

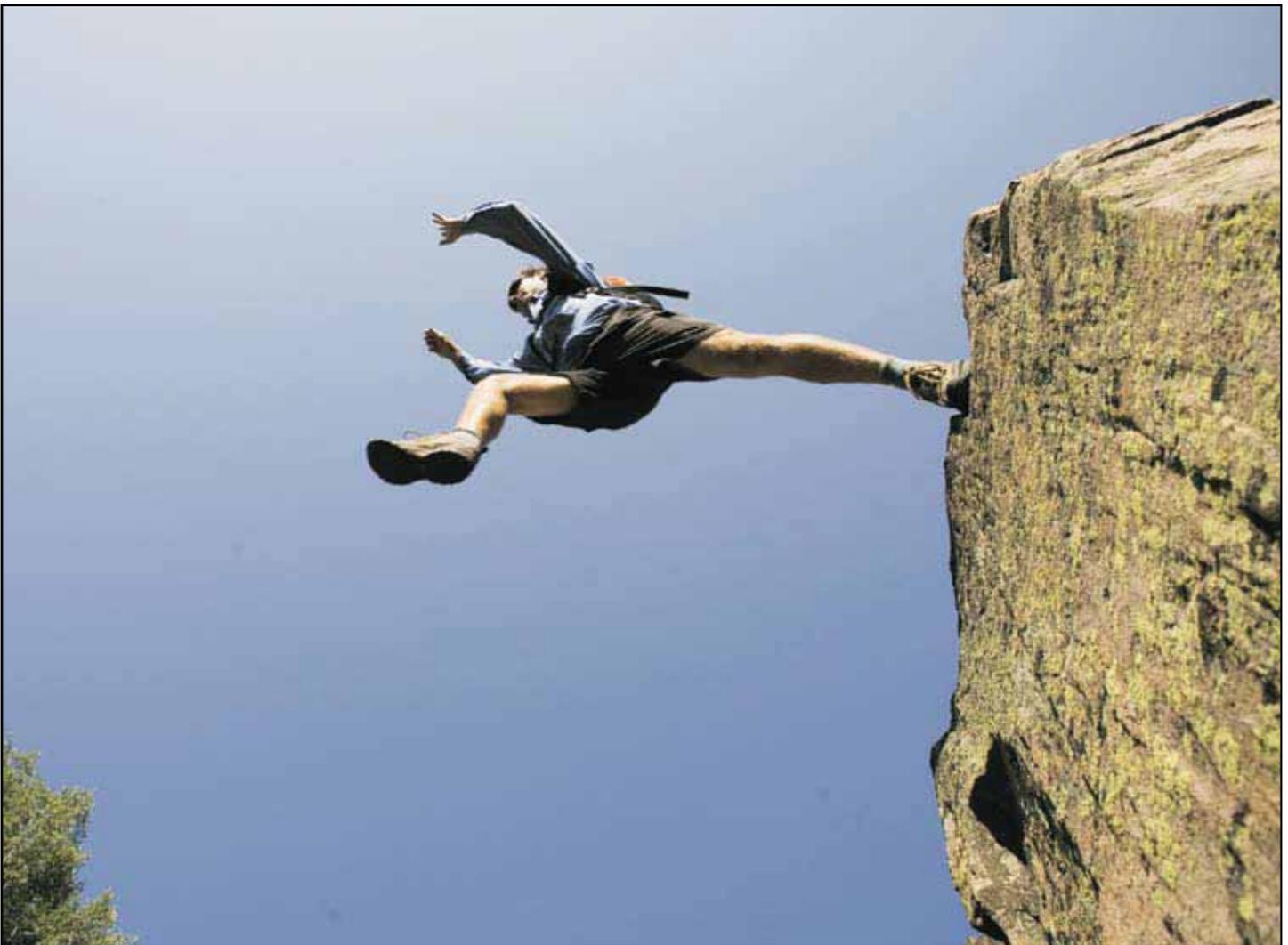
# The Advocate

Official Publication of the Idaho State Bar

Volume 52, No. 2

February 2009

This issue of *The Advocate* is sponsored by the Professionalism and Ethics Section



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# The Advocate

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Photograph by Assistant United States Attorney Monte Stiles. Monte is an avid photographer who specializes in wildlife and landscape photography. You can view more of his pictures at [www.montestilesphotography.com](http://www.montestilesphotography.com)

## SECTION SPONSOR

This issue of *The Advocate* is sponsored by the Professionalism and Ethics Section.

### 2009 License Fees Deadline

If you have not paid your 2009 licensing, you must also pay the appropriate late fee: Active/House Counsel - \$50.00 or Affiliate/Emeritus - \$25.00. All licensing fees and forms must be physically received in the Bar office by March 2, 2009. On March 3, 2009, the names of all attorneys who have not paid their 2009 licensing fees will be submitted to the Idaho Supreme Court for license cancellation. If you have questions please call the Membership Department (208) 334-4500 or [astrause@isb.idaho.gov](mailto:astrause@isb.idaho.gov).



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## SHOULD WE TAKE THIS CASE?

Dwight E. Baker



The small case with the inherent risk of a potential attorney's fee greater than the amount at issue demands the utmost of our professional judgment and responsibility. A magistrate's case or a district court case involving claims of \$25,000 or less which lead to attorney's fee for one side of that amount or more, which is then doubled by imposition of a similar sized cost bill as allowed and mandated by Idaho Code § 12-120, calls into serious question our professional responsibility not only to our clients, but to society as a whole.

The preamble to the Idaho Rules of Professional Conduct (IRPC), found at page 293-295 of the 2008-2009 Idaho State Bar DeskBook, addresses the philosophical background for the adoption of those rules. Paragraph (1) of the Preamble to the IRPC provides: "A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice." Paragraph (16) provides: "The rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules. The Rules simply provide an ethical framework for the ethical practice of law."

While we are required to be zealous advocates, we are also limited by IRPC 1.5 to charge only reasonable fees, taking into consideration "the amount involved and the results obtained" along with the other seven factors there identified, which are similar to those which a court must consider in a claim

for fees under Idaho Rules of Civil Procedure (IRCP) 54(e)(3). How can we, while complying with any measure of duty to our clients or our professional responsibility, agree to represent a client in a matter when we know, or should know, that the application of our usual hourly fee will result in a fee which is likely to be equal to or greater than the amount at issue? And the even greater responsibility is our duty to consider with our clients, in advance, the risk he or she may have to pay double. We trial lawyers are all egotistical enough to think that we, like Garrison Keillor's students in Lake Wobegon, are all "above average," and therefore more likely to win than lose. The reality is that as a group we're in a zero sum game; for every winner there is a loser; at the same time we as lawyers are discussing the risks of the outcome with our client, our opposing counsel, bound by the same professional standards, is having the same discussion in the office across town. And unless reason leads to an alternative solution, the lockstep notion of "zealous advocacy" leads to results which may become a tremendous burden to the losing party while simultaneously being an embarrassment to our profession.

While the potential for the "double whammy" has always existed, the problem has been exasperated by the judicial and legislative erosion of the so-called "American rule" of fee shifting, which succinctly stated means that unless there is a specific contractual obligation or statutory basis to shift fees, a court does not have the power to do so.

The constitutionally protected freedom of contract allows parties to agree to include a fee shifting term in their contract should they desire to do so. It is therefore understandable that the court honors those kinds of contractual commitments. What then, was the reason

for further eroding the "American rule" by requiring the imposition of fee shifting in litigation arising out of all commercial transactions, and what professional dilemma does the potential fee shift pose for us as practitioners?

Is it a matter of penalizing the litigious party or his incompetent attorney? Idaho Code §12-121 has long provided a statutory remedy for a prevailing party. Our Idaho Supreme Court limited the application of Idaho Code §12-121 with the requirement that a prerequisite for a fee award under §12-121 is a court finding that the matter was "brought, pursued or defended frivolously, unreasonably or without foundation." IRCP 11 provides a judicial remedy in the form of potential sanctions against some practices which are, in a word, unprofessional. While the Supreme Court and the Court of Appeals seem to be taking ever harder looks at claims for fee shifting for groundless appeals, the District and Magistrate Courts are less likely to do so for groundless litigation. Probably in part because of the difficulty of fairly assessing an attorney's conduct in the context of trial preparation and presentation, and because of the potential for incurring significantly larger fees during lengthy discovery and trial compared to an appeal. The answer only lies in part with the courts; the real answer lies with us as practicing lawyers.

Apparently unsatisfied with the court imposed limitations to the application of Idaho Code §12-121, the legislature has continued to erode the American rule through the adoption of Idaho Code §12-120(1), (3) and (4), possibly with the encouragement of segments of the bench and bar. Attorney fees are now available in all cases when the claim is \$25,000 or less under §12-120(1), in all commercial transactions regardless of amount, and perhaps regardless of the agreement of

the parties, under 12-§120(3), and in all personal injury cases if the claims do not exceed \$25,000 under §12-120(4). All of the claims under Idaho Code §12-120 are subject to procedural requirements, which expressly require communication to the opposing parties, and implicitly require careful evaluation and consideration of informal or formal alternate dispute resolution approaches.

Why the change?

Is it a matter of providing a level of protection for potentially financially limited parties, such as our legislature has provided for wage claimants, lien claimants and other similarly situated litigants?

Is it a matter of putting pressure on insurance companies to resolve claims outside of the judicial setting, or at least outside of the court room?

Is it a matter of attempting to reduce the cost of doing business for the successful litigant at the risk of doubling the litigation costs to the unsuccessful party?

Is it a matter of trying to free up our over burdened courts, or at least allowing

the judges to focus on the ever increasing social and criminal problems of our society, rather than civil litigation, by imposing a penalty in the form of a fee shift for the unsuccessful litigant?

Or is it a matter of a legislative or judicial demand of the members of the bar to more realistically consider and implement non-judicial resolutions for modest claims as an alternative to “over burdening” our courts?

Regardless of the reasons for the erosion of the American rule, we practitioners must recognize that a high level of competence and professionalism is required of us as we consider with our clients an appropriate course of action when such issues arise. We must have a working knowledge of exactly how Idaho Code § 12-120 and 12-121 work, we must have a working knowledge of IRCP 68, we must know how IRCP 54(e) works, we must be prepared to and know how to encourage settlement, and then we must carefully consider our recommendations to our clients in light of our professional responsibilities.

We lawyers take great pride in

our ability to police ourselves, which includes the creation of appropriate rules for our conduct between ourselves, with our clients, and with our society. But when we put our clients, and ourselves, in the position of charging \$10,000 to fight a \$5,000 problem, with the risk that our client may incur court costs of an additional \$10,000, we lay the legitimate groundwork for demands that other entities police our professional conduct. We can do better, and we must do better.

**Dwight E. Baker** has been engaged in private practice since 1971, and is a founding partner in the Blackfoot law firm of Baker and Harris. He is a 1963 graduate of the University of Wisconsin/Madison, and a 1971 graduate of the law school at the University of Idaho. He represents the Sixth and Seventh Districts, and is currently serving a one-year term as President of the Idaho State Bar Board of Commissioners.

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## DISCIPLINE

### **PATRICK J. MCCOY** (Interim Suspension)

On January 6, 2009, the Idaho Supreme Court issued an Order granting the Idaho State Bar's Petition for Interim Suspension of Boise attorney Patrick J. McCoy.

The Idaho Supreme Court ordered that Mr. McCoy's license to practice law be immediately suspended until further order of the Court. The Court found that Mr. McCoy posed a substantial threat of irreparable harm to the public. The Court also ordered Mr. McCoy to comply with Idaho Bar Commission Rule 506(j).

A formal charge complaint has been filed and that case is pending before the Professional Conduct Board.

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

### **CRAIG D. ODEGAARD** (Interim Suspension)

On January 6, 2009, the Idaho Supreme Court issued an Order immediately suspending the license to practice law of Coeur d'Alene attorney Craig D. Odegaard.

The Idaho Supreme Court ordered that Mr. Odegaard's license to practice law be immediately suspended pursuant to Idaho Bar Commission Rule 510(a)(1). The Idaho State Bar and Mr. Odegaard had entered into a Stipulation for Interim Suspension of License to Practice Law. The parties agreed, and the Idaho Supreme Court ordered, that the time Mr. Odegaard spends on interim suspension shall be credited toward any eventual sanction he receives in the disciplinary case.

A formal charge complaint has been filed and that case is pending before the Professional Conduct Board.

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

### **MCLE Extensions**

March 2, 2009 is the deadline for the MCLE extension to complete your MCLE requirements. Visit our website at [www.idaho.gov/isb](http://www.idaho.gov/isb) for information on upcoming live courses, recorded programs available for rent and online courses. Contact the Membership Department at (208) 334-4500 or [jhunt@isb.idaho.gov](mailto:jhunt@isb.idaho.gov) if you have any questions on MCLE compliance.



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**Richard D. Greenwood appointed to 4th District Court Bench**—Governor C. L. “Butch” Otter appointed Richard D. Greenwood to fill a judicial vacancy on the 4th District Court Bench that opened when the Hon. Kathryn A. Sticklen retired. Mr. Greenwood is a native of Nebraska. He obtained a bachelor’s degree from Jamestown College in North Dakota and his J.D. from the University of North Dakota. He has been practicing law in Twin Falls since 1977. He and his wife, Jennifer, plan to move to Boise.

**Hon. Gordon W. Petrie retires from 3rd District**—The Hon. Gordon W. Petrie resigned from the 3rd District Court Bench on January 30, 2009. Judge Petrie was appointed Gem County magistrate in 1989, serving until his appointment to the district court bench in 2006. He served in Iraq with the 116th Brigade Combat Team from 2004-2005, and retired from the Idaho Army National Guard as a full colonel. He has been named Associate Dean at ITT Technical Institute in Boise, where he previously served as adjunct faculty.

**Senator James E. Risch, R-Idaho**—Senator James E. Risch, R-Idaho, was elected in 2008 as a Republican to the U.S. Senate. He was sworn in early in January 6, 2009 for a term that will end January 3, 2015. In addition to his private practice he served as an Idaho State senator, 1974-1989 and 1995-2003, was majority leader (1976-1982), and president pro tempore (1982-1989); lieutenant governor of Idaho, 2003-2006 and 2007-2009; governor of Idaho, 2006. He is a graduate of the University of Idaho College of Law and has been a member of the Idaho State Bar for 40 years.

He will join **Senator Mike Crapo**, also an Idaho attorney who graduated from Harvard Law School in 1977. He served for one year as clerk to Judge James M. Carter, United States Court of Appeals, Ninth Circuit before returning to Idaho to practice law. Senator Crapo represented Bonneville County from 1984-1992 before being elected to represent Idaho’s 2nd District in the U.S. House of Representatives from 1993-1998. In 1998, he was elected as a U.S. Senator, R-Idaho, and re-elected in 2004 serving a term that will end January 2010.

**Community Grant Funds Available** – The Board of Judges for the District of Idaho, in conjunction with the Lawyer Representatives, have announced a total of \$6,800 will be available for the Community Outreach Grant Program for calendar year 2009.

The purpose of this program is to enhance public trust and confidence in the judiciary, promote better understanding of the judiciary and legal processes, and improve communication with the public about the role of courts and the legal process. This grant funding must be related in some way to community education.

Any interested association, organization or group may apply for funding from this program by completing the United States District and Bankruptcy Court application form. The application should briefly describe the organization, association or group, the date it was organized, its history and purpose, and the tax status of this group. The application must be submitted or co-signed by an active member of the Bar of the United States District and Bankruptcy Court for the District of Idaho. Only one application can be submitted by a single organization or entity. Preference will be given to non-profit agencies or organizations.

**Deadline for Grant Applications.** Complete applications must be post marked no later than **April 1, 2009**. Please send the application to: United States District and Bankruptcy Court 550 W. Fort Street, MSC 039 Boise, Idaho 83724

You can find out further details by accessing the web site at [www.id.uscourts.gov](http://www.id.uscourts.gov) The specific link to the Community Outreach Grant Program description and forms is: [www.id.uscourts.gov/docs/GrantProgram09.pdf](http://www.id.uscourts.gov/docs/GrantProgram09.pdf)

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**ATTORNEYS AGAINST HUNGER**

When: Thursday, February 26, 2009  
Time: Cocktail hour beginning at 5:30 p.m.  
Dinner catered by A Lively Chef at 6:30 p.m.  
Where: The Rose Room, downtown Boise

The Young Lawyers Section encourages you to support our 2009 Attorneys Against Hunger campaign! While enjoying a fun-filled event our main goal is to help the Idaho Foodbank fulfill their mission that no one in Idaho should go hungry. The Idaho Foodbank serves as a central clearinghouse for donated and purchased food for over 75 Treasure Valley agencies. These agencies serve our community by helping to feed families and individuals who are struggling during these challenging economic times. If you can’t attend please consider sending your donation directly to the Idaho Foodbank.



## EXECUTIVE DIRECTOR'S REPORT

### 2008 – THE IDAHO STATE BAR YEAR IN REVIEW

Diane K. Minnich



The Idaho State Bar continues to focus on new activities and challenges as well as the administration of the Bar's ongoing programs and operations. This month we feature the highlights of the Bar's efforts in 2008.

#### ADMISSIONS

Reciprocal Admission – Idaho now accepts reciprocal applicants from 25 states. Since the inception of reciprocal admission in late 2001, 447 attorneys have been admitted reciprocally.

Bar Exam/Reciprocal Admission		
Year	2007	2008
Bar exam applicants	211	202
Pass Rate	76%	72%
Reciprocal admittees	78	90

#### LICENSING/MEMBERSHIP

ISB Membership		
12/07	12/08	% Change
5,053	5,181	2.6%

As of December 2008, of the 5,181 lawyers licensed by the Idaho State Bar, 4,097 were active members, 181 judges, 32 house counsel members, 867 affiliate members, and 4 emeritus attorneys.

#### BAR COUNSEL

Discipline	2007	2008	Change
Phone inq.	1,168	1,388	+19%
Grievances	414	432	+4%
Complaints opened	91	105	+15%
Ethics questions answered	1,548	1,709	+10%

Twelve formal charge cases were opened in 2008, ten were closed. Of the ten closed cases, one attorney was disbarred, one resigned in lieu of discipline, two were suspended, and two received withheld suspensions and public censures.

#### FEE ARBITRATION

The number of fee arbitration cases filed was down again in 2008; 43 cases were opened in 2007, 36 were opened in 2008.

#### CLIENT ASSISTANCE FUND

Client Assistance Fund Claims		
Year	Claims Paid	Total Paid
2007	14	\$52,333
2008	7	\$45,060

2008 - 10 CAF claims were opened and 17 cases were closed, 6 cases were pending at the end of the year.

#### LAWYER REFERRAL SERVICE

Lawyer Referral Service			
Year	2007	2008	Change
Calls	7,841	4,771	-39%
Referrals	4,606	3,128	-32%

The referral service now has an on-line option for individuals seeking a referral to an attorney. This has reduced the number of calls while providing the service 24/7. About 38% of those individuals that receive a referral contact the attorney. The LRS continues to work closely with IVLP and other agencies to provide referrals for callers to attorneys and other appropriate services.

#### ANNUAL MEETING

Annual Meeting			
	2007 Boise	2008 Sun Valley	Change
Total Attendees	378	369	- 2%
Attorneys & Judges	227	199	-12%

The 2008 Annual Meeting was held in October in Sun Valley. The change in the time of year allowed the Bar to coordinate some programming with the Idaho Judicial Conference. The programs were excellent, with attendance about the same as 2007. The Commissioners and staff continue to consider how to alter the annual meeting so it appeals to more attorneys. Your ideas are welcome.

#### CASEMAKER

The Casemaker legal research library continues to offer a comprehensive, easily searchable, continually updated database of caselaw, statutes and regulations. The service is available to all ISB active members and judges. To access Casemaker, go to the ISB website, [www.idaho.gov/isb](http://www.idaho.gov/isb). Each eligible attorney has a password; your username is your Bar number. If you need your password or have any comments or recommendations for improving the Casemaker services, please contact Terri Muse or me.

#### SECTIONS

The Sections of the Bar continue to actively assist their members with education, public service activities and opportunities to meet and work with attorneys that practice in similar areas. One new section was established in 2008, the International Law Section, bringing the total to 20 sections of the Bar. Section membership increased slightly in 2008 from 2,499 to 2,523.

#### COMMUNICATIONS

##### WEBSITE/

##### ADVOCATE/EBULLETIN

In 2008, the ISB website was redesigned, the transition to the new site is scheduled for mid-2009. More information and easier navigation and access are features of the new website. The Ebulletin continues to be provided weekly, keeping you informed of programs, events, rule changes, and other opportunities for Bar members. *The Advocate*

continues to highlight the sections and their work with the section sponsorship of seven issues in 2008. You can now access issues from the years 2006-2009 at *The Advocate* online. The most current issue is posted several weeks after it is mailed to the membership and subscribers. At the end of each year an index of authors and titles is included.

**GROUP HEALTH BENEFITS**

The Idaho Lawyer Benefit Plan (ILBP) offers medical, dental and vision benefits to Idaho lawyers, their employees, and dependents. The Plan has been active since August of 2008 and continues to expand. Indications from initial participants suggest that the rates are competitive, and the benefit options are excellent.

The ILBP was formed as a partnership between ALPS Corporation and the Idaho State Bar to meet the long-term healthcare needs of Idaho lawyers and their employees. As a self-funded plan, premiums that would have gone to an in-

surance carrier are now paid to a trust as member contributions to finance the cost of member benefits. Money that remains after administrative and claims expenses are paid, is reinvested into the trust. The trust is directed by a board of trustees who are elected representatives of the firms that participate in the program. Participating members, through the board of trustees, are encouraged to provide feedback and ideas about how best to grow or alter the benefit options available to the legal community.

For further information about the Idaho Lawyer Benefit Plan please contact Todd Points via phone: (800) 367-2577 or via email: [tpoints@alpsnet.com](mailto:tpoints@alpsnet.com).

The work of the Bar is accomplished with the help of hundreds of volunteers each year. The Idaho legal community is committed to improving the profession and serving the public. Special thanks for the time, energy and expertise so many of you devote to serving the Bar.

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## WELCOME FROM THE PROFESSIONALISM & ETHICS SECTION

James K. Dickinson  
Ada County Prosecutor's Office

The Professionalism & Ethics section of the Idaho State Bar is proud to sponsor this issue of *The Advocate*. As our name implies, the Professionalism & Ethics Section was not formed with a focus towards any practice specialty, but rather to advance the conduct of all members of the Bar.

Given that charge, we would like to extend an invitation to everyone to join our Section! We meet the first Tuesday of each month at the Idaho State Bar in Boise. Lunch is provided to attendees. Members who are not able to meet with us can join by telephone. Our meetings often include a 30-minute Ethics CLE program.

The Professionalism & Ethics Section is active. We published *A Lawyer's Guide to Idaho Attorneys* as well as *Standards for Civility in Professional Conduct Guidelines*. Each can be found on the Bar's website. The Section has sponsored a number of CLE programs, the most recent in December with U.S. Federal Magistrate Candy Dale as speaker.

Our major undertaking is a partnership with the Idaho State Bar and the University of Idaho School of Law. Each year, members of the Idaho Supreme Court, the state and federal courts of appeal, the federal bench, state bench, and practitioners from all regions of the state travel to Moscow to assist with the first-year law students' orientation. Groups, consisting of two justices, judges, and/or practitioners interact with small groups of first-year students to discuss professionalism and ethics, laying an early foundation for the ethical and professional practice of law. The Professionalism & Ethics section underwrites the transportation and any hotel costs for the judges and practitioners traveling from other parts of the state. We utilize our Section dues, and also rely heavily on the generosity of other Bar sections, to defray the costs of this program.

The Professionalism & Ethics Section hopes you find the articles in this issue interesting and helpful. Since much of our section's work focuses on professionalism, we have included an article by Dick Fields, one of the most respected members of the Idaho Bar, reminding us that each of us has adopted and agreed to practice by the *Civility in Professional Conduct Standards*. Dean Donald Burnett, of the University of Idaho College of Law, explains the professionalism and ethics program for the first year law student. Matt Christensen, a member of the ABA Standing Committee on Professionalism, explores our roles not only as attorneys, but as counselors at law—a distinction that deserves further reflection by all. Mark Fucile, a frequent contributor to *The Advocate*, provides a thoughtful discussion on analyzing conflicts by examining the nuances of representing individuals, corporations and governmental entities. Additionally, we would have been remiss had we not given Brad Andrews, Bar Counsel for Idaho State Bar, the opportunity to provide a timely article regarding unlimited FDIC coverage on IOLTA accounts.

Lastly, please feel free to contact me—or any of our officers—Ammon Hansen, Gene Petty or Ann Wilkinson—with any thoughts about how our section can better serve you. Please

remember, you are always invited to join us at our monthly meetings.

### ABOUT THE AUTHOR

**James K. Dickinson** is the Chair of the Professionalism and Ethics Section of the Bar. He is a Senior Deputy Prosecutor for the Ada County Prosecuting Attorney's Office in Boise and has worked in both the criminal and civil divisions. He is a graduate of the University of Idaho, as well as its College of Law. He is a frequent lecturer for the Idaho Prosecuting Attorneys Association, has served as a faculty member for the National Advocacy Center and was one of the authors of *Doing Justice: A Prosecutor's Guide to Ethics and Civil Liability*. His current practice is civil litigation.

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# A LOOK AT IDAHO'S STANDARDS FOR CIVILITY IN PROFESSIONAL CONDUCT

Richard C. Fields

*Moffatt, Thomas, Barrett, Rock & Fields, Chtd.*

When did you last cite the *Standards for Civility in Professional Conduct (Standards)* to opposing counsel or to an Idaho federal or state court judge? When did you last read or review those *Standards*? Did you even know Idaho has such standards?

## DEVELOPMENT OF THE STANDARDS

Recognizing a current need for improvement and/or preservation (depending on your point of view) of the level of civility and professionalism among Idaho practitioners, the Idaho State Bar Professionalism & Ethics Section, [then chaired by Tom Dominick of Boise and encouraged by Chief United States District Judge B. Lynn Winmill and others] reviewed and considered guidelines or "standards" developed by various other jurisdictions around the nation. They eventually selected a set adopted by the Western District of Michigan, which appeared to fit equally well in the District of Idaho. Not surprisingly, it was in most respects similar to standards then in effect or since adopted by many other states and federal judicial districts.

The Section set out in 2000-01 to get complete judicial and bar acceptance and adoption of what came to be known officially as the *Standards for Civility in Professional Conduct of the United States District Court District of Idaho and the Courts of the State of Idaho*. The federal judiciary quickly signed on, followed by the Idaho Supreme Court and Court of Appeals. The *Standards* also received approval by the executive committee of the Idaho Magistrates' Association and the state's district judges. The Section also secured the endorsement of all the then-existing Inns of Court, several other practice sections and several district bar associations. The Board of Commissioners of the Idaho State Bar co-sponsored adoption of the *Standards* which were formally approved by a vote of 685 for and 195 against in the Bar's 2001 "RoadShow" resolution adoption process.

## OPPOSITION TO THE STANDARDS

The only significant opposition encountered en route to adoption was, as voiced at an Idaho Law Foundation seminar on professionalism in the summer of 2001, a concern that the version then being discussed did not include a specific provision to the effect that the *Standards* are aspirational and not to be used as grounds for litigation sanctions or for Bar or judicial discipline. There never was language proclaiming them to be enforceable rules, but to appease the concern, the Preamble was amended before presentation to the Bar membership to provide that "[w]hile these standards are voluntary and not to be used as a basis for litigation or sanctions, it is expected that all lawyers and judicial officers will make a commitment to adhere to these standards in all aspects of their dealings with one another and with other participants in the legal process."

Interestingly, comments heard from among those who voted against adoption on the Road Show suggest a major reason for their opposition was that the *Standards* are not mandatory. My personal view is that inclusion of the "voluntary" language was wise; lest we encourage motions for sanctions or complaints to Bar counsel or the Judicial Council any time a lawyer's (or

judge's) emotions lead to an arguably rude remark in the heat of battle.

## FEDERAL STANDARDS OF CIVILITY

There are, of course, provisions in the Idaho Rules of Professional Conduct (e.g., Rule 3.1 MERITORIOUS CLAIMS AND CONTENTIONS, Rule 3.2 EXPEDITING LITIGATION, Rule 3.3 CANDOR TOWARD THE TRIBUNAL, Rule 3.4 FAIRNESS TO OPPOSING PARTY AND COUNSEL, and Rule 3.5 IMPARTIALITY AND DECORUM OF THE TRIBUNAL) which mandate some of the key elements of the *Standards*. They have been given operative effect by other means as well. For example, Judge Winmill required the Standards to be followed in his court and would require out-of-state attorneys to agree to abide by them as a condition of pro hac vice admission. And, in due course, the federal court's local rules committee crafted Civil Rule 83.8 FAIRNESS AND CIVILITY, proclaiming that "the bar, litigants, and judiciary, in partnership with each other, have a responsibility to promote civility in the practice of law and the administration of justice." That rule lists the following "fundamental principles of civility which will be followed in the United States District and Bankruptcy Courts for the District of Idaho, both in written and spoken words":

1. Treating each other in a civil, professional, respectful and courteous manner at all times.
2. Not engaging in offensive conduct directed towards others or the legal process.
3. Not bringing the profession into disrepute by making unfounded accusations of impropriety.
4. Making good faith efforts to resolve by agreement any disputes.
5. Complying with the discovery rules in a timely and courteous manner.
6. Reporting acts of bias or incivility to the Clerk of Court. The Clerk of the Court will then determine the appropriate judicial officer with whom to discuss the matter.

## WHY THERE IS A DECLINE IN CIVILITY

Commentators on American society point out with alarm a growing decline in civility and good manners in all segments of society. On the legal scene, many judges, bar associations, law review authors and other commentators have documented the fact that the judicial system is likewise suffering from a lack of civility among lawyers and judges. And, unfortunately, we see it ourselves in daily practice, even here in Idaho.

Why has this come about? John J. Juryk, Jr.,<sup>1</sup> lists among the probable causes:

1. The adversarial nature of the legal system.
2. A dramatic increase in the lawyer population, which has decreased the sense of community among the bar.
3. The economic pressure of billable hours.

4. A prevailing attitude that law is no longer a profession, but a business.
5. Clients who demand hard-nosed Rambo lawyers who practice “take-no-prisoners” litigation tactics.
6. The (erroneous) equation of civility with weakness.
7. “John McEnroe Syndrome” — enjoying incivility, thinking it works (when in fact it doesn’t), and knowing no better.

I would add at least one more: an expense-generated decline in the number of trials (particularly jury trials), resulting in out-of-courtroom proceedings (i.e., discovery) becoming the primary opportunity for aspiring litigators to “show off” their adversarial tactics in an attempt to impress their clients.

Whatever the cause, there is little question that uncivil, abrasive, abusive, hostile and obstructive conduct impedes the efficient resolution of disputes and that incivility tends to delay and, too often, deny justice. It also patently tarnishes the image of the profession.

### **TRUE PROFESSIONALS PRACTICE WITH CIVILITY AND INTEGRITY**

Many observers, including Idaho’s United States Magistrate Judge and former Idaho Supreme Court Justice Larry M. Boyle in a 2003 paper, “From the Shoulders of Giants,” assert with numerous examples from history and from the Idaho practice of law that those lawyers who have been the most successful—those who are the giants among us—have been those who were and are true professionals, practicing with integrity and with respect for all. Without a doubt, civility enhances a lawyer’s credibility and, in turn, his or her effectiveness. In my experience, jurors and other fact finders dislike obnoxious advocates and may, consciously or unconsciously, require more proof or persuasion from them. In litigated cases that dislike may also affect their verdict or the amount of damages they award.

The Professionalism & Ethics Section and the Board of Commissioners recognized that civility standards alone are not a cure-all. “Voluntary adoption of standards for civility will not solve all problems in these areas, but it will help increase the awareness of the need for lawyers to act civilly.” they said in Resolution 01-3. “Lawyers, newly admitted or seasoned veterans, can benefit from increased attention to issues of civility and professionalism; and (t)he profession, our clients and the legal system are benefitted by improved levels of civility and professionalism.”

The civility standards are not just for lawyers; they apply to judges and court personnel as well. That is why it is significant that they have been adopted in Idaho both by the judiciary—state and federal—and by the bar.

### **A SUMMARY OF THE STANDARDS**

Following the Preamble, with its recognition of responsibilities and its pledge of commitment, there are four principal sections: ATTORNEYS’ RESPONSIBILITIES TO OTHER ATTORNEYS, ATTORNEYS’ RESPONSIBILITIES TO THE COURT, COURTS’ RESPONSIBILITIES TO ATTORNEYS AND LITIGANTS and JUDICIAL OFFICERS’ RESPONSIBILITIES TO EACH OTHER. There is no

satisfactory substitute for a careful reading of the standards, line by line. However, with the constraints of space, I will attempt here simply to summarize them.

The initial section itemizes 23 distinct common sense recitations of pledged courtesy, integrity and cooperation between and among attorneys. Included are promises to refrain from offensive conduct toward others even when otherwise urged by a client, as well as acceptance of the responsibility to explain to clients the necessity and value of cooperation and professionalism.

Similarly, the section dealing with lawyers’ responsibilities to the court focuses on honesty, courtesy and cooperation, but, in this instance, to the court and to court personnel, including marshals, clerks, court reporters, secretaries and law clerks.

The courts themselves acknowledge responsibilities to attorneys and litigants. Included are pledges of courtesy and respect to lawyers, parties, agency personnel and witnesses. Also included are references to punctuality and to consideration and cooperation in scheduling. There is also express recognition of the lawyers’ right and duty to present a cause fully and properly and the litigants’ right to a fair and impartial hearing. “Within the practical limits of time,” it is said, “we will allow lawyers to present proper arguments, to make a complete and accurate record, and to present a case free from unreasonable or unnecessary judicial interruption.”

Finally, rounding out the set of standards is recognition of judicial officers’ responsibilities to each other. Included in this section are pledges to be courteous, respectful and civil regarding opinions authored by another judicial officer, to abstain from disparaging remarks or criticisms about another judicial officer and to work cooperatively with others to enhance the administration of justice.

While “voluntary” and not in and of themselves the sole basis for sanctions against those who disregard them, I firmly believe the civility standards can be cited effectively in cases involving improper conduct. In addition to similar provisions in the several Rules of Professional Conduct referred to above and the U.S. District Court’s Rule 83.8, it appears to me that one who is forced into court to resolve a dispute involving lawyer or judicial misconduct is most likely to prevail if his or her position can be shown to be in accord with the standards. Similarly, in cases where it may be an issue, I think the standards can be pointed to as defining what a reasonable lawyer or judge would do. Also of assistance where applicable may be related publications such as the *Civil Discovery Standards* adopted as American Bar Association policy in 1999 and revised in 2004.

The civility standards are also a superb tool for the education of new lawyers. Dean Donald L. Burnett of the University of Idaho College of Law has since their adoption included them as an integral part of a professional responsibility course taken by all first year students. When, in an informal poll of recent U of I graduates, I found that few of them remembered much about the standards from that class, he agreed that they should be revisited, perhaps in a third year course and in the “bridging the gap” seminars given to newly admitted lawyers by the Idaho State Bar.

In my opinion, we should all from time to time re-read and review the *Standards*, in Bar meetings, Inns of Court sessions,

CLE programs, or in our own offices. If nothing else, they remind us of our responsibilities to the profession of which we are privileged to be a part and to assist us in preserving that profession for society.

### About the Author

**Richard C. (Dick) Fields** of Boise is a past chair of the Professionalism & Ethics Section. He is also a fellow and past state chair of the American College of Trial Lawyers, past president of the Idaho State Bar and recipient of the

Bar's Professionalism, Outstanding Service and Distinguished Lawyer awards. He was recently given an Exemplary Service Award by the Idaho chapter of the Federal Bar Association, in part for his efforts in promoting the Civility Standards.

### ENDNOTES

<sup>1</sup> John J. Juryk, JR., *The Bench*, October/November 2008.

## Standards for Civility in Professional Conduct

The Idaho State Bar

United States District Court, District of Idaho

and

the Courts of the State of Idaho

Adopted by the Courts and by the Idaho State Bar in 2001

### PREAMBLE

An attorney's conduct should be characterized at all times by personal courtesy and professional integrity in the fullest sense of those terms. In fulfilling our duty to represent a client vigorously as attorneys, we will be mindful of our obligations to the administration of justice, which is a truth-seeking process designed to resolve human and societal problems in a rational, peaceful and efficient manner.

Uncivil, abrasive, abusive, hostile or obstructive conduct impedes the fundamental goal of resolving disputes rationally, peacefully and efficiently. Incivility tends to delay, and often deny, justice.

A judicial officer's conduct should be characterized at all times by courtesy and patience toward all participants. Judicial officers owe all participants in a legal proceeding respect, diligence and punctuality. Judicial officers should lead by example.

These standards are designed to encourage attorneys and judicial officers to meet our obligations to each other, to litigants and to the system of justice, and thereby achieve the twin goals of civility and professionalism, both of which are hallmarks of a learned profession dedicated to public service.

The lawyers and judicial officers of this district and this state are firmly committed to meeting their obligations of civility and professionalism to each other, to litigants, and to the system of justice.

While these standards are voluntary and not to be used as a basis for litigation or sanctions, it is expected that all lawyers and judicial officers will make a commitment to adhere to these standards in all aspects of their dealings with one another and with other participants in the legal process.

These standards should be incorporated as an integral component of the teaching of professionalism to law students and practicing lawyers alike. Copies may be made available to clients to reinforce our obligation to maintain and foster these standards.

### ATTORNEYS' RESPONSIBILITIES TO OTHER COUNSEL

We will treat all other counsel, parties and witnesses in a civil and courteous manner, not only in court, but also in all other written and oral communications.

2. We will not, even when called upon by a client to do so, abuse, or indulge in offensive conduct directed to other counsel, parties or witnesses. We will abstain from disparaging personal remarks or acrimony toward other counsel, parties, or witnesses.

3. We will not encourage or knowingly authorize any person under our control to engage in conduct that would be uncivil if we were to engage in such conduct.

4. We will not, absent good cause, attribute bad motives or improper conduct to other counsel or bring the profession into disrepute by unfounded accusations of impropriety.

5. We will avoid *ex parte* communications with the court or tribunal, including the judge's staff, on pending matters, except when permitted by law.

6. Honesty and fair dealing are integral components of civility. Promises and agreements fairly reached, whether orally or in writing, will be adhered to in good faith. When reiterating oral promises or agreements in writing, counsel shall fairly, completely and in good faith restate all elements of the parties' oral agreement.

7. We will endeavor to confer early with other counsel to assess settlement possibilities. We will not falsely hold out the possibility of settlement as a means to adjourn discovery or to delay trial.

8. In civil actions, we will stipulate to relevant matters if they are undisputed and if no good-faith advocacy basis exists for not stipulating.

9. We will not use any form of discovery or discovery scheduling as a means of harassment, or for any other improper purpose.

10. We will make good faith efforts to resolve by agreement our objections to matters contained in pleadings, discovery requests and objections.

11. We will not time the filing or service of motions or pleadings in any way that unfairly limits another party's opportunity to respond.

12. We will not request an extension of time solely for the purpose of unjustified delay.

13. We will consult other counsel regarding scheduling matters

in a good-faith effort to avoid scheduling conflicts.

14. We will endeavor to accommodate previously scheduled dates for hearings, depositions, meetings, conferences, vacations, seminars or other functions of other counsel.

15. We will notify other counsel and, if appropriate, the Court or other persons, at the earliest possible time when hearings, depositions, meetings or conferences are to be canceled or postponed.

16. We accept primary responsibility, after consultation with the client, for making decisions about procedural agreements. We will explain to our clients that cooperation between counsel in such matters is the professional norm and may be in the clients' interests. We will explain the nature of the matter at issue in any such proposed agreements and explain how such agreements do not compromise the clients' interests.

17. We will take depositions only when actually needed to ascertain facts or information or to perpetuate testimony. We will not take depositions for the purposes of harassment or to increase litigation expenses.

18. We will not engage in any conduct during a deposition that is inappropriate under court rule or rule of evidence, including:

- (a) obstructive questioning;
- (b) inappropriate objections;
- (c) irrelevant questioning.

19. Document requests and interrogatories shall be drafted in accordance with court rule, without placing an undue burden or expense on any party.

20. Responses to document requests and interrogatories shall be submitted in accordance with the court rules, fairly meeting the request or question without strained interpretation. We will not produce documents or answer interrogatories in a manner designed to hide or obscure the existence of particular documents or information.

21. We will base discovery objections on the court rules or rules of evidence, without withholding disclosable information.

22. When a draft order is to be prepared by counsel to reflect a court ruling, we will draft an order that accurately and completely reflects the court's ruling. We will promptly prepare and submit a proposed order to other counsel and attempt to reconcile any differences before the draft order is presented to the court.

23. We will not ascribe a position to other counsel that counsel has not taken, or otherwise seek to create an unjustified inference based on counsel's statements or conduct.

#### **ATTORNEYS' RESPONSIBILITIES TO THE COURT**

1. We will speak and write civilly and respectfully in all communications with the Court.

2. We will be punctual and prepared for all Court appearances so that all hearings, conferences and trials may commence on time; if delayed, we will notify the Court and counsel, if possible.

3. We will be considerate of the time constraints and pressures on the Court and Court staff inherent in their efforts to administer justice.

4. We will not engage in conduct that brings disorder or disruption to the courtroom. We will advise our clients and witnesses appearing in Court of the proper conduct expected and, to the best of our ability, prevent our clients and witnesses

from creating disorder or disruption.

5. We will not knowingly misrepresent, mischaracterize, misquote or miscite facts or authorities in any oral or written communication.

6. We will act and speak civilly to marshals, clerks, court reporters, secretaries and law clerks with awareness that they, too, are an integral part of the judicial system.

#### **COURT'S RESPONSIBILITIES TO ATTORNEYS AND LITIGANTS**

1. We will be courteous, respectful, and civil to lawyers, parties, agency personnel, and witnesses. We will maintain control of the proceedings, recognizing that judges have both the obligation and the authority to ensure that judicial proceedings are conducted with dignity, decorum and courtesy.

2. We will not employ hostile, demeaning or humiliating words in opinions or in written or oral communications with attorneys, parties or witnesses.

3. We will be punctual in convening hearings, meetings and conferences; if delayed, we will notify counsel, if possible.

4. In scheduling hearings, meetings and conferences, we will be considerate of time schedules of lawyers, parties, and witnesses and of other courts and tribunals. We will inform counsel promptly of any rescheduling, postponement, or cancellation of hearings, meetings, or conferences.

5. We will make reasonable efforts to decide promptly matters presented to us for decision.

6. While endeavoring to resolve disputes efficiently, we will be considerate of the time constraints and pressures imposed on attorneys.

7. We recognize that a lawyer has a right and duty to present a cause fully and properly, and that a litigant has a right to a fair and impartial hearing. Within the practical limits of time, we will allow lawyers to present proper arguments, to make a complete and accurate record, and to present a case free from unreasonable or unnecessary judicial interruption. At an appropriate time and in an appropriate manner, we will bring to a lawyer's attention conduct that we observe that is inconsistent with these standards.

8. We will not impugn the integrity or professionalism of any attorney on the basis of the clients whom, or the causes, which, an attorney represents.

9. We will do our best to ensure that court personnel act civilly toward attorneys, parties and witnesses.

#### **JUDICIAL OFFICERS' RESPONSIBILITIES TO EACH OTHER**

1. We will be courteous, respectful and civil regarding opinions, written or oral, authored by another judicial officer.

2. In all written and oral communications, we will abstain from disparaging personal remarks or criticisms about another judicial officer.

3. We will endeavor to work with other judicial officers in an effort to foster a spirit of cooperation in our mutual goal of enhancing the administration of justice.

# A PATHWAY OF PROFESSIONALISM — THE FIRST DAY OF LAW SCHOOL AT THE UNIVERSITY OF IDAHO

Dean Donald Burnett  
University of Idaho College of Law

**Y**ou are now entering a profession shaped by values. Popular culture and talk show cynicism notwithstanding, real lawyers and real judges confront ethical dilemmas honestly and they resolve those dilemmas by reference to rules and unselfish principles. They represent clients, while exercising independent professional judgment; they serve as conscientious officers of the legal system; and they accept a unique responsibility for the quality of justice. Every element of expertise you develop in law school, and every skill you acquire during your legal education, must be guided in its application by a strong sense of ethics and a personal commitment to professionalism. That commitment starts today.

This is the message students receive during their first day of orientation at the University of Idaho College of Law. The message is delivered, not only in welcoming remarks, but also (and more influentially) by more than thirty judges and lawyers who come to the College every year for a program of face-to-face dialogues with entering students about the meaning and importance of professionalism. The program – formally entitled “Professionalism: First Step in Law School – Foundation of a Career,” and known informally as our “Day One” program – is a joint undertaking by the College and the Idaho State Bar. The program identifies core values and illuminates a pathway to life-long fulfillment through devotion to the law as a high and noble calling.

## WHY IS PROFESSIONALISM IMPORTANT ON DAY ONE?

Professionalism has not always been a priority in legal education. American law schools have long wrestled with their dual identity as graduate schools and professional schools, combining scholarly inquiry into what the law is (and should be) with the preparation of students to practice law ethically and effectively. In 1984, the American Bar Association held a conference entitled: *Legal Education and the Profession: Approaching the 21st Century*. It was followed in 1986 by the work of an ABA Commission on Professionalism that firmly planted “professionalism” into the discourse on the education and work of lawyers.<sup>1</sup> In 1987, the ABA conducted the National Conference on Professional Skills and Legal Education. One of the conveners of the 1987 conference, Minnesota Supreme Court Justice Rosalie Wahl, noted the importance of combining professional values with professional skills:

Have we really tried in law school to determine what skills, what attitudes, what character traits, what quality of mind are required of lawyers? Are we adequately educating students through the content and methodology of our present law school curriculum to perform effectively as lawyers after graduation?<sup>2</sup>

In the same year, another ABA task force – the Task Force on Law Schools and the Profession: Narrowing the Gap, chaired by Robert MacCrate – issued its landmark report, *Legal Education and Professional Development – An Educational Continuum (MacCrate Report)*. The *MacCrate Report* noted that professional skills and values typically had received inadequate attention in

law school (a juncture along the “legal education continuum”).<sup>3</sup> This report was reinforced by new calls for law schools to inculcate a greater sense of special calling and civic duty among future lawyers.<sup>4</sup> The result has been the emergence of a now-familiar trilogy in legal education – doctrine, skills, and values – adding complexity to the already dynamic relationship between the graduate and professional dimensions of the American law school.<sup>5</sup>

The movement toward strengthening the professional side of legal education received an additional thrust in 2007 with the publication of two profoundly important studies. The Clinical Legal Education Association (CLEA) issued its *Best Practices* report, providing a vision of what legal education might become if legal educators were to focus more intensely on how they can most effectively prepare students for practice.<sup>6</sup> The other major study, published by the Carnegie Foundation, drew upon extensive field work in comparing the teaching observed at law schools with the teaching approaches observed in other professions (e.g., medicine and engineering). The report found that American legal education is powerfully effective in developing analytical ability – “thinking like a lawyer.” On the other hand, the report found law school remarkably ineffective in developing practice effectiveness and what the report called civic professionalism. Reprising an old concept of apprenticeship, the report recommended that law schools provide not only an intellectual, cognitive apprenticeship in the growth of legal expertise and analytical capacity, but also a practice-based, hands-on learning apprenticeship as well as an apprenticeship in the development of professional identity and purpose. Without all three of these apprenticeships, the report argued, legal education is incomplete and fails to prepare students adequately for their professional lives.<sup>7</sup>

Of course, legal education is not limited to preparing lawyers for practice or for careers as judges. The Juris Doctor degree is a key that also unlocks doors of opportunity in business, nonprofit entities, public administration, social services, higher education (law as well as other disciplines), and the burgeoning forms of dispute resolution. There is no single “profession” for which our students are being prepared. Yet the early segments of these career paths have many similarities; indeed, the very fact that the Juris Doctor degree is a common point of departure evidences a universal demand for a lawyer’s endowment of knowledge

and analytical ability, adaptable skills, and good character – all nurtured and reinforced by a sense of professional identity and purpose.

Because the development of professional identity and purpose is (and perhaps always should have been) a centerpiece of American legal education, the process ought to begin on the first, formative day of law school. Idaho has been a leader, incorporating professionalism into its law school orientation since 2003. The Day One timing is both functional and symbolic. It informs students at the outset that law school is not just another form of graduate education. Moreover, it gets the students' ethical gyroscopes spinning early in their professional training, and it validates the worthy impulses of students who have been attracted to the law as a service profession. For those who may be less altruistically motivated, or who are simply seeking the career flexibility that a Juris Doctor degree provides, the Day One program sends an up-front message that genuine success and professionalism are linked in any context. This message is strengthened by the symbolism of being delivered in person, before doctrinal legal education has even begun, by judges and lawyers whose personal achievements have been shaped by professional values.

Although the values that inform professional identity and purpose do not yield to simplistic definition, they encompass, at minimum, an understanding that membership in a profession, unlike a mere occupation, entails an obligation to act beyond self-interest. This obligation is not limited to complying with the letter of standards prescribed by law; it also includes fulfilling the spirit of such standards, by acting honorably even if the standards leave room for interpretation or may be unenforceable by discipline, and by striving to resolve ethical dilemmas in a manner consistent with the public good (even when – and especially when – overreaching clients or market forces tempt a professional to do otherwise).<sup>8</sup> These values reside at the heart of the professionalism program that marks a distinctive first day of law school at the University of Idaho.

#### **ESTABLISHMENT AND OPERATION OF THE "DAY ONE" PROGRAM**

When the College of Law approached the Idaho State Bar in the fall of 2002 with a proposal to collaborate on a professionalism program featuring face-to-face dialogue with entering students, the idea received an enthusiastic response. Indeed, the Bar's newly formed Professionalism and Ethics Section had presented a lecture-style program on professionalism at the College during the prior academic year. The Section also had completed, in cooperation with Idaho's federal and state courts, a comprehensive set of civility standards for lawyers and other officers of the courts, including the judges themselves.<sup>9</sup> (The standards have been reprinted in this edition of *The Advocate*, starting on page 18.) The Section and the College recognized that a professionalism program for entering law students would heighten awareness of those standards by future lawyers. With financial support raised within the Bar and other organizations by attorney Allyn Dingel, as well as contributions to the law school from private sources including retired professor Myron Schreck's family foundation, the program made its debut on the first day of orientation for the entering class of 2003.

The program consisted, as it has in the ensuing five years, of a plenary opening session with a presentation on the meaning and importance of professionalism, followed by break-out sessions for student dialogues on ethics and professionalism scenarios, and then a second plenary session in which student groups report their responses to the scenarios and the students hear concluding remarks on professionalism as a continuing expectation in their lives. The break-out sessions are the most dynamic feature of the program. Each break-out group is composed of five or six students, together with one or two judges or lawyers whose function is to guide the discussion and stimulate student participation. The judges and lawyers – known as the "mentors" – are selected by the Bar in consultation with the College, the primary criterion being a reputation for high ethical standards. In addition, the Bar and the College undertake to show the "face" of the profession by providing as much diversity as possible in terms of professional specialty, geography, and demography. Each year some new mentors are invited to participate and usually are paired with experienced mentors. The mentors and plenary session speakers have included justices of the Idaho Supreme Court, judges of the Idaho Court of Appeals, federal judges, state trial judges, attorneys engaged in civil or criminal trial work, administrative law practitioners, and transactional lawyers from all parts of Idaho, plus a few from Washington. The mentors have donated their time and efforts; many have even "forgotten" to ask for reimbursement of their travel expenses.

The discussion scenarios for the break-out sessions contain fact patterns framing ethics or professionalism dilemmas. For example, scenarios have included civility issues arising from short-notice and no-show depositions; ethical challenges posed by clients who seek a lawyer's assistance in perpetrating apparent frauds; problems regarding the treatment of witnesses, or candor toward the tribunal, in criminal or civil cases; questions regarding the fairness of attorney fees in an estate planning situation; direct and indirect conflicts of interest; and the professional responsibility for rendering pro bono services to assure access to justice. Although the students obviously do not know the Rules of Professional Conduct or the Standards of Civility, they are asked to identify the issues in each scenario and to discuss what they believe the appropriate principles of ethics or professionalism should be. The mentors help the students acquire a broad appreciation for the duties – and relationships among the duties – lawyers have as representatives of their clients, as officers of court, and as public citizens with a special responsibility for the quality of justice. The students are drawn into a discourse framed by positive values, and they are disabused of negative stereotypes. Invariably, the mentors have reported at the end of the day that they found the students to be earnest, the discussions stimulating, and the experience often heart-warming – engendering renewed hope for the future of the profession.

For their part, the students each year have been surveyed for their impressions. Consistently, they have ranked their Day One professionalism experience among the most highly stimulating and useful parts of an overall orientation program that covers nearly a week. Narrative comments from students

have expressed amazement that “such important people would spend a day with us,” gratitude that people in “the real world” take ethics seriously, and deepened satisfaction with the decision to go to law school.

The success of the Day One program has prompted exploratory discussions, at the College of Law and in the Section of Professionalism and Ethics, of additional programs that would reinforce core values and give students a progression of mentoring experiences throughout law school. Such programs would enrich a curricular pathway of professionalism that already includes the College’s professional responsibility course, its distinctive mandatory *pro bono* program, and its doctrinal and clinical courses where professionalism and ethics components are embedded.

New forms of collaboration will emerge. The Day One program has strengthened the connection between the legal academy and the legal profession in Idaho. The result is, and will continue to be, enhanced cooperation in developing the professional identity and purpose of the Idaho-educated lawyer.

#### ABOUT THE AUTHOR

**Donald Burnett** is the Dean of the University of Idaho College of Law, a past President of the Idaho State Bar, and a past chair of the Professionalism Committee of the American Bar Association’s Section of Legal Education and Admissions to the Bar. The author gratefully acknowledges Lee Dillion, Instructor and Director of External Programs at the College of Law, for his contributions to the professionalism program discussed in this article and for his suggestions regarding the article itself.

#### ENDNOTES

<sup>1</sup> American Bar Association Commission on Professionalism, “*In the Spirit of Public Service*”: *A Blueprint for the Rekindling of Lawyer Professionalism* (1986).

<sup>2</sup> Recounted by Robert MacCrate in his “Foreword,” at page vii, to the “Best Practices” book described later in this article and cited at n. 6 *infra*.

<sup>3</sup> *Legal Education and Professional Development – An Educational Continuum*, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap (Robert MacCrate, chair), American Bar Association (1992).

<sup>4</sup> See, e.g., Anthony T. Kronman, *The Lost Lawyer: Failing Ideals of the Legal Profession* (Harv. Univ. Press 1993); Jerome Shestack, *President’s Message: Defining our Calling*, 83 A.B.A.J. 8 (1997). In a similar vein, the ABA Model Rules of Professional Conduct for Lawyers have been amended to emphasize the roles of lawyers as officers of the legal system and as public citizens with special responsibilities for the quality of justice, vis-à-vis their role as representatives of clients. See, e.g., Rules 1.6 (confidentiality and its exceptions) and 1.13 (duties of the lawyer for an organization). American Bar Association Center for Professional Responsibility, *Model Rules of Professional Conduct* (2004) (*hereinafter* the Model Rules). The Idaho Rules of Professional Conduct express the same general themes.

<sup>5</sup> Professionalism is now becoming an integral part of legal education in other countries as well. See, e.g., James R. Maxeiner & Keiichi Yamanaka, *The New Japanese Law Schools: Putting the Professional into Legal Education*, 13

PAC. RIM L. & POL’Y J. 303 (2004).

<sup>6</sup> Roy Stuckey et al., *Best Practices for Legal Education: A Vision and A Road Map* (Clinical Legal Education Association, 2007). The book is available from CLEA or can be accessed on-line at <http://cleaweb.org>.

<sup>7</sup> William M. Sullivan et al., *Educating Lawyers: Preparation for the Profession of Law* (Carnegie Foundation for the Advancement of Teaching 2007). A fuller summary of the “Carnegie Report” as well as “Best Practices” may be found in D. L. Burnett, Neither Mess nor Menace: Legal Education and the Erudite Apprentice, 18 *The Professional Lawyer* 2 (American Bar Association, 2008). Elements of that summary have been synopsized here.

<sup>8</sup> See generally “President’s Messages” of Deborah Rhode and John Sexton, respectively, in *Association of American Law Schools Newsletter* (Apr. 1997 and Apr. 1998).

<sup>9</sup> See Richard C. Fields, Preserving the Profession: The Idaho State Bar’s Professionalism & Ethics Section, 39 *Idaho L. Rev.* 479 (2003),

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# COUNSELORS AND HEALERS AT LAW

Matt Christensen

Angstman, Johnson & Associates, PLLC

... *Attorney and Counselor at Law* – after viewing my email signature for the first time, an assistant asked me why I included “and Counselor at Law” in my title. I explained that I was an attorney; i.e., one trained in the law, as well as a counselor; i.e., one who counsels clients in their various problems. Since that conversation, I have thought a bit more about my role as a “counselor” and what it means.

## HISTORIC ROLES OF ATTORNEYS AND COUNSELORS

In England, the terms “attorneys” and “counselors” were historically another way of referring to “solicitors” (attorneys) and “barristers” (counselors). Solicitors were lawyers trained to give general legal advice, and prepare cases for barristers.<sup>1</sup> Barristers, on the other hand, were lawyers trained to present client’s cases in the higher courts.<sup>2</sup> Thus, to be an “attorney and counselor at law” meant one was qualified to act as a solicitor and as a barrister—to both prepare and present cases, in all the various courts of England.

In America, these terms came to have different connotations. For example, a “solicitor” carries the somewhat negative meaning of someone who seeks to sell or collect something—think door-to-door salesman. In addition, in Idaho and other states, admission to practice law includes the right to practice before the lowest and highest courts (district and supreme courts). Nevertheless, some lawyers in Idaho – like me – call themselves “attorneys and counselors at law,” suggesting a practical, if not grammatical, difference between a lawyer’s varied roles.

## RULES OF PROFESSIONAL CONDUCT

The Idaho Rules of Professional Conduct (IRPC) contain a set of ethics rules specifically directed at a lawyer’s role as counselor. IRPC 2.1 reads as follows:

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors that may be relevant to the client’s situation.

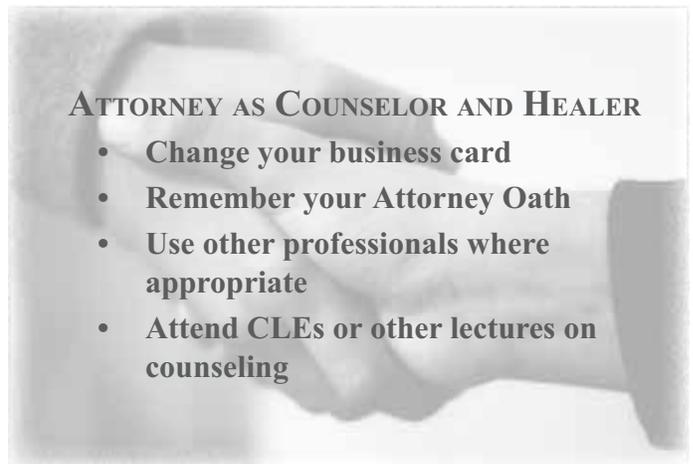
This rule is based on Rule 2.1 of the American Bar Association Model Rules of Professional Conduct (“Model Rules”). Model Rule 2.1 was first proposed in August 1982, at the American Bar Association’s (ABA) annual meeting, as part of the general revision of the previous Model Code of Professional Conduct.<sup>3</sup> The previous Model Code did not contain an analogous provision. However, it did provide that “advice of a lawyer to his client need not be confined to purely legal considerations . . . . In assisting his client to reach a proper decision, it is often desirable for a lawyer to point out those factors which may lead to a decision that is morally as well as legally permissible [.]”<sup>4</sup> Ultimately, Model Rule 2.1 was adopted as proposed, and was not changed in the 2002 revisions to the Model Rules.

**Comment 1** to Model Rule 2.1 is of special aid to understanding the Rule:

A client is entitled to straightforward advice expressing the lawyer’s honest assessment.

*Legal advice often involved unpleasant facts and alternatives that a client may be disinclined to confront. In presenting advice, a lawyer endeavors to sustain the client’s morale and may put advice in as acceptable a form as honesty permits. However, a lawyer should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client.*<sup>5</sup>

As the Comment explains, a lawyer’s role as a counselor is to do more than tell the client what she wants to hear. Sometimes moral, economic, social and political factors may dictate what advice is best for a client. More, importantly, what the client wants to do may be morally, economically, socially and politically right; but legally wrong. It is our job as counselors to advise our clients of these various options. Does this sometimes mean we’re giving our clients advice they may not want to hear? Of course . . . . However, this does not diminish our role as advisors.



## COUNSELORS AND HEALERS

A lawyer has a role both as an attorney and a counselor. The Model Rules address both of these roles. But, even after considering the Model Rules, I still wanted to have a fuller understanding of my (our) role as a counselor. I understand that, at times, I may have to give my clients advice that is difficult for them to hear. However, how do I know when I will need to do so? When should I look outside the law to find answers to my client’s problems? I believe the answer to these questions was suggested by two prominent lawyers.

Chief Justice Warren Burger long explained the lawyer’s role as that of a healer.<sup>6</sup> In a 1995 speech, he explained that “lawyers, as officers of the court, should be problem-solvers, harmonizers, and peacemakers – the healers, not the promoters, of conflict.”<sup>7</sup> Justice Burger explained the decline of professionalism as due, in part, to lawyers forgetting this “healing” role.

In addition, in 1973, Bruce C. Hafen, the first dean of the Brigham Young University (BYU) Law School and later Solicitor General of the United States, addressed the inaugural

BYU law school class, and described a conversation he had with a student. He asked the student, "What do the lawyer, doctor and priest have in common?" After some thought, the student responded:

I think they are all healers, those to whom we open up our innermost secrets when something seems to threaten our very lives, physically, spiritually, or in some other way that would destroy our liberty or our property, our chance to live. And we go to them to be healed, to be made whole, and to retain control over our lives.<sup>8</sup>

As described by Justice Burger and Dean Hafen, our role as attorneys and counselors at law is to be healers – to solve our clients' problems, using legal and non-legal means as necessary. Like doctors, our role is more than just to provide a band-aid for our client's problems. Our role is to understand the problem enough to accurately diagnose it, and then to seek out and provide cures for our client's ailments.

### REMEMBERING THE HEALING ROLE

As we meet with clients day-to-day, attend hearings or negotiations, participate in mediations or closings, engage in Bar functions and other civic responsibilities, and attempt to have a fulfilling social and family life; sometimes it's hard to keep our counseling and healing roles in sight. Thus, I offer four suggestions to help each of us continually remember these roles:

- 1. Change your business card.** On each of our business cards, email signatures, letterhead, websites, and any other professional communication, we should include the word "counselor." This will provide a continual reminder of this role. In addition, as evidenced by the question about my own email signature, it may prompt questions from others as to why we include the word "counselor," which provides a perfect opportunity to explain to them (and remind us) what our roles are.
- 2. Remember your Attorney Oath.** One of the promises we make as lawyers when we are sworn into the Idaho State Bar is to "attempt to resolve matters expeditiously and without unnecessary expense." Honoring this promise is a key part of our role as counselors and healers. Frame the Oath, and place it on your office wall. Looking at it every day, especially the first time you meet with a client; will continually remind you of the promises made.
- 3. Use other professionals where appropriate.** In some cases, the client's needs may best be met by other professionals; including professional counselors, accountants, and even clergy, if necessary. As attorneys, we should remember that we may not have all of the best answers for our clients, and these other advisors can play a role in healing our client's problems.

### 4. Attend CLEs or other lectures on counseling.

Learning about counseling and healing should be a part of every lawyers training—as that is a key role in our profession. Whether this training is provided as part of the law school curriculum, CLEs, or other professional development courses, all lawyers should seek out and take advantage of opportunities to train themselves in our counseling and healing roles.

### REDISCOVERING OUR ROLES

Lawyers who remember their counseling and healing roles are abundantly more helpful to their clients than mere attorneys. Indeed, fully remembering and exemplifying these special roles not only improves our contentment with practicing law, but also better discharges our duty of "competence" to our clients. Let each of us take steps to more fully understand, develop, and exemplify our role as counselors and healers.

### ABOUT THE AUTHOR

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### ENDNOTES

<sup>1</sup> BRYAN A. GARNER, A DICTIONARY OF MODERN LEGAL USAGE 816 "Solicitor" (2nd ed. 1995).

<sup>2</sup> *Id.* at 99 "Barrister." See also *Id.* at 90 "Attorney."

<sup>3</sup> AMERICAN BAR ASSOCIATION, A LEGISLATIVE HISTORY: THE DEVELOPMENT OF THE ABA MODEL RULES OF PROFESSIONAL CONDUCT 1982-2005, 387 (American Bar Association 2006).

<sup>4</sup> *Id.* at 389.

<sup>5</sup> I.R.P.C. 2.1, comment 1, emphasis added.

<sup>6</sup> See, e.g., *Annual Report on the State of the U.S. Judiciary*, given to the American Bar Association Annual Meeting in Chicago, Illinois, on January 24, 1982, as reported at 68 ABA JOURNAL 274; *The Decline of Professionalism*, 61 TENNESSEE LAW REVIEW 1 (1993).

<sup>7</sup> Warren E. Burger, *The Decline of Professionalism*, 63 FORDHAM LAW REVIEW 949, 953 (1995).

<sup>8</sup> Bruce C. Hafen, *Professionalism*, in LIFE IN THE LAW: ANSWERING GOD'S INTERROGATORIES, 147, 149 (Brigham Young University Press, 2002).

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# ARE YOU MY CLIENT? I DON'T KNOW ... ARE YOU MY ATTORNEY?

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One of the key elements in analyzing potential conflicts is identifying who your client is in a given representation. Sometimes that task is easy: it's the person sitting across the desk from you. But many times it's not, as there may be several people sitting across the desk from you—a family, business partners, or representatives of a government agency or corporate affiliate. The “who is the client?” question looms large in many situations because its answer reveals to whom we owe our duties of loyalty and confidentiality ... and to whom we do not. This article first looks at the general rule for deciding whether an attorney-client relationship exists and then applies that rule in four common entity contexts: corporations and their affiliates; partnerships, joint ventures and trade associations; governmental entities; and estates and trusts.

## **THE GENERAL RULE – DOES AN ATTORNEY-CLIENT RELATIONSHIP EXIST?**

In Idaho, whether an attorney-client relationship exists in a particular circumstance is a question of fact.<sup>1</sup> Paragraph 17 of the Preamble to the Idaho Rules of Professional Conduct is clear that this question is governed by case law rather than the IRPCs: “[F]or purposes of determining the lawyer’s authority and responsibility, principles of substantive law external to these Rules determine whether a client-lawyer relationship exists.”

The Supreme Court in *Warner* discussed the two-part test to determine [in order to meet the subjective belief – we are not your attorney letter] whether an attorney-client relationship exists: (1) what is the client’s subjective belief and is that subjective belief reasonable under the circumstances? and (2) was there some clear assent (either express or implied) to the representation by both the client and the lawyer?<sup>2</sup> Although the *Warner* Court did not choose one test over the other, both tests contain a key element: regardless of the client’s *subjective* belief, that belief must be *objectively* reasonable.<sup>3</sup> In making this determination of the client’s belief, the Supreme Court noted in *Stuart v. State*,<sup>4</sup> that “[u]sually the payment of a fee or retainer is evidence of an attorney-client relationship, but it is not necessary.” Rather, *Stuart* found that “[a]n attorney-client relationship can be established when the attorney is sought for assistance in matters pertinent to his profession.”<sup>5</sup> Nonetheless, the Supreme Court in *Warner* later emphasized that “payment of ... [a] fee is evidence that an attorney-client relationship exists.”<sup>6</sup> Read in tandem, *Warner* and *Stuart* underscore both the practical effect and the practical utility of having a clear written engagement agreement a client and sending a clear nonrepresentation letter to an individual with whom the lawyer met preliminarily but is not representing

## **APPLYING THE GENERAL RULE TO ENTITIES**

With all corporations and their affiliates; partnerships, joint ventures and trade associations; governmental entities; and estates and trusts, engagement letters provide an excellent venue for defining who the client is in a given representation.

This is particularly important when you have initially met with more than one person as part of the background context of a representation and will only be representing one. Depending on the setting, sending polite “nonrepresentation” letters to those not being represented offer a useful supplement to an engagement agreement to let the nonrepresented parties know which side you are on. In the face of an engagement agreement with the client, conduct consistent with that agreement and, depending on the circumstances, nonrepresentation letters, it will be difficult for a nonclient to assert that you were also representing him or her if the nonclient doesn’t like the result.<sup>7</sup>

## *CORPORATIONS AND THEIR AFFILIATES*

Idaho Rule of Professional Conduct 1.13(a) adopts the “entity approach” to corporate representation: a lawyer representing a corporation is deemed to represent the corporation rather than its individual shareholders or officers. This is the same tact taken by Section 131 of the Restatement (Third) of the Law Governing Lawyers (2000) and the ABA’s Model Rules of Professional Conduct. The “entity approach” doesn’t preclude joint representation of both the corporation and one of its constituent members, such as an individual officer or director. But in those instances, any dual representation would be subject to IRPC 1.7’s multiple client conflict rules.

A related and often more difficult issue is whether representation of one corporate affiliate will be deemed representation of the entire “corporate family.” There is no hard and fast rule. ABA Formal Ethics Opinion 95-390 (1995), which analyzes this issue in detail, suggests two measures that will weigh on the side of considering all elements of a corporate family to be the same for conflict purposes. First, if the client has informed the lawyer that the corporate family should be considered a unified whole, then it will generally be treated as such. Second, even absent such an agreement, a corporate affiliate may be treated as a member of a broader corporate family when it shares common general and legal affairs management. At the same time, such affiliate relationships are most often found to constitute a single client when control is exercised through majority ownership of the affiliate by the corporate parent.<sup>8</sup> Again, an engagement letter clearly setting out the corporate client being represented can be a key piece of evidence in defending against an allegation that the lawyer supposedly represented another corporate entity or constituent.<sup>9</sup>

## *PARTNERSHIPS, JOINT VENTURES AND TRADE ASSOCIATIONS*

Partnerships generally present the same “who is the client?” question as corporations.<sup>10</sup> The analytical framework for working through this question in the partnership context is generally the same as well:

- The representation of a partnership will normally be limited to the entity and will not extend as a matter of law to the individual partners.

- The converse is also true—representation of an individual partner will normally be limited to that individual only and will not be construed as extending to the partnership as a whole.
- A single lawyer, subject to the conflict constraints imposed by IRPC 1.7, could in theory jointly represent both a partnership and one or more individual partners.

Joint ventures and trade associations are generally treated the same as corporations and partnerships in this context under 1.13(a).<sup>11</sup> Similarly, engagement agreements in the partnership context provide the same protections they do for corporate representation for the same reasons.<sup>12</sup>

#### GOVERNMENTAL ENTITIES

Under IRPC 1.13(a), the entity approach applies to governmental representation and the “client” is the governmental entity and not its constituent members. The more difficult question in the governmental context is which agency or level of government a lawyer will be deemed to represent. Comment 9 to IRPC 1.13(a) frames both the clear issue and the imperfect answer:

The duty defined in this Rule applies to governmental organizations. Defining precisely the identity of the client and prescribing the resulting obligations of such lawyers may be more difficult in the government context and is a matter beyond the scope of these Rules. ... Although in some circumstances the client may be a specific agency, it may also be a branch of government, such as the executive branch, or the government as a whole. For example, if the action or failure to act involves the head of a bureau, either the department of which the bureau is a part or the relevant branch of government may be the client for purposes of this Rule. Moreover, in a matter involving the conduct of government officials, a government lawyer may have authority under applicable law to question such conduct more extensively than that of a lawyer for a private organization in similar circumstances. Thus, when the client is a governmental organization, a different balance may be appropriate between maintaining confidentiality and assuring that the wrongful act is prevented or rectified, for public business is involved. In addition, duties of lawyers employed by the government or lawyers in military service may be defined by statutes and regulation. This Rule does not limit that authority.<sup>13</sup>

For in-house counsel at government agencies, the “who is the client?” question is usually straightforward. But, for outside law firms that represent government entities, defining the client is as important as it is in corporate or partnership representation.

#### ESTATES AND TRUSTS

With an estate or trust, a lawyer represents, respectively, the personal representative or the trustee rather than the beneficiaries. The Court of Appeals, summarized this point:

This is so because heirs are *not* necessarily intended beneficiaries of the attorney’s services and, in fact, are frequently in a position of conflict with the attorney’s client, the personal representative. The attorney is not hired to benefit any particular heir, but to assist the personal representative in the performance of his or her duties. The imposition of a duty owed by the attorney to the heirs would create a conflict of interest whenever a dispute arose between the personal representative and an heir.” (Emphasis in original).<sup>14</sup>

Estate and trust work is a comparatively common backdrop for claims against lawyers because it often involves situations in which claimants contend they were entitled to share in the assets involved.<sup>15</sup> As with the other practice areas discussed, an engagement letter identifying the client and, where appropriate, nonrepresentation letters to other family members with whom the lawyer may have initially met along with the client, afford the lawyer a clear contemporaneous record if there are ever any questions later about who the lawyer was, and was not, representing.

#### SUMMING UP

In some areas, the IRPCs, ethics opinions, and case law draw a bright line between who a lawyer does and does not represent in an entity setting. In many other contexts, the line is much less distinct. Even with the benefit of IRPC 1.13(a), the “who is the client?” question remains a very fact-specific exercise. With all of these areas, however, lawyers can help answer that question by carefully defining the client in a written engagement letter and then handling the representation consistent with their engagement agreement.

#### ABOUT THE AUTHOR

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#### ENDNOTES

<sup>1</sup> See *Warner v. Stewart*, 129 Idaho 588, 593, 930 P.2d 1030 (1997); accord *O’Neil v. Vasseur*, 118 Idaho 257, 262, 796 P.2d 134 (Ct.App. 1990).

<sup>2</sup> 129 Idaho at 593-94; see also *Podolan v. Idaho Legal Aid Servs., Inc.*, 123 Idaho 937, 942-43, 854 P.2d 280 (Ct.App. 1993) (examining the question in contractual terms); accord *Balvi Chemical Corp. v. JMC Ventilation Refrigeration, LLC*, No. CV-07-353-S-BLW, 2008 WL 131028 at \*5 (D. Idaho Jan. 10, 2008) (unpublished) (discussing and applying *Warner*); *Balvi Chemical Corp. v. JMC Ventilation Refrigeration, LLC*, No. CV-07-353-S-BLW, 2008 WL 313792 (Feb. 1, 2008) (unpublished) (also applying *Warner* in continuing the Court’s analysis of disqualification issues).

<sup>3</sup> *Warner*, 129 Idaho at 593, 930 P.2d at 1030.

<sup>4</sup> *Stuart v. State*, 118 Idaho 932, 934, 801 P.2d 1283 (1990).

<sup>5</sup> *Id.*

<sup>6</sup> Warner, 129 Idaho at 594, 930 P.2d at 1030.

<sup>7</sup> For more on engagement letters, see Mark J. Fucile, "Defensive Lawyering: Why Engagement Letters Are a Lawyer's Best Friend," September 2004 ISB *Advocate* at 12.

<sup>8</sup> See, e.g., *Spur Products Corp. v. Stoel Rives LLP*, 143 Idaho 812, 153 P.3d 1158 (2007) (where the client and the firm treated a corporate subsidiary as integrated with the parent for conflict purposes). See also

<sup>9</sup> Restatement, *supra*, § 131, cmt. d at 367.

<sup>10</sup> In *Wick v. Eismann*, 122 Idaho 698, 700, 838 P.2d 301 (1992) (legal malpractice claim), and *Blickenstaff v. Clegg*, 140 Idaho 572, 577-78, 97 P.3d 439 (2004) (breach of fiduciary duty claim), for example, the Supreme Court denied summary judgment to the defendant lawyers where, in the absence of clear agreements, there were fact disputes over whether the lawyers represented shareholders as well as the corporations involved.

<sup>11</sup> Comment 1 to RPC 1.13 reads: "The duties defined in this Comment apply equally to unincorporated associations." *Accord* ABA Formal Ethics Op. 91-361 (1991) (addressing partnerships in particular).

*Accord* ABA Formal Ethics Op. 92-365 (1992) (discussing trade associations); Restatement § 131, cmt. a.

<sup>12</sup> In *Blough v. Wellman*, 132 Idaho 424, 426-27, 974 P.2d 70 (1999), for example, the Supreme Court denied summary judgment in a legal malpractice case involving a partnership because, lacking a definitive agreement, there was a fact dispute over the scope and duration of the lawyer's representation.

<sup>13</sup> See also ABA Formal Ethics Op. 97-405 (1997) (discussing governmental representation); Restatement § 97, cmt. c (addressing client identity in the governmental context).

<sup>14</sup> *Allen v. Stoker*, 138 Idaho 265, 267, 61 P.3d 622 (Ct.App. 2003). The Supreme Court in *Harrigfeld v. Hancock*, 140 Idaho 134, 138-

39, 90 P.3d 884 (2004), addressed the related question of whether a lawyer who prepares a will for a client owes any duty to a specific beneficiary if the lawyer errs in implementing the client's intent. In that instance, the Supreme Court recognized a narrow exception to the general requirement that only a lawyer's client has standing to assert a malpractice claim. In doing so, the Supreme Court emphasized that a beneficiary in that situation remains a nonclient.

<sup>15</sup> See, e.g., *Taylor v. Maile*, 142 Idaho 253, 127 P.3d 156 (2005); *Becker v. Callahan*, 140 Idaho 522, 96 P.3d 623 (2004).



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# GOOD NEWS REGARDING TRUST ACCOUNTS<sup>1</sup>

Bradley G. Andrews  
*ISB Bar Counsel*

There is some good news for lawyers within the gloom of recent economic news. On November 21, 2008, the Federal Deposit Insurance Corporation (FDIC) announced that client funds deposited in Interest on Lawyer Trust Accounts (IOLTA) were immediately eligible for unlimited deposit insurance coverage. All funds in an IOLTA account, regardless of the size of the account, will now be insured in full by the FDIC. This change was part of the Temporary Liquidity Guarantee Program (TLGP).

The TLGP, which was established in October 2008, fully guarantees funds in non-interest bearing accounts until June 30, 2009. With this recent clarification that IOLTA accounts, which create interest only for public use, are included in the TLGP protection, the FDIC has temporarily allayed attorneys' concerns about the security of client funds in the current economic climate. This is welcome news given concern about the solvency of banks, particularly following the July 2008 seizure of IndyMac, a California bank, by federal regulators. The IndyMac failure has been described as the second largest bank failure in United States' history, with reportedly almost \$1 billion in uninsured deposits.

## WHAT UNLIMITED PROTECTION FOR IOLTA ACCOUNTS MEANS FOR IDAHO ATTORNEYS

Under the IOLTA program, interest on IOTLA accounts is transmitted to the Idaho Law Foundation for operation of the IOLTA program. The IOLTA program makes distributions for the following purposes: to provide legal aid to the poor; to provide law related education programs for the public; to provide scholarship and student loans; to improve the administration of justice and for other programs for the benefit of the public as are specifically approved from time to time by the Idaho Supreme Court. (I.R.P.C. 1.15(i)) Inclusion of IOLTA accounts for unlimited deposit insurance coverage means that all money held in an IOLTA account qualifies for FDIC deposit insurance coverage, regardless of whether the account exceeds the current \$250,000 FDIC limit

Under I.R.P.C. 1.15, unless a lawyer or law firm elects not to do so, the lawyer or law firm will maintain an IOLTA account. A lawyer or law firm may elect to decline to maintain an IOLTA account by complying with I.R.P.C. 1.15(j), which provides flexibility for those circumstances when a lawyer will hold client or third party funds in trust, and the beneficial owner of those funds desires to receive interest on those funds while held in trust. While that is permissible and understandable, the recent unlimited protection of IOLTA accounts should now be considered in conjunction with any such request.

## THE DIFFERENCE IN FDIC TREATMENT BETWEEN IOLTA AND NON-IOLTA TRUST ACCOUNTS

Non-IOLTA accounts, i.e. trust accounts where interest is paid to a beneficial owner of the funds, are currently insured by the FDIC up to \$250,000, at least through December 31, 2009.

Funds in a non-IOLTA account are thus not necessarily fully insured.

According to the FDIC, fiduciary accounts, including non-IOLTA accounts, are insured as though the beneficial owners of the funds have directly deposited them, so long as two requirements are met. <sup>2</sup>First, the fiduciary nature of the account must be disclosed in the account title. This is nothing new to Idaho lawyers. I.B.C.R. 302(a)(2)(A)(i) requires that trust funds be held in an account clearly identified as a "trust" or "escrow" account and that the financial institution be informed of the purpose and identity of the account. Second, the identities and the interest of the principals must be ascertainable from deposit account records of the bank or records maintained in good faith and in the regular course of business by the attorney, or someone acting for the attorney. This, too, is a requirement that any lawyer with a properly managed trust account should be able to meet:

**Comment [1] to I.R.P.C. 1.15** advises that we "should maintain on a current basis books and records in accordance with generally accepted accounting practice and comply with any record keeping rules established by law or court order. See e.g., ABA Model Financial Record Keeping Rule." Those records should include ledgers, linking deposits, disbursements and balances to particular clients or beneficial owners of the funds.

Thus, with a properly managed non-IOLTA account, the FDIC will insure funds for each client who has funds in a non-IOLTA account up to a total of \$250,000 per client. If no client has funds in trust greater than \$250,000, there will be full coverage, with one exception. If the client has other funds in the same bank that the lawyer holds the non-IOLTA account funds for that client, those other funds will be aggregated with the client's trust funds to determine insurability. Thus, if a lawyer is holding \$175,000 in trust for a client who also owns another account at the same bank with a balance of \$100,000, and the bank fails, \$25,000 of that client's funds will not be FDIC insured. This means we should disclose the location of non-IOLTA accounts to certain clients to allow them to avoid this situation.

There are also cases in which attorneys have been sued for loss of non-insured trust account funds in excess of the FDIC limits. In *Bazinet v. Kluge*, 14 A. 3d 324, 788 N.Y.S.2d 77 (2003), the lawyer deposited \$2.73 million in his trust account for a real estate transaction. While the funds were on deposit, the bank closed and the FDIC became the receiver. One of the parties to the transaction sued the lawyer for the uninsured loss. The claim was that it was malpractice to fail to assure FDIC insurability of those funds or otherwise to protect the funds against loss by bank failure. The court ruled in favor of the attorney and held that the proximate cause of the depositor's injury was the failure of the bank that was not attributable to the attorney. However,

the court did note that holding was partially premised upon the fact that there was no allegation that the lawyer violated any statute or regulation regarding his trust account.

There is concern about how an Idaho court might answer the same question, since I.B.C.R. 301(a)(2)(G)(i) requires that money deposited in trust accounts "must be fully insured by federal depositor insurance, including, but not limited to, FDIC (Federal Deposit Insurance Corporation), FSLIC (Federal Savings and Loan Insurance Corp), NCUA (National Credit Union Administration), or SIPC (Securities Investor Protection Corporation)." One could argue that an attorney's failure to assure that money held in a non-IOLTA account for a particular beneficial owner in excess of \$250,000 was "fully insured" would subject that attorney to liability for any uninsured loss resulting from a breach of that rule. Thus, the good news about the unlimited deposit insurance coverage for IOLTA accounts. If the funds in the previous example were held in an IOLTA account, all of the \$2.73 million would now be fully insured, which would protect against that type of malpractice claim. Thus, if a client or third party seeks to deposit more than \$250,000 into an interest bearing trust account, an attorney should discuss with them the advantages of placing that money in an IOLTA account, as opposed to an interest bearing account, particularly if there is any concern about a bank's solvency in these uncertain economic times.

#### WHAT IS THE SAFEST COURSE?

Given the current treatment of IOLTA and non-IOLTA accounts, the safest course of action is to deposit any trust funds in excess of \$250,000 in an IOLTA account. There is also a relatively safe course of action for client funds in a non-IOLTA account; however, assuming that the client funds do not exceed \$250,000 and the client does not have other funds on deposit at the same bank as your trust account. Assuming that you satisfy the requirements for FDIC coverage for each beneficial owner's contribution to your trust account, and those funds are less than \$250,000, the client or beneficial owner can take advantage of interest on a non-IOTLA account and FDIC insurance coverage up to \$250,000 in that non-IOLTA account. For those funds that exceed \$250,000, it certainly appears that the better course of action is to place those funds in an IOLTA account and take advantage of the unlimited FDIC deposit insurance coverage. If you have any particular concerns about IOLTA or non-IOLTA accounts, give me a call at (208)334-4500.

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#### ABOUT THE AUTHOR



**Brad Andrews** was selected Bar Counsel of the Idaho State Bar in March 2003. He is general counsel to the Board of Commissioners and chief disciplinary counsel. Prior to his service as Bar Counsel, he was a partner with Jones, Gledhill, Hess, Andrews, Fuhrman, Bradbury & Eiden in Boise. His practice emphasized civil litigation and business transactions.

Before entering private practice, Brad was an Idaho Deputy Attorney General and clerked for United States District Judge Harold L. Ryan. He received his B.A. from Miami University in 1977 and his J.D. from George Washington University in 1980.

#### ENDNOTES

<sup>1</sup> I would like to credit Don Lundberg, Executive Secretary of the Indiana Disciplinary Commission for much of the information in this article. Don's article is published in Vol. 52, No. 2 *Res Gestae* 33 (September 2008).

<sup>2</sup> 12 CFR 330.5(b)

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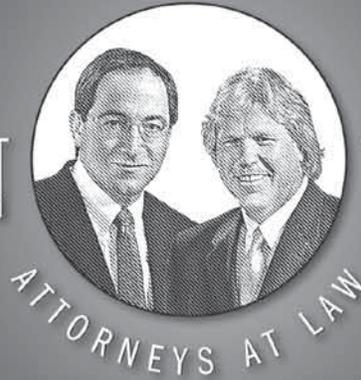
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# COURT INFORMATION

**OFFICIAL NOTICE  
SUPREME COURT OF IDAHO**

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Daniel T. Eismann  
**Justices**  
Roger S. Burdick  
Jim Jones  
Warren E. Jones  
Joel D. Horton

**Amended - Regular Spring Terms for 2009**

Boise . . . . . January 12, 14, 16, 21 and 23  
Boise . . . . . February 9, 11, 13, 18 and 20  
**Coeur d'Alene . . . . . April 6, 7, and 8**  
**Moscow . . . . . April 9**  
**Lewiston . . . . . April 10**  
**Boise (Eastern Idaho) . . . . . May 4, 6, 8, 11 and 13**  
**Boise (Twin Falls) . . . . . June 8, 10, 12, 15 and 17**

By Order of the Court  
Stephen W. Kenyon, Clerk

**NOTE:** The above is the official notice of setting of the year 2009 Spring 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 Supreme Court**

Oral Argument Dates  
As of January 20, 2009

**Monday, February 9, 2009 – BOISE**

8:50 a.m.	Dept. of Health and Welfare v. Doe	#35713
10:00 a.m.	Farber v. Idaho State Insurance Fund	#35144
11:10 a.m.	State v. John Doe	#35699

**Wednesday, February 11, 2009 – BOISE**

8:50 a.m.	Spencer v. Jameson	#34517
10:00 a.m.	Erickson v. Soderling	#34593
11:10 a.m.	Dixson Irrevocable Trust v. Dixson	#34873

**Friday, February 13, 2009 – BOISE**

8:50 a.m.	Harrison v. Binnion	#34731
10:00 a.m.	State v. Kofoed	#34589
11:10 a.m.	Hagadone Corp. v. Industrial Special Indemnity Fund	#34335

**Wednesday, February 18, 2009 – BOISE**

8:50 a.m.	Wohrle v. Kootenai County	#34095/34097
10:00 a.m.	Armstrong v. Farmers Insurance Co.	#34250
11:10 a.m.	Doe v. Dept. of Health and Welfare	#35637

**Friday, February 20, 2009 – BOISE**

8:50 a.m.	State v. Sanchez (Petition for Review)	#35547
10:00 a.m.	Neighbors for Responsible Growth v. Powderhorn	#34591/34592
11:10 a.m.	State v. Willoughby (Petition for Review)	#35289

**OFFICIAL NOTICE  
COURT OF APPEALS OF IDAHO**

**Chief Judge**  
Karen L. Lansing  
**Judges**  
Darrel R. Perry  
Sergio A. Gutierrez

**Regular Spring Terms for 2009**

**Boise . . . . . January 20 and 22**  
**Boise . . . . . February 10 and 19**  
**Eastern Idaho . . . . . March 10, 12 and 13**  
**Northern Idaho (Moscow) . . . . . April 13, 14, 15, 16 and 17**  
**Boise . . . . . May 14, 15, 19 and 21**  
**Boise . . . . . June 16, 18, 23 and 25**

By Order of the Court  
Stephen W. Kenyon, Clerk

**NOTE:** The above is the official notice of setting of the year 2009 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 Court of Appeals**

Oral Argument Dates  
As of January 20, 2009

**Tuesday, February 10, 2009 – BOISE**

9:00 a.m.	Person v. State	#34919
10:30 a.m.	Warren v. State	#34998
1:30 p.m.	Stone v. State	#34569/34571

**Thursday, February 19, 2009 – BOISE**

9:00 a.m.	State v. Parmer	#33721
10:30 a.m.	Buss v. State	#33180
1:30 p.m.	State v. Dreier	#32841

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**Idaho Supreme Court and Court of Appeals**  
**NEW CASES ON APPEAL PENDING DECISION**  
(Update 01/01/09)

**CIVIL APPEALS**

**CONTRACT**

1. Did the district court err in finding Four Rivers Packing, Co., properly rejected the onions tendered by Panike and Sons Farms, Inc.?

*Panike and Sons Farms, Inc. v. Smith*  
S.Ct. No. 35062  
Supreme Court

**DIVORCE, CUSTODY, AND SUPPORT**

1. Did the court err in terminating the parental rights of the parents?

*Idaho Department of Health & Welfare*  
S.Ct. No. 35592  
Supreme Court

**EMINENT DOMAIN**

1. Did the court commit error by allowing the jury to determine the nature and extent of the property rights taken by the state, thereby requiring reversal of the judgment?

*State v. Canyon Vista Family Ltd. Partnership*  
S.Ct. No. 34485  
Supreme Court

**LAND USE**

1. Was the decision to deny the Baycrofts a variance arbitrary, capricious and an abuse of discretion?

*Baycroft v. Kootenai County*  
S.Ct. No. 35354  
Supreme Court

**POST-CONVICTION RELIEF**

1. Did the district court abuse its discretion in appointing the county public defender's office to represent Richey on his ineffective assistance of counsel claims against that office?

*Richey v. State*  
S.Ct. No. 34847  
Court of Appeals

**PROCEDURE**

1. Did the court err in finding that the complaint failed to state a claim against the defendants?

*Cole v. Cardez Credit Affiliates*  
S.Ct. No. 34918  
Court of Appeals

**SUBSTANTIVE LAW**

1. Should Schroeder's administrative license suspension be vacated for failure of the testing officer to follow Intoxilyzer 5000 breath testing procedure as promulgated by the Idaho State Police, specifically by not re-commencing the fifteen minute waiting period after Schroeder belched?

*Schroeder v. Idaho Department of Transportation*  
S.Ct. No. 35496  
Court of Appeals

2. Are the provisions of Idaho's Tobacco Master Settlement Agreement Complementary Act, which make it unlawful for a person to sell, offer or possess for sale in this state cigarettes of a tobacco product manufacturer or brand family not included in the directory, applicable to a Native American tobacco seller who makes delivery sales without leaving his place of business on an out of state Indian reservation?

*State v. Maybee*  
S.Ct. No. 35200  
Supreme Court

**SUMMARY JUDGMENT**

1. Did the court err in concluding the listing agreements were unenforceable for lack of legally enforceable descriptions of the property to be sold pursuant to the agreements?

*Callies v. O'Neal*  
S.Ct. No. 34968  
Supreme Court

**TORT**

1. Whether the economic loss rule bars recovery in tort for losses arising from commercial transactions when there is damage to other property.

*Aardema v. U.S. Dairy System*  
S.Ct. No. 35218  
Supreme Court

2. Did the plaintiffs fail to exclude other reasonable causes for the heifer calf deaths, thereby failing to meet their burden of proof under Idaho law with respect to claims for product liability?

*Hurtado v. Land O'Lakes, Inc.*  
S.Ct. No. 35003  
Supreme Court

**CRIMINAL APPEALS**

**BAIL BONDS**

1. Whether the district court abused its discretion in denying the motion to set aside forfeiture and exonerate bond.

*State v. Two Jinn, Inc.*  
S.Ct. No. 35198  
Court of Appeals

**EVIDENCE**

1. Did the district court err in allowing three witnesses to testify regarding prior uncharged sexual misconduct on the part of Johnson?

*State v. Johnson*  
S.Ct. No. 33691  
Supreme Court

2. Did the court abuse its discretion when it permitted the state to introduce evidence of prior threats made by Cooke against the victim and in finding the evidence was relevant and not unduly prejudicial?

*State v. Cooke*  
S.Ct. Nos. 32447/34820  
Court of Appeals

3. Whether the court's evidence against Snyder was sufficient to overcome the presumption of innocence and the burden of proof beyond a reasonable doubt?

*State v. Snyder*  
S.Ct. No. 35546  
Court of Appeals

**INSTRUCTIONS**

1. Did the magistrate commit instructional error by concluding Johnson was not entitled to a necessity defense instruction at his trial for driving under the influence?

*State v. Johnson*  
S.Ct. No. 35155  
Court of Appeals

**PLEAS**

1. Is Halbesleben entitled to withdraw her guilty plea because the state breached the plea agreement by impliedly disavowing the recommendation it had agreed to make?

*State v. Halbesleben*  
S.Ct. Nos. 33578/35073  
Court of Appeals

## PROCEDURE

1. Did the court lack authority to consider Miser's "motion for Frank's hearing" either as an untimely post-conviction petition or as a motion to suppress because it was filed years after entry of judgment?

*State v. Miser*  
S.Ct. No. 34976  
Court of Appeals

## SEARCH AND SEIZURE – SUPPRESSION OF EVIDENCE

1. Did the court err in denying Shoemaker's motion to suppress because there was insufficient probable cause to issue the search warrant for his residence?

*State v. Shoemaker*  
S.Ct. No. 33047  
Court of Appeals

2. Did the district court err in denying Salinas' motion to suppress and in finding the evidence was discovered during a reasonable probation search?

*State v. Salinas*  
S.Ct. No. 34262  
Court of Appeals

3. Did the court err in denying Swindle's motion to suppress and in finding she was not unlawfully detained?

*State v. Swindle*  
S.Ct. No. 34658  
Court of Appeals

4. Did the court err in finding the officer had reasonable, articulable suspicion to justify the warrantless stop of Jiminez's vehicle?

*State v. Jiminez*  
S.Ct. No. 34902  
Court of Appeals

## SENTENCE REVIEW

1. Did the district court abuse its discretion when it revoked Young's probation and executed the previously imposed sentence?

*State v. Young*  
S.Ct. No. 34737  
Court of Appeals

## SPEEDY TRIAL

1. Did the court err in finding that because Livas filed a motion to suppress he effectively applied to postpone his trial, thereby waiving his statutory right to a speedy trial?

*State v. Livas*  
S.Ct. No. 35301  
Court of Appeals

**Summarized by:**  
**Cathy Derden**

**Supreme Court Staff Attorney**  
**(208) 334-3867**

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## FEDERAL COURT CORNER ANNUAL DISTRICT CONFERENCE/ FEDERAL PRACTICE PROGRAM

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### NEWEST LAWYER REPRESENTATIVE

Alan Stephens was appointed to a three-year term as the new Lawyer Representative, replacing outgoing lawyer rep Deb Kristensen. Alan will join existing lawyer representatives Barry McHugh and Stephen Andersen. Deb Kristensen will now serve as the Chair of the Ninth Circuit LRCC Committee.

Mr. Stephens is a partner in the Idaho Falls law firm of Thomsen Stephens. He has a general civil practice with an emphasis on insurance defense. Alan graduated from the University of Idaho Law School in 1978. He is a member of the Idaho State Bar and is also admitted to practice before the Ninth Circuit Court of Appeals and the U.S. Court of Federal Claims. He has previously served as a member of the Professional Conduct Board of the Idaho State Bar.

Typical duties of a lawyer representative include: serving as the representative of the Bar to advance opinions and suggestions for improvement; assisting the Court in the implementation of new programs or procedures; serving on Court committees; and developing curriculum for training programs. The representative may survey the Federal Bar members about issues and concerns and recommend rule or policy changes.

### COMMUNITY GRANT FUNDS AVAILABLE

The District of Idaho recently announced that a total of \$6,800 will be available for the Community Outreach Grant Program during 2009. The purpose of this Program is to enhance public trust and confidence in the Judiciary, promote better understanding of the Judiciary and legal processes, and improve communication with the public about the role of courts and the legal process. For specific details on the application process, see the additional materials contained in this edition or on the Court's website. The deadline for submission is April 1, 2009.

### REVISION OF ELECTRONIC CASE FILING (ECF) PROCEDURES

The Court recently revised its ECF Procedures, effective January 1, 2009. The changes included incorporation of the Judiciary's transcript redaction procedures relating to privacy issues, an updated e-mail address list to which proposed Orders should be sent, and several minor revisions which were more in the nature of clarification. The revised ECF Procedures can be found on the Court's website at:  
[http://www.id.uscourts.gov/docs/ECFProcedures\\_010109.pdf](http://www.id.uscourts.gov/docs/ECFProcedures_010109.pdf).

### IMPROVEMENT OF CRIMINAL JUSTICE ACT (CJA) PROCESS AND PROCEDURES

The Court recently adopted **General Order 231**, which implements a new automated submission and approval process for CJA vouchers designed to expedite payment, insure accuracy and improve the management and processing of all

Criminal Justice Act (CJA) claims and vouchers. The full text of this General Order is located on our website at: <http://www.id.uscourts.gov/generalorders/GeneralOrder-231.pdf>

### AMENDED BANKRUPTCY COURT LOCAL RULES

Changes to the **Bankruptcy Local Rules**, which became effective January 1, 2009, included **Rule 1007.4** - Payment Advices; **Rule 1007.5** - Statement of Domestic Support Obligations; **Rule 2002.2** - Notice and Hearing; **Rule 2004.1** - Examinations (new); **Rule 2014.1** - Approval of Employment of Professional Persons; **Rule 3007.1** - Procedures and Hearings for Objections to Claims; **Rule 4001.2** - Motions Requesting Relief from the Automatic Stay; **Rule 6006.1** - Assumption, Rejection or Assignment of an Executory Contract or Unexpired Lease (new); **Rule 6007.1** - Motions for Abandonment (new); **Rule 7056.1** - Motions for Summary Judgment and Proceedings Thereon; **Rule 9004.1** - Form of Orders; and **Rule 9037.1** - Privacy Protection for Filings made with the Court. Also revised was the **Model Chapter 13 Plan** as well as local forms relating to Domestic Support Obligations, Relief from Automatic Stay, Notice of Hearing and Certificate of Service. A brief summary of these Rule changes can be found on the Court's website [www.id.uscourts.gov](http://www.id.uscourts.gov) under Scrolling Announcements.

### AMENDED DISTRICT COURT LOCAL RULES

Revisions to the **District Court Local Rules**, effective January 1, 2009, included: **Civil Rule 5.5** - Protection of Personal Privacy; **Civil Rule 81.1** - Removal Actions, State Court Records; and **Civil Rule 83.4** - Bar Admission;

### BANKRUPTCY AND CRIMINAL CASE FILING INCREASES

As predicted, immediately following the implementation of the Bankruptcy Reform Act in October, 2005; bankruptcy filings in the District of Idaho and throughout the country, decreased significantly. However, since then, bankruptcy filings increased 35% during 2007 and 41% during 2008. Likewise, in the District Court, criminal case filings increased during the past year by 23%, following a 16% rise in the prior year. Additional detailed statistical information can be found on the Court's website.

### UPCOMING BANKRUPTCY SEMINAR

Chief U.S. Bankruptcy Judge Terry L. Myers and U.S. Bankruptcy Judge Jim D. Pappas are both scheduled to speak at the upcoming Annual Commercial Law & Bankruptcy Seminar to be held in Sun Valley on February 19 -21.



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

## A PRACTICAL OPPORTUNITY

Katie Ball

*University of Idaho College of Law*

This month, 13 students from the University of Idaho College of Law will travel to the Treasure Valley to spend their final semester of law school in the semester-in-practice program. Through this program students receive law school credit for working in externships at various agencies and institutions, such as the federal and state district courts, the Idaho Supreme Court, county prosecuting attorney and public defender offices, Idaho Legal Aid Services, and the Idaho Attorney General's Office.

In past years, the externship students have worked only in public sector placements. This Spring semester we will have one student in a private corporate placement, working under the supervision of the legal department at Boise, Inc. We hope this cooperative work with private sector attorneys will continue to foster the externship program's goal to bridge the gap between theory and practice for advanced law students by affording them the opportunity to work on a close, personal basis with judges and practicing attorneys.

The externship program not only provides students with practical experience and the opportunity to develop professional values and skills under the supervision of well-respected members of the Idaho Bar, it also benefits the supervisors. Jim Dickinson with the Ada County Prosecuting Attorney's Office describes the externship program as "a valuable program" for his office. The students who work at the prosecutor's office assist with research and writing projects and also appear in court. As one student in the inaugural semester-in-practice class explains: "The externship was a win-win for everyone involved: I got a chance to obtain some practical/real-world experience, while at the same time helping to take a few items off of the long to-do list/backlog of [the judge's] cases."<sup>1</sup> These sentiments are echoed by a student in the most recent semester-in-practice course: "The externship program provides the finishing touches that a law school education cannot give. It offers an environment in which one can comprehensively utilize all the research, writing, and legal knowledge gained in law school without some of the stresses that our first 'real' jobs will have."<sup>2</sup>

In an effort to better prepare the students for this real world experience, the law school is trying something new with the

semester-long externships — the students will be divided into subject matter seminars for the course work associated with the externships. Six students will participate in the first judicial externship seminar with classes taught by judges and career law clerks, designed to help train the students to work as law clerks.

The semester-long externship course is just one of three externship programs the law school offers. Some students participate in externships during the school year in the Moscow area. Most of our students, however, participate in the summer externship program. Last summer we had 54 students working with attorneys in Washington, California, Alaska, New Mexico, Washington D.C., Madrid, and throughout Idaho. Next summer we plan to commence a natural resource/water law externship course for our students who are seeking concurrent degrees in the Water Resources Program or participating in the natural resource concentration program. This targeted externship course will include classes taught by government lawyers who specialize in natural resource and water law.

We are always interested in providing new externship placements for our students. For more information on how to become a supervisor in the program, please visit our website at <http://www.law.uidaho.edu/default.aspx?pid=65565>, or contact Katie Ball at [ktball@uidaho.edu](mailto:ktball@uidaho.edu).

### ABOUT THE AUTHOR

*Katie Ball is the Externship Coordinator for the University of Idaho College of Law. She also works part-time at the federal court as a law clerk to the Hon. Ronald E. Bush.*

### ENDNOTES

<sup>1</sup> This comment was provided by Angela Sellman, a tax attorney with Freshfields Bruckhaus Deringer LLP in New York and a member of the Idaho State Bar.

<sup>2</sup> Sean Beck graduated from the University of Idaho College of Law in May, 2008, and currently works as a law clerk for the Honorable Michael Wetherell at the Fourth District Court in Ada County.

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# MY BANK IS A LEADERSHIP BANK! IS YOURS?

Jim Davis

Chair, ILF Revenue Enhancement Committee



Where Idaho attorneys place their Interest on Lawyers' Trust Accounts (IOLTA) does make a significant difference because the rate of interest paid on IOLTA accounts varies at each bank.

Historically, the rate of interest on IOLTA accounts has been very low. In the last six months, however, eleven banks located in Idaho have voluntarily committed to raise the rate of interest paid on IOLTA accounts. Ten of these banks became Leadership Banks, and one increased rates close to the Leadership Bank level. I am proud to say that my bank voluntarily chose to become a Leadership Bank. Is your IOLTA account at a Leadership Bank?

Six months ago, in June 2008, the Idaho Law Foundation (ILF), through a newly-formed Revenue Enhancement Committee, started a campaign to raise additional revenue from IOLTA accounts. Revenue from IOLTA accounts is paid by banks to ILF which, in turn, uses the funds for law-related, public-interest programs. IOLTA funds benefit many legal-related causes, but the vast majority of the funds are directed toward providing legal services to the disadvantaged. Unfortunately, the need for funding for public-interest programs has exceeded the available revenue under the existing, antiquated IOLTA program. As a result, ILF, like its counterparts in virtually every other state, decided to investigate and consider alternative plans.

ILF adopted a plan, recommended by the Revenue Enhancement Committee, to educate Idaho attorneys and banks on the purposes and benefits derived from the interest on IOLTA accounts. The goal is to increase revenue generated by IOLTA accounts by encouraging banks to increase the rate of interest paid on the accounts. As part of the plan, a Leadership Bank program was started. To become a Leadership Bank, a bank must agree to three criteria. One, it must agree to

increase the interest rate paid on IOLTA accounts to at least 70% of the current Federal Fund rate, based upon a net yield on all IOLTA accounts held at the bank. Two, it must waive all bank service fees on IOLTA accounts. Three, it must agree to minimal reporting requirements.<sup>1</sup>

Pursuant to the plan, over the last six months, specific banks have been targeted and encouraged to become Leadership Banks. At the same time, attorneys have been contacted and requested to talk to their bankers about participating in the Leadership Bank program.

While the campaign to enhance revenue from IOLTA accounts is in its infancy, significant progress has been made. There are 34 banks in Idaho where attorneys have IOLTA accounts. To date, direct contact has been attempted with representatives of eleven of those banks. Nine of the eleven banks have agreed to become Leadership Banks; one bank generously agreed to increase the rate of interest paid, albeit not to the Leadership Bank level. The ten banks that have agreed to become 2008 Leadership Banks<sup>2</sup> are:

- Bank of the Cascades
- Banner Bank
- Idaho Independent Bank
- Idaho Trust Bank
- KeyBank
- Mountain West Bank
- Syringa
- US Bank
- Washington Mutual Bank
- Zions Bank

Some of those banks have agreed to pay more than the minimum 70% of Federal Fund rate. Recently, when the Federal Fund rate was substantially lowered, one bank, Bank of the Cascades, on its own, offered to pay 100% of the Federal Fund rate on IOLTA accounts with balances over \$5,000.00. In addition to the banks that have committed to become Leadership Banks, Wells Fargo Bank agreed to increase the rate of interest paid on IOLTA accounts.

Each of the banks identified deserves

our heartfelt appreciation. If you have your IOLTA account at one of those banks, please express your appreciation to your banker. The banks' commitment to increase revenue to ILF comes at a critical time. The commitment will help many people who benefit from ILF's law-related, public-interest programs. You can be proud, as I am, that your bank sees the need and has committed to be a Leadership Bank.

If you do not see the name of your bank on our Leadership Bank list, please call your banker and ask her to support the Leadership Bank program. You may refer your banker to one of the individuals identified at the end of this article for more information about the program. When you contact your banker, you may be surprised by the reaction. My banker was already generally aware of the Leadership Bank program. Without any hesitation, he immediately committed his bank to become a Leadership Bank. Another friend of mine, who is a banker, committed his bank to the program within a week of my mentioning it to him. If your banker surprises you by not being receptive to the Leadership Bank program, you can support the program by considering moving your IOLTA account to a Leadership Bank.

As stated earlier, to date, direct contact has been attempted with 11 of the 34 banks in Idaho where there are IOLTA accounts. If your bank is not listed above, you may be contacted by a member of the Revenue Enhancement Committee with a request that you contact your banker to encourage participation in the Leadership Bank program. Thus far, every attorney from whom assistance has been sought has readily agreed to contact their banker. The support is critical to the success of the plan, and it is very much appreciated.

By educating attorneys and banks in Idaho about the benefits of the IOLTA program, significant progress has been made toward the goal of increasing revenue through the Leadership Bank program. The campaign continues. With

your help, we will all proudly be able to say, "My bank is a Leadership Bank!"

If you have any questions about this article, the Revenue Enhancement Committee, or the IOLTA Revenue Enhancement Campaign, please contact Jim Davis: [jdavis@davisjd.com](mailto:jdavis@davisjd.com); Carey Shoufler: [cshoufler@isb.idaho.gov](mailto:cshoufler@isb.idaho.gov), staff liaison to the Revenue Enhancement Committee; or Diane Minnich: [dminnich@isb.idaho.gov](mailto:dminnich@isb.idaho.gov), Executive Director of the Idaho State Bar and ILF.

#### **ABOUT THE AUTHOR**

**Jim Davis** is an attorney in Boise, Idaho, and the Chair of the Revenue Enhancement Committee.

#### **ENDNOTES**

<sup>1</sup> For more information about IOLTA revenue enhancement and the ILF plan, see Jim Davis, *We Are Stuck in 1982!* Vol. 51, No. 8 *The Advocate* 38 (August 2008)

<sup>2</sup> In addition to these ten banks, Wells Fargo Bank also agreed to raise their rates in 2008..



### **2008 IOLTA LEADERSHIP BANKS**

- **BANK of the CASCADES**
- **BANNER BANK**
- **IDAHO INDEPENDENT BANK**
- **IDAHO TRUST BANK**
- **KEY BANK**
- **MOUNTAIN WEST BANK**
- **SYRINGA BANK**
- **US BANK**
- **WASHINGTON MUTUAL BANK**
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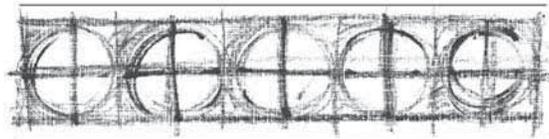
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The Idaho Volunteer Lawyers Program extends special thanks to the following 392 attorneys who accepted or completed pro bono assignments in family law, individual rights, immigration, consumer protection, wills, benefits, nonprofit corporation issues and other special needs for IVLP applicants in 2008.<sup>1</sup> Many attorneys named below represent(ed) victims of domestic violence in family law cases, thereby helping traumatized parents and their children get on with their lives free from physical and psychological abuse. Others took up the challenge to represent or assist prisoners in federal court litigation, stepped in to represent Court Appointed Special Advocates in a child protection cases, or helped a grandparent rescue an innocent grandchild from a dysfunctional home by establishing guardianship.

Describing the benefits pro bono lawyers have bestowed on individuals and communities in the last year could fill volumes. However at IVLP we also hope that our volunteers feel they have benefited in giving pro bono service. One lawyer who took the time to tell us about his experience is Allyn Dingel who donated nearly 60 hours assisting a prisoner in a federal court case:

While I have maybe tried more civil cases in Idaho, both federal and state, in various counties, than any lawyer alive, I am constantly amazed by the responsibility that counsel have regarding the pursuit of justice and the rule of law. I feel sad for Idaho attorneys who have never taken up the mantle of pro bono representation. I continue to be honored and awed by the experience and responsibilities involved.

At IVLP we are “honored and awed” by our volunteers. On behalf of all who would not have access to the legal system without your generosity, thank you.

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**Penelope Parker**--Parker Law Firm  
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**David K. Penrod**--Maguire & Kress  
**Mark R. Petersen**--M. Brent Morgan, PC Chtd.  
**Richard D. Petersen**--Farm Bureau Insurance  
**Kevin Charles Peterson**--Blackfoot  
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**Brenda H. Quick**--Law Offices of Brenda H. Quick  
**Kathryn Railsback**--Law Office of Kathryn Railsback  
**Rebecca A. Rainey**--Moffatt, Thomas, Barrett, Rock & Fields, Chtd.  
**Lisa B. Rasmussen**--Lisa B. Rasmussen, Attorney at Law, PA  
**Steven R. Rausch**--Idaho Estate Planning  
**Todd Mathew Reed**--Powell & Reed, PC  
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**Paul E. Remy**--Remy Law Offices  
**Steven A. Richards**--Grimes & Reese, PLLC  
**Donald C. Robertson**--Lopez & Kelly, PLLC  
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**Selim A. Star**--Star Law Office, PLLC  
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**Pamela J. Tarlow**--South Salem, NY  
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**Bryan K. Walker**--Hamilton, Michaelson & Hilty, LLP  
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**Francis P. Walker**--Davis & Walker  
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**Robert A. Wallace**--Robert A. Wallace, Lawyer

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**Peter M. Wells**--May, Rammell & Thompson, Chtd.  
**Stanley W. Welsh**--Cosho Humphrey, LLP  
**Carole I. Wesenberg**--U.S. Courts, District of Idaho  
**Douglas Ray Whipple**--Whipple Law Office  
**Brent L. Whiting**--Racine, Olson, Nye, Budge & Bailey, Chtd.  
**Karyn Whychell**--Saetrum Law Offices  
**Michael J. Whyte**--Thomsen Stephens Law Offices, PLLC  
**Robert David Williams**--Quane Smith, LLP  
**Jon R. Wilson**--Wilson Law Offices, PC  
**Dena Michele Winfield**--Winfield Law Office, PLLC  
**David Evans Wishney**--Boise  
**Carl Jeffrey Withroe**--Moore Smith Buxton & Turcke, Chtd.  
**Colette F. Wolf**--Fisher & Phillips, LLP  
**Lisa Wood**--Law Office of Lisa A. Wood  
**Theodore Jason Wood**--Thomsen Stephens Law Offices, PLLC  
**Aaron J. Woolf**--Thompson Smith Woolf Anderson, PLLC  
**Stephen T. Woychick**--S.T. Woychick, Chtd.  
**Steven J. Wright**--Wright Johnson Tolson & Wayment, PLLC  
**Cynthia Lin Yee-Wallace**--Perkins Coie, LLP  
**William (Bud) Frederick Yost III**--Yost Law Offices  
**John N. Zarian**--Zarian Midgley & Johnson, PLLC  
**Clayne S. Zollinger Jr.**--Rupert

**ENDNOTES**

<sup>1</sup> This list includes volunteer attorneys in Child Protection Act cases that were closed by the courts, in some instances, prior to 2008. Nevertheless, IVLP does not want to miss the opportunity to say thank you to these generous attorneys and to congratulate them for their part in helping so many individuals have a better life.



**ATTORNEY FIELDS OF PRACTICE  
 2009-2010 ANNUAL  
 DESKBOOK DIRECTORY**

The Idaho State Bar 2009-2010 DeskBook Directory will again contain a listing of members by their fields of practice. This listing is provided as a resource to help attorneys consult or associate with other attorneys knowledgeable in particular fields of law other than their own.

Look for your registration forms in the mail. If you have questions, or to learn more contact Jeanne Barker at (208) 334-4500 or [jbarker@isb.idaho.gov](mailto:jbarker@isb.idaho.gov).

**Mediator/Arbitrator**

**W. Anthony (Tony) Park**

- 36 years, civil litigator
- Former Idaho Attorney General
- Practice limited exclusively to ADR

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 Fax: (208) 345-7894

E-Mail: [tpark@twplegal.com](mailto:tpark@twplegal.com)

**David Kerrick**

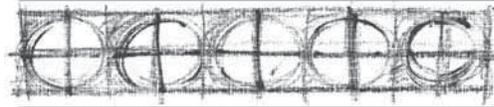
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### 2009 6.1 CHALLENGE



The Fourth District Bar  
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Attention Fourth District law offices! Make sure your professional contributions to the community are recognized. Plan now to submit your applications for the 2009 6.1 Challenge by April 1, 2009. The Judges Panel intends to honor offices in the “small,” “large” and “government” law office categories this year. Applications Forms are available at [www.idaho.gov/isb/distbars/4th/61ChallengeForm.doc](http://www.idaho.gov/isb/distbars/4th/61ChallengeForm.doc)

### SUPPORT IVLP WHILE YOU SHOP

Since May 1998 IVLP has received \$15,049.37 from the Albertson’s Community Partner Program.

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### MOCK TRIAL JUDGES NEEDED



The Law Related Education Mock Trial Program needs judges for the 2009 competition. Competition staff is currently recruiting judges and attorneys to judge for regional and state competitions. Competition dates and times are as follows:

- Friday, February 20, 2009: Regional Competition in Pocatello
- Saturday, February 21, 2009: Regional Competition in Boise
- Friday, February 27, 2009: Regional Competition in Lewiston
- Saturday, February 28, 2009: Regional Competition in Twin Falls
- Saturday, March 7, 2009: Regional Competition in Caldwell
- Monday and Tuesday, March 16 and 17, 2009: State Competition in Boise

Please consider volunteering your time to help make this year’s mock trial competition successful for Idaho students. Contact Ashley McDermott at (208) 334-4500 or [amcdermott@isb.idaho.gov](mailto:amcdermott@isb.idaho.gov) if you are interested in volunteering.

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## OF INTEREST

### — IN MEMORIAM —

**James “Jim” Hugh McFadden Jr.**, 68, of Idaho Falls, passed away January 8, 2009, of complications due to cancer. Jim served as a non attorney member of the Professional Conduct Board for several years. He was born April 25, 1940, in Dubuque, Iowa. He received a bachelor’s degree from Loras College in Dubuque, a master’s from the University of Iowa and a Ph.D. in Nuclear Engineering from Iowa State University. In 1988 he formed Computer Simulation and Analysis, an engineering consulting firm. He served as vice president and later as president before retiring in 1999. Prior to forming his company he worked at the National Reactor Testing Station and Energy Incorporated. Jim was a member of the Idaho Falls Chamber of Commerce, the Idaho Falls City Club, the Idaho Conservation League, numerous professional organizations and the Bonneville County Democratic Party. In retirement, he served on several review boards, including the Professional Conduct Board for the Idaho State Bar, Idaho State Board of Secondary Education Standards, and the grant board for the National Science Foundation.

### — ON THE MOVE —

**Joe Meuleman**, has joined Meuleman Mollerup, LLP as its newest associate. His legal practice will be in the areas of construction law and commercial litigation. He will represent general contractors, subcontractors, suppliers, sureties and owners in all phases of litigation; drafting and negotiating contracts; and representing businesses in significant and contested debt collection. He is the coauthor of a report published by a national organization, the *Associated General Contractors of America*, titled “the AGC of America Guide to Employee Travel Reimbursement”. He can be reached at (208) 342-6066.

**Murray Feldman**, Boise, partner in Holland & Hart is the new administrative partner of the Boise office. In addition to his administrative duties he will also continue his present legal practice as an environmental and legal resources attorney. He received his J.D. from the University of California at Berkeley Boalt Hall School of Law in 1988, and his M.S. from the University of Idaho’s College of Natural Resources in 1985. He is listed in the Best Lawyers in America, the 2008 Chambers USA list of America’s Leading Lawyers for Business, and the 2008 Mountain States Super Lawyers. He is a vice chairman of the American Bar Association’s

public lands committee and the past chairman of the Idaho State Bar’s Environment and Natural Resources section. He can be reached at (208) 342-5000.

**Aaron C. Charrier** has become a new partner in Greener Burke Shoemaker PA (GBS). He has substantial experience in employment, banking and finance, construction and design and contractual issues. **Soo Y. Kang** joined the firm in early 2008 and will practice in all aspects of bankruptcy law. **Lisa McGrath** joined as a new associate in June 2008. She was most recently a law clerk for Chief Justice Eismann, Idaho Supreme Court. Prior to that, she worked in Washington D.C. as a law clerk for the U.S. Senate Committee on Judiciary and in staff positions for the U.S. Senate, Economic Policy Counsel. McGrath earned her law degree at American University, Washington College of Law in Washington, DC, and is a member of the Idaho State Bar. They can be reached at (208) 319-2600.

**Tyler Wirick** has joined Zarian, Midgley and Johnson, PLLC as an associate in its Boise office. He comes to the firm from Coeur d’Alene, where he worked for Paine Hamblem. He specializes in intellectual property litigation, complex litigation, environmental litigation and commercial litigation. He received his J.D. from the University of Nebraska in Lincoln. He can be reached at (208) 562-4900.

### — RECOGNITION —

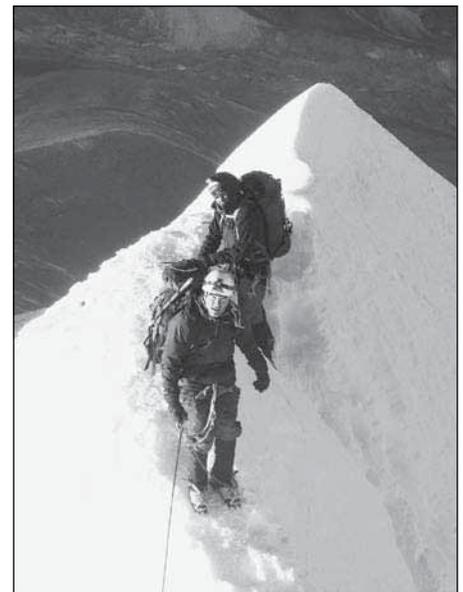
**Robert “Bob” Shaver**, Dykas, Shaver & Nipper, LLP, Boise, recently received the prestigious Cliff L. Dochterman Award for Rotarians in Scouting from the Boise Southwest Rotary Club. This award recognizes his efforts in support of Boy Scout Troop 100, which is based at the Cathedral of the Rockies. He was nominated for his contributions in teaching scout leaders about winter survival topics and leading numerous backpacking trips with the scouts. Some of which included three simultaneous three-day backpacks for about 40 scouts and parents. He also raised money and equipment for Troop 700, a troop of Turkish immigrant boys. The Boise Southwest Rotary Club and the Boise Sunrise Rotary Clubs both contributed money to this project.

He has a bachelor’s degree in biology with a minor in chemistry from California State University at Stanislaus. He received a Master’s in Business Administration from City University of Bellevue, Wash., and his J.D. from the University of Idaho. He can be reached at (208) 345-1122.

**Michael Creamer**, Givens Pursley, LLP; Boise. On November 1, 2008, Mike summited the 22,500 foot Ama Dablam in the Solu-Khumbu Himal of northern Nepal. He was part of a five-week expedition that placed three team members on Ama Dablam’s summit via the Southwest Ridge. Among mountaineers, Ama Dablam is a coveted, technical Himalayan climb involving sustained and exposed climbing on rock, snow and ice above 19,000 feet. Over the years, Mike has participated in numerous successful mountaineering efforts, including expeditions to Denali, Mt. Foraker and Mt. Crosson in the Alaska Range. He has climbed Monte Rosa, the Jungfrau and the L’Aiguille de Midi in the Swiss and French Alps. Like all mountaineers, Mike enjoys the personal satisfaction of testing his “limits,” and continues to earn the respect of fellow mountaineers. He is an avid outdoorsman who has led river expeditions in the Alaskan Arctic and the Grand Canyon.

Michael’s law practice centers on natural resources, environmental and public utilities matters. His particular areas of expertise include water rights, public lands, mineral, environmental and natural resources law, and consultation and litigation involving telecommunications and energy law.

He earned his J.D. from University of Colorado and can be reached at (208) 388-1200.



*Michael Creamer on Ama Dablam in the Solu-Khumbu Himal, northern Nepal.*

**FEBRUARY 2009 IDAHO STATE BAR EXAMINATION APPLICANTS**  
(as of January 21, 2009)

Listed below are the applicants who have applied to sit for the February 2009 Bar Examination. The Board of Commissioners publishes the names of these applicants for your review and requests any information of a material nature concerning moral character and fitness of an applicant be brought to the attention of the board of Commissioners in a signed letter by February 20, 2009. Direct correspondence to: Admissions Director, Idaho State Bar, PO Box 895, Boise, ID, 83701.

<b>L. Craig Atkinson</b> Emmett, ID <i>University of Idaho</i>	<b>Brian Matthew DeFriez</b> Caldwell, ID <i>Thomas M. Cooley Law School</i>	<b>Kurt Warren Hunsaker</b> Lincoln, NE <i>University of Nebraska</i>	<b>Ronald Dean Mesler</b> Boise, ID <i>Thomas M. Cooley Law School</i>
<b>Ashley Jean Ruen Aumick</b> Hope, ID <i>University of Idaho</i>	<b>James Russell Donoval</b> Sun Valley, ID <i>DEPAUL University</i>	<b>Benjamin Philip Hursh</b> Missoula, MT <i>University of Montana</i>	<b>Daniel Charles Meyer</b> Boise, ID <i>University of San Diego</i>
<b>Rebecca Hernandez Benavides</b> Boise, ID <i>University of Texas at Austin</i>	<b>Meagan Mackenzie Eiden</b> Boise, ID <i>Thomas M. Cooley Law School</i>	<b>Regan C. Jameson</b> aka Regan Christine Boyd Missoula, MT <i>University of Idaho</i>	<b>Michael George Millward</b> Gardnerville, NV <i>Gonzaga University</i>
<b>Don Hart Bennett</b> Star, ID <i>University of Hawaii/ Richardson School of Law</i>	<b>Sarina Fifer</b> Eagle, ID <i>Thomas M. Cooley Law School</i>	<b>Chad Aaron Jenks</b> aka Chadwick Aaron Jenks Boise, ID <i>Roger Williams University</i>	<b>Trevor S. Misseldine</b> Nampa, ID <i>Thomas M. Cooley Law School</i>
<b>Philip Maximilian Bevis</b> Boise, ID <i>University of Idaho</i>	<b>Jason E. Flaig</b> aka Jason Eugene Williams Pocatello, ID <i>University of Idaho</i>	<b>Mary Lucy Kellogg</b> aka Mary Lucy Estepa Tan Boise, ID <i>Loyola Marymount University- Los Angeles</i>	<b>Timothy E. Murphy</b> Boise, ID <i>University of Michigan</i>
<b>Kristen Lacey Bohannon</b> Houston, TX <i>New York Law School</i>	<b>Robyn J. Follett</b> aka Robyn Jackson Pocatello, ID <i>Brigham Young University</i>	<b>Amy J. Kingston</b> San Diego, CA <i>University of Idaho</i>	<b>Brian Patrick Neville</b> Boise, ID <i>University of Idaho</i>
<b>Mary Elizabeth Bridge</b> Boise, ID <i>University of Oregon</i>	<b>Patrick James Gaffney</b> Island Park, ID <i>Suffolk University</i>	<b>Oscar S. Klaas</b> Boise, ID <i>University of St. Thomas- Minneapolis</i>	<b>Casey Conrad Nixon</b> Sagle, ID <i>University of South Dakota</i>
<b>Alexander Robert Buck</b> Carmel, CA <i>Seattle University</i>	<b>Heidi Lynn Giordano</b> Carmel, CA <i>Seattle University</i>	<b>Paul David Lambert</b> Caldwell, ID <i>University of Idaho</i>	<b>Jeremi Lynn Ossman</b> Ponderay, ID <i>Michigan State University College of Law</i>
<b>Jennifer M. Carlquist</b> Provo, UT <i>Brigham Young University</i>	<b>James Eric Goldman</b> Hailey, ID <i>Catholic University of America</i>	<b>Christopher Stephen Lamont</b> Orofino, ID <i>University of Idaho</i>	<b>Jeffrey C. Parry</b> Boise, ID <i>Brigham Young University</i>
<b>Nicholas Isaac Chamberlain</b> Eagle, ID <i>State University of New York at Buffalo</i>	<b>Theodore William Graham</b> Hailey, ID <i>Stanford University</i>	<b>Andre N. Litster</b> North Salt Lake, UT <i>University of Utah</i>	<b>Aaron Thoreau Penrod</b> Sandy, UT <i>Duquesne University</i>
<b>Jane L. Chi</b> aka Jane Lingtse Chi Boise, ID <i>University of Idaho</i>	<b>Sharon Rosa Hammer</b> aka Sharon R. Buser Sun Valley, ID <i>Southern Illinois University- Carbondale</i>	<b>John G. Lorbeck</b> Boise, ID <i>Thomas M. Cooley Law School</i>	<b>Mark T. Peters Sr.</b> Boise, ID <i>University of Michigan</i>
<b>Mckinzie Nicole Elizabeth Cole</b> aka Mckinzie Grover Twin Falls, ID <i>University of Idaho</i>	<b>Dean Sage Holter</b> Ketchum, ID <i>University of San Francisco</i>	<b>David Gordon McKennett</b> Nokesville, VA <i>George Mason University</i>	<b>Todd Durney Pingel</b> Ammon, ID <i>Washburn University</i>
<b>Joseph Donald Cooper Sr.</b> Fresno, CA <i>San Joaquin College of Law</i>	<b>Melissa Anne Hornbein</b> Missoula, MT <i>University of California- Hastings</i>	<b>Lindsay McKlveen</b> Boise, ID <i>Gonzaga University</i>	<b>Nicholas James Powers</b> Boise, ID <i>Creighton University</i>
<b>Jeff Cronin</b> aka Jeffrey Thomas Cronin Pocatello, ID <i>Willamette University</i>	<b>Jared Christopher Hoskins</b> Boise, ID <i>University of Utah</i>	<b>W. Scott McNeas</b> Pennington, NJ <i>Rutgers University-Newark</i>	<b>Troy E. Rasmussen</b> Rexburg, ID <i>Southern Illinois University- Carbondale</i>
<b>Michael D Davidson</b> Nampa, ID <i>Gonzaga University</i>	<b>Jason Lee Hudson</b> Boise, ID <i>University of Colorado School of Law</i>	<b>Michael John Mehall</b> Boise, ID <i>Loyola Marymount University- Los Angeles</i>	<b>Theodore W. Reuter</b> Ontario, OR <i>Willamette University</i>
			<b>Bart Johnson Ricks</b> Moscow, ID <i>University of Idaho</i>

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*There is no such thing as good writing.  
There is only good rewriting.*  
Justice Brandeis

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## ATTORNEYS AT LAW

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Mr. Walters joined the firm in 2003 and practices in the area of civil litigation with emphasis in construction and employment law. Mr. Walters is a member of the Employment and Labor Law Sections of the Idaho State Bar, the Association of Ski Defense Attorneys and the Idaho Association of General Contractors.

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Zarian Midgley & Johnson, PLLC, a Boise-based firm specializing in intellectual property matters and complex litigation, is pleased to welcome **Tyler Wirick**, who joins the firm as an associate.

Wirick was previously employed as an associate in the Coeur d'Alene office of Paine Hamblen LLP. His practice emphasizes intellectual property, environmental, complex and commercial litigation. Wirick earned his law degree at the University of Nebraska, and a Bachelor of Science in Microbiology from Weber State University in Ogden, Utah. Prior to law school, he received valuable technical experience working as an analytical chemist and a microbiologist.

Tyler can be reached at [wirick@zarianmidgley.com](mailto:wirick@zarianmidgley.com) or 208-562-4900.

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# UPCOMING CLEs

## February 2009

### February 13

*Child Custody in Idaho*

Sponsored by the Family Law Section

8:30 a.m. - 4:00 p.m. at the Doubletree Riverside Hotel, Boise

6.5 CLE Credits RAC Approved

### February 19 – 21

*Annual Bankruptcy Seminar*

Sponsored by the Commercial Law and Bankruptcy Section

14 CLE Credits of which 1 is ethics

Sun Valley Resort: Room Reservations Call 1-800-786-8259

### February 26

*Real Estate Transfer Basics*

Sponsored by the Young Lawyers Section

8:30 - 9:30 a.m. at the Law Center Boise

1.0 CLE Credit

### February 27

*Real Estate Transactions in a Down Market*

Sponsored by the Real Property Section

Grove Hotel, Boise

## March 2009

### March 6

*Workers Compensation Annual Update*

Sponsored by the Workers Compensation Section

Sun Valley Resort: Room Reservations Call 1-800-786-8259

### March 6 – 7

*Trial Skills Academy*

Sponsored by the Litigation Section

13 CLE Credits

## March 2009 (Continued)

### March 13

*Handling Your First or Next DUI*

Sponsored by the Idaho Law Foundation

8:30 - 10:30 a.m. at the Federal Courthouse, Boise

2 CLE Credits RAC Approved

Law Center, Boise

### March 26

*Alternatives to Foreclosure*

Sponsored by the Young Lawyers Section

8:30 - 9:30 a.m. at the Law Center, Boise

1 CLE Credit

## April 2009

### April 23

*Choice and Creation of Business Entities*

Sponsored by the Young Lawyers Section

8:30 - 9:30 a.m. at the Law Center, Boise

1 CLE Credit

## May - July 2009

### May 8

*Idaho Practical Skills*

Sponsored by the Idaho Law Foundation

Boise Centre on the Grove

5 CLE Credits (tentative)

### July 9-10, 2009

*Idaho State Bar Annual Conference*

Boise Centre on the Grove

# COMING EVENTS

These dates include Bar and Foundation meetings, seminars, and other important dates. All meetings will be at the Law Center in Boise unless otherwise indicated. Dates might change or programs may be cancelled. The ISB website contains current information on CLEs. If you don't have access to the Internet please call (208) 334-4500 for current information.

## FEBRUARY

- 1 *The Advocate* Deadline
- 1 Initial Licensing Deadline for July 2009 Bar Exam
- 11 - 17 **ABA NCBP Midyear Meeting, Boston**
- 16 **President's Day, Law Center Closed**
- 18 *The Advocate* Editorial Advisory Board
- 20 Idaho State Bar Board of Commissioners
- 23 - 25 Idaho State Bar Exam, Boise Center on the Grove

## MARCH

- 1 *The Advocate* Deadline
- 2 Final Licensing Deadline for July 2009 Bar Exam
- 12 - 14 **Bar Leadership Institute - Chicago**
- 18 *The Advocate* Editorial Advisory Board

## MARCH (CONTINUED)

- 25-28 **Western States Bar Conference, Turtle Bay, Hawaii**

## APRIL

- 1 *The Advocate* Deadline
- 3 Idaho State Bar Board of Commissioners, Idaho Falls
- 9 February 2009 Bar Exam Results Released
- 15 *The Advocate* Editorial Advisory Board
- 17 Idaho Law Foundation Board of Directors Meeting

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