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IRFLP 417 Sanctions for Violation of Mandatory Disclosures and Orders; Motion for Order Compelling Discovery

Idaho Rules of Family Law Procedure Rule 417. Sanctions for Violation of Mandatory Disclosures and Orders; Motion for Order Compelling Discovery.

(a) **Definition of Confer.** To confer means to speak directly with the opposing attorney or a self-represented litigant in person or by telephone, to identify and discuss disputed issues, and to make a reasonable effort to resolve the disputed issues.

(1) The sending of electronic or voicemail communication does not satisfy the requirement to “confer”.

(2) In cases involving self-represented litigants who are incarcerated, written communication satisfies the confer requirement.

(3) The attorney or self-represented litigant must respond within a reasonable amount of time to a request to confer and must be reasonably available to confer.

(b) **Motion for Sanctions for Mandatory Disclosure.** A party may enforce compliance with the mandatory disclosure provision set forth in Rule 401 by filing a motion with the court seeking the imposition of sanctions against a non-compliant party.

(1) The motion must include a certification that the movant has in good faith conferred or attempted to confer with the alleged non-compliant party in an effort to secure the disclosure without court action.

(2) After reasonable notice to all parties and a hearing on the motion, the court may impose against a non-compliant party any sanctions available under Rule 417.

(c) **Motion for Order Compelling Disclosure or Discovery.**

(1) **In General.** On notice to other parties and all affected persons, a party may move for an order compelling disclosure or discovery. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action.

(2) **Appropriate Court.** A motion for an order to a party must be made in the court where the action is pending. A motion for an order to a nonparty must be made in the court where the discovery is or will be taken if outside of Idaho.

(3) **Specific Motions.**

(A) **To Compel a Discovery Response.** A party seeking discovery may move for an order compelling an answer, designation, production, or inspection. This motion may be made if:

(i) a deponent fails to answer a question asked under Rule 412;

(ii) a corporation or other entity fails to make a designation under Rule 412;

(iii) a party fails to answer an interrogatory submitted under Rule 405; or

(iv) a party fails to respond that inspection will be permitted, or fails to permit inspection, as requested under Rule 406.

(B) **Related to a Deposition.** When taking an oral deposition, the party asking a question may complete or adjourn the examination before moving for an order.

(4) **Evasive or Incomplete Disclosure, Answer, or Response.** For purposes of this subsection, an evasive or incomplete disclosure, answer, or response must be treated as a failure to disclose, answer, or respond.

(5) **Payment of Expenses; Protective Orders.**

(A) **If the Motion Is Granted or Discovery Is Provided After Filing of Motion.** If the motion is granted, or if the requested discovery is provided after the motion was filed, the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney fees. But the court must not order this payment if:

(i) the movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action;

(ii) the opposing party's nondisclosure, response, or objection was substantially justified; or

(iii) other circumstances make an award of expenses unjust.

(B) **If the Motion Is Denied.** If the motion is denied, the court may issue any protective order authorized under Rule 404 and must, after giving an opportunity to be heard, require the movant, the attorney filing the motion, or both to pay the party or deponent who opposed the motion its reasonable expenses incurred in opposing the motion, including attorney fees. But the court must not order this payment if the motion was substantially justified or other circumstances make an award of expenses unjust.

(C) **If the Motion Is Granted in Part and Denied in Part.** If the motion is granted in part and denied in part, the court may issue any protective order authorized under Rule 404 and may, after giving an opportunity to be heard, apportion the reasonable expenses for the motion.

(d) **Failure to Comply with a Court Order.**

(1) **Sanctions Where the Deposition is Taken.** If the court where the discovery outside of Idaho is taken orders a deponent to be sworn or to answer a question and the deponent fails to obey, the failure may be treated as contempt of either the court where the discovery is taken or the court where the action is pending.

(2) **Sanctions Where the Action is Pending.**

(A) **For Not Obeying a Discovery Order.** If a party or a party's officer, director, or managing agent, or a witness designated under Rule 412, fails to obey an order to provide or permit discovery, including an order under Rule 416 or 417(c), the court where the action is pending may issue further just orders. They may include the following:

(i) directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims;

(ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;

(iii) striking pleadings in whole or in part;

(iv) staying further proceedings until the order is obeyed;

(v) dismissing the action or proceeding in whole or in part;

(vi) rendering a default judgment against the disobedient party; or

(vii) treating as contempt of court the failure to obey any order except an order to submit to a physical or mental examination and initiating contempt proceedings.

(B) **For Not Producing a Person for Examination.** If a party fails to comply with an order under Rule 416(a) requiring it to produce another person for examination, the court may issue any of the orders listed in subsections (d)(2)(A)(i)—(vi), unless the disobedient party shows that it cannot produce the other person.

(C) **Payment of Expenses.** Instead of or in addition to the orders above, the court must order the disobedient party, the attorney advising that party, or both to pay the reasonable expenses, including attorney fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

(e) **Failure to Disclose, to Supplement an Earlier Response, or to Admit.**

(1) **Failure to Disclose or Supplement.** If a party fails to supplement discovery responses when required or fails to comply with a disclosure requirement ordered by the court pursuant to a Rule 702 scheduling or pretrial order, the party is not allowed to use that information or witness to supply

evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless. In addition to or instead of this sanction, the court, on motion and after giving an opportunity to be heard:

(A) may order payment of the reasonable expenses, including attorney fees, caused by the failure;

(B) may impose other appropriate sanctions, including any of the orders listed in subsections (d)(2)(A)(i)--(vi).

(2) **Failure to Admit.** If a party fails to admit what is requested under Rule 408 and if the requesting party later proves a document to be genuine or the matter true, the requesting party may move that the party who failed to admit pay the reasonable expenses, including attorney fees, incurred in making that proof. The court must so order unless:

(A) the request was held objectionable under Rule 408(a) or (b);

(B) the admission sought was of no substantial importance;

(C) the party failing to admit had a reasonable ground to believe that it might prevail on the matter; or

(D) there was other good reason for the failure to admit.

(f) **Party’s Failure to Attend Its Own Deposition, Serve Answers to Interrogatories, or Respond to a Request for Production or for Inspection.**

(1) **In General.**

(A) **Motion; Grounds for Sanctions.** The court where the action is pending may, on motion, order sanctions if:

(i) a party or a party's officer, director, or managing agent, or a person designated under Rule 412(b)(6), fails, after being served with proper notice, to appear for that person's deposition; or

(ii) a party, after being properly served with interrogatories under Rule 405 or a request for production or inspection under Rule 406, fails to serve its answers, objections, or written response.

(B) **Certification.** A motion for sanctions for failing to answer or respond must include a certification that the movant has in good faith conferred or attempted to confer with the party failing to act in an effort to obtain the answer or response without court action.

(2) **Unacceptable Excuse for Failing to Act.** A failure described in subsection (f)(1)(A)is not excused on the ground that the discovery sought was objectionable, unless the party failing to act has a pending motion for a protective order under Rule 404.

(3) **Types of Sanctions.** Sanctions may include any of the orders listed in subsection (d)(2)(A)(i)--(vi). Instead of or in addition to these sanctions, the court must require the party failing to act, the attorney advising that party, or both to pay the reasonable expenses, including attorney fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

(g) **Failure to Provide Electronically Stored Information.** Absent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system.

(h) **General Sanctions; Catch-All.** In addition to the sanctions provided for in this rule for violation of discovery procedures, any court may impose sanctions or conditions, or assess attorney fees, costs, or expenses against a party or the attorney advising that party for failure to comply with an order made pursuant to these rules.

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