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IRFLP 402 Additional Discovery

Idaho Rules of Family Law Procedure Rule 402. Additional Discovery.

(a) **Sequence and Timing of Discovery.** Unless, on motion, the court orders otherwise, for the parties' and witnesses' convenience and in the interest of justice:

(1) a party may proceed with discovery only after that party has completed its mandatory disclosures under Rule 401;

(2) methods of discovery may be used in any sequence after mandatory disclosures are complete; and

(3) a party may not request information or documents in discovery that were previously disclosed pursuant to mandatory disclosures under Rule 401.

(b) **Methods.** Nothing in the minimum requirements of Rule 401 will preclude relevant additional discovery by a party in a family law case. If a party believes more detailed disclosure is necessary other than that set forth in Rule 401, that party may obtain discovery by one or more of the following methods:

(1) depositions on oral examination or written questions;

(2) written interrogatories;

(3) production of documents, electronically stored information, or tangible things;

(4) entry on land or other property for inspection or other purposes;

(5) physical, mental, and vocational examinations; and

(6) requests for admission.

(c) **Discovery Scope and Limits.**

(1) **In General.**

(A) **Scope of Discovery.** Unless otherwise limited by court order, the scope of discovery is as follows: parties may obtain discovery regarding any non-privileged matter that is relevant to any party's claim or defense, including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter. For good cause shown, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.

(B) **Limits on Electronically Stored Information.** A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of subsection (c)(1)(C). The court may specify conditions for the discovery.

(C) **Limitation on Frequency and Extent of Discovery.** Unless limited by these rules or the court orders otherwise, the frequency of use of discovery is not limited. On motion or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules if it determines that:

(i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;

(ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or

(iii) the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the discovery in resolving the issues.

(2) **Limited Discovery in Civil Protection Order Actions.** The discovery rules contained in these rules do not apply to civil protection order actions. For good cause shown, a party may move the court to engage in discovery. The motion must state with specificity the information sought. The motion for discovery may be heard at the 14 day hearing. The court will determine the scope of discovery, if any. The motion for discovery may cause the 14 day hearing to be continued for no more than 14 days and the temporary civil protection order may remain in effect until the date of the continued hearing.

(3) **Trial Preparation; Materials.**

(A) **Documents and Tangible Things.** Ordinarily, a party may not discover documents and tangible things prepared in anticipation of litigation or for trial by or for another party or its representative (including the party's attorney, consultant, surety, indemnitor, insurer, or agent). But subject to subsection (c)(4), those materials may be discovered if:

(i) they are otherwise discoverable under these rules; and

(ii) the party shows that it has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain the substantial equivalent by other means.

(B) **Protection against Disclosure.** If the court orders discovery of those materials, it must protect against disclosure the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative concerning the litigation.

(C) **Previous Statement.** Any party or other person may, on request and without showing undue hardship, obtain the person's previous statement about the action or its subject matter. If the request is refused, the person may move for a court order and Rule 417(c)(5) applies to the award of expenses. A previous statement is either:

(i) a written statement that the person has signed or otherwise adopted or approved; or

(ii) a contemporaneous stenographic, mechanical, electrical, or other recording, or a transcription of it, that recites substantially verbatim the person's oral statement.

(4) **Trial Preparation; Experts.**

(A) **Deposition of Expert Allowed.** A party may depose any person who has been disclosed as an expert witness.

(B) **Further Discovery.** The court may order further discovery of experts by other means, subject to restrictions set by the court as to the scope of discovery and the payment of expenses to the expert as provided by subsection (c)(7).

(C) **Limitation on Contact with Expert.** A party must not contact a retained expert disclosed by another party pursuant to these rules without first obtaining the permission of the party who retained the expert or the court.

(5) **Trial Preparation Protection for Draft Reports or Disclosures.** A draft disclosure or draft report prepared in anticipation of litigation by any witness disclosed under Rule 401 is protected from disclosure.

(6) **Experts Employed Only for Trial Preparation.** Ordinarily, a party may not, by interrogatories or deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare for trial and who is not expected to be called as a witness at trial. But a party may do so only:

(A) as provided in Rule 416(b); or

(B) on showing exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.

(7) **Payment of Fees of Experts; Apportionment.** Unless manifest injustice would result, the court must require the party seeking discovery:

(A) to pay the expert a reasonable fee for time spent in responding to discovery under subsection (c)(6) OR Rule 401(i)(3);

(B) to pay the expert retained to provide expert testimony a reasonable fee for time spent testifying at a deposition; and

(C) to pay the other party a portion of the fees and expenses reasonably incurred in obtaining the facts and opinions of an expert not expected to testify as a witness pursuant to subsection (c)(6). The court has discretion to require such payment for discovery of the facts and opinions of an expert expected to testify under Rule 401(i)(3).

(8) **Claiming Privilege or Protection; Trial Preparation Materials.**

(A) **Information Withheld.** When a party withholds otherwise discoverable information by claiming that the information is privileged or subject to protection as trial preparation material, the party must:

(i) expressly make the claim; and

(ii) describe the nature of the documents, communications, or tangible things not produced or disclosed, and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.

(B) **Information Produced.** If information produced in discovery is subject to a claim of privilege or of protection as trial preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it, and must preserve the information until the claim is resolved. After being notified, a party:

(i) must promptly return, sequester, or destroy the specified information and any copies it has;

(ii) must not use or disclose the information until the claim is resolved;

(iii) must take reasonable steps to retrieve the information if the party disclosed it before being notified; and

(iv) may promptly present the information to the court under seal for a determination of the claim.

(C) **Signing Discovery Requests, Responses, and Objections.**

(i) **Signature Required; Effect of Signature.** Every discovery request, response, or objection must be signed by at least one attorney of record in the attorney's own name, or by the party personally, if unrepresented, and must state the signer's address and e-mail address. By signing, an attorney or party certifies that to the best of the person's knowledge, information, and belief formed after a reasonable inquiry:

(a) with respect to a statement of fact, it is complete and correct as of the time it is made; and

(b) with respect to a discovery request, response, or objection, it is:

(1) consistent with these rules and warranted by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law, or for establishing new law;

(2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needlessly increase the cost of litigation; and

(3) neither unreasonable nor unduly burdensome or expensive, considering the needs of the case, prior discovery in the case, the amount in controversy, and the importance of the issues at stake in the litigation.

(ii) **Failure to Sign.** Other parties have no duty to act on an unsigned disclosure, request, response, or objection until it is signed, and the court must strike it unless a signature is promptly supplied after the omission is called to the attorney's or party's attention.

(iii) **Sanction for Improper Certification.** If a certification violates this rule without substantial justification, the court, on motion or on its own, must impose an appropriate sanction on the signer, the party on whose behalf the signer was acting, or both. The sanction may include an order to pay the reasonable expenses, including attorney fees, caused by the violation.

(Adopted March 29, 2021, effective July 1, 2021.)