



## **IRFLP 412 Depositions on Oral Examination**

### **Idaho Rules of Family Law Procedure 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; andn;

(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.

**(6) 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.** 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.

(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.

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