

# In the Supreme Court of the State of Idaho

IN RE: AMENDMENT OF IDAHO )  
COURT ADMINISTRATIVE )  
RULE (I.C.A.R.) 47 )  
\_\_\_\_\_ )

ORDER

The Court, having received a recommendation from the Administrative Conference to adopt the following the Idaho Court Administrative Rule, and the Court being fully informed;

NOW, THEREFORE, IT IS ORDERED that the Idaho Court Administrative Rule 47 be AMENDED as follows:

## Idaho Court Administrative Rule 47. Criminal History Checks.

This rule applies to:

- persons applying to be included in the roster of ~~P~~parenting ~~C~~oordinators pursuant to Rule ~~16(f)-1002~~, I.R.C.P.-I.R.F.L.P.,
- persons seeking appointment as supervised access providers pursuant to ~~Rule 16(e)~~ I.R.C.P. I.C. § 32-717E and Rule 1003, I.R.F.L.P.,
- family court services coordinators pursuant to I.C. § 32-1407,
- domestic violence court coordinators pursuant to I.C. § 32-1407,
- persons seeking to be placed on the roster of evaluators of domestic assault or battery pursuant to Rule ~~33.3~~ 75 I.C.R., I.C.A.R.,
- guardian ad litem program directors and to staff members and volunteers of guardian ad litem programs pursuant to I.C. 16-1632, and Rule 35, I.J.R..

The criminal history check will consist of a self-declaration, fingerprints of the individual, information obtained from the Federal Bureau of Investigation, the National Criminal History Background Check System, Bureau of Criminal Identification and the Sexual Offender Registry, and as required by statute or rule the statewide child abuse registry and adult protection registry. A record of all criminal history background checks shall be maintained in the Administrative ~~o~~Office of the Supreme Court with a copy going to the applicant in accord with subsection (f) of this rule. A criminal history background check conducted pursuant to this rule and maintained in the Administrative ~~o~~Office of the Supreme Court, may be used for any position identified under this rule including parenting coordinators, supervised access providers, family court services coordinators, guardian ad litem program directors and staff and volunteers of guardian ad

litem programs so long as the fingerprints of the applicant have been submitted and the criminal history check has been conducted within the preceding twelve months.

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(b) Updating criminal history checks. Every individual subject to this rule shall complete an updated criminal history check at least every five (5) years. An updated criminal history check shall include a self-declaration form, state and local checks, and child and adult protection checks. The Supreme Court, through its Administrative Office of the Courts, or any appointing court may, at its discretion, require a criminal history check or updated criminal history check of any individual subject to this rule at any other time. Five (5) years will be calculated from the date of the individual's most recent Criminal History Check letter of approval.

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(d) Conditional denials. Except with respect to any crime which results in an unconditional denial under subsection (c) of this rule, the Administrative Director of the Courts, or designee, may conditionally deny an individual's application, if the criminal history check reveals a plea, finding or adjudication of guilt to any felony or misdemeanor, (excluding traffic violations which do not result in a suspension of the individual's driver's license), the individual has been found to have committed abuse or neglect in a child protection or adult protection case, or the individual appears on either the child abuse registry or the adult protection registry. The Administrative Director, or designee, may also conditionally deny an application if the results of the criminal history check reveal that the individual has falsified or omitted information on the self-declaration form. A conditional denial becomes a final unconditional denial within twenty-one (21) days from the date of the conditional denial notice unless, prior to the expiration of this period, the individual requests an exemption review which shall be conducted as provided in subsection (e) of this rule. The twenty-one (21) day period for filing a request for an exemption review may be extended by the Administrative Director, or designee, for good cause.

(e) Exemption reviews. If an exemption review is requested in accordance with subsection (d) of this rule, the Administrative Director of the Courts, or designee, shall initiate an exemption review in regard to any cause, action or crime for which a conditional denial was issued under subsection (d) of this rule. As determined by the Administrative Director, or designee, the review may consist of a review of the documents and supplemental information provided by the individual, a telephonic interview with the individual, an in person review hearing or any other review of the individual's criminal history. The Administrative Director, or designee, may appoint a

subcommittee from the Idaho Supreme Court's Children and Families in the Courts Committee and/or the Child Protection Act Committee to conduct any exemption review provided for under subsection (e) of this rule. Exemption reviews shall be governed by and conducted as follows.

1. Scheduling an Exemption Review. Upon receipt of the request for an exemption review, the Administrative Director, or designee, shall determine the type of review to be conducted. If an in-person review hearing is not scheduled, one of the other types of review enumerated above shall be conducted within fifteen (15) business days from the receipt of the request. If an in-person review hearing is scheduled, the hearing shall be held within fifteen (15) business days from the receipt of the request and the applicant shall be provided with at least seven (7) days notice of the hearing date.

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(f) Criminal history records. Criminal history checks done pursuant to this rule become the property of the Supreme Court and shall be held confidential subject to the provisions of Rule 32, I.C.A.R.

1. Release ~~Of~~ Criminal History Checks. A copy of the criminal history check shall be released:

- a. To the individual named in the criminal history upon receipt of a written request to the Supreme Court, through the Administrative Office of the Courts, provided the individual also releases the state from all liability; or
- b. In response to a subpoena issued by a court of competent jurisdiction.

2. Release ~~Of~~ Information Obtained Through A a Criminal History Check. Information may be released, upon written request or upon signed release by the individual who is the subject of the criminal history check, to:

- a. any judge considering appointment of the subject individual; and
- b. as otherwise required by law.

3. Retention ~~Of~~ Records. The criminal history record, supplemental documentation received, notes from the review, and the decision shall be retained by the Supreme Court, through the Administrative Office of the Courts, for a period of not less than six (6) years after the criminal background check is completed.

4. Use And Dissemination Restrictions For FBI Criminal Identification Records. According to the provisions set for in 28 CFR 50.12, the Supreme Court, through the Administrative Office of the Court, shall:

- a. Notify the applicant or individual fingerprinted that the fingerprints will be used to check the criminal history records of the FBI;
- b. In determining the suitability for licensing or employment, provide the applicant or individual the opportunity to complete or challenge the accuracy of the information contained in the FBI identification record;
- c. Afford the applicant or individual fifteen (15) days to correct or complete the FBI identification record or to decline to do so; and
- d. Advise the applicant or individual who wishes to correct the FBI identification record that procedures for changing, correcting, or updating are set forth in 28 CFR 16.34.

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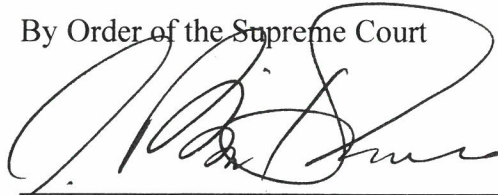
IT IS FURTHER ORDERED, that this order and these amendments shall be effective immediately.

IT IS FURTHER ORDERED, that the above designation of the striking of words from the rule 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 Court Administrative Rules.

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*.

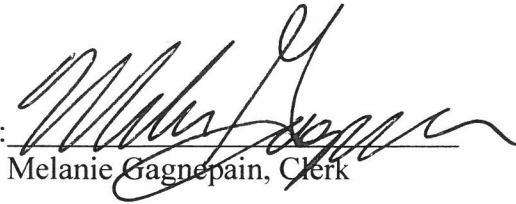
DATED this 27<sup>th</sup> day of June, 2023.

By Order of the Supreme Court

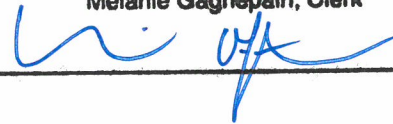


G. Richard Bevan  
Chief Justice, Idaho Supreme Court

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 10-21-23  
Melanie Gagnepain, Clerk

By  Deputy