



## **IRFLP 401 Mandatory Disclosure in Contested Proceedings**

### **Idaho Rules of Family Law Procedure 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.

(Adopted March 29, 2021, effective July 1, 2021.)

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