

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

**June 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 **Tuesday, July 2, 2024**. Thank you.

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**Proposed "NEW" IRFLP 117 and Amendments to IRFLP 118:** In response to 2024 House Bill 629, which provides for the appointment of a guardian ad litem in child custody cases, the CFCC is proposing the following revisions to the IRFLP.

The revisions seek to provide minimum qualifications and guidance for the appointment of child advocates in child custody cases, to either: 1) be the child's attorney to represent the child's interests based on the child's wishes; or 2) be the child's guardian ad litem to represent the best interest of the child as specified in Idaho Code § 32-717.

(NOTE: Due to the significant number of revisions, this document does not include track changes or strikethroughs/underlines to indicate where the changes were made.)

### **Idaho Rules of Family Law Procedure 117. Statement of a Child.**

(a) **Court Interview of a Child.** On motion of any party, or its own motion, the court may, in its discretion, conduct an in camera interview with a minor child who is the subject of a custody, parenting time, or domestic violence civil protection order dispute, to ascertain any relevant information, including the child's wishes as to the child's custodian and as to parenting time. The interview may be conducted at any stage of the proceeding and will be recorded by a court reporter or any electronic medium. The record of the interview may be sealed, in whole or in part, on a showing of good cause and after considering the best interests of the child. The parties may stipulate that the record of the interview will not be provided to the parties.

(b) **Statement of a Child.** Unless a minor child is represented by a child advocate as set forth in Rule 118, and except in emergency situations, no minor child will provide sworn testimony, either written or oral; be brought to court as a witness or to attend a hearing; or be subpoenaed to appear at a hearing without prior court order on a showing of good cause.

(c) **Testimony of a Child.** A motion by one of the parties to offer the testimony of a minor child will be in writing, filed with the court, and served on all parties not less than 28 days prior to the hearing or trial, unless good cause is shown. The court must rule upon such a motion no later than 7 days prior to the hearing or trial in the matter. On reasonable notice under the circumstances, the court may, on its own motion, compel the testimony of a minor child.

## **Idaho Rules of Family Law Procedure 118. Child Advocate**

(a) **Child Advocate Appointment.** The court may appoint an attorney to either:

- (1) be the child's attorney to represent the child's interests based on the child's wishes; or
- (2) be the child's guardian ad litem to represent the best interest of the child as specified in Idaho Code § 32-717.

(b) **Child Advocate Qualifications.** The court may appoint an attorney who is qualified through training or experience, as determined by the court and according to any standards established by Idaho law or rule. At a minimum, the attorney must have five years of experience in family law litigation and appropriate training as determined by the court.

(c) **Appointment Order.** The order appointing a child advocate must include:

- (1) a clear statement of the type of advocate appointed;
- (2) the duration of the appointment;
- (3) the advocate's compensation, and an allocation of fees and expenses between the parties;
- (4) authorization for the advocate to have immediate access to the child;
- (5) authorization for the advocate to have immediate access to any privileged or confidential information and records relating to the child;
- (6) requirements for the parties to sign appropriate releases that comply with the Health Insurance Portability and Accountability Act (HIPAA), understanding that the attorney for the child has no authority to release the confidential documents, unless by court order;
- (7) requirements for a custodian of any of the child's records to provide the advocate with access to those records; and
- (8) requirements for all parties to promptly notify the advocate of all hearings, investigations, depositions, or significant changes of circumstances involving the child.

(d) **Participation.**

- (1) An attorney for the child appointed under this rule:
  - (A) must notify the court and decline appointment if the child is not of sufficient age, maturity, or intelligence to guide the attorney;
  - (B) must participate in any proceedings relating to child custody to the same extent as an attorney for any party;

(C) must not engage in ex parte contact with the court except as authorized by law;

(D) may call any court-appointed expert witness for cross-examination regarding the witness' report without a party listing the advisor as a witness;

(E) may not be compelled to produce the attorney's work product developed during the appointment;

(F) may not be required to disclose the source of information obtained as a result of the appointment;

(G) must not submit a report into evidence; and

(H) must not testify in court.

(2) A guardian ad litem appointed under this rule:

(A) must represent the child's best interest;

(B) must conduct an independent factual investigation of the circumstances of the child;

(C) must inquire of any child capable of expressing wishes;

(D) must meet with any parent or other person having legal or physical custody of the child, record the concerns of the parent, and report them to the court, or if no such meeting occurs, file an affidavit stating why no meeting occurred;

(E) participate in any proceedings relating to child custody;

(F) must not engage in ex parte contact with the court except as authorized by law;

(G) must submit a written report to the court stating the results of the investigation, the guardian ad litem's recommendations, and such other information as the court may require. The guardian ad litem's written report shall be delivered to the court, with copies to all parties to the case, at least 7 days before the date set for the final pretrial conference;

(H) will have the right and power to file pleadings, motions, memoranda, and briefs on behalf of the child;

(I) may be deposed by any party; and

(J) may testify at a hearing or trial.

(3) **Right to Call Child's Attorney Guardian Ad Litem as a Witness.** A party, including a child's attorney, may call the attorney guardian ad litem as a witness

and cross-examine the guardian ad litem regarding the report and the investigation, even if the party did not list the guardian ad litem as a witness.

(e) **Confidentiality.** Nothing in this rule alters the duty of an attorney to report child abuse or neglect under applicable law.