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## **IRFLP 603 Mediation of Other Matters**

### **Idaho Rules of Family Law Procedure Rule 603. Mediation of Other Matters.**

(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. 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.

(b) **Matters Subject to Mediation.** All issues in family law actions other than child custody and visitation disputes are eligible for referral to mediation under this rule. Child custody and visitation disputes must be mediated pursuant to Rule 602.

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

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

(1) on motion by a party;

(2) at any Rule 701 conference;

(3) on consideration of a request for trial setting, if all parties indicate in their request or response that mediation would be beneficial; or

(4) at any other time upon 7 days' notice to the parties if the court determines mediation is appropriate.

(e) **Selection of the Mediator.** The parties will have 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 28 days, then the court must appoint a mediator from the judicial district's list of mediators maintained pursuant to subsection M(1).

(f) **Scheduling of the Mediation Session.** Unless the court otherwise orders, the initial mediation session must take place within 42 days of the reporting of the selection or the appointment of the mediator.

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

(h) **Compensation of Mediators.** Mediators must be compensated at their regular fees and expenses, which must 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 will be responsible for a pro rata share of the mediator's fees and expenses. If a mediator is not paid, the court may order payment, upon motion of the mediator.

(i) **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.

(j) **Contact between Mediator, Attorneys, and Other Interested Persons.** The mediator and the attorneys for the parties may communicate with one another in the following manner:

(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.

(k) **Confidentiality.** The mediator must abide by the confidentiality rules agreed to by the parties. Confidentiality protections of Idaho Rules of Evidence 408 and 507 extend to mediation.

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



**(m) Qualification of Mediators.**

(1) Each trial court administrator must maintain a list of mediators who meet the qualifications of subsection (m)(2), and rosters from dispute resolution organizations that meet the criteria set forth in subsection (m)(3).

**(2) Mediation Registration; Qualifications of Court-Appointed Mediators.**

(A) The Administrative Director of the Courts must compile and distribute at least annually a list of mediators. For that purpose, the Administrative Director of the Courts must gather from all applicants an application demonstrating that the applicant:

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

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

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

(B) 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 5 hours of additional training or education during the preceding 3 calendar years on one of the following topics: mediation, conflict management, negotiation, interpersonal communication, conciliation, dispute resolution or facilitation. This training must 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; 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 these criteria may be submitted for approval either prior to or after completion. The requirement that continuing education for mediators include at least 5 hours of training in mediation takes effect for renewals due on or after July 1, 2013.

**(3) Mediation Registration; Sponsors of Additional Rosters of Mediators.**

(A) 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:



- (i) an established selection and evaluation process for neutrals;
  - (ii) a mechanism for addressing complaints brought against neutrals; and
  - (iii) published code of ethics that the neutrals must follow.
  - (iv) A compilation of the organization's selection, evaluation, published code of ethics, and complaint processes that can be distributed to the parties must be provided.
- (4) A list and roster of mediators distributed by the Administrative Director of the Courts, pursuant to subsections A and B, must contain the following information about each mediator:
- (A) name, address, telephone and fax number(s), email address, professional affiliation(s), education;
  - (B) legal and mediation training and experience; and
  - (C) fees and expenses.

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

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