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## IRFLP 602 Mediation of Child Custody and Visitation Disputes

### Idaho Rules of Family Law Procedure Rule 602. Mediation of Child Custody and Visitation Disputes.

(a) **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 help the parties identify the issues, reduce misunderstandings, clarify priorities, explore areas of compromise, and find points of agreement. An agreement reached by the parties is to be based on the decisions of the parties, not the decisions of the mediator.

(b) **Matters Subject to Mediation.** All family law actions involving a controversy over custody or visitation of a minor child are subject to mediation regarding issues of custody, visitation, or both.

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

(d) **Requirement to Attend Orientation.** Any judicial district may provide by local rule that all parties be required to attend parent mediation orientation, unless excused by the court.

(e) **Authority of the Court.** A court must order mediation if, in the court's discretion, it finds that mediation is in the best interest of the child and it is not otherwise inappropriate under the facts of the particular case. The referral of a family law action to mediation does not divest the court of the authority to exercise management and control of the case during the pending mediation.

#### (f) **Qualifications of Mediator; Application and Documentation.**

(1) **List of Registered Mediators.** The Supreme Court will compile a list of registered mediators. Any applicant seeking to be placed on the Supreme Court Roster of registered mediators must submit to the Administrative Director of the Courts, the following:



(A) 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;

(B) a copy of the applicant's degree, license or certificate; and

(C) proof of completion of the required mediation training as provided in activities required in subsections F.2 and F.3.

(2) **Qualification; 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:

(A) 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; or

(B) the applicant is a: member of 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.

(3) **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 (A) and (B). In addition, such training must be approved 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, or the Administrative Office of the Courts.

(A) Applicants under subsections F (2)(A) 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 F (2)(B) must have completed a minimum of 40 hours mediation training within the past 2 years, 20 of which must be in the field of child custody mediation. At least 40 of the training hours required under this section must be acquired through a single training course.

(B) At least 20 hours of the mediation training required for applicants under subsection F(2)(B), and at least 40 hours of the training requirements for applicants under subsections F(2)(A), must include the following topics, at least 30 percent must be in the practice of mediation skills:



- (i) information gathering (intake; obtaining facts; screening issues);
- (ii) mediator relationship skills (neutrality; confidentiality; nonjudgmental);
- (iii) communication skills (active listening; reframing issues: clarifying);
- (iv) problem solving skills (identifying problems, positions, needs, interests; brainstorming alternatives);
- (v) conflict management skills (theories of conflict management; mediation models; reducing tensions; power imbalances);
- (vi) ethics (standards of practice; typical problems);
- (vii) professional skills (substantive knowledge areas; case management; drafting agreements); and
- (viii) the 20 hours of child custody training required in subsection F(3) a must include the following topics:
  - (a) conflict resolution theory;
  - (b) psychological issues in separation, divorce, and family dynamics;
  - (c) domestic violence;y;
  - (d) issues and needs of children;
  - (e) mediation processes and techniques;y;



(f) family law, including custody and support; and

(g) a minimum of 2 hours of mediation ethics.

**(4) 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 30 hours of child custody training in one or more of the areas set forth in subsection 3(B) in each and every 3 years period following the July 1 date. This training must include a minimum of 2 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 subsection F(2)(B) must also send proof of current licensing.

(5) The administrative district judge in each judicial district may, by administrative order, require mediators to comply with additional criteria beyond those stated in subsections F(2) and F(3).

(6) Persons approved as child custody mediators prior to the effective date of the amendment to this rule will not be required to satisfy the training requirements of subsections F(2)(A), and F(2)(B), but will be required to fulfill the additional continuing education requirements of subsection F(4).

**(g) Duties of Mediator.**

(1) 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:

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

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

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

(D) the duties and responsibilities of the mediator and of the parties;



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

(F) advise the participants to seek independent legal counsel prior to resolving the issues and in conjunction with formalizing an agreement; and

(G) the information necessary for defining the disputed issues.

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

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

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

**(h) Communications between Mediator and the Court.**

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

(A) the parties are at an impasse;

(B) the parties have reached an agreement. In such case, however, the agreement so reached must be reduced to writing, signed by the parties, and submitted to the court by one or both of the parties, if self-represented; otherwise, through their attorneys, for the court's approval;;

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

(D) meaningful mediation is ongoing;



(E) the mediator withdraws from mediation; and

(F) the allegation or suspicion of domestic violence.

(i) **Contact between the Mediator, Attorneys, and Other Interested Persons.** The mediator and the attorneys for the parties may communicate with one another according to the following requirements:

(1) any contacts between the attorneys and the mediator must be either in writing or by conference call; and

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

(j) **Termination of Mediation.** The court or the mediator may terminate mediation proceedings if further progress toward a reasonable agreement is unlikely. The mediator must notify the court when the mediation has been concluded. :

(k) **Status Report.** Notice of the status of the mediation process must be submitted in a report every 28 days starting from the date of the initial order requiring mediation until completion.

(Adopted March 29, 2021, effective July 1, 2021.)

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