In the Supreme Court of the State of Idaho

IN RE: ADOPTION OF IDAHO RULES OF CIVIL PROCEDURE (I.R.C.P.) 16(p)	))))	**ORDER**

The Court having reviewed a recommendation from the Administrative Conference to adopt a new rule proposed by the Children and Families in the Court's Committee, and the Court having reviewed the proposed Rule 16(p) and having approved its adoption;

NOW, THEREFORE, IT IS HEREBY ORDERED that the Idaho Rules of Civil Procedure as they appear in the volume published by the Idaho Code Commission be, and they are hereby, amended as follows:

1. That Rule 16(p) be, and the same is hereby, adopted to read as follows:

Rule 16(p). Informal Custody Trial.

(1) An **Informal Custody Trial** is an optional alternative trial procedure that is voluntarily agreed to by the parties, counsel and the court to try child custody and child support issues. The model requires that the application of the Idaho Rules of Evidence and the normal question and answer manner of trial be waived. Once the waiver is obtained the matter proceeds to trial by consent as follows:

a. The moving party is allowed to speak to the court under oath as to his or her desires as to child custody and child support determination. The party is not questioned by counsel, but may be questioned by the court to develop evidence required by the Idaho Child Support Guidelines and child custody evidence required by Idaho Code § 32-717.

b. The court then asks counsel for that party, if any, if there are any other areas the attorney wants the court to inquire about. If there are any, the court does so.

c. The process is then repeated for the other party.

d. If there is a Guardian ad Litem or other expert, the expert's report is entered into evidence as the court's exhibit. If either party desires, the expert is sworn and subjected to questioning by counsel, parties or the court.

e. The parties may present any documents they want the court to consider. The court shall determine what weight, if any, to give each document. The court may order the record to be supplemented.

f. The parties are then offered the opportunity to respond briefly to the comments of the other party.

g. Counsel or self-represented parties are offered the opportunity to make legal argument.

h. At the conclusion of the case, the court will make a decision.

(2) **Consent and waiver.** The consent to and waiver to the Informal Custody Trial shall be given verbally on the record under oath or in writing on a form adopted by the Supreme Court.

IT IS FURTHER ORDERED that this order shall be effective immediately, and the frequency, use and experience of the parties that have used this procedure shall be monitored and an annual report prepared for the Idaho Supreme Court.

IT IS FURTHER ORDERED, that the Clerk of the Court shall cause notice of this Order to be published in one issue of *The Advocate.*

DATED this 29 day of September 2008.

By Order of the Supreme Court

Daniel T. Eismann
Chief Justice

ATTEST:

Stephen W. Kenyon, Clerk

I, Stephen W. Kenyon, Clerk of the Supreme Court 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 9-29-08

STEPHEN W. KENYON
Clerk

By: Chief Deputy

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT *Revised 6-6-08*

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF _____

MAGISTRATE'S DIVISION

_____ PETITIONER, Vs. _____ RESPONDENT.	CASE NO. CV_____ WAIVER OF THE RULES OF EVIDENCE FOR INFORMAL CUSTODY TRIAL

Section A: My Rights

- I have been told I should discuss the Informal Custody Trial process with my lawyer. I have had the chance to discuss the Informal Custody Trial Process with a lawyer or I have decided not to discuss the process with a lawyer.
- I waive the normal question and answer manner of trial and I agree the court may ask me questions about the case.
- I agree to waive the rules of evidence in this Informal Custody Trial. Therefore:
    - The other party can submit any document or physical evidence he or she wishes into the record.
    - The other party can tell the court anything he or she feels is relevant.

Section B: Voluntary Acknowledgement

- I understand the following:
    - My participation in this Informal Custody Trial process is strictly voluntary, and that no one can force me to agree to this process.

- Documents, physical evidence, and testimony will be admitted during the Informal Custody Trial process, and the court will determine what weight will be given to the evidence.
- My rights on an appeal are extremely limited. I understand that, if I appeal, the court will be reviewing a transcript of the hearing and I will not be able to challenge any of the documents or testimony that was considered during the Informal Custody Trial Process. The only issue on appeal will be whether the court abused its discretion in reaching its findings and conclusions and it is unlikely an appeal will result in a different outcome.

- I have told my lawyer (if I have one), all the details of my situation or I have considered all the facts I believe the other person will testify to about me, whether true or not.
- I give this matter to the court freely and voluntarily to make a decision on the terms of child custody and child support.
- I am confident I understand the Informal Custody Trial process.
- I have not been threatened or promised anything for agreeing to this Informal Custody Trial process.

Dated this _____ day of _____, 20____.

_____ _____

Signature Printed Name

Revised 5-28-08

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF _____

MAGISTRATE'S DIVISION

_____ PETITIONER, Vs. _____ RESPONDENT.	CASE NO. CV _____ CONSENT TO INFORMAL CUSTODY TRIAL

I consent to proceed as follows:

1. The person bringing the action before the court presents their case first, under oath. The person is not questioned by lawyers, but may be questioned by the court to develop evidence required by the Idaho Child Support Guidelines and child custody evidence required by Idaho Code 32-717.

2. The court asks the lawyer, if any or the moving party if there are any other items to be discussed.

3. The process is then repeated for the other person.

4. If there is a guardian ad litem or other expert, the expert's report is entered into evidence as the court's exhibit. If either party or the court desires, the expert may be questioned under oath.

5. The parties present any documents they want the court to consider.

6. Next, the parties may present testimony and documents to contradict or oppose the other party's testimony.

7. The lawyers involved or self-represented parties are given the opportunity to make legal argument.

8. The court will make a decision.

I consent to submit the following information to the Court:

- The names of my children and their ages.
- The current parenting arrangement, (i.e. when the children are with each parent).
- What I want for a custody schedule, (i.e. what days, holidays, etc. I want the children with me).
- The reasons I want this schedule.
- Why my proposed schedule protects the best interests of the children.
- How my schedule makes certain the other parent will also have a significant and meaningful opportunity to parent.
- My gross income.
- Whether I provide health insurance for the children, and if so, what it costs.
- The medical co-payments and deductibles for the children.
- The amount of support I pay for the support of other children I have with another person.

I have had the opportunity to ask the court about the Informal Custody Trial process. In order to minimize the negative effects of the parent's separation, I agree to have the court decide the child custody and child support issues in this case.

Dated this _____ day of _____, 20___,

_____ _____

Signature Printed Name

Note: The following sections will be placed in the Judge's bench guide as best practices when using this process.

Use of Informal Custody Trial. This model may only be used if all parties, counsel, if any, and the court agree, as established by the consent and waiver listed above in section (2) of this rule. This model may be considered after careful consideration if there are issues related to:

(a) allegations of recent, prolonged or severe domestic violence,
(b) documented mental illness issues or delayed development issues,
(c) allegations of physical or sexual abuse,
(d) substantial cultural or language barriers,
(e) for some other reason a party may not be able to adequately communicate their position,
(f) there are any substantial property or debt division or characterization issues. (These issues could be tried under the traditional method in a bifurcated trial.)

Statement of purpose. Experience has taught us that the traditional adversarial child custody litigation can adversely affect the best interests of the very children such litigation is intended to serve. This is especially true in protracted, repeated and high-conflict cases where the litigation damages the capacity of parents to co-parent in the best interests of their children. Such litigation is also exceedingly expensive and drains families and children of essential financial resources that could be better used by children and families. Increasingly, parents are litigating their custody disputes *pro se.* The purpose of this rule is to create a voluntary alternative procedure to litigate child custody and child support issues, which is intended to focus on the best interests of the children in a less adversarial, more collaborative setting among the court, counsel, and the parties in a manner intended to lessen the adverse impact of litigation on children and families while promoting the best interests of the affected children.