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IRFLP 506 Injunctions and Restraining Orders

Idaho Rules of Family Law Procedure Rule 506. Injunctions and Restraining Orders.

(a) Preliminary Injunction.

(1) **Notice.** The court may issue a preliminary injunction only on notice to the adverse party.

(2) **Consolidating the Hearing with the Trial on the Merits.** Before or after beginning the hearing for a motion for a preliminary injunction, the court may advance the trial on the merits and consolidate it with the hearing. Even when this consolidation is not ordered, evidence that is received on the motion and that would be admissible at trial becomes a part of the trial record and need not be repeated at the trial.

(b) Temporary Restraining Order.

(1) **Issuing Without Notice.** The court may issue a temporary restraining order without written or oral notice to the responding party or its attorney only if:

(A) Specific facts in an affidavit or a verified motion clearly show that immediate and irreparable injury, loss, or damage will result to the moving party before the responding party can be heard in opposition; and

(B) the moving party or the moving party's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

(2) **Contents; Expiration.** Every temporary restraining order issued without notice must state the date and hour it was issued; describe the injury and state why it is irreparable; state why the order was issued without notice; and be promptly filed in the clerk's office and entered in the record. The order expires at the time after entry that the court sets, not to exceed 14 days, unless before that time the court, for good cause shown, extends it for a like period or the responding party consents to a longer extension. The reasons for an extension must be entered in the record.



(3) **Expediting the Preliminary Injunction Hearing.** If the temporary restraining order is issued without notice, the motion for a preliminary injunction must be set for hearing at the earliest possible time, taking precedence over all other matters except hearings on older matters of the same character. At the hearing, the party who obtained the order must proceed with the motion; if the moving party does not, the court must dissolve the order.

(4) **Motion to Dissolve.** On 2 days' notice to the party who obtained the order without notice, or on shorter notice set by the court, the responding party may appear and move to dissolve or modify the order. The court must then hear and decide the motion as promptly as justice requires.

(c) **Security.** The court may issue a preliminary injunction or a temporary restraining order only if the moving party gives security in an amount the court considers proper to pay the costs and damages, including reasonable attorney fees, sustained by any party found to have been wrongfully enjoined or restrained. The state of Idaho or of any political subdivision, its officer and its agencies are not required to give security.

(d) **Contents and Scope of Every Injunction and Restraining Order.**

(1) **Contents.** Every order granting an injunction and every restraining order must:

(A) state the reasons why it issued;

(B) state its terms specifically; and

(C) describe in reasonable detail, and not by referring to the complaint or other document, the act or acts restrained or required.

(2) **Persons Bound.** The order binds only the following who receive actual notice of it by personal service or otherwise:

(A) the parties;



(B) the parties' officers, agents, servants, employees, and attorneys; and

(C) other persons who are in active concert or participation with anyone described in subsections (A) or (B).

(e) **Grounds for Preliminary Injunction.** A preliminary injunction may be granted in the following cases:

(1) when it appears by the petition that the moving party is entitled to the relief demanded, and that relief, or any part of it, consists in restraining the commission or continuance of the acts complained of, either for a limited period or perpetually;

(2) when it appears by the petition or affidavit that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury to the petitioner;

(3) when it appears during the litigation that the responding party is doing, threatening, procuring or allowing to be done, or is about to do, some act in violation of the moving party's rights, respecting the subject of the action, and the action may make the requested judgment ineffectual;

(4) when it appears, by affidavit, that the responding party is about to remove or to dispose of the responding party's property with intent to defraud the moving party or;

(5) for the responding party upon filing a counterclaim praying for affirmative relief upon any of the grounds mentioned above in this section, subject to the same rules and provisions provided for the issuance of injunctions on behalf of the moving party.

(f) **Restoring Possession of Real Property.** The district court may issue a writ of injunction for affirmative relief having the force and effect of a writ of restitution, restoring any person to the possession of any real property from which the person was removed by force, violence, fraud, or stealth; or from which the person is kept out of possession by threats if possession was taken on Sunday, a legal holiday, or in the nighttime; or while the party in possession was temporarily absent. The granting of the writ extends only to the right of possession under the facts of the case, in respect to the manner in which the possession was obtained, and does not resolve the legal rights of the parties on any other issue. This writ may only be issued on 7 days' notice in writing to the adverse party of the time and place of hearing on the application for writ.

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