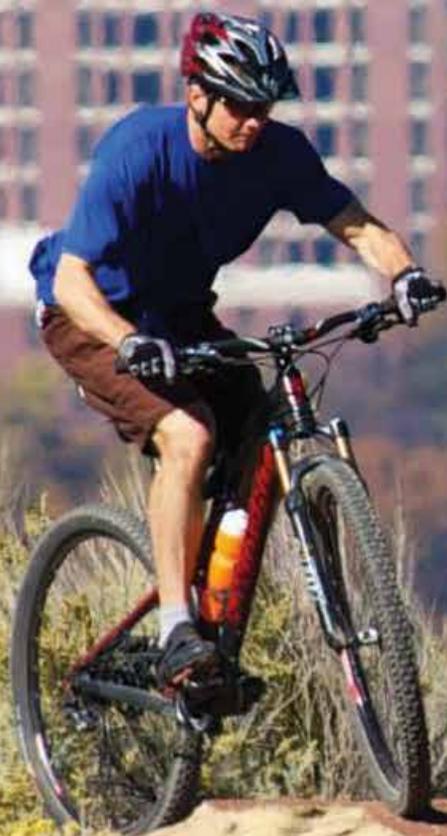


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**Official Publication
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Volume 59, No.8
August 2016**



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On the Cover:

This photo by Boise attorney Christian Nafzger shows Assistant United States Attorney Justin Whatcott taking the scenic route to the Federal Courthouse on his mountain bike. The trail complex north and east of Boise is known as Ridge to Rivers, and includes hundreds of miles of developed pathways through the foothills. Christian's work was also featured on the cover of this year's Idaho State Bar Annual Report. Christian took first place in the Idaho Statesman's photo contest in 2008 and 2015. His work has also been featured by National Geographic and in Getty Images.

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Special thanks to the August editorial team: Daniel J. Gordon, Susan M. Moss and Tenielle Fordyce-Ruff.

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ADVOCATE STAFF

Dan Black

Managing Editor

dblack@isb.idaho.gov

Bob Strauser

Senior Production Editor

Advertising Coordinator

rstrauser@isb.idaho.gov

Kyme Graziano

Member Services Assistant

LRS Coordinator

kgraziano@isb.idaho.gov

www.idaho.gov/isb

(208) 334-4500



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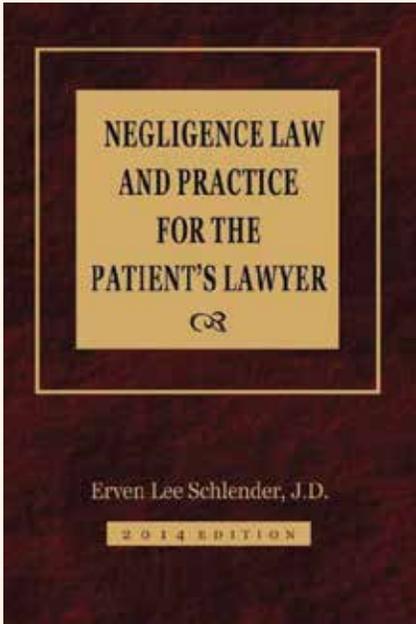
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August

August 31

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September

September 15

Civics in Action: A Celebration of the 225th Anniversary of the Ratification of the Bill of Rights
Sponsored by the Diversity Section
8:30 a.m. (PST)
University of Idaho College of Law, 711 S. Rayburn Street – Moscow
7.0 CLE credits of which 1.5 is Ethics

September 16

Civics in Action: A Celebration of the 225th Anniversary of the Ratification of the Bill of Rights
Sponsored by the Diversity Section
8:30 a.m. (MST)
Washington Group Plaza, 720 E. Park Blvd. – Boise
6.5 CLE credits of which 1.5 is Ethics

September 23

Ethics and Keeping Secrets or Telling Tales in Joint Representations
Sponsored by the Idaho Law Foundation, Inc. in partnership with Abila and WebCredenza, Inc.
11:00 a.m. (MST)
Audio Stream
1.0 Ethics credit

***NAC** — These programs are approved for New Admittee Credit pursuant to Idaho Bar Commission Rule 402(f).

September (continued)

September 28

Handling Your First or Next Property Crimes Case
Sponsored by the Idaho Law Foundation, Inc.
9:00 a.m. (MST)
The Law Center, 525 W. Jefferson Street – Boise / Statewide Webcast
1.5 CLE credits (**NAC**)

September 30 – October 1

2016 Estate Planning Conference
Sponsored by the Taxation, Probate and Trust Law Section
The Riverside Hotel, 2900 W. Chinden Blvd. – Boise
10.5 CLE credits of which 1.0 is Ethics

October

October 6

New Attorney Program
Sponsored by the Idaho Law Foundation, Inc.
8:00 a.m. (MST)
Boise Centre, 850 W. Front Street – Boise
4.0 CLE credits of which 1.0 is Ethics (**NAC**)

October 7

Beyond the Decree – Retirement Plans, QDROS and Financial Planning
Sponsored by the Family Law Section
8:30 a.m. (MST)
The Riverside Hotel, 2900 Chinden Blvd. – Boise
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Lawyers Play a Special Role in the Community

*Dennis S. Voorhees
President, Idaho State Bar
Board of Commissioners*

Twin Falls. I love this place. The Snake River Canyon. The Perrine Bridge. Base jumpers going off the bridge every fair-weather summer day. Tourists stopping by our visitors' center in ever-increasing numbers remarking on the canyon's stunning expanse and beauty. The College of Southern Idaho (CSI) — giving local students a chance to “stay close, and go far!” It doesn't get any better than this.

The first I had heard of Twin Falls, Idaho was when I was on my way out to Idaho from my home state of New Jersey. I had stopped at West Liberty, Iowa to visit the Hoover Presidential Library. As I was leaving the library parking lot to motor west on Interstate 80, I turned on the radio and caught a broadcast of Evel Knievel making his famous, but failed attempt to clear the Snake River Canyon at Twin Falls. That was September 8, 1974.

Fast-forward to August 1978. I had been admitted to and graduated from the University of Idaho College of Law, taken the bar and had arrived in Twin Falls to start my law career. It was a great time to be practicing law in this town. Classmates Walt Sinclair and John Hohnhorst were starting their careers here. We got to see first-rate lawyering from John Hepworth,

April 2015, Twin Falls has become ground-zero in a battle to protect or disband the CSI Refugee Program.

Lloyd Webb, Monte Carlson, Jim May, Ed Benoit, Tom Nelson, John Rosholt, Cal McIntyre, Dick Seeley, John Coleman, Bill Parsons, Ken Pedersen, and Bob Stephen.

Like many fair-sized Idaho cities, Twin Falls has grown and changed in many ways over the last 38 years. One of the many pleasing developments I have seen here has been the influx of people from far corners of the world as the result of a refugee program we know as the CSI Refugee Program. Refugee origins have changed over time. I recall in the 1980s there being many newcomers from Laos, Vietnam, Bulgaria, and the former Soviet Union.

In the '90s and first part of this century I saw, as a result of war and oppression, the arrival of many refugees from countries including Bosnia, Serbia, Iran, Iraq, Burma, Burundi, Eritrea, and Bhutan. In the past few years, I have noticed many

new people from Afghanistan, the Congo, and Sudan.

It's a beautiful sight to see newly-resettled peoples walking about downtown in their native garb, and young refugee children bicycling around as if the only town they ever knew was Twin Falls. In my almost-daily visits to the Twin Falls Public Library I see many refugees taking advantage of services including access to Internet terminals. It's gratifying to see people working to improve their lot in life.

Not everyone shares my beneficent outlook on the CSI Refugee Program. In fact, since April 2015, Twin Falls has become ground-zero in a battle to protect or disband the CSI Refugee Program. That's when program director Zeze Rwasama told the CSI Board of Trustees that in the fall the Center would likely receive 300 refugees and that the largest populations

would be from Syria and the Democratic Republic of the Congo.

On the following morning the announcement was reported in the *Times-News*; A significant amount of anti-refugee comments were posted to the newspaper's website and similar comments were called in to the Refugee Center. Thereafter, a contrary, pro-refugee sentiment also poured forward in letters to the editor and commentary made in public settings.

Things really heated up over the summer. Four Magic Valley legislators wrote CSI in response to constituent concerns and asked for information on the anticipated receipt of additional refugees and the security-vetting process. Anti-CSI program activist Rick Martin of Buhl reported he had formed "The Committee to End the CSI Refugee Center" and that the committee had about 100 members in a closed Facebook group.

In June, my friend and accountant, Deborah Silver, started a Refugee Center support group — and I joined it. It made no sense to stand silently by.

CSI's Trustees saw community members appearing in great numbers, both for and against the Center, at their June, July, and August board meetings. However, the college trustees allowed only limited public comment due to the press of other important issues.

There seemed to be no easy resolution in sight. In August, the Associated Press reported that recorded phone messages were made to Idaho residents from the American Freedom Party, a white supremacist group, calling for support of their candidate and warning of "thousands of Muslim refugees headed to Idaho."

On the same morning the *Times-News* reported of the first meeting of the CSI Refugee Center support group I had joined, it also printed a picture of Center opponent, Rick Martin. I took a close look at the photo. *Hub?* Rick Martin? That looks an awful lot like a client of mine who I knew as Richard Martin. Hmm? I studied the picture more closely and concluded it was my client!

The Rick Martin the newspaper reported on did not seem like the

When I realized that Rick and I were on the opposite sides of an issue we each felt strongly about I called him and disclosed what I felt might be an irresolvable conflict.

same Richard Martin I knew. My client was bright, articulate, considerate, thoughtful, patient, respectful, compliant, compassionate, and reasonable. He seemed always to value my opinion and recommendations. *Rick* and *Richard* did not, in my mind, seem to be the same person.

More recently, when his petition to put removal of the Center on the ballot failed to garner the necessary signatures, Rick was quoted by a *Times-News* reporter to have said, "I'll fight on this issue till hell freez-

es over, and then I'll fight on the ice, to end refugee resettlement at CSI."

When I realized that Rick and I were on the opposite sides of an issue we each felt strongly about I called him and disclosed what I felt might be an irresolvable conflict. Rick told me that he respected my opinion and that he did not want to terminate the attorney-client relationship. Time passed; the legal issue resolved well, and is now, for all intents and purposes, a closed matter.

Time did not stand still. Further controversy erupted in June of this year when anti-refugee resettlement and anti-Islamic bloggers began reporting that Syrian youth had held a 5-year old Twin Falls girl at knife-point and raped her at the Fawnbrook Apartments. The city council came under attack for "holding back" information. The *Times-News* was accused of covering up the story. City council members reported they had received threatening phone calls. The county prosecutor countered that the youth involved — ages 7, 10, and 14 — were not Syrian, that the evidence indicated no rape had occurred, and that no knives were involved. The older two boys had been arrested for what is described as a sexual assault. Managers of the government-subsidized apartment complex where the assault is alleged to have occurred served notice of intent to evict the boys' families. The eviction initiative angered me. It didn't seem right.

When I walked into my office in the former Key Bank building at the corner of Shoshone and Main on June 20 I noticed uniformed police officers positioned on the first floor — currently occupied by city administrative personnel. The officers were there to protect against threats to city employees. That night the city council was scheduled to

receive citizen comments on the city's response to the alleged assault. I wish I could say otherwise, but in this day and age, this was not an unreasonable response.

What do I make of this? Well, not coincidentally I had been reading a book by Jonathan Haidt entitled *The Righteous Mind: Why Good People Are Divided by Politics and Religion*. The author explores why leaders cannot get along and why we assume the worst about the motives and intentions of those we most strongly disagree with.

The author may not agree with me but my take-away from this book is that we all "fire" more or less on six cylinders:

- (1) Facilitating care/averting harm;
- (2) Promoting fairness/defeating cheating;
- (3) Promoting loyalty/punishing betrayal;
- (4) Respecting authority/punishing subversion;

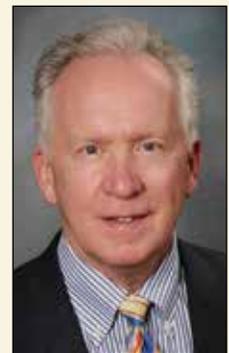
- (5) Sanctity/degradation;
- (6) Advancing liberty/rejecting oppression.

Some of us have greater genetic material, dopamine receptor sites, underlying some cylinders than others. Our upbringing (culture) has amped up or down the activity of these cylinders. In short, we don't all think or act alike, and we're not about to change.

I'm not big on authority or sanctity. I think my friend, Rick Martin, is. I'm big on averting harm

and rejecting oppression. Last week Rick and I agreed to sit down and talk about *how we think*. Not about Syrians or refugees – but about *how we think*. I hope we can expand the circle to greater than two. I don't expect to change the world, but I do know we can talk. I'm reminded and encouraged by former U of I College of Law Dean Don Burnett's admonishments on the responsibilities of a lawyer as "a public citizen," having *special responsibility* for the quality of justice. Let's see where this goes!

Dennis S. Voorhees is an attorney practicing in Twin Falls, Idaho as a sole practitioner with The Voorhees Law Firm. He has been a practicing lawyer since 1978. He is both a certified elder law attorney and a certified estate law planning specialist. His practice areas include disability trusts, elder law, and estate planning.



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DISCIPLINE

John C. Souza (Resignation in Lieu of Disciplinary Proceedings)

On June 20, 2016, the Idaho Supreme Court entered an Order accepting the resignation in lieu of disciplinary proceedings of Pocatello attorney, John C. Souza. The Idaho Supreme Court's Order followed a stipulated resolution of a disciplinary proceeding that related to the following conduct.

Mr. Souza represented a client in three different matters, a criminal case, a civil forfeiture action and a parole revocation. In the civil forfeiture case, Mr. Souza received documents allegedly supporting that the cash was not subject to forfeiture, because those funds were payments from the client's former employer. Mr. Souza received and did not forward those documents to opposing counsel or otherwise disclose the documents as part of the defense of that case. Mr. Souza did not file a response to the summary judgment motion, failed to appear for the hearing on the summary judgment motion and failed to attend the hearing on the opposing party's motion for attorney's fees and costs. The Court entered Judgment against Respondent's client.

In the criminal case, Mr. Souza filed a Rule 35 motion on behalf of his client, and requested that his client be remanded to drug court. The

Judge stated he would consider the possibility of drug court if the client was accepted and if the Parole Commission agreed. Mr. Souza asked the Judge to consider changing the sentence from 3 years fixed to 2 years fixed if the client was not accepted to drug court. The drug court denied the application, and Mr. Souza did not formally request changing the sentence. The Court denied the Rule 35 motion.

Mr. Souza failed to appear for his client's parole revocation hearing and failed to inform his client prior to the hearing that he would not appear. The client's parole was revoked.

Mr. Souza did pay the client's civil forfeiture Judgment, reimbursed the retainer fee and paid restitution totaling \$6,089.92. In addition, Bar Counsel considered as a mitigating factor that Mr. Souza suffers from significant health issues that may have contributed to the deficient representation of his client.

Mr. Souza admitted that he violated I.R.P.C. 1.2 [Failure to abide by client objectives], I.R.P.C. 1.3 [Failure to act with reasonable diligence and promptness], I.R.P.C. 1.4 [Failure to reasonably communicate with client] and I.R.P.C. 8.4(d) [Engaging in conduct prejudicial to the administration of justice].

The Idaho Supreme Court accepted Mr. Souza's resignation in lieu of disciplinary proceedings ef-

fective July 1, 2016. By the terms of the Order, Mr. Souza may not make application for admission to the Idaho State Bar sooner than five (5) years from the date of his resignation. If he does make such application for admission, he will be required to comply with all bar admission requirements in Section II of the Idaho Bar Commission Rules and shall have the burden of overcoming the rebuttable presumption of the "unfitness to practice law."

By the terms of the Idaho Supreme Court's Order, Mr. Souza's name was stricken from the records of the Idaho Supreme Court and his right to practice law before the courts in Idaho was terminated on July 1, 2016.

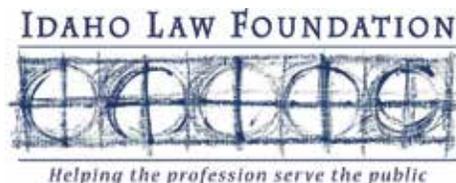
Inquiries about this matter may be directed to: Bar Counsel, Idaho State Bar, P.O. Box 895, Boise, Idaho 83701, (208) 334-4500.

REINSTATEMENT

Theresa A. Martin (Reinstatement to Active Status)

On May 25, 2016, the Idaho Supreme Court entered an Order reinstating Theresa A. Martin to practice law in Idaho.

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



The Idaho Law Foundation
has received a generous gift in memory of:
Tom High
from **John Rosholt**



Tom High



Photo by Whitney Fouser

Some of the 199 runners sprint from the starting line at the third annual Fund Run/Walk, which raises money and awareness for the Access to Justice Campaign.

Access to Justice Fund Run breaks records

BOISE — Participants, sponsors and donations all set records at the third annual Fund Run/Walk event held in Boise this spring. There were 199 runners and the event, which raised \$9,029 for Access to Justice Idaho Campaign. The money raised by the campaign will be split between Idaho Legal Aid Services, Inc., Idaho Volunteer Lawyers Program and Disability Rights Idaho.

This was the third year for the race, a light-hearted and fun competition. The winners in the Women's Division were Jordyn Anderson, first; Adrienne Daines, second; Maureen Braley, third. For the Men's Division, top finishers were Mathew Hong, first; James Smith, second; Michael Wanta, third.

Sponsors included Concordia University School of Law, Elam & Burke, Gjording Fouser PLLC, Idaho State Bar Environment & Natural Resources Section, Idaho State Bar Real Property Section, Idaho State Bar Young Lawyers Section, M&M

Court Reporting, Parsons Behle & Latimer, Stoel Rives LLP, Thomas Williams & Park LLP, and the University of Idaho College of Law.

Senior Lawyer Transition Task Force creates a guidebook

The Idaho State Bar Senior Lawyer Transition Task Force has published *Planning Ahead: A Guide to Protecting Your Clients' Interest in the Event of Your Disability or Death*.

Task Force Chairperson William F. (Bud) Yost III of Nampa, a former President of the Idaho State Bar, said that "an informal survey of active licensed attorneys in private practice here in Idaho shows only 23 percent have a written succession plan in place, a little below the national average of 30 percent. It is the Task Force's goal to eclipse the 30 percent mark immediately and be a leading bar preparing for the unknown circumstances that can arise at any moment."

In opening remarks, the guide states: "[A]lthough it is hard to think about events that could ren-

der you unable to continue practicing law, freak accidents, unexpected illness and untimely death do occur. Following the suggestions in this handbook will help to protect your clients' interests and will help to make your practice a valuable asset to your estate. In addition, it will simplify the closure of your office — a step your family and colleagues will very much appreciate."

To access the materials please visit www.isb.idaho.gov and click "Succession Planning Guide & Resources" under "Attorney Shortcuts."

The Task Force was appointed by the ISB Commission. They chose Mr. Yost, Idaho Supreme Court Chief Justice Jim Jones, retired practitioner Dennis L. Cain, University of Idaho College of Law Professor Sunil Ramalingam, Idaho Division of Human Resources Deputy Administrator and licensed attorney Kim W. Toryanski and Idaho State Bar Commissioner Dennis S. Voorhees.

Members of the Task Force discussed the guide and provided additional resources for consideration at a CLE session during the Idaho State Bar Annual Meeting. The program was recorded and will be made available for rental at isb.fastcle.com later this month.

Historic photos sought for Canyon County

CALDWELL — Dr. Bryan Taylor, Canyon County Prosecutor, is working on a wall to display all of his predecessors. Unfortunately, he is not having much luck in tracking down photographs. He has been in touch with the Canyon County Historical Society, the Idaho Historical Society and the Idaho Legal History Society and is trying to locate the following photographs:

Owen M. VanDuyn, F.A. Hagelin, W.A Stone, B.W. Henry, H.A. Griffiths, Alfred F. Stone, H.E Wallace, Clarence S. Hill, S. Ben Dunlap, Cleve Groome, W.W. Wander and William Brauner.

Law review looking for articles

SPOKANE — The Gonzaga Law Review is seeking articles for its upcoming first volume of the 52nd Edition. Articles may have an academic or practical focus and should address topics related to the legal field. Interested attorneys may contact editors Anni Glogovac and Cara Verhaeghe at gulr@gonzaga.edu.

Alert of fraudulent emails

BOISE — Attorneys in Idaho and other states are receiving emails that

appear to come from their respective state bar indicating that a complaint has been made or disciplinary action commenced regarding the attorney or the attorney’s firm. Emails have also been sent to attorneys regarding overdue fees. Those emails appear to be an attempt to phish members or introduce harmful software.

The Idaho State Bar does not send emails indicating a complaint has been made or disciplinary action commenced. It also does not send email notices that include invoices for bar fees. If you receive such messages, please delete the message and avoid opening any attachments.

Idaho Legal Aid gets \$5,000 grant

POCATELLO — Idaho Legal Aid Services, Inc. announced that its Pocatello office is the recipient of a

\$5,000 grant from the Union Pacific Foundation to protect more low-income Idahoans in Eastern Idaho by establishing guardianships and conservatorships for vulnerable children and older adults who have lost capacity.

Guardianships and conservatorships are essential to ensuring that seniors and children in need are able to live safe and stable lives by providing legally appointed individuals who are responsible for protecting them. The roles of guardians and conservators include making medical decisions, ensuring critical services (such as registering for school) are in reach, and managing assets for the people in their care. The Pocatello Legal Aid attorneys have years of experience helping vulnerable Idahoans with guardianship and conservatorship issues.

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2016 Resolution Process

*Diane K. Minnich
Executive Director, Idaho State Bar*

Proposed resolutions – Deadline September 26

Do you, your district bar association, practice section or committee have a proposed rule revision, law related issue or legislative matter that you think should be voted upon by the Idaho State Bar membership? If so, the fall resolution process, or “roadshow” is the opportunity to propose issues for consideration by members of the bar.

Unlike most state bars, the Idaho State Bar cannot take positions on legislative matters, or propose changes to rules of the Court, or substantive rules governing the bar itself, by act of its bar commissioners, or at its Annual Meeting. Matters referenced above must be submitted to the membership for a vote through the resolution process.

Idaho Bar Commission Rule 906 governs the resolution process. Resolutions for the 2016 resolution process must be submitted to the

bar office by the close of business on Monday, September 26, 2016. If you have questions about the process or how to submit a resolution, please contact me at dminnich@isb.idaho.gov or (208)-334-4500.

Thank you

Tim Gresback, Moscow, and Trudy Fouser, Boise, completed their service as Idaho State Bar Commissioners at the close of the 2016 Annual Meeting.

Trudy and Tim are a great team with different but complimentary styles. They both are leaders; committed to improving the practice and assisting lawyers in their efforts to effectively serve their clients. They also focused on the good works of lawyers. They like lawyers and know that lawyers contribute to the profession, their communities and those in need. And they are both a lot of fun!

Tim has endless energy and enthusiasm. He truly cares about enhancing lawyers’ skills and interactions. Tim developed the well

attended and well received CLE program on bullying.

Trudy is a true professional who commits herself and her firm to charitable causes. The Lawyers Serve! campaign gathered and highlighted the many charitable contributions of lawyers and the value lawyers bring to their communities.

For the coming year, Dennis Voorhees, Twin Falls, and Michelle Points, Boise, will share the year as President. Dennis became the ISB President at the close of this year’s Annual Meeting. Michelle will begin her time as President in January 2017. We welcome recently elected Commissioners Mike Howard, Coeur d’Alene, and David Cooper, Boise, who join Dennis, Michelle and Kent Higgins from Pocatello.

As I have said many times, serving as a Commissioner takes an incredible amount of time. The lawyers that are elected as Commissioners are – truly dedicated – my sincere thanks for their service!

2016 District Bar Association Resolution Meetings		
District	Date	Time
First Judicial District	Thursday, November 10	Noon
Second Judicial District	Thursday, November 10	6:00 p.m.
Third Judicial District	Thursday, November 3	6:00 p.m.
Fourth Judicial District	Thursday, November 3	Noon
Fifth Judicial District	Wednesday, November 2	6:00 p.m.
Sixth Judicial District	Wednesday, November 2	Noon
Seventh Judicial District	Tuesday, November 1	Noon

Welcome From the Professionalism and Ethics Section

Sherry A. Morgan

The Professionalism and Ethics Section of the Idaho State Bar is proud to co-sponsor this issue of *The Advocate*, along with the Lawyers Assistance Program. As our name implies, the Professionalism and Ethics Section was not formed with a focus towards any practice specialty, but rather to advance the conduct of all members of the Bar. Through our outreach efforts, we strive to preserve and enhance the level of ethics, civility, and professionalism in the practice of law, and to raise the public's perception of our profession.

We believe that our mission is consistent with the efforts provided by the Lawyers Assistance Program. The LAP provides support for lawyers across the state who are experiencing problems associated with substance abuse and/or mental health issues in a safe manner, preserving the reputation and trust of the attorney. Along those lines, the LAP helps promote civility and professionalism among the Bar's members, which helps to ensure compliance with our ethical responsibilities.

Consistent with these goals, our Section sponsors a variety of activities throughout the year. In cooperation with the Idaho State Bar, we promoted the adoption of the "Standards

In cooperation with the Idaho State Bar, we promoted the adoption of the "Standards for Civility in Professional Conduct Guidelines," and assisted in the publication of "Consumer's Guide to Idaho Lawyers."

for Civility in Professional Conduct Guidelines," and assisted in the publication of "Consumer's Guide to Idaho Lawyers." We also sponsor several CLE programs throughout the year, such as "Golfing for Ethics" held during the Fourth District Bar Spring Fling, as well as our annual November CLE, and the ever-popular "Ethical Happy Hour" held quarterly.

Our Section is also proud to co-sponsor the Richard C. Fields Civility Award, along with the Concordia University School of Law. Dick Fields was consistently recognized for his service, professionalism, and leadership within the Idaho State Bar and was known in the legal community as an advocate for civility in the practice of law. The annual Award was established to honor Dick's

memory and the legacy he left for future generations of lawyers, and is awarded to a lawyer who demonstrates a commitment to professionalism and civility in the profession.

Our flagship program, however, is our first year law student Professionalism Orientation Program held at the University of Idaho and Concordia University. Each year, members of the Idaho Supreme Court, the state and federal courts of appeal, the federal bench, state bench, and practitioners from all regions of the state travel to Moscow and/or Boise to assist with the first-year law students' orientation. Groups consisting of two justices judges and/or practitioners interact with small groups of first-year students to discuss professionalism and ethics, laying an early

Professionalism & Ethics Section

Chairperson

Sherry A. Morgan
Ada County Prosecutor's Office
200 W. Front Street, Rm 3191
Boise, ID 83702
Phone: (208) 287-7700
Fax: (208) 287-7709
smorgan@adaweb.net

Vice Chairperson

Jodi A. Nafzger
Concordia University School of Law
501 W. Front Street
Boise, ID 83702
Phone: (208) 639-5403
Fax: (208) 639-5498
jnafzger@cu-portland.edu

Secretary/Treasurer

Julianne Slayton Hall
Gjording Fouser, PLLC
PO Box 2837
Boise, ID 83702
Phone: (208) 336-9777
Fax: (208) 336-9177
jhall@gfdaholaw.com

foundation for the ethical and professional practice of law. Our Section underwrites the transportation and hotel costs for those who travel by utilizing our Section dues and the generous donations from other Bar sections, district associations, and legal organizations.

We hope that you find the articles in this issue interesting and helpful. We also invite each of you to join our Section. Membership provides an opportunity to work closely with colleagues who share a vision for a profession that embodies personal courtesy and professional and ethical integrity in the fullest sense of those terms. We meet the first Tuesday of each month at the Idaho State Bar office in Boise, or you can join us by phone. Our meetings often include a 30-minute ethics CLE, and always include lunch!

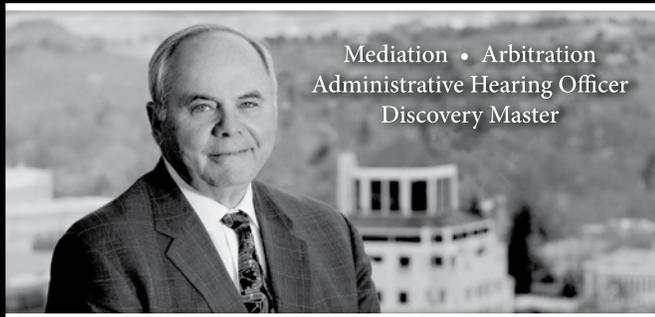
Please feel free to contact me or any of our officers — Jodi Nafzger, Julianne Hall, or Bob Aldridge — with any thoughts about how our Section can better serve you.

Membership provides an opportunity to work closely with colleagues who share a vision for a profession that embodies personal courtesy and professional and ethical integrity in the fullest sense of those terms.

Sherry A. Morgan is a Senior Deputy Prosecuting Attorney in the Civil Division of the Ada County Prosecuting Attorney's Office, where she represents Ada County in various types of litigation including civil rights, torts, and property tax cases, as well as providing general advice. She is a graduate of Boise State University and the Gonzaga University School of Law. She can be reached at smorgan@adaweb.net.



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phone 208.343.4212

fax 208.336.2121

anniemcdevittlaw.com

law office of 
Annie O. McDevitt

Eliminating Bias, Harassment, and Discrimination in the Legal Profession: Proposed Changes to Model Rule 8.4

Sarah C. Haan
Dominic Lovotti

Is a lawyer who makes unwanted sexual advances to a legal assistant in violation of the Idaho Rules of Professional Conduct? Under existing rules, which essentially track the ABA's Model Rules of Professional Conduct, probably not, unless the lawyer's acts are prejudicial to the administration of justice. However, if Idaho adopts proposed revisions to the ABA's Model Rules, the answer will almost certainly be yes.

The ABA Standing Committee on Ethics and Professional Responsibility is currently seeking approval for a draft proposal that would revise Model Rule of Professional Conduct 8.4 to add anti-discrimination and anti-harassment provisions to the black letter rules governing conduct in this profession. The draft proposal seeks to strengthen ethics protections for protected classes and to advance the ABA's goal of eliminating bias, harassment, and discrimination in the legal profession.

Many believe that the ABA's existing Model Rule 8.4(d) provides insufficient protection for at least two reasons. First, it considers discrimination by an attorney to be misconduct only when prejudicial to the administration of justice, which is generally understood to be discrimination in connection with client representation. Second, the current anti-discrimination provision is only mentioned in a comment to Model Rule 8.4 – Comment 3. Comments are advisory and not every state adopts them. (Idaho generally does.)

The proposed changes have sparked controversy. From its earliest drafts, the ABA's Standing Committee has openly sought comment

The draft proposal seeks to strengthen ethics protections for protected classes and to advance the ABA's goal of eliminating bias, harassment, and discrimination in the legal profession.

from the public on how best to achieve the desired protections and to assuage practitioners' concerns. The most forceful objections are that the revised Rule will force attorneys to accept work that they can decline under the existing framework, and that attorneys affiliated with religious organizations will not be able to select people with whom they work.

As it stands now, the proposed draft has addressed many of the concerns raised in the proposal process. The ABA Standing Committee has prepared a formal Report and Resolution for presentation and a vote at the ABA House of Delegates Annual Meeting in August 2016.¹ Commentators believe the proposal is likely to pass. What follows is an examination of the current rule, the proposed changes, a description of the controversy, concluding with an endorsement of the ABA's proposed draft.

The current rule

Currently, Model Rule 8.4(d) and its Comment 3 work in tandem to address discrimination. 8.4(d) makes it professional misconduct for a lawyer "to engage in conduct that is prejudicial to the administration of

justice." Comment 3 goes on to state that "[a] lawyer who, in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates paragraph (d) when such actions are prejudicial to the administration of justice. Legitimate advocacy respecting the foregoing factors does not violate paragraph (d)."

The Idaho Supreme Court has adopted ABA Model Rule 8.4(d) and Comment 3 verbatim as Idaho Rule of Professional Conduct 8.4 and its Comment 3.

The proposed changes

The changes sought to Model Rule 8.4 would create an additional section, 8.4(g), redraft Comment 3, and add two additional comments. The new Rule 8.4(g) would make it professional misconduct for a lawyer "to harass or discriminate on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law." The revised language goes on to specify that "[t]his Rule does not

limit the ability of a lawyer to accept, decline, or withdraw from a representation in accordance with Rule 1.16.”²

The revised Comment 3 further defines what would constitute discrimination or harassment: “[D]iscrimination includes harmful verbal or physical conduct that manifests bias or prejudice towards others because of their membership or perceived membership in one or more of the groups listed in paragraph (g). Harassment includes sexual harassment and derogatory or demeaning verbal or physical conduct towards a person who is, or is perceived to be, a member of one of the groups. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other unwelcome verbal or physical conduct of a sexual nature. The substantive law of antidiscrimination and anti-harassment statutes and case law may guide application of paragraph (g).” *Id.*

The newly-drafted Comment 4 expands the breadth of interactions that could potentially cause an attorney to violate Rule 8.4(g): “Conduct related to the practice of law includes representing clients; interacting with witnesses, coworkers, court personnel, lawyers and others while engaged in the practice of law; operating or managing a law firm or law practice; and participating in bar association, business or social activities in connection with the practice of law. Paragraph (g) does not prohibit conduct undertaken to promote diversity.” *Id.*

The newly-drafted Comment 5 explains how this new Rule and its Comments should be interpreted in light of other Model Rules: “Paragraph (g) does not prohibit legitimate advocacy that is material and relevant to factual or legal issues or

arguments in a representation. A lawyer does not violate paragraph (g) by limiting the scope or subject matter of the lawyer’s practice or by limiting the lawyer’s practice to members of underserved populations in accordance with these Rules and other law. A lawyer may charge and collect reasonable fees and expenses for a representation. Rule 1.5(a). Lawyers also should be mindful of their professional obligations under Rule 6.1 to provide legal services to those who are unable to pay, and their obligation under Rule 6.2 not to avoid appointments from a tribunal except for good cause. See

Proponents of the revised Rule seek to further the reach of the disciplinary authorities to address implicit and explicit bias in the legal profession.

Rule 6.2(a), (b) and (c). A lawyer’s representation of a client does not constitute an endorsement by the lawyer of the client’s views or activities. See Rule 1.2(b).” *Id.*

The controversy

Proponents of the revised Rule seek to further the reach of the disciplinary authorities to address implicit and explicit bias in the legal profession. The concern here is that the ABA Model Rules, which are

supposed to be a guiding light for the legitimacy and credibility of the legal profession nationwide, currently allow harassment and discrimination to occur so long as they are not tied to client representation.

In addition, because Comments to the Model Rules are generally not binding and not every state adopts them, there are states that have not even adopted Comment 3 to the current Rule 8.4. On the other hand, 24 states have already added anti-discrimination or anti-harassment provisions to their codes of professional responsibility. Idaho falls in the middle, essentially tracking the ABA Model Rules and Comments on this subject word-for-word.

Opponents to the revised Rule have raised several grievances with the proposed change.³ First, Model Rule 8.4 has historically been solely concerned with attorney conduct that might adversely affect an attorney’s fitness to practice law or that seriously interferes with the proper and efficient operation of the judicial system. The new Rule change addresses neither of those issues. Second, attorneys may be subject to professional discipline for acting in accordance with their professional and moral judgment when making decisions about whether to accept, reject, or withdraw from certain cases because attorneys will be forced to take cases or clients they might have otherwise declined. And third, attorneys may end up being sanctioned for expression that is protected by the First Amendment.

Another frequent comment in opposition has raised concerns about a religious exemption so religious organizations or attorneys affiliated with these organizations can maintain their practice of hiring people with similar beliefs.⁴ The comments in opposition demonstrate that there are a significant number of attorneys who would like to be able to continue to be selective

about clientele or hiring practices.

For a more complete picture, you can examine additional information and useful commentary found in a joint Report to the House of Delegates submitted by the ABA's Standing Committee, which summarizes the case for adopting the revisions.⁵ The Standing Committee is supported by other sections and commissions of the ABA representing these areas: Civil Rights and Social Justice, Disability Rights, Diversity and Inclusion, Racial and Ethnic Diversity in the Profession, Sexual Orientation and Gender Identity, and Women in the Profession.

Final thoughts

Overall, the proposed revision is a good idea for the ABA Model Rules and for the Idaho bar. The proposal process, during which the ABA Standing Committee has revised the draft proposal several times in response to practitioner comments, has produced a workable improvement to Rule 8.4. The new Rule will promote important anti-discrimination and anti-harassment principles and present little potential downside for most lawyers. It successfully promotes the ABA's major goal of eliminating bias and enhancing diversity in the legal profession and, more broadly, in the justice system as a whole.

Hopefully, as the proposed Rule change makes its way to Idaho, it will cause Idaho lawyers to consider biases, harassment, and discrimination, and their effects on our profession. All individuals are capable of acting upon bias and of being harmed by the biases of others. With the diversification of the Idaho bar and the client population, the time is right to grapple over these significant issues, even if they make us uncomfortable. It is up to each of us to be active and productive participants in the conversation.

The new Rule will promote important anti-discrimination and anti-harassment principles and present little potential downside for most lawyers.

Endnotes

1. ABA Standing Committee on Ethics and Professional Responsibility, Section on Civil Rights and Social Justice, Commission on Disability Rights, Diversity & Inclusion 360 Commission, Commission on Racial and Ethnic Diversity in the Profession, Commission on Sexual Orientation and Gender Identity, Commission on Women in the Profession, Report to the House of Delegates (Aug. 2016), *available at*: http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/scepr_report_to_hod_rule_8_4_amendments_05_31_2016_resolution_and_report_posting.authcheckdam.pdf
2. *Id.* at 1-2.
3. American Bar Association, Model Rule of Professional Conduct 8.4, Dec. 22 Draft Proposal – Comments Received, *available at*: http://www.americanbar.org/groups/professional_responsibility/committees_commissions/ethicsand-professionalresponsibility/modruleprof-conduct8_4.html
4. Comments on Proposed Amendment to Model Rule 8.4. United States Conference of Catholic Bishops, *available at*: http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/aba_model_rule%208_4_comments/05_31_16.authcheckdam.pdf
5. See endnote 1, *supra*.

Sarah C. Haan is a law professor at the University of Idaho College of Law, where she teaches Business Associations, Advanced Corporate Governance, Mergers & Acquisitions, and Professional Responsibility.



Dominic Lovotti graduated from the University of Idaho College of Law in May 2016.



Bridging the Justice Gap: Judicial Promotion of Pro Bono

Jodi Nafzger

The United States is facing a civil legal aid crisis. With the recent economic recession, more and more people have fallen into poverty and now face a multitude of legal problems. According to the United States Census Bureau's Annual Social and Economic Supplement, 14.8 percent of the population (roughly 48 million people) is living in poverty. As poverty rates have increased, public and private funding for civil legal aid has dramatically declined. Increasing numbers of low-income and modest-means individuals and families are unable to afford legal counsel or secure pro bono representation. Meaningful access to justice for these individuals requires lawyers and judges to take a more proactive approach to bridging the gap.

The civil legal aid crisis has also left court dockets across the country overburdened with *pro se* litigants. In 2012, for example, nearly 60 percent of civil legal cases filed in Idaho had at least one *pro se* party.¹ To tackle this problem, the judiciary, the private bar and the public interest community have implemented numerous initiatives to attempt to bridge the justice gap. But these efforts have not been enough to make significant headway in curing the problem. As a scholarly team noted:

Referral by the courts to legal services providers has not solved the problem, because of the providers' limited resources. Referral to private, pro bono attorneys has been only sporadically successful. Other remedies, though imaginative and earnest, have not effectively eliminated the problem. Past and current efforts to remedy the pro

The State of Poverty in Idaho			
Poverty and Employment		Education, Housing and Federal Programs	
Poverty Rate	15%	4-Year College Degree	26%
Asset Poverty Rate	30%	Aged 16-19 (No School/Work)	11%
Children	21%	Grandparents raising grandchildren	20,594
Women	16%	Less Than 30% of Income on Housing	36,127
Single-Parents	40%	Homeless	2,104
Working Poor	39%	SNAP (Food stamps - children)	109,000
Food Insecurity	15%	TANF (Welfare - adults and children)	2,939
Uninsured	18%	WIC (Nutrition program)	43,292
Low-Wage Jobs	29%	LIHEAP (Home Energy)	50,186

se problem have fallen short. Self-help centers, family law facilitators, pro se clinics, and enhanced technology have helped, but not enough. At the conclusion of these services, the pro se litigant is still pro se.²

This is the reality in our state as well. Though Idaho's Statewide Court Assistance Offices (CAOs) served 51,944 people in 2015, the CAOs are prohibited from providing legal advice and representation to *pro se* litigants and therefore are only able to provide basic information and template forms. Moreover, although more than 20 percent of Idaho's residents are eligible for civil legal aid, due to funding restrictions Idaho Legal Aid Services, which has fewer than 20 attorneys across the entire state, is only able to offer assistance to a limited number of individuals and families facing a limited scope of legal issues.

Likewise, though 800 Idaho attorneys donated more than 16,000 hours of pro bono time in 2015 to underserved communities, due to a lack of funding and volunteers the Idaho Volunteer Lawyers Program (IVLP) has reduced its services in domestic violence cases, foreclosures, and housing. As a result, the follow-

The civil legal aid crisis has also left court dockets across the country overburdened with *pro se* litigants.

ing story is now an all too common example of the access to justice gap in Idaho.

Having faced ethnic persecution in their native country of Bhutan, a landlocked country in South Asia at the eastern end of the Himalayas, a family was forced to flee and resettled in Idaho. Working through a re-

settlement agency, the family rented an apartment in an affordable complex in Boise. The father works at the airport, and the mother worked at the Boise International Market until it was destroyed in a fire. The couple has two young children who attend the elementary school just behind their apartment complex. One child suffers from a physical disability, and the school provides special services. Last week, the couple received a 30-day notice to evict their apartment. Unfortunately, the rental market in Boise isn't keeping up with the demand. The couple has nowhere to go. Details about the property surface including stories of pest infestations, mold, and holes in the roof. The couple can't afford an attorney and the local legal aid organizations can't take any more cases. The couple obtained some paperwork for a demand letter from a legal advice clinic and sent the letter to the landlord. Now the couple is in court but, even with an interpreter, they cannot fully understand the proceedings to defend the eviction notice. They just need more time to relocate, again.

So, in light of the circumstances above, the question becomes: can the magistrate judge appoint counsel in the eviction proceeding or, at a minimum, request assistance from a pro bono attorney through IVLP?

On the surface, the answer appears to be yes. The American Bar Association's (ABA) Model Rules of Professional Conduct Rule 6.2 requires lawyers to accept appointments by a tribunal unless the representation would compromise the attorney's ethical responsibilities or the attorney-client relationship. ABA Model Rule 6.1 also recognizes the deeply rooted requirement that lawyers provide pro bono service to underserved populations, encourag-

ing attorneys to dedicate at least 50 hours of pro bono service annually. Relatedly, the commentary to the appointment rules note that a lawyer may be subject to appointment by a court to serve unpopular clients or persons unable to afford legal services.³

But, in most jurisdictions, judges are reluctant to appoint counsel in civil cases under the rationale that doing so may violate the ABA's Model Code of Judicial Conduct. In this article, I examine this rationale and propose a rule change that

A lawyer may be subject to appointment by a court to serve unpopular clients or persons unable to afford legal services.³

would permit judges to take a more active role in creating pro bono appointment systems for indigent civil litigants.

ABA Model Code of Judicial Conduct permits judges to encourage lawyers to engage in pro bono services

The Model Code of Judicial Conduct ("the Code"), adopted by the ABA House of Delegates in 1990, provides guidance to judges in their judicial and personal conduct and provides a basis for regulating that conduct. The Code consists of

four canons that provide the overall framework of judicial ethics and under which are numbered rules and comments explaining each rule.

Canon 3 of the Code provides that "[a] judge shall conduct the judge's personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office." In February 2007, the ABA House of Delegates amended Rule 3.7, which is entitled Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities. As a response to the increasing frequency of *pro se* representation in the courts, the House of Delegates added subsection (B), allowing judges to "encourage lawyers to provide pro bono publico legal services," and added a new Comment [5], which provides:

[5] In addition to appointing lawyers to serve as counsel for indigent parties in individual cases, a judge may promote broader access to justice by encouraging lawyers to participate in pro bono publico legal services, if in doing so the judge does not employ coercion, or abuse the prestige of judicial office. Such encouragement may take many forms, including providing lists of available programs, training lawyers to do pro bono publico legal work, and participating in events recognizing lawyers who have done pro bono publico work.

This new comment was designed to clarify that judges may encourage lawyers to engage in pro bono service generally, apart from situations in which judges may appoint counsel for indigent parties in individual cases.⁴ Examples of permitted judicial encouragement include letters to bar members, resolutions, recognition, and educational tools such as speeches, manuals, or videos.

Idaho Code of Judicial Conduct also permits judges to encourage pro bono activities

Canon 4 of Idaho's Code of Judicial Conduct ("the Idaho Code") requires judges to "conduct the judge's extra-judicial activities to minimize the risk of conflict with judicial obligations." Canon 4C(3), however, allows judges to serve as an officer, director, trustee or non-legal advisor of an organization or governmental agency devoted to the improvement of the law. It also provides, in a revision adopted by the Idaho Supreme Court in 2010, that Idaho state judges:

(iii) shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation, *provided that a judge may encourage participation by a lawyer or lawyers in pro bono activities as long as the encouragement is not coercive in nature.*⁵

In announcing this rule change, the Honorable Candy Dale, United States Magistrate Judge for the District of Idaho, wrote "judges are not holding out tin cups and asking for coins from lawyers but we have the opportunity-- and obligation-- to use our positions to promote and provide access to justice."⁶

Like the Code, the Idaho Code does not define what encouragement could be seen as "coercive." In a formal opinion issued in May 2015, the ABA Standing Committee on Ethics and Professional Responsibility found that it is permissible for a justice to sign a letter encouraging lawyers to seek out pro bono opportunities. In doing so, the Standing Committee recommended evaluating the totality of the facts to determine whether a judge's actions appear "coercive" under Rule 3.1(D) to

Twenty-seven states have adopted Rule 3.7(B) verbatim or substantively similar language, often including examples of permissible pro bono activities for judges.

a reasonable person. In other words, whether "the person solicited would feel obligated to respond favorably..." In the opinion, the Standing Committee concludes that a general appeal letter does not lead a person to feel obligated to perform pro bono services or that the lawyer who performs pro bono services is "currying favor with the justice," and is therefore not coercive.⁷

Adoption of Rule 3.7(B) leads to debate about judicial efforts to expand pro bono representation

States unfortunately do not have a consistent approach to the limits of judicial promotion of pro bono. Twenty-seven states have adopted Rule 3.7(B) verbatim or substantively similar language, often including examples of permissible pro bono activities for judges. Some states have placed the language of Rule 3.7(B) in the comments of their codes without substantively altering existing rules. Some states also include provisions dealing with pro bono service under different canons, including canons dealing with extrajudicial activities, fundraising, or solicitations. There is still debate, however, even among states that have adopted Rule 3.7(B), whether (and to what extent) judges can be involved in efforts to expand

pro bono representation without violating their states' codes of judicial conduct.⁸

Despite this debate, the judiciary in several states is taking a more active role to meaningfully affect change and provide civil legal services to the ever-increasing gap. In Oregon, for example, family law judges created the Pro Se Assistance Project in partnership with Legal Aid Services of Oregon where volunteer lawyers provide pro bono legal advice at the courthouse two afternoons a week to pro se litigants.⁹ The U.S. District Court for the District of Colorado created a civil pro bono panel of attorneys and law firms willing to accept appointments to represent pro se litigants of limited means in civil cases.¹⁰

In 2009, the California Judicial Council developed ten pilot projects in seven counties for appointment of counsel in civil cases including housing, domestic violence, child custody, and probate guardianship.¹¹ The District of Columbia Access to Justice Commission and Pro Bono Program have developed a Landlord-Tenant Court to match every litigant living in public or subsidized housing with counsel.¹²

State courts and bar associations are also pioneering technology to increase access to justice, including the

ABA Legal Answers, a website staffed by volunteer lawyers to answer questions from low-income individuals.¹³ Many courts are also using online document-assembly software to help litigants complete court-approved legal forms easily and in a manner acceptable to the courts, using software such as LawHelp Interactive, HotDocs Professional, and the Center for Access to Justice and Technology's A2J Author.

To date, Idaho is still, by most accounts, conservative in its view toward judicial promotion of pro bono, expressly permitting only general appeals letters and avocational activities by its judges.¹⁴ In partnership with the Idaho State Bar and IVLP, Idaho Courts could be a leader in this fight to close the justice gap.

Proposal to standardize judicial activities: Adoption of a New Rule 3.7(C)

While I recognize the challenges in proposing a change to the Model Code of Judicial Conduct, there is a need to standardize the ways in which judges may encourage or promote pro bono. In fact, the rules should not just permit judges to "encourage lawyers to provide pro bono," but rather the rules should permit judges to use their inherent authority to appoint attorneys to represent indigent clients without promise of compensation. The current landscape shows some states allowing only general appeals letters and other avocational activities, while other states permit judges to directly recruit volunteer attorneys.

In light of the ever increasing need for civil legal assistance for low-income individuals and the unavailability of resources and capacity, judges should be permitted to take a more active role in creating pro-

grams in their courts, in partnership with volunteer lawyers programs, to bridge the justice gap.

States should be encouraged to establish the right to pro bono legal counsel in certain discrete practice areas, as many states do in parental termination cases. In *Lassiter v. Department of Social Services*, the U.S. Supreme Court held that there was no absolute right to appointed counsel in parental termination cases but that due process might require counsel.¹⁵ The Court applied the due process test from *Matthews v. Eldridge*,

Idaho is still, by most accounts, conservative in its view toward judicial promotion of pro bono, expressly permitting only general appeals letters and avocational activities by its judges.¹⁴



in which the court weighs the state interest against the private interest.¹⁶ In *Matthews*, the Court was confronted with deciding to what extent due process requires an evidentiary hearing prior to the termination of disability benefits. The Court concluded that an evidentiary hearing was not required and the administrative procedures prescribed under the Act fully comport with due process.¹⁷

Though not every civil legal need will require a due process analysis under the Fifth Amendment, states could explore a comparable bal-

ancing test when making decisions about a person's right to pro bono legal counsel. Like in *Lassiter*, these cases could be decided case-by-case or state legislatures could provide the right to counsel in certain types of cases, such as housing, personal safety, and other areas involving basic necessities of life. Courts would use their inherent authority to appoint counsel in these cases pursuant to a pro bono appointment system.

Appointments would be made by drawing from a list of active attorneys in that jurisdiction, following the lead of other successful federal court pro bono programs. As a licensed member of the state's bar association, attorneys would agree to pro bono representation in these discrete practice areas unless they are excused under Rule 6.2 or Rule 1.16. Legal services would be provided without compensation. Many scholars have addressed the constitutional limits of uncompensated appointments, which is an important discussion, but one that is beyond the scope of this article.¹⁸

The Model Code of Judicial Conduct should likewise make it expressly clear that it permits judges to take on a more active role by making pro bono appointments. I propose adding a subsection (C) under Rule 3.7, which would read as follows: "A judge may appoint lawyers to represent indigent individuals in civil cases pursuant to a state's pro bono appointment system." This rule change will provide much-needed clarity around the judiciary's role in appointing pro bono lawyers. It will empower states like Idaho to create a pro bono appointment system and will allow judges to use their inherent power to require attorneys to accept appointments to help bridge the justice gap.

Conclusion

It is well known that *pro se* civil litigants represent a burden on the court system. But more importantly, many *pro se* litigants, like the Bhutanese refugee family, are ill-equipped to navigate the complexities of the judicial system. As attorneys have a professional responsibility to provide pro bono legal services to disadvantaged communities, and as the judiciary is uniquely positioned to play a profound role in bridging the justice gap, a critical step toward resolving the legal aid crisis is an express articulation in the Model Code of Judicial Conduct and the Idaho Code of Judicial Conduct that judges are permitted to actively appoint attorneys to provide pro bono legal services to civil litigants. With articulated changes to state laws and the judicial canons, states can dramatically improve access to justice for some of our most vulnerable populations.

Endnotes

1. In 2012, 58% of civil cases (more than 89,000) had a *pro se* party. Access to Justice Idaho Campaign, available at https://isb.idaho.gov/ilf/aji_campaign/aji.html.
2. Hon. Mary E. Triggiano, John F. Ebbott, *Gideon's New Trumpet*, 82-JUN Wis.Law.5, Wisconsin Lawyer 2009, *Gideon's New Trumpet*.
3. MODEL RULES OF PROF'L CONDUCT R. 6.2 cmt. 1.
4. ABA Joint Commission to Evaluate the Model Code of Judicial Conduct's Report, November 2006.
5. Idaho Code of Judicial Conduct 4C(3) b(iii) (2013)(emphasis added).
6. Hon. Candy Dale, *The What and Whys of the Pro Bono Survey*, 53-AUG Advocate (Idaho) 57 (2010).
7. Id. This opinion does not address the situation in which a judge asks a specific lawyer to accept appointment for a

A critical step toward resolving the legal aid crisis is an express articulation in the Model Code of Judicial Conduct and the Idaho Code of Judicial Conduct that judges are permitted to actively appoint attorneys to provide pro bono legal services to civil litigants.

specific case. For those matters, see ABA Model Code of Judicial Conduct Rules 1.3, 2.13, 2.4, 3.1(D) and ABA Model Rules of Professional Conduct Rule 6.2.

8. Alabama Jud. Inquiry Comm'n Adv. Op. 04-847 (2004) (judges may send letters asking lawyers to participate in state bar operated pro bono programs); Maryland Judicial Ethics Committee, Op. 2013-29 (judges may solicit volunteers for pro bono service to indigent parties by writing to such attorneys individually); Alaska Comm'n on Jud. Conduct Adv. Op. 2004-01 (2004) (judges may not refer lawyers to a particular pro bono program); Kentucky Ethics Comm. of the Judiciary Op. JE-107 (2005) (judges may issue generic letters to the bar but a judge may not urge lawyers to volunteer with a specific pro bono organization); Michigan Stand. Comm. on Prof'l and Jud. Ethics Op. J-7 (1998) (a judge may not solicit individual lawyers to perform pro bono); Florida Supreme Court, Judicial Ethics Advisory Committee, JEAC Opinion 2012-26 (judges may convene meetings in order to solicit attorneys to

volunteer as attorneys ad litem for children in dependency cases).

9. Janine Robben, *Here Come the Judges*, Oregon State Bar Bulletin (2006).

10. Hon. William J. Martinez, *Introducing the District of Colorado's New Civil Pro Bono Panel*, The Colorado Lawyer (April 2014).

11. Alan W. Houseman, *Civil Legal Aid in the United States: An Update for 2015* (December 2015).

12. Id.

13. See http://www.americanbar.org/groups/probono_public_service/resources/free_legal_answers.html.

14. Idaho Code of Judicial Conduct, Canon 4(B) and (C).

15. 452 U.S. 18 (1981).

16. 424 U.S. 319 (1976).

17. Id.

18. Jerry Anderson, *Court-Appointed Counsel: The Constitutionality of Uncompensated Conscriptio*n, 3 Geo. J. Legal Ethics 503 (1989-1990).

Jodi Nafzger is an Associate Professor and Director of Experiential Learning at Concordia University School of Law. In this position, Jodi directs the formal mentorship program, the externship program, and the pro bono service requirement. She also teaches Professional Responsibility. Jodi received her *juris doctor* from the University of Missouri-Columbia.



A Perspective From Bar Counsel's Office: Addressing Substance Abuse and Mental Health Issues

Caralee Lambert

From time to time, Bar Counsel's Office is contacted confidentially by individuals who are concerned that an attorney is abusing alcohol or possibly struggling with a mental illness. Sometimes, these concerns are already being addressed at the disciplinary level because a grievance has been filed against the attorney by a current or former client.

As part of the investigation of a grievance, Bar Counsel's Office may learn that the attorney is in fact struggling with substance abuse or mental health issues. It is troubling from a regulatory perspective to know that an attorney has become the subject of a disciplinary investigation due to his or her inability to complete tasks for a client, but it is especially disheartening to know that a fellow attorney is struggling and to question whether that struggle could have been addressed before discipline became an issue.

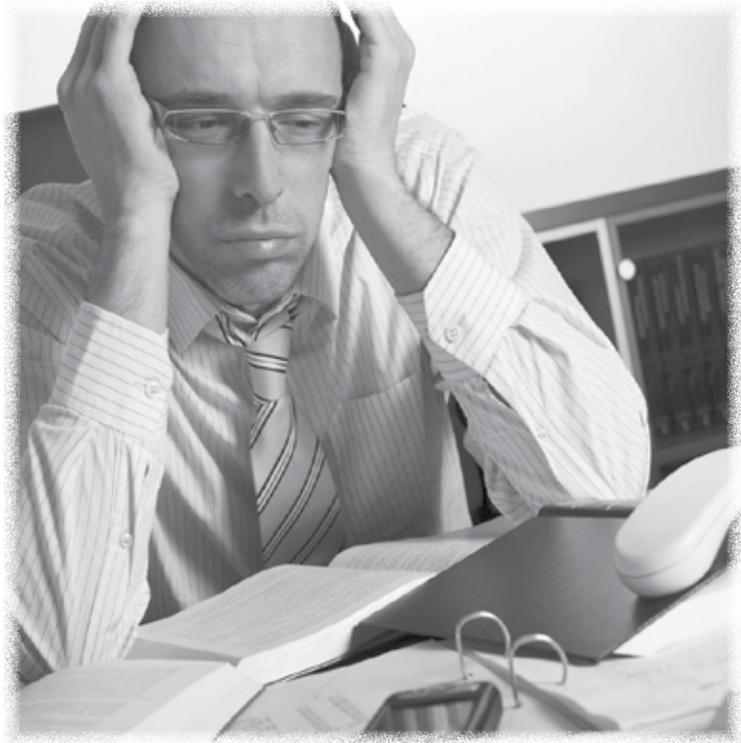
This article is intended to highlight the interplay that Bar Counsel's Office is seeing between the personal struggles and professional lives of attorneys. The article is also intended to open a dialogue on mental illness and substance abuse, both for attorneys who are struggling and for those who work with and care about them. The goal is to reduce the stigma that so often comes with mental illness and substance abuse, to encourage attorneys to realize it is a brave step to acknowledge their need for help, and to enable other attorneys to support those who need help. By doing so, we can all work toward ensuring that Idaho attorneys receive the support and assistance they need before their actions cause

harm to their firms, clients or themselves and result in discipline.

Houston, we have a problem

A new study jointly conducted by the ABA Commission on Lawyer Assistance Programs and the Hazelden Betty Ford Foundation reveals higher levels of mental health issues and problematic drinking among attorneys than previously indicated.¹ The study was based on a survey of 12,825 employed attorneys and assessed alcohol use, depression, anxiety and stress. The results were released in February 2016.

According to the study, 21% of the survey participants scored at a level consistent with problematic drinking. Younger and newer attorneys had a significantly higher proportion of problematic drinking than older and more experienced



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attorneys, with the highest rates reported by attorneys under age 30 (32%) followed by attorneys aged 31 to 40 (26%). Approximately 44% of the participants who considered their drinking problematic reported that their excessive drinking started within 15 years of law school graduation.

Idaho Formal Disciplinary Cases ⁴					
Year of case resolution	Number of attorneys	Number of cases involving depression or anxiety	Percent of cases involving depression or anxiety	Number of cases involving substance abuse	Percent of cases involving substance abuse
2005	15	2	13%	2	13%
2006	14	2	14%	1	7%
2007	5	1	20%	0	0%
2008	11	5	45%	2	18%
2009	12	2	17%	2	17%
2010	11	2	18%	3	27%
2011	11	2	18%	4	36%
2012	8	3	38%	2	25%
2013	17	9	53%	3	18%
2014	15	8	53%	5	33%
2015	8	5	62%	3	38%
2016	4	2	33%	1	17%
Total (10.5 years)	133	43	32%	28	21%

The study's findings regarding attorney mental health were also concerning. Twenty-eight percent of responding attorneys reported they were currently experiencing depression and 19% reported experiencing anxiety. When asked about past mental health issues in their legal careers, 61% of responding attorneys reported suffering from anxiety and 46% reported problems with depression. The study found that men suffered from "significantly higher levels" of depression, while women reported higher levels of anxiety. As with problematic drinking, rates of anxiety and depression decreased with an attorney's age and legal experience.

When personal issues become professional problems

Stressed-out lawyers make poor decisions, leaving them open to liability.

— Leslie A. Gordon²

The results of the ABA/Hazelden study are consistent with what Bar Counsel's Office is addressing in disciplinary matters. Among the most common grievances filed against Idaho attorneys are those involving allegations that the attorney failed to complete work as requested or failed to reasonably communicate with the client about that work. The large majority of these grievances conclude with no disciplinary action. However, those cases that result in formal sanctions may involve an attorney's underlying mental health issue or substance abuse.

The chart above reflects the prevalence of depression, anxiety, and substance abuse in Idaho's formal disciplinary cases. The chart is based on interaction by Bar Counsel's Office with the responding attorney and is largely anecdotal, but it highlights the role that mental health and substance abuse play in attorney misconduct. Notably, the chart may underreport the problem because it does not include attorneys whose anxiety, depression or substance abuse was not apparent or disclosed during the formal charge case. The chart also does not include private

discipline cases in which mental health issues or substance abuse may have been a factor.³

Mental health issues and substance abuse do not *cause* professional misconduct, but they can affect an attorney's ability to function under stress and may lead to disciplinary issues. For instance, an attorney suffering from depression may feel overwhelmed by his or her caseload and avoid client calls requesting status updates because the work is not being completed. In some cases, earlier intervention in the form of a colleague's inquiry or a friend's referral to a therapist may have enabled the attorney to gain a foothold on the situation before it led to allegations of misconduct and discipline.

When "Thinking like a lawyer" is detrimental

[D]epression, when it finally came to me, was in fact no stranger, not even a visitor totally unannounced; it had been tapping at my door for decades.

— William Styron⁵

The ABA/Hazelden study underscores a well-known reality: The practice of law can be stressful and may lead to personal problems if an attorney lacks appropriate coping mechanisms. A study in 1990 by Johns Hopkins University found that attorneys suffered from depression at a rate 3.6 times that of individuals in 100 other professions.⁶ According to the ABA/Hazelden study, 12% of highly educated professionals reported problematic drinking compared to nearly 21% of the surveyed attorneys.

Unfortunately, the traits of a successful lawyer can contribute to an underlying mental illness such as anxiety or depression.⁷ For instance, perfectionism and attention to detail are effective traits for any practitioner, but they can exacerbate an underlying anxiety if the attorney's watchful vigilance extends from work to others areas of life.⁸ Another trait, pessimism, can also be effective for attorneys because we are trained to "look out for what can go wrong."⁹ However, such pessimism outside the office can lead to a dystopian worldview that may trigger or worsen a depressive episode.¹⁰

Ironically, these traits are developed and often rewarded in law school. As one commentator noted, law schools teach students to "approach life ... with a heightened sense of all that can go wrong."¹¹ Students are taught to "think like a lawyer," meaning to develop a "critical skepticism about any proposition, no matter how seemingly straightforward."¹² We probably all know individuals who entered law school as unabashed optimists who, after their first month of Torts class, begin "search[ing] the horizon for problems."¹³ Everyday joys become everyday torts. Is Fido's inflatable swimming pool an attractive nuisance to the 5-year-old neighbor? Could post-

Perfectionism and attention to detail are effective traits for any practitioner, but they can exacerbate an underlying anxiety if the attorney's watchful vigilance extends from work to others areas of life.⁸

ing online about last night's very awkward date be grounds for a defamation claim? This skill of questioning various actions and their consequences can be indispensable when acting on behalf of a client, but it can be damaging when applied to an attorney's everyday life.

Additionally, attorneys work with a clientele who may skew the reality of the attorney's community. For instance, defense attorneys are not generally hired by the average plumber or teacher.¹⁴ They represent the plumber whose shoddy workmanship resulted in a homeowner's flooded basement or the middle school teacher facing a DUI charge after knocking down the school crossing sign on her way into the school parking lot.¹⁵ Add to this the high and sometimes unrealistic expectations of clients, job insecurity, and the ever-present threat of malpractice claims, and individuals who may have been predisposed to mental health issues are struggling just several years into their practice.¹⁶

Coping that isn't working

Alcohol was an invaluable senior partner of my intellect, besides being a friend whose ministrations I sought daily ...

— William Styron¹⁷

Attorneys under stress may be more irritable with their family and colleagues, engage in obsessive thoughts about work or finances, feel inadequate compared to their peers, or find they are unable to shake a sense of worry about life in general.¹⁸ These same characteristics can be the markers of anxiety and depression.¹⁹ The Idaho State Bar's Lawyer Assistance Program, "LAP", receives more calls for assistance with mental health problems than for addiction issues, with depression being the predominant issue identified by attorneys seeking help.²⁰

It is generally known that mental health issues can co-occur with substance abuse, and attorneys are no exception. For many attorneys, alcohol is a way to take the edge off a stressful day or to celebrate the conclusion of a case. For some attorneys, however, alcohol becomes a "daily mood bath."²¹ These attorneys find that without daily alcohol use, they cannot calm their anxious thoughts or silence a depressive voice.

Eric, an Idaho attorney, recalls having depression and anxiety as early as high school.²² The symptoms felt physiological, like an overwhelming sense of dread and despondency. Eric was a perfectionist, which he believes contributed to his anxiety, especially during his first

years of practice at a large law firm. The work stress was compounded by personal stressors, including a troubled marriage and acting as his family's primary breadwinner. In his early years of practice, Eric relieved his depression and anxiety with alcohol, which ultimately led to several DUIs. His spouse also drank alcohol to excess, which he says "normalized" his drinking. He was still productive at work, however, and interpreted his colleagues' failure to confront him about his moods and drinking as tacit consent for him to keep "imploding."

Eric believes his legal skills enabled him to deny that he had a mental illness and to rationalize his drinking as a reasonable way to cope with the stress of practicing law. However, after additional DUIs and the breakup of his marriage, he finally sought help. With regular therapy and medication, Eric is rebuilding his personal life and law practice. He says he knows he will always be shadowed by feelings of gloom from depression and dread from anxiety, but he has learned how to "dial down" the volume of those feelings by abstaining from alcohol, participating in regular therapy, and following a treatment regimen that includes antidepressant medication.

Resources and education: breaking the stigma

The Idaho LAP provides resources for attorneys needing assistance with mental health issues or substance abuse. As a starting point, attorneys or their colleagues, friends and family can call LAP's 24-hour confidential hotline: (866) 460-9014. Judges and attorneys volunteering for the LAP will provide the necessary assistance, which can include a phone call to an attorney to make sure they are okay or a treatment re-



ferral if necessary. Additionally, LAP will work with other attorneys to volunteer their time as temporary replacements if an attorney needs to enter treatment.

Importantly, Idaho's law schools are educating students about mental health and substance abuse from the start. University of Idaho College of Law students complete an orientation addressing mental health and substance abuse, receive information about campus counseling and dietitian services, and attend workshops through the Professionalism Education Program addressing topics such as a healthy work-life balance. Through its Legacy Mentor Program, Concordia University School of Law provides a forum for practicing attorneys to present on issues such as mental health and stress management. Students also have access to health and counseling services through Boise State University.

The decision of Idaho's law schools to address mental health and substance abuse early and di-

The decision of Idaho's law schools to address mental health and substance abuse early and directly signals an important change in attitudes.

rectly signals an important change in attitudes that will hopefully effect change in students' lives and legal careers. The sooner Idaho's newest attorneys realize that stress is inherent in the practice of law and that there are resources available if they find themselves struggling, the better.

Well, that's depressing – Now what?

If your wife locks you out of the house, you don't have a problem with your door.

— Anne Lamott²³

Studies consistently indicate that attorneys suffer from substance abuse and mental health issues at levels higher than the general population. So let's start a dialogue. Maybe start by checking your own "emotional barometer" to see if you have feelings of despondency or worries that are interfering with your mood, your job satisfaction, or your personal relationships.²⁴ Consider sharing this article or LAP materials (available on the Idaho State Bar website) with a newer attorney who may still be finding his way in the practice. Or if a colleague seems to be going through a particularly difficult time, ask her about it. As Eric explained, your concern alone may act as a red flag that a colleague's depression or substance abuse is noticeable and that support and encouragement are available. By addressing these problems earlier and more openly, we can all help new attorneys succeed in their first years of practice and ensure that long-term practitioners continue serving as vital members of the Idaho State Bar.²⁵

Endnotes

1. Patrick R. Krill, Ryan Johnson, and Linda Albert, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, *JOURNAL OF ADDICTION MEDICINE* 10.1 (2016): 46–52.
2. Leslie A. Gordon, *How lawyers can avoid burnout and debilitating anxiety*, *ABA JOURNAL*, (July 1, 2015), http://www.abajournal.com/magazine/article/how_lawyers_can_avoid_burnout_and_debilitating_anxiety.
3. Because mental illness often co-occurs with substance abuse, some attorneys were counted in both categories.
4. The author thanks Bar Counsel Brad Andrews for creating and providing the chart for this article.
5. WILLIAM STYRON, *DARKNESS VISIBLE: A MEMOIR OF MADNESS* 79 (1992).
6. Gordon, note 2.

If a colleague seems
to be going through a particularly difficult time,
ask her about it.

7. *Id.*
8. *Id.*
9. *Id.*
10. *Id.*
11. WALT BACHMAN, *LAW V. LIFE: WHAT LAWYERS ARE AFRAID TO SAY ABOUT THE LEGAL PROFESSION* 53 (1995).
12. *Id.* at 54.
13. Gordon, note 2.
14. Bachman, note 11 at 133.
15. *Id.* at 133–34.
16. Idaho Lawyers Assistance Program Reference Manual, section 3, p. 1, *available at* http://isb.idaho.gov/pdf/general/lap_manual.pdf
17. Styron, note 5 at 40.
18. Gordon, note 2.
19. *Id.*
20. LAP Reference Manual, note 16 at § 3. p. 1.
21. Styron, note 5 at 41.
22. The attorney's name has been changed for privacy reasons.
23. ANNE LAMOTT, *BIRD BY BIRD: SOME INSTRUCTIONS ON WRITING AND LIFE* 178 (1995).

24. Tyger Latham Psy.D., *The Depressed Lawyer: Why are so many lawyers so unhappy?*, *PSYCHOLOGY TODAY*, (May 2, 2011), <https://www.psychologytoday.com/blog/therapy-matters/201105/the-depressed-lawyer>.

25. For attorneys or their families trying to understand what it feels like to experience a mental illness or substance abuse problem, the following books can be a good starting point:

- KAY REDFIELD JAMISON, *AN UNQUIET MIND: A MEMOIR OF MOODS AND MADNESS* (1995)
- MARY KARR, *LIT: A MEMOIR* (2009)
- CAROLINE KNAPP, *DRINKING: A LOVE STORY* (1995)
- ELYN R. SAKS, *THE CENTER CANNOT HOLD: MY JOURNEY THROUGH MADNESS* (2007)
- DANIEL SMITH, *MONKEY MIND: A MEMOIR OF ANXIETY* (2012)
- ANDREW SOLOMON, *THE NOONDAY DEMON: AN ATLAS OF DEPRESSION* (2001)
- SCOTT STOSSEL, *MY AGE OF ANXIETY: FEAR, HOPE, DREAD, AND THE SEARCH FOR PEACE OF MIND* (2014)
- WILLIAM STYRON, *DARKNESS VISIBLE: A MEMOIR OF MADNESS* (originally published in 1989).

Caralee Lambert has served as Assistant Bar Counsel since May 2007. Prior to her position with the Idaho State Bar, she served as Senior Legal Analyst with the Legislative Services Office of the Idaho Legislature and was an associate with Hawley Troxell Ennis & Hawley in Boise, Idaho. She received her J.D. from Georgetown University Law Center and her B.A. from Willamette University.



Idaho Lawyer Assistance Program

Welcome Message From the Chair

Jamie Shropshire

We all know that lawyers occupy a unique position in society. We are called upon to handle the most delicate matters of great importance to our clients. Our well-being and that of our clients rests upon the quality of our professional performance, and our performance does not rest solely upon our legal expertise. Our physical health, mental health and overall quality of life directly affect our performance, and thus directly affect our clients. Any impairment of our performance ultimately impairs our client, our profession and society.

While a license to practice law may provide many opportunities and open many doors which otherwise might be closed, it unfortunately does not protect us against common “career killers,” such as alcoholism, drug addiction, depression, burnout and stress.

The American Bar Association estimates that 15 to 20 percent of attorneys and judges suffer from addiction or mental illness. That means that between 925 to 1,235 of Idaho’s legal professionals are impaired by these problems.

The Lawyer Assistance Program’s mission is to safely provide help and support for lawyers who are experiencing problems associated with substance abuse and/or mental health, while preserving the reputation and trust of the lawyer. Idaho LAP also focuses on educating legal professionals and their families and friends about the causes, effects and treatment of alcohol and drug dependency, depression and other mental health issues.

One of Idaho LAP’s stated purposes is to provide assistance to impaired lawyers in a manner that is separate and distinct from attorney discipline proceedings and to maintain that distinction.¹

Idaho LAP committee members are appointed for staggered three-year terms by the Board of Commissioners for the Idaho State Bar. Idaho LAP committee members are available in your area for a confidential, anonymous consultation or referral. Idaho LAP is also very fortunate to have John Southworth, CADC, NCAC, ICAADC, CIP, serve as our Program Coordinator. John has had both personal and professional experiences in the fields of substance abuse and mental health for more than 40 years, and provides valuable insight and referrals for assisting struggling Idaho legal professionals.

It cannot be stressed enough that all information provided by

a lawyer to any LAP member is 100% confidential and will not be reported to the Idaho State Bar. One of Idaho LAP’s stated purposes is to provide assistance to impaired lawyers in a manner that is separate and distinct from attorney discipline proceedings and to maintain that distinction.¹ Records and proceedings of the Idaho LAP are NOT subject to subpoena or discovery and are NOT admissible as evidence in an administrative proceeding or a criminal or civil action.²

Endnotes

1. Idaho Bar Commission Rule 1201(a)(4)
2. Idaho Code § 54-4901(2).

Jamie C. Shropshire is the Lawyer Assistance Program (LAP) Committee Chairperson and formerly Prosecuting Attorney for the City of Lewiston. Ms. Shropshire has been an active LAP Committee Member for many years, including time as Chairperson.



A Personal Story About Mental Illness in Our Profession

Andrea Courtney

The professor who taught me criminal law died by suicide two years ago. It still resonates with me. It had been more than a decade since I last saw her, but she was one of those memorable, for-all-the-right-reasons instructors. Professor Cheryl Hanna was an academic who could calm, engage, challenge, and awe her students. Her voice alone told a story. She was a gifted lawyer with equal parts vigor and kindness and struck just the right tone in every setting. Hopefully you had at least one professor in law school (or even in undergraduate studies) who was like Prof. Hanna. Others described her as an inspiring role model, beloved, “a force of nature.” She inspired other academics, contributed greatly to research on women and girls in gangs and volunteered her time both at the law school and in the greater community. She exuded confidence.

Prof. Hanna was trusted by many Vermonters because her voice clearly spread the news on Vermont Public Radio. After I graduated and moved back to the West, I learned that Hanna fell in love, married and had two children. She had a saying for her students: “Be a star.” She encouraged every student to rise to the occasion, to make a difference, to get in the game.

Her death so struck me that I feel compelled to write to all of you, fellow members of the Bar. If Prof. Hanna, who from the outside seemed to have it all, could get caught in such a dark place that her vigorous mind deemed death by suicide as her best alternative, there is something profound going on. We need to talk about mental illness and mental health in our profession. We need to shed the stigma of depression and

Mental illness is not personal weakness,
caused by lack of discipline or will-power.⁵
Mental illness, she said, is organic.

anxiety. We need to help one another before another colleague dies by suicide.

Focusing on the problem

First, I provide some definitions, symptoms and factors that help us see the scope of mental illness in the legal profession. Next, I share some heart-wrenching and scary statistics, which underscore the urgency of action. It might help to look at other bar organizations to see what has been done in other states. We should consider, copy, and/or adapt what we find works. Next, I outline what each of us can do to help other legal professionals, should the need arise. And finally, I conclude with what we can do for ourselves, should the focus be internal.

Mental health is the effective functioning in daily life, resulting in productive activities, healthy relationships and the ability to adapt to change when encountering adversity.¹ Mental illness “refers collectively to all diagnosable mental disorders,” i.e., those health conditions involving significant changes in thinking, emotion and/or behavior, as well as conditions involving distress and/or problems functioning in social, work or family activities.² Oftentimes mental health and men-

tal illness are used interchangeably. While related, they mean different things. Common mental illnesses are depression, anxiety, eating disorders, addictive behaviors, and schizophrenia.³ While the exact cause of most mental illnesses is unknown, research strongly suggests mental illness is caused by a combination of genetic, biological, psychological, and environmental factors. For this article, I will focus on depression, anxiety and suicide.⁴

I contacted Anne Daggett, MSW, LCSW, a social worker at St. Luke’s in Boise, seeking her insight on mental illness, especially in the legal profession. She wants us to know that mental illness is not personal weakness, caused by lack of discipline or will-power.⁵ Mental illness, she said, is organic. You can no more will away a mental illness than cancer or cystic fibrosis.

Mental illness is common. In the general U.S. population, nearly one in five adults (19%) experience some form of mental illness; one in 24 has a serious mental illness, and one in 12 has a substance use disorder.⁶

Depression is a mental illness that negatively affects the way you feel, think and act. Depression includes more than a sad mood. It is also characterized by diminished interest in activities you once found pleasur-

When you know a person, you know what is normal and what is not.

• More rapid speech	• Isolating, asking for assignments that can be performed in his/her office without interaction
• Lack of ability to focus, the person is clearly distracted	• Less talkative
• Changes in weight	• Unexplained changes in schedule, erratic schedule, erratic absences
• Searching for words	• Visible agitation in relating personal anecdotes
• A change in expression — a smile is a different smile, more pained, forced	• Visible (even if minimal) lack of self-care
• Going through the motions, the person's face lacks genuineness	• Decreasing productivity
• It can be at different levels: at its most intense, you can see the person trying to function and it requires effort	• Taking risks (because nothing matters)

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able, weight gain or loss, psychomotor agitation⁷, fatigue, inappropriate guilt, problems concentrating, and recurrent thoughts of death.⁸ Unlike having a “bad day” or occasional sadness, clinical depression involves symptoms which are present for at least two weeks. One lawyer describes her depression this way:

Depression comes on like a thief in the night and only after you rise from its darkness do you see how pervasive it was. When depressed, you are stuck in a cruel mental suspension: you don't think things are that bad but you also don't think they can get better. So you make no great effort to change the status quo.⁹

In addition to being a chronic illness in its own right, depression is associated with behaviors linked to other chronic diseases like smoking, alcohol consumption, physical inactivity, and sleep disturbance.¹⁰ If not treated, one episode of depression places the person at a 50% risk for experiencing another episode, with subsequent episodes further raising the risk.¹¹

Anxiety is a normal emotion. But when the anxiety does not go away, worsens over time or prevents someone from participating in daily activities, a person might have an anxiety disorder. Symptoms include frequent headaches, jaw clenching,

rapid heartbeat, tightness in the chest, sweaty palms, and difficulty concentrating.¹² Anxiety disorders are the most common of mental disorders, affecting more than 25 million Americans.¹³ The spectrum of anxiety disorders includes generalized anxiety disorder (persistent and excessive worry that interferes with daily activities), panic disorder, phobias, and separation anxiety.¹⁴

No definition of suicide is needed. Instead, more helpful would be some of the warning signs and symptoms of someone considering suicide. The American Bar Association (ABA) sponsored a recent webinar focused on suicide prevention.¹⁵ One of the slides is particularly instructive in describing the warning signs:

Certain circumstances may increase the risk. These include previous suicide attempt(s), a history of suicide in the family, substance misuse, mood disorders, access to lethal means, interpersonal losses or other events (i.e., death, end of a relationship, academic failure, financial difficulty, bullying), history of trauma or abuse, and chronic physical illness.¹⁶ Specific to the legal profession, additional contributing factors are perfectionism, pessimism, isolation, long hours, expectation to be an “expert,” vicarious trauma,¹⁷ stigma, adversarial nature of the job, frustra-

If not treated, one episode of depression places the person at a 50% risk for experiencing another episode, with subsequent episodes further raising the risk.¹¹

tion with the realities of legal practice as opposed to the ideals one may have held in law school, etc.¹⁸

Sadly, you probably know a colleague who suffers from mental illness or is considering attempting suicide. Suicide is the tenth leading cause of death in the U.S.¹⁹ *The New York Times* recently reported that deaths by suicide in the U.S. have rocketed to the highest levels in nearly 30 years, with the overall death by suicide rate rising by 24% from 1999 to 2014.²⁰

Those numbers are frightening on their own. Statistics suggest, however, ours is one of the most at-risk

professions. As one lawyer notes, “There are a lot of high stress professions. Being a physician has stress. However, when the surgeon goes into the surgical suite to perform his surgery, they don’t send another physician in to try to kill the patient.”²¹

In the general U.S. population, three-fourths of all mental illness begins by age 24.²² It is not surprising that the depression and suicide statistics for law school students are grim. In a Dave Nee Foundation study, 27% of law school students reported being depressed after the first semester, 34% after two semesters, and 40% after three years.²³

Things do not necessarily improve after graduation. Lawyers are 3.6 times more likely to suffer from depression than non-lawyers.²⁴ When ranked by profession, lawyers are in the top five for death by suicide.²⁵ A recent study by the Hazelden Betty Ford Foundation and the ABA Commission on Lawyer Assistance Programs is the most comprehensive evaluation of substance abuse and mental illness among U.S. attorneys. Surveying over 18,000 American attorneys, the study’s conclusions are stark.

- Substantial rates of behavioral health problems were found
- Men had significantly higher levels of depression while women had higher levels of anxiety and stress
- 28% were currently experiencing mild or higher levels of depression
- 19% were currently experiencing anxiety
- 61.1% reported past anxiety
- 45.7% reported past depression
- 11.5% reported suicidal thoughts at some point during their careers.²⁶

We should not wait for a quantified emergency where numbers catalyze action as sadly was the case in a few other states. In a two year period, at least 15 lawyers died by suicide

Lawyers think creatively, advance options,
empower others, and solve problems.
We should be tailor-made to help each other.

in Kentucky.²⁷ In 2004, Oklahoma lost one per month by suicide.²⁸ Six lawyers completed suicide in South Carolina in 18 months.²⁹ Georgia lost three lawyers in six months.³⁰

For some states, it took that wake-up call. The Georgia Bar created a suicide prevention video and showed it to over 30,000 attorneys.³¹ It also created a peer support program, where lawyers volunteer to help others.³² Kentucky begins its annual CLE conference with a suicide prevention presentation and has reached over 7,000 attorneys.³³ A handful of state bars have added a mental health category to their mandatory CLE regime.³⁴

Certain law schools have instituted some form of wellness program, including stress-management, yoga, meditation classes, peer counseling, free chair massages, and puppies in the lobby day where shelter dogs make students happy.³⁵ The Dave Nee Foundation assists law schools with a Law Student Mental Health Day and provides schools with resources and a tool kit to promote mental health awareness and reduce the stigma of mental illness.³⁶

Let’s be stars and do better for all of us

Though some might suggest optimism is a weakness in an attorney, I remain hopeful we can do better, be

proactive, and start to address mental illness in our profession.³⁷ For a number of reasons, we attorneys might be the best equipped to notice subtle changes in behavior and attitude. For our colleagues, we need to get informed,³⁸ listen to them, go with them to seek help, and be understanding³⁹ (mental illness is not a weakness or a choice). Be on the lookout for cumulative changes in character or behavior. Start by talking to your colleague. If you show genuine care and concern, you could help get the colleague back on a healthy path, perhaps save a life.⁴⁰ Do not be afraid to ask them about their plans, if any.⁴¹ You cannot plant the seed for suicide by talking to someone about your concern for them.⁴² Consider also putting up a poster at work about mental health or suicide prevention.⁴³ Treatment and recovery are personal, unique processes that hopefully pave the way to living a satisfying and hopeful life even with the mental illness limitations.⁴⁴ Lawyers think creatively, advance options, empower others, and solve problems. We should be tailor-made to help each other.

If you are experiencing some of the above symptoms, you have resources. The Idaho Lawyers Assistance Program (LAP) supports lawyers experiencing mental illness as well as chemical dependency.⁴⁵ The LAP is completely confidential.

(208) 891-4726 or 24-hr hotline is (866) 460-9014. The LAP will not report a caller to the State Bar for discipline. The LAP has experience and can offer a path out of spiral, even muster resources to cover caseloads.

Other hotlines. The Idaho Suicide Prevention Hotline is toll-free at (800) 273-TALK (8255), available 24 hours a day, every day. All calls are confidential. Or you can text 741-741 and get a quick response from a live, trained crisis counselor provided by the not-for-profit Crisis Text.⁴⁶

Medicine and counseling. Tell your doctor. Many family doctors use regular screening tools to start the conversation about mental illness. Take them up on the invitation. Describe your symptoms.

Insurance. Blue Cross Blue Shield offers personal health support for those battling depression with a free benefit, a case management team which includes a registered nurse and a social worker. Saint Alphonsus' Corporate Health and Wellness offers a corporate health nurse if you have questions about mental illness.⁴⁷

Self-care. Reach out to your mentors, partners, favorite judge, family, caring coworkers. Try activity therapy. If zip lining energizes you, then head to the nearest zip lining option. Take a day or a half-day off every once and a while to play, read for fun, volunteer, reconnect with nature, or whatever it is you need to refresh.

Mental illness is common, organic and not a reflection of weak character, and we all are at greater risk by virtue of our profession. Amazing and strong lawyers combat mental illness daily and can do so successfully with a variety of treatment. Please join me in shedding the stigma and chose to talk about depression, anxiety and suicide in our profession. Become familiar with resources for colleagues and yourself.

After Prof. Hanna's death, I read the online comments of many who knew her and who extolled her strengths. The authors also expressed shock, dismay, sadness, and regret. I think about Prof. Hanna's children. I hope they had a kind of *Mr. Holland's Opus* moment, reading those comments, or will someday, when they are ready, and realize what a bright light their mom was for so many. I hope they find peace. I hope we will learn one more lesson from Prof. Hanna.

Take a day or a half-day off
every once and a while to play,
read for fun, volunteer, reconnect
with nature, or whatever
it is you need to refresh.

Endnotes

1. American Psychiatric Association, *What is Mental Illness?*, <http://www.psychiatry.org/patients-families/what-is-mental-illness>, (last visited Dec. 23, 2015).
2. *See id.*
3. *Mental Illness: What You Need to Know*, PERSONAL HEALTH GUIDE (St. Alphonsus, Boise, ID) 2015 3Q.
4. While suicide is not a mental illness, it is linked to mental disorders, particularly depression and alcohol use. *See is Mental Illness?*, *supra* note 1. And it is a suicide that catalyzed this article.
5. Personal interview with Anne Daggett, Social Worker, St. Luke's, in Boise, Idaho (May 12, 2016).
6. *What is Mental Illness?*, *supra* note 1.
7. According to the National Center for Biotechnology Information, psychomo-

tor agitation is a feeling of restlessness associated with increased motor activity. Wikipedia offers more concrete examples of the unintentional and purposeless motions like pacing, wringing one's hands, uncontrolled tongue movement, etc.

8. Center for Disease Control and Prevention, *Depression*, <http://www.cdc.gov/mentalhealth/basics/mental-illness/depression.htm>, (last visited Nov. 23, 2015).

9. Hilary Martin Chaney, *Through the Open Door: A Bipolar Attorney Talks Mania, Recovery and Heaven on Earth*, 49 ARK. LAW 42 (Spring 2014).

10. *Depression*, *supra* note 8.

11. *See id.*

12. American Bar Association, *Law schools take aim at mental illness*, <http://www.americanbar.org/publications/youraba/2015/november-2015/law-schools-take-aim-at-mental-illness.html>, (last visited Dec. 29, 2015).

13. American Psychiatric Association, *What Are Anxiety Disorders?*, <https://www.psychiatry.org/patients-families/anxiety-disorders/what-are-anxiety-disorders>, (last visited June 7, 2016).

14. *Id.*

15. I've Got Your Back; You've Got My Ear: Suicide Prevention in the Legal Profession, available at http://www.americanbar.org/groups/lawyer_assistance/events_cle.html (follow the hyperlink in the Recorded Webinars) (last visited July 6, 2016). It is worth downloading not only for the personal perspectives but also for the expansive reference materials provided.

16. American Psychiatric Association, *Suicide Prevention*, <http://www.psychiatry.org/patients-families/suicide-prevention>, (last visited Dec. 23, 2015).

17. Vicarious trauma includes hearing stories from clients and being unable to emote, instead turning the focus on analyzing the problem and potential solutions. The concept is related to emergency first responders and how repeated exposure to trauma can lead to burnout, or make the attorney feel jaded.

18. *See* I've Got Your Back; You've Got My Ear: Suicide Prevention in the Legal Profession, *supra* note 15; Daggett interview, *supra* note 5.

19. National Institute of Mental Health, *Suicide Prevention*, <http://www.nimh.nih.gov/health/topics/suicide-prevention/index.shtml> (last visited May 12, 2016).

20. Sabrina Tavernise, *U.S. Suicide Rate Surges to a 30-Year High*, <http://nyti.ms/212FMnr> (Apr. 22, 2016). The death by suicide rate for middle-aged women, ages 45-64, rose by 63%; men in that age range saw a 43% rise. White middle-

aged women had an 80% increase. Yet men are still 3.6 times more likely to die by suicide than women. *Id.*

21. Rosa Flores and Rose Marie Arce, CNN, *Why Are Lawyers Killing Themselves?*, (quoting Yvette Hourigan, Kentucky Lawyer Assistance Program) <http://www.cnn.com/2014/01/19/us/lawyer-suicides/>, (last visited May 9, 2016).

22. See *What is Mental Illness?*, *supra* note 1.

23. Dave Nee Foundation, *Scholarship and Research: Lawyers & Depression*, <http://www.daveneefoundation.org/scholarship/lawyers-and-depression/> (last visited June 8, 2016). The non-profit Dave Nee Foundation seeks to eliminate stigma associated with depression and suicide. Its website is full of resources. See also Jerome M. Organ et al., *Helping Law Students Get the Help They Need: An Analysis of Data Regarding Law Students' Reluctance to Seek Help and Policy Recommendations for a Variety of Stakeholders*, THE B. EXAMINER, Dec. 2015 at 8 for deeper treatment of that study.

24. See W.W. Eaton et al., *Occupations and the Prevalence of Major Depressive Disorder*, 32 J. OF OCCUPATIONAL MED. 1079 (1990).

25. See *id.*; *Law schools take aim at mental illness*, *supra* note 12; Flores, *supra* note 21.

26. Patrick Krill et al., *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, J. ADDICTION MED., Feb. 2016, at 46.

27. Robin Frazer Clark, *Are You Okay? The Most Important Conversation No One Wants to Have*, THE ATLANTA LAWYER, May 2015, at 8.

28. Flores, *supra* note 21.

29. *Id.*

30. Frazer Clark, *supra* note 27, at 8.

31. I hope you will take a few minutes and watch the video (there are three versions of different lengths so even if you only have 6 minutes, you have time to watch it). https://www.gabar.org/committeesprogramssections/programs/lap/suicide_awareness.cfm

32. Lynn S. Garson, *Helping Our Own*, THE ATLANTA LAWYER, May 2015, at 6.

33. Flores, *supra* note 27.

34. *Id.*

35. *Law schools take aim at mental illness*, *supra* note 12.

36. Dave Nee Foundation, *Law Student Mental Health Day*, <http://www.daveneefoundation.org/programs/law-student-mental-health-day/> (last visited June 8, 2016).

37. Evidently so did Texas attorney Michael W. Eaton when he told his fellow

Amazing and strong lawyers combat mental illness daily and can do so successfully with a variety of treatment.

Bar, "To completely fulfill your duty to the legal profession and to your clients, you need to do more than merely recognize and commit to fulfilling your professional responsibilities. You should have some basic knowledge about alcoholism, addiction, and mental illness and other impairments. Develop an understanding of the signs and symptoms of these problems, and know how to access help—whether for yourself or a colleague." Eaton, *Do the Right Thing: Every Lawyer in Texas Will Encounter an Impaired Colleague Sooner or Later*, 77 TEX. B.J. 598, 601 (JULY 2014).

38. This includes knowing the ethical considerations related to mental illness in the profession. Consider at least the following rules from the I.R.P.C.: 1.1 Competence, 1.3 Diligence, 1.4 Communication, 1.16 Declining or Terminating Representation, 5.1 Responsibilities of Partners, Managers and Supervisory Lawyers, and 8.3 Reporting Professional Misconduct. Also consider contacting the Idaho Lawyers Assistance Program. See *infra* p. XX [9].

39. See American Bar Association, *Study identifies high rate of problem drinking among lawyers, next steps*, <http://www.americanbar.org/publications/youraba/2016/march-2016/study-identifies->

[high-rate-of-problem-drinking-among-lawyers--ne.html](http://www.americanbar.org/publications/youraba/2016/march-2016/study-identifies-high-rate-of-problem-drinking-among-lawyers--ne.html) March 2016. It includes interview snippets with the authors of the Hazelden Betty Ford Foundation lawyer study about their suggestions to lawyers interested in helping others with drinking problems. While our focus is different, the suggestions are nonetheless relevant.

40. Daggett interview, *supra* note 5.

41. *Mental Illness: What You Need to Know*, *supra* note 16.

42. Daggett interview, *supra* note 5.

43. Go to www.idahosuicideprevention.org/outreach for pdfs of cards, posters and more.

44. See National Association of Social Workers' Policy, *Mental Health*, SOCIAL WORK SPEAKS 230, 233 (Feb. 1, 2012).

45. You can find additional information about the LAP at the State Bar's website: http://www.isb.idaho.gov/member_services/lap.html.

46. See <http://www.crisistextline.org>.

47. *Mental Illness: What You Need to Know*, *supra* note 3. The nurse can be reached at (208) 367-6567.

Andrea L. Courtney is a Deputy Attorney General in the Natural Resources Division representing the Idaho Department of Water Resources. She lives in Boise with her husband, son, two dogs, and fish. The opinions and advice contained herein do not represent the views of the State of Idaho or the Idaho Attorney General's Office.



What is the Lawyers Assistance Program? A Short Q & A

Paul McFarlane

What is LAP, anyway?

The Idaho Lawyers Assistance Program (LAP) provides support for lawyers who are experiencing problems associated with substance abuse and/or mental health issues in a safe manner, preserving the reputation and trust of the attorney.

Why do we have LAP?

Alcoholism, drug addiction, and mental health problems are treatable illnesses that affect a huge number of people, including lawyers and judges. Reports estimate that, while 10% of the general population has problems with alcohol abuse, 15-18% of the legal profession battles the same problem. The effects can be devastating 10— both to the individual and to those around them. Fortunately, there is help.

What does LAP do?

LAP assists and educates legal professionals and their family and friends about the causes, effects, and treatment of alcohol and drug dependency, depression, and other mental health problems. Attorneys and judges volunteer their time to assist lawyers who suffer with such issues. These volunteers can direct you to a wide number of addiction and mental health resources.

What services does LAP provide?

- Guidance for lawyers in need of assistance or referral sources;
- Information relating to alcohol/drug education, mental health treatment, interventions, monitoring, and/or family support;
- Recommendations for appropriate treatment centers
- Assistance in finding lawyers who

volunteer time as a temporary replacement for those lawyers entering a treatment program; and

- Guidance for re-entering the workplace.

What happens when I call LAP?

You can expect to be connected with one of the volunteer members of the LAP Committee — probably a lawyer — who has extensive experience with addiction and mental health issues. You can expect the undivided attention you need and deserve to share what's on your mind and to explore options for addressing your concerns. You'll receive referrals, suggestions, and support.

Are LAP services confidential?

Absolutely. All information is 100% confidential. LAP records and proceedings cannot be subpoenaed and are not subject to discovery. Moreover, under Idaho Codes. 54-4901, LAP records and proceedings are not admissible in administrative proceeding or criminal or civil actions.

Will the Idaho State Bar or Bar counsel find out when I call LAP?

No! Information is confidential

Attorneys and judges volunteer their time to assist lawyers who suffer with such issues.

and will not be reported to the Idaho State Bar.

What if I know a lawyer or judge who seems to be having addiction or mental health problems?

Call LAP for a confidential consultation and advice on how to handle this sensitive issue.

So how do I contact LAP?

Call the LAP hotline at 866-460-9014. The LAP hotline is available 24/7.

Paul D. McFarlane founded *McFarlane Law Offices, PLLC* in Boise, where his practice includes businesses, employment law, and civil litigation. Paul graduated cum laude from the Tulane University School of Law where he was Editor-in-Chief of the *Tulane Maritime Law Journal*. He is also licensed in Oregon, Washington and Alaska. He formerly practiced with *Moffatt Thomas*.



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Warren E. Jones
Joel D. Horton

**Regular Spring Term for 2016
2nd Amended – 5/18/16**

Boise August 16, 17, 24, 26, 29
Coeur d'Alene August 30, 31
Moscow September 1
Boise September 19, 29, 30
Idaho Falls September 22
Pocatello September 23
Boise November 2, 4, 7, 9, 10, 30
Boise December 2, 5, 7, 9

By Order of the Court
Stephen W. Kenyon, Clerk

NOTE: The above is the official notice of the 2016 Fall 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.

**OFFICIAL NOTICE
COURT OF APPEALS OF IDAHO**

Chief Judge
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Judges
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David W. Gratton
Molly J. Huskey

**Regular Fall Term for 2016
5/4/16**

Boise August 9, 18, 23, 25
Boise September 6, 15, 20, 22
Boise October 4, 11, 18, 20
Boise November 3, 8, 29
Boise December 6, 8

By Order of the Court
Stephen W. Kenyon, Clerk

NOTE: The above is the official notice of the 2016 Fall 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 Supreme Court
Oral Arguments for August 2016
4th AMENDED – 7/7/16**

Tuesday, August 16, 2016 – BOISE

8:50 a.m. *Turner House v. TV Narc Anonymous* #43191
10:00 a.m. *Medical Recovery Services v. Olsen* #43147
11:10 a.m. *Kirk v. Wescott* #42593
1:30 p.m. *Reed v. Reed* #44056

Wednesday, August 17, 2016 – BOISE

8:50 a.m. *Prehn v. Hodge* #42465
10:00 a.m. *Smith v. TV Seed Co.* #42596
11:10 a.m. *Estay v. NW Trustee Serv.* #43162
1:30 p.m. *Hoke v. Neyada, Inc.* #43343

Tuesday, August 30, 2016 – COEUR D'ALENE

8:50 a.m. *Marek v. Hecla Mining* #43269
10:00 a.m. *Eyer v. Idaho Forest Group* #43532
11:10 a.m. *Barrett v. Hecla Mining* #43639

Wednesday, August 31, 2016 – COEUR D'ALENE

8:50 a.m. *Thorton v. Pandrea* #42332
10:00 a.m. *Union Bank v. NIR* #42467
11:10 a.m. *Union Bank v. JV, LLC* #42479

Thursday, September 1, 2016 – MOSCOW

8:50 a.m. *Pend Oreille View v. TT* #42538
10:00 a.m. *Shatto v. Syringa Surgical* #42958
11:10 a.m. *OPEN* *State v. Hill* #44011

**Idaho Court of Appeals
Oral Arguments for August 2016
6/8/16**

Tuesday, August 9, 2016 – BOISE

9:00 a.m. *State v. Gottardi* #43354
10:30 a.m. *OPEN*
1:30 p.m. *State v. Breese* #43691

Tuesday, August 23, 2016 – BOISE

9:00 a.m. *State v. Sellers* #42716
10:30 a.m. *State v. Collom* #43499

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**Idaho Supreme Court and Court of Appeals
NEW CASES ON APPEAL PENDING DECISION
(Updated 6/1/16)**

Civil Appeals

Divorce, custody, and support

1. Whether the district court erred in affirming the magistrate's admission of the parenting time evaluation and expert opinion of Dr. Ward.

Orndorff v. Padlo
S.Ct. No. 43836
Court of Appeals

Malpractice

1. Whether the district court erred in ruling that Molen's cause of action for legal practice accrued on the date of his conviction in 2007.

Molen v. Christian
S.Ct. No. 43755
Supreme Court

Other

1. Whether the court erred in denying appellants' motion to set aside default and in its finding that they failed to present a meritorious defense because the anti-deficiency statute found in I.C. § 6-108 does not protect personal guarantors from actions to enforce the guarantee.

Agstar Financial v. Gordon Paving
S.Ct. No. 43747
Supreme Court

2. Did the court err in finding that, pursuant to the Idaho Nonprofit Corporation Act, Ruth Smith had authority as sole director to call a special meeting?

Kemmer v. Newman
S.Ct. No. 42566
Supreme Court

Post-conviction relief

1. Did the district court err by not adequately inquiring into a potential conflict of interest with Green's post-conviction counsel?

Green v. State
S.Ct. No. 43750
Court of Appeals

2. Did the court abuse its discretion by denying Rendon's motion for discovery?

Rendon v. State
S.Ct. No. 43048
Court of Appeals

3. Whether the district court erred in finding Wurdemann had failed to prove numerous claims of ineffective assistance of counsel.

Wurdemann v. State
S.Ct. No. 39173
Court of Appeals

Procedure

1. Whether the judge erred by miscalculating the time period for filing a motion to disqualify the judge and by denying the motion to disqualify.

Wells Fargo Bank v. Perez
S.Ct. No. 43465
Court of Appeals

Remedies

1. Did the court err in finding acceptance of non-refundable earnest money from a buyer constituted an election of remedies that precluded the seller from pursuing a claim for damages actually suffered by the breach of contract to purchase real estate?

Phillips v. Gomez
S.Ct. No. 43678
Supreme Court

Summary judgment

1. Did the district court apply the wrong legal standard in granting summary judgment to the plaintiffs by failing to view the evidence in a light most favorable to the non-moving party?

Lee v. Litster
S.Ct. No. 43554
Supreme Court

Sureties

1. Did the trial court err in concluding Schmidt could not recover contribution from Huston due to unclean hands?

Schmidt v. Huston
S.Ct. No. 43620
Supreme Court

CRIMINAL APPEALS

Due process

1. Was Olsen's right to fundamental due process violated because the statute at issue was unconstitutionally vague, resulting in arbitrary enforcement and a lack of required notice of prohibited conduct?

State v. Olsen
S.Ct. No. 43496
Supreme Court

Evidence

1. Did the district court abuse its discretion by admitting the audio of the traffic stop in which Bagshaw lied about his name and birthday, because it was not relevant to the possession charge and was unduly prejudicial?

State v. Bagshaw
S.Ct. No. 43227
Court of Appeals

2. Did the court err by admitting video animation of a shaken baby as illustrative of an expert's testimony because the video was not relevant and its probative value was outweighed by the danger of unfair prejudice?

State v. Baker
S.Ct. No. 41590
Court of Appeals

3. Did the State present substantial competent evidence upon which a reasonable trier of fact could have found that Harris is a persistent violator of the law?

State v. Harris
S.Ct. No. 43044
Court of Appeals

Instructions

1. Did the court err in its jury instruction as to the elements of the charged offense thereby denying Sellers a fair trial?

State v. Sellers
S.Ct. No. 42716
Court of Appeals

2. Did the district court err when it denied Trenkle's request for an ICJC 1522 defense of property jury instruction?

State v. Trenkle
S.Ct. No. 43219
Court of Appeals

Joinder

1. Did the court err in denying Blake's motion to sever her trial from that of her alleged co-conspirator and in finding the evidence was admissible against both?

State v. Blake
S.Ct. No. 43316
Court of Appeals

**Search and seizure –
suppression of evidence**

1. Did the court err in denying Gottardi's motion to suppress and in finding his initial detention was not unlawful?

State v. Gottardi
S.Ct. No. 43354
Court of Appeals

2. Did the court err in ruling that the police officer had reasonable suspicion to seize Seward?

State v. Seward
S.Ct. No. 43658
Court of Appeals

3. Did the district court err in denying Mehalos' motion to suppress and in finding he consented to a search of his backpack?

State v. Mehalos
S.Ct. No. 43528
Court of Appeals

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a counselor's purpose, and she gets paid — so why object? The law requires the defendant to pay for or reimburse all costs, so the taxpayers do not object. The courts see offenders getting treatment, thereby reducing future crime and reinforcing the “no domestic violence” message — so why object?

However, psychologists and counselors have subtly coopted the legislative, executive and judicial branches, dictating the structure of the system, decreeing what will be taught and corrupting a sentencing judge's independence. DVC's one-size-fits-all approach perverts the traditional criminal justice system, which usually embraces police discretion, prosecutor analysis of minor versus serious crimes, respect for victims and individualized sentencing by impartial judges.

The structure and reach of the DVC

Complicating this discussion is that Ada County's DVC was chosen by the U.S. Department of Justice to serve as a role model for DVCs across the nation. Only two courts were selected. The Ada DVC will implement the psychologists' programs (called best practices) and enforce their punishments (called accountability). Statistics and outcomes will likely be reported in a pro-DVC manner. Saddled with Ada's leadership role, all of Idaho's DVCs will become even more insistent on participants attending treatment.

But those treatment plans are fundamentally flawed. Pursuant to Idaho Code §18-918(7)(d), the Idaho Council on Domestic Violence (ICDV) determines the standards for treatment and counseling: “Counseling or treatment ordered pursuant to this section shall be conducted according to standards established

or approved by the Idaho council on domestic violence.” Seven people comprised the 2015 ICDV: An acting county sheriff, an acting city chief of police, a retired Idaho state police lieutenant, a retired police lieutenant from another state, a prosecutor, a licensed counselor, and a teacher of nursing who also conducts interviews for sexual assault cases. As a whole, not a council with obvious skill in the field of psychology or designing treatment plans.

The enabling legislation gives ICDV the duty to create standards for

The enabling legislation gives ICDV the duty to create standards for the overall DVC program, to create guidelines for evaluators along with what information the evaluations must contain, and to determine what treatment must be recommended.

the overall DVC program, to create guidelines for evaluators along with what information the evaluations must contain, and to determine what treatment must be recommended. Apparently the ICDV also manages or receives input from an advisory board described in Idaho Criminal Rule 33.3(b) which approves evaluators and mandates the contents of an evaluation. The board's recommendations, by way of the ICDV, are then put into practice by the courts, prosecutors, police and legislature. Not to worry, all branches of government are on board.

A person pleading guilty to domestic violence must be evaluated, but not by a self-selected psychologist or counselor with skill and experience. Only those on an “approved” list of counselors are allowed to evaluate. No psychologist or counselor can make a living in DV treatment if he or she is not on the court list.

To be on the list the counselor must use the ICDV standards.¹ The ICDV minimum standards, section 1(B)(3) states: “Initial intervention shall be standard offender group counseling, education, and/or treatment for a minimum of 52 ninety-minute sessions.” Also, from the Statement of Purpose as set forth in the standards: “The Council recognizes that these are *minimum standards* for treatment.” (Emphasis in the original.) The minimum standard's treatment philosophy, §A(9), forewarns that “...substance abuse, anger management, and mental health treatment are not substitutes for domestic violence offender intervention...”

Evaluators who do not recommend 52 sessions in all cases are not kept on the list, according to some counselors. For instance, in a 2009 meeting of an oversight committee, it granted approval to a counselor only after he revised his described services. His description “...needed to be updated as it had inferences of ‘state approved treatment programs’ which were less than the required 52 weeks.”² It seems that even an inference that a defendant could receive a recommendation of less than 52 sessions is not permitted when advertising DV counseling if one wants to be employed in this field.

Why have an evaluation?

So why have an evaluation at all if most defendants must receive the

minimum 52 session recommendation? Perhaps it is to obtain the vast amount of personal and private information collected about a defendant, then shared with court personnel, probation officers, prosecutors, judges and other counselors. Rule 33.3 requires a wide range of data in the evaluations, which approved evaluators must include. The DVC coordinator must make statistical reports to the state using that information including the number of victims served, number of offender review hearings, number of judicial contacts with offenders, demographics, probation violations and much more.

Even so, recommendations exist to expand the data collected to include gender, education level, access to weapons, all children's ages and custody relation, exposure to combat, and family history of mental health and illnesses. None of these proposals were enacted yet, but give it a few years.

Those non-enacted recommendations would require a defendant to send the completed evaluation to the sentencing court rather than to him or his attorney to review for errors. "Evaluations contain NCIC information protected by federal law; this information can only be released by the court, not the evaluator." The logic is circular. Approved evaluators must include NCIC information in the evaluations, which information can only be released by the court. Thus, the evaluations must first go to the court for release. (A court order exists for the evaluator to originally obtain the NCIC report.) But HIPAA regulations and professional ethics raise serious questions about the propriety of sending an evaluation to the court, not the patient or attorney.

Violations of the NCO, even when initiated by the victim, are often handled with more severity than the original crime.

No contact orders

One potent condition used by the DVCs is the no contact order (NCO). Although not required by any statute or rule, in nearly every domestic violence charge a no contact order is put in place while the suspect is in jail, with no input from the alleged victim. These NCOs do not expire in 72 hours, but in a year.

Finding attorneys and alternative housing can be expensive. Getting NCOs dismissed or even modified challenges victims and defendants alike. Why? "Lifting no-contact orders should only happen at the request of the victim and after a period of [the] defendant proving achievements and compliance."³ That means that a NCO imposed without input from the victim should not be modified or dismissed until the defendant pleads guilty or starts some treatment. Prosecutors will often ask the court to dismiss the NCO upon a plea, and judges point out that changes in a NCO are made as a safety issue, not as a coercive tool to obtain pleas. Yet this plea/dismissal process continues.

Victim input

Why can a victim not get a NCO terminated? Because Idaho Criminal Rule 46.2(d) allows a victim to

get a hearing, not relief. At the request of several victims and defendants, the proposed version of that rule would have allowed a victim to automatically terminate a NCO imposed by the court, but that was not accepted. Authorities critical of DVC programs point to this as an area where victims are demeaned.⁴

A victim's opposition to a NCO often gets cast as enabling the abuser or proof of his control. Requests to end the NCO are often denied at the early stage of a case, refusing to even allow written communication. Violations of the NCO, even when initiated by the victim, are often handled with more severity than the original crime.

Despite the dangers from some abusers, can a woman not think for herself? Idaho courts used to believe so, except in statutory rape cases, and even then with disagreement. While quoting another case, and agreeing with its observations, the dissent in *State v. LaMere*⁵ repeated:

Because she is a woman she is deemed inherently less capable of knowing the facts, of controlling her emotions, of weighing the risks and benefits, and of making intelligent choices—in short, she is less responsible for her actions—than her male counterpart.

Such notions are obviously vestiges of a bygone era, remnants of the exploded myth of intrinsic male superiority. They are the product of conventional sex-stereotypical thinking, and revive an outmoded patriarchal [sic] view of “the woman’s role.”

Thus, even when a female victim wants separation and is not fearful of violence, but needs contact to exchange or divide property, the request has been denied. Too often, it seems that courts deny NCO termination or modification if the DV case is being fought.

A victim wanting dismissal will receive an explanation of why that choice is wrong, despite the fact that many charges are defensible and some people are innocent. The DVC environment discourages both victims and defendants from expressing any displeasure or criticism of the DVC practices. In general, in DVC the victim will be treated with honor and encouragement mostly when she wants to prosecute.

The one-size-fits-all mindset as to DVC defendants apparently applies to DVC victims as well. An independent judiciary should provide a buffer from the stereotyped thinking of well-intended people. But it seems that the DVC model forces judges to follow the underlying psychological DV outlook embraced by the counselors.

Has the court lost its independence?

Why does a judge not rely more on the facts of the individual case and use independent judgment? Idaho’s tradition has been for independent judges. “[T]rial judges are vested with sentencing discretion so that they can apply their own judgment and experience to the task of independently sentencing each defendant that comes before them.”⁶ Idaho Code §18-106

reminds us that criminal sentencing “...devolve[s] a duty upon the court authorized to pass sentence, to determine and impose the punishment prescribed.” Indeed, the Idaho Court of Appeals reminds us that: “Both the federal and Idaho constitutions guarantee litigants the right to a disinterested and impartial judge.”⁷

As an example of such a concern, although DVC judges sentence the vast majority of defendants to attend 52 sessions of counseling, §18-918(7) (a) itself does not require it, even if that is the counselor’s recommenda-

Just as a neutral and impartial judge determines matters case by case, a pre-determined approach can easily descend to administering policies and practices instead of relating to an actual defendant.



tion. “The court shall take the evaluation into consideration in determining an appropriate sentence.” The DVC informs all defendants that failure to complete the 52 sessions will likely result in the full underlying sentence being imposed. Why does a DVC judge seem different from regular judges? Perhaps the Idaho Domestic Violence Court Policies and Guidelines, Attachment A, section 1(b) explains it:

It is critical that a judge selected to serve on a domestic violence court be highly interested in tak-

ing on the job and willing to be educated on the complex issues surrounding domestic violence. Moreover, domestic violence court procedures and best practices should be institutionalized in a domestic violence court manual to ensure consistency and aid judges in fulfilling this leadership role.

This provision demeans a judge’s independence, runs counter to normal justice system safeguards and reduces the public’s confidence in the judiciary. Just as a neutral and impartial judge determines matters case by case, a pre-determined approach can easily descend to administering policies and practices instead of relating to an actual defendant. Instructed and trained in the DVC system, judges can become aligned to that philosophy. That said, DVC judges seem to truly care about each defendant’s life and are interested in what was learned and applied; they want each person to succeed.

The program creators believe that a judge needs to be the one reviewing the defendant’s progress based upon the traditional respect and deference given to judicial officers. However, in practice this program ends up demeaning the judiciary with its pre-chosen judge who must embrace the DVC’s psychological views, case management principles and sentencing philosophy.

Over time, as more and more attorneys and participants see that the DVC policies are strictly enforced with almost no deviation and few excuses allowed, a judge might be seen as a tool of the system, not an independent official. A reasonable probation officer or DVC coordinator could just as effectively review participation and impose sanctions (if properly set up at the time of sentencing).

A call for change

An open discussion of DVC's problems and solutions must begin. The benefits of DVCs and counseling can be great, individually and to the community. DVCs are not going away; they are here to stay and will increase in number. At the same time, its approach changes traditional legal roles in subtle but significant ways, compelling blind obedience to already made decisions and stifling criticism of this governmental program. Many changes can be made to improve the situation.

An obvious one is to convert DVC to a specialty court where offenders voluntarily opt in. Other constructive changes include imposing NCOs only when needed, and/or to expire in 72 hours which gives the state abundant time to seek an extension if needed. Victims should have the right to terminate an unrequested, unwanted NCO. Police officers might be more selective in making arrests. Prosecutors should use more discretion or expand plea options. Stop the unnecessary expense of an evaluation; simply require attendance at 52 sessions of therapy. (Focused treatment for specific issues can occur if they arise during the year of counseling.) Or, allow an expanded selection of counselors and counseling. Stop gathering massive amounts of personal information to satisfy the government's unending appetite for data.

Once the judge takes a plea, get him or her out of the review process, to return only if the prosecutor files for probation revocation. The public should not be placed in a system where they stop thinking of the judge as an independent and neutral authority. Once that security is lost, it cannot be easily restored. A reasonable probation officer can review a defendant's progress and guide his rehabilitation.

Its approach changes traditional legal roles in subtle but significant ways, compelling blind obedience to already made decisions and stifling criticism of this governmental program.

Those offenders with petty incidents could plead guilty but refuse the probation term of 52 sessions and see what sentence the judge imposes (a perilous decision). Courts could also offer the 52 sessions as a sentencing option in theft cases. A basic truth is that defendants with any reasonable defense could go to trial. Even a guilty person has the right to a trial. But if just a small portion of these cases went to trial, the justice system would be strained to breaking.

Conclusion

Although well intended, DVCs create a host of problems that slowly undermine the public's confidence in the judiciary as an independent, unbiased branch of government. Courts should not appear to take an active role as a prosecutor-like agent or maintain preconceived views set by psychologists on matters such as

NCOs and sentencing. DVCs in many ways demean the judiciary and will, in the long run, bring a loss of faith in the justice system. It is time for a fundamental adjustment to the Domestic Violence Court system. We can make it better.

Endnotes

1. Idaho Code §18-918(7)(d).
2. Oversight committee board minutes, November 5, 2009.
3. Idaho DVC Policies and Guidelines, Attachment D.
4. See, for example, Goodmark, L. (2012). *A Troubled Marriage: Domestic Violence and the Legal System*.
5. *State v. LaMere*, 103 Idaho 839, 655 P.2d 46 (1982).
6. *Stedtfeld v. State*, 114 Idaho 273 at 277, 755 P.2d 1311 at 1315 (Ct. App. 1988). See also *State v. Pederson*, 124 Idaho 179 at 183, 857 P.2d 658 at 662 (Ct.App. 1993), citing numerous cases.
7. *State v. Blume*, 113 Idaho 224 at 228, 743 P.2d 92 at 96 (Ct. App. 1987).

Dennis Reuter is a Coeur d'Alene attorney practicing since 1976, primarily in the field of criminal law as both prosecutor and defense attorney. The views expressed in this article are his alone and he is solely responsible for its content. Comments can be sent to: DVCarticle@gmail.com.





Idaho's Domestic Violence Courts: Improving the Justice System's Response to Domestic Violence

Kerry Hong

Idaho domestic violence courts seek to improve the civil and criminal justice systems' response to domestic violence by enhancing victim safety and offender accountability, and providing effective case management and coordination of information when families are involved in multiple cases.

In 2009, the Idaho Legislature provided the statutory framework for domestic violence courts.¹ The legislative findings set forth in Idaho Code § 32-1408(2) established policy for domestic violence courts to "hold offenders accountable, increase victim safety, provide greater judicial monitoring and coordinate information to provide effective interaction and use of resources among the courts, justice system personnel and community agencies."

Idaho's domestic violence courts embrace this policy and their operations are designed around best practices and research to accomplish this mission. Domestic Violence Court Policies and Guidelines have been adopted in Idaho to foster the development and effective operation of domestic violence courts statewide.²

The judge considers the domestic violence evaluator's report and recommendations and applies what weight, if any, to the disposition of each case.

Domestic violence courts are integrated into case processing to promote fair and timely disposition and operate under the same laws and rules as any other court handling these types of cases. The courts are presided over by a judge with specialized training on domestic violence, which provides context to the judge's consideration of the individual factors in each case. This training is similar to the specialized training judges receive on substance use disorders and mental health.

One of the strongest predictors of future violence is past conduct. Domestic violence evaluations gather information to help parties understand the defendant's risk

of reoffending and potential treatment needs. Factors around domestic violence are varied and require an in-depth, individualized review by a qualified professional. Idaho Criminal Rule 33.3(c) sets the scope and content of these evaluations and requires consideration of the following factors: risk assessment, substance abuse, self-assessment, psychological testing results (if any), collateral information, personality assessment, and behavioral observations. The judge considers the domestic violence evaluator's report and recommendations and applies what weight, if any, to the disposition of each case. Domestic violence courts utilize post-disposition review hear-

ings to help promote compliance with all court orders. Simply put, people pay more attention to orders when they know they will appear before the judge. These review hearings allow the court to better understand the status of each case and to respond appropriately.

Community safety in general and victim safety in particular are integral considerations in the management of domestic violence cases. No contact orders are issued by the court when a person is charged with or convicted of certain offenses and the judge finds it appropriate. Requests to modify or terminate no contact orders are provided a hearing, in which the court exercises discretion in the consideration of that request on a case-by-case basis. Domestic violence courts provide victims of domestic violence with links to services and appropriate referrals regardless of their position regarding the underlying case.

Domestic violence courts are a relatively recent innovation. Idaho courts welcome the opportunity to examine practices to improve and advance access to justice. Currently, domestic violence courts are undergoing a statewide process evaluation. Not all domestic violence court models are the same, even though they all share common elements, and there is an ongoing effort to understand what works. There is emerging research on the efficacy of domestic violence interventions at a national level that may better inform how evaluations are conducted and the formulation of treatment recommendations. Both the Domestic Violence Court Subcommittee (DVCS) of the Idaho Supreme Court Children and Families in the Courts Committee (CFCC) and the Domestic Assault and Battery Evaluator Advisory Board consider devel-



opments in the field and provide recommendations for the management and enhancement of domestic violence courts.

Stakeholders and interested persons are invited to join the conversation around domestic violence courts by contacting Kerry Hong, Director of Justice Services Division, Idaho Supreme Court at khong@id-courts.net.

Endnotes

1. H.B. 104, 60th Leg., 1st Reg. Sess (Idaho 2009).
2. See http://www.isc.idaho.gov/dv_courts/DV_Court_Policies_and_Guidelines_revised_4.15.pdf

Requests to modify or terminate no contact orders are provided a hearing, in which the court exercises discretion in the consideration of that request on a case-by-case basis.

Kerry Hong has worked for Idaho's court system for nearly 15 years in the 6th Judicial District of Idaho and the Administrative Office of the Courts. He has served as a family court services coordinator, court assistance officer, problem solving court coordinator, sentencing alternative manager, and division director.



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How to Stop Having to Write Declination Letters

Mark Bassingthwaight

Ok. I get it. How many malpractice claims are there that have been the result of a failure to write a declination letter? You know the one that says thanks but no. Truth be told, not many; although we have seen a few. Some are conflict problems because the creation of this letter is what normally would trigger the entering of the names of declined clients into the conflict database. When the letter isn't written, the names can't be entered and a conflict problem sometimes arises down the road. Others are a bit more concerning and represent the real reason why these letters should be used. Sometimes a non-client who did speak with you eventually sues you for failing to do something. They allege that you were indeed their attorney, at least as they understood it. If you have no documentation that they weren't, you may have a problem because these kinds of word against word disputes don't always end well for the attorney.

Excuses vary. Declination letters are viewed as a waste of time, unnecessary in most matters, irrelevant, or too costly in terms of attorney and staff time. Sometimes they are just simply overlooked. Again, I get it. The good news is that declinations can be documented in another more efficient way. The letter approach isn't the only option.

Many attorneys use some version of a client intake form during an initial prospective client interview. If you do use this form, consider making a few modifications to it that will help document the engage-



The good news is that declinations can be documented in another more efficient way. The letter approach isn't the only option.

ment or declination. Once you finish the initial interview you will give the prospective client a copy of this modified client intake form and then you and your prospective client should sign both the copy and the original. If you and your prospective client decide to create an attorney/client relationship, you will then ask the client to also sign a fee agreement. This leaves the client with a copy of the client intake form and the written fee agreement. If you decide not to form an attorney/client relationship at the conclusion of the initial consultation, the prospective client will sign only the original and copy of the client intake form and receive just a copy of that document.

In order to use your client intake form as the method of documenting the engagement or declination, you might add to the beginning of this form language that reads something like this:

The purpose of our initial consultation meeting is for me to determine what legal services (if any) our firm might be able to provide to address your legal concerns, as well as to provide an indication as to what your cost might be if you decide to hire this firm.

Our initial consultation meeting does not give me enough time or information to provide you with a definite legal opinion. The short time allotted for this meeting makes it impossible for me to properly and fully assess any legal matter that you might have.

Regardless of whether you and I create an attorney/client relationship today, the attorney/client privilege protects all information that I gather during this meeting and record on this client intake form. Rest assured that I will hold that information in strict confidence.

At the end of the client intake form, you might add something similar to this:

Please read carefully and sign below

Now that we have concluded our initial consultation, if you agree to hire me as your attorney and I agree to represent you, we will both sign a Contract for Legal Services. That Contract will state the terms and conditions under which this firm will provide you with legal representation.

If I am willing to represent you and you decide not to sign a Contract for Legal Services today, I strongly urge you to do one of two things: (1) schedule a follow-up appointment with me at the earliest possible time; or (2) immediately consult with another attorney in order to ensure that you fully protect your legal rights. Unless and until *both of us sign* a Contract for Legal Services, neither I nor this firm represent you on the matters described in this client intake form or discussed during this initial consultation. No action of any kind will be taken on your behalf until you authorize us to do so by our both signing a Contract for Legal Services.

If I do not agree to represent you, then we have not formed an attorney/client relationship, even though we had this initial consultation. Neither this firm nor I will represent you on the matters set forth in this client intake form or discussed during this initial consultation. If your legal matter involves a potential lawsuit, it is important that you realize that you must file your lawsuit within a certain period of time, known as a Statute of Limitations. Therefore, I strongly urge you to immediately consult with another

The expanded use of a client intake form with text substantively similar to what I have suggested above does effectively eliminate the need for a separate declination letter.



attorney in order to protect your rights. My decision not to represent you is *not* a legal opinion regarding the merits of your case.

By signing below, you acknowledge that you have received a copy of this completed client intake form. Your signature also confirms that you understand that I have not been hired as your attorney and that this firm will take no further actions on your behalf.

Signature: _____

Date: _____

The expanded use of a client intake form with text substantively similar to what I have suggested

above does effectively eliminate the need for a separate declination letter. The issue is addressed and documented while the client is in your office. Finally, if your practice covers several areas of the law, simply alter the sample language to meet the needs of each practice area. For example, a big reason that these letters aren't used with prospective divorce clients is out of a fear of notifying an innocent spouse. This approach is a win/win on that front. The innocent spouse will never see a letter from an attorney in the mail and documentation of the declination is hand delivered to the prospective client before they ever leave your office.

ALPS Risk Manager Mark Bassingthwaighe, Esq. has conducted over 1,000 law firm risk management assessment visits, presented numerous continuing legal education seminars throughout the United States, and written extensively on risk management and technology. Check out Mark's recent seminars to assist you with your solo practice by visiting ALP's on-demand CLE library at alps.inreachce.com.

Mark can be contacted at: mbass@alpsnet.com.



Help the Reader Swim Downstream: Create Flow in Your Writing

Tenielle Fordyce-Ruff

Idahoans know flow. We have the most amazing rivers just out of our backdoors. But as legal writers, Idaho attorneys need to do more than look outside to create effective writing. This month's column will focus on flow when writing, and how to achieve that flow through better paragraphs.

This may seem simple, but remembering the definition and purpose of a paragraph can help you create more effective paragraphs and flow within your writing.

A paragraph is a group of sentences that develop a dominant idea.¹ We shouldn't create a paragraph break simply because it seems like time for one, nor should we just shove disparate ideas into one paragraph. Instead, we should strive to create effective paragraphs: those that are understandable internally and indicate to the reader their place in the overall structure of the argument.² This will give our writing flow — the ability for the reader to seamlessly move from idea to idea and argument to argument.

Creating flow requires attention to several different areas of your writing: paragraph unity, topic sentence, paragraph coherence, and transitions.

Paragraph unity and topic sentences

Many of us were introduced to the concept of unity early in our writing careers. I learned this basic concept in elementary school as soon as I learned about paragraphs. The simplest definition for paragraph unity that I can find states that a paragraph has unity "when every sentence relates to the topic."³

So, simply put, each paragraph of your writing should cover only one



discrete topic. Additionally, that dominant idea should be clearly laid out in the topic sentence. This helps the reader keep track of the organization of your argument. Let's look at the following paragraph.⁴

The tools and devices of discovery are more than options and opportunities. As a franchised auto dealer, Rambler Motors filed suit on March 28, 1961, against American Motors asserting various claims including alleged violation of anti-trust laws. This particular cause of action was abandoned and not briefed on appeal. Rule 56 requires diligence in opposing a motion for summary judgment. Diligence in opposing a motion for summary judgment is required. Here, Plaintiff Rambler Motors failed to seek any documents in discovery during the four years that passed between the filing its complaint and the hearing on the Defendant's motion for summary judgement. Rambler

We should strive to create effective paragraphs: those that are understandable internally and indicate to the reader their place in the overall structure of the argument.²

Motors did attempt to engage in discovery after the summary judgment hearing. But the trial court in the case at bar was more than patient in awaiting Rambler's controverting affidavits or efforts in any direction. It did not abuse its discretion in refusing to order the production of documents by American after summary judgment had been granted.

What’s this paragraph about? Would it help if I added a topic sentence? Let’s look at a rewrite of the paragraph.

The trial court did not abuse its discretion by refusing to order the production of documents after granting summary judgment. The tools and devices of discovery are more than options and opportunities. As a franchised auto dealer, Rambler Motors filed suit on March 28, 1961, against American Motors asserting various claims including alleged violation of anti-trust laws. This particular cause of action was abandoned and not briefed on appeal. Rule 56 requires diligence in opposing a motion for summary judgment. Diligence in opposing a motion for summary judgment is required. Plaintiff Rambler Motors failed to seek any documents in discovery during the four years that passed between the filing its complaint and the hearing on the Defendant’s motion for summary judgment. Rambler Motors did attempt to engage in discovery after the summary judgment hearing. But the trial court in the case at bar was more than patient in awaiting Rambler’s controverting affidavits or efforts in any direction. It did not abuse its discretion in refusing to order the produc-

tion of documents by American after summary judgment had been granted.

Notice now that some of the sentences don’t fit with the topic of the paragraph. See how much better the paragraph flows with the unnecessary information removed.

The trial court did not abuse its discretion by refusing to order the production of documents after granting summary judgment. Plaintiff Rambler Motors failed to seek any documents in discovery during the four years that passed between the filing its complaint and the hearing on the Defendant’s motion for summary judgment. Rambler Motors only belatedly attempted to engage in discovery after the summary judgment hearing. Rule 56 requires diligence in opposing a motion for summary judgment. The trial court did not abuse its discretion in refusing to order the production of documents by American Motors after summary judgment had been granted. Lawsuits are not timeless or aeonian, and although aging is not an altogether unhappy process, it is not a desirable aspect of judicial proceedings. All things must end-even litigation.

Paragraph coherence and transitions

Once a paragraph covers only one topic, you should turn to making it coherent. Paragraph coherence is what many of us think of as flow. A paragraph has coherence “when there is a smooth and logical flow between sentences and a clear and explicit connection between any one sentence and the topic of the paragraph.”⁵

Finally, now that the paragraph has unity, coherence, and a clear topic sentence, make sure the reader can follow its logic. The easiest way to ensure that is to use transitions. Transitions are words or phrases that show the relationship between sentences. They fall generally into a few categories. I’ve created a handy chart below for your reference.⁶

Take the previous paragraph again. This time I’ve added in transitions.

The trial court did not abuse its discretion by refusing to order the production of documents after granting summary judgment. *Here*, Plaintiff Rambler Motors failed to seek any documents in discovery during the four years that passed between the filing its complaint and the hearing on the Defendant’s motion for summary

Function	
To Add	and, again, and then, besides, finally, further, furthermore, nor, too, next, lastly, moreover, in addition, first (second, etc.)
To Compare	whereas, but, yet, on the other hand, however, nevertheless, on the contrary, by comparison, where, compared to, balanced against, but, although, conversely, meanwhile, in contrast
To Prove	because, for, since, for the same reason, furthermore, moreover, besides, in addition
To Show Exception	yet, still, however, nevertheless, in spite of, despite, of course, sometimes
To Show Time	immediately, thereafter, soon, after a few hours, finally, then, later, previously, formerly, first (second, etc.), next, and then
To Show Sequence	first, second, third, and so forth, A, B, C, and so forth, next, then, following this, at that time, now, at that point, after, afterward, subsequently, finally, consequently, previously, before this, simultaneously, concurrently, thus, therefore, hence, next, and then, soon; and
To Give an Example	for example, for instance, in this case, in another case, on this occasion, in this situation, take the case of, to demonstrate, to illustrate

judgment. *Rather*, Rambler Motors only belatedly attempted to engage in discovery after the summary judgment hearing. *Yet* Rule 56 requires diligence in opposing a motion for summary judgment. *Thus*, the trial court did not abuse its discretion in refusing to order the production of documents by American Motors after summary judgment had been granted. Lawsuits are not timeless or aeonian, and although aging is not an altogether unhappy process, it is not a desirable aspect of judicial proceedings. All things must end—even litigation.

Was this easier for you to read and understand? If you said yes, remember that your readers will also appreciate the use of transitions in your writing.

Conclusion

I'm off to seek out some flowing water. I'll work on my writing again after I take a cool dip. I hope you, too, can enjoy a little of the outdoor fun we are so lucky to have in Idaho!

Endnotes

1. Helen S. Shapo et al., *Writing and Analysis in the Law*, 179 (4th ed. 1999).

2. *Id.*

3. *Id.*

4. The examples in this article are inspired by *Southern Rambler Sales, Inc. v. American Motors Corp.*, 375 F.2d 932 (5th Cir. 1967).

5. *Id.*

6. Adopted from: Purdue OWL, *Transitional Devices*, <http://owl.english.purdue.edu/owl/resource/574/02/> (last visited June 7, 2016).

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 Fisher Rainey Hudson. You can reach her at tfordyce@cu-portland.edu or <http://cu-portland.fice.com>.



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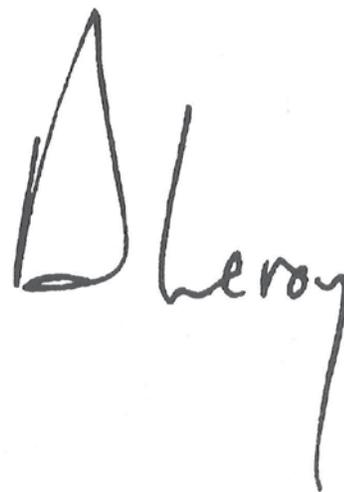


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The spoken word perishes; the written word remains.



IN MEMORIAM

Leslie Richard Weatherhead 1956 - 2016

Leslie Richard Weatherhead, 59, of Spokane died of cancer on May 9, 2016. Diagnosed last December, Les fought the disease with the same tireless conviction he held for his clients, and with the abundant love and support of his family, friends, doctors, and medical staff. Les was a captivating storyteller whose optimism was boundless. Les often told his children that he “never worked a day in his life” because of his deep passion for his profession. He was a member of the bar associations of Washington, Oregon, Idaho, and Hawaii.

Les was an adjunct professor at Gonzaga University School of Law for many years, a member of the Washington Appellate Lawyers Association, board member of the Federal Public Defenders group in Spokane, member and former Chair of the Ninth Circuit Advisory Board, and a Fel-



Leslie Richard
Weatherhead

low of the American College of Trial Lawyers.

He cared about the community in which he lived, volunteering in numerous non-profit civic organizations. He volunteered for his children’s school theatre, sports, and music groups, and most recently as member of the board of the Friends of Mt. Spokane State Park.

For the last three years, Les was a partner at Lee & Hayes, an intellectual property law firm. For 30 years prior, he was a partner at Witherpoon Kelley Davenport & Toole. His practice concentrated on litigation of complex commercial and regulatory disputes, white-collar defense, and pro-bono work (a right to representation he felt every person was entitled).

He enjoyed arguing in front of the Federal Courts in various parts of the country and was incredibly honored to have recently appeared before the United States Supreme Court. He was born in 1956 to A. Kingsley and Ingrid Weatherhead, professors at the University of Oregon. He earned his bachelor’s degree at the University of Oregon Honors College in 1977, and his Juris Doctor at

the University of Washington School of Law in 1980.

He married Anali Torrado on June 24th, 1985 on the island of Guam. Survivors include his wife, Anali; son Spencer; daughters Madeleine and Audrey; his sisters Lyn-Kristin and Andrea; his mother Ingrid; mother-in-law Lilia; brothers-in-law Alan and Arnel.

Wesley Gene Wilhite 1951 – 2016

Wesley Gene Wilhite, 64, and his wife, Rosa, 51, died this June in Costa Rica. Rosa had lung cancer for several years, and died on June 4. Wesley died of a heart attack 10 days later. Wesley, who kept an address in Kuna, Idaho, won the Idaho State Bar Pro Bono Award in 2002.

Wesley was born June 21, 1951. He farmed in Costa Rica, moved and worked in Texas, did logging at Idaho City, before he went to U of I law school in 1989. He was a member of the Family Law Section.



Wesley Gene Wilhite

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Fred Hoopes

Dan Taylor joins Gideon Legal

POCATELLO — Gideon Legal Services, PLLC, has hired Dan Taylor at its office in Pocatello. Mr. Taylor is a former Special Deputy Attorney General, the former Felony Public Defender of Jerome County, and is approved to litigate capital murder cases in the State of Idaho. Mr. Taylor has over a decade of experience practicing criminal law, and has litigated very complex cases. Mr. Taylor is from Southern Idaho.



Dan Taylor

Idaho Legal Drafting moves

BOISE — The law office of Idaho Legal Drafting has relocated to downtown Boise. The firm's new address is 910 Main St., Suite 236, Boise, Idaho 83702. You can reach attorney Brian DeFriez at 208-965-9734, or by visiting his website: www.idaholegaldrafting.com. Drop-in appointments and referrals are welcome.



Brian DeFriez

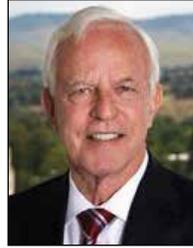
Moffatt Thomas welcomes Robert L. Bilow

BOISE — Moffatt Thomas announces Robert L. Bilow has joined the firm. Working from the firm's Boise office, Mr. Bilow will focus his practice on matters involving the semiconductor industry, business advice

and formation, complex securities and business litigation, real estate transactions, and estate planning and probate.

Mr. Bilow has vast experience as a leader in the technology industry. He served as President of SCP Global Technologies from 1982-1995. He also served as the managing partner of a large Idaho law firm.

A graduate of the University of Washington School of Law, Mr. Bilow is a member of the Idaho State Bar Sections on Litigation, Workers Compensation, and Probate.



Robert L. Bilow

Danielle Quade joins Idaho Community Foundation Board

COEUR d'ALENE — Danielle Quade, a resident partner at Hawley Troxell in Coeur d'Alene, has joined the Board of Directors at the Idaho Community Foundation.

Quade, an Idaho native who earned her bachelor's and law degrees from the University of Idaho, focuses primarily on finance and municipal law. She will serve on ICF's Asset Development Committee.

In addition to ICF's board, Quade is also involved with the Coeur d'Alene Rotary, the EXCEL Foundation Board and EXCEL Foundation Finance Committee. She and her husband Clay Storey have four children.



Danielle Quade



Tom Dvorak



Judd Montgomery



Deborah Nelson



Bob White

Team selected at Givens Pursley

BOISE — Givens Pursley LLP is pleased to announce that Tom Dvorak, Judd Montgomery, Deborah Nelson and Bob White have been selected by their partners for the firm's Executive Committee. The Executive Committee includes the firm's managing partners and directs the resources of the firm to achieve the objectives of the partnership. These four attorneys have made significant contributions to our clients and to our firm's success in a wide range of practice areas, including litigation, corporate, real estate, land use, environmental, and employment law.

James McCubbins joins Borton-Lakey

MERIDIAN — Attorney James McCubbins has joined the law firm of Borton-Lakey as its newest associate. Mr. McCubbins focuses his legal practice on a wide range of business transactional work, litigation, and family law matters. He has a background in the bioenergy industry

OF INTEREST

and policy from working with the Energy Biosciences Institute at the University of Illinois. Mr. McCubbins has written and spoken on legal topics relating to bioenergy feedstocks, invasive plant species, forestry and natural resources. He is currently an adjunct professor with the Concordia University College of Law, teaching Natural Resources Law.



James McCubbins

Young University in 2006 and his J.D. in 2011 from the University of Illinois College of Law. As an advanced speaker of Mandarin Chinese, Mr. McCubbins is also serving the Chinese speaking community by providing legal guidance and counsel. James can be reached at Borton-Lakey at 908-4415 or by email at james@borton-lakey.com

Blackfoot teacher honored nationally

BLACKFOOT — The American Lawyers Alliance presented the ALA Teacher of the Year Award in San Francisco on Friday, Aug. 5 to Ms.

Holly Kartchner, a teacher at Blackfoot High School in Blackfoot, Idaho. The ALA is a national charitable and educational non-profit organization. Its mission is to preserve the integrity of our legal heritage through citizenship education. Each year, the organization honors two high school and one middle school teachers who incorporate law-related education into their curriculum.



Holly Kartchner

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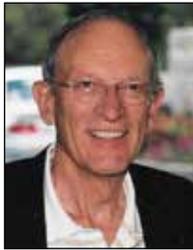
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Dale Higer: A Career Based in Civility and Professionalism

Dan Black

What does a distinguished career in law look like? A quick peek at Dale Higer's CV and you can see why his colleagues, partners and opposing counsel nominated him as a Distinguished Lawyer. And above his various professional accomplishments, his peers said in nominating letters, he has been an exceptional role model and consummate gentleman.

Dale's example of fairness and civility is perhaps most easily seen in his work on the state and national levels to remove inconsistencies in laws across state boundaries. He currently serves as a Commissioner of the National Conference of Commissioners on Uniform State Laws (ULC), and has served 24 years there. He has also served on various uniform act drafting committees as well as Chairman of the Idaho Commission on Uniform State Laws since 2001.



Dale Higer

And in the Boise community, he has served as a member, director or chairman on 15 nonprofit agencies diverse enough to include the Boise Art Museum and the Idaho Mental Health Association.

In his nominating letter, Rex Blackburn wrote, "Dale has served his profession with skill, professionalism, civility and overall distinction since 1966 (49 years). I cannot identify a more deserving candidate to receive the Distinguished Lawyer Award."

Among the community projects he has championed over the years, Dale said it was the Idaho Botanical Garden that gave him the most satisfaction.

Dale earns high marks from clients, too. Chief Operating Officer at Investors Financial Scott Taylor wrote in his nomination letter: "I have come to realize the breadth of his experience and dedication to the practice of law in its broadest sense. I fondly recall a past associate who fittingly referred to Dale as the 'Dean of Real Estate.'"

Among the community projects he has championed over the years, Dale said it was the Idaho Botanical Garden that gave him the most satisfaction.

"We set up a plan and I am amazed at the transformation of the site," Dale said, giving credit to his wife, Ramona, for helping the garden's founder, Christopher Davidson.

Dale also mentioned his time on the Boise Planning and Zoning Commission, which, during his tenure as chairman, approved plans for River Run, development along Park Center and the U.S. Bank Building. Dale was also the lead lobbyist for tax increment legislation for Idaho's urban renewal districts, another satisfying accomplishment that allows cities to finance infrastructure incentives such as parking garages and street improvements to attract businesses willing to invest in downtown areas.

He eventually narrowed his focus. "As I became more involved in the Uniform Law Commission I phased out my lobbying efforts because I didn't want any appearance of conflict of interest," he said.

Dale was born and raised in Emmett, where his father was an attorney who served three terms in the Idaho legislature and also served as a prosecuting attorney. His mother served on the school board and was president of the Idaho Federated Women's Clubs. So when he was growing up, "It was not so much about whether I would do public service, but how?"

Dale attended the University of Washington and then went on to earn his J.D. at Harvard Law School in 1966. His career since has focused on areas of banking, creditor's rights, bankruptcy, real estate, general business practice and estate planning.

Among the most interesting cases he's taken: Challenging the reapportionment of the Idaho Legislature in 1970 (summarily reversed by the U.S. Supreme Court); and unsuccessfully as plaintiff's lawyer against construction of the Teton dam on grounds that it would destroy a cutthroat trout habitat and the geological formation where the

dam was to be built would not hold water. Sadly, the dam was built, but broke as it was being filled in 1975 creating a flood that caused more than \$2 billion in damages.

Dale said that among the two dozen or so professional and community roles he has served, he has received the most satisfaction from his work on the Idaho and National Uniform Law Commission.

Started in 1892, the ULC is the nation's oldest state government association comprised of sitting judges, academics and lawyers from every state. "These laws really reduce business and legal costs around the country and enhance state's rights. If states do a good job, then the federal government is less likely to preempt areas of the law best left to the states."

"We involve experts," he said with an ageless enthusiasm, adding that each state has its own commission. Idaho has four commissioners. Once a uniform law is promulgated

by the ULC, "we take it to the Legislature" for passage.

"We do it because we love what we do," Dale said. Last year he spent about 360 hours on commission business. "You can work on it seven days a week."

Idaho has adopted many uniform Acts, including 20 lobbied through the Legislature by Dale. Looking ahead, Dale said he would like to keep working "as long as I can" and to address abuses while

"These laws really reduce business and legal costs around the country and enhance state's rights.

If states do a good job, then the federal government is less likely to preempt areas of the law best left to the states."

— Dale Higer

serving as the Chairman of the Revised Athletic Agents Act which helps protect student athletes from being exploited early in their careers.

Dale and his wife, Ramona, have been married for 43 years and have two daughters. One daughter, Sarah, is corporate counsel for Idaho Power. And the other daughter, Allegra Thompson, is an HR specialist at St. Luke's.

INTRODUCING OUR NEW PARTNER

GEOFFREY M. WARDLE



Spink Butler is pleased to announce that Mr. Wardle has joined their team of professionals. Drawing on his 20 years of experience in both the public and private arenas, Mr. Wardle will focus his practice at Spink Butler on commercial development, real estate, land use, entitlements, and transportation issues.



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Robert E. Williams III: Finding Perfection with Law and Family

Dan Black

“How you going to keep them down on the farm (After they’ve seen Paree)”

— Popular song addressing the rural American soldiers returning from World War I, where they experienced the cultural life of Europe.

Growing up in the small Idaho farming town of Jerome, Idaho, Robert E. Williams often thought of spreading his wings and going to college in an urban environment. “Although I was the son of the town dentist, my friends and I had every rotten job you could have on a farm. We hoed beets, picked rock, hauled hay and cleaned the barn stalls. No one was exempt. I had a love-hate relationship with farming.”

After graduating from Jerome High School he attended the University of Utah on a basketball scholarship two years before serving an LDS mission in New Zealand. He transferred to Brigham Young University on his return, earning a degree in political science in 1971. Rob married a Jerome girl, Susan Thompson, in August of that year and a week later they left for law school at Northwestern University in Chicago, looking for a big-city experience. They got it.

“Despite the law school grind, we had a wonderful time,” he said. “We lived in a low-rent high rise

“Matt was 16 months old and when we put him on the grass he was beside himself. We figured out he had never felt the touch of grass. That’s when we finally decided to return (to Idaho).”

— Robert E. Williams III

with graduate students from all over the country. Nobody had a thing. Chicago was a vibrant city and you could sit in the bleachers at Wrigley Field for \$1.50, which was barely within our budget.”

At the time, Rob was inspired by John F. Kennedy and the civil rights movement. “I was idealistic about creating a better world through the practice of law,” he said. “You could sense that the civil rights legislation was necessary to right the wrongs of the past, and could see the progress being made. It was exhilarating. I knew I wanted to get into the courtroom. I liked the connection with real people I first had at the NU free legal clinic I volunteered at. I also knew I needed to eventually do something that was professionally satisfying.”

As he approached graduation, he interviewed for jobs in Chicago and elsewhere. Rob and Susan made a trip back to Jerome where both he and Susan have large, close families. “Our oldest, Matt was 16 months old and when we put him on the grass he was beside himself. We figured out he had never felt the touch of grass. That’s when we finally decided to return (to Idaho). We didn’t want our kids to miss

what we loved about Idaho. I took a cram-course for the Idaho bar at the U of I, passed the bar, and then an opportunity came open in my home town,” he said.

“Frank Rettig and Gene Fredericksen hired me. Frank was a meticulous practitioner. His example stuck with me – especially in case preparation. Gene had been recently elected county prosecuting attorney and loved his job. He was an excellent public servant. My long time law partners Jim Meservy and John Lothspeich have been very helpful to me.”

Judge Theron Ward was another great influence. “He had a very commanding, majestic presence on the bench. No lawyer, especially a young one, wanted to be unprepared in his courtroom,” Rob said.

While he took all sorts of cases at the beginning, “My practice began tilting to agriculture and business transactions. I spoke the lingo and had an affinity for this.”

In the late 1970s and into the 80s and 90s the traditional farm economy of the area “flipped completely” as a new generation of dairymen from California moved to the area. “Those transplants, some who came with capital and some



Robert E. Williams III

who came with nothing but an idea and a desire to work hard became my clients,” Rob said. In California, encroaching residential development had forced them to sell out and relocate.

Land use permits, water rights, regulatory compliance, purchase and sale agreements, loan negotiations, business organizations, and employee matters became the focus of Rob’s practice. The size and complexity of all of these matters grew substantially as time went on. Many of his clients have been such for 30 years or more. Jerome itself has grown from 4,000 residents to more than 11,000 through Rob’s career.

“I also have a class of clients who still call me ‘Robby’, my childhood nick name” he said, as he reflected on what he has appreciated about practicing law in Southern Idaho. “To be able to serve the legal needs

“I also have a class of clients who still call me ‘Robby’, my childhood nick name” he said, as he reflected on what he has appreciated about practicing law in Southern Idaho.

of those folks has been particularly gratifying to me. I have great respect for lawyers and judges. I admire their diligence, passion and intelligence. The law exists to solve problems and preserve civilization.” Viewing the law as a tool to help people, their businesses, and society in general is a noble calling that Rob says he respects wherever he sees it.

But aside from a vibrant law practice, Rob has enjoyed the pleasures of family. “I have had the best of both worlds,” he said. “Jerome has been a wonderful place to practice law and raise a family. Coming back was a great decision.”

He and Susan have seven children, all with college degrees; and 13 grandchildren. One of his sons, Brian, practices law with the firm.

Mediation Services

“I will learn the case, challenge assumptions and conventional thinking, ask the difficult questions and offer analysis where it is needed.”

David Lombardi

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Mr. Lombardi’s resumé is available at: www.givenspursley.com

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Samuel “Dick” Rubin: Defending Those Who Need a Voice

Dan Black

Samuel “Dick” Rubin earned his reputation in Idaho for the last 22 years as the Executive Director of Federal Defender Services of Idaho, a non-profit corporation responding to defendants’ Sixth Amendment rights. And he’s known from the trial skills courses he teaches at UI’s Trial Advocacy program, with the Idaho Association of Criminal Defense Attorneys, in CLE’s and other trial skills events. But many Idaho attorneys might not know that each spring for last 35 years Dick has taught at the Kessler-Eidson Trial Advocacy at Emory University. He has deep roots with Emory, a school he was adjunct faculty for 15 years.

Dick was among those who first participated in the program from its inception at Emory. What he appreciates most about that work he said, is what “I learn from the students,” adding that interactions among the 300 students and 120 faculty instill a deep appreciation for the finer points of courtroom strategy.

“There is showing, doing and critiquing at the program. The intellectual give-and-take invigorates everyone involved.”

Dick attended the University of Iowa for college. “The first person to inspire me to go to law school” he said, was English Professor Alice Stewart, a young Yale graduate who Dick found inspiring. “She directed me to look at law as a profession I should think about.”



Samuel “Dick” Rubin

Although growing up in a middle class family, growing up Dick was keenly aware and deeply concerned about economic, racial and social injustice. “I always seemed to be troubled by the plight of those who were disadvantaged and lacked a chance in life,” he said. So he applied to law school, also at the University of Iowa, where met his wife, Suzanne.

After graduation, the young family moved to Atlanta, Georgia, a place with big ambitions and a rapidly changing power structure.

In Georgia you needed a year’s residency before admission in the bar, so Dick worked as a law clerk. “I’d go to the jail on Monday morning and check with judges. I got \$25 for each case I handled; \$50 if it was a felony. That gave me experience, and,” he said, “a free breakfast.”

As a solo practitioner in the late 1960’s, he kept running into another attorney, an African-American, and they became close friends, and later partners in their own firm. It was one of the first, if not the very first, integrated law firms in Atlanta. The two lawyers still are best friends and their families are like extended families to each other. Dick said, “Our families were on parallel tracks. Between us, all of our children became attorneys.”

Dick was in private practice about 25 years in Atlanta and was one of the five founders of the Georgia Association of Criminal Defense Lawyers, now numbering 1800. “Our function is to make sure that individuals who have no voice, are given a voice in the criminal justice system. What we do is unique. We are misunderstood by most and reviled by many; but we know that by standing up for the rights of individuals, even those believed to be guilty, we help make the United States a model for the world.”

What we do is unique.
We are misunderstood by most
and reviled by many.

— Dick Rubin

He has seen numerous changes in the way lawyers practice. While in Atlanta, “We watched as the economic base moved from white to black, and it was a wonderful transition.” And he’s also seen over the last 30 years, the devastating effect of sentencing guidelines. “It’s like sentencing by computer, or by bean counting without any real evidence to support it.”

“The number of people in prison for non-violent offenses is out of control,” he said. “Now, there is more concern over the cost of mass incarceration. Currently one out of 34 adult Americans is either in jail or under supervision in the criminal legal system; 2.7 million children have a parent behind bars, mostly for non-violent offenses.”

The aggressive incarceration affects more people than simply the convict. A prior conviction can exclude them from many types of jobs, housing, and benefits, and it creates both immediate and long-term costs to the individual, to their families, and to society. And it can have duration for life. “That is why I do what I do, to provide fairness and to make things that are not right, right.”

Dick and his wife Suzanne have been married for 48 years and have two children and three grandchildren.

Wendy J. Olson Keeps an Eye on the Big “C”

Dan Black

Having worked for 24 years at the U.S. attorney’s office, Wendy J. Olson appreciates her unique vantage point in the legal world – one through which she sees the U.S. Constitution “at play every day” in the lives of victims, suspects, law enforcement and fellow lawyers.

She spoke recently about her career, its rewards and challenges at a time of rapidly change in society.

She also spoke about her own values and upbringing. Her father Bill earned the Distinguished Lawyer Award in 2008. He practiced in Pocatello during the latter half of the 20th Century, when there were a mere handful of lawyers in the small town.

Wendy had supportive upbringing and “of course (my parents) told us girls we can do anything boys can do,” she said. So, because she liked playing baseball, she tried out for little league. She was turned away, “even though I was better than many of the boys.” At that time, Title IX was making headlines around the country. Wendy said, “They were worried that if they turned me away again, there would have been a legal challenge,” she said. The next year she made the team. “I saw personally how the law can bring fairness and justice to people’s lives.”

That impression stuck. She studied journalism at Drake University in Des Moines, Iowa, but decided she wasn’t ready to get a job yet. “I wanted my work to bring fairness

and justice.” So Wendy went on to earn a law degree from Stanford Law School in 1990 through an accelerated program.

She clerked for U.S. Chief District Court Judge Barbara Rothstein in Seattle and joined the Department of Justice as a trial attorney in the Criminal Section, Civil Rights Division, for four years in Washington, D.C. Much of her work was in the Deep South, and at the end of her Civil Rights Division tenure she worked on a task force investigating church burnings and other hate crimes. She worked her way up the ranks, and in 2010 she was sworn in as U.S. Attorney for the District of Idaho, having been nominated by President Barack Obama.

“It’s intriguing, challenging, exhilarating,” she said of her job. “It makes it easy to go to work every morning.” Especially the “legal and ethical questions associated with the digital age,” she said. Constantly, “we have to think about how the Constitution applies.”

Her ethical standards have remained the same since she was little – cherishing justice and fairness. Those are the traits she admires in other attorneys today. She added that the virtues she values in others are the same ones she tries to measure in herself. Among them is humility: “You have to be able to question your assumptions, even when you get it right,” she said.

She explained that much of what colors her professional life stems from the context of the U.S. Attorney’s Office. “We have the luxury to do what’s right on every single case,” she said. “We don’t have the crush of cases that face state courts. We don’t have the classic individual client. Our job is to do justice.”

“In an institution this big you

Constantly, “we have to think about how the Constitution applies.”

— Wendy J. Olson

can expect some group-think,” she said. But they try to avoid it. “We’re counted on to do the right thing.”

Case work on the federal level is very thorough and things don’t get rushed, she said. “We have the opportunity to spend more time, which is a luxury for prosecutors. I empathize with state prosecutors.”

Wendy said she thinks a lot about the victims. And she added that no matter how heinous the crime, “we must take a neutral attitude towards evidence. To make sure it is gathered fairly and justly.”

With society undergoing rapid change in the digital era, the department is challenged to keep up with technology, privacy, and all the moving parts in the justice system. With so many personal details on a person’s phone, technology has created some interesting judgement calls.

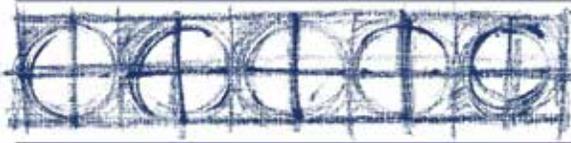
“I vacillate on law enforcement access to information” and the need for privacy, she said. “We have to determine in what situation to ask for a search warrant. I totally get that people want some space from government.”

And there are cases in which the criminals are, for various reasons, trying to make a living. “Most people who do get charged go to prison and, sooner or later, they come back into the community. So we should really be thinking about re-entry.”

“I’m a fan of lawyers. We’re counted on to do the right thing.”



Wendy J. Olson



U.S. Magistrate Judge B. Lynn Winmill applauds the competitors at the National Championship Mock Trial Competition in Boise.

Photos by



A high school student argues her case under the watchful eyes of judges, peers, coaches and teammates.

Idaho Hosts National High School Mock Trial Championship

Carey Shoufler

From Thursday to Saturday, May 12 to 14, the Idaho Law Foundation’s Law Related Education Program hosted the National High School Mock Trial Championship. 400 high school students representing 42 states, Guam, the Northern Mariana Islands, and South Korea along with their coaches, families, and other mock trial supporters participated.

Three years earlier, when the Idaho Law Foundation and the 2016 National Mock Trial Host Committee submitted a bid to host the 2016 National Mock Trial the goal was to provide participants with a premier, hands-on academic that would further their understanding of our legal system and highlight our beautiful state and gracious hospitality as we

hosted a pleasant and memorable event. From all reports, we were able to make that happen.

Teams participated in mock trials in our lovely Ada County Courthouse. They ate Basque food and danced with the Onkari dancers on Boise’s Basque block. They hung out at the Discovery Center and enjoyed food from several local food trucks. They had a wonderful time listening to a local cowboy poet and dancing the night away at the awards gala. These young people had the experience of a lifetime.

None of this would have been possible without the support of the many donors and volunteers. Thanks to Idaho’s legal community, the Law Foundation was able to secure support we needed to host a stellar 2016 National High School Mock Trial Championship.

These young people had the experience of a lifetime.

The Law Related Education (LRE) Program hopes to leverage the excitement from the 2016 National High School Mock Trial Championship for Idaho’s mock trial program. LRE will be convening a mock trial committee to develop a strategic plan for increasing mock trial participation throughout the state. If you are interested in participating on this committee, contact Carey Shoufler at (208) 334-4500 or cshoufler@isb.idaho.gov.



Making a precise point, this Mock Trial competitor presents an oral argument



Khala Hamilton takes on her opponents with logic, facts and law during the National Mock Trial Competition.

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Thank you to the organizations that have provided space, staffing and other support for the 2016 National High School Mock Trial Championship.

Ada County Courthouse

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All the competitors at the National Mock Trial Competition had previously won their state competitions and proceeded to the nationals, held in Boise in May.



Between the stress of competition and excitement making new friends, a competitor takes a short nap between rounds.

2016 NATIONAL HIGH SCHOOL MOCK TRIAL JUDGES AND VOLUNTEERS

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The National Mock Trial Host Committee includes, from left: Greg Dickson, Celeste Miller, Law Related Education Coordinator Carey Shoufler, and Mike Fica.



Students trade momentos during a dinner event on the Basque Block in Boise.

2016 NATIONAL HIGH SCHOOL MOCK TRIAL JUDGES AND VOLUNTEERS

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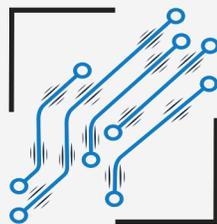
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