

## **Proposed Amendments to the Idaho Rules of Family Law Procedure**

**November 2022**

The Idaho Supreme Court's Children and Families in the Courts Committee is seeking input on proposed revisions to the Idaho Rules of Family Law Procedure. Please send your comments to **Deena Layne**, [dlayne@idcourts.net](mailto:dlayne@idcourts.net) by **Friday, December 2, 2022**. Thank you.

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**Proposed Amendments to IRFLP 502** – The proposed amendments seek to clarify that motions for orders issued without notice will be heard and decided exclusively on the motion and affidavits unless certain conditions are present.

### **Rule 502. Evidence on Motions.**

- (a) When a motion is based on facts not appearing of record the court may hear the matter on affidavits or may hear it wholly or partly on oral testimony or on depositions.
- (b) **Hearing on a Motion for Temporary Order.** A motion for temporary order will be heard and decided exclusively on the motion and affidavits unless, at the hearing on the motion for temporary orders, the court determines that the parties should be allowed to present evidence. In such case, the court will schedule an evidentiary hearing within a reasonable time.
- (c) **Hearings on an Order Issued Without Notice.** A hearing on an order issued without notice will be heard and decided exclusively on the motion and affidavits unless any party elects to produce testimony and evidence at any hearing or to cross-examine the adverse party or the party's affiants, by first giving notice of at least 24 hours to the court and opposing attorney before the hearing, which requirement will be stated in the body of the notice. If such notice is timely given it will not be necessary to subpoena the adverse party or the party's affiants and the adverse party will 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 fees for the requesting party. The hearing, notice and expiration periods set forth in Rule 505, 506 and 508 apply to any order issued without notice under this rule.

**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 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.
- (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 “NEW” IRFLP 814**– Idaho courts have been working to create a procedural mechanism for enforcement of existing orders in family law cases in order to provide an alternative to contempt proceedings (where appropriate), or modification actions where the moving party’s true intent is to enforce existing rights. This proposed Rule allows for expedited hearings when a parent alleges denial of, or interference with, parenting time and allows remedies including compensatory (make up) time. It is modeled in part upon similar authority in New Jersey and Kansas.

## **Rule 814. Enforcement of Orders, Judgments, or Decrees.**

(a) **Expedited Enforcement Procedure Regarding Custody, Visitation, or Parenting Time.** Expedited enforcement of a custody order issued in the state of Idaho, or of another state if the foreign order has been registered in accordance with applicable law, is governed by Idaho Code §§ 32-11-308 to 32-11-317.

### **(b) Enforcement of Court Ordered Custody, Visitation, or Parenting Time.**

(1) **Commencement.** A party seeking to enforce a court ordered custody, visitation, or parenting time term will file a verified petition to enforce parenting time alleging denial or interference with custody, visitation, or parenting time. The provisions of this Rule are separate and distinct from a contempt proceeding under Rule 812 and other remedies provided by law.

(2) **Form of Petition to Enforce Parenting Time.** The verified petition to enforce parenting time of no more than 20 pages must set forth:

(A) the date of the order, judgment, or decree awarding the moving party the rights sought to be enforced;

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

(C) the term of the order for which enforcement is sought;

(D) specific facts constituting a denial or interference with the order;

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

(F) the relief sought.

(3) **Service.** The petition 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.

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

(5) **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.

(6) **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.

(7) **Hearing.**

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

(B) The petition will be heard and decided exclusively on the petition and affidavits 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.

(C) 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.

(D) Any exception to the time limits in this rule may be granted by the court for good cause shown. If time does not permit a hearing or response on a petition to extend or shorten time, the court may rule without opportunity for response or hearing.

(8) **Available remedies.** After a hearing, if the court finds a party has violated an order for custody or parenting time by denial or interference with the order, the court may order one or more of the following:

(A) temporary modification of the order of custody, visitation, or parenting time if the court finds it is in the best interest of the child including:

- (i) compensatory (make up) parenting time with the child;
- (ii) modification of transportation and exchange arrangements; and
- (iii) clarification of terms to effectuate the order;

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

- (C) suspension of a parent's license consistent with applicable law;
- (D) appointment of a parenting coordinator;
- (E) an award reasonable attorney fees and costs to the prevailing party; and
- (F) any other appropriate remedy as determined by the court.

**(c) Enforcement of Other Terms of Orders, Judgments, or Decrees.**

- (1) **Commencement.** A party seeking enforcement of a court ordered term in a family law action will file a verified petition to enforce alleging denial or interference with the court ordered term. The provisions of this Rule are separate and distinct from a contempt proceeding under Rule 812, a money judgment under Rule 201(d), and other remedies provided by law.
- (2) **Form of Petition to Enforce.** The verified petition to enforce must set forth:
  - (A) the date of the court order, judgment, or decree awarding the moving party the term sought to be enforced;
  - (B) how the responding party or their attorney was served with a copy of the order, judgment, or decree or had knowledge of it;
  - (C) the term of the order for which compliance is sought;
  - (D) specific facts constituting a denial or interference with the order;
  - (E) the efforts the moving party has made to confer with the responding party regarding the relief sought; and
  - (F) the relief sought.
- (3) **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.
- (4) **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.

(5) **Available remedies for enforcement of court ordered terms.** After a hearing, if the court finds a party has violated a court ordered term by denial or interference with the order, the court may order one or more of the following:

(A) costs associated with the denial or interference;

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

(C) order compliance of the act by a specific time;

(D) clarification of the terms to effectuate the order;

(E) an award of reasonable attorney fees and costs to the prevailing party; and,

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