



## **I.C.R. 15. Depositions**

### **Idaho Criminal Rule 15. Depositions**

#### **1. (a) When Taken.**

(1) *In General.* At any time after the filing of the complaint, indictment or information, and on notice to all parties, a party may move that a prospective witness be deposed in order to preserve testimony for trial. The court may grant the motion if the testimony of the witness is material and it is necessary to take the deposition of the witness in order to prevent a failure of justice. If the court orders the deposition to be taken, it may also require the deponent to produce at the deposition any designated material that is not privileged, including any book, paper, document, record, recording, or data.

(2) *Detained Witness.* If a witness is detained for failure to give bail to appear to testify at a trial or hearing, the witness or any party may request that the witness be deposed by filing a written motion and giving notice to the parties. The court may then order that the deposition be taken and may discharge the witness after the witness has signed under oath the deposition transcript.

**(b) Notice of Taking.** The party at whose request the deposition is to be taken must give reasonable written notice of the time and place for taking the deposition to every other party, and to the officer having custody of a defendant. The notice must state the name and address of each person to be examined. On motion of a party on whom the notice is served, the court, for cause shown, may extend or shorten the time or change the place for taking the deposition.

#### **(c) Defendant's Presence.**

(1) *Defendant in Custody.* The officer who has custody of the defendant must produce the defendant at the deposition and keep the defendant in the witness's presence during the examination, unless the defendant:

(A) waives in writing the right to be present; or

(B) persists in disruptive conduct justifying exclusion after being warned by the court that disruptive conduct will result in the defendant's exclusion.



(2) *Defendant Not in Custody.* A defendant who is not in custody has the right on request to be present at the deposition, subject to any conditions imposed by the court. If the government tenders the defendant's expenses as provided in subsection(d) of this rule but the defendant still fails to appear, the defendant, absent good cause, waives both the right to appear and any objection to the taking and use of the deposition based on that right.

**(d) Payment of Expenses.** When a deposition is taken, the court may direct that the county pay 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.

**(e) How Taken.** Subject to any additional conditions that the court may provide, a deposition must be taken and filed in the manner provided in the Idaho Rules of Civil Procedure except as otherwise provided in these rules, except that:

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

(2) the scope and manner of examination and cross-examination must be such as would be allowed in the trial itself.

The state must 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 that is in the possession of the state and to which the defendant would be entitled at the trial. 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.

**(f) Use.** At the trial or on any hearing, a part or all of a deposition that is 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.

**(g) Objections to Deposition Testimony.** Objections to deposition testimony or evidence or parts of it and the grounds for the objection must be stated at the time of the taking of the deposition, unless otherwise agreed by the parties.

**(h) Deposition by Agreement Not Precluded.** Nothing in this rule precludes the taking of a deposition orally or on written questions, or the use of a deposition, by agreement of the parties with the consent of the court.



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