I.C.R. 15. Depositions

Idaho Criminal Rule 15. Depositions.

(a) When taken. If it appears that a prospective witness may be unable to attend or prevented from attending a trial or hearing, that the testimony of the witness is material and that it is necessary to take the deposition of the witness in order to prevent a failure of justice, the court at any time after the filing of a complaint, indictment or information may upon motion of the prosecution or the defendant and after notice to all parties, order that the testimony of the witness be taken by deposition and that any designated books, papers, documents or tangible objects, not privileged, be produced at the same time and place. If a witness is committed for failure to give bail to appear to testify at a trial or hearing, the court on written motion of the witness or any party and upon notice to the parties may direct that the deposition of the witness be taken. After the has been subscribed the court may discharge the witness.

(b) Notice of taking. The party at whose instance the deposition is to be taken shall give to every other party a reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time or change the place for taking the deposition. The officer having custody of a defendant shall be notified of the time and place set for the examination and shall, unless the defendant waives in writing the right to be present, produce the defendant at the examination and keep the defendant in the presence of the witness during the examination, unless, after being warned by the court that disruptive conduct will cause the defendant to be removed from the place of the taking of the deposition, the defendant persists in conduct which is such as to justify the defendant being excluded from that place. A defendant not in custody shall have the right to be present at the examination upon request subject to such terms as may be fixed by the court, but defendant's failure, absent good cause shown, to appear after notice and tender of expenses in accordance with subdivision (c) of this rule shall constitute a waiver of that right and of any objection to the taking and use of the deposition based upon that right.

(c) Payment of expenses. Whenever a deposition is taken, the court may, in its discretion, direct that the expense of travel and subsistence of the defendant and defendant's attorney for attendance at the examination and the cost of the transcript of the deposition shall be paid by the county.

(d) How taken. Subject to such additional conditions as the court shall provide, a deposition shall be taken and filed in the manner provided in civil actions except as otherwise provided in these rules, provided that

(1) in no event shall a deposition be taken of a party defendant without the defendant's consent, and

(2) the scope and manner of examination and cross-examination shall be such as would be allowed in the trial itself. The state shall make available to the defendant or defendant's counsel for examination and use at the taking of the deposition any statement of the witness being deposed which is in the possession of the state and to which the defendant would be entitled at the trial. A deposition shall be taken as provided by the Idaho Rules of Civil Procedure. The court at the

request of a defendant may direct that a deposition may be taken on written interrogatories in the manner provided in the Idaho Rules of Civil Procedure.

(e) Use. At the trial or upon any hearing, a part or all of a deposition so far as otherwise admissible under the rules of evidence, may be used as substantive evidence if the witness is unavailable, as the term unavailability is defined in Rule 804(a) of the Idaho Rules of Evidence.

(f) Objections to deposition testimony. Objections to deposition testimony or evidence or parts thereof and the grounds for the objection shall be stated at the time of the taking of the deposition, unless otherwise agreed by the parties.

(g) Deposition by agreement not precluded. Nothing in this rule shall preclude the taking of a deposition orally or upon written questions, or the use of a deposition by agreement of the parties with the consent of the court.

(Adopted December 27, 1979, effective July 1, 1980; amended March 20, 1985, effective July 1, 1985.)

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