I.R.C.P. 16.j. Mediation of Child Custody and Visitation Disputes.

Idaho Rules of Civil Procedure Rule 16(j). Mediation of Child Custody and Visitation Disputes.

(1) Definition of "Mediation". Mediation under this rule is the process by which a neutral mediator appointed by the court or agreed to by the parties assists the parties in reaching a mutually acceptable agreement as to issues of child custody and visitation. The role of the mediator is to aid the parties in identifying the issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise and finding points of agreement. An agreement reached by the parties is to be based on the decisions of the parties, and not the decisions of the mediator.

(2) Matters Subject to Mediation. All domestic relations actions involving a controversy over custody or visitation of minor children at the pre-trial, trial and post-decree stages in the courts of this state shall be subject to mediation regarding issues of custody, visitation, or both.

(3) Selection of Mediator. The court shall permit the parties to select a mediator from the list of registered mediators compiled by the Supreme Court and maintained by the Administrative Director of the Courts. If the parties are unable to select a mediator, the court shall appoint one.

(4) Requirement to Attend Parent Education and Mediation Orientation. The district court of any judicial district may provide by local rule that all parties to any domestic relations case involving children, whether or not a trial or contested case has been scheduled, be required to attend such parent education and mediation orientation, unless excused by the court.

(5) Authority of the Court. A court shall order mediation if, in the court's discretion, it finds that mediation is in the best interest of the children and it is not otherwise inappropriate under the facts of the particular case.

(6) Qualifications of Mediator - Application and Documentation.

(A) The Supreme Court will compile a list of registered mediators. Any applicant seeking to be placed on the Supreme Court Roster of registered mediators shall submit to the Administrative Director of the Courts, the following:

(i) An Application for Registration, which includes an affidavit of compliance executed by the applicant attesting that the applicant has fulfilled the requirements to be placed on the Supreme Court list of registered mediators.

(ii) A copy of the applicant's degree, license or certificate.

(iii) Proof of completion of the required mediation training as provided in sections (6)(B) and (6)(C) of this rule.

(B) Qualifications - Professional Credentials. To be placed on the list of registered mediators compiled by the Supreme Court, the applicant must have at least one of the following professional credentials:

(i) The applicant is recognized by Idaho Mediation Association as a Certified Professional Mediator (CPM), or membership in the Association for Conflict Resolution at the advanced practitioner level or other national organizations with equivalent standards for membership.

(ii) The applicant is a member of one of the following: the Idaho judiciary; licensed member of the Idaho State Bar Association; licensed psychologist; licensed professional counselor; licensed clinical professional counselor; licensed master social worker; licensed clinical or independent practice social worker; licensed marriage and family therapist; certified school counselor; or certified school psychologist.

(iii) The applicant possesses a bachelors degree.

(C) Training. There are two independent training criteria for all applicants as set forth more fully below. An applicant must complete the substantive training set forth in subsections (i) and (ii) below. In addition, such training shall be approved and/or provided by an accredited college or university, the Idaho Mediation Association, Association for Conflict Resolution, Association of Family and Conciliation Courts, the Idaho State Bar, or the Idaho Supreme Court, Administrative Office of the Courts.

(i) Applicants under subsections 6(B)(i) and (iii) must have completed a minimum of 60 hours mediation training within the past two years, 20 of which must be in the field of child custody mediation. Applicants under subsection 6(B)(ii) must have completed a minimum of 40 hours mediation training within the past two years, 20 of which must be in the field of child custody mediation. At least 40 of the training hours required under this section shall be acquired through a single training course.

(ii) At least 20 hours of the mediation training required for applicants under section 6(B)(ii), and at least 40 hours of the training requirements for applicants under sections 6(B)(i) and (iii), shall include the following topics, at least 30 percent of which must be in the practice of mediation skills:

(a) Information gathering (intake; obtaining facts; screening issues);

(b) Mediator relationship skills (neutrality; confidentiality; nonjudgmental);

(c) Communication skills (active listening; reframing issues: clarifying);

(d) Problem solving skills (identify problems, positions, needs, interests; brainstorm alternatives);

(e) Conflict management skills (theories of conflict management; mediation models; reducing tensions; power imbalances);

(f) Ethics (standards of practice; typical problems);

(g) Professional skills (substantive knowledge areas; case management; drafting agreements).

(iii) The 20 hours of child custody training required in section 6(C)(i) shall include the following topics:

(a) Conflict resolution theory;

(b) Psychological issues in separation, divorce, and family dynamics;

(c) Domestic violence;

(d) Issues and needs of children;

(e) Child custody mediation processes and techniques;

(f) Family law, including custody and support.

(g) Mediation ethics - a minimum of two hours.

(D) Continuing Education of Mediators. Beginning the next July 1 after a mediator has been placed on

the Supreme Court list of registered mediators, the mediator must take at least thirty (30) hours of child custody training in one or more of the areas as set forth in Section (C)(iii) in each and every three (3) years period following the July 1 date. This training must include a minimum of two hours of mediation ethics training. The mediator must file proof of compliance with this requirement with the Administrative Office of the Courts by July 1 of the year the continuing education is due. Along with proof of compliance, a mediator under section 6(B)(ii) must also send proof of current licensing.

(E) The administrative district judge in each judicial district may, by administrative order, require mediators to comply with additional criteria beyond those stated in subsections (6)(B) and (6)(C) of this rule.

(F) Persons approved as child custody mediators prior to the effective date of the amendment to this rule shall not be required to satisfy the training requirements of parts (6)(B)(i), (6)(B)(ii) and (6)(B)(iii) of this rule, but shall be required to fulfill the additional continuing education requirements of part (6)(D) of this rule.

(7) Duties of Mediator.

(A) The mediator has a duty to define and describe for the parties the process of mediation and its cost during the initial conference before the mediation conference begins. The description should include the following:

(i) The difference between mediation and other forms of conflict resolution, including therapy and counseling;

(ii) The circumstances under which the mediator will meet alone with either of the parties or with any other person;

(iii) Any confidentiality of the mediation proceedings and any privilege against disclosure;

(iv) The duties and responsibilities of the mediator and of the parties;

(v) The fact that any agreement reached will be reached by mutual consent of the parties;

(vi) The mediator shall advise the participants to seek independent legal counsel prior to resolving

the issues and in conjunction with formalizing an agreement;

(vii) The information necessary for defining the disputed issues.

(B) The mediator has a duty to be impartial, and to advise all parties of any circumstances bearing on possible bias, prejudice or impartiality.

(i) The parties shall have the right to have counsel review any resulting agreement before its submission to the court.

(ii) Any agreement submitted to the court shall be subject to court review and approval. The court shall reject such agreement only if it is not in the best interests of the child or children involved.

(8) Communications Between Mediator and the Court.

(A) The mediator and the court shall maintain no contact or communication except that the mediator may, without comment or observation, report to the court:

(i) That the parties are at an impasse;

(ii) That the parties have reached an agreement. In such case, however, the agreement so reached shall be reduced to writing, signed by the parties and submitted to the court by one or both of the parties, if pro se; otherwise, through their attorneys, for the court's approval.

(iii) That one or both of the parties have failed to attend the mediation proceeding;

(iv) That meaningful mediation is ongoing;

(v) That the mediator withdraws from mediation;

(vi) The allegation or suspicion of domestic violence.

(9) Contact Between Mediator, Attorneys and Other Interested Persons. The mediator and the attorneys for the parties may communicate with one another in the following manner:

(A) Any contacts between the attorneys and the mediator shall be either in writing or by conference call;

(B) Attorneys and other persons are excluded from mediation conferences unless their presence is requested by the mediator or ordered by the court.

(10) Termination of Mediation - Status Report. The court or the mediator may terminate mediation proceedings if further progress toward a reasonable agreement is unlikely. The mediator shall notify the court when the mediation has been concluded. Notice of the status of the mediation process shall be submitted to the court within 28 days from the date of the initial order requiring mediation.

(Adopted June 26, 1991, effective September 1, 1991; amended January 29, 1993, effective January 1, 1993; amended April 19, 1995, effective July 1, 1995; amended March 31, 1998, effective July 1, 1998;amended March 9, 1999, effective July 1, 1999; amended July 29, 2003, effective August 1, 2003; amended April 27, 2011, effective July 1, 2011; amended April 27, 2012, effective July 1, 2012.)

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