

Proposed Amendments to the Idaho Rules of Family Law Procedure

April 2022

The following amendments to the Idaho Rules of Family Law Procedure (I.R.F.L.P) are recommended by the Idaho Supreme Court's Children and Families in the Courts Committee (CFCC) for approval by the Court.

Proposed Amendments to IRFLP 505 – The proposed amendments seek to alert and remind courts and parties of the expedited and temporary nature of the proceedings under this rule by requiring a title in the caption of the motion and implementing page limits.

Idaho Rules of Family Law Procedure Rule 505. Temporary Order Issued Without Notice.

(a) **Requirements.** The court may issue a temporary order without written or oral notice to the responding party or its attorney only if the following conditions are present:

(1) the title of the motion in the caption must be "I.R.F.L.P. 505 Motion for Temporary Order Issued Without Notice;"

(2) the verified motion or affidavit(s) must not exceed 20 pages, including attachments;

(~~13~~) specific facts in an affidavit or a verified motion for temporary order without notice clearly show that immediate and irreparable injury, loss, or damage will result to the moving party or minor child of the party before the responding party can be heard in opposition;

(~~24~~) the moving party or the moving party's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required; and

(~~35~~) the moving party submits a proposed temporary order without notice that complies with this Rule ~~is submitted~~.

(b) Contents of Temporary Order Issued Without Notice; Expiration and Extension.

(1) **Contents.** Every temporary order issued without notice must:

(A) describe the injury and state why it is irreparable;

(B) state why the order was issued without notice; and

(C) state the date and time for the hearing.

(2) **Expiration and Extension.** The temporary order issued without notice must be promptly filed and is only effective for a fixed period not to exceed 14 days. Prior to expiration, a party may file a motion and affidavit stating the reasons to extend the order. The court, for good cause shown, may extend the order for an additional period not to exceed 14 days or the responding party consents to a longer extension.

(3) **Expedited Hearing.** If the temporary order is issued without notice, a hearing must be set at the earliest possible time, taking precedence over all other matters except hearings on older matters of the same character. At the hearing, the party who obtained the order must proceed with the motion; if the moving party does not, the court must dissolve the order.

(4) **Continuance of Hearing.** The responding party is entitled to a continuance for a period of not more than 14 days to respond. If the responding party obtains a continuance, the temporary order issued without notice will remain in effect until the date of the continued hearing.

(5) **Service.**

(A) **Method of Service.** The moving party must immediately serve a copy of the motion, affidavits, and order to the responding party as provided in Rule 205 (c)-(e), unless the court orders personal service. The petition and summons, as well as any other required initial orders, if not previously served to the responding party, must be served as provided in Rule 204 prior to the hearing.

(B) **Time for Service.** The moving party must serve the motion, affidavits, and order within 5 days of entry or 2 days prior to the hearing, whichever is sooner.

(6) **Response to Motion.** The responding party may file an affidavit(s), not to exceed 20 pages, in response to the motion subject to the limitations set forth in Rule 504(c), and if the affidavit(s) ~~are~~ is served on the moving party at least 2 days prior to the hearing, the moving party will not be entitled to a continuance of the hearing unless good cause is shown.

(7) **Motion to Dissolve.** On 2 days' notice to the moving party or on shorter notice set by the court, the responding party may appear and move to dissolve or modify the order. The court must then hear and decide the motion as promptly as justice requires.

Proposed “NEW” IRFLP 604— Idaho courts have been working to create new avenues for family law parties to work together toward case resolution. The courts want families to retain as much family decision making as possible while a case is moving through the judicial process. The pandemic has also created a weight of cases pending litigation. This proposed Rule would create another avenue for case resolution ~~by using through the use of~~ Court Ordered Judicial Settlement Conferences. Approving this type of resolution would help ease the court dockets, as well as allow a collaborative family decision process.

Rule 604. Court Ordered Judicial Settlement Conference.

- (a) **In General.** A Judicial Settlement Conference is a voluntary process in which a judge facilitates communication between the parties and assists them in their negotiations as they attempt to resolve their claims pending before the court. The nature, extent, and results of the settlement conference are within the sole control of the parties.
- (b) **Initiation of Settlement Conference.** Once a family law case commences, the court may order a settlement conference on its own initiative, by motion of a party, or by stipulation of the parties. The presiding judge has the discretion to determine whether the settlement conference should be ordered.
- (c) **Order.** The court will issue an order setting the date for the settlement conference and requiring the parties' attendance. The order may include instructions governing the process and procedure used by the judge.
- (d) **Participation.**
 - (1) **Required Participants.** All parties and counsel must participate in the settlement conference fully, reasonably, and in good faith. Lead counsel, parties, and persons with full authority to settle the case must attend.
 - (2) **Optional Participants.** A judge may authorize a mental health professional, an attorney mediator, or the family court service manager to participate in the settlement conference. In addition, the court may authorize other necessary participants.
 - (A) The mental health professional must have a minimum of a master's in social work or professional counseling and maintain a current license.
 - (B) The attorney mediator must be on the official list compiled by the Idaho Supreme Court and maintained by the Administrative Director of the Courts.

- (C) The mental health professional, the attorney mediator, and family court services manager involved in the settlement conference have qualified judicial immunity in accordance with Idaho law as to all acts undertaken pursuant to and consistent with the order.

(e) **Non-Presiding Judge as the Settlement Conference Judge.**

- (1) **Report of Settlement Conference.** At the conclusion of the settlement conference, the judge will report to the presiding judge by written notice or oral record whether a settlement was achieved.
- (2) **Confidentiality.** None of the matters or information discussed during the settlement conference will be communicated to the presiding judge assigned to the case, unless all parties stipulate to said communication.

(f) **Presiding Judge as the Settlement Conference Judge.**

- (1) **Agreement.** The presiding judge may handle the settlement conference only if the parties agree.
- (2) **Substantive Discussion.** The presiding judge may have substantive discussions about the case during the settlement conference. If the matter proceeds to trial, only the evidence admitted at trial will be considered in rendering a decision. This may include statements made during the settlement conference, except that any offers made during the settlement conference will not be considered by the presiding judge at the trial or any other proceeding consistent with Idaho Rule of Evidence 408.
- (3) **Waiver.** The parties and counsel may sign a waiver authorizing the presiding judge to confer separately with the parties and counsel on substantive matters outside the presence of the other party during the settlement conference. A signed waiver must be filed prior to the start of the settlement conference.
- (g) **Resolutions.** Full or partial resolutions must be placed on the record as soon as reasonably possible after the settlement conference with both parties swearing to the contents under oath. The parties must reduce the agreements to a judgment for approval by the court.

Proposed Amendments to IRFLP 1003 – The rule was amended to add “Reunification Therapy” to the definition section.

Idaho Rules of Family Law Procedure Rule 1003. Supervised Access to Child.

(a) **Coverage.** This rule applies in cases in which the court orders supervised access to child.

(b) **Purpose.** This rule sets forth the duties and obligations for providers of supervised access to child. The best interest of child is the paramount consideration in deciding the manner in which supervision is provided.

(c) **Scope of Service.** These standards govern supervised access. Each court may adopt local court rules that are not inconsistent with these standards and which are necessary to implement these standards.

(d) **Definitions.**

(1) **Supervised Access.** Any contact between a supervised party and one or more child in the presence of an approved provider.

(2) **Provider.** Any contact between a supervised party and one or more child in the presence of an approved provider.

(3) **Exchange Supervision or Supervised Transfer.** Supervised access designed to facilitate the movement of one or more child between persons with the right to access those children. In this role, the provider waits at a neutral location and makes the exchange. Objective reports may be filed with the court regarding the behavior of the parties and the well-being of the child. Exchanges may take place at a variety of locations and times. The length of time between the first half of the exchange between parties and the return half may fluctuate between several hours or several weeks.

(4) **Non-Professional Provider.** Any provider who is not paid for providing supervised access services.

(5) **Professional Provider.** Any provider paid for providing supervised access services.

(6) **Therapeutic Provider.** A professional provider who is also a licensed mental health professional (including a psychologist, licensed master social worker, licensed professional counselor, marriage and family therapist, or an intern working under direct supervision of one of these professionals) and is ordered to provide Therapeutic Supervision.

(7) **Therapeutic Supervision.** The provision of supervised access services between the child and supervised party, as well as therapeutic intervention and modeling to help improve the parent-child interactions. A therapeutic provider may, when ordered, make evaluations and recommendations for further parent-child contact.

(8) **Supervised Party.** A person who is authorized to have contact with a child only by supervised access or who is subject to an order for supervised exchanges or transfers.

(9) **Reunification Therapy.** Use of therapeutic provider to reunite or reestablish a parent back into a child's life in a safe and controlled manner. A therapeutic provider may, when ordered, make assessments and recommendations for further parent-child contact.
