I.R.C.P. 16.k. Mediation of Civil Lawsuits.

Idaho Rules of Civil Procedure Rule 16(k). Mediation of Civil Lawsuits.

(1) Definition of Mediation. Mediation under I.R.C.P. 16(k) 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. 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 civil cases are eligible for referral to mediation under this subsection.

(3) Authority of the Courts. The referral of a civil action to mediation does not divest the court of the authority to exercise management and control of the case during the pending mediation.

(4) Referral to Mediation. In its discretion a court may order a case to mediation, as follows:

(A) Upon motion by a party;

(B) At any I.R.C.P. 16 conference;

(C) Upon consideration of request for trial setting, pursuant to I.R.C.P. 40(b), if all parties indicate in their request or response that mediation would be beneficial; or

(D) At any other time upon seven (7) days notice to the parties if the court determines mediation is appropriate.

(5) Selection of the Mediator. The parties shall have twenty-eight (28) days from entry of the mediation order, or such other time as the court may allow, to select any person to act as mediator and report their selection to the court. If the parties do not select a mediator within twenty-eight (28) days, then the court shall appoint a mediator from the judicial district's list of mediators maintained pursuant to I.R.C.P. 16(k)(13)(A).

(6) Scheduling of the Mediation Session(s). Unless the court otherwise orders, the initial mediation session shall take place within forty-two (42) days of the reporting of the selection or the appointment of the mediator.

(7) Reports. Within seven (7) days following the last mediation session, the mediator or the parties shall advise the court, with a copy to the parties, whether the case has, in whole or in part, settled.

(8) Compensation of Mediators. Mediators shall be compensated at their regular fees and expenses, which shall be clearly set forth in the information and materials provided to the parties. Unless other arrangements are made among the parties or ordered by the court, the interested parties shall be responsible for a prorata share of the mediator's fees and expenses. If a mediator is not paid, the court, upon motion of the mediator may order payment.

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

(10) Attendance at the Mediation Session(s). The attorney(s) who will be primarily responsible for handling the actual trial of the matter, and all parties, or insurers, if applicable, with authority to settle, shall attend the session(s), unless otherwise excused by the mediator upon a showing of good cause.

(11) Confidentiality. The mediator shall abide by the confidentiality rules agreed to by the parties. Confidentiality protections of I.R.E. 408 and 507 shall extend to mediations under this Rule.

(12) Sanctions. The mediator shall be subject to sanctions, including removal from the roster of mediators, if the mediator fails to assume the responsibilities provided herein.

(13) Qualifications of Mediators. Each trial court administrator shall maintain a list of mediators who meet the qualifications of subsection A, and rosters from dispute resolution organizations that meet the criteria set forth in subsection B below.

(A) Mediation Registration -- Qualifications of Court-Appointed Mediators

(i) The Administrative Director of the Courts shall compile and distribute at least annually a list of mediators. For that purpose, the Administrative Director of the Courts shall gather from all

applicants an application demonstrating that the applicant:

(a) is a member of the Idaho State Bar;

(b) has been admitted to practice law for not less than five (5) years; and

(c) has attended a minimum of forty (40) hours of mediation training.

(ii) In order for a person to remain on the list of mediators maintained by the Administrative Director of the Court, the mediator must submit proof that the mediator has completed a minimum of five (5) hours of additional training or education during the preceding three (3) calendar years on one of the following topics: mediation, conflict management, negotiation, interpersonal communication, conciliation, dispute resolution or facilitation. This training shall be acquired by completing a program approved by an accredited college or university or by one of the following organizations: Idaho State Bar, or its equivalent from another state; Idaho Mediation Association, or its equivalent from another state; or Society of Professionals in Dispute Resolutions; ; American College of Civil Trial Mediators; Northwest Institute for Dispute Resolution; Institute for Conflict Management; the National Academy of Distinguished Neutrals or any mediation training provided by the federal courts. Any program that does not meet this criteria may be submitted for approval either prior to or after completion. The requirement that continuing education for mediators include at least five (5) hours of training in mediation takes effect for renewals due on or after July 1, 2013.

(B) Mediation Registration -- Sponsors of Additional Rosters of Mediators

(i) A public or private dispute resolution organization may make its roster of mediators available to the Administrative Director of the Courts for distribution to the trial court administrators if it documents that it has:

(a) an established selection and evaluation process for neutrals;

(b) a mechanism for addressing complaints brought against neutrals; and

(c) a published code of ethics that the neutrals must follow. A compilation of the organization's selection, evaluation, published code of ethics, and complaint processes that can be distributed to the parties shall be provided.

(C) A list and roster(s) of mediators distributed by the Administrative Director of the Courts, pursuant to subsections A and B, above, must contain the following information about each mediator:

(a) name, address, telephone and FAX number(s);

(b) professional affiliation(s);

(c) education;

(d) legal and/or mediation training and experience; and

(e) fees and expenses.

(Adopted June 12, 1996, effective July 1, 1996; amended March 31, 2006, effective July 1, 2006; amended April 27, 2012, effective July 1, 2012; amended March 9, 2015, effective July 1, 2015.)

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