I.C.R. 18.1. Mediation in Criminal Cases

Idaho Criminal Rule 18.1. Mediation in Criminal Cases.

In any criminal proceeding, any party or the court may initiate a request for the parties to participate in mediation to resolve some or all of the issues presented in the case. Participation in mediation is voluntary and will take place only upon agreement of the parties. Not all defendants in a multi-defendant case need join in the request or in the settlement conference/mediation. Decision making authority remains with the parties and not the mediator.

(1) Definition of "Mediationî. Mediation under this rule is the process by which a neutral mediator assists the parties (defined as the prosecuting attorney on behalf of the State and the Defendant) in reaching a mutually acceptable agreement as to issues in the case, which may include sentencing options, restitution awards, admissibility of evidence and any other issues which will facilitate the resolution of the case.

Unless otherwise ordered, mediation shall not stay any other proceeding.

(2) Matters Subject to Mediation. All misdemeanor and felony cases shall be subject to mediation if the court deems that it may be beneficial in resolving the case entirely. Issues related, but not limited to, the possibility of reduced charges, agreements about sentencing recommendations or possible Rule 11 agreements, the handling of restitution and continuing relationship with any victim, are all matters which may be referred to mediation.

(3) Selection of Mediator. The court shall select a mediator from those maintained on a roster provided by the Administrative Office of the Courts, after considering the recommendations of the parties. That roster will include senior or sitting judges or justices who have indicated a willingness to conduct criminal mediations and who have completed 12 hours of criminal mediation training within the previous two years. If the selected mediator is a senior judge or justice, the mediator will be compensated as with any senior judge service, and approval from the trial court administrator must be obtained by the court prior to the mediation.

(4) Role of the Mediator. The role of the mediator shall be limited to facilitating a voluntary settlement between parties in criminal cases. The role of the mediator is to aid the parties in identifying the issues, reducing misunderstandings, exploring options and discussing areas of agreement which can expedite the trial or resolution of the case. The mediator shall not preside over any future aspect of the case, other than facilitation of a voluntary settlement according to this rule. The mediator shall not take a guilty plea from nor sentence any defendant in the case.

(5) Persons to be Present at Mediation. Participants shall be determined by the attorneys and the mediator. The government attorney participating in the settlement discussions shall have authority to agree to a disposition of the case.

(6) Confidentiality. Except as provided in I.C. ß 16-1605, mediation proceedings shall in all respects be confidential and not reported or recorded.

(7) Mediator Privilege. Mediator privilege is governed by Idaho Rule of Evidence 507.

(8) Communications Between Mediator and the Court. The mediator and the court shall have no contact or communication except that the mediator may, without comment or observation, report to the court:

(a) that the parties are at an impasse;

(b) that the parties have reached an agreement. In such case, however, the agreement so reached may be reduced to writing, signed by the prosecuting attorney, the Defendant and defense counsel, and submitted to the court for approval;

(c) that meaningful mediation is ongoing;

(d) that the mediator withdraws from the mediation.

(9) Communications Between Mediator and Attorneys. The mediator may communicate in advance of the mediation with the attorneys to become better acquainted with the current state of negotiations and the issues to be resolved in the mediation. This communication may be conducted separately with each of the attorneys and without the presence of the defendant.

(10) Termination of Mediation. The court, the mediator, or any party may terminate the mediation at any time if further progress toward a reasonable agreement is unlikely or concerns or issues arise which make mediation no longer appropriate.

(Adopted March 18, 2011, effective July 1, 2011; amended April 27, 2012, effective July 1, 2012; amended February 27, 2013, effective July 1, 2013.)