IRFLP 443 Sanctions for Violation of Orders - Motion for Order Compelling Discovery

Idaho Rules of Family Law Procedure Rule 443. Sanctions for Violation of Orders - Motion for Order Compelling Discovery.

A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

A. Appropriate court. An application for an order to a party may be made to the court in which the action is pending, or, on matters relating to a deposition, taken in connection with litigation pending outside the state, to the district court in the judicial district where the deposition is being taken. An application for an order to a deponent who is not a party shall be made to the court in the district where the deposition is being taken.

B. Motion. The discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request, or compelling an evaluation under Rule 442 [1] if:

1. a deponent fails to answer a question propounded under Rule 430 [2],

2. a corporation or other entity fails to make a designation under Rule 430.G [2];

3. a party fails to answer an interrogatory submitted under Rule 413 [3];

4. a party, in response to a request for inspection submitted under Rule 416 [4], fails to respond that inspection will be permitted as requested or fails to permit inspection as requested; or

5. a person or a person in the custody of or under the legal control of a party fails to attend an examination under Rule 442 [1].

The motion must include a certification that the movant has in good faith conferred or attempted to confer with the party not making the disclosure in an effort to secure the disclosure without court action. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order. If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to Rule 409 [5].

C. Evasive or incomplete answer. For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer.

D. Award of expenses of motion. If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

*Pilot Project for Fourth Judicial District
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