

# In the Supreme Court of the State of Idaho

IN RE: AMENDMENT OF IDAHO  
RULE OF CIVIL PROCEDURE 37.1

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ORDER

The Court, having received a recommendation to amend Idaho Rule of Civil Procedure 37.1, and the Court being fully informed;

IT IS ORDERED that Idaho Rule of Civil Procedure 37.1 be amended as follows:

## **Idaho Rules of Civil Procedure Rule 37.1. Mediation and Online Dispute Resolution of Civil Cases-Lawsuits.**

- (a) **Definitions of Mediation and Online Dispute Resolution.** Mediation under this Rule is the process by which a neutral mediator assists the parties in reaching a mutually acceptable agreement. The role of the mediator is to help aid the parties in identifying the issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise, and finding points of agreement. An agreement of reached by the parties is to must be based on the decisions of the parties, and not the decisions of the mediator. ~~Online Dispute Resolution under this Rule is the online process through which certain civil case types may be negotiated informally by the parties in dispute using the Court's online dispute resolution tool.~~
- (b) **Matters Subject to Mediation.** All civil cases may be referred governed under these rules are eligible for referral to mediation.
- (c) **Authority of the Courts.** ~~The~~ Referral of a civil action case to mediation or Online Dispute Resolution does not limit divest the court's of the authority to exercise management and control of the case during the pending mediation. ~~or Online Dispute Resolution.~~
- (d) **Referral to Mediation or Online Dispute Resolution.** In its discretion a court may, in its discretion, order a case into mediation, as follows:
- (1) upon motion by a party;
  - (2) at any Rule 16 conference;
  - (3) upon consideration of request for trial setting, pursuant to made under Rule 16(b), if all parties agree indicate that mediation would be beneficial; or

(4) at any other time the court determines mediation is appropriate and provides the parties 7 days' notice. ~~upon 7 days' notice to the parties if the court determines mediation is appropriate.~~

(5) ~~where available by county or judicial district, a case eligible for Online Dispute Resolution may be automatically assigned to Online Dispute Resolution after which the parties may opt-out affirmatively through the Court's system or by non-participation of either party.~~

**(e) Selection of the Mediator.** The parties must select a mediator within 28 days of the entry of the mediation order, unless the court orders otherwise. If the parties do not timely select a mediator and report their selection to the court, the court will appoint a mediator from the judicial district's list of mediators. ~~If, within 28 days from entry of the mediation order or such other time as the court orders, the parties do not select a mediator and report their selection to the court, the court must appoint a mediator from the judicial district's list of mediators.~~

**(f) Scheduling of First Mediation Session.** Unless the court orders otherwise orders, the first mediation session must take place within 42 days of: the reporting of the selection or the appointment of the mediator.

(1) the parties reporting to the court their selection of a mediator; or

(2) the appointment of the mediator.

**(g) Reports.** ~~Within 7 days following the last mediation session, †The mediator or the parties must advise the court within 7 days of the last mediation session as to, with a copy to the parties, whether the case has been settled, in whole or in part, settled. The parties must be copied on the communication to the court.~~

**(h) Compensation of Mediators.** Mediators must be compensated at their regular fees and expenses, which must be clearly stated 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 are responsible for a prorata share of the mediator's fees and expenses, unless other arrangements are made by the parties or ordered by the court.~~ If a mediator is not paid, the court may order payment on, upon motion of the mediator, ~~may order payment.~~

**(i) Impartiality.** The mediator has a duty to be impartial, ~~and has~~ This includes a continuing duty to advise all parties of any circumstances bearing on possible bias, prejudice, or partiality.

**(j) Attendance at Mediation.** ~~The attorneys who will be primarily responsible for handling the actual trial of the matter, and all parties, or insurers, if applicable, with authority to settle, must attend the sessions, unless otherwise excused by the court, the agreement of the parties, or the mediator upon a showing of good cause.~~

(1) In General. Mediation must be attended by:

A. The attorneys primarily responsible for trying the case; and

B. all parties, or insurers, if applicable, with authority to settle.

(2) When attendance is excused.

A. Where excused by the court.

B. At the request of the parties who are in agreement, can show good cause, and are excused by the court.

C. At the request of the mediator who can show good cause and is excused by the court.

**(k) Confidentiality.** ~~The mediator must follow-abide by the confidentiality rules agreed to by the parties. The Confidentiality protections of Rules 408 and 507 of the, Idaho Rules of Evidence, extend apply to mediations and to Online Dispute Resolution under this Rule.~~

**(l) Sanctions.** ~~If a mediator fails to fulfill their responsibilities in this Rule they may be sanctioned. The mediator is subject to sanctions, including referral for removal from the roster of mediators, if the mediator fails to assume the responsibilities provided herein.~~

IT IS FURTHER ORDERED that this order and these amendments shall be effective immediately.

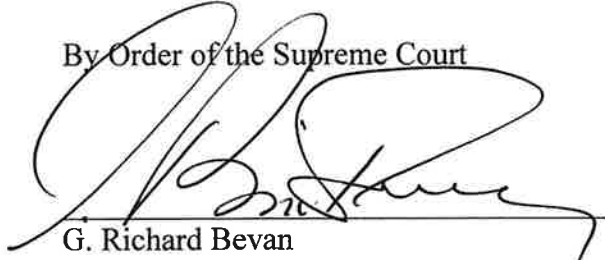
IT IS FURTHER ORDERED that the above designation of the striking of words from the Rules by lining through them, and the designation of the addition of new portions of the Rules by underlining such new portion is for the purposes of information only as amended, and NO OTHER AMENDMENTS ARE INTENDED. The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

IT IS FURTHER ORDERED that notice of this Order shall be published for three consecutive weeks on the Idaho State Bar's website and in its weekly E-Bulletin, and that

as soon as practicable, a summary of the amendment(s) effected by this Order shall be published in one issue of *The Advocate*.

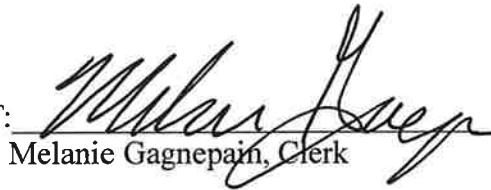
DATED this 27<sup>th</sup> day of March, 2025.

By Order of the Supreme Court



G. Richard Bevan  
Chief Justice, Idaho Supreme Court

ATTEST:



Melanie Gagnepain, Clerk

I, Melanie Gagnepain, Clerk of the Supreme Court/  
Court of Appeals of the State of Idaho, do hereby  
Certify that the above is a true and correct copy of the  
Order entered in the above entitled  
cause and now on record in my office. WITNESS my  
hand and the Seal of this Court 3-21-25  
Melanie Gagnepain, Clerk

By  Deputy