

# The Advocate

Official Publication of the Idaho State Bar

Volume 50, No. 12

December 2007



This issue of *The Advocate* is sponsored by  
the Real Property Section



# TENANT ADVISOR

COMMERCIAL REAL ESTATE

Current Market Surveys  
Objective Counseling  
Market Knowledge  
Expert Negotiations  
Experienced

While most landlords are well represented in a leasing transaction, many tenants are not. Bill Beck, SIOR, of Tenant Realty Advisors represents the interests of commercial **tenants and buyers**. Beck's experience representing over 750 clients enables him to bring a wealth of market knowledge and objective counseling which will help his clients find terms and locations favorable to their needs.

*"It was so helpful to have an agent look out for our interests. The only thing I had previously experienced was a real estate agent who looked out for the landlord. I have handled real estate transactions but was unaware of the pitfalls in commercial leases. Your knowledge saved us money."*

Carty & Dredge, PA Attorneys at Law



950 West Bannock Street, Suite 620  
Boise, Idaho 83702  
208-333-7050  
[www.tenrealad.com](http://www.tenrealad.com)





## ALPS is your Idaho State Bar endorsed professional liability insurer.

### ALPS comprehensive professional liability program offers industry-leading guidance, financial stability and protection to you and your law firm.

#### SUPERIOR POLICY FEATURES AVAILABLE:

- **Defense Costs Paid in Addition to the Limits of Liability**
- Input on selection of mutually acceptable **defense representation**
- **No "Hammer Clause"** regarding the appropriateness of a settlement
- **First Dollar Defense:** Avoid paying deductible for defense costs if no loss payment is made
- **Directors and Officers Coverage** while serving select tax-exempt organizations
- **Extended Reporting Endorsement** for solo attorneys in the event of death, disability or full and permanent retirement if insured with ALPS for 5 continuous years
- **Innocent-Insured Coverage** for members of firm who did not commit the error
- Same defense to **non-lawyers, who refer** business to our insured firm
- Enhanced policy **coverage available for services to family members**
- **Deductible:** pay no more than two in a policy year
- **Reduced Deductible** for claims resolved through formal mediation
- **Supplementary Payments:** Defendant's Reimbursement Coverage and Grievance Defense
- **Claims/Incident Reporting** is available 24 hours per day, 365 days per year

#### IN ADDITION ALPS SERVICES INCLUDE:

- Providing you and your firm with the best coverage and assistance possible
- Highly efficient claims management and procurement
- Industry-leading education and risk management programs

### CALL ALPS TODAY FOR YOUR NO-OBLIGATION QUOTE: 1-800-FOR-ALPS

ALPS works diligently to promote the honor and dignity of the legal profession and provides resources to address issues affecting lawyers, law firms and bar associations. Examples include lawyer assistance programs, rookie camps, access-to-justice support and professionalism programs.

ALPS is the endorsed or affiliated lawyers professional liability carrier for more state bars (12) than any other insurance company and is **rated A- (Excellent) by A.M. Best Company**.

[www.alpsnet.com](http://www.alpsnet.com)

## FEATURE ARTICLES

- 13 Welcome from the Real Property Section**  
Cynthia A. Melillo
- 14 Brokerage Services v Unauthorized Practice of Law: Where's the Line?**  
Jane Reiser  
*What liability do real estate brokers and agents have in their efforts to service the marketplace? How do they perform essential brokerage services today without crossing the line into the unauthorized practice of law (UPOL)?*
- 17 Taking Title in Idaho: Options and Consequences**  
Sasha D. Collins  
*This article outlines the options an individual has when choosing to take title to real property located in Idaho. It examines the tax, asset protection, and inheritance consequences of the options.*
- 20 A Practitioner's Guide to Mechanic's Lien Law**  
Douglas Hookland and Jeffrey S. Young  
*This article provides Idaho attorneys with a checklist of issues to cover when asserting or defending against mechanic's lien rights.*
- 25 Local Historic Preservation Ordinances**  
Renee R. Magee, Julie Braun, and Joseph H. Groberg  
*The Idaho Preservation of Historic Sites Act, Idaho Code §§ 67-4601 et seq through 4619, authorizes local historic preservation ordinances which are valuable and powerful tools for preserving the uniqueness of our communities.*
- 28 Ad Valorem Taxation of Conservation Easements**  
Arthur B. Macomber  
*Idaho Code § 55-2109 mandates ad valorem county taxation on conservation easements gifted or sold to charitable organizations. This article discusses the legality of that statute, which appears to abridge Idaho's constitution on uniform taxation and unjustly mandates taxation of what is no longer owned.*
- 32 Conservation Easements in the Rocky Mountain West: Perpetuity is Relative**  
Jessica Rutzick  
*This article discusses recent developments related to conservation easements and the potential termination of conservation easements placed on split estates.*

## 42 Idaho's New Judiciary in 2007

Hon. Lowell D. Castleton

*As of October 29, 2007 the Idaho courts have seen a new chief justice, the appointment of two Supreme Court Justices, the appointment of six district judges and six magistrate judges, and the election of one district judge.*

## COLUMNS

- 6** President's Message, *Andrew E. Hawes*  
**8** Executive Director's Report, *Diane K. Minnich*  
**39** Good Will for the Season and Beyond, *Linda Judd*

## NEWS AND NOTICES

- 9** Discipline  
**11** Casemaker—the things we can do  
**34** Diversity Section Inaugural Reception  
**35** Directory Updates  
**39** Idaho Law Foundation  
**40** IVLP Special Thanks to Volunteers  
**45** Idaho Supreme Court Fall Terms  
**45** Idaho Supreme Court Oral Arguments  
**45** Idaho Court of Appeals Fall Terms  
**45** Idaho Court of Appeals Oral Arguments  
**47** Cases Pending  
**51** Of Interest  
**54** 2007 *Advocate* Author Index  
**56** 2007 *Advocate* Title Index  
**58** Classifieds  
**60** Coming Events  
**60** Continuing Legal Education Information

## ON THE COVER

The photograph on the cover was taken by Wayne Kidwell retired Supreme Court Justice. "This colorful shot of a Christmas cactus occurred to me as it recently came into bloom in my kitchen window. I took it outside, sat down on the cold ground and took several shots. The soft light and detail make it more interesting."

## SECTION SPONSOR

This issue of *The Advocate* is sponsored by the Real Property Law Section.

# The Advocate

Official Publication of the Idaho State Bar

## MANAGING EDITOR

Jeanne S. Barker

## EXECUTIVE DIRECTOR

Diane K. Minnich

## EDITORIAL

### ADVISORY BOARD

Lorna K. Jorgensen, *Chair*

Matthew T. Christensen

Samuel B. Laugheed

Kenneth J. Pedersen

Scott E. Randolph

Pamela J. Tarlow

Mitchell E. Toryanski

Hon. Mikel H. Williams

John N. Zarian

Brian P. Kane

Karin D. Jones

B. Newal Squyres

*Commissioner Liaison*

## BOARD OF

### COMMISSIONERS

Andrew E. Hawes, *President*

Terrence R. White,

*Commissioner*

Dwight E. Baker,

*Commissioner*

B. Newal Squyres,

*Commissioner*

Douglas L. Mushlitz,

*Commissioner*

## ADVOCATE STAFF

Jeanne S. Barker  
Managing Editor  
jbarker@isb.idaho.gov

Robert W. Strauser  
Advertising Coordinator  
Senior Production Editor  
rstrauser@isb.idaho.gov

Amber R. B. Kenoyer



Copyright© 2007 The Idaho State Bar. The editorial contents of this publication are the opinions of the authors and do not necessarily represent or reflect the policies or opinions of the Idaho State Bar. *The*

*Advocate* has the authority to edit material submitted for publication. Appearance of an advertisement in *The Advocate* does not constitute a recommendation or endorsement by *The Advocate* or the Idaho State Bar of the goods or services offered therein. The Idaho State Bar Editorial Advisory Board reserves the right to reject advertising determined not to be in keeping with the publication's standards.

*The Advocate* (ISSN 05154987) is published monthly, September through June by the Idaho State Bar, 525 W. Jefferson Street, Boise, Idaho 83702. Subscriptions: Idaho State Bar members receive *The Advocate* as part of their annual dues payment. Nonmember subscriptions are \$45 per year. Periodicals postage paid at Boise, Idaho.

POSTMASTER: Send address changes to:  
The Advocate



62% of cases accepted by Idaho Volunteer Lawyers Program involve children whose families require assistance for family law issues.

## Consider Joe.

People would describe Joe as a hard-working man and loving father. Since his divorce, Joe has had full custody of his children for two years. Joe's ex-wife decided she wanted custody, even though her new husband had been convicted of committing domestic violence against her. Joe wanted to protect his children from exposure to this violent man. His children wanted to stay in their secure, established routines. Through the support and assistance of **Idaho Volunteer Lawyers Program**, Joe received representation from a volunteer attorney and retained custody of his two children.

All children deserve to live in safe, loving homes, and with the support of **Idaho Volunteer Lawyers Program** and the help of people like you, many more will.

Help fathers like Joe protect their children. Send your donation today.

*A Foundation for Justice*

FOUNDATION FOR JUSTICE CAMPAIGN  
P.O. Box 895 | Boise, Idaho 83702

IDAHO LAW FOUNDATION



*Helping the profession serve the public*



## PRESIDENT'S MESSAGE

ANDREW E. HAWES

### PUTTING THE SENIOR PARTNER OUT TO PASTURE: LAW FIRM'S MANDATORY RETIREMENT POLICY



The Idaho State Bar membership in the age 50+ category has increased sharply and now represents the highest category of practicing lawyers.

In 1994, aged 50+ lawyers amounted to 19% of Bar membership. In 1999, this figure was 30%. The Idaho State Bar 2007 survey revealed that attorneys within this age category now represent 47% of our Bar. Not surprisingly, Idaho law firms are now dealing with retirement issues more often. This includes addressing the difficult and sometime unpleasant issue concerning what circumstances make it appropriate for a firm to "force" a senior partner to retire.

In the past, retirement issues were addressed through creative retirement packages. Sometimes "retirement" was brokered through "backdoor" deals. Eventually, some firms began crafting partnership agreements that required a partner to take retirement at a certain age. In 2005, a survey obtained by the American Bar Foundation revealed that 37% of law firms had a mandatory retirement age. This survey also reported 70 as the average age of required retirement under mandatory retirement age policies.

It has been said that firms adopting a mandatory retirement age policy support the policy because it is based on an "objective" standard and spares an uncomfortable confrontation between firm and partner whose skills have waned upon the advancement of age. However, there has been a charge to re-examine the concept of mandatory retirement. For example, the New York State Bar Association recently filed a report with the American Bar Association (ABA) recommending that mandatory age-based law firm policies be discontinued and that law firms

evaluate seniors individually consistent with the firm's performance criteria.

#### SUMMARY OF THE ABA REPORT AND RECOMMENDATION 10-A

The New York State Bar Association submitted a proposed report and recommendation to the ABA for its consideration at its annual 2007 meeting in August. The proposal became known as Report and Recommendation 10-A (The Report). You can access a copy of The Report in its entirety online at the Bar's website: [www.idaho.gov/isb](http://www.idaho.gov/isb). The following is a summary of the report.

The Report gives a warning to the legal profession in that involuntary or mandatory age-based retirement policies in law firms may not necessarily be exempt from the Age Discrimination in Employment Act (ADEA) and other federal antidiscrimination laws. In support, the Report cited the case of *E.E.O.C. v. Sidley Austin Brown & Wood*, 315 F. 3d 696 (7th Cir. 2002).

In the Sidley case, the EEOC issued a subpoena to the firm to determine whether 32 former partners who had been demoted to "counsel" or "senior counsel" positions were protected "employees" under the ADEA. The Sidley firm sought to quash the subpoena arguing that the partners holding equity interest in a law firm could not be considered employees under the ADEA. In the case, the Court noted that an individual's status as "partner" under state law is not dispositive whether this status is considered an "employer" under federal antidiscrimination law. In the Sidley case, the court observed that the firm was controlled by a self-perpetuating executive committee with the power to fire, promote, demote and set compensation and to generally decide all firm-wide issues. The court noted the similarities between the 32 demoted partners and regular "employees" of a corporation.

The Report acknowledged the case did not break new ground as the ruling was concerned with the narrow issue whether or not the EEOC had grounds to issue the subpoena. However, the Report, suggests the court's opinion underscored the unsettled application of law relating to mandatory age-based retirement policies and federal age discrimination law. The Report implicated that if partners are protected as "employees" under the ADEA, they could have the ability to claim age discrimination with respect to hiring, firing, compensation, terms, conditions and privileges of employment.

The report also acknowledged that if it was found that the ADEA would cover a partner in a law firm setting, liability could not be automatic. Certain defenses would be available to the firm including, whether the treatment accorded the partner-employee is based on reasonable factors other than age or where the partner-employee's discharge or discipline was based on good cause. See 29 U.S.C. § 623 (f).

Report 10-A identified that beyond Sidley, there is really a larger issue at stake: that forced retirement based on age lacks sound public policy. After all, according to the Report, society has made judgment that people should not be put "out to pasture" arbitrarily, solely because of age and therefore retirement based on age-alone is unwarranted, unwise and short sided and should not be acceptable in the legal profession.

#### REPORT 10-A'S RECOMMENDED GUIDELINES ON FIRM RETIREMENT POLICIES

If mandatory age requirement must go, what should a firm consider in setting a firm retirement policy? The Report suggests that flexibility (not rigidity) and individual consideration of the needs of the firm and the individual partner should be considered. According to the Report, the

focus should be on performance criteria, not age. Specifically, a senior partner should be evaluated individually in accordance with his or her attributes and interests and the firm's generally applicable performance criteria, including the full range of strategic and tactical legal abilities and lawyering skills. The Report recommends firms to consider criteria other than billable hours, such as business generation, pro bono activities, as well as the partner's ability to create or maintain client relationships and the willingness to involve other lawyers in the firm, mentoring, collegiality, recruiting activities, marketing and other functions that support their firm's morale, stability and growth, or working on philanthropic or bar association activities that will benefit the profession and enhance the reputation of the firm.

The Report recommends that a senior lawyer should have a different standard for "billable hour" than the young lawyer. Expanding, billable hours may be more relevant criteria for the younger partners' overall performance, while transitioning of clients, experience and ability, the law firm's heritage and culture and need to act in a training capacity (which may take away from the "billable hour") may be more important criteria for senior lawyers.

The Report suggests some firms should consider special categories of positions that can accommodate the best interests of the firm, such as overseeing the law firm's pro bono program. In addition, some firms may find it appropriate to utilize a "transition" program in which the senior partner "transitions" his or her

client relationships to more junior partners. This may take up to two years and at the conclusion of the transition period the partner and the firm could then arrive at a relationship that works best for both.

Ultimately, Recommendation 10-A was adopted by the House of Delegates of the American Bar Association.

I debated about including this theme in a presidential message. After all, this is Idaho. Many law firms' forced retirement policy is that retirement is to occur upon Dwight failing to show up at the office one day because he's dead. In addition, it is hard for me to sympathize with an attorney objecting over a forced retirement based on age when he or she understood the rule when voting for the policy or agreed to accept partnership subject to this policy. However, Report 10-A does cause us to examine what is considered to be a "meaningful contribution" to the law firm practice. At the very least, Report 10-A may provide some guidance as to what criteria a firm may want to consider in setting forth a retirement policy.

#### EDITOR'S CORRECTION

In President Hawes' November column there was a fundamental editing error. In the column, Borah states Wood instructed the jury that a person cannot be convicted of a crime upon the testimony of an accomplice unless such accomplice is corroborated by other evidence. That one instruction tended to connect Haywood to the assassination of Governor Stuenenberg. That is incorrect, as this instruction did NOT allow a jury to connect Haywood to the assassination because they found no other evidence

backing up the accomplice's testimony—and that was the point—because of this instruction Borah claims, Haywood was let off the hook. The original draft said "...unless the accomplice's testimony was corroborated by other evidence connecting Haywood to the assignation of Governor Stuenenber."

Also, the referenced fourth form of measurement for judicial quality should not have been included. The editors regret these errors and apologize for any confusion they caused readers.

**Andrew E. Hawes**, is an in-house attorney for *Western Pacific Timber, LLC* and *Yellowstone Club World, LLC*. He is serving a six-month term as President of the *Idaho State Bar Board of Commissioners*. He was elected as Commissioner to represent the *Fourth Judicial District* in 2005. He grew up in Boise, and is a graduate of *Boise High School* and the *University of Denver*. He obtained his law degree from the *University of Idaho College of Law*. He and his wife *Gretchen*, live in Boise and have two daughters, *Audrey* and *Greta*.

#### WANT TO AVOID THE LAST MINUTE SCRAMBLE FOR CLES?

If your MCLE reporting period ends on December 31, 2007, visit [www.idaho.gov/isb](http://www.idaho.gov/isb) for lists of upcoming live courses, approved online courses, and audio/video rentals available for rent. If you have questions about MCLE compliance, contact the Membership Department at (208) 334-4500 or [jhunt@isb.idaho.gov](mailto:jhunt@isb.idaho.gov).



**MOONLIGHTING SOFTWARE**  
*Innovative Custom Software*

**Home of the best Child Support Program**

**PO Box 44930 (208) 376-7728**  
**Boise, ID 83711 [www.idchildsupport.com](http://www.idchildsupport.com)**

**FORENSIC DOCUMENT EXAMINER**

Full service laboratory to resolve handwriting issues, obliterations, alterations, ink comparisons, etc. The only examiner in ID and the N/W Certified by the American Board of Forensic Document Examiners. Government trained.

**James A. Green**  
**(888) 485-0832**  
**PO Box 5379 · Eugene OR · 97405**



# EXECUTIVE DIRECTOR'S REPORT

DIANE K. MINNICH



## HAPPY HOLIDAYS!

Again this year, I have included pictures of my daughters as part of my December article. Why... ? Because this is the time of year to celebrate those things in your life that make you happy. In my case, I am fortunate to have wonderful family and friends. Our daughters, Samantha and Stephanie, are now six years old; a kindergartner and a first grader. They are at a great age. Stephanie loves dance, and tolerates team sports—mostly so she can wear the baseball cap. Samantha loves animals. She wants horses, which her dad says won't fit in the backyard so she has cats. They love to dress-up and they both still love hugs. They write me notes every day saying, "I love you Mom." Mike and I are cherishing this time because we often hear rumors that the teenage years might be more challenging!

So, this holiday season take time to reflect on the good things in your life and enjoy time with those you care most about. From all of us at the Bar, we wish you a happy ending to the old year, and a positive beginning to the new year.



### HAPPY HOLIDAYS

FROM THE IDAHO STATE BAR AND THE IDAHO LAW FOUNDATION LEADERSHIP AND STAFF!

IDAHO LAW FOUNDATION



*Helping the profession serve the public*

The Idaho Law Foundation  
has received a generous donation

*In Memoriam*

*Hon. James G. Towles*

*from*

*Hon. James and Mrs. Linda Judd*

IDAHO LAW FOUNDATION



*Helping the profession serve the public*

The Idaho Law Foundation  
has received a generous donation

*In Memoriam*

*Yolanda A. Crossland*

*from*

*Bud and Joan Yost*

**MICHAEL L. SCHINDELE  
(Interim Suspension)**

On November 1, 2007, the Idaho Supreme Court issued an Order Granting Petition of Interim Suspension of License to Practice Law of Boise attorney Michael L. Schindele.

The Idaho State Bar filed a Petition for Interim Suspension of License to Practice Law and for an Injunction of Maintenance of Trust Funds and supporting Affidavit on October 31, 2007. A formal charge disciplinary proceeding is pending before the Professional Conduct Board seeking Mr. Schindele's disbarment. The Idaho Supreme Court determined that it clearly appeared from the specific facts shown by the Petition and Affidavit that Mr. Schindele, "poses a substantial threat of irreparable harm to the public and the conduct alleged in the Complaint filed with the Professional Conduct Board, if true," would subject him to sanctions. The Court therefore concluded that Mr. Schindele is suspended from the practice of law until further order of the Court and that Mr. Schindele be "enjoined from maintaining, establishing or contributing to any trust account connected with his or any other attorney's trust account." Mr. Schindele is also "enjoined from removing any funds from any of his existing trust accounts and any financial institution in the State of Idaho is enjoined from paying over to" Mr. Schindele "from any of his trust account funds."

Inquiries about this matter may be directed to: Bar Counsel, Idaho State Bar, P.O. Box 895, Boise, Idaho 83701, (208) 334-4500.

**NOTICE TO MICHAEL L. SCHINDELE OF  
CLIENT ASSISTANCE FUND CLAIM**

Pursuant to *Idaho Bar Commission Rule* 614(a), the Idaho State Bar hereby gives notice to Michael L. Schindele that a Client Assistance Fund claim has been filed against him by former client Simplot Employee's Credit Union in the amount of \$3,801.70. Please be advised that service of this claim is deemed complete fourteen (14) days after the publication of this issue of *The Advocate*.

**NOTICE TO MICHAEL L. SCHINDELE OF  
CLIENT ASSISTANCE FUND CLAIM**

Pursuant to *Idaho Bar Commission Rule* 614(a), the Idaho State Bar hereby gives notice to Michael L. Schindele that a Client Assistance Fund claim has been filed against him by former client Simplot Employee's Credit Union in the amount of \$44,567.98. Please be advised that service of this claim is deemed complete fourteen (14) days after the publication of this issue of *The Advocate*.

**NOTICE TO MICHAEL L. SCHINDELE OF  
SERVICE OF SUMMONS AND COMPLAINT**

Pursuant to *Idaho Bar Commission Rule* 523(a), the Idaho State Bar hereby gives notice to Michael L. Schindele that the Idaho State Bar has filed a Summons and Complaint against him. The Idaho State Bar attempted to serve the Summons and Complaint upon Mr. Schindele by certified mail, return receipt

requested at his address as filed with the Idaho State Bar and the certified mail was returned to the Idaho State Bar as unclaimed. Please be advised that service of these documents upon Mr. Schindele shall be deemed complete fourteen (14) days after the publication of this issue of *The Advocate*. Mr. Schindele, please contact Brad Andrews, Bar Counsel, at the Idaho State Bar, P.O. Box 895, Boise, ID 83701, (208) 334-4500, to obtain copies of the Summons and Complaint referred to in this notice.

**RICHARD A. BERGESEN  
(Public Reprimand)**

The Professional Conduct Board of the Idaho State Bar has issued a Public Reprimand to Boise lawyer, Richard A. Bergesen, based on professional misconduct.

The Professional Conduct Board Order followed a stipulated resolution of an Idaho State Bar disciplinary proceeding, in which Mr. Bergesen admitted that he violated Idaho Rule of Professional Conduct 3.5(d) ["Conduct Intended to Disrupt a Tribunal"].

The Complaint related to Mr. Bergesen's conduct in two criminal cases. The first case was a misdemeanor battery charge before Judge Richard A. Schmidt. At the close of the trial evidence in that case, Mr. Bergesen requested a self-defense jury instruction. Judge Schmidt ruled that the record did not support the instruction and denied the request. Mr. Bergesen objected to the ruling and disrupted proceedings in the courtroom and Judge Schmidt's chambers. Judge Schmidt ordered Mr. Bergesen to leave his chambers, called the marshal, the marshal diffused the situation and Mr. Bergesen returned to the courtroom. When the trial resumed, while discussing instructions, without the jury, the disruption continued. Judge Schmidt stated it was obvious to him that the case could not go further. Mr. Bergesen then requested a mistrial. Judge Schmidt then granted a mistrial without regard to Mr. Bergesen's motion. Upon retrial before a different judge, the jury found Mr. Bergesen's client not guilty.

The second case involved a felony sentencing before Judge Cheri Copsey. Mr. Bergesen openly challenged Judge Copsey's ability to be fair and impartial to him. After a recess, when Judge Copsey returned to court, Mr. Bergesen briefly left the courtroom, without the Court's permission, to advise his client's family members that the hearing was continuing. Judge Copsey then made a record of Mr. Bergesen's conduct. At the request of his client, Mr. Bergesen asked Judge Copsey to recuse herself. Judge Copsey reiterated that she was not personally biased against Mr. Bergesen or his client, declined Mr. Bergesen's request, and the hearing proceeded.

Mr. Bergesen has agreed to complete an anger management course approved by Bar Counsel. The Public Reprimand does not limit Mr. Bergesen's eligibility to practice law.

Inquiries about this matter may be directed to: Bar Counsel, Idaho State Bar, P.O. Box 895, Boise, Idaho 83701, (208) 334-4500.

CHASAN



WALTON

ATTORNEYS AT LAW

## PROFOUND INJURY CASES

FEE SPLIT ARRANGEMENTS

ANDREW M. CHASAN

*Martindale-Hubbell AV Rated  
Past President, Idaho Trial Lawyers Association*

TIMOTHY C. WALTON

*Martindale-Hubbell AV Rated  
Past President, Idaho Trial Lawyers Association*

**208.345.3760**

**800.553.3760**



1459 Tyrell Lane • PO Box 1069 • Boise, Idaho 83701

**[www.chasanwalton.com](http://www.chasanwalton.com)**

[andrew.chasan@chasanwalton.com](mailto:andrew.chasan@chasanwalton.com) • [tim.walton@chasanwalton.com](mailto:tim.walton@chasanwalton.com)

# CASEMAKER—THE THINGS WE CAN DO!

*Casemaker is a computerized legal research library developed in 1988 by Lawriter and the Ohio State Bar Association (OSBA) which allows attorneys to access a comprehensive, easy-to-use electronic research library as part of their state bar membership. It is a complete state and federal law library that can be accessed over the Internet. The Bar provides all Idaho lawyers with the Casemaker computerized legal research system, and covers the entire cost of providing most basic computer research.*

## THESAURUS FUNCTION

Casemaker incorporates a Thesaurus function in its search engine. This little-known **Thesaurus** function can provide users with expanded search capabilities. By placing a tilde (~) immediately before a word (*no spaces allowed*), users can find synonyms for keywords. Because the thesaurus allows for the expansion of the number of searchable cases with similar dialogue, this greatly increases the chance of finding case law that is most applicable to your challenges. For example, entering ~**alcohol** into the Full Document Search Query box will yield the case law containing the words, "**liquor**," "**whiskey**," "**intoxicant**," "**spirits**," and more.

Entering the word ~**car** will yield the words "**car**," "**automobile**," "**auto**," "**vehicle**," "**train**," and others. But users need to be careful. Because the word, "**vehicle**" can also mean, "**conveyance**," this word may also appear in the search. When searching for ~**animal** the surnames "**Hare**" and "**Hunter**" may appear.

The **Thesaurus** function can also be used in conjunction with other search parameters such as **AND**, **OR**, **NOT**, **PHRASE**, and **SUFFIX EXPANSION** searches.

## SUPERCODE FEATURE

Casemaker utilizes **SuperCODE** to identify changes to statutes and codes. **SuperCODE** is the exclusive Casemaker feature that identifies session laws which may affect the documents that users view. **SuperCODE** appears on the right-hand side of the screen and displays hyperlinks to session laws that reference the document currently being viewed. By clicking on the hyperlink (*if present*) the user is immediately transported to the segment of the legislation that deals with the current document. Users can then quickly determine if the new law will apply to the salient portion of code of interest.

## SUFFIX EXPANSION

You can perform a more inclusive search by using the **Suffix Expansion** feature. Because the search engine is precise,

Casemaker finds only the exact search terms entered into the Full Document Search Query box. However, users may find all word forms of a single word by attaching an asterisk (\*) to the end of the word (*no spaces allowed*). By doing so, users activate the **Suffix Expansion** feature. If the term **stalk\*** is typed into the Search box, present tense (**stalk**), plurals (**stalks**), past tense (**stalked**), nouns (**stalker**), and progressive tense verbs (**stalking**) can all be found in a single search.

## CASECHECK FEATURE

The **casecheck** function allows Casemaker users to determine validity of case law. **Casecheck** allows legal professionals the opportunity to determine if the case they may wish to cite has been challenged by a later court. To access **casecheck**, simply look on the righthand side of the screen of the case you are viewing. If there are no hyperlinks underneath the **casecheck** logo, it means that no action has been taken on the case by a later court. If there are hyperlinks it does not necessarily mean there have been any rulings against the case in question. However, it will require the user to click on the link to find out.

By clicking the hyperlink, the user is taken directly to the portion of the later case where the older case is cited. By reading the text surrounding the case citation, the user can quickly determine later treatment of the cited case.

Citators can be good, but they may or may not address the finer point that a user would need to have in order to accurately determine the status of a case. Further, there is no guarantee that the citator determination was actually written by a lawyer. In some instances, non-graduate law students may have been assigned to write the citator determination. By allowing Casemaker users to view the specific area of the later case, legal professionals can read the decision themselves and make their own determination of the value of the case in question. We feel that, although it

may be slightly more time-consuming, Casemaker users are the best judge of the applicability of a ruling to their case.

## EXCLUSION FUNCTION

Casemaker allows users to exclude search terms in order to narrow searches. The **Exclusion Function** can be used to prohibit undesired cases from being offered to the user. By placing a hyphen (-) immediately before (*no spaces allowed between the hyphen and the word to be excluded*) the term to be eliminated from the search, Casemaker will display only those cases which have desired search terms.

For example, **property—commercial** would most likely yield strictly private property cases. Users are able to insert multiple combinations. Entering the words **gross sexual imposition—rape** would eliminate all rape cases. **Drown—swimming—pool** would yield cases in which the word **drown** would appear, but **swimming** and **pool** would not.

This useful feature and other search tools allow Casemaker users the flexibility to quickly discover the cases that accurately put them on point.

## BROWSE FEATURE

The ability to **Browse** through content is one of Casemaker's more popular features. Users have the ability to view a list of hyperlinks to statutes, codes, rules, and other materials. By being able to view the titles users can determine which item would be of most interest to them. This feature allows attorneys the freedom to search for a desired document without knowing the citation number or even the official document name. Casemaker members are able to browse without charge.

## CURRENCY OF MATERIALS

Casemaker updates legal research materials in accordance with requirements of individual state bar associations. A link to the state or federal **Currency Page** is located on each individual library's main page. By clicking on the link, users are directed to information that clearly delineates the currency of all material available

in that library. Not all of Casemaker's states' case law begin in the same year. The level of document history and currency has been determined by individual state bar associations. If you have any questions regarding the release date or currency of any materials, please check the **Currency Page**.

#### PROXIMITY SEARCH

The ability to search for words that are within a defined "distance" to another word can provide valuable assistance. You can use the Casemaker's **Proximity Function** to choose how closely multiple search terms appear within a document. By going to the drop-down menu at the bottom of the Search page, the user can readily select how close in **Proximity** they would like the search terms to be. This feature allows users to rapidly narrow their searches thereby reducing search times.

#### MULTIPLE FUNCTION SEARCHES

Most Casemaker users find the **AND** function successful in narrowing searches. This function is activated by simply leaving a space between the two or more search terms. Most of Casemaker's Search

Functions can also be used in conjunction with each other.

Casemaker search parameters for the Full Document Search Query box include: **AND, OR, NOT, PHRASE, THESAURUS,** and **SUFFIX EXPANSION** searches. Here are a few examples to show how Casemaker's Search Functions work.

•**AND**—leaving a space between the search terms will require **ALL** of the words to appear in the document.

**Example: knife gun**—»will yield documents containing both **knife** and **gun**. Additional terms may be added to further narrow search results.

•**OR**—put the search terms in parentheses with only a comma between them (*no space*) and **EITHER** search term will appear in the document.

**Example: (knife,gun)**—»(*parentheses required*) identifies documents which contain either **knife** or **gun**.

•**NOT (Exclusion Search)**—inserting a hyphen (-) immediately in front of the word will ensure that the search term **DOES NOT** appear in the document. Make sure there is a *space* between all of the search terms.

**Example: knife -gun**—»will find documents that contain the word **knife**, but not the word **gun**.

•**PHRASE**—putting the exact phrase in quotation marks yields documents which contain the phrase.

**Example: "next of kin"**—»will locate documents with the phrase **next of kin**.

•**THESAURUS**—by placing a tilde (~) just in front of a word (*no space*), documents that have the word, as well as synonyms will be found.

**Example: ~liquor**—»will produce documents that have the words, **liquor, spirits, whiskey, drink, intoxicant**, etc.

•**SUFFIX EXPANSION**—placing an asterisk just behind the word (*no space*), will produce documents with the word appearing in any amended form (i.e. plurals, past and progressive verb tenses, nouns, etc.).

**Example: stalk\*** —»displays documents with the words **stalk, stalks, stalked, stalker, stalking**.

Most of these functions will work together in the same search. With just a little experimentation, users can incorporate **Multiple Function** searches into their everyday searches.

## ZM ZARIAN+MIDGLEY

### We Are Pleased to Announce the Formation of ZARIAN MIDGLEY & JOHNSON PLLC

University Plaza • 960 S. Broadway Ave. • Suite 250 • Boise, ID 83706  
Tel: (208) 433-9121 • Fax: (208) 441-9120  
[www.zarianmidgley.com](http://www.zarianmidgley.com)

ZARIAN + MIDGLEY is a boutique law firm specializing in intellectual property matters and complex litigation. The firm has assembled a team of lawyers with extensive experience handling complex legal matters throughout the country, including registered patent attorneys and lawyers with technical degrees ranging from electrical and computer engineering to genetics and mechanical and manufacturing engineering. Our attorneys have handled patent prosecution and litigation matters in a wide variety of technology areas, including semiconductors, electronic devices, biomedical devices, visual display products, and complex mechanical systems. The firm serves clients on a local and regional basis.

#### Areas of Practice

- Intellectual Property Litigation
- Patent Litigation
- Complex Business Litigation
- Trials and Appeals
- Trademark Law
- Trade Secret Law
- Copyright Law
- Unfair Competition Law
- Patent Prosecution
- Technology Licensing
- IP Strategic Counseling
- IP Portfolio Management

# REAL PROPERTY SECTION: MESSAGE FROM THE CHAIR

Cynthia A. Melillo  
Givens Pursley LLP

The Real Property Section of the Idaho State Bar is pleased to sponsor the December issue of *The Advocate*. The Real Property Section is currently the largest practice section within the Idaho State Bar with close to 300 members. Real property issues are many and diverse, and the practices of our members reflect this diversity with members practicing in areas which include real estate based litigation, real estate sales and leasing, taxation, financing, investment, commercial and residential development, condominium development, easements and land use.

The focus of the Real Property Section has been to provide education on a variety of real property issues to members of the Idaho State Bar as well as non-lawyers whose professions touch and concern real property issues, such as real estate agents, title and escrow officers and developers. We do this by holding monthly meetings which include a CLE component. In addition to the scheduled CLE discussion, these meetings are also a great place for real estate professionals and attorneys to raise questions and share ideas. We welcome attendance in person or by conference phone and we have managed to maintain a strong connection with our peers in Northern and Eastern Idaho who regularly attend meetings via conference telephone and provide significant contributions in terms of participation in the activities of the Real Property Section. We also sponsor an annual winter CLE each February, as well as a shorter CLE held in connection with the annual meeting of the Idaho State Bar to address current issues and trends in the real estate arena. The CLEs sponsored by the Real Property Section are designed to include topics of interest to lawyers and non-lawyers alike.

One of our proudest accomplishments has been the compilation of a real estate forms book. With the assistance of many attorneys in our section, we have a form book that includes basic real estate transaction forms, financing forms, landlord/tenant forms, easement forms, subdivision development forms, litigation and lien forms, tax deferred exchange forms, and non-judicial trust deed foreclosure forms. These forms are an invaluable tool for practitioners both new and experienced. The Idaho Real Property Forms Book is available in print and CD versions and can be obtained by contacting the Idaho State Bar ([www.idaho.gov/isb](http://www.idaho.gov/isb)).

In this issue of *The Advocate* you will find articles on a range of real property issues. Jane Reiser explores the fine line between the performance of essential brokerage services and the unauthorized practice of law. Her article, *Brokerage Services v. Unauthorized Practice of Law: Where's the Line?* offers some guidance for practitioners in order to minimize risk, avoiding possible violations, and litigation. Sasha D. Collins', *Taking Title in Idaho: Options and Consequences*, sets forth many options in which title to land can be held and explores some of the tax and other consequences one should consider before taking title. In *A Practitioner's Guide To Mechanic's Lien Law*, Douglas

Hookland provides Idaho practitioners with a checklist to assist in analyzing what must be done and when to perfect and advance lien rights, as well as examining what to look for when defending against a lien claim. Renee R. Magee, Julie Braun, and Joseph H. Groberg provide an overview of the Idaho Preservation of Historic Sites Act, Idaho Code §§ 67-4601 through 4619, which authorizes local historic preservation ordinances in their article, *Local Historic Preservation Ordinances*. Arthur B. Macomber discusses the legality of Idaho Code section 55-2109, which mandates *ad valorem* county taxation be paid by the former owner of conservation easements gifted or sold, which statute appears to abridge Idaho's Constitution on uniform taxation in his article entitled *Ad Valorem Taxation of Conservation Easements*. In the final article, *Conservation Easements in the Rocky Mountain West: "Perpetuity" Is Relative*; Jessica Rutzick examines the long-term enforceability of conservation easements.

We hope these articles will provide useful information not only to members of the Real Property Section, but also to members of the Idaho State Bar in general. If there are issues any member of the Idaho State Bar would like to see discussed either in a future article, CLE or otherwise, we invite you to contact any of the officers of the Real Property Section. Don't forget our mid-winter CLE that will be held in February. For more information about it, please contact any of our officers.

## ABOUT THE AUTHOR

**Cynthia A. Melillo** is a partner in the firm of Givens Pursley LLP in Boise, Idaho. She graduated from the University of Southern California with a B.A. in Political Science, the University of Kent in Canterbury, England with an M.A. in Political Thought, and from the University of Arizona College of Law with a J.D. She currently serves as the chair of the Real Property Section of the Idaho State Bar. Her practice is focused primarily on residential and commercial real estate development, commercial leasing, condominium development and resort development.

### REAL PROPERTY SECTION

**Cynthia A. Melillo**, Chair  
[cam@givenspursley.com](mailto:cam@givenspursley.com)  
(208) 388-1200

**Kristin B. Dunn**, Vice-chair  
[kristindunn@givenspursley.com](mailto:kristindunn@givenspursley.com)  
(208) 388-1200

**Kipp L. Manwaring**, Secretary  
[kipp@manwaringlaw.com](mailto:kipp@manwaringlaw.com)  
(208) 782-2300

**David G. Ballard**, Past Chair  
[dgb@dbdb.com](mailto:dgb@dbdb.com)  
(208) 344-8900

# BROKERAGE SERVICES V. UNAUTHORIZED PRACTICE OF LAW: WHERE'S THE LINE?

Jane C. Reiser, Esq.  
Reiser Law Office, P.C.

In the intensity of today's real estate transactions, buyers and sellers desiring to accelerate the purchase and sale process often decline to take the extra time or incur the extra expense for careful review and representation by a licensed attorney. As we know, by failing to consider the wide range of potential hazards, parties unintentionally open themselves to liability or loss. What about the liability and exposure of real estate brokers and agents in their efforts to service the marketplace? How do they perform essential brokerage services today without crossing the line into the unauthorized practice of law (UPOL)? The time has come to offer guidance for real estate brokers and agents in order to minimize risk, possible violations, and litigation.

The national trend has shifted to having less involvement by attorneys in real estate transactions and closings. In the late 1990s, only forty percent (40%) of real estate closings involved the services of an attorney.<sup>1</sup> Conducting transactions necessitates confidentiality, discretion, negotiation and the application of legal knowledge and judgment. So, where is the bright-line demarcation for activities which represent the "UPOL" by a broker or agent? The answer, not surprisingly, depends entirely on the statutes, case law, bar association guidelines and industry practices for the state in which you practice, in addition to the particular facts of the case.

## NATIONAL CONCERNS

At the beginning of this decade, in a summary of the "Top Ten Legal Issues Facing Brokers," the National Association of Realtors (NAR) General Counsel articulated "No. 9" as the Unauthorized Practice of Law. "The courts have tried to strike a balance in their definition and take public policy into consideration. They don't want the public damaged by unskilled practitioners, but they'll look at whether it's in the public interest to allow brokers to engage in certain activities, such as drafting clauses in legal documents. Generally speaking, courts have said that brokers are permitted to complete the blanks of a preprinted sales agreement [which] has been approved by an attorney. You may not draft documents or give legal advice."<sup>2</sup> Further, NAR members are reminded that, "REALTORS® shall not engage in activities that constitute the UPOL and that legal counsel should be obtained whenever the interest of any party to a transaction requires it."<sup>3</sup> Using standardized preprinted forms, a common practice in Idaho, does not negate such fundamentals.

In August of 2007 the Missouri Supreme Court reviewed the class action suit, *Eisel v. Midwest BankCentre*, which initially arose from two mortgage loans made to the Eisels by the bank in 2001. Missouri prohibits the practice of law or to "do law business." Violations are punishable as misdemeanors, subject to a fine of not more than \$100. Additionally, the violator may be sued for treble the amount charged for the unlawful services performed.

In *Eisel*, Plaintiff claimed that the "document preparation fee" or "processing fee" charged resulted from loan processing procedures by bank personnel constituted engaging in the UPOL. "In processing the loans, Midwest employees completed preprinted forms—including a deed of trust and a promissory note—that placed each loan in the proper format to be sold on the secondary mortgage market."<sup>4</sup> The award of treble damages and other damages and costs was affirmed. As this same behavior is typical of lending practices around the country, this ruling may unleash a flood of litigation.

## REGIONAL PRACTICES

Throughout the country there are broad differences in the level of attorney involvement in real estate transactions and closings. In Virginia, South Carolina, Massachusetts, Delaware, Connecticut and Georgia, attorneys manage a large part of the transactions and closings. Colorado, Missouri, Kansas, Michigan and Arizona are considered non-attorney closing states.

The North Carolina State Bar discovered that mandating attorneys to participate in real estate closings may go too far. In 2001, the State Bar of North Carolina issued Formal Ethics Opinions directing that only attorneys could oversee real estate closings and had to be physically present at the closings. Shortly thereafter, the Federal Trade Commission (FTC) and the U.S. Department of Justice (DOJ) issued a joint letter cautioning the North Carolina Bar that their ethics opinions may raise possible restraint of trade violations. This action prompted a revision of the Formal Ethics Opinions and an Authorized Practice Advisory Opinion.<sup>5</sup>

## SELECTED STATES—UPOL

**IDAHO**—In Idaho, the UPOL constitutes a criminal act, punishable as a misdemeanor with fine and/or imprisonment.<sup>6</sup> Idaho Code § 3-420 states:

If any person shall, without having become duly admitted and licensed to practice law within this state or whose right or license to practice therein shall have terminated either by disbarment, suspension, failure to pay his license or otherwise, practice or assume to act or hold himself out to the public as a person qualified to practice or carry on the calling of a lawyer within this state, he shall be guilty of an offense under this act, and on conviction thereof be fined not to exceed five hundred dollars (\$500), or be imprisoned for a period of not to exceed six (6) months, or both, and if he shall have been admitted to practice law he shall in addition be subject to suspension under the proceedings provided by this act.

The leading case in Idaho to define such behaviors was *In re Matthews*, where the unlicensed defendant held himself out, for a period [of] years, as being, "learned in the law and particularly in matters connected with all kinds and types of conveyancing and in the preparation of ... Probate papers in Probate mat-

ters ...” It is then alleged that a few days prior to April 29, 1936, the defendant, “prepared two Deeds of Conveyance for the several heirs of the Gorton Estate ...” and that he “charged a fee of \$2.50 for each of said deeds ...”<sup>7</sup>

Although the defendant claimed that the fee was only for notary or stenographic services, the Idaho Supreme Court found otherwise. “The practice of law as generally understood, is the doing or performing services in a court of justice, in any matter [pending] therein, throughout its various stages, and in conformity with the adopted rules of procedure. But in a larger sense, it includes legal advice and counsel, and the preparation of instruments and contracts by which legal rights are secured, although such matter may or may not be [pending] in a court.”<sup>8</sup>

These matters have already withstood constitutional challenges in Idaho courts. In the case of *State v. Wees*, the Idaho Court of Appeals determined that the statute prescribing such behaviors is not overbroad and unconstitutionally vague.<sup>9</sup> The offending party, Wees, went beyond distributing “do-it-yourself” legal forms to his customers and instead drafted statements of legal consequence, by inserting his own phrasing into the blanks. The facts of the case clearly demonstrate that Wees went well beyond a ministerial function of the scrivener, typing the information directed by his two customers and instead overtly drafted legal documents without a license to practice law. Everyday real estate practitioners in Idaho are asked to fill in forms such as addendums or amendments which are in large measure substantially blank lines to be filled in by the licensees for their customers or clients, describing additions or modifications to the purchase and sale agreements. Filling in these blanks have direct legal implications to the parties, their obligations and interests. One of the recent additions to the Idaho Real Estate License Law and Rules (July 2007) allows a brokerage to charge “a separate fee or commission for each service provided to the customer in the transaction,” which could include the à la carte service of filling out contract forms.<sup>10</sup> “Custom does not, however, make such conduct proper if in fact it is improper.”<sup>11</sup>

At this time neither the Idaho State Bar (ISB) nor the Idaho Real Estate Commission (IREC) have issued specific written “Guidelines” to aide real estate practitioners in avoiding the UPOL. General caveats provided during IREC pre-license training classes include, but are not limited to simple admonitions not to engage in the “UPOL,” counseling licensees to encourage parties to obtain the services from an attorney or tax professional when needed; and directing licensees only to “fill in the blanks” on attorney approved printed contract forms. It is noteworthy, that a licensee’s failure to advise a client to seek appropriate legal or tax advice or to interfere with that effort could subject the licensee to possible disciplinary action.<sup>12</sup> Because the practice of law by a layperson constitutes a crime in Idaho and in so far as errors and omissions policies typically exclude criminal acts committed by the insured, there are significant and substantial reasons why agents must know the boundaries and avoid crossing the line upon the commencement of their service to the public. Absent definitive written guidelines, circumstances beg the question for real estate practitioners, where is the line?

Could a violation of the prohibition for the UPOL constitute a violation of the Idaho Consumer Protection Act (ICPA)? The

jury is still out on this one, but the ICPA has been held to apply in real estate transactions. There is language in the act suggesting that an action may be brought under the ICPA for the UPOL. Provisions of the ICPA provide for substantial enforcement, including prosecution by the Attorney General for the State of Idaho. The ICPA gives the Attorney General broad investigative authority, including subpoena power, injunctive relief and the assessment of civil penalties up to \$5,000 for each violation, plus investigative costs and attorney fees. A guilty party may also be required to make full restitution to the consumer and this method of relief may, in the future, offer the highest level of consumer protection.<sup>13</sup>

**OREGON**—The Oregon Legislature has addressed this issue head on. In doing so it had to balance forces of practicality, economics, competition, while at the same time protecting the public. Oregon has specifically carved out an exception for licensed real estate practitioners through an exception to the licensure requirement for the practice of law, stating: “A person licensed under (citation omitted) acting in the scope of the person’s license to arrange a real estate transaction, including the sale, purchase, exchange, option or lease coupled with an option to purchase, lease for a term of one year or longer or rental of real property, is not engaged in the practice of law in violation of subsection (1) of this section.”<sup>14</sup> In addition, Oregon constructed qualified exceptions regarding services performed by title insurers, title insurance officers and escrow agents.<sup>15</sup> Should persons or entities exceed their bounds, however, Oregon still maintains criminal sanctions for the UPOL, which may result in a fine of not more than \$500 or imprisonment in the county jail for a period not to exceed six months, or both.<sup>16</sup>

Finally, the Oregon Supreme Court insists that the practice of law is contingent upon acts requiring the “exercise of an intelligent choice, or an informed discretion in advising another of his legal rights and duties.”<sup>17</sup>

**WASHINGTON**—Acts involving the UPOL in Washington are considered crimes as well. The first offense is classified as a gross misdemeanor, with any subsequent offenses prosecuted as a felony. In 1985, the Washington courts responded to the limitations being placed upon real estate brokers in the performance of standard transactional business in the case *Cultum v. Heritage House Realtors, Inc.* “Although the completion of form earnest money agreements might be commonly understood as the practice of law, we believe it is in the public interest to permit licensed real estate brokers and salesperson to complete such lawyer prepared standard for agreements; provided, that in doing so they comply with the standard of care demanded of an attorney.”<sup>18</sup> An application of this standard followed in 1993 when an action arose between Cora E. Edmonds (Buyer) and John L. Scott Real Estate, Inc. (Broker) concerning representation by the Buyer’s sub-agent James Toja. The Buyer, viewed a listing held by the Broker, but was concerned about puddles of water in the basement. Buyer requested that the property be turned over with the basement in a dry condition. Upon assurances by the listing sub-agent that the basement would be fixed and a warranty provided, the buying agent inserted the following language on the preapproved contract inspection contingency form, “Seller to furnish copy of warranty for drainage work done.” Applying the

*Cultum* standard of care requirements, the court found, “Licensed real estate brokers and salespersons, when completing earnest money agreements, are required to comply with the standard of care of a practicing attorney. (Citation omitted). The language that the sub-agent inserted in the earnest money agreement was insufficient to protect Buyer’s interests with respect to the water problem and fell below the standard of care of a reasonable and prudent attorney in preparing a residential purchase and sale agreement. To protect Buyer’s interests, there should have been an identification of who was doing what work, the right to inspect the work, to specify when the work was to be completed, the right to require that the work be done to the buyer’s satisfaction, an assurance that the warranty was assignable to her and the availability of other remedies. Further, as illustrated by this litigation, the language inserted by sub-agent was entirely insufficient to protect Buyer’s interest in purchasing a house with a dry basement.”<sup>19</sup> As a practical matter, how often do you believe that an attorney would have exercised the requisite level of care?

### CALL TO ACTION

State courts and legislatures have been tip-toeing through this minefield for over half a century; this author believes the time has come for decisive action. This article is a call to action in the spirit of cooperation, common sense, and common goals, proposing the formation of a composite task force to comprehensively review and address these concerns. We need to clearly establish boundaries and then provide guidance and continuing education to agents, title companies, lenders, attorneys and the public. Is it time to implement a three-day “no fault” right-of-rescission period allowing principals time for attorneys to review and/or modify documents? All the alternatives must be explored and evaluated. As members of the Idaho State Bar, we must remain vigilant by accepting this challenge and providing a solution compatible with the desires of the people of Idaho, whom we all endeavor to protect and serve.

### ABOUT THE AUTHOR

**Jane C. Reiser**, *Esq.*, *M.Ed.*, *J.D.* received her law degree from the J. Reuben Clark School of Law, Provo, UT and her *M.Ed.* from George Mason University, Fairfax, VA. Reiser Law Office, P.C. ([reiserlawoffice@gmail.com](mailto:reiserlawoffice@gmail.com)). She is also certified by the IREC as a Real Estate Instructor.

### ENDNOTES

<sup>1</sup> Michael Braunstein, *Structural Change and Inter-Professional Competitive Advantage: An Example Drawn From Residential Real Estate Conveyancing*, 62 MO. L. Rev. 241, 241 (1997); quoted in, “The Role of Laypersons in the Closing of Residential Real Estate Transactions: North Carolina’s New Approach” 7 N.C. Banking Inst. 277, note 6 at 277 (2003).

<sup>2</sup> *Top 10 Legal Issues Facing Brokers, NAR Attorney Shows You How to Stay on the Right Side of the Law*, Laurie K. Janik, NAR General Counsel, March 1, 2000.

<sup>3</sup> *Id.*

<sup>4</sup> ABA/BNA Lawyer’s Manual on Professional Conduct, Vol. 23, No. 18, 452-453 (2007); citing Mo. Rev. Stat. § 484.020.

<sup>5</sup> N.C. State Bar, *Authorized Practice Advisory Opinion 2002-1* (2002), note 17 [http://www.ncbar.com/home/realestate\\_ethics.asp](http://www.ncbar.com/home/realestate_ethics.asp); quoted in, “The Role of Laypersons in the Closing of Residential Real Estate Transactions: North Carolina’s New Approach,” 7 N.C. Banking Inst.

277, 290-291 (2003). Although not an exhaustive list, eight activities were listed to clarify for non-attorneys what clearly constituted the UPOL in North Carolina:

- 1) performing abstracts or providing an opinion as to the title of real property;
- 2) explaining the legal status of a real estate title, the legal impact of anything found in the chain of title, or the legal effect of any title insurance commitment exception, unless a licensed title insurer, agency, or agent explains an underwriting decision to the insured or prospective insured;
- 3) explaining or giving advice regarding the rights or responsibilities of parties concerning the land survey to the extent such explanations affect the parties’ legal rights or obligations;
- 4) providing legal opinions or advice at the request of any party;
- 5) advising or instructing a party to the transaction regarding alternate means of taking title to the property or the legal consequences of acquiring property in a particular manner;
- 6) drafting legal documents for a party to the transaction or assisting a party in the completion of a legal document or aiding a transaction party in choosing the appropriate legal document form from among several forms;
- 7) explaining or recommending a course of action which requires legal judgment or will affect a party’s legal rights or obligations;
- 8) attempting to resolve or settle a dispute between the parties that will affect their legal rights or obligations. (*Id.* 290-291)

<sup>6</sup> Idaho Code § 3-104 and Idaho Code § 3-420.

<sup>7</sup> *In Re: Contempt Proceedings against S. E. Matthews*, 57 Idaho 75, 79 (1936).

<sup>8</sup> *Id.* at 83.

<sup>9</sup> *State v. Wees*, 138 Idaho 119 (Idaho App. 2002).

<sup>10</sup> Idaho Code § 54-2086 (4).

<sup>11</sup> I.S.B., Formal Opinion No. 33, “Propriety of Attorney Drafting Legal Instruments for Realtors and Title Companies” (April 18, 1962).

<sup>12</sup> Idaho Code § 54-2087 (4) (d).

<sup>13</sup> Further information is available through the Office of the State Attorney General, Consumer Protection Division, in Boise, ID (208) 334-2424, or on-line at [www.ag.idaho.gov](http://www.ag.idaho.gov).

<sup>14</sup> Or. Rev. Stat. 9.160 (3).

<sup>15</sup> *Id.* (4) et seq.

<sup>16</sup> Or. Rev. Stat. 9.160.

<sup>17</sup> *Oregon State Bar v. Security Escrows, inc.* 377 P. 2d 334, 339 (Or. 1962); quoted in, Shane L. Goudey, “Too Many Hands in the Cookie Jar: the Unauthorized Practice of Law by Real Estate Brokers,” 75 Or. L. Rev. 889, 895 (1996).

<sup>18</sup> *Cultum v. Heritage House Realtors, Inc.*, 694 P. 2d 630 (Wash. 1985).

<sup>19</sup> *Edmonds v. Scott Real Estate*, 87 Wn. App. 834.853 (1997).

# TAKING TITLE IN IDAHO: OPTIONS AND CONSEQUENCES

Sasha D. Collins  
*SDC Law Office*

The decision about how an individual holds title to real property is often not fully analyzed. Specifically, the tax, asset protection and inheritance consequences are not always fully considered. Failing to consider these factors may result in unintended consequences. In order to understand the impact of the choices made by an individual, this article outlines the title options in Idaho and examines and analyzes the consequences of each option.

These options can best be discussed by way of a hypothetical scenario. Jane Simpson recently received an inheritance from her grandmother. Jane is married to Jack. Jack and Jane are Idaho residents. They have three adult children, Mary, Bill and Alex. Jane has decided to invest her inheritance in Greenacre, an income-producing rental real-property located in Idaho, but Jane is unsure how she should hold title to Greenacre.

## **SEPARATE PROPERTY VS. COMMUNITY PROPERTY**

Jane must decide whether to hold title to Greenacre as separate property or community property. Jane may hold title to Greenacre as separate property because separate property in Idaho includes property received after marriage by gift, bequest, devise or descent.<sup>1</sup> Jane may also choose to hold title as community property.<sup>2</sup> By taking title as community property, Jane would be gifting one-half of the property to Jack. There are no tax consequences of the transfer to Jack because an individual does not recognize gain or loss on transfers of property to a spouse.<sup>3</sup>

If Jane chooses to hold Greenacre as separate property, then property acquired with the proceeds of Greenacre<sup>4</sup> and any appreciation in the value of Greenacre will be Jane's separate property.<sup>5</sup> For example, if Jane decides to sell Greenacre for Blueacre, then Blueacre will be Jane's separate property.

Unlike the capital appreciation of Greenacre, the rents, issues and profits from Greenacre are community property.<sup>6</sup> In order for Jane to characterize the rents, issues and profits from Greenacre as separate property, the deed conveying the property to Jane must indicate that the rents, issues and profits are Jane's separate property, or Jack and Jane must sign a written agreement characterizing the rents, issues and profits as Jane's separate property.<sup>7</sup>

Characterizing Greenacre as Jane's separate property may provide Jane and Jack with greater asset protection than a community property characterization. Jack's separate creditors generally cannot reach Jane's separate property; although they could reach Jack's half of the community property.<sup>8</sup> If Jack has a higher credit risk than Jane or has current creditor issues, maintaining Jane's real property as her separate property may be advantageous for the couple.

Upon Jane's death, her separate property is transferred to the people she specifies in her will, or in the absence of a will, to her heirs at law;<sup>9</sup> Jane's one-half share of the community property is transferred to the people she specifies in her will, or in the absence of a will, to her surviving spouse, Jack.<sup>10</sup> Jane's heirs at

law are her husband, Jack, and her three children, Mary, Bill and Alex. According to the laws of intestate succession, all of the community property would go to Jack, but if Jane maintains it as her separate property, one-half would go to her husband, Jack, and the other one-half would go to her children, Mary, Bill and Alex, in equal shares.<sup>11</sup>

Neither separate property nor community property includes a right of survivorship; therefore the transfer of Greenacre would require a probate of Jane's estate or an affidavit in lieu of probate.<sup>12</sup>

The income tax consequences of characterizing Greenacre as separate property are less favorable than characterizing Greenacre as community property. Individuals who inherit property receive a new "adjusted basis" <sup>13</sup> in the property equal to the fair market value at the date of death, called a "stepped-up" basis.<sup>14</sup> A stepped-up basis generally results in less income tax upon a future sale than if no stepped-up basis is received.<sup>15</sup> If Greenacre is Jane's separate property, and if Jack is the first spouse to die, Greenacre will not receive a stepped-up basis at Jack's death. If Greenacre is characterized as community property, Greenacre would receive a stepped-up basis on the entire property, both upon Jack's death and upon Jane's death.<sup>16</sup>

## **JOINT TENANTS VS. TENANTS IN COMMON**

Jane may choose to take title as a joint tenant or as tenant in common with Jack.<sup>17</sup> By taking title as a joint tenant or tenant in common,<sup>18</sup> Jane is gifting one-half of the real property to Jack. Thereafter, Jack and Jane would each hold their one-half shares in the real property as separate property.

Similar to community property, Jane would be giving up asset protection from Jack's separate creditors on Jack's portion of Greenacre if Jane decides to hold title as a joint tenant or tenant in common with Jack. Unlike community property, which receives a stepped-up basis on both spouses' half of the real property at the death of the first spouse,<sup>19</sup> a joint tenant and tenant in common only receive a stepped-up basis on the deceased spouse's one-half interest.<sup>20</sup>

Although the income tax consequences are less favorable, the inheritance rights of joint tenants are generally more favorable to the surviving joint tenant than the community property rights of the surviving spouse. Joint tenants have rights of survivorship, which means on the death of one of the tenants, the whole of the property passes to the remaining tenant or tenants without probate.<sup>21</sup> Unlike joint tenants, tenants in common have no right of survivorship, meaning that if one owner dies, a probate is necessary to transfer that owner's interest in the property as specified in that owner's will, or in the absence of a will, to her heirs at law.<sup>22</sup>

The ability to avoid probate through a joint tenancy leads some people to hold title with their children as joint tenants. Jane could hold title with Mary, Bill and Alex with the aim of avoiding probate. The disadvantage of holding title as joint tenants

with her children is the loss of asset protection. A joint tenant's share of real property can be reached to pay the liabilities of that joint tenant. Therefore, if Jane, Mary, Bill and Alex are all joint tenants, the real property is subject to the creditors of each of the children and each child's spouse if the children characterize the property as community property.

### REVOCABLE LIVING TRUST

A revocable living trust typically contains provisions for management and distribution of an individual's or couple's assets while they are living, after one of them has died and after both of them have died. While the grantors are living, they may amend or revoke the trust at any time. Community property transferred to the trust retains its character as community property, and separate property retains its character as separate property, unless the grantors sign a written document to change the character.<sup>23</sup> An advantage of Jane holding title through a revocable living trust is that upon Jane's death, legal title would transfer to her successor trustee without the need for probate. Jane must make the decision to hold title as trustee in conjunction with the decision to hold the real property as community or separate because transferring title to a revocable living trust does not change the character of the property transferred. A revocable living trust does not alter the tax or asset protection consequences of the way Jane chooses to hold title prior to the transfer to the revocable living trust.

### LIMITED LIABILITY ENTITY

Jane may choose to hold title to her property through a limited liability entity such as a limited liability company, a C corporation or an S corporation. Each entity allows for a single owner, so Jane could transfer the real property as her separate property to the entity in which she was the sole owner. Each entity also provides asset protection to shield Jack and Jane's personal assets from creditors of the entity. None of the entities has a right of survivorship. Jane's ownership interest would be probated unless Jane held title to the entity as trustee of her revocable trust.

However, a C corporation is generally not favored for holding real estate for four reasons. First, double taxation frequently results if the real property appreciates and the C corporation then sells the property. The C corporation pays tax on the gain from the sale and then the shareholder pays tax on the gain distributed as a dividend.<sup>24</sup> Second, capital gains tax rates are not available to C corporations.<sup>25</sup> The capital gains rates are generally lower than the C corporation's tax rate. Third, rental losses of the C corporation are not deductible by the shareholder.<sup>26</sup> Fourth, the step-up in basis is unavailable to real property owned by a C corporation.<sup>27</sup>

Both the limited liability company and the S corporation are flow-through entities resulting in only one level of taxation. The S corporation, however, has several disadvantages that generally make the limited liability company preferable over an S corporation for holding real estate. First, if a corporation distributes the real property directly to Jane, the IRS will treat the distribution as if the corporation sold the property to a third party and any gain from the sale would be taxed.<sup>28</sup> Second, S corporation shareholders do not receive debt basis for loans made by a third

party to the S corporation.<sup>29</sup> That means it is unlikely an S corporation can refinance the real property and distribute the proceeds to Jane tax-free. Third, the step-up in basis is also unavailable to real property owned by an S corporation.<sup>30</sup>

The limited liability company is often the favored entity for holding real property because property may be distributed to the owner without triggering a deemed sale, owners receive debt basis facilitating tax-free distributions and a step-up in basis is available to the owner's devisees.<sup>31</sup>

### CONCLUSION

Jane has many options to hold title to Greenacre. Before Jane decides how to hold title to the real property, she should weigh the tax, asset protection and inheritance benefits and burdens to determine her best option.

### ABOUT THE AUTHOR

**Sasha D. Collins**, *SDC Law Office, Boise*. Sasha holds a *Juris Doctorate with honors*, a *Master of Science in Accounting* and a *Bachelor of Science in Accounting and Finance* from the *University of Florida*. She is the current *President of the Treasure Valley Estate Planning Council*, and thanks the members of the Council for their comments and feedback on this article. You can reach her at *SDC Law Office, 1602 West Hays Street, Suite 200, Boise, ID 83702*, by phone (208) 344-5828, by fax (208) 330-7676 or by e-mail [sasha@sdclawoffice.com](mailto:sasha@sdclawoffice.com).

### ENDNOTES

<sup>1</sup> Idaho Code §32-903.

<sup>2</sup> Idaho Code § 32-906.

<sup>3</sup> 26 U.S.C. § 1041.

<sup>4</sup> *Id.*

<sup>5</sup> Generally, appreciation in the value of separate property is also separate property, unless the appreciation in value is attributable to the personal services of one of the spouses. The increase in value attributable to the skills of a spouse or to the application of community property to the separate property asset creates a right to reimbursement of the community for the increase in value attributable to the spouse's labor or the application of the community property. The right to reimbursement is a property right to which a federal tax lien could attach. It is not clear whether the right to reimbursement results in a portion of the capital gain income being characterized as community property. Internal Revenue Service Manual 25.18.2.1.

<sup>6</sup> Idaho Code § 32-906(1).

<sup>7</sup> *Id.*

<sup>8</sup> Idaho Code § 32-910, 32-906.

<sup>9</sup> Idaho Code § 15-3-101.

<sup>10</sup> Idaho Code § 15-3-101.

<sup>11</sup> Idaho Code §§ 15-2-102, 103.

<sup>12</sup> If Jane leaves no will, then in Ada County, Jack could present an affidavit in lieu of probate along with a Jane's death certificate to remove Jane's name from the deed. Idaho Code § 63-306. If Jane leaves a will, a probate is required if Jack wishes to remove Jane's name from the deed within three years of her death. Idaho Code § 15-3-108. After three years have passed, Ada County will allow Jack to present an affidavit in lieu of probate as if Jane had not executed a will. Idaho Code § 15-3-108.

<sup>13</sup> The "adjusted basis" in the property is generally the taxpayer's original basis plus the cost of any capital improvements minus any depreciation or depletion. See 26 U.S.C. §§ 1011, 1012 and 1016.

<sup>14</sup> 26 U.S.C. § 1014; Internal Revenue Service Reg. § 1.1014-1 – § 1.1014-8.

<sup>15</sup> Donees generally take property with the donors cost or “carry-over” basis. See 26 U.S.C. § 101(a); Internal Revenue Reg. § 1.1015-1. Assuming appreciating real property, carry-over basis is typically lower than stepped-up basis and will generate more income tax from the sale of the real property than real property with a stepped-up basis. The devisee’s gain on a future sale of the real property will equal the “amount realized” from the sale minus the stepped-up basis in the property. The “amount realized” on the sale is the total of all money received plus the fair market value of all other property or services received. See 26 U.S.C. § 1001(b).

<sup>16</sup> 26 U.S.C. § 1014(b)(6). Internal Revenue Service Reg. § 1.1014-1 – § 1.1014-8.

<sup>17</sup> Idaho Code § 55-104.

<sup>18</sup> Tenancy in common is a form of concurrent estate in which each owner is regarded as each owning separate and distinct shares which may differ in size. Every interest created in Idaho in favor of more than one person is as tenants in common unless declared otherwise Idaho Code § 55-104.

<sup>19</sup> 26 U.S.C. § 1014(b)(6).

<sup>20</sup> 26 U.S.C. § 1014; Internal Revenue Service § 1.1014-1 – 1.1014-8.

<sup>21</sup> Idaho Code § 32-906 indicates all property, other than separate property, acquired after marriage is community property. Thus, practically speaking, title companies may not issue title insurance based on the death of one spouse even if joint tenants because of the concern that the property could be considered community property and the deceases spouse could have a will leaving the property to someone other than the surviving spouse.

<sup>22</sup> Idaho Code § 15-3-101.

<sup>23</sup> Idaho Code § 32-906A.

<sup>24</sup> 26 U.S.C. § 316(a); Internal Revenue Service Reg. § 1.316-1.

<sup>25</sup> 26 U.S.C. § 1201(a).

<sup>26</sup> 26 U.S.C. § 1212(a)(1).

<sup>27</sup> 26 U.S.C. § 1014; Internal Revenue Service Reg. § 1.1014-1 – § 1.1014-8.

<sup>28</sup> 26 U.S.C. § 311(b).

<sup>29</sup> 26 U.S.C. § 1367(a)(2); Internal Revenue Service Reg. § 1.1367-2.

<sup>30</sup> 26 U.S.C. § 1014; Internal Revenue Service Reg. § 1.1014-1 – § 1.1014-8.

<sup>31</sup> 26 U.S.C. § 731(b), 721.

**DOES YOUR REPORTING YEAR END 12/31/07?  
ARE YOU SHORT .5 (OR MORE) ETHICS CREDITS?**

If your reporting year ends 12/31/07, and you are short ethics credits, call now while the selection of recorded program rentals is still good. Contact Eric White (208) 334-4500 or ewhite@isb.idaho.gov.



## Mediator / Arbitrator

Richard H. Greener

30+ years as an experienced civil litigator; available for ADR

- Mediator on the Supreme Court and Federal Court Civil Case Mediators Rosters
- Certified by Institute for Conflict Management’s Mediation training/seminar
- Completed 40 hours of basic civil mediation training at University of Idaho, including 40 hours of IMA core training

### Professional Activities and Association

- Best Lawyers in America, 1999 – Present
- Fellow, American College of Trial Lawyers
- American Board of Trial Advocates
- Lawdragon, leading 500 Trial Lawyers in America
- Mountain States Super Lawyers, 2007
- Chambers USA American Leading Business Lawyers (Litigation) 2003 – Present

### **Dispute Resolution Services**

Greener, Burke & Shoemaker, P.A.

rgreener@greenerlaw.com

950 W. Bannock Street, Suite 900 Boise, ID 83702

Phone: (208) 319-2600; Facsimile: (208) 319-2601

For more information see website: [www.greenerlaw.com](http://www.greenerlaw.com)

# A PRACTITIONER'S GUIDE TO MECHANIC'S LIEN LAW

Douglas R. Hookland  
Jeffrey S. Young  
Scott Hookland, LLP

Idaho's mechanic's lien statutes provide security for payment to those providing labor, materials, rental equipment, and professional services on private construction projects.<sup>1</sup> The purpose of this article is to provide Idaho practitioners with a checklist to analyze what must be done and when to perfect and advance lien rights, and what to look for when defending against a lien claim.

## THE CHECKLIST QUESTIONS

The checklist consists of asking, and getting answers to, these questions: What type of project is it? Who is the lien claimant's customer? Is contractor registration required for the lien claimant and its customer? What pre-claim notice requirements exist, if any? What are the claim requirements? What post-claim requirements exist, if any? What are the foreclosure requirements? The time for a lien claimant to work through this checklist is before it provides a bid on the construction project, because it must satisfy one or more requirements at that stage.

### 1. What type of project is it?

Only privately owned projects may be subjected to a mechanic's lien. Publicly owned projects are not. If the project is let by a federal, state, or local government entity, in many situations a performance and/or payment bond may be available to a provider of labor, materials or rental equipment as a substitute for lien rights. If it is a Native American project, suppliers and subcontractors will likely not have mechanic's lien rights, and there may be no requirement for a payment or performance bond. The key questions are who is asking for the construction work and what interest do they have in the property on which the improvement will be built? If they are a private individual or entity and they own fee title or have a lessee's interest in the property, their interest will be subject to mechanic's lien rights.

### 2. Who is the lien claimant's customer?

Those who perform labor upon or furnish materials or rental equipment to the project are entitled to record a lien, provided they did so at the request of the property owner or his agent.<sup>2</sup> Any contractor, subcontractor, architect, builder or other person having charge of the construction, in whole or in part, may be an agent of the property owner.<sup>3</sup> However, and as discussed below, to qualify as a valid "agent" of the property owner, the contractor, subcontractor, builder, or other person having charge of the construction, must at all material times be registered as a contractor with the Idaho Contractors Board.<sup>4</sup>

A material supplier does not qualify as an agent of the property owner. Therefore, if a lien claimant furnishes work at the request of a supplier, lien rights probably are not available. If the lien claimant's customer takes from the prime contractor a specific part of the labor or material requirements of the original contract, the customer is a "subcontractor" and the materialman likely has lien rights.<sup>5</sup> If the customer does not perform any labor on the job site – i.e., design work, planning, installation, alteration, or fabrication – the customer is a "supplier" and Idaho

courts have clearly held that a "supplier to a supplier" has no right to lien the property.<sup>6</sup>

**Tip:** For a materialman, lien rights depend upon the nature of the work its customer performs on the job site. The materialman must determine if its customer is a subcontractor, or merely a supplier.

### 3. Is contractor registration required for the lien claimant and its customer?

#### A. Lien claimant registration.

A lien claimant, who is not properly registered as a contractor, when such registration is required, will not have lien rights. The Idaho Contractor Registration Act ("Act"), codified at Idaho Code sections 54-5201 through 54-5218, took effect January 1, 2006, and requires that any person or entity engaged in the business of a construction contractor within Idaho must be registered as a contractor as required by the Act.<sup>7</sup> There are exemptions to this requirement, including, but not limited to architects, electrical contractors, engineers and surveyors, public works contractors, plumbing contractors and plumbers, those performing public works construction management, HVAC contractors, material suppliers, those supplying equipment, and property owners performing construction on their own property not for the purpose of promptly selling the property.<sup>8</sup> A lien claimant has no lien rights if it was performing the work of a contractor yet not properly registered as a contractor.<sup>9</sup>

Unless an exemption to registration applies, every lien claimant who provided labor on the construction site may be considered a contractor for purposes of being required to register as a contractor. This means prime contractors (those contracting directly with the property owner) and subcontractors of any tier not exempt from registration must be registered as contractors to have lien rights.

**Tip:** Absent a registration exemption, if your client bids or performs construction work, it must register as a contractor with the Idaho Contractors Board and timely renew its registration before it lapses. Failure to do so can bar your client's lien rights.

Failure to carry current contractor registration also results in other severe penalties. Any such person is guilty of a misdemeanor punishable by up to a \$1,000 fine and/or six months in jail.<sup>10</sup> Further, such person cannot bring legal action to collect for work performed.<sup>11</sup>

#### B. Registration of potential lien claimant's customer.

Lien rights of subcontractors and suppliers depend on whether their customer is registered under the Act. The applicable section provides, in pertinent part that:

[t]his section shall not operate as a denial of lien rights for any subcontractor or independent contractor who is duly registered in accordance with this chapter and who is performing services at the direction of another contractor, nor shall it operate as a denial of lien rights for an employee of any contractor who is not duly registered, or for any supplier of materials to such unregistered contractor, *so long as* such subcontractor, independent contractor, employee or supplier *did not have actual knowledge* that such contractor was not duly registered, *or who reasonably believed* that such contractor was duly registered.<sup>12</sup>

This statute is poorly worded and creates uncertainty. The use of the word “or” allows an argument that as long as the lien claimant did not actually know its customer was not registered, it will have lien rights whether or not the lien claimant took any steps to determine whether its customer was registered. Such an interpretation would seem to make meaningless the language “who reasonably believed such contractor was duly registered,” because the lien claimant could simply claim “I did not know my customer was not registered.” The statute creates a safe harbor for those lien claimants who, at the time they bid the project, take reasonable steps to determine whether their customer is registered as a contractor. Reasonable steps should include asking the customer for its contractor’s registration number and contacting the Idaho Contractors Board to see if the customer is indeed registered. The Board’s website is <http://www.ibol.idaho.gov/cont.htm>. The lien claimant should print off the online information on its customer’s registration, date it and keep it in its job file, and 30 days before the renewal date, check online again to make sure the customer has renewed its registration.

**Tip:** *Protect your lien claimant clients by including in their contracts a written provision stating that it is a substantial breach of the contract if their upstream customer becomes unregistered as a contractor at any time during the project for any reason, permitting your client to stop all work unless and until the upstream customer becomes properly registered again and written documentation thereof is provided to your client.*

It is unclear whether a contractor contracting with a “developer” loses lien rights if the developer is not registered. Consider that a property owner who contracts for work to be performed by a registered contractor on his own property is exempt from the contractor registration requirement, unless the property owner, with the intent to evade the Act, “constructs a building, residence or other improvement on the owner’s property with the intention and for the purpose of selling the improved property at any time during the construction or within twelve (12) months of completion of such construction.”<sup>13</sup> Many developers fall into this category, and therefore they may not receive an exemption to contractor registration. To date no Idaho appellate court appears to have addressed whether a developer must register as a contractor.

**Tip:** *Have your clients who do work for developers insist that their developer customers be registered as contractors and maintain such registration while your clients are bidding, entering into, and performing construction contracts for such developers.*

#### 4. What are the pre-claim notice requirements, if any?

“Pre-claim notices” are those notices, if any, the lien claimant must provide before recording a lien. Subcontractors and material and rental equipment suppliers have no pre-claim notice requirements. This means they have no obligation to provide any notice to the property owner or any one else before they record a lien.

Prime contractors (those contracting directly with the property owner) are required to make two disclosures to property owners or purchasers of residential real property.<sup>14</sup> The requirements of the first disclosure are detailed in Idaho Code section 45-525(2). The purpose of the statute is to provide adequate disclosure to property owners and purchasers of residential real property of potential mechanic’s liens.<sup>15</sup>

The prime contractor must also provide a second disclosure to the homeowner, signed by the prime contractor, listing the business names, addresses and telephone numbers of all subcontractors, material suppliers, and rental equipment suppliers having a direct contractual relationship with the prime contractor and who have supplied materials or performed work on the residential property of a value in excess of \$500. Such disclosure and information must be provided within a reasonable time prior to the closing of any purchase or sales agreement with a prospective residential real property purchaser, or before the final payment to the prime contractor by a homeowner or residential real property purchaser for construction, alteration, or repair of any improvement of residential real property.<sup>16</sup>

A failure of the prime contractor to provide these disclosures is an unlawful and deceptive act or practice under the Idaho Consumer Protection Act.<sup>17</sup> However, there does not appear to be a loss of mechanic’s lien rights to any prime contractor who fails to provide the required disclosures. These disclosure requirements do not apply where the homeowner contacts the prime contractor to repair an emergency situation or to make necessary repairs to an electrical, plumbing or water system of the homeowner.<sup>18</sup>

#### 5. What are the claim requirements?

The “claim requirements” are the mechanic’s lien claim itself, and what must be included in the lien and by what date it must be recorded.

##### A. What is the time period to record?

Generally stated, a lien claimant must record its lien within 90 days after it completes its work.<sup>19</sup> Failure to record the lien claim within this 90-day statutory period results in a loss of lien rights.<sup>20</sup>

Prime contractors and subcontractors must record a mechanic’s lien no later than 90 days after substantial completion of their work.<sup>21</sup> Work provided after substantial completion of the contract that is trivial in character does not extend

the time to claim a lien or revive an expired lien.<sup>22</sup> Such work must be actually used in constructing or repairing the structure and reasonably necessary to complete construction according to the terms of the contract.<sup>23</sup>

Materials and suppliers must record a mechanic's lien no later than 90 days after the last shipment of materials, provided that the materials were used in the building, were reasonably necessary to complete the building and not for the purpose of extending the time for claiming a lien or reviving a lien that has expired.<sup>24</sup> It seems that furnishing even a small amount of materials is sufficient to trigger the 90 day period.<sup>25</sup>

#### *B. What must the lien claim include?*

The claim of lien must contain the following:<sup>26</sup>

##### ***(i) A statement of the claimant's demand, after deducting all just credits and offsets***

Generally, a lien claim will not be held invalid if it claims an amount due exceeding the amount ultimately found owing by the court. Similarly, a lien will not be found invalid where the lien claim has a different amount than the amount alleged due and owing in the foreclosure complaint.<sup>27</sup> However, an entire lien claim will be found invalid if the court determines that an excessive amount was claimed in the lien due to bad faith or fraudulent intent in making the claim.<sup>28</sup> The bad faith standard may be met by knowingly including in the lien claim amounts that are not justified under the lien law (e.g., intentionally claiming hours of labor which were not expended in work on the property sought to be liened).<sup>29</sup>

##### ***(ii) Name of property owner, or reputed owner, if known***

The statute requires the property owner, or reputed owner, be named in the claim of lien, "if known."<sup>30</sup> It seems then that omitting the name of the property owner or reputed owner is not fatal to the lien claim.<sup>31</sup> However, there must be substantial compliance, in good faith, with the material requirements of the statute,<sup>32</sup> or it must be shown that the property owner was not misled.<sup>33</sup>

Though not absolutely essential, a significant effort should be made to identify in the lien all property owners, even if only to comply with the requirement in Idaho Code section 45-507(5) that the property owner or reputed property owner be served with a copy of the lien no later than five (5) business days after recording. "Owner" may not necessarily refer to the title holder; holders of fee title, land sale contract purchasers and lessees are all property owners subject to mechanic's lien claims.

**Tip:** Order a trio from a title company on the property or check county records to determine who the property owner(s) is.

##### ***(iii) Name of person employing lien claimant***

The statute requires the lien claim to state the name of the person by whom the claimant was employed or to whom the lien claimant furnished materials.<sup>34</sup> Failure to include this information can be fatal to the lien.<sup>35</sup>

##### ***(iv) Description of labor, materials, services or rental equipment provided***

The statute does not require any particular description of the labor, materials, rental equipment, or professional services for which the lien claim is being asserted. As such, a mere general description may suffice. Nevertheless, a detailed description of all labor, materials and rental equipment, as well as the dates when provided, should assist in opposing any claim that the lien is overstated or does not include a proper demand after deducting all just credits and offsets.

##### ***(v) Description of the property to be charged***

The statute requires a description of the property sufficient to identify it. A specific legal description is not required, but should be provided if you can obtain it. Otherwise, the address of the property should be "sufficient for identification". If the property description in the lien is vague, ambiguous, incomplete, includes minor errors, or describes or includes more land than can be liened, it should nevertheless be sufficient if it provides a basis for locating the property.<sup>36</sup> However, if the lien claim identifies the wrong property, is so overly broad such that it is not possible to identify the property, or is otherwise clearly erroneous, the lien will fail for not adequately describing the property.<sup>37</sup>

##### ***(vi) Verification requirement***

The claim of lien must also be verified by the oath of the claimant, his agent or attorney, to the effect that the affiant believes the same to be just.<sup>38</sup> The lien must satisfy all requirements of Idaho Code sections 45-507(4) and 51-109(4) with respect to verification.

##### ***(vii) Recording requirements***

The lien must be recorded with the county recorder's office where the property, or some part thereof, on which the improvement being built is situated.<sup>39</sup> The lien cannot be amended after the 90-day period runs.<sup>40</sup>

##### ***(viii) Segregation among improvements***

Where there is more than one building or improvement being built, the lien claimant must designate the amount due on each building or improvement or its lien will be inferior to other liens. However, this requirement is tempered by the Idaho Court of Appeals opinion in *Treasure Valley Plumbing and Heating, Inc. v. Earth Resources Co.*<sup>41</sup>, in which the court held that requiring claimants to describe with particularity each and every building, or other form of improvement, where plumbing work was performed, at a mining project, "would exalt form over substance."<sup>42</sup>

#### ***6. What post claim requirements exist, if any?***

Within five (5) business days after lien recording, a true and correct copy of the claim of lien must be served on the property owner or reputed property owner either by delivering a copy to the property owner or reputed property owner personally or by mailing a copy by certified mail to the property owner or reputed property owner at his last known address.<sup>43</sup> If a copy is not timely delivered or mailed, the claim of lien is wholly invalid.<sup>44</sup>

**Tip:** After the claim of lien is fully executed, but before it is recorded, retain several copies of the fully executed lien so that the copies can be served on the property owner(s) in a timely fashion regardless of any delay by the county recorder's office in returning to you a copy of the recorded lien..

### 7. What are the foreclosure requirements?

A mechanic's lien is valid for a period of six months from the date it is recorded.<sup>45</sup>

Therefore, the mechanic's lien must either be paid, or a lawsuit commenced to foreclose it, within this six-month period. Otherwise, the lien ceases to exist and the lien claim becomes void and unenforceable.<sup>46</sup> The lawsuit must be commenced in the county in which the property subject to the lien is situated. A successful lien claimant is entitled to recover its reasonable attorney fees at trial, but not on appeal.<sup>47</sup> In conjunction with preparing the lien foreclosure complaint, a title report on the property should be obtained, so the foreclosing lien claimant can join as defendants all persons or entities claim ownership or other interest in the property. It is also recommended that immediately after filing the foreclosure lawsuit, a *lis pendens* (a notice of pendency of the action) be recorded in county where the property is situated.<sup>48</sup>

A mechanic's lien can be removed from the property. The debtor of the lien claimant, or a party having an interest in the property liened, may obtain a bond having the statutorily required language, in the amount of one-and-one half (1.5) times the lien claim amount.<sup>49</sup> A petition requesting release of the lien (with a copy of the bond attached) must then be filed with the court in the county where the property subject to the lien is situated.<sup>50</sup> The petitioner must obtain an order setting a hearing on the petition, and a copy of the petition and order must be served on the lien claimant at least two (2) days before the hearing date.<sup>51</sup> At the hearing, the court shall release the lien upon the petitioner filing the original bond with the court with proof of payment of the bond premium.<sup>52</sup> The lien claimant can then bring an action against his debtor and the surety on the bond.<sup>53</sup> The advantage to bonding off the lien is that it can cap liability on the lien claim to 150% of the lien claim.

### CONCLUSION

The above discussion is not a comprehensive analysis of Idaho's mechanics lien law, and does not address all issues that should be considered when evaluating lien rights. Nevertheless, the above checklist and discussion should be a good tool for practitioners to use when asked by their clients to perfect and advance lien rights or defend against lien claims.

### ABOUT THE AUTHORS

**Douglas R. Hookland** is a partner in the Tigard, Oregon law firm of Scott Hookland LLP, where his practice emphasizes the enforcement of creditor's rights and construction law. He is admitted to practice law in Oregon, Washington, Idaho, and Alaska; and, has been a member of the Idaho State Bar since 2003. He received his law degree from Willamette University College of Law.

**Jeffrey S. Young** is an associate attorney at Scott Hookland LLP, and has been a member of the Oregon State Bar since 2007. His practice emphasizes the enforcement of creditor's rights and construction law. He received his law degree from the University of Oregon.

### ENDNOTES

<sup>1</sup> Idaho Code §§ 45-501 through 45-525.

<sup>2</sup> Idaho Code § 45-501.

<sup>3</sup> *Id.*

<sup>4</sup> See Idaho Code § 54-5208.

<sup>5</sup> *L & W Supply Corp. v. Chartrand Family Trust*, 136 Idaho 738, 743 (2002).

<sup>6</sup> *Id.* at 744.

<sup>7</sup> Idaho Code § 54-5204(1).

<sup>8</sup> Idaho Code § 54-5205.

<sup>9</sup> Idaho Code § 54-5208.

<sup>10</sup> Idaho Code § 54-5217(1).

<sup>11</sup> Idaho Code § 54-5217(2).

<sup>12</sup> Idaho Code § 54-5208 (emphasis added).

<sup>13</sup> Idaho Code § 54-5205(2)(k).

<sup>14</sup> Idaho Code §§ 45-525, 45-525(5)(b).

<sup>15</sup> Idaho Code § 45-525(1).

<sup>16</sup> Idaho Code § 45-525(3).

<sup>17</sup> Idaho Code § 45-525(4).

<sup>18</sup> Idaho Code § 45-525(6).

<sup>19</sup> Idaho Code § 45-507(2).

<sup>20</sup> See, e.g. *Chief Indus., Inc. v. Schwendiman*, 99 Idaho 682, 685 (1978) (holding a lien claimant's defective notice of claim of lien could not be amended after the statutory period for filing claim expired).

<sup>21</sup> *Pierson v. Sewell*, 97 Idaho 38, 42, 539 P.2d 590 (1975).

<sup>22</sup> *Mitchell v. Flandro*, 95 Idaho 228, 231, 506 P.2d 455 (1972).

<sup>23</sup> *Gem State Lumber Co. v. Witty*, 37 Idaho 489, 498-99, 217 P. 1027 (1923).

<sup>24</sup> *Franklin Bldg. Supply Co. v. Sumpter*, 139 Idaho 846, 851, 87 P.3d 955 (2004).

<sup>25</sup> *Id.* (holding that the cedar trim and locking door handle furnished by a materials supplier were not trivial in nature as they were supplied as part of the contract obligation and were actually installed in the house).

<sup>26</sup> Idaho Code § 45-507(3).

<sup>27</sup> *Barber v. Honorof*, 116 Idaho 767, 769, 787 P.2d 89 (1989).

<sup>28</sup> See, e.g. *Blake v. Crystalline Lime Co.*, 37 Idaho 637, 211 P. 1100 (1923); *Beall Pipe & Tank Corp. v. Tumac Intermountain, Inc.*, 108 Idaho 487, 700 P.2d 109 (Ct. App. 1985).

<sup>29</sup> *Blake*, 37 Idaho at 641-42.

<sup>30</sup> Idaho Code § 45-507(3)(b).

<sup>31</sup> See, e.g., *Gem State Lumber v. Union Grain*, 47 Idaho 747, 749, 278 P. 775 (1929); *Layrite Products Co. v. Lux*, 86 Idaho 477, 483, 388 P.2d 105 (1964).

<sup>32</sup> *Layrite Products Co.*, 86 Idaho at 483.

*Gem State Lumber*, 47 Idaho at 749.

<sup>33</sup> Idaho Code § 45-507(3)(c).

<sup>34</sup> See, e.g., *Riggins v. Perkins*, 42 Idaho 391, 396 246 P. 962 (1926).

<sup>35</sup> *Ross v. Olson*, 95 Idaho 915, 917, 523 P. 518 (1974); *White v. Constitution Mining and Milling Co.*, 56 Idaho 403, 419, 55 P.2d 152 (1936); *Beall Pipe & Tank Corp. v. Tumac Intermountain*, 108 Idaho 487, 490, 700 P.2d 198 (Ct. App. 1985).

<sup>36</sup> *Ross v. Olson*, 95 Idaho at 917-18; *Chief Indus., Inc.*, 99 Idaho at 685.

<sup>37</sup> Idaho Code § 45-507(4); Idaho Code § 51-109(4) (setting forth the verification requirements).

<sup>38</sup> Idaho Code § 45-507(1).

<sup>39</sup> *Chief Indus., Inc.*, 99 Idaho at 685.

<sup>40</sup> 684 P.2d 322 (1984).

<sup>41</sup> *Treasure Valley Plumbing and Heating, Inc. v. Earth Resources Co.*, 106 Idaho 920, 923-24, 684 P.2d 322 (1984).

<sup>42</sup> Idaho Code § 45-507(5).

<sup>43</sup> *Ashley Glass Co., Inc. v. Hoff*, 123 Idaho 544, 547, 850 P.2d 193 (1993).

<sup>44</sup> Idaho Code § 45-510.

<sup>45</sup> *Continental & Commercial Trust & Savings Bank v. Pacific Coast Pipe Co.*, 222 F. 781, 785 (9th Cir. 1915).

<sup>46</sup> Idaho Code § 45-513; *Franklin Building Supply Co.*, 139 Idaho at 852.

<sup>47</sup> Idaho Code § 5-505.

<sup>48</sup> Idaho Code § 45-519.

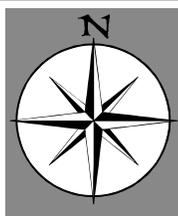
<sup>49</sup> Idaho Code § 45-520(1).

<sup>50</sup> Idaho Code § 45-520(2).

<sup>51</sup> Idaho Code § 45-521(1).

<sup>52</sup> Idaho Code § 45-522(1).

<sup>53</sup> Idaho Code § 45-522(1).



**Land Records Research  
Company  
Carol Tice Davis  
President**

Property History  
Mineral, Timber, Water Rights  
Easements and Rights of Way  
Asset location for  
conservatorship.estates

Phone: 208.376.7686

Fax: 208.376.3054

www.landrecordsresearch.com

**NEED MCLE CREDITS?**

Check your current MCLE records at [www.idaho.gov/isb](http://www.idaho.gov/isb). The website also includes a list of MCLE approved courses and rentals. Contact the Membership Department at (208) 334-4500 or [jhunt@isb.idaho.gov](mailto:jhunt@isb.idaho.gov) if you have any questions.

**IS YOUR CASE SET FOR TRIAL AND YOU NEED IMMEDIATE HELP?**

Personal Injury, Medical Malpractice Cases: over 35 years of Trial Experience; Federal and State Courts, Statewide. Verdicts in Excess of One Million Dollars in Medical, Product Liability and Airline Case. Board Certified Trial Specialist: National Board of Trial Advocacy; American Board of Professional Liability Attorneys. Million Dollar Advocates Club; Pro hac vice in Oregon, Washington, Utah, Montana, California and Nevada. Board of Governors of ABPLA 2007; Special Competence Award, National Board of Trial Advocacy (ABA accredited) 2004.

**"Mr. Schlender's teaching and assistance on a medical malpractice case provided both legal and tactical insights that were instrumental in a favorable verdict. I highly recommend his services to anyone."**

- Connie Taylor, J.D. (Lewiston, ID)

**"Lee's quick review and help has been invaluable."**

- Ken Coleman, M.D./ J.D. (Spokane, WA)

**"E. Lee pulled together for us a medical case of extreme complexity, resulting in an excellent settlement. I definitely will seek Lee's assistance with future cases."**

- Kevin Dinius, J.D. (Nampa, ID)

**"Lee and I were classmates of the University of Idaho law school more years ago than I'd care to remember. Recently, I had the pleasure of working with Lee as co-counsel on a medical negligence case in Northern Idaho. I would strongly recommend him to anyone going to trial with a major case. His experience and knowledge of the trial practice is hard to match."**

- Rick Fancher, J.D. (Spokane, WA)



**E. Lee Schlender**

*Trial Lawyer and Consultant*  
Flat rate or fee arrangements available. Emphasizing trial and settlement assistance on short notice.

**MR. SCHLENDER IS NOW AVAILABLE FOR MEDIATION SERVICES**

Call (208) 587-1999 or go to American Board of Professional Attorneys [abpla.org](http://abpla.org), under State of Idaho; Schlender Profile.

**ERVEN LEE SCHLENDER, J.D.**  
2700 Holly Lynn Drive  
Mountain Home, ID 83647

# LOCAL HISTORIC PRESERVATION ORDINANCES

JOSEPH H. GROBERG

RENEE R. MAGEE

CITY OF IDAHO FALLS

JULIE BRAUN

IDAHO NATIONAL LABORATORY

## HOTEL BONNEVILLE

June 1, 1927, marked the formal dedication and opening of the Hotel Bonneville, then located between the railroad station and the Bonneville County Courthouse in Idaho Falls. The local newspaper, *The Times-Register*, described it as a community celebration and the culmination of a “cooperative effort of four hundred and eighty-one progressive citizens of Idaho Falls.”<sup>1</sup> The Idaho Falls Chamber of Commerce, with the assistance of the Hockenberry System of Pennsylvania<sup>2</sup>, had determined an eighty room hotel with convention facilities was needed to serve business travelers and local residents in this growing agricultural city. Local leaders raised \$200,000 and bonded for another \$135,000 to finance the construction. They engaged the services of a San Francisco architectural and engineering firm to design the five story hotel in Spanish Renaissance Revival style. Ground was broken on August 24, 1926, and, less than one year later, the doors opened. The salmon and maroon colored brick structure with its ornamental iron balconies and Spanish tile courses still dominates the northern blocks of downtown Idaho Falls. It is unique in the history of Idaho Falls as part of a “building boom” in the downtown area. The Hotel is an example of the Renaissance Revival style which replaced the original dressed stone building style of the downtown area, and represents the result of the efforts of local civic leaders whose surnames still grace Idaho Falls businesses, streets, and parks.<sup>3</sup>

In 2007, Hotel Bonneville celebrated its 80th birthday. As age and neglect take their toll, some are calling for its demolition. However, others believe this and other historic buildings in the city are what distinguish Idaho Falls from sister cities such as Pocatello; Missoula, Montana; or Casper, Wyoming, each of which has distinctive buildings and history. In response to similar concerns, many cities in Idaho—Boise, Caldwell, Idaho City, Lewiston, Pocatello, Priest River, Rupert, Silver City, Twin Falls, and Wallace, to name a few—and across the West and the nation have adopted historic preservation ordinances as tools to save their unique historic buildings. Idaho Falls is considering expanding the powers of its local historic preservation commission through such an ordinance.

## HISTORIC PRESERVATION LAWS

Local preservation ordinances become part of an existing network of state and federal statutes designed to encourage the preservation of historic places. The Hotel Bonneville was listed in 1984 on the National Register of Historic Places. This is the official list of districts, sites, buildings, structures, and objects significant in national, state, or local history created by the National Historic Preservation Act (NHPA) of 1966 and maintained by the U.S.

Department of Interior.<sup>4</sup> Listing on the Register allows the owners of commercial and residential rental properties to take significant tax credits for rehabilitation of their buildings under the Federal Historic Preservation Tax Incentives Program of 1976,<sup>5</sup> provided work is completed in accordance with the Secretary of Interior’s Standards for Rehabilitation. For those with knowledge of historic buildings, their reuse, and the Secretary of Interior’s Standards, such tax credits become an important reason to rehabilitate historic buildings such as Hotel Bonneville. Although it offers an incentive for investment, register listing only protects an historic property when it is affected by federal action. Section 106 of the NHPA established a process for identifying and addressing the adverse impacts of federally funded, licensed, permitted, or regulated activities on historic properties.<sup>6</sup> This process does not necessarily prohibit federal action and allows for mitigation through formal consultation.

Most communities encounter the protections of Section 106 when U.S. Department of Housing and Urban Development monies are used locally, often under Community Development Block Grants (CDBG).<sup>7</sup> As part of the environmental assessment required by the block grants, the Idaho State Historic Preservation Office (SHPO) determines if an historic site (defined as a site listed on the Register or eligible to be listed) is proposed to be altered in a manner which adversely affects its historic significance.<sup>8</sup> If the site meets these criteria, then alternatives should be developed which lessen the impact on the historic property. For example, if Hotel Bonneville were remodeled to provide housing for low and moderate income families



79-5.59; 1978—Bonneville Hotel, Idaho Falls, ID. Photo permission of Idaho Legal Historical Society.

using CDBG monies, protection of the exterior and major features of the interior would be strongly encouraged.

In addition to NHPA, Section 4(f) of the Department of Transportation Act of 1966 contains a very strong historic preservation provision applicable to federally funded highway projects.<sup>9</sup> Unlike NHPA, it has no provisions for mitigation. The City of Idaho Falls recently learned the inflexibility of this statute when it had to redesign a portion of a major road project to avoid impacting an historic site. However, the majority of significant private and public historic properties are not affected by federally funded highway projects. Rather, they are adversely impacted through demolition and, oftentimes, well-intentioned remodeling projects.

### LOCAL PRESERVATION ORDINANCES

In contrast to the limited protection offered by the National Register, local historic preservation ordinances protect buildings and sites from significant change and demolition. The Idaho Preservation of Historic Sites Act<sup>10</sup> authorizes enactment of such ordinances by local governments in Idaho. The designation of local historic districts and properties are the cornerstone of such ordinances. Designation is based on a property meeting one or more of the criteria for listing on the National Register: association with historic events, association with a person important in history, embodiment of an architectural style or work of engineering, or likelihood to yield information of scientific value.<sup>11</sup> Normally, a property must be at least 50 years of age to be considered for listing. However, a property that is younger may be considered if it is of exceptional historical importance.<sup>12</sup> A property must also have integrity, meaning it must have enough historic fabric remaining to convey its historic character. Prior to the governing body designating a historic property or creating a local historic district by ordinance, notice shall be given to affected property owners and a public hearing held.<sup>13</sup>

After the property is designated as an historic property, a local historic preservation ordinance can require its owner obtain a certificate of appropriateness prior to making any significant exterior change or demolishing the building.<sup>14</sup> This certificate is required even if a building permit is not required. A certificate is also required for a change of use.<sup>15</sup>

Applications to modify the exterior of designated properties are reviewed by a local historic preservation commission appointed by the local government. Commission members should be trained in such fields as architectural history, architecture, and law.<sup>16</sup> Since designation of historic districts and buildings and the subsequent review of applications to modify the exterior of those buildings are quasi-judicial actions, commission members should also be trained in due process requirements such as notice, public hearings, the presentation of evidence, and the creation of a written decision based on a transcribable record. Some communities rely on the Secretary of the Interior's Standards for Rehabilitation for the criteria to determine a project's acceptability and develop their written decision. However, these standards are broad and may not reflect the goals of a particular community or provide clear guidance to the applicant. Design guidelines tailored to the community provide greater guidance to both the applicant and commissioners, meet local needs, and are phrased in regulatory language. Such guidelines can also be used to ensure new construction enhances the historic character of a downtown or residential neighborhood. Appeals from the decisions of the

local historic preservation commission are made to the city council or the local governing body.<sup>17</sup>

### CONCLUSION

Since 1931, when Charleston, South Carolina, established a local historic district, over 2,300 communities have adopted historic preservation ordinances.<sup>18</sup> Although change is inevitable, it must be managed in order to retain those characteristics of cities and towns that make them unique. Local preservation ordinances are the avenue by which this change is managed. They protect historic properties and local history, enhance historic neighborhoods and downtowns with compatible new construction, and encourage economic development through investment and tourism. Through preservation, cities and towns will provide their citizens with a sense of pride and tourists with a sense of history that is different than any other.

### ABOUT THE AUTHORS

**Joseph H. Groberg** is a member of the Idaho Falls City Council. He received his law degree from the University of Chicago and is a member of the Colorado and Idaho state bars.

**Renee R. Magee** is the Planning Director of Idaho Falls. She received her law degree from University of Wyoming and is an affiliate member of the Idaho and Wyoming state bars.

**Julie Braun** is the Team Lead for the Idaho National Laboratory (INL) Cultural Resources Management Office and the principal investigator for the INL Industrial Archaeology/History Program.

### ENDNOTES

<sup>1</sup> *Idaho Falls Community Hotel Corporation*, The Times-Register, Idaho Falls, ID, May 31, 1927, at 3.

<sup>2</sup> In 1927, the Hockenberry System of Pennsylvania was a business to promote locally owned hotels in communities in the United States which it operated, The Times-Register, May 31, 1927, at 3.

<sup>3</sup> The Times-Register, May 31, 1927, at 3.

<sup>4</sup> The National Historic Preservation Act of 1966. 16 U.S.C. §§ 470 et seq. (1996).

<sup>5</sup> The Federal Historic Preservation Tax Incentives Program of 1976. 36 CFR 67. (1976).

<sup>6</sup> 16 U.S.C. §§ 470(f) (1996).

<sup>7</sup> Community Development Block Grant monies are an annual Congressional appropriation administered by the U.S. Department of Housing and Urban Development. They are generally allocated to cities with populations of at least 50,000.

<sup>8</sup> The Idaho State Historic Preservation Office is a division of the Idaho State Historical Society. It functions on a grant from the National Park Service for which it administers the National Register Program for Idaho.

<sup>9</sup> Department of Transportation Act of 1966 §4F, 49 U.S.C. §§ 303 (1966).

<sup>10</sup> Idaho Code §§ 67-4601, et seq. (2007).

<sup>11</sup> See 36 CFR 65.4 (1983) and Idaho Code § 67-4614 (2007) for a listing of the exact criteria for receiving the historic site designation.

<sup>12</sup> See 36 CFR 65.4(b) (1983).

<sup>13</sup> Idaho Code § 67-4607, 4615 (2007).

<sup>14</sup> Idaho Code § 67-4608 (2007).

<sup>15</sup> Idaho Code § 67-4609 (2007).

<sup>16</sup> Idaho Code § 67-4603 (2007).

<sup>17</sup> Idaho Code § 67-4610 (2007).

<sup>18</sup> "A Citizen's Guide to Protecting Historic Places: Local Preservation Ordinances," available at [http://www.nationaltrust.org/smartgrowth/toolkit\\_citizens.pdf](http://www.nationaltrust.org/smartgrowth/toolkit_citizens.pdf) (last visited Nov. 6, 2007)

**DO YOU REALLY WANT TO TRY THAT  
CUSTODY CASE?**

Some custody cases have to be tried.  
Most can be resolved through mediation.

**CHRISTOPHER S. NYE**

CHILD CUSTODY AND CIVIL MEDIATION  
25 years litigation experience, 17 years family law

**WHITE PETERSON, P.A.**

Canyon Park at the Idaho Center  
5700 E. Franklin Road, Suite 200 Nampa, Idaho 83687  
Tel. (208) 466-9272 Fax (208) 466-4405  
csn@whitepeterson.com



Your legal staffing  
resource for part-time  
and full-time employees.

We are accepting applications and resumes from experienced paralegals and other professional office staff.

Contact Merrily Munther  
or Mary Lou Brewton-Belveal  
at (208) 344-4566  
info@idaholegalstaffing.com

ahead of the



**Drug & Alcohol Testing  
Background Checks  
Employee Assistant Program  
And Additional Services**

Ahead of the Kurve, LLC  
102 S. 17th Street, Suite 200  
P.O. Box 6071 Boise, ID 83707

Toll Free **877-331-5057**

Local **208-331-5057**

**www.aheadofthekurve.com**  
**solutions@aheadofthekurve.com**

**ALTERNATIVE DISPUTE RESOLUTION**

**Merlyn W. Clark**

Mr. Clark serves as a private hearing officer, federal court discovery master, neutral arbitrator and mediator. He has successfully conducted more than 500 mediations. He received the designation of Certified Professional Mediator from the Idaho Mediation Association in 1995. Mr. Clark is a fellow of the American College of Civil Trial mediators. He is a member of the National Roster of Commercial Arbitrators and Mediators of the American Arbitration Association and the National Panel of Arbitrators and Mediators for the National Arbitration Forum. Mr. Clark is also on the roster of mediators for the United States District Court of Idaho and all the Idaho State Courts.

Mr. Clark served as an Adjunct Instructor of Negotiation and Settlement Advocacy at the Straus Institute For Dispute Resolution, Pepperdine University School of Law in 2000. He served as an Adjunct Instructor at the University of Idaho College of Law on Trial Advocacy Skills, negotiation Skills, and Mediation Advocacy Skills. He has lectured on evidence law at the Magistrate Judges Institute, and the District Judges Institute annually since 1992.

- **Arbitration**
- **Mediation**
- **Discovery Master**
- **Hearing Officer**
- **Facilitation**
- **Education Seminars**
- **Small Lawsuit Resolution Act**



**HAWLEY TROXELL  
ENNIS & HAWLEY LLP**  
ATTORNEYS AT LAW

Phone: 208.388.4836  
Fax: 208.342.3829  
mwc@hteh.com

877 Main Street · Suite 1000  
Boise, ID 83702  
www.hawleytroxell.com

# AD VALOREM TAXATION OF CONSERVATION EASEMENTS

Arthur Macomber  
*Macomber Law, PLLC*

Idahoans are challenged by population growth. Private property owners facing land use changes may be reluctant to sell their land to developers, but feel they have no choice. Forty-one states balance pressures of real estate development using conservation easements.<sup>1</sup> However, Idaho's conservation easement statute undercuts attempts to channel or restrict development pressures by taxing parcels encumbered by conservation easements as if the easements do not exist.<sup>2</sup> This is in violation of the Idaho Constitution and appraisal practices county assessors are required to follow.<sup>3</sup> It is time to change Idaho Code Section 55-2109 in light of reasoned constitutional analysis and common sense.

## WHAT IS AN EASEMENT AND HOW IS IT CONVEYED?

The word "easement" is a real estate term, and there are two types of easements. An affirmative easement is the right which one person has to use someone else's property in a specific way<sup>4</sup> Conversely, a negative easement is the right one person has to prevent a use of another person's land.<sup>5</sup> For example, if a road does not border Smith's property, he may buy a driveway-sized affirmative easement from Jones, so that Smith may cross over Jones' land. Jones still owns fee title, but Smith has the right to cross over it in perpetuity for ingress and egress to Smith's property. Smith is called the dominant tenement or dominant estate,<sup>6</sup> because Smith dominates the land's use. Jones is the servient tenement or servient estate,<sup>7</sup> because Jones' land serves Smith's land.

In Idaho, "[r]eal property includes 'that which is appurtenant to the land.'<sup>8</sup>" "It includes all easements attached to the land."<sup>9</sup> Thus, an easement is an interest in real property in Idaho. Pursuant to federal law relating to tax benefits from donations of conservation easements, "[t]he term 'qualified real property interest' means any of the following interests in real property: (A) the entire interest of the donor other than a qualified mineral interest, (B) a remainder interest, and (C) a restriction (granted in perpetuity) on the use which may be made of the real property."<sup>10</sup>

"Any person ... may take, hold or dispose of property" in Idaho.<sup>11</sup> A conveyance of an interest in real property must be in writing, "subscribed by the party *disposing* of the same, ..."<sup>12</sup> Disposing of property is an act "transfer[ing] to the control of another," "get[ting] rid of," or "deal[ing] with conclusively."<sup>13</sup> A conveyance in the form of a grant of real property is presumed to grant "fee simple title ... unless it appears from the grant that a lesser estate was intended."<sup>14</sup> Thus, a written grant of a conservation easement by sale is the disposing of and dealing "conclusively" with an interest in real property.<sup>15</sup> Likewise, a charitable gift deed conveyance disposes of the same interest.<sup>16</sup>

## CONSERVATION EASEMENTS AND IDAHO LAW

A conservation easement is a non-possessory easement.<sup>17</sup> The easement holder<sup>18</sup> has no right to possession of the proper-

ty, but may contractually prevent or require defined uses of the land with the agreement of the property owner. Conservation easements may be perpetual or for a term of years.<sup>19</sup> Idaho conservation easements must accomplish certain purposes, such as "retaining or protecting natural, scenic, or open-space values of real property, assuring its availability for agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property."<sup>20</sup>

## MARKET VALUATION OF REAL PROPERTY INTERESTS

A property interest, such as a right to develop<sup>21</sup> or the obligation to maintain an historic building<sup>22</sup> can be defined separately from a parcel of land, appraised using standard valuation practices and donated in perpetuity to a non-fee owner through a Grant Deed. Some conservation easement holders will purchase the easement, but there is no federal tax benefit for an easement sale, so usually it is donated as a charitable contribution in perpetuity. The value of the donated property interest qualifies for a federal tax benefit to the title owner as a charitable contribution,<sup>23</sup> and such benefits are currently being addressed in the Idaho Legislature.<sup>24</sup> Under federal law, "the fair market value of a perpetual conservation restriction is equal to the difference between the fair market value of the property it encumbers before the granting of the restriction and the fair market value of the encumbered property after the granting of the restriction."<sup>25</sup>

## CURRENT COUNTY ASSESSMENT PRACTICES

Pursuant to Idaho Code, a county "shall determine, according to recognized appraisal methods and techniques, the market value for assessment purposes of real and personal property."<sup>26</sup> The definition of "real property" in Idaho's Revenue and Taxation Code includes "land ... and all other property which the law defines, or the courts may interpret, declare and hold to be real property under the letter, spirit, intent and meaning of the law."<sup>27</sup> This accords with the definition of real property discussed above in Idaho Code Section 55-101. Appraisal methods and techniques must assess the market value, which is "the amount of United States dollars or equivalent for which, in all probability, a property would exchange hands between a willing seller, under no compulsion to sell, and an informed, capable buyer, with a reasonable time allowed to consummate the sale, substantiated by a reasonable down or full cash payment."<sup>28</sup> Following standard real estate practices, an informed, capable buyer would procure a title report showing all easements of record, including a conservation easement restricting development rights, and such buyer would submit his market-priced offer reflecting the diminished value lost due to conveyance of the easement to the holder in perpetuity.

Even with these statutes and practices, Idaho Code Section 55-2109 states:

The granting of a conservation easement across a piece of property shall not have an effect on the market value of property for ad valorem tax purposes and when the property is assessed for ad valorem tax purposes, the market value shall be computed as if the conservation easement did not exist.<sup>29</sup>

How can Idaho mandate a county's *ad valorem* taxation be applied as if the easement interest was never conveyed in perpetuity? First, the statute appears to abridge the Idaho Constitution regarding uniform taxation. Second, it does not recognize the charitable donative effect of the easement being conveyed forever, and which property interest the fee title owner no longer owns. How can Idaho mandate a tax payment from someone who does not own the property assessed?

#### **STATE CONSTITUTION MANDATES UNIFORM TAXATION**

The Idaho Constitution at Article VII, Section five, in pertinent part, states, “[a]ll taxes shall be uniform upon the same class of subjects within the territorial limits, of the authority levying the tax, and shall ... secure a just valuation for taxation ... .”<sup>30</sup> That section mandates uniform taxation upon all real property when imposed by a county jurisdiction empowered pursuant to Article VII, Section six.<sup>31</sup> Arguably, this means that easements must either be recognized or ignored when *ad valorem* assessment is completed, because the property interest called an easement is within “the same [real property] class” of topical subjects constitutionally and statutorily.<sup>32</sup>

#### **NON-UNIFORMITY OF COUNTY AD VALOREM TAXATION**

Idaho Code Section 55-2109 separates conservation easements from other types of easements, thus the class of real property interests including easements is treated in a non-uniform manner. “The requirement of uniformity is violated ... when the tax is levied unevenly within the same class of subjects ... .”<sup>33</sup> The mandate to tax property as if a conservation easement does not exist violates uniform taxation, because appraisal practices applicable to all real property interests account for easement valuation during the county assessment process on all other parcels. Further, payment of taxes must be “in proportion to the value of his, her, or its property,”<sup>34</sup> and an easement conveyed as a charitable donation does not belong to the title-owning taxpayer of the parcel following delivery of the conveyance deed.<sup>35</sup> Finally, Article VII, Section five, mandates “just valuation,” and it is unjust to tax a title owner for an easement interest that is not owned by that title owner.

#### **ASSESSORS VALUATE EXISTING NON-CONSERVATION EASEMENTS**

Appraised prices for real property,<sup>36</sup> whether by licensed appraisers<sup>37</sup> or through a real estate broker's price opinion,<sup>38</sup> include a market valuation of the effect of easements on the value of the entire parcel.<sup>39</sup> A parcel becomes more valuable if it is accessible by an ingress-egress easement and is not land-locked. A parcel becomes less valuable when a conservation easement blocks all development thereon. Thus, *ad valorem* taxation already provides for recognition of the effects of easements on a property's value because an assessed value necessarily reflects the market value of the entire parcel, including value or

lack of value attributable to an easement.<sup>40</sup> This means all non-conservation-type easements are taxed uniformly by County *ad valorem* taxation, because the appraised market values used for assessing real property reflect the decrease or increase in value attributable to easements. However, Idaho Code Section 55-2109 requires “the market value [of the entire parcel] shall be computed as if the conservation easement did not exist.” Thus, Idaho Code Section 55-2109 requires non-uniformity of *ad valorem* taxation of conservation easements in violation of Idaho Constitution Article VII, Section five.

#### **IDAHO'S RECOGNITION OF DEVELOPMENT RIGHTS**

Idaho statutes recognize valid transfers of development rights from one parcel to another within the same county, if that county has passed an ordinance authorizing such transfers.<sup>41</sup> Most conservation easements include partial or complete restrictions on development,<sup>42</sup> and Idaho Code Section 67-6515A states that an “unexercised development right shall not be taxed as real or personal property.” It would appear that, if a conservation easement transfers all development rights appurtenant to a parcel to a non-profit charitable organization for the express purpose of barring such development to save natural land values, then real property taxation of that parcel would be barred pursuant to Section 67-6515A. The only difference between the two scenarios is that while Section 67-6515A requires identification of a “sending area” parcel and a “receiving area” parcel after enactment of a county ordinance, a conservation easement transfers development rights from parcel A but there exists no parcel B.

Thus, if, under the statutory scheme of Section 67-6515A, a county recognizes unexercised development rights as untaxable, it cannot claim it is uniformly applying *ad valorem* taxation when development rights locked up in a conservation easement must be taxed. Even if a county has yet to enact an ordinance following Section 67-6515A, the Idaho Legislature has violated the Idaho Constitution by enacting unconstitutional statutes granting counties non-uniform taxing power through Sections 55-2109 and 67-6515A.<sup>43</sup>

#### **TITLE OWNERSHIP IN EASEMENT INTEREST HAS BEEN CONVEYED**

Is Idaho Code Section 55-2109 legally defensible, when the entire development right or the right to alter the building or the right to engage in activities that encroach on sensitive ecological areas has been granted by deed to another party in perpetuity? The answer must be no. Idaho Constitution Article VII, Section two, mandates Idahoans pay taxes “in proportion to the value of his, her, or its property,” and a validly conveyed perpetual easement interest is no longer owned by the title owner.<sup>44</sup> Therefore, that owner no longer owns and cannot be taxed on that interest. And, although there may be no federal or state case law on Idaho Code Section 55-2109, it should not be left to courts to reform statutes where there is a clear Constitutional violation that the legislature can cure.

#### **NON-UNIFORM TAXATION OF “LANDS ACTIVELY DEVOTED TO AGRICULTURE”**

Idaho Code Section 63-602C allows exemption from real property taxation to certain charitable organizations. If the criteria are met for being recognized as a charitable organization,<sup>45</sup>

Section 63-605(1)(a) states a special tax status for property “owned and used for wildlife habitat by [a] corporation [ ] dedicated to the conservation of wildlife or wildlife habitat.”<sup>46</sup> In Section 63-605(1)(b), lands *managed* for conservation of wildlife or wildlife habitat that formerly qualified as “land actively devoted to agriculture” are afforded this special tax status, including tax exemption.<sup>47</sup> However, a conservation easement qualifying pursuant to Section 63-605(1), if Section 63-605 is read as a whole, “shall be eligible for appraisal, assessment and taxation as agricultural property, dry grazing land, or waste pursuant to rule.” If a conservation easement has been validly conveyed to a non-profit corporation, that corporation owns that property interest and Section 63-605(1) should afford that property interest special tax status.

Why would Idaho Code Section 55-2109 specifically mandate taxation “as if the conservation easement did not exist,”<sup>48</sup> where Section 63-605 specifically mandates appraisal, assessment and taxation as agricultural property, dry grazing land, or waste? This is neither just nor uniform taxation.

#### **AGRICULTURAL DEVELOPMENT RIGHTS V. OTHER DEVELOPMENT RIGHTS**

Idaho Code Section 63-602K provides a tax exemption for “that portion of the value of agricultural land which represents the excess over the actual use value of such land established by comparable sales data compared to value established by capitalization of economic rent or long-term average crop rental at a [certain] capitalization rate ... .”<sup>49</sup> This language describes a development right, except it refers to the speculative value of agricultural crop development instead of the speculative value of residential or commercial building development. These rights are directly analogous, because both involve property interests that are defined as unexercised development rights beyond the actual use value of such land, and are property interests capable of valuation for tax purposes.

Thus, unexercised residential and commercial development rights can be tax exempt pursuant to Idaho Code Section 67-6515A, agricultural crop development rights are exempt pursuant to Idaho Code Section 63-602K, but conservation easements that in similar fashion curtail or eliminate residential and commercial development rights “shall be computed as if the conservation easement did not exist.”<sup>50</sup> Since Idaho Constitution Article VII, Section five requires uniform taxation “upon the same class of subjects within the territorial limits, of the authority levying the tax,” and development rights appear to be within the same real property class of subjects,<sup>51</sup> Idaho counties should be legislatively directed to levy *ad valorem* taxes as if conservation easements exist, and remove county authority to tax title owners for that which is no longer owned.

#### **CONCLUSION**

Idaho has made laudable efforts to make the transition from primarily an extractive-based economy to a diverse multi-industry commercial environment. We know the current construction explosion will end. As growth continues, the conservation easement option can form a protective shield over lands, buildings, and views that are worth preserving. If your client is a landowner whose property has conservation values worth saving for

future generations, a conservation easement may provide a legacy of benefits to all citizens. The Idaho Legislature can correct inequity, non-uniform taxation, and sweeten the incentive to preserve Idaho’s valued resources by amending Section 55-2109 to require *ad valorem* taxation reflect the diminished parcel value attributable to a conservation easement.

#### **ABOUT THE AUTHOR**

**Arthur B. Macomber** received his undergraduate degree from George Fox University. Prior to attending the University of California Hastings College of the Law; he enjoyed 25 years in business, real estate and construction. Mr. Macomber runs a solo practice in Coeur d’Alene; focusing on real property, land use, water and construction law.

#### **ENDNOTES**

<sup>1</sup> All statutes 2007 unless otherwise noted: Alaska Stat. § 29.45.62; Ariz. Rev. Stat. § 33-271; Cal. Civ. Code § 815; Colo. Rev. Stat. § 38-30.5-109; Conn. Gen. Stat. § 47-42a and § 12-129r; D.C. Code Ann. § 42-202 (2001); Fla. Stat. Ann. § 704-06; Ga. Code Ann. § 44-10-3(a); Haw. Rev. Stat. § 198-1; Idaho Code § 55-2101; Ill. Comp. Stat. § 765 120/1; Ind. Code § 32-23-5-8; Kan. Stat. Ann. § 58-3810; Ky. Rev. Stat. Ann. § 382.800; Me. Rev. Stat. Ann. tit. 33, § 476 (2006); Md. Code Ann., Property § 2-118; Mass. Gen. Laws ch. 184, § 31; Mich. Comp. Laws § 324.2140; Minn. Stat. § 84C.01(1) (2006); Miss. Code Ann. § 89-19-1 (1972); Mont. Code Ann. § 76-6-208; Neb. Rev. Stat. Ann. 76-2,111(1) (1981); Nev. Rev. Stat. § 111.390; N.H. Rev. Stat. Ann. § 477:45(1) and § 79-B:3 (1990); N.J. Stat. Ann. § 13:8B-2(b); N.M. Stat. Ann. § 47-12-2(B); N.Y. Real Prop. § 49-0303(1); N.C. Gen. Stat. § 121-34 and § 121-40; Ohio Rev. Code Ann. § 5301.67(A); Okla. Stat. tit. 60, 49.2(1) (1999); Or. Rev. Stat. § 271-715(1) (2005); R.I. Gen. Laws § 34-39-2(a); S.C. Code Ann. § 27-8-70; S.D. Codified Laws § 1-19B-56(1); Tenn. Code Ann. § 66-9-303(1)(B); Utah Code Ann. § 57-18-2(1); Vt. Stat. Ann. tit. 24 § 4423(a)(5); Va. Code Ann. § 10.1-1009; Wash. Rev. Code § 64.04.130 (1987); W.Va. Code § §20-12-3(a); Wis. Stat. § 700.40(1)(a); Wyo. Stat. Ann. § 34-1-201(b)(i).

<sup>2</sup> Idaho Code § 55-2109 (2007).

<sup>3</sup> Idaho Code § 63-301. (2007).

<sup>4</sup> Black’s Law Dictionary 548 (8th Ed. 2004).

<sup>5</sup> *Id.*, at 550.

<sup>6</sup> *Id.*, at 589.

<sup>7</sup> *Id.*

<sup>8</sup> Idaho Code § 55-101(3) (2007); *see Hughes v. State* (1958) 80 Idaho 286, 293 (Access to business over public sidewalk construed as easement appurtenant to real property requiring just compensation if taken by municipality).

<sup>9</sup> Idaho Code § 55-603 (2007); *see* Note at 8.

<sup>10</sup> 26 U.S.C. § 170(h)(2) (2006); 26 C.F.R. § 1.170A-14(1) and (2) (2003).

<sup>11</sup> Idaho Code § 55-103 (2007).

<sup>12</sup> Idaho Code § 55-601 (2007), (emphasis added).

<sup>13</sup> Merriam-Webster Dictionary 208 (New Ed. 2004).

<sup>14</sup> Idaho Code § 55-604 (2007).

<sup>15</sup> Idaho Code §§ 55-505 (2007) (written deed) and 55-606 (2007) (conclusiveness) (“Every grant or conveyance of an estate in real property is *conclusive* against the grantor . . . .” (emphasis added), *see Hill v. Sligar* (1996) 128 Idaho 858, 860 (“Valid delivery of a deed occurs when there is a delivery of the instrument itself to the grantee coupled with an intent by the grantor to pass immediate and present title to the property.” citing *Hartley v. Stibor* (1974) 96 Idaho 157, 160.)

<sup>16</sup> Idaho Code § 55-2102(1) (2007).

17 Idaho Code § 55-2101(1) (2007).  
 18 Idaho Code § 55-2101(2) (2007); see *Housing Southwest, Inc. v. Washington County* (1996) 128 Idaho 335, 338 (qualifications under Idaho law for status as charitable organization); see 26 U.S.C. § 170(h)(3) (2006).  
 19 Idaho Code § 55-2102(3) (2007); see 26 C.F.R. § 1.170A-14(g) (2006).  
 20 Idaho Code § 55-2101(1) (2007); see 26 U.S.C. § 170(h)(4) (2006) (conservation easement purposes pursuant to federal law); see 26 C.F.R. § 1.170A-14(d) (2003) (applicable Treasury regulations).  
 21 Idaho Code § 67-6515A (2007).  
 22 26 C.F.R. § 1.170A-14(d)(5) (2003).  
 23 26 U.S.C. § 170(h) (2006); see 26 C.F.R. § 1.170A-14(h)(2) (2003) (requiring fair market value be computed).  
 24 H.B. 262, 59th Leg., 1st Regular Sess. (Idaho 2007).  
 25 26 C.F.R. § 1.170A-14(h)(3)(i) and (ii) (2003).  
 26 Idaho Code § 63-301(1) (2007).  
 27 Idaho Code § 63-201(18) (2007).  
 28 Idaho Code § 63-201(10) (2007).  
 29 Idaho Code § 55-2109 (2007).  
 30 Idaho Const. art. VII § 5.  
 31 *Idaho County v. Fenn Hwy. Dist.* (1926) 43 Idaho 233, 240 (“[I]f a tax is to be levied by a county, it shall be uniform upon the same class of subjects within the county.”); see *Scandrett v. Shoshone* (1941) 63 Idaho 46.  
 32 Idaho Const., art. VII § 3; *Idaho Telephone Co. v. Baird* (1967) 91 Idaho 425, 413 (“[a]rt. VII, § 3 . . . affirms the power of the state legislature to make reasonable classifications of property for certain purposes. However, the exercise of that power is bounded by the constitutional requirement of uniformity embodied in [a]rt. VII, § 2”); see Idaho Code § 63-204 (2007) (Three classes of property: 1) real property, 2) personal property, and 3) operating property).

33 *County of Ada v. Red Steer Drive-Ins of Nevada, Inc.* (1980) 101 Idaho 94, 97-98.  
 34 Idaho Const. art. VII § 2.  
 35 *Crenshaw v. Crenshaw* (1948) 68 Idaho 470, 475 (“Before a deed can operate as a valid transfer of title, there must be a delivery of the instrument and it must be effected during the life of the grantor.”).  
 36 Idaho Code § 54-4104(11) (2007).  
 37 Idaho Code § 54-4104(12) (2007).  
 38 Idaho Code § 54-4104(5) (2007).  
 39 Idaho Code § 54-4104(1) (2007).  
 40 Idaho Code § 63-314(1) and (5) (2007).  
 41 Idaho Code § 67-6515A (2007).  
 42 See note 15 citing state and federal statutes on the purposes of conservation easements.  
 43 *Idaho Telephone Co. v. Baird* (1967) 91 Idaho 425, 428 (“[T]he Constitution of the State of Idaho is not a delegation of power to the legislature but is a limitation on the power it may exercise, and that the legislature has plenary power in all matters for legislation except those prohibited by the constitution.”).  
 44 Idaho Code § 63-307 (2007).  
 45 *Housing Southwest, Inc. v. Washington County* (1996) 128 Idaho 335, 338 (qualifications under Idaho law for status as charitable organization).  
 46 Idaho Code § 63-605(1)(a) (2007) (emphasis added).  
 47 Idaho Code § 63-605(1)(b) (2007).  
 48 Idaho Code § 55-2109 (2007).  
 49 Idaho Code § 63-602(K) (2007).  
 50 Idaho Code § 55-2109 (2007).  
 51 See note 31.




**At Data Tracks, our mission is to provide our clients with a concise evaluation of their digital data, present the data in a meaningful way and provide expert testimony in support of our discovery as needed.**

**Our specialties**

- Computer Forensics
- E-discovery
- Data Recovery

3313 W. Cherry Lane, #141  
 Meridian, Idaho 83642  
 (208) 884-4437

Visit us on the web at  
<http://www.datatracks.net>

**Data Tracks, Inc.** 

**Does your structured settlement broker play for both teams?**



**Make sure that your broker is plaintiff-only.**  
The James Street Group always has the plaintiff's best interest in mind, not the defense.

**Our experts will:** *Attend Mediations & Maximize Your Settlement Offers*  
*Ensure The Best Rates & Products For Your Clients • Reduce Your Malpractice Risk*

**Call us when you open a case... Our service is always free.**

**Audrey Kenney**  
 akenney@tjsg.com  
 208-631-7298  
 www.tjsg.com

**THE JamesStreet GROUP**  
 Structured Settlements 

# CONSERVATION EASEMENTS IN THE ROCKY MOUNTAIN WEST: “PERPETUITY” IS RELATIVE

JESSICA RUTZICK

JESSICA RUTZICK, ATTORNEY AT LAW, PC

Conservation easements are becoming a popular and frequently used land-protection tool. In Wyoming alone, over 275,000 acres of privately-owned farm and ranchlands, open space and wildlife habitat are protected by conservation easements. Although the donors of a conservation easement may intend that the land be protected from development in perpetuity, termination of the easement has become a real possibility—with significant ramifications.

A recent case decided by the Wyoming Supreme Court calls into question the legal basis on which conservation easements rest and highlights their numerous legal pitfalls.<sup>1</sup> That decision, *Hicks v. Dowd*, has changed the terms and methods for enforcing conservation easements throughout the state, and their durability will remain in question for years to come throughout the Rocky Mountain West.

*Hicks v. Dowd* concerns a 1,000 acre ranch northeast of Buffalo, Wyoming. The easement was created by the Lowhams in 1993 and was deeded to the Board of County Commissioners of Johnson County.<sup>2</sup> The stated purpose of the conservation easement was: “preserving and protecting in perpetuity the natural, agricultural, ecological, wildlife habitat, open space, scenic and aesthetic features and values of the Ranch.”<sup>3</sup> The gift was estimated to have reduced the ranch’s value by \$1.2 million, and the Lowhams claimed a federal charitable income tax deduction based on that amount.<sup>4</sup>

Subsequently, the Board of County Commissioners created the Johnson County Scenic Preserve Trust and quitclaimed the one-acre property and the appurtenant conservation easement to the Trust. The County Commissioners were the trustees and settlers of the Trust.

In 1999, the Dowds purchased the ranch from the Lowhams. Two years later, a mineral developer, Northwest Energy, obtained twenty-two permits for coalbed methane development on the ranch, pursuant to its lease of the subsurface mineral estate. Recognizing that mineral development would likely reduce the property’s value and defeat the purpose of the conservation easement, the Dowds asked the County Commissioners to terminate the easement. In a public meeting, the County Commissioners complied and granted the request by way of Resolution. The Dowds then subdivided their land and listed it for sale for \$1.5 million more than they paid for it.

Approximately one year later (July 2003), Robert Hicks filed suit against Johnson County, challenging the termination of the conservation easement. Hicks argued that the County held the easement as a charitable trust for the benefit of the public and thus did not have the legal right to terminate the easement without court approval. The Dowds argued that the conservation easement must be treated from a legal standpoint like any other contractual easement, which is terminable at the will of the parties to the contract.

The district court never reached the merits of the case, dismissing it on the ground that Hicks needed to appeal the County’s decision under the Wyoming Administrative Procedure Act. Hicks appealed the dismissal to the Wyoming Supreme Court. The *Hicks v. Dowd* decision leaves us with more questions than answers. Two of the more intriguing issues are: 1) How long is forever, and 2) What is the effect of split estates?

## HOW LONG IS FOREVER?

In order to qualify for an income tax deduction for a charitable donation, the conservation easement must be held in perpetuity by a donee organization. Accordingly, land trust organizations must have the means to enforce the conditions of the easement in perpetuity.<sup>5</sup> This requirement begs the question: how long is forever? More specifically, under what circumstances will the purposes of the conservation easement be defeated, thereby justifying termination?

Under Wyoming common law, an appurtenant easement is a contractual relationship between the servient and dominant estate holders.<sup>6</sup> The contract could be voluntarily amended or even terminated by the parties to the agreement at any time. If conservation easements are classified as appurtenant, the common law doctrines of contracts and easements dictate amendment and/or termination.

In this framework, the easement holder (land trust) and the land owner could agree to amend or terminate the easement in their discretion. That is exactly what happened in the *Hicks v. Dowd* case. In this legal context, unless a third party beneficiary of the conservation easement is specifically named in the agreement, it is unlikely that the terms of a conservation easement could be enforced by anyone other than the owners of the dominant and servient estates.<sup>7</sup> Thus, the life of a conservation easement is only as enduring as the mission, finances, and withdrawal of the organization entrusted with it. In the *Hicks v. Dowd* case, the easement was sustained for less than ten years.<sup>8</sup>

With rising commercial, residential and mineral development in the Rocky Mountain West, pressure to terminate conservation easements will increase exponentially. Land trusts will require increasing flexibility in their management and oversight. Application of the common law of contracts and easements will best serve that need by eliminating the possibility of interference or uninformed input from indiscriminate members of the public. On the other hand, the grantor’s intentions may not necessarily be honored by the trust, whose stewardship decisions are influenced by changing development pressures. For example, the ability to sell or trade development rights from one parcel of land to another may benefit the trust’s mission, but could fly in the face of the grantor’s wishes to preserve one specific parcel of land. As in the *Hicks* example, the land trust concluded that proposed mineral development defeated the purpose of the conser-

vation easement and agreed to terminate it. The grantors of the easement certainly did not anticipate its termination within nine years, nor did the Internal Revenue Service, which requires the easement to be "perpetual" for the tax benefits to take effect.

"Forever" in the common law context is only as long as the land trust is willing and able to retain its interest in the conservation easement. As *Hicks v. Dowd* suggests, that could be anywhere from nine years to centuries.

### EFFECT OF SPLIT ESTATES

As *Hicks v. Dowd* illustrates, even the potential for mineral development may justify termination of a conservation easement. The Dowds purchased their ranch with the understanding that mineral development was highly unlikely. Within eight years, however, Northwest Energy commenced mineral development on the ranch.<sup>9</sup>

After viewing the extensive surface damage caused by well sites, roads, pipelines, and water disposal facilities on nearby lands; the Dowds were alarmed by what they saw. They concluded that this activity would cause significant environmental damage and was inconsistent with the terms of the conservation easement. The Johnson County Commissioners agreed and terminated the conservation easement accordingly. Had the district court reached the merits of the *Hicks* case, it would have had to consider an equitable remedy addressing the changed circumstances on the ranch.<sup>10</sup>

Very little, if any, case law is available to lend guidance on whether or when changed circumstances justify amendment or termination of a conservation easement. In any event, the determination must be fact and case specific, based on the provisions of the particular easement at issue, the intent of the grantor, and the particular circumstances prompting amendment or termination.

This analysis invokes a high degree of subjectivity. For example, in *Southbury Land Trust, Inc. v. Andricovich*, 757 A.2d 1263 (Conn. App. 2000), a holder of a land trust easement challenged the construction by the servient land owner of a farm house intended for use by the grantor's family. The trial court permitted the construction, and the court of appeals affirmed, finding that the construction was consistent with the intent of the easement.<sup>11</sup> The court of appeals interjected a subjective analysis, however, opining, that if a large contemporary mansion was built in the middle of the pastoral view of the farm, then the spirit of the easement would be undermined.<sup>12</sup> In that case, the court concluded that the easement holder could enjoin construction of a mansion on the ground that it would undermine the entire purpose of the easement.<sup>13</sup> Thus, the court's subjective views of good taste, appropriate location and the grantor's intent played a significant role in the outcome.

To some, disturbance to the surface estate by mineral development is short-term, and any harm to the surface may be readily reclaimed. To others, like the Dowds and the Johnson County Commissioners, mineral development can so impact the surface estate that any attempt at continuing the conservation easement is futile. Thus, the intent of the grantors and the language of the easement will dictate whether or not mineral development will justify termination of a conservation easement. Any conservation

easement on a split estate should anticipate mineral development and identify those circumstances in which amendment or termination of the easement should occur.

The *Hicks v. Dowd* case has called into question the status and sustainability of conservation easements in Wyoming, especially those placed on split estates. The intended perpetuity of these easements will be subject to challenge and remain under scrutiny for years to come.

### ABOUT THE AUTHOR

**Jessica Rutzick** received her Bachelor of Science from the University of Wisconsin, Madison and her J.D. from the University of Washington School of Law in 1996. Jessica has a general civil litigation practice with an emphasis on personal injury, insurance bad faith and land development litigation. She maintains a solo practice serving Western and Central Wyoming. Jessica is also admitted in Idaho and Minnesota and has been practicing in Jackson Hole, Wyoming for 11 years.

### ENDNOTES

<sup>1</sup> *Hicks v. Dowd*, 157 P.3d 914 (Wyo. 2007).

<sup>2</sup> *Id.* at 915-16.

<sup>3</sup> *Id.* at 916.

<sup>4</sup> *Hicks v. Dowd*, Plaintiff's brief in support of summary judgment.

<sup>5</sup> 26 U.S.C. § 170 (2006); C.F.R. §§ 1.170A-14(e)-(g) (2004).

<sup>6</sup> The principles of contract construction apply to construction of an easement. See *Lozier v. Blattland Investments, LLC*, 100 P.3d 380, 383-84 (Wyo. 2004).

<sup>7</sup> A third-party beneficiary may enforce his rights under a conservation easement only if specific terms exist. Uniform Conservation Easement Act, Wyo. Stat. § 34-1-201 et seq. (West 2007). An outsider claiming the right to sue must show that the easement was intended for his direct benefit. *Id.*; *Hicks v. Dowd*, supra. A third party may sue to enforce his rights under a conservation easement only if: the easement recognizes a right to performance in the beneficiary and the circumstances indicate that the grantee (land trust) intends to give that beneficiary the benefit of the conservation easement. See *Bear v. Volunteers of America, Wyoming, Inc.*, 964 P.2d 1245, 1252 (Wyo. 1998)

<sup>8</sup> See *Hicks*, 157 P.3d at 915-16.

<sup>9</sup> *Hicks v. Dowd*, Appellee's Brief.

<sup>10</sup> Wyo. Stat. § 34-1-203 (b). The UCEA "shall not affect the power of a court to modify or terminate a conservation easement in accordance with the principles of law and equity."

<sup>11</sup> *Southbury Land Trust, Inc.*, 757 A.2d at 1264-67.

<sup>12</sup> *Id.* at 1267 n.8.

<sup>13</sup> *Id.*

### Mediation and Arbitration Services

## D. Duff McKee

Practice limited to alternative dispute resolution services

Post Office Box 941 Telephone: (208) 381-0060  
Boise, Idaho 83701 Facsimile: (208) 381-0083

Email: [ddmckee@idacomm.net](mailto:ddmckee@idacomm.net)

## DIVERSITY SECTION INAUGURAL RECEPTION

The Idaho State Bar is pleased to announce the formation of its newest section, the Diversity Section. The Diversity Section was created to foster diversity within the legal profession and thereby promote the professional development of a diverse bar serving the interests of the public. Pursuant to the Section's bylaws, the Section shall create awareness in the legal profession about the value of diversity; advance the skills and ability of all attorneys to better serve diverse clients; provide a forum for communication among attorneys to promote the professional advancement of a diverse bar; and develop programs to increase diversity in the pool of students K-12 who desire to pursue a career in law.

On September 25, 2007 the Honorable Sergio A. Gutierrez delivered the keynote address at the Inaugural Reception. University of Idaho College of Law Dean Donald Burnett and Idaho's Secretary of State Ben Ysura were among other dignitaries in attendance.

We would like to thank SuperValu, Inc. for hosting the reception with the support of Camacho Mendoza Law, Holland & Hart LLP, Idaho Employment Law Solutions, Perkins Coie LLP, Stoel Rives LLP, Technology Law Group LLC and the University of Idaho College of Law.



Section co-founders Rick Boardman (on R) and Britt Ide (on L) with ISB President Andrew Hawes. Photo courtesy of Peppershock Media Productions, LLC.



Foreground R to L: Walt Sinclair, Jason Prince, Gloria Hong, and Ron Coulter. Photo courtesy of Peppershock Media Productions, LLC.



R to L: Emile Loza, Diversity Section Chair Ron Coulter, and Ron Bruce. Photo courtesy of Peppershock Media Productions, LLC

### DIVERSITY SECTION COUNCIL MEMBERS

**Ronald A. Coulter, Chair**  
Idaho employment Law Solutions  
ron@idahoels.com

**Natalie C. Mendoza, Chairperson-elect**  
Camacho Mendoza Law Office  
camacho@cableone.net

**Linda L. Pall, Secretary/Treasurer**  
Law Office of L. Pall  
lpall@moscow.com

## DIRECTORY UPDATES

10/2/07 - 11/1/07

### Rami Amaro

Amaro Law Office  
PO Box 796  
Hayden, ID 83835  
(208) 665-7551  
Fax: (208) 667-9992  
contact@amarolaw.com

### Marty Ray Anderson

Thompson Smith Wolff  
Anderson, PLLC  
PO Box 50160  
Idaho Falls, ID 83405-0160  
(208) 525-8792  
Fax: (208) 525-5266  
marty@eastidaholaw.net

### Matthew Curtis Andrew

Goicoechea Law Offices  
1226 Karcher Road  
Nampa, ID 83687  
(208) 466-0030  
Fax: (208) 466-8903  
matthew@legaleaglesnw.com

### Kent Wade Bailey

1952 E. Grand Canyon Dr.  
Meridian, ID 83646  
(208) 963-0508  
kentwbailey@gmail.com

### Shawn Parker Bailey

Beamson & Peck, LC  
74 West 100 North  
Logan, UT 84321  
(435) 787-9700  
Fax: (435) 787-2455  
sbailey@bplaw.biz

### Thomas A. Banducci

Banducci Woodard  
Schwartzman, PLLC  
802 W. Bannock Street, Ste. 700  
Boise, ID 83702  
(208) 342-4411  
Fax: (208) 342-4455  
tbanducci@bwsllawgroup.com

### Sara Marie Bearce

Idaho Court of Appeals  
PO Box 83720  
Boise, ID 83720-0101  
(208) 947-7594  
Fax: (208) 334-2526  
sbearce@idcourts.net

### Jacob Kahle Becker

Office of the Attorney General  
PO Box 83720  
Boise, ID 83720-0050  
(208) 334-0236  
Fax: (208) 334-2297  
kahlebecker@gmail.com

### Emil R. Berg

Greener Burke & Shoemaker, PA  
950 W. Bannock Street, Ste. 900  
Boise, ID 83702  
(208) 319-2600  
Fax: (208) 319-2601  
erberg@greenerlaw.com

### Jennifer E. Birken

Office of the Attorney General  
PO Box 83720  
Boise, ID 83720-0010  
(208) 334-2400  
Fax: (208) 854-8074  
jennifer.birken@ag.idaho.gov

### Clint Robert Bolinder

Givens Pursley LLP  
PO Box 2720  
Boise, ID 83701  
(208) 388-1200 Ext: 235  
Fax: (208) 388-1300  
cbolinder@givenspursley.com

### Erik J. Bolinder

Givens Pursley LLP  
PO Box 2720  
Boise, ID 83701  
(208) 388-1200 Ext: 265  
Fax: (208) 388-1300  
ebolinder@givenspursley.com

### Brook Bernard Bond

Zarian Midgley & Johnson,  
PLLC  
PO Box 170440  
Boise, ID 83717  
(208) 433-9121  
Fax: (208) 441-9120  
bond@zarianmidgley.com

### Charles R. Brink

10105 Parley Drive  
Tampa, FL 33626-5406  
(813) 846-8222  
Fax: (813) 925-0085  
chaudaho1@aol.com

### John Joseph Browder

Lerma Law Office, PA  
PO Box 190719  
Boise, ID 83719  
(208) 288-0608  
Fax: (208) 288-0697  
lermalaw@fiberpipe.net

### Amy McNally Brown

PO Box 7874  
Boise, ID 83707  
(208) 389-8125  
amymcnally815@hotmail.com

### Christian Dale Brown

Brown & Patrick, P.C.  
2399 S. Orchard Street, Ste. 204  
Boise, ID 83705  
(208) 336-4477  
Fax: (208) 336-4479  
chris@brownandpatrick.com

### Robert Christopher Brown

1422 E. Woodstone Drive  
Hayden, ID 83835  
(208) 772-0725  
Fax: (208) 772-0725  
rob.brown1@hotmail.com

### Amie L. Bruggeman

12550 N. Upper Ridge Place  
Boise, ID 83714  
(208) 891-8070  
amie\_b@ctcweb.net

### Gerald Raymond Bublitz

Barrera Bublitz, LLP  
2021 Cleveland Blvd.  
Caldwell, ID 83605  
(208) 459-9690  
Fax: (208) 459-9701  
jessicabublitz@yahoo.com

### Gary Milo Bullock

Gary M. Bullock & Associates,  
PC  
1000 SW Broadway, Ste. 2460  
Portland, OR 97205  
(503) 228-6277  
Fax: (503) 228-6280  
gary@garymibullock.com

### Christopher Carl Burke

Greener Burke & Shoemaker, PA  
950 W. Bannock Street, Ste. 900  
Boise, ID 83702  
(208) 319-2600  
Fax: (208) 319-2601  
cburke@greenerlaw.com

### Aaron Christopher Charrier

Greener Burke & Shoemaker, PA  
950 W. Bannock Street, Ste. 900  
Boise, ID 83702  
(208) 319-2600  
Fax: (208) 319-2601  
aacharrier@greenerlaw.com

### Christian Carl Christensen II

Idaho Court of Appeals  
PO Box 83720  
Boise, ID 83720-0020  
(208) 947-7583  
cchriste@hotmail.com

### Richard Raymond Clarkson

Law Office of Richard R.  
Clarkson  
713 E. Linkershim Drive  
Meridian, ID 83642  
(208) 794-1754  
lclarkson0744@msn.com

### John Xavier Combo

Combo Law Office  
PO Box 50190  
Idaho Falls, ID 83405-0190  
(208) 524-5380  
Fax: (208) 524-5451  
jack@woolfcombandthompson.com

### William Patrick Combo

Combo Law Office  
PO Box 50190  
Idaho Falls, ID 83405-0190  
(208) 524-5380  
Fax: (208) 524-5451  
bill@woolfcombandthompson.com

### Janis DeVore Cook

9317 W. Pandion Court  
Boise, ID 83714  
(208) 853-6258  
Fax: (208) 853-6440  
janiscook59@yahoo.com

### Hon. Michael Ray Crabtree

5th District Court  
1459 Overland Avenue  
Burley, ID 83318  
(208) 878-7152  
Fax: (208) 878-1010  
mcrabtree@cassiacounty.org

### Luke Waldron Davis

Idaho Supreme Court  
PO Box 83720  
Boise, ID 83720-0101  
(208) 334-2248  
Fax: (208) 334-2146  
ldavis@idcourts.net

### Jeffrey Alan De Voe

Hawkins Companies, LLC  
855 Broad Street, Ste. 300  
Boise, ID 83702-7153  
(208) 908-5543  
Fax: (208) 376-8523  
jdevoe@hawkinscompanies.com

### Jennifer Schrack Dempsey

Greener Burke & Shoemaker, PA  
950 W. Bannock St., Ste. 900  
Boise, ID 83702  
(208) 319-2600  
Fax: (208) 319-2601  
jdempsey@greenerlaw.com

### Rob G. Dickinson

Hawkins Companies, LLC  
855 Broad Street, Ste. 300  
Boise, ID 83702-7153  
(208) 908-5540  
Fax: (208) 376-8523  
rdickinson@hcolc.com

### Kate Donnelly

600B W. Oak  
Caldwell, ID 83605

### Ryan Kenneth Dowell

1100 W. Amity Road  
Meridian, ID 83642  
(509) 679-1806  
ryankdowell@yahoo.com

### Kristin Bjorkman Dunn

Givens Pursley LLP  
PO Box 2720  
Boise, ID 83701  
(208) 388-1200  
Fax: (208) 388-1300  
kristindunn@givenspursley.com

### Marty Durand

Herzfeld & Piotrowski, LLP  
PO Box 2864  
Boise, ID 83701  
(208) 331-9200  
Fax: (208) 331-9201  
marty@idunionlaw.com

### Kirstin K. Dutcher

Lawson & Laski, PLLC  
PO Box 3310  
Ketchum, ID 83340  
(208) 725-0055  
Fax: (208) 725-0076  
fjeldkirstin@hotmail.com

### Dylan Alexander Eaton

3483 S. Bridgeport Place  
Boise, ID 83706  
(206) 669-3177  
dylaneaton@hotmail.com

### Stephanie Theresa Ebright

U.S. Environmental Protection  
Agency  
1200 Pennsylvania Avenue, NW  
Mail Code 3902R  
Washington, DC 20460  
(202) 564-5308  
ebright.stephanie@epa.gov

### Faren Zane Eddins

Moulton Law Office  
PO Box 631  
Driggs, ID 83422  
(208) 354-2345  
Fax: (208) 354-2346  
fareneddins@tetonvalleylaw.com

### Scott Raymond Erikson

1075 Ridge Road  
McCall, ID 83638  
serekson@yahoo.com

### Carlton Reed Ericson

Canyon County Prosecutor's  
Office  
1115 Albany Street  
Caldwell, ID 83605  
(208) 454-7391  
Fax: (208) 455-5955  
cericson@canyonco.org

### John Matthew Eustermann

Stoel Rives, LLP  
101 S. Capitol Blvd., Ste. 1900  
Boise, ID 83702  
(208) 389-9000  
Fax: (208) 389-9040  
johnmeustermann@stoel.com

### Stefan W. Farr

Phillips Bohyer & Hedger, PC  
PO Box 8569  
Missoula, MT 59807  
(406) 721-7880 Ext: 189  
Fax: (406) 549-2253  
sfarr@phh-law.com

### Whitney Anne Faulkner

Ada County Prosecutor's Office  
200 W. Front Street, Room 3191  
Boise, ID 83702  
(208) 287-7700  
Fax: (208) 287-7709  
wfaulkner@adaweb.net

**Galen C. Fields**

Ada County Prosecutor's Office  
200 W. Front Street, Room 3191  
Boise, ID 83702  
(208) 287-7700  
Fax: (208) 287-7709  
gcarlson@adaweb.net

**Sharon Louise Fields**

623 W. Hays Street  
Boise, ID 83702  
(208) 343-5665  
Fax: (208) 343-1146  
august\_inanna@yahoo.com

**Cynthia Grace Flynn**

Carney Badley Spellman  
701 Fifth Avenue, Ste. 3600  
Seattle, WA 98104  
(206) 622-8020  
Fax: (206) 467-8215  
flynn@carneylaw.com

**Curt Alan Fransen**

Department of Environmental  
Quality  
1410 N. Hilton  
Boise, ID 83706  
(208) 373-0134  
Fax: (208) 373-0417  
curt.fransen@deq.idaho.gov

**David Eugene Gabert**

845 W. Center  
Pocatello, ID 83204  
(208) 233-9560  
Fax: (208) 232-8001  
degabert2002@yahoo.com

**Mary Kate Garcia**

Fourth District Court  
200 W. Front Street  
Boise, ID 83702  
(208) 287-7518  
Fax: (208) 287-7529  
mkgarcia@gmail.com

**Richard Kenneth Gardner**

VanCott, Bagley, Cornwall &  
McCarthy  
PO Box 45340  
Salt Lake City, UT 84145-0340  
(801) 532-3333  
Fax: (801) 237-0872  
rgardner@vancott.com

**Stephen Chase Gerrish**

134 Red Cloud Way  
Hailey, ID 83333  
(208) 788-5902  
Fax: (208) 788-5946  
sgerrish@q.com

**Eric Richard Glover**

Glover Law Office, PLLC  
671 E. Riverpark Lane, Ste. 130  
Boise, ID 83706  
(208) 336-3117  
Fax: (208) 344-7980  
glover.eric@gmail.com

**Larry Lee Goins**

Office of the Attorney General  
PO Box 83720  
Boise, ID 83720-0036  
(208) 332-7961  
Fax: (208) 334-6515  
goinsl@dhw.idaho.gov

**Daniel J. Gordon**

U.S. Courts, District of Idaho  
550 W. Fort St. MSC 039  
Boise, ID 83724  
(208) 401-6252

**Adam Howard Green**

Adam H. Green, Attorney at  
Law, PLLC  
PO Box 246  
Grangeville, ID 83530  
(208) 983-3089  
Fax: (208) 983-3098  
adamhowardgreen@yahoo.com

**Shane L. Greenbank**

Kootenai County Prosecutor's  
Office  
Dept. PA  
PO Box 9000  
Coeur d'Alene, ID 83816  
(208) 446-1800  
sgreenbank@kcgov.us

**Richard H. Greener**

Greener Burke & Shoemaker, PA  
950 W. Bannock Street, Ste. 900  
Boise, ID 83702  
(208) 319-2600  
Fax: (208) 319-2601  
rgreener@greenerlaw.com

**Randall Scott Grove**

Grove Legal Services, PLLC  
1038 S. River Stone Drive  
Nampa, ID 83686  
(208) 442-6950  
Fax: (208) 442-5293  
randy@grovelegal.com

**Bryan William Hall**

U.S. Air Force  
100 Jo Jackson Blvd., Ste. 3031  
McChord AFB, WA 98438

**Brett R. Hamm**

Hawkins Companies, LLC  
855 Broad Street, Ste. 300  
Boise, ID 83702-7153  
(208) 908-5546  
Fax: (208) 376-8523  
bhamm@hcollc.com

**Syrena Case Hargrove**

Boise City Attorney's Office  
PO Box 500  
Boise, ID 83701-0500  
(208) 384-3870  
shargrove@cityofboise.org

**Jeffrey Scott Burgad Harr**

Miller & Harr, PLLC  
101 S. Capitol Blvd., Ste. 502  
Boise, ID 83702  
(208) 336-3553  
Fax: (208) 331-6618  
millerharr@boiselaw.net

**Matthew Ryan Harrison**

Harrison Law Offices, PA  
4696 W. Overland Road, Ste. 250  
Boise, ID 83705  
(208) 336-0617  
Fax: (208) 336-1491  
mharrison@q.com

**Mark Jay Hartenstein**

601 Beacon Street  
Boise, ID 83706  
(208) 286-1881  
emailmjh@earthlink.net

**Ronald James Hartnett**

3688 S. Crosspoint  
Boise, ID 83706  
(208) 342-2833  
Fax: (208) 386-9282  
rhartnett@cablone.net

**Gregory P. Hawkins**

Gregory P. Hawkins, PC  
5710 S. Green Street  
Murray, UT 84123-5779  
(801) 747-3390  
Fax: (801) 261-5199  
greg@gregoryhawkins.com

**Matthew E. Hedberg**

Greener Burke & Shoemaker, PA  
950 W. Bannock Street, Ste. 900  
Boise, ID 83702  
(208) 319-2600  
Fax: (208) 319-2601  
mhedberg@greenerlaw.com

**Herbert Joseph Heimerl III**

Heimerl & Spitzer, PC  
PO Box 499  
Victor, ID 83455  
(208) 787-0337  
Fax: (208) 787-0330  
hheimerl@tetonlawfirm.com

**Melissa O. Heimerl**

PO Box 499  
Victor, ID 83455  
(208) 787-1777  
heimerl@silverstar.com

**Heather Henderson**

Thomson Law Offices  
PO Box 609  
Rexburg, ID 83440  
(208) 356-9000  
Fax: (208) 356-9336  
heatherh@nstep.net

**Jeffery Lynn Hess**

Hawkins Companies, LLC  
855 Broad Street, Ste. 300  
Boise, ID 83702-7153  
(208) 908-5503  
Fax: (208) 376-8523  
jhess@hcollc.com

**Noah Grant Hillen**

Idaho Supreme Court  
PO Box 83720  
Boise, ID 83720-0101  
(208) 947-7519  
nhillen@idcourts.net

**Curtis N. Holmes**

8295 Tupelo  
Desoto, KS 66018

**Dale Lawson Holst**

11202 N. Rocking R Road  
Hayden, ID 83835  
(208) 762-5274  
dholst3683@verizon.net

**Dari Mathews Huskey**

Greener Burke & Shoemaker, PA  
950 W. Bannock Street, Ste. 900  
Boise, ID 83702  
(208) 319-2600  
Fax: (208) 319-2601  
dhuskey@greenerlaw.com

**Jordan Sky Ipsen**

2625 S. Ammon Road, #3  
Ammon, ID 83406  
(208) 340-8853  
sipsen@law.gwu.edu

**Paul Henning Johnson**

Mineral Resources Int'l, Inc.  
Legal Department  
1990 West 3300 South  
Ogden, UT 84401  
(801) 731-7040 Ext: 323  
Fax: (801) 731-7985  
paulj@mineralresourcesint.com

**Teri Jones**

Ada County Public Defender's  
Office  
200 W. Front Street, Rm 1107  
Boise, ID 83702  
(208) 287-7400 Ext: 7415  
Fax: (208) 287-7419  
tjones@adaweb.net

**Shane Aiden Kennedy**

Brake Hughes Bellermann, LLP  
2845 NE 49th Avenue  
Portland, OR 97213  
(208) 286-1013  
Fax: (202) 470-6464  
shane@brakehughes.com

**Isaac David Keppler**

Judge R. Barry Wood, Fifth  
Judicial District  
PO Box 584  
Grand View, ID 83624  
(208) 934-4861  
kepplerid@hotmail.com

**Joanne Margaret Kibodeaux**

Kibodeaux Law Office  
PO Box 140076  
Boise, ID 83714  
(208) 429-1490  
Fax: (208) 429-8030  
joanne@jklawoffice.com

**Gary A. Kittleson**

PO Box 512  
South Cle Elum, WA 98943-  
0512

**Elizabeth Anne Koeckeritz**

Elizabeth A. Koeckeritz, PC  
PO Box 748  
Jackson, WY 83001  
(307) 733-4712  
Fax: (307) 733-4782  
elizabeth@tetonlawyer.com

**Cheryl R. Koshuta**

26 Northview Court  
Portland, OR 97035

**Benton Edwin Larsen**

2966 Riverview Terrace  
Lewiston, ID 83501-4219

**Tyler James Larsen**

5890 South 3200 West  
Roy, UT 84067  
(801) 628-5843  
delarsens@msn.com

**Carmel Ann McCurdy Lewis**

Law Offices of Todd S.  
Richardson, PLLC  
604 Sixth Street  
Clarkston, WA 99403  
(509) 758-3397  
Fax: (208) 758-3399  
carmel@clearwire.net

**Iver J. Longeteig**

1407 West Bannock Street  
Boise, ID 83702  
(208) 342-5431  
Fax: (208) 342-5623  
ilongeteig@gmail.com

**Gary D. Luke**

PO Box 191347  
Boise, ID 83709  
(208) 949-3764  
gary\_d\_luke@msn.com

**Theresa A. Martin**

Idaho Human Rights  
Commission  
9614 W. Patina Drive  
Boise, ID 83709  
(208) 334-2873  
theresamartin@q.com

**Linsey Elene Mattison**

Owens & Crandall, PLLC  
1859 N. Lakewood Drive, #104  
Coeur d'Alene, ID 83814  
(208) 667-8989  
Fax: (208) 667-1939  
linsey.mattison@cdalawyer.com

**Deborah Lynn McCormick**

Siebe Law Offices  
PO Box 9045  
Moscow, ID 83843  
(208) 883-0622  
Fax: (208) 882-8769  
debmcc@moscow.com

**Regina M. McCrea**

Owens & Crandall, PLLC  
1859 N. Lakewood Dr, Ste. 104  
Coeur d'Alene, ID 83814  
(208) 667-8989  
Fax: (208) 667-1939  
regina@cdalawyer.com

**Kathryn Rae McKinley**  
Wolkey McKinley, PS  
528 E. Spokane Falls Blvd., Ste. 502  
Spokane, WA 99202  
(509) 324-9500  
Fax: (509) 324-9505  
kmckinley@wolkeymckinley.com

**Daniel Toby McLaughlin**  
321 S. 1st Avenue  
Sandpoint, ID 83864-1201  
(208) 263-4748  
Fax: (208) 263-7557  
toby@sandpointlaw.com

**Mark LeRoy Means**  
Means Law Office  
PO Box 544  
Caldwell, ID 83606  
(208) 608-2315  
mlmeans@meanslawoffice.com

**John Chandler Meline**  
Meline Law Firm, PLLC  
246 W. 20th Street  
Idaho Falls, ID 83402  
(208) 524-6655  
Fax: (208) 524-6301  
john@melinelaw.com

**Kevin William Mickey**  
Mickey Law Firm, PC  
421 W. Riverside Ave., Ste. 762  
Spokane, WA 99201  
(509) 951-4048  
kevinmickey@hotmail.com

**Peter McKay Midgley Jr.**  
Zarian Midgley & Johnson,  
PLLC  
PO Box 170440  
Boise, ID 83717  
(208) 433-9121  
Fax: (208) 441-9120  
midgley@zarianmidgley.com

**John Andrew Miller**  
Miller & Harr, PLLC  
101 S. Capitol Blvd., Ste. 502  
Boise, ID 83702  
(208) 336-3553  
Fax: (208) 331-6618  
millerharr@boiselay.net

**Tanya Eileen Milligan**  
Holland & Hart, LLP  
555 17th Street, Ste. 3200  
Denver, CO 80202  
(303) 295-8094  
Fax: (303) 713-6289  
temilligan@hollandhart.com

**Briane Nelson Mitchell**  
566 30th Avenue  
San Francisco, CA 94121

**Anita Marie Elizabeth Moore**  
PO Box 873  
Homedale, ID 83628  
anitavforvictory@gmail.com

**William Wright Morgan**  
William W. Morgan &  
Associates  
PO Box 5686  
Salem, OR 97304  
(503) 991-7339  
Fax: (503) 566-9039  
wmmorgan@gmail.com

**Joseph Lowell Mrstik**  
PO Box 968  
Dickinson, ND 58602  
mrstikj@hotmail.com

**Charles Maurice Murphy**  
Murphy Law Office, PLLC  
847 E. Fairview Avenue  
Meridian, ID 83642  
(208) 855-2200  
Fax: (208) 855-0873  
chuck@murphylawoffice.com

**Michael Jon Myers**  
Michael J. Myers, PLLC  
601 W. Main Avenue, Ste. 1102  
Spokane, WA 99201  
(509) 624-8988 Ext: 306  
Fax: (509) 623-1380  
michael@myerslegal.net

**Cathy Lynn Naugle**  
Merris, Naugle & Herndon,  
PLLC  
913 W. River Street, Ste. 420  
Boise, ID 83702  
(208) 336-2060  
Fax: (208) 336-2059  
nauglaw@mindspring.com

**Stephen J. Nemeč**  
James, Vernon & Weeks, PA  
1626 Lincoln Way  
Coeur d'Alene, ID 83814  
(208) 667-0683  
Fax: (208) 664-1684  
snemeč@jvwlaw.net

**Charina A. Newell**  
Hawley Troxell Ennis & Hawley,  
LLP  
PO Box 1617  
Boise, ID 83701-1617  
(208) 344-6000  
Fax: (208) 342-3829  
cnew@hteh.com

**Lisa Joanne O'Hara**  
U.S. District Court of Idaho  
550 W. Fort, MSC 040  
Boise, ID 83724  
(208) 334-9330  
Fax: (208) 334-9215  
lisa\_j\_ohara@id.uscourts.gov

**Rebecca J. Ophus**  
2248 Dorothy Avenue  
Boise, ID 83706  
(208) 860-7624  
beckyophus@gmail.com

**Rudolf (Rudy) Lee Patrick**  
Brown & Patrick, PC  
2399 S. Orchard Street, Ste. 204  
Boise, ID 83705  
(208) 336-4477  
Fax: (208) 336-4479  
rudy@brownandpatrick.com

**Michael John Paukert**  
James, Vernon & Weeks, PA  
1626 Lincoln Way  
Coeur d'Alene, ID 83814  
(208) 667-0683  
Fax: (208) 664-1684  
mpaukert@jvwlaw.net

**Annie-Noelle Pelletier**  
Idaho Coalition Against Sexual  
& Domestic Violence  
300 E. Mallard Drive, Ste. 130  
Boise, ID 83706  
(208) 384-0419  
anniep@idvsa.org

**Robert Lee Phillips**  
Hawkins Companies, LLC  
855 Broad Street, Ste. 300  
Boise, ID 83702-7153  
(208) 908-5502  
Fax: (208) 376-8523  
rphillips@hcollc.com

**Michael Kaye Porter**  
Labrador Law Office  
5700 E. Franklin Road, Ste. 100  
Nampa, ID 83687  
(208) 465-9988  
Fax: (208) 465-9893  
mike@labradorlaw.com

**Victor A. Ramirez**  
Internal Revenue Service  
158 Wood Crest Circle  
Brunswick, GA 31525  
(912) 280-5271  
Fax: (912) 554-4896  
victor.a.ramirez@ci.irs.gov

**Julie Dawn Reading**  
USDA, National Appeals Div.  
1770 W. State Street, #393  
Boise, ID 83702  
(208) 424-7888  
Fax: (208) 424-6667  
julie.reading@usda.gov

**Spencer Morgan Reese**  
Grimes & Reese, PLLC  
615 Hoopes Avenue  
Idaho Falls, ID 83401  
(208) 524-0699  
Fax: (208) 524-5686  
sreese@mlmlaw.com

**George Rey Reinhardt IV**  
Agrium, Inc.  
13131 Lake Fraser Drive  
Calgary, AB  
CANADA, T2J 7E8  
(403) 225-7405  
Fax: (403) 225-7610  
greinha@agrium.com

**Elizabeth Ann Richards**  
Advocates for the West  
1620 North 6th Street  
Boise, ID 83702  
brichards@advocateswest.org

**Joy Elaine Richards**  
Idaho Forest Industries  
1345 E. Lacey Avenue  
Hayden, ID 83835-9406  
(208) 772-5110  
Fax: (208) 772-0886  
jer10200@adelphia.net

**Adam Jared Richins**  
Stoel Rives, LLP  
101 S. Capitol Blvd., Ste. 1900  
Boise, ID 83702-7705  
(208) 389-9000  
Fax: (208) 389-9040  
ajrichins@stoel.com

**Jeffery Wayne Ring**  
Bateman Seidel  
888 SW 5th Avenue, Ste. 1250  
Portland, OR 97204  
(503) 972-9920 Ext: 809  
Fax: (503) 972-9921  
j.w.ring@batemansideid.com

**Richard Talbot Roats**  
Roats Law Office, PLLC  
PO Box 9811  
Boise, ID 83707  
(208) 344-3477  
Fax: (208) 345-1095

**Heather Christine Rowe**  
Missouri Attorney General's  
Office  
149 Park Central Sq., Ste. 1017  
Springfield, MO 65806  
(417) 895-6567  
Fax: (417) 895-6382  
heather.rowe@ago.mo.gov

**Amanda Keating Schaus**  
1519 Knights Drive  
Boise, ID 83712

**Raymond Douglas Schild**  
Onsite, LLC  
10280 W. Ustick Road  
Boise, ID 83704  
(208) 672-1616 Ext: 15  
Fax: (208) 672-1901  
rschild@fiberpipe.net

**Benjamin A. Schwartzman**  
Banducci Woodard  
Schwartzman, PLLC  
802 W. Bannock Street, Ste. 700  
Boise, ID 83702  
(208) 342-4411  
Fax: (208) 342-4455  
bschwartzman@bwsllawgroup.com

**Lincoln V. Sharp Jr.**  
Hawkins Companies, LLC  
855 Broad Street, Ste. 300  
Boise, ID 83702-7153  
(208) 908-5544  
Fax: (208) 376-8523  
lsharp@hcollc.com

**Steven William Shaw**  
Law Offices of Steven W. Shaw  
PO Box 50840  
Provo, UT 84605  
(801) 373-2880  
Fax: (801) 373-2881  
steve@shawlaw.biz

**Amelia Anne Sheets**  
Dunn Law Offices  
PO Box 277  
Rigby, ID 83442  
(208) 745-9202  
Fax: (208) 745-8160  
asheets@dunnlawoffices.com

**Fredric Victor Shoemaker**  
Greener Burke & Shoemaker, PA  
950 W. Bannock Street, Ste. 900  
Boise, ID 83702  
(208) 319-2600  
Fax: (208) 319-2601  
fshoemaker@greenerlaw.com

**Jon T. Simmons**  
Greener Burke & Shoemaker, PA  
950 W. Bannock Street, Ste. 900  
Boise, ID 83702  
(208) 319-2600  
Fax: (208) 319-2601  
jsimmons@greenerlaw.com

**Curtis Reed Smith**  
Thompson Smith Woolf  
Anderson, PLLC  
PO Box 50160  
Idaho Falls, ID 83405-0160  
(208) 525-8792  
Fax: (208) 525-5266  
curtis@eastidaholaw.net

**Donna J. Smith**  
Eskanos & Adler  
11124 NE Halsey, #680  
Portland, OR 97220  
(503) 364-9919 Ext: 3063  
Fax: (503) 262-6830  
smithd1@eskanos.com

**William Lloyd Smith**  
Bill Smith & Associates, PA  
5987 W. State Street, Ste. A  
Boise, ID 83703-5056  
(208) 388-0123  
Fax: (208) 388-0120  
billsmithlaw@gmail.com

**Robert W. Stahman**  
2814 Tartan Place  
Boise, ID 83702  
(208) 342-8476

**Adrienne K. Stromberg**  
Latah County Prosecutor's Office  
PO Box 8068  
Moscow, ID 83843  
(208) 883-2246  
Fax: (208) 883-2290  
akstrom@aol.com

**Jay Q. Sturgell**  
Jay Q. Sturgell, PA  
6848 N. Government Way  
Unit 114, PMB 186  
Dalton Gardens, ID 83815  
(208) 666-8960  
Fax: (208) 666-8970  
sturgellcs@usamedia.tv

**Darcy Ann James Swetnam**  
2000 Cleveland Street  
Boise, ID 83705  
(208) 841-0992  
darcyjames25@hotmail.com

**Tim Alan Tarter**

Woolston & Tarter, PC  
101 S. Capitol Blvd., Ste. 300  
Boise, ID 83702  
(208) 342-9300  
Fax: (208) 363-9878  
tim@woolston-tarter.com

**Julie Shannon Tetrick**  
Holland & Hart, LLP  
PO Box 2527  
Boise, ID 83701  
(208) 342-5000 Ext: 5438  
Fax: (208) 450-0480  
jstetrick@hollandhart.com

**William Charles Tharp**  
Greener Burke & Shoemaker, PA  
950 W. Bannock Street, Ste. 900  
Boise, ID 83702  
(208) 319-2600 Ext: 02162  
Fax: (208) 319-2601  
btharp@greenerlaw.com

**Bruce L. Thomas**  
Hopkins Roden Crockett Hansen  
& Hoopes, PLLC  
PO Box 2110  
Boise, ID 83701-2110  
(208) 336-7930  
Fax: (208) 336-9154  
brucethomas@hopkinsroden.com

**Lynn Evan Thomas**  
2143 Rockridge Way  
Boise, ID 83712  
(208) 344-3603  
lethomas@q.com

**Stevan H. Thompson**  
Thompson Smith Woolf  
Anderson, PLLC  
PO Box 50160  
Idaho Falls, ID 83405-0160  
(208) 525-8792  
Fax: (208) 525-5266  
stevan@eastidaholaw.net

**Christopher N. Topmiller**  
Office of the Attorney General  
PO Box 83720  
Boise, ID 83720-0010  
(208) 334-2400  
Fax: (208) 854-8074  
chris.topmiller@ag.idaho.gov

**Hon. Linda Copple Trout**  
PO Box 83720  
Boise, ID 83720-0101  
(208) 947-7515  
ltrout@idcourts.net

**James Charles Tucker**  
Idaho Power Company  
PO Box 70  
Boise, ID 83707  
(208) 388-2112  
Fax: (208) 388-6935  
jamestucker@idahopower.com

**Tracy V. Vance**  
Hawkins Companies, LLC  
855 Broad Street, Ste. 300  
Boise, ID 83702-7153  
(208) 908-5545  
Fax: (208) 376-8523  
tvance@hcollc.com

**Hon. John Foy Varin**  
PO Box 190  
Fairfield, ID 83327  
(208) 764-2285  
jvarin@idcourts.net

**Yvonne Andrea Vaughan**  
Greener Burke & Shoemaker, PA  
950 W. Bannock Street, Ste. 900  
Boise, ID 83702  
(208) 319-2600  
Fax: (208) 319-2601  
yvaughan@greenerlaw.com

**Susan Renee Veltman**  
Idaho Industrial Commission  
PO Box 83720  
Boise, ID 83720-0041  
(208) 334-6000 Ext: 6014  
Fax: (208) 332-7558  
sveltman@iic.idaho.gov

**Arthur W. Verharen**  
Redal & Redal  
5431 N. Government Way, Ste.  
101A  
Coeur d'Alene, ID 83815  
(208) 676-9999  
Fax: (208) 676-8680

**Jeremy Todd Vermilyea**  
Vermilyea Law Group  
PO Box 23338  
Portland, OR 97281  
(503) 726-1080  
Fax: (503) 726-2496  
jeremy@vermilyealaw.com

**Conchita Maria Vogt**  
Hamilton, Michaelson & Hilty,  
LLP  
PO Box 65  
Nampa, ID 83653-0065  
(517) 475-5720  
cvogt@nampafjc.com

**Jeffrey R. Waldo**  
Medical Management, Inc.  
146 Dover Lane  
Boise, ID 83702  
(208) 333-0000  
jeff@medman.com

**Daniel Nathan Weber**  
559 E. Rainbow Drive  
Chandler, AZ 85249  
webercrew@gmail.com

**Steven R. Weeks**  
Weeks Law, PLLC  
PO Box 668  
Eagle, ID 83616  
(208) 939-5955  
Fax: (208) 939-7996  
srweeks@msn.com

**Peter Max Wells**  
May, Rammell & Thompson,  
Chtd.  
PO Box 370  
Pocatello, ID 83204  
(208) 233-0132  
Fax: (208) 234-2961  
peterwells@cableone.net

**Jedediah James Whitaker**  
Kootenai County Public  
Defender's Office  
Dept. PD  
PO Box 9000  
Coeur d'Alene, ID 83816-9000  
(208) 446-1700  
Fax: (208) 446-1701  
jwhitaker@kcgov.us

**Jason R. Whiteley**  
Itron, Inc.  
2111 N. Molter Road  
Liberty Lake, WA 99019  
(509) 891-3775  
jrwc2001@yahoo.com

**Arnold M. Willig**  
Hacker & Willig, Inc., PS  
1501 Fourth Avenue, Ste. 2150  
Seattle, WA 98101  
(206) 340-1935  
Fax: (206) 340-1936  
arnie@hackerwillig.com

**Lance Douglas Wilson**  
Tucker Ellis & West  
One Market  
Steuart Tower, Ste. 1300  
San Francisco, CA 94105  
(415) 617-2400  
Fax: (415) 617-2409  
lance.wilson@tuckerellis.com

**Sarah Lynn Clarke Wixson**  
Stokes Lawrence Velikanje  
Moore & Shore  
1433 Lakeside Court, Ste. 100  
Yakima, WA 98902  
(509) 853-3000  
swixson@vmslaw.com

**Colette Farley Wolf**  
Panza, Maurer & Maynard, PA  
3600 N. Federal Hwy., 3rd Fl.  
Ft. Lauderdale, FL 33308  
(954) 390-0100  
cwolf@panzamaurer.com

**Wade Laurence Woodard**  
Banducci Woodard  
Schwartzman, PLLC  
802 W. Bannock Street, Ste. 700  
Boise, ID 83702  
(208) 342-4411  
Fax: (208) 342-4455  
wwoodard@bwslawgroup.com

**Aaron J. Woolf**  
Thompson Smith Woolf  
Anderson, PLLC  
PO Box 50160  
Idaho Falls, ID 83405-0160  
(208) 525-8792  
Fax: (208) 525-5266  
aaron@eastidaholaw.net

**Joseph A. Wright**  
PO Box 25  
Grangeville, ID 83530  
(208) 983-8363  
Fax: (208) 983-2706  
jawright@qwestoffice.net

**Michael Wytychak III**  
PO Box 1888  
Coeur d'Alene, ID 83816-1888  
(208) 765-3595  
Fax: (208) 765-0515  
wytychak@verizon.net

**John Naya Zarian**  
Zarian Midgley & Johnson,  
PLLC  
PO Box 170440  
Boise, ID 83717  
(208) 433-9121  
Fax: (208) 441-9120  
jnzarian@zarianmidgley.com

**Certified Business  
Valuation Services**

**ARTHUR BERRY & COMPANY**  
*Professional Business Brokerage and Commercial Real Estate Company Since 1883*

Over 1,000 Accredited Business Valuations and Sales Completed  
Nine Licensed Professionals with Access to Comparable Sales Data  
Expert Witness Testimony and Master Services

Call for a Confidential, No Obligation Consultation  
208-336-8000  
www.arthurberry.com

#### MCLE ATTENDANCE RECORDS

Check your current MCLE attendance records on the Idaho State Bar website at [www.idaho.gov/isb](http://www.idaho.gov/isb). The website also includes a list of MCLE approved live courses, online courses and video/audio disks and tapes. Contact the Membership Department if you have any questions about MCLE compliance. (208) 334-4500 or [jhunt@isb.idaho.gov](mailto:jhunt@isb.idaho.gov).



## GOOD WILL FOR THE SEASON AND BEYOND

Linda Judd  
*President, Idaho Law Foundation*

I recently read that the average family in the United States spends \$1,000 on Christmas. When I read this statistic it made me think: What if those same families took just 10% of their Christmas budgets and gave that \$100 to community causes instead? All those families could still have a wonderful holiday, but would be able to make the lives of those around them better as well. Isn't that really the good will towards men and women to which the season aspires?

I know you understand this sentiment of good will. Idaho lawyers like you already give a lot of your time and resources to the betterment of your communities, both through your profession and through the charitable organizations to which you dedicate yourselves. One such organization is the Idaho Law Foundation.

As the only organization in Idaho whose sole mission is to help the profession serve the public, the Idaho Law Foundation tailors its programs to enhance and support the services you provide. Through our programs, the Idaho Law Foundation, with your help and support, creates educational opportunities and increases access to legal services for those who meet certain low-income guidelines and for whom legal representation can be arranged. Active donors ensure the continuation of this important work.

In 2007 the Foundation staff and volunteers have been able to accomplish so much, both on your behalf and because of your help. *Idaho Volunteer Lawyers Program* served over 1,000 low income people who received some kind of legal help or representation. *Law Related Education* prepared Idaho lawyers to visit classrooms across the state and provide engaging law-related instruction for more than 500 students at all grade levels. The Law Foundation staff works tirelessly to offer these programs all year. I've never

worked with a group of people so committed to providing exceptional services.

We can't continue this important work without you. Think about how much more we could accomplish for Idaho citizens if all attorneys in our state chose to give to the Law Foundation. With additional funds, we can sponsor more schools interested in participating in the mock trial competition. We can increase the number of low-income screened applicants who receive representation in their civil legal cases. We can distribute our new *Age of Majority* booklet and curriculum guide to more schools in Idaho and provide important civic education to Idaho's young people. We can recruit more attorneys to serve as Guardians ad Litem for abused and neglected children.

I am asking you to help us make this vision a reality by giving a tax-deductible donation to the Idaho Law Foundation. The Foundation's staff work hard and effectively to serve Idaho communities on behalf of Idaho lawyers. By giving to the Idaho Law Foundation, you promote a positive image of our profession for Idaho's citizens. I hope we can count on you for a generous donation of \$100, or more, or less, in accord with your inclination and budget. Any donation amount is always welcome. You can donate through a designation on your 2008 Licensing Form or by filling out and returning the pledge card you will receive in the mail during the first two weeks of December.

If you require additional information about the Law Foundation, please contact Carey Shoufler, the Foundation's Development Director. She will be happy to answer any questions you may have. You can reach her at (208) 334-4500 or [cshoufler@isb.idaho.gov](mailto:cshoufler@isb.idaho.gov).

Throughout the holidays, may you and your family enjoy the good will of the season. The Idaho Law Foundation will be

here to continue serving as a conduit for good will between Idaho lawyers and the public during the holiday season and throughout 2008. And, isn't good will what it's all about?

**Linda Judd** is a retired lawyer and is president of the Idaho Law Foundation. She was admitted to practice in the Idaho courts in 1970 after receiving her J.D. degree from the University of Idaho in that year. She was engaged in the active practice of law in Idaho for more than thirty years.

### DONATIONS TO THE IDAHO LAW FOUNDATION

#### LEVELS OF SUPPORT

**Benefactor** (\$5,000 plus)  
**Patron** (\$2,500-\$4,999)  
**Founder** (\$1,000-\$2,499)  
**Sustainer** (\$500-\$999)  
**Contributor** (\$250-\$499)  
**Sponsor** (\$100-\$249)  
**Donor** (\$25-\$99)

*If you are interested in donating to the ILF you can do so when you send in your licensing fees.*



## 2007 HOMELESS VETERANS STAND DOWN

On September 29, 2007, attorneys from Idaho Legal Aid Services (ILAS) and volunteers from the Idaho Volunteer Lawyers Program (IVLP), in conjunction with the US Department of Veterans Affairs in Boise, provided free legal services to sixty (60) veterans and other homeless and/or low income persons at the annual **Homeless Veterans Stand Down**. Attorneys volunteering through the Idaho Volunteer Lawyers Program (IVLP) included **John DeFranco**, Ellsworth, Kallas, Talboy & DeFranco, PLLC; **Kim Toryanski**, Idaho Commission on Aging, Boise; **Angie Richards**, Boise; **John Gannon**, John Gannon Law Offices; **Mike Baldner**, Meuleman Mollerup, LLP; **Robert Wallace**, Robert A. Wallace, Lawyer; **Brenda Quick**, DBSI - Discovery Real Estate Services, Inc.; **Andrea Cardon**, Irish & Cardon, LLP; **Jake Bernhardt**, Irish & Cardon, LLP; **Jeff West**, The Law Office of Jefferson H. West, PLLC; **Mary Jo Butler**, Co-Ad Inc.; **Mary S. Hobson**, IVLP Legal Director and **Brett Bunkal**, Boise. ILAS attorneys included **Sunrise Ayers**, **Howard Belodoff**, **John Cross**, **Richard Eppink**, **Roderick Gere**, and **Zoe Ann Olson**. Also participating in Stand Down were paralegals **Carrie House** (Idaho Volunteer Lawyers Program) and **Bruce Hendricks**, Boise. Special thanks goes to volunteer **Helena Smith**, a Capitol High student.

The legal services were provided as part of the **2007 Homeless Veterans Stand Down** event held at East Junior High School in

Boise, Idaho. The attorneys provided free legal advice and counsel concerning housing, public benefits, family law, elder law, civil rights, criminal issues, employment, and consumer law issues. In addition, two volunteer social workers and a community member coordinated non-legal social services, including medical, dental, vision services and employment referrals. The project coordination was made possible by a grant from the United States District and Bankruptcy Courts for the District of Idaho for the purpose of serving the unmet legal needs of Idaho veterans.

More than 5,000 people in Idaho are defined as homeless. According to the Department of Veterans Affairs, one third of all adult homeless men are veterans and nearly 25% of all homeless adults have served in the armed forces (Veterans Affairs Fact Sheet, September 2006). A recent national survey conducted by Veterans Affairs has confirmed that the fourth highest unmet need of homeless veterans is the need for legal services.

**Homeless Veterans Stand Down** is annual event but there is a year around need for legal services to help this population. To find out how you can provide legal services to low-income veterans or other persons who are experiencing homelessness contact **Zoe Ann Olson**, Attorney, Idaho Legal Aid Services, Inc. (208) 345-0106, extension 108 or **Mary Hobson**, IVLP Legal Director at (800) 221-3295 or [mhobson@isb.idaho.gov](mailto:mhobson@isb.idaho.gov).

### IVLP SPECIAL THANKS: ADVICE AND CONSULTATION VOLUNTEERS IN 2007

*Each year, volunteer attorneys contribute hundreds of hours providing pro bono advice and consultation to senior citizens and low-income people at a local Senior Center or through their local community-based organization serving low-income people. The Idaho Volunteer Lawyers Program would like to extend special thanks to our volunteer attorneys who have provided these services during 2007.*

#### BOISE SENIOR CENTER

**Alison E. Brace**, Non-Confrontational Legal Solutions  
**Christopher D. Bray**, Bray Law Office, Chtd.  
**Carl P. Burke**, Greener Burke & Shoemaker, PA  
**Laura E. Burri**, Ringert Clark, Chtd.  
**Allen R. Derr**, Allen Derr Law Office  
**Thomas B. Dominick**, Dominick Law Offices, PLLC  
**David W. Hyde**, Hyde & Haff, PLLC  
**Lorna K. Jorgensen**, Ada County Prosecutor's Office  
**Kenneth O Kreis**, Kreis Law Offices  
**Mark H. Manweiler**, Manweiler, Breen, Ball & Hancock, PLLC  
**Janice D. Newell**, Ada County Prosecutor's Office  
**Richard A. Riley**, Hawley Troxell Ennis & Hawley, LLP  
**Matthew J. Ryden**, Angstman, Johnson & Associates, PLLC  
**Christine M. Salmi**, Perkins Coie, LLP  
**Steven F. Scanlin**, Scanlin Law Offices, PLLC  
**William L. Smith**, Bill Smith & Associates, PA  
**Thomas G. Walker Jr.**, Cosho Humphrey, LLP

#### MOUNTAIN HOME SENIOR CENTER

**Jay R. Friedly**, Hall, Friedly & Ward  
**Brian B Peterson**, Hall, Friedly & Ward

#### IDAHO FALLS SENIOR CENTER

**Boyd J. Peterson**, Law Offices of Boyd J. Peterson  
**John M. Sharp**

#### MERIDIAN SENIOR CENTER

**Mark S. Freeman**, Foley Freeman Borton, PLLC

#### POCATELLO SENIOR CENTER

**Kirk B. Hadley**, Racine, Olson, Nye, Budge & Bailey, Chtd.

#### LEGAL LINK, ST. VINCENT DEPAUL CENTER, COEUR D'ALENE

**Amy C. Bistline**, Paine Hamblen LLP  
**R. Romer Brown**, Brown, Justh & Romero, PLLC  
**Dennis M. Davis**, Witherspoon, Kelley, Davenport & Toole, PS  
**Steven P. Frampton**  
**Terrance W. Hannon**  
**Fonda L. Jovick**, Paine Hamblen LLP  
**David W. Lohman**  
**Cameron L. Phillips**, Cameron Phillips, PA  
**Richard P. Wallace**, Richard P. Wallace Attorney  
**Alan M. Wasserman**, Idaho Legal Aid Services Inc.  
**Roland Watson**, Watson Law Office, Chrted.  
**Tyler S. Wirick**, Paine Hamblen LLP

#### PLEASE VOLUNTEER!

To continue to provide these important services volunteers are needed for next year. If you would like to participate at one of the following locations, or if you would like to see an advice and consultation clinic started in your community, please contact Mary Hobson at (800) 221-3295 or [mhobson@isb.idaho.gov](mailto:mhobson@isb.idaho.gov).

SELF-DIRECTED RETIREMENT PLAN SERVICES

**Are your clients afraid the stock market will produce dismal results?**

**Fearful of a falling dollar?  
Oil at over \$100 a barrel?**

**Help your clients understand self-direction in hard assets.**

Entrust of Idaho provides exceptional education, resources, and administration for self-directed IRA and qualified plans. Attend our 6.25 CLE class December 10, 2007. Only \$149 including books.

Post Falls  
1616 Seltice  
Ste. 200  
Post Falls, ID 83854



**Entrust  
OF IDAHO**  
Your Source for Self-Directed IRAs

Boise  
10096 W. Fairview Avenue  
Suite 160  
Boise, ID 83704

**(208) 377-3311**



a member of  
**Entrust Group**  
Self-Directed Retirement Plan Services

[www.TheEntrustGroup.com](http://www.TheEntrustGroup.com)

**IDAHO VALUATIONS, INC.**  
Residential Real Estate Appraisal

- Divorce Settlements
- Estate Settlement
- Bankruptcy Valuation
- Pre/Postnuptial Agreements
- Expert Witness Experience

Julianna Comstock-Niehans, CRA-66  
Brent Niehans, CRA-114

208.853.2728

208.859.0180

[www.idaval.com](http://www.idaval.com)

*Service • Experience • Quality*

**The Advocate**  
Official Publication of the Idaho State Bar

*Connecting the Idaho Bar*

**Advertise in *The Advocate*  
and stay connected!**

Contact Robert W. Strauser  
to reserve your 2008 ad space today!  
Telephone: (208) 334-4500  
Email: [rstrauser@isb.idaho.gov](mailto:rstrauser@isb.idaho.gov)

# IDAHO'S NEW JUDICIARY IN 2007

Lowell D. Castleton, Senior Judge  
*Judicial Education Director, Idaho Supreme Court*

*As of October 29, 2007 the Idaho courts have seen the election of a new chief justice, the appointment of two Supreme Court Justices, the appointment of six district judges and six magistrate judges, and the election of one district judge.*

## IDAHO SUPREME COURT

### Chief Justice Daniel T. Eismann

Justice Eismann was raised in Owyhee County and graduated in 1965 from Vallivue High School near Caldwell, Idaho. He spent two years at the University of Idaho, before leaving in 1967 to enlist in the United States Army. He served two consecutive tours of duty in Vietnam where, as a crew chief/door gunner on a Huey gunship, he was awarded two purple hearts for being wounded in combat and three medals for heroism.

After being honorably discharged from the military, he returned to the University of Idaho where he received his undergraduate degree and then graduated cum laude from law school in 1976. He practiced law for ten years, before being appointed as the Magistrate Judge in Owyhee County. As a magistrate judge, he was a member of the Region III Council for Children and Youth; he helped create Children's Voices, Inc., an organization to recruit, train and oversee guardians ad litem to represent the interests of neglected and abused children in court proceedings; he organized and served upon a community diversion board to handle outside the judicial system first-time juvenile offenders who committed minor crimes; and he chaired the Canyon County Juvenile Justice Task Force.

In 1995, Governor Batt appointed Justice Eismann as a district judge in Ada County. Convinced that there must be a more effective way to deal with the burgeoning drug problem, Justice Eismann began working to set up a drug court in Ada County. In 1998 Ada County was awarded a federal grant, and in February 1999 the drug court began receiving participants. Justice Eismann presided over that drug court until just prior to taking office as a Justice of the Idaho Supreme Court. The Ada County Drug Court is proving effective in getting addicts off drugs so that they can restore their lives, rebuild their family relationships, and become productive members of the community. In 1998, the other district judges elected Justice Eismann as the Administrative District Judge for the Fourth Judicial District, consisting of Ada, Boise, Elmore, and Valley Counties. While a district judge, he also served on the Ada County Domestic Violence Task Force.

In 2000, the people of Idaho elected Justice Eismann to the Idaho Supreme Court, where he began serving on January 2, 2001. He also serves as chair of the Civil Rules Committee, the Criminal Jury Instructions Committee, and the statewide Drug Court and Mental Health Court Coordinating Committee. He is a member and past-president of the Boise Chapter of the Inns of Court and currently serves on the boards of the Idaho State Bar Lawyers Assistance Program, which provides assistance to lawyers with substance abuse problems, and of the Idaho Law

Foundation. He also serves on the Criminal Justice Commission created by Governor Kempthorne in 2005 and the Interagency Committee on Substance Abuse and Treatment. On August 1, 2007, Justice Eismann began serving as the Chief Justice of the Idaho Supreme Court.

In 1982, Justice Eismann married Sheila Wood, and they have three children.

### Justice Joel D. Horton

On September 18, 2007 Governor C.L. "Butch" Otter appointed 4th District Judge Joel Horton to fill the Idaho Supreme Court vacancy created when Justice Linda Copple Trout stepped down on August 31, 2007. Justice Horton will serve the remainder of Trout's term, which expires in January 2009. He will stand for election in May 2008.

Justice Horton became a judge in the 4th Judicial District in July 1996. He previously was an Ada County Magistrate Judge, a deputy state attorney general and a deputy Ada County prosecutor. He also was legislative counsel for the Idaho Prosecuting Attorneys' Association for two years and worked in a private law practice in Lewiston. He is a Nampa native. He received a bachelor's degree from the University of Washington and a law degree from the University of Idaho. He is married to Ada County Magistrate Judge Carolyn Minder.

### Justice Warren E. Jones

Governor C.L. "Butch" Otter named attorney Warren Jones to the Idaho Supreme Court. Jones, an insurance defense attorney at the law firm of Eberle Berlin, Kading, Turnbow, McKlveen and Jones, will fill the vacancy left by Chief Justice Gerald Schroeder who left the court at the end of July 2007. This term is set to expire in January of 2009, meaning Justice Jones will stand for election in May of 2008. In a press release issued from the Governor's office, Governor Otter said "His colleagues in the Idaho Bar agree that he is balanced, fair and impartial, and that his temperament will fit well in a collegial setting with the other justices." The Governor also commented on his desire to fill the position with someone who could bring a wealth of civil litigation experience to balance out the other justices who came directly from positions as judges or in the Attorney General's Office.

Justice Jones, a lawyer for 37 years, graduated from the College of Idaho and the University of Chicago Law School. Justice Jones, 67, has two grown stepchildren, and a wife, Karen, who is a retired nurse.

## SECOND JUDICIAL DISTRICT

**Hon. Jeff F. Payne** was appointed as a Magistrate Judge for Idaho County, effective September 1, 2007 filling the vacancy left by the retirement of Judge Michael Griffin.

Prior to taking the bench, Judge Payne was in private practice in Grangeville, in the firm of Olds and Associates. He previously served as Idaho County Prosecuting Attorney from 1993 to 2005. He received his undergraduate degree from the University of Idaho and his law degree from the University of Montana.

### THIRD JUDICIAL DISTRICT

**Hon. Dan Grober** was appointed as a Magistrate Judge for Owyhee County, effective September 4, 2007, filling the vacancy left by Judge Thomas Ryan who was appointed to fill a district judge position in the Third Judicial District.

Judge Grober received his undergraduate degree from Eastern Illinois University, a graduate degree from Boise State University and his law degree from the University of Idaho. Prior to practicing law, Judge Grober worked as a journalist, a criminal investigator and a high school English teacher. From 1989 through 1996, Judge Grober served as Assistant Bar Counsel for the Idaho State Bar. From 1996 until his appointment to the bench, he maintained a general law practice in Homedale, Idaho.

**Hon. Thomas J. Ryan** was appointed as a District Judge for the Third Judicial District, effective June 16, 2007, filling the vacancy left by the retirement of Judge James C. Morfitt.

Judge Ryan has an accounting degree from Notre Dame and a law degree from the University of Idaho. He has run the 3rd Judicial District's Drug Court operations from his position as a magistrate, and was instrumental in creating the Canyon County Youth Court program.

"Judge Ryan has a well-earned reputation for being hard-working, fair-minded and thoughtful. His broad experience includes handling civil and criminal cases with distinction, and his commitment to innovative problem solving shows in his work in mediation and court diversion programs," Governor Otter said. "Tom is extremely professional and well prepared to follow in the footsteps of a great jurist in Judge Morfitt."

### FOURTH JUDICIAL DISTRICT

**Hon. John T. Hawley** was appointed as a Magistrate Judge for Ada County, effective October 2, 2006, filling the vacancy left by the retirement of Judge Michael Dennard.

Prior to taking the bench, Judge Hawley was self-employed as an attorney in private practice from 1994 to 2006; where he specialized in adoption and termination of parental rights law; criminal defense law, business law, administrative law, probate and general civil law. From 1991-1994, Judge Hawley was in private practice with the law firm Orndorff, Peterson and Hawley, where he practiced public utility law, litigation and appellate work in Cogeneration, utility and administrative hearings. From 1982-1991, he was in private practice with the law firm Hawley, Troxell, Ennis and Hawley, where he specialized in civil litigation, appellate practice in state and federal court, construction law, insurance defense and real estate foreclosure. Judge Hawley also was a deputy prosecuting attorney in Ada County, 1980-1982, where he prosecuted juvenile, felony and misdemeanor cases.

Judge Hawley holds a B.S. degree in Journalism from the University of Idaho and a J.D. from Gonzaga University. He is a

member of the American Academy of Adoption Attorneys and the Idaho State Bar; served on the Salvation Army Advisory Board, 1987-2000; and served as a CASA volunteer attorney, 2002-2006. He also received Martindale-Hubble's A-V Peer Review Rating (highest rating available), which ranks attorneys nationwide.

Judge Hawley handles Ada County misdemeanor criminal calendars and juvenile calendars.

**Hon. Patrick Owen** was appointed as a District Judge for the Fourth Judicial District, effective August 14, 2007, filling a newly created position by the Legislature to help alleviate the heavy caseload in Idaho's most populous judicial district.

Judge Owen, 54, is a Virginia native with a law degree from Cornell University. He had been a deputy Ada County prosecutor from May of 1993 until his appointment, and previously practiced law in Alaska. His prosecutorial work included helping to create the Ada County Adult Felony Drug Court in 1998, and a role as lead or sole prosecutor in five first-degree murder trials. Judge Owen and his wife Teresa have two children.

### FIFTH JUDICIAL DISTRICT

**Hon. Michael Crabtree** was appointed as a District Judge for the Fifth Judicial District, filling the vacancy left by the death of Judge Monte B. Carlson.

Judge Crabtree, 55, served as a Magistrate Judge for Cassia County from 1999-2007. He has lived in Burley for 27 years. He had a private law practice in Twin Falls before becoming a magistrate, and was a law partner with Carlson from 1991 to 1998. Judge Crabtree is a Missouri native with a law degree from the University of Kansas. He served on the Idaho Supreme Court's Committee to Reduce Delays in Foster Care since 1998, and served on the Governor's Committee on Children at Risk from 1995 until he was appointed to the magistrate bench.

He helped create the 4th Judicial District Court Appointed Special Advocates, which recruits and trains volunteers to represent abused children in court, and he was a member of a regional effort to help states increase the number of adoptions of abused children.

**Hon. Thomas D. Kershaw, Jr.** was appointed as a Magistrate Judge for Twin Falls County, effective August 27, 2007, filling the vacancy left by Judge Randy Stoker who was appointed to fill a district judge position in the Fifth Judicial District.

Judge Kershaw held his own private practice in Twin Falls and served as an adjunct professor at the College of Southern Idaho prior to his appointment. He earned a bachelor's degree from Brigham Young University in 1978 and his juris doctorate from BYU's J. Reuben Clark Law School in 1981.

**Hon. Randy Stoker** was appointed as a District Judge for the Fifth Judicial District, effective May 11, 2007, filling the vacancy left by the death of Judge John C. Hohnhorst.

Judge Stoker graduated in 1972 from the University of Idaho with a B.S. in Economics and earned his J.D. degree in 1975. He was appointed to the bench as a Twin Falls County Magistrate Judge on January 13, 2003. Prior to that, he was an attorney in private practice in Twin Falls starting in 1975 and a sole practi-

tioner starting in 1991. He practiced with several law firms between September 1975 and October 1980, and returned to solo practice in 1989. Judge Stoker held the position of Twin Falls County Public Defender in 1980 and Jerome County Public Defender for approximately six years in the mid 1980's. He practiced with the firm of Smith, Stoker and Smith between 1989 and 1990, and was a Deputy Attorney General representing the state of Idaho in child support proceedings.

**Hon. Jason Walker** was appointed as a Magistrate Judge for Camas County, effective June 1, 2007, filling the vacancy left by the retirement of Judge John Varin.

Judge Walker, 39 was initially appointed and later elected to serve as the Minidoka Prosecuting Attorney and had practiced in that capacity from 2003 until his appointment to the bench. Prior to that, he was an associate, then partner with the firm Ling, Robinson & Walker in Rupert since 1999. Judge Walker was a law clerk to the late Honorable J. William Hart. He attended Ricks College, Utah Valley Community College, and earned a B.S. degree in 1995 from BYU. Judge Walker received his J.D. degree from the University of Idaho, College of Law in 1998. Judge Walker serves Camas.

## SIXTH JUDICIAL DISTRICT

**Hon. David C. Nye** was appointed as a District Judge for the Sixth Judicial District, effective July 30, 2007, filling the elevation of Judge N. Randy Smith to the 9th Circuit Court of Appeals.

Judge Nye is a California native who graduated from Brigham Young University and its J. Reuben Clark Law School. Prior to taking the bench, he was with the Pocatello law firm of Merrill & Merrill for the previous 20 years. He and his wife Kathre have eight children.

"Dave has the values, character and deep understanding of his community to be a successful and respected district judge," Governor Otter said. "Like Judge Smith before him, Dave is committed to the area and its people, as well as to the law. While someone of Judge Smith's quality and integrity is tough to replace, I'm proud to be able to fill this position with so able a candidate."

**Hon. Steven A. Thomsen** was appointed as a Magistrate Judge for Bannock County, effective July 2, 2007, filling the vacancy left by the retirement of Judge Boyd White.

Judge Thomsen attended Idaho State University, 1974, BA, Government and Gonzaga University School of Law, where he earned his J.D. in 1977.

From 1989 until he was appointed to the bench, he was in private practice at the law firm on Meyers & Thomsen, PLLP in Pocatello where he served as managing partner and general practitioner. His major clients included the State of Idaho, Department of Health and Welfare and the Bureau of Child Support Services, for whom he was involved in the establishment, modification and enforcement of child support orders; and when appropriate, the establishment of paternity for dependent children.

From 1982 until 1983 he practiced with Green, Service, Gasser & Kerl in Pocatello and from 1981 to 1982 he served as

Chief Deputy Prosecuting Attorney for Bannock County representing all elected officials and the land board. From 1979 to 1981 Steven served as Legal Counselor of the Governor where he served as the Governor's liaison, worked on special legislative matters, wrote legislation and lobbied special legislation. From 1978 to 1979 he served as Deputy Prosecuting Attorney for Garth S. Pincock, Bannock County Prosecuting Attorney and started his legal career with Herzog and Isley in 1977.

## SEVENTH JUDICIAL DISTRICT

**Hon. Darren B. Simpson** was elected a District Judge for the Seventh Judicial District, effective January 2, 2007.

Judge Simpson was born in Logan, Utah and is a graduate of Blackfoot High School (1982), Utah State University (1990) and the University of Idaho College of Law (1995).

Judge Simpson was privileged to begin his law career during his third year of law school. While there, he obtained a limited license and worked in the college's Legal Aid Clinic. After graduating from law school, he worked in the Bannock County Public Defender's Office for two and one half years. He then joined a private law practice in Blackfoot, Acevedo & Simpson.

In October of 1999, he began working with the Bingham County Prosecuting Attorney's Office. He was with that office for six years, and served as its Chief Deputy Prosecuting Attorney for the last four of those years. While the Chief Deputy, he was in charge of most of the office's criminal cases. Judge Simpson was also trained in the formation and operation of drug court programs and served as a member of the Bingham County Felony Drug Court Team. He left the prosecuting attorney's office in September 2005, and began his own practice in Blackfoot, Simpson Law Office, Inc. As part of his private practice, he had a contract with Fremont County to provide legal representation of indigent persons charged with criminal offenses.

His resident chambers is in Bingham County. However, he is also assigned as the District Judge for Butte County.

Judge Simpson and his wife, Cherie C. Evans have been married for 20 years and have four children.

**Hon. Joel Tingey** was appointed as a District Judge for the Seventh Judicial District, effective August 31, 2007, filling the vacancy left by the retirement of Judge Richard St. Clair.

Judge Tingey, 51, had practiced with the Idaho Falls law firm Anderson Nelson Hall Smith since 1988 prior to his appointment to the bench, and before that with the Boise firm Brady & McDaniel. He is an Idaho Falls native, a graduate of Brigham Young University and BYU's J. Reuben Clark Law School. Judge Tingey and his wife, Stacey, have four sons.

## COURT INFORMATION

### OFFICIAL NOTICE SUPREME COURT OF IDAHO

Chief Justice  
Daniel T. Eismann

Justices  
Roger S. Burdick  
Jim Jones  
Warren E. Jones  
Joel D. Horton

#### 1st Amended – Regular Fall Terms for 2007

**Boise** ..... December 3, 5, 7, 10 and 12

#### Regular Spring Terms for 2008

**Boise** ..... January 2, 4, 7, 9, and 11

**Boise** ..... February 1, 4, 6, 8, and 11

**Lewiston/Moscow** ..... March 6 and 7\*

**Boise** ..... March 10, 12, and 14

**Idaho Falls/Pocatello** ..... April 2 and 3

**Boise** ..... April 7, 9, and 11

**Twin Falls** ..... May 1 and 2

**Boise** ..... May 5, 7, and 9

By Order of the Court  
Stephen W. Kenyon, Clerk

**NOTE:** The above is the official notice of setting of the year 2007 Fall Terms of the Idaho Supreme Court, and should be preserved. A formal notice of the setting of oral argument in each case will be sent to counsel prior to each term.

*\*Please note: The University of Idaho's spring break is scheduled for the week of March 10, 2008, therefore, the need to move the Lewiston/Moscow dates up one week.*

### OFFICIAL NOTICE COURT OF APPEALS OF IDAHO

Chief Judge  
Darrel R. Perry

Judges  
Karen L. Lansing  
Sergio A. Gutierrez

#### 4th AMENDED – Regular Fall Terms for 2007

**Boise** ..... December 11 and 13

#### Regular Spring Terms for 2008

**Boise** ..... January 8, 10, 15, and 17

**Boise** ..... February 5, 7, 12, and 13

**Eastern Idaho** ..... March 10, 11, 12, 13, and 14

**Northern Idaho (Moscow)** ... April 14, 15, 16, 17, and 18

**Boise** ..... May 6, 8, 13, and 15

**Boise** ..... June 10, 12, 17, and 19

By Order of the Court  
Stephen W. Kenyon, Clerk

**NOTE:** The above is the official notice of setting of the year 2007 Fall Terms of the Court of Appeals, and should be preserved. A formal notice of the setting of oral argument in each case will be sent to counsel prior to each term.

### IDAHO SUPREME COURT ORAL ARGUMENT DATES As of November 13, 2007

#### Monday, December 3, 2007 – BOISE

8:50 a.m.	State v. Anderson (Petition for Review)	#34411
10:00 a.m.	State v. Joslin	#32483
11:10 a.m.	State v. Sheldon (Petition for Review)	#34286

#### Wednesday, December 5, 2007 – BOISE

8:50 a.m.	Bybee v. Isaac	#33251
10:00 a.m.	Hall v. Farmers Alliance Mutual Insurance	#32326
11:10 a.m.	Neighbors for a Healthy Gold Fork v. Valley County	#33552

#### Friday, December 7, 2007 – BOISE

8:50 a.m.	McCabe v. Jo-Ann Stores, Inc.	#33675
10:00 a.m.	Parkside Schools v. Bronco Elite Arts & Athletics	#32611
11:10 a.m.	Heinze v. Bauer	#33579

#### Monday, December 10, 2007 – BOISE

10:00 a.m.	Page v. McCain Foods	#33158
11:10 a.m.	State v. Adair	#33270

#### Wednesday, December 12, 2007 – BOISE

10:00 a.m.	Commercial Ventures, Inc. v. Lea Family Trust	#33139
11:10 a.m.	Koch v. Canyon County	#33707

### IDAHO COURT OF APPEALS ORAL ARGUMENT DATES as of November 13, 2007

The Idaho Court of Appeals will have **NO**  
oral argument for the month of December.

### ARE MCLE COURSES SCARCE IN YOUR AREA? ONLINE MCLE COURSES

Remember, Idaho approved online courses are a great source for interesting CLEs. Visit [www.idaho.gov/isb](http://www.idaho.gov/isb) to get a list of preapproved online MCLE courses. Online courses are considered self-study and there is a limit of 15 self-study credits per reporting period. Contact the Membership Department if you have any questions. (208) 334-4500 or [jhunt@isb.idaho.gov](mailto:jhunt@isb.idaho.gov).

# Who's Guarding Your Clients' Intellectual Property?

Experience  
Matters

Dykas,  
Shaver &  
Nipper

Protecting  
Intellectual  
Property Rights  
Since 1975



208-345-1122 • 1403 W. Franklin St.  
Boise, ID 83702 • [www.dykaslaw.com](http://www.dykaslaw.com)

## The Other Trust Bank... Fiduciary Solutions offered uniquely through a trusted community bank.

Serving Idaho, Washington, and Oregon

- Trustee Appointments
- Estate Settlements
- Investment Management
- Retirement Accounts

CONTACT US AT: 208-415-5705 OR 800-795-6512

Panhandle State Bank  
Intermountain Community Bank  
Magic Valley Bank



...exactly like no other.

NOT A DEPOSIT	NOT FDIC INSURED	NOT GUARANTEED BY THE BANK
NOT INSURED BY ANY FEDERAL GOVERNMENT AGENCY		MAY LOSE VALUE



**R. Bruce Owens**  
Attorney at Law

*of the Firm,*



**OWENS & CRANDALL, PLLC**

*Admitted ID and WA*

**Malpractice & Serious Injury Cases**  
(Fee split or association arrangements)

*Martindale-Hubbell AV rated*

*Named "Best Lawyers in America" since 1993*

*Certified Civil Trial Specialist since 1995*

**208-667-8989**

**877-667-8989**

1859 N. Lakewood Drive, Suite 104

Coeur d'Alene, ID 83814

Email: [bruce@cdalawyer.com](mailto:bruce@cdalawyer.com)

**ADR SERVICES**  
MEDIATION · ARBITRATION · EVALUATION

**JOHN MAGEL**



**40 years' experience**  
Litigation & ADR

Member ISB ADR Governing Council

More than 550 Mediations through 2006

[jm@elambuke.com](mailto:jm@elambuke.com)

**Elam & Burke**

251 E. Front St., Ste. 300, P.O. Box 1539, Boise, ID 83701

Tel: 208-343-5454 • Fax: 208-384-5844

[www.elamburke.com](http://www.elamburke.com)

**Idaho Supreme Court and Court of Appeals**  
**NEW CASES ON APPEAL PENDING DECISION**  
**as of 11/1/07**

**CIVIL APPEALS**

**PROCEDURE**

1. Did the district court err in dismissing the appeal in this case for failure to timely file a brief without first allowing Aho an opportunity to establish good cause in response to the state's motion to dismiss?

*Aho v. Idaho Dept. of Transportation*  
S.Ct. No. 33837  
Court of Appeals

**ATTORNEY FEES AND COSTS**

1. Whether the district court's award of attorney's fees was an abuse of its discretion and an impermissible modification of the arbitrator's award.

*Deelstra v. Hagler*  
S.Ct. No. 34276  
Supreme Court

2. Did the trial court err in awarding attorney fees and costs to the Mihalkas and in finding they were the prevailing parties?

*Mihalka v. Shepherd*  
S.Ct. No. 33571  
Supreme Court

3. Did the district court err in finding the attorneys' fees requested by Mike Lettunich in the underlying partnership dissolution action were necessary and reasonable?

*Lettunich v. Lettunich*  
S.Ct. No. 33612  
Supreme Court

**LAND USE**

1. Whether the Board's decision comports with the local land use planning act requirements under I.C. § 67-6535(b).

*Giltner Dairy, LLC. v. Jerome County*  
S.Ct. No. 34020  
Supreme Court

**DIVORCE, CUSTODY, SUPPORT AND TERMINATION OF RIGHTS**

1. Did the court abuse its discretion when it refused to vacate the termination of parental rights order and grant a new trial on newly discovered evidence concerning the proposed adoptive family?

*Doe v. Idaho Dept. of Health & Welfare*  
S.Ct. No. 33290  
Supreme Court

2. Whether there was substantial and competent evidence that severance of the mother-child relationship was in the best interests of the children where Doe and the children had a strong emotional bond and Doe showed promise of stability in the near future.

*Idaho Dept. of Health & Welfare v. Doe*  
S.Ct. No. 33685  
Supreme Court

3. Should Waller be granted equitable relief from the judgment requiring him to pay child support for a child that is not his biological or adopted child?

*Waller v. Idaho Dept. of Health & Welfare*  
S.Ct. No. 33831  
Supreme Court

4. Whether the magistrate court erred as a matter of law when it concluded I.C. § 32-717 is not applicable to a grandparent custody action where the biological parents were never married and as such the grandparent custody action does not arise out of a divorce action.

*Doe v. Doe*  
S.Ct. No. 34051  
Supreme Court

**POST-CONVICTION RELIEF**

1. Did the court abuse its discretion in denying Patino-Montejano's motion to set aside the order denying his Rule 59(e) motion and in finding the motion failed to present a cognizable claim?

*Patino-Montejano v. State*  
S.Ct. No. 33049  
Court of Appeals

2. Did the court err in summarily dismissing Schwartz's petition on the basis it was untimely?

*Schwartz v. State*  
S.Ct. No. 33326  
Court of Appeals

3. Did the court err when it concluded the application for post-conviction relief was filed in an untimely manner?

*Hughes v. State*  
S.Ct. No. 34107  
Court of Appeals

4. Did Bates raise a genuine issue of material fact as to whether he received ineffective assistance of counsel when his trial counsel failed to investigate and present mitigation evidence at the sentencing hearing?

*Bates v. State*  
S.Ct. No. 33217  
Court of Appeals

5. Did the court err in concluding that trial counsel was not ineffective for failing to file a motion to dismiss pursuant to Idaho Code Section 19-315?

*Cook v. State*  
S.Ct. No. 33534/33594  
Court of Appeals

6. Whether the district court erred when it denied post-conviction relief after an evidentiary hearing, rejecting petitioner's assertions that he had received ineffective assistance of counsel and/or his guilty plea was not voluntary.

*Silva v. State*  
S.Ct. No. 29453/33971  
Court of Appeals

7. Whether the district court erred by denying the post-conviction claim asserting that Piro had received ineffective assistance of counsel when his attorneys based a DNA suppression issue on the wrong grounds.

*Piro v. State*  
S.Ct. No. 33409  
Court of Appeals

**TORT**

1. Did the jury err by failing to award Hei monetary compensation after making a finding of negligent supervision, proximate cause and fault on the part of the school district?

*Hei v. Holzer*  
S.Ct. No. 32211  
Supreme Court

2. Whether the Winters, as landlords, had an obligation of reasonable care to prevent injuries to third parties due to a tenant's dog.

*Boots v. Winters*  
S.Ct. No. 33489  
Court of Appeals

**QUIET TITLE**

1. Did the trial court err in finding there was no agreement establishing the fence as the boundary?

*Anderson v. Rex Hayes Family Trust*  
S.Ct. No. 34015  
Supreme Court

**LIENS**

1. Did the court err in concluding the verification used by LienData U.S.A., Inc., on the claim of lien substantially complied with I.C. § 45-507 and that substantial compliance was all that was required?

*Bighorn Builders, Inc. v. LienData U.S.A. Incorporated*  
S.Ct. No. 33815  
Court of Appeals

## CONTRACT

1. Was it clearly erroneous for the court to find the parties were operating under a mistake of fact?

*O'Connor v. Harger Construction, Inc.*  
S.Ct. No. 33685  
Supreme Court

## HABEAS CORPUS

1. Did the court abuse its discretion by denying Ingram's petition for a writ of habeas corpus and in denying his motion to appoint counsel?

*Ingram v. Craven*  
S.Ct. No. 33184  
Court of Appeals

2. Did the court abuse its discretion in dismissing Lake's petition for writ of habeas corpus upon a finding that he had not been denied parole hearings on his first two consecutive sentences?

*Lake v. Newcomb*  
S.Ct. No. 34184  
Court of Appeals

## PROPERTY

1. Whether the court properly determined that Fred Bahnmitter was entitled as a matter of law to reimbursement from the other co-tenants for expenditures purportedly made by him for acquisition and improvement of the co-tenancy property of the parties.

*Bahnmitter v. Bahnmitter*  
S.Ct. No. 32616  
Supreme Court

2. Did the court err in determining that Strong's court appointed guardian had actual and apparent authority to consent to a search of Strong's residence, including the room where drugs were found?

*State v. Fancher*  
S.Ct. No. 33253  
Court of Appeals

3. Did the district court err in reversing the magistrate court's grant of Barmore's motion for partial summary judgment, where the subject quitclaim deed is unambiguous?

*Barmore v. Perrone*  
S.Ct. No. 34253  
Supreme Court

## CRIMINAL APPEALS

### PLEAS

1. Did the court err by not permitting Taylor to withdraw his guilty plea based upon its earlier failure to address a motion to dismiss prior to the plea and Taylor's assertion of actual innocence?

*State v. Taylor*  
S.Ct. No. 33876  
Court of Appeals

## PROCEDURE

1. If the judge in a court trial applies the wrong burden of proof, is a new trial the proper remedy on remand or can the trial judge be ordered to reconsider the evidence under the proper standard and enter a new decision?

*State v. Jones*  
S.Ct. No. 34090  
Court of Appeals

## SEARCH AND SEIZURE – SUPPRESSION OF EVIDENCE

1. Did the court err in denying Perez's motion to suppress his statements and in finding the statements were made in compliance with his *Miranda* rights?

*State v. Perez*  
S.Ct. No. 33003/33004  
Court of Appeals

2. Did the officers have authority to arrest Campbell for committing a public offense in their presence such that the search incident to arrest was valid?

*State v. Campbell*  
S.Ct. No. 33688  
Court of Appeals

3. Did the court err when it denied Robinson's motion to suppress?

*State v. Robinson*  
S.Ct. No. 32516  
Court of Appeals

4. Did the district court err when it denied Teal's motion to suppress because the warrant did not describe, with particularity, the items to be searched, and because the warrant does not command a search of Teal's residence?

*State v. Teal*  
S.Ct. No. 32600  
Court of Appeals

## SENTENCE REVIEW

1. Did the court abuse its discretion by failing to *sua sponte* order a psychological evaluation of Bruffett prior to the imposition of sentence, and did such failure lead to a manifest disregard for I.C.R. 32?

*State v. Bruffett*  
S.Ct. No. 33441  
Court of Appeals

## DEATH PENALTY CASES

1. Did the court err in dismissing Payne's claim of ineffective assistance of counsel in which Payne alleged counsel failed to adequately investigate and present mitigating evidence as well as evidence to rebut the prosecution's case in aggravation?

*State v. Payne*  
S.Ct. No. 28589/32389  
Supreme Court

## EVIDENCE

1. Was there sufficient evidence to convict Morales of felony injury to a child and to prove that Morales had "care or custody" of the child?

*State v. Morales*  
S.Ct. No. 33547  
Court of Appeals

2. Did the district court err in allowing Officer Hancuff to testify that Bryson was "unsafe" to drive because it was an issue of fact to be decided by the jury?

*State v. Bryson*  
S.Ct. No. 32117  
Court of Appeals

## DISCLOSURE AND VENUE

1. Did the district court err by failing to order disclosure of several informants' identities after an *in camera* proceeding pursuant to I.R.E. 509?

*State v. Alvarez*  
S.Ct. No. 31387  
Court of Appeals

**Summarized by:**  
**Cathy Derden**  
**Supreme Court Staff Attorney**  
**(208) 334-3867**

## Mediator/Arbitrator

**W. Anthony (Tony) Park**

·36 years, civil litigator

·Former Idaho Attorney General

·Practice limited exclusively to ADR

P.O. Box 2188  
Boise, ID 83701

Phone: (208) 345-7800  
Fax: (208) 345-7894

E-Mail: wap@huntleypark.com



Preserving the Civil  
Justice System

Guarding  
Individual Rights

- Members-Only Listserv
- Statewide Networking
- Idaho's Best Seminars
- Legislative Representation
- Amicus Curiae
- Nationwide Research Access
- Trial Mentoring
- Daily Legal News Briefs
- Practice Forms

**ITLA Seminar**  
February 29, 2008  
The Grove Hotel -- Boise

www.itla.org — itla@itla.org — (208) 345-1890

CONTRACT LITIGATION ATTORNEY

**MARTHA G. WHARRY, ESQ.**

Services Provided at a Reasonable Rate:

Hearing and Deposition Coverage  
Large Document Case Management  
Trial Preparation Assistance  
Litigation Support  
Preparation of Briefs and Memoranda  
Legal and Factual Research  
Discovery Preparation and Analysis  
Licensed: Idaho, 1995; Oregon, 1994



**NORTHWEST ATTORNEY SERVICES, LLC**

222 N. 13<sup>th</sup> St., Ste. 250  
Boise, Idaho 83702

(208) 869-0137  
mgw@nwasllc.com

**Appellate Attorney**  
**Emil R. Berg**

Greener Burke + Shoemaker P.A.  
950 W. Bannock Street, Suite 900  
Boise, ID 83702  
208.319.2600

Available for associations, consultations, and referrals on appeals, complex civil motions, and insurance coverage questions in state and federal courts of Idaho and Oregon

- 30 years experience in private law practice.
- Work on approximately 200 appeals, resulting in more than 90 published opinions by state and federal appellate courts.
- Former pro tem judge, adjunct law professor, and Oregon Supreme Court law clerk.



greener|burke|shoemaker|p.a.

**ETHICS and LAWYER  
DISCIPLINARY  
INVESTIGATION  
and PROCEEDINGS**

**Stephen C. Smith,**  
former Chairman of the  
Washington State Bar Association  
Disciplinary Board, is now  
accepting referrals for attorney  
disciplinary investigations  
and proceedings in  
Washington, Idaho, Hawaii, and Guam



877 Main Street • Suite 1000  
Boise, Idaho 83701  
208-344-6000  
ssmi@hteh.com



# Peace of Mind

## Free with Every Deposition

With 24 hour expert client service - every day, on call reporters, nationwide scheduling, centralized production and secure archived storage, you will receive an extra benefit no other court reporting firm can provide. Peace of Mind. [schedule.naegelireporting.com](http://schedule.naegelireporting.com) [www.naegelireporting.com](http://www.naegelireporting.com)

### Naegeli Reporting Corporation

Court Reporting • Trial Presentation • Legal Videography • Videoconferencing

National  
(800) 528-3335

Portland, OR  
(503) 227-1544

Seattle, WA  
(206) 622-3376

Spokane, WA  
(509) 838-6000

Coeur d'Alene, ID  
(208) 667-1163

The **Advocate**  
Official Publication of the Idaho State Bar

*Connecting the Idaho Bar*

**Advertise in *The Advocate* and stay connected!**

Contact Robert W. Strauser  
to reserve your 2008 ad space today!  
Telephone: (208) 334-4500  
Email: [rstrauser@isb.idaho.gov](mailto:rstrauser@isb.idaho.gov)

## OF INTEREST

### IN MEMORIAM

#### HON. JAMES G. TOWLES, 1921-2007

**Retired District Judge James G. Towles**, died on Oct. 3, 2007. He was born in Wallace, Idaho on March 16, 1921, and lived there until 1935, when his family moved to Spokane. He graduated from Lewis and Clark High School in Spokane in 1939. He attended the University of Idaho before serving in the European Theatre as a sergeant in the Army during World War II. He married Betty Lou Gordon in February of 1943, and was a proud Sigma Nu. He graduated from the University of Idaho in 1946. He received his J.D. from the University of Idaho College of Law in 1948.

Judge Towles practiced law in Kellogg from 1949-1959. He was appointed by Governor Smiley to the District Court as a judge in 1959. He served as a judge in Shoshone County until his retirement in 1982.

He retired to his beloved lake home in Blue Creek Bay on Lake Coeur d'Alene. He built the home himself and lived there for 23 years. For the past two years, Judge Towles and his wife Betty Lou have been living at the Waterford in Spokane.

He was a member of the Jestors in The Shrine, a former Mason, father, grandfather, and great-grandfather. He is survived by his wife of 64 years, Betty Lou, daughter Janice Towles, sons James and Stephen; seven grandchildren; and four great-grandchildren. He is also survived by his sister Virginia Anderson Peretti.

#### GLENN A. COUGHLAN 1914-2007

**Glenn A. Coughlan**, 93, died peacefully at his home, Wednesday evening, Nov. 7, 2007. Glenn was born on May 11, 1914. He was raised in Montpelier, Idaho and after graduating from Montpelier High School he attended the University of Idaho and the University of Idaho School of Law. While at the University he was a member of the Sigma Nu Fraternity. It was at the University that he met his future wife, Aurrel Laxton. After receiving his law degree in 1938, Glenn and Aurrel were married. This union continued for 61

years. There was a brief interruption of Glenn's successful law career from 1942 to the end of WWII. During this time Glenn served as a Lieutenant (jg) in the U.S. Navy.

After the war, Glenn and Aurrel moved to Boise where he resumed his law career. He practiced his profession with dignity, honesty and integrity. Glenn was the consummate lawyer who loved his profession. He formally retired in 1995, however, to his last day he did maintain his license in the profession he respected so very much.

In 1962, Glenn was recognized by his peers to preside as President of the Idaho Bar. Because of his expertise with work related injuries and during the formative years of the Idaho State Fund he was appointed by Idaho's Attorney General to act as Counsel to the Fund.

In between a lot of hard work there were some fun times for Glenn and Aurrel on the links of Hillcrest Country Club where they were long time members, or, at their Lake Cascade Getaway.

Glenn's wife, Aurrel, and their son, Joe, preceded Glenn in death. Survivors include: his daughter, Karen Marmillion and son-in-law, Dick Marmillion of Boise; grandsons David Marmillion of Boise, Daniel Marmillion and his wife Angela, his two grandchildren Nicholas and Bella of Dallas, Texas; nephew Glenn Coughlan Jr. and his wife Darlene of Sun River, Oregon.

#### DALE LORNE SMITH 1942-2007

**Dale Lorne Smith**, died Tuesday, Oct. 30, 2007. Dale was born Dec. 12, 1942 in Emmett. When he was nine, his family moved to New Plymouth. After graduating from New Plymouth High School, Dale went to mechanics school in Seattle where he met and married the love of his life, Katherine Butler. He and Kay moved to Moscow, where they attended the University of Idaho. Dale graduated from U of I and WSU. In 1971 Dale and Kay moved to Spokane where he taught accounting at Spokane Community College.

After teaching for some time, Dale decided to act on his lifelong passion for helping the underdog and attend law

school. He graduated with a Juris Doctorate from Gonzaga School of Law in 1977. Dale chose his hometown of New Plymouth to start practicing law. He truly loved the law business, both civil and criminal. He also loved his family wholeheartedly. The entire family spent many evenings at his law office working on cases set for trial. They spent many days and weekends playing basketball at home, camping and riding motorcycles at Silver Creek, rafting near Banks, water skiing at the Owhyee reservoir, and snow skiing at Brundage.

Dale was preceded in death by his parents and two brothers. Dale will be greatly missed by his wife Kay, his son Mike (Mandie) Smith; his three daughters Katy (Brett) Oman, Andrea Willems and Jodi (Justin) Marvel; his grandchildren, Hannah Oman, Gaige and Greyson Smith, Daly and Owen Marvel; his two sisters, Adele (Ben) Blair and Coleen Riley; and his brother, Kirk (June) Smith.

#### ON THE MOVE

**Emil R. Berg** has become of counsel to Greener Burke Shoemaker, P.A., in Boise. His practice will focus on appeals, civil motions, and insurance coverage issues in the state and federal courts of both Idaho and Oregon. You can reach him at (208) 319-2600 or by email at [eberg@greenerlaw.com](mailto:eberg@greenerlaw.com).

**Adam Richins**, a former civil engineer, has joined Stoel Rives LLP, Boise, as an associate in the litigation group. He will represent clients on construction, design, energy, technology and environmental matters. Prior to joining Stoel Rives, he served as a law clerk to the Honorable Stephen S. Trott, Ninth Circuit Court of Appeals in Boise.

Adam received his J.D., with honors, from the University of Washington School of Law; a B.S. magna cum laude in civil engineering from Columbia University; and a B.S. in mathematics from the University of Puget Sound.

The Rocky Mountain regional law firm Holland & Hart LLP Boise, is pleased to announce the following attor-

neys Ammon Hansen, Julie Tetrick, and Kyle Yearsley have joined the Boise office.

**Ammon Hansen** is a member of the firm's litigation department. Prior to joining Holland & Hart, he was a deputy prosecutor, handling both civil and criminal cases. His experience includes jury and bench trials, appellate work, and virtually all aspects of civil litigation. Hansen earned his J.D. cum laude and his B.A. from Brigham Young University.

**Julie Tetrick's** legal practice focuses on complex litigation, including commercial contract disputes, securities fraud, and class actions. Prior to joining Holland & Hart, she was an associate at a litigation firm in Boise. She received her J.D. from the University of Georgia and her B.A. from the University of Washington.

**Kyle Yearsley** focuses his practice on various facets of general business law, with particular emphasis on transactions, entity selection, and formation. Prior to joining Holland & Hart, he practiced in complex litigation and insurance defense. He received his J.D. and M.B.A. from Gonzaga University and his B.A. from Albertson College of Idaho.

#### RECOGNITION

Several Idaho attorneys have been listed in the upcoming 2008 edition of *The Best Lawyers in America*. Selection is peer-reviewed and based on thousands of evaluations by the top attorneys in the country.

Spink Butler, LLP is pleased to announce that two of its partners, **Michael T. Spink** and **JoAnn C. Butler**, have been listed in the 2008 edition of *The Best Lawyers in America*. They were both recognized in the specialty of Real Estate Law.

Givens Pursley LLP, Boise had nine partners recognized in *Best Lawyers 2008*: **Jeff Fereday** for Energy Law, Environmental Law, Natural Resources Law, and Water Law; **Conley Ward** for Energy Law; **Mike Creamer** for Environmental Law, Natural Resources Law, and Water Law; **Pat Miller** for Health Care Law; **Ed Miller** for Real Estate Law and Health Care Law; **Gary Allen** for Land Use & Zoning Law; **Chris**

**Meyer** for Land Use & Zoning Law, Environmental Law; Water Law, and Natural Resources Law; **David Lombardi** for Medical Malpractice Law and Personal Injury Litigation; **Chris Beeseon** for Real Estate Law.

Eight attorneys from Hawley Troxell Ennis and Hawley LLP, Boise have been listed in the 2008 *The Best Lawyers in America*, which bases its selection on thousands of evaluations by the top attorneys in the country.

The attorneys and the fields in which they were recognized are as follows: **Brian Ballard**, real estate; **Steven W. Berenter**, labor and employment law; **Merlyn W. Clark**, commercial litigation and alternative dispute resolution; **John McGown Jr.**, tax law and trusts and estates; **Craig L. Meadows**, commercial litigation; **Nicholas G. Miller**, corporate law and public finance; **Richard A. Riley**, corporate law and mergers and acquisitions; and **Timothy W. Tyree**, land use and zoning law. Hawley Troxell is ranked number one, in Idaho in corporate law, alternative dispute resolution, and public finance law.

#### NEW PRACTICES IN TOWN

**Zarian Midgley & Johnson, PLLC** is pleased to announce its formation and the opening of Boise offices. The firm specializes in intellectual property matters and complex litigation. The firm's Boise attorneys include John Zarian, Peter Midgley, Rex Johnson and Brook Bond.

**John N. Zarian's** practice emphasizes intellectual property and complex business litigation. John is a Fellow in the Litigation Counsel of America, a trial lawyer honorary society. He received his J.D. from the University of Southern California and his Master's in Finance from the University of Utah. He is admitted to practice in Idaho and California, and before the U.S. Supreme Court. Prior to founding Zarian Midgley, John was affiliated with the Boise office of Stoel Rives, LLP.

**Peter M. Midgley** is a patent attorney with practice areas in patent prosecution, licensing and litigation. He received his B.S. degree in electrical and computer engineering from BYU, and his J.D. (cum laude) from George Washington

University. He is admitted to practice before the U.S. Patent and Trademark Office, all courts in Idaho and California, and the U.S. Court of Appeals for the Federal Circuit. Prior to founding Zarian Midgley, Peter was affiliated with the Orange County, California office of Knobbe Martens Olson & Bear, LLP.

**Rexford A. Johnson's** is a registered patent attorney with a practice emphasis for patents, trademarks, trade secrets, and related intellectual property litigation. Rex received his B.S. degrees in mechanical engineering and manufacturing engineering from BYU, and he earned his J.D. from BYU. He is admitted to practice before the U.S. Patent and Trademark Office and all courts in Texas. His application to practice before Idaho courts is currently pending. Prior to founding Zarian Midgley, Rex was affiliated with the Houston, Texas office of Howrey, LLP.

**Brook B. Bond's** practice focuses on intellectual property, business, commercial and environmental litigation. He received his J.D. from the University of San Diego and his B.S. in genetics from the University of California, Davis. Brook is admitted to practice before all courts in California and Idaho. Prior to joining Zarian Midgley, Brook was affiliated with the Boise office of Perkins Coie, LLP.

Zarian Midgley & Johnson, PLLC is located at the University Plaza, 960 S. Broadway Ave., Suite 250; Tel: (208) 433-9121; Fax: (208) 441-9120; [www.zarian-midgley.com](http://www.zarian-midgley.com).

**Banducci Woodard Schwartzman (BWS)** is a new firm focusing on complex commercial litigation, products liability, antitrust, bad faith and class actions. The firm's Boise attorneys are Tom Banducci, Wade Woodard and Ben Schwartzman.

**Tom Banducci** is a graduate of Stanford University and University of California, Hastings College of Law. He has been practicing law in Idaho since 1979, and opened the Boise office of Stoel Rives LLP in 1991. He practiced there for 14 years, serving as managing partner and head of the litigation department. He was recently selected by Lawdragon as one of the 500 Leading Lawyers in America, and just completed his term as President of the Idaho State Bar in July 2007.

**Wade Woodard**, a graduate of BYU and the J. Rueben Clark School of Law at BYU graduating *magna cum laude*, and Order of the Coif. He previously worked for several large regional firms, including the Boise office of Stoel Rives LLP. His practice focuses on commercial litigation, bad faith insurance claims, product liability claims, securities fraud claims, and employment claims. He is admitted to practice law in Idaho and New Mexico.

**Ben Schwartzman** is a graduate of Duke University and the Boalt Hall School of Law at the University of California at Berkeley. He graduated *magna cum laude* and was a *phi beta kappa*. He practiced for ten years in Seattle, Washington, before returning to his hometown of Boise in 2006. Ben is admitted to the bars of Idaho, Oregon and Washington. He specializes in both the prosecution and defense of statewide, regional and national class action suits.

BWS offices are located on the 7th floor of the Hoff Building in downtown Boise. They can be reached at (208) 250-8666.

#### **ERRORS AND OMISSIONS**

On page 36 of the October *Advocate* we incorrectly identified Judge Roger Swanstrom. The picture was taken at the Bar's Annual Meeting. Judge Swanstrom is sitting between University of Idaho College of Law Dean Donald Burnett and retired Justice Jesse Walters. The three gentlemen were the first judges to sit on Idaho's Court of Appeals. We apologize for the error.

#### **NEW OFFICERS**

*The Idaho Association of Paralegals, Inc. recently elected a new slate of officers for the 2007-2008 year.*

*President, **Lauren Paul**, Washington Group International  
VP of Policy and Public Affairs, **Mary Beth Blair**, Ringert Clark, Chtd.  
VP of Membership, **Lori Peel**, Idaho Office of the Attorney General  
VP of Education, **Renea Ridgeway**, Idaho Office of the Attorney General  
Secretary, **Annette Botarro-Walker**, Washington Group International  
Treasurer, **Pamela Jo Packard**, Idaho Department of Agriculture  
National Affairs Representative, **Toni Orth**, US Department of Interior  
Board Advisor, **Maryann Duncan**, Discovery Real Estate Services  
Board Advisor, **Bernice Myles**, Idaho Office of the Attorney General*

### **Do you have clients with TAX PROBLEMS?**

**MARTELLE LAW OFFICE, P.A.**  
represents clients with  
**Federal and State tax problems**

- OFFERS IN COMPROMISE
- APPEALS
- BANKRUPTCY DISCHARGE
- INNOCENT SPOUSE
- INSTALLMENT PLANS
- PENALTY ABATEMENT
- TAX COURT REPRESENTATION
- TAX RETURN PREPARATION

**MARTELLE LAW OFFICE, P.A.**  
**208-938-8500**

**82 E. State Street, Suite F**  
**Eagle, ID 83616**

**E-mail: [attorney@martellelaw.com](mailto:attorney@martellelaw.com)**  
**[www.martellelaw.com](http://www.martellelaw.com)**

#### **DOES YOUR REPORTING YEAR END 12/31/07?**

#### **ARE YOU SHORT .5 (OR MORE) ETHICS CREDITS?**

If your reporting year ends 12/31/07, and you are short ethics credits, call now while the selection of recorded program rentals is still good. Contact Eric White (208) 334-4500 or [ewhite@isb.idaho.gov](mailto:ewhite@isb.idaho.gov).

## AUTHOR INDEX—THE ADVOCATE 2007

### FEATURED ARTICLES

- Amos, Adell; Eichstaedt, Rick; Sherman, Rebecca, *More Dam Process*, 50(6/7), 33-37.
- Anonymous, *They were only small sips...*, 50(10), 30.
- Anthon, Kelly Arthur, *Buyer (and Debtor) Beware*, 50(2), 28-30.
- Bacon, William F., *20 Questions About Indian Law*, 50(5) 17-18.
- Bakes, Robert E., *The Snake River Basin Adjudication...From the Beginning to the Present (Reprint from 1995)*, 50(1), 33-35.
- Box, Hon. Gaylen L., *Welcome from the Idaho Legal History Society*, 50(11), 9-10.
- Box, Hon. Gaylen, *Crow Dog: Tribal Sovereignty and Criminal Jurisdiction in Indian Country*, 50(5), 13-16.
- Bradbury, Hilary; Prince, Jason, *Transcending Practice Area: Insight and Advice for Idaho's Young Transactional and Trial Attorneys*, 50(10), 25-29.
- Braun, Julie; Groberg, Joseph H; Magee, Renee R., *Local Historic Preservation Ordinances*, 50(12), 25-26.
- Brawer, Judi, *The Endangered Species Act: A Year in Review in the Ninth Circuit*, 50(6/7), 23-26.
- Brawer, Judi, *The New "Hot" Topic in Environmental Law: Global Warming*, 50(6/7), 17-20.
- Bromley, Chris M.; McHugh, Candice M., *Will 2007 prove to be the Most Interesting 'Water Year' ever?* 50(1), 12-13.
- Burke, Cecelia; Nash, Douglas, *Passing Title to Tribal Lands*, 50(5), 26-29.
- Burnett, Donald, Dean; Cosens, Barbra, Professor, *UI College of Law Undertakes Exciting Initiatives in ENR Law*, 50(6/7), 38-41.
- Carlson, Gerard, *The Many Roles of a Patent Agent*, 50(8/9), 17.
- Castleton, Lowell D., Hon., *Idaho's New Judiciary in 2007*, 50(12), 42-44.
- Chess, Laura, *Welcome...from the Government and Public Sector Lawyers Section*, 50(3), 12.
- Christensen, Matthew T., *How to Talk Good: Lessons Learned from Grandpa Max*, 50(10), 22-24.
- Collins, Sasha D., *Taking Title in Idaho: Options and Consequences*, 50(12), 17-19.
- Colson, Dennis C., *Idaho's Founders and Their Mormon Test Oath*, 50(11), 11-15.
- Cosens, Barbra, Professor, See Burnett, Donald, Dean, 50(6/7), 38-41.
- Eichstaedt, Rick, See Amos, Adell, Sherman, Rebecca, 50(6/7), 33-37.
- Esler, Brian W., *The Dilution Debate: The Trademark Dilution*, 50(8/9), 18-19.
- Evans, David L., Hon, *Titans Tug of War*, 50(11), 16-19.
- Evet, Joshua S., *The Ninth Circuit's Duty to Preserve Electronic Data*, 50(8/9), 35-36.
- Feldman, Murray D., *Photography and the Environment*, 50(6/7), 42-45.
- Ferguson, Deborah A., *The Long and Winding Road: Restoration of Sherlock Creek*, 50(6/7), 21-22.
- Finch, Michelle R.; Olsson, Patricia M, *Looking Back Article—The Idaho Public Records Act: Preserving the Status Quo*, 50(3), 22.
- Frazer, Brad, *Recent Developments in Internet Law*, 50(8/9), 26-28.
- French, Randal J., *The Automatic Stay in Bankruptcy and Contempt Proceedings*, 50(2), 15-19.
- Gilmore, Michael S., *Olson and Rees: a Tale of Two Tort Claims Acts*, 50(3), 13-16.
- Goergen, Brad A., *'Just the Facts' About Consumer Credit Laws*, 50(2), 11-14.
- Gould, Jon C., *Idaho's Conjunctive Management Rules are 'Constitutionally Deficient'*, 50(1), 30-32.
- Gray, Monte, *Recharacterizing Debt to Equity – Not just for Bankruptcy*, 50(2), 22-23.
- Groberg, Joseph H., See Braun, Julie, 50(12), 25-26.
- Hill, Teresa A., *Welcome from the ENR Section Chair*, 50(6/7), 10.
- Hinman, Margaret B., *Clean Water Act jurisdiction*, 50(6/7), 13-14.
- Hodges, Kathleen R., *The Life & Death of Idaho's Loyalty Oath*, 50(11), 20-23.
- Hookland, Douglas; Young, Jeffrey S., *A Practitioner's Guide to Mechanic's Lien Law*, 50(12), 20-24.
- Jones, Rory R., *Looking Back Article – School Board Recall Rules Must Be Changed*, 50(3) 23-24.
- Kane, Brian, *If the Citizens Speak, Listen: Idaho's Local Initiative Process*, 50(3), 17-19.
- Kelly, Kate Senator, *Key Environmental Actions of the 2007 Idaho Legislature*, 50(6/7), 11-12.
- Kilminster-Hadley, Shasta; Loza, Emile, *The Law of Electronic Contracts: The New United Nations Convention*, 50(8/9), 40-43.
- Knapp, John R. Jr., *Treatment of Intellectual Property Licenses in Bankruptcy*, 50(8/9) 29-31.
- Leroy, David, *Lawyers, Lincoln, and Idaho*, 50(3), 20-21.
- Loza, Emile, See Kilminster-Hadley, Shasta, 50(8/9), 40-43.
- Loza, Emile, *Welcome from the Intellectual Property Law Section*, 50(8/9), 12.
- Macomber, Arthur B., *Ad Valorem Taxation of Conservation Easements*, 50(12), 28-31.
- Macomber, Arthur B., *From the Panhandle into the Adjudication Fire*, 50(1), 18-22.
- Magee, Renee R., See Braun, Julie, 50(12), 25-26.
- Maynes, Robert J., *"Ride Through" BAPCPA and the Idaho Credit Act*, 50(2), 24-27.
- McHugh, Candice M., See Bromley, Chris M., 50(1), 12-13.
- McIntyre, Krista, *Current Trends in Enforcement of Environmental Crimes*, 50(6/7), 31-32.
- Melillo, Cynthia A., *Welcome from the Real Property Section*, 50(12), 13.
- Merrell, David E., *Civil Fines up to \$32,500 Per Day for Storm Water Pollution*, 50(6/7), 15-16.
- Meyring, Weston, *Having Your Day in Appellate Court*, 50(10), 19-21.
- Nash, Douglas, See Burke, Cecelia, 50(5), 26-29.
- Newby, Tyler G., *Criminal Enforcement of Federal Intellectual Property Laws*, 50(8/9), 37-39.
- Nipper, Stephan M., *Counseling Clients About Invention Promotion Companies*, 50(8/9), 15-16.
- Olsson, Patricia M, See Finch, Michelle R., 50(3), 22.
- Pfisterer, Kira; Reinhardt, Jennifer, *Justice Linda Copple Trout Retires*, 50(11), 42-43.
- Pooser, Christopher, *Statutory Damages under the Copyright Act*, 50(8/9), 23-24.
- Prince, Jason, See Bradbury, Hilary, 50(10), 25-29.
- Ramfjord, Per, *Tips on Conducting Internal Investigations of Environmental Crimes*, 50(6/7), 27-30.
- Reinhardt, Jennifer, See Pfisterer, Kira, 50(11), 42-43.
- Reiser, Jane, *Brokerage Services v Unauthorized Practice of Law: Where's the Line?* 50(12), 14-16.
- Rutzick, Jessica, *Conservation: Easements in the Rocky Mountain West: Perpetuity is Relative*, 50(12), 32-33.

Ryan, Maureen G., *Welcome from the Young Lawyers Section*, 50(10) 14.

Ryan, Rita, *Idaho's Oral Legal History Project*, 50(11) 34.

Salmi, Christine M., *Chief Justice Gerald F. Schroeder Retires*, 50(8/9), 53-54.

Semanko, Norman M., *When Land is Water: Clean Water Jurisdiction*, 50(1), 23-25.

Shaver, Robert, *Conflicts Between Domain Names and Trademarks*, 50(8/9), 20-22.

Sherman, Rebecca, See Eichstaedt, Rick, Amos, Adell, 50(6/7), 33-37.

Shum, Ida; Stolworthy, Jason, *You Can Bet the Farm*, 50(8/9), 13-14.

Sims, Robert C., *Loyalty Questionnaires and Japanese Americans in WWII*, 50(11), 24-26.

Smith, Clay R., *Tribal Sovereign Immunity: A Primer*, 50(5), 19-25.

Smith, Rob Roy, *If you Think Tribal Casinos Don't Have to Comply with the NLRA, Think Again*, 50(5), 30-32.

Smyser, Hon. Howard, *One Judge's Checklist*, 50(10), 15-18.

Spinner, Jim, *A Few Words about Proofs of Claim*, 50(2), 31-34.

Spinner, Jim, *Welcome from the Commercial Law and Bankruptcy Section*, 50(2), 10.

Steele, Jon M., *Use of the Internet and Personal Jurisdiction*, 50(8/9), 25.

Stolworthy, Jason, See Shum, Ida, 50(8/9), 13-14.

Strong, Clive J., *The First Twenty Years of the Snake River Basin Adjudication – Is There an End in Sight?*, 50(1), 14-17.

Sudbury, Ryan, *Welcome from the Indian Law Section Chair*, 50(5), 12.

Tolson, Aaron J., *The Intersection of Family Law and Bankruptcy*, 50(2), 20-21.

Waldera, Andrew J., *Anadromous Fish and the Landscape of Idaho Water Use and Development*, 50(1), 26-29.

Waldera, Andrew J., *Welcome from the Water Law Section*, 50(1) 11.

Wister, Owen, *The Second Missouri Compromise*, 50(11), 27-32.

Young, Jeffrey S., See Hookland, Douglas, 50(12), 20-24.

Zarian, John N., *Patent Litigation in the U.S. District of Idaho*, 50(8/9), 32-34.

## COLUMNS

Banducci, Thomas A., *President's Message: Judicial Elections, Judicial Independence, Judicial Surveys*, 50(2), 6-7.

Banducci, Thomas A., *President's Message: Judicial Performance Evaluation Program*, 50(6/7), 6-7.

Banducci, Thomas A., *President's Message: Not a Joking Matter*, 50(5), 8-9.

Banducci, Thomas A., *President's Message: Rule of Law and the Judiciary that Upholds It*, 50(3), 6-7.

Becker, Kahle, *Young Lawyers: What are Endowment Lands, and What Issues Do I Need to Watch for When Dealing with Them?* 50(3) 26.

Burnett, Don, Dean, *University of Idaho College of Law: University of Idaho Weighs Future Options in Statewide Legal Education*, 50(8/9) 44-45.

Hasko, John, *InSite – Traversing the Internet*, 50(3) 25.

Hasko, John, *University of Idaho College of Law Library: Vendor – Neutral Citations – Time to Play in Idaho*, 50(8/9), 46.

Hawes, Andrew E., *President's Message: House Counsel*, 50(10), 6-7.

Hawes, Andrew E., *President's Message: Judges Picked by Voters Are Better*, 50(11), 5-6.

Hawes, Andrew E., *President's Message: Public Legal Education: Change is often desirable, frequently necessary and always inevitable*, 50(8/9), 6-7.

Hawes, Andrew E., *President's Message: Putting the Senior Partner Out to Pasture: Law Firm's Mandatory Retirement Policy*, 50(12), 6-7.

Henderson, Michael, *Idaho Courts: Idaho's Substance Abuse and Mental Health Problems: A Four-way Partnership*, 50(5), 37-38.

Henderson, Michael, *Idaho Courts: The Administration of Justice: A Mass of Numbers*, 50(3) 36.

Hunter, Larry C., *ABA Annual Meeting Report: ABA Annual Meeting Welcomes Members of High Court*, 50(10), 42-43.

Hunter, Larry C., *ABA Mid-Year Meeting Report: ABA Enacts Model Code of Judicial Conduct*, 50(3), 28.

Judd, Linda, *Good Will for the Season and Beyond*, 50(12), 39.

Meyring, Wes, *Young Lawyers: On the Spirit of Liberty*, 50(2), 46.

Minnich, Diane K., *Executive Director's Report: 2006 – The Idaho State Bar Year in Review*, 50(2), 9.

Minnich, Diane K., *Executive Director's Report: 2006 – The Idaho Law Foundation Year in Review*, 50(3), 9.

Minnich, Diane K., *Executive Director's Report: 2006 Resolutions – The Results*, 50(1), 10.

Minnich, Diane K., *Executive Director's Report: Charitable Giving – The Idaho Law Foundation, Inc.*, 50(11), 8.

Minnich, Diane K., *Executive Director's Report: Happy Holidays!* 50(12), 8.

Minnich, Diane K., *Executive Director's Report: Join us for the Idaho State Bar Annual Meeting*, 50(6/7), 8.

Minnich, Diane K., *Executive Director's Report: Join us for the Resolution Meetings and Award Presentations*, 50(10), 10-12.

Minnich, Diane K., *Executive Director's Report: Resolution Process 2007 Idaho State Bar Membership Survey Results*, 50(8/9), 9-11.

Minnich, Diane K., *Executive Director's Report: Volunteer Opportunities*, 50(5), 10.

Murawski, Tom, *Federal Court Corner*, 50(1), 53.

Murawski, Tom, *Federal Court Corner*, 50(11), 47.

Murawski, Tom, *Federal Court Corner*, 50(3), 41-42.

Murawski, Tom, *Federal Court Corner*, 50(5), 35.

Murawski, Tom, *Federal Court Corner*, 50(8/9), 49.

Prince, Jason, *Young Lawyers: First to File or First to Offend? Demand Letters and Preferred Litigation Forums*, 50(5), 45-46.

Richins, Adam, *Young Lawyers: Overcoming the Anti-terrorism and Effective Death Penalty Act*, 50(8/9), 47.

Schroeder, Gerald F., Chief Justice, *Idaho Courts: State of the Judiciary*, 50(3), 34-35.

Sturgell, Jay Q., *President's Message: It's Hard to Believe...*, 50(1), 6.

Whitney, Douglas, *Out of State Active: The Justice System Support Program: JSSP – Working in Afghanistan*, 50(5), 33-34.

## OP-EDS

Winmill, Hon. B. Lynn, *Idaho's Federal Judiciary to Experience a Historic Transition*, 50(8/9), 55.

## INDEX

*2007 Author Index*, 50(12), 54-55.

*2007 Title Index*, 50(12), 56-57.

## TITLE INDEX—THE ADVOCATE 2007

### FEATURED ARTICLES

- 20 Questions about Indian Law*, Bacon, William F., 50(5), 17-18.  
*A Few Words about Proofs of Claim*, Spinner, Jim, 50(2), 31-34.  
*A Practitioner's Guide to Mechanic's Lien Law*, Hookland, Douglas; Young, Jeffrey S., 50(12), 20-24.  
*Ad Valorem Taxation of Conservation Easements*, Macomber, Arthur B., 50(12), 28-31.  
*Anadromous Fish and the Landscape of Idaho Water Use and Development*, Waldera, Andrew J., 50(1), 26-29.  
*Brokerage Services v Unauthorized Practice of Law: Where's the Line?*, Reiser, Jane, 50(12), 14-16.  
*Buyer (and Debtor) Beware*, Anthon, Kelly Arthur, 50(2), 28-30.  
*Chief Justice Gerald F. Schroeder Retires*, Salmi, Christine M., 50(8/9), 53-54.  
*Civil Fines up to \$32,500 Per Day for Storm Water Pollution*, Merrell, David E., 50(6/7), 15-16.  
*Clean Water Act jurisdiction*, Hinman, Margaret B., 50(6/7), 13-14.  
*Conflicts between Domain Names and Trademarks*, Shaver, Robert, 50(8/9), 20-22.  
*Conservation: Easements in the Rocky Mountain West: Perpetuity is Relative*, Rutzick, Jessica, 50(12), 32-33.  
*Counseling Clients about Invention Promotion Companies*, Nipper, Stephan M., 50(8/9), 15-16.  
*Criminal Enforcement of Federal Intellectual Property Laws*, Newby, Tyler G., 50(8/9), 37-39.  
*Crow Dog: Tribal Sovereignty and Criminal Jurisdiction in Indian Country*, Box, Hon. Gaylen, 50(5), 13-16.  
*Current Trends in Enforcement of Environmental Crimes*, McIntyre, Krista, 50(6/7), 31-32.  
*From the Panhandle into the Adjudication Fire*, Macomber, Arthur B., 50(1), 18-22.  
*Having Your Day in Appellate Court*, Meyring, Weston, 50(10), 19-21.  
*How to Talk Good: Lessons Learned from Grandpa Max*, Christensen, Matthew T., 50(10), 22-24.  
*Idaho's Conjunctive Management Rules are 'Constitutionally Deficient'*, Gould, Jon C., 50(1), 30-32.  
*Idaho's Founders and Their Mormon Test Oath*, Colson, Dennis C., 50(11), 11-15.  
*Idaho's New Judiciary in 2007*, Castleton, Hon. Lowell D., 50(12), 42-44.  
*Idaho's Oral Legal History Project*, Ryan, Rita, 50(11) 34.  
*If the Citizens Speak, Listen: Idaho's Local Initiative Process*, Kane, Brian, 50(3), 17-19.  
*If you Think Tribal Casinos Don't Have to Comply with the NLRA, Think Again*, Smith, Rob Roy, 50(5), 30-32.  
*Just the Facts about Consumer Credit Laws*, Goergen, Brad A., 50(2), 11-14.  
*Justice Linda Copple Trout Retires*, Pfisterer, Kira; Reinhardt, Jennifer, 50(11), 42-43.  
*Key Environmental Actions of the 2007 Idaho Legislature*, Kelly, Kate, Senator, 50(6/7), 11-12.  
*Lawyers, Lincoln, and Idaho*, Leroy, David, 50(3), 20-21.  
*Local Historic Preservation Ordinances*, Braun, Julie; Groberg, Joseph H; Magee, Renee R., 50(12), 25-26.  
*Looking Back Article – School Board Recall Rules Must Be Changed*, Jones, Rory R., 50(3) 23-24.  
*Looking Back Article –The Idaho Public Records Act: Preserving the Status Quo*, Finch, Michelle R.; Olsson, Patricia M., 50(3), 22.  
*Loyalty Questionnaires and Japanese Americans in WWII*, Sims, Robert C., 50(11), 24-26.  
*More Dam Process*, Amos, Adell; Eichstaedt, Rick; Sherman, Rebecca, 50(6/7), 33-37.  
*Olson and Rees: a Tale of Two Tort Claims Acts*, Gilmore, Michael S., 50(3), 13-16.  
*One Judge's Checklist*, Smyser, Hon. Howard, 50(10), 15-18.  
*Passing Title to Tribal Lands*, Burke, Cecelia; Nash, Douglas, 50(5), 26-29.  
*Patent Litigation in the U.S. District of Idaho*, Zarian, John N., 50(8/9), 32-34.  
*Photography and the Environment*, Feldman, Murray D., 50(6/7), 42-45.  
*Recent Developments in Internet Law*, Frazer, Brad, 50(8/9), 26-28.  
*Recharacterizing Debt to Equity – Not just for Bankruptcy*, Gray, Monte, 50(2), 22-23.  
*Ride through BAPCPA and the Idaho Credit Act*, Maynes, Robert J., 50(2), 24-27.  
*Statutory Damages under the Copyright Act*, Pooser, Christopher, 50(8/9), 23-24.  
*Taking Title in Idaho: Options and Consequences*, Collins, Sasha D., 50(12), 17-19.  
*The Automatic Stay in Bankruptcy and Contempt Proceedings*, French, Randal J., 50(2), 15-19.  
*The Dilution Debate: The Trademark Dilution*, Esler, Brian W., 50(8/9), 18-19.  
*The Endangered Species Act: A Year in Review in the Ninth Circuit*, Brawer, Judi, 50(6/7), 23-26.  
*The First Twenty Years of the Snake River Basin Adjudication – Is There an End in Sight?* Strong, Clive J., 50(1), 14-17.  
*The Intersection of Family Law and Bankruptcy*, Tolson, Aaron J., 50(2), 20-21.  
*The Law of Electronic Contracts: The New United Nations Convention*, Kilminster-Hadley, Shasta; Loza, Emile, 50(8/9), 40-43.  
*The Life & Death of Idaho's Loyalty Oath*, Hodges, Kathleen R., 50(11), 20-23.  
*The Long and Winding Road: Restoration of Sherlock Creek*, Ferguson, Deborah A., 50(6/7), 21-22.  
*The Many Roles of a Patent Agent*, Carlson, Gerard, 50(8/9), 17.  
*The New "Hot" Topic in Environmental Law: Global Warming*, Brawer, Judi, 50(6/7), 17-20.  
*The Ninth Circuit's Duty to Preserve Electronic Data*, Evett, Joshua S., 50(8/9), 35-36.  
*The Second Missouri Compromise*, Wister, Owen, 50(11), 27-32.  
*The Snake River Basin Adjudication...From the Beginning to the Present (Reprint from 1995)*, Bakes, Robert E., 50(1), 33-35.  
*They were only small sips...*, Anonymous, 50(10), 30.  
*Tips on Conducting Internal Investigations of Environmental Crimes*, Ramfjord, Per, 50(6/7), 27-30.  
*Titans Tug of War*, Evans, David L., Hon, 50(11), 16-19.  
*Transcending Practice Area: Insight and Advice for Idaho's Young Transactional and Trial Attorneys*, Bradbury, Hilary; Prince, Jason, 50(10), 25-29.  
*Treatment of Intellectual Property Licenses in Bankruptcy*, Knapp, John R. Jr., 50(8/9) 29-31.  
*Tribal Sovereign Immunity: A Primer*, Smith, Clay R., 50(5), 19-25.

*UI College of Law Undertakes Exciting Initiatives in ENR Law*, Burnett, Donald, Dean; Cosens, Barbra, Professor, 50(6/7), 38-41.  
*Use of the Internet and Personal Jurisdiction*, Steele, Jon M., 50(8/9), 25.  
*Welcome from the Commercial Law and Bankruptcy Section*, Spinner, Jim, 50(2), 10.  
*Welcome from the ENR Section Chair*, Hill, Teresa A., 50(6/7), 10.  
*Welcome from the Idaho Legal History Society*, Box, Hon. Gaylen L., 50(11), 9.  
*Welcome from the Indian Law Section Chair*, Sudbury, Ryan, 50(5), 12.  
*Welcome from the Intellectual Property Law Section*, Loza, Emile, 50(8/9), 12.  
*Welcome from the Real Property Section*, Melillo, Cynthia A., 50(12), 13.  
*Welcome from the Water Law Section*, Waldera, Andrew J., 50(1) 11.  
*Welcome from the Young Lawyers Section*, Ryan, Maureen G., 50(10) 14.  
*Welcome...from the Government and Public Sector Lawyers Section*, Chess, Laura, 50(3), 12.  
*When Land is Water: Clean Water Jurisdiction*, Semanko, Norman M., 50(1), 23-25.  
*Will 2007 prove to be the Most Interesting 'Water Year' ever?* Bromley, Chris M.; McHugh, Candice M., 50(1), 12-13.  
*You Can Bet the Farm*, Shum, Ida; Stolworthy, Jason, 50(8/9), 13-14.

## COLUMNS

*ABA Annual Meeting Report: ABA Annual Meeting Welcomes Members of High Court*, Hunter, Larry C., 50(10), 42-43.  
*ABA Mid-Year Meeting Report: ABA Enacts Model Code of Judicial Conduct*, Hunter, Larry C., 50(3), 28.  
*Executive Director's Report: 2006 – The Idaho Law Foundation Year in Review*, Minnich, Diane K., 50(3), 9.  
*Executive Director's Report: 2006 – The Idaho State Bar Year in Review*, Diane K. Minnich, 50(2), 9.  
*Executive Director's Report: 2006 Resolutions – The Results*, Minnich, Diane K., 50(1), 10.  
*Executive Director's Report: Charitable Giving – The Idaho Law Foundation, Inc.*, Minnich, Diane K., 50(11), 8.  
*Executive Director's Report: Happy Holidays!*, Minnich, Diane K., 50(12), 8.  
*Executive Director's Report: Join us for the Idaho State Bar Annual Meeting*, Minnich, Diane K., 50(6/7), 8.  
*Executive Director's Report: Join us for the Resolution Meetings and Award Presentations*, Minnich, Diane K., 50(10), 10-12.  
*Executive Director's Report: Resolution Process 2007 Idaho State Bar Membership Survey Results*, Minnich, Diane K., 50(8/9), 9-11.  
*Executive Director's Report: Volunteer Opportunities*, Minnich, Diane K., 50(5), 10.  
*Federal Court Corner*, Murawski, Tom, 50(1), 53.  
*Federal Court Corner*, Murawski, Tom, 50(11), 47.  
*Federal Court Corner*, Murawski, Tom, 50(3), 41-42.  
*Federal Court Corner*, Murawski, Tom, 50(5), 35.  
*Federal Court Corner*, Murawski, Tom, 50(8/9), 49.  
*Good Will for the Season and Beyond*, Judd, Linda, 50(12), 39.  
*Idaho Courts: Idaho's Substance Abuse and Mental Health Problems: A Four-way Partnership*, Henderson, Michael, 50(5), 37-38.  
*Idaho Courts: State of the Judiciary*, Schroeder, Gerald F. Chief Justice, 50(3), 34-35.  
*Idaho Courts: The Administration of Justice: A Mass of Numbers*, Henderson, Michael, 50(3) 36.

*InSite – Traversing the Internet*, Hasko, John, 50(3) 25.  
*Out of State Active: The Justice System Support Program: JSSP – Working in Afghanistan*, Whitney, Douglas, 50(5), 33-34.  
*President's Message: House Counsel*, Hawes, Andrew E., 50(10), 6-7.  
*President's Message: It's Hard to Believe....*, Sturgell, Jay Q., 50(1), 6.  
*President's Message: Judges Picked by Voters Are Better*, Hawes, Andrew E., 50(11), 5-6.  
*President's Message: Judicial Elections, Judicial Independence, Judicial Surveys*, Banducci, Thomas A., 50(2), 6-7.  
*President's Message: Judicial Performance Evaluation Program*, Banducci, Thomas A., 50(6/7), 6-7.  
*President's Message: Not a Joking Matter*, Banducci, Thomas A., 50(5), 8-9.  
*President's Message: Public Legal Education: Change is often desirable, frequently necessary and always inevitable*, Hawes, Andrew E., 50(8/9), 6-7.  
*President's Message: Putting the Senior Partner Out to Pasture: Law Firm's Mandatory Retirement Policy*, Hawes, Andrew E., 50(12), 6-7.  
*President's Message: Rule of Law and the Judiciary that Upholds It*, Banducci, Thomas A., 50(3), 6-7.  
*University of Idaho College of Law Library: Vendor – Neutral Citations – Time to Play in Idaho*, Hasko, John, 50(8/9), 46.  
*University of Idaho College of Law: University of Idaho Weighs Future Options in Statewide Legal Education*, Burnett, Don, Dean, 50(8/9) 44-45.  
*Young Lawyers Section: Overcoming the Anti-terrorism and Effective Death Penalty Act*, Richins, Adam, 50(8/9), 47.  
*Young Lawyers: First to File or First to Offend? Demand Letters and Preferred Litigation Forums*, Prince, Jason, 50(5), 45-46.  
*Young Lawyers: On the Spirit of Liberty*, Meyring, Wes, 50(2), 46.  
*Young Lawyers: What are Endowment Lands, and What Issues Do I Need to Watch out for When Dealing with Them?*, Becker, Kahle, 50(3) 26.

## OP-EDS

*Idaho's Federal Judiciary to Experience a Historic Transition*, Winnmill, Hon. B. Lynn, 50(8/9), 55.

## INDEX

*2007 Author Index*, 50(12), 54-55.  
*2007 Title Index*, 50(12), 56-57.

**Mediation/Arbitration**

**John C. Lynn**

**33 years experience**

3503 West Grover Court Phone: (208) 860-5258  
 Boise, ID 83705

**Email: johnlynn@fiberpipe.net**

## CLASSIFIEDS

### EXPERT WITNESSES

#### FORENSIC ENGINEERING- EXPERT WITNESS

JEFFREY D. BLOCK, P.E. &  
ASSOCIATES, INC.

Civil, Structural, and Construction  
Management Consultants. 112 East Hazel  
Ave. Coeur d'Alene, ID 83814  
Telephone: 208-765-5592  
Email: jdblock@imbris.net  
Licensed in Idaho, Washington,  
California.

#### MEDICAL/LEGAL CONSULTANT GASTROENTEROLOGY

THEODORE W. BOHLMAN, M.D.  
Licensed, Board Certified Internal  
Medicine & Gastroenterology Record  
Review and medical expert testimony. To  
contact call telephone: Home: (208) 888-  
6136, Primary Cell: (208) 841-0035  
Secondary Cell: (208) 863-1128, or by  
Email: tbohlman@mindspring.com.

#### INSURANCE AND CLAIMS HANDLING

Consultations or testimony in cases  
involving insurance or bad faith issues.  
Adjunct Professor Insurance Law; 25  
years experience as attorney in cases for  
and against insurance companies; devel-  
oped claims procedures for major insur-  
ance carriers. IRVING "BUDDY" PAUL,  
Telephone: (208) 667-7990 or Email:  
bpaul@ewinganderson.com.

#### EXPERT WEATHER TESTIMONY

Weather and climate data research and  
analysis. 20+ years meteorological expert-  
ise – AMS certified – extensive weather  
database-a variety of case experience spe-  
cializing in ice, snow, wind and atmos-  
pheric lighting. METEOROLOGIST SCOTT  
DORVAL, phone: (208) 890-1771.

### SERVICES

#### LUMP SUMS CASH PAID

For Seller-Financed Real Estate Notes &  
Contracts, Divorce Notes, Business Notes,  
Structured Settlements, Lottery Winnings.  
Since 1992. CASCADE FUNDING, INC.  
Telephone: 1 (800) 476-9644 or visit our  
website at: www.cascadefunding.com

### SERVICES

#### MEXICAN LEGAL SERVICES

TIMOTHY ACKER & DIEGO GARCIA  
Guadalajara, Mexico  
US Telephone (360) 434 3262  
Mexican Probate, Real Estate,  
Tax, Investments, Trusts, Business and  
General Civil Law

#### CASH FOR CONTRACTS

We purchase "Owner-Carry" real-estate  
secured contracts for a lump sum cash  
payment. Call 208-407-5667 or visit  
ContractFunders.com for a free quote.

### LEGAL ETHICS

#### ~ LEGAL ETHICS ~

Ethics-conflicts advice, disciplinary  
defense, disqualification and sanctions  
motions, law firm related litigation, attor-  
ney-client privilege. Idaho, Oregon &  
Washington. MARK FUCILE: Telephone  
(503) 224-4895 Fucile & Reising LLP  
Mark@frllp.com

### PROCESS SERVERS

#### POWERSERVE OF IDAHO

Process Serving for Southwest Idaho  
Telephone: (208) 342-0012 P.O. Box 5368  
Boise, ID 83705-036. Visit our website at  
www.powerserveofidaho.com.

### OFFICE SPACE

#### OFFICE SPACE AVAILABLE

300 W. Main Street Beautiful 2 room Suite  
overlooking Main Street or 8 office Suite -  
the space is set-up where you could com-  
bine both areas if needing more space.  
Fun downtown atmosphere - 1 block from  
Courthouse. Shower and locker room  
available to tenants. Full service building.  
Contact Cindy at 947-7097 or you are  
welcome to stop by, located in same  
building in Suite 111.

#### OFFICE SHARING BOISE NORTH END

Office, assistant space, conference room,  
reception room, break room, copier,  
Internet, utilities, off-street parking, easy  
access. Call: (208) 429 - 0905 and speak  
with Justin or Steve.

### OFFICE SPACE

#### BEAUTIFUL CLASS A BUILDING

Located on the greenbelt. Easy access to  
the connector. 2359 sq. ft. divisible to  
1000 square feet. Generous Tenant  
Improvement allowance. For additional  
information please call Debbie Martin,  
SIOR (208) 955-1014 or e-mail  
debbie@dkcommercial.com.

#### PRIME PARK CENTER OFFICE SPACE

Two offices near Greenbelt for reasonable  
rent includes use of conference room,  
copy machine, postage, fax machine and  
kitchen – \$395.00. High Speed Internet  
and additional space and furniture for a  
secretary are available at additional  
charge. This convenient office is ideal for  
a solo practitioner or a local branch office  
for out of town firm. Call 424-8332.

#### MERIDIAN OFFICE SPACE

Office share with several other attorneys.  
Large offices in new building. Conference  
room, break room, and easy freeway  
access for clients. Short commute for you!  
Includes receptionist, utilities, internet and  
many opportunities for referrals in a light,  
collegial atmosphere. Month to month  
options. Call 884-1995 or paul@marshal-  
landstark.com.

#### BOISE-DOWNTOWN BANNER BANK BUILDING

Fully furnished offices  
available today.

Short – or long-term options.  
Ideal for any size business.

**CALL 800-OFFICES  
or visit regus.com**

## VACATION RENTAL

### BEAUTIFUL PALM DESERT

2 bed and bath condo for short term, long term or vacation rental by owner. Condo with pools and tennis courts and is close to El Paseo the heart of the shopping district, the mountains, golf and recreation. 208-424-8332 or e-mail shane@soblawyers.com.

## LAST WILL AND TESTAMENT

We are searching for any Last Will and Testament prepared on behalf of Baret Odom of Boise, ID. Please contact Scott Rose at (208) 342-2552 with any information.

## POSITIONS

### ASSOCIATE POSITION

Aherin, Rice & Anegon, a well-established general practice law firm in Lewiston, is seeking an associate with one to five years of experience. The candidate should be licensed in Idaho. Family/criminal law experience helpful, and willingness to appear in court a must. The position offers excellent opportunities for professional development, client contact, community involvement and primary responsibility for handling cases. Please submit your cover letter, resume and brief writing sample to Aherin, Rice & Anegon, P.O. Drawer 698, Lewiston, ID 83501 or by e-mail to ara@aralawoffice.com.

## University of Idaho

College of Law

### EMPLOYER SERVICES

- Job Postings:
- Full-Time / Part Time Students, Laterals and Contract
- Confidential "Blind" Ads Accepted
- Resume Collection
- Interview Facilities Provided
- Recruitment Planning

### For more information contact:

CAREER DEVELOPMENT

Phone: (208) 885-2742

Fax: (208) 885-5709

and/or

[www.law.uidaho.edu/careers](http://www.law.uidaho.edu/careers)

Employment announcements may be posted at :

[careers@law.uidaho.edu](mailto:careers@law.uidaho.edu)

P.O. Box 442321 Moscow, ID 83844-2321

Equal Opportunity Employer

The **Advocate**  
Official Publication of the Idaho State Bar

*Connecting the Idaho Bar*

**Advertise in *The Advocate*  
and stay connected!**

Contact Robert W. Strauser  
to reserve your 2008 ad space today!

Telephone: (208) 334-4500

Email: [rstrauser@isb.idaho.gov](mailto:rstrauser@isb.idaho.gov)

# December CLE Courses

## DECEMBER 2007

### December 4

#### Lunch and A Movie: CLE Video Replays High Tech Ethics—part 1

The Law Center, 525 W. Jefferson Street in Boise from 12:00–1:00 p.m. (MST) (1.0 CLE credits RAC approved) Grab some last minute CLE credits before your reporting period ends.

### December 5

#### Managing Technology within a Law Firm: An Interactive Ethics CLE

Doubletree Riverside Hotel in Boise from 8:30–11:30 a.m. (MST) (3.0 ethics credits) Mark Bassingthwaight, the Risk Management Coordinator for ALPS will facilitate this interactive ethics CLE. Short vignettes will be presented and then participants will break into small groups to discuss the issues presented.

### December 7

#### Headline News 2007 -Pocatello

The Red Lion Hotel, Pocatello from 8:30 a.m.–3:00 p.m. (MST) (5.0 CLE credits of which 1 hour is ethics credit) As the end of the year approaches, the Idaho Law Foundation is pleased to sponsor our annual Headline News “year in review” seminar. The presentations are designed to be of interest to all Bar members and this year will include an hour of ethics credits.

### December 11

#### Video Replay: High Tech Ethics—part 2

The Law Center, 525 W. Jefferson Street in Boise from 12:00–1:00 p.m. (MST) (1.0 CLE credits RAC approved) Grab some last minute CLE credits before your reporting period ends.

### December 14

#### Headline News 2007 -Boise

The Oxford Suites, Boise from 8:30 a.m.–3:15 p.m. (MST) (5.0 CLE credits of which 1 hour is ethics credit) As the end of the year approaches, the Idaho Law Foundation is pleased to sponsor our annual Headline News “year in review” seminar. The presentations are designed to be of interest to all Bar members and this year will include an hour of ethics credits.

### 2008 CLEs

Check our website to make sure the 2008 dates are current: [www.isb.idaho.gov](http://www.isb.idaho.gov)

#### Young Lawyers

#### 2008 Topic: Litigation

3rd Wednesday of every month

1/15, 22, & 29

#### ILF-Video Replays

Lunch Hour, Law Center, Boise

2/8

#### Civil Practice Update

Idaho Law Foundation, Boise Centre on the Grove

2/28 - 3/1

#### Commercial Law and Bankruptcy Seminar

Moscow, Idaho

3/7

#### Workers Compensation Annual Seminar

Sun Valley, Idaho

4/25

#### Idaho Practice Skills Training

Boise Centre on the Grove

5/16

#### Business and Corporate Law Annual Seminar

Boise Centre on the Grove

## The Law Center

525 West Jefferson Street, Boise, Idaho 83702

Telephone: (208) 334-4500, Fax: 334-4515 or (208) 334-2764

Office Hours: 8:00 a.m. – 5:00 p.m. MST

Monday – Friday, except for state holidays

## COMING EVENTS

12/1/07 – 1/31/08

*These dates include Bar and Foundation meetings, seminars, and other important dates. All meetings will be at the Law Center in Boise unless otherwise indicated. Dates might change or programs may be cancelled. The ISB website ([www.idaho.gov/isb](http://www.idaho.gov/isb)) contains current information on CLEs. If you don't have access to the Internet please call (208) 334-4500 for current information. (DATES MAY CHANGE OR PROGRAMS MAY BE CANCELLED)*

### DECEMBER

- 3 *The Advocate* Deadline
- 7 Idaho State Bar Board of Commissioners Meeting
- 19 *The Advocate* Editorial Advisory Board Meeting
- 24 Christmas Day Holiday, Law Center Closed
- 25 Christmas Day, Law Center Closed

### JANUARY

- 1 New Year's Day, Law Center Closed
- 2 *The Advocate* Deadline
- 9 Public Information Committee Meeting
- 16 *The Advocate* Editorial Advisory Board Meeting
- 18 Idaho State Bar Board of Commissioners Meeting
- 21 Martin Luther King Jr. Day, Law Center Closed
- 25 Idaho Law Foundation Board of Directors Meeting



## Computer Forensics

Consulting ■ Recovery  
Expert Testimony  
eDiscovery ■ Imaging  
Analysis ■ Presentation  
EnCase® Certified Examiner

**We identify, collect, recover, preserve and analyze digital information.**



**CusterAgency**  
Computer Forensics Division



[custeragency.com](http://custeragency.com)  
**208.562.0200**



● ● ● **What if coverage benefits exceeded your expectations?**

Contact Moreton today!  
**208-321-9300**  
**800-341-6789**  
[www.moreton.com](http://www.moreton.com)

Since 1910  
**Moreton & Company**  
...an Assure Global Partner  
*Beyond what you'd expect*

### **We offer free services to supplement your lawyers' malpractice coverage.**

With lawyers' professional liability coverage from Zurich, you gain peace of mind with free access to VersusLaw™ for online research, a loss prevention hotline manned by Hinshaw & Culbertson for free consultation and the ability to report claims 24/7, toll-free. It all adds convenience and cost savings to your coverage benefits. For greater value.

*Because change happenz™*





STEVENS PIERCE & ASSOCIATES, CPAs

*Bringing More To The Table*

*Call (208)734-8662 to schedule a consultation!*



Ruth S. Pierce, CPA, CVA, FCPA

### DOES YOUR CASE NEED ADDITIONAL PERSPECTIVE?

We Bring To The Table the ability to enhance:

- The litigation process
- The negotiating position
- The outcome of the settlement
- The likelihood of a satisfactory out-of-court settlement amount
- The probability of winning the case

All of which  
-Enhance the satisfaction of your client!



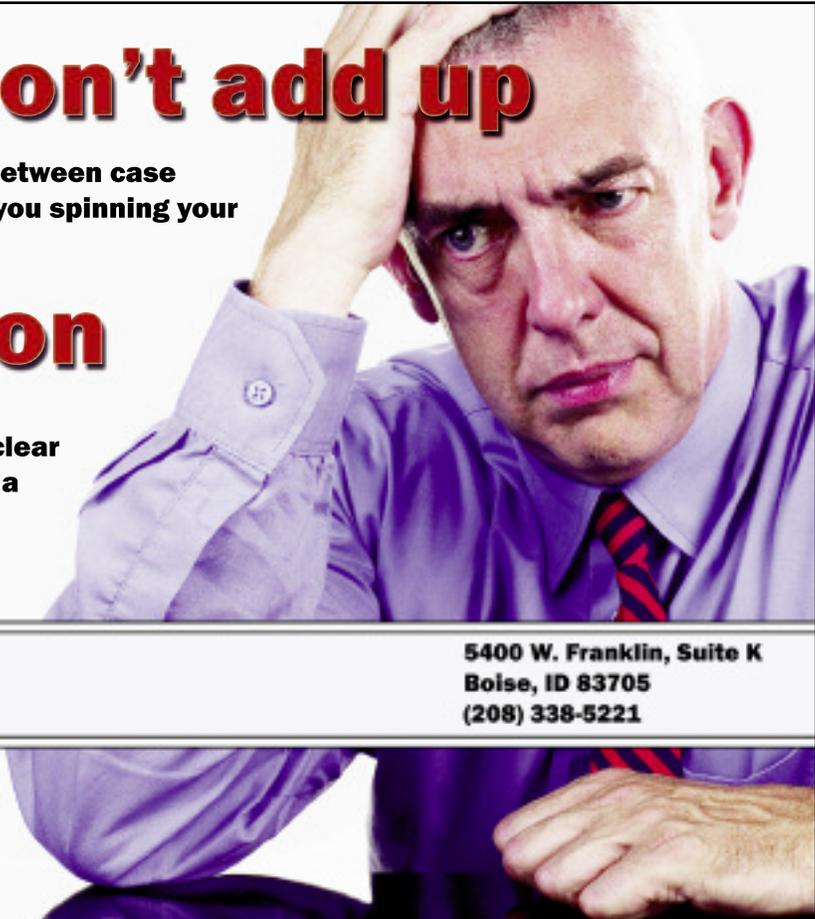
PO BOX 145  
320 Main Ave. N.  
Twin Falls, ID 83303  
(208) 734-8662  
(208) 734-8685 Fax

# The facts don't add up

**Overwhelmed by inconsistencies between case facts and your client's story? Are you spinning your wheels as time runs out?**

## Your solution

**We conduct confidential forensic interviews and provide you with a clear picture of the facts. Call today for a free case consultation.**



Idaho  
**POLYGRAPH**  
Associates

5400 W. Franklin, Suite K  
Boise, ID 83705  
(208) 338-5221



James Page



Chip Morgan



Can a digital interface replace  
a moment of contemplation?

Can it replace a subtle gesture  
of understanding?

Or a look in the eye?

[watrust.com](http://watrust.com)

Member FDIC

We don't think so. Though we believe in automated services, we also believe that great things happen when people get together face to face.

 **Washington Trust Bank**  
**BEYOND MONEY**

For trusting us with your referrals. . .



Thank You

■ Personal Injury

■ Workers' Compensation

■ Arbitration

■ Sexual Harassment Cases

■ Insurance Bad Faith

**SEINIGER**  

---

---

**LAW OFFICES**

**BRECK SEINIGER**  
AV rated by peer review process

*Licensed in*  
Idaho • Oregon • Washington

wbs@SeinigerLaw.com



[www.IdahoRights.com](http://www.IdahoRights.com)

(208) 514-4455 • 942 W. Myrtle St. • Boise, Idaho 83702 • Fax (208) 345-4700