the ADVOCATE

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February 2026

A REINSTATEMENT CHECKLIST FOR RETURNING TO WORK AFTER TERMINATION

PLUS

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the Advocate

February 2026

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On the Cover

This issue's featured article is by Samuel Fenton and gives a checklist for an employee who's returning to the office following a reinstatement order. Read more on page 14.

Featured Article

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From the Bar

In Every Issue

Resolutions, the First Amendment, and You

Hon. Robert L. Jackson
Logan Graham

2025 has come to a close and I am sitting at home on a cold afternoon contemplating the new year. I have an article to write, so what better topic than New Year's Resolutions?

First, before even writing about New Year's Resolutions, I had to do some checking to see if that is even a task people perform anymore. I enlisted the help of Logan Hansen-Graham, a 2L student at the University of Idaho, to assist with research for this article. His first contribution, as a Gen Z, was to address that question. He assured me New Year's Resolutions are still a thing. As a baby boomer myself, I know members of that dwindling group still make them. I know many Gen X and Y folks, and some of them make them. I don't think we have any bar members in the Gen Alpha group yet.

By the time you are reading this article, some of you may have participated in a ceremony to renew your Attorney Oath. That means, presumably, you read the oath. If you have not participated in a recent ceremony to renew your Attorney Oath, why not make that one of your New Year's resolutions? For those who swore to that oath years or decades ago, let me remind you of what the first two sentences say:

> "I Do Solemnly Swear That: (I do Solemnly Affirm That:)
> I will support the Constitution of the United States and the Constitution of the state of Idaho.
> I will abide by the rules of professional conduct adopted by the Idaho Supreme Court."[1]

What Does "Support" Mean?

Ok, we all, at least at the beginning of our careers, swore or affirmed to "support" two very important constitutions. But, what does it mean to "support" a constitution? The relevant definition found in *Black's Law Dictionary* (I still have mine, 5th edition, copyright 1979) is "To vindicate, to maintain, to defend, to uphold with aid or countenance."[2] The federal district courts have reached similar interpretations when the word is used in connection to a constitutional oath.[3]

Because "support" is a verb, it follows that, in order to abide by our oath, we must perform some affirmative action to "support" our two constitutions. What type of action should be taken? The U.S. Supreme Court has asserted that an oath to "support" a constitution creates "a commitment to abide by our constitutional system" and "requires an

individual assuming public responsibilities to affirm . . . that he will endeavor to perform his public duties lawfully."[4]

Sanctions

What happens if an attorney does not "support" the constitutions? Are there any sanctions? Are there any Idaho Rules of Professional Conduct that provide guidance as to what attorneys should do to cultivate knowledge of the law and employ that knowledge in reform of the law and work to strengthen legal education? Are there sanctions that may be levied upon an attorney who should fail to comply with the mandates of our oath and ultimately our federal and state constitutions?

The Idaho Rules of Professional Conduct may come into play. Comments [6] and [7] in the Preamble to the Idaho Rules of Professional Conduct provide general guidance.[5] I wish I had space to set them out verbatim, but I do not. Please review them. I'd suggest you print them off and have them in a place for quick frequent review.

But there are specific Idaho Rules of Professional Conduct that could potentially be violated when an attorney does not "support" the constitutions. They are Rules 3.1, 4.1, and 8.4(c). Rule 3.1 addresses meritorious claims and contentions. For example, making a clearly unconstitutional claim could invoke Rule 3.1. Making knowingly false statements could violate Rule 4.1. Deceitful conduct could violate Rule 8.4(c).[6]

It is important to read and understand both the U.S. and Idaho Constitutions in order to know what actions must be taken to support them. While our obligation relates to the entirety of both these documents, this article is specifically focused on the First Amendment to the U.S. Constitution and Article I, Sections 9 and 10 of the Idaho Constitution, given that the rights within these provisions have made their way into the news a great deal lately.

History

To understand why the rights protected by the First Amendment (and, later, Article I, Sections 9 & 10 of the Idaho Constitution) are considered to be worthy of constitutional protection, it is important to understand the historical context surrounding these rights. The first 10 Amendments to the U.S. Constitution (known collectively as the "Bill of Rights") were drafted in response to concerns about the infringement of individual liberties by the powerful, new federal government which the Founders had created. George Mason, an Anti-Federalist delegate who refused to sign the Constitution because of the lack of a bill of rights, famously declared that he would "sooner cut off his right hand than put it to the Constitution as it now stands."[7]

Amendment I to the United States Constitution states:

"Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Article I of the Idaho Constitution states:

SECTION 9. FREEDOM OF SPEECH. Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that liberty.

SECTION 10. RIGHT OF ASSEMBLY. The people shall have the right to assemble in a peaceable manner, to consult for their common good; to instruct their representatives, and to petition the legislature for the redress of grievances.

Mason's sentiment—as conveyed in a pamphlet entitled *Objections to The Constitution of Government formed by the Convention*—soon rallied the states to demand an acknowledgement of the basic liberties secured to the people inviolate from the federal government's power. The people had known the rule of tyranny, which England had imposed, and stood resolute that such authoritarianism would have no place in the newly formed American government. Mason warned that the powers currently granted to the federal government by the Constitution would "enable them to accomplish what Usurpations they please upon the Rights & Libertys of the People."[8] As a result of these concerns, the First Congress created 10 amendments to the Constitution for the purpose of enumerating those rights upon which the federal government may not infringe.

Freedom of Speech

Among the rights that those first representatives felt were worthy of protection was that of the freedom of speech, which is embodied in the First Amendment. This guarantee was considered fundamental as Americans had witnessed the oppression, which grows when the right of the people to speak against injustice is quelled by the government. The trial of John Peter Zenger in 1735 was one such example. Zenger was the printer of the New York Weekly Journal, a newspaper that opposed the administration of the British-appointed governor of New York.

He was prosecuted by the Crown on the charge of seditious libel—defined at the time as intentionally publishing written blame of a public official or institution. Zenger's attorney, Andrew Hamiliton, proclaimed his client's cause as "the best cause. It is the cause of liberty."[9] Zenger was only relieved of this injustice by the jury's "not guilty" decision. The governor whom Zenger had opposed described the case as "the germ of American freedom, the morning star of that liberty which subsequently revolutionized America!"[10] These injustices prompted the ratification of the First Amendment on December 15, 1791.

Since its ratification, the commitment of the American judiciary to upholding the First Amendment has been greatly tested throughout our nation's history. One of the most memorable challenges was the Sedition Act of 1798. The Act was passed by the Federalist-controlled Congress in an effort to silence opposition to the Adams administration. Under this law, persons who were accused of taking part in "writ[ing], print[ing], utter[ing] or publish[ing] . . . any false, scandalous and malicious writing or writings against the government of the United States" could be criminally charged.[11]

Attorneys of this period faced a difficult struggle in defending those who were charged under the Act. In addition to a hostile political climate towards their clients, these advocates also faced opposition in the courtroom by federal judges who vigorously supported the Sedition Act from the bench. Yet, attorneys opposing those prosecutions stood by the guarantees of the First Amendment in their arguments; upholding their clients' fundamental right of free speech against the attacks of a political administration seeking to suppress the words of its opponents.

Contemporary Status of the First Amendment

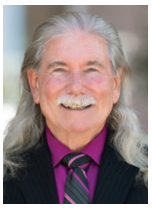
The Sedition Act expired over 220 years ago, yet the danger of undermining the guarantees of our Constitution lives on. SCOTUS has long recognized that "government has no power to restrict expression because of its message, its ideas, its subject matter, or its content."[12] However, that recognition announced by SCOTUS has been tested at various times since 1798.

In order to "support" our constitutions, specifically Amendment I of the United States Constitution and Sections 9 and 10 of Article I of Idaho's constitution, all Idaho licensed attorneys should take some sort of affirmative action.

We, as members of the bar, should not sit idly by like a person watching the floats in a parade pass them. Think of each of those floats representing some form of suppression or deterioration of a constitutional right. Do you just look at it? Do you ignore it? Do you hope someone else takes action to fix it? Attorneys should not be simply observers of the law and constitutional rights. Observers are not supporters. Supporters take some sort of affirmative action. Our Attorney Oath demands it!

Some examples of support could include: working to strengthen legal education by writing articles for the press; participating in moot court; volunteering to teach a class; speaking at a school, a church, or a community group; hosting civic lessons; mentoring; speaking out and/or taking a public position against unconstitutional behavior; attending peaceful protests; participating in elections financially; volunteering time to campaigns or as candidates; accepting appointments by a tribunal; defending individual rights; actively dispelling misinformation about the legal system by correcting misinformation when you hear it in conversations, on social media, or in the broader community; writing an op-ed; engaging in pro bono work to ensure representation for those whose constitutional rights are in jeopardy; or joining organizations that support and protect constitutional principles and civil liberties.

Lawyers play a vital role in the preservation of society.[13] We must appreciate that the legal profession plays an important role in preserving government and that our government is a government of laws. I urge you to, if you have not, make a New Year's resolution to actively support our constitutions!



Judge Robert L. Jackson *practiced law in Idaho from 1983 until going on the bench as a magistrate in Payette County in August 2013. His varied practice included criminal prosecution, criminal defense, assistant city attorney, personal injury (plaintiff and defense), medical malpractice, insurance law, and workers' compensation. Judge Jackson also serves as the current Idaho State Bar President of the Board of Commissioners, representing the Third and Fifth Districts. When not engaged in legal work you can find him, with family members or friends, at a concert, hiking, backpacking, farming, or traveling.*

Logan Graham *is a second-year student at the University of Idaho College of Law. Logan earned his bachelor's degree in history from Idaho State University and his associate's degree in political science from the College of Western Idaho. His interests in law include constitutional law, land use, and personal injury.*

Endnotes

1. *Attorney Oath*, Idaho State Bar, https://isb.idaho.gov/wp-content/uploads/Attorneys-Oath-adaacc.pdf (last visited Jan. 2, 2026).

2. *Support*, Black's Law Dictionary (5th ed. 1979).

3. The federal District Court for the District of Colorado has stated that the definition of "support" is "to actively promote the interests or cause . . . " and "to uphold or defend as valid." *Ohlson v. Phillips*, 304 F. Supp. 1152, 1154 (D. Colo. 1969).

4. *Cole v. Richardson*, 405 U.S. 676, 682-84 (1972).

5. Idaho Rules of Pro. Conduct Preamble cmt. [6] & [7] (2025).

6. Idaho Rules of Pro. Conduct r. 3.1, 4.1, and 8.4(c) (2025).

7. Pauline Maier, *The First Dissenters*, 31 Humanities 6, Nov./Dec. 2010.

8. George Mason, Objections to The Constitution of Government formed by the Convention (1787).

9. *Crown v. John Peter Zenger, 1735*, Hist. Soc'y of the N.Y. Ct., https://history.nycourts.gov/case/crown-v-zenger/ (last visited Dec. 31, 2025).

10. *Id.*

11. *Alien and Sedition Acts (1798)*, Nat'l Archives, https://www.archives.gov/milestone-documents/alien-and-sedition-acts (last visited Dec. 31, 2025).

12. *United States v. Alvarez*, 567 U.S. 709, 716 (2012).

13. Idaho Rules of Pro. Conduct Preamble cmt. [13] (2025).

Law Related Education Program Report

Carey A. Shoufler

A 2023 Annenberg Civics Knowledge Survey found that about 20 percent of Americans could not name any of the three branches of the U.S. government, and the majority of Americans could not name all the rights protected under the First Amendment. We all need to do more to support civic literacy and engagement in our country. The Idaho's Law Related Education (LRE) Program is one way to address this need in our state.

The goal of Law Related Education is to provide quality civic education materials and programming that enhances public understanding of the law and our legal system. Idaho's Law Related Education serves learners of all ages in all Idaho communities, with a focus on students and teachers in middle and high school settings. Each year, approximately 3,000 Idahoans are the beneficiaries of Law Related Education services.

Law Related Education Activities

Started in 1985 as a public service program of the Idaho Law Foundation, Idaho's Law Related Education program helps build positive relationships among educators, students, and legal professionals. LRE's current program offerings are detailed below.

High School Mock Trial

Idaho's mock trial competition is a hands-on activity for high school students. Teams of six to nine students collaborate with attorney/teacher coaches to prepare a hypothetical legal case. During competitions, mock trial teams present their cases in front of a panel of judges and jury members. From opening statements through closing arguments, each team has its own attorneys and witnesses and must be prepared to try both sides of a case.

As part of mock trial, LRE sponsors courtroom artist and journalist contests.

Timberline High School Student, Nora Lafferty placed third in the 2025 National Courtroom Journalist Contest in the first year Idaho participated.

2025 MOCK TRIAL STATISTICS

Last year, the number of teams participating in mock trial increased from 30 to 41 and the number of students from 328 to 471. The number of courtroom artists increased from 12 to 16, and five courtroom journalists participated in our pilot courtroom journalist contest. We recruited 230 teachers, judges, attorneys, and other community leaders who donated their time to serve as mock trial coaches, advisors, judges, and competition staff.

The courtroom artist contest allows artistically talented students to observe trials and submit sketches that depict actual courtroom scenes. Courtroom journalists experience a trial from the perspective of a news reporter reporting on a case and submitting an article depicting the trial they observe. LRE piloted the courtroom journalist contest in 2025, and Idaho's winning journalist placed third in the national courtroom journalist contest.

18 in Idaho *Publication and Website*

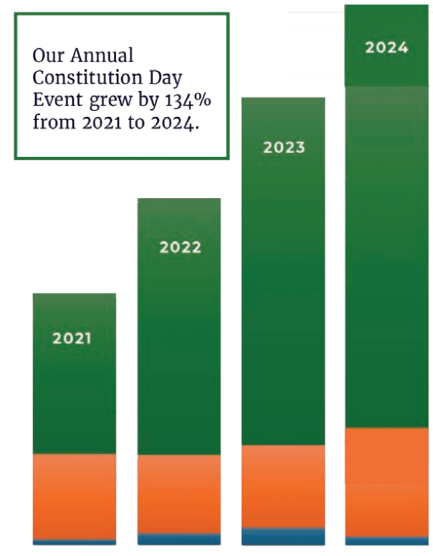
Idaho's *18 in Idaho* publication helps young people understand their rights and responsibilities as they reach the age of majority. The publication is offered free of charge to Idaho schools and community organizations. An introductory lesson has been developed in conjunction with the publication and LRE recruits attorneys to visit classrooms and speak to students about the contents of the publication. Additionally, there is a companion website that houses the contents of the publication in an online format. Over the last 13 years, Law Related Education has distributed over 100,000 copies of the publication.

Constitution Day

Constitution Day is a federal observance that recognizes the adoption of the United States Constitution on September 17, 1787. A law establishing the present holiday was created in 2004 and mandates that all publicly funded educational institutions provide educational programming about the Constitution.

To celebrate Constitution Day, the LRE Program and Attorneys for Civic Education have partnered to offer an annual educational event, welcoming distinguished attorneys for in-depth discussions covering important and currently relevant Constitutional topics.

Our Constitution Day offers a unique model, holding an event that offers professional development for attorneys but is also engaging and relevant for secondary and college students as well as members of the public. Additionally, we ensure that the program reaches not just a local but a statewide audience. By offering our Constitution Day event in person, through livestreaming, and through on-demand video that can be accessed at a later date, the event is open to people in all parts of Idaho.



	2021	2022	2023	2024
Community Members	8	18	27	16
Attorneys	130	118	124	141
Students	242	388	527	734
TOTAL	380	524	678	891

What's New for 2026?

Starting in 2026, Law Related Education will integrate the projects listed below into our program offerings.

Law Day Podcast Contest

This year, LRE will revive the annual Law Day Podcast Contest, open to students in grades nine to 12 who research, script, and produce a short podcast (6–12 minutes) exploring the ABA Law Day theme, which for 2026 is "The Rule of Law & the American Dream". The top three entries receive cash prizes, along with a matching cash prize for the winning student's teacher.

This contest is a ready-made way to build civic research, communication, and media production skills. To make participation easy, LRE provides curriculum guides and step-by-step podcast development and production resources. We can also work with attorneys to conduct classroom visits to discuss the legal aspects of the theme.

Tents to Towers *Curriculum*

Tents to Towers: A History of the Practice of Law in Idaho is a book written by a group of volunteers as part of the celebration of the 100th Anniversary of the Idaho State Bar. The book covers Idaho's law practice from the Territorial phase of history starting in 1860, all the way through the present. As part of the project, Law Related Education will spearhead an effort to distribute copies of the book to Idaho schools and libraries and develop a curriculum to accompany the book.

Middle School Mock Trial

Middle school mock trial combines students' love of argument with an appreciation of good books. Case materials are literature-based, constructed from books most commonly read in the middle grades. Students prepare both a prosecution and a defense legal case and try their cases as part of a showcase in real courtrooms in front of a presiding judge and a panel of jurors.

Seniors & the Law

Seniors & the Law is an upcoming publication that builds on the educational success of *18 in Idaho*, expanding it to a new target audience. Topics for the publication include retirement, housing, medical, wills and probate, consumer law, and driving. The publication is being finalized now and will be printed by the end of 2026.

Given the fundamental place of the legal system as part of American civic life, it is critical for young people to know how our legal system functions, how law affects them, and in turn, how they can have an impact on the legal system. Participation in Law Related Education activities provides increased opportunities to examine the legal process and current legal issues while developing important critical thinking, research, and presentation skills.

Of course, we can't do this work without volunteers and donors who support us. For more information about how you can help Law Related Education in Idaho, contact Carey Shoufler at cshoufler@isb.idaho.gov.

For 35 years, **Carey Shoufler** *has worked in education in an array of settings. In her current role, Carey has spent the last 20 years working as the Law Related Education Director for the Idaho Law Foundation.*

Carey utilizes her experience as an educator to provide leadership and management for a statewide civic education program. She obtained her bachelor's degree in English literature from Mills College in Oakland, California, and her master's degree in instructional design from Boise State University.

A native Idahoan, Carey returned to Boise in 1999 after working for 13 years as a teacher and educational administrator in Boston. When not working, Carey likes to walk her dogs, knit, read, bake pies, and spend time with her grandchildren.

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Reinstatement Is Just the Beginning: A "Make Whole" Remedy Checklist

Samuel J. Fenton

When an arbitrator orders reinstatement "with full back pay," it's tempting to declare victory, shake hands, and move on. The employee gets their job back; the employer closes the file; the union or plaintiff's counsel can report a win. By the text of the statute, perhaps, justice has been done. But anyone who has lived through a reinstatement knows that is only the beginning.

This article addresses what comes next by drawing on recent federal "make whole" developments. Although Idaho arbitrations, civil rights cases, and public sector disputes are not governed by the National Labor Relations Act (NLRA), federal labor remedies are frequently cited by Idaho decision makers and offer a structured way to identify the full range of harms that follow a termination. Using that framework, together with Idaho and general employment law practice, this article presents a practical post reinstatement "make whole" checklist for both employee side and management side counsel. In practice, by the time of a reinstatement order's entry, months, or sometimes years, have passed. Health insurance lapsed. Retirement contributions stopped. Savings were drained. Cars were repossessed, credit scores tanked, kids were pulled out of daycare, and professional licenses or certifications expired. Simply cutting a back-paycheck and turning the badge back on does not really make the worker whole.

In recent years, the National Labor Relations Board (NLRB) and its General Counsel have pressed the "make-whole" remedy beyond wages and benefits, aiming to cover the full range of financial harms that follow an unlawful discharge. Administrations change and priorities shift, but certain remedial ideas take hold. Over time they work their way into court decisions and everyday practice, becoming doctrine rather than policy.

Section 10(c) of the National Labor Relations Act (NLRA) already authorizes

"affirmative action including reinstatement of employees with or without back pay" to effectuate the Act's policies.[1] Former NLRB General Counsel Jennifer Abruzzo's Memorandums GC 2106 and GC 24-04, *Seeking Full Remedies* & *Securing Full Remedies for All Victims of Unlawful Conduct*,[2] and the Board's decision in *Thryv, Inc.*[3] built on that authority by expressly embracing compensation for "direct or foreseeable" pecuniary harms, not just lost pay.

Employers also have their own stake in getting reinstatement right. If they mishandle benefits, records, or the work environment, they invite new grievances, unfair labor practice charges, or fresh lawsuits. Make-whole relief is not only remedial; it is risk management. The more carefully an employer handles the return-to-work process, the less likely it is to find itself back in litigation. No one grabs the hot stove twice if they can help it.

The Expanding Concept of "Make Whole" Relief

For decades, the standard labor-law remedy for an unlawful discharge was straightforward: reinstatement plus back pay, offset by interim earnings and mitigated by the employee's duty to seek work. "Make Whole" meant restoring the paycheck, nothing more.

GC Memorandum 2106 challenged that narrow focus. In that memo, Abruzzo instructed NLRB Regions to pursue the "full panoply" of remedies necessary to restore victims of unfair labor practices "as nearly as possible to the status quo" they would have enjoyed but for the unlawful conduct. That included not only traditional back pay and reinstatement, but also:

- **Consequential damages** for economic losses beyond wages, such as uncovered medical bills, creditcard late fees, or the loss of a home or car tied to the unlawful termination;
- **Front pay** in lieu of reinstatement when returning to the job is impracticable; and
- **Creative nonmonetary remedies** (such as training, notice readings, and access rights) aimed at repairing the workplace going forward.

The Board's 2022 decision in *Thryv, Inc.* took a similar step on the adjudicative side. There, the Board held that its standard makewhole order must compensate employees for "all direct or foreseeable pecuniary harms" caused by the unfair labor practice, not just traditional back pay and benefits.

Examples the Board and commentators have identified include: out of pocket medical expenses after the loss of health insurance; penalties and interest on credit cards or loans when the employee could not make payments; transportation and relocation costs; and other reasonably predictable financial losses flowing from the unlawful discharge.

The Board's effort to push remedies in this direction has generated a lively appellate battle. The Fifth Circuit has rejected the idea that the NLRA authorizes broad consequential damages, while other circuits have been more receptive, namely our Ninth Circuit.[4] At the time of this writing, the scope of the Board's authority remains contested, and a Supreme Court review is a live possibility.

The Ninth Circuit's *decision in North Mountain Foothills Apartments* shows the federal legal landscape. There, the employer owned and operated a 194-unit apartment complex in Phoenix. It hired a new maintenance technician at an hourly rate, plus a housing subsidy. Within days, the new hire talked with co-workers about his pay and poor conditions at the complex, including cockroaches. Management interrogated him about those conversations, told him not to discuss his wages or pest problems, and then fired him on his fourth day. The Board found multiple Section 8(a)(1) violations, and ordered reinstatement with make-whole relief for lost earnings and benefits. The Ninth Circuit enforced the order, and rejected challenges premised upon Article II, the Seventh Amendment, and due process, holding that *Thryv*-style "direct and foreseeable" pecuniary harms remain equitable, status-quo remedies that do not trigger a jury-trial right.

> *The more carefully an employer handles the return-to-work process, the less likely it is to find itself back in litigation.*

What the Abruzzo Memo & Recent Decisions Offer to NonNLRB Practitioners

GC 2106 is not binding authority; however, it clearly provides an unusually concrete catalog of the ways a worker's economic life can be disrupted. *North Mountain Foothills* provides evidence that that made-whole relief will continue to receive expansive interpretation, and that fights are perhaps best had on reasonable value, not the courts authority to order the payment of such. The Memo offers three key takeaways for practitioners.

First, it treats "make whole" as a factual inquiry, not a formula. Think, "What did this person actually lose because of what happened?" Flowing from there, it also embraces treating consequential harms in a manner like negligence and contract litigation, encouraging pursuit of monetary relief for economic harms that are a "direct and foreseeable," such as medical expenses triggered by a loss of insurance, or fees and penalties tied to lost income. Third, it normalizes nontraditional remedies. In addition to money, the memo promotes remedies like training and public notice readings that address workplace dynamics.

Categories of "Make Whole" Losses to Consider

What follows is a practical checklist drawn from GC 21-06, *Thryv*, *North Mountain Foothills*, and *Macy's*.[5]

1. Back Pay and Benefits (The Core Remedy)

This is the foundation in Idaho, per *Smith v. Glenns Ferry Highway District*:[6] wages and benefits the employee would have earned but for the discharge, less interim earnings and, sometimes, increased by interest. Routine disputes over mitigation, overtime, shift differentials, and tax consequences still matter, and in Idaho they intersect with questions about the right to a jury on back and front pay.

Key questions:

- What is the proper back-pay period?
- How should overtime, premiums, or step increases be handled?
- Is interest available, and at what rate?

2. Health Insurance and Medical Expenses

Loss of health coverage is one of the most predictable harms following discharge. GC 21-06 and *Thryv* identify unreimbursed medical bills, COBRA or marketplace premiums, and insurance-related penalties as classic "direct and foreseeable pecuniary harms."

Counsel should ask:

- Did the employee incur medical expenses that would have been covered?
- Were COBRA or replacement-coverage premiums paid?
- Did coverage gaps increase later premiums or generate penalties?

These amounts may be recoverable either as consequential damages or as part of the back-pay make-whole calculation.

3. Retirement and Other Long-Term Benefits

A break in service can mean lost pension credits, missed defined-contribution employer payments, and disruption of vesting schedules. If the employee tapped retirement savings to survive, tax penalties and lost growth follow.

Smith tells the practitioner that "benefits and other remuneration" are recoverable where they flow from the unlawful act.

Checklist items:

- Were missed pension credits restored?
- Have employer contributions been made for the interim period?
- Did the employee incur penalties for withdrawals?

4. Housing, Transportation, and Other Large Financial Consequences

GC 21-06 expressly cites the "loss of a home or car" as harms that may be directly tied to an unlawful discharge. Tribunals vary in their willingness to award such damages, but they should be identified early.

Possible items:

- Costs of replacing a repossessed vehicle or securing new housing.
- Lease-break fees, eviction-related charges, or utility-reconnection deposits.
- Other large expenses traceable to income loss.

Even if not awarded, they often influence settlement or shape non-monetary terms.

5. Credit, Debt, and Financial Fees

Thryv and its progeny repeatedly reference late fees, overdraft charges, and elevated interest as foreseeable consequences of sudden income loss.

Consider:

- Late fees and interest on credit cards, car loans, or student loans.
- Overdraft charges and returned-check fees.
- Payday-loan, consolidation-loan, or high-interest stopgap borrowing.

From the employer's side, these items raise strong causation and foreseeability arguments; from the employee's side, documentation is essential.

6. Job Search, Relocation, and Recertification Costs

Job-search costs traditionally relate to mitigation. GC 21-06 encourages viewing them as additional pecuniary harms where they were reasonably incurred due to discharge.

Assess:

- Relocation expenses for interim employment.
- Licensing, certification, or recertification fees.
- Training or education necessary only because of the job loss.

These costs can support either reimbursement or lump-sum resolution.

7. Seniority, Step Placement, and Promotion Opportunities

Reinstatement awards often require no loss of seniority, but the practical details matter. Continuous service affects salary steps, accrual rates, and eligibility for bids or promotions.

Checklist:

- Are sick leave, vacation, and other accruals restored?
- Can lost promotional or bidding opportunities be addressed?

These adjustments may prove low-cost, but high-value.

8. Workplace Reintegration and Non-monetary Remedies

GC 21-06 highlights workplace-repair tools—notice readings, training, record correction—that translate well to reinstatement.

Counsel should consider:

- Anti-retaliation and non-disparagement provisions covering supervisors and co-workers.
- Training for management on standards such as just cause or anti-retaliation.
- Clear communication that reinstatement is required and retaliation is prohibited.
- Removal or sealing of termination records where permissible.

These measures can determine whether the reinstatement succeeds or turns into the next dispute.

9. Front Pay When Reinstatement Is Not Feasible

Reinstatement is not always workable. Positions change, workplaces fracture, and tribunals sometimes decline to order return-to-work. There, front pay substitutes for reinstatement.

Smith treats front pay as a legal remedy in Idaho, emphasizing the need for evidence on future wages and benefits. Even where reinstatement is ordered, front pay can bridge the gap between the award and the actual return date or compensate when a "same position" no longer exists.

Conclusion

Reinstatement is never just a legal remedy. It is a human moment, and often an awkward one. The employee returns to a place that once pushed them out; the employer welcomes back someone it chose to remove. That discomfort is real and ignoring it only invites new conflict. A careful, structured make-whole approach gives both sides a way to move forward with clarity, dignity, and far less friction.

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Endnotes

1. National Labor Relations Act § 10(c), 29 U.S.C. § 160(c).

2. Memorandum from Jennifer A. Abruzzo, Gen. Counsel, NLRB, to All Reg'l Dirs., OfficersinCharge, and Resident Officers, GC 2106, *Seeking Full Remedies* (Sept. 8, 2021) https://nlrbresearch.com/pdfs/09031d458353f6b9.pdf; Memorandum from Jennifer A. Abruzzo, Gen. Counsel, NLRB, to All Reg'l Dirs., OfficersinCharge, and Resident Officers, GC 2404, *Seeking Full Remedies for All Victims of Unlawful Conduct* (Apr. 8, 2024) https://www.nlrb.gov/guidance/memos-research/general-counsel-memos.

3. *Thryv, Inc.*, 372 NLRB No. 22 (Dec. 13, 2022).

4. *NLRB v. N. Mountain Foothills Apartments, LLC*, No. 24-2223, (9th Cir. Oct. 28, 2025).

5. *Macy's. Inc. V. National Labor Relations Board*, No. 23-150 (9th Cir. Jan. 21, 2025).

6. *Smith v. Glenns Ferry Highway District*, 166 Idaho 683 (2020).

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Overview of the Scope of *Muldrow v. City of St. Louis's* "Simple Injury" Standard in Title VII and Other Anti-discrimination Statutes

Rafael A. Icaza

In *Muldrow v. City of St. Louis* (2024), the U.S. Supreme Court adopted a "simple injury" test for determining whether an adverse employment action occurred in a disparate treatment claim under Title VII of the Civil Rights Act of 1964.[1] Since then, courts have grappled with the scope of *Muldrow's* holding. This article examines *Muldrow's* impact beyond Title VII disparate treatment claims, using decisions from Ninth Circuit courts where possible. Also reviewed is its application to hostile work environment, constructive discharge, retaliation, and whistleblower claims. Finally, we examine *Muldrow's* application to the Americans with Disabilities Act (ADA), Age Discrimination in Employment Act (ADEA), and § 1981 of the Civil Rights Act of 1866.

Title VII makes it unlawful for an employer to discriminate against any individual in the terms, conditions, or privileges of employment because of race, color, religion, sex, or national origin.[2] In *Muldrow*, a female police sergeant alleged sex discrimination against the City of St. Louis after she was transferred from a plainclothes specialized intelligence division to a uniformed position elsewhere within her police department, against the recommendation of her prior commander, because her new commander felt that a man was better suited for her position. Although she retained her rank and pay, her responsibilities, perquisites, and schedule were less desirable after her transfer. The trial court granted summary judgment to the city because *Muldrow* failed to show those changes caused her a "significant" employment disadvantage. The Eighth Circuit affirmed.[3]

In vacating the judgment of the Eighth Circuit, the U.S. Supreme Court held that Title VII simply requires plaintiffs to show that a discriminatory action brought about "some disadvantageous change"—a simple injury—in employment terms and conditions.[4] "Terms and conditions" covers more than economic or tangible harm.[5] Thus, "[t]o make out a Title VII discrimination claim, a plaintiff must show some harm respecting an identifiable term or condition of employment."[6] Plaintiffs "do[] not have to show . . . that the harm incurred was 'significant.' Or serious, or substantial, or any similar adjective suggesting that the disadvantage to the employee must exceed a heightened bar."[7]

Prior to *Muldrow*, the Ninth Circuit defined adverse actions as those that "materially" affect the compensation, terms, conditions, or privileges of employment.[8] The Fourth, Seventh, Eighth, and Eleventh Circuits required plaintiffs to pass a similar significance test.[9] However, the Ninth Circuit's interpretation of "materially adverse employment actions" was already broad, and it took "an expansive view of the type of actions that can be considered adverse employment actions."[10] Examples included actions negatively affecting compensation, reducing monthly base pay, paying even a couple of days late, or issuing warning letters or negative reviews.[11]

In Title VII disparate treatment discrimination cases, courts use the *McDonnell Douglas* burden-shifting framework to determine if there is sufficient evidence to prove discrimination.[12] This framework requires plaintiffs to show that they (1) belong to a protected class, (2) were performing according to their employer's legitimate expectations, (3) suffered an adverse employment action, and that (4) similarly-situated employees were treated more favorably, or other circumstances surrounding the adverse employment action were present that give rise to an inference of discrimination.[13] When these conditions are met, the burden shifts to the defendant to provide legitimate, non-discriminatory reasons for the adverse employment action. If the defendant meets this burden, the burden returns to the plaintiff to show that the defendant's reasons are a pretext for discrimination.[14]

Before and after *Muldrow*, sufficiently adverse actions have included failure to hire for positions one is qualified for, discharge, demotion, adverse job assignments, official discipline, significant changes in compensation or benefits, denial of promotional opportunities, assigning more—or more burdensome—job responsibilities, derogatory comments, hostile and dismissive attitudes, and inappropriate and sexist comments.[15]

The ADEA, ADA, and Pregnant Workers Fairness Act use Title VII's language prohibiting discrimination in the "terms, conditions, or privileges" of employment. Courts use the *McDonnell Douglas* framework to determine if there is sufficient evidence to prove discrimination under these additional anti-discrimination laws.[16] Likewise, race discrimination claims under § 1981 of the Civil Rights Act are examined under the *McDonnell Douglas* framework.[17]

Although *Muldrow* held that plaintiffs need not show that their injury satisfies a significance test, circuit courts post-*Muldrow* have "continued to find [that] trivial changes to a plaintiff's conditions of employment are insufficient to establish a claim for discrimination."[18] In *Xu v. LightSmyth Technologies*, for example, on remand from the Ninth Circuit the trial court found plaintiff's Title VII discrimination and retaliation claims and her Oregon state law whistleblower and retaliation claims only effected trivial changes to her conditions of employment, which did not support her discrimination claims.[19] In *Rios v. Centerra Grp. LLC*, the First Circuit found that prohibiting the plaintiff from eating at his post and parking his car or changing his clothes in certain places, and failing to provide the plaintiff with pointers at an off-duty shooting range practice session did not cause "some harm."[20] And in *Cordova v. Textron Aviation, Inc.*, a Tenth Circuit district court noted that *Muldrow's* requirement of "some harm" excludes "mere inconvenience" or changes that "make[] an employee unhappy."[21]

These latter cases suggest that trivial, minor, or merely inconvenient changes to employment conditions will continue to not suffice to establish discrimination claims, despite *Muldrow's* simple injury test. Put differently, such minor changes may be deemed insignificant or not "simple injuries" at all.

Hostile Work Environment Claims

To succeed in a hostile-work-environment claim under Title VII, the plaintiff must show (1) that they were subjected to a verbal or physical conduct because of their membership in a protected category, (2) that the conduct was unwelcome, and (3) that the conduct was sufficiently severe or pervasive to alter the conditions of their employment and create an (objectively and subjectively) abusive working environment.[22] In *Harris v. Forklift Systems*, the U.S. Supreme Court held that when evaluating whether harassment is "severe or pervasive," courts should look to the totality of the circumstances, including factors such as (1) the frequency of the conduct, (2) its severity, (3) whether it is physically threatening or humiliating or a mere offensive utterance, and (4) whether it unreasonably interferes with an employee's work performance.[23]

Hostile work environment claims therefore require showing more than a

> *Retaliation claims are analyzed under the same* McDonnell Douglas *burden-shifting analysis as discrimination claims.*

simple injury. For example, in *Harris* the U.S. Supreme Court held that "'mere utterance of an . . . epithet which engenders offensive feelings in an employee,' does not sufficiently affect the conditions of employment to implicate Title VII."[24] Although workplace harassment, if sufficiently severe or pervasive, may in and of itself constitute an adverse employment action, Ninth Circuit courts have declined to find a hostile work environment if allegations consist only of "harassment that is occasional, isolated, sporadic, or trivial," i.e., if they are simple injuries. Similarly, in *Williams v. Memphis Light, Gas & Water*, the Sixth Circuit, while evaluating adverse employment actions under *Muldrow*, did not employ *Muldrow's* standard when evaluating a hostile work environment claim.[25]

Hostile work environment claims, requiring "severe or pervasive" conduct that objectively and subjectively creates an "abusive working environment," therefore evoke more than a simple injury, and adverse employment actions under this rubric will likely require no less after *Muldrow*.

Constructive Discharge Claims Also Continue to Require More Than a Simple Injury

In *Pennsylvania State Police v. Suders*, the plaintiff brought a claim alleging both constructive discharge and hostile work environment claims.[26] The U.S. Supreme Court recognized that claims for constructive discharge lie under Title VII, holding that in addition to a showing that "the offending behavior must be sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment," such claims require "something more," to wit, that "[a] plaintiff . . . must show working conditions so intolerable that a reasonable person would have felt compelled to resign."[27] The Second, Fifth, Sixth, and Eleventh Circuits, and a Tenth Circuit court, have held that *Muldrow* did not alter the holding in *Suders*.[28]

As with hostile work environment claims, after *Muldrow* viable constructive discharge claims thus continue to require more than a simple injury.

Muldrow Left the Standard in Retaliation Claims Intact

Title VII also prohibits retaliation for opposing unlawful practices, making a charge, and for testifying, assisting, or participating in investigations, proceedings, or hearings.[29] Retaliation claims are analyzed under the same *McDonnell Douglas* burden-shifting analysis as discrimination claims.[30]

The term "adverse employment action," however, is construed differently in retaliation than disparate treatment claims. In *Muldrow*, the Court explained that, unlike in discrimination claims, Title VII's anti-retaliation provision "applies only when the retaliatory action is 'materially adverse,' meaning that it causes 'significant' harm."[31] This test "was meant to capture those (and only those) employer actions serious enough to 'dissuade[] a reasonable worker from making or supporting a charge of discrimination.'"[32] Consistent with *White*, the Ninth Circuit construes "adverse employment action" in retaliation cases to mean "adverse treatment that is reasonably likely to deter employees from protected activity."[33]

Accordingly, the standard for retaliation claims remains unchanged after *Muldrow*.

Muldrow Has Been Extended to the ADA, ADEA, and Section 1981 Claims

As Extended to the ADA. The ADA provides that no covered entity shall discriminate against a qualified individual on the basis of disability in regard to the terms, conditions, and privileges of employment.[34] To "discriminate against" includes failing to make reasonable accommodations unless they would impose an undue hardship.[35] There are two principal types of discrimination claims under the ADA—"disparate treatment" and "failure to accommodate."[36] To qualify for relief under the ADA, an employee or applicant must establish that they are (1) disabled, (2) qualified—with or without reasonable accommodation—to perform the essential functions of the job they hold or seek, and that (3) they suffered an adverse employment action because of disability.[37]

Courts interpret "adverse employment action" akin under the ADA and Title VII; as we have seen, prior to *Muldrow* several Circuit Courts required a "materially adverse" change in working conditions in order to find an adverse employment action.[38] But after *Muldrow*, the First, Fifth, Tenth, and Eleventh Circuits only require plaintiffs to show a simple injury.[39]

Prior to *Muldrow*, the Ninth Circuit found that failures to, among other things, engage in the interactive process, or provide reasonable accommodations such as

reassignment, leaves of absence or working from home, constituted adverse employment actions.[40] It merits mentioning that a circuit split exists on whether a failure to engage in the interactive process constitutes a separate claim under the ADA. Most circuits, including the Ninth, hold that an employer has a mandatory obligation to engage in the interactive process, and that this obligation is triggered either by the employee's request for accommodation or by the employer's recognition of the need for accommodation.[41] But other circuits, such as the First, Sixth, and Eleventh, require the employee to produce evidence that a reasonable accommodation is available before an employer is obligated to engage in the interactive process.[42]

A Ninth Circuit court has yet to decide whether a showing of simple injury suffices to establish an adverse employment action under the ADA—which is not surprising, since *Muldrow* was just issued in 2024. But since the Ninth Circuit construes adverse employment actions broadly and expansively, already applies *Muldrow* to Title VII claims, and subjects ADA and Title VII claims to the same analysis, it will likely apply *Muldrow's* simple injury test to ADA claims.

Muldrow *and the ADEA*. Under the ADEA, it is unlawful for an employer to discriminate against an individual with respect to the terms, conditions, or privileges of employment because of age over 40.[43] The *McDonnell Douglas* framework applies to actions under the ADEA.[44] Unlike in Title VII, an ADEA plaintiff must prove that age was the "but-for" cause of the employer's adverse action.[45]

As with the ADA, after *Muldrow* several Circuit Courts—including the Fifth, Sixth, and Seventh—apply the simple injury standard to ADEA claims.[46] Somewhat of a Ninth Circuit outlier is *Stepien v. Raimondo*, where a district court stated that an "adverse employment action" is one "that materially affects" the compensation, terms, conditions, or privileges of employment," but also mentioned *Muldrow's* "some injury" standard in an adjacent parenthetical.[47] For the reasons given above under the ADA, however, *Stepien's* somewhat hybrid test is likely a one-off aberration, and the Ninth Circuit is apt to examine ADEA claims under *Muldrow's* simple injury standard.

Extending to Whistleblower Actions. Whistleblower claims involve reporting misconduct within an organization to authorities who can take corrective action, while retaliation claims pertain to the actions taken against the person reporting the misconduct. Although they may arise from the same course of conduct, they are separate claims, with the retaliation claim available under Title VII, the ADA, and ADEA, and the whistleblower claim often available under state whistleblower statutes.[48] If an employee thus reports discriminatory practices—to the EEOC, for example—and her employer acts against her, she may have separate claims for whistleblowing and retaliation.[49] The elements in retaliation and whistleblower claims are identical, requiring the plaintiff to show that she (1) engaged in protected activity, (2) was subjected to an adverse employment action, and (3) that there was a causal link between the two; *Muldrow's* simple injury test thus enters the picture because whistleblower claims are analyzed under the *McDonnell Douglas* framework.[50]

In *Xu*, for instance, the plaintiff's claims included a whistleblower claim under an Oregon law modeled after Title VII, which was analyzed under the *McDonnell Douglas* framework.[51] Because the whistleblower statute in *Xu* covered conduct relating to the "terms, conditions, or privileges of employment," the Court found that "[t]he required showing of an adverse employment action tracks the [simple injury] standard of harm from *Muldrow*."[52]

Whistleblower claims rooted in the same course of conduct as claims under Title VII, the ADA and ADEA, evaluated as they are under the *McDonnell Douglas* framework, will likely be subject to *Muldrow's* simple injury standard, albeit typically by state courts.

Section 1981 Extended. Under § 1981, "[a]ll persons within the jurisdiction of the United States shall have the same right . . . to the full and equal benefits of all laws . . . as is enjoyed by white citizens[.]"[53] The elements of a § 1981 and Title VII hostile work environment claims are identical, but the § 1981 claim must be based on race.[54] The prima facie case under both claims is identical because the "legal principles guiding a court in Title VII dispute cases apply with equal force in a § 1981 action."[55] Thus, in *Kitazi v. Sellen Construction Company, Inc.*, a Ninth Circuit court analyzed an employee's Title VII and § 1981 race discrimination claims under the same *McDonnell Douglas* framework.[56] Further, a Second Circuit court found that *Muldrow* applied to § 1981 claims.[57] This suggests that *Muldrow's* simple injury standard also applies to § 1981 claims.

Conclusion

Muldrow adopted a "simple injury" test for Title VII disparate treatment adverse employment action claims. Prior to *Muldrow*, the Ninth Circuit already interpreted the term "adverse employment action" broadly and expansively, and we can expect that post-*Muldrow* the Ninth Circuit will continue in that trajectory, liberally applying *Muldrow's* test and expanding it, if it has not already, to other anti-discrimination statutes, such as the ADA, ADEA, PWFA, and § 1981 claims. On the other hand, given statements in *Muldrow* and prior precedents, the standard for hostile work environment, constructive discharge, and retaliation claims likely will remain the same.

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Endnotes

1. 601 U.S. 346, 144 S.Ct. 967 (2024).

2. 42 U.S.C. § 2000e-2(a)(1).

3. *Muldrow*, 601 U.S. at 350-51.

4. *Id.* at 354.

5. *Id.*

6. *Id.*

7. *Id.*

8. *Davis v. Team Elec. Co.*, 520 F.3d 1080, 1089 (9th Cir. 2008).

9. *Muldrow*, 601 U.S. at 353 n. 1.

10. *Fonseca v. Sysco Food Servs. of Ariz*, 374 F.3d 840, 847 (9th Cir. 2004) (broad); *Ray v. Henderson*, 217 F.3d 1234, 1241 (9th Cir. 2000) (expansive).

11. See *Little v. Windermere Relocation, Inc.*, 301 F.3d 958, 970 (9th Cir. 2002) (reduction in base monthly pay); *University of Hawai'i Prof'l Assembly v. Cayetano*, 183 F.3d 1096, 1105–06 (9th Cir. 1999) (receiving pay even a couple of days late); *Yartzoff v. Thomas*, 809 F.2d 1371, 1376 (9th Cir. 1987) (warning letter or negative review).

12. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-04 (1973).

13. *Id.* See also *Reynaga v. Roseburg Forest Products*, 847 F.3d 678, 690-91 (9th Cir. 2017) (restating elements of *prima facie* case).

14. *Reynaga*, 847 F.3d at 691.

15. *De Silva v. Pima County Government*, 2024 WL 4751574, *6, 8 (D. Ariz. 2024) (failure to hire for positions one is qualified for, denial of promotional opportunities) (construing the Arizona Civil Rights Act, which is subject to the same analysis as Title VII claims); *Schouker v. Swarm Industries, Inc.*, 2025 WL 1022141, *3-4 (N.D. Cal. 2025), citing *Ayala v. Frito Lay, Inc.*, 263 F.Supp.3d 891, 905 (E.D. Cal. 2017); *Davis v. Team Elec. Co.*, 520 F.3d 1080, 1089 (9th Cir. 2008).

16. 29 U.S.C. § 623(a)(1) (ADEA); 42 U.S.C. § 12112(a) (ADA); 42 U.S.C. § 2000gg-1(5) (PWFA). ADEA: *Avina v. Union Pacific Railroad Co.*, 72 F.4th 839 (8th Cir. 2023), certiorari denied 144 S.Ct. 555; ADA: *Bryant v. Better Business Bureau of Greater Maryland, Inc.*, 923 F.Supp. 720 (D. Md. 1996) (4th Cir.). Regarding the PWFA, to date there are no reported cases setting forth the elements of a *prima facie* case.

17. 42 U.S.C. § 1981(c); *Anderson v. Douglas & Lomason Co., Inc.*, 26 F.3d 1277 (5th Cir. 1994), certiorari denied 513 U.S. 1149.

18. *Xu v. LightSmyth Technologies, Inc.*, 2025 WL 2770511, *5 (D. Or. 2025).

19. *Id.* at *5-9.

20. 106 F.4th 101, 112-13 (1st Cir. 2024).

21. 2025 WL 1262487, at *7 (D. Kan. 2025) (citing *Muldrow*, 601 U.S. at 359).

22. *Manatt v. Bank of America, NA*, 339 F.3d 792, 798, 800 n. 6.

23. *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 23 (1993).

24. *Id.* at 21, quoting *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57, 67, 106 S.Ct. 2399 (1986).

25. *Schouker*, 2025 WL 1022141, *4, *6; *Williams*, 2024 WL 3427171, at *5, 7-8 (6th Cir. 2024). See also *Zuniga v. City of Dallas*, 2024 WL 2734956, at *3 n. 3 (N.D. Tex. 2024) (*Muldrow* does not alter the hostile work environment case); *Navarro v. Hollywood Imports Limited, Inc.*, 2024 WL 5263832, *5 (S.D. Fla. 2024) (11th Cir.) ("the . . . Plaintiff has not cited to, nor could the Court find, any authority indicating that *Muldrow* changed the standard for establishing a hostile work environment claim."); *Russell v. Wormuth*, 756 F.Supp.3d 1162, 1181 n. 6 (D. Kan. 2024) (10th Cir.) (hostile work environment claim requires tangible employment action or severe and pervasive conduct, and *Muldrow* did not change either analysis).

26. 542 U.S. 129, 143 (2004).

27. *Id.* at 133-34, 146-47. See also *Fleming v. City of Boise*, 2025 WL 2837734 (9th Cir. 2025) (constructive discharge case under Idaho's Protection of Public Employee's Act, I.C. § 6-2105).

28. *Fleming*, 2025 WI 2837734, at *1.

29. 42 U.S.C. § 2000e-3(a).

30. *Windermere*, 301 F.3d 958, 969 (9th Cir. 2001).

31. 144 S.Ct. at 975 (quoting *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006).

32. *Id.*

33. *Ray v. Henderson*, 217 F.3d 1234, 1237 (9th Cir. 2000).

34. 42 U.S.C. § 12112(a).

35. *Id.* at (b)(5)(A).

36. *Johnson v. Bd. of Trs. of Boundary Cnty. Sch. Dist. No. 101*, 666 F.3d 561, 567 (9th Cir. 2011).

37. *Sanders v. Arneson Products, Inc.*, 91 F.3d 1351, 1354 (9th Cir. 1996).

38. See, e.g., *Haynes v. Level 3 Communications, LLC*, 456 F.3d 1215 (10th Cir. 2006), certiorari denied 549 U.S. 1252 (removing sales employee's accounts constituted adverse employment action upon which Title VII, ADEA, and ADA claims could be based), abrogated 903 F.3d 900, (10th Cir. 2018); *Whitlow v. Visiting Nurse Ass'n of Western New York*, 420 F.Supp.2d 92 (W.D. N.Y. 2005), affirmed 186 Fed.Appx. 36, 2006 WL 1585440 (requiring a "materially adverse" change in working conditions).

39. *Rios v. Centerra Grp., LLC*, 106 F4th 101, 112 n. 4 (1st Cir. 2024); *Scheer v. Sisters of Charity of Leavenworth Health System, Inc.*, 144 F.4th 1212, 12114 (10th Cir. 2025); *Davis v. Orange Cnty.*, 2024 WL 3507722, at *3-4 (11th Cir. 2024) (ADA claims).

40. *Humphrey v. Memorial Hospital's Ass'n*, 239 F.3d 1128, 1135-36, 1137 (9th Cir. 2001) (referencing leave of absence, reassignment to work from home, and breakdown of interactive process).

41. *Barnett v. U.S. Air, Inc.*, 228 F.3d 1105, 1112 (9th Cir. 2000) (citing Eight, Third, Seventh, and Fifth cases), certiorari granted in part 532 U.S. 970, opinion after grant of certiorari 535 U.S. 391, on remand 297 F.3d 1106.

42. *Nicholson v. Massachusetts Bay Transportation Authority*, 783 F.Supp.3d 506, 523 (2025), citing *Lang v. Wal-Mart Stores E., L.P.*, 813 F.3d 447, 456 (1st Cir. 2016); *Hrdlicka v. General Motors*, 63 F.4th 555, 572 (6th Cir. 2023); *Willis v. Conopco*, 108 F.3d 282, 285 (11th Cir. 1997).

43. 29 U.S.C. § 623(a).

44. *Shelley v. Geren*, 666 F.3d 599, 608 (9th Cir. 2021).

45. *Gross v. FBL Financial Services, Inc.*, 557 U.S. 167, 180 (2009).

46. *McNeal v. City of Blue Ash, Ohio*, 117 F.4th 887, 900 (6th Cir. 2024); *Arnold v. United Airlines, Inc.*, 142 F.4th 460, 470 (7th Cir. 2025); *Yeates v. Spring Indep. Sch. Dist.*, 115 F.4th 414, 420 n. 4 (5th Cir. 2024).

47. 2024 WL 4043589, at *13 (W.D. Wash. 2024).

48. 42 U.S.C. § 2000e-3(a) (Title VII); 42 U.S.C. § 12203(a)-(b) (ADA); 29 U.S.C. § 623(d) (ADEA); See, e.g., *Collette v. St. Luke's Roosevelt Hosp.*, 132 F.Supp.2d 256, 274 (S.D. N.Y. 2001) (action under New York Whistleblower Act did not bar Title VII retaliatory termination action event though both actions arose from same course of conduct). (N.B., Idaho's Protection of Public Employees Act, I.C. § 6-2105, provides a legal cause of action for public employees who experience adverse action from their employer as a result of reporting waste and violations of a law, rule, or regulation.)

49. *Rodrigue v. PTS Management Group, LLC*, 550 F.Supp.3d 376, 399 (W.D. La. 2021) (outside sales consultant's allegation that he filed an EEOC charge, which commenced EEOC proceeding, was sufficient to allege a protected action, as required to state a claim under Title VII's retaliation provision, and Louisiana's whistleblower's statute).

50. *Xu*, 2025 WL 2770511 at *9 (D. Or. 2025), citing *Pool v. VanRheen*, 297 F.3d 899, 910 (9th Cir. 2002) ("The required showing on an adverse employment action tracks the standard of harm from *Muldrow*"); *Schouker*, 2025 WL 1022141, at *11 (N.D. Cal. 2025) (whistleblower claim under Cal. Lab. C. § 1102.5(b) and retaliation claim under FEHA, modeled after Title VII, share identical elements).

51. *Id.*

52. *Id.*

53. 42 U.S.C. § 1981(a).

54. *Manatt v. Bank of America, NA*, 339 F.3d 792, 798 (9th Cir. 2003), citing *Runyon v. McRary*, 427 U.S. 160, 168.

55. 339 F.3d 792, 797 (9th Cir. 2003); see also *Washington v. Brown & Williamson Tobacco Corp.*, 756 F.Supp. 1547 (M.D. Ga. 1991), affirmed 959 F.2d 1566 (generally legal elements of § 1981 employment discrimination claim are identical to those of Title VII disparate treatment claim).

56. 2017 WL 5455372, at *3 (W.D. Wash. 2017).

57. *Anderson v. Amazon.com, Inc.*, 2024 WL 2801986, at *10 (S.D. N.Y. 2024) ("So the only question after *Muldrow* . . . is whether § 1981 differs from Title VII in some way that justifies a continued materiality rule. It does not.).

MEDIATION AND ARBITRATION


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Unemployment Compensation Appeals and Workplace Misconduct

Douglas A. Werth

Introduction

Each year, the Idaho Industrial Commission (Commission) issues more than 300 unemployment compensation (UC) decisions. As one of the deputy attorneys general assigned to the Idaho Department of Labor (IDOL), I review nearly all Commission decisions. My aim with this article is to draw upon that experience and provide insight to practitioners by (a) sharing a few procedural pitfalls in appeals taken under the Employment Security Law (ESL), I.C. §§ 72-1301 *et seq.*, and (b) examining how the Commission typically reviews workplace misconduct cases—which comprise the bulk of contested UC appeals.

Understanding UC Appeals

Once a claimant files for unemployment benefits, which is typically done through IDOL's internet unemployment system, a determination of eligibility is made based upon the claimant's answers to various questions related to work history, earnings, and availability for work. After that, an audit of varying degrees of scrutiny usually occurs, which may result in a subsequent determination of eligibility that differs from the first. Claimants and employers have a right to appeal from these determinations by filing an appeal within fourteen days of the date of the determination.[1]

There are three levels of appeal after IDOL makes a determination of eligibility for unemployment benefits: (1) a *de novo* appeal to IDOL's Appeals Bureau, (2) a *de novo* appeal to the Commission, and, finally, (3) an appeal to the Idaho Supreme Court where the Court will defer to the Commission's factual findings.[2] Appeals to the Commission must be filed within fourteen days[3] and appeals to the Idaho Supreme Court within 42 days.[4]

Appeals Bureau hearings are conducted telephonically by IDOL appeals examiners. Testimony is taken under oath and subject to cross-examination. Relevant written documents may also be submitted, but it is imperative that all documents be provided in advance of the hearing, with copies furnished to the opposing party. Appeals examiners commonly refuse to consider documents submitted without prior notice to the other side. The best practice is to submit all documentary evidence well before the hearing so it can be included in the 50-to-100-page exhibit admitted at the beginning of the hearing.

Notably, appeals examiners have an affirmative duty to develop relevant facts and do not sit idly by during hearings.[5] While evidence may be considered that does not strictly comply with the rules of evidence, hearsay often proves unhelpful: first-hand testimony substantiating misconduct is generally required. For

example, in a recent case, the employer's human resources officer testified about accounts of a confrontation involving the claimant. But because she had no first-hand knowledge of the events, her testimony was given no weight.[6]

Parties must call into the telephonic hearing at the designated time. Missing the hearing by just a few minutes may result in dismissal of the appeal or a decision based solely on the evidence presented by the appearing party. When a dismissal occurs in these circumstances, the defaulted party may within 10 days request that the hearing be re-opened,[7] but that request will not be granted unless "good cause" is clearly shown.

The notice of appeal to the Commission can be as simple as an email stating, "I appeal." After the filing of a notice of appeal, an employer that is a business entity must be represented by an attorney in order to participate.[8] If a party wishes to submit additional evidence or file a written brief, it must make a request to do so within seven days of the date the record is mailed.[9] After the record is transmitted, absent a motion for briefing, the Commission will issue a written decision without prompting by any party. There is no oral argument.

A word of caution about Commission appeals: the department's Appeals Bureau hearing typically constitutes the entirety of the record for the Commission's "*de novo*" review. Don't expect a second bite at the apple. Although the ESL and the Commission's rules of procedure allow the Commission to take additional evidence or hold a new hearing,[10] it rarely does so. The Commission takes the position that allowing additional evidence and holding a new hearing are "extraordinary measures" reserved for those cases when due process or other interests of justice demand no less. A practitioner is apt to have better luck obtaining a remand to the Appeals Bureau than a new evidentiary hearing before the Commission.[11]

The Commission applies the uncontradicted testimony rule. Relying upon the Idaho Supreme Court's 1979 decision in *Dinneen v. Finch*,[12] Commission decisions explain that the finder of fact must accept as true the positive, uncontradicted testimony of credible witnesses unless their testimony is inherently improbable. Testimony is "inherently improbable" when there is a physical impossibility of the evidence being true or when the falsity is apparent without resort to any inferences or deductions. Because uncontradicted accounts are accepted as factual, it is difficult to overcome the uncontradicted testimony rule.

> *...a mere violation of a written rule is usually not enough.*

The pleading requirements in appeals to the Idaho Supreme Court are far more rigorous than those in the first and second level appeals, particularly with respect to the required contents of notices of appeal and appellate briefs.[13] A significant number of *pro se* appellants have their appeals dismissed for failing to comply with the Idaho Appellate Rules. During 2024 and 2025, 11 *pro se* appeals were dismissed by the Idaho Supreme Court for failing to comply with the Idaho Appellate Rules while only two *pro se* appeals were decided on the merits.[14]

Employee Misconduct

In employee misconduct cases, the burden of proving misconduct "falls strictly" on the employer.[15] Commission decisions explain that what constitutes "cause" in the mind of an employer for dismissing an employee is not necessarily the legal equivalent of "misconduct" under the ESL. The two issues are separate and distinct.

Commission decisions observe, consistent with case law, that misconduct under the ESL occurs when the employee (1) willfully and intentionally disregards the employer's interest, (2) willfully and deliberately violates the employer's reasonable rules, or (3) disregards a standard of behavior the employer had a right to expect of its employees.[16]

Against Employer's Interest

A Commission finding of misconduct under the "employer's interest" prong is relatively rare. Conduct that disregards an employer's interest, *e.g.*, theft or the disclosure of trade secrets to a competitor, can satisfy this prong, but the Commission applies a heightened intent standard. The Commission requires proof that the claimant displayed a malicious or consciously deliberate disregard of employer's interest—a willful or intentional disregard of that interest. Because of these intent requirements, the Commission often concludes that the evidence presented in support of an "employer's interest" claim is insufficient.

Notably, the Idaho Supreme Court has never applied a malice standard when analyzing this prong. To the contrary, it has said the term "willful" does not require proof that the claimant acted maliciously or with an "evil mind."[17]

Violation of Employer's Rules

The intent required under the "rules" prong is also a tall hurdle because the Commission requires a showing that the claimant deliberately violated a known rule and intentionally violated the spirit of the rule. To have any realistic chance of meeting this prong, the employer must include in the record the written policy at issue. The Commission has explained that without copies in the record of any written provision the claimant has allegedly violated, an employer cannot meet its burden of demonstrating misconduct under this prong.

The difficulty in proving the necessary intent under the "rules" prong is illustrated by a recent case involving an employer's attendance policy. The employer followed that policy and issued a final warning to an employee with a history of tardiness. When the employee was tardy four times in the month following the final warning, the employer terminated her employment. Although the employee had signed an acknowledgement of the written attendance policy, and the policy itself was admitted into the record, the Commission declined to find misconduct under the "rules" prong. After recounting the personal reasons offered by the claimant for her tardiness, including her need for assistance getting ready for work in the morning due to a medical condition, the Commission concluded that the employer had not met its burden. It explained that the claimant did not appear to have been intentionally disregarding the policy when she failed to arrive at work on time on the days in question.

If a written rule recites a general norm of behavior—such as a rule prohibiting "racist or sexually offensive remarks or jokes"—the Commission typically refuses to evaluate offending conduct under the "rules" prong, reasoning that the rule appears to be a "standard of behavior" rather than the kind of rule the Idaho Supreme Court has applied to the "rules" prong of the misconduct definition.

The main takeaway is that a mere violation of a written rule is usually not enough. The Commission requires evidence that the claimant "deliberately and intentionally" violated the rule at issue—which is a relatively demanding standard.

2025 LEGISLATIVE CHANGES

As mentioned above, the three-pronged misconduct definition was created by court decision. The term had not been defined in the ESL. The Court's misconduct definition later was "codified" in IDOL's administrative rules. The IDAPA rule defined the first two prongs as follows:

a. Disregard of Employer's Interest. A willful, intentional disregard of the employer's interest.
b. Violation of Reasonable Rules. A deliberate violation of the employer's reasonable rules.[22]

In 2025, the Idaho Legislature repealed the IDAPA definition of misconduct and added to the ESL a definition for "workplace misconduct."[23] Under the new definition, the first two prongs of misconduct only require that the employee's conduct be "willful." The 2025 amendments eliminate the "intentional disregard" and "deliberate violation" language and define the first two prongs as simply conduct that "willfully disregards the employer's interest [or] willfully violates the employer's reasonable rules."

A strong argument can be made that the Legislature intended to change the intent required to prove the first two prongs to only a "willful" intent. This conclusion is buttressed by the fact that the Legislature did not change the wording of the third prong from what had been recited in prior case law and the IDAPA rule.

Equally important, the 2025 Legislature added a definition for "willful" to the ESL:

(1) As used in this chapter, "willful" or "willfully" means the making of a statement where:

(a) The person knew the statement to be false or acted with deliberate ignorance of, or reckless disregard for, the truth of the matter; or
(b) The person failed to disclose a material fact that the person knew or should have known was required to be disclosed.

(2) To be willful, an act must be intentional, not accidental. No proof of specific intent to defraud or violate the law is required.[24]

Subsection (2) of this definition is not limited to "the making of a statement" so it would appear to apply to any "act," including those that might constitute "workplace misconduct." The definition in subsection (2) is consistent with the Idaho Code's definition of "willful" in the area of criminal law:

> The word "wilfully," when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act or make the omission referred to. It does not require any intent to violate law, or to injure another, or to acquire any advantage.[25]

In sum, by not carrying forward the "intentional disregard" and "deliberate violation" language of the IDAPA rule, arguably the Idaho Legislature intended to remove those requirements from the intent required under the first two prongs of misconduct.

Violation of Expected Standards of Behavior

Because of the stringent intent requirements under the first two prongs, most misconduct cases hinge on whether the employer can establish misconduct under the "standards of behavior" prong. Unlike the "employer's interest" and "rules" prongs, a claimant's subjective intent is irrelevant under the "standards of behavior" prong. The Commission explains that the employer need not demonstrate that claimant's conduct was willful, intentional, or deliberate.

The Commission applies Idaho Supreme Court precedents under this test, which require a showing that: (1) the employee's conduct violated an expectation the employer "subjectively expected from the employee," and (2) the employer's expectation was "objectively reasonable."[18] An expectation is objectively reasonable if it is either communicated to the employee or one that flows naturally from the employment relationship.[19] Expectations "flow naturally" when they are common among employers generally or within a particular enterprise.[20]

Even if the "standards of behavior" elements are established, a claimant may be eligible for benefits if it is shown that the employer's expectations could not be met because the claimant was simply inept or "merely inefficient" at the job.[21]

Patterns of Discipline Matter

When the Commission applies the three misconduct prongs, the patterns of employers' discipline matter. This is illustrated by a case where the employer disciplined an employee with a performance improvement plan (PIP) and the Commission held that misconduct could not be based upon the conduct addressed in the PIP. The Commission observed that employers cannot use a form of discipline short of discharge for a certain behavior, and then later discharge the worker for the past behavior unless the employer can demonstrate a subsequent occurrence of the same behavior.[26]

Stated another way, if an employer testifies that a specific incident precipitated the decision to discharge, there is a good chance the Commission will evaluate misconduct by focusing solely upon that event because it was the "last straw"—even though the employee failed to meet the employer's expectations on numerous prior occasions and was warned that if the conduct continued, termination would result.

In one case, the triggering event for an employee's termination was her failure to properly calendar a client's appointment. The Commission wrote that the final basis for the discharge must support any finding of misconduct under the ESL and that it is not enough for the employer to simply present an exhaustive list of every alleged misbehavior or wrongdoing committed by an employee during her employment. In this case, ignoring a long pattern of claimant's failure to meet performance expectations, the Commission found that claimant was eligible for unemployment benefits because the event that prompted the employer's decision to discharge—claimant's mis-calendaring of an appointment—was merely "an oversight or an inadvertency."[27]

Relying upon case law from Pennsylvania,[28] the Commission also applies the remoteness doctrine to UC cases and will disregard evidence of misconduct when it is too remote from the date of discharge. Under this doctrine, an "unexplained, substantial delay" between the claimant's misconduct and the employer's termination of the claimant will preclude an employer from seeking a denial of benefits based on allegations of misconduct. However, if an employer provides a reasonable explanation to justify the delay—such as an administrative review process or a lengthy investigation—the Commission may choose not to apply the remoteness doctrine.

Another thread in Commission decisions is the notion that the claimant must have received fair warning that his conduct could result in discharge. There exists no such requirement in the law, but it is something frequently mentioned by the Commission when deciding close cases.

Conclusion

Several points can be gleaned from Commission decisions. The first level UC appeal to the Appeals Bureau is not an appeal. It is an evidentiary hearing. At the second level, although the Commission hears the appeal *de novo*, the whole ball game is played in the Appeals Bureau because the Commission is unlikely to grant a request to submit additional evidence or hold a new hearing.

Also, to establish misconduct under the "employer's interest" and "rules" prongs, a heightened showing of intentional or deliberate conduct is needed. Because these are tough rows to hoe, most of the Commission appeals are decided under the "standards of behavior" prong where the claimant's intent is irrelevant. Also, a practitioner is well-advised to remember that the Commission will look at an employer's pattern of discipline and may not consider misconduct evidence that occurred before the employer's penultimate discipline or that is temporally remote from the date of discharge.

Last, it remains to be seen whether the 2025 amendments to the ESL will lessen the intent needed under the first two prongs of misconduct.

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Endnotes

1. I.C. § 72-1368(3)(c).

2. Appeals from Commission UC decisions are heard directly by the Idaho Supreme Court. Idaho Const., art. V, § 9. Most are *pro se*, have small appellate records, and involve a body of law that is discrete and manageable. Because of that, UC appeals present a great opportunity for *pro bono* attorneys who want to gain appellate experience before the Idaho Supreme Court.

3. I.C. § 72-1368(6).

4. I.A.R. 14(b). The eligibility conditions for receipt of unemployment benefits are found in I.C. § 72-1366.

5. IDAPA 09.01.01.045.11 (2022). *See also,* A Guide to Unemployment Insurance Benefit Appeals—Principles and Procedures (1970), p. 8, Appendix B to ET Handbook No. 382, 3rd Ed. (March 2011) (available at: https://oui.doleta.gov/dmstree/pl/yellow_book.pdf). According to the United States Department of Labor (USDOL), this guide is not binding on states, but, rather, sets forth "best practices." *See* informal staff-level opinion in email dated March 24, 2025 from Daniel Hays, Director, Division of Legislation, USDOL Employment & Training Administration, to Douglas A. Werth, Lead Deputy Attorney General, Idaho Attorney General's Office.

6. Due to confidentiality requirements relating to employment security information, Commission decisions are unpublished and not available to the public. I.C. §§ 72-1342(1), 72-1374, and 74-106(7). Thus, this article does not supply citations to Commission decisions because to do so would require disclosure of employment security information.

7. I.C. § 72-1368(6).

8. Industrial Commission Rules of Appellate Practice and Procedure Under the Employment Security Law (RAPP), Rule 4(C). The Commission's rules of procedure in UC cases are not found in IDAPA. Rather, they are in the RAPP available online here: https://iic.idaho.gov/wp-content/uploads/2025/07/FINAL-RAPP-July-9-2025.pdf.

9. RAPP, Rules 5(A) and 7(A).

10. I.C. § 72-1368(7); RAPP, Rule 7.

11. RAPP, Rule 10.

12. *Dinneen v. Finch,* 100 Idaho 620, 626-627, 603 P.2d 575, 581-582 (1979).

13. *See* I.A.R. 17 and 35.

14. *Castell v. Money Metals Exchange, LLC*, 174 Idaho 843, 560 P.3d 990 (2024); *Hennig v. Money Metals Exchange, LLC*, 174 Idaho 143, 551 P.3d 1237 (2024).

15. *Adams v. Aspen Water, Inc.*, 150 Idaho 408, 413, 247 P.3d 635, 640 (2011).

16. *Accord, Kivalu v. Life Care Centers of America,* 142 Idaho 262, 265, 127 P.3d 165, 167 (2005). This three-pronged framework was adopted by the Idaho Supreme Court in *Johns v. S.H. Kress and Co.*, 78 Idaho 544, 548, 307 P.2d 217, 219 (1957).

17. *Christy v. Grasmick Produce,* 162 Idaho 199, 202, 395 P.3d 819, 822 (2017) (*quoting McNulty v. Sinclair Oil Corp.*, 152 Idaho 582, 586-87, 272 P.3d 554, 558-59 (2012)).

18. *Shumway v. Evans Chiropractic, Inc.*, 173 Idaho 300, 305, 541 P.3d 58, 63 (2023).

19. *Shumway,* 173 Idaho at 306, 541 P.3d at 64.

20. *Id.* (*quoting Adams, supra*, 150 Idaho at 413, 247 P.3d at 640).

21. I.C. § 72-1330A(4).

22. IDAPA 09.01.30.275.02.a-b (1999).

23. I.C. § 72-1330A (added by 2025 Idaho Sess. Laws, ch. 29, § 17).

24. I.C. § [72-1330B] 72-1330A (added by 2025 Idaho Sess. Laws, Ch. 28, § 2).

25. I.C. § 18-101(1).

26. *But see Oxley v. Medicine Rock Specialties, Inc.*, 139 Idaho 476, 80 P.3d 1077 (2003); *Harper v. Idaho Dep't of Lab.*, 161 Idaho 114, 116, 384 P.3d 361, 363 (2016) (there is no requirement that there be a precipitating act of misconduct immediately prior to the termination of employment). *See also Wulff v. Sun Valley Co.*, 127 Idaho 71, 75–76, 896 P.2d 979, 983–84 (1995) (employer's "allegations of misconduct must be analyzed individually and as a whole").

27. I.C. § 72-1330A(4) ("Mere inefficiency, unsatisfactory conduct, [and] inadvertencies . . . shall not be considered misconduct connected with employment.").

28. *Downey v. Unemployment Compensation Bd. of Review,* 913 A.2d 351, 354 (Pa. Commw. Ct. 2006); *Raimondi v. Unemployment Compensation Bd. of Review,* 863 A.2d 1242, 1245-1247 (Pa. Commw. Ct. 2004).

McDonnell Douglas in the Crosshairs? What *Hittle v. City of Stockton* May Signal

Alexandra S. Grande
Zachery J. McCraney

The United States Supreme Court denied certiorari in *Hittle v. City of Stockton* on March 10, 2025. Justice Thomas' pointed dissent, joined by Justice Gorsuch, makes clear that at least two justices are prepared to revisit the *McDonnell Douglas* burden-shifting framework that has governed discrimination litigation for over 50 years.[1] For employment practitioners, this case offers a preview of what could happen when the Court next confronts this "judge-created doctrine" that has, according to Justice Thomas, "spawned enormous confusion" in the lower courts.[2]

Understanding the *McDonnell Douglas* Framework

For over 50 years, the *McDonnell Douglas* burden-shifting analysis has been a centerpiece in employment discrimination litigation. Emerging from the United States Supreme Court's 1973 decision in *McDonnell Douglas Corp. v. Green*,[3] the framework was originally designed to help trial courts evaluate circumstantial evidence in Title VII racial discrimination cases involving hiring decisions. However, what began as a tool for Title VII cases has expanded across the larger landscape of employment law. For example, courts have applied *McDonnell Douglas* to claims under the Americans with Disabilities Act, the Age

Discrimination in Employment Act, and the Rehabilitation Act.[4] And many state courts, including Idaho, have adopted the framework for analyzing discrimination claims under state laws.[5]

The *McDonnell Douglas* framework operates through a three-stage process. First, a plaintiff employee must establish a prima facie case of discrimination, typically, by showing (1) they belong to a protected class, (2) they are qualified for the position, (3) they experienced an adverse employment action, and (4) similarly situated people outside the protected class received more favorable treatment or there are other circumstances giving rise to an inference of discrimination.[6] Once established, the burden of production shifts to the defendant employer to articulate a legitimate, nondiscriminatory reason for its actions.[7] If the employer meets their burden, the burden returns to the plaintiff to demonstrate that the employer's stated reason is in fact pretext for discrimination.[8] Generally, the plaintiff can show pretext either directly, by persuading the court that a discriminatory reason more likely motivated the employer, or indirectly, by showing that the employer's explanation is unworthy of credence.[9]

The *Hittle* Case

Justice Thomas viewed Ronald Hittle's case as an ideal vehicle for revisiting *McDonnell Douglas*.[10] Hittle, an at-will fire chief, was directed by his supervisor to attend a leadership training program. After Hittle selected a program held at a Christian church, his supervisor raised concerns that he had selected a "religious program," among other allegations of misconduct.[11] The city hired an outside investigator who concluded that Hittle had committed misconduct owing to his attendance at a "religious event" on city time using city resources.[12] The city then terminated Hittle based on the conclusions reached in the investigator's report.[13]

Hittle sued the city and its leadership, alleging that his termination was the result of unlawful religious discrimination in violation of Title VII and the California Fair Employment and Housing Act. Following consideration of Hittle's partial motion for summary judgment and the Defendants' motion seeking dismissal of all of Hittle's claims, the district court granted summary judgment for Defendants, and the Ninth Circuit affirmed.[14] Why? Because under the third step of *McDonnell Douglas*, Hittle failed to demonstrate that the "legitimate non-discriminatory reasons for firing him were mere pretext for religious discrimination."[15] As the Ninth Circuit explained, while "an aspect of [the investigator's report] and the notice terminating Hittle was the religious nature of the leadership event, a nexus to a protected characteristic is not enough to preclude summary judgment for the employer."[16] The court found that "the facts that Hittle identifies as circumstantial evidence of discriminatory pretext are neither specific nor substantial enough to support a finding of unlawful employment discrimination."[17]

In Justice Thomas's view, *Hittle* represents exactly what is wrong with *McDonnell Douglas*: the framework distorts the trial court's analysis by replacing the usual summary judgment standard with a confusing burden-shifting exercise.[18] Rather than rely on "judge-created doctrine," Justice Thomas states that Title VII claims "should survive summary judgment so long as the plaintiff establishes a genuine dispute of material fact about each element of his claim."[19]

Justice Thomas is not alone in his views. His pointed dissent catalogues a number of lower court opinions where judges have "gone out of their way to describe the chaos sown by *McDonnell Douglas*."[20] Notably, one of the lower court opinions cited was authored by then-Circuit Judge Kavanaugh, who took aim at the prima-facie-case aspect of *McDonnell Douglas*, calling it "a largely unnecessary sideshow" that has "spawn[ed] enormous confusion and wast[ed] litigant and judicial resources[,]" perhaps suggesting that Justice Kavanaugh may be willing to join his dissenting colleagues in reconsidering *McDonnell Douglas* at a later date.[21]

However, not everyone agrees that *McDonnell Douglas* lacks value. While its critics contend *McDonnell Douglas* is a "judge-created" construct, the Supreme Court has emphasized the framework's value as a practical evidentiary tool for plaintiffs who lack direct proof. In the 1985 decision in *Trans World Airlines, Inc. v. Thurston*, for example, the Court recognized that the *McDonnell Douglas* framework was designed to ensure that plaintiffs "have [their] day in court

[Justice Thomas's] pointed dissent catalogues a number of lower court opinions where judges have "gone out of their way to describe the chaos sown by McDonnell Douglas."

despite the unavailability of direct evidence."[22] Much more recently, the Court, in an opinion delivered by Justice Jackson, characterized *McDonnell Douglas* as merely aiming "to provide 'a sensible, orderly way to evaluate the evidence' that 'bears on the critical question of discrimination.'"[23] In short, some view the *McDonnell Douglas* framework as providing a structured pathway that compels the employer to articulate a legitimate reason or risk judgment, thereby permitting a plaintiff to test whether the proffered explanation holds up.

What Comes Next?

For now, employment practitioners should continue to pay close attention to how each court interprets *McDonnell Douglas*' requirements. State specific applications should also continue to be considered. In Idaho, for example, the framework does not apply at the summary judgment stage in retaliatory discharge cases under Idaho's Whistleblower Act.[24] And in a somewhat recent decision, the California Supreme Court held that whistleblower retaliation claims under California Labor Code Section 1102.5 are governed by the two-step test articulated in Labor Code Section 1102.6, not *McDonnell Douglas*.[25] Fair Employment and Housing Act retaliation claims, by contrast, remain evaluated under *McDonnell Douglas*.

While the Court denied certiorari in *Hittle*, Justice Thomas' dissent reads like a roadmap for future challenges. With at least two justices ready to reconsider *McDonnell Douglas*, and a conservative majority that has been willing to revisit and overturn longstanding precedent and principles, the United States Supreme Court may take up the issue in the near future.

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Endnotes

1. *Hittle v. City of Stockton*, 145 S. Ct. 759 (2025).

2. *Id.* at 759 (Thomas, J., dissenting) (citations and alterations omitted).

3. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

4. *See, e.g., Budnick v. Town of Carefree*, 518 F.3d 1109, 1114 (9th Cir. 2008) (ADA); *Wallis v. JR. Simplot Co.*, 26 F.3d 885, 889 (9th Cir. 1994) (ADEA).

5. *See Mendez v. Univ. Health Servs. Boise State Univ.*, 163 Idaho 237, 243, 409 P.3d 817, 823 (2018); *Merrick v. Hilton Worldwide, Inc.*, 867 F.3d 1139, 1145 (9th Cir. 2017) ("California courts apply the *McDonnell Douglas* burden-shifting framework to analyze disparate treatment claims under FEHA"); A. Dean Bennett & Scott E. Randolph, *Idaho Supreme Court Reverses Course in Applying the* McDonnell Douglas *Burden-Shifting Framework to Summary Judgement Motion*, 57 Advocate 28 (Feb. 2014); *Hatheway v. Bd. of Regents of the Univ. of Idaho*, 155 Idaho 255, 310 P.3d 315 (2013).

6. *Mendez*, 163 Idaho at 243, 409 P.3d at 823 (citation omitted); *Ames v. Ohio Dep't of Youth Servs.*, 605 U.S. 303, 308 (2025).

7. *Id.*

8. *Id.*

9. *Campbell v. Shinseki*, 546 F. App'x 874, 877 (11th Cir. 2013) (quoting *Tex. Dep't of Cmty. Affairs v. Burdine*, 450 U.S. 248, 256 (1981)).

10. *Hittle*, 145 S. Ct. at 763 (2025) (the *Hittle* "case squarely presents the question whether *McDonnell Douglas* should be overruled") (Thomas, J., dissenting).

11. *Id.*

12. *Id.*

13. *Id.* at 764.

14. *Hittle v. City of Stockton*, 101 F.4th 1000, 1022 (9th Cir. 2024) (VanDyke, J., dissenting from the denial of rehearing en banc).

15. *Hittle*, 145 S. Ct. at 764 (Thomas, J., dissenting).

16. *Hittle*, 101 F.4th at 1017.

17. *Id.*

18. *Hittle*, 145 S. Ct. at 764 (Thomas, J., dissenting).

19. *Id.* at 763 (citation omitted).

20. *Id.* at 762 (listing cases).

21. *Brady v. Office of the Sergeant at Arms*, 520 F.3d 490, 494 (D.C. Cir. 2008).

22. *Trans World Airlines, Inc. v. Thurston*, 469 U.S. 111, 121 (1985) (citation omitted).

23. *Ames*, 605 U.S. at 308 n.2 (citation omitted) (notably, in a concurring opinion in *Ames*, Justice Thomas, joined by Justice Gorsuch, renewed their critique of *McDonnell Douglas* by emphasizing that while the Court "assumes without deciding that the *McDonnell Douglas* framework is an appropriate tool for making that determination[,]" this "judge-made *McDonnell Douglas* framework has no basis in the text of Title VII[,]" signaling their continued commitment to reconsidering the precedent).

24. *Berrett v. Clark Cty. Sch. Dist. No. 161*, 165 Idaho 913, 917, 454 P.3d 555, 559 (2019).

25. *Lawson v. PPG Architectural Finishes, Inc.*, 503 P.3d 659, 667–68 (Cal. 2022).

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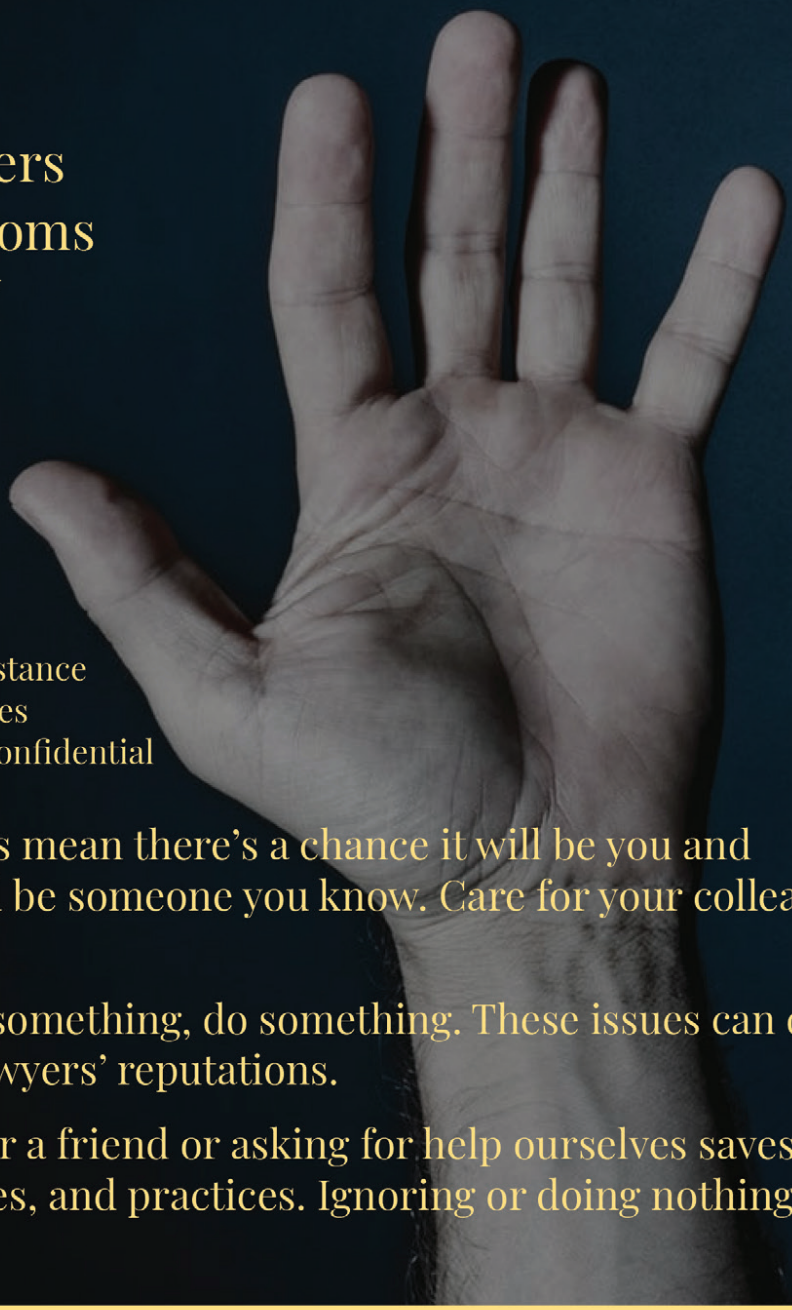

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2026 IOLTA Grant Summary

The Interest on Lawyers' Trust Account (IOLTA) program works with members of the Idaho State Bar and the Idaho banking community to hold client funds in interest-bearing accounts. Participating banks remit interest earned to the Idaho Law Foundation (ILF). The ILF distributes these funds through the IOLTA grant process. In accordance with Idaho Bar Commission Rule 1309, the ILF awards funds to organizations that provide legal aid to the poor, law-related education programs for the public, scholarships and student loans, and improve the administration of justice.

Idaho's IOLTA program has distributed over $8.5 million in grants in its almost 40-year history. This year, IOLTA granted a record $900,000.

Organization	2026 IOLTA Grant Summary	Award
Idaho Legal Aid Services, Inc.	To deliver statewide civil legal services in five priority areas: housing; services for survivors of domestic violence; guardianships and conservatorships; public benefits; and consumer protection. Due to the loss of federal housing funds, a significant share of resources will focus on eviction defense and housing stability, while sustaining the other service areas. Services will be provided through ILAS's seven regional offices via centralized phone, online, and in-person intake, offering advice/brief service and full representation. Primary beneficiaries are low-income Idahoans statewide, including rural residents, seniors, and limited-English-proficient clients. ILAS will track service volume, timeliness, and outcomes (e.g., evictions avoided, protective orders granted, benefits retained/restored, consumer relief obtained, and appropriate protective arrangements). Funds will be used solely for eligible civil legal services consistent with IOLTA guidelines.	$272,700
International Rescue Committee	To strengthen our immigration legal services to support low to moderate income (LMI) refugee clients in the Treasure Valley, with specific focus on filing adjustment of status applications and offering free legal pre-screenings.	$43,000
ILF Idaho Volunteer Lawyers Program	To maintain our current staff and capacity to provide access to legal services for low-income Idahoans.	$220,000
University of Idaho College of Law Clinic Program	Summer internships, travel expenses, translation services and clinic fellow.	$100,000
Jesse Tree	To sustain a year's salary for an Eviction Court Case Manager position.	$55,000
CASA of SW Idaho (3rd Dist. Guardian ad Litem Program)	To cover remaining annual cost needed for 2 key staff positions. The positions directly impact children in the Idaho foster care system and ensures they will have a court appointed special advocate (CASA) and are protected fairly for the duration of their time in the court system.	$27,715
ILF Law Related Education Program	The Idaho Law Foundation's Law Related Education Program requests funds from IOLTA for overall LRE program support. Specifically, an IOLTA grant would provide some administrative support, and underwrite staffing and LRE program activities including mock trial, publications, and the annual Constitution Day event. Additionally, the 2026 grant will include a one time request to support the development and distribution of curriculum materials to accompany the *Tents to Towers* book created to celebrate the Bar's 100th anniversary.	$180,000
Treasure Valley Family YMCA	For scholarship funds for youth who otherwise would not be able to attend the annual statewide model legislative and judicial session for high school students. YMCA Youth in Government.	$2,000

OFFICIAL NOTICE
SUPREME COURT OF IDAHO

Chief Justice
G. Richard Bevan

Justices
Robyn M. Brody
Gregory W. Moeller
Colleen D. Zahn
Cynthia K.C. Meyer

Regular Spring Term for 2026
3rd Amended December 22, 2025

Boise	January 7, 9, 14 and 23
Boise	February 13 and 18
Boise (University of Idaho)	February 11
Boise	April 6, 15 and 17
Moscow (University of Idaho)	April 8
Lewiston	April 9
Boise	May 6, 8, 11, 13 and 15
Boise	June 3, 5 and 8
Rexburg (BYU Idaho)	June 10
Twin Falls	June 11

By Order of the Court
Melanie Gagnepain, Clerk

NOTE: The above is the official notice of the 2026 Spring Term for the Supreme Court of the State of Idaho, and should be preserved. A formal notice of the setting of oral argument in each case will be sent to counsel prior to each term.

OFFICIAL NOTICE
COURT OF APPEALS OF IDAHO

Chief Judge
Michael P. Tribe

Judges
David W. Gratton
Molly J. Huskey
Jessica M. Lorello

Regular Spring Term for 2026
3rd Amended 01/02/2026

Boise	January 13
Boise	February 10
Boise	March 10, 17, 19 and 24
Boise	April 7, 9, 14 and 16
Boise	May 12, 14, 19 and 21
Boise	June 16, 18, 23 and 25
Boise	July 9

By Order of the Court
Melanie Gagnepain, Clerk

NOTE: The above is the official notice of the 2026 Spring Term for Court of Appeals of the State of Idaho, and should be preserved. A formal notice of the setting of oral argument in each case will be sent to counsel prior to each term.

OFFICIAL NOTICE
SUPREME COURT OF IDAHO

Chief Justice
G. Richard Bevan

Justices
Robyn M. Brody
Gregory W. Moeller
Colleen D. Zahn
Cynthia K.C. Meyer

Regular Fall Term for 2026
November 10, 2025

Boise	August 14, 19, 21 and 24
Boise	September 9 and 11
Coeur d' Alene	September 16 and 17
Boise	October 2, 7 and 9
Idaho Falls	October 14
Pocatello	October 15
Boise	November 2, 4, 6 and 9

By Order of the Court
Melanie Gagnepain, Clerk

NOTE: The above is the official notice of the 2026 Fall Term for the Supreme Court of the State of Idaho, and should be preserved. A formal notice of the setting of oral argument in each case will be sent to counsel prior to each term.

Idaho Supreme Court
Oral Arguments for February 2026

01/12/2026

Wednesday, February 11, 2026 - Boise (University of Idaho)

8:45 a.m. *WAFD, Inc. v. Idaho State Tax Commission* ..... #52584
10:00 a.m. *State v. Orr* ..... #51866
11:15 a.m. *Best v. State* ..... #53233

Friday, February 13, 2026 - Boise

8:45 a.m. *Estate of Kalinski v. Murphy Law* ..... #52242
10:00 a.m. *Hartman v. Pocatello Hospital* ..... #52101
11:15 a.m. *Bauer v. Scott Meyers & Sons Roofing* ..... #52706

Wednesday, February 18, 2026 - Boise

8:45 a.m. *State v. Lutz/Heslington* ..... #52554
10:00 a.m. *State v. Gutierrez* ..... #51649
11:15 a.m. *HMI, Hamilton v. City of Twin Falls* ..... #52620

Idaho Court of Appeals
Oral Arguments for February 2026

01/12/2026

February 10, 2026

10:30 a.m. *Wiley v. Furman* ..... #52669

CASES IN ALPHABETICAL ORDER BY CATEGORY – DECEMBER 2025

CIVIL APPEALS

Divorce
Whether the lower courts erred in holding the downfall of Husband's company did not entitle him to relief from the provision of the stipulated divorce decree requiring him to make monthly equalization payments to Wife for the value of her interest in the company at the time of the divorce.

Jones v. Jones
Docket No. 52992
Court of Appeals

Whether the magistrate court erred by dividing community property in a manner that required ex-spouses to become equal shareholders in a closely held corporation because such division failed to disentangle the parties.

Needham v. Needham
Docket No. 53034
Supreme Court

Estoppel
Whether Defendant was judicially estopped from asserting an ownership interest in the subject properties because he did not identify the properties as assets in a prior bankruptcy proceeding.

Est. of John W. Clark v. Jay P. Clark
Docket No. 52701
Supreme Court

Immunity
Whether the Idaho Department of Transportation is immune under the Idaho Tort Claims Act from liability for the injuries Plaintiff suffered after his vehicle collided with a cow on Interstate 84.

Ludwig v. Howard
Docket No. 52067
Supreme Court

Jurisdiction
Whether the district court committed reversible error when it disregarded the Arizona court's continuing jurisdiction over Plaintiff's ward and its ruling that Plaintiff's ward lacked capacity to transfer her interest in Bonner County Real Estate.

Shaw v. Shaw
Docket No. 52216
Supreme Court

Public Records
Whether the district court erred in submitting the issue of punitive damages to the jury and in not expanding the punitive damages instruction to include a proportionality requirement between actual harm and any punitive award.

Posey v. Bushnell
Docket No. 52072
Supreme Court

Summary Judgment
Whether the district court erred by ruling on summary judgment that the Sewer District was authorized to charge additional fees because the increase is Plaintiffs' use of the wastewater system between 1991 and the present constituted a substantial change in use under the relevant ordinance.

BTR Enter., Inc. v. Hayden Lake Sewer Dist.
Docket No. 52668
Supreme Court

CRIMINAL APPEALS

Evidence
Whether the district court abused its discretion by permitting the responding officers to give expert testimony on the cause of the victim's injuries where the State never disclosed the officers as expert witnesses.

State v. Hinkel
Docket No. 51754
Court of Appeals

Whether the district court abused its discretion by excluding evidence of the witness' prior felony conviction for robbery under I.R.E. 609(b) where the witness had been incarcerated on the conviction within ten years of Defendant's trial on the attempted murder charge.

State v. LaPlante
Docket No. 51895
Court of Appeals

Whether the district court abused its discretion by permitting the State to introduce evidence of Defendant's alleged commission of a similar crime, in violation of I.R.E. 404(b) and I.R.E. 403.

State v. Johnson
Docket No. 52163
Court of Appeals

Procedure
Whether the district abused its discretion by denying Defendant's motion for a new presentence investigation report and motion to continue the sentencing hearing.

State v. Cardwell
Docket No. 52151
Court of Appeals

Sufficiency of Evidence
Whether Defendant is entitled to an acquittal on the felony DUI enhancement because the State failed to present sufficient evidence to prove Defendant was the person identified in the prior judgment of conviction.

State v. Lane
Docket No. 52212
Court of Appeals

Summarized by:
Lori Fleming
Supreme Court Staff Attorney
(208) 334-2246

Keeping Track

Despite our best efforts, there are times when the Idaho State Bar is not informed of a member's death. Upon learning of a fellow attorney's death, please feel free to contact Calle Belodoff with the information at **cbelodoff@isb.idaho.gov**. This will allow us to honor the individual with details in "In Memoriam."

IDAHO STATE BAR

THE JOB INTERVIEW

ISB
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The Idaho State Bar has job postings on its website.
Searching & posting is free and easy.

Visit isb.idaho.gov to find your next opportunity or your next candidate!

Robert S. Campbell, Jr.
1933 – 2025

Robert (Bob) Sanders Campbell, Jr., died on Saturday, November 29th, at his home in Naples, Florida.

Bob was raised in Boise by his father, Robert Sanders Campbell and mother, Edythe Perrault Campbell. While in college at the University of Idaho (U of I), he was a dedicated member of the Sigma Chi Fraternity, and, as a proud lefty, he soon found a lifelong passion for golf at which he excelled as a varsity player for the school, and was an Idaho State Amateur Champion.

Bob met the beloved Karen Hinckley and they married in 1955 while in college. Bob went to U of I for law school and had some legal studies at the University of Colorado, where he also served in the Judge Advocate General Corps for the U.S. Army. Bob was admitted to the Idaho State Bar in 1958. He and Karen then moved to Salt Lake City, where they raised three children, before divorcing in 1993. Bob had a distinguished five-decade career as an attorney in Salt Lake City, specializing in business and antitrust law.

Bob was an active member of the community, and a very invested father. He held a deep respect for the American justice system and rule of law. Early on, Bob led the legal case to expand airline access to Salt Lake City, helping to transform a sleepy intermountain town into a metropolitan hub with international travel connections. He subsequently argued cases before the Utah Supreme Court and the Supreme Court of the United States. His practice was broad, representing large global companies in complex business litigation, and he both formed and affiliated with the best firms in the state.

After a short time at the Utah Attorney General's Office, he began his private practice at Parsons, Behle & Latimer, ultimately founded Watkiss & Campbell and then Campbell, Maack & Sessions, and in his later years affiliated with the firm of VanCott Bagley, Cornwall & McCarthy. Bob always felt he was surrounded by some of the finest legal minds through his colleagues in Salt Lake and held lifelong friendships with many to this day.

Bob's legal prowess was often recognized locally and beyond. A fellow in the prestigious American College of Trial Lawyers since 1983, Bob subsequently became a member of the International Academy of Trial Lawyers. In 1992, he was named Utah's Trial Lawyer of the Year.

In 1995, Bob met and married Charlotte Brown, his love and partner for the remainder of his life. They spent many happy years together England, Salt Lake City, Utah, and Naples, Florida where they retired, found friends, supported the local arts and music community, and used as a home-base for many world travels, a shared passion.

Bob is survived by: his wife, Charlotte Joyce Campbell, his three children and their spouses, Courtney Scott Campbell (Marie), Randall Sanders Campbell (Daska), and Kristin Ann Campbell (Robert Samuelson); his stepson and wife, Dominic and Michelle Brown; his grandchildren and two great-grandchildren Ashton and Penelope Douglas.

Terry Hollifield
1947 – 2025

Terry Hollifield, a beloved figure in the community and an esteemed member of the agricultural world, passed away on June 9, 2025, at his farm in Hansen, Idaho. He was born on October 5, 1947, in Twin Falls, Idaho, to Clarence and Helen Hollifield. He loved his upbringing on the family farm and raised pigs, sheep and many other entrepreneurial endeavors. Forever passionate about agriculture, Terry proudly worked alongside his son, Larry Hollifield, greatly expanding the family farm. Terry had a personal passion in running a feed yard that cared for 4,000 to upwards of 8,000 head of cattle. His skill in feeding, caring for livestock, and negotiating within the industry marked him as a standout in his field for many years.

Terry graduated from Hansen High School in 1965, then attended the University of Idaho. There, he was a dedicated member of the Phi Delta Theta fraternity. One of his brothers introduced Terry to the love of his life, Carol Blodgett. They were married in August of 1970 and would have celebrated their 55th wedding anniversary this August. After Terry completed his degree in agricultural economics, he pursued his law degree at the University of Idaho and was admitted to the Idaho State Bar in 1972. He maintained his law certification for over 53 years. Though he received his law degree, agriculture was always Terry's passion. He said he liked to look behind him at the end of the day and see what he'd accomplished. Terry accomplished a lot in over 50 years in agriculture.

Terry's contributions extended beyond his career—he served as a board member for the Hansen School District for 12 years, was involved with the Idaho Livestock Hall of Fame, was a supporter of the University of Idaho's Steer-a-Year program, and Vandal Scholarship Fund. His commitment to education and youth was evident in all aspects of his life.

Terry is survived by his loving wife, Carol Hollifield; his son, Larry Hollifield; his daughter, Margi Gunter (Clint); and six grandchildren: Aden Hollifield of Twin Falls, Peyton and Colbi Hollifield of Filer, and Vivi, Ali, and Vince Gunter of Sandpoint. He leaves behind his beloved forever daughter-in-law, Christi Hollifield of Filer. Terry is also survived by his sister Nancy Taylor of Twin Falls, niece Paige Duerr and numerous cousins.

He is preceded in death by his parents, Clarence and Helen Hollifield, and his older brother, Bill Hollifield.

Eric Barzee
1972 – 2025

Eric Milton Barzee, 53, of Rexburg, Idaho, passed away Thursday, December 18, 2025, at Madison Memorial Hospital following a heart attack. Eric was born in Corvallis, Oregon, on May 19, 1972, to Milton Arlo Barzee and Ellen Furness Barzee. He was the youngest of three children and grew up in Rexburg. He graduated from Madison High School in 1990. He went on to graduate from Brigham Young University in 1996 and J. Reuben Clark Law School in 1999. He

was admitted to the Idaho State Bar in 2004. Eric and the love of his life, NiCole, were married on July 22,1995. Together they have six wonderful children.

Eric was an avid admirer of nature and loved to be outdoors. He found great joy in his family and loved to support all of their ambitions. His entrepreneurial spirit will live on through his children. In recent years, he started Spruce Moose Tree Farm and loved tending to his trees and making friends with his customers.

At the time of his death, Eric was Chief Intellectual Property Counsel for Battelle Energy Alliance (Idaho National Laboratory) in Idaho Falls, Idaho. He is survived by his wife, NiCole Baker Barzee and their six children: Abby Barzee (Esteban Galan), James (Kenadee) Barzee, Jessica (Matthew) Hansen, Alexander (Chelsey) Barzee, Ethan Barzee, and Evan Barzee; grandchild, Sadie Hansen; mother, Ellen Barzee; and siblings, Rex (Jennifer) Barzee and Lucy (Paul) Dahl. He was preceded in death by his father, Milton Barzee.

Hon. William H. Woodland
1941 – 2025

Judge William (Bill) Henry Woodland was born February 16, 1941 to James Henry and Edith Ione Walker Woodland, the youngest of five living children. He began his life in an incubator on a small, rural farm on Philbin Road. His mother diligently cared for her tiny son, and eventually he began to thrive and grow. He was very close to his older brother Jim, and they enjoyed exploring and working the farm. He learned to play the accordion at a young age. Every Christmas, he would pull out the accordion and play Christmas carols while the rest of the family would carol to the neighbors.

Bill attended Jefferson Elementary, Pocatello High School, Ricks College, Idaho State University, and the University of Utah Law School, where he completed his educational journey. He was admitted to the Idaho State Bar in 1973.

He worked in both Utah and Idaho as a lawyer, until his appointment in 1978 as a magistrate judge. He became a District Judge for the Sixth Judicial District in 1982 and retired from his bench in 2003. He continued working as a Senior Judge for several more years.

He married Michelle Holman on November 23, 1966 in the Idaho Falls Temple. They were the parents of seven children. Bill always said his family was his greatest accomplishment, and he spent his time teaching them to work and to worship.

Bill liked to spend time outdoors, riding horses, hiking, biking, and skiing. He, along with his horse, Snap, enjoyed giving wagon and sleigh rides to his children, grandchildren, and neighbors. He was also interested in his family history, and an important place in his life was Nauvoo, Illinois.

The circumstances of his death were unexpected, and his family is grateful for the outpouring of support from the family and community. They are also grateful for the many people who gave their time and resources to search for our dad. Thank you to the Sheriff's Department, the Search and Rescue volunteers, the Fish and Game employees, and the Reservation authorities for their diligence and collaboration. A special thanks to the Alameda Stake and Ward members, and their army of volunteers, along with so many unnamed and unheralded searchers.

Bill is survived by his children; Michele Watkins (Aldon), Debbi Kinghorn (Brian), Kris Olsen (Matt), Bill Woodland (Fabiola), Richard Woodland (Sonya), Jeff Woodland (Jamie), and Jennifer Higbee (Michael), and many grandchildren and great-grandchildren.

He was preceded in death by his wife, Michelle Holman Woodland, his parents, James Henry and Edith Ione Walker Woodland, and his siblings, Donna Lee Frogley (sister), Gaynor Keller (sister), Lynette Parkinson (sister), and Jim Woodland (brother).

Harry Clifford De Haan
1945 – 2026

Harry Clifford De Haan, VI, passed away peacefully at his home in Filer on Thursday, January 8, after a courageous and valiant battle with cancer. His time came peacefully, surrounded by his family, at the age of 80 years.

Harry was born on February 6, 1945, to Harry and Dorothy De Haan in Grand Rapids, Michigan. He was the fourth of ten children and the first son born to his parents. He was raised in the middle of the Dutch immigrant, working-class community, surrounded by a large extended family.

Harry graduated from high school in 1963 and worked for several years before serving in the Army during the Vietnam War—flying helicopters in combat and combat-support missions. He was awarded the Air Medal for his bravery and heroism over many mission flights, in addition to several other medals.

Upon returning to Michigan, Harry graduated from Michigan State University with a B.S. in animal husbandry. While at Michigan State, he was a proud member of the Block and Bridle Club and rodeoed as a saddle bronc rider. Harry then attended the Southern Methodist University Dedman School of Law, earning his Juris Doctorate. After law school, Harry moved to Hobbs, New Mexico, where he practiced as a criminal defense attorney.

Harry moved to the Magic Valley in the late 1970s and began what was a very successful legal career. He was admitted to the Idaho State Bar in 1977 and was appointed the Twin Falls County Prosecutor in the early 1980s. In 1984, opened his own private practice. Harry would go on to practice law for nearly the next 40 years, representing many clients, including a class action lawsuit against Cargill Corporation. Whether at the office, in court, or in other various legal-related matters, he always made room for his daughters and included them in his life. And he often did all of this in socks, having kicked off his dress shoes at some point during the day.

Harry is survived by his daughters, Jennifer (Trent) Cummins, Katherine (Keegan) Conro, granddaughter, Madison Conro and his love, Susan Schwabacher. He is also survived by his siblings, Nick De Haan, Betsy De Haan, Ruth Cain, Brenda Stevens, and many nieces and nephews. He was preceded in death by his parents, Harry and Dorothy De Haan, and siblings Gladys Schipper, Joyce Puls, Joann DeGood, Herman De Haan, and Marilyn Welsh.

Idaho Supreme Court Annual Memorial Service

STATEWIDE—The Idaho Supreme Court will hold its annual Memorial Service at 10 a.m. on Friday, March 6, 2026, in the Supreme Court courtroom.

The Memorial Service honors judges and members of the Idaho State Bar who passed away during the previous year. Remarks will be delivered in memory of those honored and several memorial resolutions will be read.

The Memorial Service will be streamed on Idaho in Session at the following link: https://www.idahoptv.org/shows/idahoinsession/judiciary.

Idaho Office of Administrative Hearings Welcomes Newest Judge

STATEWIDE—The Idaho Office of Administrative Hearings welcomed its newest Administrative Law Judge, Mychal Schwartz, in November 2025. ALJ Schwartz comes from the Washington OAH, where he served as the Division Chief ALJ for the Public Assistance and Health Division.

New Chief Judge Selected for Idaho Court of Appeals

STATEWIDE—Idaho Court of Appeals Judge Michael Tribe has been selected as that court's next chief judge for a two-year term starting January 2026.

The Court of Appeals is made up of four judges who, in panels of three, hear appeals from Idaho's trial courts as assigned by the Idaho Supreme Court. The chief judge is chosen from among those four judges, presides over the Court of Appeals and oversees its administration.

Chief Justice G. Richard Bevan named Judge Tribe as the next chief judge in an order earlier this fall.

Judge Tribe was appointed to the Court of Appeals in January 2024. Before that, he served as a district judge for seven years. As chief judge he succeeds Judge David Gratton, whose term as chief judge ends this month.

Trudy Fouser Honored with IADC's Most Prestigious Award

BOISE—At the Idaho Association of Defense Counsel's 61st Annual Meeting (Sun Valley, ID), Trudy Fouser of Gjording Fouser law firm in Boise was presented with the association's most prestigious award, The Carl P. Burke Award of Excellence in Legal Defense.

Trudy Fouser has been lead counsel for health care facilities, governmental entities, businesses and professionals in more than 65 medical malpractice, employment law, and personal injury civil jury trials.

Ms. Fouser's superior trial skills have resulted in her being inducted into two prominent and invitation-only trial organizations—the American College of Trial Lawyers (ACTL) and the American Board of Trial Advocates (ABOTA). A lawyer must serve as lead counsel in at least 50 civil trials that are tried to jury verdict to become an Advocate of ABOTA. She is one of only 10 lawyers, and the only female lawyer, in the State of Idaho who has been inducted into ABOTA. She was also Idaho State Bar president, a 4th District Bar Commissioner, President of the Idaho Chapter of the Federal Bar Association, and on the Board of Idaho Women Lawyers.

Trudy Fouser with her son Taylor, who was able to present the award to his mother.

Idaho Court of Appeals Announces Two Retirements

STATEWIDE—Two members of the Idaho Court of Appeals have announced their expected retirements in 2026.

Judge David Gratton expects to retire on March 31. Judge Molly Huskey plans to retire on June 30.

Combined, both judges have served 32 years with Idaho's judiciary. Judge Gratton was appointed in 2009 to a newly created seat on the Court of Appeals. Judge Huskey was appointed as a district judge in 2011, then named to the Court of Appeals in 2015.

The Court of Appeals is made up of four judges who, in panels of three, hear appeals from Idaho's trial courts as assigned by the Idaho Supreme Court.

Under state law, Gov. Brad Little will appoint successors to the two judges to serve the rest of their terms, selecting from applicants recommended by the Idaho Judicial Council.

Professional Award Nominations – Deadline Feb. 6th

STATEWIDE—The Idaho State Bar Board of Commissioners is now soliciting nominations for professional awards. These awards were initiated by the Board of Commissioners to highlight members who demonstrate exemplary leadership, direction, and commitment in their profession.

Distinguished Lawyer Award: This award is given to an attorney (or attorneys) each year who has distinguished the profession through exemplary conduct and many years of dedicated service to the profession and to Idaho citizens.

Distinguished Jurist Award: This award recognizes excellence, integrity, and independence by a member of the judiciary. Nominees are selected for their competence, fairness, goodwill, and professionalism.

Professionalism Awards: These awards are given to at least one attorney in each of Idaho's seven judicial districts who has engaged in extraordinary activity in his or her community, in the state, or in the profession, which reflects the highest standards of professionalism.

Pro Bono Awards: Pro bono awards are presented to attorneys from each of the judicial districts who have donated

extraordinary time and effort to help clients who are unable to pay for services.

Service Awards: Service awards are given each year to lawyers and non-lawyers for exemplary service to the Idaho State Bar and/or Idaho Law Foundation.

Outstanding Young Lawyer: The purpose of this award is to recognize a young lawyer who has provided service to the profession, the Idaho State Bar, Idaho Law Foundation, and the community, and who exhibits professional excellence.

Section of the Year: The Section of the Year Award is presented in recognition of a Practice Section's outstanding contribution to the Idaho State Bar, to their area of practice, to the legal profession, and to the community.

Recipients of the awards will be announced in March. The Distinguished Lawyer, Distinguished Jurist, Outstanding Young Lawyer, Section of the Year, and Service Awards will be presented during the Annual Meeting in June 2026 in Boise. Professionalism and Pro Bono Awards will be presented during each district's annual Resolutions (Roadshow) Meeting in November.

Award nominations should include the following: name of the award; name, address, phone, and email of the person(s) you are nominating; a short description of the nominee's activity in your community or in the state that you believe brings credit to the legal profession and qualifies them for the award you have indicated; any supporting documents or letters to consider with the nomination; and your name and contact information.

You can nominate a person for more than one award. Nominations are accepted throughout the year. Submit nominations for the 2026 Awards by Friday, February 6, 2026. https://laserfiche.isb.idaho.gov/Forms/Award-Nominations

Continuing Legal Education

February

4 *Handling Your First or Next Real Estate Case*
The Law Center / Live Webcast
2.0 CLE credit – NAC Approved

6 *Generative AI in Law Practice: Opportunities and Ethical Perils*
1.0 Ethics credit

9 *2026 Ethics Update Part 1*
1.0 Ethics credit

10 *2026 Ethics Update Part 2*
1.0 Ethics credit

12 *Primer on Taking and Defending Depositions*
UI College of Law – Boise / Webcast

13 *Professionalism for the Ethical Lawyer*
1.0 Ethics credit

19-21 *44th Annual Bankruptcy Seminar*
The Grove Hotel - Boise

20 *Lawyer Ethics in a Digital World*
1.0 Ethics credit

26 *Lawyers Supervising Lawyers: Navigating Ethical Responsibilities*
1.0 Ethics credit

27 *Litigation Ethics: Disqualification and Sanctions*
1.0 Ethics credit

= In Person
= Live Webcast
= Live Audio Stream

March

11 *Communicating in Opposing Counsel & the Courts: Professionalism and Ethics*

19 *2026 Fourth District Bar Spring Case Review*

24 *Cybersecurity Breaches: How to Advise Clients When the Inevitable Happens*

25 *Navigating Conflicts of Interest, Part 1*

26 *Navigating Conflicts of Interest, Part 2*

For more information and to register, visit www.isb.idaho.gov/CLE.

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- Employment
- Personal Injury
- Family Law
- Life Care Plans
- Vocational Assessment
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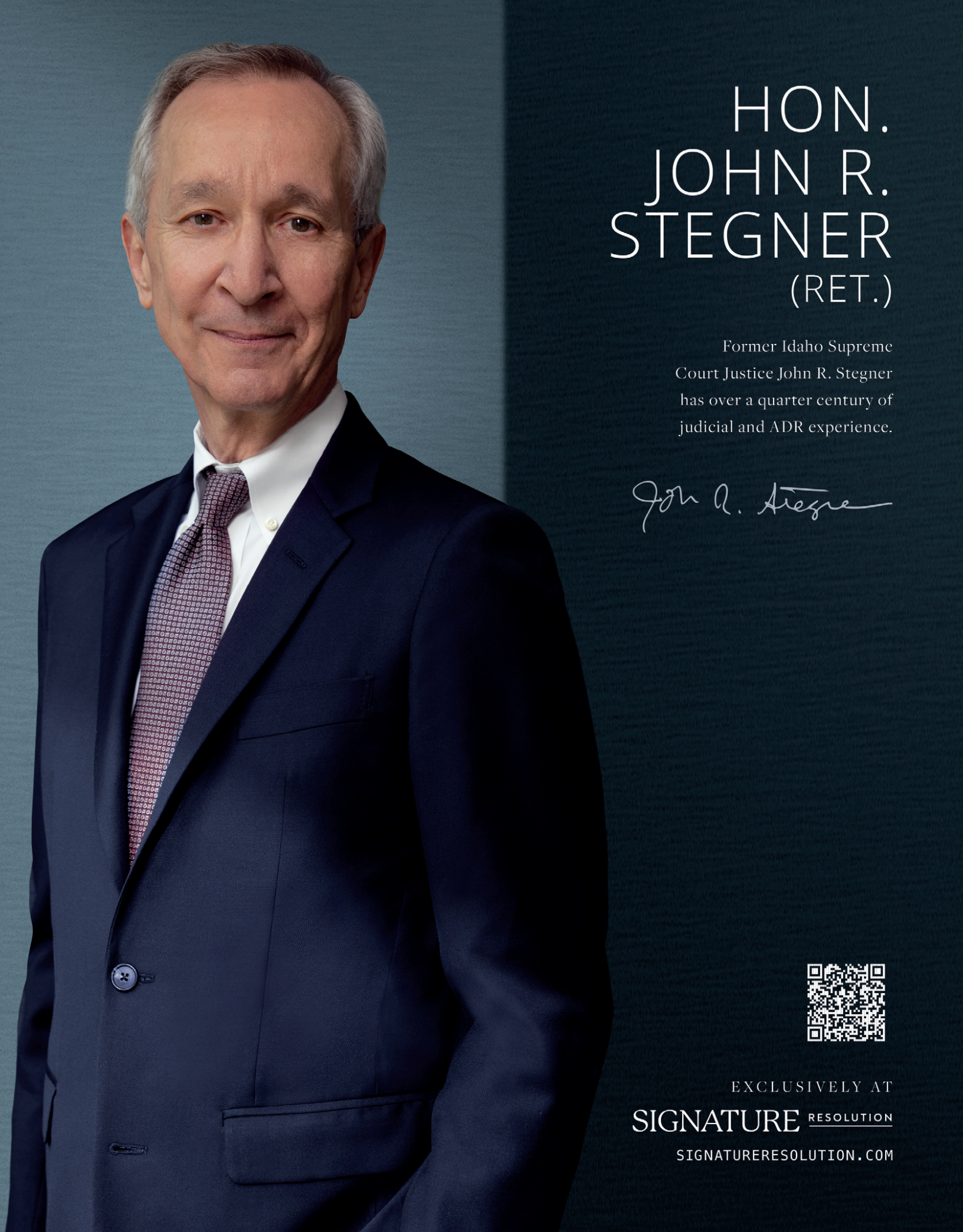
HON.
JOHN R.
STEGNER
(RET.)
Former Idaho Supreme Court Justice John R. Stegner has over a quarter century of judicial and ADR experience.
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