



2015 Resolution Process

Voter Pamphlet



2015 RESOLUTION PROCESS VOTER PAMPHLET

Dear Idaho Attorney:

Unlike many state bars, the Idaho State Bar cannot take positions on legislative matters, rules of court, substantive rules governing the bar itself at its Annual Meeting or by act of its Bar Commissioners, without first submitting such matters to the membership through the Resolution Process. Enclosed are six resolutions proposed for your consideration during the 2015 Idaho State Bar resolution process, aka "The Road Show."

The resolution meeting agenda is on page 3. In addition to the resolutions, the schedule includes a free CLE and a presentation honoring your colleagues receiving the pro bono, retiring judges' and professionalism awards.

The 2015 resolution meetings are scheduled as follows:

<i>First District</i>	Coeur d'Alene	Thursday Nov. 5	North Idaho College, Student Union Bldg.	10:30 a.m. CLE 12 noon Meeting
<i>Second District</i>	Clarkston	Thursday Nov. 5	Quality Inn	4:30 p.m. CLE 6:00 p.m. Meeting
<i>Third District</i>	Nampa	Thursday Nov. 19	Hampton Inn & Suites	4:30 p.m. CLE 6:00 p.m. Meeting
<i>Fourth District</i>	Boise	Thursday Nov. 19	Owyhee Plaza	10:30 a.m. CLE 12 noon Meeting
<i>Fifth District</i>	Twin Falls	Wednesday Nov. 18	Canyon Crest Event Center	4:30 p.m. CLE 6:00 p.m. Meeting
<i>Sixth District</i>	Pocatello	Wednesday Nov. 18	Juniper Hills Country Club	10:30 a.m. CLE 12 noon Meeting
<i>Seventh District</i>	Idaho Falls	Tuesday Nov. 17	Marriott Residence Inn	10:30 a.m. CLE 12 noon Meeting

Each judge and active member of the Idaho State Bar has the opportunity to vote at a resolution meeting or by mail. Members in attendance at a resolution meeting will be provided a ballot. Members not in attendance at the meeting will be mailed a ballot after the meeting in their district. Ballots may be completed and submitted at the resolution meetings, mailed, faxed or delivered to the Idaho State Bar office. Issues shall be determined by the total ayes and nays cast statewide. **All ballots must be signed and are due in the Idaho State Bar office by the close of business on Monday, December 7, 2015.**

See you at the District Bar meetings.

Tim Gresback
President

Diane K. Minnich
Executive Director

IDAHO STATE BAR
2015 RESOLUTION PROCESS
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- **15-01 Idaho Bar Commission Rule 217 (k). Reevaluation –**
Proposes to eliminate the bar exam reevaluation process and change the passing score.
- **15-02 Idaho Bar Commission Rule 228. Emeritus Attorney License –** Proposes to amend the rules for obtaining an emeritus license.
- **15-03 Idaho Bar Commission Rule 302. Licensing Requirements and 304 Annual License Fee –** Proposes to change the age requirement for senior status from 72 to 65.
- **15-04 Idaho Bar Commission Rule 402 –** Changes the eligibility requirements for MCLE exemptions, eliminating the ability for attorneys over the age of seventy-two to request exemption, but maintaining the ability for attorneys to request exemptions due to hardship or disability.
- **15-05 Idaho Bar Commission Rule 521. Access to Information –** Proposes to limit the scope of disciplinary confidentiality in Rule 521.
- **15-06 Idaho Bar Commission Rules Section IV Mandatory Continuing Legal Education –** Proposes several clarifications to the MCLE rules.



2015 RESOLUTION MEETING AGENDA

- **Welcome, Announcements and Introductions**
 - *ISB President Tim Gresback and District Bar President*
- **Pro Bono, Retiring Judges and Professionalism Awards**
- **Presentation of 2015 Resolutions**
 - *Bar Commissioners*
- **Local Bar Business**

MANAGING A BULLY WITHOUT BECOMING ONE

A Free Roadshow Participatory Ethics CLE

Panelists:

President Tim Gresback
Commissioner Trudy Hanson Fouser
Commissioner Kent Higgins
Commissioner Michelle R. Points
Commissioner Dennis S. Voorhees

Moderator:

Bar Counsel Bradley G. Andrews

2015 PROFESSIONALISM, PRO BONO and RETIRING JUDGES AWARD RECIPIENTS

Each year, the Idaho State Bar honors members of the profession for their contributions to their communities and the profession. At least one attorney from each judicial district receives the professionalism award and attorneys from around the state are recognized for their pro bono efforts.

PROFESSIONALISM AWARDS

First District	Joel P. Hazel	Coeur d'Alene
Second District	Anthony C. Anegon	Lewiston
Third District	William H. Wellman	Nampa
Fourth District	James J. Davis Hugh V. Mossman	Boise Boise
Fifth District	Michael F. McCarthy	Twin Falls
Sixth District	Reed W. Larsen	Pocatello
Seventh District	Royce B. Lee	Idaho Falls

DENISE O'DONNELL DAY PRO BONO AWARDS

First District	David K. Robinson Howard A. Funke	Coeur d'Alene Coeur d'Alene
Second District	Deborah L. McCormick	Moscow
Third District	Reese E. Verner Barbra Ferre	Nampa Nampa
Fourth District	Scott L. Rose Theodore S. Tollefson Kersti Harter Kennedy Joe R. Larson	Boise Boise Boise Boise
Fifth District	Kirstin K. Dutcher	Ketchum
Sixth District	Kenneth E. Lyon Shane T. Reichert Stratton P. Laggis	Pocatello Pocatello Pocatello
Seventh District	Bryce C. Lloyd Charles E. Cather III Benjamin C. Ritchie	Blackfoot Idaho Falls Idaho Falls

IDAHO STATE BAR RETIRING JUDGES AWARDS

First District	Hon. Patrick R. McFadden Hon. Benjamin R. Simpson	St. Maries Coeur d'Alene
Second District	Hon. Michael J. Griffin	Grangeville
Fourth District	Hon. Cheri C. Copsey Hon. Karen L. Lansing Hon. Thomas F. Neville	Boise Boise Boise
Sixth District	Hon. David L. Evans	Malad
Seventh District	Hon. Charles L. Roos	Challis

IDAHO STATE BAR RESOLUTION PROCESS

Unlike most state bars, the Idaho State Bar cannot take positions on legislative matters, rules of court, or substantive rules governing the bar itself at its Annual Meeting, or by act of its Bar Commissioners, without first submitting such matters to the membership through the Resolution Process.

Process

The Resolution Process is set forth in Idaho Bar Commission Rule 906. Briefly summarized, the Resolution Process is as follows:

Submission & Circulation of Resolutions

Resolutions may be submitted by a District Bar Association, by the Board of Commissioners, the Idaho Supreme Court, by a bar Section or committee, or by an individual member of the bar.

Resolutions submitted by a District Bar Association, Idaho Supreme Court, or the Board of Commissioners are automatically included in the resolution process.

Resolutions submitted from other sources are presented to the first meeting of District Bar representatives and the Board of Commissioners for consideration. This body votes on whether to circulate the resolution to the membership. Resolutions that are approved at this meeting are then mailed to each member of the Idaho State Bar. Included in the packet is discussion of the purpose of the resolution and the text of each resolution.

Resolution Meetings

District Bar meetings are held in each of the seven districts.

Voting

Each judge and active member of the Idaho State Bar shall be entitled to one vote on each question presented. Questions shall be determined by the total ayes and nays cast statewide.

Members in attendance at a resolution meeting will be provided a ballot to vote on resolutions.

Members not in attendance at the meeting will be mailed a ballot after the resolution meeting in their district. Ballots may be completed and submitted at the resolution meetings, or mailed, faxed or delivered to the Idaho State Bar office. **All ballots must be signed and are due in the Idaho State Bar office by the close of business on Monday, December 7, 2015.**

Amendments

After voting on a resolution as presented at the resolution meeting, District Bar members may vote to offer an amendment to a proposed resolution. Only members attending a resolution meeting will be able to vote on proposed amendments. Thus a District may instruct its representative to offer an amendment at the second meeting of District Bar Presidents.

Conclusion of Process

After all resolution meetings are concluded, the District Bar Representatives meet again on December 11, 2015. At that meeting, the representatives are to cast their votes in accordance with the votes cast by the members of their district bar association. The district representatives may cast votes on amendments as they see fit.

The final versions of successful resolutions are then forwarded to the appropriate recipients.

As of October 2015, the Idaho State Bar voting membership breakdown is as follows:

District	Eligible voters	% of total eligible voters
1	438	8.4%
2	227	4.3%
3	263	5.0%
4	2119	40.4%
5	323	6.2%
6	219	4.2%
7	401	7.7%
out of state	1249	23.8%
Total	5239	100.00%

RESOLUTION 15-01

Amendments to Idaho Bar Commission Rule 217

Presented by: **Board of Commissioners of the Idaho State Bar**

Rationale: The Bar Exam Reevaluation process, set forth in the Idaho Bar Commission Rules and the Bar Exam Grading Standards and Procedures, provides an opportunity for some examinees who received a failing score on the bar exam to have their test reviewed and pass the exam. Reevaluation does not change an applicant's bar exam score. Rather, reevaluators vote whether an applicant should pass or fail. The reevaluation data reveals that higher scored exams sometimes fail and lower scored exams sometimes pass after reevaluation.

Reevaluation may have been intended to make the testing and grading process fairer by giving examinees an additional review of their exam. Prior to the 1970's, the Idaho bar exam was an all-essay examination prepared by volunteer Idaho attorneys. Adoption of the multiple choice Multistate Bar Examination (MBE) in 1974, the Multistate Essay Examination (MEE) in 1990, the Multistate Performance Test (MPT) in 2001, scaling the MEE and MPT essays to the MBE to ensure consistency in bar exam scores over time, and ultimately, adoption of the Uniform Bar Examination (UBE) in 2012, have all led to increased reliability in the testing process.

Since February 2012, 138 applicants have been sent to reevaluation, and 77 passed after reevaluation. These applicants did not achieve the minimum passing score on the bar exam. Reevaluation has, therefore, effectively lowered the bar exam passing score. For this reason, the percentage of applicants passing Idaho's bar exam would likely drop by an average of 10% if reevaluation is eliminated and the passing score remains the same. In order to ensure that the highest scored examinees pass the bar exam and to set a passing score that is likely to result in pass rates consistent with historical pass rates, evaluation should be eliminated and the passing score should be amended.

NOW, THEREFORE, BE IT RESOLVED THAT the Board of Commissioners recommends that the members of the Idaho State Bar recommend to the Idaho Supreme Court that Idaho Bar Commission Rule 217 be amended to eliminate reevaluation and to provide that a passing score on the bar examination shall be a scaled score of not less than 68% of the highest possible scaled score.

***RULE 217. Bar Examination.**

- (a) **Examination Required.** Except as otherwise provided in this Rule, all Applicants, except Reciprocal and House Counsel Applicants, must take the Idaho bar examination.
- (b) **Idaho Bar Examination.** The Idaho bar examination consists of the National Conference of Bar Examiners (NCBE) prepared exams including six Multistate Essay Examination (MEE) questions, two Multistate Performance Test (MPT) questions and the Multistate Bar Examination (MBE). If all components of the Idaho bar examination are taken in the same examination administration and given according to the standards established by the NCBE, the examination qualifies as the Uniform Bar Examination (UBE).

- (k) **Grading of the Bar Examination.** Bar examinations, including any incomplete bar examination, shall be graded and reviewed under the direction of the Board in accordance with the Bar Examination Grading Standards and Procedures adopted by the Supreme Court.
 - (1) **Identification.** An identification procedure which ensures anonymity of all Applicants shall be used throughout the grading process.
 - (2) **Passing Score.** A passing scaled score on the bar examination shall be a scaled score of not less than 68.70% of the highest possible scaled score as provided by the Bar Examination Grading Standards and Procedures.
 - ~~(3) **Reevaluation.** The bar examination of an Applicant whose scaled score falls within the range of 66 2/3% to 70% of the highest possible scaled score shall be reevaluated as provided by the Bar Examination Grading Standards and Procedures.~~
- (l) **Bar Examination Certification.** The Board shall certify all eligible Applicants to the Supreme Court for admission.
- (m) **Request for Copies.** Applicants who failed the bar examination may review:
 - (1) Their bar examination grades and answers; and
 - (2) The essay questions and suggested analyses.
- (n) **Bar Examination Records.** Bar examination papers shall be maintained by the Bar for at least 120 days after the bar examination, after which time the papers may be destroyed without further notice to the examinee.

**(Rule 217 amended 3-7-11 – effective for the February 2012 bar exam and all exams thereafter.)*

RESOLUTION 15-02

Amendments to Idaho Bar Commission Rule 228 Emeritus Attorney Limited License

Presented by: **The Board of Commissioners of the Idaho State Bar**
 Senior Lawyers Transition Task Force

Rationale: The Board of Commissioners of the Idaho State Bar (“Board”) appointed a Task Force to study issues relating to senior lawyers transitioning from practicing to senior status and to make recommendations about those issues to the Board. The Senior Lawyer Transition Task Force was comprised of William F. (Bud) Yost, Nampa attorney, Task Force Chairman, Chief Justice Jim Jones, Idaho Supreme Court, Dennis Cain, retired Boise attorney, Professor Sunil Ramalingam, University of Idaho College of Law, Kim Toryanski, Boise attorney with Idaho Division of Human Resources, and Dennis Voorhees, Twin Falls attorney and a Bar Commissioner. Brad Andrews, Bar Counsel, and Mahmood Sheikh, Deputy Executive Director of the Idaho State Bar, served as liaisons to the Task Force.

The Task Force recognized the need for pro bono services in Idaho continues to exceed the supply of available volunteer lawyers. Currently, Idaho Bar Commission Rule 228 allows Emeritus Attorneys to provide pro bono services, but requires Emeritus Attorneys to be supervised by a supervising attorney during pro bono representation. The Task Force is aware that only two lawyers are currently providing pro bono services as Emeritus Attorneys and the Task Force believes that expanding the ability to practice pro bono as an Emeritus Attorney will result in more pro bono representation. The proposed rule allows attorneys to receive a limited license if they have practiced law in any state or territory of the United States or the District of Columbia within the preceding five years, as long as the pro bono services are through an Approved Legal Assistance Organization, which is currently the Idaho Volunteer Lawyers Program and Idaho Legal Aid Services. The proposed rule removes the supervising lawyer requirement, addresses the scope of the practice, and provides that Emeritus Attorneys shall complete three credits of continuing legal education from the Approved Legal Assistance Organization each year the Emeritus Attorney holds a limited license. However, those CLEs shall be offered by the Approved Legal Assistance Organizations free of charge to Emeritus Attorneys.

NOW, THEREFORE, BE IT RESOLVED THAT the Board of Commissioners recommends that the members of the Idaho State Bar recommend to the Idaho Supreme Court that Idaho Bar Commission Rule 228 be amended as follows:

RULE 228. Emeritus Attorney Limited License.

- (a) **Admission to Limited Practice as Emeritus Attorney.** Upon application and approval in accordance with this rule, qualified attorneys may be admitted as Emeritus Attorneys to engage in the limited practice of law described below.
- (b) **Qualifications.** An attorney who is or had been actively licensed to practice law in any state or territory of the United States or the District of Columbia within the preceding five (5) years of the application, may apply to practice law as an Emeritus Attorney consistent with this rule. ~~may apply for a license to practice law as an Emeritus Attorney who, for at least ten of the fifteen years immediately preceding the Application: (or within the past five (5) years):~~
- ~~(1) Is or has been a member of the Bar, or is or was admitted to practice law in any other state or territory of the United States or the District of Columbia; and~~
- ~~(2) Has been engaged in the Active Practice of Law.~~
- (c) **Pro Bono Service. Association and Supervision.** An Emeritus Attorney may perform the pro bono activities set forth in subsection (d) below only in association with an Approved Legal Assistance Organization approved by the Supreme Court under this rule. ~~and under the supervision and direction of a supervising attorney.~~
- (1) **Approved Legal Assistance Organization.** A nonprofit legal assistance organization seeking approval from the Supreme Court shall file a petition with the Clerk of the Supreme Court certifying that it is a nonprofit organization and reciting with specificity:
- (A) The structure of the organization and whether it accepts funds from its clients;
- (B) The major source of funds used by the organization;
- (C) The criteria used to determine potential clients' eligibility for legal services offered by the organization;
- (D) The types of legal and non-legal services offered by the organization;
- (E) The names of all members of the Bar who are employed by the organization or who regularly perform legal work for the organization; and
- (F) The existence and amount of malpractice insurance which will cover the Emeritus Attorney.
- ~~(2) **Qualifications of Supervising Attorney.** A supervising attorney must be:~~
- ~~(A) An active member of the Bar;~~
- ~~(B) Employed by or volunteer for the Approved Legal Assistance Organization; and~~
- ~~(C) Responsible to the court, the Bar, the Supreme Court and the client for all services of the emeritus attorney provided pursuant to this rule.~~
- (d) **Scope of Practice. Permitted Activities.**
- (1) An Emeritus Attorney may:
- (A) Appear in any court or before an administrative tribunal, mediator or arbitrator in Idaho on behalf of a client of an Approved Legal Assistance Organization; ~~if the person on whose behalf the emeritus attorney is appearing has given informed consent, confirmed in writing, to that appearance and a supervising attorney has given written approval for the appearance. Certification of the written consent and approval shall be provided to the court;~~
- (B) Prepare pleadings and other documents to be filed in any court or before any administrative tribunal, mediator or arbitrator in any matter in which the Emeritus Attorney is involved; ~~provided that such pleadings and documents shall also be signed by the supervising attorney;~~ and
- (C) Render legal advice and perform other appropriate legal services on behalf of a client of an Approved Legal Assistance Organization. ~~after prior consultation with, and upon the informed consent, confirmed in writing, of the client and supervising attorney.~~

~~(2) The presiding judge, hearing officer, mediator or arbitrator may determine the extent of the emeritus attorney's participation in any proceeding.~~

(e) **Limitations on the Scope of Practice.**

(1) Emeritus Attorneys are not, and shall not represent themselves to be, active members of the Bar licensed to practice law in Idaho.

(2) An Emeritus Attorney shall not request or receive compensation for legal services rendered, provided:

(A) An Approved Legal Assistance Organization may reimburse the Emeritus Attorney for actual expenses incurred while rendering services and may charge for its expenses as it may otherwise properly charge; and

(B) The Approved Legal Assistance Organization or client is entitled to receive all court awarded attorneys' fees for legal services rendered by the Emeritus Attorney.

(f) **Limited Licensure.** The Supreme Court may issue an Emeritus Attorney limited license upon receipt of:

(1) A sworn statement by the Emeritus Attorney that he or she:

(A) Is qualified under subsection (b) above;

(B) Shall not ask for or receive compensation for legal services;

(C) Shall abide by the Idaho Rules of Professional Conduct and all other laws and rules governing lawyers admitted to the Bar; and

(D) Submits to the jurisdiction of the Supreme Court and Bar for disciplinary purposes;

(2) Written confirmation from an Approved Legal Assistance Organization that:

(A) The Emeritus Attorney is currently associated with the organization; and

(B) The organization has been approved by the Supreme Court.;~~and~~

~~(C) An attorney employed by or volunteering with the organization will act as supervising attorney; and~~

(3) Verification from the highest court or agency in the state, territory or district in which the Emeritus Attorney is licensed or was previously licensed to practice law, demonstrating stating that the attorney is qualified under subsection (b) above.

(g) **Termination of License.**

(1) An Emeritus Attorney license shall be terminated:

(A) Upon request by the Emeritus Attorney;

(B) By the Supreme Court at any time, provided that the Clerk of the Supreme Court shall mail a copy of the notice of termination to the respective attorney and Approved Legal Assistance Organization; or

~~(C) Upon notice to the Supreme Court from the Approved Legal Assistance Organization that the Emeritus Attorney is no longer associated with the organization; or~~

~~(C) (D) Upon the Supreme Court's withdrawal of its approval of the Approved Legal Assistance Organization the Emeritus Attorney is currently working with.~~

~~(2) Upon termination of the emeritus attorney's license, the supervising attorney shall immediately:~~

~~(A) File in each matter pending before any court or tribunal a notice that the emeritus attorney will no longer be involved in the case; and~~

~~(B) Advise all clients that the emeritus attorney will no longer be representing them.~~

~~(2) To transfer to any other membership status, the Emeritus Attorney must comply with I.B.C.R. 306, if applicable.~~

(h) **CLE.** Emeritus Attorneys shall complete a minimum of three (3) credit hours of continuing legal education (CLE) from an Approved Legal Assistance Organization for each year the Emeritus Attorney limited license is renewed. Those CLE's shall be offered by the Approved Legal Assistance Organization free of charge to any Emeritus Attorney. Those CLE's will be included on a form in the Emeritus Attorney's annual limited license renewal.

RESOLUTION 15-03
Amendments to Idaho Bar Commission Rules 301, 302 and 304
Senior Members of the Idaho State Bar

Presented by: **The Board of Commissioners of the Idaho State Bar**
 Senior Lawyers Transition Task Force

Rationale: The Board of Commissioners of the Idaho State Bar (“Board”) appointed a Task Force to study issues relating to senior lawyers transitioning from practicing to senior status and to make recommendations about those issues to the Board. The Senior Lawyer Transition Task Force was comprised of William F. (Bud) Yost, Nampa attorney, Task Force Chairman, Chief Justice Jim Jones, Idaho Supreme Court, Dennis Cain, retired Boise attorney, Professor Sunil Ramalingam, University of Idaho College of Law, Kim Toryanski, Boise attorney with the Idaho Division of Human Resources, and Dennis Voorhees, Twin Falls attorney and a Bar Commissioner. Brad Andrews, Bar Counsel, and Mahmood Sheikh, Deputy Executive Director of the Idaho State Bar, served as liaisons to the Task Force.

The Task Force determined that the qualifying age for Senior Members of the Idaho State Bar should be age 65 instead of 72. Senior Members are not entitled to actually practice law, but receive Idaho State Bar notices and The Advocate.

NOW, THEREFORE, BE IT RESOLVED THAT the Board of Commissioners recommends that the members of the Idaho State Bar recommend to the Idaho Supreme Court that Idaho Bar Commission Rules 301(s), 302(d) and 304 be amended as follows:

RULE 301. Definitions. The following capitalized terms shall have the meanings set forth below:

- (s) **Senior or Senior Member.** A member of the Bar aged ~~seventy-two (72)~~ sixty five (65) years or older who is not licensed to practice law in Idaho and has been granted Senior status under Rule 302(d).

RULE 302. Licensing Requirements. Following admission as a member of the Bar, an attorney may maintain membership as follows:

(d) Senior Member.

- (1) Any Active, Inactive or Judicial Member aged ~~seventy-two (72)~~ sixty-five (65) years or older who is not engaged in the practice of law may request Transfer to Senior status by submitting a written request to the Bar.
- (2) A Senior Member must meet the licensing requirements of an Inactive Member under subsection (b) above.

RULE 304. Annual License Fees. Maintenance of membership in the Bar shall require payment of a non-refundable annual license fee payable on or before February 1, as prescribed below:

(d) Senior Members.

(1) Seventy dollars (\$70).

~~(e)(d)~~ Senior Members and Members Aged Seventy-Two (72) Years or Older.

(1) Seventy dollars (\$70) for the first full calendar year following an attorney's seventy-second (72nd) birthday and every year thereafter.

~~(f)(e)~~ Late Fees.

(1) Annual license Fee.

(A) Active and House Counsel Members who fail to pay the annual license fee by February 1 shall pay an additional fee of one hundred dollars (\$100).

(B) Inactive, Emeritus and Senior Members who fail to pay the annual license fee by February 1 shall pay an additional fee of twenty-five dollars (\$25).

(2) MCLE.

(A) An attorney who requires additional time beyond the end of the attorney's reporting period to obtain the necessary credits to meet MCLE requirements shall pay an additional fee of one hundred dollars (\$100).

RESOLUTION 15-04

Amendments to Idaho Bar Commission Rule 402-CLE Exemptions

Presented by: **The Board of Commissioners of the Idaho State Bar**
 Senior Lawyer Transition Task Force

Rationale: The Board of Commissioners of the Idaho State Bar (“Board”) appointed a Task Force to study issues relating to senior lawyers transitioning from practicing to senior status and to make recommendations about those issues to the Board. The Senior Lawyer Transition Task Force was comprised of William F. (Bud) Yost, Nampa attorney, Task Force Chairman, Chief Justice Jim Jones, Idaho Supreme Court, Dennis Cain, retired Boise attorney, Professor Sunil Ramalingam, University of Idaho College of Law, Kim Toryanski, Boise attorney with the Idaho Division of Human Resources, and Dennis Voorhees, Twin Falls attorney and a Bar Commissioner. Brad Andrews, Bar Counsel, and Mahmood Sheikh, Deputy Executive Director of the Idaho State Bar, served as liaisons to the Task Force.

With respect to Idaho Bar Commission Rule 402, the Task Force considered whether exemptions from qualified CLE requirements should continue to be granted to attorneys over age 72. Those attorneys who have already received an exemption are “grandfathered in” and will continue to be exempted. The Task Force concluded that all lawyers actively practicing law, regardless of age, should comply with the CLE requirements and that exempting those requirements based upon age is unrelated to the continuing legal education goals set forth in I.B.C.R. 400. Those goals are to enable attorneys to acquire new knowledge and skill sets and understand current trends and legal issues. The Task Force also recognized that any lawyer may qualify for an exemption under I.B.C.R. 402(e) (1) (A) and (B), set forth below, which will adequately address any potential exemptions.

NOW, THEREFORE, BE IT RESOLVED THAT the Board of Commissioners recommends that the members of the Idaho State Bar recommend to the Idaho Supreme Court that Idaho Bar Commission Rule 402 be amended as follows:

RULE 402. Education Requirement – Report.

- (e) **Exemptions.** Exemptions from all or part of the CLE requirements of subsection (a) may be granted as follows:
- (1) **Eligibility.** An exemption may be granted:
- (A) Upon a finding by the Executive Director of special circumstances constituting an undue hardship for the attorney; **or**
- (B) Upon verification of the attorney’s disability or severe or prolonged illness, in which case all or a specified portion of CLE credits may be earned through self-study; ~~or~~
- ~~(C) To attorneys over the age of seventy two (72) years.~~

RESOLUTION 15-05

Amendments to Idaho Bar Commission Rule 521-Access to Information

Presented by: **The Board of Commissioners of the Idaho State Bar**

Rationale: Idaho Bar Commission Rule (“I.B.C.R.”) 521 requires “all parties and witnesses” involved in attorney disciplinary proceedings to maintain the confidentiality of those proceedings. The language for the Rule was based on the ABA Model Rule for Lawyer Disciplinary Enforcement 16. The ABA subsequently revised that Rule following review by the ABA House of Delegates, which questioned the constitutionality of prohibiting individuals other than disciplinary authorities from disclosing information about disciplinary proceedings. Specifically, that review concluded that such a content-based restriction was constitutionally problematic. *Landmark Communications, Inc. v. Virginia*, 435 U.S. 829 (1978). Accordingly, the ABA Model Rule was revised to require only that the disciplinary authority and its employees maintain such confidentiality. Based on caselaw, the ABA’s analysis, and its own independent review, the Board of Commissioners agrees that prohibiting attorneys and other individuals involved in disciplinary proceedings from disclosing information about those proceedings raises constitutional issues that are addressed by the proposed revisions to I.B.C.R. 521.

NOW, THEREFORE, BE IT RESOLVED THAT the Board of Commissioners recommends that the members of the Idaho State Bar recommend to the Idaho Supreme Court that Idaho Bar Commission Rule 521 be amended as follows:

RULE 521. Access to Information

- (b) **Confidentiality.** Prior to the filing and service of Formal Charges, a Professional Conduct matter is confidential within Bar Counsel’s Office, except that the pendency, subject matter and status of a Professional Conduct matter may be disclosed by Bar Counsel if:
- (1) the Lawyer has waived confidentiality in writing;
 - (2) the matter is based upon allegations that include either the conviction of a crime or ~~public~~ reciprocal discipline;
 - (3) the matter is based upon allegations that have become generally known to the public; or
 - (4) there is a need to notify another person or organization, including the Client Assistance Fund, in order to protect the public, the administration of justice, or the legal profession.
- (c) **Public Hearings.** After the filing and service of Formal Charges or a petition for reinstatement, the hearing of proceedings in a Professional Conduct matter ~~is-are~~ public, except for:
- (1) deliberations of a Hearing Committee, Professional Conduct Board, or Court; or
 - (2) ~~aspects of the hearing information~~ with respect to which the Hearing Committee has issued a protective order ~~is pending or issued~~.

- (g) **Disclosure with Notice to Lawyer.** Except as provided in subsection (h), if Bar Counsel decides to provide nonpublic information to a requesting agency, and if the Lawyer has not signed a waiver permitting the requesting agency to obtain nonpublic information, the Lawyer shall be notified in writing at his or her last known address of the information that has been requested and the agency making the request, together with a copy of the information proposed to be released to the requesting agency. The notice shall advise the Lawyer that the information shall be released at the end of 14 days following mailing of the notice unless the Lawyer objects to the disclosure. If the Lawyer timely objects to the disclosure, the information shall remain confidential unless the requesting agency obtains a court order requiring its release.
- (h) **Disclosure Without Notice to Lawyer.** If an otherwise authorized requesting agency has not obtained a waiver from the Lawyer to obtain nonpublic information and requests that the information be released without giving notice to the Lawyer, the requesting agency shall certify, ~~in writing, to the satisfaction of Bar Counsel~~ that:
- (1) the request is made in furtherance of an ongoing investigation into misconduct by the Lawyer;
 - (2) the information is essential to that investigation; and
 - (3) disclosure of the existence of the investigation to the Lawyer would seriously prejudice that investigation.
- (i) **Notice to National Discipline Data Bank.** Bar Counsel shall transmit notice of all public discipline imposed against a Lawyer, transfers to or from disability inactive status, and reinstatements to the National Discipline-Lawyer Regulatory Data Bank maintained by the American Bar Association.
- (j) **Scope of Duty.** ~~All parties and witnesses in the process, together with all~~ officials and employees of the agency authorized to receive information under these Rules, shall conduct themselves so as to maintain the confidentiality mandated by this Rule.

RESOLUTION 15-06

Amendments to Section IV “Mandatory Continuing Legal Education” of the Idaho Bar Commission Rules

Presented by: Board of Commissioners of the Idaho State Bar

Rationale: In 2013 the MCLE rules were revised and updated. Since that time, a few issues have arisen that are not specifically addressed in the rules and warrant revisions to the rules. The proposed changes address the following:

Rule 401. Definitions. Throughout the rules, the terms sponsor and organization are used for the entity responsible for program planning and applying for accreditation. The terms were inconsistently used and not clear for those applying for credit. The resolution proposes the term be changed to “Course Provider” throughout the rules and a definition included in 401.

Rule 403(b)(2)(B) Time of Filing. Currently, 403(b)(2)(B) states “An application filed more than thirty (30) days after the CLE activity is completed may be rejected as untimely.” The bar does not reject applications because they are not timely. It seems unfair not to allow an attorney to earn credit for a course, regardless of when he or she applies. However, taking applications 2 or 3 years after the course creates other issues. More than a few months after a program, it is difficult for the individual lawyer, as well as the course provider, to have or find the relevant information needed to submit the course for accreditation. Late filed applications take more time and slow the application process for all applications. The recommendation is to delete the current language and charge a late fee for applications filed more than 90 days after a program concludes.

Rule 403(b)(3) Attendance Roster. Proposes language requiring the attendance list to include the attorney’s printed name and bar number. This will ensure that each attorney’s attendance record will accurately reflect the course attended and credit earned.

NOW, THEREFORE BE IT RESOLVED THAT, the Board of Commissioners recommends that the members of the Idaho State Bar recommend to the Idaho Supreme Court that Idaho Bar Commission Rules be amended as follows:

- RULE 401. Definitions.** As used in these Rules, the following terms have the meanings set forth below:
- (a) **Accredited Activity.** A course, video, recording or other activity approved for CLE credit by the Board or its designee.
 - (b) **Active or Active Member.** A member of the Bar as defined in I.B.C.R. 301.

- (c) **Attendance.** Being present in an audience, either in person or through an electronic medium, at a live Accredited Activity at the time the course is actually presented, or engaging in self-study using an accredited recorded program under Rule 404(a).
- (d) **Bar.** Idaho State Bar.
- (e) **Bar Counsel.** Legal counsel for the Board.
- (f) **Board.** Board of Commissioners, the duly elected governing body of the Bar.
- (g) **Canceled.** Status of an attorney as defined in I.B.C.R. 301.
- (h) **Certificate of Compliance.** Form certifying an attorney's compliance with applicable CLE requirements.
- (i) **CLE.** Continuing legal education.
- (j) **Course Provider.** The entity or individual responsible for the planning and presentation of a CLE activity, applying for accreditation of the CLE activity and paying the respective accreditation application fee.
- (k) **Court or Supreme Court.** Supreme Court of the State of Idaho.
- (~~kl~~) **Credit Hour.** Sixty (60) minutes of actual attendance at an Accredited Activity, rounded to the nearest quarter of an hour.
- (~~lm~~) **Executive Director.** The chief administrative officer of the Bar.
- (~~mn~~) **House Counsel or House Counsel Member.** A member of the Bar as defined in I.B.C.R. 301.
- (~~no~~) **I.B.C.R.** Idaho Bar Commission Rules.
- (~~op~~) **New Admittee Credit-Approved (NAC-Approved).** An Accredited Activity addressing Idaho practice, procedure, and/or ethics that has been designated by the Bar as NAC-Approved in accordance with standards adopted by the Board.
- (~~pq~~) **New Attorney Program.** The NAC-Approved Accredited Activity described in Rule 402(f).
- (~~qr~~) **Resigned.** Status of an attorney as defined in I.B.C.R. 301.
- (~~rs~~) **Rules.** Section IV of the I.B.C.R.
- (~~st~~) **State.** State of Idaho.

RULE 402. Education Requirement - Report. Except as provided in Rule 408, all Active and House Counsel Members shall complete and report CLE credits as provided in this section.

(a) **Minimum Requirements.**

- (1) Active and House Counsel Members shall complete a minimum of thirty (30) credit hours of Accredited Activity in every three (3) year reporting period.
- (2) Beginning with the attorney's next full reporting period after the effective date of these Rules and thereafter, at least three (3) CLE credits shall be in courses on legal ethics or professional responsibility, as approved by the Board or its designee. Such courses may include discussion of the Idaho Rules of Professional Conduct, professionalism and civility, client trust account administration and legal malpractice prevention.
- (3) No more than fifteen (15) of the required thirty (30) credits may be self-study credits.
- (4) Attorneys holding themselves out as specialists or certified specialists, as provided in Section X of the I.B.C.R., shall comply with the requirements of the applicable certifying organization for completion of CLE credits in the specialty area.
- (5) Fulfillment of the credit requirements specified in subsections (1) through (4) above may be concurrent.

(b) **Reporting Period.**

- (1) **General.** Except as provided in subsection (2), the reporting period for Active and House Counsel Members shall be every three (3) calendar years.

- (2) **Exceptions.**
- (A) Upon an attorney's admission to the Bar as an Active or House Counsel Member, the reporting period shall begin on the date of admission and end on December 31 of the third full calendar year following admission.
- (B) The reporting period for an attorney who transfers to active status under I.B.C.R. 306 shall begin on the effective date of the transfer and end on December 31 of the third full calendar year following transfer, provided:
- (i) Any CLE credits obtained to satisfy transfer requirements shall not apply to the new reporting period; and
- (ii) The reporting period for an attorney who transfers to Active status after less than one (1) year on another status shall be the same reporting period that was applicable prior to the attorney's transfer from Active status.
- (C) The reporting period for an attorney whose license has been reinstated under I.B.C.R. 305 shall be the same reporting period that was applicable prior to the license cancellation, provided that any CLE credits obtained to satisfy requirements for reinstatement shall not apply to the reporting period.
- (c) **Certificate of Compliance.** An attorney who is required to complete CLE credits under subsection (a) shall submit a written Certificate of Compliance, on a form prescribed by the Board, verifying the attorney's CLE compliance for the applicable reporting period.
- (1) **Content.** The Certificate of Compliance shall set forth the record of the attorney's compliance with these Rules during the reporting period and shall contain at least:
- (A) A list of the Accredited Activities attended;
- (B) The dates of attendance;
- (C) The ~~sponsoring organization~~ Course Provider;
- (D) The hours attended, rounded to the nearest quarter of an hour; and
- (E) The attorney's signature, under penalty of perjury.
- (2) **Place of Submission.** The Certificate of Compliance shall be submitted to the Executive Director.
- (3) **Time of Submission.** The Certificate of Compliance shall be submitted on or before February 1 of the year immediately following the conclusion of the reporting period.
- (d) **Verification of Compliance.** The Executive Director shall cause up to ten percent (10%) of the Certificates of Compliance submitted pursuant to subsection (c) to be randomly reviewed to verify compliance.
- (e) **Exemptions.** Exemptions from all or part of the CLE requirements of subsection (a) may be granted as follows:
- (1) **Eligibility.** An exemption may be granted:
- (A) Upon a finding by the Executive Director of special circumstances constituting an undue hardship for the attorney;
- (B) Upon verification of the attorney's disability or severe or prolonged illness, in which case all or a specified portion of CLE credits may be earned through self-study; or
- (C) To attorneys over the age of seventy-two (72) years.
- (2) **Request for Exemption.** An attorney may request an exemption by submitting a written request to the Executive Director setting forth the grounds for the exemption.
- (3) **Time for Submission.** A request for an exemption must be submitted to the Executive Director at least sixty (60) days prior to the end of the attorney's three (3) year reporting period.

- (f) **New Admittee Education Requirement.** Commencing on the date of admission to the Bar ~~as an Active or House Counsel Member~~ and within one (1) year thereafter, attorneys shall complete and report the following CLE credits:
- (1) **NAC-Approved CLE Credits.** Attorneys shall complete at least ten (10) NAC-Approved CLE credits, which shall be counted towards satisfying the thirty (30) credit requirement set forth in subsection (a)(1).
 - (2) **Idaho Substantive Law Requirement.** Of the ten (10) NAC-Approved CLE credits required in subsection (f)(1), attorneys shall complete Accredited Activities addressing Idaho law on ethics, civil and criminal procedure, and community property. The Board shall approve and administer the Accredited Activities that satisfy the Idaho substantive law requirements of this Rule.
 - (3) **New Attorney Program.** An attorney who has actively practiced law for less than three (3) years prior to admission to the Bar shall also complete the New Attorney Program, which shall consist of an introduction to practice, procedure and ethics. The New Attorney Program CLE credits shall count towards satisfying the NAC-Approved CLE credit requirement in subsection (f)(1).
 - (4) **Extension.** An attorney may request an extension of time to complete these requirements by filing a written petition with the Executive Director within one (1) year of admission as an Active or House Counsel Member. The Executive Director may grant the extension upon a showing by the attorney that completion of these requirements would cause a substantial hardship.
 - (5) **Noncompliance.** An attorney's failure to complete these requirements shall be grounds for a finding of noncompliance under Rule 406.

RULE 403. Accreditation.

- (a) **Standards.** Accreditation of CLE activities shall be consistent with the following standards:
- (1) The activity shall have significant intellectual or practical content, and the primary objective shall be to increase the attorney's professional competence and ability to deliver quality legal services in an efficient, competent and ethical manner;
 - (2) The activity shall constitute an organized program of learning that addresses matters directly related to the practice of law, professional responsibility or ethical obligations of attorneys, provided:
 - (A) Courses included in the curriculum of a college or university undergraduate degree program do not qualify for accreditation as a CLE activity; and
 - (B) An attorney may receive credit for attendance at a non-legal educational program if the subject of that program relates specifically to the attorney's area of practice. For example, credit may be given for attendance at a medical-related program if the attorney's practice includes medical malpractice;
 - (3) The activity shall be conducted by an individual or group qualified by practical or academic experience in the covered subjects;
 - (4) The activity may include video, digital content or other presentation formats;
 - (5) Materials used in the activity shall be thorough and of high quality, and should be distributed to participants prior to or during the activity; and
 - (6) The activity may address law practice management to promote the efficient and competent delivery of legal services; however, no CLE credit shall be approved for marketing, client cultivation, general time management or stress reduction, computer training that is not specific to attorneys, general business topics, or vendor-sponsored activities designed solely to promote products or services.

- (b) **Accreditation.** A person or ~~organization~~ Course Provider may apply for accreditation of a CLE activity by filing with the Executive Director a written application on a form prescribed by the Board.
- (1) **Contents of Application.** The application shall contain:
- (A) The name of the ~~sponsoring organization~~ Course Provider;
 - (B) A description of the CLE activity;
 - (C) Detailed descriptions of the subjects covered in the CLE activity;
 - (D) The name and qualifications of each presenter;
 - (E) The time schedule of a live CLE activity or the length, in minutes, of a recorded CLE activity;
 - (F) The name of the person or ~~organization~~ Course Provider requesting accreditation;
 - (G) The date and location of a live CLE activity or, if the CLE activity is recorded, the date and location that the attorney completes the CLE activity for self-study credit; and
 - (H) For a recorded CLE activity used for self-study credit, the date the activity was produced or initially recorded.
- (2) **Time of Filing.**
- (A) The application may be filed prior to the CLE activity.
 - (B) An application filed more than ~~thirty ninety~~ (3090) days after the CLE activity is completed ~~may be rejected as untimely shall be accompanied by a fifteen dollar (\$15) late fee.~~
- (3) **Attendance Roster.** Upon completion of an Accredited Activity, the ~~sponsor~~ Course Provider shall forward to the Bar an attendance roster ~~specifying providing the printed name and Bar number for each attorney participant and~~ the total number of general credits and, if applicable, ethics credits, earned by each attorney participant.
- (4) **In-House and Self-Study Programs.** In-house or self-study programs that satisfy the requirements of subsection (a) may qualify for CLE credit upon written application.

RULE 405. Processing Applications for Accreditation. Applications for accreditation under Rule 403(b) shall be submitted to the Executive Director.

- (a) **Application Fee.** All applications for accreditation of CLE activities shall be accompanied by a forty dollar (\$40) application fee, provided:
- (1) Applications submitted by non-profit ~~sponsors~~ Course Providers for live CLE activities that are two (2) hours or less in length and held in Idaho shall be accompanied by a twenty dollar (\$20) application fee; and
 - (2) No application fee is required for accreditation applications submitted by the Supreme Court, the Bar and its sections or district bar associations, the Idaho Law Foundation, Inc., or individual members of the Bar.
- (b) **Credit Approval or Denial.** The Executive Director shall:
- (1) Examine and evaluate all applications for accreditation following the standards established by Rule 403(a);
 - (2) Approve or deny all or any portion of a CLE activity for which accreditation is sought; and
 - (3) Determine the number of credit hours allowed for each CLE activity.
- (c) **Decision.** The Executive Director shall provide written notice of the determination to approve or deny an accreditation application to the respective person or ~~organization~~ Course Provider.
- (1) **Contents of Notice.**
- (A) If the application is denied, the notice shall state the reason for the denial and advise the applicant of the right to seek review of the decision.
 - (B) If the application is approved, the notice shall state the number of credit hours allowed for the CLE activity.

- (2) **Timing of Notice.** The notice shall be provided within twenty-one (21) days following receipt of the application.
- (d) **Review.** Any person or ~~organization~~ Course Provider whose application for accreditation of a CLE activity has been denied may seek review of the Executive Director's decision by filing a written request with the Board, stating the reasons for the review request.
- (1) **Time for Filing.** Any request for review of the Executive Director's decision shall be filed within fourteen (14) days of the notice.
- (2) **Additional Information.** The applicant may present additional information to the Board for its consideration.
- (3) **Decision of Board.** Following its review of the record, the Board shall issue a decision and advise the applicant of that decision. The decision of the Board is final.



**2015 RESOLUTION PROCESS
MEETING SCHEDULE**

<i>First District</i>	Coeur d'Alene	Thurs, Nov. 5	North Idaho College, Student Union 1000 W. Garden Avenue (Michael T. Howard, President)	10:30 CLE 12 noon MTG
<i>Second District</i>	Clarkston	Thurs, Nov. 5	Quality Inn 700 Port Drive (Jamal K. Lyksett, President)	4:30 CLE 6:00 p.m. MTG
<i>Seventh District</i>	Idaho Falls	Tues, Nov. 17	Marriott Residence Inn 635 W Broadway Street (Troy D. Evans, President)	10:30 CLE 12 noon MTG
<i>Sixth District</i>	Pocatello	Wed, Nov. 18	Juniper Hills Country Club 6600 S. Bannock Highway (Richard A. Diehl, President)	10:30 CLE 12 noon MTG
<i>Fifth District</i>	Twin Falls	Wed, Nov. 18	Canyon Crest Event Center 330 Canyon Crest Drive (Patricia M. Migliuri, President)	4:30 CLE 6:00 p.m. MTG
<i>Fourth District</i>	Boise	Thurs, Nov. 19	Owyhee Plaza 1109 Main Street (Kristin Bjorkman Dunn, President)	10:30 CLE 12 noon MTG
<i>Third District</i>	Nampa	Thurs, Nov. 19	Hampton Inn & Suites 5750 E. Franklin Road (Yecora L. Daniels, President)	4:30 CLE 6:00 p.m. MTG



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