

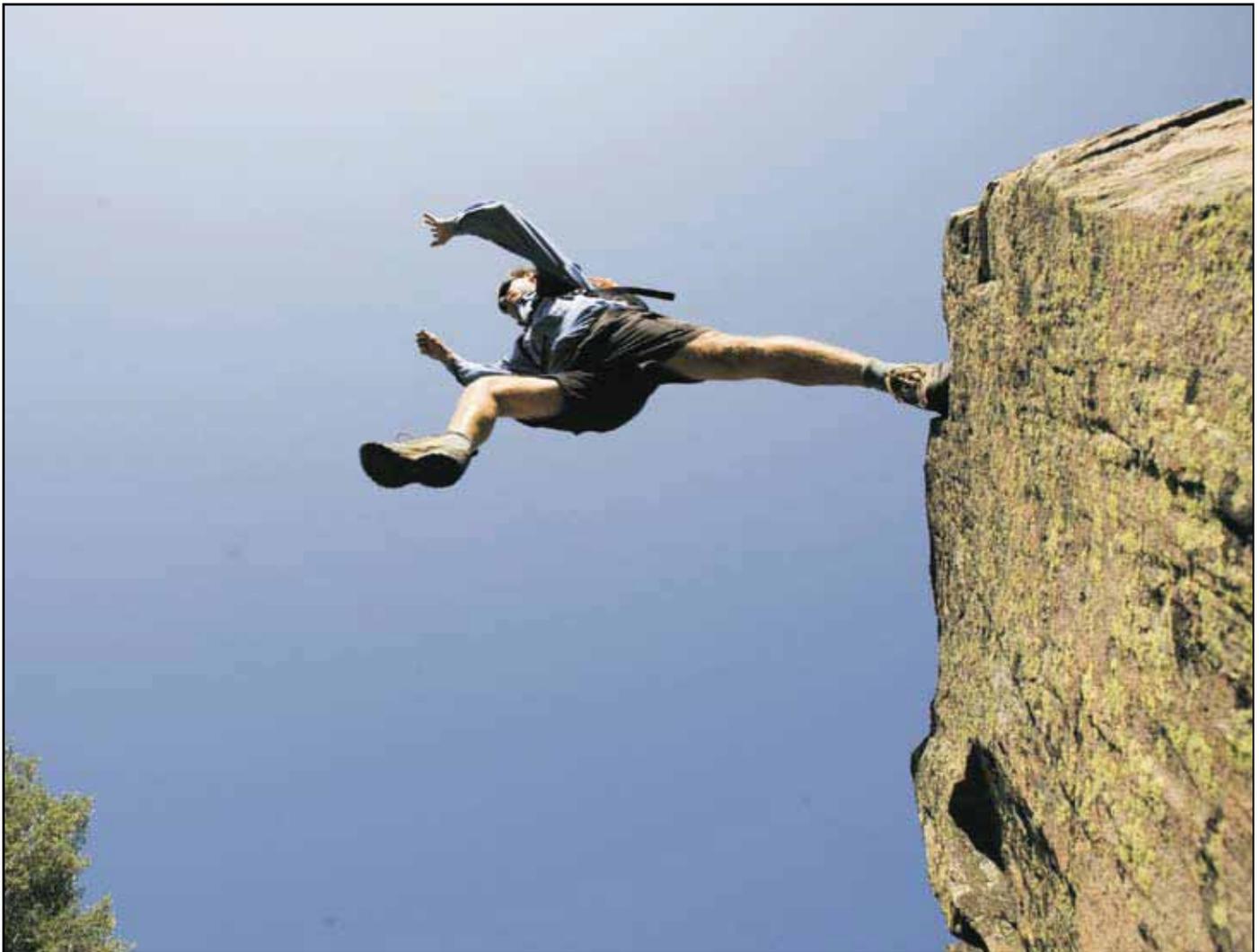
The Advocate

Official Publication of the Idaho State Bar

Volume 52, No. 6/7

June/July 2009

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the Commercial Law & Bankruptcy Section



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The Advocate

The Official Publication of the Idaho State Bar
52 (6/7), June/July 2009

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ON THE COVER

Cover photo "The Niagara of the West" was taken by Chris Nye, a partner at White, Peterson, Gigray, Rossman, Nye & Nichols, P.A., in Nampa. He took the photo of Shoshone Falls this April when the Snake River was flowing at over 17,000 cubic feet per second. Shoshone Falls plunges 212 feet; 50 feet higher than Niagara Falls. The best time to view the Falls is in the spring before irrigation season begins. Chris is an avid outdoorsman and writes a bi-weekly outdoor column for the Idaho Press Tribune.

SECTION SPONSOR

This issue of *The Advocate* is sponsored by the Commercial Law & Bankruptcy Section.

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Special thanks to the June/July *Advocate* editorial team: Matt Christensen; Angstman, Johnson & Associates, PLLC and Scott Randolph; Holland and Hart, LLP.

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CENTENNIAL
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University of Idaho

College of Law

The University of Idaho College of Law would like to congratulate our graduates who passed the February 2009 Idaho State Bar Exam:

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Philip Maximilian Bevis

Mckinzie Nicole Elizabeth Cole

Jason E. Flaig

Regan C. Jameson

Amy J. Kingston

Christopher Stephen Lamont

Bart Johnson Ricks

Craig D. Stacey

Jade Charles Stacey

Joshua G. Studor

Brian James Williams

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IDAHO STATE BAR

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A MENTOR'S ADVICE: BE LIKED

Dwight E. Baker



Allyn Dingel's untimely passing initiated a discussion about mentors with F. J. Hahn. We were comparing notes about who had been the most influential lawyers in our professional careers.

F. J. said he had begun his practice under the tutelage of Allyn, Pete Boyd and others at Elam, Burke and Boyd. Our discussion led to reflection of the mentoring role F. J.'s father, Fred Hahn had played in his career. F. J. shared with me that his father's greatest lesson to a young lawyer was to "Be Liked," which was a concept new to me.

We have heard the mentoring message over and over. A key part of the messages recently delivered by four different speakers addressing the new admittees to our Bar on May 7, in Boise was the importance of mentors in learning how not only to be a good lawyer, but also in learning how to deal with the inevitable conflicting demands which make our personal lives as lawyers difficult. That importance has been recognized in some states by the adoption of formal mentoring programs: Utah is in the process of implementing an extensive mandatory program the implementation of which will require hundreds of hours of volunteered time. The Idaho State Bar has not done so, at least in part because of the impression that the great majority of Idaho lawyers are honored to be asked to be a mentor for an inexperienced or inquisitive practitioner. Underlying the message is the conviction that many of us would have benefitted, or would benefit, with some time and effort shared with an experienced person before striking out on our own with a unique problem or in a new area of practice.

In spite of the many mentoring lessons we read about in bar related publications or hear in Inns of Court or other settings, the "Be liked" message adds a higher level of professional commitment for outstanding lawyers. It is one thing for us to try to be likable, but it is a significant leap forward to assume personal responsibility for the objective of being liked. We all understand

that regardless of our efforts to be likable, our efforts don't always translate into success. Fred's challenge takes us to a higher level.

Most of us can disagree without being disagreeable. We can take strong positions in negotiations, depositions, or argument, whether written or oral, without being discourteous. We have all observed truly accomplished practitioners handling themselves so as to be liked. It can be highly disconcerting when one suspects his or her client "likes" the attorney on the other side better than their own attorney. When that happens, it's predictable the parties will reach an acceptable resolution without unnecessary acrimony, more often than not a resolution which favors the likeable attorney's client. If a resolution is not reached, the ultimate decision maker will want to lean toward the position advanced by those who are liked, rather than those who are not. The art of persuasion is not only a matter of facts and law; mastery of the psychology of decision making sets the accomplished practitioner apart from the norm. The additional effort to accomplish the object of "being liked" will serve us well, as it did Fred Hahn. It was no accident that Fred Hahn received the Idaho State Bar Distinguished Lawyer award in 2000. Fred was a leader in arbitration and mediation for many years, primarily in his construction law specialty, in addition to being a moving force in the implementation and operation of the Idaho Law Foundation.

So, what does one do to "be liked?" Every individual holds the keys to the answer. One of the attractions of the legal profession is that there is a place for every personality. Each one of us is different, and each one of us practices law differently. While it is a laudable goal to be liked, the reality is that some people simply don't like some other people. When we have that unfortunate experience with client, we are hopefully in a position to refer the client elsewhere, whether within our own firm or down the street. We also recognize that we can't be condescending, overly friendly, too personal, or too pushy in an effort to be liked. We all admire the charismatic Lou Racines of the world, who seem to be instantly liked and respected regardless of the setting, but we recognize that most of us are not so blessed.

"Being liked" is probably less an objective than a process. That process includes the requirement that we be painfully honest with ourselves and with others. Formal or technical honesty alone is not enough; our communications must be candid and forthright to fully convey the import of our message to others.

We need to have a genuine respect for other individuals. We need to listen and to have the deference to let others validate themselves or their thought processes. If and when we have the patience and the courtesy to not only listen, but to meaningfully hear what others are saying, and if we can respect others as individuals, we have laid the foundation to satisfy Fred Hahn's admonition to "be liked." In order to gain the respect of others, we need to respect ourselves and our role as attorneys.

We need to genuinely care about people, all people, and not just our clients. I was personally blessed to have the privilege to work with Blaine Anderson the four months between his nomination and swearing in as a federal district judge. Blaine believed the most important attribute for a lawyer was to genuinely like and care for his clients. Blaine's principle is a mirror image of Fred Hahn's advice to his son.

In conclusion, the process of being liked requires at a minimum honesty, respect and caring. We need only to look at our mentors to realize the success which can be achieved with the process of "being liked."

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.*



EXECUTIVE DIRECTOR'S REPORT

2009 IDAHO STATE BAR ANNUAL CONFERENCE JULY 8-10, BOISE CENTRE ON THE GROVE

Diane K. Minnich



Please join us for this year's ISB Annual Conference in Boise. The annual conference offers reasonably priced CLE programs, award recognition of your peers and colleagues as well as social and networking opportunities. About 45% of Idaho Bar members live within 30 miles of Boise. We hope that those of you in the Treasure Valley, as well as your colleagues from around the state, will find at least one program or event that appeals to you.

The conference offers a variety of education programs, social events, entertainment, and award presentations. The full registration includes 14 CLE program choices, (you can earn up to 11 CLE credits), one hosted reception, one dinner, two lunches and two continental breakfasts. The full registration at \$300 (\$250 for first time attendees) is the best value but you can register for individual programs or events; we encourage you to sign up for as many or as few activities as you can fit into your schedule.

The conference begins with the President's reception on Wednesday evening and concludes on Friday afternoon with ethics CLE programs. Thursday morning features a special presentation on the future of the practice of law by two former State Bar presidents.

The CLE program choices include:

- ❖ The EEOC Presents: Current Case Law and Practical Tips for Litigating Employment Law Issues.
- ❖ Law Firm Risk Management in Hard Times
- ❖ Mediation Ethics: How to Ethically Move the Parties Toward Resolution
- ❖ Goldmine of the 1040
- ❖ Effective Written Advocacy
- ❖ Recent Developments: Highway Law and Municipal Law
- ❖ Things you need to know about Recent Updates in Idaho Employment Law

- ❖ The Current Status of Title IX
- ❖ Lessons from the Masters, featuring Merlyn Clark, C. Timothy Hopkins and Judge Lowell Castleton
- ❖ A crash course in contemporary issues in Immigration Law and Native American Law for Idaho Practitioners
- ❖ 10 Things Every Boomer's Lawyer Should Know about Elder Law.
- ❖ Tax Law Update/IRS Update
- ❖ Golfing for Ethics

At the Wednesday night dinner we will honor this year's distinguished lawyers, **Robert Alexander, Twin Falls, Dean Don Burnett, Moscow and Craig Meadows, Boise.**

At the Thursday and Friday luncheons we will honor lawyer and non lawyers for their service to the legal profession and the public. We will also honor those lawyers who have practiced law for 50 and 60 years.

There will be an exhibit hall, featuring products, information and services to assist you in your practice, including:

- ❖ ALPS, Idaho Lawyer Benefit Plan
- ❖ Idaho Legal History Society
- ❖ The James Street Group
- ❖ Marsh Consumer Connexions
- ❖ Orthopedic Forensic Solutions
- ❖ West, a Thomson Reuters Business

We offer special thanks to our sponsors for their support of the Annual Conference. Their contributions allow us to keep the costs down, while maintaining the quality of events. To date, our sponsors include:

- ❖ ALPS
- ❖ Benoit, Alexander, Sinclair, Harwood & High, LLP
- ❖ Hawley Troxell Ennis & Hawley LLP
- ❖ Idaho Lawyer Benefit Plan
- ❖ Moreton and Co.
- ❖ University of Idaho College of Law

For more information about the programs and events at the Annual Conference, visit the Idaho State Bar website at www.idaho.gov/isb or refer to the Annual Conference brochure you received in the mail in late May.

SAVE THE DATE
JULY 8 - 10

ISB
IDAHO STATE BAR

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

2009 Idaho State Bar Annual Conference • Boise Centre on the Grove

IDAHO STATE BAR

Distinguished Lawyer Award Dinner

Wednesday, July 8, 2009

Reception 5:30 p.m.

Dinner 7:00 p.m.

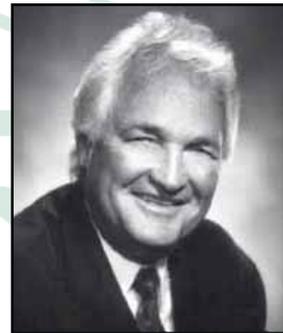
The Distinguished Lawyer Award is presented each year at the Idaho State Bar Annual Conference to one or more attorneys who have distinguished the profession through exemplary conduct and through their many years of dedicated service to the legal profession and to the citizens of Idaho. In 2009, the Idaho State Bar honors three renowned Idaho lawyers: J. Robert Alexander, Dean Donald Burnett, Jr., and Craig L. Meadows.



J. Robert Alexander



Dean Donald Burnett, Jr.



Craig L. Meadows

ISB/ILF Service Awards Luncheon

Thursday, July 9, 2009

12:30 p.m. – 2:00 p.m.

The Service Awards are presented to those members of the profession who have contributed their time and talent to serve the public and improve the profession. The recipients of the 2009 Service Award are:

Service Awards

David W. Lloyd, Boise
Craig Beaver, PHD., Boise
Tammie D. Whyte, Idaho Falls

Hon. Charles F. McDevitt, Boise
John M. Adams, Coeur d'Alene
Lane V. Erickson, Pocatello

Howard A. Belodoff, Boise
Michael F. McCarthy, Twin Falls
James K. Dickinson, Boise

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Boise Centre on the Grove

Join friends and colleagues as we honor these members of the bar. For more information about attending these events, please contact Dayna Ferrero at: (208) 334-4500 or dferrero@isb.idaho.gov.

IDAHO STATE BAR

50/60 Year Attorneys Recognition Luncheon

Friday, July 10, 2009

12:00 p.m. – 1:30 p.m.

60-Year Attorneys

Admitted in 1949

Richard B. Eismann – Nampa
University of Oregon

William Hass Foster – Mesa, AZ
University of Idaho

Cope Ross Gale – Coeur d'Alene
University of Idaho

Louie Gorrano – Emmett
University of Idaho

Francis Hubert Hicks – Mountain Home
University of Notre Dame

C. G. McIntyre – Twin Falls
University of Idaho

Eugene L. Miller – Coeur d'Alene
University of Idaho

Eli B. Ponack – Lewiston
Gonzaga University

Edward L. Scott – Pocatello
University of Utah

50-Year Attorneys

Admitted in 1959

Howard Leroy Armstrong – Pocatello
Brigham Young University

John Wesley Barrett – Boise
University of Idaho

Alonzo Franklin Davis – Boise
University of Idaho

Allen Richard Derr – Boise
University of Idaho

Donald Edward Downen – Caldwell
University of Idaho

John David Hansen – Idaho Falls
University of Idaho

Andrew Matthew Harrington – Boise
University of Idaho

Robert C. Huntley Jr. – Boise
University of Idaho

Ralph Lavar Marsh – Boise
University of Utah

Thomas Carol Morris – St. Maries
University of California-Hastings

Hon. Robert Gary Newhouse – Henderson, NV
University of Idaho

William Dale Olson – Pocatello
Washington University

Hon. Robert Mellen Rowett – Mountain Home
University of Idaho

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Boise Centre on the Grove

Join friends and colleagues as we honor those members of the bar who have given decades of service to their clients and the public. For more information about attending this luncheon please contact Dayna Ferrero at: (208) 334-4500 or dferrero@isb.idaho.gov.

DISCIPLINE

TIMOTHY J. WILLIAMS (Withheld Suspension/Public Reprimand)

On April 27, 2009, the Idaho Supreme Court issued a Disciplinary Order suspending Timothy J. Williams from the practice of law for a period of two years, with all two years withheld, placing him on Bar Counsel probation and imposing a public reprimand.

The Idaho Supreme Court found that Mr. Williams' violated Idaho Rules Professional Conduct 1.2 [Scope of representation]; 1.3 [Diligence]; and 1.4 [Communication] with respect to his representation of three different clients.

The Idaho Supreme Court's Disciplinary Order followed a stipulated resolution of an Idaho State Bar disciplinary proceeding in which Mr. Williams' admitted that he violated Idaho Rules of Professional Conduct 1.2, 1.3 and 1.4. The misconduct related to Mr. Williams' representation of three different clients. In the first matter, the Idaho Supreme Court issued an order conditionally dismissing an appeal in a habeas corpus case, because the habeas corpus appeal was not from a final, appealable district court order or judgment. The Idaho Supreme Court allowed Mr. Williams 21 days to file a response on behalf of the client, otherwise that order would be final. Mr. Williams did not file a response and did not advise or inform his client that he was not filing a response. As a consequence, the Idaho Supreme Court dismissed the habeas corpus appeal.

In a second matter, the client hired Mr. Williams in a modification of custody, visitation and child support case. The client paid Mr. Williams a retainer fee. The court entered an order granting a default against Mr. Williams' client because Mr. Williams did not enter an appearance. Mr. Williams did file a motion to set aside the default and indicated that a brief would follow. His opponent filed a motion for order denying the motion to set aside default and it was scheduled for hearing. Mr. Williams did not appear at the hearing and an order was signed and served upon Mr. Williams. Mr. Williams' client decided to seek different representation and requested Mr. Williams return his documents and retainer. Mr. Williams returned all of the documents and fully refunded the retainer to his client.

With respect to the third matter, Mr. Williams was appointed to handle his client's Rule 35 appeal, an appeal from a probation revocation conviction and for post-conviction relief. The post-conviction relief case was originally misfiled in one of the criminal cases and there was substantial delay in the post-conviction relief case while the court supervised the proper filing of the petition for post-conviction relief and necessary pleadings. Mr. Williams did not respond to the initial notice of intent to dismiss the post-conviction relief petition despite discussing that with his client. After the court dismissed the case, Mr. Williams filed a motion for reconsideration, which was eventually granted. After the case was reinstated and a motion for summary dismissal was filed, Mr. Williams still had difficulties assuring that portions of the transcript he wanted the court to review were filed. After additional court involvement, substantial delay and the failure to file all necessary information with the court, Mr. Williams was permitted to withdraw from the case. Mr. Williams did not transfer the file within five days to new counsel as ordered by the court, but did eventually transfer the file to new counsel. The client's post-conviction relief case was scheduled for evidentiary hearing and resolved upon the merits.

During the times that Mr. Williams was representing the clients described above, he was suffering a substance abuse problem. In July 2006, with the encouragement and assistance from the Fifth District judges and Bar Counsel, Mr. Williams spent one month in inpatient treatment, followed by three months of extensive outpatient treatment. Following completion of that treatment and return to practice, Mr.

Williams has not received any disciplinary grievances and remained abstinent.

The Disciplinary Order provides that Mr. Williams' two-year suspension is withheld subject to the terms and conditions of a twelve-month probation, which include: avoidance of any alcohol or drug related criminal acts or alcohol or drug related traffic violations; compliance with a substance abuse monitoring program, which includes a program of random urinalysis; provision that if Mr. Williams tests positive for alcohol or other tested substances or misses a random urinalysis test, without prior approval, the entire withheld suspension shall be immediately imposed; and if Mr. Williams admits or is found to have violated any of the Idaho Rules of Professional Conduct for which a public sanction is imposed for any conduct during his period of probation, regardless whether that admission or determination occurs after the expiration of the probationary period, the entire withheld suspension shall be imposed.

The withheld suspension and this public reprimand do not limit Mr. Williams' eligibility to practice law.

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

NOTICE TO MICHAEL L. SCHINDELE OF CLIENT ASSISTANCE FUND CLAIM

Pursuant to Idaho Bar Commission Rule 614(a), the Idaho State Bar hereby gives notice to Michael L. Schindele that a Client Assistance Fund claim has been filed against him by former client Key Bank National Association, in the amount of \$20,508.47. Please be advised that service of this claim is deemed complete fourteen (14) days after the publication of this issue of *The Advocate*.



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NEWSBRIEFS

New Idaho State Bar Commissioner—Congratulations to Reed W. Larsen, Pocatello, who was elected to serve as a member of the Idaho State Bar Board of Commissioners. He will represent the sixth and seventh judicial districts, and replaces outgoing Board President Dwight Baker, Blackfoot. Mr. Larsen is a native of Burley. He received an undergraduate degree at Brigham Young University in 1982 and his J.D. from the University of Idaho College of Law in 1985. He served as a law clerk in the Fifth Judicial District and is admitted to practice before all state and federal courts in Idaho, the 9th Circuit Court of Appeals, and the Shoshone Bannock Tribal court. Mr. Larsen was President of the Southeast Idaho Claims Association in 1990, Secretary of the 6th District Bar Association in 2001, and President of the 6th District Bar Association in 2003-2004. Mr. Larsen and his wife Linda reside in Pocatello and have three children.

IDAHO STATE BAR/IDAHO LAW FOUNDATION WEBSITE



Redesigned Idaho State Bar/Idaho Law Foundation website will be announced soon.

A brand new, fully redesigned Idaho State Bar/Idaho Law Foundation website will be announced soon. The website will have a totally new look as well as a new address: www.isb.idaho.gov.

The main focus of the redesign was to simplify the website and make it easier to navigate. We separated information for attorneys and the public into two main dropdown menus. Links to some of our most popular features – find an attorney, Casemaker, job announcements and MCLE – are prominently positioned on the home page. While we were at it, we updated the look to make it more interesting and inviting. We hope the new site is more intuitive, easier to use and worth adding to your favorites/bookmarks.

As a part of the redesign, we also created an improved presence for the Idaho Law Foundation to showcase the programs and services it provides to attorneys and the public. The home page of the website has highly visible links to the Idaho Law Foundation's web pages. Soon you will be able to visit the Idaho Law Foundation website directly by going to www.idaholawfoundation.org.

Watch for announcement in your email and please give us your thoughts on the new website. Our members are the best source of suggestions for improvement. Let us know what we can do to help you.

Special Thanks—The Fourth District Bar Association would like to thank Jacque Palmer for her many years of service as the district representative to the Board of Directors for Idaho Legal Aid Services. The Fourth District needs to make a recommendation for Jacque's replacement. If you are a member of the Fourth District and are interested in serving on this Board, please contact Jim Martin at 385-5303 jlm@moffatt.com or Rod Gere at 345-0106 rodgere@idaholegalaid.org.

Newly Elected 2009-2010 District Bar Officers—The Idaho State Bar would like to congratulate the following members who were elected to positions as 2009-2010 officers of their district bar associations. For further information about your local district please visit our website www.idaho.gov/isb and click on About Membership and Licensing/District Bar Associations.

FIRST DISTRICT

- President: John A. Cafferty
- Vice President: Saviraj Grewal
- Sec/Treasurer: David C. Whipple

SECOND DISTRICT

- President: Karen R. Seubert
- Vice President: Deborah L. McCormick
- Sec/Treasurer: Kristine M. Wallace

THIRD DISTRICT

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- Vice President: Gearld L. Wolff
- Secretary: Aaron J. Bazzoli
- Treasurer: Matthew A. Johnson

FOURTH DISTRICT

- President: James L. Martin
- Vice President: Paula A. Kluksdal
- Secretary: Scott B. Muir
- Treasurer: Teresa A. Hill

FIFTH DISTRICT

- President: David A. Heida
- Vice President: Brooke Baldwin
- Sec/Treasurer: Paul LaMar Arrington

SIXTH DISTRICT

- President: James A. Spinner
- Vice President: Angela Jensen
- Secretary: Richard T. Garbett
- Treasurer: David P. Gardner

SEVENTH DISTRICT

- President: Curtis R. Smith
- 1st Vice President: Hon. Penny Jo Stanford
- 2nd Vice President: Lee Radford
- 3rd Vice President: John S. Andrew
- Secretary: Kari M. Campos

MCLE Reminder

Reminder letters were recently sent to all members with an MCLE reporting deadline of December 31, 2009. Please check your records to make sure all the courses you attended have been approved for Idaho MCLE credit. Avoid the last minute scramble by applying for accreditation now. You can check your MCLE attendance records on our website at www.idaho.gov/isb. Questions should be directed to the Membership Department at (208) 334-4500 or jhunt@isb.idaho.gov.

READER VIEWPOINT

(The views expressed here do not necessarily reflect those of the Idaho State Bar or of the Advocate Editorial Advisory Board.)

IS MY RECORD CLEAR NOW?

Idaho does not mollycoddle criminals. However, sound public policy suggests that those who fully and completely rehabilitate themselves, particularly for minor offenses, should not forever be haunted by a single indiscretion.

I live in a college town. Over the last several years, law enforcement has become more and more aggressive in charging university students with beer, driving, and minor marijuana charges. Only a few decades ago, the student's beer was poured out, a police lecture ensued and everybody went on their way.

Today, when a student is charged with a crime, even for our lowliest of misdemeanors, police and court digital files are opened to create a record of the event. Once the digital record is created, even if the case is reduced to a non-jailable infraction, Idaho has no uniform procedure to extract from the digital netherworld the charging event or subsequent court action. Similarly, when a person fully rehabilitates there is no uniform way to expunge the records. The haunting from youthful indiscretions will continue until a comprehensive expungement procedure is enacted.

But what about a withheld judgment? I represent an outstanding college student who never did anything wrong in his life: great grades; Dean's list; an athlete; found a wonderful job working after graduation at an oil company. He did screw up once about six months ago and got a DUI. He went to an alcohol class, received a withheld judgment and was scheduled to have his license back before his new job began after graduation. He emailed me this today:

This is [your client], just to let you know, [the company] retracted their offer to me today because of the DUI they found on my background check. I was wondering after we get the withheld judgment taken off next year, will companies still be able to see it on a background check or only if I disclose it can they find out about it?

I have no good answer for this young man. We can get the guilty plea withdrawn and the case dismissed after the probation ends, but many judges conclude that they are impotent to "expunge" a record, if expungement means causing all public records of the event to be removed as though it never occurred. Long story short: We have numerous methods to open public databases to add information but no comprehensive method to extract the information.

I appreciate the idea that offenders must be held accountable. However, our present system which lacks an expungement scheme is antithetical to rehabilitation. We would be wise to encourage accountability with an expungement carrot.

We need not look far for a state that has enacted a workable, fair and comprehensive expungement scheme: Utah. In Utah a lay person can get a case fully expunged without the need to hire a lawyer. You can examine the Utah expungement scheme by searching: "Utah State Courts" (<http://www.utcourts.gov/>). Once you are on that website, in the "search" box in the upper right corner, search for "expungement."

In Utah, child molesters can never get their records expunged. For DUIs and other offenses, the enhancement period must run before any expungement is allowed. Utah has recognized that public policy benefits from a comprehensive, user-friendly expungement scheme. Idaho should do the same.

Tim Gresback is a Moscow attorney who specializes in personal injury and criminal defense litigation. He is a past president of the Idaho Association of Criminal Defense Lawyers and currently serves on the Executive Committee of the Idaho Trial Lawyers Association. He became president-elect of ITLA in June of 2008.

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WELCOME FROM THE COMMERCIAL LAW AND BANKRUPTCY SECTION

James C. Meservy
Williams, Meservy & Lothspeich, LLP

The Commercial Law and Bankruptcy section accepted the opportunity to submit articles to this issue of *The Advocate*. The Commercial Law and Bankruptcy section is, and has been, an active section of the Idaho State Bar for over 25 years. The governing council meets monthly to conduct the business of the section. The section holds an annual meeting, which is well attended with substantial CLE credits available.

The governing council invites you to join and become active in the section. In today's economic climate the number of phone calls to the Idaho practitioner regarding bankruptcy-related issues are steadily climbing. Practitioners who rarely faced a bankruptcy issue, whether debtor or creditor, are today called upon to respond, perhaps, several

times a week. Valued clients face financial difficulties because of their own economic situation or those caused by their creditors.

The Commercial Law and Bankruptcy section provides "tips of the month" to its members and dispatches newsletters several times a year. The list serve is active where members freely give advice, tips, counsel and the occasional war story to section members. Section camaraderie is such that no one is left alone on an island when a difficult issue arises.

On behalf of the governing board and the section membership, we hope you find these articles helpful in your practice. If you find yourself facing bankruptcy and commercial questions in your practice in these difficult times, you might take a look at the section, then join and break bread with the rest of us.

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RECENT BANKRUPTCY DECISIONS EXPOSE PITFALLS AND OPPORTUNITIES

Carol Mills and Brian Langford
United States Bankruptcy Court

With the economy struggling, more and more practitioners are dealing with clients or opponents who are coping with financial pressures. Many individuals and businesses are seeking relief in bankruptcy. This article highlights some recent significant bankruptcy cases. Though limited space prevents us from addressing all the noteworthy cases on the subject, perhaps these few cases will pique your interest.

STUDENT LOANS

Student loan debt is often present in bankruptcy cases. Most attorneys, even those who try to avoid the bankruptcy arena, realize that such debt is non-dischargeable unless the debtor can demonstrate “undue hardship.” This is typically done in an adversary proceeding. However, *Espinosa v. United Student Aid Funds, Inc. (In re Espinosa)*¹ reiterates that, at least in the Ninth Circuit, there is a back door to discharging student loan debt in Chapter 13 cases. In *Espinosa*, the debtor proposed to pay the bulk of the principal of his student loan debt through his Chapter 13 plan, but to discharge all of the fees and interest. The student loan creditor was provided notice of the proposed plan, and it submitted a proof of claim for the full amount of the debt (principal plus interest). Although the creditor was given specific notice that its claim and the repayment amount within the plan were different, it failed to object to the plan, and the plan was confirmed.

The debtor completed his repayment plan and received a discharge of his debts from the Bankruptcy court. Then, a few years later, the student loan creditor began intercepting the debtor’s tax refunds in an attempt to satisfy the remainder of the debt. At that point, the debtor moved for contempt on the basis of a violation of the discharge injunction, and the student loan creditor moved for relief from the order confirming the plan.

Naturally, the student loan creditor argued that 11 U.S.C. § 523(a) (8) required a finding of undue hardship in order to discharge student loan debt, and that because the Bankruptcy court did not make an undue hardship finding, relief from the confirmation order was warranted. The Ninth Circuit disagreed, explaining that “notice of how the Chapter 13 plan affects creditors’ rights is all that the Constitution, the Bankruptcy Code (“Code”) and the Federal Rules of Bankruptcy Procedure (“Rules”) require to bind creditors to the provisions of a confirmed plan under § 1327(a).”²

The student loan creditor also argued that the discharge order was void due to a lack of due process. The creditor complained that because the debtor never commenced an adversary proceeding to determine undue hardship, it was never served with a summons and complaint. The Fourth, Sixth, and Seventh Circuits would have agreed with the student loan creditor on this argument, however, the Ninth Circuit thought otherwise.

In its Rule 60(b) analysis, the court focused on sufficiency of notice, and reminded us that constitutionally sufficient notice is actually a fairly low standard. It is “notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objection.”³ Because the student loan creditor not only received notice of the contents of the proposed plan, but was also warned of the consequences of failing to object, it received *more* than what due process required. The court concluded “[o]ur long-standing circuit law holds that student loan debts can be discharged by way of a Chapter 13 plan if the creditor does not object, after receiving notice of the proposed plan . . . and that such notice is not constitutionally inadequate.”⁴

This is not the first time a provision in apparent contravention of the Code has made it into a plan, and the finality of the confirmation

order has been respected.⁵ The bottom line is that notice is key. If notice is given and the opportunity to object is provided, the terms of the confirmed plan will likely stand as written. As may be expected, consumer blogs have highlighted this decision, and it is likely that more of these types of provisions will find their way into future Chapter 13 plans. This case operates almost as an invitation to Chapter 13 debtors, and requires greater vigilance on the part of not just student loan lenders, but all Chapter 13 creditors and their counsel.

HOMESTEAD PROCEEDS

In Idaho, when someone sells their homestead, up to \$100,000 of the proceeds are exempt from creditors for a period of one year.⁶ Presumably, this allows the homeowner to reinvest the proceeds in another homestead. Given today’s difficult economic times, scenarios where a home is sold but the proceeds are not immediately reinvested in a new homestead are playing out more frequently. *White v. Brown (In re White)*⁷ discusses what may be done with these proceeds during the exemption period, prior to reinvestment in another homestead.

In re White is based upon Arizona law, but the Arizona statutory scheme is sufficiently similar to that of Idaho to draw several simple comparisons. Notably, neither Idaho nor Arizona law provides any guidance concerning the permissible uses of proceeds during the exemption period. The Ninth Circuit Bankruptcy Appellate Panel has already determined that the bankruptcy trustee maintains a “contingent, reversionary interest” in those proceeds.⁸ That means, when the exemption period ends, the exemption lapses and the proceeds lose their exempt status and revert back to the trustee. Trustees do not have to give notice that they intend to take possession of homestead proceeds at the conclusion of the exemption period, nor do they have to object to the claim of exemption.

In *In re White*, the debtor claimed \$145,000 in proceeds as exempt (the homestead exemption is \$150,000 in Arizona), but did not immediately reinvest those funds in a new homestead. Rather, the debtor used that money to purchase a car, make a gift to a family member, pay for some living expenses, and make several investments which turned out to be extremely poor indeed. When the exemption period was up, the debtor had no home and had squandered all but \$166 of the proceeds which he had claimed as exempt. The trustee showed up and demanded the \$145,000 for the bankruptcy estate.

For those of you with clients who have sold their homes and are contemplating bankruptcy, several points in the decision are of particular interest. First, homestead proceeds must be used in a manner which is consistent with the exempt purposes of the proceeds. In other words, the proceeds must be protected, not squandered, and should be traceable. Second, the debtor bears the risk of loss; the trustee is entitled to the total amount claimed as exempt.

Therefore, if your client claims an amount of homestead proceeds as exempt, it would be wise to counsel your client to reinvest the proceeds in a new homestead before the conclusion of the one-year exemption period. Otherwise, your client had better be prepared to pony up the full amount claimed as exempt to the bankruptcy trustee. Thus, this exemption has the potential to be either a protection or a burden to Idaho debtors.

“PRODUCE THE NOTE” DEFENSE TO FORECLOSURE

The automatic stay is a fundamental principal in bankruptcy, and serves to grant debtors some breathing room as they seek to restructure their financial situation.⁹ However, under certain circumstances, creditors may be entitled to relief from the automatic stay, and motions seeking to lift the automatic stay are frequently granted. In the face of

losing their homes to foreclosure from lenders who have been granted stay relief, many homeowners are finding creative new ways to assert their rights and to challenge the foreclosing creditor. The “produce the note” defense has been utilized by a growing number of homeowners across the country. The recent decision by Chief Bankruptcy Judge Terry Myers in *In re Sheridan*¹⁰ highlights the effectiveness of this tool in the context of a motion for relief from the automatic stay.

Prior to their bankruptcy, debtors purchased a home and executed a promissory note, payable to Fieldstone Mortgage Company, as the “Lender.” The note was secured by a deed of trust that indicated that Mortgage Electronic Registration Systems, Inc. (“MERS”) was the beneficiary under the deed, and further recited that MERS was acting solely as nominee for Lender and Lender’s successors and assigns.

When debtors filed their bankruptcy case, they scheduled an ownership interest in the home, but indicated that the secured debt against the home exceeded of the property’s value. MERS moved for relief from the automatic stay under 11 U.S.C. § 362(d), alleging that debtors were delinquent in their payments. The trustee challenged the motion, contending that MERS did not have the proper standing to bring the motion; the court agreed.

The Code requires a motion for relief from stay to be brought by a “party in interest.”¹¹ Although “party in interest” is not defined by the Code, it has been held that such a party must have a pecuniary interest in the outcome of the dispute before the court. The Rules further require that actions be prosecuted in the name of the real party in interest.¹² Judge Myers explained that together, the Code and Rules require that stay relief motions must be brought by a party who has a pecuniary interest in the case and that, at least in connection with secured debts, by the entity that is entitled to payment from the debtor and to enforce security for such payment.¹³

In this case, MERS could not overcome those hurdles. First, although MERS was designated as a “beneficiary” under the deed of trust, its counsel conceded that it was not an economic beneficiary because it would not collect any money under the promissory note nor would it realize any of the property’s value through foreclosure if the note was not paid. Next, as the court indicated, the motion was filed by MERS “as nominee [for] HSBC Bank USA, National Association, as Indenture Trustee of the Fieldstone Mortgage Investment Trust Series 2006-3.”¹⁴ Accordingly, the court reasoned that this language suggested that MERS’s position was that of an agent. While the court did not decide whether an agent has sufficient authority to advance its principal’s stay relief request, it explained that even assuming that it has such authority, MERS failed in this instance to show that its principal was the holder of the note. Absent that showing, the court concluded that MERS failed to prove that it was a party in interest with standing to seek relief from the stay, and denied the motion.

Although the “produce the note” defense was used here by a bankruptcy trustee in the context of a motion for relief from the automatic stay, its application is not so narrow. It can be used any time a creditor threatens foreclosure. Because of the way that mortgages have been handled throughout the industry in recent years – *i.e.*, frequently changing hands with little or no documentation – it is increasingly common that this defense will be effective as creditors scramble to locate original loan documents. While this defense may not save your client’s home from foreclosure forever, it may buy your client enough time to allow you to explore alternative options, such as renegotiating the terms of the note.

ABOUT THE AUTHORS

Carol Keating Mills received her B.S. from the University of Utah, and her J.D. from the University of Utah College of Law. After graduation, she worked as a law clerk for the Honorable William H. Woodland in the Sixth Judicial District. She then clerked for the Honorable B. Lynn Winnmill in the Sixth Judicial District and the United

States District Court in Pocatello, Idaho. Following her clerkship with Judge Winnmill, she prosecuted in Bingham County under the tutelage of Thomas E. Moss. After moving to Boise, she worked part-time as a law clerk for Judge Winnmill, and later as a temporary law clerk for the Honorable Thomas G. Nelson of the Ninth Circuit Court of Appeals. She is a member of the Utah and Idaho state bars. Carol currently serves as a permanent, part-time law clerk to the Honorable Jim D. Pappas. She is married to Mark Mills, and they have three children.

Brian Langford serves as a term law clerk to the Honorable Jim D. Pappas of the United States Bankruptcy Court. Brian earned his J.D. from the University of Idaho College of Law in 2007. During law school, Brian worked as a summer associate at the firm of Lukins & Annis, P.S., in Coeur d’Alene, Idaho. Later, Brian participated in the law school’s Semester in Practice program, externing with the Honorable Edward J. Lodge of the United States District Court in Boise, Idaho. Brian did his undergraduate work at Utah State University, where he received a B.S. in Civil Engineering with a Spanish minor. When not at work, Brian enjoys golfing, basketball, and spending time with his wife and two children.

ENDNOTES

¹ 53 F.3d 1193 (9th Cir. 2008).

² *In re Espinosa*, 553 F.3d at 1202 (citing *Great Lakes Higher Educ. Corp. v. Pardee (In re Pardee)*, 193 F.3d 1083 (9th Cir. 1999)).

³ *In re Espinosa*, 553 F.3d at 1202.

⁴ *Id.* at 1205.

⁵ See, e.g., *In re Pardee*, 193 F.3d at 1086-87; *Trulis v. Barton*, 107 F.3d 685, 691 (9th Cir. 1995).

⁶ Idaho Code § 55-1008(1).

⁷ 389 B.R. 693 (9th Cir. B.A.P. 2008).

⁸ *Gaughan v. Smith (In re Smith)*, 342 B.R. 801, 808 (9th Cir. B.A.P. 2006).

⁹ *Sherman v. SEC (In re Sherman)*, 491 F.3d 948, 971 (9th Cir. 2007)

¹⁰ 2009 WL 631355 (Bankr. D. Idaho, Mar. 12, 2009).

¹¹ 11 U.S.C. § 362(d).

¹² Fed. R. Civ. P. 17(a)(1), as incorporated by Fed. R. Bankr. P. 7017.

¹³ *In re Sheridan*, 2009 WL 631355 at *4.

¹⁴ *Id.*

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BANKRUPTCY LAW SUBJECTS ATTORNEYS TO SCRUTINY

David W. Newman

Assistant United States Trustee for the District of Idaho

The number of bankruptcies filed in Idaho is increasing. Experienced members of the bankruptcy bar are being joined by attorneys who are new to the bankruptcy world. Regardless of the level of experience, it goes without saying that bankruptcy counsel must adhere to the highest ethical standards.

THE BANKRUPTCY COURT AND THE UNITED STATES TRUSTEE

Bankruptcy proceedings are governed by Title 11 of the United States Code (“Bankruptcy Code”), and the Federal Rules of Bankruptcy Procedure. Bankruptcy proceedings are filed in the United States Bankruptcy Court, a unit of the United States District Court.¹ Bankruptcy Judges have the inherent power to discipline attorneys, including suspending them from practicing before the Bankruptcy Court.² In addition to this inherent power, the Bankruptcy Code and Federal Rules of Bankruptcy Procedure subject debtor’s and creditor’s attorneys to the Bankruptcy Court’s scrutiny.

Congress added an additional level of scrutiny when it created the United States Trustee Program, a component of the United States Department of Justice. The United States Trustee Program serves as the “watchdog over the bankruptcy process.”³ The United States Trustee has statutory standing in bankruptcy proceedings.⁴

CREDITOR’S COUNSEL

Appearing before the Bankruptcy Court or filing a proof of claim on behalf of a client subjects creditor’s counsel to scrutiny.⁵ By signing a pleading or presenting a proof of claim for a client, creditor’s counsel certifies that to the best of his or her knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the facts alleged have evidentiary support and the legal contentions are warranted by existing law.⁶ While the United States Trustee Program does not engage in two party disputes or take the place of the private bankruptcy trustees assigned to the case, it does investigate and bring enforcement actions against creditors and their attorneys to address abuses that harm the integrity of the bankruptcy system. Abuses by creditors include filing motions to lift the automatic bankruptcy stay with materially false or inaccurate accountings, filing false or inaccurate proofs of claims, violating the automatic bankruptcy stay or discharge injunction and violating the Bankruptcy Code’s requirements relating to reaffirmation of debts. Additionally, filing papers with personally identifiable information, such as social security numbers, may expose creditor’s counsel to sanctions.⁷ Abuses should be referred to the Office of the United States Trustee.

DEBTOR’S COUNSEL

Debtor’s counsel is also subject to scrutiny. Congress recognized that many debtors are particularly vulnerable when it drafted section 329 of the Bankruptcy Code. Section 329 is designed to protect debtors from their attorney’s misconduct or overreaching. It requires attorneys to file a statement of compensation paid or agreed to be paid for services rendered to debtors in contemplation or in connection with a bankruptcy case. Section 329 empowers the Bankruptcy Court to order a debtor’s attorney to refund all or part of the fees received and cancel any fee agreement where the fees charged exceed the reasonable value of the services provided. This section is typically triggered by a motion filed by the Office of the United States Trustee. In Chapter 11 cases [reorganization cases], attorneys are required to obtain a court order authorizing the debtor to employ them.⁸ Additionally, attorneys in these cases must file fee applications and obtain court orders approving their fees and expenses.⁹ The Bankruptcy Court has “broad and inherent authority to deny any and all compensation when an attorney fails to meet [these] requirements. . . .”¹⁰

In *In re Castorena*¹¹, Chief Bankruptcy Judge Terry Myers provides a good discussion of what is expected of debtor’s counsel in consumer cases in the District of Idaho. For example, the practice of allowing non-attorney staff to handle client intake, explain bankruptcy and review the final draft of the bankruptcy petition, schedules and statement of financial affairs with the client is unacceptable. Likewise, failing to represent the debtor at the meeting of creditors, where the debtor must testify under oath, is unacceptable. Where a debtor is “for practical purposes ‘represented’ by [an] intern or paralegal alone . . . not only would fees be lost but other sanctions potentially appropriate.”¹² Competent debtor’s counsel understands he or she must thoroughly explain the petition, schedules and statement of financial affairs and review the client’s responses with the client. The client will sign these documents under penalty of perjury. In Chapter 7 cases, the signature of the attorney certifies the attorney has no knowledge after an inquiry that the information in the bankruptcy schedules is incorrect.¹³ Inaccurate responses may lead to denial of the client’s bankruptcy discharge or worse. Likewise, debtor’s counsel is expected to verify the identity and social security number of anyone for whom he will file a bankruptcy petition. Counsel must implement procedures to prevent typographical errors when disclosing social security numbers to the Bankruptcy Court. The use of incorrect social security numbers may not only harm someone else’s credit rating, but it may also expose the debtor to a complaint objecting to the bankruptcy discharge or an investigation for identity theft. Likewise, counsel may be subject to a motion to reduce or disallow fees.

TWO EXAMPLES

Knowingly and fraudulently transferring assets in contemplation of filing bankruptcy, making false statements under penalty of perjury or concealing assets in conjunction with a bankruptcy proceeding may constitute a felony under federal law.¹⁴ In a recently tried criminal case, the defendants, principals of a corporate Chapter 11 debtor, were indicted on twelve counts of fraudulently transferring property in anticipation of bankruptcy, fraudulently receiving property during the bankruptcy, making false declarations in their bankruptcy papers and monthly operating reports and money laundering. The keystone of the defense was an attempt to blame the bankruptcy attorney.

The Government called the debtor’s bankruptcy attorney as a witness. He was required to testify about his intake procedure, what he explained to the debtor’s principals, advice he gave and how he prepared various bankruptcy papers. He was vigorously cross examined and harshly criticized in the defense’s closing arguments. Nevertheless, his practices and procedures enabled him to testify about what he explained to the defendants and the fact that they failed to tell him about the transfers and diversion of funds. As a result, not only did the jury return guilty verdicts on all counts, but the attorney was able to preserve his good name.

This case highlights the importance of thoroughly explaining everything to clients and documenting what you have done. The unfortunate fact is some clients may be dishonest and, when caught, attempt to blame their attorney. On the other hand, if it becomes apparent that problems arose in a case because of your failure to competently represent your client, you face the very real possibility of a motion to refund fees, sanctions or worse.

As a final example, in November, an Idaho attorney who had practiced bankruptcy law was sentenced to prison for bankruptcy fraud in his own bankruptcy case. Judge Winmill, noting the defendant was a bankruptcy attorney, indicated a prison sentence was required to preserve the integrity of the bankruptcy system.

CONCLUSION

In short, as attorneys, we must be sure that our actions comply with the high ethical expectations that accompany the trust we have taken upon ourselves. Unlike many other areas of the law, bankruptcy practice is closely monitored by officials with a statutory duty to protect the integrity of the system.

ABOUT THE AUTHOR

David W. Newman, is the Assistant United States Trustee for the District of Idaho. Prior to his appointment in January 2008, he served as a trial attorney in the Office of the United States Trustee in Tulsa, Oklahoma where he continues to serve as a Special Assistant United States Attorney prosecuting bankruptcy crimes. Prior to his public service, he was an attorney with Best Best & Krieger, LLP in Southern California where he also served as a Chapter 7 bankruptcy trustee. He received his law degree from Brigham Young University in 1992.

Disclaimer. The views expressed do not necessarily reflect those of the United States Trustee Program or United States Department of Justice.

ENDNOTE

¹ 28 U.S.C. § 151.

² *Price v. Lehtinen* (In re Lehtinen), ___ F.3d ___ (9th Cir. 2009); see *Caldwell v. Unified Capital Corp.* (In re Rainbow Magazine, Inc.), 77 F.3d 278, 284 (9th Cir. 1996).

³ 28 U.S.C. § 586; House Report No. 989, 95th Cong., 2d Sess. at 88 (reprinted in 1978 U.S. Code Congressional & Admin. News at 5787, 5963, 6049).

The United States Trustee Program is divided into 21 Regions and includes all of the Federal Judicial Districts except Alabama and North Carolina. The Attorney General appoints a United States Trustee for each region and an Assistant United States Trustee for each Federal Judicial District. 28 U.S.C. § 581.

⁴ 11 U.S.C. § 308.

⁵ A proof of claim may be filed in a bankruptcy case to assert a creditor's claim that it is entitled to be paid based on a debt owed to it by the debtor.

⁶ FED. R. BANKR. P. 9011.

⁷ The debtor's full social security number is disclosed to the Bankruptcy Court in a sealed document. Only the last four digits of the number are used in publicly filed documents. FED. R. BANKR. P. 9037.

⁸ 11 U.S.C. § 327.

⁹ 11 U.S.C. § 328, 330.

¹⁰ *Law Offices of Nicholas A. Franke v. United States Trustee (In re Lewis)*, 113 F.3d 1040, 1045 (9th Cir. 1997).

¹¹ 270 B.R. 504 (Bankr. Idaho 2001)

¹² *In re Castorena*, 504 B.R. at 519.

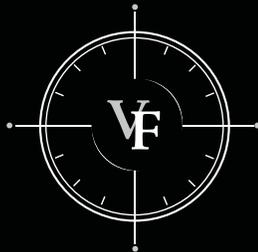
¹³ 11 U.S.C. § 707(b)(4)(D).

¹⁴ 18 U.S.C. § 152.

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I-CARE: IDAHO CREDIT ABUSE RESISTANCE EDUCATION

Kelly Greene McConnell
Givens Pursley

It took a dramatic economic crisis to expose America's appalling deficiency in personal finance education. Generations of Americans are growing up without any guidance about how to deal with the complex array of financial products today, much less how to deal with basic budgeting and spending. This lack of financial literacy is in part responsible for the current economic downturn.

In a late attempt to address the problem, President George W. Bush signed an Executive Order which created the President's Advisory Council on Financial Literacy, for the first time in 2008. In January of 2009, the Chairman of that Council, Charles R. Schwab, wrote President Bush a letter enclosing the Council's first annual report where he stated:

While there are many causes to the economic problems facing the country, it is undeniable that a lack of financial literacy is a contributing factor. Far too many Americans entered into home and other loan agreements that they did not understand and ultimately could not afford.¹

In reading this earth shattering finding, one can't help but imagine a resounding voice emanating from Idaho's bankruptcy practitioners saying "DUH." While it's somewhat frustrating that what has been a glaring issue to so many for so long is only now breaking into the light of public consciousness, it is gratifying to know that we are finally there. People are finally paying attention.

THE START OF CREDIT ABUSE RESISTANCE EDUCATION

An early crusader for the cause of financial education is Bankruptcy Judge John C. Ninfo, II of the Western District of New York, who began reaching out to high school students over ten years ago.² As the financial illiteracy rate seemed to grow at a rate matched only by the nation's credit debt, Judge Ninfo realized that he could not reach enough students alone. In 2002, Judge Ninfo contacted his local bankruptcy bar association to see if they would help with the cause and the Credit Abuse Resistance Education (C.A.R.E.) project was born.³

The CARE program is "a free financial literacy initiative that makes experienced members of the Bankruptcy Community available to teach the importance of financial education."⁴ More specifically, CARE involves bankruptcy lawyers, trustees and judges going into high school classrooms to teach students basic financial principles. Given the unique nature of bankruptcy professionals, the emphasis is obviously on what everyone should want to avoid – personal insolvency.

During a recent interview, Judge Ninfo told me that bankruptcy professionals bring extra value to financial education that the teachers don't have.⁵ "They [teachers] are not in the trenches every day." A bankruptcy professional puts an "exclamation point" on the presentation, making it a "scared-straight" type of program for the high school student.

CARE has partnered with and is supported by a number of organizations, including Jump\$tart Coalition, the National Financial Education Network, the National Conference of Bankruptcy Judges, the National Association of Bankruptcy Trustees, the United States Trustee Program and the Federal Judicial Center. Currently, CARE has a presence in all 50 states, including Idaho.

THE CARE PROGRAM

The core component of the CARE program involves bankruptcy practitioners teaching high school students basic personal finance principles. Topics of presentation can include budgeting, saving, investing and borrowing. To that end, CARE volunteers have developed

a wide variety of available curriculum from which a presenting lawyer can pick and choose.

Given the "scared-straight" emphasis of the program related to credit abuse, most topics involve responsible borrowing. The presentations therefore, usually include an explanation of interest accrual on loans, particularly credit cards. The presenter will typically also address concepts like minimum payments and credit limits. Of course, most lawyers are familiar with these basics, and bankruptcy practitioners intimately so.

IDAHO CREDIT ABUSE RESISTANCE EDUCATION (I-CARE)

In early January 2005, an ad hoc group of Idaho bankruptcy professionals met for the first time to discuss what actions could be taken to address financial literacy issues in Idaho. With the support of the Commercial and Bankruptcy section of the Idaho State Bar, and our Bankruptcy Judges Terry L. Myers and Jim D. Pappas, we began work on the Idaho Credit Abuse Resistance Education⁶ project, or I-CARE.

Initially, I-CARE encountered some resistance among the education hierarchy in actually getting into Idaho classrooms. Today's schools face difficult curriculum decisions and competition for classroom presentation time, particularly when trying to meet the standards of "No Child Left Behind." For that reason, the sometimes chilly reception of Idaho educators to I-CARE is common to CARE programs in other states.⁷ With the tenacious support of bankruptcy professionals, however, I-CARE has successfully entered Idaho classrooms and will continue to do so.

Recently, I-CARE announced the launch of its web site at <http://www.id.uscourts.gov/I-CARE>. The website exists because of the tireless dedication of Chief Bankruptcy Judge Terry L. Myers, who is ultimately responsible for leading its development and implementation. The website offers information to educators, students and presenters interested in financial education. Volunteers who go into the class rooms to teach have access to a wealth of presentation materials developed by CARE teams since the program's inception.

Celeste K. Miller, Regional Fraud Coordinator for the U.S. Trustee Program, and co-chair of I-CARE, has even more recently undertaken the massive project of revamping presentation materials for the Idaho classroom. The purpose of this project is to make it as easy as possible for busy professionals to prepare a classroom presentation. Volunteer presenters will be happy to know that the legwork is already done and an updated PowerPoint presentation will soon be available on the I-CARE website.

WHAT YOU CAN DO TO HELP

While the cause of financial literacy has become main stream, CARE still has a unique message to deliver to students. The Bankruptcy world represents the rock bottom of financial problems and its professionals have a unique perspective. Even in the new world with massive volumes of financial education curriculum, the personal insight of Idaho's lawyers is invaluable. In today's environment, almost everyone in the bar has enough exposure to insolvency or bankruptcy to qualify as a volunteer presenter.

The State of Idaho is one of the pioneer states in allowing financial education to meet graduation requirements. More recently, that support has strengthened with the introduction of math standards based upon financial education. While this is a good start, financial education is still not mandatory, nor is it properly tested or funded. There are many proponents who will not rest until that happens.

In the meantime, with a local focus, the key to success for the I-CARE project is to get lawyers into classrooms to teach Idaho

children the importance of financial education. This means that we rely heavily on members of the Idaho bar throughout the state to volunteer to give presentations. Volunteers need not be bankruptcy practitioners, but should have a basic understanding of rudimentary principals of personal finance and the bankruptcy system generally. If you are interested in volunteering, please contact me or Celeste Miller. You may also volunteer through the I-CARE website at <http://www.id.uscourts.gov/I-CARE>.

ABOUT THE AUTHOR

Kelly Greene McConnell is a partner at the law firm of *Givens Pursley LLP*, in the finance and credit recovery practice. She has worked with the I-CARE project since its inception and currently serves as its co-chair.

ENDNOTES

¹ 2008 Annual Report to the President, President's Advisory Council on Financial Literacy, January 6, 2009.

² Courts Fight Financial Illiteracy, *The Third Branch*, newsletter of the *Federal Courts*, vol. 40, no. 4, April 2008.

³ <http://www.careprogram.us/program-overview/>

⁴ *Id.*

⁵ From interview with Bankruptcy Judge John C. Ninno II, February 2009.

⁶ The current name for the project actually came about a few years later.

⁷ From interview with Bankruptcy Judge John C. Ninno II, February 2009.

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TO EXTEND OR NOT EXTEND: THE DILEMMA OF THE NON-DEBTOR AND THE AUTOMATIC STAY

Soo Y. Kang
Greener Burke Shoemaker, P.A.

Situations arise where a corporate or other business entity debtor files for bankruptcy leaving behind non-debtor third parties, principals, guarantors, officers, directors, and other key employees to fend off collection or litigation efforts by creditors of the corporate debtor. When these non-debtor parties are pursued, are they also protected under the automatic stay afforded to the debtor?

APPLICATION OF THE STAY TO NON-DEBTORS

Section 362(a)(1) of the Bankruptcy Code provides a stay from the “commencement or continuation ... of a judicial, administrative, or other action or proceeding against the debtor ...”¹ A strict construction of this section leads to the conclusion that the stay afforded by the filing of a petition extends only to the debtor.² However, the seminal case of *A.H. Robins Co. v. Piccinin*³ carved out an exception for “unusual circumstances”:

This “unusual situation,” it would seem, arises when there is such identity between the debtor and the third-party defendant that the debtor may be said to be the real party defendant and that a judgment against the third-party defendant will in effect be a judgment or finding against the debtor.

The *Piccinin* court continued with examples of an “unusual circumstance” and held:

An illustration of such a situation would be a suit against a third-party who is entitled to absolute indemnity by the debtor on account of any judgment that might result against them in the case. To refuse application of the statutory stay in that case would defeat the very purpose and intent of the statute.⁴

To the extent that the non-debtor believes he or she falls under an “unusual circumstance,” what burden must be met to have the stay extended and how does one, procedurally, obtain the extension?

The extension of the stay is not automatic, but rather, requires an affirmative action on the part of the debtor under 11 U.S.C. Sections 105 and 362 to achieve the desired result.⁵ In order to obtain the extension of the stay, the debtor bears the burden of establishing all the elements of the traditional preliminary injunction test.⁶

The majority of circuits that have reviewed injunctions staying actions against non-debtors have applied the usual preliminary injunction standard. [inner cites omitted] As the Fifth Circuit pointed out ..., the traditional approach is strongly supported by the legislative history of § 105(a). [inner cite omitted] The relevant Senate report explained that § 105(a) grants bankruptcy courts “all the traditional injunctive powers of a court of equity.” S.REP. NO. 95-989, at 51 (1978), as reprinted in 1978 U.S.C.C.A.N. 5785, 5837. “Stays or injunctions issued under these other sections will not be automatic upon the commencement of the case, but will be granted or issued under the usual rules for the issuance of injunctions.” *Id.* The Second, Third, and Eighth Circuits have similarly applied the traditional standard with respect to stays that are not automatic under § 362(a).⁷

Thus, in order for the court to enjoin a creditor’s action against a non-debtor, the debtor must show:

1. Irreparable harm to the bankruptcy estate if the stay is not extended;

2. Strong likelihood of success on the merits; and

3. No harm or minimal harm to the other party or parties.⁸

“Likelihood of success on the merits” has been equated to probability of a successful plan of reorganization.⁹ In that respect, it has been held that a debtor’s stay may extend to a non-debtor only when necessary to the debtor’s ability to reorganize. In other words, is the action against the non-debtor likely to have a material adverse effect on the reorganization efforts? Material adverse effect can be in the form of having such an identity of interest between debtor and non-debtor that the real party in interest is the debtor or inability to reorganize because the non-debtor’s services are essential to the reorganization process.¹⁰ Assuming that elements of a preliminary injunction can be met, it really only affords the non-debtor a temporary respite, unless the injunction can be made permanent.

CAN THE STAY BECOME A PERMANENT INJUNCTION OR DISCHARGE FOR THE NON-DEBTOR?

The circuits differ on whether a permanent injunction may be issued in favor of the non-debtor which, in essence, would forever discharge the non-debtor’s liability. The Ninth Circuit has directly addressed this question, and declined to issue a permanent injunction, in other words, a permanent extension of the automatic stay to discharge the debts of the non-debtor. In *In re American Hardwoods, Inc.*,¹¹ the Keelers, president and vice president of American Hardwoods, obtained machinery for the corporation in their individual capacities which was financed by Deutsche Credit Corporation. The Keelers then transferred the machinery to the company in consideration for the company’s assumption of the liability of debt. Subsequently, Deutsche obtained an order in state court permitting seizure of American Hardwoods’ machinery. In response, American Hardwoods filed for protection under Chapter 11. Additionally, American Hardwoods initiated an adversary proceeding seeking to enjoin Deutsche preliminarily and permanently from continuing the state action against the Keelers individually.

In affirming the bankruptcy court’s decision that it lacked the power to order a permanent injunction against a non-debtor, the *American Hardwoods* court analyzed the scope of power provided under Section 105. The *American Hardwoods* court held that Section 105 does not authorize relief inconsistent with more specific law. There, the more specific provisions of Section 524 displaced the equitable powers of the court under Section 105. Section 524 governs the effect of discharge and describes the effect of discharge as “an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived.”¹² The *American Hardwoods* court reasoned that, as a discharge is a special type of permanent injunction, the permanent injunction requested by American Hardwoods in the adversary proceeding falls squarely within the definition of discharge under Section 524(a)(2) and, as such, the court’s authority to enjoin under Section 105 is displaced by the specific provision of Section 524.¹³ However, this decision can be challenged for the following reasons.

First, after concluding the permanent injunction exceeds the scope of authority under Section 105, the *American Hardwoods* court analyzed the permanent injunction issue under the *Piccinin* analysis and held that the factual circumstances did not lend themselves to an issuance of a permanent injunction.¹⁴ Thus, potentially, under the right

factual circumstances an argument can be posed in favor of a permanent injunction under the *Piccinin* analysis. Secondly, in its holding the *American Hardwoods* court noted that there is an absence of case law which allows a court, post-confirmation of a plan, to permanently enjoin a creditor from enforcing a state court judgment against a non-debtor guarantor of a contract liability.¹⁵ Since the opinion issued, there have been numerous courts in other circuits which have disagreed with the holding.¹⁶ Lastly, the *American Hardwoods* court, in applying Section 524 to limit Section 105, relied upon *Union Carbide Corp. v. Newbowles*,¹⁷ a Seventh Circuit case, for the proposition that Section 524 can never alter the rights of third-party debtors. The *Union Carbide* rule has since been substantially revised by the Seventh Circuit.¹⁸

CONCLUSION

In conclusion, if there are collection efforts and/or litigation being pursued against non-debtors which materially affect a debtor's ability to reorganize, then it may be a worthwhile exercise to seek an extension of the automatic stay. Furthermore, numerous circuits support extending the stay post-confirmation of the plan and, thus, essentially discharging the debt of the non-debtor. To the extent that a permanent injunction is pursued in the Ninth Circuit, while case precedent would indicate that such an application would be denied, the legal authority prohibiting such an injunction is susceptible to challenge.

ABOUT THE AUTHOR

Soo Y. Kang is an associate at Greener Burke Shoemaker P.A. where he focuses on all forms of complex civil litigation, including, but not limited to, contractual, business, and construction disputes in both the state and federal forums of Idaho. In addition, Mr. Kang chairs the firm's bankruptcy practice representing secured and unsecured creditors in diverse industries who require assistance asserting their rights in bankruptcy court. Mr. Kang's practice also incorporates debtor representation. He is a member of the Commercial Law and Bankruptcy Section of the Idaho State Bar and the American Bankruptcy Institute.

ENDNOTES

¹ 11 U.S.C. § 362(a).

² See *Maritime Elec. Co. v. United Jersey Bank*, 959 F.2d 1194, 1204 (3d Cir. 1991) (“[t]he clear language of Section 362(a) indicates that it stays only proceedings against a ‘debtor’ - the term used by the statute itself”); *In re American Film Technologies, Inc.* 175 B.R. 847, 850 (Bankr. D. Del. 1994) (The automatic stay affords protection only to debtors and does not extend to “co-tortfeasors,” “joint obligors,” “guarantors,” “sureties,” or other non-debtor “co-defendants.”).

³ *A.H. Robins Co. v. Piccinin*, 788 F.2d 994, 999 (4th Cir. 1986); *In re American Film Technologies, Inc.*, 175 B.R. at 850 (“Nevertheless, numerous bankruptcy courts have issued preliminary injunctions, on collateral estoppel grounds, staying the prosecution of actions against non-debtor defendants who were officers and/or directors of the debtor defendants”).

⁴ *Id.* See also, *In re American Film Technologies, Inc.*, 175 B.R. 847 (Bankr. D. Del. 1994) (automatic stay extended to non-debtor directors and officers because, in part, there is an indemnification between the debtor and its officers and directors); *Eastern Air Lines, Inc. v. Rolleston*, 11 B.R. 423, 435 (Bankr. S.D. N.Y. 1990), *aff'd*, 124 B.R. 635 (Bankr. S.D. N.Y. 1991) (automatic stay extended to chairman of the board of debtor because indemnity agreement created such an identity of interest between debtor and chairman that the debtor was deemed the real party in interest).

⁵ *In re All Seasons Resorts, Inc.*, 79 B.R. 901, 903 (Bankr. C.D. Cal. 1987).

⁶ *In re Family Health Services, Inc.*, 105 B.R. 937, 943 (Bankr. C.D. Cal. 1989).

⁷ *In re Excel Innovations, Inc.*, 502 F.3d 1086, 1094 (9th Cir. 2007) (italics in original).

⁸ *In re Family Health Services, Inc.*, 105 B.R. at 943, citing *In re Otero Mills, Inc.*, 25 B.R. 1018, 1021 (Bankr. D. N.M. 1982) and *In re Larmar Estates, Inc.*, 5 B.R. 328, 331 (Bankr. E.D. N.Y. 1980). The Ninth Circuit's preliminary injunction test differs slightly, “A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance

of equities tips in his favor, and that an injunction is in the public interest.” *American Trucking Ass'n v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009), quoting *Winter v. Natural Res. Def. Council, Inc.*, ___ U.S. ___, 129 S. Ct. 365, 172 L. Ed. 2d 249 (2008).

⁹ *Id.*

¹⁰ *In re Uni-Marts, LLC*, 399 B.R. 400, 416 (Bankr. D. Del. 2009) (extension of the stay must be consistent with the purpose of the stay itself, which is to suspend actions that pose a serious threat to a corporate debtor's reorganization efforts and cites as examples of harm where the action against a non-debtor affects the debtor's funds (indemnification agreements – identity of interest) or personnel issues (debtor requires the services of the non-debtor facing litigation)); see also *In re Steven P. Nelson*, 140 B.R. 814, 816-17 (Bankr. M.D. Fla. 1992) (actions against non-debtor guarantor of debtor corporation's obligations enjoined where the non-debtor guarantor was president of debtor corporation and the president's services, expertise and attention were critical to the reorganization process).

¹¹ See *American Hardwoods, Inc.*, 885 F.2d 621, 622-623 (9th Cir. 1989). Although not directly stated, it is evident from the opinion that the Keelers personally guaranteed the loan from Deutsche upon transferring the equipment to the company.

¹² *Id.* at 626, quoting 11 U.S.C. § 524(a)(2).

¹³ *Id.*

¹⁴ See *American Hardwoods*, 885 F.2d at 626-27; see also *In re American Family Enter.*, 256 B.R. 377, 408 (Bankr. D. N.J. 2000) (recognizing that the *American Hardwoods* court specifically distinguished its decision from *Robins*, stating that the particular bankruptcy proceeding before it did not present the unusual factors recognized in *Robins*.)

¹⁵ See *American Hardwoods*, 885 F.2d at 625.

¹⁶ See *In re Dow Corning Corp.*, 255 B.R. 445, 476-77 (Bankr. E.D. Mich. 2000). The *Dow Corning* decision identifies the three approaches adopted by various courts when determining whether to extend the stay via a permanent injunction to non-debtors. First, there is a line of cases that holds that the bankruptcy court has the authority to confirm reorganization plans which discharge non-debtors even if there are objecting creditors. Second, there is a line of cases holding that a bankruptcy court does not have the authority to discharge or release a non-debtor. Lastly, there is a third line of cases that hold bankruptcy courts may discharge or release non-debtors from debts only if the affected creditors consent. The *Dow Corning* court held that the “underlying reason for the differing views among the circuits stems from the interpretation of §§ 524(e) and 105(a).” *In re Dow Corning Corp.*, 255 B.R. at 477. In concluding that Section 524 does not expressly prohibit injunctions in favor of third parties, the *Dow Corning* court applied the general principle that when interpreting the Bankruptcy Code, the plain meaning of the statute controls. See *In re Dow Corning Corp.*, 255 B.R. at 478. To the extent that courts have interpreted Section 524 to trump the inherent powers of the bankruptcy court under Section 105, such a reading is improper as the various sections of the Code should be read to avoid a conflict. *Id.*; see also *United States v. Ron Pair Enter., Inc.*, 489 U.S. 235, 245-47, (1989).

¹⁷ 628 F.2d 593 (7th Cir. 1982).

¹⁸ See *In re Specialty Equip. Co.*, 3 F.3d 1043, 1046 (7th Cir. 1993) (limiting the *Union Carbide* decision to only prohibit gratuitous release of a third party who did not contribute to a reorganization).

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Chief Justice
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Justices
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Jim Jones
Warren E. Jones
Joel D. Horton

Amended - Regular Spring Terms for 2009

Boise (Twin Falls)..... June 8, 10, 12, 15 and 17

1st Amended - Regular Fall Terms for 2009

Boise..... August 19, 21, 24, 26 and 28
Boise..... September 17 and 18 and 21
Pocatello..... September 23 and 24
St. Anthony..... September 25
Twin Falls..... November 4, 5 and 6
Boise..... November 9 and 12
Boise..... December 2, 4, 7, 9 and 11

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 April 29, 2009

Monday, June 8, 2009 - BOISE

9:00 a.m. Boudreau v. City of Wendell #35077
10:00 a.m. State v.
Canyon Vista Family
Limited Partnership #34485
11:10 a.m. Aardema v.
U.S. Dairy Systems Inc #35218

Wednesday, June 10, 2009 - BOISE

8:50 a.m. Panike & Sons Farms v. Smith. . . . #35062
10:00 a.m. Callies v. O'Neal #34968
11:10 a.m. Rollins v. Blaine County. #33658

Friday, June 12, 2009 - BOISE

8:50 a.m. Hurtado v. Land O'Lakes Inc. . . . #35003
10:00 a.m. Orrock v. Appleton #35064
11:10 a.m. IDHW v. Matey. #34483

Monday, June 15, 2009 - BOISE

8:50 a.m. Houston v. Whittier. #35287
10:00 a.m. Berg v. Kendell. #34763/35154
11:10 a.m. First American Title Insurance v.
Chandler. #33695

Wednesday, June 17, 2009 - BOISE

8:50 a.m. Allbright v. Allbright. #35783
10:00 a.m. St. Alphonsus v. Ada County. . . . #34962
11:10 a.m. Van v. Portneuf Medical Center. . . #34888

OFFICIAL NOTICE COURT OF APPEALS OF IDAHO

Chief Judge
Karen L. Lansing

Judges
Darrel R. Perry
Sergio A. Gutierrez
David W. Gratton

4th Amended - Regular Spring Terms for 2009

Boise..... June 16 ~~18, 23,~~ and 25

1st Amended Regular Fall Terms for 2009

Boise..... August 18, 20, 25 and 27
Boise..... September 10, 14, 15, 17, 22
and 24 29
Boise..... October 13, 15, 20 and 22
Boise..... November 10, 13, 17 and 19
Boise..... December 8, 10 and 15

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 April 29, 2009

Tuesday, June 16, 2009 - BOISE

9:00 a.m. Action Collection v. Jackson #35226
10:30 a.m. Hughes v. State #35132
1:30 p.m. Olson v. Montoya #34915



The Madison County Commissioners dedicated a courtroom in honor of Seventh District Judge Brent Moss. Judge Moss created Idaho's first mental health court, and retired in March 2009.



Mentors for the 2009 Idaho Trials Skills Academy gather in a courtroom at the Federal Courthouse.

Idaho Supreme Court and Court of Appeals
NEW CASES ON APPEAL PENDING DECISION
(Update 05/01/09)

CIVIL APPEALS

ATTORNEY FEES AND COSTS

1. Did the district court err by affirming the magistrate court's finding that Bromley is the prevailing party where Bromley recovered no affirmative relief or judgment against the Crumps and the Crumps recovered a \$200 judgment against Bromley?

Crumph v. Brumley
S.Ct. No. 35666
Supreme Court

2. Did the trial court err in refusing to award fees to the prevailing party in litigation for breach of contract involving a commercial transaction?

Jorgensen v. Coppedge
S.Ct. No. 35575
Supreme Court

DIVORCE, CUSTODY, AND SUPPORT

1. Whether the decision to terminate the parental rights of Doe was supported by substantial and competent evidence.

Dept. of Health and Welfare v. Doe
S.Ct. No. 36078
SUPREME COURT

INSURANCE

1. Whether the district court erred in finding Farm Bureau had a contractual obligation to recover and reimburse Farm Bureau's subrogated interest under the policy of insurance between Farm Bureau and Lopez.

Lopez v. Farm Bureau Mutual Ins.
S.Ct. No. 35745
Supreme Court

POST-CONVICTION RELIEF

1. Did Stakey raise a genuine issue of material fact as to whether trial counsel was ineffective for failing to file a motion to suppress?

Stakey v. State
S.Ct. No. 34875
Court of Appeals

2. Did the court erroneously analyze the prejudice prong of the Strickland analysis by finding Ellis had been sufficiently advised of his Fifth Amendment right against self-incrimination when he agreed to participate in a psychosexual evaluation as a condition of a plea agreement?

Ellis v. State
S.Ct. No. 35461
Court of Appeals

SUBSTANTIVE LAW

1. Whether the district court erred in not granting the defendant's motion to disqualify without cause.

Ransom v. Topaz Marketing, L.P.
S.Ct. No. 35494
Supreme Court

2. Whether res judicata bars an arbitration claim where the claim depends upon the existence of latent defects that were neither actually known nor discoverable by the exercise of reasonable diligence at the time of an earlier arbitration and thus could not have been litigated in the earlier arbitration.

Storey Construction, Inc. v. Hanks
S.Ct. No. 35459
Supreme Court

CRIMINAL APPEALS

DUE PROCESS

1. Did the prosecutor's statements in opening and closing amount to prosecutorial misconduct, depriving Troutman of due process of law and a fair trial?

State v. Troutman
S.Ct. No. 35033
Court of Appeals

2. Did the prosecutor's statements during questioning and during closing argument constitute improper vouching for the credibility of the state's witness?

State v. Merrifield
S.Ct. No. 34917
Court of Appeals

EVIDENCE

1. Whether the district court erred by allowing the undercover officer who purchased drugs from Doe to testify as to his impressions of Doe's mental condition.

State v. Doe
S.Ct. No. 34117
Court of Appeals

2. Was the probative value of the admission of testimony regarding Hoak's prior bad acts outweighed by the danger of undue prejudice?

State v. Hoak
S.Ct. No. 34906
Court of Appeals

3. Was there substantial evidence presented at trial to sustain the finding of guilt that Hodge failed to perform her duties upon striking an unattended vehicle?

State v. Hodge
S.Ct. No. 35539
Court of Appeals

4. Whether the court abused its discretion by admitting Adam Thorngren's statement as an excited utterance.

State v. Thorngren
S.Ct. No. 34806
Court of Appeals

Instructions

1. Did the court deny Molen's statutory and constitutional rights to a unanimous jury by failing to give a unanimity instruction?

State v. Molen
S.Ct. No. 34940
Court of Appeals

SEARCH AND SEIZURE – SUPPRESSION OF EVIDENCE

1. Did the district court err in affirming the magistrate's decision denying Martin's motion to suppress evidence of a traffic stop?

State v. Martin
S.Ct. No. 35549
Court of Appeals

2. Whether the court committed reversible error when it found the stop of Ferguson's car was supported by reasonable suspicion of a traffic violation.

State v. Ferguson
S.Ct. No. 35718
Court of Appeals

SENTENCE REVIEW

1. Whether the prosecutor argued facts at sentencing that were inconsistent with the plea agreement and whether these statements prejudiced the defendant and constituted misconduct.

State v. Delgado
S.Ct. No. 34689
Court of Appeals

2. Did the court correctly conclude there was a sufficient causal connection between Corbus's criminal conduct and Clark's injuries such that the court did not err by ordering restitution for Clark's medical expenses?

State v. Corbus
S.Ct. No. 34966
Court of Appeals

SUBSTANTIVE LAW

1. Did the court abuse its discretion when it excluded a defense expert witness that had been disclosed just days before trial?

State v. Smith
S.Ct. No. 35216
Court of Appeals

Summarized by:
Cathy Derden

Supreme Court Staff Attorney
(208) 334-3867

LICENSING CANCELLATIONS

ORDER CANCELLING LICENSE TO PRACTICE LAW FOR NON-COMPLIANCE WITH BAR COMMISSION RULE 406(D)

The Commissioners of the Idaho State Bar by and through their Executive Director have filed with the Clerk of this Court evidence that the following named attorneys have not complied with the mandatory continuing legal education requirements required by Idaho Bar Commission Rule 406(d), and have not given notice of withdrawal from the practice of law to the Idaho State Bar and the Court;

NOW, THEREFORE, IT HEREBY IS ORDERED that the license to practice law in the State of Idaho of the following named attorneys be, and hereby are, **CANCELLED** and said person(s) shall be placed on **INACTIVE STATUS** for failure to comply with the mandatory continuing legal education requirements:

MITCHELL R. BARKER
DUSTIN DOUGLASS DEISSNER
KIRKALAN WALTON
FIONA ALLISON CRINKS KENNEDY

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

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

DATED this 20th day of April 2009.
Daniel T. Eismann, Chief Justice

LICENSING REINSTATEMENTS

As of the dates indicated, the following attorneys' licenses were reinstated:

MITCHELL R. BARKER; Active Status, April 27, 2009
CHERI L. BUSH; Active Status, May 4, 2009
DUSTIN DOUGLASS DEISSNER; Active Status, May 4, 2009

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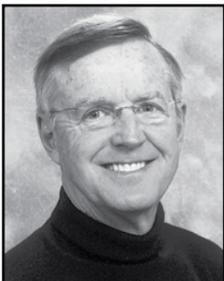
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IDAHO COURTS CORNER

Michael Henderson
Legal Counsel, Idaho Supreme Court

This year's extraordinarily long legislative session was devoted largely to the crafting of a budget in challenging economic conditions and, especially during its seemingly interminable coda, addressing the issue of transportation. Compared to other recent sessions, there was little legislation affecting the courts and legal practice. But there were a few significant bills that should be noted.

GUARDIANSHIPS AND CONSERVATORSHIPS

The lack of a comprehensive system for monitoring guardianships and conservatorships left some of Idaho's most vulnerable citizens unprotected for far too long. In 2004, the Legislature's Interim Guardianship and Conservatorship Committee examined the problem. One of the results was the establishment in 2005 of the Guardianship Pilot Project, which instituted pilot projects in six counties: Ada, Bannock, Bonner, Bonneville, Caribou, and Payette. Under this project, independent third-party reviews of conservatorships have been implemented, technology for tracking of accounting and reporting has been developed, and standardized reporting forms have been created. By 2007, compliance with reporting requirements in the six project counties had increased from 30% to 85%. In fiscal years 2008 and 2009, nearly 20% of the reports showed signs of potential fraud or exploitation and were referred for further investigation.

The bill creating this project had a sunset date of July 1, 2009. This year the Legislature adopted HB 103, which removes the sunset provision and authorizes review by the court or persons designated by the court of financial plans, inventories, accounts, and reports. The Guardianship Pilot Project Fund, which is supported by fees paid in guardianship and conservatorship cases, will be used to extend the monitoring procedures developed so far to all of Idaho's 44 counties.

DOMESTIC VIOLENCE COURTS

Idaho currently has seven domestic violence courts in operation in Ada, Bannock, Bingham, Bonneville, Custer, Jefferson, and Lemhi Counties. These courts permit swift, efficient handling of domestic violence cases, enabling courts to hold offenders accountable and increase the safety of victims and their children. These courts also make it possible to monitor related child protection, divorce,

child custody, and criminal cases. This allows for a coordinated approach and avoids the possibility of conflicting orders arising from different cases affecting the same family.

HB 104 creates a statutory framework for domestic violence courts. It provides domestic violence court coordinators to assist the court and serve victims and families, and gives the already existing Children and Families in the Courts Committee responsibility for establishing policies and procedures, providing oversight, making funding recommendations, and providing training. The bill also imposes a \$30 fee on offenders convicted of specified crimes related to domestic violence, alcohol abuse, and controlled substances. The funds generated by the fees will be used to defray the cost of domestic violence court coordinators.

BAIL

Idaho's current criminal bail statutes date back to 1864. It is difficult to apply their provisions to bail bonds for the simple reason that, as the Supreme Court noted in *Leader v. Reiner*, 143 Idaho 635, 151 P.3d 831 (2007), they predate the modern commercial bail industry.

In 2006 the Supreme Court formed the Bail Bonds Guidelines Committee, chaired by District Judge Barry Wood and including representatives of prosecutors, defense counsel, sheriffs, the Department of Insurance and the bail industry, as well as district judges, magistrate judges, and trial court administrators. One of the products of that Committee is HB 184, which enacts an entirely new chapter addressing bail. The new statutes explicitly address the three forms of bail – cash bail, property bonds, and bail bonds. They include specific standards for the posting of property bonds and bail bonds, as well as forfeiture, revocation or exoneration of bail. The bill also resolves an apparent conflict that currently exists between the statutes and court rules regarding when forfeiture is set aside. Under the new statutes, the forfeiture will be set aside if the defendant appears before the court within 180 days following the order of forfeiture. But if the defendant was not returned to the county where the criminal case is pending, the court may condition the setting aside of the forfeiture on payment of the cost of transporting the defendant back to that county.

The new statutes will provide clear guidance to the courts, the parties, and bail companies, and lays the foundation for the adoption of uniform statewide rules and guidelines.

COURT FEES

HB 105 updates some of the provisions of Idaho Code § 31-3201A relating to court fees in civil cases. The standard fee for filing a civil case, \$88, remains unchanged. But cases where the amount claimed does not exceed \$300 have carried a filing fee of \$66, and cases where the amount claimed is more than \$300 but no more than \$1,000 have carried a fee of \$68. These cutoff points for different fees may have made sense when they were adopted in 1969 and the maximum amount that could be sought in small claims court was \$200, but they make little sense now. The filing fee for all of these cases will now be \$88. The bill also adds to the statute a comprehensive list of the cases in which no filing fee is charged, and provides that intervenors will pay the standard appearance fee of \$58. The filing fee for small claims cases is increased from \$35 to \$41; the addition of the \$6 fee for the Senior Magistrate Judges Fund corrects an omission made in 2006 when the Fund was created.

CHILD SUPPORT IN VEHICULAR MANSLAUGHTER CASES

In 1994 a provision was added to Idaho Code § 18-4007 stating that a person convicted of a vehicular manslaughter involving the death of a parent of a minor child may be ordered by the court to pay child support until the child reaches the age of 18. The provision also stated that the support to be paid "shall be established in accordance with the child support guidelines then in effect." But the child support guidelines are designed to distribute the support obligation between the parents of a child in an equitable fashion; they were not intended to establish the support obligation of an unrelated third party. Courts have found the application of the guidelines to this very different situation to be a difficult and frustrating task. SB 1004 removes the provision requiring the use of the child support guidelines in this setting and states instead, "In setting the amount of support, the court shall consider all relevant factors." The mystery that remains is why the child support provision is made applicable only to vehicular manslaughter cases and not to other forms of homicide.

RESTRICTED DRIVING PERMITS IN DRUG COURTS AND DUI COURTS

Idaho law currently requires that repeat DUI offenders have their licenses suspended for one year with no driving privileges whatever. This is consistent with federal law, which has required states to have an absolute one-year suspension for repeat DUI offenders or face a transfer of a portion of their federal highway funds. But the federal law was amended in 2008 to provide that states could also meet this requirement if they required DUI offenders to serve a 45-day period of absolute suspension, followed by restricted driving privileges for the

purpose of work, school, or alcohol treatment, and if the offenders were required to have an ignition interlock on their vehicles. SB 1153 provides that judges may grant these privileges to participants in good standing in drug courts and DUI courts, with the added requirement that persons receiving such privileges must show proof of liability insurance. This provision will provide an added incentive for participants in these courts to comply with their terms and conditions in order to obtain these driving privileges, and will also provide them with a means of getting to work, school, and drug court programs, which should increase their chances for success.



Michael Henderson is *Legal Counsel for the Idaho Supreme Court. He previously served as a Deputy Attorney General for 18 years (seven of those years as Chief of the Criminal Law Division), and before that was a Deputy Prosecuting Attorney in Ada, Blaine and Twin Falls Counties.*

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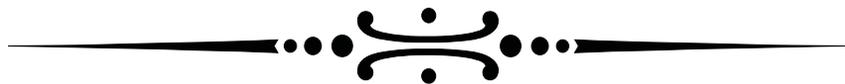
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THE IDAHO PRO BONO COMMISSION: A CALL TO JUSTICE

John J "Jack" McMahon
University of Idaho College of Law Pro Bono Program Director



In Fond Remembrance

The Idaho Pro Bono Commission honors the many and varied contributions of our friend Allyn Dingel to pro bono 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."

—M. Allyn Dingel, Jr. December 12, 2008

"To him friendship never was egocentric, never was what you would do for Allyn. It always was what he would do for you"—Hon. George David Carey, May 1, 2009.

Nationwide a pro bono "renaissance" is underway.¹ A major effort to spur such a revival in Idaho has been a joint Resolution by the Idaho Supreme Court, the United States District Court for the District of Idaho and the Idaho State Bar to create the Idaho Pro Bono Commission.²

At the Commission's first meeting on April 14, 2008, Idaho Chief Justice Daniel Eismann voiced concern for those who cannot afford legal services, and reminisced about his years in private practice in Owyhee County where pro bono service was "a daily fact of life." U.S. District Chief Judge B. Lynn Winnill spoke of the 80% of federal court litigants who are pro se, and the critical contribution made by members of the federal bar who take those cases.

Idaho Attorney General Lawrence Wasden related the importance of pro bono work in forming his own concept of justice and of a society based on the rule of law. University of Idaho College of Law Dean Donald Burnett spoke of pro bono initiatives at the College of Law and noted that every Idaho lawyer takes an oath "never to reject, for any consideration personal to myself, the cause of the defenseless or oppressed." It is with these words of justice and compassion for those in need that the Commission began its work.

WHAT IS THE TASK OF THE COMMISSION?

The Commission identified three goals necessary to create a culture of pro bono service in Idaho:

1. To increase pro bono participation by private sector attorneys, both in private firms and in corporate legal departments.
2. To increase pro bono participation by public sector attorneys, including deputy attorneys general, prosecuting attorneys, public defenders, city attorneys, and judicial clerks.
3. To have judges adopt "best practices" encouraging and supporting pro bono participation by the attorneys under their jurisdiction.

GOAL 1— INCREASING PRIVATE SECTOR PRO BONO - PRO BONO POLICY TEMPLATES

The Commission adopted two pro bono policy templates, one for private firms and one for corporate law departments. These template policies encourage firms and corporations to discuss and to clarify such issues as:

- (a) How pro bono hours will be treated in organizations with billable hour requirements;
- (b) How an attorney's pro bono work will be treated in advancement and partner and associate compensation decisions;
- (c) Annual goals regarding the number of pro bono hours contributed by the law firm; Establishment of

systems ensuring that firm pro bono programs are managed effectively, that participating attorneys are trained adequately, and that the highest levels of firm management oversee and participate in their programs.

The Commission encourages all private law firms and corporate law departments, large and small, to adopt an in-house pro bono policy tailored to their own unique legal culture and needs. The templates, which are based largely on policies already adopted by Idaho firms, are available from the Idaho State Bar³ and can be used as firms and law departments see fit. Some of the issues the Commission worked through in drafting its template policies may be of interest as private sector lawyers consider their own policies.

Should Pro Bono Hours Count as Billable Hours?

The ABA Report identified "limited time" and the fact that lawyer status is "measured by billable hours" as the greatest obstacles to pro bono service in private law firms. The response of the ABA House of Delegates is to urge law firms to adopt policies that

- (a) count pro bono hours as billable hours;
- (b) consider attorneys' commitment to pro bono activity as a favorable factor in decisions affecting compensation and advancement; and
- (c) set annual goals for hours contributed through law firm pro bono programs.⁴

The Commission template incorporates these ABA recommendations. But it also provides two other alternatives. One is based on an Idaho firm policy that does not prescribe a specific number of billable hours, but that has a comprehensive program which produces similar results. Another alternative commits to treating pro bono work positively when considering compensation and advancement.

What "Counts" as Pro Bono

One issue that Commission members debated was: What should "count" as pro bono? The policies supplied by private firms tended to count only work done free of charge for the needy and for organizations that provide legal services to the needy – what commentators on Idaho Rules of Professional Conduct Rule 6.1 (IRPC 6.1) call "Tier 1" pro bono services.

The Commission was torn between following the commendable lead of firms that want to stick to "Tier 1" service, and providing the full spectrum of services allowable under IRPC 6.1. Commission members chose the latter alternative in order to provide as many options as possible. Thus, the final template also "counts" as pro bono:

- Legal services for charitable, religious, civic, community, governmental and education organizations in matters designed primarily to address the needs of persons of limited means.

- Representation of businesses owned by persons of limited means for the purpose of community economic development.
- Legal education and bar activities, designed to assist individuals of limited means or to prevent social or civil injustice.
- Participation in activities for improving the law, the legal system or the legal profession

The Commission found it helpful to identify a list of things that do *not* count as pro bono:

- Legal services rendered to clients who did not pay
- Community and church volunteer work of a non-legal nature
- Work undertaken on a contingency fee basis unless done with the up-front intent to donate the fee to the client or to a legal services organization
- Legal services provided to friends or family members who are able to pay

The “Malpractice” Question

Another issue the Commission discussed was the frequent objection, “I cannot do pro bono work (usually meaning family law) because I’d be committing malpractice if I work outside my area of expertise.” Three responses are worth considering. First, pro bono is not synonymous with family law. A broad spectrum of pro bono work is available under Rule 6.1

Second, attorneys are life-long learners. We often find it necessary to cope with major changes even within our own specialty areas (think of recent revisions to the bankruptcy code, the tax code, health law, etc.). An attorney or firm may gain the necessary expertise through CLE⁵ programs or through self study.

Finally, a firm can adopt its own in-house “signature program” and develop the expertise necessary to run it. Examples include:

- A law firm carves out an area (say, immigration law), invites an expert in that area to train attorneys and makes them available when the need arises.
- A law firm investigates an area of poverty law and puts together in-house its own manual of law and legal forms necessary for firm members to practice comfortably in that field.

GOAL 2—PUBLIC SECTOR ATTORNEY POLICIES

The Idaho State Bar’s 2007 membership survey listed 18% of its responding attorneys as government employees. Virtually all responded that they did not do pro bono because government attorneys are “not allowed to accept” pro bono work.⁶ Fortunately, this is not the case. For example, both the U.S. Attorney’s Office and the Office of the Attorney General have policies encouraging pro bono work, provided certain conditions are met. Those conditions focus on conflicts of interest and acceptable use of government time and resources.

The broad range of allowable pro bono activities means that there are many types of pro bono work that involve no conflict at all. The dilemma presented by using government resources to do pro bono work can be resolved. For example, many government resources -- such as using a computer to type a document or using a phone to make a local phone call -- have zero or *de minimis* incremental cost.. The policy template addresses more complex issues and provides a roadmap insuring that public sector attorneys can make significant contributions to the field of pro bono service.

GOAL # 3 - JUDICIAL SUPPORT AND ENCOURAGEMENT OF PRO BONO

In 2001, The U.S. Conference of Chief Justices adopted Resolution No. 23, which states that “the Judicial Branch, in our constitutional structure, shoulders primary leadership responsibility to preserve and protect equal justice and to take action necessary to ensure access to the

justice system.” The Chief Justices urge judges throughout the country “to establish partnerships with state and local bar organizations, legal service providers, and others” to take the actions necessary to open the doors of the courthouse to those least fortunate in our society.

The Commission’s judicial members -- Idaho Supreme Court Justice Jones, U.S. District Judge Candy Dale and Magistrate Judge Rick Carnaroli -- are exploring ways in which Idaho judges can carry out their responsibility of assuring access to justice for all.

Actions under consideration include: taking direct action to urge law firms to adopt pro bono policies and pledge to engage in pro bono work; serving on award panels and presiding at award ceremonies for attorneys who do extraordinary pro bono work; serving on CLE panels in their areas of expertise in poverty law. In addition the judges will be exploring possibilities for accommodations for those engaging in pro bono such as special calendaring for pro bono cases.

* * * * *

The Idaho Supreme Court, the U.S. Federal District Court and the Idaho State Bar are committed to ensure that justice reaches the poorest, most under-represented and most hidden corners of our society. The Idaho Pro Bono Commission hopes that our efforts will assist your efforts in achieving our common aspiration. Please contact a Commission member if you wish your voice to be heard in our deliberations.⁷

ABOUT THE AUTHOR

John J. “Jack” McMahon, is a member of the Idaho Pro Bono Commission and presently serves as the University of Idaho College of Law Pro Bono Program Director. He is a past Idaho State Bar Commissioner and President, and former Idaho Chief Deputy Attorney General.

ENDNOTES

¹ The term refers to the work of the ABA House of Delegates in August 2006 and to a dozen resolutions on pro bono enacted at that time. For a summary of the work and the text of the resolutions see:

<http://www.abanet.org/renaissance/downloads/finalreport.pdf>

² http://www2.state.id.us/isb/advocate/advocate_online.htm; *The Advocate*, 51(5):31, May 2008.

³ The private sector templates are available on the Idaho State Bar website http://www.isb.idaho.gov/ilf/ivlp/join_ivlp.html - once on the page click on the Pro Bono Commission in the left column.

⁴ Resolution 121A, ABA House of Delegates, August 2006. See fn. 1 *supra* for full text.

⁵ To respond to the need for attorney training, the Commission has partnered with the Family Law Section to bring CLE training in family law to non-specialists in October 2009.

⁶ The survey questionnaire was in multiple-choice format. This answer, while being the closest pertinent option, may not have reflected the sentiments of those who chose it.

⁷ Commission members from the judiciary are: Idaho Supreme Court Justice Jim Jones, U. S. District Court Magistrate Candy Dale, and Idaho Sixth District Court Magistrate Judge Rick Carnaroli. Private bar and public sector members are: David E. Alexander, Sunrise A. Ayers, Susie Boring-Headlee, Richard C. Boardman, Donald F. Carey, Peter C. Erbland, Trudy Hanson Fouser, Mary S. Hobson, Lorna K. Jorgenson, Linda Judd, Brian P. Kane, James L. Martin, John J. McMahon, Terry Michaelson, Michelle R. Points, B. Newal Squyres, John Tait and Terry Uhling.

6.1 CHALLENGE
NEARLY 6,000 HOURS
FOURTH DISTRICT BAR ANNOUNCES WINNERS

The winners of the Fourth District Bar's 6.1 Challenge were announced at the Law Day Reception on May 1 at the Rose Room in downtown Boise. The 6.1 Challenge is an event to encourage and formally recognize pro bono service. The winners were selected from the entries of law firms and government offices by a distinguished panel of judges including Boise Mayor Dave Bieter, Federal Magistrate Judge Candy Dale, Fourth District Judge Ronald J. Wilper, Statesman Editor and Vice President Vicki Gowler, and Idaho Supreme Court Justice, Roger S. Burdick. The hours reported through the Challenge this year totaled nearly 6,000.

Justice Burdick made the presentations on behalf of the judges' panel and added his personal note of thanks:

"When I observe busy, stressed legal professionals reaching out to help these unprotected, I see protectors of our very life, our tranquility, our pursuit of happiness. I—We thank you so much for anything you do to help preserve our way of life in the Rule of Law."

The panel this year expanded the awards to include a new category for public sector law offices and honored the **Law Clerks of the Idaho Court of Appeals** for their outstanding contributions including participation in Family Law Clinics, research and support for pro bono immigration projects, and participation in activities for improving the law, the legal system and the profession. The clerks honored were Chris Christensen, Sara Bearce, and Alison Graham.

Audrey L. Numbers, a sole practitioner in Boise, received the Small Firm 6.1 Challenge award for her varied contributions to pro bono through the CASA program, mentoring volunteer lawyers in family law cases, and Bar-related work including organizing CLE programs to assist lawyers who wish to act as pro bono attorneys in family law cases.



Audrey Numbers accepts the 6.1 Challenge Small Firm Award.

For the second consecutive year, the Large Firm award went to **Holland & Hart, LLP**. Over thirty lawyers contributed to the firm's total of more than 2400 pro bono hours in this reporting year in a wide array of activities including representation of victims of domestic violence, immigration work, and legal services to a variety of nonprofit organizations.



Justice Roger Burdick congratulates Linda Jones as she accepts the 6.1 Large Firm Award given to Holland & Hart, LLP for their participation in the pro bono challenge.

As outstanding as these winners are, there was one entrant who was truly exceptional. **Robert L. Aldridge** contributed **over 700 hundred hours** of service since May 2, 2008. Given that Aldridge previously won the Small Firm Award in 2007 with a similar breath-taking total, the judges' panel reasoned that his service required a "lifetime achievement award." He was presented with a unique award that bore the highly accurate inscription, "In a Class by Himself."



In a Class by Himself: Bob Aldridge accepts the special 6.1 Challenge award created for his exceptional philosophy to doing pro bono work.

SPECIAL THANKS

The Idaho Volunteer Lawyers Program wishes to give special thanks to the **Seiniger Law Offices** for its donation of the back page of this volume of *The Advocate* with its compelling image of the denial of access to justice. Attorneys are unique in holding the keys that unlock our system of justice. When attorneys donate their services to assist a child, or any vulnerable person, they are literally providing access justice. Thank you **Breck Seiniger** for your generous donation, and to all who provide access to justice through pro bono work.

LAW DAY ACTIVITIES

Established in 1957 by the American Bar Association, Law Day is a national day set aside to celebrate our legal system. On May 1, Law Day programs are conducted across the country for both youth and adults and are designed to help people understand how law keeps us free and how our legal system strives to achieve justice. The Fourth District Bar Association participates every year. This year's Law Day Committee was chaired by Heather McCarthy. Committee members were: Chris Christensen, Mary Hobson, Dan Gordon, Gabe McCarthy, Nicole Hancock, Galen Carlson, Stacy Wallace, Laurier Fortier, and Jeanne Howe. They started meeting in January to coordinate their efforts for the following 2009 programs: Liberty Bell Award, School Outreach, Ask-a-Lawyer, Oral Argument 101, CLEs, and 6.1 Challenge awards. All of the activities came together successfully, culminating in the Law Day Reception at the Rose Room in Boise to present the Liberty Bell and 6.1 Challenge Awards.

FOURTH DISTRICT LAW DAY ACTIVITIES

The Liberty Bell Award: This award is given to acknowledge outstanding community service by an individual in the local community. The recipient of the 2009 Liberty Bell Award was Mr. Russ Heller, Boise School District, Education Services Center, Boise. He taught history for many years at Boise High School, counting many attorneys in Fourth District as previous students. Russ has worked for many years to coordinate the Law Related Education (LRE) activities between the Idaho Law Foundation and the Boise School District faculties and students. He works with LRE Coordinator Carey Shouffer on developing presentations for the annual conference, Law Day events, Lawyers in the Classroom, and other law related instructional events. He finds working as a judge during the Mock Trial finals a true pleasure, and enjoys witnessing the talented, well-prepared students as they argue their cases. Russ is a board member for Junior Achievement of Idaho, Inc.; Idaho Council on Economic Education; and Frank Church Institute. He is a Trustee and Executive Director for the Idaho Council for History Education; and the Idaho Coordinator of the Gilder Lehrman/Preserve America Program. He is the recipient of several academic and teaching honors, including two Presidential Scholar awards. Russ, and his wife Linda, have one daughter Jordan, a 5th-generation Idahoan who practices law in San Francisco.



David Leroy speaks with 2009 Liberty Bell Award recipient Russ Heller.

School Outreach Program: This program is conducted in the schools during April and May, with attorneys being matched with Fourth District school teachers in elementary through high school classes. The attorneys speak in the classes about legal careers and law-related

topics. This year the school outreach program coordinated 29 teacher/attorney pairings and reached over 1500 students.

Ask-a-Lawyer: This program gives the general public an opportunity to call in to speak to an attorney about a variety of legal matters. Attorneys and callers use only first names to remain anonymous, and all calls are limited to 15 minutes. Fifty-eight attorneys participated, spending over one hundred and twenty-five hours discussing questions from 21 different areas of law with over 325 callers. The Ada County Courthouse Hearing Room was provided for call intake and response.



Attorneys from Fourth District respond to telephone calls during the Ask-a-Lawyer program.

Court of Appeals—Oral Argument 101: On May 1, 2009, Timberline High School hosted the Idaho Court of Appeals during oral argument. The school's entire senior class observed this oral argument, and studied summaries of the parties' briefs in their government classes. Several local attorneys attended those government classes to field questions about the procedural and substantive aspects of the case. Following oral argument, the students had the unique opportunity to ask the Idaho Court of Appeals and counsel for the litigants questions about the judicial process and appellate advocacy. The State was represented in this oral argument by Ken Jorgensen, the Defendant was represented by Erik Lehtinen and the Judges hearing the case were Hon. David W. Gratton, Hon. Karen L. Lansing and Hon. Darrel R. Perry.

CLE – civility and professionalism: Former Idaho Lieutenant Governor and Attorney General, David Leroy discussed President Abraham Lincoln as a model of civility and professionalism for today's lawyer. Mr. Leroy is a nationally-recognized authority on President Lincoln.

The 6.1 Challenge: Modeled after Idaho Rule of Professional Conduct 6.1 relating to the number of pro bono hours an attorney should handle during a year. The 6.1 Challenge represents a friendly competition to recognize and encourage pro bono and public service from law offices within the Fourth District. See page 31 for more information on the 6.1 Challenge winners.



Justice Roger Burdick, U.S. Magistrate Candy Dale, Boise Mayor Dave Bieter, 4th District Judge Ronald Wilper and 2009 Liberty Bell Award recipient Russ Heller.

Ask-a-Lawyer volunteers

- Audrey Numbers, Numbers Law Office
- Beth Smethers, Hawley Troxell Ennis & Hawley, LLP
- Bob Faucher, Holland & Hart, LLP
- Brad Poole, Bradley Poole, Chtd.
- Brian Kane, Office of the Attorney General
- Cheryl Thompson, Holland & Hart, LLP
- Chris Christensen, Idaho Court of Appeals
- Chris Graham, Trout Jones Gledhill Fuhrman, PA
- Dan Gordon, U.S. Courts, District of Idaho
- Dean Arnold, Law Offices of Dean B. Arnold
- Emily Kane, Meridian City Attorney's Office
- Gabriel McCarthy, McCarthy Law
- Gery Edson, Gery W. Edson, PA
- Greg Bradford, Boise
- Heather McCarthy, Ada County Prosecutor's Office
- James Huegli, James D. Huegli, Attorney at Law
- Jeff West, Fletcher & West, LLP
- Jenifer Marcus, Boise
- Jerry Taylor, Boise
- John Connolly, Connolly & Smyser, Chtd.
- John Keenan, Office of the Attorney General
- John McGown, Hawley Troxell Ennis & Hawley, LLP
- Jon Steele, Runft & Steele Law Offices, PLLC
- Kate Ball, U.S. Courts, District of Idaho
- Katie Garcia, Fourth District Court
- Kevin Beaton, Stoel Rives, LLP
- Kimberly Watt, Ada County Court
- Laurie Fortier, Boise City Attorney's Office
- Loren Messerly, Ada County Prosecutor's Office
- Margery Smith, Law Office of Margery Smith
- Mark Coonts, Ada County Courthouse
- Mark Freeman, Foley Freeman, PLLC
- Maureen Ryan, Meuleman Mollerup, LLP
- Megan Mooney, U.S. District Court of Idaho
- Melissa Moody, Office of the Attorney General
- Michael Mehall, Boise
- Michael Gustavsen, Davison, Copple, Copple & Cox
- Mike Crawford, Ratliff Law Offices, Chtd.
- Mindy Willman, Ada County Trial Court Administration
- Nicole Trammel, Hawley Troxell Ennis & Hawley, LLP
- Noah Hillen, Idaho Supreme Court
- Pam Packard, Boise
- Pat Inglis, Sasser & Inglis, PC
- Patrick Madigan, New Albertsons, Inc.
- Rob Vail, Howell & Vail, LLP
- Scott Randolph, Holland & Hart, LLP
- Sean Beck, Ada County Court

- Shannon Romero, Idaho State Appellate Public Defender's Office
- Stephen Olson, Brady Law, Chtd.
- Steve Kenyon, Idaho Supreme Court
- Susan Bosworth, Susan E. Bosworth, Attorney at Law
- Tobi Mott, Holland & Hart, LLP
- Tom Donovan, Office of the Attorney General
- Tony Pantera, Marcus, Christian & Hardee LLP
- Tony Steenkolk, Boise Inc.
- Vickie Meier, Eberle, Berlin, Kading, Turnbow & McKlveen, Chtd.
- Weldon Stutzman, Idaho Public Utilities Commission
- Wes Scrivener, J.R. Simplot Company

School Outreach

Schools

- Bishop Kelly High School
- Cynthia Mann Elementary School
- Meridian Medical Arts Charter High School
- Les Bois Junior High School
- Boise High School
- Mountain View High School
- St. Mark's School
- Homedale Middle School
- Mountain Home High School
- Meridian Academy High School



Tagline

Volunteers

- Robert Berry, Hall Farley
- Kira Pfisterer, U.S. Courts, District of Idaho
- Jennifer Dempsey, Counselor at Law
- Demi Fisher, Associate General Counsel Micron Technology, Inc.
- Walt Donovan, Boise
- Susan Miner, Law Office of Susan D. Miner, PLLC
- Joe Miller, DREDGE MILLER KOONTZ, PLLC
- Mark Coonts, Ada County Courthouse Law Clerk
- Teresa Baker, Ada County Prosecutor's Office
- Alison Graham, Idaho Court of Appeals Law Clerk
- Jeff Brownson, Nevin, Benjamin, McKay & Bartlett, LLP
- Nikki Owens, Idaho State Appellate Public Defender's Office
- Elizabeth Allred, Idaho State Appellate Public Defender's Office
- Stacy Wallace, Deputy Prosecuting Attorney, Ada County Juvenile Division
- Shasta Kilminster-Hadley, Deputy Attorney General Natural Resources Division Office of the Attorney General
- Natalie Camacho-Mendoza, Camacho Mendoza Law
- Rick Boardman, Perkins Coie, LLP

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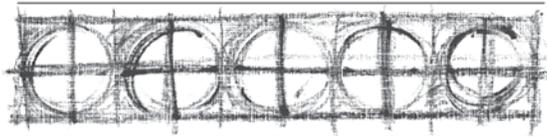
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Law Related Education Program Completes Another Successful Mock Trial Season

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

The 2009 mock trial season began with nearly 40 teams registering for the competition in one of four regional tournaments held throughout Idaho during late February and early March. This year's case involved the allegation of the illegal taking of a grizzly bear.

From the regional tournaments, 12 teams advanced to the state tournament held in Boise on March 16 and 17. The teams who advanced included:

Pocatello Regional

- Blackfoot High School (2 teams)

Northern Idaho Regional

- Coeur D'Alene High School

Lewiston High School

- Logos Secondary School (2 teams)

Treasure Valley Regional

- Boise High School
- Skyview High School
- St. Ambrose High School (2 teams)

Caldwell Regional

- Caldwell High School
- Vallivue High School

The quarter-final rounds of the state competition, held on Monday night, March 16 at the Ada County Courthouse in Boise, included the four teams who advanced to the semi-final rounds on Tuesday, March 17 at the Federal Courthouse. These four teams included two teams from Logos Secondary School, as well as two teams from St. Ambrose High School from Boise, Idaho.



Russ Heller, George Breitsameter, and Justice Joel Horton judge the state championship round.

In the championship round held at the Idaho Supreme Court on March 17, Logos Secondary School Varsity team defeated St. Ambrose Junior Varsity Team in a split decision with an overall spread of only 5

points. George Breitsameter, with the U.S. Attorney's Office, presided over the case. The Honorable Joel Horton, Supreme Court Justice, and Russ Heller, Boise School District's Educational Services Supervisor for Social Studies joined him on the judging panel.

During a debrief session after the championship round, the judging panelists complimented the participants for their poise and professionalism, also their ability to bring the case to a level that professionals would admire and be covetous of. Logos will now advance to the National High School Mock Trial Championship in Atlanta, Georgia, May 6th through May 10th.



Two mock trial attorneys confer with mock trial judge Ritchie Eppink during the state quarter finals.

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

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



St. Ambrose High School of Boise, this year's State Mock Trial Runner up.

Mock Trial 2009 Thank You

Caldwell Regional

- Anne-Marie Kelso
- Barbara J. Richart
- Hon. Thomas Joseph Ryan
- Mandy Hessing
- Mark L. Means
- Matthew A. Johnson

Pocatello Regional

- Ben Carlson
- Dave Bagley
- Dorothy Fica
- Hon. Mitchell Brown
- Hon. Ron Bush
- Kelly Kumm
- Mike Fica

Special thanks to the Six District Bar Association for their donation to cover the cost of food for the tournament.

Treasure Valley Regional

- Adam Kimball
- Chris Christensen
- Dave Lloyd
- Hon. James Cawthon
- Laura Mattern
- Matt Osterman
- Mike Olsen
- Mikela French
- Pam Howland
- Debbie Dudley
- Ritchie Eppink
- Scott Keim

North Idaho Regional

- Charles L. Graham
- Dan Spickler
- Edwin L. Litteneker
- Hon. John Bradbury
- Hon. Michael James Griffin
- J. Mitchell Pickerill
- Jamie C. Shropshire
- Jessica Koep
- John Reid Tait
- Sandra Dickerson
- Tanner Crowther

State Competition

- Alison Graham
- Brad Andrews
- Bruce Castleton
- Colleen Zahn
- Cynthia L. Yee-Wallace
- Dave Lloyd
- David I. Stanish
- Debbie Dudley
- Emil Berg
- George Breitsameter
- Glenda Talbutt
- Hon. Cheri Copsey
- Hon. Christopher Bieter
- Hon. Theresa L. Gardunia
- Jeff Simmons
- John C. Keenan

- Justice Joel Horton
- Katelyn R. McKinney
- Kevin Satterlee
- Leo Shishmanian
- Leslie Bigham
- Mike Fica
- Mike Olsen
- Pamela Packard
- Ritchie Eppink
- Russ Heller
- Tonya Westenskow
- Walter John Donovan Jr.

Idaho State Bar Staff

- Ashley McDermott
- Carey Shoufler
- Jeanne Barker

Attorney and Teacher Coaches

- Aaron Lucoff
- Blaine Horrocks
- Bob Pangburn
- Brian Douglas
- Chris Schlect
- Darrell May
- David Goodwin
- Donald Frashier
- Greg Dickison
- Heather Luff
- Holland Johnson
- Ian Service
- Jared Harris
- Jeanette Jackson
- John Petti
- Julie Underwood
- Kathy Malm
- Laura Kingsley
- Lee Schlender
- Linda Donnelly
- Mike Riedle
- Mr. Smith
- Pam Danielson
- Robert Bellomy
- Sonyalee Nutsch
- Stephanie Lauritzen

- Steve Nipper
- Tabitha Miller-Zuercher
- Tom Garfield
- Vicki Armstrong
- Wes Jensen

Courts

Ada County Courthouse

- Hank Ortiz
- Jerry Goulding
- Joe Defruscio
- Karen Eckroat
- Larry Reiner
- Margie Shepherd

Federal Courthouse

- Kathy Stutzman

Idaho Supreme Courthouse

- Karel Lehrman
- Steve Kenyon

Nez Perce County Courthouse

- Hon. Carl Bryce Kerrick
- Shellie Roe

Bannock County Courthouse

- Hon. Rudolph Enrico Carnaroli
- Suzanne Johnson

Canyon County Courthouse

- Chuck Chaloupsky
- Dan Kessler

Catering

- Boullion Soup & Catering
- Happy Day Catering
- Heavenly Ham
- Qudoba Mexican Grill

Vendors

- Larry Davenport – Acclaimed Video, Inc.
- Ray Gadd – Steve Smith Photography
- Tenille Kelly – Springhills Marriot



Logos Secondary School of Moscow, this year's State Mock Trial Champions.

LESSONS FROM THE MASTERS—2009

ISB ANNUAL CONFERENCE - BOISE CENTRE ON THE GROVE - FRIDAY, JULY 10, 2009

Betty Richardson

Richardson & O'leary, PLLC

There is no better way to earn Continuing Legal Education credits than to learn from those who are widely regarded as masters of the legal profession. Thus, for the fourth consecutive year, the CLE Committee of the Idaho State Bar and Law Foundation is pleased to offer the popular "Lessons from the Masters" program at the annual meeting. This year our featured speakers will be Judge Lowell D. Castleton, formerly of Preston and presently of Boise; Tim Hopkins, senior partner of , Idaho Falls; and Merlyn W. Clark, partner in the Boise office of Hawley Troxell Ennis & Hawley LLP.

The Hon. Lowell D. Castleton is a Senior Judge in Idaho and currently serves as the Director of Judicial Education for the Idaho Supreme Court. Judge Castleton obtained his undergraduate and law degrees from Brigham Young University and the University of Utah, respectively. He practiced law in Preston, Idaho, from 1975 until his appointment as a Magistrate Judge there in 1983. Throughout his career, Judge Castleton has provided strong and inspired leadership in his areas of specialization: elder law, guardianship, and conservatorship.

In his role as Director for Idaho's Pilot Monitoring Program in Guardianship/Conservatorship, and in his work with the Idaho Commission on Aging, Judge Castleton has taught and mentored hundreds of attorneys, agency staff, and volunteers. Moreover, through his extensive involvement on committees and task forces regarding child abuse, Judge Castleton has done a great deal to address one of the most important and vexing family law issues of our time. Judge Castleton has written and spoken extensively on a wide variety of family law issues, and he has received awards for his work from the Idaho Council on Domestic Violence, the Idaho State Bar, and the National Prevent Child Abuse America organization.

Tim Hopkins is one of the best known and most highly regarded attorneys in Idaho. A graduate of Idaho Falls High School, Tim served his country in the United States Army from 1954-56. He received his undergraduate degree from Stanford University and his law degree from George Washington Law School. Admitted to practice in both California and Idaho, Tim has been engaged in private practice since 1963, and has served as counsel in some of Idaho's most prominent public law cases. He has served as President of the Idaho State Bar and is the recipient of both the Outstanding Service Award and the Distinguished Lawyer Award. Tim has also held several leadership roles with the American

Bar Association. These have included chairing the Standing Committee on the Federal Judiciary and Chairing the Standing Committee on the Constitution and Bylaws. He is currently nominated to the ABA Board of Governors.

In addition to his many contributions to the legal community, Tim has long been active in the larger community. Among Tim's many leadership roles are his service as Chair of the Idaho Nature Conservancy and member of the Board of Directors of the Idaho State University Foundation, the Teton Regional Land Trust, and the Eastern Idaho Economic Development Council.

Few Idaho lawyers have shaped and influenced the practice of law in our state as extensively as Merlyn Clark. A graduate of the University of Idaho, College of Law, Merlyn has practiced in Idaho since 1964. Well known for his mastery and modernization of the Idaho Rules of Evidence, Merlyn has a very successful civil litigation and alternative dispute resolution practice. Merlyn has served the Idaho State Bar and the Idaho judiciary in many roles for which he has received several honors and awards. Among these are the Distinguished Lawyer Award presented by the Idaho State Bar, the Award of Legal Merit presented by the University of Idaho, College of Law, and the Distinguished Service Award presented by the Idaho Judiciary.

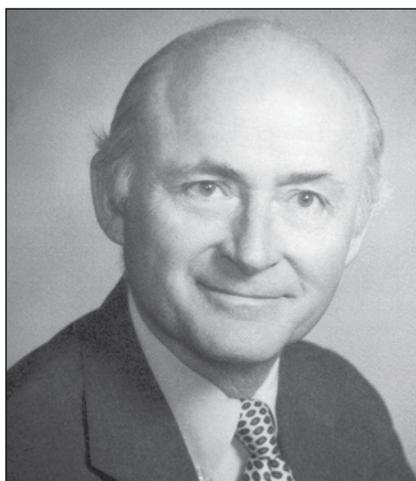
Merlyn is a Fellow of the American Bar Foundation, a Fellow of the American College of Trial Lawyers, a Master Lawyer Emeritus of the American Inns of Court Foundation, a Certified Professional Mediator of the Idaho Mediation Association, and a Fellow of the American College of Civil Trial Mediators. Merlyn has provided training and procedural guides for state court judges, and he has been a frequent and popular presenter at continuing legal education programs sponsored by the Idaho State Bar and Law Foundation.

In previous years, our "Masters" series has featured presentations by other outstanding attorneys, including: Scott W. Reed, Allen R. Derr, Fred W. Hoopes, former Idaho Supreme Court Justice Byron Johnson, Raymond C. Givens, Paul L. (Larry) Westberg, Ray Rigby, David Leroy and the late Allyn Dingle. Their presentations were videotaped and are available for rental through the Idaho State Bar.

Please join us on at the annual meeting on Friday morning, July 10, 2009, for what promises to be a most memorable series of presentations from three of the Idaho Bar's most accomplished practitioners.



Hon. Lowell D. Castleton



C. Timothy Hopkins



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OF INTEREST

— IN MEMORIAM —

M. ALLYN DINGEL, Jr. 1936-2009

M. Allyn Dingel, Jr. passed away at his home on April 23, 2009 after courageously battling lung cancer for nearly two years. Allyn was born in Twin Falls on Oct. 10, 1936, to Allyn and Della Dingel. He was a rambunctious youth and full of life. Baseball was his passion. The stories of him playing baseball growing up and in college are legendary, with his rifle arm and home run power.

Following his school days in Twin Falls, where he was Student Body President at Twin Falls High, Allyn attended the University of Idaho. It was there he first met his beloved Fran Baudek. The two, however, were not immediately love struck. School was important to Allyn and on their dates he queried her about her grades. Fran was not impressed. He missed his opportunity, but destiny would later bring the two together.

Allyn was active on campus with his fraternity, Phi Gamma Delta, the Vandaleers, and other student organizations. Allyn graduated from UI in 1958 with a B.A. in Economics. On Doctor Erwin Graue's directive, he successfully applied for a scholarship to New York University Law School. He finished his first year at NYU in the top twenty of his class, entitling him to join the NYU Law Review. After graduating from NYU with an L.L.B. in Law, Allyn returned to Idaho and was admitted to the Idaho State Bar in 1961.

He practiced in Twin Falls until early 1964, when he joined the Idaho Attorney General's office and moved to Boise. Allyn discovered that Fran was teaching in Boise, and more importantly, that she was single. His dating skills vastly improved, Fran and Allyn quickly became best friends. On December 26, 1964, they became lifelong partners and were married in the Chapel at St. John's Cathedral. Their marriage was blessed with two sons, Bryan and Mike.

Following three years at the AG's office, Allyn went into private practice and practiced law with the same Boise firm for nearly 40 years. At age 70, his law firm retired him, but Allyn did not retire from the practice of law. His vigor for the law was never stronger. He continued practicing and officed with John Runft and Jon Steele for one year.

During the last twelve months of his life, Allyn was of counsel with the law firm of Moore, Smith, Buxton & Turcke. Allyn's days at Moore Smith were some of the happiest in his professional life. He cherished

every day he was there, and they have told the family how fortunate they were to have had him. During the last days of his life, his mind was as sharp as ever, and he was intent on continuing his practice despite the physical hardships he was enduring with his battle with cancer.

Allyn was a true trial lawyer. The courtroom was his stage. His presentation before juries was not always conventional, but he had a way of communicating that made him believable. He had his own way of doing things, his own vocabulary, and his own style that often resulted in humorous anecdotes, sometimes on purpose, sometimes accidental.

Allyn was a lawyer's lawyer. He was well liked and respected by his colleagues in the law, young and old. Many of Allyn's courtroom adversaries were Allyn's closest friends, a reflection of his professionalism. Allyn also had many friends in the judiciary. His circle of friends from the law perpetuated throughout the United States. Allyn provided pro bono legal services his entire legal career.

Allyn was a founding member of the Idaho Law Foundation. He was a Fellow of the American College of Trial Lawyers. He served as Idaho's lawyer representative to the Ninth Circuit Conference of the United States Courts. He was a member of the Idaho Code Commission. He served as the Idaho State Bar's delegate to the American Bar Association House of Delegates. He was a Fellow of the American Bar Foundation. Allyn served as the Chancellor for the Episcopal Diocese of Idaho for 25 years. He served on the executive committee of Idaho Partners Against Domestic Violence. Allyn was a member emeritus on the Advisory Board for UI's College of Law.

The Idaho State Bar awarded him its highest attorney accolade in 2004, naming him a Distinguished Lawyer. The judges of Idaho's Fourth District honored Allyn in July 2008, naming a courtroom after him. Many current and former federal and state court judges, including nearly all of Idaho's appellate judiciary, attended the courtroom dedication ceremony, a tribute of respect to Allyn's long standing service to Idaho's judiciary.

Allyn was a pro bono legislative liaison and lobbyist for Idaho's judiciary and various charitable and philanthropic organizations for over 30 years. The Idaho Legislature commended him this year with Senate Concurrent Resolution 111, honoring him for his years of service to the Idaho Legislature, the Idaho courts, and for his charitable and

philanthropic endeavors. Rarely a day went by where Allyn did not spend time pro bono on a charitable, community or philanthropic cause.

Allyn was a pure silver and gold Vandal. He often instigated impromptu choruses of the Vandal Fight Song. He was a baritone and sang at many weddings. He also played the violin for the Boise Philharmonic. Allyn affiliated himself with the Republican Party but he often supported the left wing. Ensuring a balance of power in government was important to him; and, his knowledge of Idaho was vast, particularly the inner workings of Idaho's three branches of government.

He was generous with his story-telling and the sharing of his knowledge. He had a prodigious memory and not only remembered people's names and where they hailed from, but also their background, lineage, and accomplishments. It was joked that you did not talk with Allyn, you listened. He did listen though, especially when people needed his support. It was a rare day that you spent time with him and did not learn something ... sometimes trivial, sometimes meaningful, but always memorable

The family has been told countless times by young lawyers how valuable Allyn was as a mentor early in their careers. To the older lawyers, he was known as a warhorse. He was also very influential in the lives of his sons as well as his sons' friends. Many of his sons' friends have told the family that Allyn was the most influential person in their life outside of immediate family. He had an eidetic memory. He did not forget. He did, however, forgive. Allyn had great compassion and the ability to find the good in people. Allyn had amazing stage presence and the ability to speak with ease in front of large groups of people, often impromptu.

There was no one more special in Allyn's life than his loving wife, Fran. They had many special trips together, as travelling was one of the passions they shared. Allyn's meandering side trips often led them to off the beaten path dirt roads and areas known only to locals. He was an adventurer. While he often worked late into the evening, he was a devoted husband and Fran meant the world to him. He knew he was very lucky to have her, especially these last months.

Allyn was a devoted father and he took great interest in his sons and their lives. Family vacations were always memorable, especially the time spent at their cabin in McCall. Allyn was especially close to his six grandchildren, whom he absolutely adored. Allyn's extended family was also very important to him, including Fran's sister Gerrie Crook and her

late husband Don, and their children and families. Family functions were a circus and he was the ringleader. He was our patriarch, our Don Corleone as he jokingly referred to himself. Our lives will never be the same, but we are blessed to have had him for the time we did and we will cherish our memories of him.

Allyn will be remembered for his heart of gold, the resonating sound of his voice, and his enduring smile. He will be remembered for the touch of his fingers to his lips, which was his sign of love and peace. He will be remembered for his wisdom, integrity, generosity, compassion, wit, keen sense of humor, eternal optimism, and unbridled enthusiasm for life. He will be remembered for his love of family.

Allyn is survived by his wife, Fran; their two sons, Bryan and his wife Valencia and Mike and his wife Lori; grandchildren Aleksei, Jackson, Halle, Jake, Audrey, and Isabelle; his sister-in-law Gerrie Crook; and nieces and nephews. The family gives special thanks to the staff at St. Luke's Hospital and MSTI, Boise, for their care and support.

Should friends desire, in honor of Allyn, memorial contributions may be made to the University of Idaho, College of Law, c/o Gift Administration-M. Allyn Dingel, Jr. Scholarship, POB 443147, Moscow, Idaho 83844-3147, or the Idaho Community Foundation (www.idcomfdn.org).

HON. LLOYD WEBB 1931-2009

Lloyd J. Webb, an attorney recognized by his peers as a "fierce advocate" for his trial and appellate work died peacefully Sunday, April 26, 2009, at St. Luke's Magic Valley Medical Center of leukemia.

Lloyd was born October 6, 1931, to Clarence Riley and Alta Simmons Webb in Twin Falls. He graduated from Twin Falls High School in 1949. He attended BYU and the University of Idaho and received his law degree from the University of Utah in June 1955.

Lloyd married Barbara Claire Birrell on December 22, 1954, in the Logan LDS Temple. They raised four children. He was a member of The Church of Jesus Christ of Latter-day Saints, where he faithfully served in many positions. His chief loves were his family and the legal profession.

Webb worked as a law clerk in Alaska before returning to Twin Falls. From 1957, he practiced law in Twin Falls until his recent retirement except from 1963 to 1966 when he served as a district judge in Burley and Rupert. At age 31, he was elected as a district judge for what was then the 11th District, covering Cassia and Minidoka counties.

He served as judge for three years and later returned to the bench for three months in 1998 after the death of Judge George Granata. Over his life, he handled nearly every kind of case imaginable, serving as a private attorney and a public defender and even looking at cases from the other side of the bench as a district judge. He was, said son and fellow attorney Curtis Webb, "the kind of lawyer we don't have anymore."

Though Webb had battled esophageal cancer since March 2007, his death still came as a surprise to many in the Magic Valley legal community.

To Ken Pedersen, Webb was a mentor and friend. The two practiced law together for about 18 years, and Pedersen recalled his partner's appellate work and annual reviews of new Idaho Supreme Court decisions at meetings of the Idaho Trial Lawyers Association - which Webb helped found.

Webb also helped current Idaho Supreme Court Justice Roger Burdick get his foot in the door. Just as he was about to finish law school at the University of Idaho, Burdick recalled, he heard a speech from Webb and afterward asked him for a job. He worked in Webb's firm for about a year, getting to know the attorney he now praises as "a real champion of the common man" and one of the best trial lawyers in Idaho.

"Many of his clients were people without money or high station in life," Burdick said. "But Lloyd felt that they were wronged, and he took their cases."

"He always told me he just wanted to be the practicing lawyer," Burdick said.

Webb served as legal counsel for the Times-News in the '70s and '80s. Most prominent among his First Amendment cases was the newspaper's defense against the Sierra Life insurance company in a \$36 million libel lawsuit, the largest suit ever of its kind at the time, according to Dick High, then editor of the Times-News. High said the case revolved around the paper's aggressive coverage of the company's fraudulent overvaluation of property in Western states. The paper used only financial data and records that it acquired in its investigation. No source quotes were ever used in the stories. "It was amazingly solid," said High. "They said, 'Give us the name of your tipsters.' We said, 'We haven't quoted anybody.'" "Eventually (Sierra Life) finally came up with an argument that if you say the truth enough times, it becomes libelous." The judge in the case ruled for the plaintiff, striking the paper's defense entirely. But Webb was convincing in his appeal to the Supreme court, earning a unanimous ruling in the paper's favor.

He is survived by the love of his life, Barbara of Twin Falls; and four children, Kevan and wife, Donna of Fredericksberg,

Texas, Curtis and wife, Kristy of Twin Falls, Carolea and husband, Bruce Wright of Pullman, Wash., and Barry of Jackson, WY. He is also survived by eight grandchildren; his sister, Clarene Law and husband, Creed of Jackson, WY; sister-in-law, Marie Webb of Twin Falls; and seven nieces and nephews. He was preceded in death by his parents; his sister, Doris; and his brother, Fred of Twin Falls.

JAY D. SUDWECKS 1940-2009

Jay D. Sudweeks, of Twin Falls, passed away Sunday, April 26, 2009.

He was born June 10, 1940, to Rachel and Harold Sudweeks in Fort Peck, MT. He was the youngest of four children and was raised in Idaho Falls. He graduated from Idaho Falls High School.

He then attended one year of college at Ricks College in Rexburg. Jay then had the opportunity to attend another year of college at Brigham Young University-Hawaii.

He was then called to serve a 2½-year mission to Switzerland from 1962 to 1965. Jay met Isabell Murray of Idaho Falls in 1962. They married in the Idaho Falls LDS Temple on Feb. 25, 1966.

After finishing his undergraduate degree at Brigham Young University in Provo, Jay attended the University of Utah Law School. Upon graduation, Jay and Isabell moved to Twin Falls in 1969. Jay had practiced law with the May, Sudweeks and Browning law firm for the last 40 years. Jay was a kind and loving father and husband.

He enjoyed traveling, playing golf and especially spending time with his family. Jay was very active in the LDS Church and served many different callings.

Jay is survived by his wife, Isabell Sudweeks; their children, Jayce (Jen) Sudweeks, Justin (Jennifer) Sudweeks, Jeremy (Michele) Sudweeks, Jennifer (Ben) Cluff and Jodi (Erik) Bradbury; and their grandchildren, Ivy and Jaye Sudweeks, Jessica, Alexa, Madison and Halle Sudweeks, Brooke, Erin, Isaac and Zach Sudweeks, Hannah, Ethan and Lily Cluff, and Luke and Mercedes Bradbury. He is also survived by his siblings, Al Sudweeks and Marge (Jim) Freston.

JOHN G. GRAY, JR. 1919-2009

John G. Gray Jr., 90, of Boise, died Monday May 4, 2009, at his home of natural causes. He was born in Los Angeles, CA, on April 29, 1919, to John G. Gray and Elizabeth C. Gallimore Gray. When John was six months old the family returned to Boise.

He attended schools in Boise, graduating from St. Theresa's Academy. He attended Boise Junior College and received an associate's degree in 1941. He then went on to Santa Clara University, and did not receive his degree in accounting from there until 1947, due to serving his country in the U.S. Army during WWII.

John was a staff sergeant and acted as a squad leader from 1942-1945 in the 84th Infantry Division, otherwise known as the Rail Splitters. He participated in the Battle of the Bulge, and the Crossing of the Rhine, receiving a Combat Infantryman Badge and The Silver Star for his service.

After the war John attended the University of Idaho and received his law degree in 1950. While enrolled at the University, he met and married his wife, Janet Long, on March 20, 1948.

John was admitted to the Idaho Bar in 1951. He also became a Certified Public Accountant and worked for Morrison-Knudsen as an accountant from 1951 to 1953. After that he established individual accounting and law practices. He was a part-time accounting instructor at BJC from 1956-1957.

John was a member of the American Institute of C.P.A.'s and the Idaho Society of C.P.A.'s and also the Idaho State Bar. John loved his family, and will be greatly missed.

John was preceded in death by his parents, and his two brothers James and Richard. John is survived by his wife Janet, of Boise; three children, son, Christopher Gray and wife Tanra, daughter, Kathleen Wood, and daughter Mary Jane and husband Sam Steiner; five grandchildren, Becky Fowers (Dusty), John Wood, Nick Steiner (Michelle), Elizabeth Wood, and Tom Steiner; and two great-grandchildren, Cami and Troy Fowers.

— RECOGNITION —

Moffatt Thomas Barrett Rock & Fields, Chtd. is pleased to announce that partner **Christine E. Nicholas** has been named a recipient of a [2009 Burton Award for Legal Achievement](#), which honors excellence in legal writing.

Ms. Nicholas' article, "Teach an Old UCC Dog New Tricks, An Overview of the U. N. Convention on the International Sale of Goods" was recently published in *Business Law Today*, a publication of the Business Law Section of the American Bar Association.

Each year the Burton Foundation, in association with the Law Library of Congress, honors lawyers whose writings "use plain, modern language and avoid archaic, stilted legalese." This year, 30 law firm award winners were selected by jury from entries submitted by the nation's 1,000 largest law firms.

The awards are selected, generally, by professors from Harvard Law School, University of Pennsylvania Law School, Michigan Law School, and a judge, among others. Judge Richard Posner (7th Circuit US Court of Appeals) and Judge Alex Kozinski (9th Circuit US Court of Appeals), Supreme Court Judge Carol Corrigan of California, and James Ward, California Court of Appeal (retired) are honorary members on the Burton Foundation board of directors.

Deborah Nelson, Givens Pursley LLP partner was recently selected as a member of the COMPASS Public Participation Committee. The Community Planning Association of Southwest Idaho (COMPASS) is an association of local governments working together to plan for the future transportation needs of the region. As a member of the Public Participation Committee, Deborah will help shape and communicate COMPASS's transportation policies and public outreach efforts.

Deborah's law practice is focused on helping clients navigate and obtain all of the legal entitlements required for the sitting, operation, or expansion of a business or development. She has experience with industrial, commercial, energy, agricultural, resort, large-scale residential and mixed-use projects.

Givens Pursley LLP is pleased to announce the addition of new partner **Donald E. Knickrehm** to the firm. Don brings with him over three decades of legal experience in the areas of real estate development and real estate related finance. Don has substantial experience in Retail Leasing and Shopping Center Development in most of the western states. Don's experience also encompasses real estate related loan restructures, workouts and foreclosures, having represented a number of S & L's, banks, and life insurance companies throughout the RTC era, and since.

Don has been active in community affairs for most of his career, having served on the Board of Directors and as Chairman of the Greater Boise Auditorium District (the entity that developed, built and operates the Boise Center on the Grove public convention center); the Board of Directors and the Executive Committee of the Boise Metro Chamber of Commerce; the Board of Directors and as Chairman of the Boise Valley Economic Partnership (formerly the Boise Area Economic Development Council); and Chairman of the Northwest YMCA Steering Committee.

Givens Pursley's co-managing partner **Christopher J. Beeson** was named 2009 Idaho Lawyer of the Year in Real Estate by Best Lawyers, the oldest and most respected peer-review publication in the legal profession. Chris concentrates his practice in commercial real estate, business transactions, financings, entity structuring, equity formations, and loan workout solutions. The lawyers being honored as "Lawyers of the Year" have received particularly high ratings in Best Lawyers' surveys by earning a high level of respect among their peers for their abilities, professionalism, and integrity.

Caldwell native Steven Berenter is new managing partner of Hawley Troxell. As Managing Partner, he is involved in all aspects of the firm and he continues to remain active in his employment law practice. The firm has more than 15 practice areas, including new areas of emphasis such as intellectual property, information technology and renewable energy.

— ON THE MOVE —

IDACORP, Inc. and Idaho Power Company announced the appointment of **Rex Blackburn** to the position of Senior Vice President and General Counsel. Rex joined the company in January 2008. He brings significant knowledge of the company and industry, as well as considerable experience in the courtroom as a trial lawyer.

He graduated from the College of Idaho and the University of California, Hastings College of Law. He was a trial lawyer in private practice from 1980 through 2007. He is a Fellow of the Litigation Counsel of America, and was selected for inclusion in *Mountain States Super Lawyers* magazine. He was also appointed by Governor Cecil Andrus to the Idaho Commission of Uniform State laws, and reappointed by Governors Phil Batt and Dirk Kempthorne, serving on the Commission continuously since 1993.

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University of Idaho College of Law Dean Donald Burnett; Steve Wood, Caribou County Court; and Idaho Law Foundation President, Chuck Homer.

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U.S. Magistrate Judge Ronald Bush congratulates Nicholas Vieth, Federal Defenders of Idaho, Pocatello.

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Justice Roger Burdick congratulates a new admittee and his family after the ceremony on May 7, 2009.

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Retired U.S. Magistrate Judge Mikel Williams congratulates family friend, Phil Bevis and Jessica Lynn Chambers on Phil's admittance to the Idaho State Bar. Phil is the son of Jim Bevis, who is also a graduate of the University of Idaho College of Law and was admitted to the Idaho State Bar in 1974.

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Kent and Linda Gardner, Preston; visit with a friend after the ceremony.

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Historic McCarty Building at 9th & Idaho, office spaces for sale or lease. Single offices to half-floors available, \$18.00 per square foot full service. For more information contact L. D. Knapp & Assoc. (208) 385-9325.

PRIME PARK CENTER OFFICES

Prime Park Center Offices with amenities near Greenbelt River, Downtown and Courthouse. Great atmosphere includes Highspeed DSL, conference room, copier, postage, fax machines and kitchen - \$425.00. Additional space available for secretary/staff. Office is ideal for solo practitioner or local branch office. Call (208) 424-8332.

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Class A building. 1-3 Large offices and 2 Secretary stations. Includes: DSL, Receptionist/Administrative assistant, conference, copier/printer/scanner/fax, phone system with voicemail, basic office & kitchen supplies, free parking, janitor, utilities. Call Bob at (208) 344-9355 or by email at: drozdarl@drozdalaw.com.

DOWNTOWN OFFICE SPACE

Prime "A" full-service attorney office space downtown with parking close by. Reception and secretarial available. For more information call: (208) 345-7800

SINGLE DOWNTOWN OFFICE

Office Space. Ground Level. 5th and Bannock, across from the Idaho State Bar. Includes onsite adjacent parking. Three months minimum lease. \$350 per month, full- service parking included. Contact: J. Gary Brookover by telephone (208) 229-1229 or by email at: jgbrook@aya.yale.edu.

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FOR SALE

MICHIE IDAHO CODE

For sale, 10 full sets of Michie Idaho Code, current through July 2009, at \$150.00 per set. Please contact Carla Behrens at White Peterson via phone at 466-9272 or email at cbehrens@whitepeterson.com.

UPCOMING CLEs

June 2009

June 8

Idaho Trade and International Ramifications

Sponsored by the International Law Section

The Law Center, Boise

3.5 CLE credits RAC

Further Details & Registration Information Forthcoming

June 18

Intellectual Property Law

Sponsored by the Intellectual Property Law Section

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

1 CLE Credit **LIVE WEBCAST STATEWIDE**

June 25

Keeping Your Clients out of Employment Litigation

Sponsored by the Young Lawyers Section

8:30 - 9:00 a.m. at the Law Center, Boise

1 CLE Credit **LIVE WEBCAST STATEWIDE**

July 2009

July 8 - 10

Idaho State Bar Annual Conference

Boise Centre on the Grove, Boise

See Agenda on page

Save the Date

September 11

Annual Estate Planning Seminar

Sun Valley, ID

Room Reservations Call 1-800-786-8259

October 2

Idaho Practical Skills

Sponsored by the Idaho Law Foundation

Boise Centre on the Grove, Boise

October 2

Basic Family Law Training

Sponsored by the Family Law Section

Blackfoot, ID

October 9

Basic Family Law Training

Sponsored by the Family Law Section

Boise, ID

October 15

Basic Family Law Training

Sponsored by the Family Law Section

Coeur d'Alene, ID

November 20

Headline News—Year in Review

Sponsored by the Idaho Law Foundation

Moscow, ID

December 4

Headline News—Year in Review

Sponsored by the Idaho Law Foundation

Pocatello, ID

December 11

Headline News—Year in Review

Sponsored by the Idaho Law Foundation

Boise, ID

*RAC - Reciprocal Admission Credits

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.

JUNE

- 1 *The Advocate* Deadline
- 5 Jackrabbit Bar Meeting, Santa Fe, NM
- 17 *The Advocate* Editorial Advisory Board

JULY

- 1 *The Advocate* Deadline
- 3 **Independence Day: The Law Center Closed**
- 8 Idaho State Bar Board of Commissioners
- 8 - 10 Idaho State Bar Annual Conference, Boise Centre on the Grove**
- 15 *The Advocate* Editorial Advisory Board
- 27 - 29 Idaho State Bar Exam, Boise Centre on the Grove and Moscow
- 30 - 8/5 ABA/NABE/NCBP/NCBF Annual Meeting, Chicago, IL

AUGUST

- 1 *The Advocate* Deadline
- 19 *The Advocate* Editorial Advisory Board

SEPTEMBER

- 1 *The Advocate* Deadline
- 7 **Labor Day: The Law Center Closed**
- 16 *The Advocate* Editorial Advisory Board
- 17 July Idaho State Bar Exam Results

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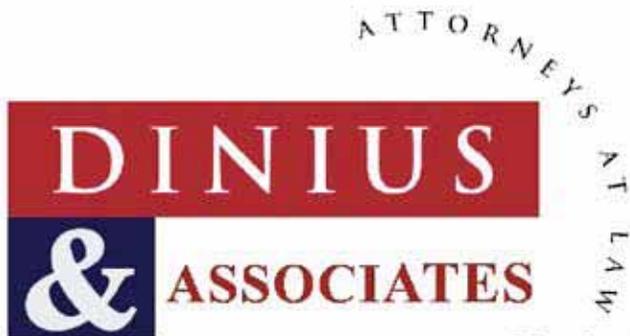
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2009 ISB ANNUAL CONFERENCE

Boise Centre on the Grove

July 8 - 10, 2009

AGENDA AT-A-GLANCE

Wednesday, July 8, 2009

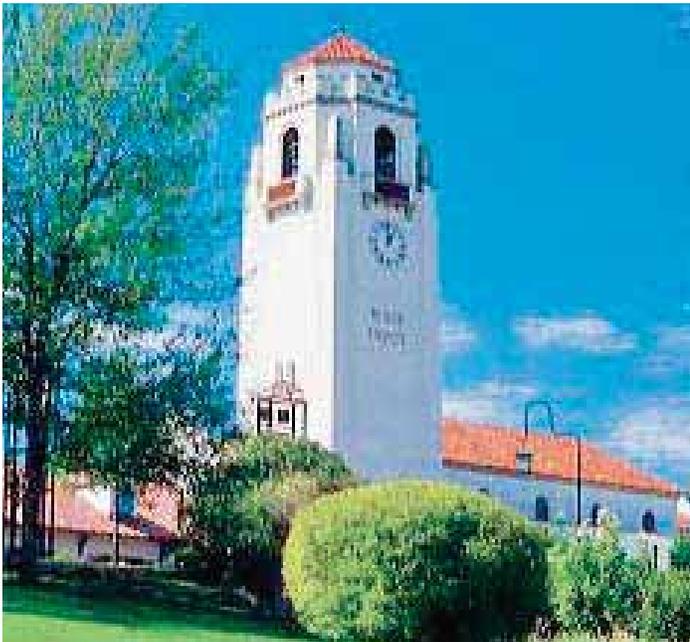
- 5:00 p.m. - 7:00 p.m. Registration (The Peregrines)
5:30 p.m. - 6:45 p.m. President's Reception (The Peregrines)
7:00 p.m. Distinguished Lawyer Award Dinner (Flying Hawk Eyrie)

Thursday, July 9, 2009

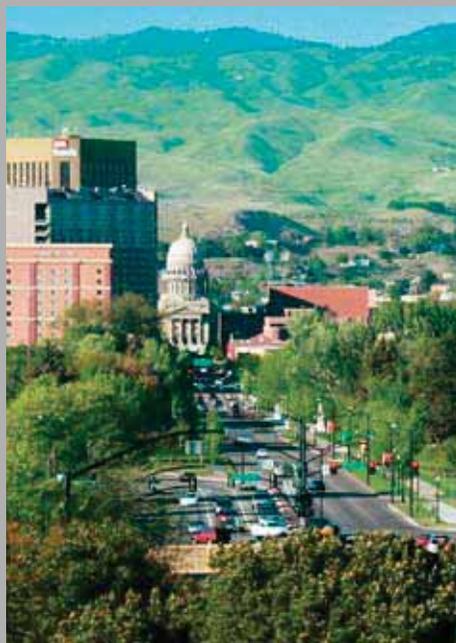
- 8:00 a.m. - 5:00 p.m. Registration (The Peregrines)
8:30 a.m. - 10:15 a.m. Conference Plenary Session (The Merlin/Kestrels)
 - ☼ Welcome from ISB President
 - ☼ State of the Court
 - ☼ "The Future of the Practice of Law" – 1.5 CLE Credits10:45 a.m. - 12:15 p.m. CLE Breakout Session – 1.5 CLE Credits
12:30 p.m. - 1:45 p.m. Idaho Law Foundation Lunch and ISB/ILF Service Awards (The Glen)
2:00 p.m. - 5:15 p.m. CLE Session – 3.0 CLE Credits
5:30 p.m. - 6:30 p.m. Family Law Section Award Reception

Friday, July 10, 2009

- 8:30 a.m. - 11:45 a.m. CLE Breakout Session – 3.0 CLE Credits
12:00 p.m. - 1:30 p.m. Recognition Lunch - 50/60 Year Attorneys (The Kestrels)
2:00 p.m. - 4:00 p.m. CLE Session
 - ☼ Golfing for Ethics CLE – 2.0 Ethics Credits
Warm Spring Golf Course
 - ☼ Law Firm Risk Management in Hard Times
– 2.0 Ethics Credits (Payette River)4:00 p.m. Conference Adjourns



**Idaho State Bar Annual Conference
July 8 - 10, 2009 ☼ Boise Centre on the Grove**



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