

# In the Supreme Court of the State of Idaho

IN RE: ORDER AMENDING LOCAL RULES )  
OF THE THIRD JUDICIAL DISTRICT )

ORDER

The Administrative Judge of the Third Judicial District, having submitted a proposal to amend the local rules pursuant to Rule 1(c) of the Idaho Rules of Civil Procedure to include the Child Protection Caseflow Management Plan that was approved by the Court on June 27, 2016, and the Court having approved that proposal;

NOW, THEREFORE, IT IS HEREBY ORDERED, that the local rules of the Third Judicial District be amended to include the approved Child Protection Caseflow Management Plan, attached to this order, and the amended local rules are hereby approved and adopted.

IT IS FURTHER ORDERED, that the amended local rules of the Third Judicial District shall become effective immediately.

IT IS FURTHER ORDERED, that said amendments to the local rules of the Third Judicial District of the state of Idaho shall be sent to the trial court administrator of the Third Judicial District for publication and dissemination.

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

Dated this 15 day of August, 2018.

ATTEST:

Clerk

By Order of the Supreme Court

R. S. Burdick

Roger S. Burdick, Chief Justice

I, Karel A. Lehrman, 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 8-15-18

KAREL A. LEHRMAN

Clerk

By: [Signature]

Chief Deputy

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
OF THE STATE OF IDAHO**

IN RE: AMENDMENT OF THE LOCAL )  
RULES OF THE THIRD JUDICIAL )  
DISTRICT TO ADOPT A CHILD )  
PROTECTION CASEFLOW )  
MANAGEMENT PLAN )

**ORDER**

WHEREAS, by ORDER dated June 27, 2016, the Idaho Supreme Court approved the Child Protection Caseflow Management Plan for Idaho's Third District: and

WHEREAS the Idaho Supreme Court's December 7, 2015 Amended Order Regarding Caseflow Management Plans provides that each district caseflow management plan "shall be adopted by local rule, subject to the approval and publication by the Supreme Court, in accordance with I.R.C.P. (1)(c) or I.C.R.(2), prior to their effective date;"

**NOW, THEREFORE IT IS ORDERED:**

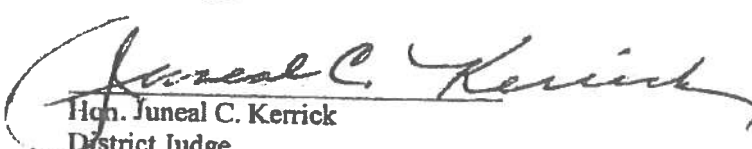
Pursuant to the Idaho Supreme Court's December 7, 2015 Amended Order Regarding Caseflow Management Plans and the authority granted by I.R.C.P. 1(c), the District Court Judges of the Third Judicial District hereby amend the Third Judicial District local rules by adopting and adding the attached "Child Protection Caseflow Management Plan for Idaho's Third District."

This Order amends and revokes any existing inconsistent order or orders dealing with the same subject matter, shall govern all child protection proceedings in the Third Judicial District, and shall be effective upon approval and publication by the Idaho Supreme Court, as provided in I.R.C.P. 2(c). This Order shall be posted in a conspicuous place in the Clerk's Office of each county in the Third Judicial District, shall be published in the Idaho State Bar Desk Book, and shall be posted on the Third Judicial Court website located at: <http://www.the3rdjudicialdistrict.com>.

Dated this 10<sup>th</sup> day of August, 2016.



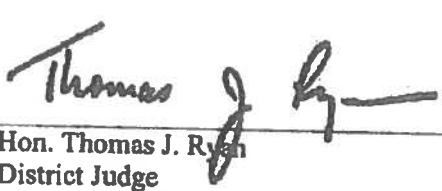
Hon. Bradley S. Ford  
Administrative District Judge




Hon. Juneal C. Kerrick  
District Judge




Hon. Christopher S. Nye  
District Judge




Hon. Thomas J. Ryan  
District Judge



Hon. George A. Southworth  
District Judge



Hon. Susan E. Wiebe  
District Judge



Hon. Davis VanderVelde  
District Judge

## **Child Protection Caseflow Management Plan for Idaho's Third District**

### **Statement of Purpose**

This caseflow management plan will be administered consistently with Idaho's Statewide Caseflow Management Plan.

The purpose of this plan is to ensure fair, just, and timely case resolution in the courts of the Third District by:

1. Preventing unnecessary delay in case processing.<sup>1</sup>
2. Ensuring that each case receives individual time and attention proportional to need in order to ensure a just result in each case.
3. Promoting judicial leadership and instituting continuous court oversight over the progression of cases from filing to disposition.
4. Creating consistency and predictability for users of the court system.
5. Setting reasonable and mutually understood clear expectations for judges, litigants, the Bar, and the public.
6. Ensuring that judges, court clerks, and trial court administrators have consistent, meaningful case management information to inform their efforts.

Nothing in this plan should be construed to create a substantive right.

This plan is not intended as a comprehensive guide for implementing best practices in child protection cases. The Child Protection Bench Cards and Child Protection Manual should also be referenced. These and other resources are located on the Idaho Supreme Court website at <http://www.isc.idaho.gov/child-protection/judges>

### **Section 1: Assignment of Judges in the Third Judicial District**

All magistrate judges are assigned matters specified in Idaho Code 1-2208 and Chapter 23, Title 1, Idaho Code. Additional matters may be assigned by the administrative district judge pursuant to Idaho Code 1-907. In addition, the Idaho Supreme Court may, by rule, specify additional categories to magistrate judges pursuant to Idaho Code 1-2210.

Backup judge coverage may be provided in instances of scheduling conflicts, judicial conferences, vacations, illness, etc., by assignment to either senior or sitting judges, as available. Assignments shall consider the specialized knowledge and experience required and the possibility to consult with the regularly assigned judge. Backup judges presiding over child protection cases should follow Juvenile Rules, statutes and local "custom" or "practices."

---

<sup>1</sup> According to Article I, Section 18 of the Idaho Constitution, "...justice shall be administered without...delay." According to the American Bar Association's *Standards Relating to Court Delay Reduction*, delay is "any elapsed time other than reasonably required for pleadings, discovery, and court events."

For child protection cases, a cadre of specially trained senior judges exists and is maintained by the Administrative Office of the Court. Trial court administrators will use senior judges with child protection experience or training to provide backup coverage on child protection cases. A list of senior judges who meet these requirements and have expressed an interest in hearing child protection cases and termination of parental rights trials is available at the Administrative Office of the Courts.

The administrative district judge in each judicial district is responsible for the overall assignment of judges and caseloads to ensure effective caseload management. Each administrative district judge considers carefully the number and types of judges available within the district, as well as the availability of senior judges. Other considerations include population density, distribution and mix of caseloads, number of counties, geography and driving distances, the feasibility and desirability of specialization of caseloads, and societal and workload trends. The administrative district judge and trial court administrator continually monitor the assignment of judges and the effective use of existing resources.

## **Section 2: Management of Child Protection Cases**

### **Section 2.1: Timelines for Processing Child Protection Cases**

Delays in the processing of child protection cases can have dire consequences for children and families. Children may spend years of their childhood waiting to find permanency. If too much time is spent in foster care during a child's formative years, lifetime problems can be created. Time is of the essence in child protection cases. Courts should ensure timely decision-making at all stages of a child protection cases, from shelter care through permanency.

Idaho Court Administrative Rule 57 establishes time standards for case processing for individual case types. Per the rule, the time standards "are adopted as guidelines for judges, trial court administrators, lawyers, and litigants to assist them in determining the length of time it should take to conclude a case in the trial courts." Time standards establish reasonable, mutual expectations for the courts, attorneys, and the public and can be an effective way of boosting public confidence in the Idaho courts. Pursuant to ICAR 57, time standards for child protection cases are "as provided in the timeframes established in the Idaho Juvenile Rules."

When monitored regularly, time standards serve as a tool to assist courts with managing caseloads, preventing backlog, and assessing progress towards case processing goals. In short, they are a tool for ensuring that Idaho Courts are meeting their goal to provide timely case resolution as reflected in the Mission Statement of the Idaho Judiciary and as mandated in the Idaho Constitution. The identification and monitoring of processing times for key interim case events for each case type is an additional tool to assist with case management efforts, allowing for the identification of specific areas of delay in the case process.

Judges, clerical staff, and trial court administrators consistently monitor time standard reports each month and use the information to take action in particular cases and to adjust processes and reallocate resources to meet case processing goals.

In child protection cases, the following timelines must be met pursuant to Idaho statute and the Idaho Juvenile Rules:

**Shelter Care Hearings:**

The shelter care hearing must be held within 48 hours of the child(ren) being removed or within 24 hours of an alleged offender being removed, excluding weekends and holidays. I.C. §§ 16-1608(2) and (3) and 16-1614(4); I.J.R. 16(b) and 39(c), (d) and (f).

**Pretrial Conference:**

The pretrial conference must be held outside the presence of the court between three (3) and five (5) days before the adjudicatory hearing. I.C. §16-1619(2).

**Adjudicatory Hearing:**

The adjudicatory hearing must be held no later than thirty (30) days after the filing of the petition in the child protection case, or the date the court orders a Juvenile Corrections Act case expanded to a child protection case, or service of the order of removal, whichever occurs latest. (IJR 39(k); *see also*: I.C. §16-1614(6), I.C. §16-1619(1), and IJR 41(b))

The following time standards for adjudicatory hearings have been approved by the Idaho Supreme Court for piloting and tracking beginning in 2015:

90% within 30 days

98% within 60 days

Measured from filing of petition to completion of hearing

**Case Plan Hearing:**

The case plan hearing must be held within thirty (30) days after the adjudicatory hearing or a child coming back into foster care after having been under protective supervision. I.C. §§ 16-1621(1) and 16-1623(5). Case planning hearings are not held if the court has found aggravated circumstances. I.C. § 16-1620.

**Redisposition hearings:**

Redisposition hearings occur when a child under protective supervision comes back into foster care. The hearing must be held within 48 hours of removal, excluding weekends and holidays. I.C. § 16-1623(3).

**Review Hearings:**

Review hearings must be held no later than six (6) months after entry of the court's order taking jurisdiction, generally at the Adjudicatory Hearing, and at least every six (6) months thereafter. I.C. 16-1622(1)(a).

**Permanency Hearings:**

Permanency hearings must be held at any time, but no later than twelve (12) months from the date the child is removed from the home or the date of the court's order taking jurisdiction, whichever occurs first, and every twelve (12) months thereafter. I.C. § 16-1622(2)(b). **If the court has found aggravated circumstances**, the first permanency hearing must be held within thirty (30) days of the finding. I.C. § 16-1620(1).

The following time standards for permanency hearings have been approved by the Idaho Supreme Court for piloting beginning in 2015:

**First Permanency Hearing:**

98% within 365 days

Measured from the date the child was removed from the home or the date the court took jurisdiction, whichever was first, to completion of hearing

**Subsequent Permanency Hearing:**

98% within 365 days

Measured from the earlier of the date of the previous timely permanency hearing or the last date on which the previous permanency hearing would have been heard timely to the completion of the hearing. (I.C. § 16-1622(2))

**Timelines for Achieving Permanency Goals:**

Timelines for permanency goals should be addressed at the case plan hearing:

**Reunification:**

**If the court has not found aggravated circumstances**, reunification should be accomplished within 12 months from the date of removal; provided, however, if it is in the child's best interest, the court may approve an extension of up to 3 months to finalize reunification. I.J.R. 44(a)(1). **If the court has found aggravated circumstances**, the Department is not obligated to make reasonable efforts to reunify the family. (§ 16-1620)

**Guardianship:**

If the permanency goal is guardianship, it should be finalized within 13 months from the date of removal. I.J.R. 44(a)(2). **If the court has found aggravated circumstances**, guardianship should be finalized within 5 months from the date of the determination of aggravated circumstances. I.J.R. 44(b)(1). Any extension of time to finalize guardianship must be approved by the court.

**Termination/Adoption:**

If the permanency goal is termination of parental rights and adoption, the court shall order the Department to file a termination petition within 30 days of approval of the goal. Termination must be finalized within 18 months and adoption within 24 months from the date of removal. I.J.R. 46. A termination petition is not required to be filed as stated above if the court finds that the child is placed permanently with a relative; there are compelling reasons why termination is not in the best interests of the child; or the Department has failed to provide reasonable efforts to reunify the child with his/her family. I.C. § 16-1622(2)(g). **If the court has found aggravated circumstances**, termination of parental rights should be finalized within 6 months and adoption within 12 months from approval of the permanency goal. I.J.R. 44(b)(2). Any extension of time to finalize termination and adoption must be approved by the court.

In the case of a safe haven baby, shelter care and adjudicatory hearings are held as set forth above. No case plan hearing is held. The Department is required to petition for termination of parental rights as soon as practicable following the initial 30 day period from the date the child was delivered to the safe haven. I.C. § 39-8205.

**Section 2.2: Overlay of Federal Law**

In addition to the time standards and time lines as set out in Idaho statute and rule, child protection cases must be managed in compliance with several federal statutes. Failure to comply can result in unnecessary case delay or may negatively impact outcomes for children in care.

**1. Reasonable Efforts Findings and IV-E funding.** In order for an Idaho child who is placed in foster care to establish and maintain eligibility to receive federal IV-E foster care maintenance payments, the presiding judge must make specific findings at specific times in the child protection case. Failure to make the required findings may delay permanency for the child, and may also result in the loss of federal foster care match and adoption assistance funding for the child.

Judges hearing child protection cases must make the following findings at the following times:

**A. Contrary to the Welfare.**

The judge hearing a child protection case must make a finding that it would be "contrary to the welfare of the child to remain in the home." 42 U.S.C § 672(a)(2)(A)(ii); I.C. §§ 16-1615(5)(d), 16-1619(6).

The finding must be made in the **first order pertaining to the removal of the child from the home.**

If the Rule 16 Expansion Order is the first order of removal, the contrary to the welfare finding **must** be included in the IJR 16 Expansion Order. Failure to make this finding in the first order will render an otherwise eligible child ineligible for foster care maintenance payments for the duration of the child's stay in foster care and for federal adoption assistance payments.



**B. Reasonable Efforts to Prevent Removal.**

A judicial determination must be made as to whether or not the Department made reasonable efforts to prevent the removal of the child from his/her home.

The finding must be made no later than sixty (60) days from the date the child was removed from home.

**C. Reasonable Efforts to Finalize the Permanency Plan.**

A judicial determination must be made as to whether the Department did or did not make reasonable efforts to finalize the permanency plan that was in effect.

The finding is a retrospective review of the efforts to finalize permanency and must be made within twelve (12) months of the date the child is removed from the home or the date of the court's order taking jurisdiction, whichever occurs first, and at least once every twelve (12) months thereafter. (§16-1622(2)(c))

The Third Judicial District employs the following process to ensure that the above findings are made at the specified times:

The Third Judicial District magistrate judges hearing child protection cases utilize structured minute forms that have reminders of the findings that need to be made at each hearing associated with the processing of child protection cases.

**2. Special Circumstances that Can Contribute to Delay.**

**A. Indian Child Welfare Act (ICWA) determination.**

Failure to comply with the standards required by the ICWA may result in substantial delay in finding permanency for Indian children. Early and accurate identification of any unmarried child who is a member of an Indian tribe or is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe is critical. The court should inquire about the application of the ICWA at the earliest possible time in the case and continue to do so until a determination is made. If the ICWA is applicable in a case, there are a substantial number of unique issues that must be addressed. Judges should employ the bench cards, child protection manual, and the BIA Guidelines.

The Third Judicial District employs the additional following process for early identification of Indian Children in child protection cases:

The Court will ask parents at every hearing if there is any Indian heritage in the family and will encourage the parents to let the court know immediately if they discover information regarding possible Indian heritage. The Court orders the Department of Health and Welfare to do an investigation to determine if there may be ICWS issues in the event that the parents are uncertain about the possibility of any Indian heritage being present in the family. This line of inquiry ends only when a definite answer is received regarding the families' Indian heritage.

**B. Interstate Compact for the Placement of Children (ICPC).**

The ICPC is a federal law that governs the out-of-state placement of children. Delay can result from failure to timely initiate the ICPC process or from delay by the receiving state in their response to the placement request. Whenever out-of-state placement is a possibility for a child, the court should inquire about the application of the ICPC (specifically, Regulation 7) at the earliest possible time. ICPC Regulation 7 is a tool to expedite ICPC approval or denial and applies in a specific set of circumstances.

The Third Judicial District employs the additional following procedures to manage and/or prevent unnecessary delay in the ICPC process:

At the first hearing where it appears that an out-of-state placement is a concurrent plan, and at least by the case plan hearing, the Court should inquire of the Department of Health and Welfare whether or not it has commenced an ICPC or multiple ICPCs and/or the Court should order when appropriate a Regulation 7 be commenced. Since some states are slow to prepare these reports, the Court must act with all deliberate speed. Further, the Court should set review hearings as necessary to inquire as to the progress of responding states.

**Section 2.3: Early identification and engagement of family.** Early identification of family members helps to ensure timely permanency for children. Failure to engage parents can delay the court process. In addition, family members may provide the most appropriate placement or may provide guidance about the most appropriate placement for the child.

Federal law requires that the Department identify all extended relatives within the first thirty (30) days of a child protection case. Failure to do so may result in substantial delay throughout the life of a case, including late appointment of counsel for a parent, delay in ICPC processing, delay in genetic testing, or conflicting orders.

The Third Judicial District employs the following process to ensure early identification of family members in child protection cases:

It is standard practice for the court to inquire on the record at the shelter care hearing any additional or potential family members to include an inquiry of the mother as to who is the father of the child(ren). The prosecuting attorney is creating a multi-part form to be completed with family information for purposes of passing along that information to the prosecuting attorney, public defender and guardian ad litem.

It is also standard practice for the Department of Health and Welfare to obtain birth certificate(s) for the child(ren) involved and to provide those documents to the prosecuting attorney.

**Section 2.4: Concurrent planning.** Concurrent planning is a planning model that prepares for and implements different outcomes at the same time. I.C. §16-1602 (11) Concurrent planning is essential from the outset of a child protection case. If there is no finding of aggravated circumstances, the case plan must include a plan for reunification as well as a concurrent permanency goal and a plan for achieving that goal. The plan for reunification and for the alternate permanency goal should be implemented concurrently from the outset of the case. Initiating concurrent planning late in a child protection case will result in substantial delay in permanency for the child.

The Third Judicial District employs the following process to ensure that concurrent planning is initiated early in a child protection case and is implemented along with the plan for reunification:

**A concurrent plan is required to be part of the case plan that has to be submitted to the court.**

## **Section 2.5: Case Assignment and Case Coordination**

### **1. Assignment of Child Protection Cases to Judges and Deputy Court Clerks**

The purposes of a case assignment policy are to 1) establish for the district the process by which cases will be assigned (individual case assignment or an alternative calendar system); 2) ensure continuity of judicial attention; 3) designate the instances in which cases involving the same family will be assigned or consolidated for adjudication by the same judge; and 4) put in place case assignment processes that ensure the public that the assignment of cases to judges within the Third Judicial District is not susceptible to control or manipulation by parties or attorneys.

Judges assigned to child protection cases have the responsibility to protect the rights of participants before the court and ensure safe, permanent homes for abused and neglected children. Judges assigned should have training, resources (Bench Cards and Child Protection Manual) and support necessary to accomplish this task and ensure that all participants are accountable for their duties and responsibilities to the family and the case.

Judges shall provide close judicial oversight of child protection cases and to the fullest extent possible preside over all hearings in the case and practice the one family/one judge assignment to cases and proceedings.

Clerks assigned to child protection cases shall have or be supervised by a clerk having specialized training for the processing and clerking of these proceedings. Best practice is for the same clerk to be responsible for all stages of a case both in and out of the courtroom and to work with the assigned judge in scheduling proceedings to meet time deadlines and data entry requirements.

The Third Judicial District employs the following case assignment process for child protection cases:

Child protection cases are assigned in one-judge counties to the resident magistrate judge. In Payette County, where there are two resident magistrate judges, child protection cases are assigned to one judge, Judge Brian Lee, who has extensive experience with child protection cases. In Canyon County, Judge Kotyk is the judge assigned to the specialized child protection court.

In Canyon County, the clerk's office checks names upon the filing of a child protection case to determine if there are any other active cases involving the same parties to the child protection action. In the even there are any related family law cases, the child protection judge will assume responsibility for handling all of those cases. A small and specialized clerk's staff has been assigned to handle all clerical responsibilities associated with the processing of child protection cases.

The Third Judicial District adheres to the provisions of IRCP 40 in responding to recusals, disqualifications, and the need for additional judges to handle lengthy trials by assigning cases to other sitting judges or senior judges assigned to the district.

## **2. Case Coordination**

### **A. Case Coordination with Other Pending Cases**

Timely resolution of a child protection case is often affected by parallel court cases involving the parents and/or children. The court, to the extent possible, coordinates with all cases involving the family to identify additional resources and reduce obstacles to timely resolution in the child protection case. This includes identifying and utilizing the Idaho Department of Health and Welfare "child identification number". Additionally, the court considers at least the following:

1. Information provided on the Family Law Case Information sheet
2. Obstacles created by criminal cases for parents, including, but not limited to, the impact of "no contact orders" issued between the parents and children and the discouragement of parents to participate in evaluations pending criminal trials
3. Any case involving the family, including but not limited to:
  - a. Guardianship or Conservatorship
  - b. Custody (including out-of-state orders)
  - c. Child Support/Paternity
  - d. Juvenile
  - e. Companion criminal cases
  - f. Problem solving court cases
  - g. Domestic violence

### **B. Late Appearing Parent/Late Appearing Child**

Following the initiation of a child protection case, a child or parent may be identified who is connected to an existing child protection case. If the court already has jurisdiction over a child it has jurisdiction over the cause of action (*in Rem*) and has jurisdiction to engage the newly discovered or appearing parent.

If a child is identified that is connected to an existing case, that child may be brought into the existing case by: (1) If prior to adjudication, with proper notice, amending the petition to include the child; or, (2) if, after adjudication, jurisdiction is found, by filing a new petition and if jurisdiction is taken, merging it into the original case and follow the timeline of the original case.

The Third District follows these practices when a sibling or parent is removed from home at a later date:

**In the instance when a sibling or parent is removed from the home at a later date, an amended petition is filed adding the child or parent and hearings previously scheduled for the original petition are kept on the calendar for the amended petition.**

### **C. Problem Solving Courts**

When a family has an open child protection case and is simultaneously participating in a problem solving court, and the same judge is not hearing both cases, communication between the child protection and problem solving courts is essential.

Information-sharing protocols should be developed to ensure that information shared between the problem solving court and other systems that is critical for informed decision-making and treatment planning while protecting parents' privacy and due process rights. The protocols must also ensure that information is shared in a timely way.

The Third District follows these practices to ensure good communication between child protection and problem solving courts:

**Although there have not been any issues in this area, it is contemplated that there would be direct communication between the judges involved in order to avoid any possible communication gaps if left to staff to pass along information.**

### **D. Transfer of Venue**

Transfer of venue in a child protective act case is governed by IJR 50. Prior to the transfer, the judge of the sending county court will communicate, either verbally or in writing, and obtain consent to the transfer from a judge of the receiving county court. (IJR 50(c)(6)) Venue may not be transferred prior to the entry of a decree finding the child within the jurisdiction of the court under the child protective act.

The Third District follows these practices when venue is transferred to another Idaho district:

**Before venue in a case is transferred to another judicial district, the Third District judge either calls or sends an e-mail message directly to the receiving judge to relate that the case is in proper status for venue to be changed and to relate the reason for the change of venue.**

The Third District follows these practices when venue is transferred from another Idaho district:

**When notice is received by the clerk's office or TCA office that a change of venue will be received from another judicial district, appropriate personnel are put on notice to watch for arrival of the case and to arrange for the immediate appointment of necessary legal counsel and the setting of necessary hearings.**

#### **Section 2.6: Proactive Case Management**

All cases and calendars are set in such a way to prevent unnecessary delay in case processing, while balancing the effective use of the time of parties, judges, attorneys, and court personnel. The presiding judge adopts a scheduling policy that accomplishes this and reduces the likelihood of scheduling conflicts requiring rescheduling of events. The judge maintains early and continuous control of all cases from initiation through resolution by the use of:

1. Appropriate case assessment;
2. Scheduling of hearings that comply with time standards adopted by the Idaho Supreme Court, Idaho statutes, and Federal law; and
3. Court control of continuances for purposes of fostering timely and just voluntary resolution of most cases and achieving trial date certainty for those cases that are resolved by trial.

#### **Section 2.7: Early and Continuous Assessment, Scheduling of Events, Calendar Setting**

##### **1. Early and Continuous Assessment**

Judges continuously assess cases to ensure that every case receives individual attention and to make sure that the amount of individual attention is proportional to need. The amount of court time and resources devoted to a case and the pace at which a case progresses depends on the complexity and individual needs of that case. Some cases can be resolved quickly with little court involvement while other cases require more time, court appearances, and judicial oversight to reach resolution. Through an early and ongoing assessment process, the judge manages the progress of a case in a manner that will result in the most timely and just resolution possible, given the individual circumstances of that case. Prompt screening and assessment help to ensure compliance with ASFA timelines and provide the greatest chance of the family's success.

There are people from many disciplines that the court may draw from in order to assess the case and reach its findings. Judges are encouraged to conference on the record with parties and interested persons throughout the life of a child protection case. These people may include but are not limited to:

- \*Parents
- \*Children and Youth
- \*IDHW Staff
- \*Foster Parents
- \*Guardian *ad litem*
- \*Extended family

- **\*Tribal Representatives**
- **\*Medical and Behavioral Health Professionals**

The Child Protective Act is silent as to whether or not the Idaho Department of Health and Welfare is a party to a child protection case. Judges should solicit the perspective of the Department either directly from IDHW staff, or if represented by a Deputy Attorney General, their counsel.

Early and ongoing assessment for substance abuse/dependency, mental health issues and trauma is also necessary to identify cases that are appropriately referred to a problem solving court, other appropriate community service, or for enhanced treatment or services, in order to ensure that the necessary amount of judicial time and oversight is provided in the case.

When determining the most appropriate plan for a child protection case, the court considers at least the following:

1. Parental attitude (positive or negative)
2. Questions regarding paternity
3. Housing status of family at the time of removal
4. Substance abuse or dependency, trauma, or mental health issues
5. Prior history with IDHW including prior terminations
6. Re-entry cases
7. Long-term incarceration of one or both parents
8. Domestic violence
9. Developmental disability
10. Family constellation (genogram)
11. Type and quality of legal representation (public vs. private counsel)

The Third Judicial District follows these practices to ensure early and ongoing assessment in child protection cases as well as appropriate early assignment to problem solving courts or appropriate community resources:

The Third District follows a practice of “front-end loading” management of cases by addressing what sort of early screening and/or treatments that the Department of Health and Welfare can schedule and arrange at the earliest opportunity. Instead of waiting until the case plan hearing, the Court encourages the parents (and older children if relevant) to work with the Department of Health and Welfare as soon as possible to resolve the issues that brought the child(ren) into care so that the family is reunited as rapidly and safely as possible.

## **2. Scheduling of Events and Ensuring Meaningful Hearings**

All scheduled case events are meaningful events, defined as events that (a) move a case toward disposition and (b) prompt the attorneys and parties to take necessary action. Monitoring the effectiveness and timeliness of interim case events between filing and disposition helps to prevent unnecessary delay. A number of key interim case events, including those listed in Section 2.1 of this plan, will be tracked in the case management system for informational and case management purposes. The following guidelines are used to ensure that case events are meaningful:

1. Hearings and trials are scheduled in a manner that minimizes delay, respects the participants' time and reduces the potential need for continuances.
2. Adequate time should be set aside for contested hearings, which should be completed without disruption rather than parsed out over several days.
3. Every event is a meaningful opportunity for case resolution.
4. Every event is potentially more meaningful when parents are able to see and hear from the judge. A short hearing should be held when the parties have stipulated to a matter to allow face-to-face communication between the judge and parents. See IJR 38.
5. Future action dates (based on interim case events) are always assigned and deadlines for those dates are enforced.
6. Requests for continuances are considered pursuant to Section 2.10 of this plan.

The Third Judicial District follows these practices to ensure that all scheduled events are meaningful:

**Hearing dates are front-end loaded at the early state of child protection cases so that all parties and agencies are aware of upcoming case events and have an ample opportunity to be prepared for hearing.**

**Multiple-day termination trials are assigned to senior judges so that the trials can be calendared in an expedited fashion and be completed without interruption.**

**The calendar plan for the child protection judge in Canyon County is designed to allow adequate time for individual case hearings absent exceptional circumstances that may require additional calendar time.**

#### **A. Importance of Timely Reporting**

The Department and the GAL are required to file reports and plans prior to statutorily mandated conferences and hearings. Failure to file reports timely causes unnecessary delay. The Department's report of investigation must be received by the court and parties prior to the pretrial conference for the adjudicatory hearing. I.C. §§16-1616 and 16-1619(2). The Department must file a case plan no later than 5 days prior to the case planning hearing. I.C. §16-1621(1). The Department and the GAL must file reports for 6 month review and annual permanency hearings at least 5 days prior to the hearing to which they pertain. I.C. §§16-1629(4) and (9), 16-1633(2), and IJR 45(c). Written reports for review hearings other than the 6-month review hearing are not required, but may be requested by the court. Judges are encouraged to convene stakeholders to explore barriers to timely reporting.

The Third Judicial District follows these practices to encourage timely reporting:

**The court accepts the filing of reports via electronic means which helps expedite the filing process. The court also allows "short" filing of reports by the Department and the GAL when cases need to be quick set for some reason or there are problems receiving information necessary for the reports from service providers.**



As a means to not delay a case, oral reports will also be accepted when circumstances do not allow the time necessary to prepare a written report.

**B. The Right of Children and Foster Parents to be Heard**

Children age eight (8) and over and the foster parents of, pre-adoptive parents of, and relative placements for the child shall be provided notice of and have a right to be heard at any post-adjudicatory hearing. (IJR 40) Judges are encouraged to schedule hearings in a manner that encourages and facilitates the participation of youth, foster/pre-adoptive parents, and relative caregivers. This includes providing set hearing times and sufficient hearing length to encourage meaningful interaction with children and foster parents.

The Third Judicial District follows these practices to encourage time-certain hearings and the meaningful participation of children and foster parents:

When children are necessary for hearings or children who desire to attend hearings, the court schedules these hearings whenever possible outside of normal school hours. Prior to the hearings, foster parents are sent a letter of introduction from the judge by the district guardian ad litem program office explaining the court process and encouraging the foster parents to attend hearings. The district guardian ad litem office confirms that the child(ren) and the foster parents are notified of upcoming hearings. Young children are furnished books or animals to help provide them with some degree of comfort and the judge shakes hands with the children to make them feel welcome. The court has reached out to foster parent organizations to encourage active participation by foster parents in court hearings. The court on the record also continues to encourage foster parent and foster child participation.

**C. Problem Solving Court Practices that May Facilitate More Meaningful Hearings**

Judges and stakeholders are encouraged to consider:

- Positive Judicial Qualities
- Three minutes of direct contact with parents at each hearing
- Policy and plan for assessing parent for a substance use disorder at the earliest point possible.
- Policy and plan for timely access to treatment, drug testing and increased monitoring for individuals with a substance use disorder who are not eligible for or decline to participate in a child protection drug court
- Increased frequency of hearings for parents with a substance use disorder who are not eligible for or decline to participate in a child protection drug court
- Formal training of court and IDHW staff on substance use disorders, dependency, and related topics.

**3. Calendar Setting**

For judges presiding over an individual calendar, counsel contacts the clerk of the presiding judge to calendar a matter for a time certain. In jurisdictions using alternative calendar systems, matters are scheduled by the clerk's office or at the direction of the presiding judge, as necessary. All calendar settings are made within the applicable time standards. Settings outside of an applicable

time standard or statutory timeframe are made only upon a showing of good cause and upon order of the presiding judge.

Child protection cases require individual attention. For all hearings other than shelter care hearings, districts are encouraged to use a calendaring system that allows for hearings that are time-certain and of a length proportional to need.

The Third Judicial District follows these practices to promote time-certain hearings and of a length proportional to need:

The child protection calendar in Canyon County is designed specifically to accommodate child protection cases and is a calendar for a specialized judge assignment to this case type. There are designated calendar slots for the various types of hearings in child protection cases. The calendar slots have been designed to provide appropriate lengths of time to adequately accommodate the needs of the matters scheduled for those time slots. There are no "cattle call" calendars for child protection cases.

#### **Section 2.8: Appointment of counsel**

The fundamental Constitutional right of parents to parent their children, the interplay of state and federal laws, the complex legal issues, the upheaval in families, and the need for the case to move quickly through the system all necessitates specialized legal representation in child protection cases. Active steps should be taken to ensure that parties in child protection cases have early access to competent legal representation. Ideally, attorneys working with the child protective system should be committed, well trained, and experienced in the child protection process.

A parent, guardian, or legal custodian has the right to be represented by counsel in all proceedings before the court. The court shall appoint counsel to represent the parent(s), guardian or legal custodian if it finds that they are financially unable to pay for such legal services, unless representation is competently and intelligently waived. At the shelter care hearing, the judge must advise the parent, guardian, or custodian of their right to be represented by an attorney, and if financially unable to hire an attorney, of their right to be represented by a court-appointed attorney. (IJR 39(g)) In addition, Idaho law requires the appointment of a guardian ad litem or an attorney for the child. For children under the age of 12, a guardian ad litem and counsel for the guardian ad litem shall be appointed. For a child twelve (12) years of age or older, the court shall appoint counsel to represent the child and may, in addition, appoint a guardian ad litem. (§16-1614)

The Third Judicial District follows these procedures to prevent continuances of shelter care hearings due to a lack of counsel:

Attorneys for all known parties are appointed as soon as the petition is filed in the clerk's office. Notification of the appointments is provided where possible by electronic means so that the shelter care hearing can take place without delay.

Parents, guardians, and children with conflicting positions or potential for conflicting positions may require the appointment of conflict counsel. Inefficient or ineffective appointment of conflict counsel may result in significant delays in processing child protection cases. Conflicts may also

arise when the parents also have criminal charges requiring appointment of public defenders. Public defenders assigned to represent a parent in both criminal and child protection proceedings have an added responsibility of helping the parents succeed in the child protection proceedings while at the same time protecting the parents' rights in the criminal matter.

The Third Judicial District follows these procedures to reduce delays and ensure that conflict counsel is appointed at the earliest possible date in child protection cases:

**The public defender has an established roster of conflict counsel with attorneys who are experienced and readily available to pick up conflict counsel appointments on very short notice. The prosecuting attorney is usually the first to become aware of actual or potential conflicts and provide this information immediately to the public defender.**

## **Section 2.9: Early case resolution processes**

### **1. Family Group Decision Making (FGDM)**

Family Group Decision Making (FGDM) recognizes the importance of involving families in decision making. FGDM meetings are held at the case opening and at other critical junctures throughout the case. FGDM may assist parents in making co-parenting plans, and aid in resolving conflict with children, other family members, between foster and birth parents, between kinship providers, birth parents, etc. Judges are encouraged to confirm that a FGDM meeting has occurred prior to the case plan hearing and that it is offered at critical junctures throughout the case.

### **2. Front-Loading Services**

To achieve better outcomes in cases, the services should be "front-loaded." This means that all stakeholders must move quickly to assess the facts of the case, identify the appropriate parties and participants, and provide the appropriate services for the family at the earliest possible stage. Effective practice includes early identification and involvement of fathers and other relatives, early engagement of parents in the court process, as well as early voluntary involvement of the family in remedial services. Important court practices include establishing firm court dates and times with tight control over continuances and rapid distribution of the court's orders to all parties. Judges should encourage parents, as early as possible in the case, to discuss any concerns or needs that may prevent the reunification of the family.

## **Section 2.10: Continuances**

A continuance, for the purposes of this section, is when a party requests the postponement of a scheduled hearing or adjudicatory date. Courts exercise discretion in determining whether to grant or deny a requested continuance. If a continuance is granted, courts also exercise discretion in determining the length of the continuance. Continuances should only be granted for good cause shown and for the shortest amount of time possible. Joint, or stipulated, motions to continue are not binding on the court. Courts should always be mindful to avoid and reduce unnecessary delays. Some brief delays may be needed, from time to time, to effectuate justice or to facilitate effective resolution of cases.

Some factors to consider in determining whether to grant a motion to continue are:

1. The reason for the request and when the reason arose.
2. Whether the reason relates to a fundamental right (such as the right to counsel) or is simply related to an issue of convenience.
3. Whether the reason for the request was within the control of counsel or a party or was otherwise reasonably foreseeable and, possibly, preventable.
4. Whether granting or denying the motion would unfairly prejudice a party.
5. The number of continuances previously granted.
6. The age of the case.
7. Whether a child or children are in shelter care or foster care and the effect a delay would have on them.
8. The child's need for timely permanency.
9. The balance between benefits and burdens, i.e., does the benefit to be achieved by a continuance outweigh the burden caused by a delay.
10. Whether the hearing is a short-set hearing (shelter hearing, pretrial, adjudicatory) or a hearing set with longer time parameters (review hearing, permanency hearing).
11. Any applicable time standards or time frames in statutes or rules.
12. CP cases are civil cases. If a parent has been served and the court has jurisdiction, the voluntary absence of the parent from a hearing is not grounds for a continuance. (Unlike a criminal case where the presence of the defendant is generally necessary to proceed).

The judges of the Third Judicial District have adopted the following policy to implement the statewide policy on continuances in child protective cases:

**Continuances will not generally be favored and there must be a showing of good cause and resulting benefits before a continuance is granted. Continuances should not result in the violation of any statutory or rule timelines.**

#### **Section 2.11: Effective and Consistent Monitoring of Case Management Reports**

Caseflow management necessitates the regular production of case management information from an automated system. Case management reports provide a means of identifying and preventing delay in the processing of individual cases and the buildup of a case backlog that can result in an overall delay in the processing of all cases. They also provide information about potential sources of delay.

The production of case management information is not sufficient in and of itself, however, to ensure effective caseflow management. Equally important is the utilization of this information:

1. Judges consistently and effectively monitor their case management reports and take appropriate action to ensure that meaningful events are set for all cases, that case processing goals are being met, and that potential sources of unnecessary delay are identified so that they may be addressed through case management.
2. Administrative district judges and trial court administrators closely monitor reports for their districts to identify cases that are nearing or exceeding applicable time standards, areas where backlog may be developing, potential sources of systematic delay, and changes in overall caseloads and inequities that may be developing in caseload distributions that may require changes in judicial assignments.
3. Court clerks monitor case management reports regularly to ensure that all pending cases are scheduled for meaningful events through disposition.

It is the responsibility of individual courts to ensure that data entry practices are consistent with statewide uniform business practices thus resulting in accurate and reliable case management information.

The Third Judicial District uses these procedures to ensure effective use of data reports for monitoring the progress of child protection cases:

**The trial court administrator is responsible for auditing monthly case reports to identify any child protection cases that appear to have issues and to notify the assigned judge or designated support staff of those cases that should be reviewed for possible processing issues.**

## **Section 2.12: Special Considerations for District Plans**

### **Language Access Services**

Federal and state laws require judges to ensure parties, witnesses, and other interested individuals have meaningful access to the courts. Language access services are provided in all civil and criminal cases pursuant to Idaho Code 9-205. Professional court interpreters are appointed pursuant to ICAR 52. Determining the need for services is done in a number of ways, including the following:

- For spoken languages, self-identification by the non-English speaker (or companion). For the deaf or hard of hearing, through an ADA request for accommodation.
- A judge finds there is a need for language access services.
- Court-personnel may receive notice directly from the public, attorneys, guardians, probation officers, law enforcement and other participants.
- Outside agencies, such as social workers, law enforcement or correctional facilities notify the court about a LEP individual's need for auxiliary services for an upcoming event.

The Third Judicial District adheres to the following practices to ensure the most efficient use of available certified and non-certified interpreter resources:

**The district has a language services coordinator who makes his services available to all counties in the district to include either providing certified Spanish interpreter services himself, or arranging for other certified interpreters to provide necessary services.**

### **Self-Represented Litigants**

The Idaho Judiciary is committed to ensuring access to justice for self-represented litigants (SRLs). Consistency and predictability are vital to meeting this goal. Self-represented litigants may lack the expertise to manage their cases effectively. There are key points in a case where SRLs can unintentionally stall the progress of a case. The Judiciary's commitment to ensure fair and timely case resolution requires that these and other SRL concerns be addressed. All solutions will look toward effective practices that will not become obstacles to SRLs but will instead facilitate proper notification and access to information for SRLs so that they can more effectively navigate the court system.

The Third Judicial District adheres to the following practices to ensure that child protection proceedings in which parties waive their right to counsel proceed in the most fair and efficient manner possible:

**The judges in the Third Judicial District are not allowing parties to waive their right to counsel and are appointing counsel for all parties named in a child protection action.**

#### Media relations

The Idaho courts have a manual for judges on media relations and the handling of notorious cases. These issues are addressed in ICAR 45 and 46. In addition, ICAR 32 addresses public requests for court records, which includes media requests. Child protection proceedings are exempt from public disclosure pursuant to I.C. §9-340B(7), I.C. §16-1626, and ICAR 32 (g)(9)(A).

Administrative district judges establish effective relations between the court and the media, by scheduling forums or other opportunities for discussion with the media, and by providing general information to the media about the courts, the law, and court procedures and practices, to the extent permitted by the Idaho Code of Judicial Conduct.

#### Telephonic and other remote appearances

IRCP 7(b)(4) authorizes the use of telephone conferencing to conduct hearings. Allowing parties, witnesses, interpreters, probation officers and attorneys to make court appearances without appearing personally in court can result in significant efficiencies and are allowed when they do not compromise the rights of a party. Stipulating to remote appearances by forensic testing personnel can reduce backlog in forensic testing requests.

In the Third Judicial District, remote appearances are allowed as follows:

**Telephonic or video conferences are routinely allowed for all non-evidentiary hearings. Expert testimony via telephone conference under special circumstances and with the agreement of all parties involved may be allowed at the discretion of the judge.**

The procedures for arranging a remote appearance are:

**Court case files are flagged that a remote appearance has been requested and the judge's clerk is responsible for coordinating the remote appearance with parties and counsel.**

#### **Section 2.13: Maintaining the Third Judicial District case management plan**

Once the Statewide and District caseflow management plans are established, keeping the plans relevant will be a priority. Therefore, outreach and collaboration will be ongoing. Both at the state and at the individual judicial district levels, collaborative planning procedures will be maintained to promote regular and ongoing communication, problem solving and adaptation of caseflow management processes to the ever-changing needs of the justice system and the communities it serves.

Major sources of future changes will be the deliberations and conclusions of the Advancing Justice Committee's work group on uniform business processes and the Judges Associations' efforts to develop uniform forms for all Idaho case types.

The Third Judicial District maintains the case management plan through the following process(es):

Regular stakeholder meetings will provide a forum for discussing issues related to the processing of child protection cases and to make any necessary changes to this case management plan.