In the Supreme Court of the State of Idaho

IN RE: ADOPTION OF NEWLY FORMATTED IDAHO RULES OF FAMILY LAW PROCEDURE

ORDER

The Court has reviewed a recommendation from the Children and Families in the Courts Committee (CFCC) to amend the Idaho Rules of Family Law Procedure, to simplify, clarify and modernize the language, and to create a consistent structure and format.

NOW THEREFORE IT IS ORDERED that the existing Idaho Rules of Family Law Procedure be, and hereby are, rescinded and the attached Idaho Rules of Family Law Procedure are hereby adopted.

IT IS FURTHER ORDERED, that this order and these amendments shall be effective July 1, 2021, subject to the Court's COVID related emergency orders still in effect.

IT IS FURTHER ORDERED, that the Clerk of the Court shall cause notice of this Order to be published in one issue of *The Advocate*.

DATED this 29th day of March, 2021.

By Order of the Supreme Court

G. Richard Bevan, Chief Justice

ATTEST: 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: Adoption of New Rules entered in the above entitled cause and now on record in my office. WITNESS my hand and the Seal of this Court March 29, 2021

Melanie Gagnepain, Clerk

By Deputy

PART I. GENERAL ADMINISTRATION

Rule 101. Scope of the 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 actions sought under the Idaho Domestic Crime Prevention Act, Idaho Code Title 39, Chapter 63; 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, actions for guardianship or conservatorship, or actions for civil protection orders sought under Idaho Code Title 18, Chapter 79.

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

Rule 102. Applicability of Other Rules.

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

(b) **Applicability of Idaho Rules of Evidence.**

(1) On a motion to the court filed by any party within 30 days after an answer or other responsive pleading in a family law action is filed, or, if there is no responsive pleading, within 42 days from the filing of the motion or petition in a family law action, or such other date as may be established by the court, any party may request strict compliance with the Idaho Rules of Evidence, except as provided in subsection (b)(3). A request for strict compliance with the Idaho Rules of Evidence will be filled under a separate motion only dealing with this request. Motions in civil protection order actions must be filed no later than 2 days before the 14 day hearing; the motion will be heard at the beginning of the 14 day hearing.

The court may deny the motion for strict compliance with the Idaho Rules of Evidence for good cause shown, including but not limited to a power imbalance in representation between the parties or the best interest of the child.

(2) If no such motion is filed or the motion is denied, 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 evidence. This admissibility standard will replace Idaho Rules of Evidence 403, 602, 801-806, 901-903 and 1002, except as provided in subsection (b)(3). All remaining provisions of the Idaho Rules of Evidence apply.

(3) Regardless of whether a motion is filed under subsection (b)(1):

(A) 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 timely disclosed and copies are provided at time of disclosure to all other parties.

(B) Child interviews under Rule 118 may be conducted by the court.

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

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) **Answer.** An answer is a pleading that substantially responds to a petition.

(2) **Civil Protection Order Action.** Any action related to a petition for civil protection order sought under the Idaho Domestic Violence Crime Prevention Act, Idaho Code, Title 39, Chapter 63, and all proceedings to register, modify, renew or terminate the civil protection order.

(3) **Confer**. To confer means to speak directly with the opposing attorney or a self-represented party in person or by telephone, to identify and discuss a disputed issue, and to make a reasonable effort to resolve the disputed issue. The sending of electronic or voicemail communication does not satisfy the requirement to confer. The attorney or a self-represented party will respond in a reasonable time to a request to confer and will be reasonably available to confer. For cases where a self-represented party is incarcerated, a written communication will satisfy the requirement to confer.

(4) **Family Law Action.** Any action related to annulment; divorce; legal separation; separate maintenance; paternity; grandparent visitation or custody; de facto custodian; to establish, enforce, register or modify custody or parenting time; to establish, enforce, register or modify child support; and all proceedings related to the registration, modification, or enforcement of judgments or decrees in such cases, except contempt.

(5) **Good Cause**. A sufficient reason, based on the particular circumstances of each case, as determined by the discretion of the presiding judge.

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

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

(8) **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.

(9) **Petition**. The petition is the initial pleading that commences a family law or civil protection order 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.

(10) **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.

(11) **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.

(12) **Respondent**. A respondent is any opposing party other than the petitioner.

(13) **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.

(14) **Response**. A response is a document that responds to a motion or other paper.

(15) **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 referenced in these rules.

(16) **Title IV-D**. Title IV-D means Title IV-D of the Social Security Act, United States Code, Title 42. Title IV-D is administered in Idaho by the State Department of Health and Welfare.

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

(18) **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.

(c) **Use of Singular, Plural, and Gender Words**.

(1) Words in the singular number include the plural, and those in the plural include the singular; and

(2) Words of any gender also refer to any other gender.

Rule 104. Computing Time.

(a) **Computing Time.** The following apply in computing any period of time specified in these rules, in any local rule or court order, or in any statute that does not specify a method of computing time.

(1) **Generally**. When the period is stated in days or a longer unit of time:

(A) exclude the day of event that triggers the period;

(B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(C) include the last day of the period, but if the last day is a Saturday, Sunday or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) **Inaccessibility of the Clerk's Office**. Unless the court orders otherwise, if the clerk's office is inaccessible, then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday.

(b) **Extending Time.**

(1) **In General**. When an act may or must be done within a specified time, the court may, for good cause shown, extend the time:

(A) with or without motion or notice if the court acts, or if a request is made before the original time or its extension expires; or

(B) on motion made after the time has expired if the party failed to act because of excusable neglect.

(2) **By Stipulation**. The parties may extend time by written stipulation, filed before or after expiration of time period, if the extension does not disturb the orderly dispatch of business or the convenience of the court.

(3) **Exceptions**. A court must not extend time to act under Rules 801, 804, and 805.

(c) **Additional Time after Service by Mail**. When a party may or must act within a specified time after service and service is made by mail, 3 days are added to the specified period.

(d) **Blood or Other Genetic Tests in Paternity Actions**. If a blood or other genetic test is used to prove paternity, the blood or other genetic test report must be served upon the respondent with the petition or as soon as it is obtained. The blood or other genetic test report must be served upon the respondent at least 28 days before the date set for trial, together with a notice that the blood or other genetic test will be admitted under this rule if no objection is filed at least 21 days in advance of trial. The verified expert's blood or other genetic test report will be admitted at trial unless a challenge to the testing procedures or the blood or other genetic analysis has been made by a party at least 21 days before the date set for trial.

(e) **Setting Hearings by Court**. The court, upon its own initiative, may notice for hearing any motion, trial, or proceeding which is pending before it by providing notice to all parties in conformance with these rules.

(f) **Stipulations Not Binding on Court--Continuance of Trial or Hearing**. The parties to any action may present to the court a stipulation as to any procedural matter involved in any proceeding, including a stipulation to vacate or continue a hearing or trial, but such stipulation must be considered as a joint motion by the parties to the court for its consideration, and will not be binding upon the court. The court may approve or

disapprove the stipulation in the same manner as the court rules upon a motion. The court may by oral or written notice to the parties limit the time within which a motion or stipulation to vacate or continue a hearing or trial must be made in order to be considered by the court.

Rule 105. Change of Venue.

(a) **Motion for Change of Venue.** A judge may change venue only upon motion by any party.

(1) **Discretionary**. A judge may grant a change of venue or change the place of trial to another county in any civil action as provided by statute or when it appears by affidavit or other satisfactory proof:

(A) there is reason to believe that an impartial trial cannot be held in the county in which the action is filed; or

(B) the convenience of witnesses and the ends of justice would be promoted by the change.

(2) **Mandatory**. The judge must change the venue of the trial when it appears by affidavit or other satisfactory proof that the county designated in the petition is not the proper county. This motion must be made no later than 14 days after the party files a responsive pleading.

(3) **Objection to Change of Venue**. On a motion for change of venue under subsection (2), the court may consider an objection based upon subsections (1)(A) or (1)(B). The court may deny an otherwise proper motion for change of venue under subsection (2) if it finds that an impartial trial cannot be had in the proper venue or that the convenience of witnesses and the ends of justice would be promoted by retaining jurisdiction in the county where the action is filed.

(4) **Sanctions**. When a judge grants a motion for change of venue pursuant to subsection (2), the court may assess sanctions against the party who filed the action or the party's attorney if the court finds that the action was filed in the improper venue without a showing of good cause.

(b) **Change of Venue in Same Judicial District**. If venue is changed to a court of proper venue within the same judicial district, the judge granting the change of venue must:

(1) order the case transferred to a specific court of proper venue within the judicial district; and

(2) continue the assignment over the case, unless the administrative district judge reassigns the case to another judge of the judicial district.

(c) **Change of Venue to a Different Judicial District.**

(1) **Venue Changed Pursuant to Subsection (a)(2)**. If change of venue to a different judicial district is granted pursuant to subsection (a)(2), a new presiding judge is assigned as follows:

(A) if the original judge desires to continue the assignment over the case, the judge may so indicate in the order, suggesting a court of proper venue, and refer to the administrative director of the courts for assignment by the Supreme Court to a court of proper venue and for assignment of a specific judge to preside; or

(B) if the original judge does not desire to continue the assignment over the case, the judge must enter an order transferring the case to a proper county and the receiving judicial district must assign a judge pursuant to the assignment procedures of that district.

(2) **Venue Changed Pursuant to Subsection (a)(1)(A) or (B)**. If change of venue is granted according to subsection (a)(1)(A) or (B), the court must enter an order changing venue, suggest a court of proper venue, and refer the case to the administrative director of the courts for assignment by the Supreme Court to a court of proper venue and for assignment of a specific judge to preside. If the original judge does not desire to continue the assignment over the case, the judge may so indicate in the order.

Rule 106. Coordination of Related Family Cases.

(a) **Related Family Cases.**

(1) A case is a related family case when:

(A) it involves any of the same parties, child, or issues and is pending at the time the party files or reopens a family law action;

(B) it affects the court's jurisdiction to proceed;

(C) an order in a related case may conflict with an order on the same issues in the new case; or

(D) an order may conflict with an order in the earlier litigation.

(2) Any related family cases should be identified on the Family Law Case Information Sheet required under Rule 201.

(A) Each party has a continuing duty to inform the court of any proceedings in this or any other state that could affect the current proceeding.

(b) **Assignment to One Judge**.

(1) All related family cases and civil protection order actions must be handled before one judge, unless impractical.

(2) If it is impractical for one judge to handle all related family cases and civil protection order actions, the judges assigned to hear the related cases involving the same family or child may confer for the purpose of case management and coordination of the case. In addition to the issues that may be considered, if actions before the court involve a common question of law or fact, the court may:

(A) consolidate as many issues as is practical to be heard by one judge;

(B) coordinate the progress of the remaining issues to facilitate the resolution of the pending actions and to avoid inconsistent rulings;

(C) determine the access of the parties to court records if a related case is confidential or exempt from disclosure pursuant to Idaho Code or other court rules; and

(D) issue any other orders to avoid unnecessary cost and delay.

(c) **Judicial Access and Review of Related Family Cases.**

(1) **In General.** Notwithstanding provisions in I.C.A.R. 32, a judge hearing a family law action may access and review the files of any related family case, either pending or closed, to aid in carrying out his adjudicative responsibilities. Authorized court personnel may also access and review the files of any related family case.

(2) **Nondisclosure of Confidential Information.** A judge or authorized court personnel must not disclose confidential information or documents contained in related family case files except in accordance with applicable state and federal confidentiality laws and rules.

(3) **Notice of Court Personnel**. Authorized court personnel may advise the court about the existence of related legal proceedings, the legal issues involved, and administrative information about such case.

Rule 107. (Intentionally Left Blank).

Rule 108. Joint Hearings and Consolidation.

(a) **Joint Hearings.**

(1) If actions before the court involve a common question of law or fact, the court may:

(A) join a hearing or trial of any matters in issue in the related family cases and civil protection order actions;

(i) For joint or coordinated hearings, notice to all parties and to all attorneys of record in each related case must be provided by the court, the moving party, or other party as ordered by the court, regardless of whether or not the party providing notice is a party in every case number that will be called for hearing.

(B) consolidate the actions; and

(C) issue any other orders to avoid unnecessary cost or delay.

(b) **Consolidation into Lowest Case Number**.

(1) Except as set forth in subsection (c), motions to consolidate actions in the same county must be presented to and ruled on by the judge to whom the lowest numbered case or first filed case has been assigned among those matters sought to be consolidated. Notice must be given to all parties in each action involved and a copy filed in each case involved.

(2) In the event the motion is granted, the order must specify the case number under which all future papers must be filed, which will be the lowest of the case numbers involved. Thereafter, that case number will be used exclusively for all papers filed only in the designated case file. If a motion to consolidate is granted, all further action with regard to the consolidated cases must be heard by the judge who is assigned the lowest numbered case or first filed cases involved.

(c) **Consolidation of Child Support and Custody Cases**.

(1) If a family law action involving custody is filed in the proper venue, and there is a previous case involving only child support in the same county or a different county, a motion to consolidate may be filed and ruled upon by the judge assigned to preside over the action involving custody.

(2) In the event the motion is granted, the order must specify that the actions are consolidated under the case number assigned to the action involving custody and all future papers will be filed under that case number. All further action with regard to the consolidated cases must be heard by the judge who is assigned the action involving custody.

Rule 109. Disqualification.

(a) **Disqualification without Cause.** Each party has the right to file 1 motion for disqualification of the judge without cause, which does not require the statement of any grounds, under the following conditions and procedures:

(1) **Time for Filing**. The motion must be filed not later than 7 days after service of a written notice or order setting the action for a conference, trial or for hearing on the first contested motion, or not later than 21 days after service or receipt of a petition, summons, order, or other pleading indicating or specifying who the presiding judge to the action will be, whichever occurs first. The motion must also be filed before the judge sought to be disqualified has presided over a conference, a contested hearing, or trial.

(2) **Multiple Parties**. If there are multiple co-parties, the court must determine whether the co-parties have sufficient interest in common so as to be required to join in a disqualification without cause, or whether such parties have an adverse interest in the action such that each co-party is entitled to file one motion for disqualification without cause.

(3) **New Parties**. If a new party is joined in an action after the time for disqualification without cause of the presiding judge has passed, the new party may file a motion for disqualification without cause within 14 days after the party's first appearance or 14 days after that party's first responsive pleading is due, whichever occurs first.

(4) **New Judge**. If at any time during the course of the proceedings, except under circumstances involving alternate judges as set forth below in subsection (a)(6), a new judge is assigned to preside over the case, each party may file one motion for disqualification without cause of the new judge, within the time limits set forth in subsection (a)(1). If a party has previously exercised a disqualification under subsection (a), that party has no right of disqualification without cause of a new judge under this subsection.

(5) **Disqualification on New Trial**. After a trial has been held, if a new trial has been ordered by the court or by an appellate court, each party may file a motion for disqualification without cause of the presiding judge within the time limits set forth in subsection (a)(1).

(6) **Alternate Judges**. If the presiding judge intends to have a panel of judges as alternates to preside at trial or at any other hearing or proceeding in the case, a notice or amended notice of trial setting will include a list of judges who may alternatively be assigned to preside if the presiding judge is unavailable. Upon service of the notice as to the panel, each party may file 1 motion for disqualification without cause as to any alternate judge within 14 days after service of written notice listing the alternate judges. Provided, if a party has previously exercised the right to disqualification without cause under subsection (a), that party has no right to disqualify an alternate judge under this subsection.

(7) **Exceptions**. The right to disqualification without cause does not apply to:

(A) a judge when acting in an appellate capacity, unless the appeal is a trial de novo;

(B) a judge who has been appointed by the Supreme Court to preside over a specific civil action;

(C) a judge hearing a petition to modify or enforce child custody, child support, spousal maintenance, or a divorce judgment; a modification, renewal, or termination of a civil protection order action; a petition for money judgment; or motion for contempt if the judge had previously presided in an earlier proceeding in the case and had not been disqualified; or

(D) a judge who heard, joined, or consolidated a prior related family case.

(8) **Misuse of Disqualification without Cause**. A motion for disqualification without cause must not be made under this rule to hinder, delay, or obstruct the administration of justice. If it appears that an attorney or law firm is using disqualifications without cause for such purposes, or with such frequency as to impede the administration of justice, the trial court administrator must notify the administrative director of the courts requesting a review of the possible misuse of disqualifications without cause. The administrative director will review the possible misuse of this rule and may take remedial measures. The administrative director, before or after taking such remedial measures, may refer the matter to the Chief Justice, who, upon determining that there has been misuse of disqualifications without cause, may take appropriate action to address the misuse, which may include an order providing that the attorney or firm that has engaged in such misuse is prohibited from using disqualifications without cause for such period of time as is set forth in the order or until further order of the Chief Justice.

(b) **Disqualification for Cause**.

(1) **Grounds**. Any party to an action may disqualify a judge or magistrate for cause from presiding in any action upon any of the following grounds:

(A) the judge is a party, or is interested, in the action or proceeding;

(B) the judge is related to either party by consanguinity or affinity within the third degree, computed according to the rules of law;

(C) the judge has been an attorney for any party in the action or proceeding; or

(D) the judge is biased or prejudiced for or against any party or the subject matter of the action.

(2) **Motion for Disqualification**. A motion to disqualify for cause must be accompanied by an affidavit of the party or the party's attorney stating the specific grounds upon which disqualification is based and the facts relied upon in support of the motion. The motion for disqualification for cause may be made at any time. The presiding judge sought to be disqualified must grant or deny the motion upon notice and hearing in the same manner as other motions.

(c) **Voluntary Disqualification.** A presiding judge in an action may make a voluntary disqualification without stating any reason.

(d) **Disqualification and Assignment of New Judge.** After the filing of a motion for disqualification, the presiding judge must not act further in the action except to grant or deny the motion for disqualification. After disqualification of a judge for any reason, the administrative judge of the judicial district, or designee, must appoint another qualified judge in the judicial district to act, or apply to the Supreme Court for appointment of a new judge from outside the judicial district.

(e) **Disqualification of Judge on Change of Venue.**

(1) **Change of Venue within a Judicial District**. If a judge is disqualified from further handling of a proceeding in which a change of venue has been granted to a court of proper venue within the same judicial district, the administrative district judge must reassign the case to another judge of the judicial district.

(2) **Change of Venue to a Different Judicial District**. If a judge is disqualified from further handling of a proceeding in which a change of venue has been granted to a different judicial district, the administrative district judge of the receiving judicial district must refer the case to the administrative director of the courts for assignment by the Supreme Court to a court of proper venue and assignment of a specific judge.

Rule 110. Substitution of Attorney.

(a) **In General.** An attorney may be substituted by filing written notice with the court. The notice must be signed by both the new attorney and the withdrawing attorney.

(b) **Effect of Substitution**. The substitution of attorneys or the appearance of a new attorney must not delay the proceedings except for good cause shown.

Rule 111. Withdrawal of Attorney.

(a) **Withdrawal of Attorney**.

(1) **Leave of Court Required**. To withdraw from an action, except by substitution, an attorney must first obtain leave of the court. The attorney seeking to withdraw must file a motion with the court and set the matter for hearing, and must provide notice pursuant to Rule 205(c) to all parties, including the party the withdrawing attorney represents in the proceeding. The attorney must provide the last known address of the client in any notice of or motion for withdrawal.

(2) **When Granted**. By written order the court may grant leave to withdraw on a showing of good cause and upon such conditions or sanctions as will prevent delay or prejudice to the parties.

(3) **Withdrawal after Final Judgment**. After or with the entry of a final judgment, an attorney may file notice of withdrawal, for which leave of the court is not required. However, the withdrawal will not be effective until after the time for appeal has expired and no proceedings are pending. Provided, that at the conclusion of any family law action to which these rules apply, attorneys for both parties will be deemed to have automatically withdrawn as the attorneys of record effective when the time for appeal from the final judgment has expired and there are no proceedings pending.

(b) **Service; Content of Order; Stay of Action; Dismissal or Default Judgment**.

(1) **Service; Content of Order**. The clerk of the court will serve on all parties, including the party represented by the withdrawing attorney, an order permitting an attorney to withdraw. Service must be in the same manner as provided in Rule 809. The order allowing withdrawal must notify the party whose attorney is withdrawing that the party's claims will be subject to dismissal with prejudice or default judgment may be entered against the party if the party does not, within 21 days after service of the order, either appoint another attorney to appear or file notice with the court that the party will be self-represented in the action.

(2) **Stay of Action**. An action is stayed for 21 days after service by the court of an order allowing withdrawal of the attorney.

(3) **Dismissal or Default Judgment**. If a notice of appearance of a new attorney or notice of self-representation is not filed within 21 days after service of the order allowing withdrawal, the court may dismiss with prejudice any claims of the party or may enter default judgment against the party.

(c) **Withdrawal upon Death, Disbarment or Other Conditions**.

(1) In the event of the death, extended illness, absence, suspension, or disbarment from the practice of law of an attorney of record in an action, the court must stay the action from further proceedings, unless the attorney is associated with a firm, partnership, corporation or other attorney in the action. The court must then enter an order permitting withdrawal that is subject to the provisions of subsection (b).

Rule 112. Capacity.

(a) **Capacity to Sue or be Sued**. The capacity of a party, who is not acting in a representative capacity, to sue or be sued, is determined by the law of this state.

(b) **Minor or Incompetent Persons**.

(1) **With a Representative**. The following representatives may sue or defend on behalf of a minor or an incompetent person:

(A) a general guardian;

(B) a committee;

(C) a conservator; or

(D) a like fiduciary.

(2) **Without a Representative**. A minor or an incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court must appoint a guardian ad litem, or issue another appropriate order, to protect a minor or incompetent person unrepresented in an action.

Rule 113. Access to Proceedings.

(a) **Trials in Open Court; In Regular Courtroom**. All trials upon the merits must be conducted in open court and so far as convenient in a regular courtroom. All trials or

hearings and all judgments and orders issued by such courts are deemed to have been done in open court regardless of the place held.

(b) **Exclusion from Courtroom.** The court may exclude all persons from the courtroom except officers of the court, which may include advocates or other support people, the parties, and attorneys. Witnesses may be excluded by the court at a party's request so they cannot hear other witnesses' testimony, or the court may do so on its own. If the witness is a child, the court may allow parents, a counselor, friend, or other person having a supportive relationship with the child to remain in the courtroom during the child's testimony.

(c) **Hearing Outside the County.** Any hearing, except a trial or evidentiary hearing, may be held outside the county in which the action was filed or transferred for change of venue. By stipulation of the parties, a trial or evidentiary hearing may be held outside the county in which the action was filed or transferred for change of venue.

(d) **Minute Entry.** A minute entry must be made by the clerk of the court under the direction of the court of all court proceedings and filed in the official file of the action.

Rule 114. Oaths and Affirmations; Written Certification; and Unsworn Foreign Declarations.

(a) **Affirmations in Lieu of Oath**. When these rules require an oath, a solemn affirmation suffices.

(b) **Declarations**. Whenever these rules require or permit a written declaration to be made under oath or affirmation, such statement may be made as provided in Idaho Code, Title 9. An affidavit includes a written certification or declaration made as provided in Idaho Code, Title 9.

(c) **Unsworn Foreign Declarations**. Unsworn foreign declarations are governed by Idaho's implementation of the Uniform Unsworn Foreign Declarations Act as set forth in Idaho Rule of Civil Procedure (I.R.C.P.) 2.8.

Rule 115. 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 another 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.

Rule 116. 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) **Minutes; Recordings; Costs**.

(1) Minutes of any hearing or matter heard by telephone or video conference must be prepared and filed in the action.

(2) The hearing or matter to be audio recorded electronically with the recording to be made, retained, and erased as the court may direct.

(3) The costs for the telephone or video teleconference may be allowed as discretionary costs to the party who paid for the costs if that party is the prevailing party in the action.

Rule 117. (Intentionally Left Blank).

Rule 118. Participation of a Child in Proceedings.

(a) **Appointment of Child's Attorney.**

(1) **Appointment**. Pursuant to Idaho Code § 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, 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 according to this rule to access the records.

(C) A child's record that is privileged or confidential under 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 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) **Statement of a 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 on a showing of good cause.

(c) **Court Interview of a Child**. On 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, on a showing of 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, filed with the clerk of the court, provided to the court, and served on all parties not less than 28 days prior to the hearing or trial, unless good cause is 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.

Rule 119. Dismissal of Actions.

(a) **Voluntary Dismissal**.

(1) **By Moving Party**.

(A) **Without Court Order.** Subject to any applicable statute, a moving party may dismiss an action without order of the court:

(i) by filing a notice of dismissal before the responding party serves either an answer or a motion for summary judgment;

(ii) if no responsive pleading, before the introduction of evidence at hearing or trial; or

(iii) by filing a stipulation of dismissal signed by all parties who have appeared in the action.

(B) **Effect**. Unless the notice of dismissal or stipulation states otherwise, the dismissal is without prejudice.

(2) **By Court Order, Effect**. Except as provided in subsection (a)(1), an action may be dismissed at the moving party's request only by court order, on terms that the court considers proper. If a responding party has pleaded a counterclaim before being served with the moving party's motion to dismiss, the action may be dismissed over responding party's objection only if the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under this subsection ~~(2)~~ is without prejudice.

(b) **Involuntary Dismissal**.

(1) **Failure to Prosecute or Comply with Rules**. If the moving party fails to prosecute or to comply with these rules or court order, a responding party may move for dismissal of an action or of any claim against it.

(2) **Dismissal in Court Trial.** After the moving party has completed the presentation of the moving party's evidence, the responding party, or the court on its own motion, without waiving the right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the moving party has shown no right to relief. The court as the trier of the facts may then determine the facts and render judgment against the moving party or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the moving party, the court must make findings as provided in Rule 801.

(3) **Effect of Dismissal.** Unless the order states otherwise, a dismissal under this rule and any dismissal not provided for in this rule, except for one for lack of jurisdiction or failure to join a party under Rule 211, operates as an adjudication on the merits.

(c) **Dismissing a Counterclaim, Cross-claim, or Third-Party Claim.** This rule applies to a dismissal of any counterclaim, cross-claim, or third-party claim. The moving party's voluntary dismissal under Rule 119(a)(1)(i) must be made:

(1) before a responsive pleading is served; or

(2) if there is no responsive pleading, before evidence is introduced at a trial or hearing.

(d) **Costs of Previously Dismissed Action**. If a moving party who has once dismissed an action in any court commences an action based on or including the same claim against the same responding party, the court:

(1) may order the moving party to pay all or part of the costs of that previous action; and

(2) may stay the proceedings until the moving party has complied.

(e) **Dismissal of Inactive Cases.** Any action or proceeding in which no action has been taken for a period of 90 days may be dismissed unless there is a showing of good cause for retention.

(1) Dismissal pursuant to this rule is without prejudice as to all other matters.

(2) At least 14 days prior to such dismissal, the clerk must give notice of the pending dismissal to all parties or their attorneys of record.

Rule 120. Child Support Guidelines. (Presented in a separate document as reworked by the Child Support Guidelines Committee)

Rule 121. Reclaiming Exhibits, Documents or Property.

(a) Any party or any interested person may apply to the court for an order permitting return to the party of exhibits offered or admitted in evidence, or any other documents or property displayed or considered in connection with the action. The application must be filed after:

(1) the expiration of the time for appeal;

(2) the determination of an appeal; or

(3) the determination of a proceeding following an appeal and the expiration of the time for any appeal from that determination, whichever is later.

(b) The court may grant the application on conditions as it deems appropriate, including but not limited to the substitution of a copy, photograph, drawing, facsimile, or other reproduction of the original exhibit, document or property, or the posting of a bond that

the exhibit, document or property will be returned to the court if the court later finds it necessary.

PART II. PLEADINGS

Rule 201. Commencement of Actions.

(a) **Commencement of a Family Law Action.**

(1) A family law action is commenced by filing a petition with the clerk of the court.

(2) **Designation of Parties**. The party filing the initial petition is designated as the petitioner and any party against whom it is filed is designated as the respondent.

(3) **Name and Date of Birth of Child**. If a child is involved in the family law action, the child's full name and date of birth must be included in the petition and any subsequent order, decree, or judgment.

(4) **Service.** Unless the parties have filed a stipulation for entry of a decree or judgment prior to service of the petition, a petition must be served on all parties entitled to service along with (1) a summons and (2) any notice, form, or order issued by the court at the time of filing of the petition as set forth in Rule 204.

(b) **Commencement of a Civil Protection Order Action or Modification**.

(1) A civil protection order action is commenced by the filing of a sworn petition in the form approved by the Supreme Court with the clerk of the court. Such action may be commenced or defended on behalf of a minor as set forth in Rule 112.

(2) A civil protection order may be modified, terminated, or renewed by a party filing an application in the form approved by the Supreme Court with the clerk of the court.

(2) **Name and Date of Birth of Child**. If a child is involved in the civil protection order action, the child's full name and date of birth must be included in the petition and any subsequent order.

(3) **Law Enforcement Information Sheet**. A petition will not be filed unless accompanied by information in whatever form required by the court to allow entry of the protection order into the Idaho public safety and security information system (to be transferred by the court to the appropriate law enforcement agency with any signed order). A copy of this information form will not be maintained in the court file.

(c) **Commencement of a Family Law Modification Action**.

(1) An action to modify child custody, child support, or spousal maintenance is commenced in the original family law action by filing a:

(a) **Petition to Modify**. A petition to modify will be in a form similar to an original petition. All allegations of substantial and material changes in circumstances supporting a petition to modify a term of a prior judgment or decree must be stated with particularity; or

(b) **Stipulation**. The stipulation must expressly authorize the court to enter a modification judgment attached to or specifically identified in the stipulation.

(2) **Designation of Parties**. The parties will remain as designated as the petitioner and respondent as set forth in the original family law action, regardless of whether that party is now the moving party.

(3) **Service**. Unless the parties have filed a stipulation for entry of a judgment, a petition to modify must be served upon all parties entitled to service along with a (1) summons and (2) any notice, form, or order issued by the court at the time of filing of the petition to modify. The method of service will be the same as for an original family law action set forth in Rule 204 and service will be on the responding party rather than on the previous attorney of record for the party.

(4) **Adjudication**. A petition to modify will be adjudicated in the same manner as an original family law action.

(d) **Commencement of an Action to Obtain a Money Judgment**.

(1) A party to a divorce decree, legal separation, or judgment that establishes support for a child of the parties may file a petition for money judgment in a form similar to an original petition or stipulation in the original family law action to enforce the term of the decree or judgment by seeking a money judgment for:

(A) contribution for amount paid by one party toward debt assigned to the other party as provided in the decree or judgment;

(B) reimbursement of uncovered medical expenses incurred on behalf of the child;

(C) reimbursement of work-related day care expenses incurred on behalf of the child;

(D) reimbursement of medical insurance premiums for insurance covering the child;

(E) unpaid child support or spousal maintenance or other payments ordered; and

(F) reimbursement of other amounts ordered to be paid or shared by the parties.

(2) **Designation of Parties**. The parties will remain as designated as the petitioner and respondent as set forth in the original family law action, regardless of whether that party is now the moving party.

(3) **Service**. Unless the parties have filed a stipulation for entry of a judgment, a petition for money judgment must be served upon all parties entitled to service along with a summons. The method of service will be the same as for an original family law action set forth in Rule 204 and service will be on the responding party rather than on the previous attorney of record for the party. If a petition for money judgment is initiated in a family law action currently pending, the petition for money judgment may be served as provided by Rule 205(c)-(e), unless the court orders personal service.

(4) **Adjudication**. A petition for money judgment will be adjudicated in the same manner as an original family law action or may be expedited as directed by the court.

(e) **Family Law Case Information Sheet.**

(1) **Required to File a Petition or Stipulation**. A petition or stipulation in a family law or civil protection order action will not be filed unless and until the moving party furnishes to the clerk a completed family law case information sheet on a form adopted by the Supreme Court and furnished by the clerk. This family law case information sheet will be exempt from disclosure according to I.C.A.R. 32(g).

(2) **Required to File an Answer.** An answer to a family law action will not be filed unless and until the responding party furnishes to the clerk a completed family law case information sheet on a form adopted by the Supreme Court and furnished by the clerk. This family law case information sheet will be exempt from disclosure according to I.C.A.R. 32(g).

(f) **Filing Fee--Waiver**. The filing fee prescribed by Appendix "A" of the Idaho Rules of Civil Procedure must be paid before the filing of a pleading or motion listed in the filing fee schedule. Any waiver of the filing fee will be made by the court upon verified application of a party which will require no filing fee. Provided, the filing fees will be automatically waived in any case in which a party is represented by an attorney under the Idaho Law Foundation Volunteer Lawyers Program, the University of Idaho Legal Aid Clinic, the Idaho Legal Aid Program, or an attorney under a private attorney contract with Legal Aid.

Rule 202. Real Party in Interest.

(a) **Designation in General**. An action must be prosecuted in the name of the real party in interest. The following may sue in their own names without joining the person for whose benefit the action is brought:

(1) an executor;

(2) an administrator;

(3) a personal representative;

(4) a guardian;

(5) a bailee;

(6) a trustee of an express trust;

(7) a party with whom or in whose name a contract has been made for another's benefit; and

(8) a party authorized by statute.

(b) **Action in the Name of the State of Idaho for Another's Use or Benefit**. When a statute in the state of Idaho so provides, an action for the use or benefit of another must be brought in the name of the state of Idaho.

(c) **Joinder of the Real Party in Interest**. The court may not dismiss an action for failure to prosecute in the name of the real party in interest until, after an objection, a reasonable time has been allowed for the real party in interest to ratify, join, or be substituted into the action. After ratification, joinder, or substitution, the action proceeds as if it had been originally commenced by the real party in interest.

Rule 203. Pleadings Allowed.

(a) **Family Law Pleadings**. Only these pleadings are allowed in family law actions:

(1) a petition;

(2) an answer to a petition, which may include a counterclaim;

(3) an answer to a counterclaim designated as a counterclaim;

(4) an answer to cross claim;

(5) a third-party petition;

(6) an answer to third-party petition; and

(7) if the court orders one, a reply to an answer.

(b) **Civil Protection Order Pleadings**. Only these pleadings are allowed in civil protection order actions:

(1) a petition; and

(2) an application for modification, termination or renewal of civil protection order.

(c) **Designation of Pleadings.** Each pleading must have one of the above designations and must comply with Rule 208.

Rule 204. Summons.

(a) **Issuance**. On or after the filing of the petition in a family law action, the moving party may present a summons to the clerk for signature and seal. If the summons is properly completed, the clerk must sign, seal, and issue it to the moving party for service on the responding party.

(b) **Time Limit for Service**. If a responding party is not served within 182 days after the filing of the petition, the court, on motion or on its own after 14 days' notice to the moving party, must dismiss the action without prejudice against the responding party. But if the moving party shows good cause for the failure to serve, the court must extend the time for service for an appropriate period.

(c) **Contents; Amendments**.

(1) **Contents**. A summons must:

(A) name the court;

(B) state the assigned number of the case;

(C) name the parties;

(D) identify the county in which the action is brought;

(E) state the mailing address, physical address (if different), and phone number of the district court clerk;

(F) state the name, address, phone number, email address, and bar number of the moving party's attorney, or, if unrepresented, the address, phone number, and email address (if any) of the moving party;

(G) be directed to the responding party;

(H) state the time in which the responding party must appear and defend;

(I) notify the responding party that a failure to appear and defend will result in a default judgment against the responding party for the relief demanded in the petition;

(J) be signed by the clerk; and

(K) bear the court's seal.

(2) **Amendments**. At any time in its discretion and upon such terms as it deems just the court may allow the summons to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the summons issued.

(3) **Form of Summons**.

(A) **Generally**. The summons must be in substantially the form found in Appendix A.

(B) **Publication**. Where service is made by publication, the summons must be published in substantially the form found in Appendix A.

(d) **Service**.

(1) **Personal service**. A copy of the summons must be served with the petition, except when the service is by publication as provided in subsection (f). The moving party is responsible for furnishing the necessary copies to the person who makes service.

(2) **By whom**. An officer authorized by law to serve process, or any person over the age of 18, not a party to the action may serve the summons and petition.

(e) **Upon Whom Served.**

(1) **Service upon individuals**. An individual, other than a person under age 18 or incompetent person, may be served by doing any of the following:

(A) delivering a copy of the summons and of the petition to the individual personally;

(B) leaving a copy of the summons and petition at the individual's dwelling house or usual place of abode with someone at least 18 years old who resides there; or

(C) delivering a copy of the summons and petition to an agent authorized by appointment or by law to receive service of process.

(2) **Serving a Person Under Age 18; Incompetent Person**.

(A) **Minor**.

(i) **Guardian Appointed**. A person less than 18 years old must be served by service on the guardian, if one has been appointed.

(ii) **No Guardian Appointed**. If there is no guardian, service may be made on a parent. If no guardian or parent can be found within the state, service may be on any person having the care and custody of the minor.

(iii) **Additional Service on Minor**. Unless the court otherwise orders, the minor must also be served. Service must be in the same manner set forth in subsection (e)(1).

(B) **Incompetent Person**.

(i) **Guardian Appointed in this State**. An incompetent person who has been judicially declared to be of unsound mind or incapable of conducting his or her own affairs, must be served by service upon the guardian, if one has been appointed in this state.

(ii) **No Guardian Appointed in this State**. If there is no guardian appointed in this state, service must be made on a competent adult member of the family with whom the incompetent person resides. If the incompetent person is living in an institution, service must be on the chief executive officer of the institution. If service cannot be had upon any of them, then must be as provided by order of the court.

(iii) **Additional Service on Incompetent Person**. Unless the court otherwise orders, service must also be made on the incompetent person. Service must be in the same manner set forth in subsection (e)(1).

(iv) **If Person to be Served is a Petitioner**. If any of the parties on whom service is directed to be made is a petitioner, then service must be on such other person as the court designates.

(3) **Serving the State and its Agencies or Governmental Subdivisions**.

(A) **State of Idaho**. To serve the state of Idaho or any of its agencies, a party must deliver 2 copies of the summons and petition to the attorney general or any deputy attorney general.

(B) **Other Governmental Subdivisions**. To serve any other governmental subdivision, municipal corporation, or quasi-municipal corporation or public board service, service must be made pursuant to the statute in addition to service provided in this subsection.

(4) **Admission of Service**. Service may be completed by a written admission, acknowledged by the person to be served, that the person has received service of process. The admission must state the capacity in which service of process was received.

(f) **Summons – Other Service.**

(1) **Service on Persons Outside the State; Unknown Persons**.

(A) Personal service outside of the state, when authorized by statute, must be as provided by subsection (e).

(B) When a statute of this state provides for service of a summons, or of a notice, or of an order in lieu of summons, on a party not an inhabitant of, or found within the state, or on unknown persons, service must be made as provided by the statute.

(C) When the summons, notice or order is served by publication it must contain, in general terms, a statement of the nature of the grounds of the claim, and copies of the summons and petition must be mailed to the last known address most likely to give notice to the party.

(2) **Service – Completion**. Personal service within or outside the state is complete on the date of delivery; service by publication is complete on the date of the last publication.

(g) **Territorial Limits of Effective Service**. All process, other than a subpoena under Rule 409, may be served anywhere within territorial limits of the state and, when a statute or rule provides, beyond the territorial limits of the state.

(h) **Proving Service**.

(1) **Requirements of Proof of Service**. Proof of service of process must be in writing, identifying all documents served, specifying the manner of service and the date and place of service. Unless the party served files an appearance, proof of service must be filed with the court. Proof of service must be as follows:

(A) if service is made by a sheriff or deputy sheriff, or any peace officer or court marshal, anywhere within the state of Idaho, then by certificate of the officer stating how service was made as required by these rules;

(B) if service is by any person other than those specified in subsection (h)(1)(A), then by affidavit of the person stating that the person is over the age of 18 years and how service was made as required by these rules;

(C) if service is by certified or registered mail, then by affidavit of a person over the age of 18 years who mailed the process together with postal receipts indicating whether the person received the service of process by mail;

(D) if service is by publication, then by affidavit of the publisher of the newspaper, or the publisher's designated agent over the age of 18 years, stating the dates of publication and attaching a true copy of the publication, and by affidavit of mailing by a person over the age of 18 years who mailed the process and stating the date and address to which they were mailed; or

(E) the party's acknowledged written admission that service of process was received, as provided by subsection (e)(4).

(2) **Amendment of Proof of Service**. At any time in its discretion and upon such terms as it deems just, the court may allow proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

Rule 205. Serving and Filing of Pleadings and Other Papers.

(a) **Responsive Pleading**. The responding party in a family law action who has been served with a petition and summons will respond by filing an answer. In the event the responding party does not file an answer, the moving party will have the right to file for a default and receive a default judgment under Rules 301and 302.

(b) **Service: When Required.**

(1) **In General**. Unless these rules provide otherwise, each of the following papers in family law actions must be served on every party:

(A) an order stating that service is required;

(B) a pleading filed after the original petition, unless the court otherwise orders because there are numerous respondents;

(C) a discovery paper required to be served on a party, unless the court orders otherwise;

(D) a written motion, except one that may be heard ex parte; and

(E) a written notice, appearance, demand, or offer of judgment or any similar paper.

(2) **If a Party Fails to Appear**. No service is required on a party who is in default for failure to appear. But if a pleading asserts a new claim for relief against such party, that pleading must be served on that party under Rule 204.

(3) **Service in Civil Protection Order Actions**. All petitions, applications, and orders in civil protection order actions must be served in accordance with Idaho Code Title 39, Chapter 63.

(c) **Service: How Made**.

(1) **Serving an Attorney**. If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party.

(2) **Service in General**. A paper is served under this rule by:

(A) handing it to the person;

(B) leaving it:

(i) at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or

(ii) if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone over the age of 18 years who resides there;

(C) mailing it to the person's last known address, in which event service is complete upon mailing;

(D) leaving it with the court clerk if the person has no known address;

(E) sending it by electronic means if the person consented in writing, in which event service is complete upon transmission, but is not effective if the serving party learns that it did not reach the person to be served;

(F) transmitting the copy by a facsimile machine process although this rule does not require a facsimile machine to be maintained in the office of an attorney; or

(G) delivering it by any other means that the person consented to in writing, in which event service is complete when the person making service delivers it to the agency designated to make delivery.

(d) **Filing**. All papers after the petition required to be served upon a party must be filed with the court either before service or within a reasonable time thereafter filed. If the papers have been filed before service, the filing date will be noted thereon.

(1) **Required Filings; Certificate of Service**. Any paper after the petition that is required to be served, together with a certificate of service, must be filed within a reasonable time after service.

(2) **How Filing Is Made; In General**. A paper is filed by delivering it:

(A) to the clerk; or

(B) to a judge who agrees to accept it for filing, and who must then note the filing date on the paper and promptly send it to the clerk.

(3) **Filing by Facsimile**.

(A) A pleading or document for filing may be sent to the court by facsimile machine if there is a facsimile machine in the office of the filing clerk of the court. Documents may be fax filed if:

(i) no filing fee is required or the county allows the fee to be prepaid by credit card in accordance with the county's credit card acceptance policy;

(ii) the filing is made during normal business hours or the county allows filings to be received outside normal working hours or on any non-judicial day and file stamped at 9:00 a.m. on the next judicial day;

(iii) the document does not exceed ten pages or the county allows documents of any length to be faxed.

(B) The faxed document must be file stamped and treated as the original, such that the signature, court seal, and notary seal on the faxed document are considered as an original. A document filed by facsimile need not be also mailed to the court.

(C) A facsimile machine process copy of a document that is not transmitted directly to the court by facsimile machine may be filed with the court. The clerk must file stamp the facsimile copy as an original and the signature on the copy constitutes the required signature under Rule 213. There is no limit as to the number of pages.

(e) **Proof of Service**.

(1) Proof of service must:

(A) be made by a certificate of the attorney or the party making service;

(B) be attached to the copy of the document filed with the court, or if the document is not filed with the court, be filed within a reasonable time after service of the document; and

(C) state the date and manner of service and the name and address of the person served.

(2) Failure to make proof of service does not affect the validity of the service.

(f) **Service on Attorney-Legislator Suspended During Sessions; Emergency Provisions**.

(1) **Appearance in Court Not Required.** When an attorney is serving as a legislator while the legislature is in general or special session, the attorney is not required to appear at any trial or other proceeding.

(2) **Extension of Time for Filing; Statute of Limitation Not Tolled.** The time within which the attorney would normally be required to file any pleading or other paper is extended for a period of ten days following adjournment of the session of the legislature. The extension of time does not toll or otherwise extend the running of any limitation period provided by statute.

(3) **Emergency Provisions.** On a motion supported by affidavit, the court may order, ex parte, that the attorney-legislator appear or make appropriate arrangements for another attorney to represent the attorney-legislator's clients in the matter if the court finds that:

(A) an emergency exists;

(B) the party will be unduly prejudiced; or

(C) irreparable damage will accrue.

The order must be served on the attorney-legislator by certified mail addressed to the attorney at the legislature.

Rule 206. Time to Serve Responsive Pleading; Defenses and Objections; Motion for Judgment on the Pleadings; Joining Motions; Waiving Defenses.

(a) **Time to Serve a Responsive Pleading.**

(1) **In General.** Unless another time is specified by rule or statute, the time for serving a responsive pleading is as follows:

(A) a responding party must serve an answer within 21 days after being served with the summons and petition;

(B) a party must serve an answer to a counterclaim or cross-claim within 21 days after being served with the pleading that states the counterclaim or cross-claim;

(C) a party must serve a reply to an answer within 21 days after being served with an order to reply, unless the court specifies a different time.

(2) **Effect of a Motion**. Unless the court sets a different time, serving a motion under this rule alters these periods as follows:

(A) if the court denies the motion or postpones its disposition until trial, the responsive pleading must be served within 14 days after notice of the court's action; or

(B) if the court grants a motion for a more definite statement, the responsive pleading must be served within 14 days after the more definite statement is served.

(b) **How to Present Defenses.** Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third party claim, must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

(1) lack of subject-matter jurisdiction;

(2) lack of personal jurisdiction;

(3) improper venue;

(4) insufficient process;

(5) insufficient service of process;

(6) failure to state a claim upon which relief can be granted;

(7) failure to join a party under Rule 211; and

(8) another action pending between the same parties for the same cause.

If a pleading states a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim.

(c) **Motion for Judgment on the Pleadings.** After the pleadings are closed, but early enough not to delay trial, a party may move for judgment on the pleadings.

(d) **Result of Presenting Matters Outside the Pleadings.** If, on a motion under this rule, matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 507. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

(e) **Motion for a More Definite Statement.** A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare an answer. The motion must be made before filing a responsive pleading and must point out the defects complained of and the details desired. If the court orders a more definite statement and the order is not obeyed within 14 days after notice of the order or within the time the court sets, the court may strike the pleading or issue any other appropriate order.

(f) **Motion to Strike.** The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act:

(1) on its own; or

(2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading.

(g) **Joining Motions.**

(1) **Right to Join**. A motion under this rule may be joined with any other motion allowed by this rule or by filing a special appearance under this rule.

(2) **Limitation on Further Motions**. Except as provided in subsections (b)(2) or (3), a party that makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion.

(h) **Waiving and Preserving Certain Defenses.**

(1) **When Some Are Waived**. A party waives any defense listed in subsection (b)(2), (4) and (5) by failing to assert it by motion before filing a responsive pleading or filing any other motion, except a motion for an extension of time to answer or otherwise appear or a motion to disqualify a judge under Rule 109.

(2) **When to Raise Others**. Failure to state a claim upon which relief can be granted, to join a person required by Rule 211, a defense of another action pending between the same parties for the same cause, or to state a legal defense to a claim may be raised:

(A) in any pleading allowed or ordered under Rule 203(a);

(B) by a motion under Rule 206(c); or

(C) at trial.

(3) **Lack of Subject Matter Jurisdiction**. If the court determines at any time that it lacks subject matter jurisdiction, the court must dismiss the action.

(4) **Improper Venue**. An objection to improper venue is waived unless a timely motion for proper venue is made as provided in Rule 105.

i) **Hearing Before Trial.** If a party so moves, any defense listed in subsections(b)(1)-(7), whether made in a pleading or by motion, and a motion under subsection (c) must be heard and decided before trial unless the court orders a deferral until trial.

Rule 207. General, Special, or Limited Pro Bono Appearance.

(a) **General Appearance**. The voluntary appearance of a party or service of any pleading by the party, except as provided in subsection (b) constitutes voluntary submission to the personal jurisdiction of the court.

(b) **Motion or Special Appearance to Contest Personal Jurisdiction**. The following do not constitute a voluntary appearance by a party under this rule:

(1) a motion under Rule 206(b)(2), (4), or (5), whether raised before or after judgment, a motion under Rule 110, or a motion for an extension of time to respond or otherwise appear;

(2) the joinder of other defenses in a motion under Rule 206(b)(2), (4), or (5);

(3) after a party files a motion under Rule 206(b)(2), (4), or (5), action taken by that party in responding to discovery or to a motion filed by another party;

(4) if, after a motion under Rule 206(b)(2), (4), or (5) is denied, the party pleads further and defends the action, such further appearance and defense of the action; and

(5) the filing of a document entitled "special appearance," which does not seek any relief but merely provides notice that the party is entering a special appearance to contest personal jurisdiction, if the party files a motion under Rule 206(b)(2), (4), or (5)within 14 days after filing such document, or within such later time as the court permits.

(c) **Limited Pro Bono Appearance**.

(1) **In General**. In accordance with the Idaho Rules of Professional Conduct 1.2(c) an attorney may appear to provide pro bono assistance to an otherwise self-represented litigant in an action by filing and serving on all parties a notice of limited appearance specifying all matters that are to be undertaken on behalf of the party.

(2) **Limited Authority**. The attorney must only act on behalf of the party for those matters specified in the notice of limited appearance or any amended notice. Service on the attorney is valid only for those specific proceedings for which the attorney has appeared. Upon conclusion of the matters for which the attorney specifically appeared, the attorney must file a notice of completion of limited appearance which terminates the attorney's appearance in the action without need for leave of the court.

Rule 208. Form of Documents and Pleadings.

(a) **Form, Caption and Name - Generally**. The following requirements apply to all documents filed with the court:

(1) they must be printed in black ink using a computer printer, word processor, or typewriter on 8 ½ " by 11" white paper, except that:

(A) prisoners incarcerated or detained in a state prison or county jail may file documents under this rule that are legibly hand-printed in black ink; and

(B) forms approved by the Supreme Court or the administrative district judge or distributed through the Court Assistance Office in the county

where the action is pending may be completed by legibly hand-printing in black ink or by typing;

(2) they must contain a caption setting forth the names of the parties, the title of the court, the case number, and the title of the document;

(3) the title of the court must commence not less than 3 inches from the top of the first page;

(4) the name, address, phone number, email address, and valid Idaho State Bar Number of the attorney appearing of record or, if unrepresented, the address, phone number, and email address (if any) of the self-represented party, must appear above the title of the court in the space to the left of the center of the page and beginning at least 1.2 inches below the top of the page;

(a) In civil protection order actions, the petitioner may omit his address, phone number, or email address on the petition or application so long as this information has been included on the family law case information sheet.

(5) if an attorney is representing a party pro bono, this may be indicated immediately below the attorney's bar number with the words "pro bono" and an indication of any program sponsoring the pro bono appearance, such as Idaho Volunteer Lawyers Program, Idaho Legal Aid Clinic, or a law school clinic;

(6) the body of the document must be printed with double line spacing or 1 ½ line spacing with a font of not less than 11-point size and with margins of not less than 1.2 inches at the top and sides and not less than 1 inch at the bottom unless slightly smaller margins will allow a document to fit on a single page;

(7) the title of the document must appear at the bottom of each page;

(8) all attached exhibits must be clearly legible;

(9) all handwritten exhibits must be accompanied by a machine-printed duplicate:

(10) the nature of the document, filing fee category, and filing fee prescribed by Appendix "A" of the Idaho Rules of Civil Procedure, must be stated if the document requires a filing fee; and

(11) the title of the action in the petition must include the names of all of the parties, but in subsequent pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of the other parties.

(b) **Language**. Pleadings and other documents filed with the court must be in the English language.

(c) **Abbreviations and Numbers**. Common abbreviations may be used, and numbers may be expressed by words or numerals.

(d) **Unknown Party**. When a party does not know the true name of the adverse party, that fact may be stated and that party may be designated by any name and the words, "whose true name is unknown," and when the true name is discovered the pleading must be amended accordingly.

(e) **Paragraphs; Separate Statements**. A party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a statement of a single set of circumstances. A later pleading may refer by number to a paragraph in an earlier pleading. If doing so would promote clarity, each claim founded on a separate transaction or occurrence and each defense other than denials, must be stated a separate count or defense.

(f) **Adoption by Reference; Exhibits.** A statement in a pleading may be adopted by reference elsewhere in the same pleading or in any other pleading or motion. A copy of any written instrument which is an exhibit to a pleading is a part the pleading for all purposes.

Rule 209. General Rules of Pleading.

(a) **Claims for relief**. A pleading that states a claim for relief must contain:

(1) a short and plain statement of the grounds upon which the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;

(2) a short and plain statement of the claim showing that the pleader is entitled to relief; and

(3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

(b) **Defenses; Admissions and Denials**.

(1) **In General**. In responding to a pleading, a party must:

(A) state in short and plain terms its defenses to each claim asserted against it;

(B) admit or deny the allegations asserted against it by the opposing party.

(2) **Denials; Responding to the Substance**. A denial must fairly respond to the substance of the allegation.

(3) **General and Specific Denials**. A party that intends in good faith to deny all of the allegations of a pleading, including the jurisdictional grounds, may do so by a general denial. A party that does not intend to deny all the allegations must either specifically deny designated allegations or generally deny all except those specifically admitted.

(4) **Denying Part of an Allegation**. A party that intends in good faith to deny only part of the allegation must admit the part that is true and deny the rest.

(5) **Lacking Knowledge or Information**. A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial.

(6) **Effect of Failing to Deny**. An allegation, other than one relating to the amount of damages, is admitted if a responsive pleading is required and the allegation is not denied except those necessary to sustain an action for divorce. If a responsive pleading is not required, an allegation is considered denied or avoided.

(c) **Affirmative Defenses**.

(1) **In General**. In responding to a pleading, a party must affirmatively state any avoidance or affirmative defense, including:

(A) accord and satisfaction;

(B) arbitration and award;

(C) assumption of risk;

(D) contributory or comparative responsibility;

(E) duress;

(F) estoppel;

(G) failure of consideration;

(H) fraud;

(I) illegality;

(J) injury by fellow servant;

(K) laches;

(L) license;

(M) payment;

(N) release;

(O) res judicata;

(P) statute of frauds;

(Q) statute of limitations;

(R) waiver; and

(S) discharge in bankruptcy.

(2) **Mistaken Designation**. If a party mistakenly designates a defense as a counterclaim, or a counterclaim as a defense, the court must, if justice so requires, treat the pleading as though it were correctly designated and may impose terms for doing so.

(d) **Pleadings to be Concise and Direct; Alternative Statements, Inconsistency.**

(1) **In General**. Each allegation must be simple, concise, and direct. No technical form is required.

(2) **Alternative Statements of Claims or Defense**. A party may set forth 2 or more statements of a claim or defense alternatively or hypothetically, either in a single count or defense or in separate ones. If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient.

(3) **Inconsistent Claims or Defenses**. A party may state as many separate claims or defenses as it has, regardless of consistency.

(e) **Construing pleadings**. Pleading must be construed as to do justice.

Rule 210. Counterclaims and Cross-claims.

(a) **Compulsory Counterclaim**.

(1) **In General**. A pleading must state as a counterclaim any claim that, at the time of service, the pleader has against any opposing party, if the claim:

(A) arises out of the transaction or occurrence that is the subject matter of the opposing party's claim; and

(B) does not require adding another party over whom the court cannot acquire jurisdiction.

(2) **Exceptions**. The pleader need not state the claim if:

(A) when the time the action was commenced, the claim was the subject of another pending action; or

(B) the opposing party sued upon its claim by attachment or other process that did not establish personal jurisdiction over the pleader on that claim, and the pleader does not assert any counterclaim under this rule.

(b) **Permissive Counterclaim**. A pleading may state as a counterclaim against an opposing party any claim that is not compulsory.

(c) **Relief Sought in a Counterclaim**. A counterclaim need not diminish or defeat the recovery sought by the opposing party. It may request relief that exceeds the amount or differs in kind from the relief sought by the opposing party.

(d) **Counterclaim Against Government Entities**. These rules do not expand the right to assert a counterclaim, or to claim a credit, against the state of Idaho or any political subdivision, agency, or officer.

(e) **Counterclaim Maturing or Acquired After Pleading**. The court may permit a party to file a supplemental pleading asserting a counterclaim that matured or was acquired by the party after serving any earlier pleading.

(f) **Cross-claim Against a Coparty**. A pleading may state as a cross-claim any claim by one party against a coparty if the claim arises out of the transaction or occurrence that is the subject matter of the original action or of a counterclaim, or if the claim relates to any property that is the subject matter of the original action. The cross-claim may include a claim that the coparty is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

(g) **Joining Additional Parties**. Rule 211 governs the addition of a person as party to a counterclaim or cross-claim.

(h) **Separate Trials; Separate Judgments.** If a court orders separate trials under Rule 708, it may enter a judgment on a counterclaim or cross-claim under Rule 803 when it has jurisdiction to do so, even if the opposing party's claims have been dismissed or otherwise resolved.

Rule 211. Third-Party Practice.

(a) **When a Responding Party May Bring in a Third Party.**

(1) **Timing of the Summons and Petition**. A responding party may, as a third-party petitioner, serve a summons and petition on a nonparty who is or may be liable to it for all or part of the moving party's claim against it. But the third-party petitioner must, by motion, obtain the court's leave if it files the third-party petition more than 14 days after serving its answer.

(2) **Third-Party Respondent's Claims and Defenses**. The person served with the summons and third-party petition, the "third-party respondent":

(A) must make any defense to the third-party petitioner's claim under Rule 205;

(B) must assert any counterclaim against the third-party petitioner under Rule 210(a) and may assert any counterclaim against the third-party petitioner under Rule 210(b) or any cross-claim against another third-party respondent as provided in Rule 210(f).

(3) **Petitioner's Claims Against a Third-Party Respondent**. The petitioner may assert against the third-party respondent any claim arising out of the transaction or occurrence that is the subject matter of the petitioner's claim against the third-party petitioner. The third-party respondent must then assert any defense under Rule 205 and any counterclaim under Rule 210(a), and may assert any counterclaim under Rule 210(b) or any cross claim under Rule 210(f).

(4) **Motion to Strike, Sever, or Try Separately**. A party may move to strike the third-party claim, to sever it, or to try it separately.

(5) **Third-party Respondent's Claim against a Nonparty**. A third-party respondent may proceed under this rule against a nonparty who is or may be liable to the third-party respondent for all or part of any claim against it.

(b) **When a Moving Party May Bring in a Third Party**. When a claim is asserted against a moving party, the moving party may bring in a third party if this rule would allow a respondent to do so.

(c) **Required Joinder of Parties.**

(1) **Persons Required to be Joined if Feasible**.

(A) **Required Party.** A person who is subject to service of process will be joined as a party in the action if:

(i) in that person's absence, the court cannot accord complete relief among existing parties; or

(ii) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may:

(a) as a practical matter impair or impede the person's ability to protect that interest; or

(b) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest.

(B) **Joinder by Court Order.** If a person has not been so joined as required, the court must order that the person be made a party. A person who refuses to join as a petitioner may be made either a respondent or, in a proper case, an involuntary petitioner.

(2) **When Joinder is Not Feasible**. If a person who is required to be joined if feasible cannot be joined, the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or be dismissed. The factors for the court to consider include:

(A) the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties;

(B) the extent to which any prejudice could be lessened or avoided by

(i) protective provisions in the judgment;

(ii) shaping the relief; or

(iii) other measures;

(C) whether a judgment rendered in the person's absence would be adequate; and

(D) whether the petitioner would have an adequate remedy if the action is dismissed for nonjoinder.

(d) **Permissive Joinder of Parties**.

(1) **Persons Who May Join or Be Joined**.

(A) **Petitioners**. All persons may join in one action as petitioners if:

(i) they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

(ii) if any question of law or fact common to all of them will arise in the action.

(B) **Respondents**. All persons may be joined in one action as respondents if:

(i) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

(ii) any question of law or fact common to all of them will arise in the action.

(C) **Extent of Relief**. Neither a petitioner nor a respondent need be interested in obtaining or defending against all the relief demanded. The court may grant judgment to one or more of the petitioners according to their rights, and against one or more respondents according to their liabilities.

(e) **Misjoinder and Nonjoinder of Parties**. Misjoinder of parties is not a ground for dismissing an action. On motion or on its own motion, the court may at any time, on just terms, add or drop a party. The court may also sever any claim against a party.

Rule 212. Intervention.

(a) **Intervention of Right**. On timely motion, the court must permit anyone to intervene who:

(1) is given an unconditional right to intervene by an Idaho statute; or

(2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing the action may as a practical matter impair or impede the movant's ability to protect its interest, unless the existing parties adequately represent that interest.

(b) **Permissive Intervention**.

(1) **In General**. On timely motion, the court may permit anyone to intervene who:

(A) is given a conditional right to intervene by an Idaho statute; or

(B) has a claim or defense that shares with the main action a common question of law or fact.

(2) **By a Government Officer or Agency**. On timely motion, the court may permit a federal or state governmental officer or agency to intervene if a party's claim or defense is based on:

(A) a statute or executive order administered by the officer or agency; or

(B) any regulation, order, requirement, or agreement issued or made under the statute or executive order.

(3) **Delay or Prejudice**. In exercising its discretion the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.

(c) **Procedure**. A motion to intervene must filed and be served on the parties as provided in Rule 205. The motion must state the grounds for intervention and be accompanied by a pleading that sets out the claim or defense for which intervention is sought.

(d) **Intervention by Department of Health and Welfare**. A motion to intervene brought by the Idaho Department of Health and Welfare for the purpose of obtaining, enforcing or modifying a child support order may be granted without hearing, subject to a later hearing upon a motion by an objecting party. Service of the motion and any order allowing intervention may be made by mail to the last known address of each of the parties.

(e) **Intervention by De Facto Custodian**.

(1) A request for de facto custodian status pursuant to existing Idaho order of child custody or a pending Idaho proceeding to establish custody with regard to the child that is the subject of the request. A child custody proceeding does not include actions filed pursuant to title 16 of the Idaho Code. The motion for permissive intervention must be served pursuant to Rule 203 in any pending child custody proceeding. The motion for permissive intervention must be served pursuant to Rule 204 if the custody proceeding is closed. A notice of hearing must be served along with the motion in accordance with Rule 501(a)(3).

(2) If the motion for permissive intervention is granted, a petition for de facto custodian status and custody may be filed. The petition must be served and adjudicated in substantially the same manner as an original action. The petition and notice of hearing must be served upon the parties pursuant to Rule 204

unless otherwise ordered by the court. The notice of hearing must direct the opposing party to file a written response within 21 days.

Rule 213. Signing Pleadings, Motions, and Other Papers; Representations to the Court; Sanctions.

(a) **Signature.** Every pleading, written motion, and other paper must be signed by at least one attorney of record licensed in the state of Idaho, in the individual attorney's name, or by a party personally if the party is unrepresented. The paper must state the signer's address, e-mail address, and telephone number. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention.

(1) **Electronic Signature**. An electronic signature may be used on any document that is transmitted electronically, and a notary's seal may be in electronic form.

(2) In civil protection order actions, the petitioner may omit his address, phone number, or email address on the petition or application so long as this information has been included on the family law case information sheet.

(b) **Representations to the Court.** By presenting to the court a pleading, written motion, or other paper, whether by signing, filing, or submitting, or later advocating it, an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

(c) **Sanctions.**

(1) **In General**. If, after notice and a reasonable opportunity to respond, the court determines that subsection (b) has been violated, the court must impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is

responsible for the violation. A law firm may be held jointly responsible for a violation committed by its partner, associate, or employee.

(2) **Motion for Sanctions**. A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates subsection (b). The motion must be served under Rule 205, but it must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets. If warranted, the court may award to the prevailing party on the motion, reasonable expenses, including attorney fees and costs incurred for the motion.

(3) **On the Court's Initiative**. On its own, the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated subsection(b).

(4) **Nature of the Sanction**. The sanction imposed under this rule may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including reasonable attorney fees. The sanction may also include nonmonetary directives.

(5) **Vexatious Litigant**. In addition to any other sanction available under this rule, the court may also refer to the administrative district judge the question of whether to declare a person to be a vexatious litigant pursuant to I.C.A.R. 59 and for relief under that rule.

(6) **Requirements for an Order**. An order imposing a sanction must describe the sanctioned conduct and explain the basis for the sanction.

(d) **Inapplicability to Discovery**. This rule does not apply to disclosures and discovery requests, responses, objections, and motions under Part IV. Disclosure, Discovery, and Subpoena sections of these rules.

Rule 214. Verification.

Verification of pleadings authorized or permitted under these rules or by law must be a written statement or declaration by a party or the party's attorney of record sworn to or affirmed before an officer authorized to take depositions by Rule 411, or that otherwise complied with Idaho Code § 9-1406 and Rule 411 of these rules, that the affiant believes the facts stated to be true, unless a verification upon personal knowledge is required.

Rule 215. Amended Pleadings.

(a) **Amendments Before Trial.**

(1) **Amending as a Matter of Right**. A party may amend its pleading once as a matter of right within:

(A) 21 days after serving it; or

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 206(b), (e), or (f), whichever is earlier.

(2) **Other Amendments**. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

(A) **Request to Amend Pleading**. Whether by stipulation or motion, the request to amend must:

(i) attach a copy of the unsigned proposed amended pleading setting forth the entire pleading as an amended without incorporating the prior pleading by reference; and

(ii) include a statement with particularity of what amendments are being requested, or in the alternative, a "redline" or comparison version of the proposed amended pleading that shows the changes to the current pleading.

(B) **Proposed Order**. A proposed order allowing the amendment of the pleading must be submitted by the party seeking to amend a pleading.

(C) **Amended Pleading Must be Filed**. Once the order to amend is granted by the court, the moving party must file the amended pleading and serve a copy to the opposing party.

(3) **Time to Respond**. Unless the court orders otherwise, any required response to an amended pleading must be made within the time remaining to respond to the original pleading or within 14 days after service of the amended pleading, whichever is later.

(b) **Amendments During and After Trial.**

(1) **Based on an Objection at Trial**. If, at trial, a party objects that evidence is not within the issues raised in the pleadings, the court may permit the pleadings to be amended. The court should freely permit an amendment when doing so will aid in presenting the merits and the objecting party fails to satisfy the court that

the evidence would prejudice that party's action or defense on the merits. The court may grant a continuance to enable the objecting party to meet the evidence.

(2) **For Issues Tried by Consent**. When an issue not raised by the pleadings is tried by the parties' express or implied consent, it must be treated in all respects as if raised in the pleadings. A party may move, at any time, even after judgment, to amend the pleadings to conform them to the evidence and to raise an unpleaded issue. But failure to amend does not affect the result of the trial of that issue.

Rule 216. Relation Back of Amendments.

(a) **When an Amendment Relates Back**. An amendment to a pleading relates back to the date of the original pleading when:

(1) the law that provides the applicable statute of limitations allows relation back;

(2) the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out, or attempted to be set out, in the original pleading; or

(3) the amendment changes the party or the naming of the party against whom a claim is asserted, if subsection(a)(2) is satisfied and if, within the period provided by Rule 204(b) for serving the summons and petition, the party to be brought in by amendment:

(A) received such notice of the action that it will not be prejudiced in defending on the merits; and

(B) knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity.

(b) **Notice to the State**. When the state of Idaho or any agency or officer of the state is added as a defendant by amendment, the notice requirements of subsections (a)(3)(A) and (B) are satisfied if, during the stated period, process was delivered or mailed to the Idaho attorney general or designee of the attorney general, or to the officer or agency.

(c) **Joining Real Party in Interest**. The relation back of an amendment joining or substituting a real party in interest is as provided in Rule 202.

Rule 217. Supplemental Pleadings.

On motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented. The court may permit supplementation even though the original pleading is defective in stating a claim or defense. The court may order that the opposing party plead to the supplemental pleading within a specified time.

Rule 218. Privacy Protection for Filings Made with the Court.

(a) **Responsibility of Filer**. It is the responsibility of the filer to ensure that protected personal data identifiers are omitted or redacted from documents before the documents are filed. This responsibility exists whether the documents are filed electronically or conventionally, and even if the filer did not create the document. The responsibility to redact also applies to documents that are initially exempt from disclosure but later become public pursuant to court rule. The clerk of the court will not review filings to determine whether appropriate omissions or redactions have been made.

(b) **Personal Data Identifiers to be Redacted**. Personal data identifiers should not be included in any document filed with the court unless such inclusion is required by the court, by statute or court rule, or is material to the proceedings. If the identifiers must be included, then the following personal data identifiers must be partially redacted from the document, including exhibits:

(1) **Social Security Numbers**. If an individual's social security number must be included, only the last four (4) digits of that number are used.

(2) **Name of Minor Child**. If the involvement of a minor child must be mentioned, only the initials of that child are used.

(3) **Dates of Birth**. If an individual's date of birth must be included, only the year is to be used, and the date specified in the following format: XX/XX/1998.

(4) **Financial Account Numbers**. If financial account numbers are relevant, only the last four digits of these numbers are to be used, and the number specified in substantially the following format: XXXXX 1234.

(5) **Driver's License Numbers and State-Issued Personal Identification Card Numbers**. If an individual's driver's license number or state issued personal identification card number must be referenced, only the last four digits of that number are to be used and the number specified in substantially the following format: XXXXX350F.

(6) **Employer or Taxpayer Identification Number**. If an employer identification number of business' taxpayer identification number must be included, only the last four (4) digits of that number are used.

(c) **Exceptions to Redaction Requirement**.

(1) The redaction requirement does not apply to the record of a court, tribunal, administrative, or agency proceeding if that record was filed before the effective date of this rule.

(2) The redaction requirement does not apply to documents that are exempt from disclosure pursuant to I.C.A.R. 32.

(3) The redaction requirement of a minor's full name does not apply to documents related to a name change for the minor.

(d) **Options When Personal Data Identifiers are Necessary**. A party filing a redacted document need not also file an unredacted version of the document; however, where inclusion of the unredacted personal data identifiers is required by the court, by statute or court rule, or is material to the proceedings in a document that is open to the public, the party must choose the most appropriate option below:

(1) File the redacted document together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item listed. The list must be clearly identified as a reference list filed pursuant to this rule and may be amended as of right. Any reference in the case to a listed identifier will be construed to refer to the corresponding item of information. The reference list is exempt from disclosure pursuant to I.C.A.R. 32; however, courts will share the reference list with other government agencies as required or allowed by law without court order or application for purposes of the business of those agencies.

(2) File the redacted document together with an unredacted copy of the document. The unredacted copy must be clearly identified as an unredacted copy filed pursuant to this rule. The unredacted copy is exempt from disclosure pursuant to I.C.A.R. 32; however, courts will share the unredacted copy with other government agencies as required or allowed by law without court order or application for purposes of the business of those agencies.

(e) **Unredacted Document Inadvertently Submitted**. If an unredacted document is inadvertently submitted without a reference list or redacted copy, then the filer must submit a redacted copy as soon as possible. The filer must also identity the original unredacted document, the date it was submitted, and request that the original unredacted document be marked as exempt from disclosure.

(f) **Parties to Use Caution**. Parties should exercise caution when filing papers that contain private or confidential information, including, but not limited to, the information covered above and listed below:

(1) medical records, treatment, and diagnosis;

(2) employment history;

(3) individual financial information;

(4) insurance information;

(5) proprietary or trade secret information;

(6) information regarding an individual's cooperation with the government; and

(7) personal information regarding the victim of any criminal activity.

(g) **Sanctions**. Failure to comply with this rule is grounds for contempt. If a party knowingly publicly files documents that contain or disclose confidential information in violation of these rules, the court may, upon its own motion or that of any other party or affected person, impose sanctions against the filing party.

(h) **Privacy Protections in Orders, Judgments, and Decrees**.

(1) **Protection of Unredacted Court Orders, Judgments and Decrees**. If possible, the court must refrain from including in a court order, judgment, or decree the personal data identifiers set forth in subsection (b) of this rule. If unredacted personal data identifiers are required by statute or court rule, or are material to the proceedings and must be included in an order, judgment, or decree that is open to the public then the unredacted document will be protected from public access. Copies of the unredacted document must be served on the parties and must be available to the parties and other government agencies without court order for purposes of the business of those agencies. A redacted copy of the order, judgment, or decree must be available to the public; however, no redacted copy of any order or judgment must be prepared until there is a specific request for the document, in which case the document must be redacted in the manner specified in subsection (b) of this rule.

(2) **Exceptions**. The court may include unredacted personal data identifiers in documents that are exempt from disclosure pursuant to I.C.A.R. 32.

Rule 219. Contact Information.

(a) **Family Law Actions**. During the pendency of the case, a party who is not represented by an attorney must keep the court apprised of their current contact information including mailing address, phone number, and email address (if previously provided). Each attorney and unrepresented party must notify the court within 14 days of any changes in the attorney's or party's mailing address, phone number, or previously provided email address.

(b) **Civil Protection Order Actions**. During the pendency of the case and at all times a civil protection order is in effect, each party must keep the court apprised of his current mailing address, phone number, and email address (if previously provided) and must notify the court within 14 days of any changes.

Rule 220. Attorney Appearance in Civil Protection Order Actions.
(a) If an attorney intends to represent a party in a civil protection action, the attorney must file a notice of appearance with the court prior to the hearing on the case, or as soon as practicable after the first hearing at which they appear.

(b) Attorneys who appear in civil protection order actions will be served a copy of any filings in the case, in addition to the service of notices or orders upon the parties as required by statute.

(c) The attorney must notify the court within 14 days of any changes to the attorney's mailing address, phone number, or email address.

(d) **Withdrawal after Civil Protection Order Hearing**. After or with the entry of a final order or dismissal, an attorney may file notice of withdrawal, for which leave of the court is not required. However, the withdrawal will not be effective until after the time for an appeal has expired and no proceedings are pending. Provided, that at the conclusion of any civil protection order action to which these rules apply, attorneys for both parties will be deemed to have automatically withdrawn as the attorneys of record when the time for appeal from the final order has expired and there are no proceedings pending.

Rule 221. Lost Papers.
If an original pleading or paper is lost, the court may authorize a copy thereof to be filed and used instead of the original.

III. DEFAULTS.

Rule 301. Entering a Default.

(a) **In General.** When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the court must order entry of the party's default. If a party has appeared in the action, that party must be served with 3 days written notice of the application for entry of default before default may be entered.

(b) **Time Limitation**.

(1) **In General**. Default may not be entered, and proof of default may not be presented, before the expiration of the time allowed by these rules for appearance or defense.

(2) **Shortened Time.** Default may be entered earlier if (1) the party required to make the appearance or defense states in a written waiver under oath that the party waives the permitted time for appearance or defense, refuses to plead further, and consents to the immediate hearing of a default proceeding without further notice, and (2) the court enters an order shortening the time for appearance or defense by such party for good cause shown by the affidavit or testimony of the moving party. Upon compliance with this rule, default may be entered, a default proceeding held, and judgment by default entered without notice to the defaulting party as though the time for an appearance or defense had expired, subject to the limitations of Idaho Code § 32-716.

(c) **Uncontested Trial is Not a Default**. This rule does not prevent a trial of an action if a responsive pleading has been filed even if the responding party does not participate in the trial or oppose the claim. A trial in this circumstance is not a default hearing.

Rule 302. Entering a Default Judgment.

(a) **For Sum Certain**. If a claim is for a sum certain or a sum that can by computation be made certain, the court, on the moving party's request, with an affidavit showing the amount due, must enter judgment for that amount and costs against the party who has been defaulted for not appearing and who is neither a minor nor an incompetent person and has been personally served, other than by publication or personal service outside the state. The affidavit must show the method of the computation, together with any original instrument evidencing the claim, unless otherwise permitted by the court. An application for a default judgment must also contain written certification of the name of the party against whom judgment is requested and the address most likely to give the defaulting party notice of the default judgment. The clerk must use this address in giving the party notice of judgment.

(b) **Other Cases**. In all other cases, the party must apply to the court for a default judgment. A default judgment may be entered against a minor or incompetent person only if represented by a general guardian, conservator, or other like fiduciary who has appeared. If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 3 days before the hearing. The court may conduct hearings or make referrals when, to enter or effectuate judgment, it needs to:

(1) conduct an accounting;

(2) determine the amount of damages;

(3) establish the truth of any allegation by evidence; or

(4) investigate any other matter.

(c) **Name and Address of Defaulting Party**. Any application for a default judgment must contain written certification of the name of the party against whom the judgment is requested and the address most likely to give the party notice of default judgment. The clerk must use the address provided in giving the party notice of judgment.

(d) **Default Judgment Against the State.** A default judgment may be entered against the state of Idaho, its officers, its agencies, or its political subdivisions only if the claimant establishes a claim or right by evidence that satisfies the court.

(e) **Vital Statistics Certificate Required.** An application for default judgment in a divorce or annulment action must be accompanied by a certificate furnished by the Department of Vital Statistics fully filled out by the party seeking the default divorce or annulment.

(f) **Child Support Transmittal Required.** An application for default judgment requesting child support or a modification of an award of child support must be accompanied by a child support transmittal form fully filled out by the party seeking the default judgment.

Rule 303. Setting Aside Default or Default Judgment.

The court may set aside an entry of default for good cause shown, and it may set aside a default judgment under Rule 805.

PART IV. DISCLOSURE, DISCOVERY, AND SUBPOENA

Rule 401. Mandatory Disclosure in Contested Proceedings.

(a) **In General.** The requirements of this rule are minimum disclosure requirements for every family law action. Unless otherwise provided for in this rule or agreed to in writing by the parties or ordered by the court, within 35 days after the filing of a responsive pleading, each party will disclose in writing, signed under oath, to every other party the information set forth in this rule. If a party does not possess a copy of any of the following documents, they will provide the name, address, and telephone number of the custodian of the documents.

(b) **Child Support**. In a case in which child support is an issue, each party, with the exception of the Idaho Department of Health and Welfare, will disclose the following information to the other party:

(1) a fully completed Affidavit Verifying Income on a form substantially in compliance with Rule 120 and Form 5;

(2) a Child Support Worksheet substantially in compliance with Rule 120 and Form 6 or 7;

(3) proof of income of the party from all sources, specifically including:

(A) complete personal tax returns with all schedules, complete business tax returns with all schedules, W-2 forms, 1099 forms, and K-1 forms for the prior 3 completed calendar years;

(B) year-to-date income information for the current calendar year, including, but not limited to, year-to-date pay stub, salaries, wages, commissions, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, social security benefits, worker's compensation benefits, unemployment insurance benefits, disability insurance benefits, recurring gifts, prizes, and spousal maintenance;

(4) proof of the amount of court-ordered child support and spousal maintenance actually paid by the party in any case other than the one in which disclosure is being provided;

(5) proof of the cost of all medical, dental, and vision insurance premiums paid by the party for any child listed or referenced in the petition;

(6) proof of the cost of any child care expenses paid by the party for any child listed or referenced in the petition;

(7) proof of any expenses paid by the party for private or special schools or other particular education needs of a child listed or referenced in the petition; and

(8) proof of any expenses paid by the party for the special circumstances of a child listed or referenced in the petition.

(c) **When Health and Welfare is a Party.** When the Idaho Department of Health and Welfare (IDHW) is a party to a case in which child support or other financial matters regarding the child are at issue, IDHW will disclose all financial information at its disposal after redacting social security numbers to the other parties who have made an appearance in the case.

(d) **Custody.** If parenting time is an issue in the case, each party will state with particularity their requested parenting plan.

(e) **Spousal Maintenance and Attorney Fees and Costs**. If either party has requested an award of spousal maintenance or an award of attorney fees and costs, each party will disclose the following information to the other:

(1) a fully completed affidavit containing the information required by Rule 504(a)(2); and

(2) those documents set forth in subsection (b)(3).

(f) **Property**. Unless the parties have entered into a written agreement disposing of all property issues in the case or no property is at issue in the case, each party will prepare a list of all items having a fair market value more than $100 of real and personal property, including, but not limited to, household furniture, furnishings, antiques, artwork, vehicles, jewelry, and similar items in which any party has an interest, together with the party's estimate of current fair market value (not replacement value) for each item. In addition, each party will provide to the other party complete copies the following documents:

(1) all deeds, deeds of trust, purchase agreements, escrow documents, settlement sheets, and all other documents that disclose the ownership, legal description, purchase price, and encumbrances of all real property owned by any party;

(2) all monthly or periodic bank, checking, savings, brokerage, and security account statements in which any party has or had an interest for the period commencing 6 months prior to the filing of the petition and through the date of the disclosure;

(3) all monthly or periodic statements and documents showing the value of all pension, retirement, stock option, and annuity balances, including Individual Retirement Accounts, 401(k) accounts, and all other retirement and employee benefits and accounts in which any party has or had an interest for the period commencing 6 months prior to the filing of the petition and through the date of the disclosure, or if no monthly or quarterly statements are available during this time period, the most recent statements or documents that disclose the information;

(4) all monthly or periodic statements and documents showing the cash surrender value, face value, and premiums charged for all life insurance policies in which any party has an interest for the period commencing 6 months prior to the filing of the petition and through the date of the disclosure, or if no monthly or quarterly statements are available for this time period, the most recent statements or documents that disclose the information;

(5) all documents that may assist in identifying or valuing any item of real or personal property in which any party has or had an interest for the period commencing 6 months

prior to the filing of the petition, including any documents that the party may rely on in placing a value on any item of real or personal property;

(6) all business tax returns, balance sheets, profit and loss statements, and all documents that may assist in identifying or valuing any business or business interest for the last 2 completed calendar or fiscal years and through the latest available date prior to disclosure with respect to any business or entity in which any party has an interest or had an interest for the period commencing 24 months prior to the filing of the petition; and

(7) all bankruptcy filings of the parties.

(g) **Debts**. Unless the parties have entered into a written agreement disposing of all debt issues in the case or no debts are at issue in the case, each party will prepare a list of all debts identifying the creditors and the amounts owed. In addition, each party will provide to the other party complete copies of the following documents:

(1) All monthly or periodic statements and documents showing the balances owing on all mortgages, notes, liens, and encumbrances outstanding against all real property and personal property in which the party has or had an interest for the period commencing 6 months prior to the filing of the petition and through the date of the disclosure, or if no monthly or quarterly statements are available during this time period, the most recent statements or documents that disclose the information; and

(2) All credit card statements and debt statements for the period commencing 6 months prior to the filing of the petition and through the date of the disclosure.

(h) **Disclosure of Witnesses**. At least 42 days before trial, each party must disclose the names, addresses, and telephone numbers of any witness whom the disclosing party expects to call at trial, along with a statement fairly describing the substance of each witness's expected testimony. Any witnesses not timely disclosed, either 42 days before trial or such period as ordered by the court, will not be allowed to testify at trial.

(i) **Disclosure of Expert Witnesses**. At least 42 days before trial, each party must disclose the name, address, and telephone number of any person whom the disclosing party expects to call as an expert witness at trial, and the name and address of the custodian of copies of any reports prepared by the expert.

(1) A party will not be allowed to call an expert witness who has not been disclosed at least 42 days before trial or such different period as may be ordered by the court.

(2) **What Must Be Disclosed; Retained Experts.** For individuals retained or specially employed to provide expert testimony in the case or who are employees of the party:

(A) a complete statement of all opinions to be expressed and the basis and reasons for the opinion;

(B) the data or other information considered by the witness in forming the opinions;

(C) any exhibits to be used as a summary of or support for the opinions;

(D) any qualifications of the witness, including a list of all publications authored by the witness within the preceding 10 years;

(E) the compensation to be paid for the testimony; and

(F) a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding 4 years.

(3) **What Must Be Disclosed; Non-retained Experts.** For individuals with knowledge of relevant facts not acquired in preparation for trial and who have not been retained or specially employed to provide expert testimony in the case:

(A)a statement of the subject matter on which the witness is expected to present evidence; and

(B)a summary of the facts and opinions to which the witness is expected to testify.

(j) **Continuing Duty to Disclose.** The duty described in this rule will be a continuing duty, and each party must make additional or amended disclosures before a motion hearing or trial in the event new or different information is discovered or revealed.

(k) **Not Filed with Court.** The disclosures must not be filed with the court. The party receiving disclosures must retain the original of the disclosures with a copy of the notice of service affixed thereto until 1 year after final disposition of the action. At that time, the originals may be destroyed unless the court, on motion of any party and for good cause shown, orders that the originals be preserved for a longer period.

(l) **Notice of Service.** The party serving disclosures must file with the court a notice of when the disclosures were served and on whom.

Rule 402. Additional Discovery.

(a) **Sequence and Timing of Discovery.** Unless, on motion, the court orders otherwise, for the parties' and witnesses' convenience and in the interest of justice:

(1) a party may proceed with discovery only after that party has completed its mandatory disclosures under Rule 401;

(2) methods of discovery may be used in any sequence after mandatory disclosures are complete; and

(3) a party may not request information or documents in discovery that were previously disclosed pursuant to mandatory disclosures under Rule 401.

(b) **Methods**. Nothing in the minimum requirements of Rule 401 will preclude relevant additional discovery by a party in a family law case. If a party believes more detailed disclosure is necessary other than that set forth in Rule 401, that party may obtain discovery by one or more of the following methods:

(1) depositions on oral examination or written questions;

(2) written interrogatories;

(3) production of documents, electronically stored information, or tangible things;

(4) entry on land or other property for inspection or other purposes;

(5) physical, mental, and vocational examinations; and

(6) requests for admission.

(c) **Discovery Scope and Limits.**

(1) **In General.**

(A) **Scope of Discovery.** Unless otherwise limited by court order, the scope of discovery is as follows: parties may obtain discovery regarding any non-privileged matter that is relevant to any party's claim or defense, including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter. For good cause shown, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.

(B) **Limits on Electronically Stored Information.** A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of subsection (c)(1)(C). The court may specify conditions for the discovery.

(C) **Limitation on Frequency and Extent of Discovery.** Unless limited by these rules or the court orders otherwise, the frequency of use of discovery is not limited. On motion or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules if it determines that:

(i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;

(ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or

(iii) the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the

parties' resources, the importance of the issues at stake in the litigation, and the importance of the discovery in resolving the issues.

(2) **Limited Discovery in Civil Protection Order Actions.** The discovery rules contained in these rules do not apply to civil protection order actions. For good cause shown, a party may move the court to engage in discovery. The motion must state with specificity the information sought. The motion for discovery may be heard at the 14 day hearing. The court will determine the scope of discovery, if any. The motion for discovery may cause the 14 day hearing to be continued for no more than 14 days and the temporary civil protection order may remain in effect until the date of the continued hearing.

(3) **Trial Preparation; Materials.**

(A) **Documents and Tangible Things.** Ordinarily, a party may not discover documents and tangible things prepared in anticipation of litigation or for trial by or for another party or its representative (including the party's attorney, consultant, surety, indemnitor, insurer, or agent). But subject to subsection (c)(4), those materials may be discovered if:

(i) they are otherwise discoverable under these rules; and

(ii) the party shows that it has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain the substantial equivalent by other means.

(B) **Protection against Disclosure.** If the court orders discovery of those materials, it must protect against disclosure the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative concerning the litigation.

(C) **Previous Statement.** Any party or other person may, on request and without showing undue hardship, obtain the person's previous statement about the action or its subject matter. If the request is refused, the person may move for a court order and Rule 417(c)(5) applies to the award of expenses. A previous statement is either:

(i) a written statement that the person has signed or otherwise adopted or approved; or

(ii) a contemporaneous stenographic, mechanical, electrical, or other recording, or a transcription of it, that recites substantially verbatim the person's oral statement.

(4) **Trial Preparation; Experts.**

(D) **Deposition of Expert Allowed**. A party may depose any person who has been disclosed as an expert witness.

(E) **Further Discovery**. The court may order further discovery of experts by other means, subject to restrictions set by the court as to the scope of discovery and the payment of expenses to the expert as provided by subsection (c)(7).

(F) **Limitation on Contact with Expert**. A party must not contact a retained expert disclosed by another party pursuant to these rules without first obtaining the permission of the party who retained the expert or the court.

(5) **Trial Preparation Protection for Draft Reports or Disclosures**. A draft disclosure or draft report prepared in anticipation of litigation by any witness disclosed under Rule 401 is protected from disclosure.

(6) **Experts Employed Only for Trial Preparation.** Ordinarily, a party may not, by interrogatories or deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare for trial and who is not expected to be called as a witness at trial. But a party may do so only:

(A) as provided in Rule 416(b); or

(B) on showing exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.

(7) **Payment of Fees of Experts; Apportionment.** Unless manifest injustice would result, the court must require the party seeking discovery:

(A) to pay the expert a reasonable fee for time spent in responding to discovery under subsection (c)(6) OR Rule 401(i)(3);

(B) to pay the expert retained to provide expert testimony a reasonable fee for time spent testifying at a deposition; and

(C) to pay the other party a portion of the fees and expenses reasonably incurred in obtaining the facts and opinions of an expert not expected to testify as a witness pursuant to subsection (c)(6). The court has discretion to require such payment for discovery of the facts and opinions of an expert expected to testify under Rule 401(i)(3).

(8) **Claiming Privilege or Protection; Trial Preparation Materials.**

(A) **Information Withheld.** When a party withholds otherwise discoverable information by claiming that the information is privileged or subject to protection as trial preparation material, the party must:

(i) expressly make the claim; and

(ii) describe the nature of the documents, communications, or tangible things not produced or disclosed, and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.

(B) **Information Produced.** If information produced in discovery is subject to a claim of privilege or of protection as trial preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it, and must preserve the information until the claim is resolved. After being notified, a party:

(i) must promptly return, sequester, or destroy the specified information and any copies it has;

(ii) must not use or disclose the information until the claim is resolved;

(iii) must take reasonable steps to retrieve the information if the party disclosed it before being notified; and

(iv) may promptly present the information to the court under seal for a determination of the claim.

(C) **Signing Discovery Requests, Responses, and Objections.**

(i) **Signature Required; Effect of Signature.** Every discovery request, response, or objection must be signed by at least one attorney of record in the attorney's own name, or by the party personally, if unrepresented, and must state the signer's address and e-mail address. By signing, an attorney or party certifies that to the best of the person's knowledge, information, and belief formed after a reasonable inquiry:

(a) with respect to a statement of fact, it is complete and correct as of the time it is made; and

(b) with respect to a discovery request, response, or objection, it is:

(1) consistent with these rules and warranted by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law, or for establishing new law;

(2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needlessly increase the cost of litigation; and

(3) neither unreasonable nor unduly burdensome or expensive, considering the needs of the case, prior discovery in the case, the amount in controversy, and the importance of the issues at stake in the litigation.

(ii) **Failure to Sign.** Other parties have no duty to act on an unsigned disclosure, request, response, or objection until it is signed, and the court must strike it unless a signature is promptly supplied after the omission is called to the attorney's or party's attention.

(iii) **Sanction for Improper Certification.** If a certification violates this rule without substantial justification, the court, on motion or on its own, must

impose an appropriate sanction on the signer, the party on whose behalf the signer was acting, or both. The sanction may include an order to pay the reasonable expenses, including attorney fees, caused by the violation.

Rule 403. (Intentionally Left Blank).

Rule 404. Protective Order.

(a) **In General.** Any party or any person from whom discovery is sought may move for a protective order in the court where the action is pending or, on matters relating to a deposition, in the court where the deposition will be taken. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) forbidding the disclosure or discovery;

(2) specifying terms, including time and place, for the disclosure or discovery;

(3) prescribing a discovery method other than the one selected by the party seeking discovery;

(4) forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters;

(5) designating the persons who may be present while the discovery is conducted;

(6) requiring that a deposition be sealed and opened only on court order;

(7) requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way; and

(8) requiring that the parties simultaneously file specified documents or information in sealed envelopes, to be opened as the court directs.

Rule 405. Interrogatories.

(a) **Uniform Interrogatories.** The Uniform Family Law Interrogatories set forth in Form 2 are approved for use as a standard or guide recommended in preparation of interrogatories under these rules.

(1) The use of uniform interrogatories will be governed by this rule.

(2) The use of uniform interrogatories is not mandatory.

(3) Uniform interrogatories are not to be used as a standard set for submission in all cases.

(4) Each interrogatory may be used only where it fits the particular case.

(b) **Interrogatories to Parties.**

(1) **In General.**

(A) **Number.** Unless the parties stipulate or the court finds good cause to allow a specific additional number of interrogatories, a party may serve on any other party no more than 40 written interrogatories, including all subparts. Any uniform interrogatory and its subparts will be counted as 1 interrogatory.

(B) **Scope.** An Interrogatory may relate to any matter that may be inquired into under Rule 402. An interrogatory is not objectionable merely because it asks for an opinion or contention that relates to a fact or the application of law to fact, but the court may order that the interrogatory need not be answered until designated discovery is complete, or until a pretrial conference or some other time.

(C) **When May be Served**. Interrogatories may be served pursuant to Rule 402.

(2) **Answers and Objections.** The method of propounding and responding to interrogatories will be as follows:

(A) **Propounding Party.** The propounding party must serve a copy of the interrogatories on each other party to the action, identifying which party or parties the interrogatories are directed to.

(B) **Responding Party.** The interrogatories must be answered:

(i) by the party to whom they are directed; or

(ii) if that party is a public or private corporation, a partnership, an association, or a governmental agency, by any officer or agent, who must furnish the information available to the party.

(C) **Time to Respond.** The responding party must serve its answers and any objections within 30 days after being served with the interrogatories. A shorter or longer time may be stipulated to by the parties or be ordered by the court.

(D) **Answering Each Interrogatory.** Each interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath. The answers must first set forth each interrogatory asked, followed by the answer or objection.

(E) **Spacing.** A space sufficient for the answer must be left within or immediately below each interrogatory or subpart thereof. The responding party will insert the

answer in the space provided, or if more space is needed, on a separate sheet, restating the question before giving the answer.

(F) **Objections**. The grounds for objecting to an interrogatory must be stated with specificity. Any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure.

(G) **Signature**. The person who makes the answers must sign them, and the attorney who objects must sign any objections.

(3) **Use of Interrogatories at Trial or on Motions.**

(A) **In General.** An answer to an interrogatory may be used to the extent allowed by the Idaho Rules of Evidence and these rules.

(B) **Use of Interrogatories with the Court.** If interrogatories or their answers are to be used at trial or in support or opposition to any motion, only the relevant portion of the interrogatory or answer should be submitted to the court. Unless a genuine issue of authenticity is raised, a party may submit excerpts from copies of the original interrogatories or answers and is not required to submit the originals to the court.

(4) **Option to Produce Business Records.**

(A) If the answer to an interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing a party's business records (including electronically stored information), and if the burden of deriving or ascertaining the answer will be substantially the same for either party, the responding party may answer by:

(i) specifying the records that must be reviewed in sufficient detail to enable the interrogating party to locate and identify them as readily as the responding party could; and

(ii) giving the requesting party a reasonable opportunity to examine and audit the records and to make copies, compilations, abstracts, or summaries.

(5) **Not Filed with Court.** Neither the interrogatories nor the answers are to be filed with the court. The propounding party must maintain the original interrogatories and the original answers, along with the original proof of service, for one year following the final disposition of the action and expiration of any period for appeal, unless the court orders that they may be retained for a longer period.

(6) **Notice of Service.** The party serving either interrogatories or responses must file with the court a notice of when the interrogatories or responses were served and by whom.

(7) **Duty to Supplement Responses.** The duty to respond will be a continuing duty, and each party must make additional or amended responses before a motion hearing or trial in the event new or different information is discovered or revealed.

(c) **Stipulations to Serve Additional Interrogatories.** If a party believes that good cause exists to serve more than 40 interrogatories on another party that party must attempt to secure a written stipulation as to the number of additional interrogatories that may be served. If a stipulation is not secured, the party must seek leave of the court.

(d) **Leave of Court to Serve Additional Interrogatories.** On written motion showing good cause, the court may grant leave to serve a specific number of additional interrogatories on another party.

(1) The moving party must establish:

(A) the issues presented in the action warrant the service of additional interrogatories;

(B) additional interrogatories are a more practical or less burdensome method of obtaining the information sought; or

(C) other good cause.

(2) The motion must be accompanied by the proposed additional interrogatories.

Rule 406. Production of Documents, Electronically Stored Information, and Tangible Things; Entering onto Land for Inspection and Other Purposes.

(a) **In General.**

(1) **Number.** Unless the parties stipulate or the court finds good cause to allow a specific number of requests for production, a party may serve on any other party no more than 40 requests for production.

(2) **Scope.**

(A) **Production of Documents, Electronically Stored Information, and Tangible Things**. Any party may serve on any other party a request to produce and permit the requesting party or its representative to inspect, copy, test, or sample the following items in the responding party's possession, custody, or control:

(i) any designated documents or electronically stored information, including writings, drawings, graphs, charts, photographs, sound records, images, and other data or data compilations, stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form; or

(ii) any designated tangible things.

(B) **Entry onto Land for Inspection and Other Purposes.** Any party may serve on any other party a request to permit entry on designated land or other property possessed or controlled by the responding party so that the

requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

(3) **When May be Served**. Requests for production may be served pursuant to Rule 402.

(b) **Procedure.**

(1) **Contents of the Request.** The request:

(A) must describe with reasonable particularity each item or category of items to be inspected;

(B) must specify a reasonable time, place, and manner for the inspection and for performing the related acts; and

(C) may specify the form in which electronically stored information is to be produced.

(2) **Response and Objections.**

(A) **Time to Respond.** The party receiving the request must serve a written response within 30 days after the service of the request. A shorter or longer time may be stipulated to or be ordered by the court.

(B) **Responding to Each Item.** For each item or category, the response must either state that inspection and related activities will be permitted as requested or state an objection to the request, including the reasons. The response must first set forth each request asked, followed by the response or objection.

(C) **Objection.** An objection to part of a request must specify the part and permit inspection of the rest.

(D) **Responding to a Request for Production of Electronically Stored Information.** The response may state an objection to a requested form for producing electronically stored information. If the responding party objects to a requested form, or if no form was specified by the request, the party must state the form it intends to use.

(E) **Producing the Documents or Electronically Stored Information.** Unless otherwise stipulated or ordered by the court, these procedures apply to producing documents or electronically stored information:

(i) a party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request;

(ii) if a request does not specify a form for producing electronically stored information, a party must produce it in a form in which it is ordinarily maintained or in a reasonably usable form or forms;

(iii) a party need not produce the same electronically stored information in more than one form; and

(iv) if the court orders the responding party to comply with the request, the court may also order that the requesting party pay the reasonable expenses of any extraordinary steps required to retrieve and produce the information.

(F) As provided in these rules, a nonparty may be compelled to produce documents and tangible things or to permit an inspection.

(3) **Not Filed with Court.** Neither the requests nor the responses are to be filed with the court. The propounding party must maintain the original requests and the original responses, along with the original proof of service for one year following the final disposition of the action and expiration of any period for appeal, unless the court orders that they be retained for a longer period.

(4) **Notice of Service.** The party serving requests or responses to requests must file a notice with the court of when and on whom they were served.

Rule 407. Nonparties.

These rules do not preclude an independent action against a nonparty for production of documents and tangible things or to permit an inspection.

Rule 408. Requests for Admission.

(a) **In General.**

(1) **Number.** Unless the parties stipulate or the court finds good cause to allow a specific number of requests for admissions, a party may serve on any other party no more than 40 requests for admissions.

(2) **Scope.** A party may serve on any other party a written request to admit, for purposes of the pending action only, the truth of any matters within the scope of Rule 402 relating to:

(A) facts, the application of law to fact, or opinions about either; and

(B) the genuineness of any described documents.

(3) **When May be Served**. Requests for admission may be served pursuant to Rule 402.

(b) **Procedure**.

(1) **Form; Copy of a Document.** Each matter must be separately stated. A request to admit the genuineness of a document must be accompanied by a copy of the document

unless it is, or has been, otherwise furnished or made available for inspection and copying.

(2) **Time to Respond; Effect of Not Responding.** A matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney. A shorter or longer time for responding may be stipulated to or be ordered by the court.

(3) **Answer.** If a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. A denial must fairly respond to the substance of the matter; and when good faith requires that a party qualify an answer or deny only part of a matter, the answer must specify the part admitted and qualify or deny the rest. The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny. The answers must first set forth each request for admission made, followed by the answer, objection, or other response of the party.

(4) **Objections.** The grounds for objecting to a request must be stated. A party may not object solely on the ground that the request presents a genuine issue for trial.

(5) **Motion Regarding the Sufficiency of an Answer or Objection.** The requesting party may move to determine the sufficiency of an answer or objection. Unless the court finds an objection justified, it must order that an answer must be completed and served. On finding that an answer does not comply with this rule, the court may either order that the matter is admitted or that an amended answer be served. The court may defer its final decision until a pretrial conference or a specified time before trial. Rule 417 applies to an award of expenses.

(c) **Effect of an Admission; Withdrawing or Amending an Admission.** A matter admitted under this rule is conclusively established unless the court, on motion, permits the admission to be withdrawn or amended. The court may permit withdrawal or amendment if it would promote the presentation of the merits of the action and if the court is not persuaded that it would prejudice the requesting party in maintaining or defending the action on its merits. An admission under this rule is not an admission for any other purpose and cannot be used against the party in any other proceeding.

(d) **Documents Attached to Pleadings.** The genuineness, accuracy, or truth of any document attached to a pleading must not be deemed as admitted by the other party because of a failure to make a verified denial of it in a responsive pleading or affidavit.

(e) **Use of Admissions with Court.** If admissions are to be used at trial or in support or opposition to any motion, only the portion of the admissions relied upon should be submitted to the court. Unless a genuine issue of authenticity is raised, a party may submit excerpts from copies of the original admissions or answers and is not required to submit the originals to the court.

(f) **Not Filed with Court.** Neither the requests for admission nor the responses are to be filed with the court. The propounding party must maintain the original requests and the original responses, along with the original proof of service, for one year following the final disposition of

the action and expiration of any period for appeal, unless the court orders that they be retained for a longer period.

(g) **Notice of Service.** The party serving requests and responses to them must file with the court a notice of when and on whom it was served.

Rule 409. Subpoenas.

(a) **In General.**

(1) **Form and Contents.**

(A) **Requirements**. Every subpoena must be substantially in the form found in Appendix B and must:

(i) state the name of the court from which it issued;

(ii) state the title of the action and the case number;

(iii) command each person to whom it is directed to appear to give testimony at trial, or at a hearing or deposition at a specified time and place. A command to produce or to permit inspection and copying of documents, electronically stored information or tangible things, or to permit inspection of premises, may be joined with a command to appear at trial, or at hearing or deposition, or may be issued separately; and

(iv) state the method of recording the testimony if the subpoena is commanding attendance at a deposition.

(2) **Issuing Court**. A subpoena must issue from the court where the action is pending.

(3) **Issued by Whom**. At the request of a party, the clerk must issue a subpoena, signed and under the seal of the court, but otherwise blank, and the party must complete it before service. An attorney licensed in Idaho as an officer of the court may also issue and sign a subpoena.

(b) **Service.**

(1) **By Whom and How.** Any person who is at least 18 years old and not a party may serve a subpoena. Serving a subpoena requires delivering a copy to the named person.

(2) **Tendering Fees.**

(A) If the subpoena requires the person's attendance, the fees for 1 day's attendance and the mileage allowed by law must be tendered, if requested, at the time the subpoena is served.

(B) Service of a subpoena on a party to a legal action or proceeding can be made by service on the attorney of record for that party in such legal action or proceeding as provided in Rule 205 for attendance at a hearing or trial with or

without the production of documents or other objects. No prepayment tender of fees and mileage is necessary to that party, but the court may, on a hearing held at any time after service on that party's attorney, determine the reasonable amount of such fees and mileage to be paid, if any, to that party.

(C) Fees and mileage need not be tendered when the subpoena is issued by the Attorney General or any prosecuting attorney or on behalf of the State or any of its officers or agencies.

(3) **Proof of Service.** When service is by an officer it must be returned with the officer's certificate of service, and when served by any other person, it must be returned with the person's affidavit stating the date and manner of service and the names of the persons served.

(c) **Subpoena for Production or Inspection of Premises.**

(1) **Subpoena to Attend a Deposition, Trial, or Hearing.** A subpoena to attend a deposition, trial, or hearing may command the person to whom it is directed to produce or permit inspection and copying of designated books, papers, documents, electronically stored information, or tangible things. If the subpoena is for a party to attend a deposition, the scope and procedure must comply with Rule 406, and the party must be allowed at least 30 days to comply.

(2) **Subpoena to a Nonparty.** A subpoena to command a person who is not a party to produce or to permit inspection and copying of documents, electronically stored information, or tangible things, or to permit inspection of premises may be served at any time after all parties have either appeared or have been defaulted, unless otherwise ordered. The party serving the subpoena must:

(A) serve a copy of the subpoena on the opposing party at least 7 days prior to service on the nonparty, unless otherwise specified by the court;

(B) pay the reasonable cost of producing or copying the documents, electronically stored information, or tangible things; and

(C) on request of any other party and the payment of reasonable costs, provide copies of all documents obtained in response to the subpoena.

(3) **Appearance Not Required.** A person commanded to produce or permit inspection and copying of documents, electronically stored information or tangible things or to permit inspection of premises need not appear in person at the place of production or inspection unless also commanded to appear at trial, at hearing, or at deposition.

(4) **Organization of Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the usual course of business or must organize and label them to correspond with the categories in the demand.

(d) **Relief from Subpoena.** The court, on timely motion, may:

(1) quash or modify the subpoena if it is unreasonable, oppressive, fails to allow time for compliance, requires disclosure of privileged or other protected matter and no exception or waiver applies, or subjects a person to undue burden; or

(2) condition compliance with the subpoena on the prepayment of the reasonable cost of producing the books, papers, documents, electronically stored information, or tangible things.

(e) **Duties in Responding to a Subpoena.**

(1) **Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) **Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) **Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) **Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

(D) **Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause. The court may specify conditions for the discovery.

(2) **Claiming Privilege or Protection.**

(A) **Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) **Information Produced**. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return,

sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(f) **Subpoena for Deposition.**

(1) **Issuance.** The clerk of the district court for the county in which an action is pending or the county in which a deposition is being taken to be used in an action pending in another state or country, may issue a subpoena on proof of service of a notice to take a deposition as provided by Rules 412 or by stipulation.

(2) **Place of Examination.** A resident of the state may be required to attend an examination only in the county where the resident resides or is employed or transacts business in person. A nonresident of the state may be required to attend in any county of the state where the nonresident is served with a subpoena.

(g) **Subpoena for Hearing or Trial.** At the request of any party, subpoenas for attendance at a hearing or trial must be issued as provided by subsection (a) and may be served at any place within the state.

(h) **Witness Fees.** Witness fees and expenses must be in the amounts provided for under Rule 901.

(i) **Failure to Obey Subpoena.** Failure by any person without adequate excuse to obey a subpoena served up the person may be deemed a contempt of the court from which the subpoena issued, in addition to the penalties provided by law.

(j) **Interstate Depositions and Discovery**. The Uniform Interstate Depositions and Discovery Act adopted as Idaho Rule of Civil Procedure 45(j) governs depositions and discovery conducted in Idaho in connection with a civil lawsuit brought in another state.

Rule 410. Depositions to Perpetuate Testimony.

(a) **Before an Action is Filed.**

(1) **Petition.** A person who wants to perpetuate testimony about any matter within the jurisdiction of any court in the state of Idaho may file a verified petition in the district court for the district where any expected adverse party resides. The petition must ask for an order authorizing the petitioner to depose the named person in order to perpetuate their testimony. The petition must be titled in the petitioner's name and must show:

(A) that the petitioner expects to be a party to an action within the jurisdiction of a court of the state of Idaho but cannot presently bring it or cause it to be brought;

(B) the subject matter of the expected action and the petitioner's interest;

(C) the facts that the petitioner wants to establish by the proposed testimony and the reasons to perpetuate it;

(D) the names or a description of the persons whom the petitioner expects to be adverse parties and their addresses, so far as known; and

(E) the name, address, and expected substance of the testimony of each deponent.

(2) **Notice and Service; Appointment of Attorney.** At least 21 days before the hearing date, the petitioner must serve each expected adverse party with a copy of the petition and a notice stating the time and place of the hearing. The notice may be served either inside or outside the county or state in the manner provided in Rule 204. If that service cannot be made with reasonable diligence on an expected adverse party, the court may order service by publication or otherwise. The court must appoint an attorney to represent persons not served in the manner provided in Rule 204 and to cross-examine the deponent if an unserved person is not otherwise represented. If any expected adverse party is a minor or is incompetent, Rule 112(c) applies.

(3) **Order and Examination.** If satisfied that perpetuating the testimony may prevent a failure or delay of justice, the court must issue an order that designates or describes the persons whose depositions may be taken, specifies the subject matter of the examinations, and states whether the depositions will be taken orally or by written interrogatories. The depositions may then be taken under these rules, and the court may issue orders like those authorized by Rules 406 and 416. A reference in these rules to the court where an action is pending means, for purposes of this rule, the court where the petition for the deposition was filed.

(4) **Using the Deposition**. A deposition to perpetuate testimony may be used under I.R.C.P. Rule 32(a) in any later-filed district-court action involving the same subject matter if the deposition either was taken under these rules or, although not so taken, would be admissible in evidence in the courts of the state where it was taken.

(b) **Pending Appeal.**

(1) **In General**. The court where a judgment has been rendered may, if an appeal has been taken or may still be taken, permit a party to depose witnesses to perpetuate their testimony for use in the event of further proceedings in that court.

(2) **Motion.** The party who wants to perpetuate testimony may move for leave to take the depositions, on the same notice and service as if the action were pending in the district court. The motion must show:

(A) the name, address, and expected substance of the testimony of each deponent; and

(B) the reasons for perpetuating the testimony.

(3) **Court Order**. If the court finds that perpetuating the testimony may prevent a failure or delay of justice, the court may permit the depositions to be taken and may issue orders like those authorized by Rules 406 and 416. The depositions may be taken and used as any other deposition taken in a pending district court action.

(c) **Perpetuation by an Action.** This rule does not limit a court's power to entertain an action to perpetuate testimony.

Rule 411. Persons Before Whom Depositions May Be Taken.

(a) **Within the United States**.

(1) **In General**. Within Idaho, before a person authorized by the laws of this state to administer oaths. Outside Idaho, but within the United States or a territory or insular possession subject to United States jurisdiction, a deposition must be taken before:

(A) an officer authorized to administer oaths either by the laws of the state of Idaho, by federal law, or by the law in the place of examination; or

(B) a person appointed by the court where the action is pending to administer oaths and take testimony.

(2) **Definition of "Officer"**. The term "officer" includes a person appointed by the court under this rule or designated by the parties by stipulation.

(b) **In a Foreign Country**.

(1) **In General**. A deposition may be taken in a foreign country;

(A) before a secretary of embassy or legation, consul, vice consul, or consular agent of the United States;

(B) before any officer authorized to administer oaths under the laws of the state of Idaho, or of the United States; or

(C) before a person appointed by the court.

(2) **Power of Officer.** A person before whom a deposition may be taken by this rule is empowered to administer oaths and take testimony.

(3) **Commission.** A commission may be issued when necessary and convenient on appropriate terms after an application and notice of it. Officers may be designated in a notice or commission by name or by descriptive title.

(c) **Of Members of the Armed Forces.**

(1) **In General.** The deposition of a member of the armed forces of the United States or of the state of Idaho or any other person subject to military or naval law, or their children or spouse, may be taken before any officer of any component of any branch of the armed forces of the United States or of Idaho.

(2) **Certificate of Office.** A statement in a certificate of an officer of the armed forces of the United States or of Idaho is prima facie proof that:

(A) the officer holds the office stated in the certificate; and

(B) the deponent is a member of the armed forces or subject to military law or is a spouse or child of such a member.

(d) **Disqualification.** A deposition must not be taken before a person who is any party's relative, employee, or attorney; who is related to or employed by any party's attorney; or who is financially interested in the action.

Rule 412. Depositions on Oral Examination.

(a) **When Depositions May be Taken.**

(1) **Without Leave.** A party may, by oral questions, depose any person, including a party, without leave of court except as provided in subsection (a)(2). The deponent's attendance may be compelled by subpoena under Rule 409.

(2) **With Leave.** A party must obtain leave of court:

(A) if the deponent is confined in prison; or

(B) the petitioner seeks to take the deposition and more than 30 days have not passed since service of summons and petition on the respondent or since service has otherwise been made under Rule 204(f). However, leave is not required if:

(i) the respondent served a notice of taking deposition or otherwise sought discovery; or

(ii) the petitioner or the attorney for the petitioner certifies in the notice of deposition, with supporting facts to the best of his or her knowledge, that the deponent is expected to leave the district where the action is pending and go more than 100 miles from the place of trial or leave the United States before the expiration of the 30 day period, and will be unavailable for examination after the time set for deposition. The certification is subject to the sanctions provided in Rule 213. If a party shows that when the party was served with notice under this subsection the party was unable through the exercise of diligence to obtain an attorney to represent the party at the taking of the deposition, the deposition may not be used against the party.

(b) **Notice of Deposition; Other Formal Requirements.**

(1) **Notice.** A party who wants to depose a person by oral questions must give reasonable written notice to every other party. The notice must state the time and place of the deposition. The court may for good cause shown enlarge or shorten the time for taking the

deposition. If known, the notice must state the deponent's name and address. If the name of the deponent is unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs.

(2) **Producing Documents.** If a subpoena duces tecum is to be served on the deponent, the materials designated for production, as set out in the subpoena, must be listed in the notice or in an attachment. The notice to a party deponent may be accompanied by a request under Rule 406 to produce documents and tangible things at the deposition, and the procedures of Rules 401, 402, 406, 407, and 408 will apply to the request.

(3) **Methods of Recording.**

(A) **Method Stated in the Notice.** The party who notices the deposition must state in the notice the method for recording the testimony. Unless the court orders otherwise, testimony may be recorded by audio or audiovisual means, but must also be simultaneously recorded by stenographic means, as provided by this rule.

(B) **Additional Method.** With prior notice to the deponent and other parties, any party may designate another method for recording the testimony in addition to that specified in the original notice. That party bears the expense of the additional record or transcript unless the court orders otherwise.

(4) **By Remote Means.** The parties may stipulate, or the court may on motion order, that a deposition may be taken by telephone or other remote means. For purposes of this rule and Rules 409(f)(2), 411(a), and 417, the deposition takes place where the deponent answers the questions.

(5) **Officer's Duties.**

(A) **Before the Deposition.** Unless the parties stipulate otherwise, a deposition must be conducted before an officer appointed or designated under Rule 411. The officer should begin the deposition with an on-the-record statement that includes:

(i) the officer's name and business address;

(ii) the date, time, and place of the deposition;

(iii) the deponent's name;

(iv) the officer's administration of the oath or affirmation to the deponent; and

(v) the identity of all persons present.

(B) **After the Deposition.** At the end of a deposition, the officer must state on the record that the deposition is complete and must set out any stipulations made by the attorneys about custody of the transcript or recording and of the exhibits, or about any other pertinent matters.

(4) **Notice or Subpoena Directed at an Organization.** In its notice or a subpoena name, a party may name as the deponent a public or private corporation, a partnership, association, a governmental agency, or other entity and must describe with reasonable particularity the matters for examination. The named organization must then designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf; and it may set out the matters on which each person designated must testify. A subpoena must advise a nonparty organization of its duty to make this designation. The persons so designated must testify about information known or reasonably available to the organization. This subsection does not preclude a deposition by any other procedure authorized in these rules.

(c) **Examination and Cross-Examination; Record of the Examination; Objections; Written Questions.**

(1) **Examination and Cross-Examination.** Examination and cross-examination of a witness may proceed as they would at trial under Rule 706. After putting the deponent under oath or affirmation, the officer must record the testimony by the method designated under Rule 412(b)(3)(A). The testimony must be recorded by the officer personally or by a person acting in the presence and under the direction of the officer. If requested by a party the officer must transcribe the testimony at that party's expense.

(2) **Objections.** An objection at the time of the examination, whether to evidence, to a party's conduct, to the officer's qualifications, to the manner of taking the deposition, or to any other aspect of the deposition, must be noted on the record, but the examination still proceeds; the testimony is taken subject to the objections.

(3) **Participation through Written Question.** Instead of participating in the oral examination, a party may serve written questions in a sealed envelope on the party noticing the deposition, who must deliver them to the officer. The officer must ask the deponent those questions and record the answers verbatim.

(d) **Objections; Conduct; Sanction; Motions to Terminate or Limit Examination.**

(1) **Objections.** An objection must be stated concisely in a nonargumentative and nonsuggestive manner. A person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation ordered by the court, or to present a motion under Rule 412(d)(4).

(2) **Conduct of Attorney and Party**. An attorney or any other person present during the deposition must not impede, delay, or frustrate the fair examination of the deponent.

(3) **Sanction**. The court may impose an appropriate sanction, including reasonable expenses and attorney fees incurred by any party, or any other sanction listed in Rule 417, on a person who impedes, delays, or frustrates the fair examination of the deponent.

(4) **Motion to Termination or Limit.**

(A) **Grounds.** At any time during a deposition, the deponent or a party may move to terminate or limit the deposition on the ground that it is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses the

deponent or party. The motion may be filed in the court where the action is pending or the deposition is being taken. If the objecting deponent or party so demands, the deposition must be suspended for the time necessary to obtain an order.

(B) **Order.** The court may order that the deposition be terminated or may limit its scope and manner as provided in Rule 404. If terminated, the deposition may be resumed only by order of the court where the action is pending.

(C) **Award of Expenses.** Rule 417(c)(5) applies to the award of expenses.

(e) **Review by the Witness; Changes.**

(1) **Review; Statement of Changes.** Unless waived by the deponent and the parties, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) **Changes Indicated in the Officer's Certificate.** The officer must note in the certificate prescribed by this rule whether a review was requested and, if so, must attach any changes the deponent makes during the 30 day period.

(3) **Witness Failure to Sign.**

(A) **In General.** If the deposition is not signed by the witness within the 30-day period, the officer must sign it and state on the record the fact of the waiver of signature, or of the illness or absence of the witness or the fact of the refusal to sign the deposition together with any reason given for not signing.

(B) **Use of Unsigned Deposition.** The deposition may be used as if it were signed, unless pursuant to Rule 415(d)(4) the court determines the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(f) **Certification and Delivery; Exhibits; Copies of the Transcript or Recording; Notice of Completion; Inspection and Use.**

(1) **Certification and Delivery.** The officer must certify in writing that the witness was duly sworn and that the deposition accurately records the witness' testimony. The certificate must accompany the record of the deposition. Unless the court orders otherwise, the officer must seal the deposition in an envelope or package bearing the title of the action and marked "Deposition of (witness' name)" and must promptly send it to the attorney who noticed the deposition. The attorney must store it under conditions that will protect it against loss, destruction, tampering, or deterioration. The transcript of a deposition must not be filed with the court. The attorney to whom the transcript of a deposition is transmitted by the officer must retain it until 1 year after final disposition of the action. At that time, the transcript may be destroyed unless the court orders that it be preserved for a longer period.

(2) **Documents and Tangible Things.**

(A) **Originals and Copies.** Documents and things produced for inspection during the deposition must, on a party's request, be marked for identification and attached to the deposition. Any party may inspect and copy them. But if the person who produced them wants to keep the originals, the person may:

(i) offer copies to be marked, attached to the deposition, and then used as originals, after giving all parties a fair opportunity to verify the copies by comparing them with the originals; or

(ii) give all parties a fair opportunity to inspect and copy the originals after they are marked, in which event the originals may be used as if attached to the deposition.

(B) **Order Regarding the Originals**. Any party may move for an order that the originals be attached to the deposition pending final disposition of the case.

(3) **Copies of the Transcript or Recording.** Unless otherwise stipulated or ordered by the court, the officer must retain the stenographic notes of a deposition taken stenographically or a copy of the recording of a deposition taken by another method. When paid reasonable charges, the officer must furnish a copy of the transcript or recording to any party or to the deponent.

(4) **Notice of Completion** On completion of the transcript and delivery of it to the party noticing the deposition, the officer who prepared the transcript must promptly notify all parties or their attorneys that the transcript has been completed and provided to the party noticing it.

(5) **Inspection of Original and Use of Deposition.**

(A) **Inspection of Original.** Unless otherwise ordered by the court, the attorney or party having custody of the original deposition must make it available for inspection by the other parties on request.

(B) **Use of Deposition with the Court.** If any portion of a deposition is to be used at trial or in support of or opposition to any motion, only the relevant portion of the deposition should be submitted to the court. Unless a genuine issue of authenticity is raised, a party may submit excerpts from copies of the original deposition transcript and is not required to submit the original transcript to the court.

(C) **Exhibits to Depositions.** Exhibits to the deposition may be annexed to and returned with the deposition; or the officer must, if requested by the party producing the documentary evidence or exhibits, mark it as an exhibit in the case, and return it to the party offering it and must be treated as if annexed to and returned with the deposition.

(D) **Return after final disposition**. Depositions, or portions thereof, which have been submitted to the court pursuant to this rule will be returned to appropriate attorney after final disposition of the case.

(g) **Failure to Attend Deposition or Serve a Subpoena; Expenses.** A party who, expecting a deposition to be taken, attends in person or by an attorney may recover reasonable expenses for attending, including attorney fees, if the noticing party failed to:

(1) attend and proceed with the deposition; or

(2) serve a subpoena on a nonparty deponent, who consequently did not attend.

Rule 413. Audio-Visual Recording of Deposition.

(a) **In General.** On notice, any deposition may be recorded by audio-visual means, but must also simultaneously be recorded as a stenographic record. The noticing party bears the recording and transcribing costs. On request and at the party's own expense, a party is entitled to a transcript and an audio or audio-visual copy of the recording.

(b) **Official Record.** Both the audio-visual recording and the transcript prepared by a reporter are official records of the deposition.

(c) **Transcript.** The court may order a party taking the deposition by audio-visual recording to furnish a transcript of the deposition at the party's expense.

(d) **Use of Audio-Visual Deposition.** An audio-visual recording of a deposition may be used for any purpose and under any circumstance as a stenographic deposition may be used.

(e) **Notice of Audio-Visual Deposition.** The notice for taking an audio-visual deposition and the subpoena for attendance must state that the deposition will be recorded by audio-visual means.

(f) **Procedure for Taking.** The following procedure must be used in recording an audio-visual deposition:

(1) **Opening of Deposition.** The deposition must begin with an oral or written statement on camera which includes:

(A) the operator's name and business address;

(B) the name and business address of the operator's employer;

(C) the date, time, and place of the deposition;

(D) the caption of the case;

(E) the party on whose behalf the deposition is being taken; and

(F) any stipulations by the parties.

(2) **Identification of Attorney.** An attorney must identify themselves on the record.

(3) **Oath on Camera.** The administration of the oath to the witness must be audio-visually recorded.

(4) **Multiple Recording Units.** If an audio-visually recorded deposition is recorded on multiple units of film or data storage devices or recording units, the end of each unit and the beginning of each succeeding unit must be announced on camera.

(5) **Statement of Closing of Deposition.** A statement must be made on camera indicating the conclusion of the deposition. A statement identifying any stipulations of attorneys concerning the custody of the audio-visual recording and exhibits or regarding any other pertinent matters may be made on camera.

(6) **Time Index.** Depositions recorded by audio-visual means must be indexed by a time generator or other method specified by rule or order of the court.

(7) **Objections.** An objection must be made as it would in the case of stenographic depositions.

(8) **Editing.** If the court orders that the audio-visual deposition must be edited for presentation or use, the original of the recording must not be altered.

(9) **Filing of Recording.** Unless ordered by court, the original audio-visual recording of a deposition, any copy-edited version pursuant to an order of the court, and exhibits must be maintained by the attorney who noticed the deposition, in the same manner as a transcript of a deposition.

(g) **Costs.** The reasonable expense of recording, editing, and using an audio-visual deposition may be taxed as costs.

Rule 414. (Intentionally Left Blank).

Rule 415. Using Depositions in Court Proceedings.

(a) **Using Depositions.**

(1) **In General**. At a hearing, trial, or on an interlocutory proceeding, all or part of a deposition may be used against a party on these conditions:

(A) the party was present or represented at the taking of the deposition or had reasonable notice of it;

(B) it is used to the extent it would be admissible under the Idaho Rules of Evidence and these rules if the deponent were present and testifying; and

(C) the use is allowed by subsections (a)(2) through (8).

(2) **Impeachment and Other Uses.** Any party may use a deposition to contradict or impeach the testimony given by the deponent as a witness, or for any other purpose allowed by the Idaho Rules of Evidence and these rules.

(3) **Deposition of Party, Agent, or Designee**. An adverse party may use for any purpose the deposition of a party or anyone who, when deposed, was the party's officer, director, managing agent, or designee under Rule 412.

(4) **Unavailable Witness.** A party may use for any purpose the deposition of a witness, whether or not a party, if the court finds:

(A) that the witness is dead;

(B) that the witness is more than 100 miles from the place of hearing or trial or is outside the state of Idaho, unless it appears that the witness' absence was procured by the party offering the deposition;

(C) that the witness cannot attend or testify because of age, illness, infirmity, or imprisonment;

(D) that the party offering the deposition could not procure the witness' attendance by subpoena; or

(E) on motion and notice, that exceptional circumstances make it desirable, in the interest of justice and with due regard to the importance of live testimony in open court, to permit the deposition to be used.

(5) **Limitations on Use**.

(A) **Deposition Taken on Short Notice.** A deposition must not be used against a party who, having received less than 14 days' notice of the deposition, promptly moved for a protective order under Rules 404(a)(2) requesting that it not be taken or be taken at a different time or place, and this motion was still pending when the deposition was taken.

(B) **Unavailable Deponent; Party Could Not Obtain an Attorney.** A deposition taken without leave of court under the unavailability provision of Rule 412(a)(2)(B)(ii) must not be used against a party who shows that, when served with the notice, it could not, despite diligent efforts, obtain an attorney to represent it at the deposition.

(6) **Using Part of a Deposition**. If a party offers in evidence only part of a deposition, an adverse party may require the offeror to introduce other parts that in fairness should be considered with the part introduced, and any party may itself introduce any other parts.

(7) **Substituting a Party.** Substituting a party under I.R.C.P. Rule 25 does not affect the right to use a deposition previously taken.

(8) **Deposition Taken in an Earlier Action**. A deposition lawfully taken in any federal or state-court action may be used in a later action involving the same subject matter between the same parties, or their representatives or successors in interest, to the same extent as if taken in the later action. A deposition previously taken may also be used as allowed by the Idaho Rules of Evidence.

(b) **Objections to Admissibility.** Subject to I.R.C.P. Rule 32(d)(3), an objection may be made at a hearing or trial to the admission of any deposition testimony that would be inadmissible if the witness were present and testifying.

(c) **Reserved.**

(d) **Waiver of Objections.**

(1) **To the Notice**. An objection to an error or irregularity in a deposition notice is waived unless promptly served in writing on the party giving the notice.

(2) **To the Officer's Qualification.** An objection based on disqualification of the officer before whom a deposition is to be taken is waived if not made:

(A) before the deposition begins; or

(B) promptly after the basis for disqualification becomes known or, with reasonable diligence, could have been known.

(3) **To the Taking of the Deposition.**

(A) **Objection to Competence, Relevance, or Materiality.** An objection to a deponent's competence, or to the competence, relevance, or materiality of testimony, is not waived by a failure to make the objection before or during the deposition, unless the ground for it might have been corrected at that time.

(B) **Objection to an Error or Irregularity.** An objection to an error or irregularity at an oral examination is waived if:

(i) it relates to the manner of taking the deposition, the form of a question or answer, the oath or affirmation, a party's conduct, or other matters that might have been corrected at that time; and

(ii) it is not timely made during the deposition.

(C) **Objection to a Written Question.** An objection to the form of a written question under Rule 412 is waived if not served in writing on the party submitting the question within the time for serving responsive questions or, if the question is a recross-question, within 7 days after being served with it.

(4) **To Completing and Returning the Deposition.** An objection to how the officer transcribed the testimony, or prepared, signed, certified, sealed, endorsed, sent, or otherwise dealt with the deposition, is waived unless a motion to suppress is made

promptly after the error or irregularity becomes known or, with reasonable diligence, could have been known.

Rule 416. Physical, Mental and Vocational Evaluations of Persons.

(a) **Order for Evaluation**.

(1) **In General.** When the mental, physical, or vocational condition of a party or any other person is in controversy, the parties by stipulation, or the court by order, may require that person to submit to a physical, mental, or vocational evaluation by a designated expert or to produce for evaluation the person in the party's custody or legal control.

(2) **Motion and Notice; Contents of the Order.** The order:

(A) may be made only on motion for good cause and on notice to all parties and the person to be evaluated (unless the person to be evaluated is a minor child of one or both of the parties); and

(B) must specify the time, place, manner, conditions, and scope of the evaluation, including any tests or procedures to be performed, as well as the person or persons who will perform it.

(3) **Representative at Examination.** On reasonable notice, the person being evaluated must have the right to have a representative of his or her choice present during the evaluation, unless the presence of that representative may adversely affect the outcome of that evaluation.

(b) **Evaluator's Report.**

(1) **Request by the Party or Person Evaluated**. The party who moved for the examination must, on request, deliver to the requester a copy of the examiner's report, together with like reports of all earlier examinations of the same condition. The request may be made by the party against whom the examination order was issued or by the person examined.

(2) **Contents**. The evaluator's report must be in writing and must set out in detail the examiner's findings, including diagnoses, conclusions, and the results of any tests.

(3) **Request by the Moving Party**. After delivering the reports, the party who moved for the examination may request, and is entitled to receive, from the party against whom the examination order was issued all other writings or recordings created by the examiner or the party, including the originals of forms and test score sheets and like reports of all earlier or later examinations of the same condition. But those reports need not be delivered by the party with custody or control of the person examined if the party shows that it could not obtain them.

(4) **Waiver of Privilege**. By requesting and obtaining the examiner's report, or by deposing the examiner, the party examined waives any privilege it may have, in that action or any other action involving the same controversy, concerning testimony about all examinations of the same condition.

(5) **Failure to Deliver a Report**. The court on motion may order, on just terms, that a party deliver the report of an examination. If the report is not provided, the court may exclude the evaluator's testimony at trial.

(6) **Scope**. Subsection (b) applies also to an examination made by the parties' agreement, unless the agreement states otherwise. This subsection does not preclude obtaining an examiner's report or deposing an examiner under other rules.

Rule 417. Sanctions for Violation of Mandatory Disclosures and Orders; Motion for Order Compelling Discovery.

(a) **Definition of Confer**. To confer means to speak directly with the opposing attorney or a self-represented litigant in person or by telephone, to identify and discuss disputed issues, and to make a reasonable effort to resolve the disputed issues.

(1) The sending of electronic or voicemail communication does not satisfy the requirement to "confer".

(2) In cases involving self-represented litigants who are incarcerated, written communication satisfies the confer requirement.

(3) The attorney or self-represented litigant must respond within a reasonable amount of time to a request to confer and must be reasonably available to confer.

(b) **Motion for Sanctions for Mandatory Disclosure.** A party may enforce compliance with the mandatory disclosure provision set forth in Rule 401 by filing a motion with the court seeking the imposition of sanctions against a non-compliant party.

(1) The motion must include a certification that the movant has in good faith conferred or attempted to confer with the alleged non-compliant party in an effort to secure the disclosure without court action.

(2) After reasonable notice to all parties and a hearing on the motion, the court may impose against a non-compliant party any sanctions available under Rule 417.

(c) **Motion for Order Compelling Disclosure or Discovery.**

(1) **In General.** On notice to other parties and all affected persons, a party may move for an order compelling disclosure or discovery. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action.

(2) **Appropriate Court.** A motion for an order to a party must be made in the court where the action is pending. A motion for an order to a nonparty must be made in the court where the discovery is or will be taken if outside of Idaho.

(3) **Specific Motions.**

(A) **To Compel a Discovery Response**. A party seeking discovery may move for an order compelling an answer, designation, production, or inspection. This motion may be made if:

(i) a deponent fails to answer a question asked under Rule 412;

(ii) a corporation or other entity fails to make a designation under Rule 412;

(iii) a party fails to answer an interrogatory submitted under Rule 405; or

(iv) a party fails to respond that inspection will be permitted, or fails to permit inspection, as requested under Rule 406.

(B) **Related to a Deposition.** When taking an oral deposition, the party asking a question may complete or adjourn the examination before moving for an order.

(4) **Evasive or Incomplete Disclosure, Answer, or Response**. For purposes of this subsection, an evasive or incomplete disclosure, answer, or response must be treated as a failure to disclose, answer, or respond.

(5) **Payment of Expenses; Protective Orders.**

(A) **If the Motion Is Granted or Discovery Is Provided After Filing of Motion.** If the motion is granted, or if the requested discovery is provided after the motion was filed, the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney fees. But the court must not order this payment if:

(i) the movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action;

(ii) the opposing party's nondisclosure, response, or objection was substantially justified; or

(iii) other circumstances make an award of expenses unjust.

(B) **If the Motion Is Denied.** If the motion is denied, the court may issue any protective order authorized under Rule 404 and must, after giving an opportunity to be heard, require the movant, the attorney filing the motion, or both to pay the party or deponent who opposed the motion its reasonable expenses incurred in opposing the motion, including attorney fees. But the court must not order this payment if the motion was substantially justified or other circumstances make an award of expenses unjust.

(C) **If the Motion Is Granted in Part and Denied in Part.** If the motion is granted in part and denied in part, the court may issue any protective order authorized under Rule 404 and may, after giving an opportunity to be heard, apportion the reasonable expenses for the motion.

(d) **Failure to Comply with a Court Order.**

(1) **Sanctions Where the Deposition is Taken**. If the court where the discovery outside of Idaho is taken orders a deponent to be sworn or to answer a question and the deponent fails to obey, the failure may be treated as contempt of either the court where the discovery is taken or the court where the action is pending.

(2) **Sanctions Where the Action is Pending.**

(A) **For Not Obeying a Discovery Order**. If a party or a party's officer, director, or managing agent, or a witness designated under Rule 412, fails to obey an order to provide or permit discovery, including an order under Rule 416 or 417(c), the court where the action is pending may issue further just orders. They may include the following:

(i) directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims;

(ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;

(iii) striking pleadings in whole or in part;

(iv) staying further proceedings until the order is obeyed;

(v) dismissing the action or proceeding in whole or in part;

(vi) rendering a default judgment against the disobedient party; or

(vii) treating as contempt of court the failure to obey any order except an order to submit to a physical or mental examination and initiating contempt proceedings.

(B) **For Not Producing a Person for Examination.** If a party fails to comply with an order under Rule 416(a) requiring it to produce another person for examination, the court may issue any of the orders listed in subsections (d)(2)(A)(i)—(vi), unless the disobedient party shows that it cannot produce the other person.

(C) **Payment of Expenses.** Instead of or in addition to the orders above, the court must order the disobedient party, the attorney advising that party, or both to pay the reasonable expenses, including attorney fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

(e) **Failure to Disclose, to Supplement an Earlier Response, or to Admit.**

(1) **Failure to Disclose or Supplement.** If a party fails to supplement discovery responses when required or fails to comply with a disclosure requirement ordered by the court pursuant to a Rule 702 scheduling or pretrial order, the party is not allowed to use

that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless. In addition to or instead of this sanction, the court, on motion and after giving an opportunity to be heard:

(A) may order payment of the reasonable expenses, including attorney fees, caused by the failure;

(B) may impose other appropriate sanctions, including any of the orders listed in subsections (d)(2)(A)(i)--(vi).

(2) **Failure to Admit.** If a party fails to admit what is requested under Rule 408 and if the requesting party later proves a document to be genuine or the matter true, the requesting party may move that the party who failed to admit pay the reasonable expenses, including attorney fees, incurred in making that proof. The court must so order unless:

(A) the request was held objectionable under Rule 408(a) or (b);

(B) the admission sought was of no substantial importance;

(C) the party failing to admit had a reasonable ground to believe that it might prevail on the matter; or

(D) there was other good reason for the failure to admit.

(f) **Party's Failure to Attend Its Own Deposition, Serve Answers to Interrogatories, or Respond to a Request for Production or for Inspection.**

(1) **In General.**

(A) **Motion; Grounds for Sanctions**. The court where the action is pending may, on motion, order sanctions if:

(i) a party or a party's officer, director, or managing agent, or a person designated under Rule 412(b)(6), fails, after being served with proper notice, to appear for that person's deposition; or

(ii) a party, after being properly served with interrogatories under Rule 405 or a request for production or inspection under Rule 406, fails to serve its answers, objections, or written response.

(B) **Certification.** A motion for sanctions for failing to answer or respond must include a certification that the movant has in good faith conferred or attempted to confer with the party failing to act in an effort to obtain the answer or response without court action.

(2) **Unacceptable Excuse for Failing to Act.** A failure described in subsection (f)(1)(A)is not excused on the ground that the discovery sought was objectionable, unless the party failing to act has a pending motion for a protective order under Rule 404.

(3) **Types of Sanctions.** Sanctions may include any of the orders listed in subsection (d)(2)(A)(i)--(vi). Instead of or in addition to these sanctions, the court must require the party failing to act, the attorney advising that party, or both to pay the reasonable expenses, including attorney fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

(g) **Failure to Provide Electronically Stored Information.** Absent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system.

(h) **General Sanctions; Catch-All.** In addition to the sanctions provided for in this rule for violation of discovery procedures, any court may impose sanctions or conditions, or assess attorney fees, costs, or expenses against a party or the attorney advising that party for failure to comply with an order made pursuant to these rules.

Rule 418. Expenses Against State of Idaho.

Expenses and attorney fees may be awarded against the state of Idaho under this rule.

PART V. MOTIONS AND INJUNCTIONS

Rule 501. Motion Practice.

(a) **Motions and Other Papers.**

(1) **In General**. A request for a court order must be made by motion. That motion must:

(A) be in writing unless made during a hearing or trial;

(B) state with particularity the grounds for the relief sought including the number of the applicable Rule of Family Law Procedure, other relevant rule, or law, if any; and

(C) state the relief or order sought.

(2) **Proposed Order**. A proposed form of an order, if included, must be a separate document.

(3) **Filing and Serving Motions, Affidavits and Briefs; Time Limits**.

(A) A written motion, other than one which may be heard without notice, affidavits supporting the motion, memoranda or briefs supporting the motion, if any, and, if a hearing is requested, the notice of hearing for the motion, must be filed with the court and served so as to be received by the parties at least 14 days prior to the day designated for hearing.

(B) Affidavits opposing the motion and opposing memoranda or briefs, if any, must be filed with the court and served so as to be received by the parties at least 7 days before the hearing.

(C) The moving party may file a reply brief or memorandum, which must be filed with the court and served so as to be received by the parties at least 2 days prior to the hearing.

(D) The moving party must indicate on the face of the motion whether oral argument is desired. If a brief or memorandum is not filed with the motion, the motion must indicate on the face of the motion whether the party intends to file a brief or memorandum supporting the motion. If no oral argument is requested, a proposed order must be submitted by the moving party.

(E) If the moving party does not request oral argument or does not timely file a supporting memorandum or brief, the court may deny the motion without further notice if it determines the motion does not have merit.

(F) If oral argument has been requested on any motion, the court may deny oral argument by written or oral notice from the court at least 1 day prior to the hearing. The court may limit oral argument at any time.

(G) If the office of the presiding judge is outside of the county in which the action is pending, the parties must simultaneously provide a copy of any notice, motion, affidavit, brief, or other document relating to a motion to the presiding judge in addition to filing the materials with the court of record.

(H) Any exception to the time limits in this rule may be granted by the court for good cause shown. If time does not permit a hearing or response on a motion to extend or shorten time, the court may rule without opportunity for response or hearing.

(I) The time limits in this rule do not apply to motions and other matters if a different time limit is provided by statute or by another Rule of Family Law Procedure.

(b) **Captions, Signing and Form of Motions.** The rules applicable to captions, signing, and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

Rule 502. Evidence on Motions.

(a) When a motion is based on facts not appearing of record the court may hear the matter on affidavits or may hear it wholly or partly on oral testimony or on depositions.

(b) **Hearing on a Motion for Temporary Order.** A motion for temporary order will be heard and decided exclusively on the motion and affidavits unless, at the hearing on the motion for temporary orders, the court determines that the parties should be allowed to present evidence. In such case, the court will schedule an evidentiary hearing within a reasonable time.

(c) **Hearings on an Order Issued Without Notice.** For a hearing on an order issued without notice, any party may elect to produce testimony and evidence at any hearing, or to cross-examine the adverse party or the party's affiants, by first giving notice of at least 24 hours to the court and opposing attorney before the hearing,

which requirement will be stated in the body of the notice. If such notice is timely given it will not be necessary to subpoena the adverse party or the party's affiants and the adverse party will appear with the party's designated affiants without further notice unless otherwise ordered by the court. If the adverse party and the adverse party's affiants designated in the notice are not excused by the court and do not appear as requested, the court may impose such sanctions as it deems appropriate including attorney fees for the requesting party. The hearing, notice and expiration periods set forth in Rule 505, 506 and 508 apply to any order issued without notice under this rule.

Rule 503. Successive Applications for Orders or Writs; Motions for Reconsideration.

(a) **Successive Applications.**

(1) **In General.** In any action, if an application for any order or writ is denied in whole or in part by such judge, neither the party nor the party's attorney may make any subsequent application to any other judge except by appeal to a higher court.

(2) **Second Order Vacated; Sanctions.** A writ or order obtained in violation of this section will be immediately vacated by the judge who issued it. The court must sanction a party and the attorney seeking an order or writ in violation of this rule as it may determine appropriate, including by assessing costs and attorney fees incurred by a party in defense of the writ or order.

(3) **Constitutional Writ After Disclosure Allowed.** A second application seeking a constitutional writ may be made if the first application and adverse ruling on the application are disclosed to the second judge. Likewise a constitutional writ may be sought from the same judge, or judge succeeding the same judge, in an action after the application was originally denied.

(4) **Application to the Same Judge or Successor.** A party or attorney may renew an application to the same judge, or a succeeding judge, in an action after the application was originally denied; but this rule does not create the right to file a motion for reconsideration except as provided in subsection (b) of this rule.

(b) **Motion to Reconsider.**

(1) **In General**. A motion to reconsider any order of the court entered before final judgment may be made at any time prior to or within 14 days after the entry of the final judgment. A motion for reconsideration of an order entered after the entry of final judgment must be made within 14 days from the entry of the order.

(2) **Certain Orders Not Subject to Reconsideration.** No motion to reconsider an order of the court entered on any motion under Rules 303, 801, 804, or 805 may be made.

Rule 504. Motion for Temporary Orders.

(a) **Form of Motion.** A party seeking a temporary order will file a verified motion, or a motion and affidavit, with the court setting forth the legal and jurisdictional bases for the motion and the specific relief requested. The motion will include the following information and documents where relevant:

(1) **Custody and Parenting Time**. If a party seeks an order for temporary legal or physical custody, including parenting time or visitation, the motion must set forth the proposed parenting schedule specifically stating the legal or physical custody, parenting time, and visitation requested for all parties to the action. If not contained in a separate affidavit or pleading previously filed in the case, the motion will set forth all facts that are required to be disclosed by Idaho Code § 32-11-209. The motion will further set forth the following additional information:

(A) the name and date of birth of each child who is subject to the motion;

(B) the nature and extent of any special needs of each child;

(C) a description of the manner in which the parents are currently caring for the child. If the parties live separately, then include a description of the manner in which they have cared for the child, both before and after separation;

(D) each parent's current work schedule; and

(E) the nature and extent of any circumstances known to the moving party that would subject the child to a risk of neglect or abuse in either parent's custody including, but not limited to, substance abuse or dependence, and domestic violence.

(2) **Child Support, Temporary Maintenance, Attorney Fees, and Sharing of Community Property**. If a party seeks a temporary child support order, the moving party will file a completed Affidavit Verifying Income and Child Support Worksheet setting forth the amount requested in accordance with the Idaho Child Support Guidelines set forth in Rule 120. All motions for temporary orders of child support, temporary maintenance, or attorney fees will set forth the specific amount requested. A motion requesting a temporary order to exclude a party from a residence, to divide community property, or

to order payment of debt and expenses, must state the specific relief requested, including the proposed division of property, the responsibility that each party would have to pay debts and expenses, and the income and assets that would be available to each party if the motion is granted. The motion must provide the following information to the best of the moving party's knowledge:

(A) the name of each party's employer;

(B) the amount of each party's monthly income, both gross and net, supported by an accurate photocopy of the moving party's most recent pay stub;

(C) an itemization of the amount of each party's reasonable monthly living expenses; and

(D) if reasonable monthly expenses exceed the parties' combined net income, the identity of each and every community asset, including a statement of its fair market value, which is available to sell or borrow against in order to meet the reasonable needs of the parties and their child.

(b) **Response to Motion.** A party who wishes to file a response to a verified motion for temporary order must file an affidavit containing the same information that is required of the motion. The response may only respond to the claim for relief set forth in the motion for temporary order; the response may not raise a new claim for relief. If there is an additional claim from what is requested in the original motion for temporary orders, a party must file a separate motion for temporary order to set forth the claim for relief.

(c) **Limitations on Verified Motion and Affidavits**. No party will file a verified motion or affidavit under this rule that exceeds 20 pages, including attachments; the Affidavit of Income and Child Support Worksheet, if required, are excluded from the page limitation. Affidavits from nonparties filed in support of, in response to, or in opposition to a motion for temporary order will be limited to 4 per party and will be limited to the same number of pages set forth above.

(d) **Reply to Motion.** The moving party may file a reply affidavit of no more than 3 pages no later than 2 days prior to the hearing.

(e) **Service.** Service of the motion, affidavits, and legal memoranda, if any, will be governed by Rule 501(a)(3).

(f) **Temporary Order is Not a Final Judgment.** A temporary order issued pursuant to Idaho Code §§ 32-704 and 32-717 is not a judgment. It need not comply with Rule 802 and cannot be certified as a final judgment.

Rule 505. Temporary Order Issued Without Notice.

(a) **Requirements**. The court may issue a temporary order without written or oral notice to the responding party or its attorney only if:

(1) specific facts in an affidavit or a verified motion for temporary order without notice clearly show that immediate and irreparable injury, loss, or damage will result to the moving party or minor child of the party before the responding party can be heard in opposition;

(2) the moving party or the moving party's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required; and

(3) a proposed temporary order without notice that complies with this Rule is submitted.

(b) **Contents of Temporary Order Issued Without Notice; Expiration and Extension**.

(1) **Contents**. Every temporary order issued without notice must:

(A) describe the injury and state why it is irreparable;

(B) state why the order was issued without notice; and

(C) state the date and time for the hearing.

(2) **Expiration and Extension.** The temporary order issued without notice must be promptly filed and is only effective for a fixed period not to exceed 14 days. Prior to expiration, a party may file a motion and affidavit stating the reasons to extend the order. The court, for good cause shown, may extend the order for an additional period not to exceed 14 days or the responding party consents to a longer extension.

(3) **Expedited Hearing.** If the temporary order is issued without notice, a hearing must be set at the earliest possible time, taking precedence over all other matters except hearings on older matters of the same character. At the hearing, the party who obtained the order must proceed with the motion; if the moving party does not, the court must dissolve the order.

(4) **Continuance of Hearing.** The responding party is entitled to a continuance for a period of not more than 14 days to respond. If the responding party obtains a continuance, the temporary order issued without notice will remain in effect until the date of the continued hearing.

(5) **Service.**

(A) **Method of Service.** The moving party must immediately serve a copy of the motion, affidavits, and order to the responding party as provided in Rule 205 (c)-(e), unless the court orders personal service. The petition and summons, as well as any other required initial orders, if not previously served to the responding party, must be served as provided in Rule 204 prior to the hearing.

(B) **Time for Service.** The moving party must serve the motion, affidavits, and order within 5 days of entry or 2 days prior to the hearing, whichever is sooner.

(6) **Response to Motion**. The responding party may file affidavits in response to the motion subject to the limitations set forth in Rule 504(c), and if the affidavits are served on the moving party at least 2 days prior to the hearing, the moving party will not be entitled to a continuance of the hearing unless good cause is shown.

(7) **Motion to Dissolve**. On 2 days' notice to the moving party or on shorter notice set by the court, the responding party may appear and move to dissolve or modify the order. The court must then hear and decide the motion as promptly as justice requires.

Rule 506. Injunctions and Restraining Orders.

(a) **Preliminary Injunction.**

(1) **Notice.** The court may issue a preliminary injunction only on notice to the adverse party.

(2) **Consolidating the Hearing with the Trial on the Merits.** Before or after beginning the hearing for a motion for a preliminary injunction, the court may advance the trial on the merits and consolidate it with the hearing. Even when this consolidation is not ordered, evidence that is received on the motion and that would be admissible at trial becomes a part of the trial record and need not be repeated at the trial.

(b) **Temporary Restraining Order.**

(1) **Issuing Without Notice**. The court may issue a temporary restraining order without written or oral notice to the responding party or its attorney only if:

(A) Specific facts in an affidavit or a verified motion clearly show that immediate and irreparable injury, loss, or damage will result to the moving party before the responding party can be heard in opposition; and

(B) the moving party or the moving party's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

(2) **Contents; Expiration**. Every temporary restraining order issued without notice must state the date and hour it was issued; describe the injury and state why it is irreparable; state why the order was issued without notice; and be promptly filed in the clerk's office and entered in the record. The order expires at the time after entry that the court sets, not to exceed 14 days, unless before that time the court, for good cause shown, extends it for a like period or the responding party consents to a longer extension. The reasons for an extension must be entered in the record.

(3) **Expediting the Preliminary Injunction Hearing**. If the temporary restraining order is issued without notice, the motion for a preliminary injunction must be set for hearing at the earliest possible time, taking precedence over all other matters except hearings on older matters of the same character. At the hearing, the party who obtained the order must proceed with the motion; if the moving party does not, the court must dissolve the order.

(4) **Motion to Dissolve**. On 2 days' notice to the party who obtained the order without notice, or on shorter notice set by the court, the responding party may appear and move to dissolve or modify the order. The court must then hear and decide the motion as promptly as justice requires.

(c) **Security.** The court may issue a preliminary injunction or a temporary restraining order only if the moving party gives security in an amount the court considers proper to pay the costs and damages, including reasonable attorney fees, sustained by any party found to have been wrongfully enjoined or restrained. The state of Idaho or of any political subdivision, its officer and its agencies are not required to give security.

(d) **Contents and Scope of Every Injunction and Restraining Order**.

(1) **Contents**. Every order granting an injunction and every restraining order must:

(A) state the reasons why it issued;

(B) state its terms specifically; and

(C) describe in reasonable detail, and not by referring to the complaint or other document, the act or acts restrained or required.

(2) **Persons Bound**. The order binds only the following who receive actual notice of it by personal service or otherwise:

(A) the parties;

(B) the parties' officers, agents, servants, employees, and attorneys; and

(C) other persons who are in active concert or participation with anyone described in subsections (A) or (B).

(e) **Grounds for Preliminary Injunction**. A preliminary injunction may be granted in the following cases:

(1) when it appears by the petition that the moving party is entitled to the relief demanded, and that relief, or any part of it, consists in restraining the commission or continuance of the acts complained of, either for a limited period or perpetually;

(2) when it appears by the petition or affidavit that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury to the petitioner;

(3) when it appears during the litigation that the responding party is doing, threatening, procuring or allowing to be done, or is about to do, some act in violation of the moving party's rights, respecting the subject of the action, and the action may make the requested judgment ineffectual;

(4) when it appears, by affidavit, that the responding party is about to remove or to dispose of the responding party's property with intent to defraud the moving party or;

(5) for the responding party upon filing a counterclaim praying for affirmative relief upon any of the grounds mentioned above in this section, subject to the same rules and provisions provided for the issuance of injunctions on behalf of the moving party.

(f) **Restoring Possession of Real Property.** The district court may issue a writ of injunction for affirmative relief having the force and effect of a writ of restitution, restoring any person to the possession of any real property from which the person was removed by force, violence, fraud, or stealth; or from which the person is kept out of possession by threats if possession was taken on Sunday, a legal holiday, or in the nighttime; or while the party in possession was temporarily absent. The granting of the writ extends only to the right of possession under the facts of the case, in respect to the manner in which the possession was obtained, and does not resolve the legal rights of the parties on any other issue. This writ may only be issued on 7 days' notice in writing to the adverse party of the time and place of hearing on the application for writ.

Rule 507. Summary Judgment.

(a) **Motion for Summary Judgment or Partial Summary Judgment.** A party may move for summary judgment, identifying each claim or defense, or the part of each claim or defense, on which summary judgment is sought. The court must grant summary judgment if the moving party shows that there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law.

(b) **Time.**

(1) **Time for Filing**. The motion may be filed any time after the expiration of 21 days from the service of process upon the adverse party or that party's appearance in the action or after service of a motion for summary judgment by the adverse party. However, a motion for summary judgment must be filed at least 90 days before the trial date, or filed within 7 days from the date of the order setting the case for trial, whichever is later, unless otherwise ordered by the court.

(2) **Other Time Requirements**. The motion, supporting documents, and brief must be served at least 28 days before the date of the hearing. If the adverse party wishes to oppose summary judgment, the party must serve an answering brief. The answering brief and any opposing documents must be served at least 14 days before the date of the hearing. Any reply brief of the moving party must be served at least 7 days before the date of the hearing.

(3) **Altering Time Requirements**. The court may alter or shorten the time periods and requirements of this rule for good cause shown, may continue the hearing, and may impose costs, attorney fees and sanctions against a party or the party's attorney, or both.

(c) **Procedures**.

(1) **Supporting Factual Positions**. A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

(A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

(B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(2) **Objection That a Fact Is Not Supported by Admissible Evidence**. A party may object that the material cited to support or dispute a fact is not admissible in evidence at the hearing.

(3) **Materials Not Cited**. The court need consider only the cited materials, but it may consider other materials in the record.

(4) **Affidavits**. An affidavit used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated. Sworn or certified copies of all papers or parts of papers referred to in an affidavit must be attached to or served with the affidavit. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits.

(d) **When Facts are Unavailable to the Nonmovant**. If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

(1) defer considering the motion or deny it;

(2) allow time to obtain affidavits or declarations or to take discovery; or

(3) issue any other appropriate order.

(e) **Failing to Properly Support or Address a Fact**. If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 506, the court may:

(1) give an opportunity to properly support or address the fact;

(2) consider the fact undisputed for purposes of the motion;

(3) grant summary judgment if the motion and supporting materials, including the facts considered undisputed, show that the moving party is entitled to it; or

(4) issue any other appropriate order.

(f) **Failing to Grant all the Requested Relief**. If the court does not grant all the relief requested by the motion, it may enter an order stating any material fact, including an item of damages or other relief, that is not genuinely in dispute and treating the fact as established in the case.

(g) **Affidavit or Declaration Submitted in Bad Faith**. If satisfied that an affidavit under this rule is submitted in bad faith or solely for delay, the court, after notice and a

reasonable time to respond, must order the submitting party to pay the other party the reasonable expenses, including attorney fees, it incurred as a result. An offending party or attorney may also be held in contempt or subjected to other appropriate sanctions.

Rule 508. Declaratory Judgments.
These rules govern the procedure for obtaining a declaratory judgment pursuant to the statutes of this state. The existence of another adequate remedy does not preclude a judgment for declaratory relief that is otherwise appropriate. The court may order a speedy hearing of an action for a declaratory judgment.

Rule 509. Prohibitive or Mandatory Orders.
In family law actions, the court may make prohibitive or mandatory orders, with or without notice or bond as may be just, including bond for payment of costs, damages and reasonable attorney fees, as may be just.

PART VI. ALTERNATIVE DISPUTE RESOLUTION

Rule 601. Alternative Dispute Resolution Screening.

(a) **Authority of the Court**. In any family law actions involving a child, the presiding judge may order the parties to participate in Alternative Dispute Resolution (ADR) screening for the purpose of assessing whether parents are appropriate or prepared to engage in mediation. The secondary purpose is to provide additional recommendations to the parents and to the court which may enhance the appropriateness of mediation, or to provide alternatives for resolving issues which will broaden parenting options.

(b) **Qualifications of ADR Screeners**. ADR screeners are appointed by the judge. To be eligible for appointment as an ADR screener, the applicant must be currently licensed by the state of Idaho as a psychologist, licensed master social worker, or licensed professional counselor practitioner.

(c) **Standards for ADR Screening Reports**.

(1) **Content.** An ADR report is generated from a structured and standard interview that is conducted with each biological parent. The content of the interview with both parents is provided to the court in the form of a written report. No ADR report will be filed if one or both parties fail to appear at the interview. Attached to the report is an Idaho criminal history check on each parent and the needs of the child based on reports by the parties and observations of the ADR screener. The recommendations provided to the court and parents are designed to protect the child from the potential negative impact of parental conflict and the adversarial process. ADR reports will not make recommendations for custody and visitation and should be used as a case management tool.

(2) **Factors**. Factors considered in determining the appropriateness of mediation or other recommendations for alternatives to resolving issues include, but are not limited to, the following:

(A) compliance of both parties with the ADR process;

(B) issues of domestic violence, including the party's ability to maintain impulse control and anger management;

(C) the use of, or allegations surrounding the use of, drugs and alcohol:

(D) the ability of each parent to articulate his own needs and concerns and consider the needs of the child; and

(E) the parties' mental health and emotional stability.

(3) **Disclosure of Report**. The ADR report is exempt from disclosure pursuant to I.C.A.R. 32(d)(14)(B).

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.

(b) **Matters Subject to Mediation**. All family law actions involving a controversy over custody or visitation of a minor child are subject to mediation regarding issues of custody, visitation, or both.

(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.

(e) **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.

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

(1) **List of Registered Mediators.** The Supreme Court will compile a list of registered mediators. Any applicant seeking to be placed on the Supreme Court Roster of registered mediators must submit to the Administrative Director of the Courts, the following:

(A) an Application for Registration, which includes an affidavit of compliance executed by the applicant attesting that the applicant has fulfilled the requirements to be placed on the Supreme Court list of registered mediators;

(B) a copy of the applicant's degree, license or certificate; and

(C) proof of completion of the required mediation training as provided in activities required in subsections F.2 and F.3.

(2) **Qualification; Professional Credentials**. To be placed on the list of registered mediators compiled by the Supreme Court, the applicant must have at least one of the following professional credentials:

(A) the applicant is recognized by Idaho Mediation Association as a Certified Professional Mediator (CPM), or membership in the Association for Conflict Resolution at the advanced practitioner level or other national organizations with equivalent standards for membership; or

(B) the applicant is a: member of the Idaho judiciary; licensed member of the Idaho State Bar Association; licensed psychologist; licensed professional counselor; licensed clinical professional counselor; licensed master social worker; licensed clinical or independent practice social worker; licensed marriage and family therapist; certified school counselor; or certified school psychologist.

(3) **Training**. There are two independent training criteria for all applicants as set forth more fully below. An applicant must complete the substantive training set forth in subsections (A) and (B). In addition, such training must be approved or provided by an accredited college or university, the Idaho Mediation Association, Association for Conflict Resolution, Association of Family and Conciliation Courts, the Idaho State Bar, or the Idaho Supreme Court, or the Administrative Office of the Courts.

(A) Applicants under subsections F (2)(A) must have completed a minimum of 60 hours mediation training within the past two years, 20 of which must be in the field of child custody mediation. Applicants under subsection F (2)(B) must have completed a minimum of 40 hours mediation training within the past 2 years, 20 of which must be in the field of child custody mediation. At least 40 of the training hours required under this section must be acquired through a single training course.

(B) At least 20 hours of the mediation training required for applicants under subsection F(2)(B), and at least 40 hours of the training requirements for applicants under subsections F(2)(A), must include the following topics, at least 30 percent must be in the practice of mediation skills:

(i) information gathering (intake; obtaining facts; screening issues);

(ii) Mediator relationship skills (neutrality; confidentiality; nonjudgmental);

(iii) communication skills (active listening; reframing issues: clarifying);

(iv) problem solving skills (identifying problems, positions, needs, interests; brainstorming alternatives);

(v) conflict management skills (theories of conflict management; mediation models; reducing tensions; power imbalances);

(vi) ethics (standards of practice; typical problems);

(vii) professional skills (substantive knowledge areas; case management; drafting agreements); and

(viii) the 20 hours of child custody training required in subsection F(3) a must include the following topics:

(a) conflict resolution theory;

(b) psychological issues in separation, divorce, and family dynamics;

(c) domestic violence;

(d) issues and needs of children;

(e) mediation processes and techniques;

(f) family law, including custody and support; and

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

(4) **Continuing Education of Mediators.** Beginning the next July 1 after a mediator has been placed on the Supreme Court list of registered mediators, the mediator must take at least 30 hours of child custody training in one or more of the areas set forth in subsection 3(B) in each and every 3 years period following the July 1 date. This training must include a minimum of 2 hours of mediation ethics training. The mediator must file proof of compliance with this requirement with the Administrative Office of the Courts by July 1 of the year the continuing education is due. Along with proof of compliance, a mediator under subsection F(2)(B) must also send proof of current licensing.

(5) The administrative district judge in each judicial district may, by administrative order, require mediators to comply with additional criteria beyond those stated in subsections F(2) and F(3).

(6) Persons approved as child custody mediators prior to the effective date of the amendment to this rule will not be required to satisfy the training requirements of subsections F(2)(A), and F(2)(B), but will be required to fulfill the additional continuing education requirements of subsection F(4).

(g) **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.

(h) **Communications between Mediator and the Court.**

(1) The mediator and the court must maintain no contact or communication except that the mediator may, without comment or observation, report to the court:

(A) the parties are at an impasse;

(B) the parties have reached an 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;

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

(D) meaningful mediation is ongoing;

(E) the mediator withdraws from mediation; and

(F) the allegation or suspicion of domestic violence.

(i) **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.

(j) **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.

Rule 603. Mediation of Other Matters.

(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. The role of the mediator is to aid the parties in identifying the issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise, and finding points of agreement. An agreement reached by the parties is to be based on the decisions of the parties, and not the decisions of the mediator.

(b) **Matters Subject to Mediation**. All issues in family law actions other than child custody and visitation disputes are eligible for referral to mediation under this rule. Child custody and visitation disputes must be mediated pursuant to Rule 602.

(c) **Authority of the Courts**. The referral of a case 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**. In its discretion a court may order a case to mediation, as follows:

(1) on motion by a party;

(2) at any 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) at any other time upon 7 days' notice to the parties if the court determines mediation is appropriate.

(e) **Selection of the 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 judicial district's list of mediators maintained pursuant to subsection M(1).

(f) **Scheduling of the Mediation Session.** Unless the court otherwise orders, the initial mediation session must take place within 42 days of the reporting of the selection or the appointment of the mediator.

(g) **Reports.** 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.

(h) **Compensation of Mediators**. Mediators must be compensated at their regular fees and expenses, which must be clearly set forth in the information and materials provided to the parties. Unless other arrangements are made among the parties or ordered by the court, the interested parties will be responsible for a pro rata share of the mediator's fees and expenses. If a mediator is not paid, the court may order payment, upon motion of the mediator.

(i) **Impartiality**. The mediator has a duty to be impartial, and has a continuing duty to advise all parties of any circumstances bearing on possible bias, prejudice, or partiality.

(j) **Contact between Mediator, Attorneys, and Other Interested Persons**. The mediator and the attorneys for the parties may communicate with one another in the following manner:

(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 abide by the confidentiality rules agreed to by the parties. Confidentiality protections of Idaho Rules of Evidence 408 and 507 extend to mediation.

(l) **Sanctions**. The mediator must be subject to sanctions, including removal from the roster of mediators, if the mediator fails to assume the responsibilities provided herein.

(m) **Qualification of Mediators.**

(1) Each trial court administrator must maintain a list of mediators who meet the qualifications of subsection (m)(2), and rosters from dispute resolution organizations that meet the criteria set forth in subsection (m)(3).

(2) **Mediation Registration; Qualifications of Court–Appointed Mediators.**

(A) The Administrative Director of the Courts must compile and distribute at least annually a list of mediators. For that purpose, the Administrative Director of the Courts must gather from all applicants an application demonstrating that the applicant:

(i) is a member of the Idaho State Bar;

(ii) has been admitted to practice law for not less than5 years; and

(iii) has attended a minimum of 40 hours of mediation training.

(B) In order for a person to remain on the list of mediators maintained by the Administrative Director of the Court, the mediator must submit proof that the mediator has completed a minimum of 5 hours of additional training or education during the preceding 3 calendar years on one of the following topics: mediation, conflict management, negotiation, interpersonal communication, conciliation, dispute resolution or facilitation. This training must be acquired by completing a program approved by an accredited college or university or by one of the following organizations: Idaho State Bar or its equivalent from another state; Idaho Mediation Association or its equivalent from another state; Society of Professionals in Dispute Resolutions; American College of Civil Trial Mediators; Northwest Institute for Dispute Resolution; Institute For Conflict Management; the National Academy of Distinguished Neutrals or any mediation training provided by the federal courts. Any program that does not meet these criteria may be submitted for approval either prior to or after completion. The requirement that continuing education for mediators include at least 5 hours of training in mediation takes effect for renewals due on or after July 1, 2013.

(3) **Mediation Registration; Sponsors of Additional Rosters of Mediators.**

(A) A public or private dispute resolution organization may make its roster of mediators available to the Administrative Director of the Courts for distribution to the trial court administrators if it documents that it has:

(i) an established selection and evaluation process for neutrals;

(ii) a mechanism for addressing complaints brought against neutrals; and

(iii) published code of ethics that the neutrals must follow.

(iv) A compilation of the organization's selection, evaluation, published code of ethics, and complaint processes that can be distributed to the parties must be provided.

(4) A list and roster of mediators distributed by the Administrative Director of the Courts, pursuant to subsections A and B, must contain the following information about each mediator:

(A) name, address, telephone and fax number(s), email address, professional affiliation(s), education;

(B) legal and mediation training and experience; and

(C) fees and expenses.

PART VII. PRETRIAL AND TRIAL PROCEDURE

Rule 701. Purposes, Matters for Consideration, and Sanctions at any Scheduling, Status, or Pretrial Conference.

(a) **Purpose.** The court may order the attorneys and any unrepresented parties to appear for one or more scheduling, status, or pretrial conferences to:

(1) expedite the disposition of the action;

(2) establish early and continuing management to avoid unnecessary delay and discourage wasteful pretrial activities;

(3) improve the quality of the trial through more thorough preparation;

(4) facilitate the settlement of the case; or

(5) discuss possible alternative dispute resolution.

(b) **Matters for Consideration.** At any conference, the court may:

(1) calendar and discuss future court dates;

(2) establish a reasonable limit on the time allowed to present evidence;

(3) identify the need for an interpreter or special accommodations;

(4) refer the case to Family Court Services;

(5) order alternative dispute resolution;

(6) address necessary amendments to the pleadings;

(7) identify and simplify the issues, including eliminating frivolous claims or defenses;

(8) take action to avoid unnecessary proof and cumulative evidence;

(9) identify witnesses and documents;

(10) appoint a court expert, evaluator, parenting coordinator, receiver, or master;

(11) appoint an attorney for the child;

(12) discuss trial planning and pretrial orders;

(13) discuss and dispose of potential pretrial motions;

(14) adopt special procedures for managing actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems;

(15) discuss other matters to help resolve the action;

(16) consider potential sanctions;

(17) facilitate in other ways the just, speedy, and inexpensive disposition of the action; or

(18) issue any appropriate orders.

(c) **Sanctions.**

(1) **Grounds.** The court may sanction any party or attorney if a party or attorney:

(A) fails to obey a scheduling or pretrial order;

(B) fails to appear at a scheduling, status, or pretrial conference;

(C) is substantially unprepared to participate in a scheduling, status, or pretrial conference; or

(D) fails to participate in good faith.

(2) **Sanctions Allowed.** The court may make such orders as are just and may, along with any other sanction, make any of the orders allowed under Rule 417. Additionally, the court must require the party or the party's attorney, or both, to pay any expenses incurred because of noncompliance with this rule, including attorney fees, unless the court

finds noncompliance was justified or that awarding such expenses would be unjust.

Rule 702. Scheduling, Status, or Pretrial Conference.

(a) **Scheduling Conference.**

(1) **In General.** A scheduling conference will be conducted by the court as soon as practicable unless otherwise ordered by the court. The court will notify all parties of the date and time of the scheduling conference, which must not be modified except by leave of the court.

(2) **Timing of Conference.** Unless the court finds good cause, the court must hold the scheduling conference within 8 weeks after the answer has been filed.

(b) **Scheduling Order.** The scheduling order must address:

(1) setting dates for trial and any pretrial conferences;

(2) setting deadlines for joining other parties and amending the pleadings; for filing and hearing dispositive motions; for completing discovery; and for disclosing witnesses;

(3) alternative dispute resolution, if appropriate;

(4) the need for a master, if appropriate; and

(5) other matters which would aid in the speedy, fair, and efficient resolution of the case.

(c) **Modifying a Scheduling Order.** The scheduling order may be modified only for good cause shown and with the judge's consent.

(d) **Request for Trial Setting by a Party.** A party may file a request for trial setting if the court fails to set a scheduling conference within 28 days of the Answer or Reply. After a request for trial setting is filed, the court must set a scheduling conference within 14 days.

(e) **Status or Pretrial Conference.** A status or pretrial conference may be scheduled by the court at any time on the court's initiative. A party may request a conference to assist with case management any time after the initial scheduling conference and before the final pretrial conference.

(f) **Pretrial Orders.** After any conference under this rule, the court should issue an order reciting the action taken. This order controls the course of the action unless the court modifies it.

Rule 703. Final Pretrial Procedure; Formulating Issues.

(a) **Directions for Pretrial Conference.** The court may hold a final pretrial conference to formulate a trial plan, including a plan to facilitate the admission of evidence.

(b) **Timing of Final Pretrial Conference.** The final pretrial conference must be held if requested by any party in writing at least 21 days before trial, or if ordered by the court at any time before trial.

(c) **Attendance Required.** Parties and if represented, their attorneys, are required to attend the final pretrial conference unless excused by the court.

(d) **Authority of Attorney.** At least one of the attorneys for each party participating in any pretrial conference must have authority to enter into stipulations and to make admissions regarding all matters that the participants may reasonably anticipate may be discussed.

(e) **Pretrial Memorandum.** The court may direct the attorneys for the parties, or any party appearing without an attorney, to submit a pretrial memorandum containing substantially the information included in Rule 704. All parties will file a pretrial memorandum no later than 3 days prior to the date set for the final pretrial conference or as directed by the court.

(f) **Exhibits and Witness Disclosure.** The court may order the parties to file a list of any potential trial exhibits as well as the names and addresses of all witnesses who may testify. Exhibits or witnesses discovered after the date set for disclosure must be supplemented, indicating the date the exhibit or witness was discovered. The court may exclude any untimely disclosed witness or exhibit, except for good cause shown and to prevent injustice.

(g) **Order Resulting from Pretrial Conference.** After the conference, the court may issue an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not resolved by admissions or agreements of the attorneys. The order controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice.

(h) **Objections to Pretrial Order.** Any party to an action may file written objections to a pretrial order within 14 days from service thereof, which objections must be heard prior to trial in the same manner as a motion under these rules.

Rule 704. Pretrial Memorandum or Pretrial Stipulation.
(a) **Contents of a Pretrial Memorandum.** The pretrial memorandum must include the following:

(1) a concise description of the nature of the action;

(2) a statement of all claims, including defenses;

(3) any admissions or stipulations of the parties;

(4) any amendments to the pleadings and any issues of law abandoned by any of the parties;

(5) a statement of the issues of fact which remain to be litigated at the trial, and any dispute as to whether such issues are formed by the pleadings;

(6) a statement of the issues of law which remain to be litigated at the trial;

(7) points and authorities on remaining issues of law;

(8) a list of the names and addresses of all witnesses which each party may call to testify at the trial, including known impeachment witnesses, and a brief statement of their anticipated testimony;

(9) where property or debt division is at issue, a completed "Form 1" as found in the Appendix of these rules or a Property and Debt Schedule containing comparable information;

(10) where child support is at issue, a completed Affidavit Verifying Income and proposed child support calculations; and

(11) where child custody is at issue, a proposed parenting plan.

(b) **Pretrial Stipulation in Lieu of Pretrial Conference**. The parties may agree or the court may require the parties to submit a pretrial stipulation in lieu of conducting a final pretrial conference.

(c) **Additional Contents of a Pretrial Stipulation**. A pretrial stipulation must include the following:

(1) all contents required in the pretrial memorandum;

(2) a statement that the parties or attorneys have produced for examination all exhibits required to be produced at the final pretrial conference;

(3) a proposed exhibit list;

(4) a statement that the parties or attorneys will not offer any exhibits at the trial other than those listed in subsection (3), except when offered for impeachment purposes or when otherwise permitted by the court in the interest of justice;

(5) a statement that the parties or attorneys have in good faith discussed settlement unsuccessfully;

(6) a statement that all disclosures and discovery procedures under the Rules dealing with disclosure, discovery and subpoena section have been completed except that the parties may show good cause for the entry of an order allowing such discovery procedures to be taken within a specific time before trial;

(7) a statement that all answers or supplemental answers to interrogatories under Rule 405 reflect facts known as of the date of the stipulation;

(8) a statement that all other undisclosed witnesses will be excluded from testifying in the trial of the action unless permitted by the court in the interest of justice; and

(9) a proposed pretrial order consistent with the parties' stipulations.

Rule 705. Judicial Notice of Facts and Foreign Law.

(a) **Scope**. In general, the court must take judicial notice as provided by law.

(b) **Adjudicative Facts.**

(1) **Kinds of Facts That May Be Judicially Noticed.** The court may judicially notice a fact that is not subject to reasonable dispute because it:

(A) is generally known within the court's territorial jurisdiction; or

(B) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

(2) **Taking Notice**. The court:

(A) may take judicial notice on its own; or

(B) must take judicial notice if a party requests it and the court is supplied with the necessary information.

(C) when taking judicial notice of records, exhibits, or transcripts from the court file in the same or a separate case, the court must identify the

specific documents or items so noticed. When a party requests judicial notice of records, exhibits, or transcripts from the court file in the same or a separate case, the party must identify the specific items for which judicial notice is requested or offer to the court and serve on all parties copies of those items.

(3) **Timing**. The court may take judicial notice at any stage of the proceeding.

(4) **Opportunity to be Heard**. On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. If the court takes judicial notice before notifying a party, the party, on request, is still entitled to be heard.

(5) **Conclusive Finding.** The noted fact is a conclusive finding.

(c) **Judicial Notice of Foreign Law.**

(1) **Notice.** If either party to an action intends to request that the court take judicial notice of the statutes or laws of a foreign state, a memorandum citing the foreign law must be submitted to the court and opposing attorney at least 14 days prior to trial or hearing. The court may deny the request for failure to submit a memorandum.

(2) **Objection.** The opposing attorney may file a reply within 7 days following service of the moving party's memorandum.

Rule 706. Taking Testimony.

(a) **In Open Court.** At trial or an evidentiary hearing, witness testimony must be taken in open court unless a statute, these rules, the Idaho Rules of Evidence, other rules or orders adopted by the Idaho Supreme Court provide otherwise. For good cause shown in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location.

(b) **Affirmation Instead of Oath.** When these rules require an oath, a solemn affirmation suffices.

(c) **Interpreter.** If any party, or person the party intends to call as a witness, needs an interpreter as provided in I.C.A.R. 52, the party must notify the court at least 14 days before commencement of the court proceeding, or as soon as practicable in the event of an expedited hearing. If the party fails to do so without a showing of good cause, and as a result the trial or hearing is postponed, the court may require the party to pay costs resulting from failing to give adequate notice.

(d) **Direct and Cross-examination.** The examination of a witness by the party producing the witness is called the direct examination; the examination of the same witness by the adverse party is called the cross-examination. The direct examination must be completed before the cross-examination begins, unless the court otherwise allows.

(e) **Limitation on Examination.** Only one attorney on each side must conduct the examination of a witness until such examination is completed, except when the court grants permission for other attorneys to conduct the examination.

(f) **Calling by Court**. When the court is the trier of fact, the court may call witnesses on its own motion or at the suggestion of a party. All parties are entitled to cross-examine witnesses called.

(g) **Interrogation by Court**. The court may interrogate witnesses, whether called by itself or by a party.

(h) **Objection**. Objections to the interrogation of a witness by the court may be made at the time of interrogation or at the next available opportunity.

(i) **Reexamination and Recalling of Witnesses.** A witness once examined cannot be reexamined as to the same matter without leave of the court, but the witness may be reexamined as to any new matter on which the witness has been examined by the adverse party. A witness, after being examined by the party producing the witness and adverse party, cannot be recalled by the same party without leave of the court. This rule does not preclude the adverse party from calling such witness as that party's own witness for direct examination.

(j) **View of Premises, Property, or Things.** During a trial, the court may order that the court may view any property, place, item, or circumstance relevant to the action. A viewing by the court must be conducted personally by the court after notice to all parties. Attorneys have the right to be present at any viewing by the court.

(k) **Inspection of Writings**. Whenever a writing is shown to a witness it may be inspected by any other party.

Rule 707. Informal Trial.

(a) **Informal Trial Model for Custody and Child Support**. An Informal Trial is an optional alternative trial procedure that is voluntarily agreed to by the parties, attorneys, and the court to try child custody and child support issues. The model requires that the application of the Idaho Rules of Evidence and the normal question and answer manner of trial be waived. Once the waiver is obtained, the matter proceeds to trial by consent as follows:

(1) The moving party is allowed to speak to the court under oath as to his desires as to child custody and child support determination. The party is not questioned by the attorney, but may be questioned by the court to develop evidence required by the Idaho Child Support Guidelines and best interest of the child.

(2) The court then asks the attorney for that party, if any, if there are any other areas the attorney wants the court to inquire about. If there are any, the court does so.

(3) The process is then repeated for the other party.

(4) If there is a Guardian ad Litem or other expert, the expert's report is entered into evidence as the court's exhibit. If either party desires, the expert is sworn and subjected to questioning by the attorney, parties, or the court.

(5) The parties may present any documents they want the court to consider. The court must determine what weight, if any, to give each document. The court may order the record to be supplemented.

(6) The parties are then offered the opportunity to respond briefly to the comments of the other party.

(7) Attorneys or self-represented parties are offered the opportunity to make legal argument.

(8) At the conclusion of the case, the court will make a decision.

(b) **Consent and Waiver**. The consent to and waiver to the Informal Trial must be given verbally on the record under oath or in writing on a form adopted by the Supreme Court.

Rule 708. Separate Trials. For convenience, to avoid prejudice, or to expedite and economize, the court may order a separate trial of one or more separate issues, claims, cross-claims, counterclaims, or third-party claims.

PART VIII. JUDGMENTS; POST-DECREE AND POST-JUDGMENT PROCEEDINGS

Rule 801. Findings and Conclusions by the Court.

(a) **In General.**

(1) **After Trial**. The court must find specific facts and state its conclusions of law separately. The findings and conclusions may be stated on the record after the close of the evidence or may appear in an opinion or a memorandum of decision filed by the court. Judgment must be entered under Rule 802.

(2) **Interlocutory Injunction**. In granting or refusing an interlocutory injunction, the court must similarly state the findings and conclusions that support its action.

(3) **Judgment by Default**. The court is not required to state findings or conclusions in support of a judgment by default.

(4) **Motion**. The court is not required to state findings or conclusions when ruling on an interlocutory order, a motion under Rules 502 or 507, or any other motion except as provided in Rule 119.

(5) **Effect of a Master's Findings**. A master's findings, to the extent adopted by the court, must be considered the court's findings.

(6) **Questioning Evidentiary Support**. A party may later question the sufficiency of the evidence supporting the findings, whether or not the party requested findings, objected to them, moved to amend them, or moved for partial findings.

(7) **Setting Aside Findings**. Findings of fact, whether based on oral or other evidence, must not be set aside unless clearly erroneous, and the reviewing court must give due regard to the court's opportunity to judge the witnesses' credibility.

(b) **Amendment or Additional Findings.** On a party's motion filed no later than 14 days after the entry of judgment, the court may amend its findings, or make additional findings, and may amend the judgment accordingly. The motion may accompany a motion for a new trial under Rule 804.

(c) **Assignment of Error.** No party may assign as error the lack of findings unless the party raised the issue to the court by an appropriate motion.

Rule 802. Judgments.
(a) **Definition and Form of Judgment.**

(1) "**Judgment**" means a separate document entitled "Judgment" or "Decree". A judgment must state the relief to which a party is entitled on one or more claims for relief in the action, which may include dismissal with or without prejudice. A judgment must not contain a recital of pleadings, the report of a master, the record of prior proceedings, the court's legal reasoning, findings of fact, or conclusions of law. A judgment is final if either it is a partial judgment that has been certified as final pursuant to subsection (b)(1) or judgment has been entered on all claims for relief, except costs and fees, asserted by or against all parties in the action. A judgment or partial judgment must begin with the words "JUDGMENT IS ENTERED AS FOLLOWS...," and it must not contain any other wording between those words and the caption. A judgment may include any findings of fact or conclusions of law expressly required by statute, rule, or regulation.

(2) **Amended Judgments.** If the court orders an amendment to a judgment, the amendment will be effective only after the court enters an amended judgment setting forth all of the terms of the new judgment, including those terms of the prior judgment that remain in effect.

(3) **Modification Judgments.**

(A) **Modification Granted**. If the court modifies child custody, child support, or spousal maintenance provisions in a prior judgment, the modification will be effective only after the court enters a modification judgment setting forth all of the terms of the new judgment. The judgment may identify and refer to the prior judgment and need not include the provisions of the prior judgment that were not modified.

(B) **Modification Denied**. If the court denies the petition to modify, the court must enter a judgment denying the requested modification.

(b) **Partial Judgment on Multiple Claims or Involving Multiple Parties.**

(1) **Certificate of Partial Judgment as Final.** When an action presents more than one claim for relief, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay. Otherwise, any judgment, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

(2) **Form.** In the event the court determines that a partial judgment should be certified as final under this rule, the court must execute a certificate which must immediately follow the court's signature on the partial judgment and be in substantially the form found in Appendix C.

(3) **Jurisdiction if Appealed after Certificate of Final Judgment.** If a Certificate of Final Judgment is issued on a partial judgment and an appeal is filed, the court loses all jurisdiction over the entire action, except as provided in Idaho Appellate Rule 13.

(c) **Demand for Judgment**. A default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings. Every other final judgment should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings.

(d) **Entry of Judgment.** Every judgment, modification judgment, and amended judgment must be set forth on a separate document. The filing of a judgment by the court as provided in Rule 205 or 809, or the placing of the clerk's filing stamp on the judgment constitutes the entry of the judgment, and the judgment is not effective before such entry. The entry of the judgment must not be delayed for the taxing of costs.

Rule 803. Satisfaction of Judgment.

(a) **Required on Full Payment.** On full payment of a judgment, the party in whose favor the judgment was rendered must:

(1) file a satisfaction of judgment in the court in which the judgment was entered; and

(2) record it in every county where the judgment or abstract of the judgment is recorded.

(b) **Signature Required.** A satisfaction of judgment must be signed by the party in whose favor the judgment was entered or the party's attorney.

Rule 804. New Trial; Amendment of Judgment.

(a) **In General.**

(1) **Grounds for a New Trial.** The court may, on motion, grant a new trial on all or some of the issues, and to any party, for any of the following reasons:

(A) irregularity in the proceedings of the court or adverse party;

(B) any order of the court or abuse of discretion by which either party was prevented from having a fair trial;

(C) accident or surprise, which ordinary prudence could not have guarded against;

(D) newly discovered evidence, material for the party making the application, which the party could not, with reasonable diligence, have discovered and produced at the trial;

(E) insufficiency of the evidence to justify the decision, or that it is against the law; or

(F) error in law, occurring at the trial.

(2) **Support for Motion**. Any motion for a new trial based on any of the grounds set forth in subsections (a)(1)(A)-(D) must be accompanied by an affidavit stating in detail the facts relied on in support of the motion. Any motion based on subsections (a)(1) (E) or (F) must set forth with particularity the factual grounds for the motion.

(3) **Further Action**. On a motion for new trial, the court may open the judgment, if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

(b) **Time to File a Motion for a New Trial.** A motion for a new trial must be filed and served within 14 days after the entry of the judgment.

(c) **Time to Serve Affidavits.** When a motion for a new trial is based on affidavits, they must be filed and served with the motion. The opposing party has 14 days after being served to file and serve opposing affidavits, which period may be extended for up to an additional 21 days by order of the court or written stipulation. The court may permit reply affidavits. All affidavits filed under this rule must meet the requirements of Rule 507.

(d) **New Trial on the Court's Initiative or for Reasons Not in the Motion.**

(1) **On Court's Own Initiative**. No later than 14 days after entry of judgment the court, on its own, may give notice of its intent to order a new trial for any reason for which it might have granted a new trial on motion of a party. A notice of intent

pursuant to this subsection is to be treated as a motion for new trial filed by a party for the purpose of these rules and the Idaho Appellate Rules.

(2) **For Grounds Not Stated in Motion**. The court may grant a motion for a new trial, timely served, for a reason not stated in the motion.

(3) **Hearing.** The court must give the parties notice and an opportunity to be heard before entering an order for new trial. The court must specify in the order the grounds for granting a new trial.

(e) **Motion to Alter or Amend a Judgment.** A motion to alter or amend the judgment must be filed and served no later than 14 days after entry of the judgment.

Rule 805. Relief from Judgment or Order.

(a) **Corrections Based on Clerical Mistakes, Oversights, and Omissions.** The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.

(b) **Grounds for Relief from a Final Judgment, Order, or Proceeding.** On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 807(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

(c) **Timing and Effect of the Motion.**

(1) **Timing.** A motion made under subsection (b) must be made within a reasonable time, and for reasons (1), (2), and (3) no more than 6 months after the entry of the judgment or order or the date of the proceeding.

(2) **Effect on Finality**. The motion does not affect the judgment's finality or suspend its operation.

(d) **Other Powers to Grant Relief.** This rule does not limit a court's power to:

(1) entertain an independent action to relieve a party from a judgment, order, or proceeding;

(2) set aside, as provided by law, within one year after judgment was entered, a judgment obtained against a party who was not personally served with summons and petition either in the state of Idaho or in any other jurisdiction, and who has failed to appear in the action; or

(3) set aside a judgment for fraud on the court.

Rule 806. Harmless Error.

Unless justice requires otherwise, no error in admitting or excluding evidence, or any other error by the court or a party, is grounds for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order. At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights.

Rule 807. Stay of Proceedings to Enforce a Judgment.

(a) **No Automatic Stay on Entry of Judgment.** Execution on a judgment and proceedings to enforce are not stayed, unless the court in its discretion and on such conditions for the security of the adverse party as are proper, otherwise directs. Unless otherwise ordered by the court, an interlocutory or final judgment in an action for an injunction or writ of mandate, or in a receivership action, is not stayed during the period after its entry and until the appeal is filed or during the pendency of an appeal. The provisions of subsection (c) of this rule govern the suspending, modifying, restoring, or granting of an injunction or writ of mandate during the pendency of an appeal.

(b) **Stay Pending the Disposition of a Motion.** On appropriate terms for the opposing party's security, the court may stay the execution of a judgment, or any proceedings to enforce it, pending disposition of any of the following motions:

(1) for judgment as a matter of law under Rule 119;

(2) to amend the findings or for additional findings under Rule 801;

(3) for a new trial or to alter or amend a judgment under Rule 804; or

(4) for relief from a judgment or order under Rule 805.

(c) **Injunction or Writ of Mandate Pending an Appeal.** While an appeal is pending from an interlocutory order or final judgment that grants, dissolves, or denies an injunction or writ of mandate, the court may suspend, modify, restore, or grant an injunction or writ of mandate on terms for bond or other terms that secure the opposing party's rights.

(d) **Stay on Appeal.** When an appeal is taken from the district court to the Supreme Court, the proceedings in the district court on the judgment or order appealed from is stayed as provided by the Idaho Appellate Rules.

(e) **Stay in Favor of the State, Subdivision, or Agency Thereof; Waiver.** The court must not require a bond, obligation or other security from the appellant when granting a stay on an appeal by the state of Idaho or its officers, agencies, or subdivisions.

(f) **Appellate Court's Power Not Limited.** This rule does not limit the power of the Supreme Court or a district court acting in its appellate capacity or one of its justices or judges:

(1) to stay proceedings, or suspend, modify, restore, or grant an injunction, while an appeal is pending; or

(2) to issue an order to preserve the status quo or the effectiveness of the judgment to be entered.

(g) **Stay with Multiple Claims or Parties.** A court may stay the enforcement of a final partial judgment entered under Rule 802(b) until it enters a later judgment or judgments, and may prescribe terms necessary to secure the benefit of the stayed judgment for the party in whose favor it was entered.

Rule 808. Judge's Inability to Proceed.

If the judge is unable to perform the duties required after findings of fact and conclusions of law is filed, because of death, sickness, or other disability, then any other judge regularly sitting in or assigned to the court in which the action was tried may perform those duties. If the other judge is satisfied that the judge cannot perform those duties, the judge may grant a new trial.

Rule 809. Notice of Orders or Judgments.

(a) **Proposed Order or Judgment.** The prevailing party, or other party designated by the court to draft a proposed order or judgment, must serve a copy of the proposed order or judgment on each party and must provide to the clerk sufficient copies for service on all parties, together with envelopes addressed to each party with sufficient postage attached, unless otherwise ordered by the court.

(b) **Service of Entered Order or Judgment.** Immediately after entering an order or judgment, the clerk of the court must serve a copy of it on every party, with the clerk's filing stamp showing the date of filing. The order or judgment may be served by mailing, emailing, or delivering it to the attorney of record for each party, or if the party is not represented by an attorney, by mailing to the party at the address designated by the prevailing party as most likely to give notice to that party. The clerk must make a note in the court records of the mailing of the entered order. Mailing is sufficient notice for all

purposes for which notice of the entry of an order is required by these rules.

(c) **Time to Appeal Not Affected by Lack of Notice.** Lack of notice of entry of an order or judgment does not affect the time to appeal or to file a post-judgment motion, or relieve or authorize the court to relieve a party for failure to appeal or file a post-trial motion within the time allowed, except where there is no showing of mailing by the clerk in the court records and the affected party had no actual notice.

Rule 810. Execution of Judgment.

(a) **In General.** An appealable final judgment, or a partial judgment if certified as final under Rule 802, for the payment of money, or a court order for the payment of money, is enforced by a writ of execution unless the court directs otherwise. A writ of execution must not be issued for an amount other than the face amount of the judgment, and costs and attorney fees approved by the court, without an affidavit of the party or the party's attorney verifying the computation of the amount due under the judgment. The clerk may rely on an affidavit in issuing a writ of execution. After service of the writ of execution, the sheriff must submit a return of service to the clerk of the court and indicate the amount of the service fees and whether they were collected by the sheriff. Any balance of the service fees of the writ of execution not collected by the sheriff must be added to the judgment by the clerk as provided in Rule 901.

(b) **Procedure on Execution.** Proceedings supplementary to and in aid of judgment, and proceedings on and in aid of execution must be in accordance with the statutes of the state of Idaho and as provided in these rules.

(c) **Obtaining Discovery.** In aid of the judgment or execution, the judgment creditor or successor in interest whose interest appears of record may obtain discovery from any person, including the judgment debtor, as provided in these rules and may examine any person, including the judgment debtor, in the manner provided by these rules.

Rule 811. Judgment for Specific Acts; Vesting Title.

(a) **Party's Failure to Act; Ordering Another to Act.** If a judgment requires a party to convey land, to deliver a deed or other document, or to perform any other specific act, and the party fails to comply within the time specified, the court may order the act to be done at the disobedient party's expense by another person appointed by the court. When done, the act has the same effect as if done by the party.

(b) **Vesting Title.** If real or personal property is within the district, the court, instead of ordering a conveyance, may enter a judgment divesting any party's title and vesting it in others. That judgment has the effect of a legally executed conveyance.

(c) **Obtaining a Writ of Attachment or Sequestration.** On application by a party entitled to performance of an act, the clerk must issue a writ of attachment or sequestration against the disobedient party's property to compel obedience.

(d) **Obtaining a Writ of Execution or Assistant.** On application by a party who obtains a judgment or order for possession, the clerk must issue a writ of execution or assistance.

(e) **Motion for Contempt.** Failure to comply with a judgment may also be the basis of a motion for contempt.

Rule 812. Contempt.
Actions for contempt are governed by Idaho Rule of Civil Procedure 75.

Rule 813. Appeals of Family Law Cases.
Any appeal of an order, decree, or judgment is governed by Idaho Rule of Civil Procedure 83.

PART IX. ATTORNEY FEES AND COSTS

Rule 901. Costs.

(a) **In General; Items Allowed.**

(1) **Parties Entitled to Costs**. Except when otherwise limited by these rules, costs are awarded as a matter of right to the prevailing party or parties, unless otherwise ordered by the court.

(2) **Prevailing Party**. In determining which party to an action is a prevailing party and entitled to costs, the court must, in its sound discretion, consider the final judgment or result of the action in relation to the relief sought by the respective parties. The court may determine that a party to an action prevailed in part and did not prevail in part, and on so finding may apportion the costs between and among the parties in a fair and equitable manner after considering all of the issues and claims involved in the action and the resulting judgment or judgments obtained.

(3) **Costs as a Matter of Right.**

(A) **Allowed Costs.** When costs are awarded to a party, that party is entitled to the following costs, actually paid, as a matter of right:

(i) court filing fees, including any fees incidental to electronic filing;

(ii) actual fees for service of any pleading or document in the action, whether served by a public officer or other person;

(iii) witness fees of $20 per day for each day in which a witness, other than a party or expert, testifies at a deposition or in the trial of an action;

(iv) travel expenses of witnesses who travel by private transportation, other than a party, who testify in the trial of an action, computed at the rate of $.30 per mile, one way, from the place of residence, whether it is in or outside the state of Idaho;

(v) travel expenses of witnesses who travel other than by private transportation, other than a party, computed as the actual travel expenses of the witness but not more than $.30 per mile, one way, from the place of residence of the witness, whether it is in or outside the state of Idaho;

(vi) expenses or charges of certified copies of documents admitted as evidence in a hearing or the trial of an action;

(vii) reasonable costs of the preparation of models, maps, pictures, photographs, or other exhibits admitted in evidence as exhibits in a hearing or trial of an action, but not more than $500 for all of such exhibits of each party;

(viii) cost of all bond premiums;

(ix) reasonable expert witness fees for an expert who testifies at a deposition or at a trial of an action, but not more than $2,000 for each expert witness for all appearances;

(x) charges for reporting and transcribing of a deposition taken in preparation for trial of an action, whether or not read into evidence in the trial of an action; and

(xi) charges for 1 copy of any deposition taken by any of the parties to the action in preparation for trial of the action.

(B) **Disallowed Costs.** The court may, on objection, disallow any of the above-described costs on a finding that the costs were not reasonably incurred; were incurred for the purpose of harassment; were incurred in bad faith; or were incurred for the purpose of increasing the costs to any other party. The mere fact that a deposition is not used in the trial of an action, either as evidence read into the record or for the purposes of impeachment, does not indicate that the taking of the deposition was not

reasonable, or that a copy of a deposition was not reasonably obtained, or that the cost of the deposition should otherwise be disallowed, so long as it's taking was reasonable for trial preparation.

(4) **Discretionary Costs.** Additional items of cost not enumerated in, or in an amount in excess of that listed in subsection (3), may be allowed on a showing that the costs were necessary and exceptional costs, reasonably incurred, and should in the interest of justice be assessed against the adverse party. The court, in ruling on objections to discretionary costs, must make express findings as to why the item of discretionary cost should or should not be allowed. In the absence of any objection to an item of discretionary costs, the court may disallow on its own motion any items and must make express findings supporting such disallowance.

(5) **Costs Incurred by the Court.** The court may assess and apportion as costs, between and among the parties to the action, all fees and expenses of masters, receivers or expert witnesses appointed by the court in the action.

(6) **Costs and Attorney Fees; Fees on Execution of Judgment; Added to Judgment.** All costs and attorney fees approved by the court and fees for the service of the writ of execution on a judgment are automatically added to the judgment as costs and collected by the sheriff in addition to the amount of the judgment and other allowed costs. In the event the return of the sheriff on a writ of execution indicates that the service costs were not obtained through the service of the writ, the clerk of the court must automatically add the uncollected service fees to the judgment as additional costs.

(b) **Multiple Parties**. In the event judgment is entered in favor of multiple parties or co-parties, costs must be allowed as a matter of course to each of the prevailing parties unless the court otherwise directs.

(c) **Costs on Extension of Time.** In the event any party to an action applies for an enlargement of time or postponement of a hearing or trial, the court may impose costs and expenses caused by the delay against the moving party as a condition to granting the enlargement or postponement.

(d) **Memorandum of Costs.** At any time after a decision of the court, but not later than 14 days after entry of judgment, any party who claims costs may file and serve on adverse parties a memorandum of costs, itemizing each claimed expense. The memorandum must state that to the best of the party's knowledge and belief that the items are correct and that the costs claimed are in compliance with this rule. Failure to timely file a memorandum of costs is a waiver of the right to costs. A memorandum of costs prematurely filed is considered as timely.

(e) **Objections to Costs.** Within 14 days of service of a memorandum of costs, any party may object by filing and serving a motion to disallow part or all of the costs. The

motion does not stay execution on the judgment, exclusive of costs, and must be heard and determined by the court as other motions under these rules. Failure to timely object to the items in the memorandum of costs constitutes a waiver of all objections to the costs claimed.

(f) **Settlement of Costs by Order of Court.** After a hearing on an objection to a memorandum of costs, or after the time for filing an objection has passed, the court must, on motion of any party or on the court's own initiative, enter an order settling the dollar amount of costs, if any, awarded to any party to the action.

Rule 902. Attorney Fees.

(a) **Pursuant to Contract or Statute.** The court may award reasonable attorney fees, including paralegal fees, to the prevailing party as defined in Rule 901(a)(2), when provided for by any statute or contract.

(b) **Pursuant to Idaho Code Section 12-121.** Attorney fees under Idaho Code § 12-121 may be awarded by the court only when it finds that the case was brought, pursued, or defended frivolously, unreasonably, or without foundation. This finding must be in writing and include the basis and reasons for the award. No attorney fees may be awarded pursuant to Idaho Code § 12-121 on a default judgment.

(c) **Amount of Attorney Fees.** If the court grants attorney fees to a party in a civil action it must consider the following in determining the amount of such fees:

(1) the time and labor required;

(2) the novelty and difficulty of the questions;

(3) the skill requisite to perform the legal service properly and the experience and ability of the attorney in the particular field of law;

(4) the prevailing charges for like work;

(5) the time limitations imposed by the client or the circumstances of the case;

(6) the amount involved and the results obtained;

(7) the undesirability of the case;

(8) the nature and length of the professional relationship with the client;

(9) awards in similar cases;

(10) the reasonable cost of legal research, if the court finds it was reasonably necessary in preparing a party's case; and

(11) any other factor which the court deems appropriate in the particular case.

(d) **Pleading; Default Judgments.**

(1) **In General.** It is not necessary for any party in a civil action to assert a claim for attorney fees in any pleading when attorney fees are requested pursuant to contract or statute.

(2) **In Default Judgment.** The amount of attorney fees in the event of default must be included in the prayer for relief in the petition and the award must not exceed the amount in the prayer.

(e) **Attorney Fees as Costs.** Attorney fees, when allowable by statute or contract, are costs in an action and processed in the same manner as other costs and included in the memorandum of costs. A claim for attorney fees as costs must be supported by an affidavit of the attorney stating the basis and method of computation.

(f) **Objection to Attorney Fees.** Any objection to a claim for attorney fees must be made in the same manner as an objection to costs as provided by Rule 901(e). The court may conduct an evidentiary hearing, if it deems it necessary, regarding the award of attorney fees.

(g) **Settlement of Attorney Fees by Order of Court; Determination Not Binding on Attorney and Client.** After a hearing on an objection to a claim for attorney fees, or after the time for filing an objection has passed, the court must enter an order settling the dollar amount of attorney fees, if any, awarded to any party to the action. If there was a timely objection to the amount of attorney fees, the court must include in the order its reasoning and the factors it relied in determining the amount of the award. The allowance of attorney fees by the court under this rule is not to be construed as fixing the fees between attorney and client.

(h) **Claims to Which Rule Applies.** Any claim for attorney fees, including claims pursuant to Idaho Code § 12-121, must be made pursuant to this rule unless an applicable statute or contract provides otherwise.

PART X. OTHER RESOURCES.

Rule 1001. Other Family Law Services; Assessments, Evaluations, and Resources.

In addition to services identified elsewhere in these rules, the court may order the following services:

(a) **Mental Health Services.** The court may order parties to engage in mental health services, including, but not limited to, assessment and evaluation, counseling, and other therapeutic interventions.

(b) **Substance Abuse Screening, Testing, and Treatment.** On an allegation or showing that a party has abused drugs or alcohol, including prescription medication, the court may order substance abuse screening, assessment or evaluation, random testing, and treatment of that party where custody or parenting time are at issue. The court must designate the frequency of testing and apportion responsibility for payment of screening and testing.

(c) **Parent Education and Parent Resources.** The court may order the parties to engage in parent education and other resources. The court may order supplemental or additional education, such as parenting skills classes, parental conflict resolution classes, and other parental resources. The court has discretion to enter default if the responding party fails to attend the parenting class. Failure to attend the parenting class by the answering party should not prevent a default or default judgment; however, this does not relieve the party from taking the class and the court may still enforce the order through the contempt process.

(d) **Family Violence Prevention Services and Advocacy Services.** Goals of the court include prevention of domestic violence and protection of parties and children from domestic violence. In pursuit of these goals, the court may implement family violence prevention services, including, but not limited to, assessment and evaluation, intervention, treatment, counseling, and victim advocacy services. If the court finds evidence of an act or threat of domestic violence in a case, the court may refer the parties to obtain evaluations and services that the court deems appropriate for the victim, batterer, and child.

Rule 1002. Appointment of Parenting Coordinator in Child Custody and Visitation Disputes.

(a) **In General.**

(1) **Definitions.**

(A) A "Parenting Coordinator" is a qualified impartial person appointed by the court either by stipulation of the parties, motion by one party, or on its own motion, to perform any or all of the following functions:

(i) decide certain discretionary issues specified in the order of appointment relating to custody of a minor child;

(ii) assist the parties with reaching an agreement to resolve certain custody issues; or

(iii) make recommendations to the court and parties.

(B) An "order of appointment" is the court order appointing the Parenting Coordinator which must determine the scope of the Parenting Coordinator's authority and duties in the case.

(C) The "best interest of the child" is defined by Idaho Code § 32-717 and nothing in this rule is intended to supersede, replace, or invalidate Section 32-717.

(2) **Statement of Purpose**. The purpose of appointing a Parenting Coordinator in a given case should be to help parents (i) implement a court order regarding child custody, (ii) comply with a court order regarding child custody, (iii) resolve day-to-day issues that arise regarding physical and legal custody of their child, (iv) learn healthy and effective methods of communication and ways to safely exchange their child, and (v) reduce re-litigation where high conflict threatens the safety or well-being of their child.

(3) **Exceptional Circumstances**. A reference to a Parenting Coordinator must be the exception and not the rule. Such a reference must be made only when:

(A) the issues appear to be intractable or have been the subject of frequent re-litigation;

(B) the well-being of a minor child is placed at risk by the parents' inability to co-parent civilly;

(C) one or both parents have committed domestic violence;

(D) one or both parents are chemically dependent or mentally ill; or

(E) other exceptional circumstances require such appointment to protect the child's best interests

(b) **Process for Appointing a Parenting Coordinator.**

(1) **Authority**. The court is authorized to appoint a Parenting Coordinator pursuant to Idaho Code § 32-717D and this rule.

(2) **Procedure**. The appointment must be made by an order of appointment, after having found that the circumstances specified in subsection A(3) are present, based on either (i) a stipulation or agreement filed by the parties or (ii) after hearing on a motion filed by either a party or the court. If the court orders the appointment of a Parenting Coordinator on its own motion, it must give the parties at least 7 days' advance notice of a hearing on the motion.

(3) **Timing.** The appointment of a Parenting Coordinator may be made at any stage in the proceedings after entry of an order, decree, or judgment establishing child custody.

(4) **Selection.** The Parenting Coordinator must be a person selected by stipulation of the parties, or a qualified Parenting Coordinator who has met the requirements set forth in subsection I.

(5) **Duration**. The term of the Parenting Coordinator's service must be designated in the order of appointment but must not exceed the date on which the youngest minor child subject to the order of appointment reaches the age of majority.

(6) **Removal and Resignation.**

(A) Either party may petition the court for termination of the Parenting Coordinator's appointment whenever the Parenting Coordinator has exceeded the scope of his authority, abused his discretion, or acted in a manner inconsistent with this rule.

(B) The court may terminate the order of appointment at any time if the parties stipulate to such termination or it finds that further efforts by the Parenting Coordinator would be contrary to the best interests of the child.

(c) **Scope of the Parenting Coordinator's Authority**. The order of appointment must specify the authority and duties of the Parenting Coordinator. An order of appointment that fails to identify the Parenting Coordinator's authority and duties grants only those powers and duties identified in Idaho Code § 32-717D(3). The order of appointment must not delegate to the Parenting Coordinator the court's exclusive, continuing jurisdiction to modify a child custody or child support order. The Parenting Coordinator must have no authority to make decisions regarding child support issues.

(1) **Order of Appointment Based on a Stipulation of the Parties.** The parties may delegate to the Parenting Coordinator by stipulation the authority to resolve any legal or physical custody issues regarding their child as set forth in their stipulated order.

(2) **Order of Appointment Based on a Motion Filed by the Court or a Party.** If the order of appointment is made by the court on its own motion or the motion of a party, then the Parenting Coordinator may assist the parties with reaching an agreement on any issue regarding legal and physical custody of their child; however, absent a stipulation of the parties, the Parenting Coordinator's authority to make a decision is limited to any or all of the following child custody issues if the decision is consistent with the controlling child custody order, decree, or judgment:

(A) the time, place, and manner of pick-up and delivery of the child;

(B) child care arrangements, including babysitting;

(C) the selection of an appropriate supervisor, if supervised visitation is ordered;

(D) the selection of which parent may enroll a child in school;

(E) minor alterations in the parenting schedule with respect to weeknight, weekend, holidays, or vacation which do not substantially alter the basic time share allocation;

(F) scheduling "make up" time in the event one parent is denied court-ordered custodial time by the other parent, in lieu of the party filing a motion for contempt based on the denial of that custodial time;

(G) when a particular child must commence overnight visitation with a parent;

(H) the extent to which significant others and relatives may participate in visitation, including any limitations on the role of significant others and relatives;

(I) the first and last dates for school break visitation including winter, summer, and spring breaks;

(J) the schedule and conditions of telephone and virtual communication with the child;

(K) the manner and methods by which the parties may communicate with each other;

(L) the approval of out-of-state travel plans by a parent or guardian;

(M) alteration of the child's appearance including clothing, haircuts, piercings, and tattoos;

(N) the child's travel and passport arrangements;

(O) equipment and personal possessions of the child;

(P) the attendance by one or both parents at parenting classes;

(Q) which parent may authorize counseling or other health care treatment for a child;

(R) the authorization of the child's participation in extracurricular activities, including issues related to transportation and the allocation of costs for each activity; and

(S) any other issues submitted for immediate determination by agreement of the parties, including clarification of inconsistencies or ambiguities in the controlling custody order, decree, or judgment.

(3) **Recommendations**. If authorized by the order of appointment, a Parenting Coordinator may also make recommendations to the parties and the court, or to the parties only, regarding (i) any legal or physical custody issue pertaining to the child of the parties, (ii) the appointment of an attorney for the child, and (iii) any financial issue related to the child of the parties, including child support. The issues about which a Parenting Coordinator may make recommendations must be identified in the order of appointment. Recommendations made by a Parenting Coordinator are not binding on the parties or the court and must not have the effect of a decision under subsection F. The court must not issue an order based on a recommendation from a Parenting Coordinator absent a properly filed (a) stipulation by the parties or (b) motion by one of the parties in accordance with these rules.

(4) **Access to Information.** The order appointing the Parenting Coordinator, whether based on a stipulation or not, must grant the Parenting Coordinator reasonable access to all potentially relevant records, documents, and information related to the minor child of the parties, except information that is protected by an attorney-client privilege. The Parenting Coordinator must also be given access to communicate directly with the minor child if, in the Parenting Coordinator's discretion, such access is necessary to decide an issue within the scope of his appointment.

(d) **Duties of Parenting Coordinator.**

(1) **Primary Duty.** The Parenting Coordinator has a primary duty to be impartial and to advise all parties of any circumstances bearing on possible bias, prejudice, or impartiality.

(2) **Other Duties.** During the initial conference with either or both parties, the Parenting Coordinator must define and describe, in writing, his role established by the order of appointment. The description should include the following:

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

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

(C) the lack of confidentiality of the proceedings and, if applicable, the lack of any privilege against disclosure;

(D) the duties and responsibilities of the parties;

(E) the manner of service most likely to give each party notice of any or all of the Parenting Coordinator's decisions;

(F) the fact that the resolution of any disagreement not reached by mutual consent of the parties may be decided by the Parenting Coordinator subject to review by the court on motion or petition of either party;

(G) the parties' right to seek independent legal counsel prior to resolving the issues or in conjunction with formalizing an agreement;

(H) the information necessary for defining and resolving the disputed issues; and

(I) the duty to keep an adequate record of contacts with the parties and other interested persons in the case.

(3) **Submission of Reports.** The Parenting Coordinator may report to the court in writing the status of the case, including, but not limited to, those specific duties set forth in the Parenting Coordinator's order of appointment so long as copies of such reports are timely served on both parties. The order appointing the Parenting Coordinator must require the Parenting Coordinator to make at least 1 status report to the court and to the parties every 6 months.

(e) **Proceedings Conducted by the Parenting Coordinator**. The order of appointment must specify the procedure to be followed by the Parenting Coordinator. The procedure

specified should be simple, swift, and inexpensive. The parties will be given an opportunity to be heard on every issue submitted to the Parenting Coordinator but the procedure to be followed can be informal, and need not comply with the rules of evidence and procedure. Unless requested by the parties, no record need be made except for the Parenting Coordinator's decision. In emergencies and other circumstances involving severe time constraints, decisions may be made orally, but communicated to both parties, and followed by written confirmation within a reasonable time thereafter.

(1) **Communications from Parties.** The Parenting Coordinator must control the method and manner by which the parties communicate with him, which may include ex parte communication consistent with the circumstances set forth in the Parenting Coordinator's duties in subsection D.

(2) **Non-Confidentiality.** All decisions made by the Parenting Coordinator, and all information on which his decisions are based (including all information submitted by the parties to the Parenting Coordinator and obtained by the Parenting Coordinator from any source), are not confidential in the sense that they may be disclosed to the parties and to the court. Third-party and public access to such decisions and information must continue to be governed exclusively by I.C.A.R. 32.

(f) **Effect of Parenting Coordinator's Decisions.** Every decision made by a Parenting Coordinator on matters submitted to him pursuant to the order of appointment is effective immediately on service of the decision on the parties. "Effective" means that it must be an affirmative defense to a motion for contempt if a party can show that his act or omission, while in violation of a controlling custody order, decree, or judgment was nevertheless in compliance with a subsequent decision made by a duly appointed Parenting Coordinator. If neither party has filed a timely motion to set aside or modify a decision as set forth below, then the Parenting Coordinator may (or, if requested by a party, must) submit to the court a copy of the decision and a form judgment or decree. If the Parenting Coordinator submits a proposed judgment to the court based on a decision, he must also file with the court a certificate of service that identifies the date on which he served each party with the decision along with a description of the manner of service. Thereafter, if the court determines that the requirements have been met, it may enter the judgment immediately and the judgment must thereafter be enforceable by contempt.

(g) **Manner of Service of the Parenting Coordinator's Decision**. The Parenting Coordinator's decision must be in writing and served on the parties by the means most likely to give them notice including hand delivery, email, facsimile, or regular mail. Service is complete on mailing, delivery, or transmission by electronic means, as the case may be.

(h) **Judicial Review; Process.** Within 14 days after the Parenting Coordinator has served his decision on the parties, either party may file a motion with the court to set

aside or to modify the Parenting Coordinator's decision. A party who files a motion must also serve the other party and the Parenting Coordinator with the motion and any supporting affidavits and legal memoranda by the method most likely to give him notice under the circumstances of the case as set forth. The filing of a motion does not stay implementation of the decision unless the court orders otherwise. Failure to file a timely motion must constitute a waiver of all objections to the Parenting Coordinator's decision.

(1) **Limited Bases for Review.** The only bases on which a party may file a motion to set aside or modify a decision by the Parenting Coordinator are as follows:

(A) the Parenting Coordinator exceeded the scope of his authority provided in the order of appointment; or

(B) the Parenting Coordinator abused his discretion in making the decision.

(2) **Standards of Review**. A motion based on subsection 1(a) must show by clear and convincing evidence that the Parenting Coordinator exceeded his scope of authority in reaching the decision. A motion based on subsection 1(b) must be reviewed by an "abuse of discretion" standard as defined by Idaho law.

(i) **Qualifications and Training.**

(1) **Appointment**. To be appointed as a Parenting Coordinator in the absence of a stipulation of the parties a person must be on the list of mediators compiled by the Supreme Court pursuant to Rule 602.

(2) **Training.** Parenting Coordinators must have participated in at least 20 hours of training in domestic violence and lethality assessment as set out in subsection I(3) within 2 years of the initial application. They must also have a basic familiarity with child development as it pertains to issues of bonding, attachment, and loss in early life and future child development. Each Parenting Coordinator must, at his own expense, submit to a criminal history check as provided for in I.C.A.R. 47. The 20 hours of training required must be in one or more of the following areas: (a) domestic violence; (b) violence in families; (c) child abuse; (d) anger management; (e) evaluation of future dangerousness; or (f) psychiatric causes of violence. Parenting Coordinators must acquire their training by completing a program approved or sponsored by one of the following associations: (i) Idaho Psychiatric Association; (ii) Idaho Psychologists Association; (iii) Idaho Nursing Association; (iv) Idaho Association of Social Workers; (v) Idaho Counselors Association; (vi) Council on Domestic Violence and Victim Assistance; (vii) Idaho State Bar; (viii) Idaho Supreme Court; (ix) an accredited college or university; or (x) any state or national equivalent of any of these organizations. Any program that does not meet the criteria set out in this subsection may be submitted for approval either prior to or after completion.

(3) **Conditional Denial Process.** If the application indicates the applicant lacks any of the necessary qualifications the application will be conditionally denied. The applicant will have 30 days after the conditional denial to provide any additional documentation concerning his qualifications or criminal history. The denial must become final 30 days after the conditional denial unless the Supreme Court determines after reviewing any additional documentation submitted that the applicant is qualified and fit to perform as a Parenting Coordinator.

(j) **Compensation.** A Parenting Coordinator must be compensated for his regular fees and expenses, which must be clearly set forth in the information and materials provided to the parties. Unless other arrangements are made among the parties or ordered by the court, the interested parties must be responsible for a pro rata share of the Parenting Coordinator's fees and expenses, equal to their respective contributions to total child support. If a Parenting Coordinator is not paid, the court, on motion of the Parenting Coordinator, may order payment. Any dispute regarding payment of the fees and costs of the Parenting Coordinator must be subject to review by the court on request of the Parenting Coordinator or either party.

(k) **Immunity.** The Parenting Coordinator has qualified judicial immunity in accordance with Idaho law as to all acts undertaken pursuant to and consistent with the order of appointment.

Rule 1003. Supervised Access to Child.

(a) **Coverage.** This rule applies in cases in which the court orders supervised access to child.

(b) **Purpose.** This rule sets forth the duties and obligations for providers of supervised access to child. The best interest of child is the paramount consideration in deciding the manner in which supervision is provided.

(c) **Scope of Service.** These standards govern supervised access. Each court may adopt local court rules that are not inconsistent with these standards and which are necessary to implement these standards.

(d) **Definitions.**

(1) **Supervised Access**. Any contact between a supervised party and one or more child in the presence of an approved provider.

(2) **Provider**. Any individual or entity appointed to provide supervised access between a supervised party and one or more child. Although accountable to the court, a provider is not a party to the court proceeding.

(3) **Exchange Supervision or Supervised Transfer**. Supervised access designed to facilitate the movement of one or more child between persons with the right to access those children. In this role, the provider waits at a neutral location and makes the exchange. Objective reports may be filed with the court regarding the behavior of the parties and the well-being of the child. Exchanges may take place at a variety of locations and times. The length of time between the first half of the exchange between parties and the return half may fluctuate between several hours or several weeks.

(4) **Non-Professional Provider**. Any provider who is not paid for providing supervised access services.

(5) **Professional Provider**. Any provider paid for providing supervised access services.

(6) **Therapeutic Provider**. A professional provider who is also a licensed mental health professional (including a psychologist, licensed master social worker, licensed professional counselor, marriage and family therapist, or an intern working under direct supervision of one of these professionals) and is ordered to provide Therapeutic Supervision.

(7) **Therapeutic Supervision**. The provision of supervised access services between the child and supervised party, as well as therapeutic intervention and modeling to help improve the parent-child interactions. A therapeutic provider may, when ordered, make evaluations and recommendations for further parent-child contact.

(8) **Supervised Party**. A person who is authorized to have contact with a child only by supervised access or who is subject to an order for supervised exchanges or transfers.

(e) **Court Control of Supervised Access.** The court must make the final decision as to who the provider will be, the manner in which supervised access is provided, and any terms or conditions thereof. The court may consider recommendations by the attorney or guardian ad litem for the child, the parties and their attorneys, family court services staff, evaluators, therapists, and reports submitted by providers of supervised access services.

(f) **Qualifications of Providers.**

(1) Unless otherwise ordered by the court or stipulated by the parties, all individuals providing supervised access must:

(A) be 21 years of age or older;

(B) if transporting a child, have proof of minimum automobile insurance, possess a valid current driver's license, not have been convicted of or pled guilty to driving under the influence of alcohol, drugs, or other intoxicating substances within the last five years, and utilize an approved child car seat or seat belt for the child as required by law;

(C) have no current or past civil, criminal, or juvenile protection or restraining order against him regarding a child involved in the case or a party to the case;

(D) have no current Temporary Civil Protection Order against him;

(E) have no current or past civil protection order against him entered after a hearing with notice and opportunity to be heard;

(F) have no current or past criminal no contact order against him;

(G) never have been a supervised party; and

(H) communicate in a language that the non-custodial party and the child understand or have a neutral interpreter over the age of 18 present to assist with communication, including for the hearing-impaired.

(2) In addition to the above, all professional providers must comply with the provisions of I.C.A.R. 47 regarding criminal history checks.

(g) **Education and Training of Providers**. When the court orders supervised access, each court must make available to the providers the terms and conditions of supervised access under subsections N and O and the legal responsibilities and obligations of a provider as provided in subsections P, Q and R. In addition, within 24 months prior to becoming a professional provider of supervised access for the first time, the provider must have completed 13 hours of training in supervised access including the following topics:

(1) the role of a professional and therapeutic provider;

(2) child abuse reporting laws;

(3) record-keeping procedures;

(4) screening, monitoring, and termination of access;

(5) developmental needs of a child;

(6) legal responsibilities and obligations of a provider;

(7) cultural sensitivity;

(8) conflicts of interest;

(9) confidentiality requirements and limitations;

(10) dynamics of domestic violence, child abuse, sexual abuse, and substance abuse;

(11) techniques for dealing with high conflict or difficult situations;

(12) effects of separation and divorce on a child and his parents;

(13) local court practices and relevant state law;

(14) maintaining a neutral role; or

(15) ethical principles involved in supervision of access.

(h) **Safety and Security Procedures.** All providers must make reasonable efforts to ensure the health, safety, and welfare of the child, custodial and non-custodial parties, and providers during supervised access. In addition, professional providers must do all of the following:

(1) Establish, with the assistance of the local law enforcement agency if possible, a written protocol that describes what emergency assistance and responses can be expected from the local police or sheriff's department. The protocol should specifically address procedures to follow in the event a child is abducted during the process of supervised access.

(2) Establish and set forth in writing minimum safety and security procedures and inform the parties of these procedures prior to the commencement of supervised access.

(3) Obtain prior to providing services:

(A) copies of any protection orders and no contact orders;

(B) current court orders pertaining to the child;

(C) a report of any written records of allegations of domestic violence or abuse; and

(D) in the case of a child's chronic health condition, an account of his health needs.

(4) Conduct a comprehensive intake and screening to assess the nature and degree of risk for each case. The procedures for intake should include separate interviews with the parties before access begins. During the interview, the provider must obtain identifying information of the parties and the child and explain the reasons for temporary suspension or termination of access as specified in this section. If the child is of sufficient age and capacity, the provider must include the child in an age-appropriate orientation prior to the first supervised access. The provider has the discretion to conduct an orientation of the process with the child separate and apart from the parties.

(i) **Ratio of Children to Provider.** A professional provider may determine the appropriate ratio of children to provider for supervised access based on:

(1) the degree of risk present in each case;

(2) the nature of supervision required in each case;

(3) the number and ages of the children to be supervised during a visit;

(4) the number of people having contact with the child during access;

(5) the duration and location of supervised access; and

(6) the experience of the provider.

(j) **Conflict of Interest; Non-professional Providers.** When appointing a non-professional provider the court should evaluate the provider's ability to act independently of the supervised person and in a neutral and unbiased fashion.

(k) **Conflict of Interest; Professional Providers.** All professional providers must maintain an engaged but unbiased role. Generally, discussions between a provider and the parties outside the actual supervision situation should be limited to arranging access and providing for the safety of a child. Unless otherwise ordered by the court or stipulated to by the parties, professional providers must not be:

(1) financially dependent on the person being supervised;

(2) an employee of or work for the supervised party in a capacity other than providing supervision;

(3) otherwise employed in another capacity in a case involving the same parties; or

(4) a close relative of, or be involved in or have had an intimate relationship with, the supervised party.

(l) **Maintenance and Disclosure of Records.**

(1) The professional provider must keep, and it is recommended that all providers keep, a record for each case, including the following:

(A) a written record of each contact, including the date, time, and duration of the contact;

(B) a list of who attended each session;

(C) a summary of activities;

(D) actions taken by the provider, including any interruptions, temporary suspension or termination, and reasons for these actions;

(E) an account of critical incidents, including physical or verbal altercations and threats;

(F) violations of protection orders, court visitation orders, or access orders;

(G) any failure of the parties to comply with the terms and conditions of the supervised access order; and

(H) any incidents of abuse.

(2) Records and reports must be limited to facts, observations, and direct statements made by the parties or the child, except where a therapeutic provider has been authorized by the court to evaluate and make recommendations regarding the adult/child interactions. All contacts by the provider in person, in writing, or by telephone with any party, the child, the court, attorneys, mental health professionals, and referring agencies must be documented in the case file.

(3) If ordered by the court, or requested by either party or the attorney for either party or the attorney for the child, a report about the supervised access must be produced and sent to all parties, their attorneys, the attorney for the child, and the court. Such reports must not include recommendations regarding future access unless ordered by the court and submitted by a therapeutic provider.

(4) Information gathered and observations made as a result of appointment as a provider must not be disclosed to anyone except as required by law, court order, or on consent of both the parties.

(m) **Evidentiary Privilege.** Communications between parties and providers of supervised access are not protected by any privilege.

(n) **Delineation of Terms and Conditions.** The provider is responsible for following all of the terms and conditions of any supervised access order. The provider must:

(1) monitor conditions to reasonably ensure the health, safety, and welfare of the child;

(2) follow the frequency and duration of the access as ordered by the court;

(3) remain neutral;

(4) ensure that all contact between the child and the supervised party is within the provider's hearing and sight, and that discussions are audible to the provider;

(5) communicate in a language that the child and non-custodial party understand;

(6) prohibit derogatory comments about another party, his family, the caretaker, the child, or the child's siblings;

(7) prohibit discussion of the court case or possible future outcomes;

(8) refuse to allow the provider or the child to be used to gather information about another party or a caretaker, or to transmit documents, information, or personal possessions;

(9) prohibit spanking, hitting, or threatening of the child;

(10) prohibit access to occur while the supervised party appears to be under the influence of alcohol or illegal drugs;

(11) prohibit emotional, verbal, physical, or sexual abuse;

(12) ensure that the parties follow any additional rules set forth by the provider or the court; and

(13) not allow any other person to have access, unless such access has been specifically approved by the court or by all parties in writing.

(o) **Safety Considerations for Cases involving Sexual Abuse.** Unless ordered by the court, all providers must adhere to the following additional terms and conditions in cases involving allegations of sexual abuse:

(1) prohibit exchanges of gifts, money or cards;

(2) prohibit photographing, audio taping, or videotaping of the child;

(3) prohibit physical contact with the child that appears inappropriate or sexualized, such as lap sitting, hair combing, stroking, hand holding, prolonged hugging, wrestling, tickling, horse-playing, changing diapers or clothes, or accompanying the child to the bathroom;

(4) prohibit whispering, passing notes, hand signals, or body signals that appear inappropriate or sexualized; and

(5) prohibit supervised access in the location where the alleged sexual abuse occurred.

(p) **Responsibilities and Obligations of a Provider.** All providers of supervised access must:

(1) inform the parties before commencement of supervised access that while communications are confidential, no privilege exists;

(2) report suspected child abuse to the appropriate agency, as required by law, and inform the parties of the provider's obligation to make such reports;

(3) comply with and enforce the terms of this rule and the court's order; and

(4) suspend or terminate access as appropriate under subsection S.

(q) **Additional Responsibilities of Professional Providers**. In addition to the preceding responsibilities and obligations set forth under subsection P, the professional provider must:

(1) prepare a written contract that informs each party of the terms and conditions of supervised access that is signed by all parties before the commencement of supervised access;

(2) review custody and visitation orders relevant to the supervised access;

(3) implement an intake and screening procedure under subsection H(4);

(4) develop a written protocol for suspension or termination of access services; and

(5) provide general information to the parties about how they may be referred back to the court when access has been suspended or terminated.

(r) **Discharge of the Supervisor**.

(1) If a previously named provider cannot accept the appointment for whatever reason, that provider must within 7 days of the notice of appointment, or receipt of the notice to the supervisor, or order, file a declination of appointment. A provider need not give a specific reason for declining an appointment to provide supervised access.

(2) If at any time after the acceptance of the appointment or before providing supervised access services the provider is no longer willing or able to act as a supervisor, the provider must notify the court by filing a written resignation with the court and mailing a copy to the parties and their attorneys.

(3) On motion of a party or the court, a supervisor may be removed for failure or inability to comply with this rule or the conditions of appointment. The supervisor may also be removed because the services are no longer needed.

(s) **Temporary Suspension or Termination of Supervised Access.** All providers must make reasonable efforts to provide a safe environment for all participants. Access may be temporarily interrupted, rescheduled at a later date, or terminated if a provider determines that the rules for the access have been violated; the child has become acutely distressed; or the health, safety; or welfare of the child or provider is at risk. When suspending or terminating access, providers must:

(1) notify the court and state the reasons for suspension or termination of supervised access in writing, providing copies to all parties, their attorneys, and any attorney for the child; and

(2) record all interruptions or terminations of access in their case file or, in the case of non-professional providers, inform the court of such interruptions or terminations of access.

Rule 1004. Parenting Time Evaluation.

(a) **Definition of Parenting Time Evaluation**. A "parenting time evaluation" is an expert investigation and analysis of the best interest of child with regard to disputed parenting time issues. The parenting time evaluation must not include interim parenting time recommendations or a brief focused assessment. The purpose of a parenting time

evaluation is to provide the court with information it may consider to make decisions regarding custody and parenting time arrangements that are in the child's best interest. This is accomplished, among other things, by assessing the capacity to parent, and the developmental, emotional, and physical needs of the child. Unless otherwise specified in the order, evaluators must consider and respond to the factors set forth at Idaho Code § 32-717.

(b) **Matters in Which Appointment May be Made**. The court, on a motion of any party, agreement of the parties, or on its own motion, may order a parenting time evaluation in any action involving custody of minor child to assist the trier of fact with matters that affect the best interest of the child.

(c) **Selection of a Parenting Time Evaluator.** The court may permit the parties to select an evaluator, or the court may appoint an evaluator. The evaluator must meet the qualifications set forth. If the court intends to appoint its own evaluator, it must follow the show cause procedure set forth in Idaho Rule of Evidence 706.

(d) **Qualifications of Evaluator.**

(1) A parenting time evaluator must have at least one of the following minimum qualifications:

(A) licensed physician who is Board certified in psychiatry;

(B) licensed psychologist; or

(C) individual with a minimum of a master's degree in a mental health field that includes formal education and training in the legal, social, familial, and cultural issues involved in custody and access decisions.

(2) Parenting time evaluators must possess the same or similar qualifications, expertise, and trainings as outlined in the Association of Family and Conciliation Courts (AFCC) Model Standards of Practice for Child Custody Evaluations.

(3) Family Court Services' staff who do not meet the qualifications set forth may perform a parenting time evaluation when such evaluation is performed under the direct supervision of another Family Court Services' staff person who does meet the minimum qualifications set forth in this section.

(4) An evaluator must be licensed in the state of Idaho or other jurisdiction approved by the court and must perform the parenting evaluation within the scope of their licensure.

(e) **Motion, Stipulation, and Order of Evaluation.**

(1) Every motion or stipulation for the performance of a parenting time evaluation must include:

(A) the name, address, and telephone number of the evaluator; and

(B) specific factors, if any, to address in the evaluation, including but not limited to whether a specific parenting access schedule is needed.

(2) Every order requiring the performance of a parenting evaluation must:

(A) include the name of the evaluator;

(B) require the parties to cooperate as requested by the evaluator;

(C) with the exception of mediation records, provide for the evaluator to have access to all records, public or private, that bear on the physical or mental health of the parties, the child and other persons who are part of the household and for any child whose custody is at issue, including but not limited to, medical and dental records, school records, day care records, drug test results, court records including civil and criminal domestic violence petitions, orders of protection, previous assessments or evaluations of either party, and child protective services records;

(D) require each party to sign releases for such information as requested by the evaluator;

(E) restrict disclosure of the evaluation's findings or recommendations and privileged information to the child of the subject litigation or as deemed necessary by the court;

(F) assign responsibility for payment;

(G) specify the anticipated dates of commencement and completion of the evaluation;

(H) specify any additional factors to be addressed in the evaluation;

(I) require the evaluator to provide written notice to the court, attorneys, and parties within 5 business days of completion or termination of the evaluation and, if terminated, the reason;

(J) require a written custody evaluation report to be prepared unless the court orders otherwise; and

(K) include language that the court and the parties acknowledge the evaluator is appointed by the authority of the court and that the evaluator is under the direction and control of the court and as such, is performing a judicial function and is entitled to judicial immunity.

(f) **Scope of Evaluation**. All evaluations must be conducted in accordance with the Association of Family and Conciliation Courts (AFCC) Model Standards of Practice for Child Custody Evaluations, American Academy of Matrimonial Lawyers, or the American Psychological Association (APA) Guidelines for Child Custody Evaluations in Family Law Proceedings and must include, at a minimum:

(1) A written explanation of the process that clearly describes the:

(A) purpose of the evaluation;

(B) procedures used and the time required to gather and assess information and, if psychological tests will be used, the role of the results in confirming or questioning other information or previous conclusions;

(C) scope and distribution of the evaluation report;

(D) limitations on the confidentiality of the process; and

(E) cost and payment responsibility for the evaluation.

(2) Data collection and analysis sufficient to allow the evaluator to observe and consider each party in comparable ways and to substantiate (from multiple sources when possible) interpretations and conclusions regarding each child's developmental needs; the quality of attachment to each parent and that parent's social environment; and reactions to the separation, divorce, or parental conflict. This process must include:

(A) reviewing pertinent documents related to custody, including court records and local police records;

(i) Any documents provided by the parties to the evaluator must be simultaneously provided to the other party or their attorney, if represented.

(ii) Any documents provided by the parties or their attorney to the evaluator will not be subject to disclosure by subpoena of the evaluator.

(B) interviewing parents conjointly, individually, or both conjointly and individually (unless contraindicated in cases involving domestic violence), to assess:

(i) capacity for setting age-appropriate limits and for understanding and responding to the child's needs;

(ii) history of involvement in caring for the child;

(iii) methods for working toward resolution of the child custody conflict;

(iv) history of child abuse, domestic violence, substance abuse, and psychiatric illness; and

(v) psychological and social functioning.

(C) conducting age-appropriate interviews and observation of the child with each parent, stepparent(s), step-and half-siblings conjointly, separately, or both conjointly and separately, unless contraindicated to protect the best interest of the child;

(D) collecting relevant corroborating information or documents as permitted by law; and

(E) consulting with other experts to develop information that is beyond the evaluator's scope of practice or area of expertise.

(3) An evaluator must provide a written report unless the parties agree and the court order allows for an oral report of findings. In any presentation of findings, the evaluator must:

(A) summarize the data-gathering procedures, information sources, time spent, and present all relevant information, including information that does not support the conclusions reached;

(B) describe any limitations in the evaluation that result from unobtainable information, failure of a party to cooperate, or the circumstances of particular interviews;

(C) only make a custody or visitation recommendation for a party who has been evaluated;

(D) address each factor set forth in Idaho Code § 32-717, and any other relevant factors;

(E) consult with those having specialized training or experience in cases in which specific areas of concern exist such as domestic violence, sexual abuse, substance abuse, or mental illness, and the evaluator does not possess specialized training or experience in the area(s) of concern. The assessment must take into consideration the potential danger posed to the child's custodian and the child;

(F) in cases in which psychological testing is employed, it must be conducted by a licensed individual who is trained in the use of the tests administered. The evaluator must adhere to the ethical standards for the use and interpretation of psychological tests in the jurisdiction in which he or she is licensed to practice. If psychological testing is conducted with an adult or a child, it must be done with knowledge of the limits of the testing and should be viewed within the context of information gained from clinical interviews and other available data. Conclusions drawn from psychological testing should take into account the inherent stresses associated with divorce and custody disputes; and

(G) provide detailed recommendations that are consistent with the best interest of the child and include an example of a parenting time schedule. In cases where the evaluator concludes the case is inappropriate for a parenting time evaluation or recommendations, or the data available is insufficient for this purpose, the evaluator will submit the basis for the evaluator's decision to terminate the evaluation process and reason for not making recommendations.

(g) **Form of the Report and Transmittal to the Court.** The written report must be submitted to the court provided that copies are simultaneously distributed to the parties. The parties must have an opportunity to cross-examine the parenting time evaluator if the contents of the evaluation are introduced into evidence in the form of expert testimony or a written report. If the report is oral, the court must not hear the contents of the report and findings unless both parties are present.

(h) **Communications between Evaluator, the Court, the Parties, and Attorneys.** Any contacts between the parenting time evaluator and the court must either be in writing to all parties, conference call with parties and their attorneys, or at court hearings with the parties and their attorneys. Evaluators may communicate with the court and attorneys separately with respect to scheduling and administrative matters.

(i) **Admissibility of Reports.** A report prepared consistent with this rule must be admissible into evidence, subject to cross-examination. The court may consider the information contained in the report in making a decision on the parenting plan, and the Idaho Rules of Evidence do not exclude the report from consideration.

(j) **Judicial Immunity**. Any parenting time evaluator appointed by the court or a court approved, stipulated evaluator is performing a judicial function when conducting an evaluation and is entitled to qualified judicial immunity.

Rule 1005. Brief Focused Assessments.

(a) **Definition of Brief Focused Assessment**. A "brief focused assessment" is an assessment of a specific, narrowly defined issue or limited set of issues identified by a judge and designated in a court order. The purpose of the assessment is to provide the judge with information generated through reliable procedures regarding focused questions that have been identified by the court as important to the resolution of a child custody dispute. A qualified assessor conducts interviews, makes observations, reviews relevant records, consults relevant collateral contacts, and conducts additional activities in connection with the assessment. The assessment is guided by focused inquiry provided by the court.

(b) **Limitations of Brief Focused Assessments.** A brief focused assessment must be limited to the issues identified in the court order and must not contain any recommendations of a custody schedule or opinions from the assessor regarding the best interests of the child. Acknowledging the narrow scope of the issues assessed and data gathering related thereto, the assessor must:

(1) offer information and options within the available data;

(2) respond within the scope of the referral questions;

(3) clearly state the limitations of the response within the report;

(4) avoid broad issues to be addressed by comprehensive custodial evaluations; and

(5) seek clarification for specific areas of concern in broadly stated requests or orders.

(c) **Referral Procedures.** A brief focused assessment may be initiated on a motion of any party, agreement of the parties, or on the court's motion. On receipt of a written stipulation of the parties, or on granting the motion after proper notice and a hearing, the court must issue an order that includes a well-defined referral question or set of questions, specifically naming the assessor to conduct the assessment and to whom the report must be provided on completion.

(d) **Qualifications of Assessors.** Subject to an appointment pursuant to Idaho Rule of Evidence 702, a qualified assessor is an individual who meets or exceeds the qualifications set forth in Rule 1004 D(1).

(e) **Issues Subject to a Brief Focused Assessment.** A brief focused assessment must be limited to assessing not more than three of the following issues:

(1) the wishes of the child regarding custody, including the context and bases for those wishes;

(2) the child's academic performance and functioning within a defined time period, including, but not limited to, circumstances surrounding the child's attendance at school or lack thereof;

(3) the adequacy of the residence of one or more of the child's physical custodians including, but not limited to, cleanliness and safety;

(4) the adequacy of the physical environment of any or all third-party care providers to the child including, but not limited to, cleanliness and safety;

(5) whether any or all of the parties presently consume drugs or alcohol in a manner that adversely impacts their ability to provide proper parental care to the child; in so doing, the assessor may request any party or a child of the parties to submit to random drug testing, including urine and hair follicle testing;

(6) whether or not the child is fearful of one of the parties including, but not limited to, at custody exchanges;

(7) the identification of present mental health issues in any or all parties and, how those issues are likely to impact parenting capacity, or the party's ability to provide a consistent and safe environment during custody time;

(8) in cases involving a disabled party, the identification of adaptive equipment or supportive services that are available which enable the disabled party to carry out the responsibilities of parenting the child; and

(9) any other factual issue that is narrowly-defined by the court.

(f) Motion, Stipulation, and Order of Assessment.

(1) Every motion or stipulation for the performance of a brief focused assessment must include specific issues to be addressed in the assessment;

(2) Every order for brief focused assessment must include:

(A) the name of the assessor;

(B) the referral question(s) for assessment;

(C) names and dates of birth of those assessed;

(D) a requirement that the parties cooperate as requested by the assessor, including that they execute and sign any and all releases of information necessary for the assessor to obtain access to documents that are relevant to the referral questions;

(E) provide for the assessor to have access to all records, public or private, identified in the court order;

(F) assign responsibility for payment; and

(G) require a written assessment to be prepared unless the court orders otherwise.

(3) Every brief focused assessment must include:

(A) a discussion of issues related to the referral question, including acknowledgment of the limitation to the data;

(B) conclusions relevant to the issues raised in the referral question, if requested by the court; and

(C) documentation that limits of confidentiality were explained.

(g) **Admissibility of Reports.** A report prepared consistent with this rule must be admissible into evidence, subject to cross-examination. The court may consider the information contained in the report in resolving the issues addressed in the assessment. The Idaho Rules of Evidence do not exclude the report from consideration by the court.

(h) **Form of the Report and Transmittal to the Court**. The written report must be submitted to the Court provided that copies are contemporaneously distributed to the parties. The parties must have an opportunity to cross-examine the assessor if the contents of the assessment are introduced into evidence in the form of expert testimony or a written report. If the report is oral, the court must not hear the contents of the report and findings unless both parties are present.

(i) **Judicial Immunity**. An assessor appointed to conduct a brief focused assessment pursuant to this Rule has qualified judicial immunity in accordance with Idaho law as to all acts undertaken pursuant to and consistent with the order of appointment.

Rule 1006. Masters.

(a) **Appointment.** The court in which any action is pending may appoint a master. Except where these rules are inconsistent with the law, the word "master" includes a referee, a commissioner, an auditor, and an examiner.

(b) **Appointment is an Exception.** A master must not be appointed except to perform an accounting or on a showing that some exceptional condition requires it.

(c) **Compensation.** The compensation for a master must be set by the court and the court may direct payment by the parties or from a fund or subject matter of the action that is in the control of the court. The master must not retain the report as security for compensation; but when the party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, the master is entitled to a writ of execution against the party.

(d) **Disqualification of a Master.**

(1) **In General.** Any person appointed as a master must be disqualified on the finding of a relation or a condition that would be grounds for disqualification of a judge for cause as specified in statute or these rules.

(2) **Motion Practice.** At any time within 14 days from receipt of notice of the appointment of a master, any party may object to the qualification of the master by filing a motion to disqualify the master, stating the grounds for disqualification. The motion may be supported by affidavit and must be heard and determined by the court in the same manner as other motions. The court may hear testimony on the motion or may determine it on the record including affidavits and counter-affidavits filed by the parties or the master.

(e) **Authority and Duties of a Master**.

(1) **Discretionary Responsibilities.** The order appointing a master may:

(A) define the authority of the master;

(B) direct the master to report only on particular issues, to do or perform particular acts, or to receive and report evidence only; and

(C) fix the time and place for beginning and closing the hearings and for the filing of the master's report.

(2) **General Authority & Duties.** Unless the appointing order directs otherwise, a master may:

(A) regulate all proceedings;

(B) take all appropriate measures to perform the assigned duties fairly and efficiently;

(C) if conducting an evidentiary hearing, exercise the appointing court's power to compel, take, and record evidence;

(D) rule on the admissibility of evidence; and

(E) put witnesses on oath and may examine them and may call the parties to the action and examine them on oath.

(3) **Making a Record.** On request of a party, the master must make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided in Idaho Rule of Evidence 103.

(f) **Procedure.**

(1) **Meetings of Master.** When a master is appointed, the clerk must give the master a copy of the order of appointment. Unless the order provides otherwise, the master must set a time and place for the first meeting of the parties or their attorneys, which must be held within 21 days after the date of the order, and must notify the parties or their attorneys. The master must act promptly and diligently. Either party, on notice to the parties and master may apply for an order requiring the master to speed the proceedings and to make the report. If a party fails to appear at the time and place appointed, the master may proceed without the party or, in the master's discretion, postpone the proceedings to a certain date, giving notices to the parties.

(2) **Witnesses.** The parties may subpoena witnesses for proceedings before a master as provided in these rules. If without adequate excuse, a witness fails to appear or give evidence, the witness may be sanctioned and is subject to the consequences, penalties, and remedies provided in Rules 711 and 444.

(3) **Statement of Accounts**. When accounting issues are before the master, the master may direct the form of statement of account to be submitted and may require the testimony of a certified public accountant. On objection of a party or if the master finds that the form of a statement is insufficient, the master may require a different form of statement, or the accounts or specific items proven by oral testimony or on written interrogatories.

(g) **Master's Report.**

(1) **Contents and Filing**. The master must prepare and file a report of the matters submitted by the court and, if required to make findings of fact and conclusions of law, the master must separately state them in the report. The master must file the report with the clerk of the court and unless otherwise directed by the order of reference, must file with it a transcript of the proceedings and of the evidence and the original exhibits. The clerk must immediately mail to all parties notice of the filing.

(2) **Master's Findings**. The court must accept the master's findings of fact unless clearly erroneous. Within 14 days after being served with notice of the filing of the report any party may file and serve on the other parties written objections to the report. Any party may file a motion for action on the report. The court, after hearing, may adopt, modify, or reject the report in whole or in part, or may receive further evidence, or may resubmit the matter to the master with instructions.

(3) **Stipulation as to Findings of Master**. The effect of a master's report is the same whether or not the parties have consented to the reference; but, when the parties stipulate that a master's findings of fact must be final, only questions of law arising on the report must thereafter be considered.

(4) **Draft Report of Master**. Before filing a report a master may submit a draft to the attorneys for all parties to receive their suggestions.

Rule 1007. Receiver.
These rules govern an action in which the appointment of a receiver is sought or a receiver sues or is sued. The appointment and administration of estates by receivers or other similar officers must be in accordance with Idaho Code. An action in which a receiver has been appointed may be dismissed only by court order.

Appendix A

Summons

ATTORNEY'S NAME OR SELF-REPRESENTED PARTY

FIRM NAME

STREET ADDRESS

MAILING ADDRESS

CITY, STATE & ZIP CODE

TELEPHONE NUMBER

EMAIL ADDRESS (IF ANY)

IDAHO STATE BAR NUMBER

Attorney(s) for Plaintiff(s)

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF _____

	)	CASE NO. _____
_____,	)	
Plaintiff,	)	
vs.	)	SUMMONS
	)	
_____,	)	
Defendant.	)	
	)	

NOTICE: YOU HAVE BEEN SUED BY THE ABOVE-NAMED PLAINTIFF(S): THE COURT MAY ENTER JUDGMENT AGAINST YOU WITHOUT FURTHER NOTICE UNLESS YOU RESPOND WITHIN 21 DAYS. READ THE INFORMATION BELOW.

TO: _____

You are hereby notified that in order to defend this lawsuit, an appropriate written response must be filed with the above designated court at [mailing address, physical address (if different) and telephone number of the clerk] within 21 days after service of this Summons on you. If you fail to so respond the court may enter judgment against you as demanded by the plaintiff(s) in the Complaint.

A copy of the Complaint is served with this Summons. If you wish to seek the advice of or representation by an attorney in this matter, you should do so promptly so that your written response, if any, may be filed in time and other legal rights protected.

An appropriate written response requires compliance with Rule 2 and other Idaho Rules of Civil Procedure and must also include:

1. The title and number of this case.

2. If your response is an Answer to the Complaint, it must contain admissions or denials of the separate allegations of the Complaint and other defenses you may claim.

3. Your signature, mailing address and telephone number, or the signature, mailing address and telephone number of your attorney.

4. Proof of mailing or delivery of a copy of your response to plaintiff 's attorney, as designated above. To determine whether you must pay a filing fee with your response, contact the Clerk of the above-named court.

DATED this _____ day of _____, 20 ____.

CLERK OF THE DISTRICT COURT

By _____

Deputy Clerk

Appendix A

Summons – Publication

SUMMONS

To: [Defendant's Name]

You have been sued by [Plaintiff's Name], the Plaintiff, in the District Court in and for [Name of County] County, Idaho, Case No. [Case No.].

The nature of the claim against you is [nature of claim].

Any time after 21 days following the last publication of this summons, the court may enter a judgment against you without further notice, unless prior to that time you have filed a written response in the proper form, including the Case No., and paid any required filing fee to the Clerk of the Court at [mailing address, physical address (if different) and telephone number of the clerk] and served a copy of your response on the Plaintiff's attorney at [name, address, and phone number of Plaintiff's attorney].

A copy of the Summons and Complaint can be obtained by contacting either the Clerk of the Court or the attorney for Plaintiff. If you wish legal assistance, you should immediately retain an attorney to advise you in this matter.

Dated: _____

[Name of County] County District Court

By _____, Deputy Clerk

APPENDIX B

Rule 409. Subpoena

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR _____ COUNTY

Party's name and designation,

vs.

SUBPOENA

Party's name and designation.

_____

The State of Idaho to: _____:

YOU ARE COMMANDED:
[ ] to appear in the Court at the place, date and time specified below to testify in the above case.
[ ] to appear at the place, date and time specified below to testify at the taking of a deposition in the above case.
[ ] to produce or permit inspection and copying of the following documents or objects, including electronically stored information, at the place, date and time specified below. (list documents or objects)
[ ] to permit inspection of the following premises at the date and time specified below.
PLACE, DATE, AND TIME:_____
_____
_____

You are further notified that if you fail to appear at the place and time specified above, or to produce or permit copying or inspection as specified above that you may be held in contempt of court and that the aggrieved party may recover from you the sum of $100 and all damages which the party may sustain by your failure to comply with this subpoena.

Dated this _____ day of _____, 20__.

By order of the court.

_____
Clerk

_____
Deputy
(Court Seal)

Appendix C

Rule 802(b) CERTIFICATE

With respect to the issue determined by the above partial judgment it is hereby CERTIFIED, in accordance with Rule 802(b), I.R.F.L.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above partial judgment is a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

Dated:_____ _____

Judge