Proposed Amendments to the Idaho Rules of Family Law Procedure

Administrative Conference- May 2, 2018

The following rule amendments are recommended by the Idaho Supreme Court's Children and Families in the Courts Committee (CFCC).

1. **IRFLP 120: Change the language from "shall" to a more permissive "may" and change the 6 month deadline to 90 days.**

Idaho Rules of Family Law Procedure Rule 120. Dismissal of Inactive Cases.

In the absence of a showing of good cause for retention, any action, appeal or proceeding, ~~except for guardianships, conservatorships, and probate proceedings,~~ in which no action has been taken or in which the summons has not been issued and served, for a period of ~~six (6) months~~ ninety (90) days ~~shall~~ may be dismissed. Dismissal pursuant to this rule in the case of appeals shall be with prejudice and as to all other matters such dismissal shall be without prejudice. At least 14 days prior to such dismissal, the clerk shall give notification of the pending dismissal to all attorneys of record, and to any party appearing on that party's own behalf, in the action or proceeding subject to dismissal under this rule.

2. **IRFLP 502: Change the dates to conform to 7 day increments. The 20 days in the rule now reads 21 days and the 10 days in the rule now reads as 14 days.**

Idaho Rules of Family Law Procedure Rule 502. Defenses and Objections; When and How Presented; By Pleading or Motion; Motion for Judgment on Pleadings – When Presented.

A respondent shall serve a response within ~~twenty (20)~~ twenty-one (21) days after the service of the summons upon the party, or within such longer period as is provided by statute. A party served with a pleading stating a cross-claim against him shall serve a response thereto within ~~twenty (20)~~ twenty-one (21) days after the service of the cross-claim upon the party. The petitioner shall serve a reply to a counterclaim in the response within ~~twenty (20)~~ twenty-one (21) days after service of the response or, if a reply is ordered by the court, within ~~twenty (20)~~ twenty-one (21) days after service of the order, unless the order otherwise directs. The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court: (1) if the court denies the motion or postpones its disposition until

the trial on the merits, the responsive pleading shall be served within ~~ten (10)~~ fourteen (14) days after notice of the court's action; (2) if the court grants a motion for a more definite statement the responsive pleading shall be served within ~~ten (10)~~ fourteen (14) days after the service of the more definite statement. In either case the time for service of the responsive pleading shall not be less than remains of the time which would have been allowed under these rules if the motion had not been made.

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C. Motion for more definite statement. If a pleading to which a responsive pleading is permitted violates the provisions of Rule 207 or is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a compliance with the Rules or for a more definite statement before interposing the responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within ~~ten (10)~~ fourteen (14) days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

D. Motion to strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within ~~twenty (20)~~ twenty-one (21) days after the service of the pleading upon the party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

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3. **IRFLP 505: Conform the days to 21 days as in other Rules in this section as well as Rules of Civil Procedure.**

Idaho Rules of Family Law Procedure Rule 505. Summary Judgment.

A. For claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of ~~twenty (20)~~ twenty-one (21) days from the service of process upon the adverse party or that party's appearance in the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in that party's favor upon all or any part thereof. Provided, a motion for summary judgment must be filed at least 60 days before the trial

date, or filed within 7 days from the date of the order setting the case for trial, whichever is later, unless otherwise ordered by the court.

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C. Motion for summary judgment and proceedings thereon. The motion, affidavits and supporting brief shall be served at least 28 days before the time fixed for the hearing. If the adverse party desires to serve opposing affidavits the party must do so at least 14 days prior to the date of the hearing. The adverse party shall also serve a responding brief at least 14 days prior to the date of the hearing. The moving party may thereafter serve a reply brief not less than 7 days before the date of the hearing. The judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. ~~A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.~~ Such judgment, when appropriate, may be rendered for or against any party to the action. The court may alter or shorten the time periods and requirements of this rule for good cause shown, may continue the hearing, and may impose costs, attorney fees and sanctions against a party or the party's attorney, or both.

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4. IRFLP 704: Conform the rule to 21 days.

Idaho Rules of Family Law Procedure Rule 704. Final Pre-trial Procedure - Formulating Issues.

A. Directions for pre-trial conference. A pre-trial conference shall be held in any action if requested by any party in writing at least ~~20~~ twenty-one (21) days before trial, or if ordered by the court at any time, and the court may direct the attorneys for the parties, or any party appearing without an attorney, to submit a pre-trial memorandum containing substantially the information enumerated in Rule 705 and to appear before it for a conference to consider:

1. The simplification of the issues.
2. The necessity or desirability of amendments to the pleadings.
3. The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof.

4. The limitation of the number of expert witnesses and the disclosure of the identity of persons having knowledge of the relevant facts and who may be called as witnesses.
5. The advisability of a preliminary reference of issues to a master for findings to be used as evidence.
6. Such other matters as may aid in the disposition of the action.

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5. **IRFLP 910: REPEALED. It was determined that IRFLP 908 adequately addressed this issue and there were no changes or revisions to IRFLP 908.**

Idaho Rules of Family Law Procedure Rule 908. Attorney Fees.

A. Pursuant to Contract or Statute. In any civil action the court may award reasonable attorney fees, including paralegal fees, to the prevailing party or parties as defined in Rule 901.B, when provided for by any statute or contract. Provided, attorney fees under section 12-121, Idaho Code, may be awarded by the court only when it finds, from the facts presented to it, that the case was brought, pursued or defended frivolously, unreasonably or without foundation; but attorney fees shall not be awarded pursuant to section 12-121, Idaho Code, on a default judgment.

B. Amount of attorney fees. If the court grants attorney fees to a party or parties in a civil action it must consider the following in determining the amount of such fees:
1. the time and labor required;
2. the novelty and difficulty of the questions;
3. the skill requisite to perform the legal service properly and the experience and ability of the attorney in the particular field of law;
4. the prevailing charges for like work;
5. the time limitations imposed by the client or the circumstances of the case;
6. the amount involved and the results obtained;
7. the undesirability of the case;
8. the nature and length of the professional relationship with the client;
9. awards in similar cases;
10. the reasonable cost of automated legal research (Computer Assisted Legal Research), if the court finds it was reasonably necessary in preparing a party's case;
11. any other factor which the court deems appropriate in the particular case.

C. Pleading - Default Judgments. It is not necessary for any party in a civil action to assert a claim for attorney fees in any pleading when attorney fees are requested pursuant to contract or statute in a judgment by default, the amount of attorney fees in the event of default must be included in the prayer for relief in the complaint and the award must not exceed the amount in the prayer.

D. Attorney Fees as Costs. Attorney fees, when allowable by statute or contract, are costs in an action and processed in the same manner as other costs and included in the memorandum of costs A claim for attorney fees as costs must be supported by an affidavit of the attorney stating the basis and method of computation.

E. Objection to Attorney Fees. Any objection to a claim for attorney fees must be made in the same manner as an objection to costs as provided by Rule 906. The court may conduct an evidentiary hearing, if it deems it necessary, regarding the award of attorney fees.

F. Settlement of Attorney Fees by Order of Court - Determination Not Binding on Attorney and Client. After a hearing on an objection to a claim for attorney fees, or after the time for filing an objection has passed, the court must enter an order settling the dollar amount of attorney fees, if any, awarded to any party to the action. If there was a timely objection to the amount of attorney fees, the court must include in the order its reasoning and the factors it relied in determining the amount of the award. The allowance of attorney fees by the court under this rule is not to be construed as fixing the fees between attorney and client.

G. Claims to Which Rule Applies. Any claim for attorney fees, including claims pursuant to Idaho Code section 12-121, must be made pursuant to this rule unless an applicable statute or contract provides otherwise.

RULE 910 REPEALED:

~~**A. Factors to consider.** In the event the court grants attorney fees to a party or parties in a civil action it shall consider the following factors in determining the amount of such fees:~~
~~1. The time and labor required.~~
~~2. The novelty and difficulty of the questions.~~
~~3. The skill requisite to perform the legal service properly and the experience and ability of the attorney in the particular field of law.~~
~~4. The prevailing charges for like work.~~
~~5. Whether the fee is fixed or contingent.~~

~~6. The time limitations imposed by the client or the circumstances of the case.~~
~~7. The amount involved and the results obtained.~~
~~8. The undesirability of the case.~~
~~9. The nature and length of the professional relationship with the client.~~
~~10. Awards in similar cases.~~
~~11. The reasonable cost of automated legal research (Computer Assisted Legal Research), if the court finds it was reasonably necessary in preparing a party's case.~~
~~12. Any other factor which the court deems appropriate in the particular case.~~

6. **IRFLP 112: Conformed the days to reflect 21 days.**

Idaho Rules of Family Law Procedure Rule 112. Appearance and Withdrawal of Counsel.

A. Leave to withdraw--Notice to client. If an attorney is granted leave to withdraw, the court shall enter an order permitting the attorney to withdraw. After the order is entered, the clerk shall immediately serve a copy of the order on all parties in accord with Rule 819. The order shall direct the party whose attorney is withdrawing to appoint another attorney to appear, or to appear in person by filing a written notice with the court stating how the client will proceed without an attorney, within ~~20~~ twenty-one (21) days from the date of service. Upon the entry of an order granting leave to an attorney to withdraw from an action, no further proceedings can be had in that action which will affect the rights of the party of the withdrawing attorney for a period of ~~20~~ twenty-one (21) days after service of the order. If such party fails to file and serve an additional written appearance in the action either in person or through a newly appointed attorney within such ~~20~~ twenty-one (21) day period, such failure shall be sufficient ground for entry of default and default judgment against such party or dismissal of the action of such party, with prejudice, without further notice, which shall be stated in the order of the court.

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7. **IRFLP 211: Conformed to 21 days**.

Idaho Rules of Family Law Procedure Rule 211. Intervention.

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E. Intervention by de facto custodian.

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2. If the Motion for Permissive Intervention is granted, a Petition for De facto Custodian Status and Custody may be filed. The petition shall be served and adjudicated in substantially the same manner as an original proceeding. The petition and notice of hearing shall be served upon the parties pursuant to Rule 204 unless otherwise ordered by the court. The Notice of Hearing shall direct the opposing party to file a written response within ~~20~~ twenty-one (21) days.

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8. IRFLP 901: Now includes any fees incidental to electronic filing.

Idaho Rules of Family Law Procedure Rule 901. Costs - Items Allowed.

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C. Costs as a matter of right. When costs are awarded to a party, such party shall be entitled to the following costs, actually paid, as a matter of right:

1. Court filing fees, including any fees incidental to electronic filing.
2. Actual fees for service of any pleading or document in the action whether served by a public officer or other person.
3. Witness fees of $20.00 per day for each day in which a witness, other than a party or expert, testifies at a deposition or in the trial of an action.
4. Travel expenses of witnesses who travel by private transportation, other than a party, who testify in the trial of an action, computed at the rate of $.30 per mile, one way, from the place of residence, whether it be within or without the state of Idaho; travel expenses of witnesses who travel other than by private transportation, other than a party, computed as the actual travel expenses of the witness not to exceed $.30 per mile, one way, from the place of residence of the witness, whether it be within or without the state of Idaho.
5. Expenses or charges of certified copies of documents admitted as evidence in a hearing or the trial of an action.
6. Reasonable costs of the preparation of models, maps, pictures, photographs, or other exhibits admitted in evidence as exhibits in a hearing or trial of an action, but not to exceed the sum of $500 for all of such exhibits of each party.

7. Cost of all bond premiums.
8. Reasonable expert witness fees for an expert who testifies at a deposition or at a trial of an action not to exceed the sum of $2,000 for each expert witness for all appearances.
9. Charges for reporting and transcribing of a deposition taken in preparation for trial of an action, whether or not read into evidence in the trial of an action.
10. Charges for one (1) copy of any deposition taken by any of the parties to the action in preparation for trial of the action.

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9. IRFLP 212: Mandate that a written certification or declaration be submitted electronically.

Idaho Rules of Family Law Procedure Rule 212. Signing of Pleadings, Motions, and Other Papers; Sanctions; Electronic Signatures.

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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~~ which must include a written certification or declaration under penalty of perjury or an affidavit, and a notary's seal may be in electronic form.

10. IRFLP 717: Clarifies language regarding criminal history background checks in accordance with Idaho Court Administrative Rule 47.

Idaho Rules of Family Law Procedure Rule 717. Supervised Access to Children.

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F. Qualifications of providers.
1. Unless otherwise ordered by the court or stipulated to by the parties, all individuals providing supervised access must:
a. be 21 years of age or older;
b. if transporting a child, have proof of minimum automobile insurance, possess a valid current driver's license, not have been convicted of or pled guilty to driving under the influence of alcohol, drugs or other intoxicating substances within the last five years, and utilize an approved child car seat and/or seat belt for the child as required by law;

c. have no current or past civil, criminal, or juvenile protection or restraining order against him or her regarding a child involved in the case or a party to the case;
d. have no current ex parte domestic violence protection order against him/her;
e. have no current or past domestic violence protection order against him/her entered at/after an adjudicatory hearing held after notice to him/her;
f. have no current or past criminal "no contact" order against him or her;
g. never have been a supervised party; and
h. communicate in a language that the non-custodial party and the child understand or have a neutral interpreter over the age of 18 present to assist with communication, including for the hearing-impaired.

2. In addition to the above, all professional providers must comply with the provisions of Idaho Court Administrative Rule 47 regarding Criminal History checks. ~~A denial, either conditional or unconditional as defined by I.C.A.R. 47 precludes employment as a supervised access provider.~~

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11. IRFLP 511: Revised to make it easier to read.

Idaho Rules of Family Law Procedure Rule 511. Bond or Notice Discretionary in Prohibitive or Mandatory Orders.

A. Orders on Court's Motion. In suits for divorce, annulment, alimony, separate maintenance, legal separation or custody of children, the court may make prohibitive or mandatory orders, with or without notice or bond as may be just, including bond for payment of costs, damages and reasonable attorney's fees, as may be just.

B. Other Motions. If a party applies for an order without notice to the adverse party, the party or the party's attorney must certify to the court in writing the efforts if any, which have been made to give the notice and the reasons supporting the party's claim that notice should not be required. Any party may elect to produce testimony and evidence at any hearing, or to cross-examine the adverse party or the party's affiants, by first giving at least twenty-four (24) hours notice to the court and opposing counsel before the hearing, which requirement shall be stated in the body of the notice. If such notice is timely given it shall not be necessary to subpoena the adverse party or the party's affiants and the adverse party shall appear with the party's designated affiants without further notice unless otherwise ordered by the court. If the adverse party and the adverse party's affiants designated in the notice are not excused by the court and do not appear as requested, the court may impose such sanctions as it deems appropriate including attorney's fees

for the requesting party. Under this subsection, ~~T~~the hearing, notice and expiration periods set forth in Rule 508 apply to any order issued under this rule.

12. IRFLP 602: Made corrections and added a NEW subsection to provide for removal of a Mediator.

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

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F. Qualifications of mediator – application and documentation.

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4. Continuing education of mediators. Beginning the next July 1 after a mediator has been placed on the Supreme Court list of registered mediators, the mediator must take at least thirty (30) hours of child custody training in one or more of the areas as set forth in section 3~~c~~ b in each and every three (3) years period following the July first date. This training must include a minimum of two hours of mediation ethics training. The mediator must file proof of compliance with this requirement with the Administrative Office of the Courts by July 1 of the year the continuing education is due. Along with proof of compliance, a mediator under section F.2.b must also send proof of current licensing.

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K. Removal.

1. Upon a written request for removal by an attorney, judge, or any member of family court services for failure to comply with a court order, ethical standards, or good cause shown, a mediator may be removed from the Supreme Court Roster by the Administrative Director of the Court or designee.

2. Process for Removal. The request for removal shall be reviewed by the Administrative Director or designee. The Administrative Director or designee shall notify the mediator of the request for removal. The mediator will have twenty-one (21) days from the date of the notice to request a review. If no request for review is made within twenty-one (21) days, the Administrative Director or designee may remove the mediator from the roster.

3. Process for Review of Removal. If the mediator requests a review, it may include a review of the documents and supplemental information provided by the individual, a telephonic interview with the individual, an in-person review hearing, or any other review including a panel involving the Administrative Director or designee and others whom the Administrative Director determines are necessary to make a decision.

4. Reinstatement to Mediation Roster: Upon a decision to remove a mediator from the roster, the mediator may reapply after one (1) year unless the Administrative Director, designee, or appeal panel decides otherwise.