

**Proposed Amendments to the Idaho Rules of Family Law Procedure**  
**April 2017**

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

**Proposed Amendment to IRFLP Rules 201.D. and E.** – Amend the rule to allow a party to request a monetary judgment for reimbursement of the opposing party's share of daycare, medical and debt expenses. This action is required post-judgment as a Decree only sets forth the parties responsible percentage of these expenses, but the actual costs will only occur in the future.

**Rule 201. Commencement of Action.**

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D. Commencement of action to obtain money judgment. A party to a divorce decree, or to a judgment that establishes support for a child or children of the parties, may file a petition or written stipulation in the original action to enforce the terms of the decree or judgment by seeking a judgment for:

1. contribution for amounts paid by one party toward debt(s) assigned to the other party as provided in the decree or judgment;
2. reimbursement of uncovered medical expenses incurred on behalf of the child/ren;
3. reimbursement of work-related day care expenses incurred on behalf of the child/ren; and/or
4. reimbursement of medical insurance premiums for insurance covering the child/ren.

The petition shall be in a form similar to an original petition and shall be served upon all parties entitled to service along with a summons. The method of service and return shall be the same as for an original action set forth in Rule 204 and service shall be on the opposing party rather than on the previous attorney of record for the party. The petition shall be adjudicated in the same manner as an original proceeding, but the filing of a petition to obtain a money judgment under this rule shall not be deemed the commencement of an action under Idaho Code Section 5-404 and there shall be no right for an existing party in the lawsuit to disqualify the judge without cause pursuant to Rule 107 if that judge had previously presided in the lawsuit and had not been disqualified. A stipulation shall expressly authorize the court

to enter a judgment attached to or specifically identified in the stipulation. The petition or stipulation shall be resolved by the entry of a judgment as provided in Rule 803.B.

~~D~~ E. Filing Fee- Waiver. The filing fee prescribed by Appendix "A" ~~to these rules of the Idaho Rules of Civil Procedure~~ must be paid before the filing of a pleading or motion listed in the filing fee schedule. Any waiver of the filing fee shall be made by the court upon verified application of a party which shall require no filing fee. Provided, the filing fees shall be automatically waived in any case in which a party is represented by an attorney under the Idaho Law Foundation Volunteer Lawyers Program, the University of Idaho Legal Aid Clinic, the Idaho Legal Aid Program<sup>2</sup>, or an attorney under a private attorney contract with Legal Aid.

**Proposed Amendments to IRFLP Rule 204.C.-** The proposed amendments to IRFLP Rule 204 adopt recent amendments to the IRCP which increased the time for filing an Answer to a Complaint from 20 to 21 days.

**Rule 204. Service on the Opposing Party or Additional Parties of Initial Pleadings.**

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C. Summons – form. The summons shall be signed by the clerk of the district court, be under the seal of the court, contain the name of the court, the assigned number of the case, the names of the parties, the county in which the action is brought, the mailing address, physical address (if different) and telephone number of the district court clerk, and state the name and address of the Petitioner's attorney, if any, otherwise, the Petitioner's address. The summons shall contain the time within which these rules require the Respondent to file a written response or written motion in defense to the Petition, and shall notify the Respondent that, in case of the Respondent's failure to do so, judgment by default will be rendered against the Respondent for the relief demanded in the Petition. The summons shall be in substantially the following form:

NAME OF PARTY OR ATTORNEY  
ATTORNEYS BAR NUMBER  
STREET OR PO BOX ADDRESS  
CITY, STATE & ZIP CODE  
TELEPHONE NUMBER  
(Attorney for) Petitioner

IN THE DISTRICT COURT OF THE \_\_\_\_\_ JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF \_\_\_\_\_

)  
Petitioner, ) Case No. \_\_\_\_\_

)  
vs. ) SUMMONS

)  
Respondent. )

)

NOTICE: YOU HAVE BEEN SUED BY THE ABOVE-NAMED PETITIONER(S): THE COURT MAY ENTER JUDGMENT AGAINST YOU WITHOUT FURTHER NOTICE UNLESS YOU RESPOND WITHIN 201 DAYS. READ THE INFORMATION BELOW.

TO: \_\_\_\_\_

You are hereby notified that in order to defend this lawsuit, an appropriate written response must be filed with the above designated court at [mailing address, physical address (if different) and telephone number of the district court clerk] within 201 days after service of this Summons on you. If you fail to so respond the court may enter judgment against you as demanded by the Petitioner(s) in the Petition. A copy of the Petition is served with this Summons. If you wish to seek the advice of or representation by an attorney in this matter, you should do so promptly so that your written response, if any, may be filed in time and other legal rights protected.

An appropriate written response requires compliance with Rule 205 of the Idaho Rules of Family Law Procedure and shall also include:

1. The title and number of this case.
2. If your response is a Response to the Petition, it must contain admissions or denials of the separate allegations of the Petition and other defenses you may claim.
3. Your signature, mailing address and telephone number, or the signature, mailing address and telephone number of your attorney.
4. Proof of mailing or delivery of a copy of your response to Petitioner's attorney, as designated above.

To determine whether you must pay a filing fee with your response, contact the Clerk of the above-named court.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

CLERK OF THE DISTRICT COURT

By \_\_\_\_\_  
Deputy Clerk

1. Personal service. A copy of the petition shall be served with the summons, except when the service is by publication as provided in Rule 204.G. The petitioner shall furnish the person making service with such copies as are necessary. Service shall be made as follows:

2. Service upon individuals. Upon an individual other than infants and incompetents, by delivering a copy of the summons and of the petition to the individual personally or by leaving copies thereof at the individual's dwelling house or usual place of abode with some person over the age of eighteen (18) years then residing therein or by delivering a copy of the summons and of the petition to an agent authorized by appointment or by law to receive service of process.

3. Service upon incompetents. Upon a minor less than fourteen (14) years of age, service shall be upon the guardian if one (1) has been appointed, and if there is none then upon either the father or mother, and if neither guardian, father or mother be found within the state then upon any person having the care and custody of such minor, and unless the court otherwise orders, also upon the minor, said service to be in the manner set forth in subdivision (2) of this rule. Upon an incompetent person who has been judicially declared to be of unsound mind or incapable of conducting the incompetent person's own affairs, service shall be had upon the guardian if one (1) has been appointed in this state, or if there is none by service upon a competent adult member of the family with whom the incompetent person resides, or if the incompetent person is living in an institution then upon the chief executive officer of the institution, or if service cannot be had upon any of them, then as provided by order of the court, and unless the court otherwise orders, also upon the incompetent. If any of the parties upon whom service is directed to be made is a plaintiff, then service shall be upon such other person as the court may designate.

4. Service upon state, agencies or governmental subdivisions. Upon the state of Idaho, or any agency thereof, service shall be made by delivering two (2) copies of the summons and complaint to the attorney general or any assistant attorney general. Upon any other governmental subdivision, municipal corporation, or quasi-municipal corporation or public board service shall be made by delivering a copy of the summons and complaint to the chief executive officer or the secretary or clerk thereof. In all actions brought under specific statutes requiring service to be made upon specific individuals or officials, service shall be made pursuant to the statute in addition to service as provided above.

D. Service by publication. Where service is to be made by publication, the Summons to be published shall be substantially as follows:

#### SUMMONS

To: [ Respondent's Name]

You have been sued by [Petitioner's Name], the Petitioner, in the District Court in and for [Name of County] County, Idaho, Case No. [Case No.].

The nature of the claim against you is [nature of claim].

Any time after 20~~1~~ days following the last publication of this summons, the court may enter a judgment against you without further notice, unless prior to that time you have filed a written response in the proper form, including the Case No., and paid any required filing fee to the Clerk of the Court at [mailing address, physical address (if different) and telephone number of the clerk] and served a copy of your response on the Petitioner's attorney at [name, address, and phone number of Petitioner's attorney].

A copy of the Summons and Petition can be obtained by contacting either the Clerk of the Court or the attorney for Petitioner. If you wish legal assistance, you should immediately retain an attorney to advise you in this matter.

Dated: \_\_\_\_\_

[Name of County] County District Court

By \_\_\_\_\_, Deputy Clerk

**Proposed Amendments to IRFLP Rule 214-** The proposed amendments to IRFLP Rule 214 adopt recent amendments to the IRCP which increased the time for filing a response to

an amended complaint within the time remaining on the 20 days from service or 10 days, whichever came later. The time increased to 21 and 14 days respectively.

**Rule 214. Amended and Supplemental Pleadings- Amendments.**

A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within twenty-one (201) days after it is served. Otherwise a party may amend a pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires, and the court may make such order for the payment of costs as it deems proper. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within ~~ten~~ fourteen (104) days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

**Proposed Amendments to IRFLP Rule 720-** The proposed amendments to Rule 720 seek to streamline and simplify the rule, and make two substantive changes: (1) remove the requirement that assessments be conducted in accordance with the Association of Family and Conciliation Courts' (AFCC) guidelines, and (2) change section 720.D. (Qualification of Assessor) by substituting IRE Rule 702 for IRFLP 719.D.1.

**Rule 720. Brief Focused Assessments.**

A. Definition of Brief Focused Assessment. A "brief focused assessment" is an assessment of a specific, narrowly defined issue or limited set of issues identified by a judge and designated in a court order. The purpose of the assessment is to provide the judge in a case that falls within the scope of these Rules with information generated through reliable procedures regarding focused questions that have been identified by the court as important to the resolution of a child custody dispute. A qualified assessor conducts interviews, makes observations, reviews relevant records, consults relevant collateral contacts and conducts additional activities in connection with the assessment. The ~~evaluation process~~ assessment is guided by a focused inquiry provided by the court or judicial officer. ~~A brief focused assessment differs from other types of custody evaluations, including a Parenting Time Evaluation defined by IRFLP Rule 719, by being narrow in scope, more descriptive in reporting of data, and more limited in making inferences.~~

B. Limitations of Brief Focused Assessments. A brief focused assessment shall be limited to the issues identified in the court order and shall not contain any recommendations of a custody schedule or opinions from the assessor regarding the best interests of the child/ren. Acknowledging the limited nature of a brief focused assessment, including the narrow scope of the issues assessed and data gathering related thereto, the assessor shall:

1. offer ~~interpretations or opinions~~ information and options within the available data;
2. respond within the scope of the referral question(s);
3. clearly state the limitations of the response within the report;
4. avoid broad issues to be addressed by comprehensive custodial evaluations; and
5. seek clarification for specific areas of concern in broadly stated requests or orders.

C. Referral Procedures. A brief focused assessment may be initiated upon a motion of any party, agreement of the parties, or on the court's motion. Upon receipt of a written stipulation of the parties, or upon granting the motion after proper notice and a hearing, the court shall issue an order that includes a well-defined referral question or set of questions, specifically naming the ~~clinician or agency~~ assessor to conduct the assessment and to whom the report shall be provided upon completion.

D. Qualifications of Assessors. ~~A qualified assessor is an individual who meets or exceeds the qualifications set forth in IRFLP Rule 719.D.1.~~ Subject to an appointment pursuant to Idaho Rule of Evidence 702, a qualified assessor is an individual who meets or exceeds the qualifications set forth in Rule 719.D.1.

E. Issues Subject to a Brief Focused Assessment. A brief focused assessment shall be limited to assessing not more than three of the following issues:

1. the wishes of the child or children regarding custody, including the context and bases for those wishes;
2. the child/ren's academic performance and functioning within a defined time period, including, but not limited to, circumstances surrounding the child/ren's attendance at school or lack thereof;

3. the adequacy of the residence(s) of one or more of the child/ren's physical custodians including, but not limited to, cleanliness and safety;
4. the adequacy of the physical environment of any or all third-party care providers to the child/ren including, but not limited to, cleanliness and safety;
- ~~5. the need for supervision of the child/ren's contact with one of the parties and/or any other person involved in providing care to the child/ren;~~
- ~~6. whether or not the circumstances that surrounded a prior court order for supervised contact between a party and the child/ren have changed, including a recommendation for the continuation or termination of supervision;~~
- ~~7~~5. whether or ~~not~~ any or all of the parties presently consume drugs or alcohol in a manner that adversely impacts his/her/their ability to provide proper parental care to the child/ren; in so doing, the assessor may request any party or a child of the parties to submit to random drug testing, including urine and hair follicle testing;
- ~~6~~6. whether or not the child/ren are fearful of one of the parties including, but not limited to, at custody exchanges;
- ~~8~~7. the identification of present mental health issues ~~and/or concerns~~ in any or all parties and, ~~for each party about whom issues or concerns are identified~~, how those issues ~~or concerns~~ are likely to impact parenting capacity, and/or the party's ability to provide a consistent and safe environment during custody time;
- ~~9~~8. in cases involving a disabled party, the identification of ~~any and all~~ adaptive equipment or supportive services that are available which enable the disabled party to carry out the responsibilities of parenting the child/ren; and,
- ~~10. the circumstances and conditions under which the child/ren would likely benefit from the reunification with and/or resumption of a relationship with one of the parties;~~
- ~~and~~
- ~~11~~9. any other factual issue that is narrowly-defined by the court.

F. Motion/ Stipulation/ Order of Assessment/Assessment.



1. Every motion or stipulation for the performance of a brief focused assessment shall include specific issues to be addressed in the assessment;

2. Every order for brief focused assessment shall include:

a. the name of the assessor;

b. the referral question(s) for assessment;

c. names and dates of birth of those assessed;

d. ~~documentation that limits of confidentiality were explained;~~

e. a requirement that the parties cooperate as requested by the assessor, including that they execute and sign any and all releases of information necessary for the assessor to obtain access to documents that are relevant to the referral question(s);

~~f e.~~ provide for the assessor to have access to all records, public or private, ~~relating to the question to be determined by the assessor~~ identified in the court order;

~~g f.~~ ~~require each party to sign releases for such information as requested by the assessor;~~

~~h g.~~ assign responsibility for payment; and

~~i h.~~ require a written assessment to be prepared unless the court orders otherwise.

3. Every brief focused assessment shall include:

a. a discussion of issues related to the referral question, including acknowledgment of the limitation to the data ~~and possible alternative hypotheses~~ hypotheses;

b. ~~recommendations~~ conclusions relevant to the issues raised in the referral question, if requested by the court; and

~~c. other concerns or issues arising from the assessment for the consideration of the court.~~ documentation that limits of confidentiality were explained.

~~4. All assessments shall be conducted in accordance with the Association of Family and Conciliation Courts' (AFCC) Guidelines for Brief Focused Assessment.~~

G. Admissibility of Reports. A report prepared consistent with this rule shall be admissible into evidence, subject to cross-examination. The court may consider the information contained in the report in resolving the issue(s) addressed in the assessment. The Idaho Rules of Evidence do not exclude the report from consideration by the court.

H. Form of the Report and Transmittal to the Court. The written report shall be submitted to the Court provided that copies are contemporaneously distributed to the parties. The parties shall have an opportunity to cross-examine the assessor if the contents of the assessment are introduced into evidence in the form of expert testimony or a written report. If the report is oral, the court shall not hear the contents of the report and findings unless both parties are present.

I. Judicial Immunity. An assessor appointed to conduct a brief focused assessment pursuant to this Rule has qualified judicial immunity in accordance with Idaho law as to all acts undertaken pursuant to and consistent with the order of appointment.

**Proposed Amendments to IRFLP Rule 908-** The proposed amendments to IRFLP Rule 908 adopts recent amendments to the IRCP 54(e)(2) regarding attorney fees.

#### **Rule 908. Attorney Fees.**

A. Pursuant to Contract or Statute. In any civil action the court may award reasonable attorney fees, including paralegal fees, ~~which at the discretion of the court may include 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. 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.

AC. Pleading - Default Judgments. It ~~shall~~ is not be necessary for any party in a civil action to assert a claim for attorney fees in any pleadings; ~~provided, however, When attorney fees; when claimed to be allowable are requested pursuant to by contract or statute other than section 12-121, Idaho Code, in a judgment by default, the amount of attorney fees in the event of default must be included in~~ shall not be awarded unless the prayer for relief in the complaint and the award must not exceed the amount in the prayer states that the party is seeking attorney fees and the dollar amount thereof in case judgment is entered by default. Any award of attorney fees in default judgments shall be subject to the provisions of this Rule, and shall not exceed the amount prayed for in the complaint. Any award of attorney fees pursuant to under I.C. Section 12-120, in default judgments in which the defendant has not appeared shall must not exceed the amount of the judgment for the claim, exclusive of costs.

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

~~CE.~~ Objection to Attorney Fees. Any objection to ~~the allowance of a claim for~~ a claim for attorney fees, ~~or to the amount thereof, shall must~~ 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.

~~DF.~~ 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 ~~shall, upon motion of any party or upon the court's own initiative, must~~ 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 ~~shall must~~ must include in the order its reasoning and the factors it relied ~~upon~~ 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.

~~EG.~~ Claims to Which Rule Applies. ~~The provisions of this rule shall be applicable to all claims for attorney fees made pursuant to section 12-121, Idaho Code, and to any claim for attorney fees made pursuant to any other statute, or pursuant to any contract, to the extent that the application of these Rules to such a claim for attorney fees would not be inconsistent with such other statute or contract. 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.~~