



2017 Resolution Process

Voter Pamphlet



2017 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 is one resolution proposed for your consideration during the 2017 Idaho State Bar resolution process, aka "The Road Show."

In addition to the resolution, the meetings include presentations honoring your colleagues receiving the pro bono, retiring judges' and professionalism awards. All of the districts also plan to offer a CLE program.

The 2017 resolution meetings are scheduled as follows:

District	District Bar President	Date of Meeting	Meeting Location	Time of Meeting
<i>First District</i>	Mischelle R. Fulgham	Thursday Nov. 2	North Idaho College 1000 W. Garden Ave., Coeur d'Alene	10:30 a.m. CLE 12 noon Meeting
<i>Second District</i>	William Jeremy Carr	Thursday Nov. 2	Meriwether's Bistro in the Red Lion 621 21 st St., Lewiston	4:30 p.m. CLE 6:00 p.m. Meeting
<i>Third District</i>	Michael K. Porter	Wednesday Nov. 15	Holiday Inn Express & Suites 4104 E. Flamingo Ave., Nampa	4:30 p.m. CLE 6:00 p.m. Meeting
<i>Fourth District</i>	Philip M. Bevis	Wednesday Nov. 15	Barber Park Event Center 4049 S. Eckert Rd., Boise	10:30 a.m. CLE 12 noon Meeting
<i>Fifth District</i>	Nancy H. Austin	Tuesday Nov. 14	The Stone House 330 4 th Ave. S., Twin Falls	4:30 p.m. CLE 6:00 p.m. Meeting
<i>Sixth District</i>	Aaron N. Thompson	Tuesday Nov. 14	Juniper Hills Country Club 6600 S. Bannock Highway, Pocatello	10:30 a.m. CLE 12 noon Meeting
<i>Seventh District</i>	Jonathan W. Harris	Monday Nov. 13	Marriott Residence Inn 635 W. Broadway, Idaho Falls	10:30 a.m. CLE 12 noon Meeting

Each judge and active member of the Idaho State Bar in attendance at a resolution meeting will be provided a ballot. Members not in attendance will be mailed a ballot after the 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. 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 4, 2017.**

See you at the district bar meetings.

Kent A. Higgins
President

Diane K. Minnich
Executive Director



2017 RESOLUTION PROCESS

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2017 PROPOSED RESOLUTION

- **17-01** – Proposed Amendments to Idaho Rule of Professional Conduct 8.4(g)

RESOLUTION MEETING AGENDA

- Welcome, Announcements and Introductions
 - *ISB President Kent Higgins and District Bar President*
- Pro Bono, Retiring Judges and Professionalism Awards
- Presentation of 2017 Resolution
 - *Bar Commissioners and Professional and Ethics Subcommittee Members*
- Local Bar Business

CLE INFORMATION

“Navigating the Ethical Issues of Social Media”

Hon. Michael J. Oths, Fourth Judicial District Magistrate and ISB Commissioner
Bradley G. Andrews, Bar Counsel for Idaho State Bar

2017 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	Ausey H. "Rusty" Robnett	Coeur d'Alene
Second District	William W. Thompson, Jr.	Moscow
Third District	Nicholas T. Bokides	Weiser
Fourth District	Jan M. Bennetts Joseph M. Meier	Boise Boise
Fifth District	Andrew H. Parnes	Ketchum
Sixth District	Craig W. Christensen	Pocatello
Seventh District	Kimberly Evans Ross	Idaho Falls

DENISE O'DONNELL DAY PRO BONO AWARDS

First District	Alycia T. Moss	Coeur d'Alene
Second District	Robert Wakefield	Moscow
Third District	William "Bud" Yost	Nampa
Fourth District	Sara M. Berry Heather L. Conder Robert C. Huntley Lynnette M. Davis	Boise Boise Boise Boise
Fifth District	Brian J. Williams Bruce J. Collier	Jerome Ketchum
Sixth District	Julian E. Gabiola M. Anthony Sasser	Pocatello Pocatello
Seventh District	Sean J. Coletti Megan J. Hopfer	Idaho Falls Idaho Falls

IDAHO STATE BAR RETIRING JUDGES AWARDS

Idaho Supreme Court	Hon. Daniel T. Eismann Hon. Jim Jones	Boise Boise
Idaho Court of Appeals	Hon John M. Melanson	Buhl
First District	Hon. Debra Heise	Sandpoint
Third District	Hon. Juneal C. Kerrick Hon. Frank P. Kotyk	Caldwell Caldwell
Fourth District	Hon. Timothy L. Hansen Hon. Patrick H. Owen	Meridian Boise
Fifth District	Hon. Robert J. Elgee Hon. Michael R. Crabtree	Hailey Burley
Seventh District	Hon. Penny J. Stanford	Dubois

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 pamphlet 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 the

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 4, 2017.**

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 representatives.

Conclusion of Process

After all resolution meetings are concluded, the district bar representatives meet again on December 8, 2017. 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 2017, the Idaho State Bar voting membership breakdown is as follows:

District	Eligible voters	% of total eligible
1	467	8.58%
2	225	4.14%
3	286	5.26%
4	2206	40.55%
5	315	5.79%
6	220	4.04%
7	409	7.52%
out of state	1312	24.12%
Total	5440	100.00%

RESOLUTION 17-01
[Amendment to Idaho Rule of Professional Conduct (I.R.P.C.) 8.4]

Presented By: Board of Commissioners of Idaho State Bar

- WHEREAS: The Idaho Rules of Professional Conduct are modeled on the American Bar Association (ABA) Model Rules of Professional Conduct; and
- WHEREAS: From 2014 through 2016, the ABA Standing Committee on Ethics and Professional Responsibility (SCEPR) publicly investigated how the Model Rules of Professional Conduct should be amended to reflect changes in the practice of law; and
- WHEREAS: Thereafter, the SCEPR proposed amending Model Rule of Professional Conduct 8.4 to include an anti-discrimination and anti-harassment provision; and
- WHEREAS: The ABA House of Delegates voted to amend Model Rule of Professional Conduct 8.4 by adding a new subsection (g) in August 2016; and
- WHEREAS: Twenty-five (25) states have already adopted an anti-discrimination and/or anti-harassment provision to their Rules of Professional Conduct; and
- WHEREAS: In September 2016, the Board of Commissioners asked the Professionalism and Ethics Section of the Idaho State Bar to study the proposed ABA Model Rule of Professional Conduct 8.4(g) and make a recommendation about that Rule to the Board; and
- WHEREAS: The Professionalism and Ethics Section considered the proposed ABA Model Rule of Professional Conduct 8.4(g) at its December 2016 meeting, and following that meeting, appointed a Subcommittee of the Professionalism and Ethics Section (“Subcommittee”) to study that rule, providing that when the Subcommittee finished its work, the Subcommittee would make a recommendation about a potential rule to the full Professionalism and Ethics Section; and
- WHEREAS: The Subcommittee was comprised of Subcommittee Chair, Jodi Nafzger, Larry Hunter, Bob Aldridge, Dennis Voorhees, Jeremiah Hudson, Catherine Freeman, Mark Freeman, Yvonne Dunbar, Greg Ledonne, Steve Smith, and Jason Gray. Brad Andrews, Bar Counsel, and Caralee Lambert, Assistant Bar Counsel, served as liaisons to the Subcommittee; and
- WHEREAS: The Subcommittee made substantial revisions to ABA proposed Model Rule of Professional Conduct 8.4(g) and presented its proposed revisions to I.R.P.C. 8.4 to the full Professionalism and Ethics Section at its June 2017 meeting; and
- WHEREAS: Thereafter, by a vote of 86.67% in favor, the Professionalism and Ethics Section voted to recommend the Subcommittee’s proposed I.R.P.C. 8.4(g) to the Board of Commissioners; and
- WHEREAS: The proposed amendments to I.R.P.C. 8.4 have been posted on the Idaho State Bar’s website in a redline-strikeout format; and
- WHEREAS: The Board of Commissioners considered that proposed I.R.P.C. 8.4(g) at its September 2017 meeting and voted to recommend the proposed amendments to I.R.P.C. 8.4(g) be adopted.

NOW, THEREFORE, BE IT RESOLVED THAT the Board of Commissioners and the Professionalism and Ethics Section recommend that the members of the Idaho State Bar recommend to the Idaho Supreme Court that Idaho Rule of Professional Conduct 8.4, as set forth below, be amended.

[Current I.R.P.C. 8.4 – revisions indicated by redline and strikethrough]

RULE 8.4 MISCONDUCT

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;**
- (b) commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects;**

- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; ~~or~~
- (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or

(g) engage in discrimination or harassment, defined as follows:

- (1) in representing a client or operating or managing a law practice, engage in conduct that the lawyer knows or reasonably should know is unlawful discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status, or socioeconomic status. This subsection does not limit the ability of a lawyer to accept, decline, or withdraw from a representation as otherwise permitted in these Rules or preclude advice or advocacy consistent with these Rules; and
- (2) in conduct related to the practice of law, engage in conduct that the lawyer knows or reasonably should know is harassment. Harassment is derogatory or demeaning verbal, written, or physical conduct toward a person based upon race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status, or socioeconomic status. To constitute a violation of this subsection, the harassment must be severe or pervasive enough to create an environment that is intimidating or hostile to a reasonable person. This subsection does not limit the ability of a lawyer to accept, decline, or withdraw from a representation as otherwise permitted in these Rules or preclude advice or advocacy consistent with these Rules.

Commentary

...

[3] ~~A lawyer who, in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates paragraph (d) when such actions are prejudicial to the administration of justice. Legitimate advocacy respecting the foregoing factors does not violate paragraph (d). A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this rule.~~ Discrimination and harassment by lawyers in violation of paragraph (g) undermine confidence in the legal profession and the legal system. Harassment includes sexual harassment such as unwelcome sexual advances, requests for sexual favors, and other unwelcome verbal, written, or physical conduct of a sexual nature. Factors to be considered to determine whether conduct rises to the level of harassment under paragraph (g)(2) of this Rule include: the frequency of the harassing conduct; its severity; whether it is threatening or humiliating, or a mere offensive utterance; whether it is harmful to another person; or whether it unreasonably interferes with conduct related to the practice of law. Petty slights, annoyances, and isolated incidents, unless extremely serious, will not rise to the level of harassment under paragraph (g)(2). The substantive law of antidiscrimination and anti-harassment statutes and case law may guide application of paragraph (g).

[4] Conduct related to the practice of law includes: representing clients; interacting with witnesses, coworkers, court personnel, lawyers, and others while engaged in the practice of law; operating or managing a law firm or law practice; and participating in bar association, business, or social activities in connection with the practice of law.

[5] A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of paragraph (g). A lawyer does not violate paragraph (g) by limiting the scope or subject matter of the lawyer's practice in accordance with these Rules and other law. A lawyer may charge and collect reasonable fees and expenses for a representation consistent with Rule 1.5(a). Lawyers should be mindful of their professional obligations under Rule 6.1 to provide legal services to those who are unable to pay, and their obligation under Rule 6.2 not to avoid appointments from a tribunal except for good cause. A lawyer's representation of a client does not constitute an endorsement by the lawyer of the client's views or activities. See Rule 1.2(b).

[6] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2(d) concerning a good faith challenge to the validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.

[57] Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.



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