

**Proposed Amendments to the Idaho Rules of Family Law Procedure and Idaho
Court Administrative Rules**
September 2025

The Idaho Supreme Court's Children and Families in the Courts Committee is seeking input on proposed revisions to the Idaho Rules of Family Law Procedure and the Idaho Court Administrative Rules. Please send your comments to **Deena Layne** at dlayne@idcourts.net by **Thursday, September 18, 2025**. Thank you.

Proposed Amendments to I.R.F.L.P. 602: *The proposed amendments to I.R.F.L.P. 602 move the qualifications of child custody mediators from subdivision (f) to the Idaho Court Administrative Rules. Additionally, the proposed amendments seek to clarify language, correct clerical errors, and provide time frames for reporting to the court.*

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/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 by a civil mediator qualified under I.R.F.L.P. 602, 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.**~~

[MOVED to proposed NEW 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 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.~~

Proposed NEW ICAR 76: *This proposed new rule moves the qualifications for placement on the Idaho Supreme Court's Child Custody Mediator Roster from I.R.F.L.P. 602(f) to the Idaho Court Administrative Rules.*

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 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 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.

Proposed NEW ICAR 76A: *This proposed new rule provides a process for removal or suspension from the Court's Child Custody Mediator Roster.*

Idaho Court Administrative Rule 76A. Removal or Suspension of Child Custody Mediators from Roster of Child Custody Mediators.

(a) **Purpose.** The purpose of this rule is to:

- (1) establish a quality control process for child custody mediators (mediators) who are on the Idaho Supreme Court's Roster of Child Custody Mediators (Roster), and
- (2) allow for suspension or removal of a mediator from the Roster if a complaint is upheld.

(b) **Grounds for Suspension or Removal.** The following actions or omissions constitute misconduct and may be grounds for suspension or removal of a mediator from the Roster:

- (1) violation of a federal, state, or local criminal code or regulation when the offense adversely affects the mediator's ability or fitness to perform their duties or may have an adverse effect on the administration of justice or public if the mediator continues to work as a child custody mediator in the courts;
- (2) a current or past civil protection order or criminal no contact order against him or her;

when such order adversely affects the mediator's ability or fitness to perform mediator duties or may have an adverse effect on the administration of justice, or public if the mediator continues to work as a child custody mediator in the courts;

- (3) fraud, dishonesty, or corruption related to the functions and duties of a mediator;
- (4) knowing and willful disclosure of confidential or privileged information obtained while serving as a mediator, unless required by law;
- (5) incompetence, unprofessional, or unethical behavior;
- (6) failure to follow standards prescribed by law or professional organizations, or as set forth in the Idaho Rules of Family Law Procedure, court policy, procedure, or order, including engaging in conduct that constitutes discrimination or harassment;
- (7) misrepresentation of credentials or other credentials or other material misstatement of fact relative to appointment as a mediator, or to an application for placement on the Roster;
- (8) failure to comply with the terms and conditions of a sanction imposed under this rule; or
- (9) noncompliance with any continuing education requirements.

(c) Complaint Submission and Review.

(1) ***Submission of Complaint.*** Anyone with knowledge of misconduct by a mediator on the Roster may submit a complaint.

(A) ***Timing.*** A complaint must be submitted within 180 days of the discovery of the facts constituting the alleged misconduct to the Administrative Office of the Courts (Administrative Office).

(B) ***Contents.*** The complaint must state, to the extent known, the following:

- (i) date, time, and location (including judicial district), of the alleged Misconduct;
- (ii) case name and number of the proceeding in which the alleged misconduct occurred, if applicable;
- (iii) description of the alleged misconduct and why the complainant believes it was improper; and
- (iv) name, title and telephone number of potential witnesses.

(2) ***Review of Complaint.*** The Statewide Manager for Family Court Services or designee (Manager) will review the complaint within a reasonable amount of time, not to exceed 14

days from receipt, to determine whether the allegations, if true, are grounds for removal from the Roster.

(A) *No Grounds*. If the Manager determines that the complaint does not allege misconduct that, if true, are grounds for discipline, they will forward the complaint and a recommendation to the Director of Justice Services.

(i) If the Director of Justice Services agrees, the Manager will dismiss the complaint and notify the complainant in writing.

(ii) If the Director of Justice Services determines that the complaint alleges misconduct that, if true, are grounds for discipline and decides further action or review is needed, the complaint will be forwarded to the Director of Human Resources or designee (HR Director) for review and investigation under subparagraph (d)(1).

(B) *Grounds*. If the Manager determines that the complaint alleges conduct that, if true, are grounds for discipline, the Manager will forward the complaint and a recommendation to the Director of Justice Services. The Director of Justice Services will review the complaint and recommendation, and forward the information, along with any additional recommendations to the HR Director for review and/or investigation under subparagraph (d)(1).

(d) Investigation and Findings.

(1) *Investigation*.

(A) *Notice*. Upon receipt of the request to investigate, the HR Director will provide the mediator with a copy of the complaint and an opportunity to respond. The review and investigation must be completed within 35 days of receipt of the request to investigate.

(B) *Interim Suspension*. In the interest of the administration of justice or the public, the Supreme Court may suspend the mediator from court appointments and the Roster during an investigation or until a final decision is made.

(C) *Response from Mediator*. Within 14 days of receipt of notice from the HR Director, the mediator may submit any relevant evidence or information in writing to the HR Director. The HR Director will review all information provided and will include any response from the mediator in the investigative report.

(D) *Meetings with Mediator and/or Witnesses*. The HR Director may conduct meetings with the mediator, complainant, and witnesses. Meetings may occur in-person, over the telephone, or video conferencing. The HR Director may contact witnesses and give evidence the weight they deem appropriate. Meetings are

confidential, unless otherwise requested by the mediator and agreed to by the HR Director.

(E) *Report of Investigation.* At the conclusion of the investigation, the HR Director will submit findings and recommendations to the Director of Justice Services which includes specific factual findings as to whether misconduct occurred that are grounds for discipline.

(2) Findings.

(A) *No Grounds.* If upon review of the Report of Investigation, the Director of Justice Services determines that no grounds for discipline exist, the Director of Justice Services must dismiss the complaint and notify the mediator and complainant in writing. The notification must include an explanation of the reason for the determination.

(B) *Additional Information.* If the Director of Justice Services determines that additional information is required before deciding, a written request must be sent to the mediator with specific questions posed. All questions must be answered and returned within 7 days. If the mediator fails to respond in writing within the allotted time, the Director of Justice Services may determine that grounds for discipline exist and, exercising discretion, proceed with the sanctions outlined in subdivision (g) of this rule.

(C) *Grounds for Discipline Present.* If upon review of the Report of Investigation, the Director of Justice Services determines by a preponderance of evidence that grounds for discipline exist, the Director of Justice Services must send the mediator the written determination, including a summary of the allegations contained in the complaint, the relevant investigative findings, citations to any rules or procedures that were violated, and the sanctions deemed appropriate by the Director of Justice Services. The Director of Justice Services' determination must be made within 14 days of receipt of the Report of Investigation. Failure to file an appeal under subparagraph (e)(2)(A) within 14 days of the determination will result in a final decision and imposition of the sanctions.

(e) Hearing.

(1) *Request for Hearing.* If the mediator contests the Director of Justice Services' determination, the mediator may file an appeal with the Administrative Director of the Courts and request a hearing before Child Custody Mediation Subcommittee (Subcommittee). The Administrative Director of the Courts may appoint an advisor to assist the Subcommittee with conducting the hearing including the preparation of notices, legal research, and drafting written findings and sanctions.

(2) Hearing Procedures.

(A) *Notice of Appeal*. The appeal and any request for hearing must be made within 14 days of the Director of Justice Services' written determination. Failure to file an appeal within the timeframe will result in a final decision and imposition of the sanctions.

(B) *Hearing Discretionary*. The Subcommittee may set the matter for hearing or decide the matter based on the complaint, Report of Investigation, and the information submitted without a hearing. If a request for hearing is granted, the hearing must take place within 42 days of the written request.

(C) *Discovery*. Discovery shall not be permitted.

(D) *Hearing Recorded*. The hearing must be recorded electronically and is closed to the public, except the complainant may attend with legal counsel.

(E) *Legal Representation*. The mediator may be represented by legal counsel at his/her own expense.

(F) *Evidence*. The Idaho Rules of Evidence do not apply. The Subcommittee will consider any relevant evidence presented, giving such evidence the weight deemed appropriate. The Subcommittee may call witnesses and consider or clarify any relevant evidence presented. At the hearing, the Director of Justice Services or designee, the complainant, and the mediator may introduce relevant evidence including calling and questioning witnesses.

(f) Final Decision.

(1) If no hearing is held, the Subcommittee must issue written findings and recommendations, within 14 days, for consideration by the Supreme Court. The Supreme Court will consider the findings and issue a final decision, within 21 days of receiving the findings.

(2) If a hearing is held, within 21 days of the conclusion of the hearing, the Subcommittee must issue written findings and recommendations to the Supreme Court for a final decision. The Supreme Court will consider the findings and issue a final decision, within 21 days of receiving the findings.

(3) The Subcommittee must act based on majority vote of its members.

(4) The Supreme Court must advise the mediator and the complainant of its final decision in writing with a copy to the Administrative Director of the Courts. If the Supreme Court's decision includes sanctions against the mediator, consistent with subdivision (g) of this rule, the Supreme Court must state the sanctions, the reasons for the sanctions, and the length of the sanctions. If the sanctions include suspension or removal of the mediator from the Roster, the Supreme Court must specify the conditions and timeframe that the mediator may apply for reinstatement on the Roster.

(5) The Supreme Court's decision is final and not subject to further review or appeal.

(g) **Sanctions.**

(1) ***Factors to Consider.*** If the Subcommittee finds by a preponderance of evidence that there are grounds for discipline under subdivision (b) of this rule, the Subcommittee will recommend to the Supreme Court that it impose such sanctions as deemed appropriate. In determining what sanction is appropriate, the Subcommittee and the Supreme Court will consider:

- (A) the nature and seriousness of the misconduct;
- (B) any pattern of misconduct;
- (C) the effect of the misconduct on the court system or the complainant;
- (D) the amount of experience the mediator has as a mediator; and
- (E) any other mitigating or aggravating information presented.

(2) ***Possible Sanctions.*** Sanctions that may be imposed include, but are not limited to:

- (A) private reprimand;
- (B) public reprimand;
- (C) corrective action with which the mediator must comply to remain on the Roster;
- (D) requirement of completion of education courses or mediation ethics;
- (E) requirement that the mediator work with a mentor, or that the mediator's work be supervised; or
- (F) suspension or removal of the mediator from the Roster.

(h) **Reinstatement.** Mediators who are removed from the Roster for misconduct or noncompliance may apply to the Supreme Court for reinstatement according to the terms and conditions in the final decision. The Supreme Court has sole discretion in granting or denying reinstatement, including the discretion to impose further conditions on reinstatement.

(i) **Confidentiality.**

(1) Complaints and investigations are confidential in accordance with I.C.A.R. 32, except that when sanctions are imposed, the Director of Justice Services' determination and the

final decision, including grounds for the sanction and the facts cited in support of the determination or decision, must be made available to the public upon request.

(2) The Administrative Office of the Courts will provide information in accordance with I.C.A.R. 32 to judicial officers, Trial Court Administrators, and court coordinators concerning sanctions imposed against mediators.