

In the Supreme Court of the State of Idaho

IN RE: AMENDMENT OF)
IDAHO RULE OF FAMILY LAW)
PROCEDURE 602 AND ADOPTION OF)
IDAHO COURT ADMINISTRATIVE RULE)
76)
)
)
)

ORDER

The Court, having reviewed a recommendation from the Children and Families in the Courts Committee (CFCC) and the Administrative Conference to amend the Idaho Rules of Family Law Procedure (I.R.F.L.P.), and adopt a new rule under the Idaho Court Administrative Rules (I.C.A.R.), and the Court being fully informed;

IT IS ORDERED that Idaho Rule of Family Law Procedure 602 is AMENDED as follows:

Idaho Rules of Family Law Procedure Rule 602. Mediation of Child Custody and Visitation Disputes.

(a) **Definition of Mediation.** Mediation ~~under this rule~~ is the process by which a neutral mediator appointed by the court, or agreed to by the parties, assists the parties in reaching a mutually acceptable agreement ~~as to issues of child custody and visitation. The role of the mediator is to help the parties identify the issues, reduce misunderstandings, clarify priorities, explore areas of compromise, and find points of agreement.~~ An agreement reached by the parties is ~~to be~~ based on the decisions of the parties, not the decisions of the mediator. The role of the mediator is to:

- (1) aid the parties in identifying issues;
- (2) reduce misunderstandings;
- (3) clarify priorities;
- (4) explore areas of compromise; and
- (5) find points of agreement.

(b) **Matters Subject to Mediation and Qualifications.** All family law actions involving a controversy over custody or ~~visitation~~ parenting time of a minor child are subject to mediation ~~regarding issues of custody, visitation, or both~~ by a child custody mediator qualified under Idaho Court Administrative Rule (I.C.A.R.) 76, Qualifications of Child Custody Mediators. All issues in family law actions other than child custody and parenting time of a minor child, are subject to mediation under I.R.F.L.P. 603, Mediation of Other Matters.

~~(c) **Selection of a Mediator.** The court will permit the parties to select a mediator. If the parties are unable to select a mediator, the court must appoint one from the list of registered mediators compiled by the Supreme Court and maintained by the Administrative Director of the Courts.~~

~~(d) **Requirement to Attend Orientation.** Any judicial district may provide by local rule that all parties be required to attend parent mediation orientation, unless excused by the court.~~

~~(ec) **Authority of the Court.** A court must order mediation if, in the court's discretion, it finds that mediation is in the best interest of the child and it is not otherwise inappropriate under the facts of the particular case. The referral of a family law action to mediation does not divest the court of the authority to exercise management and control of the case during the pending mediation.~~

~~(d) **Referral to Mediation.** A court may order any issue in a family law action to mediation as follows:~~

~~(1) on a motion by a party;~~

~~(2) at a Rule 701 conference;~~

~~(3) on consideration of a request for trial setting, if all parties indicate in their request or response that mediation would be beneficial; or~~

~~(4) Upon 7 days' notice to the parties, if the court determines that mediation is appropriate.~~

~~(e) **Selection of a Mediator.** The parties will have 28 days from entry of the mediation order, or such other time as the court may allow, to select any person to act as mediator and report their selection to the court. If the parties do not select a mediator within 28 days, then the court must appoint a mediator from the applicable roster of mediators compiled and maintained by the Idaho Supreme Court's Administrative Office of the Courts (Administrative Office).~~

~~(f) **Qualifications of Mediator; Application and Documentation.**~~

[Qualifications of Mediators was revised and MOVED to I.C.A.R 76]

~~(f) **Scheduling of the Mediation Session.** The initial mediation session must be scheduled within 14 days after selection or appointment of the mediator, unless otherwise ordered by the court.~~

~~(g) **Compensation of Mediators.** A mediator's fees and expenses must be clearly set forth and explained at the initial conference with the parties. Each party is responsible for one-half of the mediator's fees and expenses unless other arrangements are made between the parties or ordered by the court. If a mediator is not paid, the court may order payment upon motion of the mediator.~~

~~(gh) **Duties of Mediator.**~~

~~(1) The mediator has a duty to define and describe for the parties the process of mediation and its cost during the initial conference before the mediation conference begins. The description should include the following:~~

~~(A) the difference between mediation and other forms of conflict resolution, including therapy and counseling;~~

~~(B) the circumstances under which the mediator will meet alone with either of the parties or with any other person;~~

~~(C) any confidentiality of the mediation proceedings and any privilege against disclosure;~~

~~(D) the duties and responsibilities of the mediator and of the parties;~~

~~(E) the fact that any agreement reached will be reached by mutual consent of the parties;~~

~~(F) advise the participants to seek independent legal counsel prior to resolving the issues and in conjunction with formalizing an agreement; and~~

~~(G) the information necessary for defining the disputed issues.~~

~~(2) The mediator has a duty to be impartial, and to advise all parties of any circumstances bearing on possible bias, prejudice, or impartiality.~~

~~(A) The parties must have the right to have counsel review any resulting agreement before its submission to the court.~~

~~(B) Any agreement submitted to the court will be subject to court review and approval. The court must reject such agreement only if it is not in the best interests of the child involved.~~

(1) **Impartiality.** The mediator must be impartial and must advise the parties of any circumstances bearing on possible bias, prejudice, or impartiality.

(2) **Disclosure of the Process.** The mediator must define and describe the process of mediation and its cost during the initial conference with the parties before mediation begins. The description should include the following:

(A) the difference between mediation and other forms of conflict resolution, including therapy and counseling;

(B) the circumstances under which the mediator will meet alone with either of the parties or with any other person;

(C) any confidentiality of the mediation proceedings and any privilege against disclosure;

(D) the duties and responsibilities of the mediator and of the parties;

(E) inform the parties that any agreement must be made with their mutual consent;

(F) advise the parties to seek independent legal counsel prior to resolving issues and in conjunction with formalizing an agreement;

(G) inform the parties that any agreement must be reduced to a final agreement and submitted to the court for the court's review and approval; and

(H) the information necessary for defining the disputed issues.

(3) **Mediation Agreement Summary.** If the parties reach an agreement on any issue, the mediator must document the agreement in writing and provide a copy to the parties or their attorneys.

(hi) Communications between Mediator and the Court. ~~(1) The mediator and the court must maintain no contact or communication except that the mediator may not communicate without notice to all parties; however, the mediator must, without comment or observation, report to the court:~~

~~(A1) the parties are at an impasse;~~

~~(B2) the parties have reached an full or partial agreement. In such case, however, the agreement so reached must be reduced to writing, signed by the parties, and submitted to the court by one or both of the parties, if self-represented; otherwise, through their attorneys, for the court's approval;;~~

~~(C3) one or both of the parties have failed to attend the mediation proceeding;~~

~~(D4) meaningful mediation is ongoing; or~~

~~(E5) the mediator withdraws from mediation; and~~

~~(F) the allegation or suspicion of domestic violence.~~

(ij) Contact between the Mediator, Attorneys, and Other Interested Persons. The mediator and the attorneys for the parties may communicate with one another according to the following requirements:

(1) any contacts between the attorneys and the mediator must be ~~either~~ in writing or by conference call; and

(2) attorneys and other persons are excluded from mediation conferences unless their presence is requested by the mediator or ordered by the court.

(k) **Confidentiality.** The mediator must follow the confidentiality rules agreed to by the parties. Confidentiality protections of Idaho Rules of Evidence 408 and 507 extend to mediation.

(l) **Reports.**

(1) **Status.** The mediator must report the status of mediation to the court every 28 days from the court's order for mediation, until mediation is completed.

(2) **Final.** Within 7 days following the last mediation session, the mediator or the parties must advise the court, with a copy to the parties, whether the case has settled in whole or in part.

(jm) **Termination of Mediation.** The court or the mediator may terminate mediation proceedings if further progress toward a reasonable agreement is unlikely. The mediator must notify the court when the mediation has been concluded.

~~(k) **Status Report.** Notice of the status of the mediation process must be submitted in a report every 28 days starting from the date of the initial order requiring mediation until completion.~~

IT IS FURTHER ORDERED that I.C.A.R. 76 is ADOPTED as follows:

Idaho Court Administrative Rule 76. Qualifications of Child Custody Mediators.

(a) **Roster of Child Custody Mediators.** The Idaho Supreme Court's Administrative Office of the Courts (Administrative Office) will compile and maintain a roster of approved child custody mediators (Roster). The Administrative Office will determine if an applicant meets the qualifications to be placed on the Roster and will ensure that mediators on the Roster meet continuing education requirements, and obligations under this rule. The Roster will be made available to the public and will contain the following information about each mediator:

(1) name, address, telephone, e-mail address;

(2) license or degree; and

(3) a list of counties and districts the mediator is willing to conduct mediations in.

(b) **Application.** Any applicant seeking to be placed on the Roster must submit the following to the Administrative Office:

- (1) an application for approval, which includes an Affidavit of Compliance signed by the applicant attesting that the applicant has fulfilled the requirements of this rule;
- (2) a copy of the applicant's applicable degree, licensure, or certificate; and
- (3) proof of completion of the required mediation training.

(c) **Degree, License, or Certificate.** For placement on the Roster, an applicant must have at least one of the following professional credentials:

- (1) **Professional Licensure.** Current membership, office, or licensure in one of the following:
 - (A) Idaho Judiciary,
 - (B) Idaho State Bar Association;
 - (C) psychologist;
 - (D) professional counselor;
 - (E) clinical professional counselor;
 - (F) master social worker;
 - (G) clinical or independent practice social worker;
 - (H) marriage and family therapist;
 - (I) certified school counselor;
 - (J) certified school psychologist; or
 - (K) any substantially similar and applicable professional license;
- (2) **Degree.** A bachelor's degree from an accredited college or university; or
- (3) **Mediation Organization Membership and Experience.** Membership in one of the following mediation organizations:
 - (A) Association for Conflict Resolution at the advanced practitioner level;
 - (B) Idaho Mediation Association as a Certified Professional Mediator (CPM); or
 - (C) a national organization with equivalent standards for membership.

(d) **New Applicant Training.** Within 3 years prior to submission of an application, new applicants must complete the training set forth below.

(1) **Approved Training Programs.** Training must be acquired by completing a program approved by one of the following:

- (A) the Idaho State Bar or its equivalent in another state;
- (B) an accredited college or university;
- (C) the Idaho Mediation Association or its equivalent in another state; or
- (D) the American College of Civil Trial Mediators or similar national organization.

Any program that does not meet this criterion may be submitted for consideration for approval by the Administrative Office.

(2) **General Mediation Training.** All new applicants seeking to be placed on the Roster must have general mediation training that includes the following topics:

- (A) information gathering (intake, obtaining facts, screening issues);
- (B) mediator relationship skills (neutrality, confidentiality);
- (C) communication skills (active listening, reframing issues, clarifying);
- (D) problem solving skills (identifying problems, positions, needs, interests);
- (E) conflict management skills (reducing tensions, power imbalances);
- (F) mediation processes and techniques (case management, drafting agreements);
and,
- (G) a minimum of 2 hours of mediation ethics.

(3) **Child Custody Mediation Training.** All new applicants seeking to be placed on the Roster must complete specific child custody mediation training that includes the following topics:

- (A) child custody;
- (B) psychological issues in separation, divorce, and family dynamics;
- (C) domestic violence;
- (D) issues and needs of children;

(E) child development; and

(F) conflict resolution theory.

(4) *Required Hours.*

(A) *Professional Licensure.* The applicant must have completed a minimum of 40 hours of General Mediation Training as described in (d)(2), with 20 of the hours in Child Custody Mediation as described in (d)(3).

(B) *Degree or Mediation Organization Membership.* The applicant must have completed a minimum of 80 hours of General Mediation Training as described in (d)(2) with 40 of the hours in Child Custody Mediation as described in (d)(3).

(5) *Additional Criteria.* The Administrative District Judge in each of Idaho's judicial districts may, by administrative order, require applicants to comply with additional criteria beyond those stated above. The Administrative District Judge may also, by administrative order, appoint an individual that has substantially complied with the requirements set forth above.

(e) **Renewal Applications and Continuing Education.** To remain on the Roster, a mediator must complete ~~30~~ 15 hours of continuing education from an approved training course as provided in paragraph (d)(1), every 3 years beginning the next July 1 after a mediator has been placed on the Roster. Mediators on the Roster are responsible for submitting continuing education requirements and keeping their contact information current. The ~~30-15~~ hours must include training in the following areas:

(1) general mediation training as described in (d)(2); or

(2) child custody mediation training as described in (d)(3); and

(3) a minimum of 2 hours of mediation ethics.

(f) Proof of Compliance.

(1) **Hours Defined.** For the purposes of this rule, an hour is defined as 60 minutes of instructional time or activity.

(2) **Training Format.** Training may be completed in one of the following formats with a certificate of attendance or participation:

(A) live lecture or seminar;

(B) webinar or online presentation, live or recorded; or

(C) up to 5 hours when the mediator is the instructor of an approved mediation course.

(3) ***Certificate of Attendance.*** As proof of compliance with training requirements, a certificate of attendance must include:

(A) the name of the training program;

(B) the name of the participant in attendance;

(C) the topic of the training;

(D) the date of the training; and

(E) the number of hours completed.

(g) **Failure to File Proof of Compliance.** If the Administrative Office does not receive the mediator's proof of compliance by July 1 the year it is due, the mediator will be removed from the Roster. Once a mediator is removed from the Roster, the mediator must reapply as a new mediator and meet the requirements set forth in this rule.

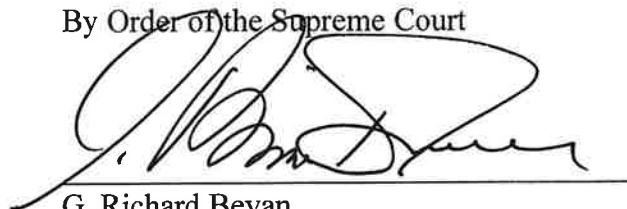
IT IS FURTHER ORDERED that the amendments shall be effective January 1, 2026.

IT IS FURTHER ORDERED that the above designation of the striking of words from the Rules by lining through them, and the designation of the addition of new portions of the Rule by underlining such new portion is for the purposes of information only as amended, and NO OTHER AMENDMENTS ARE INTENDED. The lining through and underlining shall not be considered a part of the permanent Idaho Rules of Family Law Procedure and the Idaho Court Administrative Rules.

IT IS FURTHER ORDERED that notice of this Order shall be published for three consecutive weeks on the Idaho State Bar's website and in its weekly E-Bulletin, and that as soon as practicable, a summary of the amendment(s) effected by this Order shall be published in one issue of *The Advocate*.

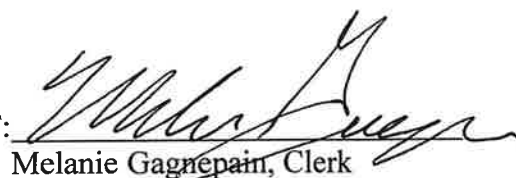
DATED this 6th day of November, 2025.

By Order of the Supreme Court



G. Richard Bevan
Chief Justice, Idaho Supreme Court

ATTEST:



Melanie Gagnepain, Clerk

I, Melanie Gagnepain, Clerk of the Supreme Court/
Court of Appeals of the State of Idaho, do hereby
Certify that the above is a true and correct copy of the
Order entered in the above entitled
cause and now on record in my office. WITNESS my
hand and the Seal of this Court 11-06-2025
Melanie Gagnepain, Clerk

By Lena McKee Deputy