

The Advocate

Official Publication
of the Idaho State Bar
Volume 59, No. 2
February 2016



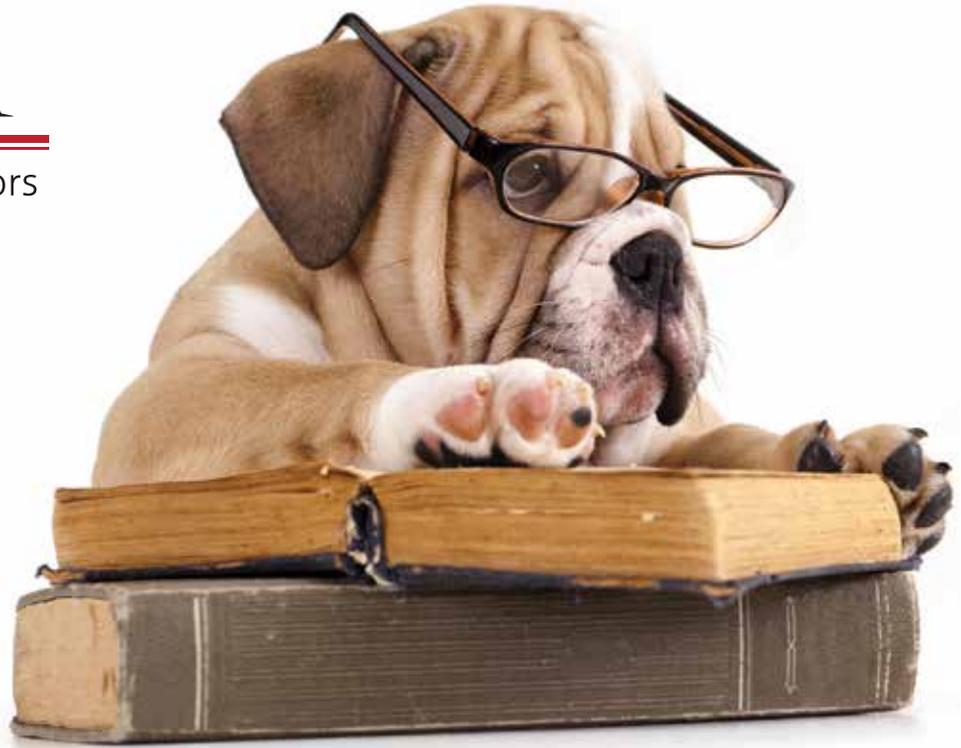
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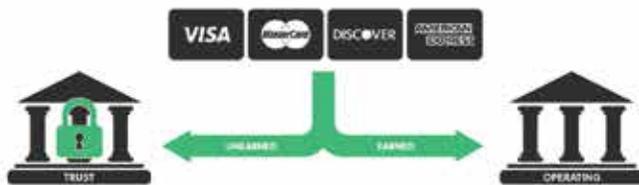


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The Advocate makes occasional posts and takes comments on a LinkedIn group called "Magazine for the Idaho State Bar."

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On the Cover:

Backcountry skier looks toward Sargent's Peak from north side of Brundage Mountain – Summit elevation 7,640 feet. The photo is Courtesy Brundage Mountain Resort.

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Special thanks to the February editorial team: Tienielle Fordyce-Ruff, Jennifer Schindele, A. Denise Penton.

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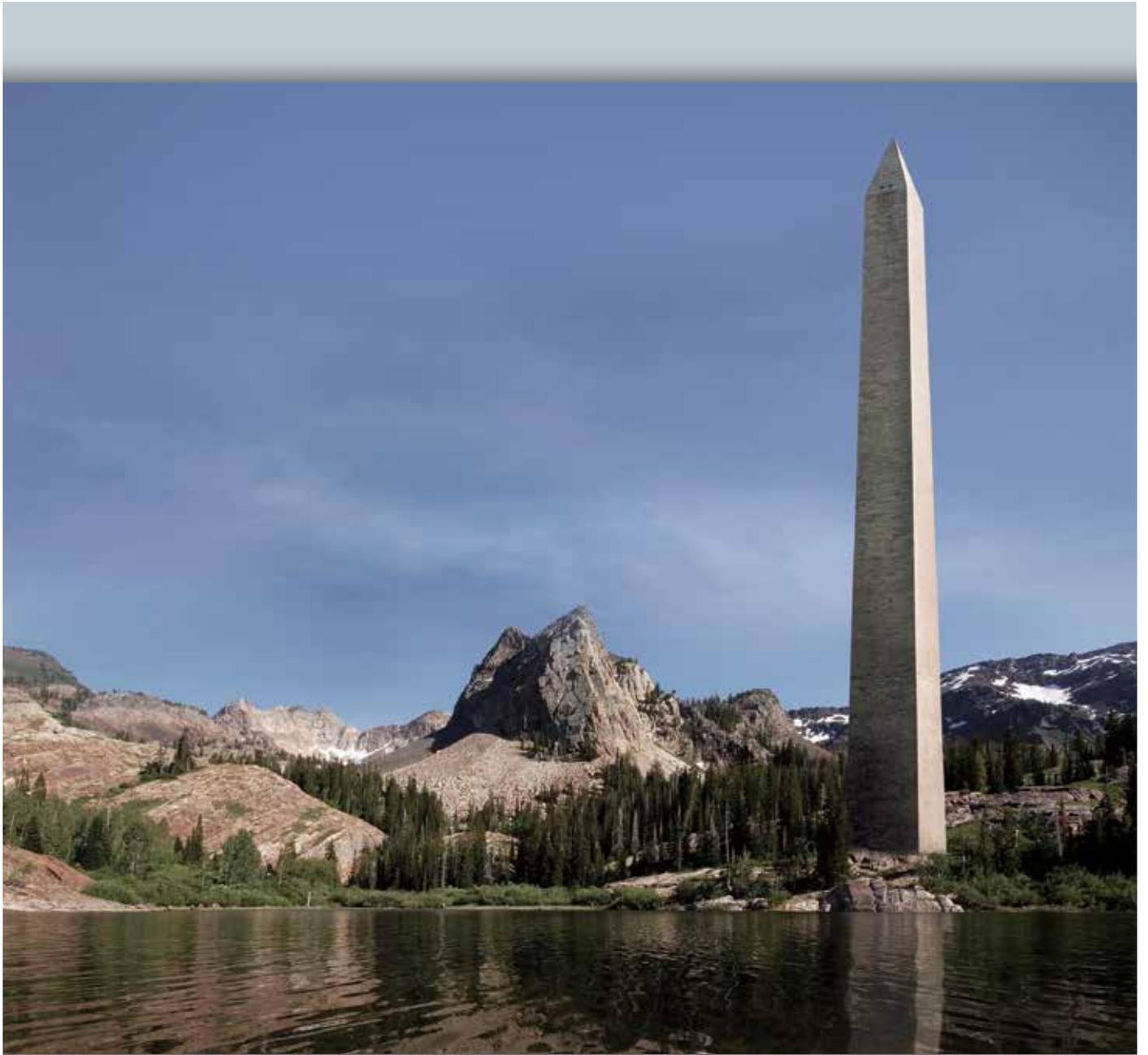
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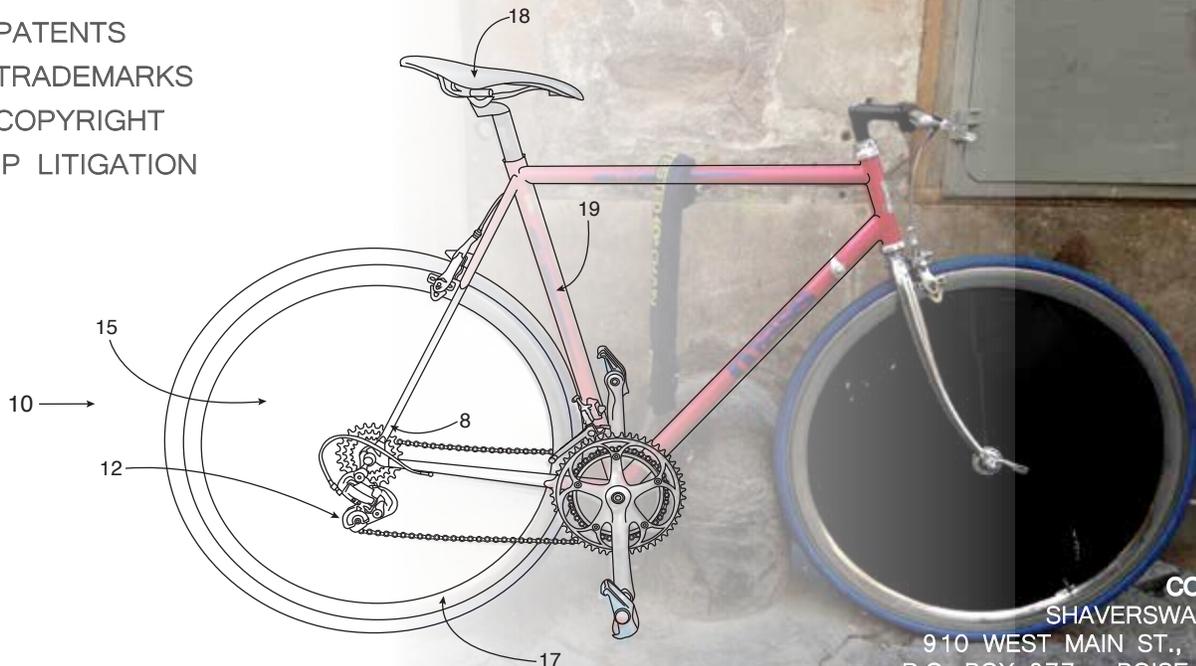
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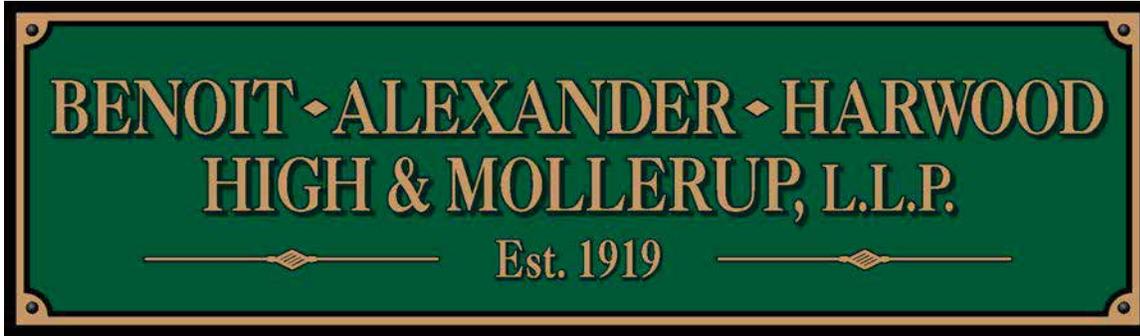
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Benoit Law is pleased to welcome Bren E. Mollerup as a named partner of the firm.



Mr. Mollerup joined the firm in 2009 and has been a partner since 2013. His practice is focused on civil defense in the areas of employment liability, product liability, personal injury and worker's compensation. Mr. Mollerup's practice also includes estate planning and family law. He can be reached at mollerup@benoitlaw.com or (208) 733-5463.

*Robert M. Harwood is now *of counsel* with the firm and can be reached at (208)726-4900.

The advertisement features a group photo of five attorneys (three men and two women) in professional attire, smiling. In the top left corner is the logo for Owens McCrea Linscott, LLC, which consists of the letters "om" in a stylized red and orange font, followed by the firm name in a bold, black, sans-serif font. Below the photo, the text reads: "ASSOCIATION OR FEE SPLIT ON MEDICAL MALPRACTICE, PRODUCT LIABILITY, PREMISES LIABILITY, EMPLOYMENT / WAGE CLAIMS OR OTHER SERIOUS INJURY CASES" followed by the phone number "208-762-0203". Below that, it says "MARTINDALE-HUBBELL AV PREEMINENT RATING / CERTIFIED CIVIL TRIAL SPECIALIST" and "BEST LAWYERS IN AMERICA SINCE 1993 / MOUNTAIN STATES SUPER LAWYERS SINCE 2010". At the bottom, the address "8596 N Wayne Dr., Suite A, Hayden, ID 83835" and website "www.omllaw.com" are listed.



Upcoming CLEs

February

February 18 – 20

34th Annual Bankruptcy Seminar
Sponsored by the ISB Commercial Law & Bankruptcy Section
Hilton Garden Inn Idaho Falls
700 Lindsay Blvd. – Idaho Falls, ID
13.25 CLE credits of which 1.0 is Ethics

March (continued)

March 16

Handling Your First or Next Motor Vehicle Accident Case
Sponsored by the Idaho Law Foundation, Inc.
The Law Center
525 W. Jefferson St. – Boise, ID / Statewide Webcast
9:00 a.m. (MDT)
2.0 CLE credits – **NAC**

March

March 4

Hot Writing and Hot Topics
Sponsored by the ISB Real Property Section
The Riverside Hotel
2900 Chinden Blvd. – Boise, ID
8:35 a.m. (MST)
6.75 CLE credits

March 9

Ethical Issues When Changing Law Firms
Sponsored by the Idaho Law Foundation, Inc. in partnership with Peach New Media and WebCredenza, Inc.
Audio Stream
11:00 a.m. (MST)
1.0 Ethics credit

March 11

Annual Workers Compensation Seminar
Sponsored by the ISB Workers Compensation Section
The Red Lion Downtowner
1800 W. Fairview Ave. – Boise, ID
8:15 a.m. (MST)
6.0 CLE credits

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

April

April 20

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

May

May 4

Ethics and Drafting Effective Conflict of Interest Waivers
Sponsored by the Idaho Law Foundation, Inc. in partnership with Peach New Media and WebCredenza, Inc.
Audio Stream
11:00 a.m. (MDT)
1.0 CLE Credit of which 1.0 is Ethics

****Dates, times, locations and CLE credits are subject to change. The ISB website contains current information on CLEs.**

Live Seminars

Throughout the year, live seminars on a variety of legal topics are sponsored by the Idaho State Bar Practice Sections and by the Continuing Legal Education Committee of the Idaho Law Foundation. The seminars range from one hour to multi-day events. Upcoming seminar information and registration forms are posted on the ISB website at: isb.idaho.gov. To learn more contact Dayna Ferrero at (208) 334-4500 or dferrero@isb.idaho.gov. For information around the clock visit isb.fastcle.com.

Online On-Demand Seminars

Pre-recorded seminars are available on demand through our online CLE program. You can view these seminars at your convenience. To check out the catalog or purchase a program go to isb.fastcle.com.

Webcast Seminars

Many of our seminars are also available to view as a live webcast. Pre-registration is required. Watch the ISB website and other announcements for upcoming webcast seminars. To learn more contact Dayna Ferrero at (208) 334-4500 or dferrero@isb.idaho.gov. For information around the clock visit isb.fastcle.com.

Recorded Program Rentals

Pre-recorded seminars are also available for rent in DVD and CD formats. To visit a listing of the programs available for rent, go to isb.idaho.gov, or contact Lindsey Egner at (208) 334-4500 or legner@isb.idaho.gov.





President's Message

Together, We Can Improve the Reputation of Our Profession

Trudy Hanson Fouser
President, Idaho State Bar
Board of Commissioners

February 2016 is the month I begin my tenure as the President of the Idaho State Bar. I practice in the Fourth District, but have lived in the Third District, gone to school in the Second District and was born and raised in the Sixth District. I am an Idaho native. As a child, as a teenager, and even as a college student, I never even thought of going to law school or becoming a lawyer. Fortunately for me, even though I truly enjoyed working in restaurants, I found myself applying to law school. Because of my extremely limited experience with lawyers, or even any knowledge of lawyers, I thought becoming a lawyer was something to be proud of. I had no idea this noble profession was saddled with such a poor reputation. Over the course of time, I learned that, for the most part, the public really does not think well of lawyers. The reasons apparently are many and, as we all know, the jokes are prolific.

Analyzing all the reasons why the perception is so poor is the subject for someone else, but this past fall your Board of Commissioners met to outline additional ways to assist the members. There are many ways to help improve the public's perception of us and the Board will continue to explore different opportunities. One thing we all agreed on; it is time to re-shape the

The Board decided that this year one of our priorities will be to help change the public's perception of lawyers by informing them of the generous and selfless efforts that so many Idaho lawyers take on.

perception of Idaho lawyers. The Board decided that this year one of our priorities will be to help change the public's perception of lawyers by informing them of the generous and selfless efforts that so many Idaho lawyers take on. We know this will not be the easiest task since the public is used to seeing lawyers "practice law" on television shows like *The Grinder* and *Better Call Saul*. But our profession is too important and too noble not to try.

So, before we look ahead to the New Year, please take a few minutes to look back on your generous contributions made to clients, organizations and individuals in 2015. Let's focus on the contributions of time and money made by individual lawyers, law firms, ISB sections, Judges, law school classes, law schools, district bar associations, the Idaho Trial Lawyers Association, the Idaho Association of Defense Counsel,

Idaho Women Lawyers, professional legal organizations, and the Idaho Law Foundation.

You will all be receiving an e-mail soon with a link to a brief survey at <https://www.surveymonkey.com/r/TSDD8T8>. Please take a few minutes to complete the survey so we can start gathering information about your contributions and then we can start sharing them with others. Tell us about your experiences as either a Big Brother or Big Sister, working with the Idaho military. Write to us about your fundraising activities, your contributions of food and clothing, your time assisting non-profit organizations, your work in schools. There is no meaningful act too small not to be recognized. We recognize that true giving should be done without fanfare but let's just try letting this well-kept secret out of the bag. Idaho lawyers are

incredibly generous with both their time and money!

You all deserve to be recognized and the Idaho State Bar is going to provide a platform for that recognition. We will showcase your contributions and generosity through various means, including: the Idaho State Bar's website and publications, various news and business-related publications, and publicize your efforts to other organizations.

As the public learns how generous you all are and what a difference you all make to your communities and the state, we are predicting we will hear fewer jokes.

The people of this state will be proud to know us and do business with us. I look forward to serving as your Bar President and the Commissioners are eager to hear about and promote your generous efforts. Please feel free to contact me at tfouser@gfidaholaw.com if you have ideas about how we can re-shape the perception of Idaho lawyers.

As the public learns how generous you all are and what a difference you all make to your communities and the state, we are predicting we will hear fewer jokes.

Trudy Hanson Fouser grew up in Malad City, Idaho, and has practiced civil litigation for over 30 years. She is a former recipient of the Idaho State Bar Professionalism Award and is currently serving as President of the Idaho State Bar. Some of her rather irrelevant "accomplishments" include being quite good at parallel parking, having a very loud whistle, running (used rather loosely) Robie Creek 10 times, finishing the NYC Marathon and finding out she had the largest head circumference in her high school graduating class.



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Immigration lawyers offer CLE

The Idaho Chapter of American Immigration Lawyers Association will present a 3-hour CLE on Friday, Feb. 26, titled, "Immigration Consequences of Certain Idaho Crimes." Please register with Nicole Derden, nicole@idahoimmigrationlawyer.net, or at the class. Checks should be made payable to the American Immigration Lawyers Association (AILA). Registration is \$80.

Magistrate Commission appoints Jill Jurries to bench

Jill Jurries, a Boise attorney specializing in family law, child custody and mediation has been appointed to the Ada County bench. She was selected by the Magistrate Commis-

sion of the Fourth Judicial District. Ms. Jurries, 40, will begin handling cases on the family law docket in January.

Ms. Jurries earned a bachelor's degree in political science from Seattle Pacific University and a law degree from the Pepperdine University School of Law in Malibu, Calif. She became a member of the Idaho State Bar in 2001 and is qualified to try cases in state and federal courts. Ms. Jurries formerly served as a deputy prosecuting attorney in Payette County and as a criminal investigator with the U.S. Secret Service.

6.1 Challenge deadline April 3

Based on Idaho Rule of Professional Conduct 6.1 and the responsibility of lawyers to provide pro bono

service, the 6.1 Challenge represents a friendly competition to recognize and encourage pro bono and public service from law offices within the Fourth District.

Keep track of your qualifying hours between April 1, 2015 to March 31, 2016 for the 6.1 Challenge. The deadline to submit your (and/or your firm's) qualifying pro bono hours and public service activities is April 3. Winners in various categories will be announced during the 2016 Law Day festivities.

For more information, e-mail Anna Almerico at aalmerico@isb.idaho.gov or call (208) 334-4510. For ideas for pro bono service, call Idaho Volunteer Lawyer Program at (208) 334-4510. Learn more by visiting: <http://www.isb.idaho.gov/ilf/ivlp/challenge.html>



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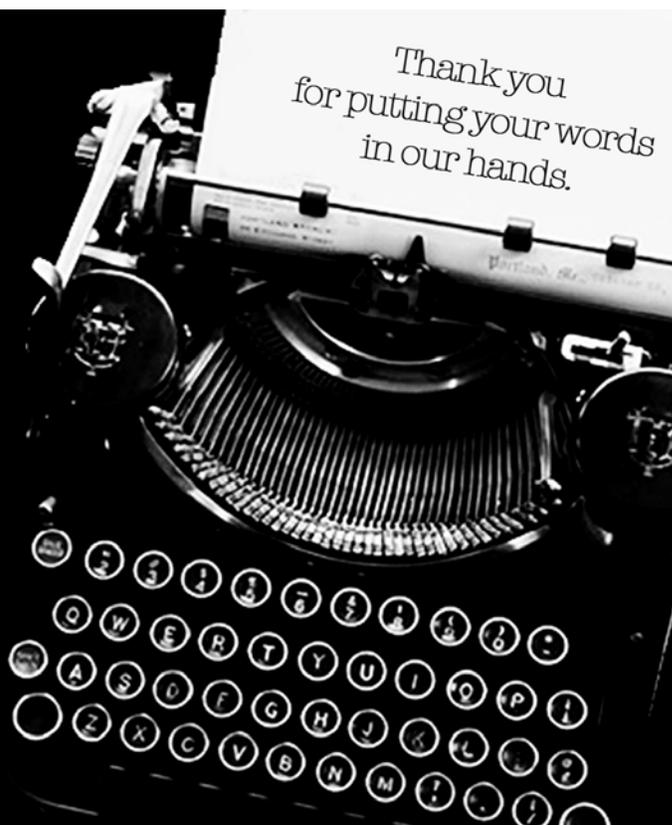


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The spoken word perishes; the written word remains.





Executive Director's Report

Idaho State Bar — 2015 Year in Review

Diane K. Minnich
Executive Director, Idaho State Bar

Admissions

Attorneys are admitted to the Idaho State Bar through reciprocal admission, the Unified Bar Exam (UBE) score transfer, or sitting for the bar exam. At the end of 2015, 19 states had adopted the UBE. Idaho allows reciprocal admission from 33 jurisdictions. Last year, only 44% of the attorneys admitted in Idaho sat for the Idaho bar exam.

Bar Exam/Reciprocal Admission		
Year	2014	2015
Bar exam applicants	190	181
Pass Rate	67.8%	70.1%
Reciprocal applicants admitted	74	61
UBE applicants admitted	34	33

ISB Membership		
12/14	12/15	Percent change
6,080	6,184	1.7%

Licensing/Membership

As of December 2015, the ISB bar member breakdown is;

- 5,002 active members
- 217 judges
- 30 house counsel members
- 861 inactive members
- 71 senior members
- 3 emeritus members

Bar Counsel

In 2015, 8 formal charge cases were opened and 10 cases closed. Of the 10 closed cases, 2 attorneys resigned in lieu of disciplinary proceedings and 8 received suspensions.

Discipline/Ethics			
	2014	2015	Percent change
Phone requests	1,135	1,318	16%
Grievances opened	354	337	-5%
Grievances closed	392	352	-10%
Complaints opened	31	50	61%
Complaints closed	44	39	-11%
Ethics questions	1,591	1,467	-8%

Fee Arbitration

There was a decrease in fee arbitration cases in 2015, 31 cases were opened in 2015 as compared to 43 cases opened in 2014.

Client Assistance Fund

Year	Claims	Total Paid
2014	7	\$57,800
2015	12	\$52,955

There were 11 client assistance fund cases opened in 2015 and 16 claims closed.

Lawyer Referral Service (LRS)

	2014	2015	Percent change
Calls	3,786	3,796	0%
Referrals	1,610	1,634	1.4%

The Lawyer Referral Service Committee and staff worked to finalize LRS changes designed to improve the quality of the service for attorneys and the public. The new program rules and guidelines will be implemented in early 2016.

Annual Meeting

The 2015 Annual Meeting was held at the newly remodeled Sun Valley Resort.

The program offered 15 CLE programs, several social events and

an opportunity to honor those who serve the profession and the public.

Annual Meeting			
	2014 Fort Hall	2015 Sun Valley	Percent change
Total Attendees	398	395	-1%
Attorneys and Judges	261	254	-2.5%

Member Services and Communications

In addition to our regulatory responsibilities, we continue to offer quality services to bar members. The services are designed to enhance your practice and professional growth. The services available to bar members can be found on our website: www.isb.idaho.gov. Services include; Casemaker legal research library, *The Advocate*, CLE programming, mentor program, Idaho Academy of Leadership for Lawyers (IALL), ALPS attorney match, job announcements, publications, weekly E-bulletin, Facebook, twitter, and discounts on services. Also, the 21 ISB practice sections offer many opportunities for learning, networking and service.

This past year, the Commissioners focused on educating the bar to recognize and stop bullying in the legal profession. Thanks to the many lawyers who contributed to this important discussion.

We are fortunate that attorneys and non-attorneys volunteer their time, and provide their expertise and resources to support bar programs and services. The Idaho legal community's commitment to improving the profession and serving the public is exceptional – Thank you for another successful year!

Welcome From the Family Law Section

Jennifer Schindele

As the current chair of the Family Law Section, I am honored to share the success of the Section this past year and introduce a series of articles authored by our members. The Family Law Section is one of the largest sections of the Idaho State Bar with membership currently exceeding 325. We have an extremely active membership with four officers and a governing council serving to provide education, mentorship and other benefits to our members.

The Section has historically planned and put on a CLE series on family law topics. This year was no exception. Our annual October CLE series, held in Boise, Idaho Falls, and Coeur d'Alene, was entitled *Divorce and Businesses: Experts, Appraisals/Evaluations, Determining Self-Employment Income and Dissecting Tax Returns*. The CLE was well received and I would like to thank Betsy B. Black and Curtis A. Clark for their contributions. The Section also sponsored a CLE at the annual meeting in Sun Valley this past July entitled, "Alienation and Reunification in High Conflict Situations." Also at the annual meeting, the Section presented the 2015 Award of Distinction to the Hon. Russell A. Comstock.

In addition, we recently completed a new Family Law Handbook and Formbook, available for purchase through the Idaho State Bar, and we revamped our list serv.

As a benefit of our membership, this year we began holding free CLE presentations during some of our Section meetings. Those topics have covered issues such as Brief Focused Assessments and the new E-filing System. In addition, we recently completed a new Family Law Handbook and Formbook, available for purchase through the Idaho State Bar, and we revamped our list serv.

In this issue of *The Advocate*, you will find an article by Nikeela Black addressing the question of whether non-merged settlement agreements regarding spousal maintenance can be enforced as a court order under ERISA. Michael Kraynick submitted a primer on the intersection of divorce and bankruptcy. David Lohman proposes an interesting solution to problems that arise when attorneys request an order allowing

withdrawal from a pending divorce or custody case. J.O. Nicholson III provides several survival tips for family law practitioners and Stephen A. Stokes equips practitioners with the necessary information to represent Idaho's military population. Finally, Thomas Whitney gives some insight into custody disputes as they are addressed in temporary order hearings under the new Rules of Family Law Procedure.

I hope you find these articles insightful and helpful in your practice. I would encourage anyone interested in joining the Section to contact me or any of our officers or council members to learn more about the benefits of membership. Our regular meetings occur on the second Friday of each month and the dates and times can be found on our page of the Idaho State Bar's website.

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Why Idaho Should Adopt a Family Law Rule Permitting Withdrawal Without Judicial Approval

David Lohman

Recently Idaho adopted new rules of procedure for most family law matters. Unfortunately some of the new rules do not yet go far enough. The rules should be changed to streamline how an attorney withdraws from a case. Idaho should adopt a family law rule permitting an attorney to withdraw without first obtaining judicial approval. This article focuses on Rule 112 of the Idaho Family Law Rules. It explains what is wrong with the current rule and proposes a sensible and tested solution to ameliorate the problem.

The current rule

Idaho Family Law Rule 112 addresses withdrawal by an attorney. The current rule provides, in relevant part, as follows: “no attorney may withdraw as an attorney of record for any party to an action without first obtaining leave and order of the court upon a motion filed with the court, and a hearing on the motion after notice to all parties to the action, including the client of the withdrawing attorney.”¹ This rule was imported into the new Family Law Rules of Procedure substantially unchanged from its iteration as Rule 11(b) of the Idaho Rules of Civil Procedure.

First consider the problems with the current rule. The rule is unclear, often rendered ineffective by delay, adds to court congestion and interferes with the private contract between the client and his or her lawyer.

Rule 112 is unclear

Many questions arise under the current rule. A few of them are as follows:

The rule is unclear, often rendered ineffective by delay, adds to court congestion and interferes with the private contract between the client and his or her lawyer.

- Can an attorney altogether skirt the rule by simply having the client substitute in place of the withdrawing attorney?
- Can the client waive application of the rule?
- What happens to the lawyer during the time required between the motion to withdraw and the date the court grants the order to withdraw?
- Must the lawyer continue to work for the client during this gap period?
- If the client makes clear an intention to no longer pay for legal services during this gap period, does the client’s expressed position automatically create a conflict of interest under Rule 1.7 (a) (2) of the Idaho Rules of Professional Conduct?²

These are questions with no easy answers. They highlight issues that arise when a lawyer withdraws under the current rule.

Consider the application of Rule 112 from the lawyer’s perspective

From the lawyer’s perspective the rule is a version of involuntary servitude. For the better part of three weeks³ the lawyer is expected

to continue to work diligently and usually without any expectation of being paid for his or her time and attention to this matter. The situation only gets worse if the client makes clear his or her wishes that the lawyer no longer provide services.

Given that the client has ultimate control over the work the lawyer performs⁴, the lawyer is now in a real quandary. The situation is not made any easier by knowing that it will take time to explain all of this in a public hearing before a judge who will hear the lawyer’s motion to withdraw. It will take even longer to explain the situation to bar counsel if the client tells the lawyer to stop work and then blames the lawyer when something goes wrong in litigation while waiting for a hearing on a motion to withdraw.

Consider the application of Rule 112 from the client’s perspective

Assume for valid reasons the client wishes to discharge his or her counsel. The client must first tell the lawyer, who is then required to prepare and file with the court a motion seeking permission from the magistrate to obey the client’s instruc-

tion. The lawyer should also draft a carefully-worded affidavit explaining the “just cause” required by Rule 112. Then the lawyer must schedule a hearing, prepare notice of that hearing, appear at the hearing and explain all of this to the magistrate. Finally, the lawyer must draft an order complying with Rule 112.A.

All the while the family law client just thinks, “I asked you to stop work and depart. Why are you still here?” Pretty soon the client is convinced that the only thing worse than no lawyer at all is having a lawyer who does not follow this basic direction to stop work. Even if the lawyer makes a good explanation of Rule 112 and the procedure required to withdraw (probably also at the outset of their professional relationship), the client will only want his or her lawyer to depart. The steps required by Rule 112 will always seem like unnecessary delay to the client.

Yet when everyone arrives at the hearing and the magistrate (presumably) grants leave to withdraw, the court will then advise the client to go find another lawyer within 20 days and explain that unless the client finds another lawyer really bad things will happen to the client. The client might respond, “But I just want to represent myself. Can’t I do that?” To which the magistrate will reply, “Sure, just file a simple notice with the clerk of the court.” And then the client makes fools of everyone by asking why he or she could not have simply done that weeks ago when he or she terminated the lawyer-client relationship. The magistrate’s only answer is, “Well . . . we have this awkward rule in Idaho and this is the way we have to do it.” Of course a more tactful or compassionate answer can be given but not one that can be distinguished in principle from this line of reasoning.

Delay often renders Rule 112 ineffective

Under Rule 112 permission to withdraw is required from the magistrate and is granted only after a hearing is held. At least in the First Judicial District where this author works, a hearing is typically 45 to 60 days away and at times has not been available under any circumstances. Sometimes there is just no place to put one more hearing on the magistrate’s calendar. Requiring a hearing on a motion to withdraw requires the litigants and counsel to

Under Rule 112 permission to withdraw is required from the magistrate and is granted only after a hearing is held.

wait for the hearing to rotate up on the court’s calendar. Eliminating the requirement of judicial oversight of the withdrawal process would allow the litigants to resolve the matter faster.

Occasionally the only place the magistrate can find to fit in a hearing on a motion to withdrawal is the morning of the trial.⁵ For obvious reasons a hearing on a motion that significantly alters the trial landscape on the eve of trial is a bad idea. Waiting for the motion to be heard inconveniences the party seeking to

discharge his or her attorney. Granting the motion on the eve of trial inconveniences the opposing party and his or her counsel. Denying the motion on the eve of trial surprises everyone and disadvantages the lawyer who must do his or her best with a client now suspicious of the awkward process.

Rule 112 increases court congestion because it requires a hearing

Remember when Idaho required persons seeking a divorce to personally appear in court with a corroborating witness and provide sworn testimony in support of what was at the time called a divorce complaint? The legislature first saw reason to do away with the requirement of a corroborating witness thereby streamlining the process. Next, a change in the rules of procedure eliminated the requirement of sworn testimony from the plaintiff, permitting the magistrate to evaluate the propriety of the proposed decree outside of the courtroom. For the same reasons the state should permit two persons who no longer wish to associate to separate: the lawyer and client.

Judicial oversight interferes with the right to contract

A written contract between an attorney and a client is all but required by the Idaho Rules of Professional Conduct.⁶ Nevertheless such a contract is merely a private agreement and subject to negotiation between the parties, in this case a lawyer and prospective client. The engagement agreement may contain provisions making the contract terminable at the will of either party. Typically the client will want a provision permitting the client to terminate the contract in the event he or she is not

satisfied with the services of the lawyer. Likewise, the lawyer will want a provision permitting the lawyer to discontinue his or her services if the client fails to pay as agreed.

Yet for reasons not clear to the author, Idaho requires judicial approval of the lawyer's request to terminate the engagement agreement. More precisely, the lawyer may be permitted (by the terms of his or her engagement agreement) to terminate the contract with the client, but under the provisions of Rule 112 the lawyer must wait for judicial approval of his decision to invoke those provisions of the engagement agreement which permit termination. This is unfair to the lawyer.

It is also unfair to the client. Citizens are trusted to make other important decisions in their management of daily affairs, such as the selection of a physician, accountant, pharmacist, investment advisor, mortgage loan consultant, land surveyor, undertaker, building contractor, and even a cell phone service providers. Only Rule 112 and cell phone providers restrict the terms under which one party can leave the relationship.

The solution to this problem

Idaho should adopt a family law rule permitting a privately retained attorney to withdraw upon notice first given to the client and all counsel of record. Any rule should provide that the withdrawing attorney can simply give written notice of a date after which he or she shall be considered to have withdrawn without the need for court review and approval. The rule should provide a minimum period of notice. A similar Washington Civil Rule provides 10 days notice to all parties of record and the client.⁷ It would be best to also require the notice to advise that

The client will be served because they can discharge a lawyer and see the lawyer actually obey their direction and promptly depart.

the withdrawal will be effective unless an objection is filed with the clerk of the court and served on the withdrawing attorney prior to the date set out in the notice. In this way the client will be aware of the need to respond to the notice.

It would be possible to include the same procedural safeguards presently found in Idaho Family Law Rule 112. Any new rule could still provide that the notice of withdrawal include the date set for trial or the next hearing, the name and address of the client of the attorney seeking to withdraw.⁸ Any new rule should still provide that the withdrawing attorney serve notice of the proposed withdrawal on his or her client.⁹ The rule should provide that the withdrawal shall be effective at the time stated without order of the court and without the need to file any additional papers unless a written objection is filed and served on the attorney seeking to withdraw. Any new rule should provide that if a timely objection is served then the magistrate makes a decision and enters an order resolving the objection.

Why the proposed solution is a better procedure

Unilateral withdrawal will permit lawyers to better serve family law litigants by being available only

when needed. By making it easier to end representation, lawyers will no longer be forced to either see the project through to conclusion or seek to withdraw at the first sign of trouble. A savvy client could handle pretrial discovery, early negotiations and some mediation without the help of a lawyer and then hire a lawyer for an informal trial. Lawyers could come and go as needed. The client will be served because they can discharge a lawyer and see the lawyer actually obey their direction and promptly depart.

Conclusion

The creation of separate family law rules makes it possible to develop rules that better serve families, magistrates and lawyers. However in this area there is room for continued improvement. The changes suggested here are one more step in the evolution of rules that fit the unique nature of family law. It is a small step in the correct direction.

Endnotes

1. Idaho Family Law Procedure Rule 112
2. IRPC Rule 1.7(a) (2) provides in relevant part: "Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if . . . there is a significant risk that the representation of one

or more clients will be materially limited by . . . the personal interests of the lawyer, including family and domestic relationships." Although a client can, theoretically, consent to the conflict, under these circumstances it is hard to imagine a situation in which a client would grant such consent.

3. Idaho Family Law Procedure Rule 501.C.1 provides that a moving party must give at least fourteen days written notice of a motion and Rule 104.C provides for three more days if service on the client is by mail.

4. IRPC 1.2(a) provides in relevant part: ". . . a lawyer shall abide by a client's decisions concerning the objectives of representation . . ."

5. The notice sent by the court scheduling a pre-trial conference specifically prohibits counsel from adding anything to the calendar at that point.

6. IRPC 1.5(b) provides in relevant part: "The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a

reasonable time after commencing the representation . . ." (Emphasis added.)

7. Washington Civil Rule 71

8. A provision could be included to protect privacy of those persons whose addresses should not be disclosed, such as any person in a domestic violence shelter.

9. Notice should probably be required to be sent by certified mail, postage prepaid, to the client's last known mailing addresses. Proof of service or mailing

shall be filed with the court. A provision to safeguard the client's address could be included here for the reasons suggested above. It might be best to also permit service on the client in a way calculated to provide actual notice of the withdrawal in addition to simply mailing the notice. For example notice could be sent by certified mail and then also sent by first-class mail (which the post office will forward) and sent by email or text message.

David Lohman was first licensed to practice law in Idaho in 1985, and later in Washington in 2008. His professional practice includes a significant family law component and he prefers using the Collaborative Law model. When not working he enjoys cooking, fishing, bow hunting and tending his tree farm.



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Survival Tips for the New (Family Law) Lawyer

J.O. Nicholson III

After 25 years of practice, I've collected a lot of knowledge. Crazy, how fast time has flown. Here are several tips to help the new lawyer, especially the new family law lawyer, survive and thrive in practice.

We are not miracle workers

Remember that family lawyers are not magicians or miracle workers. Clients can have unrealistic expectations of what family lawyers are able to accomplish. Some clients believe that we can simply pay off the judge or have "dirt" on judges which we can hold against a judge to accomplish the impossible. Other clients may want us to provide sole custody for their children when they have not spent any time with their children for years.

When a client's expectations are unobtainable the best thing to do is to have a serious "heart to heart." Frankly, the client may not always want to hear what you have to say, but if she doesn't hear it from you, she will hear it from the court after spending a great deal of time, money and heartbreak.

Restraint

Some clients have a hard time understanding restraint. They don't understand that sometimes waiting and talking it out is the better option. Sometimes they simply want to push ahead and go for scorched earth with the opposing parent. This tactic seldom sits well with the court.

Often restraint can work to the client's advantage. When a client has made every effort to work through

When a client's expectations are unobtainable the best thing to do is to have a serious "heart to heart."

issues and the opposing party is obstinate just for stubbornness sake, and refuses to focus on the issues at hand, the court hears volumes.

The facts had better be the facts

Make sure you understand the facts that the client presents to you during your meetings. Then verify the facts and make sure they are correct prior to moving forward. The worst time to find out the facts are not really true is when you are sitting in day two of your trial and you see all the facts you relied on go down the drain. Ugh.

The law is not always the way it works

It is very easy to explain to clients how the law applies to the facts. However, the client must also understand that just because the law says that is the way it is, that is not always the way it will be. Every court is different and every court handles cases differently.

The practice of law is the nuances of understanding what the court wants and understanding how the court will deal with each case. Ad-

ditionally, there are times when intangibles that are not part of the record influence the outcome. Courts see the personalities of the parties during trial or hearings. These unknowns can greatly impact how the court finalizes cases.

Talk to your colleagues

List serves and other social media are a great way to communicate and get ideas from lawyers from all over the state. Sometimes, however, you need an answer right away. Establish a good rapport with a few people who you can call on short notice. Even better, walking down the hallway and bouncing ideas off a fellow lawyer is invaluable.

Cadillac vs. Yugo

Sometimes you have to tell your client he simply cannot afford the Cadillac case and instead will have to settle for the Yugo case. At times, you will have clients who will be extremely demanding and expect you to file motion after motion. If the motions have no merit, you need to have a serious conversation with

your client regarding the efficacy of filing such a motion.

Other times motions may have merit, but the client has limited resources, so your client needs to choose his battles carefully. If every client had unlimited resources and could file motion after motion and hire private investigators the court system would shut down. There are not enough judges to hear everything our clients may want. We must help our clients realize that resources and time are limited.

Familiarize yourself with the rules

Keep yourself up to date on the current rules and law. Additionally, make sure you understand the rules and laws to effectively assist your clients.

Social media and emails

I cannot count the times I have cautioned clients to be careful what they post on social media. I am frankly surprised at some of the emails I have read or Facebook postings I have reviewed during the discovery process. The Internet can be an invaluable discovery and evidence tool against the opposing party. However, they can also be the death knell for your client's case. Parents and soon-to-be ex-spouses beware.

Retainer. Retainer. Retainer.

I repeat: Retainer. Retainer. Retainer. Do I need to say more?

Lawyering

I coined a phrase not too long ago: "Planting the seeds and pulling the weeds." This was a salient observation of what happens so often with our jobs as lawyers. Many times our clients do not see what we do behind the scenes for them. Also, what

Old tips still valid even today

I have written two previous survival tip articles.¹ Even though some of the previous survival tips are antiquated some still bear repeating:

People lie

I am surprised how often I will catch people in a lie. I always call them on the lie. Sometimes they will be so caught up in the case they honestly believe their position. Sometimes I am mistaken and they will clarify their position. Whenever I am in doubt, I always try to get solid information and evidence.

Take good notes

Many times I have had to go back and review my notes to verify what was discussed with parties, counselors, evaluators, opposing counsel or what happened in court. It is very helpful when you know you told somebody to do something or you have an issue everyone agreed on.

Additionally, taking good notes will be very helpful if an attorney from your office has to cover for you if you are not available for court.

Unfortunately, sometimes attorneys stop trusting certain other attorneys. I have had to deal with a few attorneys only in writing because I am not able to have oral conversations with them. Hopefully, you will not have to get in a battle of letters back and forth to verify every conversation. Most attorneys I work with are good and keep their notes as well. When you get into a "ping pong" letter practice with an attorney it can be quite ridiculous. Remember that we are all professionals and should act as such. Your clients will appreciate this practice and the courts will appreciate your veracity.

Smile and laugh

Laughing is one of the great things we can do for our health. After all these years of practicing law I would have to concur; it releases a lot of stress. And it makes the people around you happy as well. Don't be afraid to laugh at yourself, after all we are all human.

Smiling is a great tension breaker between dueling parties. I have said before and will say again: smiling is infectious. It is very difficult for somebody to not smile at you, when you smile at them. Everybody has a certain personality, but it is rare that a smile is not hiding behind that stern or stoic face. If more people would smile and communicate, even when they disagree, the world would be a better place and feuding parties would make better decisions in lawsuits.

Show judges respect

It is okay to question a judge once in a while. However, remember this will not be the only case you will have in front of that judge. You also do not want the reputation of a lawyer who is disrespectful to judges.

Being respectful does not mean you have to back down when arguing a point. Being respectful does not mean you have to drop an objection. It is OK to object and make a record. Courts will expect you to advocate for your client. Just remember to be professional and respectful.

Be courteous, friendly and nice to court personnel and your office staff

If you don't understand this "golden rule" you have not been practicing enough.

Be on time for court hearings

Be on time. Be on time. Be on time.

Be objective

Subjectivity can be punishing when representing a client. Objectivity will allow you to stay focused and best represent your client.

When in trial make sure your client has a notepad and pen

You need to focus on the evidence and witnesses while in trial. If your client is constantly interrupting you, you will be distracted. Have your client jot notes and during a break in the action read his or her notes. If it is necessary, take a recess to discuss topics which are pertinent in the case.

we do for clients often times is not part of the record.

However, sometimes talking to the right person or speaking in chambers with the court and counsel can accomplish much more than actually putting information into evidence or placing witnesses on the witness stand. After all, the ultimate goal is to accomplish the objective for the client. Lawyering comes in many forms. Sometimes just explaining to the client how to act in the future can pay big dividends for them, even if it takes a couple of years before that seed actually grows.

Attorney fees just for attorney fees sake

I believe some attorneys do what they do just to drive up attorney fees (and this drives me crazy). This can end up costing both sides an exorbitant amount of money. Sometimes we must fight the fight. However, the same goal can often be reached if both sides cooperate and see the light.

What I call “machine gun” lawyers are out there. They will do whatever it takes to make life miserable for the opposing spouse or parent. I have had to “fire” clients who have asked me to do things I disagree with just to make the other side miserable or to prove a point. All attorneys must decide for themselves what type of lawyer they want to be.

If you and your client are on the same page, so be it. But understand the consequences, (like attorney fees being awarded against your side.)

If you decide to not pursue the craziness of custody and divorce machine gunning, start talking. Even if you disagree, be civil and try to figure out what the real issues are and then try to address them or at least whittle down the issues through stipulation. Save the real issues for trial if necessary.

I have had to “fire” clients who have asked me to do things I disagree with just to make the other side miserable or to prove a point.

Relax

I have had the opportunity to know people from all walks of life. I have seen alcoholics, drug addicts and miserable people. I have also seen happy people who are squared away. It doesn’t matter what your profession is or what path you have chosen in life. The one constant that seems to rise to the top: money is not happiness. Lawyers will sometimes fall into the money trap. Remember not to fall into that trap. Also, don’t turn to alcohol or drugs to relieve stress.

Enjoying life and relaxing is very important to your well-being and

will help you in your careers. I recommend finding a hobby that takes you away from the rigors and stress of the daily grind. I further recommend exercising regularly. I have found that hiking can be highly stress reducing. Sometimes I will put on a weighted pack and just find a mountain to climb to relieve stress. Idaho is full of many opportunities to accomplish stress reduction. Take advantage of what this great state has to offer, stay relaxed and keep smiling.

Endnotes

1. The first was published in the October 1994 *Advocate*. The second was published in January 2002 *Advocate*.

J.O. Nicholson III is a former prosecutor. He is now a partner in the law firm of Nicholson Migliuri Rodriguez, PLLC (NMR LAW) which dedicates a large amount of their time to family law matters. Jon is still actively hiking and hunting in the mountains and deserts of Idaho.



Divorce, Bankruptcy, and the Division of Property and Debt for the Family Law Practitioner

Michael Kraynick

The issue of bankruptcy must be addressed in many divorce cases. Typically, husband and wife jointly file for bankruptcy or one of them files before, during, or after the divorce and the other does not. This article will explore the most basic permutations of divorce and bankruptcy. The focus of this article is on the division of property that may be the property of the estate in bankruptcy. While the bankruptcy stay does not preclude actions involving child custody or visitation, domestic violence, or divorce in general, the stay does affect the allocation of property by the divorce court.¹

Bankruptcy filings can take place at different times and the scope of this article will be limited to the types of bankruptcy most common to married couples: Chapter 7 and Chapter 13.² Bankruptcy can occur before the divorce action is filed, during the pending divorce, or after the divorce action. To further complicate matters, it can be filed jointly or separately and depending on which chapter is filed, can have myriad effects on the parties and the court. A party may also be dismissed from a bankruptcy case creating even further issues of liability for the debts addressed by the bankruptcy and the protections a party may expect.

Chapter 13

One of the more common scenarios is where parties to a divorce have jointly filed a Chapter 13 bankruptcy and have been following the repayment plan when one spouse files a petition for divorce. The continuing payment of the plan is required

Arguably, when a plan is approved, the debtor's property vests back to the debtors and any divorce related division of such property is a state court issue in which the bankruptcy court does not take an interest.

by the bankruptcy court regardless of the divorce action. However, the magistrate does have the authority to order which party will continue to pay the plan during the pendency of the divorce. The magistrate can additionally order payment of debts that are exempt from the bankruptcy or were ordered to be paid outside of the plan by the bankruptcy court. This occurs commonly with secured debts like residential mortgages and auto loans, along with typical recurring expenses not part of the bankruptcy plan such as utilities, auto and health insurance, phone bills, and the like.

It should also be recognized that temporary orders to keep the boat afloat during a divorce may also conversely affect the Chapter 13 repayment plan since the parties' respective budgets will most certainly be affected by the temporary orders. A spouse should remain in close contact with the Trustee if his or her income or expenses are going to be affected by temporary orders in the divorce case (spousal maintenance and child support being two examples) since the repayment plan was in large part based on those factors.

While debt allocation is less of a factor for consideration by the magistrate where a Chapter 13 repayment plan exists, allocation of real and personal property subject to the bankruptcy is another matter. The bankruptcy court does not apportion the community or separate property, nor does it exercise control over possessions or any like issue regarding ownership of or title to the property. A Chapter 13 filing may discharge some of the parties' debt(s) and reorganize the remaining debt after considering assets, income, liabilities and expenses, ultimately resulting in a repayment plan, and discharging the debts after successful completion of the final repayment. Arguably, when a plan is approved, the debtor's property vests back to the debtors and any divorce related division of such property is a state court issue in which the bankruptcy court does not take an interest.

However, to be on the safe side, one spouse or the other, or both, should make immediate application for relief from the automatic stay imposed by the bankruptcy court.³ The bankruptcy court will routinely grant these motions and so long as the re-payment plan continues to be

complied with, such relief will allow the magistrate to proceed with and complete the divorce. This would include making an allocation of payment of the plan and division of the property of the estate in bankruptcy.

If relief from the stay is not sought and the magistrate court declines to proceed with divorce, payments made by one party to the repayment plan may not be reimbursable and may only reduce the debt represented by the repayment plan to the detriment of the paying spouse. Of course, while allocation by the magistrate is allowed pursuant to the relief from the automatic stay, the property will continue to be subject to the continuing jurisdiction of the bankruptcy court in the event of default in the repayment plan. This presents a unique situation for the magistrate court, insofar as the relief from the automatic stay allows the magistrate to allocate the property and complete the divorce. However, in the event the repayment plan is not completed and the discharge of the debts does not occur, it is possible that these issues will come back before the court after the divorce decree has been entered since the magistrate did not allocate those debts at the time of divorce.

It should also be recognized that a Chapter 13 plan typically takes place over several years and has continuing obligations besides mere payment under the plan. The Trustee and the bankruptcy court must be advised if there is a change in income, loss of employment, or other changed circumstances that may alter the parties' monthly budget. The parties must also submit their tax returns each year. Failure to keep the Trustee and the court advised of this information may result in dismissal of one or both parties from the bankruptcy case, thereby subjecting one or both of them to collection ef-

forts including liens on property allocated to the dismissed party by the divorce court.

Chapter 7

I personally have not experienced spouses jointly filing a Chapter 13 bankruptcy after commencement of a divorce action, and while certainly possible, a practitioner is more likely to encounter one party or both filing for Chapter 7 after a petition for divorce has been filed. As a practical matter, unless there are unique issues present, or other reasons one

While the filing spouse will list all community and separate property and debt in his or her bankruptcy filing, the discharge of those debts will only be as against the filing spouse and liability for those debts will continue to burden the other spouse even after the Decree is entered.⁴

spouse may not want to join in the bankruptcy, if the parties are eligible for a Chapter 7 bankruptcy and can benefit from the mutual discharge of debt, it is better to file jointly and complete the Chapter 7 either before commencement of a divorce case or before entry of the Decree. The magistrate can then allocate the remaining community property. But for attorney fees, the magistrate probably does not have to address the allocation of any community or the confirmation of any separate debt as most if not all debt will have discharged in the Chapter 7 filing.

One spouse seeking protection under Chapter 7, either before or after the commencement of a divorce action, presents entirely different considerations where the other spouse chooses not to join in the bankruptcy. While the filing spouse will list all community and separate property and debt in his or her bankruptcy filing, the discharge of those debts will only be as against the filing spouse and liability for those debts will continue to burden the other spouse even after the Decree is entered.⁴ When only one spouse files, that spouse uses up all the community property exemptions regardless of whether he or she actually has possession of such property. The number and amount of property exemptions is also more limited (as opposed to a joint filing which allows for the protection of more property). Additionally, the Trustee, having the obligation to collect and liquidate any of the debtor's assets may demand the non-filing spouse buy back the property, like an automobile, by paying the bankruptcy court the fair market value of said property in cash. Otherwise, the bankruptcy court may order such non-exempt property sold.

If the non-filing spouse does not join in the debtor spouses filing, he or she may file separately. Nevertheless, this may present its own challenges since the second to file spouse's exemptions will be limited by the first filing and only community assets acquired after the first filing and his or her separate assets can be listed in the bankruptcy estate.⁵

Drafting agreements and judgments

Drafting a proposed Judgment and Decree of Divorce when bankruptcy is involved or anticipated becomes increasingly important and the family law practitioner and his or her client may benefit from engaging a bankruptcy attorney to review

it for any pitfalls and possible unforeseen consequences. While debts allocated in a divorce that are owed directly to the former spouse are excepted from discharge, any debt not owing directly to the former spouse will be discharged in a Chapter 7 proceeding. This discharge is done without consideration of the debtor's ability to pay or potential income in the future or any liability the debtor's former spouse may incur for the debts discharged against the debtor. Where one spouse files a Chapter 7 and obtains a discharge, the magistrate may be met with a situation in which the non-filing spouse is still subject to all the debt and the magistrate awards all the assets to the non-filing spouse. This is probably not something the debtor anticipated. Conversely, a spouse who fails to join in the bankruptcy or file his or her separate bankruptcy case may find themselves involved in collection actions regardless of the state court's allocation of that debt to the other spouse.

Practitioners should also be wary of the use of hold harmless clauses when allocating debt in a marital settlement agreement where a Chapter 7 case has been filed or may be anticipated. A debt owed to a third party and allocated in a divorce decree that includes a hold harmless clause is a new debt created by the Judgment and Decree of Divorce and therefore owed directly to the former spouse and consequently not dischargeable in bankruptcy.

Conclusion

This is hardly an exhaustive consideration of all of the possible impacts of bankruptcy in a divorce action. However, the family law practitioner may glean some basic conclusions when met with the impact a bankruptcy may have on the parties and drafting settlement agreements or going to trial. If bankruptcy is

being contemplated by one of the parties then, for most married couples having financial difficulties, it is probably better for both parties to join together and complete the bankruptcy prior to entry of a Judgment and Decree of Divorce. A former spouse cannot join in a bankruptcy after the decree is entered. In a Chapter 13 bankruptcy, one or both parties should immediately seek relief from the automatic stay in order for there to be no reluctance by the magistrate to allocate property. And finally, where bankruptcy is filed by only one spouse or is anticipated post divorce, the drafter of the settlement agreement may want to avoid hold harmless clauses that may have unforeseen consequences by creating new obligations directly to the former spouse. The family law practitioner facing decisions for his client or when drafting settlement agreements and proposed judgments should seek the advice of competent bankruptcy counsel.⁶

Endnotes

1. See 11 U.S.C. §362(b). It should be mentioned that domestic support obligations are not subject to the stay resulting from a bankruptcy filing and they are in first priority to be paid under 11 U.S.C. §507(a)(1). Equally, wage garnishment or other withholding of income for payment of domestic support obligations is permitted and does not violate the stay. The Trustee cannot avoid transfers to *bona fide* debt payments for child

support. Domestic support obligations is defined to include not only debts owed to a spouse, former spouse, a child or that child's parent, legal guardian or responsible relative, but also a governmental unit or agency. This would include alimony, maintenance or support as well as debt that may be assigned by any such payee for the purpose of collection including but not limited to interception of a tax refund or enforcement of a medical obligation. The stay does not offer any protection to the debtor against actions to enforce those obligations such as a driver's license or professional or occupational license or even hunting/fishing license suspension.

2. Chapter 7 bankruptcy is a liquidation bankruptcy designed to erase general unsecured debts. Chapter 13 bankruptcy is a reorganization bankruptcy designed for debtors to enter into a repayment plan in order to pay back some portion of their debts.

3. U.S.C. 11 U.S.C. §362(a).

4. See *Twin Falls Bank & Trust Co. v. Holley*, 111 Idaho 349, 353, 723 P.2d 893, 897 (1986) in which the Court held "When either member of the community incurs a debt for the benefit of the community, the property held by the marital community becomes liable for such a debt and the creditor may seek satisfaction of his unpaid debt from such property."

5. See *In re Hicks*, 300 B.R. 372, 376-377, 03-4 I.C.C.R. 210, 211-212 (Bankr D. Idaho 2003, Pappas, J).

6. For more information the family law practitioner might read the following: *When Worlds Collide – Bankruptcy and Its Impact on Domestic Relations and Family Law*, Fourth Edition by Michaela White; *Bankruptcy Issues for State Trial Court Judges*, Third Edition, American Bankruptcy Institute.

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Equipping Practitioners to Represent Idaho's Military Population

Stephen A. Stokes

The Idaho Military Legal Alliance provides pro bono legal services to Idaho's military population.¹

The Alliance's flagship program is working with community partners to establish pro bono military legal clinics around the state.² For volunteers, an unequaled desire to help Idaho's military population is perhaps matched only by trepidation that comes with not understanding the law. This article will discuss common military legal issues arising in family law cases to help equip those who serve Idaho's military population, whether in a pro bono capacity or otherwise.³ I will discuss several topical areas: initial issue spotting; personal service; the Servicemembers Civil Relief Act; child custody; child support; division of marital property; and several ancillary issues. This article is intended as a very basic primer — counsel must conduct additional research to adequately represent military clients.

Initial concerns

Several preliminary issues shape a military case. First, is a party even in the military? Verifying service may seem simple, but it may require a detailed search of military records. There are many resources available to help verify military service.⁴ Verification is especially important when moving for default and default judgment, since federal law requires movants to certify service.

Jurisdictional conflicts are also often implicated given the inherently transient nature of military service. Idaho has jurisdiction to adjudicate divorce actions if the petitioner has been an Idaho resident for six weeks.⁵ However, a court may

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only adjudicate custody if, with limited exception, a child has resided in Idaho for six months prior to filing the petition for divorce.⁶

Another preliminary issue is whether the parties are seeking divorce or legal separation. Oftentimes, military members and spouses will want to legally separate to protect their interests, but remain legally married to take advantage of military benefits, especially in the event of a deployment. Legal separation is authorized in Idaho,⁷ and it may be a viable option for military clients.

Personal service

After verifying military service, determining jurisdiction, and identifying the scope of representation, personal service is the next issue with which practitioners struggle. Although personal service on a member residing on a military installation may seem daunting, it is provided for by law and regulation.⁸

There are many resources dedicated to helping practitioners with this issue.⁹ Generally, service is centrally located on military installations, and is coordinated by the Office of the Provost Marshall (military police), the installation's Office of the Staff Judge Advocate, and local

civilian law enforcement. Overseas service is another issue entirely, as it can be exceedingly expensive and time consuming.¹⁰ Further, because service in a combat situation may be impossible, the best solution may be to try voluntary acceptance of service or simply waiting until the member returns home.¹¹

The Servicemembers Civil Relief Act

After personal service is made, members often invoke the Servicemembers Civil Relief Act (SCRA). The SCRA provides for, strengthens, and expedites national defense by providing protections to members so they may devote their entire energy to the needs of the nation.¹² The SCRA applies to all members when they are on active duty. It applies to Reserve Component¹³ members when they are on active duty, and when National Guard members are on state or federal orders for more than 30 days.¹⁴

To take advantage of SCRA protections,¹⁵ the member must prove that his or her military service has a material effect on the member's ability to comply with a legal obligation.¹⁶ It is possible for the member to waive SCRA protections, and it is possible to obtain a default judgment against a member.¹⁷

Most relevant is the litigation stay.¹⁸ Stays are not automatic. They must be requested by the member.¹⁹ If the court determines that the member's military service materially affects the member's ability to participate, the court may enter a 90-day stay, which may be extended. There is an inherent tension in family law cases, because a child's best interests could be at risk while a case sits idle.

Prior to 2014, some state courts concluded that a stay cannot result in a child's best interests being held in suspense for the duration of a deployment.²⁰ In 2014, Congress amended the SCRA to explicitly allow courts to enter temporary custody orders regardless of a stay; however, courts are prevented from final adjudication until the member is available.²¹

Child custody

Turning to custody, once jurisdiction is established,²² courts may give direction for the custody, care and education of children as may be necessary or proper in their best interests.²³ In determining what is in the children's best interests, courts are required to consider all relevant factors, including but not limited to, the statutory factors found at 32-717(1)(a)-(g).²⁴

Consideration of a parent's work schedule is appropriate when it affects the children's well-being.²⁵ Courts must decide how the inherently transient, temporary, and potentially risky military lifestyle affects the children. Often, members feel as if courts are prejudiced when military service is taken into account. However, if military service affects the best interests of the children, courts have an obligation to account for such service when structuring custody arrangements.

These determinations are inherently case-specific. There is no bright-line rule to help families or practitioners. However, for purposes of custody modification, when one parent is a member of the Idaho National Guard or "military reserves," and has been ordered or called to duty,²⁶ that military service *shall not* constitute a material and permanent change in circumstances.²⁷

Another reoccurring custody issue is delegation of custodial powers. A parent may delegate to "another person" the parent's custodial powers,²⁸ which may be effective for six months, or, in the case of an overseas

The military will not act as a safe haven for those who disregard or elude their obligations to support their families.³⁰

deployment, 12 months.²⁹ Almost universally, problems arise when a member delegates custodial powers to a step-parent. The step-parent attempts to exercise the member's custodial access, and is rebuffed by the other parent. There is a lack of uniformity in how courts, law enforcement agencies, parents, and attorneys address custodial delegations. Possible effective solutions include including a provision in a dissolution agreement addressing delegation of custodial access, or moving for court approval prior to the delegation of authority going into effect.

Child and family support

Turning to support, the military will not act as a safe haven for those who disregard or elude their obligations to support their families.³⁰ Service regulations exist that prohibit dependent nonsupport.³¹ Generally, when a commander receives a complaint of nonsupport, the commander will investigate, and, if substantiated, order the member to follow applicable service regulations.

Such regulations may require the member to comply with an existing support order, follow a support agreement, or, if no order or agreement is in place, provide a percentage of the member's Basic Allowance for Housing to the dependent.³² Military sanctions for nonsupport could include adverse administrative or punitive action.³³

In a military case, child support is still determined using the Idaho Child Support Guidelines.³⁴ The starting point is the parties' gross income, which "includes income from any source."³⁵ Because a member may receive basic pay,³⁶ Basic Allowance for Housing, Basic Allowance for Subsistence, special pay, incentive pay, inactive duty training pay, retired pay, or separation incentives, determining gross income appears complicated.³⁷ While the fringe benefit rule is unclear as applied to military cases³⁸ and there is no case law on this issue in Idaho, it is likely that all forms of military "pay" would constitute gross income, even though many of them are exempt from taxation.³⁹

An interesting issue arises from the "overtime rule." Generally, compensation received by a party for employment in excess of a 40-hour week is excluded, if the employment meets certain criteria.⁴⁰ Traditional reserve pay for regular, monthly drill

may fit within the overtime rule, provided the member is otherwise employed by a civilian employer on a full-time basis. Again, the rule is not clear as applied in military cases and there is no case law in Idaho providing clarification.

Division of marital property

Although Idaho's community property rules apply in military cases, that is, all property obtained during the marriage is presumed to be community property, and all property held before the marriage or obtained during the marriage by gift, inheritance, or devise is separate property,⁴¹ it is the unique nature of military property that causes consternation. Examples of military-specific property discussed in this article are Thrift Savings Plan accounts and military retired pay.

A. Thrift savings plan accounts

Servicemembers may have a "Thrift Savings Plan," which is a federal defined contribution plan. Members direct pre-tax income to be deposited into the account, which accrues interest at a very favorable rate. Although Thrift Savings Plan accounts are divisible community property, they do not require a Qualified Domestic Relations Order (QDRO) as they are not subject to the Employee Retirement Income Security Act. All that is needed is specified language in the divorce decree.⁴²

B. Military retired pay in general

More intricate is division of military retired pay. The Uniform Services Former Spouses Protection Act,⁴³ allows states to treat disposable military retired pay as divisible marital property. Idaho treats military retired pay as divisible community property.⁴⁴ Because military retired

In Idaho, military retired pay is divisible after day one of the marriage. If the parties do not qualify for the 10-year rule, then the member must make payments to the former spouse directly.

pay is a federal entitlement and not a qualified pension plan, there is no requirement for a QDRO. So long as the award is set out in a divorce decree in an acceptable manner, retired pay may be divided. A divorce decree must set out either a fixed dollar amount, a formula-based award, or a hypothetical award.

Discussion of these formulas is complex and confusing, and exceeds the scope of this article. However, in simplest terms, a formula award could be expressed as, "the former spouse is awarded a percentage of the member's disposable retired pay, to be computed by multiplying 50% times a fraction, the numerator of which is the number of months married during the member's creditable military service, divided by the member's total months of creditable military service."⁴⁵ To avoid malpractice, further research is strongly encouraged, especially given that formula awards differ based on the member's status.⁴⁶

C. Specific federal rules applicable to military retired pay

Additional confusion arises from specific military retirement rules. Under the "10-year rule," if the parties have been married for 10 years and those 10 years of marriage overlap 10 years of service, then the former spouse may receive direct payments from the government. Under

the "20/20/20 rule," if the parties have been married for 20 years, and the 20 years of marriage overlap 20 years of service, then the former spouse may, in addition to direct payments, receive other benefits including commissary and exchange access, and health insurance.

To receive direct payments, the former spouse must send the appropriate form and a copy of the decree to the Defense Finance and Accounting Service.⁴⁷ These rules create a common misperception that a spouse is not entitled to retired pay until the parties have been married for 10 years. In Idaho, military retired pay is divisible after day one of the marriage. If the parties do not qualify for the 10-year rule, then the member must make payments to the former spouse directly.

Finally, additional military retired pay rules are implicated if the member is receiving VA Disability Benefits. A member's retired pay is offset by the amount of their VA Disability. But, a former spouse may not be awarded any portion of the member's VA Disability.⁴⁸ Because this reduces the pool of available divisible retired pay, state courts have fashioned remedies to make the former spouse whole, including indemnity provisions,⁴⁹ contract theory,⁵⁰ and the constructive trust theory.⁵¹ Idaho follows the constructive trust theory.⁵²

Ancillary issues

A constellation of other issues may also be present. First, an unfortunate reality in family law cases is that a divorce action is often accompanied by a concurrent criminal action for domestic violence. Practitioners assisting military clients who have been charged with domestic violence must understand the implications of such a charge on the client's military career. Under the Lautenberg Amendment to the Federal Gun Control Act, a person who has been convicted of domestic violence or who currently has a Civil Protection Order entered against them may not possess firearms or ammunition.⁵³

Because, under Lautenberg, a domestic violence conviction will end a member's career, negotiations should be conducted to try to preserve the member's career, while also obtaining Idaho's sentencing objectives.⁵⁴

Possible loss of a security clearance is another issue. A member may lose a clearance if saddled with bad debt or if the member is charged with or convicted of domestic violence during the course of a family law case. Because most military specialties require a security clearance, this may also be a career-ender. Finally, because most members are entitled to either Servicemember Group Life Insurance or Veterans Group Life Insurance, beneficiary designation forms must be updated upon completion of a family law case.⁵⁵

Conclusion

"As we express our gratitude [to our military population], we must never forget that the highest appreciation is not to utter words, but to live by them."⁵⁶ I am consistently surprised, encouraged, and uplifted by the Idaho bar's willingness to help

our military population not only in words, but also deeds. Taking the issues discussed into consideration and remembering that additional research is recommended, my hope is that this article provides attorneys with the tools necessary to better help military clients, whether in a pro bono clinical setting or in private practice.

A member may lose a clearance if saddled with bad debt or if the member is charged with or convicted of domestic violence during the course of a family law case.

Endnotes

1. Stephen A. Stokes, *Answering the Call to Service: The Idaho Military Legal Alliance*, 58 THE ADVOCATE 6/7, p. 41 (June/July 2015). The Idaho Military Legal Alliance broadly defines "military population" as any veteran, servicemember, or the dependent of the same.
2. With the fantastic help of many community partners, IMLA currently sustains pro bono military clinics in Coeur d'Alene, Lewiston, Caldwell, Boise, and Pocatello, and intends to establish clinics in Mountain Home and Twin Falls by the end of 2016. To volunteer, or for more information on the dates and times of IMLA's military legal clinics, see https://isb.idaho.gov/ilf/ivlp/clinic_calendar.html.
3. In addition to my own research, materials have been excerpted from the Judge Advocate General's School, United States Army, Client Services Deskbook, 2015. See also Stephen A. Stokes, *Against All Odds: Strategies for a Successful Practice*, Idaho Trial Lawyers Association Fall 2012 Conference, 14 Octo-

ber 2012, *How to Handle Military Issues Arising in Family Law Cases Outline and Sample Materials*

4. Department of Defense: <https://www.dmdc.osd.mil/appj/scra/scraHome.do>; Army: World Wide Locator Service, Enlisted Records and Evaluation Center, 8899 East 56th Street, Indianapolis, Indiana 46249-5031 (NOTE: All requests must be in writing); Navy: Bureau of Naval Personnel, PERS-312E, 5720 Integrity Drive, Millington, TN, (901) 874-3388; Air Force: Air Force Personnel Center, AFPC/DPDXIDL, 550 C Street West, Suite 50, Randolph Air Force Base, TX 78150-4752, Locator Service (210) 565-2660, DSN: 665-2660; Marine Corps: Commandant of The Marine Corps, Headquarters, U.S. Marine Corps (MMSB10), 2008 Elliott Road, Suite 201, Quantico, VA 22134-5030, Locator Service: (703)784-3941-3944.

5. Idaho Code § 32-701.

6. Idaho Code § 32-11-201(a)(1).

7. See Idaho Code §§ 32-704 and 32-917. A court may enter an order of legal separation, or the parties may enter into a legal separation agreement and then file for dissolution of the marriage upon the member's availability to participate in litigation. This is a common scenario for deploying members.

8. See *e.g.*, 10 U.S.C. 2683; Army Regulation 405-20; and Army Regulation 27-40.

9. See *e.g.*, www.state.gov; <http://www.nclamp.gov/c_divorce2.pdf>; and <http://www.americanbar.org/newsletter/publications/gp_solo_magazine_home/gp_solo_magazine_index/militaryfamlaw.html>

10. <<http://www.pfiserves.com/>> or <<http://www.croweforeignservices.com/>>

11. See Idaho Rules of Family Law Procedure, Rule 204(F).

12. Servicemembers Civil Relief Act of 2003 (SCRA), 50 U.S.C. App. 501-596.

13. The "Reserve Component" consists of the U.S. Army Reserve (authorized under Title 10 U.S.C.) and the National Guard (authorized under Title 32 U.S.C. and state law); See *e.g.*, Idaho Code §§ 46-101 et. seq.

14. National Guardsmen may be serving in several different capacities under state law and under Titles 10 and 32, U.S.C. A Guardsman could be in a traditional part-time drilling status (one weekend per month; two weeks per year), on temporary full-time duty orders to attend a

school or other short-term training, or in a variety of full-time capacities, such as Active Duty for Operational Support (ADOS), Active Duty for Special Work (ADSW), Active Guard Reserve (AGR), or as a dual status technician (federal technician under Title 32 U.S.C. or a state technician). A practitioner *must* determine the Guardsman's status before developing a litigation strategy.

15. Other protections include a 6% interest cap on consumer debt acquired after the member came on active duty; termination of leases (residential and commercial), installment contracts, and cell phone contracts; voting rights, etc. A good family law attorney can greatly assist his/her military client by being aware of these provisions and helping the client take advantage of the protections.

16. Legal obligations include, appearing in court, paying a creditor, paying rent, making a payment on a revolving consumer debt, etc.

17. See 50 U.S.C. App. 517 (the waiver must be in writing and executed *after* or *during* the member's period of military service). See also 50 U.S.C. App. 521 (Upon a motion for default and default judgment, the court must appoint an attorney to represent the member. If a default judgment is entered, the member may apply to have it set aside.)

18. 50 U.S.C. App. 522.

19. A member must submit to the court both a "Servicemember's Letter" and a "Commander's Letter," both of which must explain to the court how the member's military duty requirements materially affect his/her ability to appear *and* stating when the member will be available to appear. The Commander must also state that military leave is not authorized. See *e.g.*, <http://www.pendleton.marines.mil/Portals/98/Docs/LSSS/Legal%20assistance/SCRA%20-%20Letter%20for%20Stay.pdf> or http://www.oregon.gov/omd/jag/docs/scra_civil_case_stay_request.pdf

20. See *e.g.*, *In re Grantham*, 698 N.W.2d 140 (Iowa 2005); *Diffin v. Towne*, 787 N.Y.S.2d 677 (N.Y. Fam. Ct. 2004); and *Diffin v. Towne*, 46 A.D.3d 988 (N.Y. App. Div. 2008).

21. 50 U.S.C. App. 528, as added Pub. L. 113-291, December 19, 2014.

22. Ref. Notes 6 and 7, *supra*.

23. *Michelle Danti v. Edward Danti*, 146 Idaho 929, 934-35 (2009).

24. *Id.* Statutory factors include: the wishes of the parents; the wishes of

The key document identifying the member's categories of pay is the member's Leave and Earnings Statement (LES), which should be made available either through IRFLP mandatory disclosures or the discovery process.

the children; the interaction and inter-relationship of the child with his or her parent(s), and his or her siblings; the child's adjustment to his or her home, school, and community; the character and circumstances of all individuals involved; the need to promote continuity and stability in the life of the child; and domestic violence, whether or not in the presence of the child.

25. See *Silva v. Silva*, 142 Idaho 900 (Idaho App. 2006).

26. For National Guard members "called to duty" is as defined in Idaho Code § 46-409. For members of the "military reserves" (U.S. Army, Air Force, Navy, Marine Corps, or Coast Guard Reserves), "called to duty" is defined under Title 10, United States Code.

27. Idaho Code § 32-717(6); see also *Webb v. Webb*, 143 Idaho 521 (2006).

28. Idaho Code § 15-5-104; see also *Webb v. Webb*, 143 Idaho 521 (2006).

29. *Id.* In the event the delegation is to a grandparent or sibling of the minor, or a sibling of the delegator, then the powers extend until they expire as provided for in the power of attorney. If the power of attorney is silent, then a delegation to this group of agents is valid for three years.

30. Army Regulation 608-99; SECAF INST. 36-2906 (Air Force); LEGALADMINMAN, Ch. 15 (Marine Corps); MILPERSMAN ARTS. 1754-030 and 5800-10 (Navy); COMDTINST M1000.6A, Ch. 8M (Coast Guard).

31. See *Id.*

32. AR 608-99, para. 2-6. The specific benefit to be divided is the Basic Allowance for Housing (Reserve Component/Transit) aka BAH II (RC/T), aka "non-locality BAH." Generally, dependents are entitled to their pro-rata share of the mem-

ber's BAH. The formula is expressed as follows: pro-rata share = (1/(total number of supported family members)) x applicable BAH. See Army Regulation 608-99, fig. 2-1.

33. Administrative sanctions could include an oral or written reprimand, administrative reduction, or administrative separation. See *e.g.*, Army Regulations 600-20, 600-8-19, and 135-178. Punitive action could consist of either nonjudicial punishment or court-martial under the Uniform Code of Military Justice or a state code of military justice. See Idaho Code Sections 46-1101, et. seq, particularly Articles 92 and 134 of the Idaho Code of Military Justice. This scenario is the classic Sophie's Choice. If the dependent complains too loudly and the member continues to willfully fail to provide support, the member could ultimately be separated from the military resulting in a significantly reduced income stream for the family.

34. Rule 126, Idaho Rules of Family Law Procedure.

35. Rule 126(F)(1)(a)(i), IRFLP.

36. Current military pay tables are available through the Defense Finance and Accounting Service website: <http://www.dfas.mil/militarymembers.html>.

37. The key document identifying the member's categories of pay is the member's Leave and Earnings Statement (LES), which should be made available either through IRFLP mandatory disclosures or the discovery process. For more information on how to read an LES, consult (as a start): <http://www.militaryoneresource.mil/pfm?content_id=269406> or <<http://www.dfas.mil/civilianemployees/understandingyourcivilianpay/LES.html>>

38. Rule 126(F)(2), IRFLP.

39. *In re Marriage of Stokes*, A136795 (Ct. App.Or 2010) (BAH and BAS constitute "income from any source" although they are not taxed).

40. Rule 126(F)(1)(a)(ii) states in its entirety: Compensation received by a party for employment in excess of a 40 hour week shall be excluded from gross income, provided the party demonstrates and the Court finds: (1) the excess employment is voluntary and not a condition of employment; and (2) the excess employment is in the nature of additional, part-time employment, or is employment compensable as over-time pay by the hour or fractions of the hour, and (3) the party's compensation structure has not been changed for the purpose of affecting a support or maintenance obligation, and (4) the party is otherwise paid for full time employment at least 48 weeks per year, and (5) child support payments are calculated based upon current income. This provision is intended to benefit those who already work a full-time job, and undertake voluntary, additional employment. It is not intended to benefit self-employed individuals who may work more than 40 hours per week, those that may be seasonally employed in more than one job (none of which is full-time), those who may be employed in excess of 40 hours per week for part of the year, but are not employed full-time for most of the year, nor those whose employer regularly requires overtime as part of their employment.

41. Idaho Code §§ 32-903 and 32-906.

42. <https://www.tsp.gov/PDF/forms-pubs/tspbk11.pdf>

43. 10 U.S.C. 1408, et. seq.

44. See e.g., *Griggs v. Griggs*, 107 Idaho 123 (1984); *McHugh v. McHugh*, 115 Idaho 198 (1988); *Brooks v. Brooks*, 119 Idaho 275 (Ct.App.1990); *Leatherman v. Leatherman*, 122 Idaho 247 (1992); *Fix v. Fix*, 870 P.2d 1331 (Ct.App.1993).

45. For example if COL and Mrs. Jones were married for 20 years of COL Jones' total 30 years of military service, her percentage would be: $\frac{1}{2} \times (240 \text{ months}/360 \text{ months}) \times 100 = 33\%$. If COL Jones receives \$1,000.00 in disposable military retired pay, Mrs. Jones would receive \$333.33 from the Defense Finance and Accounting Service on a monthly basis.

46. A great place to start is the Defense Finance and Accounting Service website. <http://www.dfas.mil/garnishment/usfspa/legal.html>. Another terrific re-

source is Mark E. Sullivan, *The Military Divorce Handbook: A Practical Guide to Representing Military Personnel and Their Families*, 2Ed (2011).

47. A former spouse must complete a DD Form 2293, and send both the DD Form 2293 and a certified copy of the divorce decree to DFAS within 90 days of getting the certified copy. However, the former spouse will not receive any payments until the member vests. The time at which a member vests is dependent on whether the member is active duty or a member of the Reserve Component.

48. See *Mansell v. Mansell*, 490 U.S. 581 (1989). For example, if a member were to receive \$2,000.00 per month in retired pay, but he is awarded VA Disability payments in the amount of \$1,000.00, he must waive \$1,000.00 of his retired pay in order to receive the \$1,000.00 VA Disability payment. His former spouse is now only entitled to receive her share in \$1,000.00 of the member's military retired pay.

49. *In re Marriage of Gahagen*, 2004 Iowa App. LEXIS 926 (Iowa Ct. App. 2004); *Nelson v. Nelson*, 83 P.3d 889 (Okla. Civ. App. 2003).

50. *Hayward v. Hayward*, 868 A.2d 554 (Pa. Supr. Ct. 2005); *Suratt v. Suratt*, 85 Ark. App. 267 (Ark. Ct. App. 2004); *Gatfield v. Gatfield*, 682 N.W.2d 632 (Minn. Ct. App. 2004).

51. See, e.g., *Black v. Black*, 842 A.2d 1280; (Me. 2004); *Whitfield v. Whitfield*, 862 A.2d 1187 (N.J. Super. Ct. App. Div. 2004); *Danielson v. Evans*, 36 P.3d 749 (Ariz. Ct. App. 2001); *Johnson v. Johnson*, 37 S.W.3d 892 (Tenn. 2001); *In re Marriage of Krempin*, 70 Cal. App. 4th 1008 (Cal. Ct. App. 1999); *In re Marriage of Gaddis*, 957 P.2d 1010 (Ariz. Ct. App. 1997); *In re Marriage of Nielsen*, 293 N.E.2d 844 (Ill. App. Ct.2003); *In re Strassner*, 895 S.W.2d 614

The Federal Gun Control Act applies specifically to misdemeanor convictions. Department of Defense policy extends the prohibition to all felony convictions. See also 18 U.S.C. 922(g)(8).

(Mo. Ct. App. 1995); *McHugh v. McHugh*, 861 P.2d 113 (Idaho Ct. App. 1993). See also *Perez v. Perez*, 2005 Haw. App. LEXIS 119 (Haw. Ct. App. 2005) (creating an express constructive trust in the terms of the divorce decree).

52. Once the divorce is finalized the member holds in constructive trust that portion of retired pay that the court has awarded to the former spouse and the SM cannot unilaterally convert or change that interest. See *McHugh v. McHugh*, 861 P.2d 113 (Idaho Ct. App. 1993).

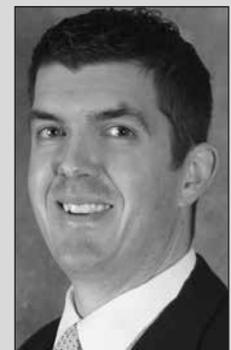
53. 18 U.S.C. 922(g)(9) applies specifically to misdemeanor convictions. Department of Defense policy extends the prohibition to all felony convictions. See also 18 U.S.C. 922(g)(8).

54. See e.g. Idaho Code § 19-2521. See also Army Regulation 135-178, Chapter 12, para. 12-2, Conviction by Civil Court.

55. <http://www.benefits.va.gov/INSURANCE/resources-forms.asp> or <http://www.benefits.va.gov/insurance/vgli.asp>

56. Quote attributed to John F. Kennedy.

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A Practical Guide to Increase Efficiency and Fairly Adjudicate Temporary Custody Disputes Under IRFLP

Thomas W. Whitney

Few types of cases within the judicial system rival the importance of child custody disputes. To the parties involved and the children affected, a final judicial decision has long-lasting and often life-changing consequences. Even before a final judgment is entered, a temporary custody determination often substantially affects the parents and children. As a practical matter, a magistrate's temporary custody determination is unreviewable because of the time required for an interlocutory appeal.

A temporary custody determination can affect the final outcome of the case by establishing a "new normal" for the children during the time period required to complete the litigation. Once the children's lives become stabilized in the pattern established by the temporary custody ruling, leaving the children in the status quo custody schedule can present a very persuasive argument to the court at the final custody trial. Thus, a temporary custody ruling can have an outsized impact on the family involved, both on the obvious temporary basis and also for the long-term.

It does not aid the cause of justice for the procedure itself to so substantially impact the rights and needs of the persons involved in the dispute. A court's procedures should be designed to allow cases to be fully heard and decided on their merits. The procedures themselves should not give an inherent advantage to one party, or, as can happen in custody disputes, give the party who prevails at the temporary custody

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determination an unfair advantage at the final custody trial.

The purpose of this article is to explain how the Idaho Rules of Family Law Procedure, (IRFLP), can be used to efficiently adjudicate temporary custody disputes in a way which:

- (1) Speeds the process without sacrificing care or fairness,
- (2) Minimizes the impact of the temporary custody determination on the final trial on the merits, and thereby;
- (3) Increases the probability of a just and durable result at the final trial.

The importance of establishing an efficient and rapid system for temporary custody determinations

An effective way to minimize the impact of a temporary custody ruling on the final custody determination is to rapidly determine temporary custody and then set a final trial to occur promptly thereafter. Neither courts nor parents have unlimited resources to devote to custody determinations. Those resources should be focused more on the final custody determination because the

final evidentiary hearing is designed to consider the dispute fully on its merits and adjudicate what is in the best interests of the children for the long term. Of course, the temporary custody determination is important, but it should not be allowed to consume an inordinate amount of time or financial resources to the detriment of a prompt and fair final decision. Thus, a magistrate court's system for adjudicating custody disputes should be to (1) promptly hear and decide temporary custody, and (2) set a prompt final trial date in order to expeditiously and finally resolve custody issues.

This focus on rapid adjudication is in accord with the 180-day period set forth in Idaho Court Administrative Rule ("ICAR") 57(a) for the total mean time which should be required to adjudicate child custody disputes. Pursuant to ICAR 57(b), "[t]rial judges should strive to resolve each individual case within the applicable time standard unless the trial judge determines that exceptional circumstances exist." Much has been written over the past two decades on so-called "high conflict"

custody disputes, but perhaps too little emphasis has been given to the benefit of moving every disputed custody case to a more prompt but still fair resolution. Lengthy custody disputes increase the toll on parents in terms of emotional stress and financial drain, while children are burdened both by uncertainty as to where they will live as well as by the knowledge that their parents are in conflict. Courts can ameliorate these impacts on children and parents by resolving custody disputes more rapidly. Realistically, 180 days is a challenging standard, but the public would be well served if this standard were met or exceeded in every case. Promptly resolving temporary custody is a substantial step in reaching this goal.

Prior to the implementation of IRFLP, there were procedural impediments to the prompt adjudication of temporary custody disputes

When parents separate prior to initiating divorce litigation, the parents themselves are enduring one of the most stressful and disorienting events that any of us will endure in a lifetime: the death of a marriage.¹ At this time of extremely high stress, the parents are required to make an initial decision as to the custody schedule for their children prior to having a temporary custody hearing before a magistrate court. If a joint decision is made, it is made by parents who are in the midst of an extremely stressful event. Often this initial, non-judicial child custody schedule is the result of one parent's exercise of power over the other.

Also, the initial child custody schedule can be the result of chance factors which substantially impact the decision-making of parents who

may not have the benefit of legal counsel. For example, if the children's home is the separate property of one parent, that fact may impact the decision of the parents when it would not substantially impact the decision of a judge.

Additionally, many divorces are preceded by arguments between the parents. The parent who most acutely senses the negative impact of the arguments on the children may be the parent who moves out of the marital home in order to insulate the children from the parents' arguing. This parent can be portrayed

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as abandoning the children even though the parent is actually putting the needs of the children ahead of his or her own needs.

These are examples of the myriad of fact patterns which may exist, but the common thread is that the initial non-judicial, pre-litigation child custody schedule may not be in the best interests of the children regardless of whether it was established with the consent of both parents.

Prior to the implementation of IRFLP, the parent who had custody of the children at the time of the

initial separation of the parents frequently could manipulate the court procedures to gain an advantage in the temporary custody determination. This advantage at the temporary custody determination could then be leveraged into an unfair advantage at the final evidentiary hearing on the merits.

Improvement and benefits in temporary custody determinations under the IRFLP

The core strengths of the IRFLP are that the rules require the parties to give magistrate judges more information prior to a temporary custody hearing and the rules also give magistrate judges more control over how temporary custody determinations are made. A magistrate can use these controls to (1) identify which, if any, issues require live testimony for the purpose of deciding temporary custody, (2) ensure that temporary custody determinations are made promptly and fairly, and (3) set a prompt final trial date on or around the time of determining temporary custody.

Requirement of temporary motions and responses under IRFLP

A motion for temporary custody must include the following:

- (1) either a sworn verification of the written motion or a separate sworn affidavit or declaration;
- (2) a proposed parenting plan that specifically states the custodial time and/or visitation time requested;
- (3) if not previously detailed in another pleading, all of the facts required by Idaho Code § 32-11-209 [These are the well known UCCJEA disclosures: (a) the children's present address or whereabouts; (b) the plac-

es where the children have lived during the last five years; (c) the names and addresses of the persons with whom the children have lived during that five-year period; (d) whether the movant has participated as a party, witness, or in any other capacity in any other proceeding concerning the custody or visitation of the children, and, if so, the court, case number, and date of the prior child custody determination; (e) whether the movant knows of any other proceeding that could affect the current proceeding, and, if so, the court, case number, and nature of the proceeding; (f) whether the movant knows the names and addresses of any non-party who has physical custody of the children or claims rights of legal custody of, physical custody of, or visitation with the children, and if so, the names and addresses of any such non-parties.];

(4) the name and date of birth of each child who is addressed in the motion for temporary custody;

(5) a description of any special needs of a child who is addressed in the motion for temporary custody;

(6) a description of “the manner in which the parents are currently caring for the child/ren”, i.e., the children’s current custody schedule regardless of whether that schedule was the result of a judicial determination;

(7) if the parents live separately (which is very commonly the case in these types of motions), a description of the manner in which the parents cared for the children both before and after the separation of the parents;

(8) each parent’s current work schedule;

(9) any circumstances known to the movant that would subject the children to a risk of neglect or abuse.

Not only do the IRFLP increase the burden of disclosure on the parents, but also the IRFLP mandate efficiency in those disclosures because both parties are limited to 20 pages of pleadings setting forth the facts regarding temporary custody.³

A responding party is required to disclose the same information.²

This is a dramatic improvement over the Idaho Rules of Civil Procedure (IRCP) because these IRFLP requirements allow a magistrate to have a substantial understanding of the children’s situation and family dynamic before even entering the courtroom to make a temporary custody decision. Importantly, these disclosures give a magistrate the opportunity to determine what, if any, oral testimony should be allowed, and what, if any, further affidavits are needed.

Obviously, these lengthy requirements place a heavier burden on the parties to prepare thorough written pleadings. Not only do the IRFLP increase the burden of disclosure on the parents, but also the IRFLP mandate efficiency in those disclosures because both parties are limited to 20 pages of pleadings setting forth the facts regarding temporary custody.³ The result is improved judicial performance for children and parents because judges get the information they need in a concise and efficient manner. As will be discussed below, the limitation on the number of pages need not come at the sacrifice of thoroughness or care.

It should be noted that there is some ambiguity in the page number limitation but that the best interpretation is 20 pages of factual assertions per party. The rule states the following: “Limitations on Verified Motion and Affidavits. No party shall file a verified motion or affidavit under this rule that exceeds twenty pages, including attachments. Affidavits from non-parties filed in support of or in opposition to a motion for temporary orders shall be limited to four per party and shall be limited to the same number of pages set forth above.”⁴

One could argue that each of the four non-party affidavits is limited to 20 pages rather than the party’s total factual submission being limited to 20 pages. Such an interpretation would produce an absurd result because allowing 100 pages per party (20 in the motion/opposition and 20 in each of the four affidavits) would expose the magistrate to the potential of reading 200 pages of factual pleadings (100 from each party) before every temporary custody hearing. This would be in addition to any briefing filed by the parties because briefs are not a part of the 20-page limit.⁵ Obviously, briefing should be confined to legal analysis and not used as an unsworn conduit for additional factual allegations.

Given the congestion present in the court system, 200 or more pages of reading per temporary custody case per magistrate is not a realistic requirement. In addition, given the authority set forth in the IRFLP for the magistrate to allow additional pleadings or testimony, such lengthy pleadings are not required to produce a fair and just result. Thus, each party's factual submissions are limited to 20 pages, including attachments, but there is no page limit on briefing of the legal issues presented.

IRFLP service requirement regarding motions and responses

Temporary custody motions and any supporting affidavits must be served at least 14 days before the time set for hearing.⁶ The opposition and responding affidavits must be served at least seven days before the time set for hearing. There is no mention of reply affidavits, as will be discussed below.

A motion for temporary custody need not be accompanied by a brief or memorandum, but the motion must indicate whether the movant desires to present oral argument. Also, if no brief is filed with the motion, the motion must indicate if the movant desires to file a brief within 14 days.⁷ If a brief is filed, the brief, like the motion and any affidavits, must be served at least 14 days before the hearing.⁸ Any responsive brief must be served at least seven days before the hearing. Any reply brief must be served at least two days prior to the hearing.⁹

Thus, the rules specifically allow reply briefs but neither expressly allows nor precludes reply affidavits. It is illogical to allow a party to file a reply brief but not a reply affidavit setting forth facts upon which the reply brief may be based. As a practi-

cal matter, if reply affidavits are not allowed, the result will be to create more issues to be adjudicated at the temporary custody hearing.

The moving party may appear and argue, "I have not been heard as to the rebuttal of the affidavits made in response to my motion." The best practice is to allow reply affidavits but (1) require them to be in the nature of rebuttal only to the responding affidavits, (2) require them to be filed at least two days prior to

If the movant neither requests oral argument nor files a brief, the court may deny the motion without notice or hearing if the court determines the motion has no merit.¹²

the hearing as is required for reply briefs, and (3) subject reply affidavits to the same 20-page limit applicable to the moving party.¹⁰ This requires the movant to "save" some of her or his 20 pages to use in reply affidavits, but this procedure will maximize both efficiency and fairness. It will allow the magistrate court to be fully informed of the relevant facts prior to the hearing and will allow each side the same 20 pages of factual pleadings regarding the temporary custody issue.

Procedure for deciding the temporary custody motion

If the IRFLP procedures set forth above are applied and followed, the presiding magistrate should have a great deal of information at her or his disposal to consider prior to the hearing on the temporary custody motion. The steps the magistrate should follow in analyzing the pleadings prior to the temporary custody hearing are the following:

- (1) determine whether the pleadings comply with the above rules;
- (2) preliminarily determine (subject to the arguments of the parties at the hearing) whether additional evidence is required to give the court the information it needs to make a temporary custody determination under the best interest factors set forth in the Idaho Code; and
- (3) preliminarily formulate the temporary custody schedule to be ordered, again subject to the oral arguments of the parties at the hearing. Significantly, and in marked contrast to the IRCP, under IRFLP the magistrate is expressly authorized to decide the temporary custody issue on the written pleadings and without any live testimony.¹¹

Before further discussion of the temporary custody hearing, it should be noted that pursuant to IRFLP if the movant neither requests oral argument nor files a brief, the court may deny the motion without notice or hearing if the court determines the motion has no merit.¹² As a practical matter, a hearing is nearly always required. Self-represented parties may overlook the requirement to request oral argument, but IRFLP does not mandate a forfeiture of a hearing if such an oversight occurs.¹³ The best course of action is to hold a temporary custody hearing

whenever reasonably expected by one or both of the parents, subject to the below analysis of the applicable provisions of the IRFLP.

At the temporary custody hearing, the court can “limit oral argument at any time.”¹⁴ The parties should be allowed to address the issues in oral argument but not *ad infinitum*.

Turning to the above steps in a magistrate’s pre-hearing analysis, if the pleadings do not comply with the IRFLP requirements, the magistrate is confronted with how to cause the parties to remedy the deficiencies or other non-compliance prior to the court’s temporary custody determination. Common flaws in temporary custody motions under IRFLP are (1) failure to provide the required information, and (2) excessive number of pages of affidavits or declarations filed by one or both parties.

The court could address these flaws in a written order issued prior to the hearing, but given the case-loads carried by most magistrate judges in Idaho, that is not a practical course of action. Any judicial remedy should keep in mind the need to resolve the temporary custody issue promptly for the reasons discussed above and also the need to keep the case on track for ultimate resolution within the 180-day period set forth in ICAR 57(a).

If the pleadings are too voluminous in nature, the judicial remedy can be as simple as (1) re-setting the hearing to occur in seven days, (2) giving the moving party two days to specify in a written pleading which 20 pages of affidavits upon which it will rely, and (3) giving the responding party two days to specify in a written pleading which 20 pages of affidavits upon which it will rely. Two

The IRFLP are designed to allow the magistrate to identify those issues which require further explanation, and this authority can be used to benefit children and parents by resolving cases promptly yet thoroughly.

days is an unusually short period of time in contested litigation, but it is reasonable under the circumstances considering that the parties have appeared at the scheduled hearing presumably ready to proceed with oral argument. In addition, two days is the same period of time allowed for reply briefing.¹⁵

If the pleadings fail to include the required information listed above, the judicial response must be determined on a case-by-case basis because the deficiencies may vary substantially in quantity and substance.

Additional evidence beyond the initial written pleadings

As to whether any additional evidence should be allowed beyond the 20-pages-per-side limit on affidavits, IRFLP 504.D states, “Motions for temporary orders shall be heard and decided exclusively on the motion and affidavits unless, at the hearing on the motion for temporary orders, the court determines that the parties should be allowed to present evidence. In such case, the court shall schedule an evidentiary hearing within a reasonable time.” The rule is silent as to whether a party must move the court to allow the submission of additional evidence. Thus,

the presiding magistrate on her or his own motion may allow the parties to present additional evidence.

Implicitly IRFLP also authorizes the presiding magistrate to determine on what specific issues to allow additional evidence and the quantity of the evidence to be allowed.¹⁶ For example, the court could allow 15 minutes of testimony per side solely on the issue of what parenting schedule existed for the children prior to the separation of the parents. In setting an evidentiary hearing, a court should be biased toward concrete limits on the parties in terms of the subject matter and times allowed for the hearing so that the case substantially progresses toward final resolution. The pressure on counsel is to make sure the client’s position is fully set forth no matter how long it may take. If every parent’s position were fully set forth via live testimony in open court on every temporary custody issue, magistrate courts would do little other than conduct these hearings. The IRFLP are designed to allow the magistrate to identify those issues which require further explanation, and this authority can be used to benefit children and parents by resolving cases promptly yet thoroughly.

By the use of the term “evidentiary hearing,” IRFLP 504.D suggests

that if any evidence is needed beyond 20 pages of affidavits by each party, it would take the form of live testimony. That may be overkill in some cases, however. Reading IRFLP 504 as a whole, the rule implies that the magistrate has the authority to allow additional affidavits (as opposed to live testimony) on a specific issue prior to making a temporary custody ruling. Extending the example given above, if a magistrate requires additional evidence on the issue of what parenting schedule existed for the children prior to the separation of the parents, the court could allow each party to submit an additional 10 pages of affidavit testimony on that issue only. As to whether additional oral argument should be allowed following the submission of further affidavits, the court has the authority to allow or disallow further oral argument on the issue; this type of determination must be made on a case-by-case basis.¹⁷

Because the default procedure for the resolution of temporary custody motions under IRFLP is that the determination be made by the court without an evidentiary hearing, the burden is on counsel or self-represented parties to explain to the court precisely why an evidentiary hearing should occur. Further, the burden is on the parties to state on what issues additional evidence should be allowed, via what method, and how long it will take. This is an improvement over the pre-IRFLP procedures for temporary custody motions because (1) it requires the parties to identify and address the core disputes between the parents, (2) it saves on-record judicial time for only those issues which require it, and (3) it speeds the overall adjudication of cases without sacrificing thoroughness and care. Some may

In nearly every case 20 pages of affidavits and unlimited pages of legal briefing are adequate to explain to the presiding judge why such live testimony should be allowed.

argue that disputed temporary custody should always be resolved by a judge meeting the parents live from the witness stand in the courtroom, but that process remains available for those cases which truly require it. In nearly every case 20 pages of affidavits and unlimited pages of legal briefing are adequate to explain to the presiding judge why such live testimony should be allowed. Ultimately, children and parents will benefit if the IRFLP are applied to temporary custody motions in a way which helps each case be fully adjudicated within the guidelines standard time of 180 days.¹⁸

Endnotes

1. See, e.g., *The Social Readjustment Rating Scale*, Thomas H. Holmes and Richard

H. Rahe, *Journal of Psychosomatic Research*, Vol. 11, pp. 213-218, Pergamon Press, 1967.

2. IRFLP 504.B.

3. IRFLP 504.C.

4. IRFLP 504.C.

5. By its terms IRFLP 504.C applies only to pleadings setting forth facts.

6. IRFLP 504.D and IRFLP 501.C.1-6.

7. IRFLP 501.C.3.

8. IRFLP 501.C.5.

9. IRFLP 501.C.5.

10. IRFLP 504.C.

11. IRFLP 504.D.

12. IRFLP 501.C.4.

13. IRFLP 501.C.4.

14. IRFLP 501.C.4.

15. IRFLP 501.5

16. See IRFLP 504.D.

17. IRFLP 501.C.4.

18. ICAR 57(a).

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Do Settlement Agreements Outside a Divorce Decree Qualify as a Court Order for ERISA Purposes?

Nikeela Black

Family law cases can range anywhere from the amiable divorce, in which the parties just need documents prepared, to the high conflict, full blown trial, and everything in between. For a variety of reasons, divorcing parties occasionally wish to enter into an agreement outside of the divorce decree. Sometimes these agreements relate to spousal or child support but are not merged into the divorce decree.

The Employee Retirement Income Security Act of 1974 (ERISA) generally prohibits the alienation or assignment of qualified retirement plans. It does, however, allow otherwise exempt retirement accounts to be accessed via a Qualified Domestic Relations Order (QDRO) in order to enforce support orders as a matter of policy: the state has an interest in ensuring that child support payments are made, and families are not forced to seek state assistance because of unpaid child support if the obligor has a retirement account that can provide the child support. The same goes for court ordered spousal support.

When one party fails to make support payments under an agreement reached outside of the divorce decree is a QDRO appropriate means of enforcement? In other words, is a separate agreement for spousal support enforceable as a court order for support under ERISA? This is a question of first impression in Idaho.

Case in point

In *Kesting v. Kesting*, the parties entered into an Alimony/Spousal

The right to enforce the separate contract through an action for breach of contract is supplanted by the divorce court's authority to enforce its orders, property division, child support, and spousal maintenance.

Support Agreement, which was never merged into the subsequent divorce decree entered in 2008. In 2014, the wife sued for unpaid support owed under the parties' Alimony/Spousal Support Agreement. The wife received a judgment in her favor and obtained a Writ of Execution, which was returned unsatisfied. The wife then obtained a Judgment of Qualified Domestic Relations Order, which directed that her Judgment for unpaid spousal support and associated attorneys' fees and costs be satisfied out of her former husband's 401(k) plan. The husband appealed the trial court's QDRO and prevailed. The wife appealed the case to the Idaho Supreme Court; oral argument is scheduled for February 10, 2016.¹

Settlement agreements in Idaho

In Idaho separate settlement agreements are not uncommon in family law. The question, however, has to do with enforceability when such agreements relate to spousal support. In *Terteling v. Payne*, the court held that when a spousal support obligation arises only from a settlement agreement, the right to

enforce the spousal support obligation rests on the contract itself.²

In contrast, when a settlement agreement is incorporated, or merged, into a divorce decree, the agreement becomes enforceable only as part of the decree.³ "Merger is the substitution of rights and duties under the judgment or the decree for those under the agreement or cause of action sued upon."⁴ In other words, when an agreement is merged into a divorce decree, it becomes part of the final order of the court.

The right to enforce the separate contract through an action for breach of contract is supplanted by the divorce court's authority to enforce its orders, property division, child support, and spousal maintenance. If a settlement agreement has been merged, the spousal support provisions generally may be judicially modified by the court of original jurisdiction.⁵

It appears the law in Idaho is that if the separate agreement is not merged into the divorce decree, it is enforceable as a contract and, unlike a conventional spousal support order, is not modifiable by the court. If that is the case, is it appropriate to use a QDRO to enforce any unpaid support?

ERISA and support payments

Qualified retirement plans such as 401(k) plans are governed by ERISA.⁶ ERISA sets standards for such plans with respect to participation, vesting, benefit accrual, and funding. ERISA, however, also provides that qualified retirement plan benefits cannot be alienated or assigned, and that ERISA provisions preempt all other state law.⁷ Hence, a state court's attempt to distribute funds in retirement plans conflict with the provisions of ERISA.

The Retirement Equity Act of 1984 (REA) was enacted to resolve the growing conflict between ERISA and state law, allowing for distribution of retirement rights in qualified plans upon dissolution of marriage. REA added Section 414(p) to the Internal Revenue Code.⁸ Section 414(p) permits the creation, assignment and recognition of any right in certain eligible retirement plans of a participant only through a QDRO.

Section 414(p) defines "domestic relations order" as, "any judgment, decree, or order (including approval of a property settlement agreement) which relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant, and is made pursuant to a State domestic relations law..."⁹

To qualify as a domestic relations order, the proposed order must relate to a valid support order made pursuant to state domestic relations law. In Idaho, the law governing support orders states in pertinent part that "Where a divorce is decreed, the court may grant a maintenance order if it finds that the spouse seeking maintenance: (a) Lacks sufficient property to provide for his or her reasonable needs; and (b) Is unable to support himself or herself through employment."¹⁰

While Idaho has not yet considered whether a QDRO may be granted after a divorce decree, several other courts have done so. In each instance where a party has been able to obtain a QDRO after the date of divorce, two factors have been present:

1. A valid order from the magistrate court for child or spousal support, either by judicial order or by judicially approved settlement agreement, and
2. State law providing a support order exception allowing retirement accounts to be accessed to satisfy support judgments.¹¹

When ordering spousal support the court takes many factors into account, and should circumstances change in the future, the order is usually modifiable.

Collecting judgments related to support payments

ERISA permits QDRO's to be used to enforce an earlier entered support judgment and collect delinquent maintenance and child support payments against a pension fund.¹² However, a QDRO must be consistent with the substantive provisions of the original decree and that statutory exception does not empower trial courts to make substantive modifications in the final divorce decree.¹³ In *Mackey v. Lanier Collection Agency & Service, Inc.*, the

Supreme Court recognized that the primary focus of the QDRO exception of ERISA was to allow spouses to seek enforcement of qualified domestic relations orders – generally, court orders providing for child support and alimony payments by ERISA plan participants."¹⁴

Idaho allows for the use of a QDRO along the same lines as the federal law. It also follows the federal law by expressly stating, "to the extent provided in any order issued by a court of competent jurisdiction that provides for maintenance or support."¹⁵

Both federal and state law require that prior to separating qualified retirement funds in order to pay a judgment, the judgment itself must be to collect support payments generated from a valid child or spousal support order.

Qualified retirement plans are also protected under Idaho state law

There is no absolute right to spousal support in Idaho.¹⁶ Rather, Idaho law specifies that spousal support can be ordered when the court finds that the specified conditions have been satisfied.¹⁷ When ordering spousal support the court takes many factors into account, and should circumstances change in the future, the order is usually modifiable.

If parties contract outside of court for spousal support, the judge never has a chance to review the spousal support and consider whether it is appropriate. Parties may wish you reach a settlement agreement outside of the divorce decree for various reasons. ERISA requires a QDRO be "based upon state domestic relations law."¹⁸ In Idaho, "when a spousal support obligation arises only from a settlement agreement, the right to enforce the spousal support obligation rests on the contract."¹⁹ In unmerged settlement agreements there is no order issued by a court

of competent jurisdiction providing for support; therefore it appears that alienating retirement funds would not be permitted.

Take away

Both federal and state law require that prior to separating qualified retirement funds to pay a judgment, the judgment itself must be to collect support payments generated from a support order entered by the court, or a settlement agreement approved by the court. While the outcome of *Kesting v. Kesting* may change that, at this time, it seems prudent to advise clients seeking a settlement agreement relating to child or spousal support outside of a divorce decree that an order from the court be obtained for future enforcement purposes.

Endnotes

1. I represent the former husband in this matter.

2. 131 Idaho 389, 393-94 (1998).
3. *Phillips v. Phillips*, 93 Idaho 384, 386 (1969).
4. *Kimball*, 83 Idaho at 15.
5. Idaho Code § 7-1015; *Borley v. Smith*, 149 Idaho 171, 177, (2010).
6. 29 U.S.C. §1056(d)(1).
7. Internal Revenue Code (I.R.C.) § 401(a) (13)(A).
8. 26 I.R.C. §414(p).
9. 26 I.R.C. §414(p)(1)(B).
10. Idaho Code § 32-705.
11. 29 U.S.C. §1056(d)(3)(A).
12. *Rohrbeck v. Rohrbeck*, 566 A.2d 767, 774 (1989).
13. *Hoy v. Hoy*, 29 Va. App. 115, 118-19 (1999).
14. *Hawkins v. C.I.R.*, 86 F.3d 982, 988 (1996) (quoting *Mackey v. Lanier Collection Agency & Serv., Inc.*, 486 U.S. 825, 838-39 (1988)).
15. Idaho Code § 11-604A(3) (emphasis added).
16. Idaho Code § 32-705.
17. *Id.*
18. 29 U.S.C. §1056(d)(3)(A).
19. *Davidson v. Soelberg*, 154 Idaho 227, 230 (2013).

Nikeela Black is a partner at Arkoosh Law Offices and founder of Idaho Mediation Center. Her practice areas include family law and mediation. She received her J.D. from the University of Idaho and a Certificate in Alternative Dispute Resolution from Pepperdine University. Nikeela is also a professional racehorse jockey.



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**Regular Spring Term for 2016
1st Amended
12/22/15**

Boise January 11, 13, 15, 19¹ and 22
Boise February 8, 10, 12 and 17
Boise (Concordia University School of Law--501 W. Front Street)
..... February 19
Boise April 1, 4 and 12
Coeur d'Alene April 6 and 7
Lewiston April 8
Boise May 9 and 11
Idaho Falls May 4
Pocatello May 5 and 6
Boise June 1, 3 and 6
Twin Falls June 8 and 9

By Order of the Court
Stephen W. Kenyon, Clerk

NOTE: The above is the official notice of the 2016 Spring Term for the Supreme Court of the State of Idaho, and should be preserved. A formal notice of the setting of oral argument in each case will be sent to counsel prior to each term.

1. State of the Judiciary on January 20th.

**Idaho Supreme Court
Oral Arguments for February 2016
3rd Amended 1/12/16**

Monday, February 8, 2016 – BOISE

8:50 a.m. *Smith v. Smith* #42621
10:00 a.m. *Wilson v. ConAgra Foods* #43058
11:10 a.m. *State v. Umphenour* #43286

Wednesday, February 10, 2016 – BOISE

8:50 a.m. *Western Comm'ty Ins. v. Pahrump Courtyard* #42871
10:00 a.m. *Mena v. ISBoard of Medicine* #43125
11:10 a.m. *McAdams v. Cintorino* #42718
1:30 p.m. *IDHW v. Doe (2015-21)* #43652

Friday, February 12, 2016 – BOISE

8:50 a.m. *Agstar Financial v. Northwest Sand & Gravel* #42932
10:00 a.m. *State v. Yermola* #43285
11:10 a.m. *State v. Lankford* #35617

Wednesday, February 17, 2016 – BOISE

8:50 a.m. *OPEN*
10:00 a.m. *Kesting v. Kesting* #42875
11:10 a.m. *Coalition for Ag's Future v. Canyon County* #42756
1:30 p.m. *Syringa Networks LLC v. Idaho Department of Admin.* #43027

Friday, February 19, 2016 – BOISE - CONCORDIA

8:50 a.m. *Deiter v. Coons* #42634
10:00 a.m. *State v. Charlson* #42201
11:10 a.m. *Path to Health v. Long* #42313

Friday, February 19, 2016 – BOISE

2:30 p.m. *Mayer v. TCP Holdings* #43468

**OFFICIAL NOTICE
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**Regular Spring Term for 2016
11/02/15**

Boise January 7, 12, 14 and 28
Boise February 9, 11, 16 and 18
Boise March 8, 10, 15 and 17
Boise April 5, 12, 19 and 21
Boise May 10, 17, 19 and 24
Boise June 7, 9, 14 and 16

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Stephen W. Kenyon, Clerk

NOTE: The above is the official notice of the 2016 Spring Term for the Court of Appeals of the State of Idaho, and should be preserved. A formal notice of the setting of oral argument in each case will be sent to counsel prior to each term.

**Idaho Court of Appeals
Oral Arguments for February 2016
12/22/15**

Tuesday, February 16, 2016 – BOISE

9:00 a.m. *State v. Nelson* #42628
10:30 a.m. *State v. Neal* #42806

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College of Law

**Idaho Supreme Court and Court of Appeals
NEW CASES ON APPEAL PENDING DECISION
(Updated 12/1/15)**

CIVIL APPEALS

Divorce, custody, and support

1. Did the district court err in affirming the magistrate's decision to deny Moore's motion to modify custody on the basis that a change in her employment was not enough to demonstrate a substantial and material change in circumstance that would warrant altering the previous custody and visitation order?

Klein v. Moore
S.Ct. No. 43429
Court of Appeals

Evidence

1. Was sufficient evidence presented for the jury to reasonably conclude that Silk Touch's negligent and reckless conduct was the proximate cause of Krystal Ballard's death?

Ballard v. Kerr
S.Ct. No. 42611
Supreme Court

Post-conviction relief

1. Did the court err by summarily dismissing Takhsilov's claim that counsel was ineffective for not requesting a competency evaluation before he entered his guilty plea?

Takhsilov v. State
S.Ct. No. 42780
Court of Appeals

Summary judgment

1. Whether the district court erred in granting summary judgment to Amundson on the claim that he owed Stiles a duty to warn of any dangerous conditions existing on Amundson's property of which he knew or should have known upon a reasonable inquiry, inspection, investigation, and or examination.

Stiles v. Amundson
S.Ct. No. 43289
Supreme Court

CRIMINAL APPEALS

Evidence

1. Did the court abuse its discretion by excluding evidence relating to the results of a DNA test performed on the item of the victim's clothing?

State v. Cook
S.Ct. No. 42278
Court of Appeals

2. Did the court abuse its discretion when, pursuant to I.R.E. 404(b), it allowed the victim to testify about statements Cole made to her a day after the incident, without articulating a purpose for admission other than propensity?

State v. Cole
S.Ct. No. 42149
Court of Appeals

3. Should the Court overrule *Elias-Cruz v. Idaho Transportation Dept.*, 153 Idaho 200 (2012), and its holding that the margin of error for the machine testing blood alcohol concentration is irrelevant?

State v. Jones
S.Ct. No. 42664
Supreme Court

4. Did the court err by admitting testimony regarding unrelated bad acts of Winegar?

State v. Winegar
S.Ct. No. 42507
Court of Appeals

5. Did the district court err when it found there was substantial and competent evidence to support the jury's verdict finding Tank guilty of second degree stalking?

State v. Tank
S.Ct. No. 43061
Court of Appeals

Instructions

1. Did the court err by denying Garner's request for a self-defense instruction?

State v. Garner
S.Ct. No. 42769
Court of Appeals

2. Did the court err in instructing the jury on burglary because Weeks could not have entered the shop with the intent to commit theft by disposing of property that he stole?

State v. Weeks
S.Ct. No. 42410
Court of Appeals

Motion to dismiss

1. Did the court err in denying the motion to reduce the felony DUI to a misdemeanor where one of the underlying convictions used to elevate the charge to a felony was obtained through a violation of the Sixth Amendment right to counsel?

State v. Farfan-Galvan
S.Ct. No. 42868
Court of Appeals

Pleas

1. Did the court abuse its discretion by denying Pridgen's motion to withdraw his guilty plea?

State v. Pridgen
S.Ct. No. 42595
Court of Appeals

2. Did the court abuse its discretion when it denied Jones' motion to withdraw his guilty plea before sentencing?

State v. Jones
S.Ct. No. 42701
Court of Appeals

Probation revocation

1. Did the court apply the wrong standard during its evaluation of Barth's claim that the alleged probation violation was not willful?

State v. Barth
S.Ct. No. 42703
Court of Appeals

Restitution

1. Did the district court err in ordering Nelson to pay \$4,746 in restitution for prosecution costs on this case?

State v. Nelson
S.Ct. No. 42628
Court of Appeals

**Search and seizure –
suppression of evidence**

1. Did the district court err when it granted Neal's suppression motion on the ground that his detention was unlawfully extended?

State v. Neal
S.Ct. No. 42806
Court of Appeals

Speedy trial

1. Did the court err by denying Brackett's motion to dismiss the case on constitutional speedy trial grounds?

State v. Brackett
S.Ct. No. 41578
Court of Appeals

**Summarized by:
Cathy Derden
Supreme Court Staff Attorney
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Are You Happy?

Mark Bassingthwaight

I am so curious about how others might respond to the title of this article. I suspect more than a few would simply dismiss the topic viewing it as irrelevant. In fact, there was a time in my own life where I would have felt the same; but times have changed. Life has a way of doing that if you really start to listen to what it's trying to tell you.

I'm a road warrior and have been traveling for years. During this time, I have had the privilege to consult with well over 1,100 law firms of all shapes and sizes. The opportunity to work with thousands of lawyers in this and other settings has taught me a thing or two, one of which is that happiness matters.

When I made the jump away from practicing law and first hit the road as a risk manager, I was forewarned. "It may be a few weeks, a few months, or a few years, but at some point you're going to hit a wall. At that point you're going to need to make a decision. You will need to find a way to keep going or call it quits."

I did hit that wall about a year in and I had to find a way to make the time away work. It is easier now that our five kids are all grown but my continued regular absences still means that my wife and I don't have a social life that is as active as many of our friends.

Truth be told, I still have my hard days, even after all these years. If too many hard days pile up it can start to feel like my work life is taking too much of a toll. For years when that happened, I pulled out of it by remembering what someone once told me. They worked to have

a life as opposed to devoting their life to work. I always valued that comment because it helped me get through some of the tough times. I was able to put things back into their proper perspective.

This helped; but ultimately it wasn't enough. Perhaps it was due to age, but the day came when I started asking questions. Questions like, "Is this crazy work life I have really what I want? Is this really working for me," and "Am I happy?"

In my head I hear some readers asking "Fine, so what's the point?" Before I answer, let me share a bit more about my experiences visiting with firms. I have had staff tell me more times than I can count that the attorney they work for is in over his or her head. I'll hear things like the attorney never takes a vacation or has too many clients. There is a real worry about the attorney's overall well-being.

I have also had a similar number of conversations with attorneys who all have shared something along the lines of "my practice stopped being fun years ago." It was quite clear that there was no real joy in their life anymore. I could only assume that they just never had the courage to do anything about it.

We've all heard the lines "Law is a jealous mistress" and "If being an attorney were easy, everyone would be doing it." So here's the point. The practice of law isn't easy and everyone has hard days. That's normal. When we do, however, the



It is easier now that our five kids are all grown but my continued regular absences still means that my wife and I don't have a social life that is as active as many of our friends.

trick is in knowing how to respond to the hard days in a healthy way, particularly if those hard days start piling up.

It would be easy to tell you about how failing to take care of yourself can lead to malpractice claims and whatnot, but that's not where I want to go. With this post I am trying to encourage you to simply listen to your life and it starts with the question I asked in the title of this post. Are you happy?

If the answer is yes, I think that's awesome. I truly do. If your answer is no or I'm not sure, I encourage you to take some time and think about what you might do to get to a yes. When those hard days hit, or never seem to go away, look for ways to bring a little more happiness into the picture.

This basic step can help keep you in the game over the long-haul. For me, I have been truly blessed to be

married to my best friend. Yes, we spend a lot of time apart, but we also prioritize couple time be it a phone call from the road, enjoying cooking a meal together when home, or taking time off together to travel to places we both long to experience. When it gets hard I simply take a few moments to remember who I get to be married to and that makes a big difference because even that thought makes me happier.

While I have been successful in working to have a life, in recent years it's become more important for me to prioritize making the life I have as fulfilling and enjoyable as it can be. Life's too short as it is and there is still so much I want to experience. Finding happiness and joy in what I do is fundamental to that equation because my career is so much of who I am as a person.

If anyone is truly unhappy in their career, odds are high that they are also truly unhappy in their life. Not good.

If you can't say yes to my question, your life is trying to tell you something. Now is the time to start listening and try to figure out what to do about it. There is no one right way to accomplish the task, no one right answer, and no one can do it for you. This one's your

responsibility. All I can do is ask the question and let you run with it or not.

That said, I can offer a small place to start thanks to this Pharrell Williams *YouTube* video. Yes, perhaps it's a bit silly; but if you have never viewed this before give it a listen and really look at everyone's face. What they have is contagious. Regardless, do something. Find a way because happiness matters.

ALPS Risk Manager Mark Bassingthwaight, 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.

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Quick Strategies for Writing Under Pressure: A Deadline Survival Guide

Dan Black

Tenielle Fordyce-Ruff, who normally writes this column, returns next month.

You know the scene – a group of people are waiting for your analysis which, so far, remains entirely in your mind. With a thousand ways to tell the story, a blank computer screen stares back at you. Your pulse quickens as the wall clock ticks away.

I faced many such white-knuckle deadlines during my 30 years as a journalist. Over time, I developed a handful of survival techniques. Knowing that my lawyer friends compose on tight deadlines, I offer these tips to make your deadline writing more methodical and effective.

Start with a sense of play

If your Muse has gone into hiding due to the stress of a tough deadline, try this exercise. Begin writing about the topic without stopping, or revising, even for punctuation, clarity or accuracy. Don't get up, pace or check your email. Just let words and ideas flow either on paper or the computer, even for just a few minutes.

This gets the word machine warmed up, even just to bring key concepts to the fore and available in your short-term memory. Judging your writing too early can undermine your confidence and make it all the more difficult to proceed. Free-flow writing breaks that log-jam we all face due to stress, worry or self-doubt. After just a few minutes our composition will feel more like play – a clear signal you



have overcome the first enemy to composing on deadline - anxiety.¹

Establish your goal

Setting goals for your writing will help establish a logical order. Consider the desired outcome in a very practical manner and work backward. Ask yourself, “What would contribute to that outcome? Do I want to convince, inform or entertain?”

Based on those answers we establish priorities for the piece. Without goals our writing meanders aimlessly across various topics, never resting long enough to become substantial. Rather, goal-based writing lends itself to a logical sequence. Like a carpenter, a writer must size up the project and think first about its purpose and function. Only then can we imagine its shape and constituent materials.

Imagine your audience

Good writing reaches the audience where they live. Consider your readers and their values. All readers appreciate clear, concise and

explicit prose. But your particular audience may have more specific needs. Accordingly, we ask how the narrative can meet the readers on common ground. That will illuminate how to move readers from Point A to Point B in the most effective manner.

If a committee needs to know the background, explain the topic's history. If a judge wants a summary, avoid extensive background and rhetoric and stick to what has been requested. What you write should depend on the intended audience.

Avoid too much copy & paste

Out of compassion for your reader, don't rely on copy and paste to stack up numerous positions hoping that one will connect. Such an “all strategies at once” approach to writing might feel like a shortcut, but it adds to the time spent editing, and creates more work for the reader. Copying from multiple sources can also muddle a piece with different voices or narrative tones. Quantity is no substitute for strong, focused content.

Draw up an outline

When dealing with a complex topic, I like to draw up an outline. Start with general headings, then follow with subordinate details. Like a recipe, an outline identifies key ingredients and their relationships. Properly organized, every paragraph should stand on its own and deliver an essential point.

An outline also helps the writer keep track of key details without duplication or omission. It helps us see how to revise the piece, say, by placing like elements together, or moving data earlier or later for maximum effect. And for topics that have become so familiar we no longer see them the way others do, an outline provides objectivity.²

Have a conversation

As you write, imagine having a conversation with your reader. Your composition will take on a natural, human cadence. Every reader can be charmed or put off by your writing style. So imagine a back and forth discussion that accomplishes your goal.

Let's say you want an administrative panel to approve your client's building plans. While composing, think about those decision makers, their dispositions, time constraints, and the tone they need to rule favorably for your client. Then imagine you are speaking to them directly.

As you flesh out your piece, imagine the reader asks, "So what?" and "Why is that important?" These questions illuminate what must be included and how. Posing questions in such hypothetical conversations will show how to make your prose more personable and accessible.

The first draft

A quick scan will tell you if the tone is right, or if there is simply

too much information being crammed into too few sentences. If cluttered, you might need to re-prioritize. Look for ways to move the subject closer to the verb. Cut extra words, phrases or ideas. Pare down prepositions such as, "of, from, about, or to." Sentences carry more power if they stick to one basic thought. For instance:

Entering the conference 10 minutes after the Annual Conference had officially been called to order, keynote speaker Mr. Jerry Blank arrived and explained that the car he was driving had recently come into contact with a female mule deer that was crossing the road, which caused extensive damage to his Honda Civic, which he rented after he arrived on a commercial airline earlier in the day.

This barely grammatical sentence lacks prioritization, conversational tone or brevity. To fix such mangled prose, prioritize the information and cut the fat. A simple and direct technique: Ask, "Who is Kicking Whom?" The answer gives you a lean, powerful sentence:

Our keynote speaker arrived 10 minutes late because he hit a deer.

A writer might believe convoluted sentence structure lends credibility or high status. It doesn't. Vague language always comes more easily to the writer, but imposes more work for the reader. Wordy sentences might create an illusion of competence. But readers know better. After a few paragraphs of cluttered prose, our readers tune out.

Find an ending

Knowing when to end can be as difficult as knowing how to start. An ending should bring the reader back to where the piece began, and

emphasize some transformation you intended for the reader. "Coming full circle" is a favorite technique for fiction writers, and works well for non-fiction as well. A good ending makes a brief recap of the author's main point, along with some culmination or conclusion we want the reader to take away.

Not quite finished

Now that you have a piece written on deadline, you are ready for a final review. Close the office door and read the piece aloud. You will hear the most obvious errors, convoluted constructions and weak lines of logic. If you stumble, rest assured that your audience will stumble as well.

Finally, before you have another person proof the piece, take a few moments to consider a few ethical considerations. "Is it true? Is it ethical? Does it create any harm? Can I stand behind every line?"

Conclusion

Like a carpenter, a writer must size up the project and think about its purpose. Those who want their words to resonate with power and meaning need to carefully consider the audience and their values. So the next time you face a tough deadline, consider how to reach your audience by setting goals, mapping out an outline and by imagining a conversation. These and other tips I mention here have helped me out of numerous deadline scrapes. Perhaps they will work for you, too.

Endnotes

1. Peter Elbow, *Writing With Power*, 50-94 (1991).
2. Jon Franklin, *Writing for Story*, 109-133 (1994).

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PACIFIC REPORTS CITATIONS: Six Volume Set; ALR, Volumes 1-175; ALR 2d, Volumes 1-100; ALR 2d Later Case Service; ALR 3d, Volumes 1-100; ALR 4th, Volumes 1-84; ALR Digest, Volumes 1-12; and, ALR First-Fourth Quick Index; IDAHO AND PACIFIC DIGEST: Seven volume set 1 P.2d – 100 P.2d.; LARSON-WORKMAN'S COMPENSATION LAW, with two volume index; AMERICAN JURISPRUDENCE 2d, Volumes 1-82 with indexes; AMJUR TRIALS, Volumes 1-27; MISCELLANEOUS BOOKS (Some antique): Cases and Materials on Tort, by Young B. Smith and William L. Prosser

(1952); Cases and Materials on Tort, by Smith and Prosser, Third Edition (1962); Cases and Materials on Equity, by Cook (1940); Cases and Readings on Property, by Brown (1941); Cases and Readings on Property, by Frazier, Third Edition (1954); Britton on Bills and Notes (1943); Materials for a Basis Course on Civil Procedure, Field and Kaplin (1953); Idaho Trial Handbook by Lewis (1995); and, Handbook of Evidence for the Idaho Lawyer by Bell, Second Edition (1972)

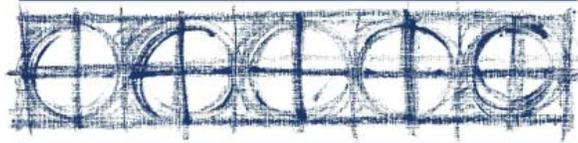
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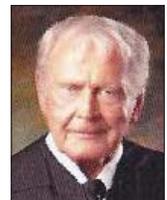


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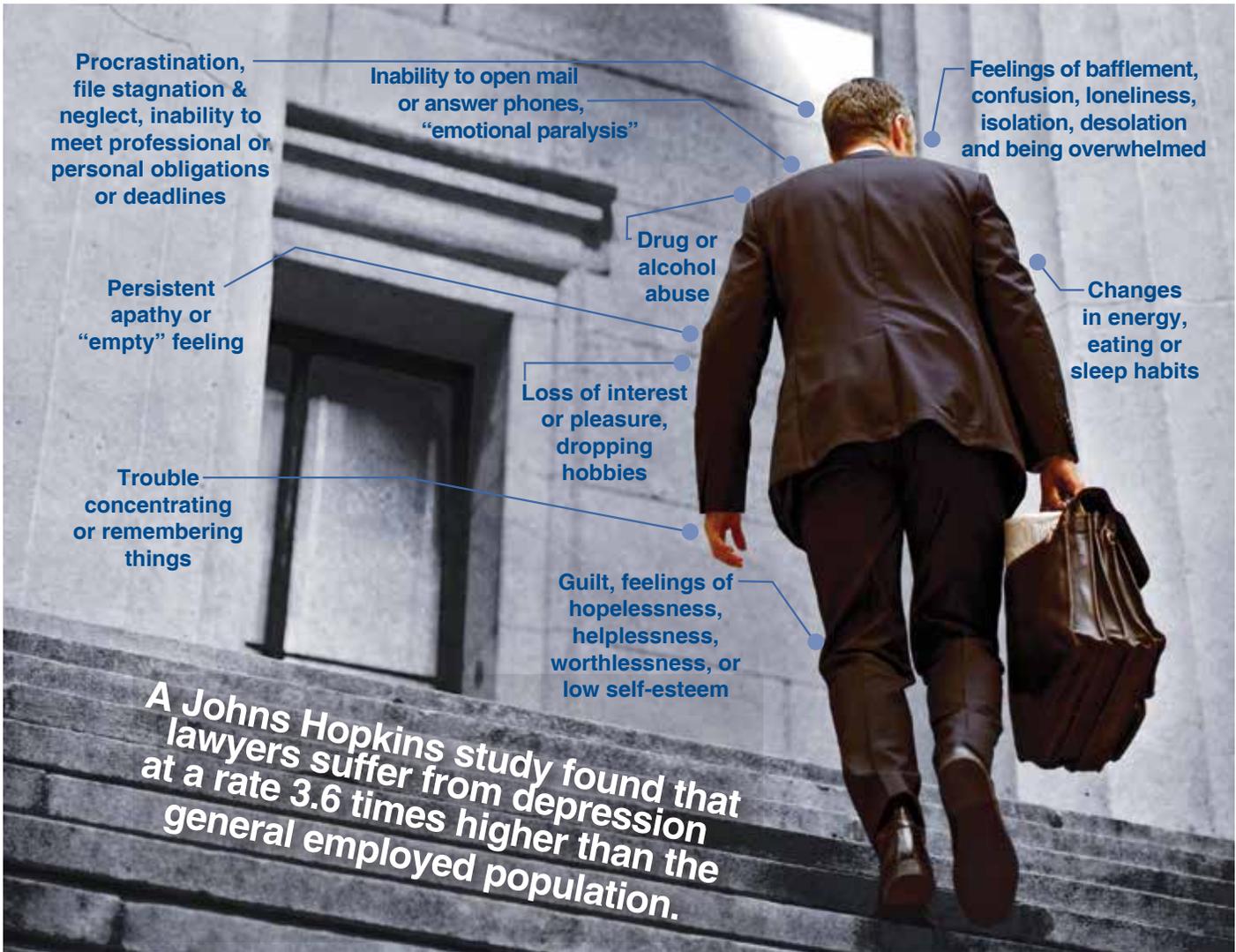


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Sue Solomon
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IN MEMORIAM

Gary Reedy 1958 - 2016

Gary Reedy died on January 6, 2016. The son of Robert and Donna Reedy, Gary grew up in the East Bay, in Pinole, California. He graduated cum laude from Golden Gate University with a B.A. degree in the Administration of Justice. He received a law degree from the University of Oregon in 1988. Gary worked for Ada County for more than 25 years, first as a law clerk for a judge, and then as a Deputy Public Defender.



Gary Reedy

Gary was a man who believed in justice and redemption. He carried his ideals into the real world. He believed in the civil rights of his clients, and in the human rights of all people. He was compassionate, respectful, and hard-working. He was understanding and sensitive to others, especially those with different abilities.

His public life was a reflection of his private life. He was a faithful and warm-hearted husband to his wife, Phoebe, with whom he recently celebrated 24 years of marriage. He was also a patient and gentle father to their daughter, Elizabeth.

Gary liked history, biography, and the curmudgeonly lawyering of Horace Rumpole. Always a man who quietly observed, Gary had a sabre wit.

In his bachelor years, Gary traveled in his native California and rode up the West Coast on his motorcycle. In recent years, he traveled to Italy, France, Greece, Turkey, Syria,

and Egypt. He took up downhill skiing in his 50th winter.

Gary dueled with an aggressive squamous cell carcinoma for 20 years. He fought this battle with dignity and without complaint. Gary had excellent care from the physicians and staff at SWIENT and MSTI. In the end, cancer won and ended Gary's life.

Gary was preceded in death by his mother, Donna Reedy, and daughter, Julianna. He is survived by his father, Robert Reedy, his wife, Phoebe Smith, their daughter, Elizabeth, his brother, Craig Reedy (Cindy), and sister, Debbie DeWitt (Bill).

Sue Solomon Flammia 1943 - 2015

Sue Solomon Flammia died peacefully at home on Dec. 16, 2015. Sue was born to Mildred Gottbreht Solomon and John Solomon on Jan. 21, 1943. She grew up in Sandpoint, Idaho, earned a bachelors degree in education from the University of Idaho in 1965, and a law degree from Gonzaga University in 1978. She taught high school English in Pittsburgh, Pa. and in Coeur d'Alene, Idaho.

In 1979, she opened a solo law practice in Coeur d'Alene. In 1980, she was joined by her sister, Anne Solomon, in their law practice Flammia and Solomon. They were the first sisters admitted to the Idaho Bar. They have worked together for 35 years, focusing on family law and peace for children. Sue helped introduce mediation into family law in Idaho and was trained as a mediator in 1988. Sue served on the Idaho Judicial Council and was awarded the Idaho State Bar Professionalism Award.

Sue married Patrick Flammia in 1969 and together they were long-time supporters of the arts. They helped create Citizens Council for the Arts and worked on Art on the Green since its inception 47 years ago. Sue served on the Idaho Arts Commission and served on the Idaho Centennial Commission, and was appointed chair of the arts committee of the Centennial. She helped create "Spirit of the West," a portable gallery and performance space that traveled throughout Idaho during the centennial. Sue and Patrick were given the Governor's Support of the Arts award in 1990.

Sue loved to travel, a passion she shared with Patrick. Italy was their "second home," and they visited Italy, as well as Spain, Mexico, Guatemala frequently.

Sue and like-minded colleagues created the Conflict Resolution Center of the Inland Northwest that offered annual continuing education to lawyers and mental health professionals about the importance of peace for families and children.

Sue is survived by her sister Anne and her spouse Charlie Roan and their children Erin and Beck; sister Julie Smith and her spouse John and children Jeff and Jennifer; sister Lori Solomon and her son Uriah; brothers Gary Solomon and his wife Judy; and Jim Solomon and his wife Diane and their children Katie and Ryan. Sue was predeceased by her husband Patrick; her parents; and her sister Eileen Miller Brandsen.



Sue Solomon
Flammia

Stoel Rives appoints Nicole Hancock as new Boise Office Managing Partner

BOISE — Stoel Rives LLP has announced that partner Nicole C. Hancock has been appointed as the new Office Managing Partner of the firm’s Boise office. Ms. Hancock is now responsible for the day-to-day administrative management of the office, which has more than 30 attorneys and staff. Stoel Rives Boise lawyers provide legal services in the areas of construction and design; corporate; environment, land use and natural resources; labor and employment; business litigation; and real estate law.



Nicole C. Hancock

She received her B.S. from Western Oregon University in 1998 and her law degree from Willamette University College of Law in 2002. She clerked for the Hon. T.G. Nelson for the United States Court of Appeals for the Ninth Circuit.

Hancock succeeds corporate partner Kris Ormseth, who served in the Boise Office Managing Partner role since 2012 and previously from 2003 to 2009.

Wade Woodard named senior fellow of Litigation Counsel of America

BOISE — Wade Woodard of the law firm Andersen Banducci PLLC has been named a senior fellow of the Litigation Counsel of America (LCA). Woodard is a trial attorney with over 15 years of experience representing both plaintiffs and defendants in civil cases. His practice focuses on complex commercial litigation, bad faith insurance claims, land-use appeals, product liability

claims, securities fraud, and employment issues.

The LCA is a trial lawyer honorary society selected by invitation based upon excellence and accomplishment in litigation, both at trial and appellate levels, and superior ethical reputation.



Wade Woodard

Woodard’s trial work with partner Thomas Banducci has attracted national attention following large jury verdicts in 2007 and 2011 which ranked among the top 100 verdicts handed down by U.S. juries during those years.

New Partners for Holland & Hart LLP

DENVER — Holland & Hart LLP announced that 15 attorneys have been elected into the firm’s partnership, including four in Boise. The new partners represent several practice areas and work from eight of the firm’s 15 offices across the Mountain West and in Washington, D.C.

“We are delighted to welcome them to the partnership as an important part of the future of Holland & Hart,” said Liz Sharrer, chair of the firm. The four from Boise include Dean Bennett, Alison Johnson, Eric Vehlow and Brian Wonderlich.

Mr. Bennett practices in the Boise office as a member of the Labor & Employment group. He is a trial attorney who tackles complex contract and



Dean Bennett

business disputes involving partnerships, limited liability companies, complex insurance matters, and trade secret issues. He also regularly represents employers in court and before state and federal agencies to resolve claims of discrimination, retaliation, and wrongful discharge.

Ms. Johnson practices in the Boise office as a member of the firm’s Corporate practice group. She counsels start-ups and established companies on a broad range of corporate and securities transactions, from daily operational concerns to complex transactional matters. She also guides firms through the challenges involved in financing, acquisitions, mergers, and sales of stock and assets.



Alison Johnson

Mr. Vehlow practices in the Boise office as a member of the Intellectual Property group. As outside counsel for one of the nation’s largest cable operators, Vehlow efficiently handles transactions between telecommunications companies and property owners, including navigating relevant federal and state laws. He also represents clients in business and commercial matters, including agreements for product purchase and license, distribution and resale, maintenance and support services, and product supply and manufacturing.



Eric Vehlow

Mr. Wonderlich practices in the Boise office as a member of the firm's Commercial Litigation group. Wonderlich represents businesses across many industries in complex commercial litigation and arbitration, and in matters before or against government agencies. Wonderlich has substantial experience litigating cases in state and federal courts, as well as administrative tribunals.



Brian Wonderlich

National men's divorce law firm opens in Boise

BOISE — Cordell & Cordell, the world's largest domestic litigation firm focusing on representing men in family law cases, has opened an office in Boise. Cordell & Cordell has more than 200 attorneys working in more than 100 offices across the United States and the United Kingdom.



Daniel Lipsitz

The new Boise office is at 950 W. Bannock Street, Suite 1100. Cordell & Cordell Associate Attorney Daniel Lipsitz is opening the firm's Boise office.

Concordia University Law School hosts legal writing conference

BOISE — Professor Tenielle Fordyce-Ruff, along with Assistant Director Jason Dykstra, recently hosted the Legal Writing Institute's December conference which attracted professors from as far away as

Georgetown Law Center, Northwestern University School of Law and University of Texas School of Law. Presenters included CU Law professors Shasta Kilminster-Hadley, Jason Dykstra and McKay Cunningham.

Concordia's Director of Legal Research and Writing, Professor Tenielle Fordyce-Ruff, was appointed as the chair of the New Directors Committee of the Association of Legal Writing Directors (ALWD). ALWD is the nation's most influential professional organization dedicated to improving legal research, writing, analysis and advocacy.



Tenielle Fordyce-Ruff



Jason Dykstra

Two attorneys join Givens Pursley

BOISE — Givens Pursley recently announced that Bradley J. Dixon and Kersti H. Kennedy have joined the firm's litigation practice. Mr. Dixon, a partner with the firm, has a broad range of experience representing clients in complex commercial litigation. Kersti Kennedy joins Givens Pursley as an associate specializing in litigation.



Bradley J. Dixon

Mr. Dixon represents clients in complex commercial litigation, secured transactions, real estate, foreclosure, employment, insurance coverage, products liability, and bank-

ruptcy trial practice. Mr. Dixon was previously an attorney Partner with Stoel Rives, LLP. He received his law degree from Willamette University College of Law.

Ms. Kennedy received her law degree from the University of Washington School of Law. Her work includes litigation, motion practice, depositions and other discovery, client interviewing and counseling, and alternative dispute resolution. She has experience in secured transactions litigation including foreclosure and post-foreclosure matters, as well as general commercial disputes. She was previously at Stoel Rives, LLP.



Kersti H. Kennedy

Attorney joins Holland & Hart

BOISE - Attorney Teague Donahey has joined Holland & Hart's Boise office, expanding the firm's litigation services within its Intellectual Property practice.

Mr. Donahey handles high technology patent litigation disputes on behalf of major corporations, as well as other significant intellectual property, antitrust, and other business litigation in both federal



Teague Donahey

and state courts and before the International Trade Commission (ITC). Before joining Holland & Hart, Donahey was a partner in the San Francisco office of Sidley Austin LLP.

2015**Idaho Law Foundation & Idaho State Bar CLE Speakers**

The Continuing Legal Education program of the ILF and ISB wants to acknowledge the many individuals who contributed their time and expertise in 2015. Without the commitment of these individuals these programs would not be possible!

A

Adams, Mark
Alexander, J. Robert
Allen, Gary
Anderson, Robert
Andrews, Bradley
Axline, Hon. Scott
Ayers, Sunrise

B

Ball, James
Barton, Peter
Baskin, Thomas
Bellinighiere, Frank
Bennetts, Jan
Bernards, Chad
Birch, Erika
Bisharat, Janica
Bithell, Walter
Black, Betsy
Blackburn, Mike
Blair, Mary Beth
Boyce, Steven
Bradford, Eidam
Brody, Robyn
Brumley, Jennifer
Buchanan, Mark
Burdick, Hon. Roger
Burgoyne, Sen. Grant
Burnett, Donald
Burns, Scott
Bush, Hon. Ronald

C

Cafferty, John
Callahan, Kimmer
Campbell, Hon. Calvin
Carey, Donald
Carnaroli, Hon. Rick
Caval, Alexandra
Cawthon, Hon. James
Cheney, Kirk
Christensen, Matthew
Clapp, Sandra
Clark, Curtis
Clark, Hon. Stephen
Coats, James
Colborn, James
Cole, Ralph
Collins, Nancy
Collins, Paul
Comstock, Hon. Russell
Cooper, Gary
Cox, Faith
Cox, Jacqueline
Crawford, J. Nick
Crum, Douglas

C

Culet, Hon. Gregory
Cuneo, Christopher

D

Dale, Hon. Candy
Davis, Sen. Bart
Diehl, Richard
Dillion, Lee
Dinger, Daniel
Donohue, Douglas
Duke, Keely
Dunn, Hon. Stephen
Dvorak, Thomas

E

Eismann, Hon. Daniel
Elliott, Kathleen
Ellis, Hon. Andrew
Evans, Hon. Michelle

F

Faller, Mimi
Feighner, Scott
Ferguson, Deborah
Ferrigno, Michael
Fordyce-Ruff, Tenielle
Freeman, Catherine

G

Gardunia, Hon. Theresa
Geidl, Tod
Gerwick-Couture, Wendy
Gilmore, Michael
Gonzalez, Rafael
Gourley, Kimbell
Green, J. Bart
Gugino, Jeremy

H

Hahn, Frederick
Hansen, Hon. Timothy
Harris, Donald
Hepworth, Charles
Hickok, Suzanne
High, Thomas
Hillen, Noah
Hodges, Hon. Mick
Hudson, Jeremiah
Hume, LeAnn
Hurwit, Josh
Huskey, Hon. Molly

J

James, Robert
Jensen, Angela
Jensen, David

J

Jones, Hon. Jim
Jones, Joseph
Jovick, Fonda

K

Kane, Brian
Kenyon, Stephen
Kessinger, Michael
Kibodeaux, Hon. Joanne
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Kluksdal, Paula
Kormanik, John
Kristensen, Debora

L

Lambert, Caralee
Lamm, Doug
Larsen, Reed
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Leavitt, Douglas
Lehtinen, Erik
Lombardi, David
Lorello, Jessica
Lucoff, Aaron

M

Magel, John
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Markuson, Grant
Marsters, LaDawn
Mathews, Jetta
Maynard, R.D.
McGown, John
McGrath, Lisa
McMahan, Brian
Meek, Kristopher
Mehall, Michael
Meier, Joseph
Melanson, Hon. John
Metcalf, David
Mills, Carol
Minnaert, Dan
Moody, Hon. Melissa
Moretto, Deb
Mossman, Taylor
Myers, Hon. Terry

N

Nafzger, Jodi
Nelson, Carley
Newman, David
Nichols, William
Nye, Hon. David
Nye, Rep. W. Marcus

O

Olson, Wendy
Orton, Dylan
Owens, R. Bruce

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Pauloski, Thomas
Penny, David
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Peterson, Hon. Clark
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Points, Michelle
Porter, Chelsea
Powers, Michael
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Ramsden, Michael
Redmond, Brooke
Reuter, Dennis
Reynard, Janine
Reynoldson, Laurie
Robnett, Ausey
Rounds, Tyler

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Schwager, Sheila
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Senn, Mark
Sheikh, Mahmood
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Simpson, Hon. Darren
Sinclair, J. Walter
Smith, James
Smith, Michael
Smith, Thomas D.
Squyres, B. Newal
Stegner, Hon. John
Stevens, John
Stewart, Trapper
Stow, Hon. James
Such, Domingo
Sullivan, Hon. Jayme

T

Tardiff, Claire
Thomsen, Hon. Steven

2015

Idaho Law Foundation & Idaho State Bar CLE Speakers (continued)

The Continuing Legal Education program of the ILF and ISB wants to acknowledge the many individuals who contributed their time and expertise in 2015. Without the commitment of these individuals these programs would not be possible!

T
Tuszynski, Allison

V
Valdez, Anthony
Verby, Hon. Steve

W
Wali, David
Walsh, Mayli
Walsh, Sean
Wardle, Geoffrey
Weiler, Todd
Wetherell, Robert
Whatcott, Mackenzie
Whitehead, Richard
Wieland, Steven
Wigle, W. Scott

W
Wilkinson, Kirsten
William, Hon. Mikel
Wilson, Brent
Wirick, Tyler
Wood, S. Douglas
Woodard, Wade
Wullenwaber, Dean

Z
Zarian, John

Annual Meeting Speakers

Allen, Gary
Andrews, Brad
Baillie, Melanie
Barrett, Steve
Bathrick, Mark

Birch, Erika
Bisharat, Janica
Bowers, Don
Cooper, Gary
Custer, Neal
Dale, Hon. Candy
Dale, James
Dickinson, James
Evans, Texie
Gaffney, Michael
Gragg, Phillip
Griffith, Dean
Hayes, Leslie
Hoidal, Ernest
Iwersen, Kevin
Jones, Joseph
Kerrick, Annie
Kerrick, Hon. Juneal
Lindstrom, Mike
Love Kourlis, Hon. Rebecca

McCann Jr., William
McGown, John
Mikitish, Joe
Nafzger, Jodi
Nicholas, Christine
Olson, Wendy
Prohaska, Thomas
Puype, Eric
Reister Conard, Jane
Rumel, John
Sanders, Shaakirrah
Schuman, Dale
Sinclair, J. Walter
Snowden, Kyle
Strong, Clive
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Winmill, Hon. B. Lynn



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K

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S

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T

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U

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 U.S. Bankruptcy Court
 U.S. Courts, District of Idaho
 U.S. Department of Justice, Office of the U.S. Trustee
 Ultimate Training Munitions
 United States Department of Homeland Security
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Vasconcellos Investment Consulting

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