



The
Advocate

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the Health Law Section



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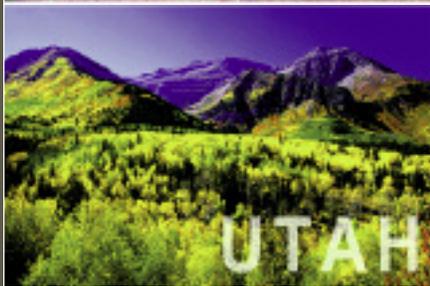
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ON THE COVER—

The cover photograph was taken by Paul Lehnert in the area of Castle Hill, Budapest, Hungary. Mr. Lehnert is the husband of Boise attorney, Lorna Jorgensen; Ada County Prosecutor's Office.

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

Cover Work Wanted

The Advocate seeks front cover original works of art or photography. Photos should be vertical with space at the top left for The Advocate logo and the bottom left for the mailing box. The main body should be somewhere in the middle. Please send photos to Bob Strauser at rstrauser@isb.idaho.gov or call (208) 334-4500.

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Jeanne S. Barker

Managing Editor

jbarker@isb.idaho.gov

Robert W. Strauser

Advertising Coordinator

Senior Production Editor

rstrauser@isb.idaho.gov

Communications Assistant

Kyme Graziano

kgraziano@isb.idaho.gov

www.idaho.gov/isb

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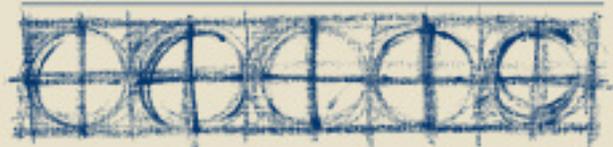
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CIVILITY AND PROFESSIONALISM ARE IMPORTANT TO THE INTEGRITY OF THE PROFESSION

Terrence R. White
President



One of the benefits of becoming a Bar Commissioner is the opportunity to visit each of the district bars for three years on the state Bar annual Road Show. One can learn a lot from just listening to what is going on about the state. One concern is how to handle the occasional lack of civility that occurs from time to time in dealing with a fellow lawyer or judge. The biblical approach of turning the other cheek can get old if the only thing that happens is that both cheeks get hit repeatedly. The organized bar has established the rules of professional conduct which set forth minimally acceptable conduct before bar counsel and the disciplinary process kicks into action.

In addition, and located in the Idaho State Bar DeskBook, are the "Standards for Civility in Professional Conduct." This could also serve as a nice checklist for how to not practice law unprofessionally. It appears some may have misread the intention of these Standards (they are to encourage personal courtesy and professional integrity—not a "how to" on ways to the dark side).

Another benefit of serving on the bar commission is the opportunity to interact with the other bar associations around us. Not unsurprisingly, we are all basically facing the same problems. What is interesting are the varied approaches our neighboring states take to resolve similar issues. The opportunity to meet and discuss common concerns and approaches has been, in my opinion, very beneficial in shaping policy here in Idaho.

Stan Bastian, current president of the Washington State Bar, recently wrote an article in the Washington State Bar News (Washington's version of *The Advocate*) dealing with the importance of civility and professionalism to the integrity of the profession. Stan

developed 10 rules of conduct which, I think, is very well written and thought out. With Stan's permission, this is his list:

1. Respect your client. Your client's interests should be your primary concern when practicing law. Take time to understand your client's goals, and understand that they may be experiencing pain or frustration in their lives. You may not approve of their conduct, but you were hired to be on their side and help them solve the problem.

2. Respect your colleagues. Join a section, specialty bar association, or volunteer for the state bar. Incivility is based, in part, on lack of familiarity. The more we know our professional colleagues, the less likely we are to be unprofessional. When confronted with unprofessional conduct by a colleague, don't respond in kind. Treat others with dignity and respect, regardless of how they treat you.

3. Respect the legal profession. Win or lose, you represent the legal and judicial system to the public. Don't complain about the judge or the other attorney to your client. Respect the process, and the other participants, even if you are not happy with the most recent development. As an attorney, you set the tone for your client, and he/she likely won't display respect for the system if you don't. It's OK to be disappointed, but it's not OK to be disparaging. As officers of the court, it is our duty to always support the rule of law.

4. Be honest. Don't make unreasonable promises to the judge, other attorneys, or your client. If you make a promise, keep it. Don't misrepresent the facts to anyone. Admit your mistakes when necessary and correct misunderstandings and misinformation. Nobody's perfect, and your clients don't expect you to be. Telling the truth is always the best policy, even when doing so is difficult.

5. Be timely. This is a big source of client frustration with lawyers. Call them back, answer their letters, reply to their emails, and keep them informed. Treat the court and colleagues in the same way. Be timely when fil-

ing pleadings and responding to discovery requests.

6. Read and know the rules. The rules are there for a reason, and a practicing lawyer should always be familiar with them. Don't depend on the judge or the other attorney to know the rules for you. Ignorance simply wastes the court's time, your opponent's time, and your client's money.

7. Remain objective. The problems of your client are not your problems. Your job is to help solve these problems, and you can do that best only when you remain objective. Don't practice angry. Behave in a way that will get a positive result.

8. Avoid unnecessary conflict. The practice of law is stressful enough. Why create unnecessary conflicts and disputes? If your adversary asks for a concession, favor, or time extension and it is within your power to say yes—then by all means grant the request. Why not? Some day you will be in the position of making a similar request. Take into account the demands on and limitations of others.

9. Be prepared. Don't expect the judge or opposing lawyer to solve your problems. Try to figure it out yourself. Work hard, come up with your own solution, and be prepared with a proper legal argument.

10. Practice with integrity. Professional conduct and civil behavior should not exist only in the courtroom, or when the judge is present. It has to be part of your daily practice. Use the discovery process properly, and not with the intent to harass or oppress your opponent. Follow the rules, speak the truth, and seek the truth. Take action with the proper motive, not with the intent to harass, annoy, or burden. Your objective should never be to oppress or inconvenience the opponent. Remember, your objective is to solve your client's legal problem. That should be your only objective when representing a client.

I think these 10 rules would serve us all well. We all have a right to expect professionalism and courtesy from the courts, opposing

counsel, and ourselves. As stated in the preamble to the Idaho Rules of Professional Conduct, "A lawyer, as a member of the legal profession, is representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice." Each of us needs, from time to time, to reflect and make sure we are adhering to these standards.

Terrence R. White is a partner in the Nampa law firm of White Peterson, PA. He is

serving a six-month term as President of the Idaho State Bar Board of Commissioners. He represents the Third and Fifth Districts. Terry grew up in New Plymouth, Idaho, and received his undergraduate and law degrees from the University of Idaho.

DISCIPLINE

DAVID J. SMETHERS

(Withheld Suspension/Public Reprimand)

On April 18, 2008, the Idaho Supreme Court issued a Disciplinary Order suspending David J. Smethers from the practice of law for a period of sixty (60) days, with all sixty days withheld, placing him on Bar Counsel probation and imposing a public reprimand.

The Idaho Supreme Court found that Mr. Smethers violated Idaho Bar Commission Rule 505(b) [Criminal conduct] and Idaho Rule Professional Conduct 8.4(b) [Commission of a criminal act].

The Idaho Supreme Court's Disciplinary Order followed a stipulated resolution of an Idaho State Bar disciplinary proceeding in which Mr. Smethers admitted that he violated I.B.C.R. 505(b) and I.R.P.C. 8.4(b). The Complaint related to Mr. Smethers' conditional plea and sentence to the criminal charge of possession of a controlled substance charge, a felony, in violation of Idaho Code §37-2732(c). The District Judge placed Mr. Smethers on unsupervised probation and judgment was withheld for a period of four years under terms and conditions identified in the Order, including that Mr. Smethers shall, at his own expense, comply with a Southworth Associates Monitoring Contract.

The Disciplinary Order provides that Mr. Smethers' suspension is withheld subject to the terms and conditions of his one-year probation, which include: avoidance of any alcohol or drug related criminal acts or alcohol or drug related traffic violations; compliance with the Southworth Associates Monitoring Contract, which includes a program of random urinalysis that will test for cocaine; provision that if Mr.

Smethers tests positive for cocaine or misses a random urinalysis test, without prior approval, the entire withheld suspension shall be immediately imposed; and if Mr. Smethers admits or is found to have violated any of the Idaho Rules of Professional Conduct for which a public sanction is imposed for any conduct during his period of probation, regardless whether that admission or determination occurs after the expiration of the probationary period, the entire withheld suspension shall be imposed.

The withheld suspension and this public reprimand do not limit Mr. Smethers' 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.

AMENDED 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 Vanderbilt Mortgage & Finance in the amount of \$66,000.00. Please be advised that service of this claim is deemed complete fourteen (14) days after the publication of this issue of *The Advocate*.



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Board of Commissioners Change—Andrew E. Hawes, Immediate Past President and Commissioner representing the 4th District transferred to Portland, Oregon with his company Western Pacific Timber. Idaho Code Section 3-402 states “Each commissioner must be a member of the Idaho State Bar residing in or maintaining an office from which he primarily practices law in the state of Idaho, within the division from which he is selected at the time of his election and during his term of office.” Consequently, Andy resigned his position as a Commissioner in April. The commission voted to appoint Thomas A. Banducci, past ISB President and Commissioner, to fill the remainder of Andy’s term on the Commission. We wish Andy well in his new home.

ABA Delegate Position—The Idaho State Bar Board of Commissioners appoints one Bar member to the ABA House of Delegates. The term of Larry C. Hunter, the current state Bar delegate, expires in August 2008. The term of the newly-appointed delegate will be August 2008 to August 2010. The position holder is a voting member of the ABA House of Delegates which controls, formulates policy for, and administers the ABA. Interested attorneys should write or send an email to Executive Director Diane Minnich, P.O. Box 895, Boise, ID 83701 or dminnich@isb.idaho.gov by May 23, 2008.

American Bar Association Leadership Institute—Idaho State Bar Commissioners **B. Newal Squires**, Holland & Hart, Boise; and **Douglas Mushlitz**, Clark & Feeney, Lewiston, joined 300 other emerging leaders of lawyer organizations from across the country at the ABA Bar Leadership Institute (BLI) in Chicago in March. The BLI is held annually for incoming officials of local and state bars, special focus lawyer organizations, and bar foundations. It provides the new officials the opportunity to confer with ABA officials, bar leader colleagues, executive staff, and other experts on the operation of bar associations. Newal and Doug joined ABA President-Elect Tommy H. Wells of Birmingham, AL, and ABA Executive Director Henry F. White in sessions on bar governance, finance, communications, and planning for a presidential term. The new bar leaders were briefed on resources available from the ABA for local, state, national, and specialty bar associations and foundations. The BLI is sponsored by the ABA Standing Committee on Bar Activities and Services and the ABA Division for Bar Services as part of the Association’s long-standing goal of fostering partnerships with state and local bars and related organizations.

Hon. Sergio A. Gutierrez has been appointed Chief Judge for the Idaho Court of Appeals. Judge Gutierrez obtained a J.D. from the University of California, Hastings Law School. He practiced law in southwest Idaho until 1993, when he was appointed to the District Court. In 2002, he was appointed to serve on the Idaho Court of Appeals. Currently, he chairs the Idaho Supreme Court Fairness and Equality Committee. He recently served on the Governor’s Criminal Justice Commission.

The District Judges Association elected the following officers: President: Judge Kathryn Sticklen; Vice-President: Judge Steve Verby; Secretary-Treasurer: Judge Juneal Kerrick.

Hon. Mark A. Beebe, Sixth District Magistrate will retire on June 30. Judge Beebe is a University of Idaho College of Law graduate. He entered private practice and was the Power County prosecuting attorney before becoming a Power County Magistrate in 1985. He will serve as a senior judge for the Idaho Supreme Court, presiding over mag-

istrate hearings throughout Idaho.

Hon. John Mitchell, Kootenai County District Judge received the 2008 Mental Health Recognition Award from the Idaho State Planning Council on Mental Health at their annual legislative breakfast in Boise last month.

Hon. Mick Hodges, was appointed as Cassia County Magistrate on February 1, 2008. He replaced Judge Michael Crabtree who was appointed to the District Court bench.

Hon. Robert Crowley’s investiture ceremony was held at the Jefferson County Courthouse in Rigby on January 18. He replaced Judge Michael Kennedy who served in the position for 25 years.

Hon. James Stow was appointed as First Judicial District Magistrate with resident chambers in Kootenai County. He replaces Judge Robert Burton who retired after 17 years on the bench.

Hon. Daniel Steckel, was recently named Magistrate Judge in the Fourth Judicial District. He filled the vacancy left by Judge Richard Schmidt. Judge Steckel served in the Attorney General’s office from 1991-2007, and provided representation to the Department of Water Resources, the Idaho Human Rights Commission, and the State Division of Human Resources.

Tammy A. Fitting, Executive Office for Immigration Review (EOIR) was appointed as an immigration judge in March 2008. There are 50 immigration courts nationwide with more than 200 immigration judges. She received a B.A. from the University of Idaho and her J.D. from the UI College of Law. She is a member of the Washington and Idaho bars.

Idaho State Law Library has relocated. The 2008 Legislative Session passed SB1271 removing the requirement that the state law library be kept in the Capitol or Supreme Court building; and SB1271 adding a fourth judge to the Court of Appeals. With this legislation in place, the Law Library, located on the main floor of the Idaho Supreme Court building, has been relocated. This move will allow the Court of Appeals, currently housed in a rented, off-site space to move to the vacated Law Library space. This area is undergoing remodeling construction. It is anticipated the Court of Appeals will move to its new location the end of 2008 or beginning of 2009. The new location for the Law Library is: 4th Floor (Key Bank Building), 702 W. Idaho St., Boise, Idaho. Hours: 8:30 a.m. - 6:00 p.m., Monday - Friday. NEW CONTACT NUMBERS: Front Desk (208) 334-2117, Fax (208) 334-2467.

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ISB/ILF Committees *Volunteer Opportunities*

Member participation is vital to the success of the Idaho State Bar and Idaho Law Foundation. Lawyers can and do make a difference by participating on one of the many committees listed below. Committee assignments are three-year terms, and each year there are generally one to three openings available on each committee. Time commitments vary with each committee depending upon its function and meeting schedule. In the appointment process, consideration is given to geographic distribution, areas of practice, and other committee assignments or ISB/ILF involvement.

Please let us know if you are interested in contributing to the activities of the Idaho State Bar and the Idaho Law Foundation by serving on one of the committees, or participating in one of the programs listed below.

Please indicate your 1st, 2nd, or 3rd choice.



Idaho State Bar Volunteer Committees

- The Advocate* Editorial Advisory Board
meets monthly
- Bar Exam Grading
takes place twice a year
- Bar Exam Preparation
meets as needed
- Bar Exam Question Writers
no meetings
- Character and Fitness
meets as needed
- Fee Arbitration Panels
meets as needed
- Professional Conduct Board
meets as needed
- Lawyer Assistance Program
meets quarterly



Idaho Law Foundation Volunteer Committees

- Continuing Legal Education
meets quarterly
- IOLTA Fund
meets once a year
- Law Related Education
meets 3 times a year
- Idaho Volunteer Lawyers Program Policy Council
meets quarterly

I would like more information about the Bar Sections.

I would like more information about participating in the Foundation's Law Related Education Programs such as Mock Trial, or Lawyer in the Classroom

I am interested in participating in the Foundation's Idaho Volunteer Lawyers Program

Name: _____ Firm: _____

Address: _____ City: _____ Zip: _____

Phone: _____ Email: _____

Have you previously participated as a member of an ISB and/or ILF Committee?

No

Yes – Most recent committee assignment(s) _____

Please return this form no later than May 23, 2008

ISB/ILF Committees

P.O. Box 895

Boise, ID 83701

Or email your committee interests to dminnich@isb.idaho.gov



VOLUNTEER OPPORTUNITIES

Diane K. Minnich



Bar and Foundation activities are successful largely because of the volunteer efforts of our Bar members. The Bar Commissioners and the Foundation Directors are recruiting attorneys interested in volunteering their time to assist with ISB and ILF programs and activities.

The general responsibilities of each committee are outlined in this column. If you are interested in one of the volunteer opportunities listed, please complete the form on page 9 and return it to the ISB/ILF offices (committees listed here, but not listed on the committee request form have no available positions for 2008-09). If you have any questions about the committees, please contact me at dminnich@isb.idaho.gov or call (208) 334-4500.

Committee appointments are made at the July ILF and ISB Board meetings. In selecting committee replacements, the Board members consider geographic diversity, areas of practice, and other previous or current committee assignments.

IDAHO STATE BAR COMMITTEES

Note: Committee appointments are for three-year terms. Chairpersons are appointed for one-year terms.

Professional Conduct Board

Exercises general control over attorney discipline. Acts as an "intermediate appellate court" in attorney discipline matters. Receives and considers formal charge complaints, and makes recommendations for disposition to the Idaho Supreme Court. The newly adopted rules for review of professional conduct (Section V of the Idaho Bar Commission Rules), allow for additional members to be appointed to the Professional Conduct Board (PCB). The Board is specifically in need of volunteers from the Northern and Eastern parts of the state to serve on the PCB. *Meets in three-*

member panels as needed; Includes both lawyers and non lawyers.

Bar Exam Preparation Committee

Gathers and reviews questions and analyses for each bar exam. Recruits question writers to prepare questions and analyses. *Meets 4-6 times per year; 5 members.*

Bar Exam Question Writers: Drafts questions and analyses for bar exam. *No meetings.*

Character and Fitness Committee

Committee members review bar exam applicants for character and/or fitness issues. Makes recommendations to the Board of Commissioners on whether applicants should be allowed admission to the practice of law in Idaho. *Meets 4 to 6 times a year; 9 members (2 non-lawyers).*

Reasonable Accommodations Committee

Reviews requests and makes recommendations to the Board of Commissioners regarding reasonable accommodations for the bar exam. *Meets as needed; 3 members.*

Client Assistance Fund Committee

Reviews claims against Client Assistance Fund for attorney misappropriation of funds due to dishonesty. *Meets as needed; 5 members (2 non-lawyers).*

Fee Arbitration Panels

Reviews matters submitted by clients disputing attorney fees. Panels formed as needed. If the disputed amount is \$2,500 or less, it is assigned to a one-lawyer panel; if disputed amount is more than \$2,500, it is assigned to a three-member panel, which includes one non-lawyer.

Unauthorized Practice of Law Committee

Reviews unauthorized practice of law complaints. Oversees investigations and makes recommendations for disposition to the Board of Commissioners. *Meets twice a year; 4 members.*

The Advocate

Editorial Advisory Board

Determines the theme, selects/recruits authors for lead articles, and reviews the contents of each issue of *The Advocate*. *Meets the third Wednesday of each month; 10-12 members.*

Public Information Committee

Works to foster awareness of the positive role of lawyers and the judicial system in Idaho. *Meets quarterly; 12 members (3 non-lawyers).*

Lawyer Assistance Program

Oversees the LAP program, which helps and support lawyers who are experiencing problems associated with alcohol and/or drug use or mental health issues. *Meets quarterly. 15-17 members.*

IDAHO LAW FOUNDATION COMMITTEES

Idaho Volunteer Lawyers

Program Policy Council

Plans and reviews programs, policies and procedures for IVLP. Makes recommendations to ILF Board of Directors. *Meets quarterly; 13-14 members (3-4 non-lawyers).*

Law Related Education Committee

Promotes and oversees law related education programs. *Meets 3-4 times a year; 14-15 members (5-6 non lawyers).*

Continuing Legal Education

Committee

Plans and oversees Idaho Law Foundation CLE programming of subjects, speakers, course materials and policies. *Meets three times a year; 15-16 members.*

IOLTA Fund Committee

Reviews and considers IOLTA grant applications. Recommends grant recipients to the Board of Directors. *Meets once a year; 10 members.*

Delivery of Legal Services Advisory Council

This joint ISB/ILF committee is responsible for the development and oversight of a comprehensive, long-term plan for the

coordination, delivery and funding of legal services to low-income individuals and groups in Idaho. *Meets three times a year; 15 members.*

OTHER VOLUNTEER OPPORTUNITIES

ILF Law Related Education

Attorneys are needed to assist with the high school mock trial competition, the Lawyers in the Classroom program, Law Day activities, and Citizens Law Academy.

Sections of the Bar: ISB Sections welcome assistance with program planning, newsletters, publications and public service projects. There are currently 19 Idaho State Bar sections.

Idaho Volunteer Lawyers Program

Attorneys are needed to provide pro bono assistance to low-income individuals through direct case representation, brief legal services, workshops or mentoring.

District Bar Associations: As a member of your local district bar association, you can assist with educational programs, social events, and public service activities.

We offer our thanks to those of you who have committed your time, expertise and energy to the work of the Bar and Foundation. The organizations are able to provide needed service to the profession and the public because of your volunteer efforts.

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in•tent

adj.

- 1 firmly directed; earnest
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WELCOME FROM THE HEALTH LAW SECTION

Stephanie Westermeier
St. Alphonsus Regional Medical Center

The Health Law Section of the Idaho State Bar welcomes the opportunity to sponsor the May issue of The Advocate. We are hopeful that the articles in this issue contain both thought-provoking and useful information for health lawyers as well as lawyers who practice in other areas.

Health law is a dynamic, growing practice area. When one thinks of a health lawyer, it calls up a number of different meanings. There is no "typical" health care lawyer. This is because health lawyers work with more "traditional" health law issues and those issues connected to the ever-growing rubric of health care regulations of providers and payors of health care. For example, a health lawyer may advise clients regarding health care issues such as health care professional licensing and profession regulation, professional liability litigation, health-care decision-making, consent and end of life issues, patient privacy, insurance regulation, employment issues, drug and device issues, antitrust issues, and many others. In addition to these more "traditional" health law issues, practitioners of health law may analyze and advise clients regarding the multiple, complex, and ever-changing laws and regulations governing billing and reimbursement and relationships between and among health care providers which arise out of the federal and state government's payment for health care service delivery.

The Health Law Section's members, as well as this Advocate issue, reflect the diversity of issues and specialization within the health care practice area discussed above. First, there will be several articles touching upon laws and regulations impacting health care provider relationships. It is important for lawyers to be aware that relationships which would be completely lawful in other settings may have civil and criminal consequences if entered in the health care setting. Kim Stanger has written an overview of the principle laws which affect health care provider relationships and transactions. Pat Miller's article highlights recent and interesting enforcement activities in this area. These two articles are followed by articles in more traditional areas of health law, namely, professional liability litigation, health care decision-making, consent and end of life issues. Steve Hippler's "Tort Reform: Close, But not Enough" focuses on the challenges for counsel attempting to assess client exposure which is posed by Idaho's cap on economic damages given the statutory exception for "reckless conduct," proposing statutory changes to the exception. Professor Monique Lillard's article discusses her view of the legal climate in medical malpractice litigation in Idaho under its current statutory scheme and underlines her recommended changes. The last two articles Charina Newell's coverage of informed consent law and Pete Sisson's article concerning end of life issues contain practical information for all lawyers and consumers of health care services regarding the legal issues affecting personal health care decision-making as well as surrogate decision-making for family members and others.

The Health Law Section is a relatively new section, less than ten years old, and is currently composed of 66 members. This year, we would like to expand the active participation of our membership, including but not limited to attorneys who are affiliated with health care entities, insurance companies, and federal and state government. Section meetings are currently held on the first Thursday every other month (February, April, June, August, October, December) at the Idaho State

Bar offices in Boise. Section members are encouraged to attend in person but are also welcome to attend by telephone, particularly those members who practice outside of Boise. Section meetings contain a CLE regarding a salient and current issue in health law. (Did I mention that since the meetings are at noon there is always a great lunch and that we have a high proportion of members who approach practice (and the meetings) with a sense of humor, which is particularly appreciated?) The Health Law Section is planning at least one activity for Section members attending the American Health Lawyers' Association Annual Meeting, June 30, 2008 through July 2, 2008 in San Francisco. The Health Care Section extends a sincere invitation to all lawyers who practice in any area of health law to actively participate in the Section to broaden your base of legal knowledge regarding health law and current issues as well as to network and communicate with the diverse, interesting (and humorous) group of Idaho health lawyers.

ABOUT THE AUTHOR

Stephanie C. Westermeier is Vice-President and General Counsel at Saint Alphonsus Regional Medical Center in Boise. She organized and implemented an in-house legal department at Saint Alphonsus beginning in the summer of 2001. Prior to joining Saint Alphonsus, Ms. Westermeier was a partner and on the executive management committee at Givens Pursley LLP, in Boise. She graduated with her J.D. from the University of Utah College of Law in 1991 as a William H. Leary Scholar. She served as Chairperson of the Health Law Section in 2006-2007 and is serving a second term for 2008-2009.

HEALTH LAW SECTION

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Saint Alphonsus Regional Medical Center, Inc.
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TRAPS FOR THE UNWARY: OFTEN OVERLOOKED LAWS AND REGULATIONS AND THEIR AFFECT ON HEALTHCARE TRANSACTIONS

Kim C. Stanger
Hawley Troxell Ennis & Hawley, LLP

In an effort to limit the rising cost of government health care programs, federal and state governments have enacted often little known and even less understood laws and regulations that affect health care transactions in surprising ways. These laws are landmines for the uninformed practitioners who structure transactional deals for physicians and other health care providers. Triggering any of these landmines, potentially exposes both the provider and their attorneys to significant civil and criminal penalties. This article will act as a mine detector by briefly summarizing some of the more prominent laws and regulations affecting common health care transactions.

ANTI-KICKBACK STATUTE (AKS)

*The federal AKS prohibits anyone from knowingly and willfully soliciting, offering, receiving, or paying any form of remuneration to induce referrals for any items or services for which payment may be made by any federal health care program.¹ The AKS is a criminal statute. A violation is a felony, and may result in a \$25,000 fine and/or imprisonment for up to five years.² It may also serve as the basis for qui tam actions and civil penalties under federal fraud and abuse claims.³ The statute is very broad—it applies to any form of remuneration, including kickbacks, free or discounted items or services, business opportunities, perks, or anything else of value. Thus, the statute potentially applies to contracts, leases, ownership or investment interests, gifts, promotions, and any other arrangements between potential referral sources. It applies if ‘one purpose’ of the transaction is to generate improper referrals.⁴ It applies to any people who are in a position to make or influence referrals, including health care providers, management, program beneficiaries, vendors, and even attorneys. In *U.S. v. Anderson*⁵, for example, hospital administration and its outside attorneys were indicted for entering contracts with physicians to provide medical director services as a way to generate referrals from the physicians and business for the hospital.*

As ominous as the prohibitions sound, there are a few significant limitations to the AKS. First, it only applies to referrals for items or services payable by government health care programs such as Medicare or Medicaid.⁶ If the parties to the arrangement do not participate in government programs or are not in a position to make referrals relating to government programs, then the statute does not apply. Second, to violate the law, a party must not only intend to commit the prohibited act, but he or she must also intend to violate the law.⁷ Third, because of its potential breadth, the federal government has issued statutory exceptions and regulatory ‘safe harbors’ which offer protection if the transaction fits all the specified requirements.⁸ For example, exceptions and safe harbors apply to employment or personal services contracts, space or equipment leases, investment interests, etc.⁹ Fourth, interested persons who are concerned about a transaction may obtain an Advisory Opinion¹⁰ from the Office of Inspector General (OIG) concerning the proposed transaction. Although the Advisory Opinions are only binding on the parties to the specific opinion, they do provide guidance for others seeking to structure a similar transaction. Together, these limitations provide practitioners with a roadmap and guidance to avoid federal criminal or civil sanctions.

ETHICS IN PATIENT REFERRALS ACT (STARK)

The federal Stark law prohibits physicians from referring patients for certain designated health services to entities with which the physician (or a member of the physician’s family) has a financial relationship unless the transaction fits within a regulatory safe harbor.¹¹ Stark also prohibits the entity that receives the improper referral from billing for the items or services rendered per the improper referral.¹² Unlike the AKS, Stark is a civil statute: violations may result in civil fines ranging up to \$15,000 per violation, and up to \$100,000 per scheme.¹³ Unlike the AKS, Stark is a strict liability statute; it does not require intent.¹⁴ Also, Stark only applies to referrals by physicians, which includes medical doctors, doctors of osteopathy, podiatrists, dentists, chiropractors, and optometrists¹⁵, or with members of such physicians’ families. Stark does not apply to transactions with other health care providers. Finally, unlike the AKS, Stark only applies to referrals for certain “designated health services” payable by Medicare and Medicaid¹⁶; it does not apply to referrals for other items or services.

Like the AKS, Stark is very broad—it applies to any type of financial relationship between physicians (and their family members) and a potential referral source, including any ownership, investment, or compensation relationships.¹⁷ Thus, the statute applies to everything from ownership or investment interests to compensation among group members as well as contracts, leases, waivers, discounts, or any other transaction in which anything of value is shared between the parties. If Stark applies to a financial relationship, then the parties must either structure the arrangement to fit squarely within one of the regulatory safe harbors applicable to many common transactions¹⁸, or not refer patients to each other for the designated health services covered by the statute and regulations.

CIVIL MONETARY PENALTIES LAW (CMP)

The CMP prohibits certain transactions that have the effect of increasing utilization or costs to federally funded health care programs.¹⁹ For example, the CMP prohibits offering or providing inducements to a Medicare or Medicaid beneficiary that is likely to influence the beneficiary to order or receive items or services payable by federal health care programs.²⁰ This law may affect health care provider marketing programs as well as contracts or payment terms with program beneficiaries.²¹ Similarly, the CMP law prohibits hospitals from making payments to physicians to induce the physician to reduce or limit services covered by Medicare.²² Thus, the CMP law generally prohibits so-called “gainsharing” programs in which hospitals split cost-savings with physicians.²³ Finally, the CMP law prohibits submitting claims for federal health care programs based on items or services provided by persons excluded from health care programs.²⁴ As a practical matter, the statute prohibits health care providers from employing or contracting with persons who have been excluded from participating in federal health care programs.²⁵ Violations of the CMP statute may result in significant penalties ranging from \$2,000 to \$50,000 per violation.²⁶

MEDICARE REIMBURSEMENT RULES

The Center for Medicare and Medicaid Service (CMS) has volumes of esoteric rules that apply to reimbursement for services provided under government health care programs hidden in federal regulations and program manuals. For example, the rules govern such items as when a health care provider may bill for services provided by another entity; supervision required for such services; and the location that such services may be performed. In addition, the amount of government reimbursement may differ depending on how the transaction is structured, e.g., whether it is provided through an arrangement with a hospital, or by a separate clinic or physician practice. The rules concerning reimbursement and reassignment should be considered in structuring health care transactions if the entities intend to bill government programs for services.

IDAHO ANTI-KICKBACK STATUTE

Idaho has its own, little-known version of the AKS. Idaho prohibits health care providers from paying others to make referrals to the provider, or from providing services to someone who was referred in exchange for a payment for the referral.²⁷ In addition, the statute also prohibits health care providers from engaging in a regular practice of waiving, rebating, giving, paying or offering to waive, rebate, give or pay all or a part of a person's health insurance deductible.²⁸ Persons who violate the statute may be subject to a \$5000 fine.²⁹ The Idaho statute is potentially broader than the federal AKS or Stark because it is not limited to items or services covered by government health care programs.

Nevertheless, the statute also contains some significant limitations. First, the statute was passed by insurance companies that were attempting to limit inducements for services covered by health insurance. To that end, the statute applies to services provided to "claimants,"³⁰ which presumably means those patients who submit claims to health insurance; it is not clear to what extent the statute would apply to others. Second, by its express terms, it only applies to the "treatment of physical or mental illness or injury arising in whole or substantial part from trauma."³¹ Arguably, it would not apply to treatment for other conditions.

IDAHO MEDICAL PRACTICES ACT

Idaho's Medical Practices Act and similar licensing statutes prohibit "fee-splitting", i.e., the dividing of fees or gifts received for professional services in exchange for referrals, or giving or receiving rebates for services provided.³² The violation of the statute could result in professional discipline and loss of licensure.³³ Although there do not appear to be any reported Idaho cases directly interpreting or applying the statute, the statute may apply in any situation between physicians and potential referral sources where some benefit is conferred in exchange for referrals.³⁴ Given the scope of this act's application to referrals, its impact is potentially broader than the federal AKS.

CORPORATE PRACTICE OF MEDICINE DOCTRINE (CPOM)

Under the corporate practice of medicine doctrine, only certain licensed health care professionals (e.g., physicians) may practice medicine; corporations may not employ physicians to practice medicine for fear of improperly influencing medical judgment. It is not clear to what extent the CPOM applies in Idaho. In *Worlton v. Davis*, the Idaho Supreme Court declared:

*It is well established that no unlicensed person or entity may engage in the practice of the medical profession through licensed employees; nor may a licensed physician practice as an employee of an unlicensed person or entity. Such practices are contrary to public policy.*³⁵

Worlton appears to be a bit of an anomaly in Idaho law. There do not

appear to be any Idaho CPOM cases preceding it, and *Worlton* is rarely referenced or relied upon in practice.

Idaho statutes authorize hospitals, managed care organizations (MCOs), and certain other licensed health care entities to make health care available through employed physicians, and the corporate code allows physicians and other health care providers to practice through professional corporations and associations.³⁶ Accordingly, it is common for hospitals and other health care entities to employ physicians and other health care professionals. Nevertheless, the Idaho Board of Medicine periodically cites the *Medical Practices Act*³⁷ and *Worlton* to warn that certain physician employment arrangements (outside the scope of hospitals, MCOs, and other licensed health care entities) may violate the *Medical Practices Act* if they unduly interfere with the physician's independent medical judgment.³⁸ Health care providers should at least consider the possibility of CPOM issues when structuring employment relationships with physicians.

CONCLUSION

The foregoing is a brief summary of some of the more significant laws and regulations that may affect common health care transactions. As in all cases, the devil is in the details (as well as the voluminous Code of Federal Regulations and CMS Medicare Manuals). Attorneys advising health care professionals and providers should carefully review these laws and associated regulations as well as other whenever structuring a health care transaction, especially if that transaction involved potential referral sources or implicates federal health care programs.

ABOUT THE AUTHOR

Kim Stranger is a partner at *Hawley Troxell Ennis & Hawley* and is President of the Idaho Association of Hospital Risk Managers. He advises individual and institutional health care clients in transactions and regulatory matters, and defends health care professionals in administrative and civil litigation. He is a frequent speaker and author on health care issues, including defense tactics; risk management; Medicare/Medicaid; EMTALA; and HIPAA. Mr. Stanger's recent publications and presentation may be accessed at *Hawley Troxell's* website, www.hteh.com.

ENDNOTES

¹ 42 U.S.C. § 1320a-7b(b).

² *Id.* § 1320a-7b(b)(1)(B), (2)(B).

³ See, e.g., 42 U.S.C. § 1320a-7a(5); 42 U.S.C. § 1320a-7(b)(7); 31 U.S.C. §§ 3729-3733; *United States ex rel. Thompson v. Columbia/HCA Healthcare Corp.*, 20 F. Supp.2d 1017 (S.D. Tex. 1998).

⁴ *United States v. Kats*, 871 F.2d 105 (9th Cir. 1989); *United States v. Greber*, 760 F.2d 68 (3d Cir.), cert. denied 474 U.S. 988 (1985).

⁵ *United States v. Anderson*, Case No. 98-20030-01/07 (D. Kan. 1998).

⁶ See 42 U.S.C. § 1320a-7b(b)(1)(B), (2)(B).

⁷ *The Hanlester Network v. Shalala*, 51 F.3d 1390 (9th Cir. 1995).

⁸ 42 U.S.C. § 1320a-7b(3); 42 C.F.R. § 1001.952.

⁹ *Id.*

¹⁰ Past Advisory Opinions are published on the OIG's website, www.bhh.oig.hhs.gov/fraud. Although the Advisory Opinions are only binding on the parties to the specific opinion, they do provide guidance for others seeking to structure a similar transaction.

¹¹ 42 U.S.C. § 1395nn; 42 C.F.R. §§ 411.351 et seq.

¹² 42 C.F.R. § 411.353(b).

¹³ 42 U.S.C. § 1395nn.

¹⁴ See 42 C.F.R. § 411.353(a), (b).

¹⁵ *Id.* § 411.351.

¹⁶ The “designated health services” covered by Stark include clinical laboratory services; physical therapy, occupational therapy and speech-language pathology services; radiology and other imaging services; radiation therapy; durable medical equipment and supplies; prosthetics, orthotics, prosthetic devices and supplies; home health services; outpatient prescription drugs; inpatient and outpatient hospital services; and parenteral and enteral nutrients. 42 C.F.R. § 411.351.

¹⁷ 42 C.F.R. § 411.351.

¹⁸ *Id.* §§ 411.355-357.

¹⁹ 42 U.S.C. § 1320a-7a.

²⁰ *Id.* § 1320a-7a(a)(5).

²¹ See *Offering Gifts and Other Inducements to Beneficiaries*, *OIG Special Advisory Bulletin* (Aug. 2002); *Routine Waiver of Part B Co-Payments/Deductibles*, *OIG Special Fraud Alert* (May 1991).

²² 42 U.S.C. § 1320a-7a(b).

²³ See, e.g., *Gainsharing Arrangements and CMPs for Hospital Payments to Physicians to Reduce or Limit Services to Beneficiaries*, *OIG Special Fraud Alert* (July 1999).

²⁴ 42 U.S.C. § 1320a-7a(a)(1)(C), (2).

²⁵ *The Effect of Exclusion from Participation in Federal Health Care Programs*, *OIG Special Advisory Bulletin* (Sept. 1999).

²⁶ 42 U.S.C. § 1320a-7a(a), (b).

²⁷ *Idaho Code* § 41-348(1).

²⁸ *Id.* § 41-348(2).

²⁹ *Id.* § 41-348(4).

³⁰ *Id.* § 41-348(1).

³¹ *Id.* § 41-348(3)(a).

³² *Id.* § 54-1814(8), (9).

³³ See *id.*

³⁴ See *Miller v. Haller*, 19 *Idaho* 345, 924 P.2d 607 (1996) (suggesting that the prohibition in the statute applies where the division of fees or money has changed hands in direct exchange for referrals).

³⁵ 73 *Idaho* 217, 221, 249 P.2d 810, ____ (1952).

³⁶ See, e.g., *Idaho Code* §§ 30-1301 *et seq.*

³⁷ *Id.* §§ 54-1803-1804.

³⁸ See, e.g., *Idaho Board of Medicine, “The Report”* (Spring 2006); *Memorandum from J. Uranga to Idaho State Board of Medicine, Corporate Practice of Medicine* (Feb. 26, 2007).

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HEALTH FRAUD ENFORCEMENT UPDATE

Pat Miller
Givens Pursley LLP

THE DOLLAR IMPACT OF HEALTHCARE FRAUD

For fiscal year 2006, the federal government reported that it had recovered over \$1.78 billion in Medicare and other governmental program monies that were obtained through fraudulent or abusive practices. For fiscal year 2005, the federal government reported that it had recovered nearly \$1.55 billion through its fraud and abuse enforcement efforts. At first blush, this sounds like a lot of money, but when compared to the \$800 to \$900 billion the federal government spent on healthcare in 2005, the number is a little less frightening (i.e., the amount recorded in fraud and abuse recoveries was approximately .18% of the amount the government spent on healthcare).

In 2002, in *An Overview of Healthcare Fraud and Abuse*¹ it was posited that the driving force behind the focus on healthcare fraud and abuse in the 1990s was the double digit increases in healthcare expenditures in the 1980s. The article also asked whether, in the post 9/11, post-Enron world, the government's significant attention to healthcare fraud and abuse would take a back seat to higher priorities. As the above numbers indicate, the federal government's focus on healthcare fraud and abuse is not as significant as it was in the 1990s. Has this anticipated change in focus had any impact?

The Congressional Budget Office (CBO) reports that in 1960, healthcare spending was 4.7% of the Gross Domestic Product (GDP) and had increased steadily through 2005 to the point where it was \$1.9 trillion – or 14.9% of the GDP. The notable exception was from 1993 to 2000, where healthcare expenditures (as a percentage of the GDP) remained relatively stable. The CBO study states that many analysts have attributed the lull in the 1990s to a substantial increase in the number of people who enrolled in managed care plans, as well as to excess capacity. It is, however, interesting to note that healthcare fraud and abuse enforcement was very aggressive in the 1990s. The government's focus on healthcare fraud and abuse through passage of the Stark Law,² the issuance of fraud alerts, stepped-up enforcement activity under the Anti-Kickback Statute, and, in 1997, the passage of significant additional anti-fraud legislation, put the threat of fraud and abuse enforcement in the forefront of every healthcare executive's mind.

Since 2001, however, healthcare fraud enforcement, though still significant, has no longer been the front page issue that it was in the 1990s. To be sure, not only did the focus on healthcare fraud and abuse enforcement wane in the post-September 11, 2001 world, but the focus on the management of healthcare crises also changed as the government's attention focused on other national priorities. One can only speculate whether any correlation exists between the diminished emphasis on healthcare fraud enforcement and the return to double digit inflation in healthcare costs. With healthcare returning as a front page issue in this election year, and with a new presidential administration coming in 2009, it will be interesting to see whether stepped-up healthcare fraud and abuse enforcement gains momentum as a method of slowing the increase in the cost of healthcare.

HEALTHCARE FRAUD ENFORCEMENT IN IDAHO Government Enforcement

In Idaho, healthcare fraud is enforced on multiple levels. The Federal Office of Inspector General has a locally staffed office that is

empowered to conduct administrative investigations and proceedings. These agents also work with the local United States Attorney's Office, which has a designated Assistant United States Attorney for healthcare fraud.

At the state level, the Department of Health and Welfare has an established unit to detect and investigate healthcare fraud and abuse by, among other things, electronically evaluating claims submission patterns to determine whether certain physicians appear to disproportionately bill larger amounts for particular services with similar patient populations than other providers. Idaho also has a recently established Medicaid Fraud Unit that has the independent power to seek out and investigate healthcare fraud.³ This recently established unit is staffed by two full-time attorneys and two full-time investigators.⁴

In speaking with these offices, the most common healthcare fraud seen in Idaho involves billing Medicaid or Medicare for services which were not provided by the type of professional provider who is legally empowered to bill under these government programs. This occurs most frequently in the mental health area, where only certain types of licensed mental health professionals are authorized to bill Medicare and Medicaid. Another problem has been mental health providers billing for individual mental health care when the care was actually provided in a group setting. Claims have also been prosecuted against billing staff who inflated bills and kept the cost difference for themselves. There has not, however, been a high profile, government-related healthcare fraud and abuse case in Idaho similar to those in other jurisdictions, which are described below. Likewise, there has not been a government-initiated anti-kickback or Stark Law case brought in Idaho.⁵

Qui Tam Actions

In addition to government enforcement actions, a frequent source of healthcare fraud litigation across the nation is whistleblower or "Qui Tam" actions. Under 31 U.S.C. § 3730(b), an individual (known as a "relator") may bring a civil action for violation of the federal civil False Claims Act (FCA). Qui Tam actions must first be served upon the federal government, which permits the federal government an opportunity to determine whether to intervene and conduct the action. If the government chooses not to intervene, the individual bringing the action has the right to conduct the action. The governmental determination affects the personal stake of the individual in the case. If the government assumes the action, the person originally bringing the action is limited to between 15 and 25% of the recovery. If the government does not intervene and proceed with the action, the person bringing the action is entitled to not less than 25% and not more than 30% of the proceeds. At least one significant Qui Tam action is pending in the United States District Court for the District of Idaho.

Significant restrictions on Qui Tam actions do exist. For example, an individual cannot bring a Qui Tam action if the information has been publicly disclosed or if the person is not the original source of the information. This provision was recently interpreted to mean that a person is not the original source of the information if that person lacks direct knowledge of the false claims submitted to the government.⁶ In addition to the requirement that the individual bringing the lawsuit must be the original source of the information at issue, courts apply the particular-

ized pleading requirement of Rule 9(b) of the Federal Rules of Civil Procedure to *Qui Tam* actions.⁷

In *United States, ex rel. Yeager v. MedQuest Associates, Inc.*, 2007 WL 3205285 (N.D. Ala. Oct. 31, 2007), the *Qui Tam* relator alleged that an imaging center had violated the Stark and Anti-Kickback Statutes and thus had submitted false claims under the FCA because the entity had paid illegal remuneration to physicians and failed to collect co-payments from beneficiaries; falsely changed diagnoses of patients to make non-payable claims payable; billed for tests under an improper Medicare provider number; and failed to follow quality control guidelines for testing. The court found that the plaintiff had not sufficiently pled her case with particularity.

Similarly, in *United States ex rel. Bledsoe v. Community Health System, Inc.*, 501 F.3d 493 (6th Cir. 2007), the court dismissed the *Qui Tam* relator's action with prejudice because the relator failed to state his FCA claim with particularity as required by Rule 9(b). The court found that it is not enough for the relator to allege that the defendant engaged in a fraudulent scheme, but he must actually plead at least characteristic examples of actual false claims submitted.

Interestingly, Senator Chuck Grassley (R-Iowa) currently has a bill before Congress that would narrow the public disclosure bar and allow individuals without direct firsthand knowledge to share in relators' awards. The United States Department of Justice, however, opposes the bill.⁸ It will be interesting to see whether the next administration's fraud enforcement efforts are more aggressive, but for now, *Qui Tam* cases have significant hurdles to overcome.

SIGNIFICANT FRAUD AND ABUSE ENFORCEMENT ACTIONS

FALSE AND FRAUDULENT BILLING

The Applicable Laws—By far and away, the most frequent focus of healthcare fraud and abuse is on improper billing for Medicare, Medicaid and other governmental services. Known as “false claims” cases, these cases arise in the context of physicians, hospitals and frequently other types of healthcare providers, billing for services that were not furnished; misrepresenting the diagnosis or the service provided to justify a higher level of payment; unbundling charges to charge sequentially for items which should have been included within a single, lesser charge; falsifying certificates of Medicare necessity; and charging for a higher level of service than was actually provided.

False or fraudulent claims can be pursued criminally, civilly or administratively. Criminal prosecutions can occur under the federal criminal FCA⁹ or under a 1997 statute (18 U.S.C. § 1347) that makes it a federal crime to knowingly and willfully execute or attempt to execute a scheme or artifice to defraud any healthcare benefit program or to obtain by means of false or fraudulent pretense any money or property owned by or under the custody of any healthcare benefit program. This federal law is not limited to federal or state money, but also allows prosecution of a fraudulent scheme against a private health insurer.

On the civil side, the most prevalent act used to enforce false claims is the FCA, discussed previously.¹⁰ Another important tool available to the government is the Civil Monetary Penalties Law, which allows the Office of Inspector General (OIG) to commence administrative proceedings to impose civil monetary penalties of up to \$10,000 for each item or service falsely claimed from a federal healthcare program.¹¹

Major Healthcare False Claims Cases—Among the larger, recent healthcare fraud cases is an enforcement action against Tenet Healthcare Corporation, the nation's second largest hospital

chain. In 2006, Tenet Healthcare agreed to pay more than \$900 million (almost one-half of the total amount the federal government collected in health fraud cases that year) to resolve claims it had fraudulently billed the government. The specific allegations were that Tenet Healthcare received improper “outlier” payments (payments that are intended to be limited to situations involving extraordinarily costly episodes of care), resulting from the hospital inflating their charges substantially in excess of an increase in the costs associated with patient care, and for billing for services and supplies not provided to patients. More than \$46 million of the amount was to resolve claims that Tenet “upcoded” charges—that is, Tenet assigned diagnosis codes to its claims that it was unable to support by reference to the patient records in order to increase reimbursement.¹²

The sale and marketing of Durable Medical Equipment (DME) has been a frequent subject of investigation. For example, in three separate wheelchair fraud cases in Texas, individuals and companies were found guilty of Medicare and Medicaid fraud in connection with paying physicians to falsely certify the medical necessity of scooters or power wheelchairs. In many of the cases, the patients were not qualified for the power wheelchair.¹³ In North Idaho, the United States Attorney's Office successfully prosecuted a case where a DME provider billed the federal government for providing power wheelchairs when in fact what he provided was motorized scooters.

On the physician side, an Iowa physician was convicted of healthcare fraud resulting from unnecessary “trigger-point” injections of Schedules 2 and 3 narcotics. The physicians were accused of submitting \$60 million in fraudulent bills to healthcare benefit programs for performing multiple, complex epidural and nerve block injections, when in fact the physician performed lower-cost trigger-point injections. The physician was ordered to pay \$14.3 million in restitution to Medicare, Medicaid and the Iowa workers' compensation fund.¹⁴

A Tennessee oncologist was sentenced to fifteen years' imprisonment for defrauding Medicare and other patients by administering diluted versions of chemotherapy medications to patients. As one would expect, the submission of bills for providing services not actually provided is a clear and egregious FCA violation.¹⁵

CONCLUSION

Healthcare fraud enforcement is alive and well in Idaho, but to date, no government-initiated case has remotely approached the magnitude of fraud and abuse cases seen nationally. Healthcare fraud cases are extremely complex and expensive to prosecute and defend. While prosecutions are not prevalent, significant fraud and abuse enforcement resources exist on the ground here in Idaho. As a matter of good practice, as well as a matter of risk management, healthcare providers in Idaho do need to continue to closely scrutinize their billings systems and infrastructure and their relationships with other healthcare providers to ensure that they do not unintentionally become ensnared in a fraud and abuse enforcement action. Though such cases in Idaho are rare, because of the amount of money involved, the potential criminal penalties and the costs of defending such a case, it is prudent to work hard to avoid even the potential for such claims.

ABOUT THE AUTHOR

Pat Miller has a B.A. (cum laude) in Economics from the University of Idaho 1981, and a J.D. (cum laude) University of Idaho in 1984. He has been a member of the American Health Lawyers Association since 1987. His practice emphasizes health and hospital law.

In addition to his full-time practice, he is currently an Adjunct Professor at the University of Idaho College of Law teaching health law. He is a founding member of the Health Law Section of the Idaho State Bar Association.

ENDNOTES

¹ See Patrick J. Miller, *An Overview of Healthcare Fraud and Abuse*, *THE ADVOCATE*, May 2002, at 15.

² CONGRESSIONAL BUDGET OFFICE, PUB. NO. 3085, *THE LONG-TERM OUTLOOK FOR HEALTH CARE SPENDING* (Nov. 2007).

³ *Idaho Code* § 67-1401(14) (2007).

⁴ 2007 *Idaho Session Laws* Ch. 345.

⁵ One reason for the lack of a case of this type may be that the Idaho Medicaid Fraud Control Unit has been in operation for less than a year. The progress of this unit as it matures is worth watching within this area.

⁶ See *Rockwell Int'l Corp. v. United States*, 127 S.Ct. 1397 (2007).

⁷ *United States, ex rel. Yeager v. MedQuest Associates, Inc.*, 2007 WL 3205285 (N.D. Ala. Oct. 31, 2007); See also *United States ex rel. Sikkenga v. Regence Bluecross Blueshield of Utah*, 2007 WL 2713913 (D. Utah Sept. 12, 2007).

⁸ See 17 *Health Law Reporter* 336 (BNA) No. 10 (Mar. 6, 2008).

⁹ 18 U.S.C. § 287.

¹⁰ 31 U.S.C. § 3729-31.

¹¹ *Offenses for which the government may seek civil monetary penalties include:*

1. Presenting a claim that the person knows, or should know, is false (the term "should know" is defined in 42 U.S.C. § 1320a-7a(i)(7) to include acting in deliberate ignorance or in reckless disregard of the truth or falsity of the information. No proof of specific intent to default is required);
2. Presenting a claim for a service not provided as claimed;
3. Engaging in a pattern or practice of up-coding;
4. Presenting claims for physician services not performed by a physician;
5. Violation of the Anti-Kickback Law, 42 U.S.C. § 1320a-7b(b);
6. Contracting (by employment or otherwise) with someone who has been excluded for participation in a federal healthcare program; and
7. Payments by hospitals to physicians as an inducement to reduce or limit services to patients. See 42 U.S.C. § 1320-7a.

¹² See DEPARTMENT OF HEALTH ADMINISTRATIVE SERVICES and DEPARTMENT OF JUSTICE HEALTH CARE FRAUD AND ABUSE CONTROL PROGRAM, FY2006 ANNUAL REPORT (NOV. 2007).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*



David Kerrick
Attorney - Mediator

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THE STANDARD OF CARE FOR MEDICAL MALPRACTICE CLAIMS IN IDAHO: TIME FOR REASSESSMENT

Monique C. Lillard
University of Idaho College of Law

This article reflects the personal viewpoint of the author and not of the The Advocate or the Health Law Section.

Anna Dulaney, a woman from the state of Washington was visiting Boise.¹ She fell from a deck and hurt her back. She was taken to an emergency room, x-rayed and released. A few days later she collapsed in excruciating pain and was taken back to the emergency room. The doctors reviewed the two-day-old x-rays, but ordered no new tests. They again released her, even though she was in such pain that she was unable to walk. Two days later, she returned home to Washington. She drove immediately to the emergency room. An MRI revealed that she had a block in her spine. The delay in treatment allegedly rendered her a paraplegic. She sued, in Idaho, using Idaho law.

Idaho Code § 6-1012, enacted in 1976, sets the standard of care for medical malpractice as a "strict locality standard," that is, the community standard at the time and place of the alleged malpractice as practiced by those of similar training and qualifications to the defendant. The "community" is the area served by the local hospital. Section 6-1013, enacted simultaneously, sets forth exactly how plaintiff's expert is to be qualified.

Mrs. Dulaney's lawyer was able to find two out-of-state experts to testify. Their professional credentials were beyond dispute. They were willing to say, with medical certainty, that the standard on this matter would not likely vary from one emergency room to another and that her care would have been inadequate "in any Emergency Department within the United States of America."² Even though Boise, Idaho is part of the United States of America, the woman could not even get past summary judgment because she was unable to satisfy the court that she had established the standard of care at the time and place of her injury.

The strict locality standard, by its very terms, permits the given community to be an island of negligence; if the defendant establishes that he was following community custom, he is exonerated, even if the community custom is out of step with the state and the nation. But the reported Idaho appellate cases indicate that this occurs seldom, if ever. Instead, what happens is that plaintiffs are unable to find a way to establish the standard of care in a given area. Idaho Code § 6-1013 requires the expert to be familiar with the local standard of care at the time of the alleged malpractice. The expert may himself be from the community or may "adequately familiariz[e] himself with the standards and practices of (a particular) such area."³ Case law establishes that this can be done by various means, including telephoning local area practitioners.⁴

In the case of Mrs. Dulaney, her lawyers asked twenty-two Idaho orthopedists to confirm to her experts that the local standard of care conformed to the national standard. None would speak with them. Her experts were eventually able to speak with three doctors who had experience in Boise. Yet the district court, affirmed by a majority of the Idaho Supreme Court, deemed that they were insufficiently knowledgeable about the relevant standard of care in her case.

The first was an Idaho doctor, board certified in both Emergency Medicine and Internal Medicine, who had practiced internal medicine in Boise, but had not practiced emergency room medicine in Boise. The record did not indicate that he had become familiar with the Boise stan-

dard of care for emergency room doctors. On the other hand, the record did not indicate that the standard for emergency room doctors would differ from the standard applicable to an internist, especially in the context of an alleged omission to treat. Nonetheless, his information was insufficient to qualify the expert.

A second doctor was contacted. He lived out of state, but had practiced in Boise. He was asked about neurological tests performed by the defendant orthopedist. But although he had practiced neurology in Boise, he had not practiced orthopedics or emergency room medicine in Boise, nor was he asked about the practices of orthopedic surgeons. The district court was also concerned that he had practiced in Boise two years before the year of the plaintiff's injury. His information was insufficient to qualify the expert.⁵

A third medical doctor was contacted, a professor who had not practiced in Idaho but who stated that he was familiar with the standard of care in Boise at the time of the injury. He spoke only anonymously. He and the plaintiff's expert spoke three or four years after the injury. He indicated that he had trained orthopedists who were "presently" practicing in Boise, but he did not state if they were practicing in Boise at the time of the injury. Although he had lectured in Boise, he did not state when. His information was insufficient to familiarize the expert with the local standard of care.

Mrs. Dulaney's experts were therefore unqualified to testify, because they were insufficiently familiar with the standard of care in Boise, Idaho at the time of her injury. Mrs. Dulaney's case was dismissed on summary judgment. She never got to trial and the facts of the case were never publicly aired. This was upheld by the Idaho Supreme Court in what has become a leading opinion in medical malpractice.⁶

*This is a troubling result. Anna Dulaney's case is representative of other cases that have passed through the Idaho courts. Certainly Dulaney is a cautionary tale for the plaintiffs' bar. A case last fall, *Ramos v. Dixon*, reiterates that the plaintiff's lawyer must oversee every aspect of the information gathering necessary for the plaintiff's case in chief.⁷ Conclusory statements of familiarity with the local standard will not suffice. Experts and local doctors must be asked precise questions about how they have become familiar with the local custom. But Dulaney, and the approximately forty-five other standard of care cases decided since Idaho Code § 6-1012 and § 6-1013 were enacted, reveal some recurring flaws in the system.*

Mrs. Dulaney was neither the first nor the last plaintiff to discover the reluctance of doctors to testify against each other.⁸ Nor was she alone in experiencing how the strictures of the statute compound the medical community's penchant for silence. If the community sets the standard but the community refuses to talk, it is difficult to prove violation of the standard. The facts in Dulaney are particularly disturbing. Five medical professionals had stated on the record that the standard of care had been violated. One stated: "What took place was outside the standard of care of modern Emergency medicine practice."⁹ The defendants had not refuted the standard of care. Even to a lay reader, Mrs. Dulaney's

repeated release from the emergency room seems questionable.¹⁰

Normally when defendants move for summary judgment, the court construes the record in the light most favorable to the party opposing the motion, drawing all reasonable inferences and conclusions in that party's favor. But, because of the specificity of § 6-1013, the threshold question of I.R.C.P. 56e must be addressed—whether the information in the supporting affidavits is admissible. The burden is on the plaintiff to qualify the expert. Thus, by moving for summary judgment, defendants can force the plaintiff into an early show of proof. The Idaho courts sometimes take this too far. Even within the strictures of § 6-1013, district courts may permissibly make logical, rational inferences, especially pre-trial; they should be encouraged to do so. Dulaney is particularly egregious in this regard. The district court was troubled that one local doctor had provided information about the standard two years before the injury. But the expert and the local doctor were saying that standard was higher than that allegedly met by the defendants. To disallow that information is to assume that the standard went down in two years, which is unlikely and implausible. Similarly, the Idaho Supreme Court majority was troubled that the anonymous professor did not specify whether the Boise doctors with whom he was familiar had practiced at the time of the injury or three years later, at the time when he was speaking with the expert. The likelihood of any change in the standard during that three-year window was small, especially in view of the credible assertions of the two experts that the standard of care was in fact standard across America. The professor's assertions were in an affidavit submitted as part of a motion for reconsideration of a summary judgment; this was not a situation where a witness on the stand could not remember crucial facts. There was still time, before trial, to garner more precise utterances from the professor or others. The majority's refusal to let the matter proceed to trial seems inflexible, even within the intentionally narrow confines of the statute.

Dulaney is merely one of several disconcerting medical malpractice cases in the Idaho Reports. The courts should rethink their application of the law and should encourage the district courts to make rational and logical inferences. But even so, the courts will be hemmed in by § 6-1-12 and § 6-1013.

Idaho has lived with these statutes for over thirty years—a generation. The time has come for the legislature to revisit and rethink the wisdom of the legislation. It was enacted with the express purpose of lowering liability insurance premiums so that Idaho would become a more attractive state in which to provide health care and thus attract more and better health care providers. The legislators intentionally protected defendant doctors at the expense of plaintiffs, in the name of increasing the public good. The first question is whether the legislation has actually attracted doctors. The law of Idaho is indeed viewed as doctor friendly,¹¹ especially when coupled with low non-economic and punitive damage caps and short statutes of limitations. On the other hand, despite these measures, recent studies indicate that the number of Idaho doctors is not keeping up with the state's rapidly growing population, especially outside of the Boise area.¹² So, the question remains, whether the "friendly" law is a significant draw to the state. The second question is whether the number and quality of Idaho care providers could be increased at lower cost to patients. The legislature should engage in fact-finding about who is likely to experience malpractice and whether the statutes are significantly reducing compensation to those with legitimate claims. Creative problem solvers across the nation have been writing about the most effective ways to deter medical error so as to benefit all

patients. Possibly Idaho's current regime is the best for the state, but if so it should be retained consciously, not through inertia. The time is right for the Idaho legislature to begin the process of discerning the optimal means of increasing the availability of high quality medical care across the state.

ABOUT THE AUTHOR

Monique C. Lillard is a Professor of Law at the University of Idaho College of Law. She has taught torts for twenty years. She has recently published an article examining medical malpractice. "The Standard of Care for Health Care Providers in Idaho,"—*Idaho L.Rev*—(2008). This topic was slated for discussion at the Idaho Law Review Symposium, "Law and Healthcare: Bridging the Divisions" in Boise on April 11, 2008. The author would be glad to share, upon request, her notes on the insights achieved at that cross-disciplinary session.

ENDNOTES

¹ *Dulaney v. St. Alphonsus Reg'l Med. Ctr.*, 137 Idaho 160, 45 P.3d 816 (2002) (Kidwell, J., dissenting).

² *Id.* at 171, 45 P.3d at 827.

³ IDAHO CODE § 6-1013 (2004). He need not be of the same specialty as the defendant, as long as he is familiar with the community practice. *Strode v. Lenzi*, 116 Idaho 214, 216, 775 P.2d 106, 108 (1989).

⁴ See *Grover v. Smith*, 137 Idaho 247, 251, 46 P.3d 1105, 1109 (2002).

⁵ The Idaho Supreme Court majority did not base its decision on the time difference, but on the doctor's lack of familiarity with the standards applicable to the defendants, given their specialties.

⁶ *Dulaney*, 137 Idaho 160, 45 P.3d 816. The facts recited in the previous paragraphs come from the majority and dissenting opinions in this case.

⁷ 144 Idaho 32, 156 P.3d 533 (2007).

⁸ See *John Banja, Medical Errors and Medical Narcissism* 3 (2005); *Grover v. Smith*, 137 Idaho 247, 46 P.3d 1105 (2002); *Gubler v. Boe*, 120 Idaho 294, 299 n.4, 815 P.2d 1034, 1039 n.4 (1991) (Bistline, J., dissenting). Note that in *Dulaney*, even the out-of-state professor spoke only anonymously. 137 Idaho at 163, 45 P.3d at 819.

⁹ *Dulaney*, 137 Idaho at 171, 45 P.3d at 827 (Kidwell, J., dissenting).

¹⁰ The defendants doubtless have explanations and rejoinders to the allegations against them. It is in the public interest, as well as in the parties' interest, to give full and fair airing to all of the facts in open court. That is one of the main purposes of jury trials.

¹¹ See, e.g., *Tresa Baldas, Localized Pain*, *National Law Journal*, July 16, 2007, at 1, 17.

¹² See MGT OF AMERICA, INC., MEDICAL EDUCATION STUDY FINAL REPORT 1-10 (2007), available at <http://www.boardofed.idaho.gov/publications/MedEdStudyRptFinal.pdf> (considering the expansion of medical education within Idaho).

A BRIEF INTRODUCTION TO INFORMED CONSENT FOR HEALTH CARE UNDER IDAHO LAW

Charina A. Newell,
Hawley Troxell Ennis & Hawley LLP

"[A]s an integral part of a physician's overall obligation to the patient, there is a duty of reasonable disclosure of the available choices with respect to proposed therapy and of the dangers inherent and potentially involved in each."¹

The patient's right to determine his or her own health care decisions is a fundamental right in our society, which gives the patient the right to determine what medical treatment is in his or her own best interests.² The right to choose whether to receive or to refuse medical treatment must be based on sufficient information from a patient's health care provider (providers).³ While it is unlikely that in today's society that any provider would knowingly treat a patient without that patient's consent, treatment without valid consent can arise in a few less-obvious contexts. Some examples include:

- *A provider treats a patient who lacks the requisite capacity to consent to his or her own care (e.g., the patient is intoxicated, underage, or unconscious).*
- *A provider provides treatment that the patient had previously decided against (e.g., the patient signed a "do not resuscitate" order).*
- *A provider fails to provide enough relevant information to the patient for the patient to make an informed decision.⁴*

Treatment without valid consent can give rise to civil, administrative, and even criminal liability for a provider. This article summarizes Idaho law regarding informed consent.⁵

WHAT IS INFORMED CONSENT?

Idaho is one of the few states that has codified the relevant principles of informed consent for health care.⁶ In general, effective consent requires that (1) the patient must have sufficient competency; (2) if the patient is incompetent, consent must be obtained from another authorized person; (3) the provider must give sufficient information to allow the patient to make an informed decision; and (4) the consent must be voluntary.⁷ Although Idaho Code § 39-4501 expressly applies to "hospital, medical, dental or surgical care,"⁸ the statutory requirements are consistent with common law principles and presumably would be applied to the provision of other types of health care.

LIABILITY UNDER COMMON LAW TORTS

Patients may sue physicians for treatment without consent under several tort theories. First, any failure to obtain valid consent can violate the standard of care and give rise to a medical malpractice claim.⁹ In addition, a provider may be subject to liability for the tort of battery. "Civil battery [is any] intentional, unpermitted contact upon the person of another which is either unlawful, harmful, or offensive."¹⁰ All that is required for liability is intent: if the provider intended the act, then the provider could be held liable even despite a lack of intent to harm or any physical injury.¹¹ Another tort for providers to be aware of is false imprisonment. If a provider sedates, restrains, or otherwise restricts the patient without his consent, the provider can be held liable.¹² Finally, providers may also be liable for fraud or misrepresentation, which requires that a provider make a material mis-statement of fact to the

patient, the provider knows the statement is false, the provider intends that the patient rely on the mis-statement, and the patient in fact relies on the mis-statement to his detriment. Significantly, informed consent is either a valid defense or negates the elements required to establish the above claims, which makes obtaining a valid informed consent critical before treating every patient.

STATUTORY LIABILITY: IDAHO CODE § 39-4501 ET SEQ.

In addition to common law torts, Idaho courts recognize a statutorily based cause of action against health care providers for the failure to obtain informed consent.¹³ Under Idaho Code §§ 39-4501 to 39-4515, physicians and other health care providers have a duty to disclose risks of injury that might result from a proposed course of treatment.¹⁴ A provider's failure to obtain informed consent can result in liability despite the fact that the provider was not negligent in providing the medical treatment to the patient.¹⁵ To establish a claim for lack of informed consent, the patient must prove three elements: (1) nondisclosure, (2) causation, and (3) injury.¹⁶

The first element, nondisclosure, is established by proving that the provider failed to meet the objective, medical community-based standard for informed consent. To establish causation, a patient must prove by a preponderance of the evidence that a prudent person would not have consented to the procedure if full and adequate disclosure of the significant risks had been made at the time the consent was given. Thus, a plaintiff must show that "a reasonable person would have chosen no treatment or a different course of treatment had he or she been adequately informed by the physician."¹⁷

Finally, to establish injury:

[T]he plaintiff must prove his injuries were a direct and proximate cause of the defendant's failure to disclose risks and alternatives to the patient. The injury must be as a result of the undisclosed material risk, rather than some unrelated risk, such as falling off of the operating table or faulty work on the part of medical personnel not involved in [the relevant] care.¹⁸

The patient's common law right of self-determination is also reflected in laws, regulations, licensing, and accreditation standards regarding health care providers. Any failure to comply with these laws and standards can subject the health care provider to suspension or loss of licensure. Failure to obtain valid consent can also result in exclusion from participation in government programs, such as Medicare. Medicare regulations include the acknowledgment that "[t]he patient has the right to participate in the development and implementation of his or her plan of care."¹⁹ Furthermore,

The patient or his or her representative (as allowed under State law) has the right to make informed decisions regarding his or her care. The patient's rights include being informed of his or her health status, being involved in care planning and treatment, and being able to request or refuse treatment.²⁰

Thus, any failure to comply with these regulations may result in the provider's exclusion from government health care programs, a result that could decimate a provider's practice.²¹

CONCLUSION

As summarized above, a provider's failure to inform a patient of significant risks and provide material information regarding proposed health care can result in a myriad of civil and criminal liabilities. These areas present interesting problems from a legal perspective. While health care providers are aware of the need to obtain informed consent, situations can arise that are less clear, such as when a patient lacks the capacity to give consent or when a patient refuses or wishes to withdraw from medical treatment. For more information on these less-clear situations, which are not directly addressed here, see Kim Stanger's upcoming article in the Idaho Law Review's Symposium edition.

ABOUT THE AUTHOR

Charina A. Newell is an associate at Hawley Troxell Ennis & Hawley LLP in the Business and Finance Practice Group. Her practice focuses primarily in the areas of health law, public finance, and mergers and acquisitions. She graduated from the University of Idaho College of Law. She clerked for the Hon. Gregory Culet in the Third Judicial District from 2003-to 2005, and for Chief Justice Daniel Eismann at the Idaho Supreme Court from 2005 to 2006.

ENDNOTES

- ¹ *LePelley v. Grefenson*, 101 Idaho 422, 429, 614 P.2d 962, 969 (1980) (superseded by statute) (quoting *Cobbs v. Grant*, 502 P.2d 1, 10 (Cal. 1972)).
- ² See generally Alice G. Gosfield et al., *Health Care Decision-Making, Patient Autonomy and Professional Responsibility*, in 1 HEALTH L. PRAC. GUIDE §§ 8.3–8.7 (2007) (stating that the right to make health care decisions is based in part on our constitutional rights of liberty and privacy and the common law right of self-determination).
- ³ See, e.g., *Foster v. Traul (Foster II)*, No. 33537, 2007 WL 4472262 (Idaho Dec. 24, 2007).
- ⁴ See, e.g., *Rook v. Trout*, 113 Idaho 652, 747 P.2d 61 (1987) (alleging that the physician failed to adequately disclose risks attendant to surgery and alternative courses of treatment).
- ⁵ Of course, many other laws and regulations may be applicable, especially in a mental health context.
- ⁶ *Medical Consent and Natural Death Act*, IDAHO CODE ANN. §§ 39-4501–4515 (Supp. 2007).
- ⁷ *Id.* §§ 39-4503–4504, 39-4506–4507.
- ⁸ *Id.* § 394501(1)(a).
- ⁹ See *Shabinaw II*, 131 Idaho 747, 963 P.2d 1184.
- ¹⁰ *Neal v. Neal*, 125 Idaho 617, 622, 873 P.2d 871, 876 (1994) (citing *White v. Univ. of Idaho*, 118 Idaho 400, 797 P.2d 108 (1990)).
- ¹¹ *Id.*; see also *White*, 118 Idaho at 401–02, 797 P.2d at 109–10.
- ¹² See, e.g., *Kenner v. N. Ill. Med. Ctr.*, 517 N.E.2d 1137, 1139 (Ill. App. Ct. 1987) (alleging that physician, by administering Valium without consent, deprived patient of control over his body that resulted in false imprisonment).
- ¹³ See *Foster v. Traul (Foster I)*, 141 Idaho 890, 894, 120 P.3d 278, 282 (2005); *Anderson v. Hollingsworth*, 136 Idaho 800, 804, 41 P.3d 228, 232 (2001); *Shabinaw II*, 131 Idaho 747, 751, 963 P.2d 1184, 1188 (1998); *Shabinaw v. Brown (Shabinaw I)*, 125 Idaho

705, 708, 874 P.2d 516, 519 (1994); *Sherwood v. Carter*, 119 Idaho 246, 251, 805 P.2d 452, 457 (1991).

¹⁴ See also *Foster I*, 141 Idaho at 894, 120 P.3d at 282; *Sherwood*, 119 Idaho at 251–52, 805 P.2d at 457–58.

¹⁵ See, e.g., *Foster I*, 141 Idaho at 894, 120 P.3d at 282; *Shabinaw I*, 125 Idaho at 709, 874 P.2d at 520.

¹⁶ E.g., *Foster v. Traul (Foster II)*, No. 33537, 2007 WL 4472262, at *3 (Idaho Dec. 24, 2007); *Sherwood*, 119 Idaho at 257, 805 P.2d at 463.

¹⁷ *Anderson v. Hollingsworth*, 136 Idaho 800, 805, 41 P.3d 228, 233 (2001) (quoting *Sherwood*, 119 Idaho at 259, 805 P.2d at 465).

¹⁸ *Foster II*, 2007 WL 4472262, at *6.

¹⁹ 42 C.F.R. § 482.13(b)(1) (2007).

²⁰ *Id.* § 482.13(b)(2).

²¹ See *id.* § 482.13.

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LIFE CARE PLANNING: THE COMPREHENSIVE ELDER LAW APPROACH TO PLANNING FOR THE CHRONIC CARE NEEDS OF SENIORS

Peter C. Sisson
Sisson & Sisson

Medicaid is a federal program that is administered by the states. There are federal statutes and state regulations that govern Medicaid eligibility. In addition, the practitioner must keep abreast of the Idaho Department of Health and Welfare's (IDHW) unwritten policy interpretations of the regulations and how those regulations are applied from a practical perspective. As elder law attorneys are well aware, the advent of the Deficit Reduction Act of 2005 (DRA)¹ has had a significant effect on Medicaid planning.

CURRENT STATUS OF MEDICAID PLANNING

The crux of Medicaid planning is to put in place a plan that speeds up Medicaid eligibility for the spouse or individual who needs long-term care and to protect as many assets as possible given the current state of the ever-changing Medicaid laws.

The National Academy of Elder Law Attorneys (NAELA) 2005 annual conference held in San Francisco rightly emphasized the anticipated effects of the DRA on restricting the asset protection options available for seniors faced with the devastating costs of long-term care. Undoubtedly, many elder law attorneys leaving that conference were wondering how their Medicaid planning practices would change based on the effect this federal legislation would have at the state level. As a certified elder law attorney in Boise, Idaho, however, I had already been dealing with many of the restrictions that attorneys in other parts of the country were shocked to learn might become a reality for their clients. For instance, Idaho had already created a "big chill" on annuity planning due to a statutory presumption placing a burden on the applicant to prove that the annuity was not used for a "Medicaid planning" purpose.² This presumption made Idaho law more restrictive than federal law, effectively precluding the use of annuities to turn excess countable resources into an income stream, thereby speeding up Medicaid eligibility.³

Idaho has had for many years a very effective estate recovery division that prides itself on being second in the nation for percentage of recovery, although the recovery is still miniscule in proportion to Medicaid dollars paid out in benefits.⁴ In addition, the estate recovery division of IDHW has actually filed court actions to set aside non-disqualifying gifts made by Medicaid participants in order to stymie transferring assets that were less than the penalty divisor, which commonly occurred in other states pre-DRA.⁵

My conclusion, which has not changed since the enactment of the DRA, is that the harder the government (state or federal) makes it for seniors to qualify for Medicaid, the more important the elder law attorney's services become. The more complex the system, the more seniors need assistance and advocates in figuring it out. Seniors and their families need more guidance than ever in working their way through the maze of Medicaid eligibility rules.

ELDER LAW ATTORNEYS ARE UNIQUELY QUALIFIED TO HELP ADDRESS CRUCIAL HEALTHCARE ISSUES FOR THE SENIOR CLIENT

As an elder law attorney, I used to be regularly frustrated in meetings with seniors and their families by not being able to comprehensively address the clients' needs. In every family meeting, it seemed I was

unable to competently help clients handle the myriad healthcare issues they presented. Although the clients may have made the appointment because of a financial concern about the extremely high cost of long-term care, the discussion inevitably came around to the issue that was causing that financial concern—the healthcare situation. Elder law attorneys are in a unique position to help families receive the quality care to which they are legally entitled. The legal/health intersection is so fundamental to the provision of healthcare in this country that it is often missed by elder law attorneys as well as their clients. No one has a Medicaid (long-term care cost) problem unless they have chronic-care health issues underlying the need for long-term care. In other words, the healthcare issue is the driving force requiring families to deal not only with health issues, but with the legal and financial issues caused by the senior's chronic care needs.

When faced with long-term care costs, families always have questions involving the care that is causing those concerns, such as:

- Are the current diagnoses and prognoses accurate?
- Are the medical needs being adequately addressed?
- Are prescriptions being managed appropriately?
- Are there medicines that should be taken to address an issue of concern?
- Are there medicines that may be causing issues of concern to arise?
- Is my loved one safe and well cared for?
- When is it appropriate to get involved with the care?
- How do I find the best in-home care providers?
- How do I know how much in-home care to pay for, how to direct those services to the areas of greatest need, and how to make sure the in-home care providers are doing their jobs?
- Can we qualify for Medicaid and protect assets for the spouse who does not need care at this time?
- At what point do we need to consider a move from home to a more secure or safe environment?
- What are the options for residential care facilities that will meet my loved one's specific needs?
- What is the standard of care by which these facilities must abide?
- How do I make sure that my loved one does not receive sub-standard care?
- How do I make sure that staff at the residential care facility explores all of the options that might make my loved one's quality of care and quality of life the best it can be?

Elder law attorneys want to comprehensively help their senior clients address their concerns, yet the main driving force behind the voiced concerns (the financial cost of long-term care) is often their healthcare situation. Again, the client has no Medicaid or long-term care cost problem unless there is a chronic, long-term care health problem. Therefore, the health issues relating to long-term care are properly addressed in planning for how to pay for those costs.

Elder law attorneys understand the legal rights and responsibilities that are associated with the provision of care in hospitals, homes, hos-

pices, and residential care facilities (assisted living and skilled nursing facilities), but they are not social workers or nurses. They do not have the experience of actually providing that care and of observing first hand, on a daily basis, whether good care is provided. Dealing with the legal and financial issues (i.e., public benefits and estate planning) may simply not be good enough to help senior clients and their families deal with the myriad issues that they face, including how to find and get good quality long-term care. Referring to healthcare resources in the community rarely works. There is no follow-up or follow through—no continuity—and elder law attorneys are left out of that loop. One solution to this situation – and the course I decided to take – is to move the elder law firm to a life care planning model of practice in order to better serve senior clients and their children who are overwhelmed trying to manage all these issues for their parents, including hiring an experienced licensed social worker to be a full-time employee of the firm.

LIFE CARE PLANNING—AN INNOVATIVE APPROACH TO COMPREHENSIVELY ADDRESS HEALTH, LEGAL AND FINANCIAL ISSUES FOR THE SENIOR CLIENT

Moving my traditional elder law practice toward life care planning was a paradigm shift for me and my law firm. Life care planning for seniors can accurately be described as taking an elder-centered approach rather than an assets-centered approach. The life care planning model of elder law practice recognizes that helping seniors and their families with their financial concerns regarding how to pay for care is an important piece of the long-term care puzzle, albeit only one piece of the puzzle, not the entire puzzle. The primary emphasis of the life care planning model of practice is on the quality of care that senior clients receive, and the quality of life they and their loved ones experience as they move through what we call the long-term care maze. A life care planning firm helps clients navigate that maze by helping them find, get, and pay for quality long-term care.

Healthcare in this country is provided on an acute care model. When someone enters a hospital, the care providers seek to address a particular injury or illness, to cure or treat that acute need, to discharge the patient, and to move on to the next patient. But for seniors who have one or more chronic care issues, a different model of care is necessary. As the very nature of the term “chronic” implies, such needs do not go away and cannot be cured. Chronic illnesses simply change and progress over time. Therefore, an effective chronic care model of legal practice emphasizes continuity, an on-going relationship, and coordination over a long period of time.

Life care planning takes such an approach to the chronic care needs of clients, encompassing help with the financial and legal planning issues as well. The life care planning firm assists clients as they move along the elder care continuum, adapting with them as their healthcare circumstances change.⁶

THE CARE COORDINATOR’S ROLE

The life care planning care coordinator/healthcare professional works with the client and his family to achieve the best possible care, no matter where the client is living. Assistance is provided to senior clients in their homes, in the hospital, and in residential care facilities. The care coordinator guides the client through the maze faced by individuals with chronic care problems. Care coordinators help clients by:

- **Reducing the frustration that is common when dealing with long-term care decision-making.**

For most families, this is a new experience. The information

and changes can be overwhelming. The care coordinator arms the senior and his family with education and support to guide them through the process.

- **Providing caregiver coaching and care advocacy.** *For those acting as a spouse’s or parent’s caregiver, the care coordinator helps the caregiver become the best, most effective caregiver possible. Caregiver support and counseling is crucial in order to be able to maintain a loved one in the home. If that pillar of support crumbles, a move outside the traditional home setting may be necessary, resulting in increased long-term care expenses and a host of necessary healthcare decisions. The care coordinator can help the client and family avoid this scenario and help the client stay in the home longer than he might otherwise be able to. The care coordinator also acts as the care advocate for care recipients.*
- **Helping the client understand a diagnosis, a disease process, or treatment options.** *The care coordinator provides information and answers questions needed for the client and family to understand and make decisions about the client’s particular healthcare needs. She provides on-going education, support, counseling, and guidance.*
- **Guiding the client to anticipate and plan for inevitable changes, as well as to react to sudden changes that were not anticipated.** *The care coordinator knows that as a person ages and healthcare problems progress, things will change. She provides foresight where she can, as well as sensible planning to cope with the changing issues. The care coordinator provides continuity and on-going support by maintaining long-term relationships with the client and client’s family. She helps deal with the situation if a crisis does occur.*
- **Aiding the client in planning for placement and transfers.** *Sometimes it is not possible to continue to provide care for the client in the home setting. The care coordinator’s assessment skills and experience can assist in determining if that time has come and what to do next.*
- **Helping to make a decision about a nursing home or assisted living facility.** *When the client can no longer remain at home, other placement is considered. The care coordinator’s assessment of the client’s needs, her experience, and her knowledge of the best resources to meet the required needs help the client and family determine the best place for continuing care.*
- **Helping to monitor changes in mood and behavior and address those changes.** *If this occurs, the care coordinator helps the family figure out the cause and solutions. If medications are part of the answer, the care coordinator helps the client and family understand the benefits and risks.*
- **Identifying symptoms of depression and getting it managed.** *Although depression is not a normal part of aging, it has prevalence among those with chronic illness. According to the National Institute of Health, “eight to 10 percent of seniors who visit primary care clinics may fit the diagnosis for clinical depression, between 20 and 25 percent of older people in hospitals have depression and one in three senior citizens living in nursing homes may be suffering from the*

illness.⁷⁷ Depression is sometimes hard to recognize. The care coordinator helps both the client and family manage the client's depression.

- **Identifying changes in pain and getting it managed.** Seniors suffer pain needlessly because they cannot or do not communicate the intensity of their symptoms. Pain symptoms are sometimes misinterpreted as "behavior" and managed with the wrong medication. The care coordinator helps stop that from occurring.
- **Assisting the client in understanding public benefits that can help pay for needed care (such as Medicare, Medicaid, and VA programs).** The area of healthcare benefits available to Americans is complex. The particular programs are frustrating to maneuver and confusing. It is crucial to have an advocate who can help the senior and his family through this process so that the senior receives the benefits he is entitled to receive and protects all of the resources that he is entitled to protect. Long-term care is expensive. Care coordinators help figure out how to afford to pay for the best quality care and protect the client's life savings.
- **Personalizing meaningful "Care Plans."** The Care Plan is what guides the care provided in a facility. It includes specific problems, goals, and approaches. The care coordinator works with staff to create a Care Plan that best meets the needs of the client.
- **Helping the client and family understand and participate in "Care Conferences."** State and federal regulations require nursing homes to complete routine, thorough assessments. Upon completion, a care conference is scheduled for staff and family to discuss the current status of a resident. The care coordinator attends the conference with the senior and/or his family to raise questions and help cultivate solutions.
- **Providing frank communication about the client's health status.** When there are problems or changes, the care coordinator helps communicate that information to the family to avoid surprise and to enable the client and his family to make informed decisions. This results in peace of mind for the entire family and the ability to make well-informed decisions.
- **Providing education about lesser known community services.** A few examples of additional services to which the care coordinator may link the client and family are: counseling, specialized footwear, adaptive clothing, low vision testing, or driving evaluations.

The above is just a sampling of the types of issues that care coordinators help senior clients and their families address. Each situation is unique and requires personalized planning, and each client's situation presents an ever-changing picture.

CONCLUSION

Comprehensively planning for seniors is challenging when they are concerned about potential long-term care costs or when they are already in the long-term care maze because they are experiencing chronic care

issues. Complex health, legal, and financial issues abound. These issues are fundamentally interrelated and comprehensive, coordinated planning from one source leads to improved results for the client. By taking an elder-centered approach to this planning, an effective elder law attorney can stay true to the needs of his clients while at the same time accomplishing the client's asset protection goals. Elder law firms practicing the life care planning model of practice are uniquely qualified to help their clients find, get, and pay for good long-term care.

ABOUT THE AUTHOR

Peter C. Sisson is a Board Certified Elder Law Attorney by the National Elder Law Foundation; Principal in the Boise law firm Sisson & Sisson, The Elder Law Firm, PLLC. He graduated Order of the Coif, Washington University School of Law, in 1988. The author is also a member of the National Academy of Elder Law Attorneys, the National Care Planning Council, the Boise Estate Planning Council, a founding member of The Better Way Coalition, and the Idaho State Bar Section on Taxation, Probate, and Trust Law. He has served on the boards of numerous local organizations involved in helping seniors, including: the Idaho chapter of the Alzheimer's Association, SunHealth Behavioral Systems, The Better Way Coalition, Faith In Action, and The Life Care Planning Law Firms Association.

ENDNOTES

¹ Deficit Reduction Act [DRA] of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2005).

² IDAHO ADMIN. CODE r. 16.03.05.837 (2005); see also IDAHO CODE ANN. § 56-214(3) (2004).

³ Interestingly, the DRA actually helped clarify requirements for annuities for seniors attempting to access Medicaid benefits and has prompted change in state regulations. Idaho's state regulations are now more in line with federal law, rather than being more restrictive than federal law. See, e.g., IDAHO ADMIN. CODE r. 126.03.05.838 (2007). The presumption is still in place, but an annuity meeting federal requirements also rebuts the presumption.

⁴ See ERICA F. WOOD, ELLEN M. KLEM & ABA COMM'N ON LAW AND AGING, PROTECTIONS IN MEDICAID ESTATE RECOVERY: FINDINGS, PROMISES PRACTICES, AND MODEL NOTICES 38 (2007).

⁵ See, e.g., *Complaint to Set Aside Transfers of Assets*, *State Dep't of Health & Welfare v. Swenson*, No. 02-3761 (5th D. Idaho Sept. 30, 2002) (seeking to set aside gifts made from the proceeds of the sale of a home).

⁶ See <http://www.idahoelderlaw.com>, for more information on life care planning, care coordination, and the elder care continuum.

⁷ Carla Garnett, *Don't Accept the Blues: Depression in the Elderly Is Treatable*, THE NIH WORD ON HEALTH, June 2000, available at <http://www.nib.gov/news/WordonHealth/jun2000/story01.htm>.

TORT REFORM: CLOSE, BUT NOT ENOUGH: A MEDICAL MALPRACTICE DEFENSE PERSPECTIVE

Steven J. Hippler
Givens Pursley LLP

This article reflects the personal viewpoint of the author and not of the The Advocate or the Health Law Section.

In 2003, *The Idaho Legislature revisited tort reform. In particular, the Legislature rolled back the cap on non-economic damages to \$250,000 from an inflation-adjusted amount of almost \$700,000.*¹ In addition, the Legislature amended the statute concerning punitive damages. The amendment continued to require plaintiffs seeking punitive damages to obtain a court order allowing an amendment to the complaint. It also strengthened the pre-amendment review process. The court, before allowing such an amendment, was required to consider all relevant evidence to determine whether there is a likelihood that plaintiffs would prove the right to punitive damages by clear and convincing evidence. The statute also sets limits on the amount of punitive damages that may be awarded in a judgment against a defendant.²

INCREASED RELIANCE ON THE "RECKLESS" EXCEPTION

The medical malpractice defense bar has been supportive of the reforms to the cap and to the punitive damages procedural requirements and limitations. One particular consequence of the cap on non-economic damages, that many in the malpractice defense bar are now experiencing, relates to the exception for reckless conduct. Specifically, the cap does not apply to cases in which the defendant's conduct complained of is found to be 'reckless.' When the cap was substantially higher, this exception rarely came into play, particularly in medical malpractice cases, for several reasons. First, in large economic damages cases such as alleged birth injury; brain injury; and cases involving paralysis, economic damages, particularly future economic damages, damages were substantial enough (in a quantum of millions) that possible alienation of the jury by pushing too hard by alleging reckless conduct was typically not worth the risk, absent compelling facts of abhorrent behavior. Moreover, in such large dollar cases, as well as in non-catastrophic economic damages cases, the cap of over \$600,000 was usually large enough to preclude attempts to 'bust' the cap in most cases, except when there existed compelling facts of egregious conduct. Accordingly, the 'reckless' card was rarely played.

Based upon the input and perspective of the medical community, the cap was scaled back to \$250,000. Among other things this was an effort to combat the rising cost and decreased availability of malpractice insurance, as well as decreased liability limits offered in the market. Anecdotal evidence from healthcare providers suggests the desired outcome has begun to be realized. Insurance premiums have not skyrocketed, and coverage is more readily available through a greater number of companies competing for business in the state, particularly as they write policies with lower limits, in part, because of the cap. Some in the medical malpractice bar may have noted an increased effort by plaintiffs' to 'bust' the cap through the reckless exception. This has created a growing concern about unintended consequences that could lead to many problems tort reform tried to solve, including insurance availability and affordability. This presents several problems for the liability defense bar generally, and the medical malpractice defense bar and medical community specifically.

UNINTENDED CONSEQUENCES

One of the most significant problems is the fact that 'reckless' claims are not required to be approved substantially in advance of trial as are punitive damage claims. Thus, defense counsel may not know reckless-

ness is a substantial issue in the case until late in the proceedings. This is problematic because many malpractice policies are limited by choice or availability to one million dollars per occurrence. The late injection of a reckless claim may result in a client's potential exposure to excess liability, where previously excess exposure was not seriously considered.³ This places the client in a difficult position of continuing with the defense of what the physician believes was appropriate care, or potentially settling to avoid a chance of excess liability and personal exposure. Such a settlement in the medical community carries with it substantial baggage. Reports of the settlement must be filed with the Board of Medicine, the National Practitioner Data Bank, and will have to be addressed on all future hospital privileges applications and job applications. Insurers will consider such settlements in determining whether to provide malpractice coverage, and if so, the liability limits offered and the cost of the premium. All this takes place without a judge evaluating the merits of the recklessness claim. Indeed, reckless claims may be, and have been, asserted on the eve of or during trial. This is true even with increasing scrutiny on expert disclosures in state court. Many judges allow such claims as a "supplemental opinion" of an expert late in a case. They may also accept as adequate disclosure, deposition testimony indicating the alleged breach of the standard of care created a high degree of risk that damage would result.⁴

Many courts differentiate negligence from recklessness based only upon the degree of risk of harm from the conduct, regardless of whether the defendant was aware of the risk. Moreover, absent a specific statutory requirement to independently weigh the evidence to determine the likelihood of a plaintiff prevailing on a claim of recklessness, there is a propensity for judges in medical malpractice cases to simply accept the naked assertion of a medical expert that the breach of the standard of care was such the defendant should have reasonably known the plaintiff would very likely be injured. The statutory exception for reckless behavior creates the same issue and concern as existed with respect to punitive damages prior to the recent statutory amendment. With punitive damages, there was a concern that judges were simply relying upon the assertions in the affidavit of a plaintiff's expert, as one might in considering a motion for summary judgment, without thoroughly considering all of the evidence supporting the expert's asserted opinion was one factor that led to the procedural changes to the punitive damages statute. Now, with the 2003 statutory change, before allowing an amendment for punitive damages at a hearing, usually months in advance of trial, a judge must weigh the evidence presented, and conclude the plaintiff has "affirmatively established" "a reasonable likelihood of proving facts at trial sufficient to support an award of punitive damages."⁵

An additional problem with the reckless exception is the lack of a legislative definition of recklessness, and a current judicial trend to accept the relatively low standard of "knew or should have known" the conduct created a high probability of harm to allow a reckless claim to proceed to a jury. Absent requiring more proof of qualitatively culpable conduct, such as applying a standard of a "conscious disregard" for the safety of the plaintiff, the reckless exception to the cap is often being used in what used to be simple negligence and malpractice cases. With the lower cap, plain-

tiffs' counsel often now feel adequately economically motivated to risk offending a jury in a medical malpractice case by arguing recklessness, particularly with such a watered-down definition of reckless being used by the district courts.⁶

Finally a less practical and more philosophical question is raised by the exception to the cap for reckless conduct. That is, assuming it is a sound policy decision to limit recovery for non-economic damages, why should the degree of foreseeability of the harm incurred allow one plaintiff to recover more than another, where there is no intent or policy to punish the wrongdoer or deter the conduct as is the case with punitive damages? Instead, why not simply allow the cap to be busted if the same finding as is required for punitive damages is met, while also applying the same pre-trial procedural requirements as currently exist to amend to add a claim for punitive damages? As a long time litigator defending medical malpractice cases, this approach seems far more reasonable and consistent with the public policy underlying the statute, at least as it relates to medical liability cases.

Ultimately, based upon my experience in defending medical malpractice cases both under the previous version of tort reform, and under the still relatively new version, I am deeply concerned about the increased propensity of plaintiffs to seek to bust the cap based on a claim of recklessness. It creates a real potential to destroy gains in the availability of coverage and efforts to prevent a spiraling of the cost of malpractice insurance. It also places physicians in the untenable position of having to demand or agree to cases being settled (and all of the consequences of settlement that are visited upon a physician as a result) for fear of personal exposure beyond insurance limits. Because reckless claims for the purpose of busting the cap do not have to be added to the case only by amendment after a meaningful hearing on the issue well in advance, the reckless issue may not truly be injected into a case or appreciated as a real issue until very late in the case, often at the trial itself. This makes the carriers' calculation of risk and exposure very complicated, and the decision and dilemma of the physician in deciding whether to demand settlement all the more difficult.

PROPOSED CHANGES

I believe the statute should be amended to eliminate the reckless exception to the cap on non-economic damages, and instead rely upon punitive damages as the remedy for conduct meriting deterrence and punishment. Alternatively, if an exception to the cap for reckless conduct is to be allowed, in addition to or apart from punitive damages claims, then the following should be required: 1) a definition of reckless that incorporates the concept of "conscious disregard" for the plaintiff's safety; and 2) a pretrial amendment of the complaint (significantly in advance of trial) which requires a similar procedure and the same type of substantial weighing by the court of the likeliness of the claim being proven at trial as is required in Idaho Code Section 6-1604. In addition, because of the potential for a jury to "compromise" a verdict by agreeing to negligence but not the requested finding of recklessness, particularly given that "recklessness," absent punitive damages is only relevant to the cap, courts should consider bifurcating the issue. Thus, if the jury returns a verdict of negligence and awards non-economic damages in excess of the cap, the jury can then be instructed on recklessness and counsel given a brief opportunity to argue the issue to the jury, whereupon the jury can then deliberate on the reckless question.⁷ By adopting some of these mitigating proposals, hopefully the unintended consequences of the reduction in the cap, particularly in medical malpractice cases, can be avoid-

ed, and the intended consequences of tort reform truly achieved.

ABOUT THE AUTHOR

Steven J. Hippler is a partner in the law firm Givens Pursley LLP. He is a 1991 graduate of the University of Utah College of Law. His law practice focus is in the areas of health care liability/medical malpractice defense and in health care regulatory law. He is a founding member and past president of the Health Law Section. He often lectures at health law regulatory and medical malpractice related seminars through Idaho and the region.

ENDNOTES

¹ IDAHO CODE § 6-1603. LIMITATION ON NONECONOMIC DAMAGES. (1) In no action seeking damages for personal injury, including death, shall a judgment for noneconomic damages be entered for a claimant exceeding the maximum amount of two hundred fifty thousand dollars (\$250,000); provided, however, that beginning on July 1, 2004, and each July 1 thereafter, the cap on noneconomic damages established in this section shall increase or decrease in accordance with the percentage amount of increase or decrease by which the Idaho industrial commission adjusts the average annual wage as computed pursuant to section 72-409(2), Idaho Code.

* * *

(4) The limitation of awards of noneconomic damages shall not apply to:

(a) Causes of action arising out of willful or reckless misconduct. . . .

² *Id.* § 6-1604. LIMITATION ON PUNITIVE DAMAGES. (1) In any action seeking recovery of punitive damages, the claimant must prove, by clear and convincing evidence, oppressive, fraudulent, malicious or outrageous conduct by the party against whom the claim for punitive damages is asserted.

(2) In all civil actions in which punitive damages are permitted, no claim for damages shall be filed containing a prayer for relief seeking punitive damages. However, a party may, pursuant to a pretrial motion and after hearing before the court, amend the pleadings to include a prayer for relief seeking punitive damages. The court shall allow the motion to amend the pleadings if, after weighing the evidence presented, the court concludes that, the moving party has established at such hearing a reasonable likelihood of proving facts at trial sufficient to support an award of punitive damages. . . .

³ In a recent trial, a co-defendant had the issue of recklessness injected at trial in an attempt to bust the cap, despite the fact that a previous motion to amend punitive damages based on what the opposing medical expert called a "reckless" breach of the standard of care was withdrawn months in advance of trial.

⁴ The Jury Instruction used by Idaho state district judges on "reckless," for purposes of the cap has, in many cases been similar to the following: The words "reckless conduct" . . . mean more than ordinary negligence. The words mean acts or omissions under circumstances where the actor knew or should have known that the acts or omissions not only created an unreasonable risk of harm to another, but involved a high degree of probability that such harm would actually result." The courts applying this definition have relied upon a modification of IDJI 2nd 2.25, which relates to "wanton" misconduct. But, cf. *Athay v. Stacey*, 142 Idaho 360, 128 P.3d 897 (2005).

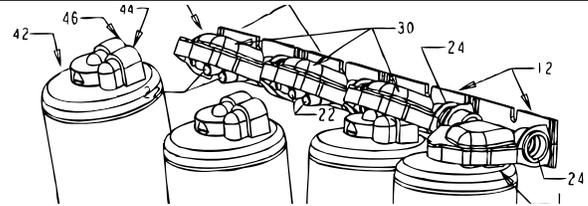
⁵ IDAHO CODE § 6-1604.

⁶ Many plaintiffs' counsel have recognized that medical professionals, particularly physicians, are still widely respected by jurors, and accusing them of doing more than "making a mistake," for which they should be liable, ran a risk of alienating the jury. This is not to suggest that there are the exceptional cases where the defendant physician's demeanor and/or the circumstances of the case are egregious enough that a more aggressive approach in attacking the physician is not as risky.

⁷ This is an approach I have had one district judge take recently in a case, and one that I am told a court took in yet another case. In both cases, however, the jury returned a defense verdict, thus alleviating the need to submit the reckless issue to the jury.

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www.chasanwalton.com

andrew.chasan@chasanwalton.com • tim.walton@chasanwalton.com

CONDITIONAL ADMISSION, 75-PERCENT PASS RATE, AND E-DISCOVERY

Larry Hunter
Idaho Delegate to ABA House of Delegates

Leading up to the ABA's mid-year meeting in Los Angeles in February there were several resolutions which it appeared that the House of Delegates was going to debate vigorously. In the end, the resolution that was most debated involves a procedure that Idaho already has in place: conditional admission.

Idaho is one of 19 states that have a process for conditional admission to the bar. It is contained in Rule 209A of the Idaho Bar Commission Rules. If that comes as a surprise to you, please take a moment to look at the Rule. It is not merely theoretical; the rule has been utilized by the Bar Commission to assess new admittees. The pertinent portions of Idaho Rule 209A read as follows:

(a) Upon recommendation from the Board of Commissioners ("Board") to the Supreme Court, an applicant may be granted conditional approval of present good moral character and fitness after meeting all other requirements under these Rules when it is determined that the protection of the public requires the temporary monitoring of the applicant in question.

(i) Confidentiality

(1) All proceedings concerning consideration of and granting of a conditional license shall be confidential, as provided by Rule 218.

The conditional admission designation in Idaho is generally considered when a candidate has had a history of substance abuse or financial disfrugalties.

Most of the debate in the ABA House of Delegates dealt with the issue of confidentiality. There were those who felt that the failure to disclose that an attorney has been conditionally admitted was unfair to the public or potential clients. The proponents of the resolution countered by saying that the issue was not what would or would not be disclosed to clients, but what would be disclosed by applicants to Bar Admissions Committees. If there were disclosure, there would be a chilling effect on disclo-

sure to the Bar. It should be noted that conditional admission under the uniform act being proposed presupposes that the candidate is qualified to be admitted—fitness and character, passed the bar exam, etc. and has gone through treatment, therapy or counseling to overcome whatever problem that the bar entrance body has identified. In the end, the House decided to adopt the Model Rule on Conditional Admission to Practice Law. Each state will have the right to decide whether or not to adopt the model rule.

There was also lengthy debate on an action to adopt the action of the ABA's Council of the Section of Legal Education and Admissions to the Bar in adopting a provision which provided a bright line for law schools concerning the sufficiency of a law school's bar passage rate. That is a long way of saying that there will now be a specific bar exam pass rate of 75% required for graduates from a law school within a 5-year period of graduation. If that is not attained the law school will be out of compliance and its accreditation threatened. The debate centered on what this rule would do to the promotion of diversity in the profession. The provision passed after assurances that efforts to protect diversity had been made.

A third action of interest was the adoption of the Uniform Rules Relating to the Discovery of Electronically Stored Information Act. The effect of the uniform rule would be to encourage states to adopt rules consistent with the Federal Rule on e-discovery. This resolution also passed and will now be considered by the various states.



Larry Hunter was appointed as the Idaho State Bar Delegate to the American Bar Association House of Delegates effective August 2004. Mr. Hunter is a partner with Moffatt, Thomas, Barrett, Rock and Fields in Boise. His practice includes general and commercial litigation, administrative law, and alternative dispute resolution. Larry is a past president of the Idaho State Bar. He received his J.D. from Northwestern University School of Law. He has an A.B. from Harvard University (cum laude). Contact information for Larry is: (208) 345-2000, or lch@moffatt.com

PRO BONO COMMISSION

JUDICIARY, PRIVATE FIRMS, AND GOVERNMENT ENCOURAGE LEGAL HELP FOR THE POOR



(Back Row, Left to right): Stephen Rice, Idaho Supreme Court Justice Jim Jones, Bannock County Magistrate Judge Enrico Carnaroli, John J. McMahon, Sunrise Ayers, Brian Kane, James Martin, David Alexander, and Richard Boardman. (Middle row): Mary Hobson, Michelle Points, Diane Minnich, Thomas Saldin, Judge Candy Dale, Linda Judd, and Newal Squyres. Commission members not pictured: Denise Asper, Peter Erbland and Donald Carey. Speakers (front row) Idaho Supreme Court Justice Daniel Eismann, Chief U.S. District Judge B. Lynn Winmill, University of Idaho Law School Dean Don Burnett. Speaker not pictured Attorney General Lawrence Wasden.

PRO BONO COMMISSION

Some of Idaho's top judges and lawyers are launching a statewide effort to encourage expanded legal assistance for the disadvantaged. The Idaho Pro Bono Commission was created by a Joint Resolution of the U.S. District Court for the District of Idaho, the Idaho Supreme Court and the Idaho State Bar.

On April 14, Chief Justice Daniel Eismann of the Idaho Supreme Court, Chief U.S. District Judge B. Lynn Winmill, Attorney General Lawrence Wasden, and University of Idaho Law School Dean Don Burnett were the keynote speakers at the inaugural meeting of the commission whose goal is to encourage law firms to provide free legal services to financially strapped individuals.

The announcement of the new joint effort came at a news conference at the Idaho Supreme Court.

A resolution adopted by the group establishes a Pro Bono Commission that will work with the judiciary, private firms, and governmental lawyers to encourage legal help for the poor. The resolution noted that "equal justice for all is fundamental to our system of government; and the promise of equal justice under the law is not realized for individuals and families who have no meaningful access to the justice system because they are unable to pay for legal services."

Specifically the new Commission will:

- Encourage larger Idaho law firms, corporate law departments, and government law offices to maximize the involvement of attorneys in pro bono services, and
- Explore the development of means and incentives to support attorneys in providing services to those unable to pay for legal services

For more information: Mary Hobson, Legal Director, Idaho Volunteer Lawyers Program, (208) 334-4510.



Attorney General Lawrence Wasden, Idaho Supreme Court Justice Daniel Eismann, Chief U.S. District Judge B. Lynn Winmill, University of Idaho Law School Dean Don Burnett.



HIGHLIGHTS OF THE 2008 RULE CHANGES

Catherine Derden
Staff Attorney and Reporter
Idaho Supreme Court Rules Advisory Committees

SUPREME COURT RULES ADVISORY COMMITTEES

The reports of the various Supreme Court Advisory Committees, recommending proposed changes to the rules, are submitted to the Idaho Supreme Court, which reviews each proposal. The 2007-2008 proposals have resulted in the ordering of the following rule changes, which will go into effect on July 1, 2008, unless otherwise noted. The orders amending these rules can be found on the Internet on the Idaho Judiciary's home page at <http://www.isc.idaho.gov/rulesamd.htm>.

APPELLATE RULES

The Appellate Rules Advisory Committee is chaired by Chief Justice Daniel Eismann. Although that committee did not meet in 2007, orders were entered in January and February of 2008, setting forth amendments that went into effect on March 1, 2008. Most of these were the result of recommendations from the Court Reporter Committee and the Administrative Conference and were made as part of a continuing effort to ensure the timely resolution of appeals. In addition, there are several amendments to Rule 31, on exhibits, effective July 1, 2008.

Rule 12.1. Permissive appeal in custody cases. Whenever the best interests of a child would be served by an immediate appeal, this rule on permissive appeal allows the parties or the magistrate hearing the case to petition the Supreme Court to take a direct permissive appeal without first going to the district court if the judgment involves custody of a minor, termination of parental rights, or adoption. Effective March 1, 2008, this rule was amended to include appeals from Child Protective Act proceedings.

Rule 17. Notice of appeal-contents. The amendment, effective March 1, 2008, requires the appellant to specifically identify by name and address each court reporter from whom a transcript is being requested and to certify that each of these reporters was served with the notice. The purpose of the amendment is to ensure that a reporter is promptly notified of the request. While most cases involve only the official court reporter for the district judge,

there are cases that involve more than one reporter. The names of the court reporters should be in the district court file and as of March 1, should appear on the Register of Actions.

The same requirement applies to an amended notice of appeal that is requesting additional transcripts. An amended notice requesting added transcripts must also include an estimate of the number of additional pages to be transcribed. This should be in the court file or can be obtained by contacting the reporter. The number of pages is used to determine the due date for the transcript.

Rule 18. Notice of cross appeal. Effective March 1, 2008, this rule was amended the same as Rule 17 to require the cross-appellant to certify that any additional requests for transcripts were served on a named reporter.

Rule 19. Request for additional transcript or clerk's or agency's record. As of March 1, 2008, a person making a request under this rule for additional transcript must certify that each reporter from whom a transcript is being requested was served with the request, specifically setting out the name and address of the reporter. The request must also include an estimate of the number of pages as to each transcript requested in the motion so that a due date for the additional transcript can be set. If additional record is requested, the person must also certify that the request was served on the clerk.

Rule 20. Filing and service of documents. In accord with the changes to Rule 17, effective March 1, 2008, the court reporter was added to the list of persons who must be served with a notice of appeal. In addition, the rule now requires the clerk of the Supreme Court to notify the reporters identified in the clerk's certificate of appeal that a transcript has been requested.

Rule 23. Filing fees and clerk's certificate of appeal-waiver of appellate filing fee. The certificate for the clerk now includes the names of the reporters from whom a transcript has been requested and the clerk sends the certificate to the Supreme Court with the notice of appeal or cross-appeal. The clerk's certificate will also include the estimated number of pages to be transcribed. This amendment was effective March 1, 2008.

Rule 24 (d). Reporter's transcript-time for preparation. Previous to March 1, 2008, the same time frame was used for the lodging of transcripts without regard to the length of the transcript. The Supreme Court has now adopted a new tiered approach for due dates for transcripts based on the number of estimated pages. If a transcript is estimated to be fewer than 100 pages, it is due within 30 days from the filing of the notice of appeal. If the transcript is estimated to be between 100 and 500 pages, then it is due within 63 days from the filing of the notice of appeal. If the transcript is estimated to be over 500 pages, then the court reporter files a form with the court, estimating the length of time required, and the Supreme Court sets a due date. The rule also details how a request for an extension of time is to be submitted and details steps taken when a transcript is more than fourteen days past due. In the event the reporter has failed to estimate the fees for the transcript, the estimated fee has been raised to \$200.00.

Rule 27(d). Clerk or agency's record- time for preparation. Effective March 1, 2008, this rule was amended to require the clerk to prepare the record and have it ready for service on the parties within thirty days of the filing of the notice of appeal. The clerk will still retain the record until the reporter's transcript, if any, is finished and then it will be sent to the parties for settlement.

Rule 30. Augmentation or deletions from transcript or record. This rule was amended effective March 1, 2008, to require that any request for augmentation with a transcript yet to be transcribed, specifically identify the name of the reporter along with the date and title of the proceeding, and an esti-

mate of the number of pages to be transcribed. A form for all motions to augment is now included in a new subsection (b) and the subsection requires that all motions to augment be substantially in this form.

Rule 31. Exhibits, recordings and documents. As of July 1, the district court clerks and agency clerks will no longer be sending original documentary exhibits to the Supreme Court for appeals. Instead, the clerks will send copies of all documents, charts and pictures offered as exhibits in a trial or a hearing. Other exhibits will be retained at the district court, unless it is a death penalty case, in which case the clerk will send photographs of these other exhibits to the Supreme Court. In all other cases, photographs of these exhibits will be sent upon request of a party. The certificate of exhibits will specifically identify each document sent to the Supreme Court and will also state if no exhibits are being sent to the Supreme Court.

In conjunction with an amendment to the criminal rules, pictures of child pornography attached to a pre-sentence investigation report that are identified in a separate envelope will be retained at the district court when there is an appeal, unless specifically requested.

CIVIL RULES

The Civil Rules Advisory Committee, chaired by Justice Warren Jones, met on January 25, 2008, recommending amendments that have resulted in the following changes:

Rule 26(b)(4)(C). Fees of expert apportionment. This rule has been amended to clarify that if discovery of an expert is obtained by deposition, then the party seeking discovery is to pay the expert a reasonable fee.

Rule 35(a). Physical and mental examination of persons. The amendment requires that the person being examined be notified of any tests or procedures to be performed and provides for the right of the party being examined to have a representative of his or her choice present.

Rule 35(b). Report of examining physician. This rule has been amended to provide access to all other writings or recordings created by the examiner or the party, including the originals of forms and test score sheets. This amendment is aimed at allowing access to the raw data used to net the expert's results so that the party's own expert can assess the conclusions reached and see if they are supported by the

data.

Rule 45(b). Subpoena for production or inspection of documents, electronically stored information or tangible things or inspection of premises. The amendment to this rule inserts the phrase "unless otherwise ordered by the court" before the requirement that the party serving the subpoena serve a copy on the opposing party at least seven days prior to service on a third party. In addition, the opening sentence of the rule has been moved to the end of subsection (1).

Rule 57. Declaratory judgments. This rule on declaratory judgments has been amended to provide that in an action seeking declaratory judgment as to coverage under a policy of insurance any person known to any party to have a claim against the insured relating to the incident that is the subject of the declaratory action shall be joined if feasible. The purpose of the amendment is to address the situation where there is an accident with injuries and the insurance company files a declaratory action as to coverage against the policy owner/driver and obtains a default judgment without the injured party knowing about it.

Rule 60(b). Mistake, inadvertence, excusable neglect, newly discovered evidence, fraud, grounds for relief from judgment or order. The amendment removes the six month limitation on motions for relief based on (6) "any other reason justifying relief". The last sentence of the rule now has subsections so that it is clear each phrase refers to a separate circumstance.

Rule 82(c)(4) and (c)(5). Jurisdiction and venue. The amendments eliminate the need for the Administrative District Judge to seek Supreme Court approval for special assignments to magistrate judges.

Filing Fee Schedule. There is a new filing fee schedule. An opening explanation as to charging fees and what constitutes an appearance by a person other than a plaintiff or petitioner has been added. References to "with prior appearance" and "no prior appearance" have been deleted and a few categories have been consolidated or eliminated.

CHILD SUPPORT GUIDELINES

The Child Support Guidelines Advisory Committee, chaired by Judge Michael Redman, met on January 11, 2008. The recommendations of the Committee were adopted,

resulting in the following rule changes.

Section 3. Function of guidelines. The amendment to this rule is to clarify that the award of child support includes both the basic child support calculation and all of the adjustments. The clarification is important as there is no statute of limitations on the collection of child support awards that are in arrears. In keeping with this idea, the term basic child support calculation replaces the reference to basic child support award so it is clear the award encompasses more.

Section 6 (c). Guidelines income determination – income defined – potential income. This section on potential earned income states "a parent shall not be deemed underemployed if gainfully employed on a full-time basis at the same or similar occupation in which he/she was employed for more than six months before the filing of the action or separation of the parties, whichever occurs first." The intent is to pay deference to persons who have made a change in jobs for valid reasons and not in an attempt to lower child support. The six months is intended to show the stability of the job and that it is a serious life style change. The current amendment is to clarify how the six month provision applies to motions for modification of child support. It reads, "On post-judgment motions, the six month period is calculated from the date the motion is filed."

Section 8 (a). Adjustments to basic child support. Subsection (a) on child care costs has a footnote that reads, "If the court imputes income to a student parent, then the court may order up to a pro-rata sharing of the student's reasonable child care expenses while attending school." The amendment moves the statement into the main body of the rule.

Section 8(d). Health insurance premiums and health care expenses not covered by insurance. The amendment removes conflicting statements found at the end of the section. Currently this guideline states that payments will be made directly between the parties and yet in the next sentence provides that insurance premiums may instead be a credit or an addition. The first sentence is really referring to all medical payments while the last sentence is referring to just the insurance premiums. To clarify this conflict, the amended section will now read: "These payments shall be in addition to the child support award and will be paid directly between the

parties; however, the prorata share of the monthly insurance premium may instead be either a credit against or in addition to the basic child support obligation.”

Section 10 (a). Computations. Basic Child Support. *There are new charts and tables for use in calculating basic child support.*

Section 11: Disability and retirement benefits paid to child. *Disability benefits for the dependent of a disabled person go toward satisfying the disabled parent’s support obligation, but the Committee recommended this section be amended to clarify that it was not referring to benefits for a disabled child, as benefits for a child are not income of the primary parent. Thus, this section has been amended by the addition of the following statement, “[P]ayments received as a result of the child’s disability are not income of either parent.”*

CRIMINAL RULES

The Criminal Rules Advisory Committee, chaired by Justice Roger Burdick did not meet in 2007; however, the court has made several amendments to the criminal rules.

Rule 2.2 (e) and (f). *Special Assignment to Attorney Magistrates. The amendments eliminate the need for the Administrative District Judge to seek Supreme Court approval for special assignments to magistrate judges.*

Rule 32. Standards and procedures governing pre-sentence investigations and reports. *The pre-sentence investigation report sometimes contains child pornography unrelated to the charged offense; for example, child pornography found on a defendant’s computer. The rule has been amended to provide that any pictures or depictions of child pornography that are included as attachments to the PSI be placed in a separately identified envelope. This is the responsibility of the pre-sentence investigator. The trial court may withhold this envelope from disclosure, pursuant to I.C.R. 32 (g)(1), and it is not to be sent to the Supreme Court as part of an appeal unless it is specifically requested.*

Rule 33.3. Evaluation of persons guilty of domestic assault or domestic battery. *The Domestic Assault and Battery Evaluator Advisory Board, chaired by Judge Gary DeMeyer, met on February 27, 2008, and recommended several amendments to this rule that were adopted by the Supreme*

Court. Beginning July 1, 2008, a licensed social worker will no longer be qualified unless he or she is a licensed master social worker, and marriage and family therapists have been added to the list of qualified persons. With this change, all applicants will have graduate level training. In addition, applicants will need twenty hours of specialized training in the previous two years as part of the initial application. The Idaho Coalition Against Sexual Assault and Domestic Violence has also been added to the list of organizations that sponsor training.

EVIDENCE RULES

The Evidence Rules Advisory Committee, chaired by Judge Karen Lansing, met on November 9, 2007, and based on their recommendations there are several amendments to the rules.

Rule 101. Title and scope. *The rules of evidence do not apply to certain proceedings listed in Rule 101(e). This rule was amended to add a reference to proceedings under the judicial consent to abortion statute to this list.*

Rule 507. Conduct of mediations. *For the last few years a special subcommittee has been reviewing the Uniform Mediation Act and I.R.E. 507 with the purpose of making a recommendation to the Evidence Rules Advisory Committee whether Idaho should revise Rule 507 and/or adopt the UMA as a rule or as a statute or both. At the November meeting, a revised proposed Mediation Rule 507 was presented for the committee’s consideration based on the Uniform Act. After much discussion, a new rule was presented to the court, resulting in adoption of a new Rule 507 on conduct of mediations. In addition to giving the parties a privilege, the rule gives the mediator a privilege so that the mediator may refuse to disclose a mediation communication and may prevent any other person from disclosing a mediation communication of the mediator even if the parties to the mediation have waived their privilege and want the mediator to testify. Thus, while the mediator cannot preclude the parties from testifying as to what they said in the mediation should they choose to waive their privilege, the mediator can refuse to be drawn into a later lawsuit and prevent others from testifying about anything that the mediator said during the mediation.*

Rule 804. Hearsay exceptions; declarant unavailable. *A new subsection entitled “forfeiture by wrongdoing” has been*

added to this rule on hearsay exceptions where the declarant is unavailable. The language adopted by the court follows the federal rule of evidence and allows for statements offered against a party who has engaged or acquiesced in wrongdoing that was intended to, and did procure, the unavailability of the declarant as a witness.

MISDEMEANOR/INFRACTION RULES.

Misd. Rule 3 and Infraction Rule 3. Citable offenses - Methods of initiating. *These rules have limited a citation to charging no more than two violations or offenses. The limitation was based primarily on the physical size of the citation; however, with the new e-citation, there is the capability of listing more than two violations on a single citation. Thus, the limitation has been removed and the rule now states that more than one violation may be charged in one citation.*

The various rules advisory committees meet annually as the need dictates. Currently both the Civil Rules Advisory Committee and the Criminal Rules Advisory Committee are scheduled to meet in September of 2008. Agenda items may be submitted to the chair of the particular committee or to me, as reporter for the committees. A listing of Supreme Court Committees and their membership can be found at www.isc.idaho.gov under judicial rosters- judicial committees.

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

4th AMENDED Regular Spring Terms for 2008

Boise	.....January 2, 4, 7, 9, and 11
Boise	.....February 1, 4, 6, and 8
Lewiston	.....March 6 and 7
Boise	.....March 10, 12, and 14
Idaho Falls	.....April 1
Pocatello	.....April 2 and 3
Boise	.....April 7 and 9
Twin Falls Boise	.....May 1 and 2
Boise	.....May 5, 7, and 9

Regular Fall Terms for 2008

Boise	..... June 2, 4, 6, 9, and 11
Idaho Falls	..... September 10
Pocatello	..... September 11 and 12
Boise	..... September 15 and 17
Twin Falls	..... November 6 and 7
Boise	..... November 10, 12, and 14
Boise	..... December 1, 3, 5, 8, and 10

By Order of the Court

Stephen W. Kenyon, Clerk

NOTE: The above is the official notice of setting of the year 2008 Spring and 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.

IDAHO COURT OF APPEALS ORAL ARGUMENT DATES

As of April 4, 2008

~~*Thursday, May 1, 2008 — LAW DAY (Mt. View H. S.)*~~

~~10:30 a.m. State v. Contreras Gonzales #33700~~

*Please Note: #33700 has been moved to Tuesday, 5/6/08, 1:30 p.m.

Tuesday, May 6, 2008 - BOISE

9:00 a.m. State v. Watkins #32710

10:30 a.m. State v. Garcia-Molina #33922

1:30 p.m. State v. Contreras-Gonzales #33700

Thursday, May 8, 2008 - BOISE

9:00 a.m. State v. Jarzabek #33941

10:30 a.m. State v. Do #34295

1:30 p.m. State v. Hanslovan #33127

Tuesday, May 13, 2008 - BOISE

9:00 a.m. State v. Lusby #34217

10:30 a.m. Heizelman v. State #33518

1:30 p.m. State v. Martin #33081

Thursday, May 15, 2008 - BOISE

9:00 a.m. State v. Ellefson #33622

10:30 a.m. Lane v. State #33220

1:30 p.m. State v. Clements #33481

IDAHO SUPREME COURT ORAL ARGUMENT DATES

As of April 4, 2008

Thursday, May 1, 2008 - BOISE

8:50 a.m. J-U-B Engineers v. Security Insurance Co #34239

10:00 a.m. Deelstra v. Hagler #34265

11:10 a.m. State v. Timbana (Petition for Review) #34624

Friday, May 2, 2008 - BOISE

8:50 a.m. Ruffing v. Ada Co. Paramedics #33514

10:00 a.m. State v. Hensley #32902

11:10 a.m. Schultz v. Schultz #34790

Monday, May 5, 2008 - BOISE

8:50 a.m. Mercy Medical Center v. Ada County #34155

10:00 a.m. Fowble v.

Industrial Special Indemnity Fund #34151

11:10 a.m. Lochsa Falls, LLC v.

Idaho Transportation Board #34039

Wednesday, May 7, 2008 - BOISE

8:50 a.m. Reynolds v. State Insurance Fund #34369

10:00 a.m. St. Alphonsus v. Ada County #34233

11:10 a.m. Dunlap v. State #33061

Friday, May 9, 2008 - BOISE

8:50 a.m. Andrus v. Nicholson #33302

10:00 a.m. State v. Johnson #33312

OFFICIAL NOTICE COURT OF APPEALS OF IDAHO

Chief Judge

Sergio A. Gutierrez

Judges

Karen A. Lansing

Darrel R. Perry

4th AMENDED Regular Spring Terms for 2008

Boise January 8 and 10

Boise February 5, 7, and 12

Pocatello (Eastern Idaho) March ~~10~~ and 11 ~~and 12~~

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 2008 Spring 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 STATE LAW LIBRARY HAS RELOCATED

The 2008 Legislative Session passed SB1271 removing the requirement that the state law library be kept in the Capitol or Supreme Court building; and SB1271 adding a fourth judge to the Court of Appeals. With this legislation in place, the Law Library, located on the main floor of the Idaho Supreme Court building, has been relocated. This move will allow the Court of Appeals, currently housed in a rented, off-site space to move to the vacated Law Library space. This area is undergoing remodeling construction. It is anticipated the Court of Appeals will move to its new location the end of 2008 or beginning of 2009. The new location for the Law Library is: 4th Floor (Key Bank Building), 702 W. Idaho St., Boise, Idaho. Hours: 8:30 a.m. - 6:00 p.m., Monday - Friday. NEW CONTACT NUMBERS: Front Desk (208) 334-2117, Fax (208) 334-2467.

LICENSING CANCELLATIONS

The Commissioners of the Idaho State Bar by and through their Executive Director have filed with the Clerk of this Court evidence that the following named attorneys have not paid the 2008 Idaho State Bar license fees required by Section 3-409, Idaho Code, and have not given notice of withdrawal from the practice of law to the Idaho State Bar and the Court,

NOW, THEREFORE, IT HEREBY IS ORDERED that the license to practice law in the State of Idaho of the following named persons is hereby cancelled, and said persons are placed on inactive status for failure to pay the 2008 Idaho State Bar license fees:

DANIEL R. ACEVEDO; JOHN SCOTT ASKEW, MELINDA HARM BENSON; GRETCHEN BIGGS; LAURENCE MICHAEL BOGERT; PAMELA R. BOUCHER; ROBERT SANDERS CAMPBELL JR.; KATE DONNELLY; WILLIAM DENMAN EBERLE; CHERI KAY GOCHBERG; RANDOLPH MARTIN HAMMOCK; DAVID ROBERT HELLENTHAL; DEBORAH LOUISE HILLER-LASALLE; CANDY L. JACKSON; ANN E. JACQUOT; DAVID C. JACQUOT; DAMIAN W. KIDD; KIM ELIZABETH LONDON; MICHAEL L. LYNCH; R. MONTE MACCONNELL; MARK THOMAS MCHUGH; JOHN ANDREW MILLER; DAVID J. MOLNAR; WILLIAM JOSEPH MORAN; TODD W. NIELSEN; JAMES C. PAINE; MARY FISHER RICE; DARREN S. ROBINS; MATTHEW DAVID ROMRELL; EDWARD L. SCOTT; ROBERT TIMOTHY SHEILS; MARK STEVAN SNYDER; TERRY R. SPENCER; JULIAN ELIZABETH ST. MARIE; DAVID MORRISON SWANK; RICHARD D. VANCE; GLEN EUGENE WEGNER; SUZANNE WEST; HERBERT BRENT WILLIAMS; MARK LEE WING; and TARA WRIGHT.

IT FURTHER IS ORDERED AND NOTICE IS HEREBY GIVEN, that the above-named persons are no longer licensed to practice law in the State of Idaho unless otherwise provided by an Order of this Court.

IT FURTHER IS ORDERED that Bar Counsel of the Idaho State Bar is directed to distribute, serve or publish this Order as provided in the Idaho State Bar Commission Rules.

DATED this 4th day of March 2008

By Order of the Supreme Court
Roger S. Burdick, Vice Chief Justice

ORDER WITHDRAWING ORDER CANCELLING LICENSE TO PRACTICE LAW FOR NON-PAYMENT OF 2008 LICENSE FEES RE: MATTHEW DAVID ROMRELL

On March 4, 2008, this Court issued an **ORDER CANCELLING LICENSE TO PRACTICE LAW FOR NON-PAYMENT OF 2008 LICENSE FEES** for the reason the attorneys named therein, including **MATTHEW DAVID ROMRELL**, had not paid the 2008 Idaho State Bar license fees required by Section 3-409, Idaho Code, and had not given notice of withdrawal from the practice of law to the Idaho State Bar and the Court. On March 5, 2008, the Idaho State Bar advised this Court that the Idaho State Bar has since discovered that **MATTHEW DAVID ROMRELL** did pay the required licensing fees on February 29, 2008. Therefore, good cause appearing;

IT HEREBY IS ORDERED that this Court's March 4, 2008 **ORDER CANCELLING LICENSE TO PRACTICE LAW FOR NON-PAYMENT OF 2008 LICENSE FEES** with regard to **MATTHEW DAVID ROMRELL** be, and hereby is, **WITHDRAWN**.

IT FURTHER IS ORDERED that **MATTHEW DAVID ROMRELL'S** status as an **AFFILIATE MEMBER** of the Idaho State Bar be, and hereby is, **REINSTATED**.

DATED this 5th day of March 2008.

For the Supreme Court
Karel A. Lehrman, Chief Deputy Clerk for Stephen W. Kenyon, Clerk

LICENSING REINSTATEMENTS

AMENDED ORDER GRANTING PETITION FOR REINSTATEMENT AS ACTIVE MEMBER IN THE IDAHO STATE BAR

The Court issued an Order, March 4, 2008, that Dennis R. Acevedo be removed from the list of attorneys entitled to practice law in Idaho and placing him on inactive status for non-compliance with the 2008 Idaho State Bar licensing requirements. A Petition for Reinstatement was filed, March 21, 2008.

The Idaho State Bar advised that Petitioner has met all requirements to be reinstated to Active Status. Therefore, good cause appearing,

IT HEREBY IS ORDERED that the Petition for Reinstatement be, and hereby is, **GRANTED** and **Daniel R. Acevedo** is reinstated to Active Status for 2008 and the Idaho State Bar is hereby directed to issue an Active Attorney License on receipt of this Order.

DATED this 2nd day of April 2008.

For the Supreme Court
Dorothy Beaver for Stephen W. Kenyon, Clerk

ORDER GRANTING PETITION FOR REINSTATEMENT AS AFFILIATE MEMBER IN THE IDAHO STATE BAR

The Court issued an Order, March 4, 2008, that Melinda Harm Benson be removed from the list of attorneys entitled to practice law in Idaho and placing her on inactive status for non-compliance with the 2008 Idaho State Bar licensing requirements. A Petition for Reactivation was filed, March 17, 2008.

The Idaho State Bar advised that Petitioner has met all requirements to be reinstated to Affiliate Status. Therefore, good cause appearing,

IT HEREBY IS ORDERED that the Motion for Reactivation be, and hereby is, **GRANTED** and **Melinda Harm Benson** is reinstated to

Affiliate Status for 2008 and the Idaho State Bar is hereby directed to issue an Affiliate Attorney License on receipt of this Order.

DATED this 28th day of March 2008.

For the Supreme Court
Dorothy Beaver for Stephen W. Kenyon, Clerk

ORDER GRANTING PETITION FOR REINSTATEMENT AS ACTIVE MEMBER IN THE IDAHO STATE BAR

The Court issued an Order, March 4, 2008, that Laurence Michael Bogert be removed from the list of attorneys entitled to practice law in Idaho and placing him on inactive status for non-compliance with the 2008 Idaho State Bar licensing requirements. A Motion for Reinstatement to the Practice of Law was filed, March 31, 2008.

The Idaho State Bar advised that Petitioner has met all requirements to be reinstated to Active Status. Therefore, good cause appearing,

IT HEREBY IS ORDERED that the Motion for Reinstatement to the Practice of Law be, and hereby is, **GRANTED** and **Laurence Michael Bogert** is reinstated to Active Status for 2008 and the Idaho State Bar is hereby directed to issue an Active Attorney License on receipt of this Order.

DATED this 2nd day of April 2008.

For the Supreme Court
Dorothy Beaver for Stephen W. Kenyon, Clerk

ORDER GRANTING PETITION FOR REINSTATEMENT AS ACTIVE MEMBER IN THE IDAHO STATE BAR

The Court issued an Order, March 4, 2008, that Ann E. Jacquot be

removed from the list of attorneys entitled to practice law in Idaho and placing her on inactive status for non-compliance with the 2008 Idaho State Bar licensing requirements. A Petition for Reinstatement was filed, March 27, 2008.

The Idaho State Bar advised that Petitioner has met all requirements to be reinstated to Active Status. Therefore, good cause appearing,

IT HEREBY IS ORDERED that the Petition for Reinstatement be, and hereby is, **GRANTED** and **Ann E. Jacquot** is reinstated to Active Status for 2008 and the Idaho State Bar is hereby directed to issue an Active Attorney License on receipt of this Order.

DATED this 1st day of April 2008.

For the Supreme Court
Dorothy Beaver for Stephen W. Kenyon, Clerk

ORDER GRANTING PETITION FOR REINSTATEMENT AS ACTIVE MEMBER IN THE IDAHO STATE BAR

The Court issued an Order, March 4, 2008, that David C. Jacquot be removed from the list of attorneys entitled to practice law in Idaho and placing him on inactive status for non-compliance with the 2008 Idaho State Bar licensing requirements. A Petition for Reinstatement to Active Member Status was filed, April 4, 2008.

The Idaho State Bar advised that Petitioner has met all requirements to be reinstated to Active Status. Therefore, good cause appearing,

IT HEREBY IS ORDERED that the Petition for Reinstatement to Active Member Status be, and hereby is, **GRANTED** and **David C. Jacquot** is reinstated to Active Status for 2008 and the Idaho State Bar is hereby directed to issue an Active Attorney License on receipt of this Order.

DATED this 7th day of April 2008.

For the Supreme Court
Dorothy Beaver for Stephen W. Kenyon, Clerk

ORDER GRANTING PETITION FOR REINSTATEMENT AS ACTIVE MEMBER IN THE IDAHO STATE BAR

The Court issued an Order, March 4, 2008, that Damian W. Kidd be removed from the list of attorneys entitled to practice law in Idaho and placing him on inactive status for non-compliance with the 2008 Idaho State Bar licensing requirements. A Petition for Reinstatement was filed, March 27, 2008.

The Idaho State Bar advised that Petitioner has met all requirements to be reinstated to Active Status. Therefore, good cause appearing,

IT HEREBY IS ORDERED that the Petition for Reinstatement be, and hereby is, **GRANTED** and **Damian W. Kidd** is reinstated to Active Status for 2008 and the Idaho State Bar is hereby directed to issue an Active Attorney License on receipt of this Order.

DATED this 1st day of April 2008.

For the Supreme Court
Dorothy Beaver for Stephen W. Kenyon, Clerk

ORDER GRANTING PETITION FOR REINSTATEMENT AS AFFILIATE MEMBER IN THE IDAHO STATE BAR

The Court issued an Order, March 4, 2008, that Kim Elizabeth London be removed from the list of attorneys entitled to practice law in Idaho and placing her on inactive status for non-compliance with the 2008 Idaho State Bar licensing requirements. A Petition for Reinstatement of Affiliate Law License was filed, March 13, 2008.

The Idaho State Bar advised that Petitioner has met all requirements to be reinstated to Affiliate Status. Therefore, good cause appearing,

IT HEREBY IS ORDERED that the Petition for Reinstatement of Affiliate Law License be, and hereby is, **GRANTED** and **Kim Elizabeth London** is reinstated to Affiliate Status for 2008 and the Idaho State Bar is hereby directed to issue an Affiliate Attorney License on receipt of this Order.

DATED this 18th day of March 2008.

For the Supreme Court

Dorothy Beaver for Stephen W. Kenyon, Clerk

ORDER GRANTING PETITION FOR REINSTATEMENT AS ACTIVE MEMBER IN THE IDAHO STATE BAR

The Court issued an Order, March 4, 2008, that John Andrew Miller be removed from the list of attorneys entitled to practice law in Idaho and placing him on inactive status for non-compliance with the 2008 Idaho State Bar licensing requirements. A Petition for Reinstatement was filed, March 6, 2008.

The Idaho State Bar advised that Petitioner has met all requirements to be reinstated to Active Status. Therefore, good cause appearing,

IT HEREBY IS ORDERED that the Petition for Reinstatement be, and hereby is, **GRANTED** and John Andrew Miller is reinstated to Active Status for 2008 and the Idaho State Bar is hereby directed to issue an Active Attorney License on receipt of this Order.

DATED this 6th day of March 2008.

For the Supreme Court
Dorothy Beaver for Stephen W. Kenyon, Clerk

ORDER GRANTING PETITION FOR REINSTATEMENT AS ACTIVE MEMBER IN THE IDAHO STATE BAR

The Court issued an Order, March 4, 2008, that Mark Stevan Snyder be removed from the list of attorneys entitled to practice law in Idaho and placing him on inactive status for non-compliance with the 2008 Idaho State Bar licensing requirements. A Petition for Reinstatement was filed, March 17, 2008.

The Idaho State Bar advised that Petitioner has met all requirements to be reinstated to Active Status. Therefore, good cause appearing,

IT HEREBY IS ORDERED that the Petition for Reinstatement be, and hereby is, **GRANTED** and **Mark Stevan Snyder** is reinstated to Active Status for 2008 and the Idaho State Bar is hereby directed to issue an Active Attorney License on receipt of this Order.

DATED this 25th day of March 2008.

For the Supreme Court
Dorothy Beaver for Stephen W. Kenyon, Clerk

ORDER GRANTING PETITION FOR REINSTATEMENT AS AFFILIATE MEMBER IN THE IDAHO STATE BAR

The Court issued an Order, March 4, 2008, that Glen Eugene Wegner be removed from the list of attorneys entitled to practice law in Idaho and placing him on inactive status for non-compliance with the 2008 Idaho State Bar licensing requirements. A Petition for Reinstatement was filed, April 7, 2008.

The Idaho State Bar advised that Petitioner has met all requirements to be reinstated to Affiliate Status. Therefore, good cause appearing,

IT HEREBY IS ORDERED that the Petition for Reinstatement be, and hereby is, **GRANTED** and **Glen Eugene Wegner** is reinstated to Affiliate Status for 2008 and the Idaho State Bar is hereby directed to issue an Affiliate Attorney License on receipt of this Order.

DATED this 9th day of April 2008.

For the Supreme Court
Dorothy Beaver for Stephen W. Kenyon, Clerk

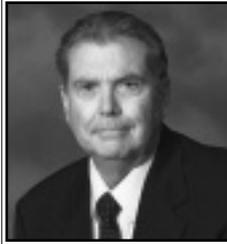
(Reinstatements continued on page 40)

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Idaho Supreme Court and Court of Appeals
NEW CASES ON APPEAL PENDING DECISION
(UPDATE 04/01/08)

CIVIL APPEALS

ARBITRATION

1. Was it error for the court to deny Adjei-Twum's request for additional attorney fees and costs where fees and costs had been submitted and decided by the arbitrator?

Adjei-Twum v. Gibson
S.Ct. No. 34249
Court of Appeals

ATTORNEY FEES AND COSTS

1. Does Idaho Code § 12-120 apply even when the plaintiff has not submitted a statement of claim consistent with the requirements of § 12-120(4) in a personal injury suit?

Gonzalez v. Thacker
S.Ct. No. 34534
Supreme Court

CONTRACT

1. Whether there was substantial evidence to support the trial court's finding that there was a meeting of the minds on a material term of the contract, the amount of consideration to be paid.

Nelson v. Construction Backhoe Services
S.Ct. No. 34476
Court of Appeals

EMPLOYMENT

1. Whether Waterman made a prima facie case at trial regarding the first element of an ADEA claim, which is that he was a member of a protected class at the time of the adverse employment action.

Waterman v. Nationwide Mutual Insurance
S.Ct. No. 33883
Supreme Court

INSURANCE

1. Did the sudden, unexpected escape of water from the Armstrongs' pool constitute water damage for which coverage is excluded?

Armstrong v. Farmers Insurance Co. of Idaho
S.Ct. No. 34250
Supreme Court

LANDS

1. Was the Commission's decision arbitrary and capricious and not supported by substantial evidence on the record as a whole?

Burns Holding LLC v.
Madison County Board of Commissioners
S.Ct. No. 33753
Supreme Court

2. Whether the district court erred in holding the decision of the Kootenai County Board of Commissioners denying a variance request was arbitrary and capricious and an abuse of discretion.

Wohrle v. Kootenai County Board of
Commissioners
S.Ct. No. 34095
Supreme Court

POST-CONVICTION RELIEF

1. Did the court err in summarily dismissing Ridgely's petition for post-conviction relief, and in finding he failed to raise a genuine issue of material fact as to ineffective assistance of counsel?

Ridgely v. State
S.Ct. No. 33782
Court of Appeals

2. Did the court err in dismissing Low's petition for post-conviction relief because it did not address all of the claims asserted by Low?

Low v. State
S.Ct. No. 34098
Court of Appeals

3. Did the district court err when it dismissed Harris' petition for post-conviction relief without ever ruling on his motion for appointment of counsel?

Harris v. State
S.Ct. No. 34153
Court of Appeals

4. Did the district court err in summarily dismissing McKay's petition for post-conviction relief and in finding the elements jury instruction from his criminal trial was correct?

McKay v. State
S.Ct. No. 34271
Court of Appeals

PROCEDURE

1. Whether defendants voluntarily appeared before the court and concurrently waived their right to challenge personal jurisdiction under IRCP 4(i)(2) when defendants filed a motion to strike an amended complaint after making a special appearance and filing a motion to dismiss but before the issue of personal jurisdiction was ruled upon.

Rhino Metals, Inc. v. Craft
S.Ct. No. 34380
Supreme Court

PROPERTY

1. Did the court err in ruling that a mailing address, alone, is a sufficient description to satisfy the statute of frauds in a contract for the purchase and sale of real property?

Ray and Remington Real Estate v. Frasure
S.Ct. No. 34311
Supreme Court

2. Whether, in the absence of either a written agreement or evidence of a long standing and accepted boundary established by implied agreement, the court erred in declaring that a boundary line by agreement had been established between the parties' adjoining properties.

Cecil v. Gagnebin
S.Ct. No. 34412
Supreme Court

3. Is a default judgment describing an interest in land only by a rural mailbox route number too vague for enforcement through a quiet title action?

McKoon v. Hathaway
S.Ct. No. 34229
Court of Appeals

SUBSTANTIVE LAW

1. Whether the court correctly ruled that a complaint against an engineer that is not heard within six months as required by I.C. § 54-1220(2) can be refiled before the board if the deadline is missed; and, if so, whether that renders the timeframe set forth in the statute as a nullity.

Erickson v. Soderling
S.Ct. No. 34593
Supreme Court

SUMMARY JUDGMENT

1. Whether the district court erred in affirming the magistrate court's finding as a matter of law that the Zollingers are not tenants at will of the Trust.

Carter v. Zollinger
S.Ct. No. 34377
Supreme Court

2. Whether the district court improperly engaged in contract interpretation preventing Coregis Insurance Company from offsetting both amounts, where the clear language of the contract allows Coregis to do so.

Cherry v. Coregis Insurance Company
S.Ct. No. 34404
Supreme Court

CRIMINAL APPEALS

EVIDENCE

1. Whether the testimony of Dr. Cushman should have been excluded since it was not disclosed.

Thomson v. Olsen
S.Ct. No. 34185
Supreme Court

2. Was there substantial, competent evidence to support Doe's adjudication under the JCA for resisting and obstructing an officer?

State v. Doe
S.Ct. No. 34028
Court of Appeals

PROBATION REVOCATION

1. Did the court abuse its discretion by revoking probation and executing the unified sentence of five years, with three years fixed?

State v. Thompson
S.Ct. No. 33548
Court of Appeals

**SEARCH AND SEIZURE –
SUPPRESSION OF EVIDENCE**

1. Did the investigatory stop of Larkey escalate into a de facto arrest not supported by probable cause?

State v. Larkey
S.Ct. No. 34332
Court of Appeals

2. Did the court err when it denied West's motion to suppress because he was subject to custodial interrogation in violation of Miranda and because the questions exceeded the scope of the stop?

State v. West
S.Ct. No. 32681
Court of Appeals

3. Was the officer's frisk of Martin's person reasonable under the totality of the circumstances?

State v. Martin
S.Ct. No. 33081
Court of Appeals

4. Did the court err by suppressing evidence and dismissing the information because Lusby was not entitled to batter or otherwise use physical force on the officer even if the search leading to her initial detention was illegal?

State v. Lusby
S.Ct. No. 34217
Court of Appeals

SENTENCE REVIEW

1. Should the court vacate the denial of the Rule 35 motion because there is no transcript of the court's reasoning in denying the motion and no written findings or conclusion?

State v. Rhoades
S.Ct. No. 32468
Court of Appeals

SUBSTANTIVE LAW

1. Did the court err in denying the motion to dismiss based on Peterson's claim that his double jeopardy rights were violated when the felony possession charge was pursued?

State v. Peterson
S.Ct. No. 33137
Court of Appeals

2. Whether the magistrate judge had authority under I.C. § 20-520(1)(i) to order the parents of a juvenile offender to submit to random urinalysis drug testing and to not violate any controlled substance law.

State v. Doe
S.Ct. No. 34008
Court of Appeals

3. Did the court err in restricting argument of counsel and instructing the jury to disregard counsel's argument?

State v. Jones
S.Ct. No. 33372
Court of Appeals

**SUMMARIZED BY:
CATHY DERDEN
SUPREME COURT STAFF ATTORNEY
(208) 334-3867**

LICENSING REINSTATEMENTS (CONT. FROM PAGE 37)

ORDER GRANTING PETITION FOR REINSTATEMENT AS ACTIVE MEMBER IN THE IDAHO STATE BAR

The Court issued an Order, March 4, 2008, that Herbert Brent Williams be removed from the list of attorneys entitled to practice law in Idaho and placing him on inactive status for non-compliance with the 2008 Idaho State Bar licensing requirements. A Petition for Reinstatement was filed, April 1, 2008.

The Idaho State Bar advised that Petitioner has met all requirements to be reinstated to Active Status. Therefore, good cause appearing,

IT HEREBY IS ORDERED that the Petition for Reinstatement be, and hereby is, **GRANTED** and **Herbert Brent Williams** is

reinstated to Active Status for 2008 and the Idaho State Bar is hereby directed to issue an Active Attorney License on receipt of this Order.

DATED this 3rd day of April 2008.

For the Supreme Court

Dorothy Beaver for Stephen W. Kenyon, Clerk

ORDER GRANTING PETITION FOR REINSTATEMENT AS ACTIVE MEMBER IN THE IDAHO STATE BAR

The Court issued an Order, March 4, 2008, that Randolph M. Hammock be removed from the list of attorneys entitled to practice law in Idaho and placing him on inactive status for non-compliance with the 2008 Idaho State Bar licensing

requirements. A Petition for Reinstatement was filed, March 14, 2008.

The Idaho State Bar advised that Petitioner has met all requirements to be reinstated to Active Status. Therefore, good cause appearing,

IT HEREBY IS ORDERED that the Petition for Reinstatement be, and hereby is, **GRANTED** and **Randolph M. Hammock** is reinstated to Active Status for 2008 and the Idaho State Bar is hereby directed to issue an Active Attorney License on receipt of this Order.

DATED this 21st day of April 2008.

For the Supreme Court

Dorothy Beaver for Stephen W. Kenyon, Clerk



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APPOINTMENT OF IDAHO'S FIRST FEMALE FEDERAL JUDGE

History was made when Candy Wagahoff Dale was appointed U.S. Magistrate Judge, thereby becoming Idaho's first female federal judge. Judge Dale assumed her official duties on March 31, 2008. The Investiture ceremony took place on April 4 and was attended by numerous dignitaries, including former Chief Judge of the Ninth Circuit Court of Appeals, Mary M. Schroeder. Judge Dale graduated with honors from the College of Idaho in 1979 and was a Gipson scholar. She earned her Juris Doctorate in 1982 from the University of Idaho College of Law where she served as Chief Editor of the Law Review. Judge Dale was an associate and shareholder in the Moffatt, Thomas law firm in Boise and later was one of the founding members of the Hall, Farley, Oberrecht & Blanton firm in 1988. She served as president of the firm until her appointment to the Bench. Judge Dale also served on numerous Idaho state and federal court committees, including as a Lawyer Representative for the District of Idaho and as a member of the Advisory Board for the Ninth Circuit Court of Appeals.

NEW CHIEF U.S. MAGISTRATE JUDGE

As part of a regular rotation, U.S. Magistrate Judge Larry M. Boyle again became Chief U.S. Magistrate Judge for the District of Idaho effective March 31, 2008. Prior to taking the federal bench, Judge Boyle served as a State of Idaho District Judge and in 1989 was appointed as Associate Justice of the Idaho Supreme Court. Judge Boyle was appointed U.S. Magistrate Judge in 1992 and served his first term as Chief U.S. Magistrate Judge from 2000 to 2007. Judge Boyle was Chairman of the Ninth Circuit Court of Appeals Magistrate Judges Executive Board from 1995-1997. In 1998, he was appointed by Chief Justice of the U.S. Supreme Court William H. Rehnquist to the U.S. Judicial Conference Committee on the Administration of Magistrate Judges System for a three-year term, which was renewed twice thereafter. Judge Boyle also serves on the Ninth Circuit Public Information and Community Outreach

(PICO) Committee.

BANKRUPTCY I-CARE WEBSITE

The Idaho Credit Abuse Resistance Education website is now available at:

<http://www.id.uscourts.gov/I-CARE/index.htm>.

I-CARE is an initiative of the United States Bankruptcy Court for the District of Idaho with the assistance and support of the Commercial Law and Bankruptcy Section of the Idaho State Bar and the Office of the United States Trustee. The goal is to facilitate the financial education of Idahoans, particularly high school and college age students, with an emphasis on the wise and responsible use of credit and related skills. Our efforts join with those of Bankruptcy Courts throughout the United States who have sponsored educational outreach programs in conjunction with or inspired by the C.A.R.E. Program developed by the United States Bankruptcy Court for the Western District of New York. The website, provides a tool for matching judges, lawyers, trustees and other volunteers who are available to present programs with interested schools, teachers, youth and civic groups and others throughout Idaho. The site includes links to presentation materials, additional educational materials and resources, and other relevant information. Approximately twenty people from across the state have already volunteered to act as Presenters.

BANKRUPTCY MEANS TESTING

The IRS's National Standards for Allowable Living Expenses and Local Standards for Transportation and Housing and Utilities Expenses for purposes of completing the means test have recently been updated. The revised standards apply to cases filed on or after March 17, 2008. The following is a direct link to the new materials:

<http://www.usdoj.gov/ust/eo/bapc-pa/20080317/meanstesting.htm>

ANNUAL CLE PROGRAM AT U.S. COURTHOUSE IN POCATELLO

The Idaho Chapter of the Federal Bar Association will hold its Annual CLE Program on Friday, May 2nd at the U.S. Courthouse & Federal Building in Pocatello. The Program will include a "Best Practices"

session presented by Chief U.S. District Judge B. Lynn Winnmill and Dave Metcalf. U.S. Ninth Circuit Court of Appeals Judge N. Randy Smith is also scheduled to speak. In addition, there will be presentations on the topics of E-Discovery and Environmental Crimes in Idaho. Please see the brochure and registration material under the scrolling announcements on our website at: www.id.uscourts.gov.

ANNUAL DISTRICT CONFERENCE AND FEDERAL PRACTICE PROGRAM

This year's Annual District Conference and Federal Practice Program will only be presented in one location. It is scheduled to take place in Boise at the Centre on the Grove on Friday, November 7th, so mark your calendars. The featured speaker will be Erwin Chemerinsky, a nationally renowned professor of constitutional law and federal civil procedure at Duke University. Chemerinsky was recently named as founding dean of the new University of California Irvine School of Law. Chemerinsky has authored four books, more than 100 articles and regularly serves as a commentator on legal issues for local and national media. In 2005, he was named by Legal Affairs as one of the "top 20 legal thinkers in America". Additional information on the Program will be provided in the future.

UPCOMING CM/ECF RELEASE - COURT TRANSCRIPT AND REDACTION POLICY & PROCEDURES

In connection with the upcoming release of the new CM/ECF software, we will implement a revised policy and procedures regarding Court Transcripts, the timing of their availability and the mandatory redaction requirements. The specifics will be set forth in an upcoming General Order.

The Judicial Conference has adopted a new policy regarding the availability of transcripts of court proceedings, which will become effective on May 15th. Under this policy, a transcript provided to the Court by a court reporter or transcriber will be available at the office of the Clerk of Court for inspection only, for a period of 90 days. During the 90-day period, a copy of the transcript may be obtained from the court reporter or transcriber at the rate established by the Judicial Conference. The transcript will be

available within the Court for internal use, and an attorney who obtains the transcript from the court reporter or transcriber may obtain remote electronic access to the transcript through the Court's CM/ECF system for purposes of creating hyperlinks to the transcript in court filings and for other purposes. After the 90-day period has ended, the filed transcript will be available for inspection and copying in the Clerk's Office and for download from the Court's CM/ECF system through the Judiciary's PACER system.

Within 5 days of filing of the transcript, attorneys must file a notice of intent to redact information in the transcript. Under these new procedures, attorneys must redact all personal

data identifiers (i.e. Social Security number; names of minor children; date of birth; financial account numbers; and home address) from transcripts within 21 days of the transcript being filed. Attorneys are strongly encouraged to avoid or minimize questioning which would result in certain information being elicited that would subsequently require redaction pursuant to Civil Local Rule 5.5 and Bankruptcy Local Rule 9037.1.

Tom Murawski is an Administrative Analyst with the United States District and Bankruptcy Courts. He has a J.D. and Masters in Judicial Administration.



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ALTERNATIVE DISPUTE RESOLUTION

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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.

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LAW RELATED EDUCATION PROGRAM COMPLETES ANOTHER SUCCESSFUL MOCK TRIAL SEASON

For the fifth consecutive year, Logos Secondary School from Moscow won Idaho's Annual High School Mock Trial Competition, sponsored by the Idaho Law Foundation's Law Related Education Program.

The 2008 mock trial season began with 40 teams registering for the competition in one of three regional tournaments held throughout Idaho on March 2, 8, and 9. This year's case was a criminal trial that involved an allegation of cyberstalking.

From the regional tournaments, 12 teams advanced to the state tournament held in Boise on March 13 and 14. The teams who advanced included:

The quarter-final rounds of the state competition, held on Thursday

REGIONAL TEAMS ADVANCE TO STATE

MAGIC VALLEY

Blackfoot High School
 Kimberly High School
 (2 teams)

NORTHERN IDAHO

Coeur D'Alene High School
 Logos Secondary School
 (2 teams)

TREASURE VALLEY

Boise High School (2 teams)
 Centennial High School
 Liberty Charter High School
 Skyview High School
 St. Ambrose High School

night, March 13 at the Ada County Courthouse in Boise, included the four teams who advanced to the semi-final rounds on Friday, March 20 at the Federal Courthouse. These four teams included two teams from Logos Secondary School, as well as Blackfoot High School from Blackfoot, Idaho and Skyview High School from Nampa.

In the championship round held at the Idaho Supreme Court on March 14, Logos secondary School Varsity Team defeated Logos Junior Varsity Team. The Honorable Joel Horton, Supreme Court Justice, presided over the case. The Honorable Roger Burdick, Supreme Court Justice, and Russ Heller, Boise School

District's Educational Services Supervisor for Social Studies joined him on the judging panel.

During a debrief session after the championship round, the judging panelists complimented the participants for their poise and professionalism. One of the judges also indicated how impressed he was with the teams' ability to bring the case to a level for which professionals would admire and be covetous. Logos will now advance to the National High School Mock Trial Championship in Wilmington, Delaware May 8th through May 10th.

Over 150 volunteers and ILF staff ensured a successful mock trial season. For Russ Heller, volunteering as a judge for the Mock Trial Final Championship was an immense opportunity. He states "I keep doing this because it is such a pleasure to watch young folks do this and do such a great job. I've had the pleasure of sitting in other venues watching this sort of thing and these students are just as good as those in other states and law schools. So, my congratulations to them all. It is remarkable that they can stand in front of an intimidating bench and deliver their presentations with such poise".

Another volunteer judge Justice Joel Horton said, "It truly is remarkable the quality of performance the students put in. It was a real pleasure to judge this competition." Justice Roger Burdick, of the Idaho Supreme Court states, "I was quite surprised at the level of professional and personal preparation of these students. Totally impressed with all of the students".

After winning state, the Logos mock trial team has now turned its attention to preparing for the national tournament, where the hope to best last year's 12th place finish out of 52 teams. In addition to studying and developing their case strategy for the national competition, Coach Chris Schlect is working on gaining the upper hand at nationals through practice and scrimmages with fellow national competitors. After speaking with the Hon. Judge John Carbo of Georgia (last years reigning national champions), Schlect recalls his conversation, "He remembers us well and views us as one of the teams to beat at nationals. Not only did he think we were "without question" Georgia's toughest competition last year, he reminded me he was a scoring judge in one of our rounds in Charlotte in 2005—a round he remembers as one of the best competition rounds he has ever seen in his experience with mock trial. Since 2005 he has considered our team to be among the best". With positive prospects and optimistic attitudes, this Logos team is looking to feel the thrill of victory.

For information about volunteering for or making a contribution to the Idaho High School Mock Trial Program, contact Carey Shoufler, Law Related Education Director, at (208) 334-4500.



Russ Heller, Director of Social Studies for the Boise School District, judges the mock trial championship round.



Logos Secondary School from Moscow won Idaho's Annual High School Mock Trial Competition, sponsored by the Idaho Law Foundation's Law Related Education Program.

**THANK YOU TO ALL OUR VOLUNTEERS
2008 IDAHO MOCK TRIAL COMPETITION**

MAGIC VALLEY REGIONAL

*Brian Harper
Brook Baldwin
Jon Jacobsen
Melissa Davlin
Patrick Brown
Paul Beeks*

TREASURE VALLEY REGIONAL

*Brindee Probst
Bryan Nickels
Cheryl Meade
Dave Lloyd
David Hensley
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Matt Osterman
Nolan Whitrock
Ray Setzke
Sara Bearce
Scott Keim
Stan Tharp
William J Russell*

NORTH IDAHO REGIONAL

*Chris Schwartz
Glenda Michaud
Hon. Barbara Buchanan
Hon. Eugene Marano
Hon. James Michaud*

STATE COMPETITION

*Brent Marchbanks
Bruce Castleton
Bryan Walker
Caralee Lambert
Colleen Zahn
Cynthia Yee-Wallace
Dara Labrum
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Ray Powers rdp@powersthomson.com

Jim Thomson jst@powersthomson.com

Portia Jenkins plj@powersthomson.com

Mark Orler mjo@powersthomson.com

www.powersthomson.com

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Fax: (208) 577-5101

Physical Address:

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Boise, Idaho 83706

IN MEMORIAM

**RICHARD E. WESTON
1935-2008**

Richard E. Weston ("Dick") died February 24. He was born January 14, 1935 in Minneapolis, and moved with his family to Boise when he was two years old. His father, Eli Weston, was a noted labor law attorney, and his mother, Hazel Weston, was a great contributor to musical events in the community. Dick, and his brother Bob, attended Boise High School where Dick graduated with the class of 1953. Dick's undergraduate education was at Boise Junior College, and Tulane University.

Before attending law school, Dick served in the Air National Guard becoming a second lieutenant in the Air Force Reserve. He graduated law school at the University of Idaho College of Law, and became an Idaho Assistant Attorney General. Later he entered practice with his father as Weston & Weston, specializing in labor law. After his father died, he associated with Harry Richardson as Weston & Richardson, and more recently was associated with the firm of Runft & Steele.

Dick loved his home, his cats, birds, squirrels, ducks and other critters who came for a meal at the back deck. He pressed for legislation on humane methods of bear hunting. His other volunteer activities included serving on the Board of Directors of the Idaho Youth Ranch, and as a past president of the Plantation Townhouses Association. He was a charter member of the Plantation Golf Club. Many friends over his life have appreciated his intelligence, personality and fine sense of humor.

He was predeceased by his parents, Eli and Hazel Weston. He is survived by his brother Robert Weston, who with his wife Georgina and children Cordelia and Jonathon live near London; by his daughter Julie Weston Lechefsky, Phoenix; his son Richard E. Weston Jr. ("Rick") who, with wife Connie and grandchildren Carly, Danielle, Skyler, Richard Scot, and Micalla live in Nampa; and by his wife of 23 years, Judy Holcombe who is also a member of the Idaho State Bar.

**DALE W. KISLING
1929 - 2008**

Dale W. Kisling, 78, passed away March 9 in Pocatello. Dale is survived by his wife, Shirley Wray Peterson; his son, Dana L. Kisling; and daughters, Leslie A. Dykman of Seattle, and Nancy L. (Craig) Siler; sisters, LaRene (Byron) Labr of Montana and Arizona, and Mona Jean Turner of California; as well as nine grandchildren and two great-grandchildren.

Dale was the son of late Dale U. Kisling and Verone Keller Kisling. Dale graduated from the University of Montana at Missoula in 1953, with a B.S. in business. He was a talented athlete, played shortstop and third base with the university team, and toured with them throughout the Northwest. After college, Dale was drafted into the Army and served two years at Fort McArthur, California. He continued playing baseball for the Ft. McArthur Team.

After his honorable discharge, Dale spent one year at Virginia City High School teaching and coaching sevenman football and basketball. Dale and family then moved to Pocatello, where he worked for Gate City Steel. After passing the national CPA exam, he decided to attend law school and the family moved to Moscow so that he could attend the University of Idaho Law School. While attending law school, Dale

worked during the summers for the Simplot Corporation at Bonneville, Idaho.

After three years in law school, the family moved back to Pocatello, where he joined the Hugh McGuire Law firm. Mr. McGuire was the prosecuting attorney and Dale became an assistant prosecuting attorney. Dale enjoyed hunting and fishing throughout Idaho and Montana, and had a "get-away" at Darling. He was a member of the Elks Club in Pocatello.

**ROBERT C. STROM
1927 - 2008**

Robert (Bob) Charles Strom, of Craigmont died, March 18, at the age of 80. He was born Sept. 11, 1927, to Clarence and Myrtle Strom of Kellogg, Idaho.

Bob graduated from the University of Idaho College of Law and practiced law for 55 years. He was proud of his service on the Idaho Constitutional Revision Commission and was general counsel for the Nez Perce Tribe for 20 years. He also served 55 years with the Highland School District School Board as clerk and as the attorney for the city of Craigmont.

Bob was a Vandal booster in every way and served as president of the University's Library Associates. He was always interested in history and loved camping with his family and friends and fly fishing.

He is survived by his wife, Shirley Longeteig Strom; his daughters, Kristein Zenner, Camber Strom, Trina Strom and her husband Michael Gruszka; and Steven Blesio; grandchildren, Chad Zenner and his wife Amy, Shane Zenner and his wife Jennika, Dana Zenner Scharping and her husband Time, and Robert Wynne Gruszka; great-grandchildren, Calvin Zenner Carter Zenner and soon to arrive, Ava Rae Scharping; and his beloved cat, Zilly. He was preceded in death by son-in-law, Wayne Zenner; and great-granddaughter, Zoe Christine Zenner.

**WARREN WOOD TRUNNELL
1946-2008**

Warren Wood Trunnell died Saturday, April 5. Warren Wood was the first of 15 children, born to Gerald and Doris Trunnell. After various confrontations with the law, Woody ended up in the Marines. Woody did two tours of duty in Vietnam as a land Marine. Upon returning from Vietnam, he attended the University of Oregon and met his first wife, Barbara Jean Wright. The two married and headed to law school in Lawrence, Kansas. Their first son, Wesley Vance, was born March 2; two months later, Woody graduated from law school.

Barbara Jean died of Lupus. Shortly after, Woody and Wesley returned to the family farm. He began to rebuild his life, opening up a law practice. Several years later, Woody married Connie Lee Townsend and had another son, Bradley Wayne, and twin girls, Tyffanie and Tabitha. One of Woody's greatest joys was the Indy 500 because it meant visiting his lifelong friend and Vietnam veteran buddy, Stephen Bradley, for whom his second son was named. Every year, Woody took one of his daughters and grandchildren with him to Indianapolis where he spent time tailgating, reminiscing, and watching the race with his kids and best friend.

As a public defender and private attorney, he cut a striking figure, often appearing in court still clad in mud-covered irrigation boots.

WILLIAM D. EBERLE
1923 – 2008

William D. Eberle, Idaho politician and businessman, died at his home in Concord, Massachusetts. He was 84. William was born in Boise. He graduated from Boise High School, Stanford University and Harvard Law School. During World War II, he served as an officer in the U.S. Navy. When the war ended, he married Jean Quick of New York, and returned to Boise to practice law with his father.

He was elected to the Idaho House of Representatives from Ada County in the 1950s and in his second term was elected speaker of the House. In the early 1960s, he became the director of Boise Cascade Corp. William left the company and Idaho in the mid-60s to become president and CEO of American Standard Inc. in New York City.

President Nixon appointed him special trade negotiator for the United States in 1971. That position carried ambassador status, making William the first Idahoan to hold that rank. He left the government in the mid-70s and took on the role of executive director of the American Automobile Dealers Association. For many years, he was a director of the International Chamber of Commerce.

William is survived by his wife; their four children, Jeffrey, David, Francis and Cilista; his sister, Nancy Umbach of McCall, and six grandchildren.

STUART A. WOLFER
1972-2008

Major Stuart A. Wolfer, 36, Idaho Thompson Reuters rep, was killed in Iraq on April 6, 2008. He lived with his wife Lee, and three daughters in Emmett. Stu grew up on Long Island, New York, moving to South Florida in 1984. He joined the Army ROTC program when he attended Washington University in St. Louis, Missouri. Upon graduation he was commissioned as a 2nd Lieutenant in the Army. He served as a logistics officer, and was assigned to an Army unit in Iowa where he met Lee. They were married in 2001. He transferred to the U.S. Army Reserve. He attended and graduated from Loyola Law School in Los Angeles. Stu worked for Thomas West as a sales rep in Idaho and Montana. He was called up from the Arm Reserves for active-duty service in 2004. He served in Kuwait for a year before returning to Emmett and his family. He was called up again for active-duty and left for Iraq on December 29, 2007. He leaves behind his wife Lee and three daughters: Lillia, 5, Melissa, 3, and Isadora, 1. Memorials can be given to any Wells Fargo Bank.

—ON THE MOVE—

Dana M. Herberholz has joined Zarian Midgley & Johnson PLLC in Boise. Prior to joining the firm, Dana was affiliated with Hall, Farley, Oberrecht & Blanton, P.A. His practice focuses on intellectual property litigation and transactions. He can be reached at Zarian Midgley & Johnson PLLC, 960 Broadway Ave., Suite 250, Boise, ID 83706, (208) 562-4906.

Angela Levesque and Angela Richards have joined the Andrade Law Office in Boise.

Angela Levesque received her J.D. from the American University, Washington College of Law. She is a member of the Maryland bar. Her practice will focus on removal defense.

Angela Richards graduated from the University of Minnesota Law School. She clerked for Hon. Kathryn Stricklen of the Fourth

District Court for two years. Her practice includes family immigration. They can be reached at Andrade Law Office, P.O. Box 2188, Boise, ID 83701, (208) 345-7800.

Julie Tetrick and Jennifer Reinhardt have joined the Stool Rives LLP Boise office as associate attorneys.

Julie Tetrick attended the University of Washington and earned her J.D. from the University of Georgia. She previously clerked for the Hon. Mikel H. Williams of the U.S. District Court. Her practice includes commercial litigation, contract disputes, environmental litigation and planning and zoning.

Jennifer Reinhardt graduated from the University of Idaho. She was a law clerk for the Hon. Linda Copple Trout of the Idaho Supreme Court. She focuses on construction and contractual matters.

Maureen Ryan has joined Meuleman Mollerup LLP, Boise. She received her J.D. from the Gonzaga University School of Law. She is the past chair of the Bar's Young Lawyer Section. Her practice focuses on Construction Law, Real Estate Law and Commercial Litigation. She can be reached at Meuleman Mollerup LLP, 755 W. Front St., Suite 200, Boise, ID 83702, (208) 342-6066.

—RECOGNITION—

Lawrence Wasden, Idaho Attorney General, was honored as the Idaho Statesman of the Year by Idaho State University. The award is given by Pi Alpha Sigma, a national political science honor society.

The Idaho Business Review Women of the Year award recipients include attorneys Deborah Ferguson, Nicole Hancock, Paula Landholm Kluksdal, Natalie Camacho Medoza, Kelly Miller, Deborah Nelson, and Cathy Silak.

Deborah Ferguson, Assistant U.S. Attorney, District of Idaho, represents federal agencies on environmental issues and land management. **Nicole Hancock** is Corporate Counsel of Syngenta Seeds. **Paula Landholm Kluksdal**, partner at Hawley Troxell Ennis & Hawley, focuses her practice on commercial and residential mortgage lending and creditor's rights. **Natalie Camacho Medoza**, Camacho Mendoza Law Office, practices immigration law, workers' compensation and Indian law. **Kelly Miller**, legal director for the Idaho Coalition Against Sexual & Domestic Violence, works to give women a knowledge of purpose and a self understanding. **Deborah Nelson**, a partner at Givens Pursley LLP, practices in the areas of land use, water, real estate and environmental law and is President of the Idaho Women Lawyers, Inc. **Cathy Silak**, president and CEO of the Idaho Community Foundation, a statewide public charity to enrich the quality of life throughout Idaho.

Kristin Bjorkman Dunn, Boise, has been named a 2008 Tribute to Women in Industry (TWIN) honoree. She received her B.A. and J.D. from the University of Idaho. As a partner at Givens Pursley she currently practices real estate law, real estate finance and business transactions. She can be reached at Givens Pursley, P.O. Box 2720, Boise, ID 83701, (208) 388-1200.

Eric Aaserud, Boise, has been named as of counsel at Perkins Coie, LLP. He focuses on government contracts law, bid protests, contract claims, audits and investigations, small business contracting,

GSA schedule contracting, contract negotiations and software and technical data rights counseling. He can be reached at Perkins Coie, LLP, P.O. Box 737, Boise, ID 83701, (208) 343-3434.

Craig Hobdey, Gooding, was named to the Idaho Water Users Association Hall of Fame. He was honored specifically for his legal services provided to the Big Wood Canal Company and American Falls Reservoir District No. 2. He is currently working on the Facilities Works adjudication in District 37 and continues to represent Big Wood Canal Company and American Falls Reservoir District No. 2 with its daily legal needs. He can be reached at Hobdey & Hobdey, P.O. Box 176, Gooding, ID 83330, (208) 934-4429.

Emile Loza, Boise, has joined the American Bar Association's Special Committee on Computer Gaming and Virtual Worlds. Emile is the Managing Attorney and Founder of the Technology Law Group, LLC. Her current practice includes intellectual property and Internet law. She can be reached at the Technology Law Group, 2215 W. State St., Boise, ID 83702, (208) 939-4472.

Richard Stacey, Boise, was elected Vice President/Treasurer of the Idaho Associated General Contractors' Young Constructors Forum. As an associate attorney at Meuleman Mollerup LLP, his practice focuses on environmental compliance. He can be reached at Meuleman Mollerup LLP, 755 W. Front St., Suite 200, Boise, ID 83702, (208) 342-6066.

Andrew Ellis, Ada County Prosecutor's Office, Boise, has been named the recipient of the Governor's Task Force on Children at Risk award for the prosecuting attorney who serves the children of Idaho in an exemplary fashion. He was nominated by Deb Alsaker-Burke, Annie Cosho and Judge Karen Vehlow. The award was presented at the Idaho Prosecuting Attorney's Association conference held recently in Boise.

Benita Miller, has been selected as the Assistant Trial Court Administrator in the 3rd Judicial District. Miller began her new duties on February 11, 2008. Miller is well-known throughout the district for her many years of work with the CASA program and for her active participation in the field of child custody mediation.

Justice Linda Copple Trout, Boise, The Idaho State Bar Family Law Section Council welcomed formally to its ranks retired Idaho State Supreme Court Justice Linda Trout on February 11. Justice Trout had agreed to join the Council this year following her retirement. The Council sets policies and programs for the Family Law Section.

David M. Swartley has joined the firm of Eberle, Berlin, Kading, Turnbow & McKlveen, as an Associate. He received his B.A. in history from the University of Puget Sound in 1992, and his J.D. in 1995 from the University of Idaho. His practice focuses on all areas of civil litigation with an emphasis on insurance defense, insurance coverage disputes, product liability, business torts and landlord-tenant disputes. He is also the co-author of publications on product liability and business torts and is a frequent presenter at landlord-tenant seminars. dswartley@eberle.com Telephone: (208) 344-9535.

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Daniel R. Acevedo

282 1/2 W. Bridge
Blackfoot, ID 83221
(208) 785-7171
Fax: (208) 785-3019

Kent Wade Bailey

Office of the Attorney General
PO Box 83720
Boise, ID 83720-0036
(208) 334-4901
Fax: (208) 334-5926
baileyk2@dbw.idaho.gov

Brooke Baldwin

Wright Brothers Law Office, PLLC
PO Box 226
Twin Falls, ID 83303-0226
(208) 733-3107
Fax: (208) 733-1669
bbaldwin@wrightbrotherslaw.com

Melinda Harm Benson

University of Wyoming
Department 3971
1000 E. University Avenue
Laramie, WY 82071
(307) 766-2703
Fax: (208) 766-5099
mhbenson@uwyo.edu

**Christian Lee Jones
Berglund**

5843 N. Morpheus Way
Meridian, ID 83646
(208) 863-2297
cjones30@cableone.net

Erika Birch

Strindberg & Scholnick
671 E. Riverpark Lane, Ste. 130
Boise, ID 83706
(208) 336-1788
Fax: (208) 344-7980
erika@utahjobjustice.com

Michael Edwin Bostwick

M.E. Bostwick's Law Offices
6776 South 1300 East
Salt Lake City, UT 84121
(801) 676-8777
Fax: (801) 352-9339
mebostwick@bluebottle.com

Marian E. Boussios

CH2M-WG Idaho, LLC
PO Box 1625
Idaho Falls, ID 83415-2506
(208) 521-9870
Fax: (208) 526-0953
marian.boussios@icp.doe.gov

Matthew Craig Campbell

Campbell & Walterscheid LLP
410 S. Orchard, Ste. 144
Boise, ID 83705
(208) 336-7728
Fax: (208) 336-7729
matthew@cswlegal.com

E. Brian Chernecke

419 Oak Road
Clear Lake, TX 77566-2432
txzephyr@botmail.com

Fen Bruce Covington

2465 Circleville Road, #125
State College, PA 16803

Hon. Candy Wagahoff Dale

U.S. District Court of Idaho
550 W. Fort Street
Boise, ID 83724
(208) 334-9111
candy_dale@id.uscourts.gov

J. Steven Fender

452 E. Lake Rim Lane
Boise, ID 83716
(208) 286-2755

Lynn Drennan Fender

452 E. Lake Rim Lane
Boise, ID 83716
(208) 286-2755

Tammy Lynn Fitting

U.S. Department of Justice/EOIR
Tacoma Immigration Court
1623 E. J Street, Ste. 3
Tacoma, WA 98421
(253) 779-6020
Fax: (253) 779-6001
tammy.fitting@usdoj.gov

Martin Alvin Flannes

Flannes Law, PLLC
PO Box 1090
Hailey, ID 83333
(208) 788-1315
Fax: (208) 788-1316
martin@flannes.net

Hon. Sergio Alberto

Gutierrez
Idaho Court of Appeals
PO Box 83720
Boise, ID 83720-0020
(208) 334-5166
Fax: (208) 334-2526
sgutierrez@idcourts.net

Ralph H. Haley

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Lewiston, ID 83501
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ZARIAN ♦ MIDGLEY is pleased to announce that Dana M. Herberholz has joined the firm as an associate. Mr. Herberholz holds a B.S. in Cellular and Molecular Biology and a B.A. in Law, Societies and Justice from the University of Washington, and a J.D. from Gonzaga University School of Law. Prior to joining the firm, Mr. Herberholz was associated with the law firm of Hall, Farley, Oberrecht & Blanton, PA, in Boise, Idaho.

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Gregg M. Haney
Haney Law Office
PO Box 392
Soda Springs, ID 83276
(208) 339-0393
ghaney@icsofidaho.com

Stephen Grant Hanks
3130 Terra Drive
Boise, ID 83709
(208) 362-9821
steve.hanks@yahoo.com

Syrena Case Hargrove
1102 N. 5th Street
Boise, ID 83702

Dana Michael Herberholz
Zarian Midgley & Johnson, PLLC
960 Broadway Avenue, Ste. 250
Boise, ID 83706
(208) 562-4900
Fax: (208) 562-4901
herberholz@zarianmidgley.com

Danielle Adelaide Hess
1015 SW Meyer Drive
Pullman, WA 99163
(509) 335-2636
haley@turbonet.com

Roger Leland Heywood
Heywood & Associates, PC
1440 S. Clearview Avenue, Ste. 101
Mesa, AZ 85209
(480) 807-8700
Fax: (480) 807-8703
rb@heywoodlaw.com

Portia Jenkins
Powers Thomson, PC
PO Box 9756
Boise, ID 83707
(208) 577-5100
Fax: (208) 577-5101
plj@powersthomson.com

Christy Ann Kaes
Ada County
200 W. Front Street, Room 1182
Boise, ID 83702
(208) 287-6944
ckaes@adaweb.net

Tyler James Larsen
Davis County Attorney's Office
PO Box 618
Farmington, UT 84025
(801) 451-4300
Fax: (208) 451-4328
tlarsen@co.davis.ut.us

Michael Warren Lojek
Ada County Public Defender's Office
200 W. Front Street, Rm 1107
Boise, ID 83702
(208) 287-7400
Fax: (208) 287-7418
mlojek@gmail.com

Kim Elizabeth London
U.S. Air Force
3195 Dayton-Xenia Road, Ste. 900
Box 222
Beavercreek, OH 45434
(208) 773-2994
kimlondon@adelphia.net

Dennis A. Love
CH2M-WG Idaho, LLC
PO Box 1625
Idaho Falls, ID 83415-2506
(208) 520-0710
Fax: (208) 526-0953
dennis.love@icp.doe.gov

Gary D. Luke
Lerma Law Office, PA
PO Box 191347
Boise, ID 83709
(208) 949-3764
Fax: (208) 288-0697
gary_d_luke@msn.com

Barry L. Marcus
Marcus, Christian & Hardee, LLP
737 N. 7th Street
Boise, ID 83702
(208) 342-3563
Fax: (208) 342-2170
beather-marcus@hotmail.com

Craig Brian Marcus
Marcus, Christian & Hardee, LLP
737 N. 7th Street
Boise, ID 83702
(208) 342-3563
Fax: (208) 342-2170

Trent B. Marcus
Marcus, Christian & Hardee, LLP
737 N. 7th Street
Boise, ID 83702
(208) 342-3563
Fax: (208) 342-2170

Theresa A. Martin
Randall S. Barnum, Attorney at Law
200 N. 4th Street, Ste. 200
Boise, ID 83702
(208) 336-3600
Fax: (208) 336-3676
theresamartin33@live.com



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jonesandswartzlaw.com

Heather Marie McCarthy
Ada County Prosecutor's Office
200 W. Front Street, Rm. 3191
Boise, ID 83702
(208) 287-7700
Fax: (208) 287-7719
hmccarthy@adaweb.net

Marty E. Moore
Bearmson & Peck, LC
399 N. Main Street, Ste. 300
Logan, UT 84321
(435) 787-9700
Fax: (435) 787-2455
mmoore@bplaw.biz

Mark James Orler
Powers Thomson, PC
PO Box 9756
Boise, ID 83707
(208) 577-5100
Fax: (208) 577-5101
mjo@powersthomson.com

Mary Linda Pearson
Coeur d'Alene Tribe
12407 N. Nine Mile Road
Nine Mile Falls, WA 99026
(208) 686-1777 Ext: 5033
Fax: (208) 686-5805
mpearson@cdatribe-nsn.gov

Raymond D. Powers
Powers Thomson, PC
PO Box 9756
Boise, ID 83707
(208) 577-5100
Fax: (208) 577-5101
rdp@powersthomson.com

Alissa Bassler Price
DBSI Discovery Real Estate Services,
LLC
12426 W. Explorer Drive, Ste. 200
Boise, ID 83713
(208) 489-2638
Fax: (208) 489-2501
aprice@ddrs.net

John Ray Reese
Reese Law Office, PC
250 Northwest Blvd., Ste. 204
Coeur d'Alene, ID 83814
(509) 665-0269
Fax: (888) 814-8598
john@reese-law.com

Betsy Roletto-Rivera
PO Box 17764
Seattle, WA 98127
(206) 251-6851
betsyrolettorivera@msn.com

John Joseph Saye
CH2M-WG Idaho, LLC
PO Box 1625
Idaho Falls, ID 83415-2506
(208) 520-1372
Fax: (208) 526-0953
joe.saye@icp.doe.gov

Eric James Scott
Idaho Supreme Court
1483 E. Carter Lane
Boise, ID 83706
(208) 947-7549
ericjamesscott@gmail.com

Justin Royce Seamons
501 Park Avenue
Idaho Falls, ID 83402
(208) 542-0600
Fax: (208) 524-6342
justin01@cablone.net

Ellen Nichole Smith
Smith Law, PA
5987 W. State Street, Ste. A
Boise, ID 83703
(208) 388-0123
Fax: (208) 388-0120
ellen@billsmithlaw.com

Sidney Earl Smith
Sidney E. Smith
301 N. First Street, #716
Coeur d'Alene, ID 83814
(208) 664-4716

Mark Stevan Snyder
PO Box 626
Kamiah, ID 83536
(208) 935-2001
Fax: (208) 935-7911
msnydatty@msn.com

Jeromy Wyatt Stafford
Stafford Law Office
525 Park Avenue, Ste. 2A
Idaho Falls, ID 83402
(208) 521-8119
Fax: (208) 523-7833
jeromywyatt@yahoo.com

Jared Bryant Stubbs
Boise City Attorney's Office
PO Box 500
Boise, ID 83701
(208) 384-3870
Fax: (208) 384-4454
jstubbs@cityofboise.org

David Michael Swartley
Eberle, Berlin, Kading, Turnbow &
McKlveen, Chtd.
PO Box 1368
Boise, ID 83701
(208) 344-8535
Fax: (208) 344-8542
dswartley@eberle.com

Research, Drafting, & Editing

Proper words in proper places
—Jonathan Swift

JAMES M. SMIRCH
ATTORNEY AT LAW

1063 E. BUTTE AVE., CHALLIS, IDAHO 83226
208-940-1901 • jsmirch@custertel.net
WEBLOG: jsmirch.blogspot.com

LLCs Revised and Revisited: SB 1350—The New Revised Uniform Limited Liability Company Act



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Friday, May 16, 2008
Boise Centre on the Grove
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*Learn about the new Idaho Limited Liability
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ences between LLCs and sub-s corporations,
operating agreements and conflicts during LLC
formation. Lunch provided with registration fee.*

Raymond Takashi Swenson
CH2M-WG Idaho, LLC
PO Box 1625
Idaho Falls, ID 83415-2506
(208) 521-4218
Fax: (208) 526-0953
raymond.swenson@icp.doe.gov

James Stuart Thomson II
Powers Thomson, PC
PO Box 9756
Boise, ID 83707
(208) 577-5100
Fax: (208) 577-5101
jst@powersthomson.com

Patricia Bridge Urquhart
Garretson, Gallagher, Fenrich & Makler
5530 SW Kelly Avenue
Portland, OR 97239
(503) 226-3906
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Brent L. Whiting
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Pocatello, ID 83204
(208) 232-6101 Ext: 503
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Hon. Mikel H. Williams
550 W. Fort
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(208) 334-9330
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mikel_williams@id.uscourts.gov

David Gordon Wood
Riddle & Associates, PC
11778 S. Election Drive, Ste. 240
Draper, UT 84020
(801) 208-8400
Fax: (801) 569-8700
david@riddlepc.com

John W. Wreggelsworth
Microsoft
19907 NE Union Hill Road
Redmond, WA 98053
(206) 696-1480
Fax: (425) 836-2412
jwregg@microsoft.com

John Naya Zarian
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960 Broadway Avenue, Ste. 250
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5/1/2008 - 6/30/2008**

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. The ISB website (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)

MAY

- 1 Rule of Law Forum
- 1 Law Day
- 1 The Advocate Deadline
- 1 Final July Bar Exam Application Deadline
- 9 CLE: Financial Aspects of Divorce—What You Don't Know CAN Hurt You
- 9 Idaho State Bar Board of Commissioners Meeting
- 16 CLE: Idaho Limited Liability Companies, Boise Centre on the Grove
- 21 *The Advocate* Editorial Advisory Board Committee Meeting
- 22 CLE: Appellate Practice Tips
- 26 Memorial Day, Law Center Closed**
- 30 CLE: Handling Your First or Next Mechanic and Materialmens Lien

JUNE

- 2 *The Advocate* Deadline
- 6-7 Jackrabbit Bar Meeting, Snowbird, UT
- 13 July 2008 Re-Exam Deadline

- 13 Fourth District Bar Spring Fling Golf Tournament, Warm Springs Golf Course, Boise
- 18 *The Advocate* Editorial Advisory Board Committee Meeting
- 19-20 Litigation Section Seminar, Sun Valley Resort, Sun Valley
- 26 CLE: Ethics

JULY

- 1 *The Advocate* Deadline
- 4 Independence Day, Law Center Closed**
- 10 CLE: Managing Technology in a Law Firm-An Interactive Ethics
- 10-11 Idaho State Bar July Annual Meeting, Boise Center on the Grove, Boise
- 10 Idaho State Bar Board of Commissioners Meeting
- 11 Idaho Law Foundation Board of Directors Meeting
- 16 *The Advocate* Editorial Advisory Board Committee Meeting
- 28-30 Idaho State Bar July 2008 Bar Exam, Boise and Moscow

Upcoming May/June ISB/ILF CLE Courses

MAY 2008

MAY 9

Financial Aspects of Divorce—What you Don't Know Can Hurt You

Sponsored by the Family Law Section
Boise Centre on the Grove

1:00 - 5:15 p.m.

4 CLE Credits

MAY 16

Idaho Limited Liability Companies

Sponsored by the Business and Corporate Law Section

8:30 a.m. - 5:00 p.m.

Boise Centre on the Grove

MAY 22

Appellate Practice Tips

Sponsored by the Young Lawyers Section
Law Center

12:00 - 1:00 p.m.

1.0 CLE Credits

MAY 30

Handling Your First or Next Mechanic and Materialmen's Lien

Sponsored by the Idaho Law Foundation
Law Center

8:30 - 10:30 a.m.

2.0 CLE Credits

JUNE 2008

JUNE 19-20

Litigation Section Seminar

Sun Valley Resort

Lodging Reservations call 1-800-786-8259

JUNE 26

Ethics

Sponsored by the Young Lawyers Section
Law Center

12:00 - 1:00 p.m.

1.0 CLE Credit

JULY 2008

JULY 10

Managing Technology in a Law Firm—An Interactive Ethics CLE

Sponsored by the Idaho Law Foundation
Boise Centre on the Grove

8:30 - 11:45 a.m.

3.0 Ethics CLE Credits

SAVE THE DATE

SEPTEMBER 11-13

Annual Estate Planning Update

Sponsored by the Taxation, Probate and Trust Section

Sun Valley Resort

OCTOBER 1

Idaho Practical Skills Training

Sponsored by the Idaho Law Foundation

5.0 CLE Credits pending

The Grove Hotel

Boise, Idaho

OCTOBER 8-10

ISB Annual Conference

CLE Programs, Guest Speakers,
Social Events

Sean Carter—Legal Humorist

Ethics Rock!—A Musical Ethics CLE

Sun Valley Resort

NOVEMBER 7

Litigation Ethics

Sponsored by the Litigation Section
Idaho Falls

NOVEMBER 14

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NOVEMBER 21

Annual Headline News—Year in Review

Sponsored by the Idaho Law Foundation
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DECEMBER 5

Annual Headline News—Year in Review

Sponsored by the Idaho Law Foundation
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DECEMBER 12

Annual Headline News—Year in Review

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Featured Speaker:

Lawyer-Humorist: Sean Carter

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Sean Carter, graduate of Harvard law School, left the practice of law to pursue a career as the country's foremost (and perhaps only) "Humorist at Law". This year he will be a featured presenter at the Idaho State Bar's Annual Conference, October 9th in Sun Valley.

Sean Carter is well known as the writer of syndicated legal humor column that has appeared in general circulation newspapers in more than 30 states, including *The Los Angeles Times*.



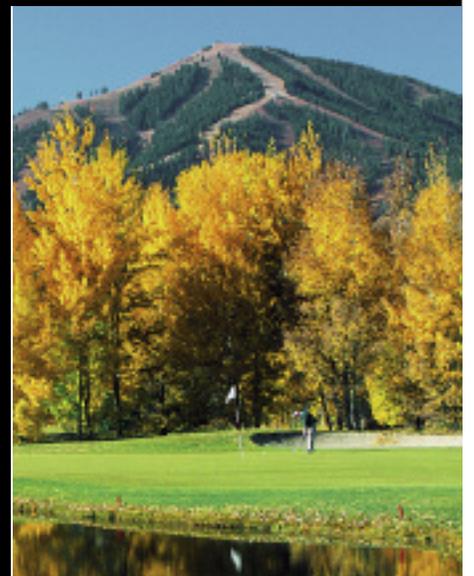
SAVE THE DATE

OCTOBER 8-10



- ⚙ Educational and informative legal seminars
- ⚙ Earn CLE credits
- ⚙ Awards and special events
- ⚙ Connect with old friends and make new ones

2008 Idaho State Bar Annual Conference • Sun Valley Resort





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