

In the Supreme Court of the State of Idaho

IN RE: ADOPTION OF IDAHO COURT
ADMINISTRATIVE RULE 76A

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ORDER

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

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

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

(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 removal of a mediator from the Roster if a complaint is upheld.

(b) **Grounds for Removal.** The following actions or omissions constitute misconduct and may be grounds for 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; or

(8) 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 removal, they will forward the complaint and a recommendation to the Director of the Court Services Division or designee (CSD Director).

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

(ii) If the CSD Director determines that the complaint alleges misconduct that, if true, are grounds for removal and decides further action or review is

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 CSD Director 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 CSD Director may determine that grounds for removal exist and, exercising discretion, remove the mediator's name from the Roster.

(C) *Grounds for Removal Present.* If upon review of the Report of Investigation, the CSD Director determines by a preponderance of evidence that grounds for removal exist, the CSD Director 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 notice of removal from the Roster. The CSD Director's 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 removal from the Roster.

(e) Hearing.

(1) *Request for Hearing.* If the mediator contests the CSD Director's determination, the mediator may file an appeal with the Administrative Director of the Courts and request a hearing before the 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.

(2) Hearing Procedures.

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

(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 CSD Director, the complainant, and the mediator may introduce relevant evidence including calling and questioning witnesses.

(f) Final Decision.

(1) ***Factors to Consider.*** If the Subcommittee finds by a preponderance of evidence that there are grounds for removal under subdivision (b) of this rule, the Subcommittee will recommend to the Supreme Court removal from the Roster as deemed appropriate. In determining whether removal 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) ***No Hearing Held.*** If no hearing is held, within 14 days of receipt of the complaint, the Subcommittee must issue written findings and recommendations 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.

(3) ***Hearing Held.*** 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.

(4) ***Based on a Majority.*** The Subcommittee must act based on majority vote of its members.

(5) ***Written Decision.*** 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 removal from the Roster, the Supreme Court must state the reasons for the removal and specify any conditions that must be met in the event

the mediator wishes to apply for reinstatement on the Roster. The Supreme Court's decision is final and not subject to further review or appeal.

(g) **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 set forth in the Court's rules and as further provided in the final decision. A mediator may apply for reinstatement no earlier than two years following the date of the order removing the mediator from the Roster. The Supreme Court has sole discretion in granting or denying reinstatement, including the discretion to impose further conditions on reinstatement in light of the mediator's specific circumstances.

(h) **Confidentiality.**

(1) Complaints and investigations are confidential in accordance with I.C.A.R. 32, except when a mediator is removed from the Roster, the CSD Director's determination and the final decision, including grounds for the removal and the facts cited in support of the determination or decision, must be made available to the public upon request.

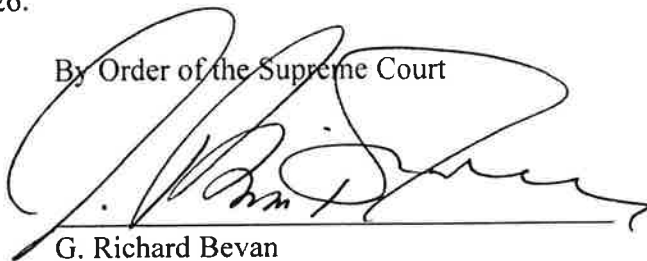
(2) The Administrative Office of the Courts will provide information in accordance with I.C.A.R. 32 to judicial officers, Trial Court Administrators, and court coordinators concerning the removal of any mediators from the Roster.

IT IS FURTHER ORDERED that the amendments shall be effective immediately.

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 3rd day of February, 2026.

By Order of the Supreme Court



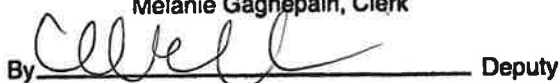
G. Richard Bevan

Chief Justice, Idaho Supreme Court
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, WITH
hand and the Seal of this Court 13-371240
Melanie Gagnepain, Clerk

ATTEST:



Melanie Gagnepain, Clerk

By  Deputy