sent to collection agency. Why is this left out if repeating the other two? One change also noted from the current form is that it is signed by the deputy clerk when the current form states clerk or judge so assuming that was a decision made.

All of these forms will be reviewed again at the next meeting.