

**Proposed Amendments to the Idaho Court Administrative Rules**  
**July 2024**

The Idaho Supreme Court seeks input on proposed revisions to the Idaho Court Administrative Rules. Please send your comments to Nate Poppino, [npoppino@idcourts.net](mailto:npoppino@idcourts.net), by **Monday, July 22, 2024**. Thank you.

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**Proposed Amendments to ICAR 32** – The Idaho Supreme Court is developing a new public case information portal that will include public access to court documents. In the process, the Court has received concerns about a possible increase in requests to seal or redact court records that, for example, contain sensitive medical or financial information of parties or third parties. Under current rule, a hearing must be held on every motion to seal or redact records, even if other court rules are clear about the handling of specific information.

The proposed amendments would strike the current section (i) of ICAR 32 – “Other Prohibitions or Limitations on Disclosure and Motions Regarding the Sealing of Records.” – and replace it with a new section (i) as listed below. (*The current section (i) is available to read at [isc.idaho.gov/icar32](http://isc.idaho.gov/icar32).*)

These changes are intended to provide more structure to the sealing and unsealing process. They eliminate the requirement that a hearing be held on *every* motion and instead propose specific *instances* when a hearing must be held. The proposed changes would also provide a clearer path for affected parties to intervene in decisions to redact, seal, unredact or unseal court records.

**(i) Redaction and Sealing of Court Records.**

- (1) **Filing a motion.** Parties to a case, or non-parties whose rights are affected by or who otherwise have a right to access information contained in a court file, may move to redact, disclose, seal, or unseal records in a case file. Additionally, the court at its own discretion may redact or seal records in a case file in accordance with this rule.
- (2) **When a hearing must be held.** When a motion is filed under this rule the court shall hold a hearing on the motion if one is requested by a party to the case. The court may also hold a hearing at its own discretion.
  - (A) Pending a hearing, the court may order the specified records temporarily redacted or sealed if it finds that doing so may be necessary to avoid harm under one of the determinations listed below.

- (B) The court is not required to hold a hearing if the court concludes redaction is necessary to prevent the disclosure of personal data identifiers under subsection (c)(1)(G) of this rule.
  - (C) An order to redact or seal records may be challenged by a non-party whose rights are affected by the decision.
- (3) **Orders to redact or seal.** Consistent with the presumption in these rules of public access to information, when entering an order redacting or sealing records in a case file, a court must fashion the least restrictive exception from disclosure and provide the reason for the redaction or sealing.
- (A) Prior to entering an order redacting or sealing records, the court must make one or more of the following determinations:
    1. The records contain highly intimate facts or statements, the publication of which would be highly objectionable to a reasonable person.
    2. The records contain facts or statements that the court finds might be libelous.
    3. The records contain facts or statements that may compromise a person's financial security, or could reasonably result in economic or financial loss or harm to a person who has an interest in the records.
    4. The records contain facts or statements that could compromise the security of Judicial Branch personnel, property, or sealed or exempt court records maintained by the Judicial Branch.
    5. The records contain facts or statements that might endanger a person's life or safety.
    6. That it is necessary to temporarily seal or redact the records to preserve the right to a fair trial.
    7. The records contain personal data identifiers that should have been redacted pursuant to Idaho Rule of Electronic Filing and Service 15, Idaho Rule of Civil Procedure 2.6, or Idaho Rule of Family Law Procedure 218.
  - (B) Regardless of whether a motion is filed or a hearing occurs, no record can be redacted or sealed (aside from presentence investigation reports) unless the court first enters a written order that includes the determinations made under subsection (i)(3)(A) above. The order must specifically identify the records to be redacted or sealed, and a copy of the order must be served on the Clerk of the District Court. The order shall remain publicly available and subject to examination, inspection or copying by the public, but should not reveal the content of the information protected from disclosure.
  - (C) When a record is redacted under this rule, the original, unaltered record must be preserved under seal. A redacted copy, so marked, shall be substituted for the original in the court file and only the redacted copy shall be subject to examination, inspection or copying by the public.

- (D) When a record is sealed under this rule, it shall not be subject to examination, inspection or copying by the public except as otherwise provided in these rules.
- (E) Presentence investigation reports are presumptively sealed as described in Idaho Criminal Rule 32 and unless a court orders otherwise, may only be disclosed in the manner identified by that rule. No order or hearing is required to seal a presentence investigation report.

**(4) Orders to unredact or unseal.**

- (A) In any order removing redactions or unsealing records, the court must explain its reasoning for the decision. Those reasons may include, but are not limited to:

1. A determination that none of the factors listed under subsection (i)(3)(A) preclude release of the records.
2. A determination that release is permitted elsewhere in court rule, including other subsections of ICAR 32.

The order must also specifically identify the records to be changed, and a copy of the order must be served on the Clerk of the District Court.

- (B) When the court issues an order for a limited disclosure of records that will otherwise remain sealed or exempt from disclosure, its order shall contain appropriate limitations on disseminating the disclosed information.

**(5) Filing under seal.** Sealed records and records requested to be sealed must be filed in compliance with Idaho Rules for Electronic Filing and Service 5 and 6.

**(6) Changes to orders.** The court may reconsider, alter, or amend any order issued under the provisions of this rule at any time.

**(7) Provisions concerning exempt records.** Exempt records are different than sealed or redacted records and are addressed in I.C.A.R. 32(f) and (g). Access to records otherwise exempt from disclosure is addressed in I.C.A.R. 32(c) and (h).

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