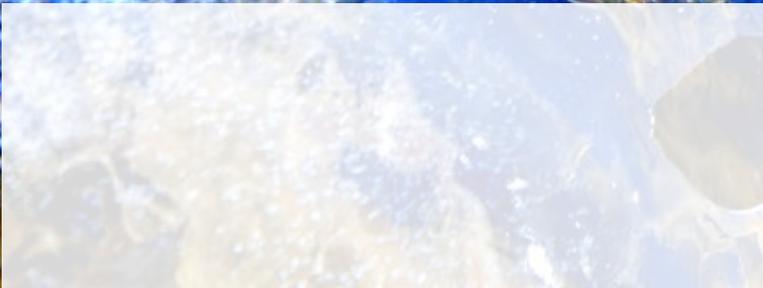


The Advocate

Official Publication
of the Idaho State Bar
Volume 57, No. 3/4
March/April 2014

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The Advocate

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Errata

An article published in the January, 2014, issue of The Advocate about civil legal remedies for victims of sexual assault did not attribute some source material. The title "Justice is More than Jail" and some of the underlying practice tips were previously used in presentations and handouts published by the Victim Rights Law Center, a nonprofit law center that provides civil legal representation to victims of rape and sexual assault in Massachusetts and Oregon.



Join for news and discussion at Idaho-State-Bar.



The Advocate makes occasional posts and takes comments on a LinkedIn group called "Magazine for the Idaho State Bar."

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On the Cover:

The cover photograph of a frozen stream near Boise was taken by Monte Stiles. In April 2011, Monte left the U.S. Attorney's Office in order to devote his full attention to drug education efforts in Idaho and elsewhere, as well as motivational speaking and training. More information can be found at www.montestiles.com and www.montestilesphotography.com.

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Robert B. Burns focuses his practice on real estate acquisition and sales, financing, development, leasing and conflicts over entitlement issues and commercial or residential property interests, including challenging property taxes and prosecuting and defending mechanic liens.



Dana M. Herberholz is a registered patent attorney whose practice emphasizes intellectual property matters and litigation, with particular emphasis on patent litigation. Mr. Herberholz has participated in the representation of national and international companies in patent cases across the United States.

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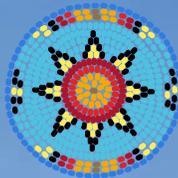
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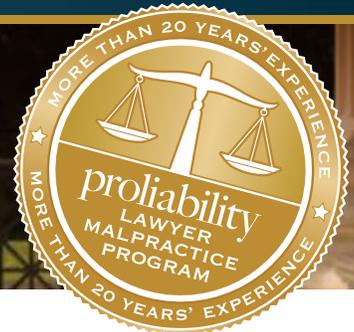
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March

March 7

Annual Workers Compensation Seminar
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The Sun Valley Resort – 1 Sun Valley Road, Sun Valley
8:30 a.m. (MST)
6.0 CLE credits of which 0.5 is Ethics

March 14

Annual Flagship Video Replay – Idaho Rules of Evidence: Tips, Traps and Trends
Sponsored by the Idaho Law Foundation, Inc.
Best Western Plus Coeur d'Alene Inn, 506 W. Appleway Avenue – Coeur d'Alene
8:15 a.m. (PDT)
4.0 CLE credits of which 1.0 is Ethics - **RAC**

March 14

Annual Flagship Video Replay – Idaho Rules of Evidence: Tips, Traps and Trends
Sponsored by the Idaho Law Foundation, Inc.
Holden Kidwell Hahn & Crapo PLLC, 1000 Riverwalk Drive, Suite 200 - Idaho Falls
8:15 a.m. (MDT)
4.0 CLE credits of which 1.0 is Ethics - **RAC**

March 28

Native American Law Conference: Idaho Indian Law Basics
Sponsored by the ISB Indian Law Section and the University of Idaho College of Law
University of Idaho College of Law, 711 S. Rayburn – Moscow
9:00 a.m. (PDT)
6.0 CLE credits of which 1.0 is Ethics - **RAC**

***RAC** — These programs are approved for Reciprocal Admission Credit pursuant to Idaho Bar Commission Rule 206(d).

April

April 10

When Animals Are Part of the Family: Animal Issues in Family Law Cases
Sponsored by the ISB Animal Law and ISB Family Law Sections
Law Center, 525 W. Jefferson – Boise / Statewide Webcast
1:00 p.m. (MDT)
3.75 CLE credits of which .5 is Ethics

April 16

Handling Your First or Next Personal Injury Case
Sponsored by the Idaho Law Foundation, Inc.
Law Center, 525 W. Jefferson – Boise / Statewide Webcast
9:00 a.m. (MDT)
2.0 CLE credits – **RAC**

April 24

Nuts and Bolts of International Trade
Sponsored by the ISB International Law Section
Law Center, 525 W. Jefferson – Boise / Statewide Webcast
Noon (MDT)
3.0 CLE credits

April 30

Ethics, Technology and Small Firms
Sponsored by the Idaho Law Foundation, Inc.
Teleseminar / Audio Stream
11:00 a.m. (MDT)
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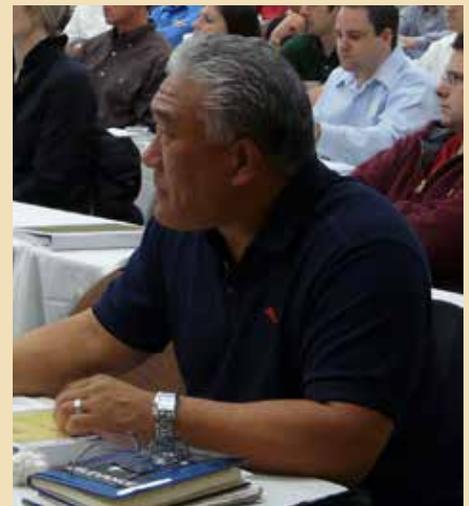
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Our Third Branch Needs Your Help

*Robert T. Wetherell
President, Idaho State Bar
Board of Commissioners*

One of the functions of a Bar Commissioner is to meet with Bar Commissioners from other Bar organizations throughout the United States. In this way, your Bar Commissioners can see how other states handle issues that come before Bar organizations and can anticipate issues or problems that may arise.

The first thing you notice when meeting other state Commissioners is the Idaho State Bar's great reputation. We can all be proud of the respect the Idaho State Bar has among the various state organizations. Credit for this respect goes largely to our Executive Director and the long-time staff that has been assembled to serve the lawyers in the state of Idaho. Credit also goes to the Bar Commissioners elected over the years and their diligence in listening to the Idaho membership and their concerns.

This is perhaps the greatest strength of the Idaho State Bar. The Idaho State Bar is very transparent and provides the membership with a financial report each year so that every member of the Bar is aware of what money is coming in and

One of the most important aspects of the Idaho State Bar is that the lawyers in the state of Idaho control how the Commissioners of the Idaho State Bar conduct the Bar's business.



where that money is being spent. And although license fee increases are formally set by statute and the Bar Commissioners, the Idaho State Bar membership is allowed to vote on any license fee increases. I was surprised by the number of states that simply allow their bar association leadership to announce what bar dues will be and to direct where that money is spent. Several states have experienced revolts among the lawyers in their states because of this practice. Washington recently cut its Bar association significantly. A lawyer legislator in Colorado recently proposed legislation making Bar membership voluntary because of a perceived lack of accountability.

One of the most important aspects of the Idaho State Bar is that the lawyers in the state of Idaho control how the Commissioners of the Idaho State Bar conduct the Bar's business. Each year the Commissioners go on the "Road Show" and

meet with District Bar leaders and with the general membership. During these Bar meetings we discuss and vote on various issues facing the Bar. The Bar Commissioners propose resolutions to the membership but it is ultimately the membership who decides how to proceed. I don't believe I would want to be a member of a bar that preceded any other way or that did not have a "road show" to allow members and their commissioners to interact, face-to-face.

With that said, two resolutions from the recent Road Show dealt with the Idaho Judiciary; Resolution No. 13-07 and Resolution No. 13-08. The first resolution dealt with judicial compensation and the second with increased funding for technology in our court system. The resolutions were necessary because your Bar Commissioners cannot take any stand before the legislature without a vote of the membership. These two resolutions passed by a percentage

of 84% and 93%, respectively. With the authority of the members of the Idaho State Bar, the Commissioners have been able to approach the 2014 Legislature, which is in session as I write this article, to let them know how the lawyers in Idaho feel about their judicial system and the respect they have for the judges who are the backbone of that system. The resolutions read as follows:

13-07: Improve Judicial Recruitment by Addressing Inadequate Judicial Compensation

NOW THEREFORE, BE IT RESOLVED THAT the members of the Idaho State Bar endorse a Legislative solution to address judicial recruitment by increasing compensation for all members of the Idaho Judiciary and establishing a salary scheme which looks towards parity and equity with the salaries paid to judges, whether national, regional or the average salary of judges of the surrounding western states.

13-08: Support Transition to New Statewide Computerized Case Management & E-Filing System

NOW THEREFORE, BE IT RESOLVED THAT the members of the Idaho State Bar endorse passage through the 2014 Idaho Legislature of the Idaho Supreme Court's proposed legislation and budget enhancements necessary to secure the new software, equipment and services required to fulfill the Court's technology vision.

It is important for the Commissioners and the practicing attorneys in the state of Idaho to remind our legislators and Governor that a well-funded and respected judiciary is as important to economic development in this state as building a road,

bridge or any other function of government. At any given time, tens of millions of dollars in client funds, not to mention the rights of the citizens of the state of Idaho, are on the line in our court system. It is also important to remember that while the legislature meets for two or three months each year and the executive deals with day-to-day aspects of running the state, the citizens usually have the most contact with our legal system.

Whether in the area of criminal law or civil disputes, it is the legal community and the legal system that attempts to resolve these issues

The time and cost to clients saved by upgrading technology in our court system cannot be emphasized enough.

on a daily basis. Without the stability of the legal system by placing on the bench our most seasoned and qualified candidates, the cost both in economic and personal terms, can be great. The same holds true for the increased productivity that benefits Idaho's future with the use of technology. The time and cost to clients saved by upgrading technology in our court system cannot be emphasized enough.

The primary emphasis of this President's Message is to urge individual members of the Bar to contact their legislators now, as they are in session, and express to them your personal belief that the resolutions passed by the Idaho State Bar should be acted upon this year. That is, the Legislature must address the compensation package for our judges and increase funding for the court system to implement technology changes to benefit the state's economic development and reduce the cost of legal services in the state of Idaho. If you will go to the website <http://www.legislature.idaho.gov> it will give you the name of your representatives and senators so you may send an e-mail or better yet, contact them by phone, to express your support and the support of the Bar for these two resolutions. Specific legislation might soon be proposed.

On behalf of the Commissioners of the Idaho State Bar, and your fellow lawyers, I thank you in advance for becoming involved.

About the Author

Robert T. Wetherell is a 1982 graduate of the University of Idaho Law School and clerked for the United States District Court for the District of Idaho immediately upon his graduation. Since that time he has been in private practice in the city of Boise and is currently a principal and partner at Capitol Law Group. Mr. Wetherell began serving as Bar President in January of 2014. He has been married to his wife, Deborah, for 29 years and they have two adult children; Marie Ellen, a third-year law student at the University of Idaho College of Law and R. John, a senior at the University of Idaho. GO VANDALS!



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Memorial set at Idaho Supreme Court

Chief Justice Roger S. Burdick announced that the Idaho Supreme Court will hold its annual Memorial Ceremony on Thursday, March 20, at 10 a.m. in the courtroom of the Idaho Supreme Court Building, in Boise. The judges and members of the Idaho State Bar who passed away during the year 2013 will be remembered at this ceremony. A Memorial Resolution will be presented in memory of the judges and attorneys. The Court invites the family and friends attending the Memorial Ceremony to a reception at the Supreme Court Building immediately following.

Members initiate new Appellate Practice Section

The ISB Board of Commissioners approved a petition submitted to form an Appellate Practice Section. An organizational meeting of the section will take place on Monday, April 7 at noon (MDT) at the Law Center, 525 W. Jefferson, Boise. Agenda items include selection of officers and discussion of membership dues, composition of the governing board, and the design and development of Section activities. All Bar members are invited to participate. Lunch will be provided for those who RSVP to attend in person with 24-hour notice. You may also participate by phone by dialing (888) 706-6468 and using participant code 4121520. If you are planning to participate (either in-person or telephone), please RSVP to dferrero@isb.idaho. For more information please contact ISB Deputy Executive Director Mahmood Sheikh at (208) 334-4500.

Grant will digitalize 'Turning 18'

The Idaho Law Foundation's Law Related Education Program received

a \$23,000 Edward Byrne Memorial Justice Assistance Grant from the Idaho State Police to update the "Turning 18 in Idaho" publication. In the five years that the Foundation has offered this resource they have distributed 80,000 copies to high schools and community organizations in all parts of Idaho. This grant will allow the Law Foundation to update the print version and create an interactive web version of the publication. "Turning 18 in Idaho" helps young people understand their rights and responsibilities when they reach the age of majority. The publication is given free of charge to schools and community organizations.

Lawyer Referral Service seeks attorneys in the Third District

The Idaho State Bar (ISB), matches callers with full-priced attorneys through the Lawyer Referral Service, (LRS). Attorneys pay to register in the LRS and in turn receive referrals via phone and ISB website. In recent years a high demand for attorneys has persisted in western Idaho, with too few LRS attorneys registered in the region. These referrals are for full-priced services after an agreed upon initial \$35 half-hour consultation. Any additional rates are up to the attorney and client.

LRS registration forms can be accessed at the www.isb.idaho.gov site under "Joining Lawyer Referral Service" under "Member Services." There is an especially strong need for attorneys who practice family law, employment and labor law and criminal defense. Attorneys can register any time, but will make the most of their registration by signing up early in the year. The cost for one year on the LRS panel is broken down as follows:

- \$50 – First year of practice or first-time LRS participant;

- \$100 – Second through fifth years of practice;

- \$125 – Six years of practice or more;

The LRS program is different than Fields of Practice, the published directory of attorneys listed by areas of practice in the Desk Book Directory, which is mailed to members in early May.

Questions, please contact program coordinator Kyme Graziano at (208) 334-4500.

Law Review to host 'Resilient Cities' symposium

The University of Idaho Law Review Symposium will be held in Boise on April 4. It will focus on defining city resilience as well as cutting-edge, non-traditional legal approaches to implementing environmental and social projects that promote city resilience. More info is found at <http://www.uidaho.edu/law/law-review/symposium>.

The symposium will ask: What is a resilient city?

The definitional panel of the symposium investigates various aspects of the answer including: "What is the relationship between environmental and social dimensions of a resilient city? Are they separate or interconnected? How can a city's physical systems and human communities respond, and thrive, in the midst of the coming century's environmental and social stresses that will include climate change, rapid urbanization, more pronounced economic cycles, and the like?"

The primary focus of the symposium will then be investigating a second question: How can cities best implement resiliency in a time of limited resources?

Symposium papers or presentations addressing either question above will be presented at the conference and published in the spring.



Executive Director's Report

2013 - The Idaho Law Foundation Year in Review

Diane K. Minnich
Executive Director, Idaho State Bar

With limited resources, the Idaho Law Foundation continues to offer services that increase the public's access to and understanding of the legal system and provide educational programs to enhance the competency of practicing lawyers and judges. In 2013, Foundation programs provided services to thousands of Idahoans, including students, lawyers, individuals, families and entities providing services to the low income population.

Law Related Education (LRE)

Idaho's LRE Program is part of a national civics education effort that began in 1978 when Congress passed the Law Related Education Act. Whether working with young people or adults, LRE programs offer participants an avenue to understand the law, court procedures, and our legal system and recognize the rights and responsibilities of citizenship while building positive relationships with members of Idaho's legal community. Program offerings for LRE include:



Mock Trial: Each year, participating teams from high schools all across Idaho prepare and present a hypothetical legal case in a simu-

Whether working with young people or adults, LRE programs offer participants an avenue to understand the law, court procedures, and our legal system and recognize the rights and responsibilities of citizenship while building positive relationships with members of Idaho's legal community.



lated courtroom competition. In 2013, 265 students and 92 volunteers participated in this annual event. Logos School from Moscow represented Idaho at the national mock trial competition after defeating the Ambrose School in a very close state championship round decided by only 6 points.

Turning 18 in Idaho: This publication helps young people understand their rights and responsibilities as they reach the age of majority. Classroom sets are available free of charge to Idaho high schools. Through 2013, 78,000 copies of the publication have been distributed to Idaho high schools in the 6 years the publication has been offered. The Idaho Law Foundation recently received a grant to update the publication and create an interactive online version of the magazine.

Citizens' Law Academy: Citizens' Law Academy is a free adult education program that offers a glimpse into the law, our legal system, and the work of lawyers and judges. In 2013, CLA was offered in Boise, Pocatello, and Idaho Falls to 84 participants.

New American Law Academy – This program was developed in 2013 and began in early 2014. It is offered to refugees in the Boise area to help them understand the legal system in their new country. The first session of the academy is being offered to 34 students representing five language groups. A second session will be offered beginning in April.

National Mock Trial Competition – The Idaho Law Foundation submitted a successful bid to host the National Mock Trial Competition in 2016. We are in the initial planning and fundraising efforts. Hosting the national event will showcase our community and the commitment of the Idaho legal profession to civic engagement. We anticipate 1,000 visitors to the Boise competition.

Idaho Volunteer Lawyers Program (IVLP)

IVLP continues to provide legal services to low-income individuals, families and groups. Through case representation by volunteer attorneys, brief services, advice and consultation, clinics and workshops,

IVLP served over 2,111 individuals last year. The program works with Idaho Legal Aid Services (ILAS), and the statewide Court Assistance Offices to assist those with legal needs and limited resources.

In 2013, IVLP, ILAS and DisAbility Rights Idaho began planning for a coordinated fundraising campaign. The campaign, Access to Justice Idaho, will raise funds to provide support for the three entities, which are the principal providers of free civil legal services for poor and vulnerable Idahoans.

The Idaho Pro Bono Commission, chaired by Idaho Supreme Court Justice Jim Jones, continues to develop and implement strategies to maximize the involvement of attorneys in pro bono service and to explore the development of means and incentives to support attorneys in providing pro bono services. Local pro bono committees are now active around the state, with a menu of options for how to involve attorneys in pro bono work.

Idaho Volunteer Lawyers Program		
	2012	2013
Calls received	5,457	4,715
Matters handled by volunteer attorneys	909	2,111
Hours donated by volunteer attorneys	14,898	12,929
Donated services value	\$2,979,600	\$2,585,800
Legal resource, bankruptcy help line calls	568	589

Interest on Lawyers Trust Accounts (IOLTA)

Since the first IOLTA grants were awarded in 1985, nearly \$6.5 million has been granted to law related programs and services throughout Idaho. The organizations funded in 2013 were: Idaho Legal Aid Services,

Idaho Volunteer Lawyers Program, ILF Law Related Education, Idaho YMCA Youth Government, Idaho State 4-H Know Your Government Conference, and University of Idaho law school scholarships. Funds granted for 2013 decreased nearly 50% from 2012. Due to the sustained low interest rates, IOLTA grant funds have decreased 486% since 2007; 160% in the last 3 years. IOLTA grant recipients struggle to meet the need for services as the funds available to provide services remain historically low.

Continuing Legal Education (CLE)

The Foundation and the Idaho State Bar Sections offer legal education programs throughout the state, and provide programming through a variety of delivery methods designed to make programs easily available and accessible. 2013 overall participation decreased from 2012, although webcast attendance increased.

ISB/ILF Continuing Legal Education		
	2012	2013
Total Live program attendance	1,938	1,497
Tape/DVD rentals	669	503
Online Streaming	1,219	1,014
Webcast attendance/telephonic	361	472

Fund Development

Sustaining funding for Foundation programs, specifically IVLP and LRE, continues to be challenging. We continue to seek new sources of grants and funds. We appreciate the support of our donors and funders, without the support of lawyers, judges and granting organizations, the important work of the Foundation could not be accomplished.

Sustaining funding for Foundation programs, specifically IVLP and LRE, continues to be challenging.

Donations		
	2012	2013
General Fund, IVLP, LRE	\$81,899	\$63,713
Endowment Fund	\$3,200	\$3,100
Total	\$85,099	\$66,813
Total donors	625	661

The Idaho Law Foundation is indebted to the attorneys that volunteer their services and donate their resources to ILF programs and activities. The mission and goals of the organization are only realized with the help and support of our members. Thank You!

Mission Statement

The Idaho Law Foundation supports the right of all people to live in a peaceful community. Our mission is to educate all people about the role of law in a democratic society, to provide opportunities for people to avoid and resolve conflicts; and to enhance the education and competence of lawyers.

1. Enhance public understanding of and respect for the law and the legal system.
2. Provide and improve access to legal services.
3. Provide programs and services that enhance the competency of members of the Bar.
4. Aid in the advancement of the administration of justice.
5. Generate the necessary funding to fulfill the mission and goals of the organization.
6. Maintain effective administration and management of the Foundation's resources.



Idaho State Bar 2014 Professional Award Nominations

The Idaho State Bar Board of Commissioners is now soliciting nominations for the 2014 professional awards. These awards were initiated by the Board of Commissioners to highlight members who demonstrate exemplary leadership, direction and commitment in their profession.

Distinguished Lawyer - This award is given to an attorney (or attorneys) each year who has distinguished the profession through exemplary conduct and many years of dedicated service to the profession and to Idaho citizens.

Professionalism Awards - The awards are given to at least one attorney in each of Idaho's seven judicial districts who has engaged in extraordinary activity in his or her community, in the state, or in the profession, which reflects the highest standards of professionalism.

Pro Bono Awards - Pro bono awards are presented to the person(s) from each of the judicial districts that have donated extraordinary time and effort to help clients who are unable to pay for services.

Service Awards - Service awards are given each year to lawyers and non-lawyers for exemplary service to the Bar and/or Idaho Law Foundation.

Outstanding Young Lawyer - The purpose of the award is to recognize an Idaho State Bar young lawyer who has provided service to the profession, the Idaho State Bar, Idaho Law Foundation, and to the community and who exhibits professional excellence.

Section of the Year - The Idaho State Bar Practice Section of the Year Award is presented in recognition of a Section's outstanding contribution to the Idaho State Bar, to their area of practice, to the legal profession, and to the community.

Recipients of the awards will be announced in May. The Distinguished Lawyer, Outstanding Young Lawyer, Section of the Year and Service Awards will be presented at the annual meeting. Professionalism and Pro Bono Awards will be presented during each district's annual resolutions meeting in the fall.

Award nominations should include the following:

- Name of the award
- Name, address, phone, and email of the person(s) you are nominating
- A short description of the nominee's activity in your community or in the state, which you believe brings credit to the legal profession and qualifies him or her for the award you have indicated
- Any supporting documents or letters you want included with the nomination
- Your name, along with your address, phone, and email

You can nominate a person for more than one award.

Nominations are accepted throughout the year. The deadline for the 2014 award nominations is March 28, 2014.

Submit nominations to:

***Executive Director, Idaho State Bar, PO Box 895, Boise ID 83701,
fax (208) 334-4515, dminnich@isb.idaho.gov.***

Welcome from Attorneys for Fair Housing

Zoe Ann Olson

The attorneys for fair housing is grateful for the opportunity to sponsor this issue of *The Advocate*.¹ In 1994, Idaho Legal Aid Services, Inc. helped form and create as an independent organization the Intermountain Fair Housing Council, Inc. Located in Boise, Idaho it has six employees and six fair housing ambassadors around the State. IFHC is a nonprofit organization whose mission is to ensure open and inclusive housing for all people throughout Idaho. The IFHC's organizational purpose is to advance equal access to housing for all persons. The IFHC attempts to eradicate discrimination through education on the fair housing laws, housing information and referrals, housing counseling and enforcement including testing and filing complaints under the federal Fair Housing Act with the Department of Housing and Urban Development or by filing complaints in federal court.

On April 11, 2013, the fair housing community celebrated 45 years since the passage of the Fair Housing Act, which opened doors for so many people throughout the United States with the goal of ending seg-

regation and eliminating discrimination. Tragically, after 45 years, we still have discrimination in housing and segregated neighborhoods in Idaho. Because fair housing discrimination still exists in Idaho, my colleagues and I bring attention to fair housing choice with four articles. IFHC's Attorney Ken Nagy's article will discuss the Fair Housing Act, the fair housing administrative complaint process and an overview of IFHC's federal litigation. My article will discuss the importance of state and local government fair housing compliance in addressing barriers to fair housing choice. United States Attorney Wendy Olson's article will discuss the criminal provision of the Fair Housing Act and relevant Idaho cases. Lastly, defense attorney Eric Steven's article will discuss best practice tips for lawyers and housing providers to avoid costly fair housing complaints.

Every April and throughout the year, IFHC brings fair housing education to communities throughout Idaho. In those trainings, we share information about the Fair Housing Act, how to recognize a violation, how to report a fair housing violation, and how to avoid a complaint.

Join us at one of our April Fair Housing Month trainings. But re-

member that fair housing law opens doors to choice 365 days a year.

Endnotes

1. Intermountain Fair Housing is supported by funding under a grant with the U.S. Department of Housing & Urban Development. The statements contained in this article do not necessarily reflect the views of the federal government.

About the Author

Zoe Ann Olson is the Executive Director of the Intermountain Fair Housing Council, Inc. Ms. Olson has 14 years of experience as an attorney with Idaho Legal Aid Services, Inc. where she served as the Housing Specialty Chair and Fair Housing/Fair Lending Project Director. Ms. Olson has had extensive fair housing training via John Marshall University, Seattle University, HUD, Accessibility First, National Consumer Law Center, National Fair Housing Alliance, and AARP. She serves as a Board of Director on the Idaho Law Foundation and member of the Diversity Law and Real Property Law Sections of the Idaho State Bar and member of the Idaho Women Lawyers.



Tips to avoid violations of the Fair Housing Act

1. Attend fair housing and diversity training annually. Prejudice in a housing program may translate into treating people differently based on a protected class;
2. Don't assume the Fair Housing Act doesn't apply to you. When in doubt, research the fair housing issue. When a housing provider incorrectly assumes the law does not apply to them, the conversation gets off to a difficult start;
3. Make sure that ads, public statements, policies, procedures don't discriminate based on a protected class;
4. Address tenant/neighbor fair housing disputes in a timely manner and interview all parties to provide due process and prevent or minimize allegations of discrimination;
5. Address reasonable accommodation and modification requests from persons with disabilities in a timely, interactive fashion;
6. Monitor and review your policies, procedures, and practices to make sure they are compliant with the Fair Housing Act and other civil rights laws; and
7. Get help from people or agencies in the know, such as the Department of Housing and Urban Development's Fair Housing and Equal Opportunity Office, IFHC and or a knowledgeable fair housing attorney.

Knowing Fair Housing Laws Promotes Inclusiveness

Zoe Ann Olson

Fair housing ensures inclusive housing for all Idahoans

Fair housing is best described as building a community in which all persons have access to a healthy environment they can enjoy. The Intermountain Fair Housing Council (IFHC) is a nonprofit organization whose mission is to ensure open and inclusive housing for all people throughout Idaho.¹ As a community, we have the power to bring attention to barriers to fair housing choice to Department of Housing and Urban Development (HUD) and local and state governments through their fair housing planning process. These housing and community planning barriers may be segregated neighborhoods, discriminatory rental or real estate ads, lack of local and state laws which protect persons in housing based on sexual orientation, gender identity, and families with children, inaccessible housing and communities, denial of housing to veterans with disabilities, unhealthy air quality, lack of mass transit to one's neighborhood, crime, poor schools and health clinics, and lack of jobs.

This article will discuss: (1) the significance of *Westchester* case in demonstrating the importance of local and state government fair housing compliance; (2) the necessary steps to fair housing planning; (3) an explanation of HUD's definition of an analysis of impediments and an explanation of impediments to fair housing choice; (4) HUD's recent rejection of the City of Houston's Fair Housing Plan; (5) Idaho case law that exemplifies why understanding the legal importance of fair housing compliance is important; and (6) how education is important to avoid fair housing complaints.

Because of *Westchester*, fair housing advocates have renewed their efforts to bring attention to policies, practices, and procedures that limit housing choice through the fair housing planning process.

The importance of *Westchester* to furthering fair housing

The importance of local and state government fair housing compliance was made evident on August 10, 2009, with the landmark \$62.5 million settlement in *U.S. ex rel. Anti-Discrimination Center v. Westchester County*.² The Anti-Discrimination Center and Relman, Dane, & Colfax PLLC were the first to use the False Claims Act to enforce a county's obligation to "affirmatively further fair housing" under the Fair Housing Act pursuant to 42 U.S.C. §3608. With federal monitoring by HUD, Westchester County was required to develop no less than 750 affordable housing units in predominantly white communities to help integrate Westchester County.

Over a six-year period, Anti-Discrimination Center documented how Westchester received \$52 million in HUD funds while falsely certifying that it had complied with its obligation to affirmatively further fair housing under the Fair Housing Act. The Anti-Discrimination Center alleged that Westchester County failed to consider national origin and race-based barriers to fair housing choice particularly for Latinos and African Americans, failed to identify and take steps to overcome

those barriers, and failed to maintain records demonstrating the efforts it took to address and remove those barriers. Basically, Westchester failed to integrate the predominantly white Westchester County while promising to do so and certifying it was while receiving HUD and other federal funds.

Necessary steps to fair housing planning

Because of *Westchester*, fair housing advocates have renewed their efforts to bring attention to policies, practices, and procedures that limit housing choice through the fair housing planning process. Using HUD's Fair Housing Planning Guide, HUD-funded recipients such as state, county and entitlement jurisdictions are required to sign a certification to affirmatively further fair housing as a part of the jurisdiction's receipt of that funding. Fair housing planning should include: (1) an analysis of impediments to fair housing choice; (2) actions to address the effects of the identified impediments; and (3) maintenance of records to support the affirmatively furthering fair housing certification. Community members should be asked to give public comment on these three steps.³

Analysis of impediments

The analysis of impediments is a review of impediments that affect the rights of fair housing choice. It covers public and private policies, practices, and procedures affecting housing choice. According to HUD's guidance, impediments to fair housing choice are defined as any actions, omissions, or decisions that restrict, or have the effect of restricting, the availability of housing choices, based on race, color, religion, sex, disability, familial status, or national origin.⁴ HUD states that the analysis of impediments serves as a template for fair housing planning, provides essential information to policy makers, administrative staff, housing providers, lenders, consumers, and fair housing advocates, and helps with building public support for fair housing efforts.

HUD's rejection of Houston's fair housing plan

As recent as late 2011, HUD rejected the City of Houston's fair housing plan which included its analysis of impediments. After review of the Houston's analysis of impediments, HUD said it was incomplete because: 1) It didn't identify actions known to the city that perpetuate segregation and restrict the availability of housing to African American and Hispanic households with children, 2) It did not specify an appropriate strategy or actions to overcome the shortage of affordable housing for African Americans, Hispanics, persons with disabilities, and families with children, and 3) the analysis of impediments did not identify any funding directed by the city toward fair housing enforcement or enforcement-related activities.⁵

The legal importance of fair housing compliance in Idaho

No Idaho jurisdiction that I know of has had its funds withheld for failing to affirmatively further fair housing. But some jurisdictions have entered into an HUD Voluntary Compliance Agreement for fair housing findings. Idaho case law demonstrates the legal importance of fair housing planning and compliance. In *Community House, Inc. v. City of Boise*, the City of Boise was ordered to pay \$1 million to Community House, a shelter/housing provider when the City violated the Idaho Constitution and the Fair Housing Act. They gave a sweetheart deal to a religious organization to lease and then own Community House's building. In the process they evicted women and families with children from the shelter, passed a discriminatory ordinance making the shelter for men only and retaliated against Community House through a hostile takeover of the building and programs.⁶ Under the Fair Housing Act, a city cannot favor one gender over another nor pass a law that does so. Moreover, it cannot favor or disfavor a religious group or adults over families with children. Furthermore, under 42 U.S.C. §3617, it is unlawful for a city to coerce, intimidate, threaten, or interfere with

any right granted or protected under the Fair Housing Act; thus, the City could not retaliate against Community House in its assertion of it or its residents' fair housing rights.

In *Alamar Ranch, L.L.C. v. County of Boise*, the County improperly denied an application for a Conditional Use Permit for the construction of a residential treatment center for youth with disabilities. This denial thwarted the construction of the center. Alamar Ranch sued Boise County alleging three separate violations of the Fair Housing Act: (1) failure to grant a reasonable accommodation for the construction of housing for persons with disabilities, (2) adverse treatment of persons with disabilities, and (3) intentional interference with the construction of housing for youth with disabilities by giving in to the community opposition to the housing center. Alamar Ranch prevailed and the jury awarded Alamar \$4 million in damages.⁷ The county officials should have entered into a discussion with Alamar Ranch to discuss the accommodation needed without inquiring into the nature or severity of the housing residents' disabilities, granted the reasonable accommodation, and permitted the construction.

Before *Alamar Ranch*, there was *Turning Point, Inc. v. City of Caldwell*.⁸

In *Community House, Inc. v. City of Boise*, the City of Boise was ordered to pay \$1 million to Community House, a shelter/housing provider when the City violated the Idaho Constitution and the Fair Housing Act.

In *Turning Point, Inc.*, shelter providers for persons who are homeless argued that Caldwell set the occupancy limitation so low that it failed to make reasonable accommodation for persons with disabilities. *Turning Point* also alleged that requiring an annual review of occupancy conditions was discriminatory toward persons with disabilities and in effect, denied persons with disabilities housing. The Court ruled that the City should have eliminated the annual review of a special use permit and unreasonable occupancy limits when it had the power to declare and abate nuisances such as too many people living under one roof in an unsafe manner. However, the City could set reasonable occupancy limits that did not discriminate.

In July of 2008, the Department of Justice initiated a compliance review of the City of Wendell after receiving a complaint regarding the accessibility of the City's sidewalks, the City Hall building, and the Library. In September of 2008, the Department of Justice conducted a survey of city buildings, parks, programs, and services. In the end, the City staff worked with the Department of Justice to reach an agreement to make programs, services, buildings, and the community accessible. In the future, cities, counties and the state should work with the Idaho State Independent Living Council to locate experts throughout Idaho to conduct annual assessments including self-evaluations to comply with the ADA's barrier removal requirements.⁹ These cases illustrate the importance of jurisdictions taking their obligation to affirmatively further fair housing seriously and address discriminatory barriers to fair housing choice and compliance with other civil rights laws.

Fair housing education helps prevent costly violations

It may be cliché to say, but education truly is the best medicine to prevent fair housing violations. Many times lawyers, housing providers, and government leaders have told us at Intermountain Fair Housing that the Fair Housing Act does not apply to them or their actions. They were wrong. Fair housing education and research may have prevented their costly fair housing violation. The cost of discrimination in fair hous-

Last June, the Idaho Municipal Lawyers Association gave IFHC a forum to educate Idaho's community planners and lawyers about important fair housing issues.

ing cases is high and may lead to loss of much needed community planning and development funds and or huge damage awards. To avoid these costs and address barriers to fair housing choice in Idaho, municipal and housing industry attorneys should attend training on fair housing law and other civil rights laws as should government leaders and managers, city, county and state community housing planning and development, code enforcement personnel, and building inspectors.

Last June, the Idaho Municipal Lawyers Association gave IFHC a forum to educate Idaho's community planners and lawyers about important fair housing issues. To help government leaders, staff, housing providers, and their attorneys address barriers to fair housing choice and avoid costly decisions, IFHC will continue to provide this much needed fair housing training around the state this April so as to help build an Idaho in which all persons have access to a healthy environment they can enjoy.¹⁰

Barriers to fair housing still exist and the laws that are in place strive to remove these barriers. As the Idaho cases above illustrate, when violations occur, they can be costly to all parties involved. Becoming educated on what housing providers responsibilities are is one of the best ways for lawyers, housing providers, and government leaders to avoid ending up in court and affirmatively furthering fair housing.

Endnotes

1. Intermountain Fair Housing is supported by funding under a grant with the U.S. Department of Housing & Urban Development. The statements contained in this article do not necessarily reflect the views of the federal government.
2. *U.S. ex rel. Anti-Discrimination Center v. Westchester County*, 2009 WL 455269 (S.D.N.Y. Feb. 24, 2009).
3. <http://www.hud.gov/offices/fheo/library/finaljointletter.pdf>.
4. <http://www.hud.gov/offices/fheo/images/fhpg.pdf>.
5. <http://nlihc.org/article/hud-rejects-houston-analysis-impediments-fair-housing-choice>.
6. *Community House, Inc. v. City of Boise*, 490 F.3d 1041 (9th Cir. 2007).

7. *Alamar Ranch, L.L.C v. County of Boise*, 2009 WL 3669741 (D. Idaho Nov. 2, 2009).

8. *Turning Point, Inc. v. City of Caldwell*, 74 F.3d 941, 942 (9th Cir. 1996).

9. (http://www.ada.gov/wendell_city/wendell_facsh.htm); <http://www.silc.idaho.gov/IdDisabilityStatutes.htm>.

10. To participate in Affirmatively Furthering Fair Housing Training in April 2014, contact Intermountain Fair Housing Council Executive Director Zoe Ann Olson at 1-208-383-0695, extension 306 or zolson@ifhcidaho.org or visit IHFC's website at www.ifhcidaho.org.

The state should work with the Idaho State Independent Living Council to locate experts throughout Idaho to conduct annual assessments including self-evaluations to comply with the ADA's barrier removal requirements.⁹

About the Author

Zoe Ann Olson is the Executive Director of the Intermountain Fair Housing Council, Inc. Ms. Olson has 14 years of experience as an attorney with Idaho Legal Aid Services, Inc. where she served as the Housing Specialty Chair and Fair Housing/Fair Lending Project

Director. Ms. Olson has had extensive fair housing training via John Marshall University, Seattle University, HUD, Accessibility First, National Consumer Law Center, National Fair Housing Alliance, and AARP. She serves as a Board of Director on the Idaho Law Founda-

tion and member of the Diversity Law and Real Property Law Sections of the Idaho State Bar and member of the Idaho Women Lawyers.



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Enforcement of the Criminal Component of the Fair Housing Act

Wendy Olson

Over nearly an eight-month period ending in the summer of 1997, six young white men, three of them not yet 18, intimidated and assaulted Hispanic residents of Nampa, Idaho, along with white residents who associated with Hispanics in Nampa. From cars, they chased teen-age Hispanic residents through the Nampa neighborhood where the teens lived — yelling racial slurs and telling them they wanted them out of the area. On one occasion, the men engaged in similar conduct toward an elementary-school aged newspaper delivery boy. On at least four occasions, they also physically assaulted Hispanics and whites who associated with Hispanics on Nampa streets, at homes in which Hispanics were visiting and at the homes in which the Hispanics lived. They told one young Hispanic woman who had lived all of her life in Idaho that she should “go back to Mexico.” They drew the words “white power” and white power symbols in front of another Hispanic family’s home after the family’s Hispanic relatives had visited for the July 4 holiday.¹

The men’s acts were illegal, violations of federal criminal civil rights statutes that broadly protect a person’s right to occupy a dwelling and to associate with others in their residences free from interference and intimidation based on, in this case, race, color and national origin. All six pled guilty in 1998 to conspiracy to violate the fair housing rights of Hispanic residents. The three juveniles were transferred to adult status, a procedure used sparingly in federal criminal cases.

The ability to enjoy one’s home, and to entertain guests of any race, or guests who belong to one of the other statutorily identified protected status groups, is a fundamental civil right.

The criminal component of the Fair Housing Act

The ability to live in one’s home, free from interference and violence based on race or some other protected status, is a fundamental civil right. The ability to enjoy one’s home, and to entertain guests of any race, or guests who belong to one of the other statutorily identified protected status groups, is a fundamental civil right. Quite simply, fair housing, and the advantages that housing provides in our society, is protected under our nation’s federal criminal civil rights laws. And these laws are vigorously enforced.

The nation’s 94 U.S. Attorney’s Offices and the Civil Rights Division for the United States Department of Justice share jurisdiction to prosecute violations of the criminal component of the Fair Housing Act.² It is the most frequently charged federal hate crimes statute. In November 2013, for example, in the Middle District of Alabama, a former Exalted Cyclops in the Ku Klux Klan was charged with conspiracy to violate housing rights and interference with housing rights. According to the indictment, he and others built a large cross, poured fuel on it and set it on fire in an African-American

neighborhood. Cross-burnings are frequently charged under 42 U.S.C. 3631.

Just as in the civil context, protections under the criminal component of the Fair Housing Act are broad. Section 3631 makes it unlawful, through the use of force or threatened use of force, to willfully injure, intimidate or interfere with any person’s housing rights because of that person’s race, color, religion, sex, handicap, familial status or national origin. Section 3631 also punishes attempts.

Housing rights are enumerated broadly in the statute. They cover all aspects of finding a place to live and figuring out how to pay for it. They include: selling, purchasing or renting a dwelling; occupying a dwelling; financing a dwelling; contracting or negotiating for any of these rights; applying for or participating in any service, organization, or facility relating to the sale or rental of dwellings; and assisting others in exercising these housing rights. Congress emphasized Section 3631’s broad scope when it passed the statute: “Experience teaches that racial violence has a broad inhibiting effect . . . Such violence must, therefore, be broadly prohibited if the enjoyment of these rights is to be secured.”³

Section 3631's penalties provide sure punishment and strong deterrence. A violation is a felony when a victim is injured or a dangerous weapon is used. The maximum prison term is 10 years, unless death results, in which case the maximum term is life in prison. Section 3631 does not contain a death penalty provision. Where no bodily injury occurs, the offense is a misdemeanor, punishable by up to one year in prison.

Where two or more persons conspire to violate housing rights, federal prosecutors may charge violation of a special civil rights conspiracy statute 18 U.S.C. 241. This was done in the Nampa case. Passed in the Reconstruction Era after the Civil War, Section 241 makes it unlawful for two or more persons to conspire to injure, oppress, threaten, or intimidate any person in the free exercise or enjoyment of any right secured by the Constitution or laws of the United States. Since 1968, fair housing has been one of those rights secured by the laws of the United States.⁴

Typically, prosecutors assess potential criminal cases on whether there is sufficient evidence to prove the elements of an offense beyond a reasonable doubt.⁵ To prove a criminal violation of the Fair Housing Act, the United States must show: (1) that the defendant used force or threat of force; (2) that the defendant willfully intimidated or interfered with, or attempted to intimidate or interfere with, a victim; (3) that the defendant acted as he did because of the victim's race (or other protected status); (4) that the defendant also acted as he did because the victim was occupying a dwelling; and (5) (in felony cases) that the defendant's actions resulted in bodily injury to a victim or that the defendant used a dangerous weapon.⁶

Federal courts have regularly recognized Congress' broad purpose in passing Section 3631. In criminal cases, federal courts have routinely upheld convictions based on a person's right to associate with persons of other races in their homes.⁷

Idaho prosecution of Keith Gilbert strengthens fair housing case law

In an Idaho federal case from the 1980s, the prosecution of avowed white supremacist Keith Gilbert further emphasized the breadth of fair housing protections.⁸ In 1985, Gilbert was charged with, among other offenses, a misdemeanor violation of Section 3631 for mailing racially derogatory and threatening correspondence to Susan Smith, the director of a northern Idaho adoption agency. Ms. Smith, through the agency, was attempting to place African American and Asian children for adoption in homes in Kootenai County.⁹ The correspondence consisted of a letter condemning the agency's actions and flyers threatening minorities and those who associate with minorities.¹⁰ The mailings were sent directly to Ms. Smith by name.

The district court in Idaho granted Gilbert's motion to dismiss the information for failure to state an offense under Section 3631. The Ninth Circuit reversed. It reasoned that

the legislative history and case law supported a broad interpretation of the Fair Housing Act, including the terms "dwelling" and "occupancy". It held that "placement of minority children by the director of an adoption agency is protected activity under section 3631(c) since the director is 'aiding or encouraging' minorities in the occupancy of dwellings."¹¹

Proving the threat and the intent to interfere based on a protected status

Cases involving threats, like those in *Gilbert*, are not unusual and often pose the most difficult decisions for prosecutors considering charges under Section 3631. Prosecutors must ask, "Is the conduct a threat or First Amendment protected (although perhaps offensive) free speech?" Among the factors prosecutors must examine are: (1) the clarity of the threat — does it put the listener or recipient in fear of harm; (2) the directness of the threat — is it conditional; (3) the manner of delivery of the threat — e.g., graffiti sprayed on the side of a house versus rantings on a website; and (4) the specificity of the threat — is it targeted at any individual or specific group of individuals, e.g., a burning cross placed in an African-American family's yard versus a burning cross on a hillside outside of a town?

In criminal cases, federal courts have routinely upheld convictions based on a person's right to associate with persons of other races in their homes.⁷

In *Gilbert II*, the Ninth Circuit provided guidance on some of these questions. Gilbert proceeded to trial and was convicted. He appealed to the Ninth Circuit on sufficiency of the evidence grounds, contending that the correspondence he sent did not constitute a “threat” under Section 3631. He argued that no single mailing made an explicit threat.¹² Again, the Ninth Circuit disagreed, holding that, as in prosecutions under 18 U.S.C. 871, which prohibits threats against the President, threats under Section 3631 must be evaluated “in light of the entire factual context.” The factual context includes surrounding events and the reaction of the listeners.¹³ The Ninth Circuit spelled out how Gilbert’s correspondence was sufficient to be a threat:

Smith received a letter from a man who was obviously an extremist and espoused the ideas of a traditionally violent group. The letter condemned Smith’s actions. The letter was accompanied by posters calling for a revolution — a term fraught with violence — and advocating lynch mobs, the shooting of black miscegenists and the hanging of whites. While the mailings may not have said “we’re going to hurt you, Susan Smith,” they certainly said “we don’t like what you’re doing, and we hurt people who do things we don’t like.” The fact that a threat is subtle does not make it less of a threat. The district court was correct in reviewing all of the mailings as a whole, rather than parsing them as Gilbert suggests.¹⁴

Determining whether the available evidence proves that the defendant acted because of the victim’s race or other protected status also poses challenges. Criminal defen-

dants rarely say why they are doing something at the time they are doing it. As a result, other acts evidence is often important in criminal fair housing cases to prove the defendant’s intent. The Ninth Circuit has held that Federal Rule of Evidence 404(b) is an inclusionary rule under which other acts evidence is admissible except where it tends to prove only criminal disposition.¹⁵ Thus, in fair housing and other hate crimes cases, evidence of prior acts or examples of racial animus are often admissible to show that the defendant

In fair housing and other hate crimes cases, evidence of prior acts or examples of racial animus are often admissible to show that the defendant acted with racial animus during the charged offense.

acted with racial animus during the charged offense. As proof of a defendant’s racial animus, federal courts have admitted: (1) tattoos or other symbols of white supremacy;¹⁶ (2) drawings of swastikas and the words white power;¹⁷ (3) racist jokes and racial slurs;¹⁸ and (4) expressions of dislike of non-white people or a desire not to associate with non-white people.¹⁹

This “other act” evidence of animus is often crucial to show that a defendant acted with that same animus or intent when he assaulted someone or threatened to do so at or near the defendant’s home.

New tools and aggressive prosecution

Despite its breadth, the criminal component of the Fair Housing Act does not yet protect against interference or intimidation based on sexual orientation or gender identity. However, with the passage of the Matthew Shepard-James Byrd, Jr. Hate Crimes Act in October 2009, violent acts based on sexual orientation and gender identity are federal crimes when there is a sufficient interstate commerce connection or when they occur within the special territorial or maritime jurisdiction of the United States. Where violent acts that interfere with housing rights are directed at persons because of their gender identity or sexual orientation, federal prosecutors may well be able to bring charges under the Shepard-Byrd Hate Crimes Act.²⁰

Enforcement of Section 3631 and other federal hate crimes statutes is an FBI and a U.S. Attorney’s Office priority. In Idaho, our agencies have partnered over the past year to provide criminal civil rights training to local law enforcement agencies throughout the state. Patrol deputies and street deputies are those most likely to first respond to a hate crime, including criminal Fair Housing Act violations.²¹ Hate crimes pose unique challenges for responders and investigators. Victims often do not know their assailants. They are often targeted for attack because of how they appear or are perceived, rather than based on something that they said or did. Hate crimes also tend to have a broader impact within communities than other kinds of violent crimes. Because they are motivated by bias, hate crimes are often intended to send, and do send, a broader message of violent intolerance toward a

class of persons. While all assaults merit serious and considerate attention from law enforcement and prosecutors, recognition of hate motivated crimes and the accompanying investigation to uncover the motive behind the crime are especially important. Such investigations and prosecutions let both victims and perpetrators know that broad messages of violent intolerance have no place in our community. Such investigations and prosecutions also show that we are committed, as Congress envisioned in passing the criminal component of the Fair Housing Act, to securing fundamental civil rights for all persons.

Endnotes

1. *United States v. Maurer*, et al., Cr No. 98-13.
2. 42 U.S.C. Section 3631.
3. U. S. Rep. No. 721, 90th Cong., 2d Sess., reprinted in 1968 U.S. Cong. & Admin. News 1837, 1842.
4. See 42 U.S.C. Section 1982.
5. In the federal criminal system, the Fifth Amendment to the United States Constitution requires that felonies be charged by a grand jury. The grand jury need only find "probable cause" to return an indictment charging a federal offense. However, internal Department of Justice policy, applicable to all U.S. Attorney's Offices, requires prosecutors to seek indictments only when they believe that a federal offense has occurred and that admissible evidence will probably be sufficient to obtain a conviction.
6. 42 U.S.C. '3631; see *United States v. Whitney*, 200 F.3d 1296, 1303 (10th Cir. 2000); *United States v. McInnis*, 976 F.2d 1226, 1230 (9th Cir. 1992); *United States v. Wood*, 780 F.2d 955, 961 (11th Cir. 1986), cert. denied, 476 U.S. 1184 (1986).
7. *United States v. Hayward*, 6 F.3d 1241, 1250 (7th Cir. 1993), cert. denied, 114 S.Ct. 1369 (1994) (purpose of section

While all assaults merit serious and considerate attention from law enforcement and prosecutors, recognition of hate motivated crimes and the accompanying investigation to uncover the motive behind the crime are especially important.

3631 is to protect the right of an individual to freely associate in his home with anyone, regardless of race); *United States v. Johns*, 625 F.2d 672, 675 (5th Cir. 1980); *Wood*, 780 F.2d at 961 (A>occupation= includes more than mere physical presence within four walls; the term clearly incorporates the right to associate in one's homes with members of another race).

8. *United States v. Gilbert*, 813 F.2d 1523 (9th Cir. 1987) (*Gilbert I*); *United States v. Gilbert*, 884 F.2d 454 (9th Cir. 1989) (*Gilbert II*).

9. *Gilbert II*, 884 F.2d at 456.

10. *Gilbert I*, 813 F.2d at 1525.

11. *Id.* at 1528.

12. *Gilbert II*, 884 F.2d at 457.

13. *Id.* (citation omitted).

14. *Id.*

15. *United States v. Meling*, 47 F.3d 1546, 1557 (9th Cir. 1995); *United States v. Rocha*, 553 F.2d 615, 616 (9th Cir. 1977).

16. *e.g.*, *United States v. Allen*, 341 F.3d 870, 885-87 (9th Cir. 2003); *United States v. Dunnaway*, 88 F.3d 617, 618-19 (8th Cir. 1996); *McInnis*, 976 F.2d at 1230.

17. *United States v. Skillman*, 922 F.2d 1370, 1372-74 (9th Cir. 1990).

18. *e.g.*, *Dunnaway*, 88 F.3d at 618-19.

19. *e.g.*, *United States v. Woodlee*, 136 F.3d 1399, 1410-11 (10th Cir. 1998); *Dunnaway*, 88 F.3d at 618-19; *United States v. Franklin*, 704 F.2d 1183, 1187 (10th Cir. 1983).

20. 18 U.S.C. Section 249.

21. Prosecution in federal court is not the only option when law enforcement officers develop evidence of a hate crime. Idaho's malicious harassment statute, I.C. '18-7902, makes it unlawful for any person maliciously, and with the intent to intimidate or harass another person because of the person's race, color, national origin, religion or ancestry, to cause physical injury to the person, to damage, destroy or deface their property or to threaten to injure or destroy property. Idaho's county prosecuting attorneys have a strong record of prosecuting malicious harassment cases.

About the Author

Wendy J. Olson is the United States Attorney for the District of Idaho. She was appointed to her position by President Barack Obama in 2010. As an Assistant United States Attorney from 1997-2010, Ms. Olson prosecuted white collar crime, crimes involving the sexual exploitation of children and criminal civil rights violations. Prior to joining the U.S. Attorney's Office, Ms. Olson was a trial attorney in the Criminal Section, Civil Rights Division, U.S. Department of Justice. Ms. Olson graduated from Stanford Law School in 1990. She is a Pocatello native.



Fair Housing Litigation in Idaho

Ken Nagy

The Fair Housing Act¹ (FHA), prohibits discrimination in housing and housing-related transactions on the basis of race, color, religion, sex, national origin, disability, and familial status (the presence of minor children). The FHA allows for enforcement by victims of housing discrimination by filing an administrative complaint with the United States Department of Housing and Urban Development (HUD).² The FHA further allows for the direct enforcement of its provisions by victims through the commencement of a lawsuit in United States District Court.³ Unlike many other civil rights laws, the FHA does not require victims of housing discrimination exhaust their administrative remedy prior to initiating a lawsuit.⁴ Therefore, victims may file a federal lawsuit while an administrative complaint is still pending with HUD. They may also file a complaint when a HUD complaint has not been filed at all.⁵

Intermountain Fair Housing Council's mission and process

The Intermountain Fair Housing Council, Inc. (IFHC) is a non-profit organization which operates pursuant to a grant from HUD. IFHC's mission is to advance equal access to housing for all persons without regard to any of the seven protected statuses listed above. IFHC serves housing providers and consumers by providing education on fair housing laws and assisting victims of housing discrimination with the preparation and filing of complaints with HUD. When IFHC receives a report of discrimination, it will in-

The courts have consistently held that fair housing organizations themselves become injured parties when they divert resources and their mission is frustrated as the result of an act of housing discrimination.⁶

investigate the matter. If it finds support for the claim of discrimination, it will assist the victim with filing a complaint. IFHC will also typically file a complaint on its (IFHC) own behalf. The courts have consistently held that fair housing organizations themselves become injured parties when they divert resources and their mission is frustrated as the result of an act of housing discrimination.⁶ In accordance with such rulings, the United States District Court for the District of Idaho has upheld the standing of IFHC in particular as an injured party.⁷

Once HUD receives a complaint of housing discrimination, HUD will also investigate the matter and make a determination of whether reasonable cause exists to believe that discrimination has occurred.⁸ If such a finding is made, the victim may elect to be represented by HUD attorneys before an Administrative Law Judge or to be represented by attorneys from the United States Department of Justice (DOJ) in a lawsuit in United States District Court.⁹ Practically speaking, once a reasonable cause finding is made by HUD, nearly all such cases are resolved through a settlement of the parties before the matter proceeds to litigation. In instances where a settlement

cannot be reached, IFHC has elected to have the case filed in United States District Court. Prior to 2008, the DOJ filed 15 such cases on behalf of IFHC in Idaho federal court.

When settlement of fair housing issues cannot be resolved

Beginning in 2008, if IFHC's complaint could not be resolved through settlement while pending with HUD, IFHC would then typically withdraw its complaint from HUD and file the matter in United States District Court. By filing federal lawsuits, IFHC would seek damages for itself as well as the victim involved. In some such cases, individual victims were also included as parties to the law suit. To date, IFHC has initiated 28 cases on its own in Idaho federal court. In addition, private parties have filed fair housing lawsuits in the Idaho federal court to which IFHC has not been a party. In every one of those cases, the victim of housing discrimination has prevailed.

Nearly all of the 43 federal court cases that IFHC has thus far been involved in have pertained to discrimination on the basis of either disability or familial status. Nearly every disability-based case, which constitutes

the majority of the cases that IFHC has litigated, pertained to either the failure to design and construct accessible multi-family housing, or discrimination against persons with service animals.¹⁰ Despite the fact that dozens of such cases have been litigated in Idaho and have resulted in sizeable settlements or jury verdicts, and despite the fact that many hundreds more of such cases have been subject to an administrative proceeding before HUD, discrimination on the basis of disability and familial status continue to be the majority of cases investigated by IFHC.

Damages for FHA violations

Most FHA cases are settled during the HUD administrative process. However, if the case is not settled at that early stage and it gets filed in court, the cost of settlement or a jury verdict can be sizeable. One FHA-based case litigated by an injured party against Boise County, Idaho resulted in a multi-million dollar verdict.¹¹ Another litigated against the City of Boise resulted in a \$1million verdict.¹² In addition, a prevailing plaintiff in a FHA court case is essentially entitled to an award of attorney's fees.¹³ Although this provision states that the court "may" allow the prevailing party reasonable attorney's fees and costs, such provisions in civil rights statutes have been interpreted by the courts to mean that prevailing plaintiffs *shall* be awarded their attorney's fees and costs, whereas prevailing defendants may obtain an award of attorney's fees and costs only upon a showing that the case was brought frivolously or unreasonably.¹⁴ Awards of attorney's fees and costs in FHA cases have exceeded \$1million, which is in addition to the amount awarded by the jury for damages and the amount that the

defendant must pay his or her own attorney.¹⁵

Settlements in FHA cases have also been significant. In my experience as a fair housing practitioner in Idaho, I have seen victims receive as much as nearly \$70,000 and IFHC routinely settles its damages for between \$10,000 and \$30,000. Furthermore, victim compensation funds to compensate unidentified victims have been created requiring defendants to pay as much as \$100,000 into the fund. Builders of inaccessible multifamily housing ordinarily must also complete retrofits to their properties. Costs to retrofit can exceed \$100,000. In addition, in all housing discrimination cases, defendants are required to change their discriminatory policies and obtain fair housing training.

IFHC conducts dozens of fair housing trainings around the state of Idaho each year for both housing providers and consumers. It also provides telephonic and in-person counseling to housing providers and consumers on a routine, daily basis. Given the high cost of non-compliance with the FHA, housing providers are well-advised to obtain such training and counseling on a frequent and on-going basis, and to do so before they are subject to a FHA complaint.

Endnotes

1. 42 U.S.C. 3601 *et seq.*
2. 42 U.S.C. §3610.
3. 42 U.S.C. §3613.
4. 42 U.S.C. §3613(a)(2).
5. *Id.*
6. *Smith v. Pacific Properties & Dev. Corp.*, 358 F.3d 1097, 1105 (9th Cir. 2004).
7. *Intermountain Fair Housing Council v. CVE Falls Park, L.L.C.*, Case No. 2:10-cv-00346-BLW (D. Id. 7/20/2011), 2011 WL 2945824 (D. Id. 2011).

Victim compensation funds to compensate unidentified victims have been created requiring defendants to pay as much as \$100,000 into the fund. Builders of inaccessible multifamily housing ordinarily must also complete retrofits to their properties.

8. 42 U.S.C. §3610(g).

9. 42 U.S.C. §3612

10. A summary of all of the cases that IFHC has litigated to date, which describes the basis for each lawsuit and the relief ordered, is available from me upon request.

11. *Alamar Ranch, LLC v. County of Boise*, 1:09-cv-00004-BLW (D. Id. 12/17/2010) (\$4,000,000 jury verdict plus accrued interest).

12. *Community House, Inc. v. City of Boise*, 1:05-cv-00283-CWD (D. Id. 9/26/2012).

13. 42 U.S.C. §3613(c)(2)

14. *See, Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983).

15. *Alamar Ranch, LLC v. County of Boise*, 1:09-cv-00004-BLW

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Fair Housing - Landlords' Perspective

Eric M. Steven

Housing is an industry experiencing growing pains as it adapts to the application of fair housing and civil rights principles. In the last decade, numerous cases across the country have applied the “thou shall not discriminate in housing” principle to specific factual scenarios in landlord-tenant relations providing new understanding as to what landlords can and cannot do with the property. The creation of enforcement agencies such as the Human Rights Commission, together with the rise of tenant advocacy claim facilitators, have required even well-intentioned landlords to respond to complaints of discrimination. The following guideline provides some basic tools for landlords to limit or avoid exposure to housing discrimination claims.

Tenant screening

Landlords should develop written screening criteria for tenant applicants. Screening criteria should pertain to the applicant’s past rental history, criminal conviction history, and credit history as permitted by State law and the Fair Credit Reporting Act 15 USC § 1681c. The screening criteria should inform the tenant of grounds for denial of the application. Landlords may want to adopt policies that allow otherwise non-acceptable applicants the ability to qualify for tenancy by tendering a higher deposit amount, or adding a qualified co-signer to the lease.

The screening criteria should be applied uniformly to all applicants. Landlords should not deter applications based upon anticipated denial. Remember to consider reasonable

Good landlords develop non-discriminatory rules. There are certain steps to take in developing non-discriminatory rules.

accommodations for applicants with disabilities in certain circumstances, including income, to rent requirements, and waiver of “no pet” clauses for service animals.¹

Tenant rules and policies

Good landlords develop non-discriminatory rules. There are certain steps to take in developing non-discriminatory rules.

Know what’s protected

The first step is to know what is prohibited. The federal law prohibits discrimination in rental housing against protected classes and also prohibits certain types of discriminatory conduct in leasing dwellings.²

Protected classes

Discrimination against individuals belonging to a protected class is prohibited. There are numerous protected classes, and the trend is to create additional classes. Federal law, as well as many state, county, and municipal laws prohibit discrimination in housing to various classes of individuals. Some counties and municipalities offer protection to additional classes of individuals over and above those protected by federal law.

Examples of current protected classes of various jurisdictions include:

- Race: includes all races African American, Asian, Caucasian, etc.;
- Color: refers to the color of one’s skin³;
- National Origin: means the country where one was born⁴;
- Ancestry: means the country where one’s parents, grandparents or forebears were born (in some jurisdictions ancestry is covered as national origin)⁵;
- Religion: includes one’s membership (or lack thereof) in an organized religious group and one’s spiritual ideas or beliefs⁶;
- Sex: includes male and female⁷;
- Familial Status and Parental Status: is essentially the same thing — the presence of one or more children under the age of 18 in the household. It includes being a parent, step-parent, adoptive parent, guardian, foster parent or custodian of a minor child, as well as any person who is pregnant or who is in the process of acquiring legal custody of a child⁸;
- Disability: includes physical, mental and sensory conditions⁹;
- Marital Status: includes being single, married, separated, engaged, widowed, divorced or co-habiting¹⁰;
- Section 8: means the person has a Section 8 housing voucher for use in rental housing in the community¹¹;

- **Political Ideology:** includes any idea or belief, or coordinated body of ideas or beliefs, relating to the purpose, conduct, organization, function or basis of government and related institutions and activities, whether or not characteristic of any political party or group¹²;
- **Age:** means individuals of any age¹³;
- **Sexual Orientation:** means actual or perceived male or female heterosexuality, bisexuality, or homosexuality. Sexual Orientation includes a person's attitudes, preferences, beliefs and practices pertaining thereto. In some jurisdictions, sexual orientation includes gender identity¹⁴;
- **Gender Identity:** means a person's identity, expression, or physical characteristics, whether or not traditionally associated with one's biological sex or one's sex at birth, including transsexual, transvestite, and transgendered. Gender identity also includes a person's attitude, preference, belief, and practice pertaining thereto¹⁵;
- **Veterans Status:** generally means every person who at the time he or she seeks benefits from services in the armed forces or reserves, has received an honorable discharge or discharge for medical reasons with an honorable record.¹⁶

Protected conduct

In addition to protecting individuals belonging to various classes, fair housing laws also regulate various types of conduct in housing. Prohibited conduct governing dwellings protects against discriminatory: advertising terms, conditions, and privileges; and steering of individuals. Steering refers to the practice of guiding prospective tenants towards or away from certain neighborhoods

based upon race in violation of 42 U.S.C. §3604(d) and (e). Fair housing laws also require landlords to make reasonable accommodation of rules for individuals with disabilities, and perform or allow modifications of the leasehold premises when necessary.¹⁷

Developing rules

Landlords should create clear, comprehensive, written neutral tenant rules. Rules should address conduct, not character. Landlords must ensure rules are reasonable and further a legitimate interest. Landlords should review lease and tenant rules scrutinizing the real business purpose of the rule or policy.

Unintentional violations

Landlords must appreciate the risk of discriminatory conduct arising out of unintentional violations. There are numerous examples of unintentional discriminatory rules including the following: Adult swim hours. [Note: Lap swimming may be a viable nondiscriminatory alternative.]; Teen curfew. [Note: Consider a prohibition against loitering in a certain place after a specified time as an alternative.]; Treating service animals as pets. [Note: As an alternative, use a Service Animal Addendum with appropriate duties, or specifically reference next to the pet or no

pet policy that service animals are welcome].

Disparate impact

Landlords also need to understand fair housing violations arising out of "disparate impact" in the application of policies and rules. Landlords must avoid apparently neutral rules that adversely impact protected class individuals in the application of the rule.¹⁸ (Example: A screening criteria requiring a tenant applicant to earn three times the amount of rent may disparately impact applicants with disabilities who receive SSI income, but have other means of assuring performance of financial obligations).

Progressive discipline

Landlords should consider policies of progressive discipline. Tenant rules and policies should address what will happen. Landlords should make rules reasonable and not punitive. Sanctions to the tenant for violating a rule should not appear too harsh.

The landlord must also be willing to adhere to sanctions flowing from application of the policy or rule. Failure to uniformly apply a rule or policy may result in a court finding waiver of the same. In addition, imposing a rule on one tenant but not another may raise claims of bias and discrimination.

Steering refers to the practice of guiding prospective tenants towards or away from certain neighborhoods based upon race in violation of 42 U.S.C. §3604(d) and (e).

Communicate rules

Rules must be adequately communicated to the tenant. Be sensitive of language barriers. There are times when landlords may be expected to translate leases, notices, and rules into the tenant's native language in areas of high density ethnic populations. Rules and policies must also be created consistently with applicable state law and/or lease provisions. A lease or rule violating state or federal law may be found void by a court.

Landlords are not typically allowed to amend rules during unexpired tenancies. Even after the termination of tenancy the landlord will typically be required to provide written notice of a new rule or condition of tenancy to their tenant. The manner of communicating a rule change may also be addressed by state law. Typically, rule amendments should be in writing and served on the tenant personally, or by posting at leasehold and mailing.

Enforcing rules in a non-discriminating manner

Landlords must discover and document rule violations by tenants and others to guard against retaliatory tenant claims of discrimination. Landlords should use tenant logs and create written, clear, concise objective notes. The Landlord's notes should identify *who, what, when, where, why, and how*, relative to any incident of notice. Notes should clearly identify the conduct and individuals at issue. Understand the landlord's logs may be discoverable in court. The landlord and all agents must be appropriate in log entries and not use vulgar, discriminatory, or offensive language in describing what was observed.

Landlords should use photos and other means to preserve evidence of

tenant misconduct. It is always good to obtain third-party verification of the conduct at issue if possible. It is also a good idea to obtain contact information from witnesses as well as detailed statements of events including dates, times, and description of incidents.

When a landlord discovers inappropriate tenant conduct, the Landlord should issue notice to the tenant. Notice to the tenant should identify specific conduct at issue, the date of the violation, and memorialize all written rules relating to the tenant's

Understand the landlord's logs may be discoverable in court. The landlord and all agents must be appropriate in log entries and not use vulgar, discriminatory, or offensive language in describing what was observed.

violation of duties. In disputes between or among tenants, landlords should interview everyone involved before issuing notice to the tenant(s) to avoid or minimize allegations of discrimination by one tenant against another, and/or against you.

The landlord should uniformly apply written policies to all offending parties, and issue appropriate notices consistent with both the rental agreement and governing state law.

The landlord should identify the problem conduct and invite opportunity to cure when appropriate.

Landlords must understand the need to grant *reasonable* accommodation in terms and conditions when requested. This is difficult at times because the landlord must uniformly apply rules and policies except when an appropriate request is made to vary policy or rule to allow a reasonable accommodation of a person's disability.

Landlords must reconcile and follow all lease, federal, state, and municipal regulations when enforcing rules and policies.

[Note: It is not uncommon for federally mandated affordable housing leases to contain a gap in continuity with state law. Even though a lease or a federal law provides for immediate termination, there may be times when state law does not provide a direct adequate remedy. Subsequently, this puts the landlord in a difficult situation, as it is the state court unlawful detainer act that typically directs sheriffs to remove evicted tenants].

Internal education and training

Education and training of staff is important to protect against discrimination. Landlords may also protect against discrimination by using effective employment/hiring screening procedures. Make sure all employees, agents, and vendors are properly screened for qualification and trained in fair housing.

Landlords should post and disseminate posters, brochures, and material supporting equal opportunity fair housing. Housing providers may want to create employee handbooks and manuals that set forth fair housing policies and protocols. Landlords are wise to create an environment that encourages inclusion and fosters non-discriminatory conduct.

Auditing conduct is also a valuable tool to protect against discrimination. Internal quality assurance and human resource monitoring through outside testing fair housing groups like the Human Rights Commission, Intermountain Fair Housing Council, or Northwest Fair Housing Alliance, is a way to audit leasehold property for discriminatory conduct of employees and agents. Many of these agencies provide training for landlords after testing.

Internal policy protocols are vital to protecting against discrimination. Provide written rules and policies to employees addressing discriminatory conduct and progressive discipline to regulate conduct.

Dealing with discovered discrimination

When discriminatory conduct of an agent is identified by a landlord immediate action should be taken. The first measure is likely to consult with an employment attorney and/or human resource director.

From an internal affairs perspective, the landlord should preserve testimony of the allegedly discriminating employee if feasible. Preserving testimony early is important in the event the employee changes his/her story, becomes hostile, or unavailable. The landlord may consider hiring an investigator or third party to take a recorded sworn statement of the employee to lend authentication. The landlord should then ensure uniform application of written discipline policies to employees engaging in discrimination after consulting with employment counsel.

Responding to discrimination claims

When responding to claims of discrimination it is important to be professional and courteous to the investigator. The landlord through counsel should strive to clarify facts, provide documents and evidence

supporting proper conduct. When responding to formal discrimination claims, the responding landlord should provide law applicable to special circumstances and/or nuances of the case. Recognize most investigators are trained and knowledgeable of fair housing laws.

Landlords are wise to consider and invite conciliation. Conciliation should occur prior to determination of "cause" or "no cause." It is often more expensive and/or difficult to settle a case after a "cause" determination is made by HUD or the Human Rights Commission.

Conclusion

It is very important for landlords to accept and implement fair housing principles of inclusion. Many landlords misconstrue their title to real property as a license to limit access. The general nature of the fair housing mandate "thou shall not discriminate" continues to be defined on a case-by-case basis. Even well-intentioned landlords have been found liable in discrimination cases. Successful landlords will create and implement non-discriminatory rules and policies. Continued education is also extremely critical to ensure compliance with the rapidly developing nature of fair housing.

Endnotes

1. 42 U.S.C §3604(f)(3)
2. 42 U.S.C. §3604
3. 42 U.S.C. §3604
4. 42 U.S.C. §3604
5. 42 U.S.C. §3604
6. 42 U.S.C. §3604
7. 42 U.S.C. §3604
8. 42 U.S.C. §3604
9. 42 U.S.C. §3604
10. Seattle Municipal Code 14.08.060(b)
11. Seattle Municipal Code 14.08.060(b)
12. Seattle Municipal Code 14.08.060(b)
13. RCW 49.60.200
14. RCW 49.60.030

Preserving testimony early is important in the event the employee changes his/her story, becomes hostile, or unavailable.

15. RCW 49.60.030

16. 42 U.S.C. §3604

17. 42 U.S.C. §3604

18. *Sherman Ave. Tenants' Ass'n v. District of Columbia*, 444 F.3d 673, 679 (D.C. Cir. 2006); *Smith v. City of Jackson*, 544 U.S. 228, 233-40 (2005) (ADEA); *Ricci v. DeStefano*, 129 S.Ct. 2658, 2672-73 (2009) (Title VII); *Schwartz v. City of Treasure Island*, 544 F.3d 1201, 1217 (11th Cir. 2008.).

About the Author

Eric M. Steven is a sole practitioner in Spokane with a practice emphasis in the area of landlord-tenant relations and housing. He practices in both state and federal courts in all Washington counties east of the Cascades and in Northern Idaho. Mr. Steven litigates landlord/tenant cases involving eviction, ejectment, commercial litigation, fair housing claims, and a variety of other landlord-tenant issues. Mr. Steven received his B.A. degree from the University of Oklahoma in 1987 and his J.D. degree from Gonzaga University School of Law in 1990. As a licensed instructor in real estate, Mr. Steven frequently lectures to attorneys, property managers, law enforcement, and owners at continuing legal education programs. He is the author of "From Landlord/Tenant to Debt Collector/Consumer and Back Again", *GONZAGA LAW REVIEW*, Vol. 35, 1999-2000, No 2.



COURT INFORMATION

OFFICIAL NOTICE SUPREME COURT OF IDAHO

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

3rd AMENDED - Regular Spring Term for 2014

Boise January 13, 15, 17, 22 and 24
Boise February 12, 14, 18 and 19
Boise (Concordia University School of Law - 501 W. Front Street) February 21
Boise April 4 and 14
Coeur d'Alene April 8 and 9
Lewiston April 10
Boise May 2
Idaho Falls May 13 and 14
Pocatello May 15 and 16
Boise June 2, 4 and 6
Twin Falls June 10 and 11

By Order of the Court
Stephen W. Kenyon, Clerk

NOTE: The above is the official notice of the 2014 Spring Term for the Supreme Court of the State of Idaho, 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 Has No Oral Argument Scheduled for March 2014

Idaho Court of Appeals Oral Argument for March 2014

Tuesday, March 4, 2014 – COEUR D'ALENE

9:00 a.m. *Robinson v. Mueller* #40866-2013
10:30 a.m. *Bonner County v. Cunningham* #40642-2013
1:30 p.m. *Mesenbrink v. Lighty* #38451-2011

Wednesday, March 5, 2014 – COEUR D'ALENE

9:00 a.m. *McHugh v. Reid* #40886-2013
10:30 a.m. *State v. Sherman* #40995-2013

Tuesday, March 18, 2014 – BOISE

9:00 a.m. *State v. Moore* #40210-2012
10:30 a.m. *State v. Foote* #40500-2012
1:30 p.m. *State v. Tracy* #40739-2012

Thursday, March 20, 2014 – BOISE

1:30 p.m. *Lyneis v. State* #40919-2013

OFFICIAL NOTICE COURT OF APPEALS OF IDAHO

Chief Judge
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Judges
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David W. Gratton
John M. Melanson

2nd AMENDED - Regular Spring Term for 2014

Boise January 9, 14, 16 and 21
Boise February 6, 11, 13 and 20
Coeur d'Alene March 4 and 5
(United States Federal Courthouse - Coeur d'Alene, located at 6450 N. Mineral Drive)
Boise March 18 and 20
Boise April 8, 10, 15 and 17
Boise May 6, 8, 13 and 15
Boise June 10, 12, 17 and 19

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Stephen W. Kenyon, Clerk

NOTE: The above is the official notice of the 2014 Spring Term for the Court of Appeals of the State of Idaho, 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 for April 2014

Tuesday, April 8, 2014 – BOISE

9:00 a.m. *Hill v. State* #40570-2012
10:30 a.m. *Lopez v. State* #40751-2013
1:30 p.m. *State v. Doe* (2013-14) #41161-2013

Thursday, April 10, 2014 – BOISE

9:00 a.m. *State v. Nicolescu* #40985-2013
10:30 a.m. *Groves v. State* #41328-2013

Tuesday, April 15, 2014 – BOISE

9:00 a.m. *Allied General Fire & Security v. DeBest Fire* #41045-2013
10:30 a.m. *State v. Gentry* #40721-2013

Thursday, April 17, 2014 – BOISE

9:00 a.m. *State v. Hunter* #40950-2013
10:30 a.m. *State v. Doe* (2013-16) #41220-2013

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The Law Office of Jeffrey Brownson focuses on criminal defense and civil matters related to criminal proceedings. Jeffrey represents clients throughout Idaho in all stages of the criminal process and has successfully tried cases in both federal and state courts.

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Idaho Supreme Court and Court of Appeals
NEW CASES ON APPEAL PENDING DECISION
(Updated 2/1/14)

CIVIL APPEALS

Attorney fees and costs

1. Whether the court abused its discretion in denying Sun Valley's motion for costs and fees by applying an incorrect standard, contrary to I.C. § 9-344(2).

Donoval v. City of Sun Valley
S.Ct. No. 40853
Court of Appeals

Liens

1. Did the court err in ruling that Allied General Fire and Security's lien contained appropriate language to satisfy the oath mandated by I.C. § 45-507 and thus erred in denying St. Luke's and DeBest Fire's motion for summary judgment seeking to have the lien invalidated?

Allied General Fire & Sec., Inc. v. DeBest Fire
S.Ct. No. 41045
Court of Appeals

Post-conviction relief

1. Did the court err by summarily dismissing Ramirez's petition for post-conviction relief and denying his request for counsel?

Ramirez v. State
S.Ct. No. 41341
Court of Appeals

2. Did the court err when it declined to appoint counsel for Grant?

Grant v. State
S.Ct. No. 39207
Court of Appeals

3. Did the court err in denying post-conviction relief because the failure of appellate counsel to raise the suppression motion was ineffective assistance of counsel?

Daniels v. State
S.Ct. No. 40811
Court of Appeals

Sex offender registration relief

1. Whether the court erred in summarily dismissing Groves' petition on the basis that a retroactive application of Sex Offender Registration Act amendments did not violate the ex post facto clauses of the United States and Idaho constitutions.

Groves v. State
S.Ct. No. 41328
Court of Appeals

Summary judgment

1. Did the court err in granting summary judgment to respondents on the basis the appellant failed to join respondents within the six months requirement of I.C. § 45-510?

Sims v. Jacobsen
S.Ct. No. 40474
Supreme Court

CRIMINAL APPEALS

Due process

1. Did the prosecutor's statements in closing argument referring to the evidence as uncontroverted constitute fundamental error as a comment on the defendant's right to remain silent?

State v. Calvillo
S.Ct. No. 39529
Court of Appeals

Enhancement

1. Did the court err when it determined that Saviers' two prior violations of a no contact order should be considered as two convictions for purposes of the felony enhancement?

State v. Saviers
S.Ct. No. 40503
Court of Appeals

Evidence

1. Was there sufficient evidence to support the finding that Goggin knew the material she was packing and selling was synthetic marijuana?

State v. Goggin
S.Ct. No. 40554
Supreme Court

2. Did the district court err in concluding substantial evidence supported the magistrate's determination that Doe committed malicious injury to property?

State v. John (2013-14) Doe
S.Ct. No. 41161
Court of Appeals

Pleas

1. Did the court abuse its discretion when it rejected Stadtmiller's attempt to enter an Alford plea of guilty to an amended charge?

State v. Stadtmiller
S.Ct. No. 40513
Court of Appeals

2. Did the court err when it determined it did not have jurisdiction to hear Webb's motion to withdraw his guilty plea?

State v. Webb
S.Ct. No. 40414
Court of Appeals

3. Did the court err when it denied McAmis' motion to withdraw his guilty plea?

State v. McAmis
S.Ct. No. 40718
Court of Appeals

Restitution

1. Did the court err in concluding Bosley had agreed to pay restitution to the victim for economic losses caused by the conduct for which he was originally charged?

State v. Bosley
S.Ct. No. 41104
Court of Appeals

**Search and seizure –
suppression of evidence**

1. Did the court err in denying Kapelle's motion to suppress evidence found on his property and in finding law enforcement lawfully entered the curtilage surrounding his home?

State v. Kapelle
S.Ct. No. 40475
Court of Appeals

2. Did the court err in denying Caudill's motion to suppress and in finding his encounter with the officer was consensual?

State v. Caudill
S.Ct. No. 40782
Court of Appeals

Sentence review

1. Did the court err by not giving Olson credit for the jail time served in Washington as a sanction for violating the conditions of his community custody in that state before being arrested on the Idaho warrant for probation violation?

State v. Olson
S.Ct. No. 40379
Court of Appeals

Summarized by:
Cathy Derden
Supreme Court Staff Attorney
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Appellate Tips: How to Use the Standard of Review

Laurie O'Neal

On appeal, standard of review is the only thing that matters to the court. Only in *de novo* review, for pure questions of law, may you rely on the arguments made below. In every other case, your argument must be about the standard of review. If you simply repeat your prior arguments, you haven't done the job, and you will lose the appeal. Instead, prove the error meets the applicable standard. It's the only way you can win on appeal. Following are three tips to help you properly focus your appeal on the standard of review.

Tip #1: Begin with the end

If there is one thing that will help you stay focused, it is this: Write your conclusion first. When you sit down to draft an appellate brief, begin with the following sentence formula: "Therefore, it was [state the standard] for the trial court to... [insert the error here]." For example, "Therefore, it was an abuse of discretion for the trial court to suppress Dr. Wilson's expert testimony." To succeed, this is the conclusion you must get to. You must prove that what occurred violated the standard. By writing it out first, you outline a goal. And you are much more likely to stay on that track throughout your argument.

Tip #2: Use the standard's definition as your rule

How do you get to that conclusion? As with any other argument, you begin with the "rule." And the rule you need on appeal differs greatly from the rule you argued below. Now your rule is the definition

If you simply repeat your prior arguments, you haven't done the job, and you will lose the appeal. Instead, prove the error meets the applicable standard. It's the only way you can win.

of the applicable standard. The definition is paramount because it is the argument.

For example, suppose you are appealing a finding of fact — say, the court's interpretation of an ambiguous lease provision that the area immediately outside a tenant's door is part of the common area because the lease's description of "rental unit" did not mention it. At trial, you may have argued from a rule that by personalizing the area, the tenant treated it as part of his rented property. That is no longer your rule. It is not your task anymore simply to argue for the "right" rule; your task now is to argue that use of the "wrong" rule was clearly erroneous.¹ But it is not enough merely to set out the standard: "Findings of fact are set aside when clearly erroneous." You must keep going. What does "clearly erroneous" mean?² In Idaho, it means the court examines "whether the findings of fact are supported by substantial and competent evidence."³

So, this is what you must convince the court of, which means you need to define "substantial and competent evidence" as well: "if a reasonable trier of fact would accept it and rely upon it in determining whether a disputed point of fact had been proven."⁴ That is your new rule. Your

job on appeal is to prove that no reasonable trier of fact would have relied upon the absence of terms in the description of "rental unit" to determine the extent of the common area. If you focus on arguing no reasonable trier of fact would have relied on the evidence, then you make the right argument on appeal.

Tip #3: Use exact terms

How do you make the argument about the standard? You must use the exact words in its definition. The words explaining what the standard means are critical; do not use synonyms, do not merely allude to the definition. For example, suppose you represent Mr. Smith and are appealing, in a negligence claim, a jury instruction that included the term "reckless" to define breach. The standard of review is "whether the instructions, as a whole, fairly and adequately present the issues and state the law."⁵ Further, "an erroneous instruction does not constitute *reversible* error" unless it misleads the jury or prejudices a party.⁶ So, use those words: "The inclusion of the term 'reckless' in the instruction did not 'fairly and adequately' state the law because the law only requires ordinary negligence to find a breach of duty. Raising the standard to 'reck-

less' is not a fair statement of the law and is therefore erroneous." Then, of course, you explain the authority supporting your assertion of a fair statement of the law. Then prove the second part of the standard: "The erroneous inclusion of the term 'reckless' misled the jury because it raised his burden of proof and required the jury to look for something more than negligence. As a result, the erroneous instruction prejudiced Mr. Smith because the jury found Mr. Smith had not met his burden on the element of breach and ruled in favor of the defendant."

At the trial court, you might have argued "reckless" was not a "correct" statement of the law. While often you will reuse the authority and argument you originally made, you must recast it using the right language. By building the argument expressly around the terms of the standard's definition, you provide the court what it needs to rule in your favor.

The standard governs everyone's argument

All three of these tips apply equally to appellees. When the standard favors your client, remind the court of that in your argument, often. Use the definition terms to convince the court that what happened below did not rise to the level of error the definition requires. You might even

concede that a different result could have been reached below, but that is not sufficient to reverse; point out that the appellant has simply argued there was an error but has not proven the error meets the precise terms of the standard's definition.

Conclusion

Standard of review is not merely an incantation to be recited at the beginning of your brief. It is the appeal. It is the essence of your argument. As one judge explained it, "Unless counsel is familiar with the standard of review for each issue, he may find himself trying to run for a touchdown when basketball rules are in effect."⁷ Take command of your appellate argument. Show up with the right ball.

Endnotes

1. "Interpretation of an ambiguous document presents a question of fact." *C & G, Inc. v. Rule*, 135 Idaho 763, 765, 25 P.3d 76, 78 (2001). Findings of fact are not set aside unless clearly erroneous. Idaho R. Civ. P. 52(a).
2. In the Seventh Circuit, it means "a decision must strike us as more than just maybe or probably wrong; it must... strike us as wrong with the force of a five-week-old, unrefrigerated dead fish." *Parts and Electric Motors, Inc. v. Sterling Electric, Inc.*, 866 F.2d 228, 233 (7th Cir. 1988).
3. *Williamson v. McCall*, 135 Idaho 452, 454, 19 P.3d 766, 768 (2001).
4. *Id.*

All three of these tips apply equally to appellees. When the standard favors your client, remind the court of that in your argument, often.

5. *Silver Creek Computers, Inc. v. Petra, Inc.*, 136 Idaho 879, 42 P.3d 672, 674 (2002) (citing *Howell v. Eastern Idaho Railroad, Inc.*, 135 Idaho 733, 24 P.3d 50 (2001)).

6. *Id.* (emphasis added).

7. Hon. John C. Godbold, *Twenty Pages and Twenty Minutes — Effective Advocacy on Appeal*, 30 Sw. L. J. 801, 811 (1976). (With apologies for the judge's pronoun choice....it was 1976.)

About the Author

Laurie O'Neal taught first-year and advanced legal writing courses at the University of Idaho College of Law for 13 years. She is licensed in Idaho and in Colorado, where she practiced civil litigation. She is currently an adjunct professor at Concordia, advising the moot court program, and has an appellate practice in Boise.



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Meet and Confer: Should Reasonable Efforts Include Live, Real-Time Communication?

Scott Armitage

Attorneys often find themselves in a bind when they attempt to meet and confer with opposing counsel. On the one hand, they want to resolve issues outside of court as a means of saving time and money for their clients. On the other hand, occasionally one party fails to respond to discovery requests and the court must become involved. In that situation, the court determines whether the parties made reasonable efforts to meet and confer prior to their filing a motion. One big issue then is defining *reasonable efforts*.

What does the law say?

The United States District Court for the District of Idaho has adopted civil rule 37.1. It provides that the court will only entertain a “statement showing that the party making [a] motion has made a reasonable effort to reach agreement with opposing attorneys or [a] self-represented litigant on the matters set forth in the motion.”¹ The Rule does not specify which method of communication satisfies the reasonable effort component, although it would seem fairly obvious on the face of a motion to compel certificate whether an attorney has actually made reasonable efforts.

For example, in *Shuffle Master, Inc. v. Progressive Games, Inc.*,² counsel for defendant failed to satisfy meet and confer because its certificate included “broad discovery requests” rather than instances where they engaged in “meaningful discussions” with opposing counsel.³ The certificate also indicated counsel for defendant

Even if reasonable efforts may seem obvious to the court, it is vitally important for the attorneys to know whether the efforts they make are reasonable enough.

“only [made] one telephone call and [submitted] four facsimiles” to opposing counsel, which the court held was not a “good faith effort to obtain discovery.”⁴

Another example of a poor, good faith effort in meeting and conferring was in *Soto v. City of Concord*.⁵ In *Soto*, counsel for plaintiff sent the defendants two separate requests for production of certain documents.⁶ The counsel for defendants sent a reply letter refusing to comply and asserting certain privileges.⁷ In response counsel for plaintiffs sent a new letter stating that defendants’ refusal to produce certain documents was not well founded and the Defendants needed to comply within two days of the letter date.⁸ Defendants did not comply with this final request, and plaintiff’s counsel filed a motion with the court.⁹ The court denied the motion because merely sending a response letter versus a “live exchange of ideas and opinions” would not satisfy the meet and confer requirement.¹⁰

Even if reasonable efforts may seem obvious to the court, it is vitally important for the attorneys themselves to know whether the efforts they make are reasonable enough. Treating clients and opposing coun-

sel in a “civil, professional, respectful, and courteous manner at all times” plays into the reasonableness of their “good faith efforts.”¹¹ Attorneys should avoid discovery methods intended to harass opposing counsel and their clients, and instead should “confer early” and treat each other with “honesty and fair dealing.”¹² Even if one party is unsuccessful at meeting and conferring with opposing counsel, he still must make at least a good faith attempt to meet and confer.

Ultimately the court decides whether a moving party has made a good faith attempt. One example of a good faith attempt is acting diligently and reasonably in order to avoid submitting frivolous discovery requests.¹³ If a judge felt that counsel was constantly requesting an extension merely for the purpose of unduly delaying a meeting or conference, likely she would not view these requests as a good faith attempt and perhaps would deny any future motions to compel certificate.¹⁴ This denial, however, should not necessarily be viewed as the court’s punishing the parties with an extraordinary requirement or an unnecessary burden. Rather, it reminds both parties that they have responsibilities

to treat each other fairly and must do so by demonstrating more than a minimum effort.¹⁵ Extensive communication is not necessary, but in the end that communication may help the court decide the extent of a party's reasonable efforts.

There may be times, however, when the court will recognize the need to step in and help both sides. Many attorneys will inevitably experience a situation where they give their best in making reasonable efforts, but opposing counsel still fails to comply with discovery requests. In those instances, an attorney might be justified in filing for a certification to request the court's help in resolving the dilemma if he made previous, reasonable efforts to meet and confer with opposing counsel.¹⁶ The Court requires that the certification must detail "[specific] steps taken to meet and confer directly with the [other party]."¹⁷ A minimum effort will not suffice, unless the court relieves the parties of a duty to disclose, but in most circumstances the parties at least must disclose some materials to each other.¹⁸

The real challenge

Determining whether a party puts forth minimum efforts versus reasonable efforts is difficult considering District Courts within the Ninth Circuit have different permissible methods to satisfy meet and confer.

Attorneys should not act too hastily just to get around the court's requirement more quickly. If a party leaves a message on a voicemail during the day, filing a motion to compel hours later would seem rushed and unreasonable.¹⁹ In addition to abrupt action, "parroting of statutory language" or "cursory recitation" of the issues likewise is unreasonable and it does not demonstrate a genu-

ine effort to resolve the parties' conflict with meeting and conferring.²⁰ In looking at different methods for reasonable efforts, it is no wonder parties become easily frustrated as each counsel may interpret the rule differently: Does an in-person meeting always have to take place? Will a phone call suffice? What about an email or a letter?

Additionally, if a meet and confer requirement for reasonable efforts was simply reduced to requiring at minimum just a letter or an email, significant communication gaps could result. The minimum effort of writing a short letter or email would neglect the importance of recognizing a party's nonverbal cues such as facial expressions, voice tone and volume, hand gestures and other body movements.²¹ In other words, there could be instances where relying only on written communication could actually be more time consuming and costly, especially if the parties have to go back and forth multiple times to resolve a simple discovery dispute.

Rather than having to pick one method over another, it might be more effective to bridge this communication gap by preferring to first meet and confer either via a live web conference, an in-person conference, or via telephone. This preference fairly recognizes our modern dependency on technology while at the same time recognizes the traditional method of meeting in person. This approach is flexible and it lets the parties have more than one option. The approach also allows the flexibility attorneys may need because of where the attorneys' offices are located and where their clients live.

Conclusion

In order to alleviate future confusion regarding reasonable efforts required, a more interpretive definition of the rule seems necessary. Districts within the Ninth Circuit have their own specific interpretations of what satisfies meet and confer. When looking at our modern age of technology and the many ways in which

District	Local Rule (respectively)
Alaska	If both counsels are located the same city, then in person – if not, then by telephone (LR 37.1(a))
Arizona	(No specified method of meet and confer)
California C. District	"If both counsel are located within the same county," then in person – if not, then telephonic conference (LR 37-1(a))
California E. District	"Held at a time and place and in a manner mutually convenient to counsel" (LR 251(b))
California N. District	(No specified method of meet and confer)
California S. District	If counsels' offices are in the same county, then meet in person – if not, then confer by telephone (Civ. R. 26.1(a))
Guam	"Meet in person" (LR 37.1(a))
Hawaii	Counsel may confer "either in person or by telephone" (LR 37.1(a))
Idaho	(No specified method of meet and confer)
Montana	"Direct dialogue in a discussion in a face to face meeting, in a telephone conversation, or in detailed correspondence" (LR 26.3(c))
Nevada	(No specified method of meet and confer)
Northern Mariana Islands	(No specified method of meet and confer)
Oregon	Telephone assigned judge if a discovery problem arises in order have a telephone conference (LR 26(f))
Washington E. District	(No specified method of meet and confer)
Washington Court District	"Face-to-face meeting or a telephone conference" (LCR 3(a)(1))

technology can serve as a convenient tool for attorneys, attorneys should still recognize the significance of oral communication and nonverbal cues. Whether attending an in-person or on-line conference, actually speaking with opposing counsel may further the likelihood of achieving a reasonable effort in resolving discovery disputes and avoid needing to burden the court with an otherwise avoidable issue.

Endnotes

1. Local Rules of Civil and Criminal Practice Before the United States District Court for the District of Idaho, R. 37.1, <http://www.id.uscourts.gov/docs/Local-Rules-DC-Clean.pdf>.
2. *Shuffle Master, Inc. v. Progressive Games, Inc.*, 170 F.R.D. 166, 173 (D. Nev.1996).
3. *Id.*
4. *Id.*
5. *Soto v. City of Concord*, 162 F.R.D. 603, 622-623 (N.D. Cal. July 17, 1995).

6. *Id.*
7. *Id.*
8. *Id.*
9. *Id.*
10. *Id.*
11. Local Rules of Civil and Criminal Practice Before the United States District Court for the District of Idaho, R. 83.8, <http://www.id.uscourts.gov/docs/Local-Rules-DC-Clean.pdf>.
12. Standards of Civility for Prof'l Conduct (2003), http://isb.idaho.gov/pdf/general/standards_for_civility.pdf.
13. Idaho Rules of Prof'l Conduct R. 3.4(a) (3).
14. *See Nash v. Waddington*, C06-5127 RJBKLS, 2006 WL 3792657 (D. Wash. Dec. 21, 2006).
15. *See Use Techno Corp. v. Kenko USA, Inc.*, 2007 WL 3045996 (N.D. Cal. Oct. 18, 2007).
16. Fed. R. Civ. P. 37(a)(1).
17. *Crossbow Tech., Inc. v. YH Tech.*, 531 F. Supp. 2d 1117 (N.D. Cal. 2007).
18. *See Norco Windows, Inc. v. Hartford Fin. Servs. Grp., Inc.*, 2005 WL 1353832 (D.

Idaho June 7, 2005).

19. *See Use Techno Corp.*, C-06-02754 EDL, 2007 WL 304599.

20. *Shuffle*, 170 F.R.D. at 170.

21. Paul A. Burton, *Bridging The Great Divide: Improved Communication Equals Increased Productivity*, American Bar Association, (May 2007), available at <http://apps.americanbar.org/lpm/lpt/articles/mgt05072.shtml>.

About the Author

Scott Armitage is a second-year law student at Ave Maria School of Law in Naples, FL. Last summer he interned for The Honorable Candy W. Dale at the District of Idaho. He participates in Volunteer Income Tax Assistance (VITA) and assists a professor in researching Florida restrictions for attorney advertising on social media networks.



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Idaho Grapples with Affordable Care Act (Obamacare)

Colleagues from three different angles work together to dispel the myths and misconceptions surrounding the implementation of the Affordable Care Act

We all know something about the 2010 Affordable Care Act, (ACA) – mostly that it is complicated. But since its contentious and partisan passage, much of the population doesn't know how the law affects them. In this first year of mandated insurance coverage, many fail to grasp some of the particulars. And just when things look clear, rule changes muddy the waters.

According to Meridian-based Blue Cross Of-Counsel attorney Theresa Niland, the ACA has “upended the insurance industry. We had to move our old policies to the trash and create anew.”

Despite the negative press, some of these changes are highly advantageous to American citizens. For example, Ms. Niland said that persons with pre-existing conditions can now likely get better and more affordable coverage, and the law has ended insurance denials based on pre-existing conditions for millions of children. The law also ends lifetime limits of insurance payouts, and adult children up to age 26 can now continue to get health insurance on their parent's policies.

Three years after its passage, and a year after surviving a legal challenge before the U.S. Supreme Court, the



law's more difficult provisions take effect in 2014 and 2015. This article won't dispel all the confusion about the law's rollout, but it does address some of the most pressing and confusing issues facing Idahoans now.

A collaborative approach is the best way

To address the issue, *The Advocate* invited three experts to the Law Center for a roundtable discussion. Attending were Ms. Niland of Blue Cross, health care attorney Terri Ackerman of Moffatt Thomas and Insurance Broker Russell Paskett of Keystone Financial Systems, the latter two from Idaho Falls. All three participated in a public presentation about the ACA in Idaho Falls last fall and have since worked together gathering the most credible information available.

Ms. Ackerman, Ms. Niland, and Mr. Paskett wrote articles which were submitted to *The Advocate*. Due to size, the material is presented in full online. Editorial Advisory Board member Susan Moss, of Lukins &

The articles can be seen on the Idaho State Bar website: www.isb.idaho.gov under the middle column called “Affordable Care Act.”

Annis in Coeur d'Alene volunteered several days' work with Ms. Ackerman to update and revise the research. The articles can be seen on the Idaho State Bar website: www.isb.idaho.gov under the middle column called “Affordable Care Act.”

The package will be updated as necessary and further information

will be posted over the next couple of months, as the 2014 rollout enters its final stages.

Below are the “Top 20” most helpful, and highly condensed, pieces of information Ms. Ackerman, Ms. Niland, and Mr. Paskett believe should get to the attorneys.

1. Although the deadline for obtaining qualifying ACA coverage for a January 1, 2014 effective date was December 24, 2013, individuals may still sign up for insurance on the Idaho Insurance Exchange (www.yourhealthidaho.com) or directly from an insurance carrier until March 31, 2014, and not be subject to a tax penalty.

2. The ACA open enrollment period to get qualifying ACA coverage in 2014 officially ends on March 31, 2014. Enrollment is not continuously available, as many individuals mistakenly believe.

3. After March 31, 2014, individuals may not sign up for qualifying ACA health insurance to cover them in 2014, unless they experience a “qualifying event” that triggers a special enrollment date, such as a change in jobs, or loss of a job, a move to a new geographic area, marriage, or the adoption or birth of children.

4. After March 31, 2014, individuals without insurance may be able to purchase short term medical policies directly from an insurance carrier to provide them with health insurance until their qualifying ACA health insurance coverage starts on January 1, 2015. Such short-term health insurance policies do not qualify as ACA health insurance policies, however, and they do not cover pre-existing conditions.

5. Those without coverage will have to rely on their own resources to pay for medical care, or seek charity re-

sources, such as the Idaho Medical Indigency Act.

6. The ACA requires plans and issuers that offer dependent coverage to make that coverage available until an adult child reaches the age of 26. Both married and unmarried children qualify for this coverage. Plans or issuers are not required to provide coverage for children of children receiving extended coverage. They are also not required to provide coverage to the spouses of children receiving extended coverage.

7. Individuals may purchase ACA qualifying health insurance through the Idaho’s Health Insurance Exchange by visiting www.yourhealthidaho.com, and www.getcoveredidaho.com.

8. Individuals may also purchase ACA qualifying health insurance directly from an insurance carrier of their choice and avoid using the Insurance Exchange. To apply for health insurance directly from Blue Cross of Idaho, for example, you can visit its shoppers page at www.BCIdaho.com, or call 1-800-365-2345.

9. “Premium Assistance Tax Credits,” which are available from the federal government, are currently available only through Insurance Exchanges, as are cost-sharing subsidies, which help qualified individuals pay addi-

Obamacare in two sentences

“The Affordable Care Act is a long, complex piece of legislation that attempts to reform the healthcare system by providing more Americans with affordable quality health insurance and by curbing the growth in healthcare spending in the U.S. Reforms include new benefits, rights and protections, rules for insurance companies, taxes, tax breaks, funding, spending, the creation of committees, education, new job creation and more.”

— U.S. Government ACA website

tional costs of health care services, such as deductibles, coinsurance, and copayments.

10. Individuals may also determine whether they are eligible for Medicaid and the Children’s Health Insurance Program (“CHIP”) through the Insurance Exchanges.

11. Individuals and businesses may use an insurance broker to help choose an ACA qualifying health insurance plan that is best for them, whether directly from an Insurance Exchange or directly from an insurance carrier.

12. Licensed insurance brokers are paid a commission directly by the insurance carrier. There is no discount

The ACA open enrollment period to get qualifying ACA coverage in 2014 officially ends on March 31, 2014. Enrollment is not continuously available, as many individuals mistakenly believe.

for not using a broker. This is an important point, as individuals with the least resources are likely to be the ones who need the services of a licensed insurance broker the most.

13. Because Idaho did not accept federal money to expand Medicaid, Idahoans who fall below the poverty line won't get any government subsidy. That's right. You can make between 100% and 400% of the poverty income level and get significant federal subsidies. But if you make less than the poverty level, you have to pay the full price. Of course, if the cost is "unaffordable," as that term is defined by the ACA, an individual can be exempt from the penalties. But you still won't be covered.

14. Individuals may determine any Premium Tax Credits to which they may be entitled by using the "Subsidy Calculator" provided on the Kaiser Family Foundation website: <http://kff.org/interactive/subsidy-calculator/>. A licensed insurance broker can also help individuals perform the necessary calculations, at no charge. Individuals can also seek this assistance directly from the direct enrollment departments of insurance carriers such as Blue Cross of Idaho.

15. Small businesses deciding whether to start or continue to offer health insurance should seek the guidance of a Certified Public Accountant to learn what tax credits may be available by providing health insurance to their employees, and what incentives they may be able to offer in lieu of health insurance.

16. Starting in 2015, the ACA, via the "Large Employer Mandate," imposes a penalty on "Large Employers" who fail to offer affordable Minimum Essential Health Insurance Coverage to 95% of their full-time employees, if at least one full-time employee is



certified to the employer as having received a Premium Assistance Tax Credit to help pay for individual health coverage through a state Insurance Exchange.

17. On Monday, February 10, 2014, the Treasury Department and the Internal Revenue Service issued final regulations implementing the employer shared responsibility provisions of the ACA, also known as the employer mandate. See, <http://www.treasury.gov/press-center/press-releases/Pages/jl2290.aspx>.

18. The final regulations give businesses with between 50 and 99 employees an extra year to comply with the ACA's requirement to provide coverage to its workers.

19. Larger employers with 100 or more employees will have to cover 70 percent of their full-time employees next year instead of the 95 percent

Because Idaho did not accept federal money to expand Medicaid, Idahoans who fall below the poverty line won't get any government subsidy. That's right. You can make between 100% and 400% of the poverty income level and get significant federal subsidies. But if you make less than the poverty level, you have to pay the full price.

previously required. Employers in this category that do not meet these standards will make an employer responsibility payment for 2015.

20. Larger employers with concerns about whether the insurance plan they offer is compliant can contact a licensed insurance broker or their insurance carrier for an evaluation.

All three colleagues emphasize the importance of consulting a Licensed Insurance Broker and Certified Public Accountant

Ms. Ackerman said Insurance Agents/Brokers and Certified Public Accountants work daily with the law's definitions, exceptions, benefits and mandates, and are most likely to be aware of any updates in the law. There are over 140 health plans available through the Idaho Insurance Exchange, and it would be very difficult for an individual without an insurance background to review and compare all of them, she said. "It's much easier to consult with an Insurance Broker, as it is their job to compare and understand the competing products."

A Licensed Insurance Broker is best qualified to explain how to comply with the ACA and get the best coverage for your particular situation, Ms. Ackerman said. They can also explain complex insurance concepts to people who have never had insurance, and at no cost. A tax accountant can describe the penalties, credits and incentives in the tax code.

Mr. Paskett added that a Broker "may be able to get you better insurance coverage for less money. He mentioned an example where an individual was paying \$500 a month for insurance, but with the govern-

There are over 140 health plans available through the Idaho Insurance Exchange, and it would be very difficult for an individual without an insurance background to review and compare all of them.

— Terri Arkerman

ment subsidy, he found better coverage at a cost of \$70 a month. "People really need to get guidance."

Ms. Niland added that a Broker can also help individuals navigate the complexities presented by purchasing insurance on the Insurance Exchange, again, at no charge. They can help individuals who have experienced problems with the "glitches" that have been widely reported on in the press.

Ms. Ackerman also noted that it is particularly important for small businesses to work with a Certified Public Accountant and Insurance Broker in making the decision about whether to continue, drop or add insurance coverage. She stated, for example, that Certified Public Accountant Eric Kunz, of Smith, Kunz & Associates, a colleague and resource to Ms. Ackerman and Mr. Paskett, has been helping his clients consider adding other benefits in lieu of health insurance, such as offering them a 401k plan, a pay raise, and/or a bonus.

An accountant can also show a small business how much they may receive in Certified Tax Credits for keeping an insurance program. A Broker can add to the decision-making process of whether or not to keep, add or remove a group health

plan, by looking at the individual coverage options available to each of the employees in a small business, including any Certified Tax Credits and other cost-sharing subsidies. This is a big decision for small businesses, and the more accurate information they have, the better the choice they can make for all of their employees and the company as a whole, Ms. Ackerman said.

— Dan Black

The essential details are online

Terri L. Ackerman, an attorney with Moffatt Thomas Barrett Rock & Fields, Chtd., Theresa Niland, Senior Associate General Counsel and Privacy Officer with Blue Cross of Idaho, and Russell Paskett, a Financial Advisor and Licensed Insurance Broker with Keystone Financial Strategies, have worked together to prepare three user-friendly but comprehensive Affordable Care Act articles for the benefit of Idaho families and businesses. These articles explore the law's nuts and bolts, and give insight to the impact on individuals and employers. A link to the articles is on the front page of the Idaho State Bar website: www.isb.idaho.gov, under the middle column called "Affordable Care Act."



Idaho Courts

Chief Justice Roger S. Burdick
Idaho Supreme Court

State of the Judiciary Address January 21, 2014

2 013 was a remarkable year for the Idaho’s courts. As I prepared these remarks my biggest challenge was organizing succinctly the work of our judges, county clerks, court personnel, and our 30-plus committees made up of citizens, lawyers, judges, and others with specialized expertise.

Legislative interim committees

I start with congratulations to the Legislature, for wisely identifying two of the chronic problems that impact Idahoans and the judicial system. Thank you for the interim committee on public defender reform as well as the hard work undertaken by your criminal justice reinvestment interim committee in concert with the Council of State Governments Justice Center.

Earlier this year, it was my privilege to address the public defender reform interim committee. I shared insights not only on the demanding and complex work performed by public defenders, but more importantly showcased Idaho’s early and strong commitment to criminal defense of indigents — a full 40 years before the 1963 landmark United States Supreme Court case of *Gideon v. Wainwright*.



In *State v. Montroy*, 37 Idaho 684 (1923) Idaho emphatically said:

It is the public policy of this state, disclosed by constitutional guarantees as well as by numerous provisions of the statutes, to accord to every person accused of a crime, not only a fair and impartial trial, but every reasonable opportunity to prepare his defense and to vindicate his innocence upon a trial. In a case of indigent persons accused of crime, the court must assign counsel to the defense at public expense.

It has been the law of this state for 90 years — yes 90 years — that every person is entitled to a fair and impartial trial with time to prepare their defense. The court must assign counsel at public expense for indigents.

This was not a case foisted on Idaho by federal mandate of the

Idaho’s public defender system today has significant deficiencies; it is a patchwork of offices and contracts paid for by our already cash starved counties.

United States Supreme Court or Congress, but our own court interpreting our own constitution and statutes — statutes dating back to territorial days.

Idaho’s public defender system today has significant deficiencies; it is a patchwork of offices and con-

tracts paid for by our already cash starved counties. I congratulate the Public Defender Interim Committee for recommending legislation that will provide a solid first step in meeting our constitutional requirements.

The appointment of a state Public Defense Commission with significant duties and responsibilities under your oversight will further this important work.

Eliminating single fixed fee contracts, providing training funds for defending attorneys, and authorizing the counties to establish public defender offices or contracts that best meet the needs of their communities are positive developments. For the future, we must maintain our commitment to Idaho's constitution and history.

The Council of State Government Justice Reinvestment Initiative has been an exciting and illuminating experience. The analysis of Idaho's criminal justice system has identified many areas of strength and others that need work.

A few observations: I applaud the energy, cooperation and good faith of all three branches of government to contribute to this analysis. I especially want to thank our district judges for their candor, interest and insights in providing substance to the skeleton of data.

The final report provides an excellent road map to guide your budget and policy decisions; to keep our communities safe, use evidence based practices to reduce recidivism, and hold offenders accountable, yet provide them the tools to succeed. I have long advocated for community based alternatives, strong probation services, and necessary treatment. The combination of these policies keeps families together, persons on the job, and protects citizens.

To date Idaho has 67 problem-solving Courts addressing drug, alcohol and mental health issues for adults, veterans and minors.

2013 accomplishments

It seems like every year I have been before you, the Idaho Courts have been acknowledged nationally by awards to its members or to the judiciary as a whole. 2013 was no different.

Recently, Idaho was recognized nationally for expertise in our domestic violence courts. The Ada County domestic violence court was one of only three courts in the nation chosen for a new mentor court initiative. It will serve as a role model and disseminate proven strategies to other courts across the nation. In 2013, Domestic Violence Courts statewide assisted over 1100 victims in both criminal and civil cases and monitored over 1400 offenders; holding them accountable and keeping our communities and victims safe.

Many of these difficult cases involving victims of domestic violence require the assistance of legal counsel in related civil cases. I am pleased to report that the new director of Idaho Legal Aid has worked closely with the Supreme Court to develop a new and much needed proposal to provide legal representation to those victims as well as to abused and neglected children and senior citizens.

Secondly, the Foundation for Government Accountability ranked

Idaho's child welfare system number one in the nation. They measured the cycle of abuse and neglect, how quickly children returned home safely, and whether children returned to a permanent family within twenty-four months from removal from their home. This recognition is a result of focused efforts by the Idaho Courts, and other key child protection agencies over the last decade. These efforts pay big dividends now and in the future — for children, families, schools, communities — all of us benefit.

Family child protective proceedings are only one portion of the larger area of family court services. The magistrate division and Family Court Services offices responded to over 70,000 requests for information and services — a 41% increase since 2010. Our Court Assistance Offices responded to an additional 50,000 requests for forms and services, and family law continued to be the primary area of need. Our court assistance website received approximately 5.75 million hits in 2013.

I'd like to report on our problem-solving courts. To date Idaho has 67 problem-solving Courts addressing drug, alcohol and mental health issues for adults, veterans and minors. In 2013, almost 600 graduates joined the over 5,000 graduates who have successfully completed the rigorous requirements of prob-

lem solving courts since 1998. The majority were felony offenders, and if not for this criminal sentencing alternative, they would have been sentenced to the penitentiary or county jail. Today we proudly announce 18 new babies born drug-free to drug court mothers this past year bringing the total to over 300.

Advancing justice for all Idahoans

We continue to review our basic procedures in all court cases through our *Advancing Justice Initiative*. The goals of this effort have been to conduct a critical review of Idaho's time standards for case processing, to develop a state-wide case management plan, to assist with the development of case management plans for each judicial district. We continue to review all court rules and statutes to identify potential barriers to timely case processing.

Advancing Justice is not about speed for the sake of speed, nor does it take away an individual judge's discretion to allow further time in cases involving significant issues. We are not trying to pound square pegs into round holes. We are, however, addressing a much needed analysis of our case management time standard expectations in light of advances in other areas of the court system.

New technology will provide greater efficiencies

A significant requirement of our *Advancing Justice Initiative* will be the implementation of our new technology solution. You have long supported statewide court technology and we thank you. Our existing 25 year-old system is at "end-of-life" and we must plan to move to a new one. 2013 was a foundational year in which we prepared for the transformation of technology throughout our courts. This new technology

strategy will improve access to court data, enhance integrations with the court's justice partners, and maximize the efficiency and effectiveness of our court business practices.

Our business plan will modernize the case management system for trial courts and appellate courts, helping both our efficiency as well as agencies and citizens who use our website and repository daily.

We will be transitioning to electronic filing of all court records as well as electronic storage of court records. Envision a paperless file that can immediately move seamlessly among the Idaho trial courts and to the appellate courts. We are also leveraging a statewide network infrastructure in partnership with other branches of Idaho government and we need to maximize the use of video conferencing as a goal of the business plan. This new technology will provide cost savings to taxpayers, optimize the use of court personnel at the state and county level, free up limited physical space from paper records in our county courthouses and storage facilities, and greatly improve the court's ability to serve justice throughout the state.

It is now time to come to you and the Governor for the funding of that business plan. It can be financed with a combination of multiple, one time general funds and increased technology court costs.

We stand ready to provide all financial options.

The "silver tsunami"

The "silver tsunami" is another significant internal analysis of what we are doing and how we are doing it. I have reported for the last two years about our efforts to get ahead of the "graying" of America. Now others throughout the nation are analyzing this "silver tsunami" in terms of health care, social networks, and changes in all walks of life and levels of government concerning systems and infrastructure.

By 2030 Idaho's total population is projected to increase by 52 percent while the number of individuals over the age of 65 will grow by 147 percent. There were over 1,200 new guardianship or conservatorships filed this past year. Once a guardian has been appointed the monitoring will often continue for years.

These cases must be actively managed and monitored by our courts. It is vital that we have mechanisms to insure monitoring on a qualitative and quantitative basis, that newly appointed guardians or conservators understand their responsibilities, and that we determine the future direction and statutes necessary to protect the citizens of Idaho.

This is not a small undertaking. Just on the financial side, in

We will be transitioning to electronic filing of all court records as well as electronic storage of court records.

2013, clerks of the courts submitted over 2400 annual reports for court review and those reports reflect almost \$375 million dollars of assets under the care of another person, an increase of 15 percent over the prior year.

The judiciary's commitment to our elderly Idahoans is commensurate to our dedicated efforts on behalf of Idaho's children.

Judicial recruitment challenges persist

Like the rest of America, the face of the judiciary is changing. In 2013, five district and magistrate judges retired. Sixty percent of district judges statewide and eight of the nine appellate judges will be eligible to retire within the next five years.

To meet this demographic inevitability, the Supreme Court and the Judicial Council have worked to encourage and streamline the recruitment of judges. The Judicial Council has instituted pre-interview panels of local district judges, human resource officers, the judicial council executive director, and others. These panels inform lawyers in a specific judicial district not only of vacancies but also of the rewards and challenges of becoming a district judge. In 2013, I invited each legislator in a judicial district to attend the public interviews, so you could see exactly who the candidates are and the interview process. I have continued this practice in 2014 for the upcoming Ada and Nez Perce county vacancies.

Even with these improvements, we are facing a vexing problem in attracting the highest caliber applicants for each vacant position. Since 2000, there have been 43 district judges appointed. The Governor has only received a full slate of four candidates 30% of the time. In the State of the State address, Gov-



ernor Otter touched on the needed ability to attract highly qualified Idahoans from the "cabinet to the courts." Through state bar surveys, anecdotal exit interviews, and informal discussions with lawyers and judges throughout the state, the key barrier to recruiting and retaining the highest caliber district judges is salary.

Throughout this session we will be discussing with you judicial recruitment and retention challenges. Some advancement must be made. Idahoans deserve, and businesses demand, a highly competent, experienced judiciary. It is vitally important for the future of Idahoans in the decades to come that we act now as this demographic change is upon us. As a court, we have tried to be proactive and creative in encouraging recruitment of district judges. It is now up to the legislature to place a value on the individuals who will be making the state's most important legal decisions. Judges are vitally important: they keep our communities safe, protect our children, families, and elderly, and insure businesses have an experienced bench to resolve complex cases. We can, and must act now.

Sixty percent of district judges statewide and eight of the nine appellate judges will be eligible to retire within the next five years.

In closing I would like to say none of this gets done without the dedication of our judges in Idaho. They take the bench and sacrifice associations, activities as well as they restrict financial opportunities to act within their Code of Conduct. This report scratches just the surface of their accomplishments and doesn't hint at the sacrifices. I want to personally thank them for their exceptional service.

I thank you for your time and God Bless.

Creating Clarity: Careful Use of Cononyms

Tenielle Fordyce-Ruff

Cononyms were not among the categories of “nyms” I learned as a child. I know all about synonyms, homonyms, and antonyms. So I was surprised when I recently learned about cononyms.

Cononyms are words that are their own antonyms (in fact, they are sometimes called autoantonyms). That’s right, the same word can have two opposing or contradictory meanings. Think of *dust*. *Dust* can mean to add fine particles to something:

The plane was dusting the field.

Or it can mean to remove fine particles.

I needed to dust my office after the windstorm.

Because cononyms have contradictory meanings, writers must depend on context to make sure the reader understands which meaning the writer intended. Context can come in either the paragraph or the sentence. Alternatively, you can assure that your meaning is crystal clear by using the cononym only for its preferred meaning and choosing a different word if the reader might be confused.

Here are some of my new favorite cononyms.

Sanction

Sanction is particularly tricky. It can be either a noun or a verb, and both usages have contradictory meanings. As a noun, a *sanction* is either a threat of a penalty or official permission.

The court gave its sanction.



Did the court approve something or impose a penalty? Without more context, the reader wouldn’t know.

Because drug courts were so successful, advocates in Idaho sought permission to use this type of program. The court gave its sanction. Thus, the drug court program was born.

*The court gave its sanction to provide CLE credits to authors who publish in *The Advocate*.*

As a verb, *sanction* is either to give official permission or to impose a sanction.

The court sanctioned two problem-solving courts: drug courts and mental health courts.

The court sanctioned the defendant for multiple violations of the discovery rules.

Of course, using a preposition can also help: giving *sanction to* signals approval, while issuing *sanctions against* signals a penalty.

Don’t forget: the approval definition of *sanction* is the more commonly understood. If you are dealing with someone other than a court or another attorney, avoid using *sanction* to mean

penalty or penalize. You would hate to have a client think you had advised her that the court would permit her conduct, when you were instead suggesting a penalty.

Oversight

Oversight can mean to monitor something or to unintentionally fail to notice or do something.

She had administrative oversight of the project.

The defendant claimed his failure to pay multiple parking tickets was an oversight.

Using *oversight* to mean an obligation to monitor, however, should be avoided. Instead, use *monitor* or *supervise*. This will avoid the reader mistakenly believing a person is in charge of botching something.

Left

As a verb *left* can mean either depart or to let remain.

He left for work at 8:00 a.m.

I left my citation manual at home (oh no!).

There is no preferred usage for *left*, but context usually makes your meaning clear. Just make sure your meaning isn't *left* to the reader's imagination.

Trim

When you *trim* something, you either add to the edges of something or remove from the edges of something.

He trimmed the tree.

Was he using tinsel or a chainsaw to do the trimming? While the *add to* meaning of trim might not come up often in your writing, don't needlessly trim context from your writing.

Resign

This one won't create confusion in speech because it's a homograph, not a homophone. *Resign* meaning to quit is spelled the same as *resign* meaning to sign again. So, when writing *resign* it's especially important to make sure you use context and prepositions to make your meaning clear.

He resigned the army.

Without either *resigned from* or *resigned up for*, the writer won't know whether this gentleman quit or re-enlisted. Instead of resigning yourself to confusing word choice, edit your writing for clarity.¹

Fast

Fast can mean either moving rapidly, or remaining firm, fixed, or unmoving.

The car was moving fast.

The boat was tied fast to the dock.

This one isn't likely to create confusion, but hold *fast* to your conviction that writing should be clear.

Off

In certain situations *off* can actually mean activated or turned on.

The alarm went off while she was at work.

But it can also mean that something was deactivated.

When he got home, he turned the alarm off.

Like *fast*, *off* isn't likely to create confusion, but if you're worried alarm bells will go off in a reader's head, opt for a different word than a contronym.

Screen

Screen can mean to show or to hide.

The theater is screening the new movie at 12:01 a.m.

They need to screen their junk pile!

Don't screen your meaning with contronyms — make sure to use context or synonyms to show the reader your meaning.

Help

When I first saw *help* on a list of contronyms, I was confused. But then the author explained that *help* can mean to assist or to prevent.

I hope my column helps you become a better writer.

Once I learned about contronyms, I couldn't help but research them.

Continue

The opposite means of this one should be obvious to any attorney. *Continue* means to keep doing an action or to suspend an action. To an attorney, the meaning of this sentence is clear:

The court is likely to continue the hearing.

You read this to mean that the hearing will be farther in the future. But the preferred meaning of *continue* is to keep doing something. A client is likely to believe this sentence means the court will keep on having the hearing, as opposed to postponing it. When dealing with non-law-trained readers, use *postpone* or *defer* instead

of *continue* in the sense of suspending or stopping.

Appropriate

The verb *appropriate* can mean to take exclusive possession or to give to another for its own use.

He appropriated trust funds for himself.

The legislature appropriated funds for school maintenance.

Context is likely to make this one clear, and there isn't a preferred meaning. Nevertheless, *appropriate* some time to making your writing clearer.

Finished

This fun contronym can mean either polished to a high degree or excellence, or doomed.

After learning about contronyms, her brain felt finished!

Sources

- Bryan A. Garner, *Garner's Modern American Usage*, 197, 200-01, 602, 727 (3d ed. Oxford Univ. Press 2009).
- Judith B. Herman, Mental Floss, *14 Words that Are Their Own Opposites*, <http://mentalfloss.com/article/49834/14-words-are-their-own-opposites> (Apr. 2, 2013).

Endnotes

1. Yes, I cheated there. I inserted a third meaning of *resign*. Did it keep you on your toes?

About the Author

Tenielle Fordyce-Ruff is an Assistant Professor of Law and the Director of the Legal Research and Writing Program at Concordia University School of Law in Boise. She is also Of Counsel at Rainey Law Office, a boutique firm focusing on civil appeals. You can reach her at tfordyce@cu-portland.edu or tfr@raineylawoffice.com.

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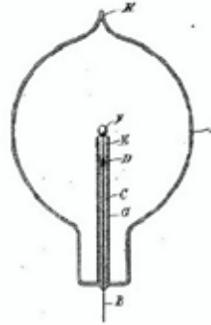
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OF INTEREST

Foley Freeman PLLC moves shop



Photo courtesy of Foley Freeman, PLLC

The firm of Foley Freeman, PLLC has moved to new quarters at 953 S. Industry Way, Meridian. The new office opened for business on January 27. Pictured left to right, back row, are: Patrick Geile, Matthew Bennett, Mark Freeman, Howard Foley. Middle Row: Sally Jepson, Robin Long, Leah Shotwell, Ann McNeese: Front row: Rachel Boyle, Abby Bennett.

Attorney Kara Heikkila receives WCA TWIN award

BOISE - Hawley Troxell attorney Kara Heikkila has been awarded the Women's and Children's Alliance (WCA) 21st Annual Tribute to Women and Industry (TWIN) award. The TWIN award honors women who have made outstanding contributions to their employers in executive, professional, or managerial roles, and recognizes them for their work performance and career achievements.

"Kara is an excellent attorney and an active member of the community through her extensive pro bono work for the WCA. She is very



Kara Heikkila

deserving of this recognition," said Managing Partner Steve Berenter.

Heikkila is a member of Hawley Troxell's employment and labor group where she focuses on employment and labor law, business law, complex and commercial litigation, alternative dispute resolution, health care law, maritime personal injury defense, and insurance law. After spending 11 years working as a health care administrator in Oregon and Washington, Heikkila received her law degree, cum laude, in 1997 from the Seattle University School of Law. She is a member of the American Bar Association, the Defense Research Institute, and the Idaho Association of Defense Counsel.

Heikkila, along with other TWIN honorees, will be recognized at an awards luncheon on March 13 at the Boise Centre. Hawley Troxell is a

longtime supporter of the WCA and is proud to be a Safety Level Sponsor of the 2014 TWIN awards.

Brian Sheldon joins Schroeder & Lezamiz Law Offices, LLP

BOISE - Schroeder & Lezamiz Law Offices, LLP is pleased to announce the addition of new associate Brian Sheldon. Mr. Sheldon received his J.D. in 2013 from the University of Idaho College of Law and received his B.A. *summa cum laude* from the University of Colorado, Boulder. During law school, he worked in the chambers of Chief Judge B. Lynn Winmill of the U.S. District Court of Idaho as well as the Natural Resources Division of the Idaho Attorney General's Office. Mr. Sheldon represents clients on matters involving the firm's extensive public lands and natural resource law practice.



Brian Sheldon

Public defender gets ACLU award

COEUR D'ALENE - Kootenai County Public Defender John Adams is the 2014 recipient of the Dave Judy Civil Rights Service Award.

Former U.S. Attorney for Idaho Betty Richardson was last year's recipient, and the first to receive the award. "Public defenders have one of the toughest, yet most important jobs in the American legal system today," said



John Adams

Monica Hopkins, ACLU of Idaho's executive director. "Their role is to defend a person's constitutional rights against an almighty government and ensure that due process and fairness under the law is carried out."

Idaho's public defender system has its shortcomings, she said. Adams, however, has been able to establish what "is arguably the best public defense delivery system possible," she added.

The Dave Judy award "recognizes an Idahoan who exemplifies commitment and service to advancing the fundamental principles that have championed the cause for civil rights in the state," the ACLU said in its announcement. Adams has been Kootenai County's public defender for almost 19 years.

In November, Adams was presented with the Idaho State Bar's Professionalism Award for 2013.

Dave Judy, who died in 2012, was a member of the ACLU of Idaho since its founding.

Idaho Mock Trial Director named to national board

BOISE – Carey Shoufler, the Idaho Law Foundation's Law Related Education Director, has been named to Board of Directors for the National High School Mock Trial Championship. Each year the national competition hosts about 50 teams from U.S. states and territories. Ms. Shoufler has organized Idaho's Mock Trial competition for eight years, directing regional



Carey Shoufler

and state competition and preparing case materials for mock trial teams around Idaho.

Through participation in the Idaho High School Mock Trial Competition, high school students are given a hands-on opportunity to examine the legal process and current legal issues while they develop important critical thinking, research, and presentation skills. In mock trial high school students learn how to try cases in court, arguing facts and law, calling witnesses, cross examination and submitting evidence to the judge.

Buris and Creason join ranks

LEWISTON - Creason, Moore, Dokken & Geidl, PLLC is pleased to announce that Samuel T. Creason became a member on January 1.



Samuel T. Creason

Mr. Creason is licensed to practice in Idaho and Washington, and is also a licensed patent attorney. He maintains a practice primarily focused on civil litigation and legal counsel for business and non-profit organizations. His practice also includes patent, copyright and trademark protection.

The firm is also pleased to introduce Paul B. Burris as an associate. Paul joined the firm upon graduating *magna cum laude* from the



Paul B. Burris

Gonzaga University School of Law in 2013. Mr. Burris is licensed in Idaho and Washington, and maintains a practice primarily focused on advising individuals and companies about legal opportunities for wealth creation, management and preservation. Mr. Burris assists clients with estate planning, probate, trust creation and elder law, as well as business formation, development and management.

Hawley Troxell welcomes Jason Melville

BOISE - Hawley Troxell is pleased to welcome Jason Melville to the firm as an attorney practicing in the areas of business, corporate, tax, and estate planning. Melville has practiced law for more than 16 years and has significant experience in estate planning, wealth preservation, business formation, transactions, mergers, acquisitions, succession planning, probate, administration of estates, estate litigation and tax matters.



Jason Melville

Melville received his J.D. from Texas Tech University School of Law in 1997 and also received his Master of Laws (LL.M.) from the University of Washington School of Law in 2002. While at Texas Tech he served on the Law Review as a note editor, and from 2002 to the present he has been the author of the ABA Sales and Use Tax Desk Book for the Idaho Chapter. Mr. Melville is a member of the Idaho State Bar Taxation, Probate, and Trust Law Section.

OF INTEREST

He is also a board member for the Better Business Bureau, a member of the Treasure Valley Estate Planning Council and Boise Estate Planning Council, and a director of the Boy Scouts of America Ore-Ida Council.

Parsons Behle & Latimer launches real estate practice; names Dana Herberholz as shareholder

BOISE – Parsons Behle & Latimer, this month added a real estate practice to its Boise office. Robert B. Burns, who joined Parsons Behle & Latimer this month as a shareholder, will lead the new practice area in Idaho.

His real estate work includes acquisition and sales, financing, development, leasing and conflicts over entitlement issues and commercial or residential property interests. During the 1990s, Burns worked for one of California's largest home builders, serving as President of The Baldwin Company's Los Angeles/Ventura Division. He was responsible for acquisition, planning and entitlement work for five master planned communities, comprising 6,500 residential units. Burns, who



Robert B. Burns

is licensed to practice law in Idaho, received his undergraduate degree from Boise State University and his Juris Doctor from Stanford Law School.

The firm is also pleased to announce Registered Patent Attorney Dana Herberholz, who has been with the firm since 2008, has been named a shareholder in the Boise office.

Herberholz's practice emphasizes intellectual property litigation, with particular focus on patent litigation. He has represented national and international companies in patent cases across the United States. His experience includes litigation concerning diverse technologies, including flat panel displays, digital projectors, wireless communication technology, and electronic vehicle braking systems.

Herberholz graduated from the University of Washington in 2002 with degrees in Cellular & Molecular Biology and Law, Societies and Justice, and he earned his law degree with honors from Gonzaga University in 2006.

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Dana Herberholz

tual property legal team in Idaho, Parsons Behle & Latimer attorneys in the Boise office also specialize in business and commercial litigation, employment, environmental and natural resources, government relations, health care, and real estate law, serving clients nationwide. The firm recently relocated its entire Boise legal team to the thirteenth floor of Boise's new Eighth and Main in downtown Boise.

Parsons Behle & Latimer has 127 attorneys (17 in Boise). Founded in 1882, the firm has offices in Las Vegas, Reno, Salt Lake City, Spokane and Washington D.C.

Blogger shares his ideas

SEATTLE – Eric Christensen of the Seattle firm of Gordon, Thomas, Honeywell, has launched a blog. He is licensed to practice in Idaho. The site is at: <http://www.energynaturalresourceslaw.com/>. Other lawyers who are writing online are welcome to share their URL location by sending it to *Advocate* Managing Editor Dan Black at dblack@isb.idaho.gov.



Eric Christensen

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MEMORIAL CEREMONY

For deceased Idaho Judges and Attorneys

Thursday, March 20, 2014 - 10:00 a.m.

Idaho Supreme Court Building

JUDGES

Hon. Orin Leroy (Lee) Squire¹

Hon. J. Ray Durtschi

RESIDENCE CITY

Orofino, ID

Boise, ID

DECEASED

December 23, 2012

March 2, 2013

ATTORNEYS

Kenneth Frank White¹

Dwight Franklin Bickel

Tyler James Henderson

Roger L. Brown

L. Lamont Jones

Robert Kenneth Reynard

Philip Henry Robinson

Stuart Waller Carty

C. G. (Calvin G.) McIntyre

Allen Richard Derr

John S. Chapman

James D. Glenn, Jr.

Franklin H. Powell

Ismael Chavez

Mary Durham Adams

Conley Earl Ward, Jr.

Tim Gass

William M. (Bill) Smith

Gary Lane Meikle

William "Bill" Harvey Mulberry

RESIDENCE CITY

Nampa, ID

Phoenix, AZ

Boise, ID

Boise, ID

Pocatello, ID

Salt Lake City, UT

Sagle, ID

Boise, ID

Twin Falls, ID

Boise, ID

Boise, ID

Lindon, UT

Boise, ID

Caldwell, ID

Fort Smith, AR

Boise, ID

Boise, ID

Boise, ID

Idaho Falls, ID

Ririe, ID

DECEASED

October 4, 2012

January 16, 2013

January 23, 2013

February 17, 2013

March 10, 2013

March 13, 2013

April 29, 2013

June 2, 2013

June 6, 2013

June 10, 2013

July 8, 2013

August 1, 2013

September 26, 2013

October 22, 2013

October 23, 2013

October 28, 2013

November 30, 2013

December 5, 2013

December 22, 2013

December 25, 2013

¹ Notified of death after 2012 Memorial Ceremony, which was held on March 21, 2013.

IN MEMORIAM

Melrose Jed Pritchett, Jr. 1929 - 2014

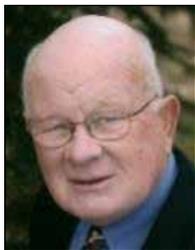
Melrose Jed Pritchett, Jr. passed away at home from natural causes on January 27, 2014.

Jed was born in Spring City, Utah in 1929. He attended Brigham Young University where he met his future wife, Jackie Hayward, of Spanish Fork. Jed and Jackie were married for nearly 60 years and raised five children. Jed attended Stanford Law School and, after interrupting his legal education to serve in the U.S. Army, graduated from the University of Utah Law School. He subsequently obtained an LL.M in labor law from the Georgetown University Law Center.

After working as an attorney for the National Labor Relations Board in Washington D.C. and Los Angeles, he returned to Salt Lake to practice law with his friends and subsequently joined Van Cott, Bagley, Cornwall & McCarthy.

Jed went to work for Albertsons in Boise in 1968 in the labor relations department. He remained there for 24 years and retired as VP of Labor Relations in 1992.

Jed is survived by his wife Jackie; sister Connie (Stan) King of American Fork, Utah; brother Michael



Melrose Jed Pritchett, Jr.

(Pat) Pritchett of Provo, Utah; four married children: M.J. (Kathryn) Pritchett, Oakland, California; Lant (Diane) Pritchett, Cambridge, Massachusetts; Tara (Parker) Sheehan, Boise, Idaho; and Troy (Michelle) Pritchett, Salt Lake City, Utah; and daughter-in-law Sharon Pritchett of Spring City, Utah. He had fourteen grandchildren and three great grandchildren.

James Harold Paulsen 1942 - 2014

James Harold Paulsen, 71, passed away peacefully on Friday, January 31, 2014 at Kootenai Health in Coeur d'Alene, Idaho. Jim was born on September 21, 1942 in Granite Falls, MN, to Clara and Harold Paulsen. He had fond memories of Slippery Rock, PA, where he spent much of his childhood. Jim had a close, loving family and shared many stories of duck hunting trips and holidays spent with them. He was especially close to his grandfather during those years. Jim received his BA from Cornell University, where he studied economics in beautiful Ithaca, New York. He received his law degree from the University of Minnesota in 1968. Jim was an exceptionally hard worker, and before passing the Bar in Minnesota, California and Idaho he had many varied jobs. Of those jobs, he often regaled others with his time as a customs officer, seizing illegal whiskey and ceremoniously pouring it out.

Jim moved to California, where he was a public defender. A few years later he packed up his camper, grabbed his dog Cinnamon and drove north to Idaho in search of better fishing. He knew he had reached his destination when he drove across the Long Bridge over Lake Pend Oreille; he settled in Sandpoint and began his law practice there in 1973.

He married his wife Christi on May 21, 1983. They spent their lives on land he purchased near Garfield Bay, and in 1989 they were blessed with their son, Gunnar, who was the joy of Jim's life.

Jim's passions included coaching his young son's soccer games and later traveling with soccer parents to many tournaments. He loved fishing and vacationing, especially in Canada, on the Washington coast and in Mexico. Survivors include Jim's wife, Christi Paulsen of Sagle, ID, his son, Gunnar Paulsen of Salida, CO, his sister Sandra Friedlander and her husband John, both from Cordova, TN, his brother Robert Paulsen and his wife Selena of Fort Collins, CO, his brother-and sister-in-law Kevin and Kaye Cogswell, of Othello, WA, his sister-and brother-in-law Sarah and Scott Ryan of Libby, MT.



James Harold Paulsen

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- FAMILY LAW - DIVORCE - MODIFY CHILD CUSTODY & SUPPORT - VISITATION RIGHTS - TERMINATE PARENTAL RIGHTS - ADOPTIONS
- QUALIFIED DOMESTIC RELATIONSHIP ORDERS (QDRO)
- APPEALS - OPENING & RESPONSIVE BRIEFS
- PROCESS SERVER FOR ADA & CANYON COUNTY
- SOCIAL SECURITY DETERMINATIONS - UNEMPLOYMENT HEARINGS & MANY OTHER ADMINISTRATIVE HEARINGS
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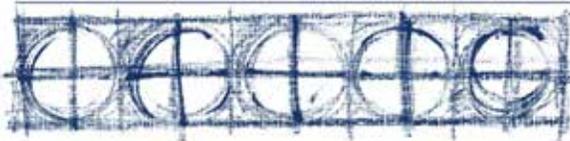
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Fourth District Bar Association Gears Up for May 1, Law Day 2014

Established in 1957 by the American Bar Association, Law Day is a national day set aside to celebrate our legal system. 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. This year's theme is "American Democracy and the Rule of Law: Why Every Vote Matters." In Idaho's Fourth Judicial District, this year's programs include:

Law Day reception

Free appetizers and drinks! The Law Day Reception will be hosted at the Berryhill Restaurant in downtown Boise beginning on May 1, at 4:30 p.m. — everyone welcome! Please join us to present the 2014 Liberty Bell Award, the 6.1 Challenge Award recipients, and hear about each of the Law Day events.

Court of Appeals — Oral argument 101

In conjunction with Law Day, Capital High School will be hosting the Idaho Court of Appeals for an oral argument. Students will not only observe this oral argument, but be provided with the opportunity to study summaries of the parties' briefs in their classes. Following oral argument, the students will have the unique opportunity to ask the Court of Appeals and counsel for the litigants' questions about the judicial process and appellate advocacy.



Ask-a-Lawyer Call-in Program

This May 1, program is very popular in the community with over 500 callers during previous Ask-A-Lawyer events. The general public can call in on multiple phone lines to speak to an attorney about a variety of legal matters. Attorneys and callers use only first names to remain anonymous. Calls are limited to 15 minutes. The phone numbers are generously provided by Cricket. Incoming calls will be taken from 5 a.m. to 3 p.m. at the Ada County Courthouse in the Commissioners' Hearing Room. Volunteers are needed to take incoming calls (something law clerks can do) and call the public back with answers to their legal questions. Attorney volunteers are needed from every area of the law.

The 6.1 Challenge

Modeled after Idaho Rule of Professional Conduct 6.1 concerning the number of pro bono hours an attorney should handle during a year, this year's *6.1 Challenge* represents

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.

a friendly competition to recognize and encourage pro bono and public service from law offices within the Fourth District. Submit your (and/or your firm's) qualifying pro bono hours and public service activities to the Idaho State Bar by April 4. Winners will be announced in categories of solo, small and large firms, as well as corporate and government sector attorneys at the Law Day Reception. Find more information at:

<http://www.isb.idaho.gov/ilf/ivlp/challenge.html> http://www.isb.idaho.gov/pdf/ivlp/6.1_challenge_volunteer_hours_form.pdf

The 2014 Liberty Bell Award recipient will be named at the Law Day Reception.

Liberty Bell Award

Every year, the Liberty Bell Award acknowledges outstanding community service by an individual in the local community who embodies that year's Law Day theme — the theme for Law Day 2014 is "American Democracy and the Rule of Law: Why Every Vote Matters." The 2014 Liberty Bell Award recipient will be named at the Law Day Reception. Watch your inboxes for an email describing how you can nominate a recipient for this award!

Law Day School Outreach Program

Conducted in the classrooms during April and May, attorneys are matched with teachers in elemen-

tary through high school in Fourth District schools. The attorneys speak in classes about legal careers and law-related topics. The program has been incredibly successful the last few years, matching nearly 50 attorneys with schools throughout the Fourth District. Attorney volunteers are needed.

Contacts for activities

1) Court of Appeals contact Elizabeth Koeckeritz at EKoeckeritz@cityofboise.org

2) 6.1 Challenge contact Mary Hobson at mhobson@isb.idaho.gov or David Hunt at dhunt@perkinscoie.com

3) Liberty Bell Award contact Jason Prince at jeprince@hollandhart.com

4) School Outreach contact Justin Cafferty at jcafferty@adaweb.net

5) Ask-a-Lawyer: contact Heather McCarthy at hmccarthy@adaweb.net

6) Law Day Reception contact Claire Rosston at ccrosston@hollandhart.com

4th District Bar Association 6.1 Challenge on Law Day 2014

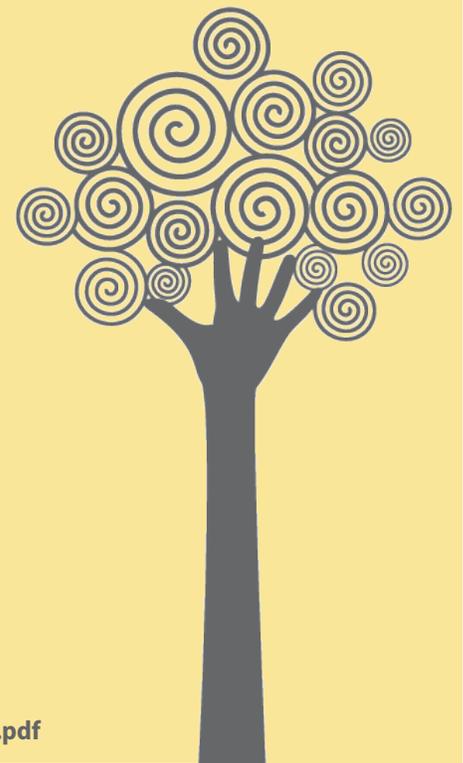
Include all Volunteer Hours from 5/1/2013 to 4/4/2014
Submit your (and/or your firm's) qualifying pro bono hours and public service activities to the Idaho State Bar by April 4th!



Find more information at:

<http://www.isb.idaho.gov/ilf/ivlp/challenge.html>

http://www.isb.idaho.gov/pdf/ivlp/6.1_challenge_volunteer_hours_form.pdf





Coordinated Effort Brings Access to Justice

Sunrise Ayers

Nonprofits work together for a combined 'Access to Justice'

We would like to announce an exciting new Idaho initiative that is of particular importance to our legal community. 2014 is the kick-off year for *Access to Justice Idaho*, an annual campaign to raise funds to support Idaho's principal providers of free civil legal services to poor and vulnerable Idahoans. The campaign will enable *DisAbility Rights Idaho*, *Idaho Legal Aid Services*, and the *Idaho Volunteer Lawyers Program*, to provide quality legal services to low-income and vulnerable Idahoans across our state. Today these organizations are able to serve only a fraction of the need in Idaho.

The goal of the *Access to Justice Idaho* campaign is to provide critical legal services to Idahoans who live in poverty, or who have disabilities, by raising funds from Idaho attorneys and others who understand the essential role that attorneys and the judicial system can play in improving lives. The real campaign beneficiaries will be low-income families, women, children, persons with disabilities and other vulnerable Idahoans who would otherwise have no access to legal help. They will receive services concerning domestic violence and sexual assault, foreclosure prevention, senior

The real campaign beneficiaries will be low-income families, women, children, persons with disabilities and other vulnerable Idahoans who would otherwise have no access to legal help.

exploitation, disability, long term care, guardianships, and other cases that would otherwise be out of reach.

The campaign has been launched after great thought and deliberation. In March 2013, the beneficiary organizations launched a study to determine the feasibility of a combined fundraising campaign to support legal services to Idahoans who live in poverty or who have disabilities. Meetings were held with members of the legal profession from across the state. The enthusiastic response led to the launch of the *Access to Justice Idaho* campaign in December of 2013. The campaign is modeled after successful legal services fundraising campaigns in states such as Utah, Oregon and Washington.

The *Access to Justice Idaho* campaign is led by a distinguished Leadership Committee of attorneys from across the state, volunteering their time to make Idaho a better

place. Members include Denny Davis and Fonda Jovick from the First Judicial District, Jim Westberg from the Second Judicial District, Kerry Michaelson and Teri Whilden from the Third Judicial District, Keely Duke and Walter Sinclair (Committee Chair) from the Fourth Judicial District, Tom High and Lisa Rodriguez from the Fifth Judicial District, Mary Huneycutt and Reed Larsen from the Sixth Judicial District and Chuck Homer and Curt Thomsen from the Seventh Judicial District.

With the support of Idaho's attorneys, judges and others who care about justice we can make our great state an even better place to live. Please stay tuned for information about the *Access to Justice Idaho* campaign kickoff and other information. For questions about *Access to Justice Idaho* contact Sunrise Ayers at (208) 345-0106 x 1511 or sunriseayers@idaholegalaid.org.

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