

FREQUENTLY ASKED QUESTIONS

Q. Why is it *necessary* to have a complete set of family law rules that duplicate many of the Idaho Rules of Civil Procedure?

A. It's not. It is, however, very helpful to have all procedural rules that apply to family law cases in one organized volume for at least several reasons.

First, family law cases represent one of the largest categories of civil cases in Idaho. In nearly every judicial district in Idaho, more than half of family law cases involve at least one self-represented litigant ("SRL"). Thus, there are a large number of consumers who need access to court rules that apply to these cases.

Second, the Idaho Rules of Civil Procedure ("IRCP") is structured in a manner that does not easily lend itself to adding additional rules of any kind. Over time, as new family law rules were adopted and incorporated in the IRCP, they were placed as subparts to rules that have little or no logical relationship to the primary rule. As a result, rules that applied only to family law became spread out and disorganized within the IRCP. Furthermore, new rules have been recently developed that apply only in family law cases that are not currently contained in the IRCP, such as rules that relate to evidence, discovery and the participation of children in court proceedings.

Third, the IRCP apply to all types of civil cases, not just family law cases. In fact, many of the rules set forth in the IRCP do not apply to family law cases at all, such as those that apply to jury trials. The process of sifting through the IRCP for rules that apply only to family law is cumbersome and can unfairly disadvantage a self-represented party.

The Idaho Rules of Family Law Procedure ("IRFLP") were designed to assist both lawyers and SRL's by reorganizing all rules that apply in family law cases (i.e., old and new) in a complete and logical manner that is easier to use by all.

Q. What types of cases are subject to the IRFLP?

A. All actions for divorce, child support, child custody, and paternity; all proceedings pursuant to the Domestic Violence Crime Prevention Act; all actions pursuant to the De Facto Custodian Act; and all proceedings, judgments or decrees related to the establishment, modification, or enforcement of orders in such actions, except contempt. The IRFLP does not apply to actions arising under the Child Protection Act, actions for adoption, actions for termination of parental rights, or actions for guardianship or conservatorship.

Q. Do the IRFLP apply to motions for contempt filed in family law cases?

A. No. Contempt is still governed by IRCP Rule 75. If you want to file a motion for contempt to enforce a court order for child support or child custody, you must comply with that rule. In part, this is because IRCP 75 specifically states that the IRCP apply to contempt actions and in part it is because contempt actions can conceivably be tried to a jury and the IRFLP are not designed for jury trials.

Q. If I am the Respondent in the initial action and I want to file a petition to modify child custody and/or child support, do I now call myself the Petitioner?

A. Currently, no. Once the parties are identified in the first action as either the Petitioner or Respondent, they stay that way throughout all future litigation. Admittedly, this rigidity can cause confusion over time among litigious couples, so this rule will continue to be examined and modified if necessary.

Q. Why must a Petition to Modify Custody or Support allege substantial and material changes with particularity?

A. Petitions to modify are filed by parents for a variety of reasons – some of them are legitimate and necessary, and some have little or no merit other than to re-litigate past issues or to harass the other party. These petitions also tend to cause more conflict among parties and they are less likely to be resolved through alternative dispute resolution (i.e., they are more likely to require a trial). The requirement to plead alleged changes in circumstances with particularity is beneficial to the parties and the court because it (i) forces parents to articulate the grounds for the proposed modification, thereby revealing the legitimacy, or lack thereof, of the allegations in the Petition, (ii) better identifies the issues in the case, thereby allowing the parties to conduct discovery more efficiently, and (iii) better informs the court regarding the nature of the issues, thereby allowing it to customize management of the case more effectively.

Q. Do the IRFLP change default practice at all?

A. Only to the extent that petitions, summonses and other court documents must now reference the proper rule under the IRFLP. Otherwise, no.

Q. Why is Mandatory Disclosure required? What was wrong with the old system of letting parties and/or attorneys conduct discovery as they wished?

A. Many attorneys do a fine job of preparation and case management. Nevertheless, it is not uncommon in contested family law cases that parties are unprepared or underprepared to discuss settlement, no less try their case, until their trial date is imminent. There are a variety of reasons for lack of preparation that include stress, procrastination and unfamiliarity with the process. Lack of communication – including an understandable desire to avoid conflict - is a common issue among parties to contested family law cases. Lack of preparation can lead to poor settlements, delay and added expense. When trial is necessary, lack of preparation translates to the lack of relevant evidence which fundamentally compromises the court's ability to fashion a fair division of marital property and debts, and to order a custody arrangement that is truly best for the parties' children.

The Mandatory Disclosure rule – IRFLP 401 - is designed to (i) decrease the cost of preparing discovery requests for information that is common in most family law cases, and (ii) motivate the parties to exchange information early in the process to prepare them for mediation or settlement. Early preparation also aides the court at trial by increasing the likelihood that the parties will present more relevant information than they otherwise might, which should lead to better decision-making.

Q. Do I file my Mandatory Disclosures with the Court?

A. No. File a notice with the court that you have complied with the rule. The actual disclosures are transmitted to the opposing party.

Q. Can the deadline for complying with the Mandatory Disclosure rule be extended? If so, how?

A. Yes. The deadline for complying is thirty-five days after a responsive pleading is filed unless both (i) you and the opposing party/attorney agree to extend it or (ii) the court orders an extension of time. If thirty-five days is an inadequate amount of time in your case to comply with the rule, ask the other party to agree to an extension. If he or she will not agree, then file a motion with the court to extend the deadline and give your reasons why thirty-five days is inadequate. As with any motion you file, ask the court clerk to set a hearing time for the motion. Then file and serve the other party with the motion and notice of hearing.

Q. If the other party does not comply with the Mandatory Disclosure rule, how do I enforce it?

A. The same way that you would if a party fails to answer additional discovery - by filing a motion with the court seeking an order to compel the disclosures.

Q. Should I file discovery requests seeking the same information that is required under the Mandatory Disclosure rule?

A. No. Additional discovery should be prepared and submitted to the opposing party only to obtain discoverable information that is not required to be disclosed under the Mandatory Disclosure rule. The purpose of mandatory disclosure is to simplify, standardize and expedite an exchange of information, not to duplicate discovery.

Q. Why are Temporary Orders determined by affidavits under IRFLP Rule 504? Why can't the court conduct an evidentiary hearing on issues like possession of a residence, temporary custody and temporary support?

A. Before there was a rule that addressed temporary orders, parties commonly appeared at the hearing on a motion for temporary orders prepared to present the testimony of the parties and, occasionally, the testimony of witnesses. These hearings could be lengthy, expensive and stressful on all concerned because they usually occurred early in the case before discovery was completed and before the court could familiarize itself with the issues in the case. In essence, the parties would attempt to try many or all of the issues in the case at this early hearing before the date set for the formal trial.

With that background in mind, the answer to the question is that the court CAN conduct an evidentiary hearing on temporary issues under Rule 504 of the IRFLP; but doing so is often time-consuming, costly and leads to re-litigating the same issues at the trial. The process of determining temporary orders by affidavits is not perfect - because the court cannot determine credibility of the affiant as accurately as live testimony - but in most cases it leads to a just result on interim issues and saves expenses for the parties and valuable court time. Nevertheless, the rule still allows the court, after each party has filed their affidavits, to determine if it is necessary to conduct an evidentiary hearing and, of course, there are circumstances when it should do so, such as when the health or safety of a party and/or child is at imminent risk. In most cases, however, determining temporary orders by affidavits only is an adequate time/money-saving alternative for the court and the parties.

Q. I understand there is a new “relaxed standard of evidence” under the IRFLP and that makes me nervous; does this rule replace all of the Idaho Rules of Evidence? Will the court allow all evidence to be admitted at trial?

A. Keep in mind that no matter what rules of evidence apply to a particular case, the court’s decision to admit or exclude evidence at trial is discretionary. The IRFLP does not restrict the court’s discretion. However, IRFLP Rule 102.B is a new rule – already in use in Arizona – that sets forth a simpler standard of evidence. It replaces only some of the Idaho Rules of Evidence (“IRE”); the ones that relate to relevance, hearsay and its exceptions, competency, authentication and the contents of writings. All other rules of the IRE apply.

Under IRFLP 102.B, all relevant evidence is admissible, although the court may exclude evidence that is shown to be “[...]utweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay, waste of time, needless presentation of cumulative evidence, lack of reliability or failure to adequately and timely disclose same.”

Furthermore, in all cases, records of regularly conducted activity are admissible if they appear on their face to be complete, accurate, relevant, reliable and seasonably disclosed.

Rule 102.B is designed to be simpler and easier to apply than the more formal and technical rules in the IRE which often operate to restrict the admission of relevant evidence. The less formal new rule should facilitate the presentation of relevant evidence at trial for all parties.

Q. Am I stuck with this new evidentiary standard, or can I still use the IRE?

A. No, you are not stuck. If either party is more comfortable operating exclusively under the IRE, he or she may opt into the IRE within thirty days after the responsive pleading is filed. It only takes one party to opt into the IRE. However, IRFLP 102.B.3 will still apply to records of regularly conducted activity.

Q. How do I find the IRFLP, and are there forms available to help me comply with these new rules?

A. The IRFLP can be found on-line at: <http://www.isc.idaho.gov/irflp>

There are forms available on that website to assist you with:

1. preparing an affidavit in support of motion for temporary orders;
2. complying with mandatory disclosure; and
3. preparing additional discovery such as interrogatories.

Many other forms that comply with the IRFLP, such as petitions, responses and motions, are available on the Court Assistance Office website at: <https://adacounty.id.gov/Court-Assistance-Office>