



2026 Resolution Process

Voter Pamphlet



2026 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 2026 Idaho State Bar resolution process, aka “The Roadshow.”

In addition to the resolutions, the meetings include presentations honoring your colleagues with the pro bono, retiring judges and professionalism awards. There will be a CLE program offered free to all bar members at each location.

District	Date	Time	Venue	City	District Bar Contact
1 st District	Wednesday, November 4 th	11:30 am PST	Coeur d’Alene Resort 115 S. Second St.	Coeur d’Alene	Makenzie Crawford
2 nd District	Thursday, November 5 th	5:30 pm PST	Best Western University Inn 1516 Pullman Rd.	Moscow	Brennan Wright
3 rd District	Tuesday November 10 th	11:30 am MST	Indian Creek Steakhouse 711 Main St.	Caldwell	Tyler Rounds
4 th District	Tuesday November 10 th	5:30 pm MST	JUMP 1000 W. Myrtle St.	Boise	Yecora Daniels
7 th District	Tuesday November 17 th	5:00 pm MST	Hilton Garden Inn 700 Lindsey Blvd.	Idaho Falls	Benjamin Ritchie
6 th District	Wednesday November 18 th	11:30 am MST	Purpose Center 224 N. Union Pacific Ave.	Pocatello	Elisheva Patterson
5 th District	Wednesday November 18 th	5:30 pm MST	Blue Lakes Country Club 1940 Blue Lakes Grade	Jerome	Qiva Dinuri

Each judge and active member of the Idaho State Bar in attendance at a resolution meeting will receive a resolution ballot. Members not in attendance will receive an electronic ballot via email 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 5:00 p.m. MST on Wednesday, December 2, 2026. The electronic voting site will close at 5:00 p.m. MST on Wednesday, December 2.**

We hope to see you at the district bar meetings.

2026 RESOLUTION PROCESS

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CLE PROGRAM

Idaho Civil Procedure and Judicial District Update 2026

Each District Bar resolution meeting will feature a free 30-minute CLE about upcoming changes to the Idaho Rules of Civil Procedure, presented by Justice Zahn and Justice Meyer of the Idaho Supreme Court and the Administrative District Judge from each judicial district.

RESOLUTION MEETING AGENDA

- Welcome, Announcements, and Introductions
 - *ISB Commissioners and District Bar President*
- Idaho Supreme Court Update – Justice Colleen Zahn
- Professionalism, Pro Bono and Retiring Judge Award Presentations
- Presentation of 2026 Resolutions
- Local Bar Business

2026 PROFESSIONALISM, PRO BONO and RETIRING JUDGE AWARD RECIPIENTS

Each year, the Idaho State Bar honors members of the profession for their contributions to the profession, the judiciary and their communities.

PROFESSIONALISM AWARDS

First District	Hon. James F. Combo	Coeur d’Alene
Second District	Julie S. Kane	Lapwai
Third District	Tyler S. Rounds	Caldwell
Fourth District	Walter J. Donovan Jr.	Boise
Fourth District	William “Bill” Nary	Meridian
Fifth District	Hon. Jennifer L.K. Haemmerle	Hailey
Sixth District	Richard A. Diehl Jr.	Pocatello
Seventh District	Eric M. Barzee (posthumous)	Idaho Falls

DENISE O’DONNELL DAY PRO BONO AWARDS

First District	Hon. Kirsten Thompson	Sandpoint
Second District	Joanna McFarland	Lewiston
Third District	Jacob T. Welsh	Emmett
Fourth District	Michelle R.W. Finch	Boise
Fourth District	A. Denise Penton	Boise
Seventh District	Justin Eckman	Rexburg

IDAHO STATE BAR RETIRING JUDGE AWARDS

First District	Hon. James F. Combo	Coeur d'Alene
First District	Hon. Barbara A. Duggan	Wallace
Third District	Hon. Robert L. Jackson	Payette
Fourth District	Chief Justice G. Richard Bevan	Boise
Fourth District	Hon. David W. Gratton	Boise
Fourth District	Hon. Molly J. Huskey	Boise
Fourth District	Hon. Theresa L. Gardunia	Boise
Seventh District	Hon. Dane H. Watkins, Jr.	Idaho Falls
Seventh District	Hon. James H. Barrett, Jr.	Idaho Falls
Seventh District	Hon. Stevan H. Thompson	Rigby

IDAHO STATE BAR RESOLUTION 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 approved at this meeting are then sent to each member of the Idaho State Bar.

Resolution Meetings

District bar meetings are held in each of the seven judicial 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 sent an electronic ballot after the resolution meeting in their district. Ballots may be completed and submitted at the resolution meetings, delivered to the Idaho State Bar office or completed online. **All ballots must be submitted by 5:00 pm MST on December 2, 2026.**

Conclusion of Process

After all resolution meetings are concluded, the district bar representatives meet again with the Board of Commissioners on December 4, 2026. 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 any amendments as they see fit.

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

As of August 2026, the Idaho State Bar voting membership breakdown is as follows:

District	Eligible voters	% of total eligible voters
1	486	8.06%
2	226	3.75%
3	319	5.29%
4	2,462	40.83%
5	296	4.91%
6	202	3.35%
7	438	7.26%
Out of State Active	1,601	26.55%
Total	6030	100.00%

RESOLUTION 26 – 02

Amendments to Idaho Bar Commission Rule 202 – Expanding qualifications for admission

Presented by: Board of Commissioners of the Idaho State Bar

Rationale:

- Idaho Bar Commission Rule (“IBCR”) 202 describes the qualifications for admission as an attorney in Idaho. Subsection (a)(3) requires an applicant for admission to have, or will have received, a law degree from a law school which is fully or provisionally approved by the American Bar Association pursuant to ABA Standards and Rules of Procedure for Approval of Law Schools, as amended (an “Approved Law School”).

- The Idaho Supreme Court frequently receives petitions from applicants seeking a waiver of the Approved Law School requirement. The Court has granted such waivers upon an adequate showing by an applicant of recent practice of law and good standing membership in the State bar of another state.

- The proposed amendment to IBCR 202(a)(3) is consistent with the Court precedent and would allow an applicant who practices law and is in good standing in another state to seek admission in Idaho notwithstanding that they have not graduated from an Approved Law School.

NOW, THEREFORE, BE IT RESOLVED THAT the Board of Commissioners of the Idaho State Bar recommends that the members of the Idaho State Bar recommend to the Idaho Supreme Court that Idaho Bar Commission Rule 202 be amended with the following language:

RULE 202. Qualifications for Admission.

(a) **Qualifications.** Before receiving permission to take the bar examination and for admission to practice law in Idaho, the Applicant must:

- (1) Be at least eighteen years of age;
- (2) Be lawfully admitted to this country;
- (3) Meet either of the following:

(A) have, or will have received a juris doctorate or bachelor of laws degree or an equivalent basic law degree from an Approved Law School. Submission of a law school transcript in a form satisfactory to the Board shall be considered compliance with this Rule or;

(B) be an attorney who has actively engaged in the practice of law in any other state or territory of the United States or the District of Columbia, for no less than three of the five years immediately preceding the Application.

- (4) Have demonstrated the essential eligibility requirements to practice law pursuant to Rule 201 and have met all requirements in the Admission Rules;
- (5) Be a person of good moral character; and
- (6) Not have been denied admission within two years of the date of a Board Order that has become final under I.B.C.R. 215 denying the Application on character and fitness grounds or within two years of the date of a Supreme Court Order denying the Application on character and fitness grounds.

(b) **Multistate Professional Responsibility Examination (MPRE).** Prior to taking the Idaho bar examination, or within the next two scheduled MPRE administrations after successfully completing the Idaho bar examination, the Applicant must take the MPRE and receive a minimum scaled score of 85 or such other minimum scaled score as the Board may establish.

(c) **Duty to Supplement.** All Applicants must supplement their Application with relevant character and fitness information until admitted to practice law in Idaho.

RESOLUTION 26 – 03

Amendments to Idaho Bar Commission Rules 218, 219 and 226 – Increasing fee amounts

Presented by: Board of Commissioners of the Idaho State Bar

Rationale:

- Section II of the Idaho Bar Commission Rules (“IBCR”) contains several fees related to admission to practice in the Idaho State Bar, including, in relevant part, the Reexamination Fee (IBCR 218(c)), Deferment Fee (IBCR 219(a)(1)), and Legal Intern License Application Fee (IBCR 226(c)(5)). These fees are paid by applicants for admission and not by members.

- The Reexamination Fee has not changed since 1999, when it increased from \$150 to \$200. Adjusting for inflation, \$200 in 1999 equals approximately \$406 in 2026. The national average for comparable fees is \$642.

- The Deferment Fee has not changed since 2012, when it increased from \$50 to \$100. Adjusting for inflation, \$100 in 2012 equals approximately \$147 in 2026. The national average for comparable fees is \$153.

- The Legal Intern License Application Fee has not changed since at least 1987. Adjusting for inflation, \$25 in 1987 equals approximately \$75 in 2026. The national average for comparable fees is \$116.

- The intent of this resolution is to increase certain admissions fees that have not been adjusted in more than 14 years to defray increasing operational costs of the Idaho State Bar so that it may maintain current levels of service provision to applicants for admission, members, and the public.

NOW, THEREFORE, BE IT RESOLVED THAT the Board of Commissioners of the Idaho State Bar recommends that the members of the Idaho State Bar recommend to the Idaho Supreme Court that IBCR 218, 219, and 226 be amended to increase the Reexamination Fee, Deferment Fee, and Legal Intern License Application Fee.

RULE 218. Reexamination. An Applicant who has failed the Idaho bar examination may apply for reexamination on a form provided by the Bar.

(a) **Character and Fitness.** The Board may require further investigation of the Applicant's character and fitness.

(b) **Disclosure of Information.** The requirements of Rule 204 apply to information required for reexamination.

(c) **Fee.** The reexamination fee is \$~~24~~400 for each of the first three reexaminations and \$~~36~~600 for each subsequent reexamination.

(d) **Number of reexaminations.** An Applicant who has failed six or more bar examinations, regardless of the jurisdiction, is ineligible to apply for the bar examination or reexamination in Idaho unless the Applicant has:

(1) Demonstrated in writing, to the satisfaction of the Board, that there has been a substantial change in the degree of the Applicant's legal learning which makes it probable that the Applicant will pass the bar examination; and

(2) Been notified, in writing, that special permission to retake the bar examination has been granted by the Board.

(e) **Other Provisions.** Provisions for reexamination relating to reasonable accommodation, filing deadlines and additional fees are as set forth in Rules 203 and 213.

RULE 219. Deferment.

- (a) **Deferment.** An Applicant who is unable to take the bar examination after filing an Application may submit a written request for deferment to the next scheduled bar examination date, provided:
- (1) The deferment request must be received by the Executive Director no later than the first day of the currently scheduled bar examination and be accompanied by a \$~~1~~200 filing fee;
 - (2) The Applicant must submit a supplemental application form before the late Application deadline under Rule 203 for the next scheduled bar examination. An Applicant whose supplemental application form is incomplete shall not take the next bar examination; and
 - (3) No deferment shall be granted if the Applicant has appeared for a character and fitness examination.
- (b) **Failure to Take Bar Examination.** An Applicant who receives a deferment but fails to take the next scheduled bar examination shall be required to file a new Application and pay the required fee.
- (c) **Failure to Appear for Bar Examination.** A deferment shall not be permitted after the bar examination begins.

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RULE 226. Legal Intern License.

- (a) **Admission to Limited Practice as Legal Intern.** Upon application and approval in accordance with this rule, qualified law students and recent law school graduates may be admitted as legal interns to engage in the limited practice of law described below.
- (b) **Qualifications of Legal Intern.** To qualify for a legal intern license, the applicant must:
- (1) Not have failed the Idaho bar examination or the bar examination in any other jurisdiction; and
 - (2) Have graduated from an Approved Law School within twelve months of applying for a legal intern license and show proof of graduation and the date thereof; or be a student duly enrolled and in good academic standing at an Approved Law School with completed legal studies totaling not less than two-thirds of a prescribed three-year course of study and the written approval of the applicant's law school dean or the dean's designee, provided that the written approval may be withdrawn at any time by written notice from the law school dean or designee to the Clerk of the Supreme Court and the Executive Director, and such approval shall be withdrawn if the applicant ceases to be duly enrolled prior to graduation or ceases to be in good academic standing.
- (c) **Application.** The applicant shall submit an application to the Executive Director on a form provided by the Bar that includes:
- (1) The applicant's certification, under oath, that he or she has read, is familiar with and shall abide by the Idaho Rules of Professional Conduct;
 - (2) Identification of any state or territory of the United States or the District of Columbia in which the applicant has been granted a legal intern license prior to applying for licensure in Idaho and, if such legal intern license has ever been revoked, the date and reasons for the revocation; and
 - (3) Proof of the date of graduation from an Approved Law School or written approval of the application by the applicant's law school dean or designee;
 - (4) The name, address, telephone number and signature of the supervising attorney; and
 - (5) A \$~~2~~50 application fee.
- (d) **Procedure.**
- (1) **Action by Executive Director.** The Executive Director shall approve or deny each application for a legal intern license as follows:

- (A) The Executive Director may deny an application based upon the applicant's failure to meet the qualifications for licensure, failure to provide requested information, or for character and fitness issues. If the application is denied, the Executive Director shall send notice of the denial and the basis of the denial to the applicant.
 - (B) The Executive Director shall forward all approved applications to the Supreme Court for further consideration. Approval by the Executive Director does not constitute a finding of good moral character and fitness for purposes of meeting the qualifications to take any bar examination or for admission to practice law.
- (2) **Action by Supreme Court.** Upon receipt of an application approved by the Executive Director, the Supreme Court may issue the legal intern license or deny the application. Supreme Court approval does not constitute a finding of good moral character and fitness for purposes of meeting the qualifications to take any bar examination or for admission to practice law.
- (e) **Term of Legal Intern License.** Each legal intern license shall be granted for a definite period of time not to exceed 12 consecutive months, provided:
 - (1) If the applicant passes the Idaho bar examination and is admitted to the Bar prior to the expiration of the 12-month term, the legal intern license shall terminate upon admission to the Bar; or
 - (2) If the applicant fails the Idaho bar examination or the bar examination in any other jurisdiction prior to the expiration of the 12-month term, the legal intern license shall terminate on the date those bar examination results are released.
- (f) **Scope of Legal Intern Practice.** A legal intern may:
 - (1) Advise or negotiate on behalf of a person referred to the legal intern by the supervising attorney with the client's informed consent, confirmed in writing;
 - (2) Prepare pleadings, motions, briefs or other documents;
 - (3) Participate in any civil and criminal proceedings if the supervising attorney is present;
 - (4) Participate in proceedings before a district court, without the presence of the supervising attorney, if the proceedings are based on a stipulation between the parties; and
 - (5) Participate in proceedings before a magistrate court, without the presence of the supervising attorney, if:
 - (A) The proceedings involve an infraction, misdemeanor, felony initial appearance, juvenile proceeding, or a civil proceeding; and
 - (B) The supervising attorney has submitted a certificate to each judge before whom the legal intern appears, certifying that the legal intern:
 - (i) Has participated in similar actions under the direct supervision and control of the supervising attorney;
 - (ii) Is fully prepared to present the matter; and
 - (iii) Has the informed consent of the client, confirmed in writing, to appear on behalf of that client.
- (g) **Responsibility.** The supervising attorney and legal intern are responsible to the courts, the Bar, the Supreme Court and the client for all services provided by the legal intern pursuant to this rule.
- (h) **Authority of the Court.** A judge may exclude a legal intern from active participation in a proceeding in the judge's sole discretion.
- (i) **Termination of Legal Intern License.**
 - (1) Failure by the legal intern to perform any of the following duties shall be grounds for the immediate termination of the legal intern license:
 - (A) Abide by the Idaho Rules of Professional Conduct and all other laws and rules governing lawyers admitted to the Bar;

- (B) Advise the client of the license status of the legal intern prior to performing any services for the client;
 - (C) Advise the judge of the license status of the legal intern prior to appearing before the judge; or
 - (D) Keep the supervising attorney and Bar advised of the legal intern's current residence at all times.
- (2) The Supreme Court may terminate a legal intern license at any time on the Supreme Court's own motion, on motion of the supervising attorney or Bar Counsel, or on motion of the legal intern and surrender of the legal intern license.
- (j) **Compensation.** A legal intern shall not receive payment directly from a client for services rendered, provided however, that the employer or supervising attorney may compensate the legal intern for his or her services and may charge for services rendered by the legal intern as may otherwise be proper.
- (k) **Termination of Activity.** A legal intern shall not perform any services as a legal intern and shall not hold himself or herself out as a legal intern upon:
- (1) Cessation of any of the conditions on which the legal intern license was issued;
 - (2) Termination of the legal intern license;
 - (3) Resignation of the legal intern's supervising attorney;
 - (4) Suspension or termination by the Board of the supervising attorney's status as a supervising attorney; or
 - (5) Withdrawal of the dean's approval under subsection (b)(2).
- (l) **Qualifications of Supervising Attorney.** An attorney is qualified to act as a supervising attorney who:
- (1) Is actively licensed in Idaho;
 - (2) Has practiced law for at least five years immediately prior to submission of the legal intern application; and
 - (3) Has never been publicly sanctioned in Idaho or any other state or territory of the United States or the District of Columbia, unless the Board approves the attorney to act as a supervising attorney.
- (m) **Duties of Supervising Attorney.** A supervising attorney shall:
- (1) Maintain direction and supervision over all work of the legal intern;
 - (2) Review and sign all pleadings, motions, briefs and other documents prepared by the legal intern, except when the judge has waived this requirement;
 - (3) Immediately notify the Supreme Court and Bar if the legal intern is no longer employed or engaged by the supervising attorney or if there has been a change of the legal intern's place of residence that impairs the ability of the supervising attorney to perform his or her duties;
 - (4) Be present in any proceedings required by this rule; and
 - (5) Advise the judge and client of the license status of the legal intern before any services are performed before the judge or on behalf of the client.
- (n) **Supervision of Interns.**
- (1) A supervising attorney shall not supervise more than two legal interns except in a clinical course offered by an Approved Law School, approved by its dean and directed by a member of its faculty. Any supervising attorney of the clinical course or program may supervise all legal interns in that course or program.
 - (2) With the approval of the supervising attorney, any attorney in the supervising attorney's firm, law office or practice may supervise and direct the work of the legal intern consistent with the duties set forth in subsection (m), provided that the supervising attorney shall continue to be responsible for all work of the legal intern as provided in subsection (g) above.

- (o) **Substitution of Supervising Attorney.** A licensed legal intern may apply to substitute another attorney as his or her supervising attorney by application to the Executive Director and Supreme Court on a form prescribed by the Board. A substitution shall not be effective until approved by order of the Supreme Court.
- (p) **Termination of Supervising Attorney.**
 - (1) An attorney may be terminated as the legal intern's supervising attorney at the discretion of the Board or Supreme Court.
 - (2) Upon termination of the supervising attorney, the legal intern shall cease performing any services and shall not hold himself or herself out as a legal intern until written notice of a substitute supervising attorney, signed by the legal intern and by a new supervising attorney, is approved by the Executive Director and Supreme Court.

RESOLUTION 26 – 04

Amendments to Idaho Bar Commission Rules 402 and 404 – Increasing minimum requirements, expanding Accredited Activities, permitting carryover credit, and making technical corrections

Presented by: Board of Commissioners of the Idaho State Bar

Rationale:

- Section IV of the Idaho Bar Commission Rules (“IBCR”) governs Mandatory Continuing Legal Education (“MCLE”) requirements for attorneys licensed in Idaho. Pursuant to IBCR 402(a), Active and House Counsel members are required to complete a minimum of 30 credit hours of Accredited Activity in every three-year reporting period. At least three CLE credits shall be in courses on legal ethics or professional responsibility and no more than 15 of the required 30 credits may be self-study credits. No credits may carryover from one reporting period to another.

- “Accredited Activities” are currently limited to traditional, classroom-style live or recorded programs. Idaho does not allow for credit based on non-formal educational activities, such as performing pro bono legal work, judging or coaching mock trial competitions, or mentoring (collectively, “Alternative Activity”). Additionally, Idaho continues to be among the states with the lowest MCLE credit hour requirement and fewer ethics requirements than most other states. Of states that have a minimum MCLE requirement, the average is 12.43 credits per year.

- At least 25 states currently permit MCLE credit for providing pro bono services, including, but not limited to, Alaska, Arizona, Colorado, North Dakota, Oregon, Utah, Washington, and Wyoming, on the basis that pro bono service provides attorneys with hands-on exposure to new legal issues, practice areas, client needs, and evolving legal developments.

- At least 19 states currently permit MCLE credit for coaching or judging mock trial competitions, including, but not limited to, Arizona, California, Colorado, North Dakota, Oregon, Utah, and Washington, on the basis that attorneys who coach mock trial teams explain legal concepts, trial strategy, rules of evidence, and advocacy techniques in a structured manner that deepens their own understanding; and attorneys who serve as judges evaluate arguments, witness examinations, and legal reasoning, exercising many of the same analytical skills required in the practice of law.

- At least 20 states currently permit MCLE credit to attorneys who mentor in some capacity, including, but not limited to, Alaska, Arizona, Colorado, Nevada, New Mexico, North Dakota, Oregon, Utah, Washington, and Wyoming, on the basis that experienced lawyers deepen their own understanding of legal practice when they teach and guide others because it requires them to explain legal reasoning and professional judgment; reflect on ethical obligations and best practices; stay current on developments in the law to answer mentee questions; and evaluate and articulate effective lawyering skills.

- The intent of this resolution is to increase the minimum MCLE requirements, while also expanding the opportunities for which attorneys may receive credit and permitting limited carryover credit, to enable attorneys to acquire new knowledge and skill sets and to understand current trends and legal issues by engaging in non-formal educational activities.

NOW, THEREFORE, BE IT RESOLVED THAT the Board of Commissioners of the Idaho State Bar recommends that the members of the Idaho State Bar recommend to the Idaho Supreme Court that IBCR 402 and 404 be amended to increase the minimum MCLE requirement, expand Accredited Activities, permit carryover credit, and make technical corrections, with the

substantive amendments applying to attorneys' next full reporting period after the effective date of these rules and thereafter.

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 ~~six~~ (306) 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, a~~ 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~~ eighteen (158) of the required thirty ~~six~~ (306) credits may be earned for self-study credits programs, published legal writing, pro bono service, mock trial, mentoring, or any combination thereof.
- (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~~ completed;
 - (B) The dates of ~~attendance~~ completion;
 - (C) The Course Provider, if applicable;
 - (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; 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.
 - (C) For an attorney on full-time active military duty who does not engage in the practice of law in Idaho.
 - (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 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.

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RULE 404. Credit for CLE Activity. Attorneys may earn CLE credits for Accredited Activities that meet the standards of Rule 403(a), as follows:

(a) Credit for Attendance.

- (1) **General.** One (1) credit hour will be given for each hour the attorney actually attends an Accredited Activity.
- (2) **Exceptions.** No credit will be given for:
 - (A) Time spent in introductory remarks, coffee and food breaks, business meetings, or other activities that do not involve educational aspects of the CLE activity; or
 - (B) Any course attended in preparation for, or prior to, admission to the practice of law, provided that credit will be given for NAC-Approved CLE credits as provided under Rule 402(f).
- (3) **Self-Study Programs.**
 - (A) Credits for self-study programs are limited to no more than one-half of the total credits for each reporting period.
 - (B) Self-study programs include viewing or listening to legal educational programs that meet the standards set forth in Rule 403(a) and that were produced within the previous five (5) years.
 - (C) A CLE activity will be deemed a self-study program unless:
 - (i) Three (3) or more participants attend the CLE activity; and
 - (ii) The participants have access to the presenter during the CLE activity or, in the case of a video, audio or other recording, a moderator is present during the CLE activity who is qualified to answer attendees' questions about the CLE topic.

(b) Credit for Teaching.

- (1) Except as otherwise provided below, an attorney who teaches an Accredited Activity shall receive three (3) credit hours for each hour of teaching, notwithstanding the provisions of Rule 403(a).
- (2) No credit will be given for:
 - (A) Preparation time;
 - (B) Time spent in introductory remarks, coffee and food breaks, business meetings, or other activities that do not involve educational aspects of the CLE activity;
 - (C) Presentations by attorneys that include the promotion of goods or services; or
 - (D) CLE activities for which the attorney is directly compensated other than as an honorarium or for expenses.
- (3) An attorney who teaches an activity that meets the accreditation standards under Rule 403(a) that is directed primarily to nonlawyers shall receive only one (1) credit hour for each hour of teaching.
- (4) For panel presentations, credit shall be calculated by multiplying the course hours by three (3) and dividing by the number of panel members.

(c) Credit for Published Legal Writing.

- (1) Published legal writing authored by attorneys may, notwithstanding the provisions of Rule 403(a), qualify for CLE credit as set forth below.
- (2) Credit may be given if the writing:
 - (A) Contributes to the attorney's legal education;
 - (B) Is intended for an attorney audience; and
 - (C) Is an original writing that is published, in print or electronically, in a professional legal journal or publication.
- (3) No credit will be given for:
 - (A) A writing that is prepared in the ordinary course of the attorney's employment or practice of law;

- (B) Written materials prepared as part of a CLE course;
 - (C) A writing for which the attorney is directly compensated, other than as an honorarium;
 - (D) A writing prepared for or on behalf of a client or prospective client or for marketing purposes; or
 - (E) Editing or rewriting.
- (4) Credit for writing will be as follows:
- (A) One (1) credit hour will be given for each one thousand (1,000) words, provided that any writing submitted for credit shall include a minimum of one thousand (1,000) words;
 - (B) Attorneys are limited to a maximum of six (6) total credits for writing for each reporting period;
 - (C) Credits will be applied in the year in which the writing is actually published; and
 - (D) A writing that is co-authored by one or more attorneys is eligible for credit in proportion to the percentage of work contributed by each attorney.
- (5) An attorney requesting credit for a published writing under this subsection shall include with the request a copy of the writing, a word count, and the name and address of the publisher. If the attorney is a co-author, the request shall also include a statement indicating the percentage of work contributed by the attorney.
- (d) **Credit for Pro Bono Service.**
- (1) Pro bono service may, notwithstanding the provisions of Rule 403(a), qualify for CLE credit as set forth below.
 - (2) Credit may be given if the pro bono service is provided through the Idaho Volunteer Lawyers Program, Idaho Legal Aid Services, or another Approved Legal Assistance Organization under Rule 228.
 - (3) No credit will be given for financial contributions or donations to organizations that provide legal services to persons of limited means.
 - (4) Credit for pro bono service will be as follows:
 - (A) One (1) credit hour will be given for every two (2) hours of pro bono service provided;
 - (B) Attorneys are limited to a maximum of nine (9) total credit hours for pro bono service for each reporting period; and
 - (C) Credits will be applied in the year in which the pro bono service is provided.
 - (5) An attorney requesting credit for pro bono service under this subsection shall submit a request on a form prescribed by the Board.
- (e) **Credit for Mock Trial Participation.**
- (1) Mock trial participation may, notwithstanding the provisions of Rule 403(a), qualify for CLE credit as set forth below.
 - (2) Credit may be given if an attorney participates as a volunteer coach or judge during a competition of the Idaho Law Foundation's Mock Trial Program.
 - (3) No credit will be given for:
 - (A) Financial contributions or donations to a mock trial program; or
 - (B) Preparation time, travel time, or time otherwise spent outside the mock trial competition setting.
 - (4) Credit for mock trial participation will be as follows:
 - (A) One (1) credit hour will be given for every two (2) hours of participation in a competition as a mock trial coach;
 - (B) One (1) credit hour will be given for every four (4) hours of participation in a competition as a mock trial judge;
 - (C) Attorneys are limited to a maximum of nine (9) total credit hours for mock trial participation as a coach or judge for each reporting period; and

- (D) Credits will be applied in the year in which participation in a competition as a mock trial coach or judge occurs.
- (5) An attorney requesting credit for mock trial participation under this subsection shall submit a request on a form prescribed by the Board.
- (f) **Credit for Mentoring.**
- (1) Mentoring may, notwithstanding the provisions of Rule 403(a), qualify for CLE credit as set forth below.
- (2) Credit may be given if an attorney volunteers as a mentor for the Bar's Mentor Program.
- (3) No credit will be given for preparation time, travel time, or time otherwise spent outside the presence of the mentee.
- (4) Credit for mentoring will be as follows:
- (A) One (1) credit hour will be given for every four (4) hours of participation as a mentor for the Bar's Mentor Program;
- (B) Attorneys are limited to a maximum of nine (9) total credit hours for mentoring for each reporting period; and
- (C) Credits will be applied in the year in which mentoring occurs.
- (5) An attorney requesting credit for mentoring under this subsection shall submit a request on a form prescribed by the Board.
- (g) **Carryover Credit.** ~~No credit for attending or teaching a CLE activity shall apply to a reporting period other than the reporting period in which the credit is earned.~~ Up to twelve (12) credit hours earned beyond the minimum requirement of Rule 402(a)(1) in one reporting period may count as carryover credit toward the minimum requirement of the reporting period immediately following. Provided, however, such carryover credit may not count toward the legal ethics or professional responsibility requirement of Rule 402(a)(2) in the reporting period to which it is carried over.

RESOLUTION 26-05

Repeal and Replace Idaho Rule of Professional Conduct 1.14 – Client with decision-making limitations

Presented by: Board of Commissioners of the Idaho State Bar

Rationale:

- Idaho Rule of Professional Conduct (“I.R.P.C.”) 1.14 addresses lawyers representing a client with diminished capacity and was based on the former American Bar Association (“ABA”) Model Rule 1.14.

- The ABA adopted a resolution on February 9, 2026, substantially repealing and replacing ABA Model Rule 1.14 to address clients with decision-making limitations rather than a client with diminished capacity. The rationale for the amendments were designed to address ambiguities in the former ABA Model Rule 1.14, including:

- It unintentionally had the effect of encouraging many lawyers to pursue guardianship or conservatorship over clients;
- It was read to offer conflicting guidance to lawyers representing people with surrogate decision makers;
- Its terminology was inconsistent with changes in the law and the modern understanding of the rights and abilities of people with disabilities; and
- It did not provide sufficient guidance to lawyers in several major areas implicated by the Rule.

- Amended ABA Model Rule 1.14 and its comments provide better guidance to lawyers working with people who have limitations that affect their ability to make decisions, including decisions related to a representation.

- The proposed repeal and replacement of I.R.P.C. 1.14 will make Idaho’s rule consistent with amended ABA Model Rule 1.14.

- The proposed amendments to comments within the I.R.P.C. that reference I.R.P.C. 1.14 will make the terminology in those comments consistent with the terminology of amended ABA Model Rule 1.14.

NOW, THEREFORE, BE IT RESOLVED THAT the Board of Commissioners of the Idaho State Bar recommends that the members of the Idaho State Bar recommend to the Idaho Supreme Court that I.R.P.C. 1.14 be repealed and replaced with the below language, and that Comment 2 to I.R.P.C. 1.2, Comment 6 to I.R.P.C. 1.4, and Comment 6 to I.R.P.C. 1.16 be amended as provided below:

RULE 1.14: CLIENT WITH DECISION-MAKING LIMITATIONS

(a) A lawyer shall, as far as reasonably possible, maintain an ordinary client-lawyer relationship with a client with decision-making limitations, including when the client’s decision-making limitations impact the client’s ability to provide direction to the lawyer or make reasoned, informed choices. A person has decision-making limitations if the person has substantial difficulty receiving and understanding information, evaluating information, or making or communicating decisions even with appropriate supports or accommodations.

(b) When the lawyer reasonably believes that the client: (1) has decision-making limitations, (2) is at risk of substantial physical, financial or other harm unless action is taken, and (3) cannot

adequately act in the client's own interest to address the risk, the lawyer may take reasonably necessary protective action to address the risk.

(c) Information relating to the representation of a client with decision-making limitations is protected by Rule 1.6. However, when taking protective action pursuant to paragraph (b), the lawyer may reveal information related to the representation to the extent the lawyer reasonably believes necessary to protect the client's interests.

Commentary

Client Abilities and Limitations

[1] A client's decision-making limitations do not diminish the lawyer's obligations under the Rules or the importance of treating the client with attention and respect. Except as provided in this Rule, a client with decision-making limitations is owed all the protections under the Rules ordinarily afforded by the client-lawyer relationship.

[2] Decision-making limitations can be situational in nature and can vary in degree and over time. A client may have decision-making limitations with regard to certain issues and not others. A client with decision-making limitations often can understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. For example, some adults with substantial decision-making limitations, including those due to intellectual, developmental or cognitive disabilities, mental health conditions or substance abuse disorder, can make legal decisions. In addition, even if unable to make some or all decisions, persons with decision-making limitations, including even very young minors, may have preferences and values that can guide the lawyer's representation.

[3] A client's decision-making limitations may be affected by multiple factors. Sometimes decision-making limitations can be alleviated or eliminated by using supports or making accommodations to enhance the client's decision-making abilities, and such use can assist the lawyer in maintaining an ordinary client-lawyer relationship. Examples of supports and accommodations include communication devices or services, assistance of appropriate third parties or supported decision-making, environmental changes (e.g., conducting client meetings in a familiar setting), and using plain language or otherwise modifying the lawyer's communication and counseling techniques for the client.

Ordinary Client-Lawyer Relationship

[4] Lawyers are required to maintain, as far as reasonably possible, an ordinary client-lawyer relationship with clients with decision-making limitations. An ordinary client-lawyer relationship requires, among other things, abiding by a client's decisions concerning the objectives of the representation; keeping a client informed about the status of the matter and explaining matters to the extent reasonably necessary for a client to make informed decisions regarding the representation; and rendering candid advice to a client. See Rules 1.2, 1.4, and 2.1. An ordinary client-lawyer relationship is based, in part, on the assumption that the client, when properly advised and assisted, can make and communicate reasoned, informed decisions about important matters. When the client has decision-making limitations, however, maintaining an ordinary client-lawyer relationship may not be possible in all respects. In particular, a client with decision-making limitations may have limited ability to make or communicate legally binding decisions.

[5] The client may wish to have family members or other persons participate in discussions with the lawyer. The lawyer should seek the client's informed consent to the presence of such persons. See Rule 1.6(a). If the presence of such persons assists in the representation, the lawyer should document that role when such documentation could help avoid a waiver of the attorney-client evidentiary privilege.

Nevertheless, the lawyer must keep the client's interests foremost and, except for protective action authorized under paragraph (b), must look to the client, and not family members or other persons, to make decisions on the client's behalf. Whenever possible, the lawyer should afford the client the opportunity to communicate privately with the lawyer without the presence or influence of others.

[6] When a family member or another seeks a lawyer's services on behalf of an individual who may have decision-making limitations, the lawyer should identify who the client is and seek to establish an ordinary lawyer-client relationship with that client. When a family member or another seeks the lawyer's assistance in drafting a legal document to be executed by an individual who may have decision-making limitations, the lawyer should be alert to the possibility of undue influence or fraud.

[7] When the client has granted an agent authority to make decisions, including an agent acting under a power of attorney, the lawyer nevertheless should take direction from the client and maintain communication with the client to the extent feasible unless the client has otherwise directed or is unable to provide direction. In addition, a lawyer may consult with and represent a person who seeks to challenge the actions of an agent or terminate or modify the agent's appointment. When representing a client in such situations, the lawyer must take direction from the client and advocate for the client's objectives.

When a court has appointed a guardian, conservator or other appointee who is not a guardian ad litem to act on behalf of a lawyer's client or prospective client, a lawyer should ordinarily look to the court appointee for those decisions on behalf of the client or prospective client over which the appointee has authority.

However, a lawyer may consult with and represent a person subject to guardianship or conservatorship who seeks representation to challenge or modify the terms of that arrangement, or who seeks representation with regard to any other matter over which the person retains decision-making authority. When representing a client in such situations, the lawyer must take direction from the client and advocate for the client's objectives.

If a lawyer represents the guardian, conservator, or agent of a person with decision-making limitations, and is aware that the guardian, conservator or agent is acting adversely to the person's interest, the lawyer may have an obligation to prevent or rectify the misconduct.

[8] When a client in a criminal matter appears to have decision-making limitations, the lawyer's ethical duty to render competent representation and to protect the client's constitutional rights may require the lawyer to seek a competency evaluation or other mental health evaluation to determine whether the client is capable of deciding whether to testify or to plead guilty or to determine whether the client can meaningfully participate in preparation for trial, sentencing or another adjudicatory process. Because a client's liberty may be at stake, these questions are uniquely

difficult. Judicial decisions vary regarding whether, without the client's informed consent, a lawyer for the accused may or must raise doubts with the court about the competency of the accused. In such situations, lawyers should inform themselves of relevant judicial decisions and other authority in the jurisdiction and are encouraged to seek guidance from other organizations and resources, such as the ABA Defense Function Standard on Establishing and Maintaining an Effective Client Relationship and the ABA Criminal Justice Standards on Mental Health.

[9] A lawyer representing a minor should be mindful that the minor may have decision-making limitations due to age and stage of development. As with adult clients with decision-making limitations, the lawyer for a minor with decision-making limitations should, as far as reasonably possible maintain an ordinary client-lawyer relationship. Accordingly, a lawyer for a minor capable of providing direction ordinarily should advocate for the minor's objectives of the representation. See Rule 1.2(a). In assessing the minor's decision-making limitations, including with regard to providing direction on a legal matter, a lawyer should consider a variety of factors such as the minor's developmental stage, cognitive ability, emotional development, ability to communicate, ability to understand consequences, and consistency of decisions, the informed opinions of professionals and others with knowledge of the child's abilities and limitations, and the factors identified in Comment [13].

[10] A lawyer acting as guardian ad litem for a person is often tasked with advocating for the best interest of that person. Because the lawyer's assessment of what is in the best interest of that person may diverge from that person's objectives, lawyers who simultaneously act as a guardian ad litem for a person and provide direct legal representation of that person may find themselves in an ethically untenable position and should consider the need to withdraw as counsel or request to be relieved of the guardian ad litem appointment.

[11] A lawyer representing a client with decision-making limitations can employ a variety of techniques to ensure that the lawyer's representation is competent. For example, the lawyer can use developmentally appropriate interviewing and counseling skills when representing a minor, employ or invite the client to use supports and accommodations that make it easier for the client to understand and communicate information, or meet with the client at a place and time where the client is likely to have less difficulty providing direction. To identify and learn such techniques, lawyers can seek guidance from resources developed by professional associations and others with expertise in working with individuals with decision-making limitations.

Taking Protective Action

[12] If a lawyer reasonably believes that a client is at risk of substantial physical, financial or other harm unless action is taken, and that an ordinary client-lawyer relationship cannot be maintained as provided in paragraph (a), paragraph (b) permits the lawyer to take protective measures the lawyer deems necessary. Such measures could include: consulting with family members; using a reconsideration period to permit clarification or improvement of circumstances; using voluntary surrogate decision-making tools such as durable powers of attorney; or consulting with support groups, healthcare professionals, other professional services, adult-protective agencies, or other persons or entities that have the ability to protect the client. In taking any protective action, the lawyer should be guided by such factors as the wishes and values of the client to the extent known, the client's best interests, and the goals of minimizing intrusion into the client's decision-making autonomy, maximizing client capacities and respecting the client's family and social connections. In litigation involving the capacity of the client, such as a guardianship or conservatorship

proceeding, the lawyer should advocate for the client's expressed position regarding what, if any, protective action should be taken.

[13] In determining the extent of the client's decision-making limitations, the lawyer should consider and balance such factors as: the client's ability to articulate reasoning leading to a decision; variability of state of mind and ability to understand consequences of a decision; appreciation of the substantive fairness of a decision; the consistency of a decision with the known long-term commitments and values of the client; and whether supports or accommodations could alleviate factors contributing to decision-making limitations. A lawyer's reasonable belief that the client cannot make and communicate reasoned, informed decisions may be based on the lawyer's own observations. In forming a reasonable belief, a lawyer should ordinarily not rely exclusively on a medical diagnosis, but rather should consider the client's functional abilities and whether the limitations in the client's abilities could be alleviated by the use of accommodations or supports. In forming a reasonable belief, a lawyer who is aware of a healthcare professional's evaluation of the client's current abilities and limitations should take such evaluation into consideration. However, the lawyer should recognize that the evaluation may have been done for a different purpose, and that the evaluator may have evaluated the client based on standards that differ from the relevant legal standard and at a time when client's abilities differed from the present.

[14] A determination that a client has decision-making limitations need not have been made by a healthcare professional or court for a lawyer to form a reasonable belief that a client has such limitations. Nevertheless, in appropriate circumstances, the lawyer may seek guidance from a healthcare professional with relevant expertise or with knowledge of the client's abilities or limitations. If obtaining such guidance requires revealing confidential information about the client and the client does not or cannot give informed consent, it is permissible only if it is a reasonably necessary protective action under paragraph (b).

[15] If a lawyer reasonably believes that the client meets the criteria set forth in paragraph (b) of this Rule, the lawyer may consider whether appointment of a guardian ad litem, conservator or guardian is necessary to protect the client's interests. For example, if the client has substantial property that should be sold for the client's benefit, effective completion of the transaction may require appointment of a guardian or conservator, which may be temporary or limited in nature, or a court order in lieu of such an appointment. In addition, rules of procedure in litigation sometimes provide that minors or persons with decision-making limitations must have their interests represented by a guardian ad litem or next friend if they do not have a general guardian. In many circumstances, however, appointment of such a legal representative may be more intrusive, expensive or traumatic for the client than circumstances in fact require. Evaluation of such circumstances is a matter entrusted to the professional judgment of the lawyer. In considering alternatives, however, the lawyer should generally advocate the least restrictive action on behalf of the client, and be aware of any law that so requires. The lawyer should also communicate with the client regarding such protective action to the extent feasible unless doing so is not necessary for the client to make informed choices about the representation and would be detrimental to the client or the lawyer's ability to protect the client's interests. See Rule 1.4.

[16] If another person has petitioned a court for an appointment of a conservator or a guardian or another restriction on the client's legal capacity, the lawyer may not advocate for such an appointment or restriction if the client opposes it. If the lawyer represents a client who is a respondent in a proceeding for guardianship or conservatorship, the lawyer must advocate for the client's objectives if known or ascertainable.

[17] Taking protective action under paragraph (b) of this Rule does not, without more, require the lawyer to terminate the representation. However, the lawyer must inform the client of the protective action and should consider whether withdrawing from the representation has become necessary under Rule 1.16(a). For example, the lawyer may have a conflict of interest necessitating withdrawal in light of the particular protective action, the subject of the representation, the nature of the client-lawyer relationship, and other relevant considerations. See, e.g., Rule 1.7.

Disclosure of Information When Taking Protective Action

[18] Disclosure of the client's decision-making limitations could adversely affect the client's interests, including constitutional or other legal rights. For example, raising the question of decision-making limitations could, in some circumstances, lead to proceedings for involuntary civil commitment. Information relating to the representation is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer may reveal information about the representation without the client's informed consent, but only to the extent reasonably necessary to protect the client's interests. Nevertheless, given the risks of disclosure, paragraph (c) limits what the lawyer may disclose in consulting with other persons or entities or seeking the appointment of a legal representative. At the very least, the lawyer should determine whether it is likely that the person or entity consulted with will act adversely to the client's interests before discussing matters related to the client.

Emergency Legal Assistance

[19] In an emergency where a substantial health, safety or financial interest of a person with decision-making limitations is threatened with imminent and irreparable harm, a lawyer may take legal action on behalf of such a person even though the person is unable to establish a client-lawyer relationship or to make or communicate reasoned, informed judgments about the matter. Such action may be taken when the person has consulted with the lawyer or when another acting in good faith on that person's behalf has consulted with the lawyer.

Even in such an emergency, however, the lawyer should not act unless the lawyer reasonably believes that the person with decision-making limitations has no other lawyer, agent or other representative available to act. The lawyer should take legal action on behalf of the person with decision-making limitations only to the extent reasonably necessary to maintain the status quo or otherwise avoid imminent and irreparable harm. A lawyer who undertakes to represent a person with decision-making limitations in such an exigent situation has the same duties under these Rules as the lawyer would with respect to a client.

[20] A lawyer who in an emergency acts on behalf of a person with decision-making limitations who is unable to establish a client-lawyer relationship should keep the confidences of the person with decision-making limitations as if dealing with a client, disclosing them only to the extent necessary to accomplish the intended protective action. The lawyer should disclose to any tribunal involved and to any other counsel involved the nature of the lawyer's relationship with the person with decision-making limitations. The lawyer should take steps to regularize the relationship or implement other protective solutions as soon as possible. Ordinarily, a lawyer would not seek compensation for such emergency actions taken.

* * *

Comment 4 to I.R.P.C. 1.2 amended as follows:

[4] ~~In a case in which the client appears to be suffering mental disability~~ When a client has decision-making limitations, the lawyer's duty to abide by the client's decisions concerning the objectives of representation is to be guided by reference to Rule 1.14.

Comment 6 to I.R.P.C. 1.4 amended as follows:

[6] Ordinarily, the information to be provided is that appropriate for a client who is ~~a comprehending and responsible adult~~ an adult capable of making and communicating reasoned, informed choices. ~~However, fully informing the client according to this standard may be impracticable, for example, where the client is a child or suffers from mental disability. See Rule 1.14. When the client has decision-making limitations, the lawyer should look to Rule 1.14 Comment [11] for guidance on communicating with the client.~~ When the client is an organization or group, it is often impossible to inform every one of its members about its legal affairs; ordinarily, the lawyer should address communications to the appropriate officials of the organization. See Rule 1.13. Where many routine matters are involved, a system of limited or occasional reporting may be arranged with the client.

Comment 6 to I.R.P.C. 1.16 amended as follows:

[6] If the client has ~~severely diminished capacity~~ decision-making limitations, and those decision-making limitations cannot be adequately alleviated or eliminated by using supports or accommodations, the client may lack the legal capacity to discharge the lawyer, ~~and in any event the discharge may be seriously adverse to the client's interests~~. The lawyer should make special effort to help the client consider the consequences and may take reasonably necessary protective action if consistent with ~~as provided in~~ Rule 1.14.

RESOLUTION 26 – 06

Amendment to Idaho Rule of Professional Conduct 7.2(d) – Modernize advertising rules

Presented by: Board of Commissioners of the Idaho State Bar

Rationale:

- The current version of Idaho Rule of Professional Conduct (“IRPC”) 7.2(d) requires a lawyer to include an “office address” in any advertisement for services. This amendment seeks to expand that requirement to allow a lawyer to provide “contact information” and add a comment that defines “contact information” as a website address, a telephone number, an email address, or a physical office location.

NOW, THEREFORE, BE IT RESOLVED THAT the Board of Commissioners of the Idaho State Bar recommends that the members of the Idaho State Bar recommend to the Idaho Supreme Court that IRPC 7.2(d) be amended to require that a lawyer provide “contact information” instead of the Rule’s current requirement that a lawyer provide an “office address.”

RULE 7.2: ADVERTISING

- (a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.
- (b) A copy or recording of an advertisement or communication shall be kept for two years after its last dissemination along with a record of when and where it was used.
- (c) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may
 - (1) pay the reasonable costs of advertisements or communications permitted by this Rule;
 - (2) pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is a lawyer referral service that has been approved by an appropriate regulatory authority;
 - (3) pay for a law practice in accordance with Rule 1.17; and
 - (4) refer clients to another lawyer or a nonlawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if
 - (i) the reciprocal referral agreement is not exclusive, and
 - (ii) the client is informed of the existence and nature of the agreement.
- (d) Any communication made pursuant to this rule shall include the name and ~~office address~~ **contact information** of at least one lawyer or law firm responsible for its content.

Commentary

[1] To assist the public in learning about and obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of advertising. Advertising involves an active quest for clients, contrary to the tradition that a lawyer should not seek clientele. However, the public's need to know about legal services can be fulfilled in part through advertising. This need is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. The interest in expanding public information about legal services ought to prevail over considerations of tradition. Nevertheless, advertising by lawyers entails the risk of practices that are misleading or overreaching.

[2] This Rule permits public dissemination of information concerning a lawyer's name or firm name, address, email address, website, and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.

[3] Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have had extensive prohibitions against television and other forms of advertising, against advertising going beyond specified facts about a lawyer, or against "undignified" advertising. Television, the Internet, and other forms of electronic communication are now among the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television, Internet, and other forms of electronic advertising, therefore, would impede the flow of information about legal services to many sectors of the public. Limiting the information that may be advertised has a similar effect and assumes that the bar can accurately forecast the kind of information that the public would regard as relevant. But see Rule 7.3(a) for the prohibition against a solicitation through a real-time electronic exchange initiated by the lawyer.

[4] Neither this Rule nor Rule 7.3 prohibits communications authorized by law, such as notice to members of a class in class action litigation.

Record of Advertising

[5] Paragraph (b) requires that a record of the content and use of advertising be kept in order to facilitate enforcement of this Rule. It does not require that advertising be subject to review prior to dissemination. Such a requirement would be burdensome and expensive relative to its possible benefits, and may be of doubtful constitutionality.

Paying Others to Recommend a Lawyer

[6] Except as permitted under paragraphs (c)(1)-(c)(4), lawyers are not permitted to pay others for recommending the lawyer's services or for channeling professional work in a manner that violates Rule 7.3. A communication contains a recommendation if it endorses or vouches for a lawyer's credentials, abilities, competence, character, or other professional qualities. Paragraph (c)(1), however, allows a lawyer to pay for advertising and communications permitted by this Rule, including the costs of print directory listings, on-line directory listings, newspaper ads, television and radio airtime, domain-name registrations, sponsorship fees, Internet-based advertisements, and group advertising. A lawyer may compensate employees, agents and vendors who are engaged to provide marketing or client-development services, such as publicists, public-relations personnel, business-development staff and website designers. Moreover, a lawyer may pay others for generating client leads, such as Internet-based client leads, as long as the lead generator does not recommend the lawyer, any payment to the lead generator is consistent with Rules 1.5(e) (division

of fees) and 5.4 (professional independence of the lawyer), and the lead generator's communications are consistent with Rule 7.1 (communications concerning a lawyer's services). To comply with Rule 7.1, a lawyer must not pay a lead generator that states, implies, or creates a reasonable impression that it is recommending the lawyer, is making the referral without payment from the lawyer, or has analyzed a person's legal problems when determining which lawyer should receive the referral. See also Rule 5.3 (duties of lawyers and law firms with respect to the conduct of nonlawyers); Rule 8.4(a) (duty to avoid violating the Rules through the acts of another).

[7] A lawyer may pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service. A legal service plan is a prepaid or group legal service plan or a similar plan that assists people who seek to secure legal representation. A lawyer referral service, on the other hand, is any organization that holds itself out to the public as a lawyer referral service. Such referral services are understood by the public to be consumer-oriented organizations that provide unbiased referrals to lawyers with appropriate experience in the subject matter of the representation and afford other client protections, such as complaint procedures or malpractice insurance requirements. Consequently, this Rule only permits a lawyer to pay the usual charges of a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is one that is approved by an appropriate regulatory authority as affording adequate protections for the public. See, e.g., the American Bar Association's Model Supreme Court Rules Governing Lawyer Referral Services and Model Lawyer Referral and Information Service Quality Assurance Act (requiring that organizations that are identified as lawyer referral services (i) permit the participation of all lawyers who are licensed and eligible to practice in the jurisdiction and who meet reasonable objective eligibility requirements as may be established by the referral service for the protection of the public; (ii) require each participating lawyer to carry reasonably adequate malpractice insurance; (iii) act reasonably to assess client satisfaction and address client complaints; and (iv) do not make referrals to lawyers who own, operate or are employed by the referral service.)

[8] A lawyer who accepts assignments or referrals from a legal service plan or referrals from a lawyer referral service must act reasonably to assure that the activities of the plan or service are compatible with the lawyer's professional obligations. See Rule 5.3. Legal service plans and lawyer referral services may communicate with the public, but such communication must be in conformity with these Rules. Thus, advertising must not be false or misleading, as would be the case if the communications of a group advertising program or a group legal services plan would mislead the public to think that it was a lawyer referral service sponsored by a state agency or bar association. Nor could the lawyer allow in-person, telephonic, or real-time contacts that would violate Rule 7.3.

Required Contact Information

[9] This Rule requires that any communication about a lawyer or law firm's services include the name of, and contact information for, the lawyer or law firm. Contact information includes a website address, a telephone number, an email address or a physical office location.