

In the Supreme Court of the State of Idaho

IN RE: AMENDMENTS OF PILOT RULES)
OF FAMILY LAW PROCEDURE) ORDER
AND ADOPTION OF NEW RULES)
_____)

The Court, having considered and approved a recommendation from the Children and Families in the Courts Committee to amend the Rules of Family Law Procedure being piloted in the Fourth Judicial District:

NOW, THEREFORE IT IS ORDERED that the pilot Rules of Family Law Procedure as published on the Idaho Supreme Court Website shall be identified as the Idaho Rules of Family Law Procedure and amended as follows:

Rule 102. Applicability of Other Rules

- A. Applicability of Idaho Rules of Civil Procedure.** The Idaho Rules of Civil Procedure apply only when incorporated by reference in these rules. Appeals from family law cases shall be governed by the Idaho Rules of Civil Procedure.

Rule 103. Definitions

B. Definitions. In these rules, unless the context otherwise requires, the following definitions shall apply:

1. I.C.A.R. References herein to I.C.A.R. are the Idaho Court Administrative Rules.
2. ~~In camera. If the court orders that a document be reviewed in camera, the party who possesses the document shall submit the document ex parte to the court. The court shall then privately review the document to determine whether it should be further disclosed under applicable law and rules.~~

32. Motion. A motion is a written request made after a petition seeking relief is filed. There shall be no procedure for Order to Show Cause.

43. 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.

54. Petition. The petition is the initial pleading that commences a family law case or the initial pleading that commences a post-decree matter. All initial documents shall be denominated as a petition followed by brief descriptive wording summarizing the nature of the relief sought.

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

76. Respondent. A respondent is any opposing party other than the petitioner.

87. Response. A response is a document that substantially responds to a petition or a motion, and includes a response to a petition.

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

109. Title IV-D. Title IV-D means Title IV-D of the Social Security Act, 42 U.S.C. 651 et seq. Title IV-D is administered in Idaho by the State Department of Health and Welfare.

110. Venue. Refers to the particular county where a court with jurisdiction hears and determines the case.

11. 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.

Rule 116. Affirmation in Lieu of Oath Oaths and Affirmations; Written Certification; Unsworn Foreign Declarations

A. Affirmations in Lieu of Oath. Whenever under these rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

B. Written Certification of Declaration. 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 Section 9-1406. An affidavit includes a written certification or declaration made as provided in Idaho Code Section 9-1406.

C. Unsworn Foreign Declarations. This subdivision constitutes Idaho's implementation of the Uniform Unsworn Foreign Declarations Act as modified herein.

1. Definitions. In this rule:

"Boundaries of the United States" means the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

"Law" includes the federal or a state constitution, a federal or state statute, a judicial decision or order, a rule of court, an executive order, and an administrative rule, regulation, or order.

“Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

“Sign” means, with present intent to authenticate or adopt a record:

- a. to execute or adopt a tangible symbol; or
- b. to attach to or logically associate with the record an electronic symbol, sound, or process.

“State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

“Sworn declaration” means a declaration in a signed record given under oath. The term includes a sworn statement, verification, certificate, and affidavit.

“Unsworn declaration” means a declaration in a signed record that is not given under oath, but is given under penalty of perjury.

2. Applicability. This rule applies to an unsworn declaration by a declarant who, at the time of making the declaration, is physically located outside the boundaries of the United States whether or not the location is subject to the jurisdiction of the United States. This rule does not apply to a declaration by a declarant who is physically located on property that is within the boundaries of the United States and subject to the jurisdiction of another country or a federally recognized Indian tribe.

3. Validity of unsworn declaration.

- a. Except as otherwise provided in subsection b, if a law of this state requires or permits use of a sworn declaration, an unsworn declaration meeting the requirements of this rule has the same effect as a sworn declaration.
- b. This rule does not apply to:
 - i. a deposition;
 - ii. an oath of office;
 - iii. an oath required to be given before a specified official other than a notary public;
 - iv. a declaration to be recorded pursuant to I.C. § 55-805; or
 - v. an oath required by I.C. § 15-2-504.

4. Required medium. If a law of this state requires that a sworn declaration be presented in a particular medium, an unsworn declaration must be presented in that medium.

5. Form of unsworn declaration. An unsworn declaration under this rule must be in substantially the following form:

I certify or declare under penalty of perjury under the law of the State of Idaho that the foregoing is true and correct, and that I am physically located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States. By signing this declaration I am submitting myself to the jurisdiction of the State of Idaho for purposes of enforcing the penalty of perjury as it relates to this declaration.

Executed on the _____ day of _____, _____ at _____,
(date) (month) (year) (city/location, and state)

(country)

(printed name)

(signature)

6. Uniformity of application and construction. In applying and construing this rule, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that have implemented the Uniform Foreign Declarations Act.

7. Relation to Electronic Signatures in Global and National Commerce Act. This rule modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) or that act, 15 U.S.C. Section 7003(b).

Rule 201. Commencement of Action

A. Commencement of a family law proceeding. A family law action is commenced by filing a petition with the clerk of the court. The party filing the initial petition shall be designated as the petitioner and any party against whom it is filed shall be designated as the respondent. A petition shall not be filed unless and until the initial petitioner furnishes to the clerk a completed family law case information sheet ~~{excluding social security numbers}~~ on a form adopted by the Supreme Court and furnished by the clerk. This family law case information sheet shall be exempt from disclosure according to I.C.A.R. 32(d). No claim, controversy or dispute may be submitted to any court in the state for determination or judgment without filing a petition as provided in these rules; nor shall any judgment or decree be entered by any court without service of process upon all parties affected by the judgment or decree in the manner prescribed by these rules. During the pendency of an action, parties who are not represented by counsel shall keep the court apprised of their current mailing addresses. Each attorney and unrepresented party shall notify the court within fourteen (14) days of any changes in the party's mailing address.

C. Proceedings to modify child custody, child support and spousal maintenance. A motion to modify child custody, child support or spousal maintenance (alimony) shall be served and adjudicated in substantially the same manner as an original proceeding, but the filing of a motion to modify child custody, child support or spousal maintenance orders shall not be deemed the commencement of an action under Idaho Code Section 5-404. The motion shall be in a form similar to an original petition and shall be served upon all parties entitled to service along with (1) a summons and (2) any notices, forms and orders issued by the court at the time of filing of the motion. The method of service and return thereon shall be the same as for an original action and service shall be on the opposing party rather than on the previous attorney of record for the party. All averments of substantial and material changes in circumstances supporting a motion to modify child custody shall be stated with particularity.

D. Filing Fee – Waiver. The filing fee prescribed by Appendix “A” to these rules must be paid before the filing of a pleading or motion listed in the filing fee schedule. Any waiver of the filing fee shall be made by the court upon verified application of a party which shall require no filing fee. Provided, the filing fees shall 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 203. Pleadings Allowed

A. Petition. A party shall commence actions for the following causes by filing a petition with the clerk of the court: Annulment (I.C. § 32-501 et seq.); Divorce (I.C. § 32-601 et seq.); Legal Separation (I.C. § 32-704 (2)); Separate Maintenance; Child Custody; Domestic Violence Protection Order (I.C. § 39-6304); Paternity (I.C. § 7-1101 et seq.); to establish, enforce, register, or modify custody or parenting time (I.C. § 32-11-101 et seq.); or to establish, enforce, register or modify support (I.C. § 7-1001 et seq.).

~~**B. Appearance of parties and child; warrant to take physical custody of a child.** A party may apply for issuance of an order for appearance of parties and child, or a warrant to take physical custody of a child, pursuant to I.C. §§ 32-11-210 and 32-11-311.~~

~~**CB. Response.** Response is defined in Rule 103.B.7 &. The response may include a counterclaim and/or one or more cross-claims.~~

~~**DC. Reply to counterclaim.** If the response includes a counterclaim, a reply to the counterclaim shall be filed.~~

~~**ED. Response to cross-claim.** If the response contains a cross-claim, the respondent on the cross-claim shall file a response to it.~~

FE. Other pleadings. Other pleadings may include a third-party petition and response and such other pre-judgment/pre-decree or post-judgment/post-decree pleadings as otherwise provided for in these rules.

Rule 204. Service on the Opposing Party or Additional Parties of Initial Pleadings

C. Summons – form. The summons shall be signed by the clerk of the district court, be under the seal of the court, contain the name of the court, the assigned number of the case, the names of the parties, the county in which the action is brought, the mailing address, physical address (if different from mailing address) and telephone number of the district court clerk, and state the name and address of the Petitioner's attorney, if any, otherwise, the Petitioner's address. The summons shall contain the time within which these rules require the Respondent to file a written response or written motion in defense to the Petition, and shall notify the Respondent that, in case of the Respondent's failure to do so, judgment by default will be rendered against the Respondent for the relief demanded in the Petition. The summons shall be in substantially the following form:

A copy of the Summons and Petition can be obtained by contacting either the Clerk of the Court or the attorney for Petitioner. 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

Rule 205. Mandatory Responsive Filings and Service of Responsive Filings.

E. Filing with the court

2. **Filing by facsimile.** Any pleading or document except those documents requiring a filing fee or filed as proof of incarceration of a party to the action may be transmitted to the court for filing by a facsimile machine process. The clerk shall file stamp the facsimile copy as an original and the signature, court seal, and notary seal on the copy shall constitute the required signature and be considered as originals under Rule ~~211~~ 212. After a document is filed by facsimile, there is no need to mail that document to the court. Filings may be made to the court only during the normal working hours of the clerk and only if there is a facsimile machine in the office of the filing clerk of the court. Provided, documents over ten (10) pages in length cannot be filed by the facsimile machine process.

3. **Other use of facsimile copies.** Any facsimile machine process copy that is not transmitted directly to the court may be filed with the court. The clerk shall file stamp the facsimile copy as an original and the signature on the copy shall constitute the required signature under Rule ~~211~~ 212. There shall be no limit as to the number of pages of a facsimile copy which was not transmitted directly to the court by the facsimile machine process.

Rule 212. Signing of Pleadings, Motions, and Other Papers; Sanctions; Electronic Signatures

B. Sanctions. If a pleading, motion or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which 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 a reasonable attorney's fee. In such cases, 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 Idaho Court Administrative Rule 59 and enter a prefiling order prohibiting such person from filing any new litigation in the courts of this state pro se without first obtaining leave of a judge of the court where the litigation is proposed to be filed.

C. Electronic Signatures. An electronic signature may be used on any document that is required or permitted under these rules and that is transmitted electronically, including a written certification or declaration under penalty of perjury or an affidavit, and a notary's seal may be in electronic form

Rule 401. Mandatory Disclosure in Contested Proceeding.

The requirements of this rule are minimum disclosure requirements for every family law case. Unless otherwise provided for in this rule or agreed to in writing by the parties or ordered by the court, within thirty-five (35) days after the filing of a responsive pleading, each party shall disclose in writing, signed under oath, to every other party the information set forth in this rule.

A. 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) shall disclose the following information to the other party:

1. a fully completed Affidavit of Verifying Income on a form substantially in compliance with Rule 126.I and Appendix A and a Child Support Worksheet substantially in compliance with Rule 126.I and Appendix B or C;

I. Not Filed with Court. The disclosures shall not be filed with the court. The party receiving disclosures shall retain the original of the disclosures with the original proof of service affixed thereto until one (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.

J. Notice of Serving. The party serving disclosures shall file with the court a notice of when the disclosures were served and upon whom.

Rule 443. Sanctions for Violation of Orders - Motion for Order Compelling Discovery

B. Motion. The discovering party may move for an order compelling disclosure, an answer, or a designation, or an order compelling inspection in accordance with the request, or compelling an evaluation under Rule 442 if:

1. a deponent fails to answer a question propounded under Rule 430,
2. a corporation or other entity fails to make a designation under Rule 430.G;
3. a party fails to answer an interrogatory submitted under Rule 413;
4. a party, in response to a request for inspection submitted under Rule 416, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested; ~~or~~
5. a person or a person in the custody of or under the legal control of a party fails to attend an examination under Rule 442; or
6. a person fails to comply with the mandatory disclosure provisions of Rule 401.

The motion must include a certification that the movant has in good faith conferred or attempted to confer with the party not making the disclosure in an effort to secure the disclosure without court action. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order. If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to Rule 409.

C. Evasive or incomplete answer or disclosure. For purposes of this subdivision an evasive or incomplete answer or disclosure is to be treated as a failure to answer or disclose.

Rule 715. View of Premises, Property or Things

A. Procedure. During a trial, the court, in its discretion, may order that the court ~~or jury~~ shall have a view of, (1) the property which is the subject of the action, or (2) a place in which any material fact occurred or in which any material thing is located, or (3) any other item, thing or circumstance relevant to the action. A view by the court shall be conducted personally by the court after notice to all parties. Counsel shall have the right to be present at any view by the court.

Rule 716 is RESCINDED in its entirety, and a NEW RULE ADOPTED to read as follows:

Rule 716. 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 or minor children;
 - ii. assist the parties with reaching an agreement to resolve certain custody issues; or
 - iii. make recommendations to the court and/or parties.
- b. An "order of appointment" is the court order appointing the Parenting Coordinator which shall determine the scope of the Parenting Coordinator's authority and duties in the case.
- c. The "best interest of the children" is defined by section 32-717, Idaho Code, 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/ren, (iv) learn healthy and effective methods of communication and ways to safely exchange their child/ren, and (v) reduce re-litigation where high conflict threatens the safety or well-being of their child/ren.

3. Exceptional Circumstances. A reference to a Parenting Coordinator shall be the exception and not the rule. Such a reference shall 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 has/have committed domestic violence;
- d. one or both parents is/are chemically dependent or mentally ill; or
- e. other exceptional circumstances require such appointment to protect the child's best interests.

B. The Process for Appointing a Parenting Coordinator.

1. Authority. The court is authorized to appoint a Parenting Coordinator pursuant to Idaho Code Section 32-717D and this rule.

2. Procedure. The appointment shall be made by an order of appointment, after having found that the circumstances specified in Paragraph A.3 of this rule are present, based upon 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 shall give the parties at least seven (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 shall be a person selected by stipulation of the parties, or a qualified Parenting Coordinator who has met the requirements set forth in Paragraph I of this rule.

5. **Duration.** The term of the Parenting Coordinator's service shall be designated in the order of appointment but shall 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/her authority, abused his/her 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 children.

C. Scope of the Parenting Coordinator's Authority. The order of appointment shall 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 Section 32-717D(3). The order of appointment shall not delegate to the Parenting Coordinator the court's exclusive, continuing jurisdiction to modify a child custody or child support order. The Parenting Coordinator shall 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 and/or physical custody issues regarding their child/ren 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/ren; 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(s) is(are) consistent with the controlling child custody order, decree or judgment:

- a. the time, place and manner of pick-up and delivery of the children;
- 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 shall 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 break;
- j. the schedule and conditions of telephone and/or virtual communication with the children;
- 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/ren's appearance including clothing, haircuts, piercings and tattoos;
- n. children'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/ren's participation in extracurricular activities, including issues related to transportation and the allocation of costs for each activity; and
- s. any other issue(s) 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 and/or physical custody issue pertaining to the child/ren of the parties, (ii) the appointment of counsel for the child/ren, and/or (iii) any financial issue related to the child/ren of the parties, including child support. The issue(s) about which a Parenting Coordinator may make recommendations shall be identified in the order of appointment. Recommendations made by a Parenting Coordinator are not binding on the parties or the court and shall not have the effect of a decision under paragraph F below. The court shall 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 the Idaho Rules of Family Law Procedure.

4. Access to Information. The order appointing the Parenting Coordinator, whether based on a stipulation or not, shall grant the Parenting Coordinator reasonable access to all potentially relevant records, documents and information related to the minor child/ren of the parties, except information that is protected by an attorney-client privilege. The Parenting Coordinator shall also be given access to communicate directly with the minor child/ren if, in the Parenting Coordinator's discretion, such access is necessary to decide an issue within the scope of his/her appointment.

D. Duties of the 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 shall define and describe, in writing, his/her 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 upon 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 upon both parties. The order appointing the parenting coordinator shall require at least one status report to be made to the court and to the parties by the Parenting Coordinator every six months.

E. Proceedings Conducted by the Parenting Coordinator. The order of appointment shall 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 in a fashion communicated to both parties and followed by written confirmation within a reasonable time thereafter.

1. **Communications from Parties.** The Parenting Coordinator shall control the method and manner by which the parties communicate with him/her, which may include *ex parte* communication consistent with the circumstances set forth in the Parenting Coordinator's duties in paragraph D above.
2. **Non-Confidentiality.** All decisions made by the Parenting Coordinator, and all information on which his/her 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 shall continue to be governed exclusively by Rule 32, I.C.A.R.

F. Effect of Parenting Coordinator's Decision(s). Every decision made by a Parenting Coordinator with respect to matters submitted to him/her pursuant to the order of appointment is effective immediately upon service of the decision on the parties. "Effective" means that it shall be an affirmative defense to a motion for contempt if a party can show that his/her 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, shall) 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, s/he shall also file with the court a certificate of service that identifies the date on which s/he served each party with the decision along with a description of the manner of service. Thereafter, if the court determines that the above requirements have been met, it may enter the judgment forthwith and the judgment shall thereafter be enforceable by contempt.

G. Manner of Service of the Parenting Coordinator's Decision. The Parenting Coordinator's decision shall be in writing and served on the parties by the means most likely to give them notice including (i) hand delivery, (ii) email, (iii) telefacsimile, or (iv) regular mail. Service is complete upon mailing, delivery or transmission by electronic means, as the case may be.

H. Judicial Review - Process. Within fourteen (14) days after the Parenting Coordinator has served his/her 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 shall also serve the other party and the Parenting Coordinator with the motion and any supporting affidavit(s) and legal memoranda by the method most likely to give him/her notice under the circumstances of the case as set forth above. The filing of a motion does not stay implementation of the decision unless the court orders otherwise. Failure to file a timely motion shall 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/her authority provided in the order of appointment ; and/or
- b. the Parenting Coordinator abused his/her discretion in making the decision.

2. Standards of Review. A motion based on subsection 1. a. above must show by clear and convincing evidence that the Parenting Coordinator exceeded his/her scope of authority in reaching the decision. A motion based on subsection 1. b. above shall 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.F.2.b, 602.F.3.a and F.3.b of the Idaho Rules of Family Law Procedure.

2. **Training.** Parenting Coordinators must have participated in at least twenty (20) hours of training in domestic violence and lethality assessment as set out in I.3 below within two 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 or her own expense, submit to a criminal history check as provided for in Rule 47, I.C.A.R. The twenty (20) hours of training required shall 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; and shall be acquired 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 be provided thirty (30) days after the conditional denial to provide any additional documentation concerning his or her qualifications or criminal history. The denial shall become final thirty (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 shall be compensated at his/her regular fees and expenses, which shall 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 shall be responsible for a pro rata share of the Parenting Coordinator's fees and expenses, commensurate with their respective contributions to total child support. If a Parenting Coordinator is not paid, the court, upon motion of the Parenting Coordinator, may order payment. Any dispute regarding payment of the fees and costs of the Parenting Coordinator shall be subject to review by the court upon request of (i) the Parenting Coordinator or (ii) 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.

A NEW RULE 719 shall be ADOPTED as follows:

Rule 719. Parenting Time Evaluation.

A. Definition of Parenting Time Evaluation. A "parenting time evaluation" is an expert investigation and analysis of the best interest of children with regard to disputed parenting time issues. The parenting time evaluation shall not include interim parenting time recommendations/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 Section 3 2-71 7.

B. Matters in Which Appointment May be Made. The court, upon a motion of any party, agreement of the parties or upon its own motion, may order a parenting time evaluation in any action involving custody of minor children 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 in this rule. If the court intends to appoint its own evaluator, it shall follow the show cause procedure set forth in Rule 706, Idaho Rules of Evidence.

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;
- c. licensed clinical social worker;
- d. licensed social worker in independent practice;
- e. licensed clinical professional counselor; or
- f. licensed marriage and family therapist.

Family Court Services' staff who do not meet the qualifications set forth above 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.

2. The Court may appoint or the parties may stipulate to the appointment of a parenting time evaluator who does not meet the minimum professional credentials, provided that the evaluator has a license in an area relevant to the scope of appointment and has conducted at least twenty (20) court ordered evaluations in the past five (5) years.

3. 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.

4. A person who has the qualifications under 1 or 2 above must also have completed a minimum of five (5) parenting time evaluations under the direct supervision of a qualified parenting time evaluator.

E. Motion/ Stipulation/ Order of Evaluation.

1. Every motion or stipulation for the performance of a parenting time evaluation shall include:

- a. the name, address, and telephone number of the evaluator;
- 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 shall:

- 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 upon the physical or mental health of the parties, the children 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, counsel and parties within five 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. shall 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 shall 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 shall include:

- a. reviewing pertinent documents related to custody, including court records and local police records;
- 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 or children 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 Section 32-717, and any other relevant factors;
- e. in cases in which specific areas of concern exist such as domestic violence, sexual abuse, substance abuse, mental illness, and the evaluator does not possess specialized training or experience in the area (s) of concern, the evaluator shall consult with those having specialized training or experience. The assessment shall 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 shall be conducted by a licensed individual who is trained in the use of the tests administered. The evaluator shall 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 adults and/or children, it shall 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 or children and include an example (s) 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 shall be submitted to the Court provided that copies are contemporaneously distributed to the parties. The parties shall 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 shall 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 shall either be in writing to all parties, conference call with parties and/or their attorneys, or at court hearings with the parties and/or 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 shall 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 810. Contempt Harmless Error

Actions for contempt shall be governed by Rule 75, Idaho Rules of Civil Procedure. No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

NEW RULES 811 through 818, and 820 through 823 shall be ADOPTED as follows:

Rule 811. Stay of Proceedings to Enforce a Judgment – Stay Upon Entry of Judgment

Execution or other proceedings to enforce a judgment may issue immediately upon the entry of judgment, 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, shall not be stayed during the period after its entry and until the appeal is taken or during the pendency of an appeal. The provisions of subdivision (c) of this rule govern the suspending, modifying, restoring, or granting of an injunction or writ of mandate during the pendency of an appeal.

Rule 812. Stay on Motion For New Trial or For Judgment

In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment or order made pursuant to Rule 60, or of a motion for judgment in accordance with a motion for a directed verdict made pursuant to Rule 50, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 52(b).

Rule 813. Injunction – Writ of Mandate Pending Appeal

When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction or writ of mandate, the court in its discretion may suspend, modify, restore, or grant an injunction or writ of mandate during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

Rule 814. Stay Upon Appeal. When an appeal is taken from the district court to the Supreme Court, the proceedings in the district court upon the judgment or order appealed from shall be stayed as provided by the Idaho Appellate Rules (I.A.R.).

Rule 815. Stay in Favor of the State, Subdivision, or Agency Thereof – Waiver

When an appeal is taken by the state of Idaho or an officer or agency or governmental subdivision thereof, and the operation or enforcement of the judgment is stayed, no security shall be required from the appellant. In all cases, the parties may by written stipulation waive the filing of security.

Rule 816. Powers of Supreme Court and District Court not Limited

The provisions in these rules do not limit any power of the Supreme Court or a district court acting in its appellate capacity or the judge thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

Rule 817. Stay of Judgment Upon Multiple Claims

When a court has ordered a final judgment on some but not all of the claims presented in the action under the conditions stated in Rule 804, the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

Rule 818. Disability of a Judge

If by reason of death, sickness, or other disability, a judge before whom an action has been tried is unable to perform the duties to be performed by the court under these rules after a verdict is returned or findings of fact and conclusions of law are filed, then any other judge regularly sitting in or assigned to the court in which the action was tried may perform those duties; but if such other judge is satisfied that the judge cannot perform those duties because the judge did not preside at the trial or for any other reason, the judge may in the judge's discretion grant a new trial.

Rule 819. (Intentionally Left Blank)

Rule 820. Execution – In General

Process to enforce an appealable final judgment or partial judgment certified as final under Rule 804 for the payment of money, or a court order for the payment of money, shall be a writ of execution, unless the court directs otherwise; but no writ of execution may issue on a partial judgment which is not certified as final under 804. Provided, a writ of execution shall not issue 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 upon such an affidavit in issuing a writ of execution. After service of the writ of execution, the sheriff shall make a return to the clerk of the court and indicate thereon the amount of the service fees and whether all of such fees were collected by the sheriff upon the service of the writ of execution. Any balance of the service fees of the writ of execution not collected by the sheriff shall be added to the judgment by the clerk as provided in Rule 901. The procedure on execution, in proceedings supplementary to and in aid of judgment, and in proceedings on and in aid of execution shall be in accordance with the statutes of the state of Idaho. In aid of the judgment or execution, the judgment creditor or successor in interest when that interest appears of record, may examine any person, including the judgment debtor, in the manner provided by the practice of this state.

Rule 821. Judgment for Specific Acts – Vesting Title

If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done has like effect as if done by the party. On application of the party entitled to performance, the clerk shall issue a writ of attachment or sequestration against the property of the disobedient party to compel obedience to the judgment. The court may also in proper cases adjudge the party in contempt. If real or personal property is within the state, the court in lieu of directing a conveyance thereof may enter a judgment divesting the title of any party and vesting it in others and such judgment has the effect of a conveyance executed in due form of law. When any order or judgment is for the delivery of possession, the party in whose favor it is entered is entitled to a writ of execution or assistance upon application to the clerk.

Rule 822. Contempt.

Actions for contempt shall be governed by Rule 75, Idaho Rules of Civil Procedure.

Rule 823. Appeals of Family Law Cases

An appeal from any order, decree or judgment in a case governed by the Idaho Rules of Family Law Procedure shall be pursuant to Rule 83, Idaho Rules of Civil Procedure.

IT IS FURTHER ORDERED, that this order and these amendments shall be effective January 1, 2014.

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 Rules of Family Law Procedure.

DATED this 3rd day of December, 2013.

By Order of the Supreme Court

R. Burdick

Roger S. Burdick, Chief Justice

ATTEST:

Stephen Kenyon

Stephen W. Kenyon, Clerk

I, Stephen W. Kenyon, Clerk of the Supreme Court 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 12/9/13

STEPHEN W. KENYON

Clerk

By: Kimber Grove Deputy