

Proposed Amendments to the Idaho Rules of Family Law Procedure

July 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 **Wednesday, August 7, 2024**. Thank you.

Proposed Amendments to IRFLP 815 and 816: The proposed amendments to IRFLP 815 and 816 seek to clarify and simplify remedies available to the courts.

Idaho Rules of Family Law Procedure Rule 815. Enforcement of Terms of Orders, Judgments, or Decrees Other Than Custody.

(a) **Commencement.** A party seeking enforcement of an order, judgment, or decree in a family law action may file a verified petition to enforce, alleging denial or interference with a court ordered term. The provisions of this rule are separate and distinct from a contempt proceeding under Rule 812, enforcement proceedings under Rules 814 and 816, and other remedies provided by law.

(b) **Form of Petition to Enforce.** The verified petition to enforce of no more than 20 pages must set forth:

(1) the date of the court order, judgment, or decree awarding the moving party the term sought to be enforced;

(2) how the responding party or their attorney was served with a copy of the order, judgment, or decree or had knowledge of it;

(3) the term of the order, judgment, or decree for which enforcement is sought;

(4) specific facts constituting a denial or interference with the order, judgment, or decree;

(5) the efforts the moving party has made to confer with the responding party regarding the relief sought;

(6) the relief sought;

(7) and attach a copy of the order, judgment, or decree with the clerk's file stamp showing the date of filing. The attached order, judgment, or decree is excluded from the 20 page limitation.

(c) **Service.** The petition must be served upon all parties entitled to service along with a summons. The method of service will be the same as for an original family law action set forth in Rule 204 and service will be on the responding party rather than on the previous attorney of record for the party. If the petition to enforce is initiated in a family law action currently pending, the petition may be served as provided by Rule 205(c)-(e), unless the court orders personal service.

(d) **Adjudication.** A petition to enforce will be adjudicated in the same manner as an original family law action or may be expedited as directed by the court.

(e) **Available remedies for enforcement of court ordered terms.** After a hearing, if the court finds a party has failed to comply or interfered with the order, judgment, or decree, or if an ambiguity in the order requires clarification, the court may ~~order one or more of the following~~:

(1) award costs associated with the denial or interference;

(2) enter a money judgment upon which interest accrues;

(3) order compliance with the term by a specific time;

(4) ~~clarification of~~ clarify the terms to effectuate the order, judgment, or decree;

(5) ~~award reasonable attorney fees, when available by statute or contract, and costs to the prevailing party~~ impose a sanction, including attorney fees and costs, for bad faith conduct when a party willfully conducts itself improperly or acts with an improper purpose; and

(6) issue any other appropriate remedy as determined by the court.

Idaho Rules of Family Law Procedure Rule 816. Enforcement of Parenting Time.

(a) **Commencement.** A party seeking to enforce court ordered parenting time will file a verified petition alleging denial or interference with parenting time. The provisions of this rule are separate and distinct from a contempt proceeding under Rule 812 and other remedies provided by law, including enforcement provisions governed by Idaho Code §§ 32-11-308 to 32-11-317 of the Uniform Child Custody Jurisdiction and Enforcement Act.

(b) **Form of Petition.** A verified petition to enforce parenting time of no more than 20 pages must set forth:

(1) the date of the order, judgment, or decree sought to be enforced;

(2) how and when the responding party and/or their attorney was served with a copy of the order, judgment, or decree or had knowledge of it;

(3) the specific term of the order, judgment, or decree for which enforcement is sought;

(4) specific facts constituting a denial or interference with the order, judgment, or decree;

(5) the efforts the moving party has made to confer with the responding party regarding the relief sought;

(6) the relief sought; and

(7) attach a copy of the order, judgment, or decree with the clerk's file stamp showing the date of filing. The attached order, judgment, or decree is excluded from the 20 page limitation.

(c) **Service.** The petition to enforce parenting time must be served upon all parties entitled to service along with a summons which substantially complies with the form in Appendix A. The method of service will be the same as for an original family law action set forth in Rule 204 and service will be on the responding party rather than on the previous attorney of record for the party. If the petition to enforce parenting time is initiated in a family law action currently pending, the petition may be served as provided by Rule 205(c)-(e), unless the court orders personal service.

(d) **Timing of Service.** The petition and summons must be filed and served on the responding party at least 14 days before the hearing.

(e) **Response to Petition.** The responding party may file an affidavit of no more than 20 pages opposing the petition. Responsive affidavits must be filed and served on the moving party at least 7 days before the hearing.

(f) **Reply to Petition.** The moving party may file a reply affidavit of no more than 3 pages. Reply affidavits must be filed and served on the responding party at least 2 days prior to the hearing.

(g) **Hearing.**

(1) The hearing will be held not more than 28 days after the filing of the petition.

(2) The petition will be decided exclusively on the petition, affidavits, and oral argument unless, at the hearing, the court determines the parties should be allowed

to present evidence. In such case, the court will schedule an evidentiary hearing within a reasonable time.

(3) The court may grant a request for continuance from either party upon showing of good cause. There is a presumption that final disposition of a petition to enforce parenting time will take place no more than 42 days after the filing of the petition. Upon good cause shown, the timeframe may be extended to allow for discovery or other actions as may be appropriate.

(4) Any exception to the time limits in this rule may be granted by the court for good cause shown. In time-sensitive matters, the court may grant a motion to extend or shorten time without notice to the other party.

(h) **Available remedies.** After a hearing, if the court finds a party has failed to comply or interfered with a parenting time order, judgment, or decree, the court may ~~order one or more of the following~~:

(1) ~~temporary modification of~~ temporarily modify the parenting time order, judgment, or decree if the court finds it is in the best interest of the child including:

(A) compensatory (make up) parenting time with the child;

(B) modification of transportation and exchange arrangements; and

(C) clarification of terms to effectuate the order;

(2) impose economic sanctions, including the award of monetary compensation for the costs resulting from a parent's failure to appear for scheduled parenting time;

(3) ~~suspension of~~ suspend a parent's license consistent with applicable law;

(4) ~~appointment of~~ a parenting coordinator;

(5) ~~award reasonable attorney fees, when available by statute or contract, and costs to the prevailing party~~ impose a sanction, including attorney fees and costs, for bad faith conduct when a party willfully conducts itself improperly or acts with an improper purpose; and

(6) issue any other appropriate remedy as determined by the court.