

Proposed Amendments to the Idaho Rules of Family Law Procedure

August 2024

The Idaho Supreme Court's Children and Families in the Courts Committee (CFCC) is seeking input on proposed revisions to the Idaho Rules of Family Law Procedure. Please send your comments to **Deena Layne**, dlayne@idcourts.net by **Thursday, August 15, 2024**. Thank you.

Proposed "NEW" I.R.F.L.P Part XI: Parenting Coordination– The proposed amendments to the Idaho Rules of Family Law Procedure (I.R.F.L.P) moves I.R.F.L.P. 1002 to the new Part IX: Parenting Coordination, and repeals I.R.F.L.P. 1002. Additionally, the proposed amendments seek to clarify language and court procedures regarding parenting coordination.

REVISED PARENTING COORDINATOR RULES
currently IRFLP 1002; proposed to be new Part X

Idaho Rules of Family Law Procedure Rule 1002. Appointment of Parenting Coordinator in Child Custody and Visitation Disputes.

REPEAL [Moved to I.R.F.L.P., Part XI]

PART XI: Parenting Coordination

Rule 1101. Appointment of Parenting Coordinator in Child Custody and Visitation Disputes.

(a) **Definitions.**

(1) **Parenting Coordinator.** A Parenting Coordinator is a qualified impartial provider appointed by the court either by stipulation of the parties, motion by one party, or on its own motion. The Parenting Coordinator will perform any or all of the following functions:

- (A) decide certain discretionary issues specified in the Order of Appointment relating to the physical and legal custody of minor children;
- (B) assist the parties with reaching agreements to resolve certain physical and legal custody issues; or
- (C) make recommendations to the court and the parties as allowed in the Order of Appointment.

(2) **Order of Appointment.** An Order of Appointment is the court order appointing the Parenting Coordinator. The Order must determine the scope of the Parenting Coordinator's authority and duties in the case.

(3) **"Best interest of the child"** is defined by Idaho Code § 32-717 and nothing in this rule may supersede, replace, or invalidate Section 32-717.

(b) **Purpose.** The purpose of appointing a Parenting Coordinator should be to help parents:

(1) implement a court order regarding child custody;

(2) comply with a court order regarding child custody;

(3) resolve day to day issues that arise regarding physical and legal custody issues of their children; and

(4) reduce re-litigation where high conflict threatens the safety or well-being of their children.

(c) **Exceptional Circumstances for Appointment.** An appointment for a Parenting Coordinator must be the exception not the rule. Such appointment must only be made when:

(1) the issues appear to be intractable or have been the subject of frequent re-litigation;

(2) the well-being of minor children is placed at risk by the parents' inability to co-parent civilly;

(3) one or both parents have committed domestic violence;

(4) one or both parents are chemically dependent or mentally ill; or

(5) other exceptional circumstances require such appointment to protect the child's best interests.

Rule 1102. Procedure for Appointing a Parenting Coordinator and for Removal or Resignation of a Parenting Coordinator.

(a) **Authorization.** The court is authorized to appoint a Parenting Coordinator pursuant to the Idaho Code § 32-717D and this rule.

(b) **Procedure.** The appointment must be made by an Order of Appointment, after having found exceptional circumstances specified in Rule 1002(A)(3) of these rules are present, based on either:

(1) a stipulation or agreement of the parties; or

(2) after a hearing on a motion filed by either a party or the court.

(c) **Court's Own Motion.** The court must give the parties at least seven (7) days' advance notice of a hearing on its own motion for the appointment of a Parenting Coordinator.

(d) **Timing.** The appointment of a Parenting Coordinator may be made at any stage in the proceedings after entry of an order, decree, or judgment establishing child custody.

(1) There is a rebuttable presumption against appointing a Parenting Coordinator at the time of a first order of custody. Prior to an appointment occurring, the court must make a finding that presumption has been overcome.

(e) **Selection.** The Parenting Coordinator must be a person selected by stipulation of the parties, or a qualified Parenting Coordinator who has met the requirements set forth in Rule 1107, Idaho Rules of Family Law Procedure.

(f) **Duration.** The term of the Parenting Coordinator's service must be designated in the Order of Appointment. The appointment must not exceed the date on which the youngest minor child subject to the Order of Appointment reaches the age of majority.

(g) **Removal and Resignation.**

(1) Either party may petition the court for termination of the Parenting Coordinator's appointment whenever the Parenting Coordinator has exceeded the scope of his authority, abused his discretion, or acted in a manner inconsistent with this Rule.

(2) The court may terminate the Order of Appointment at any time if the parties stipulate to such termination or if it finds that further efforts by the Parenting Coordinator would be contrary to the best interests of the children or no longer effective for the purpose for which the Parenting Coordinator was appointed.

(3) The Parenting Coordinator may resign at any time through a filed resignation with the court.

Rule 1103. Orders Appointing Parenting Coordinator and Authority.

(a) **Authority.** The Order of Appointment must specify the authority and duties of the Parenting Coordinator. An Order of Appointment that fails to identify the Parenting Coordinator's authority and duties grants only those powers and duties identified in Idaho Code § 32-717D(3).

(1) The Order of Appointment must not delegate to the Parenting Coordinator the court's exclusive, continuing jurisdiction to modify a child custody or child support order.

(2) The Parenting Coordinator does not have authority to make decisions regarding child support issues, including, but not limited to, issues concerning resolving whether a parent owes another parent payment for past medical costs.

(b) **Order of Appointment by Stipulation of the Parties.** The parties may delegate to the Parenting Coordinator by stipulation the authority to resolve any legal or physical custody issues regarding their child as set forth in their stipulated order. However, those issues cannot violate the court's exclusive jurisdiction.

(c) **Order of Appointment Based on a Motion Filed by the Court or a Party.** If the Order of Appointment is made by the court on its own motion or the motion of a party, then the Parenting Coordinator may assist the parties with reaching an agreement on any issue regarding legal and physical custody of their children. However, absent a stipulation of the parties, the Parenting Coordinator's authority to make a decision is limited to the following child custody issues if the decision is consistent with the controlling child custody order, decree, or judgment:

(1) the time, place, and manner of pick-up and delivery of the children;

(2) childcare arrangements;

(3) the selection of an appropriate supervisor if supervised visitation is ordered;

(4) the selection of which parent may enroll a child in school;

(5) other exceptional circumstances that require such appointment to protect the children's best interests;

(6) minor alterations in the parenting schedule with respect to weeknight, weekend, holidays, or vacation which do not substantially alter the basic time share allocation;

(7) scheduling "make-up" time in the event one parent is denied court-ordered custodial time by the other parent, in lieu of the party filing a motion for contempt based on the denial of that custodial time. The parent awarded "make-up" time cannot subsequently file a motion for contempt based on the denial of that time;

(8) when a particular child must commence overnight visitation with a parent;

(9) the extent to which significant others and relatives may participate in parenting time including any limitations on the role of significant others and relatives;

(10) the first and last dates for school break parenting time;

(11) the schedule and conditions of telephone and virtual communication with the children;

- (12) the manner and methods by which the parties may communicate with each other;
- (13) the approval of out-of-state travel plans by a parent or guardian with the children;
- (14) the children's travel and passport arrangements;
- (15) equipment and personal possessions of the children;
- (16) the attendance of one or both parents at parenting classes;
- (17) which parent may authorize counseling and other health care treatment for the children;
- (18) the authorization of the children's participation in extracurricular activities, including issues related to the transportation and allocation of costs for each activity; and
- (19) any other issues submitted for immediate determination by agreement of the parties relating to the legal and/or physical custody of the minor children, including clarification of inconsistencies or ambiguities in the controlling custody order, decree or judgment, so long as it does not encroach on the court's exclusive jurisdiction.

(d) **Recommendations.** If authorized by the Order of Appointment, a Parenting Coordinator may make recommendations to the parties and the court, or to the parties only, regarding:

- (1) any legal or physical custody issue pertaining to the child of the parties,
- (2) the appointment of an attorney or Guardian Ad Litem for the children, and
- (3) any financial issue related to the children of the parties, including child support.

The issues about which a Parenting Coordinator may make recommendations must be identified in the Order of Appointment. Recommendations made by a Parenting Coordinator are not binding on the parties or the court and must not have the effect of a decision of the Parenting Coordinator. The court must not issue an order based on a recommendation from a Parenting Coordinator absent a properly filed (a) stipulation by the parties, or (b) motion by one of the parties in accordance with the rules.

(e) **Access to Information.** The order appointing the Parenting Coordinator must grant the Parenting Coordinator reasonable access to all potentially relevant records, documents, and information related to the minor children of the parties, except information that is protected by an attorney-client privilege. The Parenting Coordinator must also be given access to communicate directly with the minor child if, in the Parenting Coordinator's discretion, such access is necessary to decide an issue within the scope of the appointment.

Rule 1104. Duties of Parenting Coordinator.

(a) **Primary Duty.** The Parenting Coordinator has a primary duty to be impartial and advise all parties of any circumstances bearing on possible bias, prejudice, or impartiality.

(b) **Other Duties.** During the initial conference with each party, the Parenting Coordinator must define and describe, in writing, the Parenting Coordinator's role established by the Order of Appointment. The description should include the following:

(1) the difference between a Parenting Coordinator and other forms of conflict resolution including therapy, counseling, and mediation;

(2) the circumstance under which the Parenting Coordinator will meet alone with the parties or any other person;

(3) the lack of confidentiality of the proceedings and, if applicable, the lack of any privilege against disclosure;

(4) the duties and responsibilities of the parties;

(5) the manner of service most likely to give each party notice of any or all of the Parenting Coordinator's decisions;

(6) the fact that the resolution of any disagreement not reached by mutual consent of the parties may be decided by the Parenting Coordinator subject to review by the court on motion or petition of either party;

(7) the parties right to seek independent legal counsel prior to resolving the issues or in conjunction with formulating an agreement;

(8) the information necessary for defining and resolving the disputed issues; and

(9) the duty to keep an adequate record of contacts with the parties and other interested persons in the case.

(c) **Submission of Reports.** The Parenting Coordinator may report to the court in writing the status of the case, including, but not limited to, those specific duties set forth in the Parenting Coordinator's Order of Appointment so long as copies of such reports are timely served on both parties. The Order of Appointment must require the Parenting Coordinator to make one status report to the court and the parties every six months. Reports will not be required more frequently than that except for on a specific finding of necessity.

Rule 1105. Proceedings Conducted by the Parenting Coordinator.

(a) **Procedure.** The Order of Appointment must specify the procedure to be followed by the Parenting Coordinator. The procedure specified should be simple, swift, and of reasonable cost.

The parties will be given an opportunity to be heard on every issue submitted to the Parenting Coordinator but the procedure to be followed can be informal and need not comply with the rules of evidence and procedure. Unless requested by the parties, no record need be made except for the Parenting Coordinator's decision. In emergencies and other circumstances involving severe time constraints, decisions may be made orally, but communicated to both parties, and followed by written confirmation within a reasonable time thereafter.

(b) **Communication from Parties.** The Parenting Coordinator must control the method and manner by which the parties communicate with the Parenting Coordinator. This may include ex-parte communication consistent with the circumstances set forth in the Parenting Coordinator's duties.

(c) **Non-Confidentiality.** All decisions made by the Parenting Coordinator and all information on which the decisions are based, including all information submitted by the parties to the Parenting Coordinator from any source, are not confidential in the sense that they may be disclosed to the parties and to the court. Third-party and public access to such decisions and information must continue to be governed exclusively by I.C.A.R. 32.

Rule 1106. Effect of Parenting Coordinator's Decisions.

(a) **Decision Effective Upon Service.** Every decision made by a Parenting Coordinator on matters submitted pursuant to the Order of Appointment is effective immediately on service to the parties. Effective means that it must be an affirmative defense to a motion for contempt if a party can show his act or omission, while in violation of a controlling custody order, decree or judgment was nevertheless in compliance with a subsequent decision made by a duly appointed Parenting Coordinator.

(b) **Manner of Service of the Parenting Coordinator's Decision.** The Parenting Coordinator's decision must be in writing and served on the parties by the means most likely to give them notice including hand delivery, email, facsimile or regular mail. Service is complete on mailing, delivery, or transmission by electronic means.

(c) **Parenting Coordinator Proposed Judgment.** If neither party has filed a timely motion to set aside or modify a decision as set forth below, then the Parenting Coordinator may submit to the court a copy of the decision and form judgment or decree. If the Parenting Coordinator submits a proposed judgment to the court based on a decision, the Parenting Coordinator must also file with the court a certificate of service that identifies the date on which the decision was served on each party along with the decision and the description of the manner of service. If the court determines that the requirements have been met, it may enter the judgment immediately and the judgment must thereafter be enforceable by contempt.

(d) **Setting Aside or Modifying Decision.** Within seven (7) days of service of the decision on the parties, either party may file a motion with the court to set aside or to modify the Parenting Coordinator's decision. A party who files a motion must also serve the other party and the

Parenting Coordinator with the motion and any supporting affidavits and legal memoranda by the method most likely to give notice under the circumstances of the case. The filing of a motion does not stay the decision unless the court orders otherwise. Failure to timely file a motion must constitute a waiver of all objections to the decision.

(e) **Limited Bases for Review.** The only bases on which a party may file a motion to set aside or modify a decision by the Parenting Coordinator are as follows:

(1) The Parenting Coordinator exceeded the scope of authority provided in the Order of Appointment;

(2) The Parenting Coordinator abused his discretion in making the decision; or

(3) The legal custody issues relate to education or health care and are subject to de novo review by the court.

(f) **Standard of Review.** A motion based on a claim that the Parenting Coordinator exceeded his authority in reaching the decision must be by clear and convincing evidence. A motion based on subsection (e)(2) must be reviewed by an “abuse of discretion” standard as defined by Idaho law.

Rule 1107. Parenting Coordinator Qualifications and Training.

(a) **Appointment.** To be appointed as a Parenting Coordinator, in the absence of a stipulation of the parties, a person must be on the list of mediators compiled by the Supreme Court and maintained by the Administrative Director of the Courts pursuant to Rule 602 of these rules, as well as the requirements and training as set forth below.

(b) **Training.** Parenting Coordinators must have participated in at least 20 hours in domestic violence and lethality assessment within 2 years of the initial application. They must also have a basic familiarity with child development as it pertains to the issues of bonding, attachment, and loss early in life and future child development.

(1) The 20 hours of training required must be in one or more of the following areas:

(A) domestic violence;

(B) violence in families,

(C) child abuse;

(D) anger management;

(E) evaluation of future dangerousness; or

(F) psychiatric causes of violence.

(2) Parenting Coordinators must acquire their training by completing a program approved or sponsored by one of the following associations:

(A) Idaho Psychiatric Association;

(B) Idaho Psychologists Association;

- (C) Idaho Nursing Association;
- (D) Idaho Association of Social Workers;
- (E) Idaho Counselors Association;
- (F) Council on Domestic Violence and Victim Assistance;
- (G) Idaho State Bar;
- (H) Idaho Supreme Court;
- (I) an accredited college or university; or
- (J) any state or national equivalent of these organizations.

(3) Any program that does not meet the criteria set out in this subsection may be submitted for approval either prior to or after completion.

(c) **Criminal History Check.** Each Parenting Coordinator must, at his own expense, submit a criminal history check as provided in I.C.A.R. 47.

(d) **Conditional Denial Process.** If the application indicates the applicant lacks any of the necessary qualifications the application will be conditionally denied. The applicant will have 30 days after the conditional denial to provide any additional documentation concerning his qualifications or criminal history. The denial must become final 30 days after the conditional denial unless the Administrative Director of Courts or designee determines after reviewing any additional documentation submitted that the applicant is qualified and fit to perform as Parenting Coordinator.

(e) **Compensation.** A Parenting Coordinator must be compensated for regular fees and expenses, which must be clearly set forth in the information and materials provided to the parties. The parties will divide costs and expenses either on an equal basis, or pro rata pursuant to the Idaho Child Support Guidelines, whichever is appropriate in the matter. If a Parenting Coordinator is not paid, the court, on motion of the Parenting Coordinator, may order payment. Any dispute regarding payment of the fees and costs of the Parenting Coordinator must be subject to review by the court on request of the Parenting Coordinator or either party. In no situation shall an order dictate the Parenting Coordinator assess financial responsibility based solely on which party asked for intervention on a matter. Should the Parenting Coordinator find that a party is abusing the process the Parenting Coordinator, in his own discretion, may reallocate the cost for a particular matter as he believes is appropriate.

(f) **Immunity.** The Parenting Coordinator has qualified judicial immunity in accordance with Idaho law as to all acts undertaken pursuant to and consistent with the Order of Appointment.