



2024 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 matters to the membership through the resolution process. Enclosed are the resolutions proposed for your consideration during the 2024 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. There will be a CLE program offered free to all bar members at each location.

District	District Bar President	Meeting Date	Meeting Location	Meeting time
<i>First District</i>	Michael Rude	Thursday Nov. 7	Coeur d’Alene Resort 115 S. Second St. Coeur d’Alene	12 noon CLE – 11:30 am
<i>Second District</i>	Brennan Wright	Wednesday Nov. 6	Best Western – University Inn 1516 Pullman Rd., Moscow	6:00 p.m. CLE – 5:30 pm
<i>Third District</i>	Tyler Rounds	Monday Nov. 18	College of Idaho 2112 Cleveland Blvd., Caldwell	6:00 p.m. CLE – 5:30 pm
<i>Fourth District</i>	Tricia Daigle	Tuesday Nov. 19	Barber Park Event Center 4049 S. Eckert Rd., Boise	12 noon CLE – 11:30 am
<i>Fifth District</i>	Kyle Bastian	Thursday Nov. 14	Blue Lakes Country Club 1940 Blue Lakes Grade, Jerome	6:00 p.m. CLE – 6 pm
<i>Sixth District</i>	JD Oborn	Thursday Nov. 14	ISU Alumni Center 1601 East Bonneville Street	12 noon CLE – 2 pm
<i>Seventh District</i>	Kelsie Kirkham	Wednesday Nov. 13	Hilton Garden Inn 700 Lindsey Blvd. Idaho Falls	12 noon CLE – 2 pm

Each judge and active member of the Idaho State Bar in attendance at a resolution meeting is provided a ballot. Members not in attendance will receive an electronic ballot after the meeting. Ballots may be completed and submitted at the resolution meetings or completed electronically. Issues shall be determined by the total ayes and nays cast statewide. **All ballots are due in the Idaho State Bar office by the close of business on Tuesday, December 3, 2024. The electronic voting site will close at 5:00 p.m. MT on Tuesday, December 3.**

See you at the district bar meetings.

Jillian Cairns
President

Diane K. Minnich
Executive Director

2024 RESOLUTION PROCESS

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2024 PROPOSED RESOLUTIONS

- 1. Amendments to Section II of the Idaho Bar Commission Rules – Pgs. – 4-8** Proposes changes to the Idaho Bar Examination
Presented by: Idaho Supreme Court and Board of Commissioners of the Idaho State Bar
- 2. Amendments to Idaho Rule of Professional Conduct 1.16 – pgs. 9-12 –** recommends the Idaho Rules of Professional Conduct be amended to add Rule 1.16A. Client Files
Presented by: Board of Commissioners of the Idaho State Bar
- 3. Amendments to III Idaho Bar Commission Rules – pgs. 13-15 –** Proposes an increase in license fees.
Presented by: Board of Commissioners of the Idaho State Bar

CLE Program

Amended Idaho Court Administrative Rule 32(i) and Related Ethical Implications

Idaho Supreme Court Justice Colleen D. Zahn will outline the amendments to Idaho Court Administrative Rule 32(i), which provide more structure to the redaction and sealing of court records. Bar Counsel Joe Pirtle will outline the Idaho Rules of Professional Conduct that are impacted by the amendments to I.C.A.R. 32(i).”

Note: CLE program times for each resolution meeting are on the meeting schedule on page 1

RESOLUTION MEETING AGENDA

- Welcome, Announcements and Introductions
 - ISB Commissioners and District Bar President

- Pro Bono, Retiring Judges and Professionalism Awards
- Presentation of 2024 Resolutions
- Local Bar Business

**2024 PROFESSIONALISM, PRO BONO and RETIRING JUDGE 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	Benjamin J. Allen	Wallace
Second District	April A. Smith	Lewiston
Third District	Elisa G. Massoth	Payette
Fourth District	Leslie M. G. Hayes	Boise
Fourth District	Kevin J. Scanlan	Boise
Fourth District	Steven M. Parry	Boise
Fifth District	Jennifer K. Brizee	Twin Falls
Sixth District	J.D. Oborn	Pocatello
Seventh District	Steven R. Parry	Idaho Falls

DENISE O'DONNELL DAY PRO BONO AWARDS

First District	Ryan S. Hunter	Coeur d'Alene
Second District	Kari E. Miller	Moscow
Third District	Aaron L. Seable	Nampa
Fourth District	Donald Jageman	Boise
Fourth District	Zachary J. McCraney	Boise
Fourth District	Ian K. Frost	Meridian
Fifth District	Anja R. Rodriguez	Twin Falls
Sixth District	Jason D. Stanley	Sandpoint
Seventh District	Paul B. Rippel	Idaho Falls

IDAHO STATE BAR RETIRING JUDGES AWARDS

First District	Hon. Richard Christensen	Coeur d'Alene
First District	Hon. Lori Meulenber	Sandpoint
Fourth District	Hon. Samuel Hoagland	Boise
Fifth District	Hon. Roger Harris	Twin Falls
Fifth District	Hon. Calvin Campbell	Hansen
Fifth District	Hon. Jonathan Brody	Rupert

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 Tuesday, December 3, 2024.**

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 6, 2024. 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 September 2024, the Idaho State Bar voting membership breakdown is as follows:

District	Eligible voters	% of total eligible
1	440	7.59%
2	225	3.88%
3	315	5.43%
4	2348	40.51%
5	305	5.26%
6	210	3.62%
7	428	7.38%
out of state	1525	26.31%
Total	5796	100.00%

RESOLUTION 24 - 01
Amendments to Section II of the Idaho Bar Commission Rules – Changes to
Idaho Bar Examination

Presented by: Idaho Supreme Court and Board of Commissioners of the Idaho
State Bar

Rationale:

- Since 2011, the Idaho Bar Examination has consisted of the Uniform Bar Examination (“UBE”) developed by the National Conference of Bar Examiners (“NCBE”). The NCBE is a not-for-profit corporation that develops licensing tests for bar admissions. 41 jurisdictions use the UBE as their bar examination, and over a dozen other jurisdictions use components of the UBE. Idaho Bar Commission Rule (“I.B.C.R.”) 217 provides that a passing score on the Idaho bar examination shall be a score of not less than 67.5% of the highest possible score.
- In 2018, the NCBE created a nationwide Testing Task Force to evaluate the current bar examination, analyze the knowledge and skills newly licensed lawyers should be expected to know, and determine how that knowledge and those skills should be tested on the bar examination. After years of research, including a national practice analysis survey of over 14,500 lawyers, the NCBE developed the “NextGen Bar Exam.”
- The NextGen Bar Exam will be the new and updated UBE. The NextGen Bar Exam will be available for the July 2026 bar examination. The current form of the UBE will not be available after July 2028.
- As of September 24, 2024, 25 jurisdictions have already announced adoption of the NextGen Bar Exam, including Utah, Wyoming, Washington, and Oregon.
- The NextGen Bar Exam is a high-quality bar examination that is the product of years of research and data, has been developed by testing experts, and is the best option for Idaho given the Idaho State Bar’s limited resources to develop its own bar examination.
- The Idaho Supreme Court and the Board of Commissioners recommend the proposed amendments to Section II of the Idaho Bar Commission Rules to implement the NextGen Bar Exam in Idaho commencing with the July 2026 bar examination.

NOW, THEREFORE, BE IT RESOLVED THAT the Idaho Supreme Court and the Board of Commissioners recommend that the members of the Idaho State Bar recommend to the Idaho Supreme Court that Section II of the Idaho Bar Commission Rules be amended to implement the NextGen Bar Exam in Idaho commencing with the July 2026 bar examination.

***RULE 217. Bar Examination.**

- (a) **Examination Required.** Except as otherwise provided in Section II of the Idaho Bar Commission Rules~~this Rule~~, all Applicants, ~~except Experienced Attorney Applicants and House Counsel Applicants~~, must take the Idaho ~~bar~~ Bar eExamination.
- (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).~~

- (eb) **Transfer of UBE or MBE Bar Examination Score.** An Applicant may transfer:
- (1) ~~A Applicants for admission by examination may transfer a UBE scaled score of 270 or above earned during the July 2023 bar exam or any exam thereafter from in another UBE jurisdiction if taken within the last 37 months;~~ or
 - (2) ~~An Applicant may transfer an MBE score from any jurisdiction if taken within the last 37 months prior to the date of the Idaho bar examination for which they are applying. Applicants who failed a prior Idaho bar examination may transfer an MBE score from a prior Idaho bar examination if taken within the last 37 months prior to the date of the bar examination for which they are applying. An Applicant who elects not to transfer a prior score and chooses to sit for that MBE may not subsequently substitute a prior score on that bar examination. Applicants who transfer an MBE score are not eligible to receive a transferable UBE score.~~ a bar examination score earned in another jurisdiction administering and NCBE bar examination that is equal to or greater than the Bar Examination passing score set forth in the Bar Examination Grading Standards and Procedures adopted by the Supreme Court.
- (dc) **Certificate Permitting the Bar Examination.** The Executive Director shall provide the Applicant with a certificate permitting the Applicant to take the bar examination if:
- (1) No Rule 211 written objection has been filed; and
 - (2) The Applicant meets the bar examination and admission requirements.
- (ed) **Entry to Bar Examination.** No Applicant shall be permitted to take the bar examination unless a valid certificate duly issued by the Bar is presented.
- (fe) **Validity.** A certificate permitting bar examination shall be valid only for the bar examination for which it is issued.
- (gf) **Supervision of Examinations.** Bar examinations shall be supervised by the Board through the Executive Director. The Executive Director may appoint proctors and monitors to conduct each bar examination. No extra time shall be given for an Applicant who is late for any session of the bar examination.
- (hg) **Bar Examination Code of Conduct.** Applicants shall abide by the rules and instructions governing the administration of the bar examination.
- (1) An Applicant shall not:
 - (A) Falsify any documentation required for admission to the bar examination;
 - (B) Read questions on the bar examination prior to the announcement to begin the bar examination;
 - (C) Utilize unauthorized notes, books, recordings, electronically retrievable data or other unauthorized materials while taking the bar examination;
 - (D) Use answers or information from other Applicants while taking the bar examination;
 - (E) Provide answers or information to other Applicants while taking the bar examination;
 - (F) Remove from the bar examination room, during or after the bar examination, ~~questions, answer sheets or other~~ any materials relating to any part of the bar examination;
 - (G) Continue to answer questions after the announcement to stop is given;
 - (H) Communicate the substance of any question to other Applicants still taking the bar examination;

- (I) Communicate the substance of any question to persons who are employed by or associated with bar review courses;
 - (J) Disregard instructions given by the Bar and proctors or monitors prior to and during the course of the bar examination or cause generalized disruption of the bar examination;
 - (K) Identify themselves by submitting their identification numbers or names on a response to any question or attempt to influence the grading of their bar examinations in any manner; or
 - (L) Otherwise compromise the security or integrity of the bar examination.
- (2) Applicants who violate this Code of Conduct, or who knowingly assist another Applicant in a violation, shall be given an automatic failing score on the entire bar examination. The circumstances of such violation may be considered by the Board as grounds for barring the Applicant from retaking the bar examination.
- ~~(i) **Handling of Bar Examination Papers.** At the beginning of each bar examination session, the Applicants shall be given a copy of the questions to be answered at that session. Applicants typing answers to the essay questions shall utilize the secure software approved by the Board. Written answers to the essay questions shall be written in ink on paper supplied by the Board. All questions must be labeled and numbered as instructed.~~
- ~~(jh) **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 sealed score on the bBar eExamination shall be approved by the Board and the Supreme Court and set forth in a sealed score of not less than 67.5% of the highest possible sealed score as provided by the Bar Examination Grading Standards and Procedures adopted by the Supreme Court.~~
- ~~(ki) **Bar Examination Certification.** The Board shall certify all eligible Applicants to the Supreme Court for admission.~~
- ~~(lj) **Request for Copies.** Applicants who failed the bar examination may review:~~
- ~~(1) Their bar examination grades scores and answers; and~~
 - ~~(2) The essay questions and suggested analyses. Any model grading materials the NCBE authorizes for distribution to examinees.~~
- ~~(mk) **Bar Examination Records.** Bar examination papers documents shall be maintained by the Bar for at least 120 days after the bar examination, after which time the papers documents may be destroyed without further notice to the examinee.~~
- * (Rule 217 amended 12-28-23 __ - __ - __ - effective 3-1-24 5-1-26)*

RULE 217. Bar Examination. [CLEAN VERSION]

- (a) **Examination Required.** Except as otherwise provided in Section II of the Idaho Bar Commission Rules, all Applicants must take the Idaho bar examination.
- (b) **Idaho Bar Examination.** The Idaho bar examination consists of the bar examination developed by the National Conference of Bar Examiners (NCBE).
- (c) **Transfer of Bar Examination Score.** Applicants for admission by

examination may transfer a bar examination score earned in another jurisdiction that administers the bar examination developed by the NCBE if the bar examination was taken within the last 37 months and the score is not less than 67.5% of the highest possible score.

- (d) **Certificate Permitting the Bar Examination.** The Executive Director shall provide the Applicant with a certificate permitting the Applicant to take the bar examination if:
 - (1) No Rule 211 written objection has been filed; and
 - (2) The Applicant meets the bar examination and admission requirements.
- (e) **Entry to Bar Examination.** No Applicant shall be permitted to take the bar examination unless a valid certificate duly issued by the Bar is presented.
- (f) **Validity.** A certificate permitting bar examination shall be valid only for the bar examination for which it is issued.
- (g) **Supervision of Examinations.** Bar examinations shall be supervised by the Board through the Executive Director. The Executive Director may appoint proctors and monitors to conduct each bar examination. No extra time shall be given for an Applicant who is late for any session of the bar examination.
- (h) **Bar Examination Code of Conduct.** Applicants shall abide by the rules and instructions governing the administration of the bar examination.
 - (1) An Applicant shall not:
 - (A) Falsify any documentation required for admission to the bar examination;
 - (B) Read questions on the bar examination prior to the announcement to begin the bar examination;
 - (C) Utilize unauthorized notes, books, recordings, electronically retrievable data or other unauthorized materials while taking the bar examination;
 - (D) Use answers or information from other Applicants while taking the bar examination;
 - (E) Provide answers or information to other Applicants while taking the bar examination;
 - (F) Remove from the bar examination room, during or after the bar examination, any materials relating to any part of the bar examination;
 - (G) Continue to answer questions after the announcement to stop is given;
 - (H) Communicate the substance of any question to other Applicants still taking the bar examination;
 - (I) Communicate the substance of any question to persons who are employed by or associated with bar review courses;
 - (J) Disregard instructions given by the Idaho State Bar and proctors or monitors prior to and during the course of the bar examination or cause generalized disruption of the bar examination;
 - (K) Identify themselves by submitting their identification numbers or names on a response to any question or attempt to influence the grading of their bar examinations in any manner; or
 - (L) Otherwise compromise the security or integrity of the bar examination.
 - (2) Applicants who violate this Code of Conduct, or who knowingly assist another Applicant

in a violation, shall be given an automatic failing score on the entire bar examination. The circumstances of such violation may be considered by the Board as grounds for barring the Applicant from retaking the bar examination.

(i) **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 67.5% of the highest possible scaled score as provided by the Bar Examination Grading Standards and Procedures.

(j) **Bar Examination Certification.** The Board shall certify all eligible Applicants to the Supreme Court for admission.

(k) **Request for Copies.** Applicants who failed the bar examination may review:

(1) Their bar examination scores and answers; and

(2) Any model grading materials the NCBE authorizes for distribution to examinees.

(l) **Bar Examination Records.** Bar examination documents shall be maintained by the Bar for at least 120 days after the bar examination, after which time the documents may be destroyed without further notice to the examinee.

**(Rule 217 amended _____ – effective 4-1-26)*

RESOLUTION 24 - 02

Amendment to the Idaho Rules of Professional Conduct – Entire File Rule

Presented by: Board of Commissioners of the Idaho State Bar

Rationale:

- Idaho Rule of Professional Conduct (“I.R.P.C.”) 1.16(d) provides that upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client’s interests, including surrendering papers and property to which the client is entitled. Although the Rule does not specify to which “papers and property” the client is entitled, lawyers have generally been advised that, at a minimum, the client is entitled to all original documents which were initially provided by the client. The I.R.P.C. do not currently address the scope of documents which must be provided to a former client under I.R.P.C. 1.16(d).
- The majority of U.S. jurisdictions have adopted the “entire file” approach, which provides that the client is entitled to all materials in the client’s file, including the attorney’s work product, with certain narrow exceptions.
- On January 25, 2023, the Idaho Supreme Court issued a Decision in a professional conduct case. In that case, the lawyer had declined a former client’s request for notes or emails that the lawyer may have generated in connection with the criminal defense representation. The lawyer asserted that those notes and emails were “work product” and therefore the property of the lawyer’s employer. In its Decision, the Court adopted the majority “entire file” rule and stated that under I.R.P.C. 1.16(d), a lawyer in a criminal case is required to surrender “everything” in the client file, including attorney work product, subject to narrow exceptions.
- In its January 25, 2023 Decision, the Court suggested that the Board of Commissioners develop and submit for the Court’s approval a proposed Comment to I.R.P.C. 1.16(d) that reflected the Court’s adoption of the “entire file” rule in criminal cases. The Court also suggested that the Board of Commissioners consider addressing the application of the “entire file” rule in civil cases.
- Consistent with the Court’s January 25, 2023 Decision, and upon determining that a black-letter Rule would more effectively provide the necessary guidance to lawyers regarding the “entire file” rule, the Board of Commissioners developed a proposed Rule that addresses which documents must be provided to the client or former client upon request. The proposed new Rule **1.16A addresses the materials included in the client’s file, outlines the “narrow exceptions” referenced by the Court, and provides relevant Commentary.**

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 the Idaho Rules of Professional Conduct be amended to add Rule 1.16A.

Rule 1.16A: Client Files.

- (a) A lawyer must make the client's file available to the client or former client within a reasonable time after the client's request for the file.
- (b) For purposes of this Rule, the client's file consists of the following materials, regardless of whether the materials are in physical or electronic form:
 - (1) all materials provided by the client to the lawyer;
 - (2) all correspondence relating to the client's matter;
 - (3) all pleadings and other legal documents filed with a tribunal or completed but not yet filed with a tribunal or served upon any party relevant to the client's matter;
 - (4) all orders and other records of a tribunal;
 - (5) all investigatory or discovery documents, including but not limited to interrogatories and their answers, deposition transcripts, medical records, photographs, investigative reports, expert reports, witness statements, and exhibits;
 - (6) legal opinions issued at the client's request;
 - (7) third-party assessments, evaluations, or records paid for by the client; and
 - (8) copies of notes, documents, and tangible materials prepared in the course of the representation of the client by the lawyer or at the lawyer's direction by the lawyer's employee, agent, or consultant, and not otherwise described in subsections (1) through (7) above, regardless of whether it is considered "work product" by the lawyer.
- (c) Notwithstanding the provisions of subsections (a) and (b) above, a lawyer may withhold the following file documents from the client despite the client's request for the entire file:
 - (1) documents or information to which the client is not entitled, such as a legal memorandum from a different case not involving the client, which the lawyer used in preparing a memorandum or related document for the client;
 - (2) communications showing the lawyer consulted other counsel or the lawyer's professional malpractice insurer to discuss the lawyer's potential exposure to professional discipline or malpractice liability;
 - (3) communications with others in the same law firm relating to administrative matters such as work assignments, routine conflicts reviews, the client's creditworthiness, time and expense records, or personnel matters;
 - (4) electronic documents or information such as metadata that would be too burdensome and expensive to identify, locate, and produce in a readable or accessible format;
 - (5) documents for which there is applicable law or a court order prohibiting the delivery of the documents or the information contained in those documents, in whole or in part, to the client;
 - (6) drafted but unexecuted estate plans, title opinions, contracts, documents regarding the formation, operation, or termination of business or other association, or any other unexecuted document, unless the lawyer has already received compensation for preparing the document; and
 - (7) documents which the lawyer has reasonable cause to believe would endanger the health, safety, or welfare of the client or others if the documents or the information contained in those documents, in whole or in part, were provided to the client.

- (d) Paragraph (b) does not require a lawyer to preserve documents that a reasonable lawyer would not customarily preserve.
- (e) Upon request by a client or former client for the client's file, a lawyer may require the client to pay:
 - (1) copying charges for copying the file documents consistent with the lawyer's actual copying cost, excluding time and labor, unless the client has already paid for but not yet received copies of the respective documents; and
 - (2) the lawyer's actual cost for the postage to mail or otherwise deliver the file documents to the client.
- (f) A lawyer is not required to turn over to the client or former client documents for which the client is obligated to pay under an enforceable fee agreement but has not paid, provided however, that a lawyer may not refuse to make available materials in the client's file on the grounds of nonpayment if such retention would result in imminent prejudice to the client. See Rule 1.16(d).
- (g) A lawyer shall not destroy a client's file if the lawyer knows or reasonably should know that:
 - (1) a lawsuit or other legal claim related to the client's matter is pending or anticipated;
 - (2) a criminal or other governmental investigation related to the client's matter is pending or anticipated; or
 - (3) a disciplinary investigation or proceeding related to the client's matter or a Client Assistance Fund claim is pending or anticipated.

Commentary

[1] This Rule governs lawyers' obligations with respect to the custody of client files. A lawyer's obligations with respect to client funds and the maintenance of records required for trust property and trust accounts are governed by Rule 1.15.

[2] Lawyers should address the disposition of client files in a written fee agreement or engagement letter or, if specific arrangements for the disposition or transfer of client files have not been made, in the lawyer's final communication to the client at the conclusion of a matter.

[3] Except as provided in Comment [4], this Rule does not require lawyers to preserve physical documents that have been converted to electronic form.

[4] Unless other applicable law requires a particular document to be physically preserved for its legal effectiveness, a lawyer may maintain a client's file in electronic form, provided however, that for documents stored only in electronic form, the lawyer shall make reasonable efforts to store such electronic files in a form that can be read with available technology for the period during which the file must be retained. If the original form of the document is important, the document should not be destroyed without the client's authorization.

[5] Rule 1.16A does not supersede obligations imposed by court order, rules of a tribunal, or other law including discovery rules in civil cases, subpoenas and other mandatory processes, and the law of spoliation and obstruction of justice. Similarly, Rule 1.16A does not supersede specific retention requirements imposed by other Idaho Rules of Professional Conduct. A document may

be subject to more than one retention requirement, in which case the lawyer should retain the document for the longest applicable period.

[6] The lawyer's obligations under this Rule to retain and return files to the client are not excused because the lawyer forwarded documents to the client during the course of the representation, provided however, that a lawyer may require the client to pay for the lawyer's actual copying and delivery costs for providing additional copies upon request, consistent with paragra

RESOLUTION 24- 03
Proposed License Fee Increase

Presented by: Board of Commissioners of the Idaho State Bar

PURPOSE: The resolution proposes an increase in the license fees for Idaho attorneys to be implemented for 2026 licensing.

When was the last license fee increase? The last general license fee increase was approved by the membership in 2009 and phased in over two years, 2011 and 2012. At that time, the Bar Commissioners committed to do their best not to request another increase for 10 years that goal has been accomplished. If approved, the proposed license fee increase will be effective for the 2026 licensing cycle.

For the last few years, the Board of Commissioners has reviewed the financial status of the Idaho State Bar to determine when a license fee increase would be necessary.

Historically, since 1975, a license fee increase has been necessary every 8-10 years (and now 14). There have been increases in 1975, 1982, 1990, 1999 and 2011. There were 5,367 members of the Idaho State Bar in 2009, when the last increase was proposed and approved. As of October 2024, there are 7,314 members – an increase of 36%. While the revenue from a larger membership has helped absorb some of the increased cost over the years, increasing bar membership does not offset incrementally increasing expenses forever.

How does the bar spend its funds? The Idaho State Bar's primary responsibility is regulatory functions, essentially serving as a quasi-governmental entity to oversee and administer admissions, licensing and discipline for its licensed members. Consistent with these responsibilities approximately 62% of the Bar's expenses are allocated to its regulatory functions, which include the Client Assistance Fund, fee arbitration, ethics advice, discipline, admissions process, District Bar Association allocations, among others. Approximately 21% of the Bar's expenses are related to member services such as *The Advocate* and other communications, Fastcase, the Lawyer Referral Service (LRS), the Lawyer Assistance Program, Desk Book Directory, and the Annual Conference. The remaining approximately 17% of the bar's expenses are for the administration of these functions, accounting personnel, and IT. Some of the expenses related to admissions, member services activities, and administration are offset by other revenue sources. For example, admission fees cover about 80% of admission expenses, almost 50% of the expense of publishing *The Advocate* is covered by advertising and subscription revenue, and LRS revenue exceeds the expenses of operating the program. Further, expense for the MCLE accreditation process is covered by fees paid by program sponsors to apply for CLE accreditation.

In an ongoing effort to reduce its expenses, the bar conducts communication through its website and via email rather than mailings. The printed Desk Book directory will be discontinued next year, MCLE fees for program sponsors increased as a result of a rule change this year, the availability of accessing LRS online has reduced staff time spent handling LRS calls, the Annual meeting will be restructured to reduce the time and expenses necessary, and online licensing is now available and used by over 80% of bar members. The Bar continues to implement technological improvements to reduce costs and staff time to carry out the functions and responsibilities of the Bar. The increase in expenses exceed increases in revenue, which will continue going forward.

How much is the proposed fee increase and when would it be effective? Specifically, the proposal would increase license fees as follows:

Licensing Category	Current Fee	2026
Active	\$425	\$485
Active (3 years or less)	320	350
New admittee – prior to 7/1	175	200
New admittee – after 7/1	115	130
Inactive/emeritus/retired judicial	150	170
Over 65 inactive/senior/emeritus/retired judicial	70	80
Over 72 – any licensing category	70	80

The proposed increase represents a 1% increase per year, over a 14-year period. The average CPI Index for the same period was 2.6%.

How do Idaho’s license fees compare to similar unified bars? Idaho’s license fees are comparable to those of similar unified state bars. The 2024 license fees for active bar members from other Western unified state bars are as follows:

- Arizona - \$505
- Nevada \$450
- Oregon* - \$688
- Alaska - \$660
- Washington* –\$478
- Montana - \$515
- Utah - \$435
- Idaho - \$425**
- Wyoming* - \$355

**These states are considering a future increase.*

So, what’s next? If a proposed license fee increase is approved by the Idaho State Bar membership, it would then be submitted to the Idaho legislature and Idaho Supreme Court for approval. License fees are set both by statute and Idaho Bar Commission Rule. If the increase is approved by these entities, it would take effect for the 2026 licensing year.

The mission of the Idaho State Bar is to administer granting the privilege to practice law in Idaho; to control and regulate the legal profession; to protect the public from the unauthorized practice of law and from unprofessional conduct by members of the bar; to promote high standards of professional conduct; and to aid the advancement of the administration of justice.

RESOLUTION 24-03
[Increase in License Fees]

Presented By: Board of Commissioners

Rationale: License fees are vital to continuing to administer the regulatory functions of the Idaho State Bar and to providing services to bar members and the public. License fees have not been increased since 2011. The Board of Commissioners have analyzed the current financial condition and future budget needs of the bar and have determined that is it time to request an increase in the license fees.

NOW, THEREFORE, BE IT RESOLVED THAT Section III of the *Idaho Bar Commission Rules* and Idaho Code Section 3-409 be amended to provide for an increase of the annual license fees. The proposed increase in the annual license fees would be effective for 2026 licensing.

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:

(a) In the Calendar Year of Admission.

- (1) ~~One hundred and seventy five dollars (\$175)~~ Two-hundred dollars (\$200) if admitted prior to July 1 of the calendar year; or
- (2) ~~One hundred and fifteen dollars (\$115)~~ One-hundred and thirty (\$130) if admitted on or after July 1 of the calendar year.

(b) Active and House Counsel Members.

- (1) ~~Three hundred and twenty dollars (\$320)~~ Three hundred and fifty dollars (\$350) in the first, second and third full calendar years after admission.
- (2) ~~Four hundred and twenty five dollars (\$425)~~ Four hundred and eighty-five dollars (\$485) in the fourth full calendar year after admission and each year thereafter.

***(c) Inactive, Emeritus and Retired Judicial Members.**

- (1) ~~One hundred fifty dollars (\$150)~~ One hundred seventy dollars (\$170) in each full calendar year after admission.
- (2) ~~Seventy (\$70)~~ Eighty (\$80) for Emeritus and Retired Judicial Members aged sixty-five (65) years or older.

*(*Section (c) amended 12-28-23 – effective 5-1-24)*

(d) Senior Members.

- (1) ~~Seventy dollars (\$70)~~ Eighty dollars (\$80).

(e) Members Aged Seventy-Two (72) Years or Older.

- (1) ~~Seventy dollars (\$70)~~ Eighty dollars (\$80) for the first full calendar year following an attorney's seventy-second (72nd) birthday and every year thereafter.