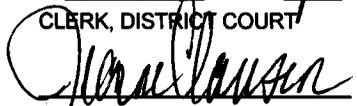


STATE OF IDAHO)
County of Kootenai)^{ss}

FILED 3/27/2020

AT 1:00 O'clock P.M
CLERK, DISTRICT COURT


Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE

STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,)
)
) *Plaintiff,*)
 vs.)
)
) **JAMES BRYAN PALAZEKE,**)
)
) *Defendant.*)

Case No. **CR28-20-4304**

**AMENDED ORDER (AND
MEMORANDUM DECISION) DENYING
DEFENDANT'S MOTION TO
DISQUALIFY PURSUANT TO
I.C.R. 25(a)**

On March 23, 2020, the Idaho Supreme Court filed its Amended Order In Re: Idaho Supreme Court Response to COVID-19 Emergency, which, in ¶ 19, "suspended [I.C.R. 25(a)] for all new case filings during the effective term of this Amended Order." The last sentence of the order reads "The Amended Order shall be effective from March 25, 2020, until further Order of this Court." On March 26, 2020, the Idaho Supreme Court filed its Order In Re: Emergency Reduction in Court Services and Limitation of Access to Court Facilities, which in ¶ 11 contained the same language suspending I.C.R. 25(a). That order supersedes the March 23, 2020, order, but does not state when it shall become effective, other than in the first paragraph where it states "Effective immediately."

In the present case, Judge Eckhart filed the Order Holding (bind over order) on March 24, 2020. At midnight, on March 25, 2020, the Idaho Supreme Court's Amended Order took effect. On March 25, 2020, counsel for the defendant filed a Motion to Disqualify Pursuant to I.C.R. 25. On March 26, 2020, the undersigned entered its Order Denying the Motion to Disqualify, and signed that order at about the same time the plaintiff filed its Objection to Defendant's Motion to Disqualify. The Court had not seen the plaintiff's objection in this case prior to signing that order. In the plaintiff's objection, the

plaintiff argues I.C.R. 10(a) states that “After an indictment or an information has been filed with the district court, the defendant must be arraigned on it by the court.”, and “The bind over order assigning this case to Judge Mitchell occurred on March 24, 2020.” “Thus, because this case had not yet been filed in the District Court the Supreme Court Order precedes the defendant’s disqualification and therefor said motion must be denied.”
Objection 1-2.

First, this Court agrees that “new case filings” in light of I.C.R. 10, refers to the filing of the case in district court (as opposed to the date the Criminal Complaint was filed in magistrate division, which in this case occurred on March 11, 2020).

Second, this Court must determine when this case was “filed” in district court, upon the Order Holding (bind over order) or the filing of the Information. This Court finds that it is not the date of the Order Holding (bind over order) that controls, it is the date of the filing of the Information which determines when the case is “filed” in district court.

The Court makes that finding based on five factors. First, that finding is based on the fact that I.C.R. 10 only speaks of the filing of the Information or Indictment as the significant event, and does not reference at all the filing of the Order Holding (bind over order). Second, the Order Holding and I.C.R. 5.2(b) place more emphasis on the filing of the Information. The Order Holding (bind over order) in this case complies with I.C.R. 5.1(b) and “require[s] the defendant to answer in the district court.” I.C.R. 5.1(b), “IT IS HEREBY ORDERED that the defendant is held to answer the above charges) and is bound over to District Court.” Order Holding 1. The Order Holding continues, “The Prosecuting Attorney shall file an Information that includes all charges under this case number.” *Id.* Third, Idaho Criminal Rule 7(a) requires “All felony offenses must be prosecuted by indictment or information.” “The prosecuting attorney must file an Information within 14 days after an order has been filed by the magistrate in the district court holding the

defendant to answer, unless more time is granted by the court for good cause shown.” I.C.R. 7(f). Fourth, going back to I.C.R. 10, under that rule, the district court has only 30 days to schedule an arraignment after the Information has been filed. “The arraignment must be within 30 days after the filing of an information.” I.C.R. 10(a). Thus, the filing of the Information has more significance than the filing of the Order Holding. Fifth, a person’s right to a speedy trial in a felony runs from the time the information is filed. Dismissal must be ordered “If a defendant, whose trial has not been postponed upon his application, is not brought to trial within six (6) months from the date that the information is filed with the court.” I.C. § 19-3501(2).

All of this leads this Court to find that it is not the date of the Order Holding (bind over order) that controls, it is the date of the filing of the Information which determines when the case is “filed” in district court. In the present case, as of the time of writing this decision on March 27, 2020, there has been no Information filed. Thus, this case must be “filed” after the effective date of the March 23, 2020, order (midnight March 25, 2020), and filed after the “effective immediately” time stated in the March 26, 2020, order.

In this decision this Court is interpreting when a “new case filing” occurs under the Idaho Supreme Court’s orders. This finding is not inconsistent with the fact that a motion to disqualify under I.C.R. 25(a) must be filed “within 14 days after the service of a written notice specifying who the presiding judge or magistrate will be.” That written notice usually is the Order Holding (bind over order). Defendant’s attorney’s motion was timely under that rule, and not premature under that rule, due to the fact that the motion was filed after the filing of the Order Holding (bind over order). However, as set forth above, the Order Holding (bind over order) is not the “new case filing” under the Idaho Supreme Court’s orders.

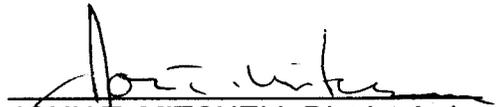
In the Order Denying Motion to Disqualify signed and filed by this Court on March

26, 2020, this Court stated the reason for denying the motion was "it [the motion] is untimely pursuant to the effective date (March 24, 2020) of the Amended Order of the Idaho Sup. Ct." Order 1. That was the right result for the wrong reason. The reason given in that order was incorrect, because whether the motion to disqualify was timely or not relative to the effective date of the order is not the question. The only relevant question is whether this case is "filed" in district court. Because this case is not "filed" in district court until the Information is filed, the Idaho Supreme Court's orders control, and the right to disqualify is suspended. Whether the Information is filed in this case later today, tomorrow or any time in the next two weeks, this case is not "filed" until that Information is filed. Because the Information in this case can only be filed after the effective dates of the Idaho Supreme Court's orders, the right to disqualify has been suspended. A "new case filing" made via the filing of the Information can only be made during the effective term of those orders.

The Court, pursuant to I.C.R. 25(a), finds the motion to disqualify must be denied, based upon that interpretation of the Idaho Supreme Court's orders, that this case will be filed in district court after the effective dates of those orders.

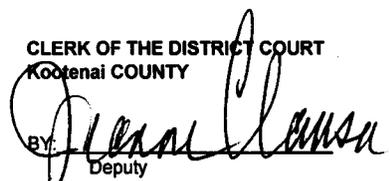
IT IS ORDERED that the Motion to Disqualify Pursuant to I.C.R. 25 filed by defendant on March 25, 2020, is **DENIED**.

DATED this 27th day of March, 2020.


JOHN T. MITCHELL District Judge

I hereby certify that on the 27th day of March, 2020 copies of the foregoing Order were mailed, postage prepaid, or sent by facsimile or interoffice mail to:

Defense Attorney – Christopher Schwartz Schwartzlawservice@gmail.com
Prosecuting Attorney – Art Verharen keppel@arts.e.kcgov.wa.

CLERK OF THE DISTRICT COURT
Kootenai COUNTY
BY: 
Deputy