

# In the Supreme Court of the State of Idaho

IN RE: ADOPTION OF NEW IDAHO )  
JUVENILE OF RULE 41A. DISCOVERY )  
FOR ADJUDICATORY HEARINGS (C.P.A.) )  
\_\_\_\_\_ )

ORDER

The Court, having reviewed a recommendation from the Child Protection Committee and the Administrative Conference to adopt a new rule, and the Court being fully informed;

IT IS ORDERED that the new Idaho Juvenile Rule 41A is ADOPTED as follows:

## **Idaho Juvenile Rule 41A. Discovery for Adjudicatory Hearings (C.P.A.)**

(a) **Scope.** The timeline for adjudicating cases under the Child Protective Act is condensed and requires more expedited discovery than is established by the Idaho Rules of Civil Procedure. To facilitate child protection timelines, the requirements for disclosure of witnesses, documents, and other evidence to be used at the adjudicatory hearing are governed by this rule. Other formal discovery, including but not limited to, discovery disclosure provided in the Idaho Rules of Civil Procedure, do not apply unless otherwise ordered by the court.

(b) **Mandatory Disclosures.** Without necessity of a request by another party and no later than 7 days prior to the adjudicatory hearing, each party must disclose in writing, to every other party, the following information:

(1) **Disclosure of non-expert witnesses.** The name, address, telephone number, email address, if known, of any witness whom the disclosing party may call at the adjudicatory hearing, including known potential impeachment witnesses, together with a short and plain statement of the witness's expected testimony;

(2) **Disclosure of expert witnesses.** The name, address, telephone number and email address, if known, of any person whom the disclosing party expects to call as an expert witness at the adjudicatory hearing together with a written summary of opinions to be expressed and the basis and reason for the opinions, a copy of any report prepared in anticipation of trial, and any exhibits the witness may rely on while testifying;

(3) **Documents and electronically stored information.** Any documents or electronically stored information relied upon or intended to be introduced into evidence at the adjudicatory hearing by the disclosing party. This includes, but is not limited to, documents and electronically stored information in the possession of law enforcement agencies, the Department of Health and Welfare, or other witnesses or experts over whom the disclosing party has control and which documents or electronically stored

information in any way relate to the investigation of the child and circumstances which are the subject of the pending child protection case.

(c) Depositions. Depositions may be taken only upon order of the court. The court must first find that the proposed testimony is material, and the desired testimony should be preserved because there is a reasonable likelihood that the prospective witness will be unavailable for the adjudicatory hearing.

(d) Continuing duty to disclose. The duty to disclose under this rule is a continuing duty until the conclusion of the adjudicatory hearing, and each party is required to make additional, amended, or supplemental disclosures as soon as practicable in the event new or different information is discovered or revealed.

(e) Service and filing. The party serving disclosures must file with the court a notice of when the disclosures were served and upon whom. Unless the court orders otherwise, the disclosures will not be filed with the court.

(f) Confidentiality. Any documents, electronically stored information, or information disclosed pursuant to this rule must only be used by counsel, parties, the Department of Health and Welfare, or expert witnesses for the purposes of preparing for the adjudicatory hearing and other proceedings under the Child Protective Act. No document or electronically stored information will be disclosed or distributed to any other person or entity not authorized by this rule without prior approval of the court. Disclosure of protected information, documents, or electronically stored information in violation of this rule may constitute contempt of court. The court may issue additional orders regarding discovery, as needed in the case.

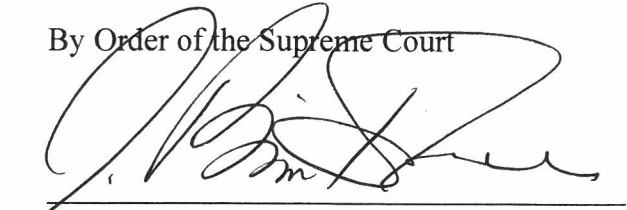
(g) Failure to Comply. If a party fails to disclose in accordance with this rule, in the exercise of discretion, the court may grant a continuance, prohibit the party from calling the witness or introducing evidence not disclosed, or enter such other order as it deems just under the circumstances. In determining the consequences for failure to comply, the court will consider the reason for the failure to disclose, the probative value of the evidence, prejudice to any party, the best interest of the child, and any other factor deemed relevant by the court. If a continuance is granted, the hearing must be held, and the required findings must be made no later than 60 days from the date of the removal.

IT IS FURTHER ORDERED that the new rule shall be effective July 1, 2024.

IT IS FURTHER ORDERED, that notice of this Order shall be published for three consecutive weeks on the Idaho State Bar's website and in its weekly E-Bulletin, and that as soon as practicable, a summary of the amendment(s) effected by this Order shall be published in one issue of *The Advocate*.

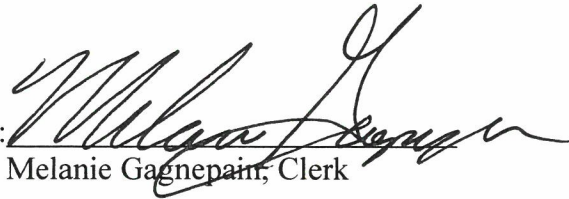
DATED this 12<sup>th</sup> day of March 2024.

By Order of the Supreme Court



G. Richard Bevan  
Chief Justice, Idaho Supreme Court

ATTEST:



Melanie Gagnepain, Clerk

I, Melanie Gagnepain, 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 entered in the above entitled  
cause and now on record in my office. WITNESS my  
hand and the Seal of this Court 3-13-24  
Melanie Gagnepain, Clerk

By  Deputy