

In the Supreme Court of the State of Idaho

IN RE: AMENDMENTS TO THE IDAHO
RULES OF CIVIL PROCEDURE

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ORDER

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

NOW, THEREFORE, IT IS HEREBY ORDERED that the Idaho Rules of Civil Procedure be amended as follows:

Rule 37.1. Mediation and Online Dispute Resolution of Civil 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 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. 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 governed under these rules are eligible for referral to mediation.

(c) **Authority of the Courts.** The referral of a civil action to mediation or Online Dispute Resolution does not divest the court 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 order a case to 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 Rule 16(b), if all parties indicate 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.

(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.** 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 otherwise orders, the first 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, in whole or in part, settled.

(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 must be responsible for a prorata share of the mediator's fees and expenses. If a mediator is not paid, the court, upon motion of the mediator may order payment.

(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) **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.

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

(l) **Sanctions.** 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.

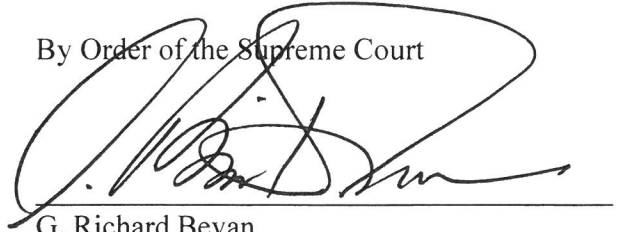
IT IS FURTHER ORDERED, that this order and these amendments shall be effective July 1, 2021.

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

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 24th day of June, 2021.

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 & Rules CP entered in the above entitled
cause and now on record in my office. WITNESS my
hand and the Seal of this Court June 25, 2021

Melanie Gagnepain, Clerk

By Corby Allen Deputy