



IRFLP 602 Mediation of Child Custody and Visitation Disputes

Idaho Rules of Family Law Procedure Rule 602. Mediation of Child Custody and Visitation Disputes.

(a) **Definition of Mediation.** Mediation is the process by which a neutral mediator appointed by the court, or agreed to by the parties, assists the parties in reaching a mutually acceptable agreement. An agreement reached by the parties is to be based on the decisions of the parties, not the decisions of the mediator. The role of the mediator is to:

(1) aid the parties in identifying issues;

(2) reduce misunderstandings;

(3) clarify priorities;

(4) explore areas of compromise; and

(5) find points of agreement.

(b) **Matters Subject to Mediation and Qualifications.** All family law actions involving a controversy over custody or parenting time of a minor child are subject to mediation by a child custody mediator qualified under Idaho Court Administrative Rule (I.C.A.R.) 76, Qualifications of Child Custody Mediators. All issues in family law actions other than child custody and parenting time of a minor child, are subject to mediation under I.R.F.L.P. 603, Mediation of Other Matters.

(c) **Authority of the Court.** The referral of a family law action to mediation does not divest the court of the authority to exercise management and control of the case during the pending mediation.

(d) **Referral to Mediation.** A court may order any issue in a family law action to mediation as follows:



- (1) on a motion by a party;
- (2) at a Rule 701 conference;
- (3) on consideration of a request for trial setting, if all parties indicate in their request or response that mediation would be beneficial; or
- (4) Upon 7 days' notice to the parties, if the court determines that mediation is appropriate.

(e) **Selection of a Mediator.** The parties will have 28 days from entry of the mediation order, or such other time as the court may allow, to select any person to act as mediator and report their selection to the court. If the parties do not select a mediator within 28 days, then the court must appoint a mediator from the applicable roster of mediators compiled and maintained by the Idaho Supreme Court's Administrative Office of the Courts (Administrative Office).

(f) **Scheduling of the Mediation Session.** The initial mediation session must be scheduled within 14 days after selection or appointment of the mediator, unless otherwise ordered by the court.

(g) **Compensation of Mediators.** A mediator's fees and expenses must be clearly set forth and explained at the initial conference with the parties. Each party is responsible for one-half of the mediator's fees and expenses unless other arrangements are made between the parties or ordered by the court. If a mediator is not paid, the court may order payment upon motion of the mediator.

(h) **Duties of Mediator.**

(1) **Impartiality.** The mediator must be impartial and must advise the parties of any circumstances bearing on possible bias, prejudice, or impartiality.

(2) **Disclosure of the Process.** The mediator must define and describe the process of mediation and its cost during the initial conference with the parties before mediation begins. The description should include the following:

(A) the difference between mediation and other forms of conflict resolution, including therapy and counseling;



- (B) the circumstances under which the mediator will meet alone with either of the parties or with any other person;
- (C) any confidentiality of the mediation proceedings and any privilege against disclosure;
- (D) the duties and responsibilities of the mediator and of the parties;
- (E) inform the parties that any agreement must be made with their mutual consent;
- (F) advise the parties to seek independent legal counsel prior to resolving issues and in conjunction with formalizing an agreement;
- (G) inform the parties that any agreement must be reduced to a final agreement and submitted to the court for the court's review and approval; and
- (H) the information necessary for defining the disputed issues.

(3) **Mediation Agreement Summary.** If the parties reach an agreement on any issue, the mediator must document the agreement in writing and provide a copy to the parties or their attorneys.

(i) **Communications between Mediator and the Court.** The mediator and the court may not communicate without notice to all parties; however, the mediator must, without comment or observation, report to the court:

- (1) the parties are at an impasse;
- (2) the parties have reached a full or partial agreement;
- (3) one or both of the parties have failed to attend the mediation proceeding;



(4) meaningful mediation is ongoing; or

(5) the mediator withdraws from mediation.

(j) Contact between the Mediator, Attorneys, and Other Interested Persons. The mediator and the attorneys for the parties may communicate with one another according to the following requirements:

(1) any contacts between the attorneys and the mediator must be in writing or by conference call; and

(2) attorneys and other persons are excluded from mediation conferences unless their presence is requested by the mediator or ordered by the court.

(k) Confidentiality. The mediator must follow the confidentiality rules agreed to by the parties. Confidentiality protections of Idaho Rules of Evidence 408 and 507 extend to mediation.

(l) Reports.

(1) **Status.** The mediator must report the status of mediation to the court every 28 days from the court's order for mediation, until mediation is completed.

(1) **Final.** Within 7 days following the last mediation session, the mediator or the parties must advise the court, with a copy to the parties, whether the case has settled in whole or in part.

(m) Termination of Mediation. The court or the mediator may terminate mediation proceedings if further progress toward a reasonable agreement is unlikely. The mediator must notify the court when the mediation has been concluded.



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