I.R.C.P. 45.i.6.a. Envisions An Action to Enforce the Subpoena.

Idaho Rules of Civil Procedure Rule 45(i)(6)(A) Envisions An Action to Enforce the Subpoena.

Ordinarily, such an action would be brought pursuant to Rule 75, IRCP, since that rule deals with contempt proceedings. However, the identification of Rule 75 should not suggest that is the sole basis to enforce a subpoena.

The term 'modify' a subpoena means to alter the terms of a subpoena, such as the date, time, or location of a deposition.

Evidentiary issues that may arise, such as objections based on grounds such as relevance or privilege, are best decided in Idaho under the laws of Idaho (including its conflict of laws principles).

Nothing in this rule limits any party from applying for appropriate relief in the trial state. Applications to the court that affect only the parties to the action can be made in the trial state. For example, any party can apply for an order in the trial state to bar the deposition of the out-of-state deponent on grounds of relevance, and that motion would presumably be made and ruled on before the deposition subpoena is ever presented to the clerk of court in Idaho.

If a party makes or responds to an application to enforce, quash, or modify a subpoena in Idaho, the lawyer making or responding to the application must comply with Idahoís rules governing lawyers appearing in its courts. This rule does not change existing state rules governing out-of-state lawyers appearing in its courts. (See Idaho Rule of Professional Conduct 5.5 governing the unauthorized practice of law.)

Comment

The rule requires that the discovery permitted by this section must comply with the rules and laws of Idaho. Idaho has a significant interest in these cases in protecting its residents who become non-party witnesses in an action pending in a foreign jurisdiction from any unreasonable or unduly burdensome discovery request. Therefore, the discovery procedure must be the same as it would be if the case had originally been filed in Idaho.

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