IRFLP 426 Depositions Before Action

Idaho Rules of Family Law Procedure Rule 426. Depositions Before Action.

A. Petition. A person who desires to perpetuate testimony or that of another person regarding any matter subject to these Rules may file a verified petition in the district court in the county of the residence of any expected adverse party. The petition shall be entitled in the name of the petitioner and shall show:

1. that the petitioner expects to be a party to an action subject to these Rules but is presently unable to bring it or cause it to be brought,

2. the subject matter of the expected action and the petitioner's interest therein

3. the facts which the petitioner desires to establish by the proposed testimony and the reasons for desiring to perpetuate it

4. the names or a description of persons the petitioner expects will be adverse parties and their addresses so far as known, and

5. the names and addresses of the persons to be examined and the substance of the testimony which the petitioner expects to elicit from each.

The petition shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.

B. Notice and service. The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least 20 days before the date of hearing the notice shall be served either within or without the county or state in the manner provided in Rule 204.C - F [1] for service of summons; but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the court may make such order as is just for service by publication or otherwise, and shall appoint, for persons not served in the manner provided in Rule 204.C - F [1], an attorney who shall represent them, and, in case they are not otherwise represented, shall cross-examine the deponent. If any expected adverse party is a minor or incompetent the provisions of Rule 114 [2] apply.

C. Order and examination. If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The depositions may then be taken in accordance with these rules. For the purpose of applying these rules to depositions

for perpetuating testimony, each reference therein to the court in which the action is pending shall be deemed to refer to the court in which the petition for such deposition was filed.

D. Use of deposition. If a deposition to perpetuate testimony is taken under these rules or if, although not so taken, it would be admissible in evidence in the courts of the state in which it is taken, it may be used in any action involving the same subject matter subsequently brought in district court, in accordance with the provisions of Rule 439 [3].

*Pilot Project for Fourth Judicial District
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Source URL: http://www.isc.idaho.gov/irflp426

Links:
[1] http://www.isc.idaho.gov/irflp204
[2] http://www.isc.idaho.gov/irflp114
[3] http://www.isc.idaho.gov/irflp439