

In the Supreme Court of the State of Idaho

IN RE: ORDER AMENDING LOCAL RULES)
OF THE FIFTH JUDICIAL DISTRICT) ORDER

The Court having previously approved on May 25, 2017, the Family Law Caseflow Management Plan submitted by the Fifth Judicial District:

NOW, THEREFORE, IT IS HEREBY ORDERED, that the local rules of the Fifth Judicial District be amended to include the approved Family Law Caseflow Management Plan, attached to this order, and the amended local rules are hereby approved and adopted.

IT IS FURTHER ORDERED, that the amended local rules of the Fifth Judicial District shall become effective immediately.

IT IS FURTHER ORDERED, that said amendments to the Local Rules of the Fifth Judicial District of the State of Idaho shall be sent to the trial court administrator of the Fifth Judicial District for publication and dissemination.

IT IS FURTHER ORDERED, that the Fifth Judicial District is hereby authorized to submit the amendments to the editors of *The Advocate* for publication and inclusion in the *Idaho State Bar Desk Book*.

Dated this 15 day of August, 2018.

By Order of the Supreme Court

R. Burdick
Roger S. Burdick, Chief Justice

ATTEST:

Karel A. Lehrman
Clerk

I, Karel A. Lehrman, Clerk of the Supreme Court/
Court of Appeals of the State of Idaho, do hereby
certify that the above is a true and correct copy of
the Order
entered in the above entitled cause and now on
record in my office.

WITNESS my hand and the Seal of this Court 8-15-18

KAREL A. LEHRMAN

Clerk

By: Michelle Goyens Chief Deputy

Family Law Caseflow Management Plan for Idaho's Fifth District

Statement of Purpose

This caseflow management plan will be administered consistently with Idaho's Statewide Caseflow Management Plan. It applies to the management of the following types of cases: divorce with children, divorce without children, child custody, legal separation, annulments, paternity, child support, de facto custodian, and modifications of any of the aforementioned case types.

The purposes of this plan are to ensure fair, just, and timely case resolution in the courts of the Fifth District by:

1. Preventing unnecessary delay in case processing.¹
2. Ensuring that each case receives individual attention proportional to need in order to ensure a just result in each case.
3. Promoting judicial leadership and instituting continuous court oversight over the progression of cases from filing to disposition.
4. Creating consistency and predictability for users of the court system.
5. Setting reasonable and mutually understood clear expectations for judges, litigants, the Bar, and the public.
6. Ensuring that judges, court clerks, and trial court administrators have consistent, meaningful case management information to inform their efforts.

Section 1: Assignment of judges in the Fifth District

All magistrate judges are assigned matters specified in Idaho Code 1-2208 and Chapter 23, Title 1, Idaho Code. Additional matters may be assigned by the administrative district judge pursuant to Idaho Code 1-907. In addition, the Idaho Supreme Court may, by rule, specify additional categories to magistrate judges pursuant to Idaho Code 1-2210.

Backup judge coverage may be provided in instances of scheduling conflicts, judicial conferences, vacations, illness, etc., by assignment to both senior and sitting judges, as available.

The administrative district judge in each judicial district is responsible for the overall assignment of judges and caseloads to ensure effective caseflow management. Each administrative district judge considers carefully the number and types of judges available within the district, as well as the availability of senior judges. Other considerations include population density, distribution and mix of caseloads, number of counties, geography and driving distances, the feasibility and desirability of specialization of caseloads, and societal and workload trends. The administrative district judge and trial court administrator continually monitor the assignment of judges and the effective use of existing resources.

Judicial assignments for the hearing of family law cases in the Fifth District are set forth in the Idaho State Bar Desk Book and are modified from time to time.

Section 2: Management of Family Law Cases

¹ According to Article I, Section 18 of the Idaho Constitution, "...justice shall be administered without...delay." According to the American Bar Association's *Standards Relating to Court Delay Reduction*, delay is "any elapsed time other than reasonably required for pleadings, discovery, and court events."

Section 2.1: Idaho Time Standards for Processing Family Law Cases

Idaho Court Administrative Rule 57 establishes time standards for case processing for individual case types. Per the rule, the time standards “are adopted as guidelines for judges, trial court administrators, lawyers, and litigants to assist them in determining the length of time it should take to conclude a case in the trial courts.” Time standards establish reasonable, mutual expectations for the courts, attorneys, and the public and can be an effective way of boosting public confidence in the Idaho courts.

When monitored regularly, time standards serve as a tool to assist courts with managing caseloads, preventing backlog, and assessing progress towards case processing goals. In short, they are a tool for ensuring that Idaho Courts are meeting their goal to provide timely case resolution as reflected in the Mission Statement of the Idaho Judiciary and as mandated in the Idaho Constitution. The identification and monitoring of processing times for key interim case events for each case type is an additional tool to assist with case management efforts, allowing for the identification of specific areas of delay in the case process.

Judges, clerical staff, and trial court administrators consistently monitor time standard reports each month and use the information to take action in particular cases and to adjust processes and reallocate resources to meet case processing goals.

Pursuant to ICAR 57, the current time standard for family law cases (new filings only) is 180 days from the filing of the petition to disposition. The revised time standards that have been approved by the Idaho Supreme Court for piloting to begin in 2015 are:

New Cases	75% within 120 days 90% within 180 days 98% within 365 days Measured from filing of the petition to disposition (entry of judgment)
Modifications	75% within 120 days 90% within 180 days 98% within 270 days Measured from the filing of the petition to modify to disposition (entry of judgment)

Section 2.2: Assignment of Cases

The purposes of a case assignment policy are 1) to establish for the district the process by which cases will be assigned (individual case assignment or an alternative calendar system), 2) identifying cases in which continuity of judicial attention is important, 3) to designate the instances in which cases involving the same parties or members of the same family (regardless of case type) will be assigned or consolidated for adjudication by the same judge, and 4) to put in place case assignment processes that ensure the public that the assignment of cases to judges within the Fifth District is not susceptible to control or manipulation by parties or attorneys.

The Fifth District employs the following case assignment process for family law cases:
(Indicate whether individual or alternative calendar systems are used).

The Fifth District follows the random method of assignment and reassignment. However, the Fifth District will generally attempt to combine cases that involve family law both within the county and the district. For example, if a Child Protection case has been filed and later a divorce case is filed the judge who has been assigned to the CP case will get the divorce case. If the cases are in different counties, a formal transfer of that case will be done when practicable; the first case filed will determine venue unless venue is formally changed.

Cases are assigned to judges using the following procedure:

(Include processes for identifying cases appropriate for assignment to a judge currently handling a related case or a case involving members of the same family as well as the process for the initial assignment of all other cases. Also, include processes for assigning modification cases).

On a regular county assignment process unless/until there are several matters with the same family either before several judges (most likely to occur in Twin Falls County) or in more than one county; in which case the procedure set forth above will be followed if practicable in order to try to conform to the practice of “one family, one judge.”

The Fifth Judicial District adheres to the provisions of IRFLP 110 in responding to recusals, disqualifications, and the need for additional judges to handle lengthy trials by assigning cases to other sitting judges or senior judges assigned to the district.

Section 2.3: Service, Joinder of Issues and Engagement of Counsel

Delay in, or failure of, service of process, joinder of issues, and engagement of counsel often lead to long delays in the commencement of a family case or to a case’s dismissal for failure to take action. Problems with service of process and joinder of issues are particularly likely to arise in cases where the plaintiff is self-represented. It is important for defendants to have an adequate opportunity to consult or retain counsel not only to protect their legal rights but also to facilitate the earliest resolution of civil cases. However, persistent failure to obtain counsel is also a cause of unnecessary delay.

The Fifth District follows these practices in helping self-represented litigants to complete service of process:

Attorney workshops for SRL are scheduled by the Court Assistance Office in many counties. Court Assistance Officers are also available to provide services to SRL at all stages of the family law cases.

The Fifth District follows these practices in helping self-represented defendants to complete the preparation and filing of an answer and obtain counsel in a timely manner:

- Because service issues outside of the United States is a concern, and most often in Mexico, our Court Assistance Offices will be equipped with Spanish and other language forms as they become available through the Idaho Supreme Court.
- Attorney prefilling workshops for SRL are scheduled by the Court Assistance Office in many counties. These workshops are a work in progress with the idea of perhaps

combining the workshops with Family Court Services as well as combining some counties for once a month workshops. The workshops are currently in place in Twin Falls, Minidoka and Cassia counties.

The Fifth District carefully follows the provisions of IRFLP 120 in dismissing civil cases for failure to take action and in allowing their reinstatement.

[Consider referring self-represented litigants to the court assistance office for further information and assistance with these processes].

- The Court will send out advance notice of intent to dismiss for inactivity prior to such dismissal.
- Courts are encouraged to consider also setting and/or utilizing status conferences just as the Court would with represented parties.

Section 2.4: Proactive Case Management/Early and Continuous Assessment

All cases and calendars are set in such a way to prevent unnecessary delay in case processing, while balancing the effective use of the time of parties, victims, judges, attorneys, and court personnel.

The District adopts a proactive case management approach that monitors the progress of all family cases and proactively intervenes in every case that is not progressing satisfactorily. Idaho judges continuously assess cases to ensure that every case receives individual attention and to make sure that the amount of individual attention is proportional to need. The amount of court time and resources devoted to a case and the pace at which a case progress depends on the complexity and individual needs of that case. Some cases can be resolved quickly with little court involvement while other cases require more time, court appearances, and judicial oversight to reach resolution. Through an early and ongoing assessment process, the judge manages the progress of a case in a manner that will result in the most timely and just resolution possible, given the individual circumstances of that case.

The Court maintains early and continuous control of all cases from initiation through post-disposition proceedings by the use of:

- Assessment of the need for interpretive services;
- Case assessment to determine the most appropriate plan for managing a case, including referral to family court resources and services;
- Scheduling orders and conferences for purposes of achieving date certainty;
- Management of discovery and motion practice in accordance with the Idaho Rules of Family Law Procedure;
- Realistic setting of trial dates and time limits;
- Court control of continuances for purposes of fostering early voluntary resolution of most cases and achieving trial date certainty for those cases that are resolved by trial.

Ongoing review of cases is necessary to ensure that a future action or review date has been set by the court in every case.

Differentiated Case Management (DCM) is an effective case management tool that involves formally screening cases at initiation and assigning them to a predefined “case track” that is proportionate to the needs of that case. Districts have the option of employing a DCM process. If used, judges have the discretion to move a case from its assigned path to one that is more appropriate, given the developments in the case.

The Court uses the following criteria when utilizing differential case management or otherwise proactively managing a family case:

- Whether there are pending child protection, juvenile delinquency, guardianship, or other cases involving the same family including criminal histories;
- Number of parties;
- Whether the parties are represented by counsel;
- Whether the issues in the case will be contested;
- Whether the case involves minor children; cases involving younger children may need special attention;
- The length of the marriage or whether the parties were never married;
- Whether a party is in the military and/or out of state;
- A history of, or evidence of the existence of, domestic violence, substance abuse, child abuse, or mental health issues;
- Complexity of factual and legal issues, for example, the amount of and nature of property involved in the case, children’s behavioral issues, children’s special needs, or the level of parental conflict; and
- Likelihood of going to trial/informal custody trial and estimated length of trial.

The Fifth District uses the following processes to ensure that family law cases are assessed early and managed proactively and on an ongoing basis:

- A status and scheduling hearing will be set 35 - 45 days out from receipt of appearance and/or answer (about the time mandatory disclosures should be completed if an answer was filed and notification on IRFLP Rule 102 B/IRE should have been made).
- At time of status/scheduling hearing, the Court should inquire as to above noted criteria to start early case assessment regarding ADR, evaluations, and trial settings. If only an appearance has been made at that time, the court will inquire to confirm when answer will be filed. Court’s scheduling order can trigger mandatory disclosures, even if an answer has not been filed yet. (Rule 401 IRFLP “... unless otherwise ordered by the Court...”)
Note: Some practitioners have been incorporating their Rule 102.B notification into the answer or complaint, which technically satisfies the requirements of the Rule, but can be missed by the party and /or Court. It is recommended that the evidence notification be a separate document.
- For Cases involving Self-Represented Litigants (SRL) (one or both parties), the Court should schedule at least one status conference between scheduling conference and pre-trial conference with mandatory attendance of parties.
- For cases in which both parties are represented, the Court will schedule status conference when requested by the parties’ attorneys or at court’s discretion.

- The Court may set more status conferences as needed, and may require party appearance, not just counsel, particularly for cases where one or both are SRL and/or there are language barriers. If parties are not attending, the status conference can be held telephonically.
- Status conferences shall be utilized to address issues of (1) discovery and mandatory disclosures; (2) use of informal custody /support trial if applicable; (3) utilization of expert witnesses including parenting time evaluation; vocational evaluation; (4) status of pleadings; (5) scheduling interlocutory motions; (6) need for interpreters and notice of same; (7) evidence compliance notification; (8) status of voluntary or court ordered mediation; (9) whether referral to Family Court Services is appropriate for any issues between the parties; (10) any other matter that will serve the interest of justice.
- If there has been no responsive pleading or other appearance filed within 60 days of complaint being filed, or such other time frame as Court deems appropriate for effective case management, the Court should consider scheduling a status conference. The Court is encouraged to establish a “tickling” system within the appropriate case management system, or in the clerk’s office, to notify the Court of these circumstances.
- Early assessment: Courts may utilize a screening form/questionnaire which has been created for this purpose. The screening form, attached hereto as Appendix A, may be in substantially the form attached hereto, or may be incorporated into other similar inquiry by the court through scheduling orders and scheduling conferences. If used, the form will be attached to an ORDER FOR CASE FLOW MANAGEMENT INFORMATION and will require the parties to file the same within fourteen (14) days. Screening form will only be used by the Court and its staff and not provided to the opposing party.

Idaho Courts are committed to resolving family cases through the combined efforts of the courts, the family, and community services—in ways that are least adversarial and intrusive. Therefore, a continuum of services and inter-disciplinary professional collaboration with the court is needed. There are finite resources available to Courts and families for case resolution. Further, one size does not fit all families.

The Fifth District uses the following process for assigning cases to Family Court Services or other appropriate services:

There will be early identification of issues for which Family Court Services are available, through use of scheduling conference and status conference settings set forth above. Utilization of FCS forms is encouraged, if appropriate.

- Provide copy of FCS Services Description Handout with Scheduling Conference Order.
- Copy FCS on any orders referring parties to their services.
- Early assessment: Courts may utilize a screening form/questionnaire which has been created for this purpose. The screening form, attached hereto as Appendix A, may be in substantially the form attached hereto, or may be incorporated into other similar inquiry by the court through scheduling orders and scheduling conferences. If used, the form will be attached to an ORDER FOR CASE FLOW MANAGEMENT INFORMATION and will require the parties to file the same within fourteen (14) days. Screening form will only be used by the Court and its staff and not provided to the opposing party.

Teleconferencing and video conferencing are permitted by IRFLP 118 and are used as a means of reducing delay and expense.

OPTIONAL DCM SECTION: The Fifth Judicial District did not identify applicable practices/procedures in this area, but will retain it as a topic for ongoing review.

Section 2.5: Calendar Setting and Scheduling of Events

Calendar Setting

Most family case hearings are initiated by the court, based on the results of its monitoring the progress of the case. Each judge presiding over an individual calendar controls and sets his or her own calendar. For judges sitting on a master calendar docket, the calendar is managed and coordinated between the judges and trial court administrator's office or clerk's office responsible for calendaring.

When an attorney or party determines that a hearing is warranted, for judges presiding over an individual calendar, the party or counsel contacts the clerk of the presiding judge to calendar a matter for a time certain. For judges sitting on a master calendar docket, matters are scheduled for a time certain by the clerk's office or at the direction of the presiding judge, as necessary. All calendar settings are made within the applicable time standards; setting outside of an applicable time standard are made only upon showing of good cause and upon order of the presiding judge.

Scheduling complies with the time standards adopted by the Idaho Supreme court.

Family cases are set for trial at the time of the scheduling conference unless otherwise ordered by the court.

The process used for setting family cases for trial is:

- Status and scheduling hearing will be set 35 - 45 days out from receipt of appearance and/or answer (about the time mandatory disclosures should be completed if an answer was filed, and notification on IRFLP Rule 102 B/IRE should have been made).
- At scheduling conference, direct parties/counsel to give realistic assessment of time necessary for trial; particularly if there will be expert witnesses on: separate property tracing; business valuation; equipment valuation; economics of spousal support; and child custody.

The Fifth District follows these practices to avoid scheduling conflicts for parties, counsel, interpreters, and court reporters in family cases:

No hearing dates will be set without consent of both parties/attorney OR with a declaration of one attorney that they have attempted to contact opposing party/or opposing attorney and get no response—this would avoid one side stonewalling an attempt to set a hearing.

The Fifth District follows these additional practices to maximize the efficient use of the time of judges, court staff, attorneys, and expert and lay witnesses:

- Inquire at Status and Scheduling conferences about use of ADR, to avoid parties appearing for trial and then using time for settlement conferences.
- Utilize IRFLP: Rule 118 (telephonic appearance); Rule 117 (Reasonable time limits on proceedings, 15 minute rule); Rule 504 (c)(4) (re discretion on oral arguments for hearings); Utilize Order on Motion to Compel which was circulated.

Scheduling of Events

All scheduled case events are meaningful events, defined as events that (a) move a case towards disposition and (b) prompt the attorneys and parties to take necessary action. Scheduling and conducting events that are not meaningful creates unnecessarily long lapses, having potentially negative impacts on the families. Monitoring the effectiveness and timeliness of interim case events between filing and disposition helps to prevent unnecessary delay.

The following have been identified as key interim case events in family law cases that will be tracked in the case management system and monitored for informational and case management purposes:

Service of summons	Mediation completed
Completion of co-parent education or waiver	
Filing of responsive pleading	Assessment/evaluation ordered
Case screening	Assessment/evaluation completed
Scheduling order	Discovery cutoff date
Motion for temporary order	Filing of dispositive motion
Order on motion for temporary order	Pre-trial conference
Ordered to mediation	Start of trial

The following guidelines are used to ensure that case events are meaningful.

- A scheduling conference is set by the court clerk or a scheduling order is issued shortly after an answer is filed [see IRFLP 701].
- A trial date is set at the scheduling conference. Attorneys are responsible for maintaining their availability for the trial date set.
- Attorneys come to the scheduling conference prepared to provide a list of available dates and reasonable estimates of the time necessary to a) prepare for trial and b) actually try the case.
- The judge controls the calendar. Requests for continuances are considered by judges in accordance with Section 2.10 of this plan.
- Scheduling orders and discovery will conform to IRFLP. Mediation is encouraged in every appropriate family case and the deadline for completion of mediation is included in a court order.

The Fifth District follows these practices to ensure that all scheduled events in family cases are meaningful:

- Avoid continuances;

- Hold hearings when scheduled;
- Follow through with recommendations or orders;
- Require party attendance when appropriate.

Section 2.6 Motion Practice

Motion practice conforms to Idaho Rules of Family Law Procedure, Chapter V.

The substance and need for motions varies widely and are most likely to be filed by attorneys rather than self-represented parties. Since motions can significantly impact the time and expense necessary in any case, management of motions is an essential component of an effective and efficient case management plan. This management is best done in an early scheduling/trial order. Requiring compliance with the motion deadlines eliminates a significant potential for unreasonable delay.

Courts do not allow the parties to modify discovery deadlines set by court rule or court order by stipulation without authorization of the court and permit modification only as necessarily and, if possible, without disturbing firm trial dates.

The court should adhere to the following general guidelines when creating scheduling orders:

- Dispositive motions are filed pursuant to IRFLP Chapter V but can and should be set earlier in the case.
- Motions which affect the introduction of evidence at trial, i.e., motions in limine, motions to strike witnesses or exhibits, etc., are often filed late in the process. Scheduling orders account for this and require such filings to occur early enough to give the court sufficient time to carefully consider the same without impacting the trial date.
- Clerks are given careful guidelines in the scheduling of motions. Parties do not control the hearing schedule, and hearings are set so as to allow for meaningful review but timely resolution.
- Courts diligently consider and rule on motions, in compliance with the requirements of the Idaho Constitution, and to prevent unreasonable delay.
- Informal methods should be adopted for consideration and resolution of motions, such as conducting hearings of non-dispositive motions by teleconferencing.

The court should adhere to the following general guidelines and rules when considering motions:

- Are there any bifurcated issues? Use a pretrial to narrow issues that were put in the original screening list or check list.
- Motions should occur more often without hearings (oral argument) but also realizing people need to be heard. Utilize telephonic hearings when appropriate.
- Motions to compel can be done with affidavit. Attorneys' need to get a good date from the clerk for next hearing and make sure the other side agrees on this date before submitting it to the court.
- All motions will be sent to both attorneys. Self-Represented Litigants will be held to the same standard.

The Fifth District follows these procedures for the filing, hearing, and disposition of motions in family law cases in a timely manner:

- Mandatory disclosures discussed at scheduling conference and as case progresses.
- Children will be allowed to write letters to the judge and then the parents will be given the opportunity to talk. This streamlines the hearing.
- Informal custody hearings are much easier for SRLs.
- Teleconferencing.
- Judge may request the attorney to write the order for his/her signature. In which case attorney must share this order with the other counsel within (five) 5 days and the other attorney must respond to it within (five) 5 days, or the original order will be signed without the second attorney's approval.
- Requests for attorney fees should be addressed at the time of motion, unless good cause exists.
- Discourage poor motion practice (untimely filings, multiple motions to shorten time, unwarranted ex parte applications, etc.)

Section 2.7: Discovery Practice

Discovery is a significant portion of the litigation time and expense. Therefore, management of discovery is also an essential component of an effective and efficient case management plan. This management is done in an early scheduling order. Such orders manage the nature and scope of discovery according to the needs of each case, consistent with applicable rules. The case management order manages the time and expense devoted to discovery while promoting just dispositions at the earliest possible time.

- Discovery in civil cases is generally governed by IRFLP Chapter IV.
- Courts have the authority to manage discovery as justified, pursuant to IRFLP 402, and do so in scheduling/trial orders consistent with the guidelines set forth above.
- Discovery deadlines are firmly set in scheduling/trial orders and adhered to by the parties and the Court. However, judges do not allow the deadlines contained in scheduling/trial orders to be used as a basis for failing to timely respond to or supplement properly served discovery, including requests for disclosure of trial witnesses and/or exhibits. Courts do not allow the parties to modify discovery deadlines by stipulation without authorization of the court and permit modification when necessary, preferably without disturbing firm trial dates.
- Motions to compel discovery responses strictly comply with IRFLP 443, requiring parties to make every reasonable effort to resolve discovery disputes without court intervention.
- Court sanctions, pursuant to IRFLP 443-448, are used to curb abuses of the discovery process, including deliberate delay.

The Fifth District follows these procedures to facilitate the exchange of discovery materials in family cases [Mention standard discovery orders if they are used in the District]:

- Will encourage early compliance with mandatory disclosures, and encourages the use standard pre-hearing Orders in substantially the same form as attached sample order, (see Appendix B).
- Predictable utilization of award and amount of attorney fees as costs upon motions to compel if such motions are granted.

The Fifth District follows these procedures to assist self-represented petitioners and respondents with discovery issues:

- Provide a copy of the Mandatory Disclosure as an attachment to Scheduling Conference Order (and any time the case suggests it).
- Court can do its own limited discovery production orders. (For example, a court order to exchange tax returns if all they really need is income information. Can be something that is utilized at a status conference).
- Utilize judicial inquiry into status of mandatory disclosures early at scheduling conferences; establish consistent policies and sanctions for failure to comply with discovery rules and orders; use scheduling and status conference to inquire about discovery status before motions to compel are filed.

Section 2.8: Early/appropriate case resolution processes

All structured dispute resolution processes conform to the governing court rule or statute applicable to a specific case. Appropriate dispute resolution in family law cases is governed by IRFLP, Chapter IV. Settlement conferences are governed by IRFLP 701. As early as practical, the court shall in every case consider the appropriateness of all forms of dispute resolution, including education, mediation, or settlement conferences, in order to foster efficiency, early resolution, and effective case management.

IRE 507, as administered by the authorizing court, governs the confidential nature of mediations to foster resolution in all such cases as deemed appropriate.

Mediation is encouraged in every civil case and the deadline for completion of mediation is included in the scheduling order.

IRFLP 603 addresses mediation in civil lawsuits. IRFLP 602 addresses mediation in child custody and visitation disputes. All mediation is conducted in conformance with the *Uniform Mediation Act*, Idaho Code §9-801, *etc. seq.*, or as amended and ordered by the authorizing court.

The Fifth District has established the following programs to facilitate the earliest possible resolution of family cases:

[Consider methods of enforcing mandatory disclosure pursuant to IRFLP 401].

Lawyers: Dispute Resolution Actions

- Settlement conferences
- Mediation
- Early referral and consulting with mental health practitioners and FCS

Referral to Family Court Services and Court Assistance Office

- Pre-filing workshops
- Assistance with parenting plans
- Co-Parenting Education
- Civil Intake Screenings
- Mediation
- Directed Co-Parenting
- Family Dispute Resolution Conferencing
- Supervised Access, Supervised Transfers
- Therapeutic Supervision
- Brief Focused Assessments
- Parenting Time Evaluations
- Referrals to other programs or agencies as necessary

Courts:

- Informal Custody Trials- Judges should address this option early with parties and counsel, ideally in scheduling phase, to determine if it may be an option for the parties. May also discuss this as an option when Judges address the Parenting Class attendees.
- Status and scheduling conferences for early management of case.
- Child Interviews:
 - The Fifth District plans to develop suggested guidelines for interviewing children for consistency among counties. Plans to offer workshops in collaboration with local bar and Family Court Services on interviewing children according to developmental ages and best practices in process.

Section 2.9: Pretrial Case Management

Implementation of standard pretrial management practices for cases that are very likely to proceed to trial, such as holding meaningful pretrial conferences, is the most effective mechanism for (a) promptly resolving cases before trial and (b) ensuring that cases going to trial are adjudicated without unnecessary delay. Successful pretrial management of cases requires both the court and counsel to attend the pretrial conference prepared to discuss the matters identified in the court's scheduling order, IRFLP 704, and/or any other issues or concerns unique to each case.

The following guidelines are used for pretrial case management:

- Consider the need for interpretive services.
- Final pretrial conferences and any pretrial submissions ordered by the presiding judge are required at least 14 days before a trial.
- In complex cases, an initial pretrial conference is set at least 30 days before trial.
- Deadlines are set for dispositive motions and motions in limine. Dispositive motions are filed early enough that they are heard by the court at least 60 days before the pretrial conference, allowing the court to make a ruling before the final pretrial conference. Motions in limine are filed early enough that they are heard by the court no later than the date of the pretrial conference.
- Scheduling orders reference IRFLP 702 and inform attorneys that they are to be prepared to discuss such matters at the pretrial conference.
- Disclosure of witnesses, pursuant to IRFLP 401, occurs 42 days before trial.

- Participation of children, pursuant to IRFLP 119, including motions to allow child testimony are filed 28 days prior to trial.
-

The Fifth District follows these procedures as part of its management of the pretrial stage of family cases:

- Clear stipulations will be presented to judges either in writing or on the record.
- Judges will ask questions and put as much on the record as possible.
- Scheduling conference; clerks will have a preset time schedule for this case (time frame) and attorneys will need to agree to dates for each hearing.
- The premise is clients will appear at the pretrial either in person or by phone unless a good reason is given why they cannot. (Allows for early settlement)
- Set at least one (1) interim status conference between scheduling conference and pre-trial conference so court can assess how case is progressing; what court intervention or orders may be appropriate.
- May also utilize status reports instead of status conferences to insure timely compliance w/ orders. Example: Court orders parties to contact evaluator or mediator by “date;” require written declaration from parties that contact has occurred to avoid Court not being informed of delay until pretrial conference and/or motion to continue trial because the PTE is not done, or parties have not had sufficient time to mediate.
- Utilize/educate parties and counsel on FCS; and Supreme Court Roster of ADR providers. Provide FCS handout with description of services at scheduling conference or with copy of scheduling order (or could have clerks provide at filing, along with JPI, Parenting Class order, etc.).

The Fifth District follows these procedures to ensure the time allotted for trial is appropriate:

- Set trials for realistic time frames: (many may be 1.5 to 2 days) with all parties attending the pretrial either in person or telephone if appears likely to be tried based upon status conference information.
- If experts will be called, allow for two days (or two weeks, how many experts?).
- Minimize the extra time by telling them they have 30 minutes.
- Cases can be bifurcated with ½ being formal and the custody portion being informal.
- Consider limiting number of witnesses identified as providing information largely related to general character or general parenting ability of either parent; confirm same number of witnesses as to these general character issues for each party.
- Get the names of those testifying 14 days prior.

Section 2.10: Continuances

Subject to IRFLP 104.F, continuances are requested by a written motion setting forth the basis of the motion. The motion also sets forth all prior continuances requested in the action. If a basis for the continuance is a conflict in a schedule, a copy of the court notice constituting the conflict is attached to the supporting affidavit. Any motion for a continuance of a trial date is signed by the litigant as well as by counsel.

A party objecting to the requested continuance may, but is not required, to file a written objection to the motion.

In accordance with IRFLP 104, a party may request oral argument on a motion for continuance. In its discretion, the court may deny oral argument. A joint or stipulated motion for a continuance is not binding on the court (IRFLP 104.F).

In family law cases, the factors the court considers in determining whether to grant a motion to continue include but are not limited to:

- The reason for the request and when the reason arose;
- Whether the reason for the request was within the control of counsel or was otherwise reasonably foreseeable;
- Whether granting or denying the motion would unfairly prejudice either party;
- The number of continuances previously granted;
- The age of the case;
- The days remaining before the trial date;
- Whether the case can be tried in the time allotted; and
- Whether all of the named parties agree to the continuance.

The judges of the Fifth District have adopted the following policy governing continuances in family law case:

- Early intervention and judicial management will lessen the requests for continuance.
- If stipulated to, both attorneys should follow Rule 11 and come to the judge together to request a continuance and state on the record that their clients have been informed and are in agreement.
- If more than one continuance is sought, a hearing should be held to address the issues before continuing matter a second time.

Section 2.11: Management of Trials

Family law hearings and trials are scheduled to proceed on consecutive days from commencement to conclusion. Trials are conducted so as to make the most effective use of the time of witnesses, interpreters, judges, attorneys, and court staff.

The judges of the Fifth District adhere to the following practices to minimize the amount of time and resources required to conduct family trials, and to minimize the inconvenience to parties and witnesses, consistent with constitutional principles of fairness and due process of law:

- Develop a standard protocol for children interviews in the Fifth District.
- Consistent pre-trial conferences to confirm witnesses have been disclosed, exhibits exchanged.
- Discuss at pre-trial conferences any stipulated matters (basis for divorce, jurisdiction, joint legal custody, joint physical (even if custody schedule is in dispute), stipulated list of property (even if value or CP/SP is in dispute); application of IRFLP 102.B or IRE if not already confirmed; order of witnesses (may need to take some lay witnesses out of order), utilizing party testimony/broad use of cross, to avoid parties being called for direct, cross, redirect in both their case and opposing party cases.

The Fifth District maximizes the certainty that a trial will commence on the date set by:

- Use of status conference and pretrial conference in advance of trial setting. Confirm status of parenting evaluations; other expert reports early on. If trial needs to be reset because evaluation process is not getting completed best to address earlier rather than week of trial; also confirm party cooperation if that is an issue.
- Consistent implementation of discovery disclosures.

Section 2.12: Preparation and Entry of Judgment

A considerable portion of the time required to resolve a family case occurs after the case has been resolved. This is particularly true in cases in which both parties are self-represented.

The Fifth District takes the following steps to ensure timely presentation of a judgment in family cases involving an attorney or attorneys:

- Preparation of final judgment. If parties advise the court that a matter has settled, attorneys are to submit judgment within time set by the Court. If no agreement is reached as to the form of the judgment the judgment will go to the judge for his/her signature as originally prepared; and objections shall be submitted within five (5) days of presentation, or such other time as the court may order. Absent timely objection, the judgment will be entered as presented, if otherwise acceptable to the court.
- Use step down Continuing Obligation Order in child support as a child ages out as an incorporated part of judgment.

The Fifth District takes the following steps to ensure timely presentation of a judgment in family cases in which no attorney is involved:

If matter proceeded to trial, then judge will likely need to prepare judgment himself. If matter is by default or stipulation, then Court Assistance forms are sufficient so long as the Court can confirm that the Decree matches the Complaint and/or Stipulation; and complies with Idaho requirements, particularly Child Support. If Judgment is insufficient for entry, then give Court Assistance Officer clear guidance on what parties need to provide and/or set for status hearing.

The Fifth District takes the following steps to ensure timely preparation of an order of protection:

Usually prepared by the Court on the bench at the time of hearing.

Section 2.13 – Contempt Motions

Rule 822 of the Idaho Rules of Family Law Procedure confirms that contempt motions and proceedings are still governed by Rule 75 of the Idaho Rules of Civil Procedure. Frequently, post judgment proceedings in family law cases involve allegations of contempt of the court's orders concerning delivery of property, payments of debts, payment of child support, and/or child custody and visitation. Contempt motions may be filed before or during modification proceedings. Courts should consider joint trials of simultaneously pending contempt and modification motions.

The Fifth District takes the following steps to ensure timely disposition of contempt proceedings in family cases that also involve a pending motion or petition to modify child custody, visitation, and/or child support:

- The Fifth Judicial District will work toward development of a standard contempt form for the district regarding advisement or rights.

The Fifth District takes the following steps to ensure timely disposition of contempt proceedings in family cases that do not also involve a motion or petition to modify child custody, visitation, and/or child support:

1. Set timely first appearance/arraignment; provide written notification of rights on arraignment of contempt.
2. Set timely evidentiary hearings following arraignment. Avoid continuances.
3. Although findings will vary from case to case, attempt to develop standard form of contempt Judgment once finding of contempt has been made.

Section 3: Effective and Consistent Monitoring of Case Management Reports

Caseflow management necessitates the regular production of case management information from an automated system. Case management reports provide a means of identifying and preventing delay in the processing of individual cases and the buildup of a case backlog that can result in an overall delay in the processing of all cases. They also provide information about potential sources of delay. The production of case management information is not sufficient in and of itself, however, to ensure effective caseflow management. Equally important is the utilization of this information, as follows:

- Judges consistently and effectively monitor their case management reports and take appropriate action to ensure that meaningful events are set for all cases, that case processing goals are being met, and that potential sources of unnecessary delay are identified so that they may be addressed through case management.
- Administrative district judges and trial court administrators closely monitor reports for their districts to identify cases that are nearing or exceeding applicable time standards, areas where backlog may be developing, potential sources of systematic delay, and changes in overall caseloads and inequities that may be developing in caseload distributions that may require changes in judicial assignments.
- Court clerks monitor case management reports regularly to ensure that all pending cases are scheduled for meaningful events through disposition.

It is the responsibility of individual courts to ensure that data entry practices are consistent with statewide uniform business practices thus resulting in accurate and reliable case management information.

The Fifth District uses these procedures to ensure effective use of data reports for monitoring the progress of family law cases:

The Judges and the Trial Court Administrator of the Fifth Judicial District regularly review the caseload reports from the appropriate case management system as well as Dash Board Reports for

certain case types, provided by the Idaho Supreme Court, to ensure that cases are proceeding in an effective and timely manner.

Section 4: Checking the Status of Pending Case Matters

Judges understand that decisions are to be issued in a timely way, pursuant to Art. V, Sec. 17 of the Idaho Constitution. Therefore, judges willingly accommodate requests by attorneys and/or parties seeking the status of matters under advisement or other pending case matters, without negative consequence to those seeking that status report. To assist the attorneys and/or parties in this regard, judges follow these practices:

- When additional briefing or materials are necessary before the judge considers the matter under advisement, the judge sets deadlines for submission of the briefing or materials clear to the attorneys and/or parties.
- If the judge considers the matter under advisement at the conclusion of oral argument, the judge clearly states the same on the record.
- If a matter is under advisement a proper notation of that fact is entered in the court's case management system.
- Every written decision contains a statement as to when the court considered the matter under advisement.
- Attorneys and/or parties are advised that they are free to contact the court's clerk to inquire about the status of any case, proceeding, or pending decision 30 days after the matter is under advisement, without consequence. Districts should consider a local rule implementing this protocol.

Clerks will receive training to fulfill requests for the status of a case, proceeding or pending decision, although their report should necessarily disclose only that the matter is still pending, the scheduled timing of future events, or that the decision has been issued.

Section 4: Special Considerations for District Plans

Language Access Services

Federal and state law requires judges to ensure parties, witnesses, and other interested individuals have meaningful access to the courts. Language access services are provided in all civil and criminal cases pursuant to Idaho Code 9-205. Professional court interpreters are appointed pursuant to ICAR 52. Determining the need for services is done in a number of ways, including the following:

- For spoken languages, self-identification by the non-English speaker (or companion). For the deaf or hard of hearing, through an ADA request for accommodation.
- A judge finds there is a need for language access services.
- Court-personnel may receive notice directly from the public, attorneys, guardians, probation officers, law enforcement and other participants.
- Outside agencies, such as social workers, law enforcement or correctional facilities notify the court about a LEP individual's need for auxiliary services for an upcoming event.

The Fifth District adheres to the following practices to ensure the most efficient use of available certified and non-certified interpreter resources:

- State in Scheduling Order and Order Setting Trial, that interpreters must be requested in writing in advance per IRFLP 712(H). Consider use of sanctions when continuances are necessary because party failed to timely request services of Interpreters.
- Also on the list of issues to be addressed at Scheduling Conference and Pre-Trial Conference (note, in Odyssey, can flag cases for interpreters).
- Utilize Idaho Court Interpreters Bench Cards; services of district and SC Interpreter Coordinators.

Self-Represented Litigants

The Idaho Judiciary is committed to ensuring access to justice for self-represented litigants (SRLs). Consistency and predictability are vital to meeting this goal. Self-represented litigants may lack the expertise to manage their cases effectively. There are key points in a case where SRLs can unintentionally stall the progress of a case. The Judiciary's commitment to ensure fair and timely case resolution requires that these and other SRL concerns be addressed. All solutions will look toward effective practices that will not become obstacles to SRLs but will instead facilitate proper notification and access to information for SRLs so that they can more effectively navigate the court system.

The Fifth District adheres to the following practices to accommodate the needs of self-represented litigants in obtaining information about their legal rights, about legal processes, and about court proceedings; in obtaining access to legal forms appropriate to their needs and in completing those forms:

- Confirm each county has a Court Assistance Officer (CAO) or court assistance resources.
- CAO cannot give legal advice but can review forms to make sure they are correctly filled out, especially making sure that the decree conforms w/complaint or stipulation in the event of default or stipulation.
- Make sure parties have received information regarding Idaho Child Support Guidelines (provide information at time complaint is filed, just as the order to attend parenting classes is); and that proper child support calculations/affidavits verifying income are included with proposed decree.
- Utilize Supreme Court instructional videos if/when completed.
- Judges may want to address necessity for compliance with child support guidelines and clarify decree and complaint and/or stipulation need to match when addressing participants at the parenting classes.

The Fifth District adheres to the following practices to accommodate the needs of self-represented litigants in the courtroom: *[Consider referrals to CAO, Family Court Services, informal custody trial, relaxed rule of evidence...etc.]*

- Status conferences w/ court so they are part of process instead of process getting away from them. Advise them early on that the Rules of Procedure apply to their processes whether attorneys are involved or not.
- Copies of Mandatory Disclosures attached to Scheduling Conference Order.
- Provide information on Family Court Services (i.e. copy each party with "Clarification of Family Court Services" and discuss ADR early, including mediation and informal custody

trial models. Copies of Clarification of Family Court Services can also be attached to Scheduling Conference Order.

Media relations

The Idaho courts have a manual for judges on media relations and the handling of notorious cases. These issues are addressed in ICAR 45 and 46. In addition, ICAR 32 addresses public requests for court records, which includes media requests.

Administrative district judges establish effective relations between the court and the media, by scheduling forums or other opportunities for discussion with the media, and by providing general information to the media about the courts, the law, and court procedures and practices, to the extent permitted by the Idaho Code of Judicial Conduct.

In the Fifth District, judges follow these standard procedures in dealing with requests for video coverage of family law proceedings:

- Family law proceedings regarding custody of minor children are sealed. Although matters are recorded for judicial record, video coverage should be limited to compelling circumstances/reasons and must be weighed against child's right to privacy and harm to child. Any recording (video or audio) must be governed by Rule 32, ICAR.

Telephonic and other remote appearances

IRFLP 118 authorizes the use of telephone conferencing to conduct hearings. Allowing parties, witnesses, interpreters, and attorneys to make court appearances without appearing personally in court can result in significant efficiencies and are allowed when they do not compromise the rights of a party

In the Fifth District, remote appearances are allowed as follows:

- In accordance with the IRFLP and ICAR. Notice should be given in advance of intent to appear if such appearance otherwise allowed by Rules. Parties/counsel should be responsible for calling in at time of hearing. Court can initiate call back if docket is backed up.
- The procedures for arranging a remote appearance are: Will be the same as for telephonic appearance; parties are responsible for securing proper access to whatever remote conferencing equipment is already compatible with equipment at courthouse (if any). Permission to appear remotely must be secured in advance; assuming that technology is available.

Other circumstances unique to the Fifth District: n/a

Section 5: Implementing and Maintaining the Family Law Caseflow Management Plan for the District

Once the District Caseflow Management Plans are established, implementing the plans and keeping them relevant will be a priority. Therefore, outreach and collaboration will be ongoing. Both at the

state and at the individual judicial district levels, collaborative planning procedures will be maintained to promote regular and ongoing communication, problem solving and adaptation of caseload management processes to the ever-changing needs of the justice system and the communities it serves.

Major sources of potential future changes include rule amendments, efforts of the Advancing Justice and Children and Families in the Courts Committee to identify and promote effective practices, and efforts of the Judges Associations to develop uniform forms for all Idaho case types.

The Fifth District will utilize the following processes to ensure the Family Law Caseflow Management Plan is implemented as intended:

- Committee will circulate Plan to Fifth Judicial Bar Members, and have copies of Plan available on Fifth Judicial District website.
- Committee will meet as necessary to assess best practices and areas that need to be modified and/or improved and/or discarded as ineffective.
- Committee will provide CLE instruction to bar members and will address at District Judicial Meetings to educate judges.

The Fifth District maintains the case management plan through the following process(es):
[Consider regular bench/bar meetings to address and resolve caseload management challenges and regular judge meetings to maintain consistency in practices within the District.]

- Committee will meet at least once pre year to assess best practices and areas that need to be modified and/or improved and/or discarded as ineffective.
- Committee will explore ways to solicit feedback from attorneys on how judges and attorneys are implementing plan.

APPENDIX A

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME**

JANE DOE,

Plaintiff,

vs.

CASE NO. CV-2017-0000

JOHN DOE,

Defendant

ORDER FOR CASE FLOW MANAGEMENT INFORMATION

IN ORDER FOR THIS COURT to implement appropriate and effective case flow management practices, the parties are **ORDERED** to fill out and complete the following informational questionnaire within fourteen (14) days of the receipt of this Order. The information provided will only be used by the Court and its' staff to implement the appropriate case flow management procedures dependent upon the information and circumstances involved. This information shall not be considered as any admission of any party nor shall it be any formal allegation of conduct by either party nor shall it be used for any purpose in any trial or hearing. The information requested is set forth in Attachment A to be signed and timely returned to this Court.

DATED this _____ day of _____, 201_

Magistrate

ATTACHMENT A

1. Need for any interpretive services for any party or witness: Yes: ____ No ____;
 - a. If yes what language: _____.
2. Any issue of any special needs for children or parties: Yes ____ No ____;
 - a. If yes brief description of special needs: _____
_____.
3. Any allegation or history of:
 - a. Domestic Violence: Yes ____ No ____;
 - b. Alcohol abuse: Yes ____ No ____;
 - c. Substance abuse: Yes ____ No ____;
 - d. Physical/Sexual abuse: Yes ____ No ____;
 - e. History of Child Protection involvement: Yes ____ No ____
 - f. Mental Health issues: Yes ____ No ____
 - g. Prior or current Guardianship issues: Yes ____ No ____
 - h. Juvenile criminal history (child or children): Yes ____ No ____.
 - i. Adult criminal history (parents) Yes ____ No ____
 - j. Prior or current Protection Orders Yes ____ No ____
4. Current or past military service: Yes ____ No ____..
5. Anticipated Court experts needed:
 - a. Custody Evaluator Yes ____ No ____
 - b. Valuation Yes ____ No ____
 - c. Vocational Rehab Yes ____ No ____

6. Any anticipated request for In Camera interview of children Yes _____ No _____

7. Involvement of persons other than parents (i.e. grandparents/relatives; Health and Welfare) Yes _____ No _____

8. Alternative Dispute Resolution potential:

a. Informal Custody Trial Yes _____ No _____ Under consideration _____

b. Mediation: Yes _____ No _____ Under consideration _____

9. Any complex factual or legal issues: Yes _____ No _____ If yes please give a brief description _____

_____.

10. Any other circumstance or condition that should be brought to the attention of the Court:

Yes _____ No _____ If yes please briefly describe: _____

Dated this _____ day of _____, 201_

Plaintiff/Plaintiff's Attorney

Defendant/Defendant's Attorney

APPENDIX B

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF _____

Petitioner's Name,)
)
Petitioner,)
)
vs.)
) Case No. CV-2017-
Respondent's Name,)
)
Respondent.)
)
)
)
_____)

ORDER RE: PETITIONER/RESPONDENT MOTION TO COMPEL

On ___ (date) counsel for the (Petitioner/Respondent) filed a Motion to Compel concerning the (Respondent's/Petitioner's) failure to respond to (Respondent's/Petitioner's) Interrogatories and Request for Production of Documents dated on ___ (date of notice of service).

The plaintiff's Motion to Compel is currently set for hearing on ___ (date) at ___ (time). It appears from the (Respondent's/Petitioner's) motion and the Register of Actions that the (Respondent/Petitioner) has not yet responded to the (Respondent's/Petitioner's) Interrogatories and Request for Production of Documents dated _____(date of notice of service).

So as not to delay the trial in this matter and good cause appearing, the Court hereby directs counsel for the (Respondent/Petitioner) to fully answer and produce, **without objection**, the (Respondent's/Petitioner's) Interrogatories and Request for Production of Documents dated _____

_____ on or before _____ (one week before hearing date). If the (Respondent/Petitioner) complies with this order of the court, the hearing on _____ will be vacated. In the event that the (Respondent/Petitioner) fails to comply with this court's order, counsel for the parties shall appear on ____ (date of hearing) at _____ (time of hearing) and in the event there is no good cause shown for the (Respondent's/Petitioner's) failure to respond to the (Respondent's/Petitioner's) discovery request, the court will impose monetary sanctions on the (Respondent/Petitioner) and (Respondent's/Petitioner's) counsel and other sanctions as may be appropriate under the circumstances.

IT IS SO ORDERED.

DATED this _____ day of _____, 201__.

Hon. _____, Magistrate Judge