

Proposed Amendments to the Idaho Rules of Family Law Procedure

The following rule amendments and revisions to the Idaho Rules of Family Law Procedure (I.R.F.L.P.) are recommended by the Idaho Supreme Court's Children and Families in the Courts Committee (CFCC). All of the following proposed amendments originated with the Family Law Rules workgroup (workgroup) and have been approved by the CFCC. The workgroup has been charged with reviewing the I.R.F.L.P. in light of recent changes to the Idaho Rules of Civil Procedure (I.R.C.P.) to simplify, clarify, and modernize the language, and to create a consistent structure and format. The initial charge of the workgroup did not include making substantive changes; however, it did include identifying and making recommendations for substantive changes to the CFCC for consideration. The proposed substantive amendments were reviewed by the CFCC and are now being recommended to the Idaho Supreme Court for adoption.

Proposed Amendments to I.R.F.L.P. Rule 101 – The title was added and applicability of the rules was expanded to cover all family law actions and all civil protection order actions.

Idaho Rules of Family Law Procedure Rule 101. Scope of Rules.

(a) **Title.** These rules may be known and cited as the Idaho Rules of Family Law Procedure, or abbreviated I.R.F.L.P.

(b) **Applicability.** These rules govern the procedure in the magistrate's division of the district court in the State of Idaho in all family law actions for annulment, divorce, legal separation, separate maintenance, child support, child custody, grandparent visitation or custody, and paternity; all civil protection orders actions; all actions pursuant to the De Facto Custodian Act; and all proceedings related to the establishment, registration, modification, or enforcement of judgments, decrees or orders in such actions, except contempt.

(c) These rules do not apply to actions arising under the Child Protective Act, actions for adoption, actions for termination of parental rights, or actions for guardianship or conservatorship.

(d) These rules should be construed and administered to secure the just, speedy and inexpensive determination of every action and proceeding.

Proposed Amendments to I.R.F.L.P. Rule 102 – The reference to appeals was removed and put into I.R.F.L.P. 823. The ability to opt in for strict compliance with the Idaho Rules of Evidence was removed.

Idaho Rules of Family Law Procedure Rule 102. Applicability of Other Rules.

(a) **Applicability of Idaho Rules of Civil Procedure.** The Idaho Rules of Civil Procedure apply only when incorporated by reference in these rules.

(b) Applicability of Idaho Rules of Evidence.

(1) All relevant evidence is admissible, provided, however, that the court must exclude evidence if its probative value is outweighed 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 the same. This admissibility standard will replace Idaho Rules of Evidence 403, 602, 801-806, 901-903 and 1002. All remaining provisions of the Idaho Rules of Evidence apply.

(2) Records of regularly conducted activity as defined in Idaho Rule of Evidence 803(6) may be admitted into evidence without testimony of a custodian or other qualified witness as to its authenticity if such document:

(i) appears complete and accurate on its face;

(ii) appears to be relevant and reliable; and

(iii) is seasonably disclosed and copies are provided at time of disclosure to all other parties.

(c) Applicability of Local Rules. To the extent these rules are inconsistent with local rules, the provisions of these rules apply.

Proposed Amendments to I.R.F.L.P. Rule 103 – The following definitions were added: Civil Protection Order Action, Family Law Action (listed in part from former I.R.F.L.P 203(A)), Relevant Evidence (definition from I.R.E. 401), and Responding Party.

Idaho Rules of Family Law Procedure Rule 103. Definitions.

(a) **Parties.** Reference to a party to the action may include the State.

(b) **Definitions.** In these rules, unless the context otherwise requires, the following definitions apply:

(1) **Civil Protection Order Action.** Any action related to a petition for civil protection order under Title 18, Chapter 63 or Title 18, Chapter 79, Idaho Code, and all proceedings to register, modify, renew or terminate a civil protection order.

(2) **Family Law Action.** Any action related to annulment (Idaho Code Section 35-501 et seq.); divorce (Idaho Code Section 32-601 et seq.); legal separation (Idaho Code Section 32-704(2)); separate maintenance; paternity (Idaho Code Section 7-1101 et seq.); grandparent visitation or custody (Idaho Code Sections 32-717(3) and/or 32-719); de facto custodian (Idaho Code Section 32-1701 et seq.); to establish, enforce, register or modify custody or parenting time (Idaho Code Section 32-11-101 et seq.); to

establish, enforce, register or modify child support (Idaho Code Section 7-1001 et seq.); and all proceedings related to the registration, modification, or enforcement of judgments or decrees in such cases, except contempt.

(3) **I.C.A.R.** References herein to I.C.A.R. are the Idaho Court Administrative Rules.

(4) **Motion.** A motion is a written request made after a petition seeking relief is filed. There is no procedure for Order to Show Cause.

(5) **Moving Party.** The party (movant or applicant) who has filed a written request for relief, regardless of whether or not that party was the petitioner or respondent in the initial petition.

(6) **Petition.** The petition is the initial pleading that commences a family law action or the initial pleading that commences a post-decree matter. All initial documents must be denominated as a petition followed by brief descriptive wording summarizing the nature of the relief sought.

(7) **Petitioner.** A petitioner is a person or entity who files the first petition, and must be referred to as such in all subsequent documents, including all post-decree petitions, motions and documents in the same case.

(8) **Relevant Evidence.** Evidence is relevant if it has the tendency to make a fact more or less probable than it would be without the evidence and the fact is of consequence in determining the action.

(9) **Respondent.** A respondent is any opposing party(ies) other than the petitioner, and must be referred to as such in all subsequent documents, including all post-decree petitions, motions and documents in the same case.

(10) **Responding Party.** The party who is to respond to a petition or motion, regardless of whether or not the party was the petitioner or respondent in the initial petition.

(11) **Response.** A response is a document that substantially responds to a petition or a motion, and includes a response to a petition.

(12) **Service of Process.** Service of process is the act of delivering a petition, summons, motion, notice of hearing, affidavit, brief, or any of the other documents referred to in these rules.

(13) **Title IV-D.** Title IV-D means Title IV-D of the Social Security Act, [42 U.S.C. § 651 et seq.](#) Title IV-D is administered in Idaho by the State Department of Health and Welfare.

(14) **Venue.** Refers to the particular county where a court with jurisdiction hears and determines the case.

(15) **Witness.** A witness is a person whose declaration under oath or affirmation is received as evidence for any purpose, whether such declaration is made on oral examination, by deposition or by affidavit.

Proposed Amendments to I.R.F.L.P. Rule 117 - Added a 30 minute time limit per side for evidentiary hearings and civil protection orders actions.

Idaho Rules of Family Law Procedure Rule 117. Conduct of Proceedings.

(a) **Reasonable Time Limits on Proceedings.** The court may impose reasonable time limits on all proceedings or portions thereof and limit the time to the scheduled time. Any party may request additional time by filing a motion within a reasonable time or as directed by the court.

(b) **Proceedings Conducted in Orderly Manner.** All proceedings must be conducted in an orderly, courteous, and dignified manner. Arguments and remarks will be addressed to the court.

(c) **Time Limits on Arguments on Motions.** Unless a different time is allowed by the presiding judge or a different time is fixed by other controlling rule, arguments on contested motions will be limited to 15 minutes for each side.

(d) **Time Limits on Evidentiary Hearings and Civil Protection Order Actions.** Unless a different time is allowed by the presiding judge or a different time is fixed by other controlling rule, the presentation of evidence for evidentiary hearings in family law actions or civil protection order actions will be limited to 30 minutes for each side. This section does not apply to family law action trials.

Proposed Amendments to I.R.F.L.P. Rule 118 - Amended to allow telephonic or video hearings for ex parte civil protection order requests.

Idaho Rules of Family Law Procedure Rule 118. Hearings by Telephone or Video Teleconference.

(a) **Hearings Allowed.** The court may hold hearings by telephone conference or video teleconference on the following:

- (1) any motion, except motions for summary judgment, unless the parties stipulate to allow a summary judgment motion to be heard by telephone or video teleconference;
- (2) any evidentiary hearing, when no oral testimony is to be produced at the hearing, except that the court may allow testimony by video teleconference if the parties stipulate;
- (3) any other pretrial matter; or
- (4) a hearing on a petition for an ex parte civil protection order.

(b) **Recordings; Minutes.** The audio of the video teleconference must be recorded and minutes of the hearing must be prepared and filed in the action.

Proposed Amendments to I.R.F.L.P. Rule 119 – Added a provision to allow court interview of a child in civil protection order actions and a good cause provision for motions for testimony of a child.

Idaho Rules of Family Law Procedure Rule 119. Participation of Children in Proceedings.

(a) Appointment of Child's Attorney.

(1) **Appointment.** Pursuant to [Idaho Code Section 32-704\(4\)](#), the court, in its discretion, may appoint a lawyer to represent a child in a custody or a visitation dispute and must enter an order for costs, fees, and disbursements in favor of the child's attorney in compliance with that statute.

(2) **Order of Appointment.** The order of appointment must clearly set forth the terms of the appointment, including the reasons for and duration of the appointment, rights of access as provided under this paragraph and applicable terms of compensation.

(3) **Qualifications of Child's Attorney.** The court may appoint as a child's attorney only an individual who is qualified through training or experience in the type of proceeding in which the appointment is made, as determined by the court and according to any standards established by Idaho law or rule.

(4) Access to Child and Information Relating to Child.

(A) Subject to subsection **(3)**, and any conditions imposed by the court that are required by law, the rules of professional conduct, the child's needs, or the circumstances of the proceeding, the court will issue an order of access at the time of an order of appointment, authorizing the child's attorney to have immediate access to the child and any otherwise privileged or confidential information relating to the child.

(B) The custodian of any relevant record relating to a child will provide access to a person authorized by order issued pursuant to this rule to access the records.

(C) A child's record that is privileged or confidential under the law other than this rule may be released to a person appointed under this rule only in accordance with that law. If necessary, either or both parents may be ordered to comply with this rule by signing any necessary releases of information that are in compliance with the Health Insurance Portability and Accountability Act (HIPAA).

(5) Participation in Proceeding by Child's Attorney.

(A) A child's attorney must participate in the conduct of the litigation to the same extent as an attorney for any party.

(B) A child's attorney may not engage in ex parte contact with the court except as authorized by law other than this rule.

(C) In a proceeding, a party, including a child's attorney may call any court-appointed expert witness as a witness for the purpose of cross-examination regarding the witness' report without the advisor's being listed as a witness by a party.

(D) An attorney appointed as a child's attorney may not be compelled to produce the attorney's work product developed during the appointment; be required to disclose the source of information obtained as a result of the appointment; submit a report into evidence; or testify in court.

(E) Subsection (D) above does not alter the duty of an attorney to report child abuse or neglect under applicable law.

(b) **Presence of Child.** Unless a minor child is represented by an attorney as previously set forth in this Rule, and except in emergency situations, no minor child will provide sworn testimony, either written or oral; be brought to court as a witness or to attend a hearing; or be subpoenaed to appear at a hearing without prior court order based on good cause shown.

(c) **Court Interview of a Child.** On the motion of any party, or its own motion, the court may, in its discretion, conduct an in camera interview with a minor child who is the subject of a custody, parenting time, or civil protection order dispute to ascertain any relevant information, including the child's wishes as to the child's custodian and as to parenting time. The interview may be conducted at any stage of the proceeding and will be recorded by a court reporter or any electronic medium that is retrievable in perceivable form. The record of the interview may be sealed, in whole or in part, based upon good cause and after considering the best interests of the child. The parties may stipulate that the record of the interview will not be provided to the parties or that the interview may be conducted off the record.

(d) **Testimony of a Child.** A motion by one of the parties to offer the testimony of a minor child will be in writing; the motion will be filed with the clerk of court, provided to the court, and served on all parties not less than 28 days prior to the hearing or trial, unless good cause shown. The court must rule upon such a motion no later than 7 days prior to the hearing or trial in the matter. On reasonable notice under the circumstances, the court may, on its own motion, compel the testimony of a minor child.