

the ADVOCATE

October 2026

Volume 69 | No. 10

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PLUS

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On the Cover



The State Public Defender Office (SPD) was created to improve public defense and provide representation throughout Idaho. This issue's special feature discusses the crucial role the State Public Defender plays and how they are working to transform indigent defense in Idaho.

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DANIEL W. MCKAY (Public Reprimand)

The Professional Conduct Board has issued a Public Reprimand to Daniel W. McKay following a stipulated resolution of an Idaho State Bar (“ISB”) reciprocal disciplinary proceeding. On December 19, 2025, the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Mr. McKay for violating Utah Rules of Professional Conduct 1.3, 1.4(a), 1.4(b) and 3.4(d). Those Utah Rules of Professional Conduct correspond to the same Idaho Rules of Professional Conduct. The Order relates to the following facts and circumstances.

Mr. McKay represented a client in a lawsuit in which the court granted a statement of discovery issues ordering his clients to supplement their discovery responses and pay attorney’s fees to the opposing parties. The court also warned Mr. McKay’s clients that, if they did not supplement their discovery responses by the court-imposed deadline, it would “strongly consider” entering a default judgment against them. On the day after the deadline, Mr. McKay filed a certificate of service indicating that he had served supplemental responses. However, Mr. McKay did not serve written supplemental responses and instead served a stack of documents with his client’s hand-written notes interspersed throughout. The opposing parties then filed a second statement of discovery issues, contending that the supplemental responses were inadequate and that Mr. McKay’s clients had not paid the attorney’s fee award. Although Mr. McKay and his clients dispute whether the clients told Mr. McKay he

did not need to respond to the statement of discovery issues, Mr. McKay did not file a response. The court then entered a default judgment in favor of the opposing parties, dismissed Mr. McKay’s clients’ counterclaims, and ordered the clients to pay additional attorney’s fees.

The Public Reprimand does not limit Mr. McKay’s eligibility to practice law.

Inquiries about this matter may be directed to: Bar Counsel, Idaho State Bar, P.O. Box 895, Boise, ID 83701, (208) 334-4500.

JOHNATHAN R. BALDAUF (Suspension)

On September 10, 2026, the Idaho Supreme Court entered a Disciplinary Order suspending attorney Johnathan R. Baldauf for one year, with all but ninety (90) days withheld.

The Idaho Supreme Court Disciplinary Order followed a stipulated resolution of an Idaho State Bar formal charge disciplinary matter. The formal charge matter related to Mr. Baldauf’s representation of a client in a civil rights case. Despite his admitted inexperience with civil rights cases, Mr. Baldauf filed a lawsuit in the United States District Court for the District of Idaho against the City of Boise, and two Boise Police Department officers (collectively “Defendants”), alleging unlawful arrest, retaliatory arrest, excessive force, malicious prosecution, and failure to intervene. Mr. Baldauf timely provided Defendants with a thumb drive containing some videos taken on the night of the arrest but did not provide any written discovery responses or other information required under Federal Rule of Civil Procedure 26. Thereafter, Mr. Baldauf failed to respond

to discovery requests, which resulted in Defendants filing a motion for sanctions. Mr. Baldauf failed to object to Defendant’s motion for sanctions, which the Court granted. The Court’s order limited the evidence Mr. Baldauf’s client would be able to utilize in the case and awarded Defendants \$3,939.30 in attorney fees. Defendants also filed a motion for summary judgment. Mr. Baldauf failed to respond or object to Defendants’ motion for summary judgment. The Court granted the motion for summary judgment and the case was dismissed. Mr. Baldauf’s client retained new counsel who negotiated the release of the sanction award in exchange for waiving his right to appeal the Court’s decision dismissing his claims.

The Idaho Supreme Court found that Mr. Baldauf’s inaction throughout the case violated Idaho Rules of Professional Conduct (“IRPC”) 1.1 [a lawyer shall provide competent representation to a client], IRPC 1.2(a) [a lawyer shall abide by a client’s decisions concerning the objectives of representation], IRPC 1.3 [a lawyer shall act with reasonable diligence and promptness in representing a client], IRPC 1.4(a) [a lawyer shall keep the client reasonably informed about the status of the matter], IRPC 3.4(c) [a lawyer shall not knowingly disobey an obligation under the rules of a tribunal], IRPC 3.4(d) [a lawyer shall not fail to make reasonably diligent efforts to comply with legally proper discovery request by an opposing party], and IRPC 8.4(d) [it is professional misconduct for a lawyer to engage in conduct prejudicial to the administration of justice].

Inquiries about this matter may be directed to Bar Counsel, Idaho State Bar, P.O. Box 895, Boise, Idaho 83701, (208) 334-4500

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12-2 pm at the Idaho State Bar

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Letter to the Editor

Dear Editor:

I am a Referee at the Idaho Industrial Commission, overseeing and ruling on contested workers' compensation files. I came to work at the Commission thirteen years ago, after thirty years of private practice as an insurance defense attorney, having done no workers' compensation work. Prior to applying for the position, I was not even aware there was such thing as an Industrial Commission Referee. This is probably true for a large segment of Idaho's attorneys. My goal is to shed light on what is one of the best positions in the legal field and to encourage other attorneys to consider this career path.

Let's start with the elephant in the room – the position is underpaid from a pure paycheck point of view, which admittedly is discouraging to some attorneys. However, when one considers the additions to the semiweekly paycheck, such as health benefits for the employee and family, generous vacation and sick leave, retirement and life insurance benefits, just to name a few, the financial package is not as disparate as one would think when comparing it to the private sector.

Besides pay, on any other matrix, it would be difficult to find a better job. As any attorney in private practice knows, the pressures of our profession are immense. Whether it is documenting each minute of the day, scrambling to meet minimum billable hours over a seventy-hour week, to making sure premiums for malpractice, health insurance, worker's compensation or quarterly taxes are current, paying rent, overhead and social security, or finding help when a secretary abruptly quits, these pressures take a toll. Office politics, changing demands, and client uncertainty keep many attorneys awake on a weekly basis. Deadlines constantly haunt practitioners. Dealing with clients who, let's face it, are not always the most rational beings

on the planet, some of whom have no problem filing complaints with the Bar, no matter how groundless, is a never-ending source of frustration. The list of pitfalls lying in wait for private practice attorneys could go on for pages.

Now, imagine a job where time tracking is nonexistent, all dues and fees are paid for you, health insurance premiums are minimal, not just for you but for your whole family, overtime work is discouraged to the point of almost being not allowed, evenings and weekends are not burdened with nagging notions that there was some overlooked deadline approaching, and you have autonomy to conduct your work as a professional in a low-key, welcoming environment, with like-minded colleagues. There is no competition to outshine one another, as there is no fictitious brass ring everyone is scrambling to find. The proverbial "door is always open" attitude is on full display daily.

This job is truly fun. When I get asked "when are you going to retire?" my response is always the same – "I retired thirteen years ago when I took this Referee position." It is so low stress and so congenial, I truly enjoy coming to work. Blended scheduling, with up to two days a week for work from home, adds to the flexibility.

So, who would be a good candidate for a Referee position at the Industrial Commission?

If any of the following apply, the answer is you:

- Someone who has been in practice for a number of years and is tired of the constant pressure of the grind, who wants to do something meaningful with the remainder of their career;
- Someone interested in accumulating a very comfortable retirement, and is willing to forgo instant income for a future lifestyle of plenty;
- Someone who has a family member with significant medical needs and

for whom private insurance is difficult to find or afford;

- Someone who is sick of office politics, gamesmanship, or petty behavior at work;
- Someone who enjoys their time off, weekends free of work or worry about work;
- Someone who is interested in a position that qualifies for Public Student Loan Forgiveness (PSLF);
- Someone who enjoys tackling interesting and oftentimes novel legal questions;
- Someone who loves judging difficult facts, always impartially seeking justice for all involved;
- Someone who has better things to do than try to run a business and be a lawyer at the same time;
- Someone who enjoys being part of a team but also enjoys the autonomy of being able to make independent decisions;
- Someone who has the insight to keep litigation progressing smoothly, even when the parties are at odds.

If this lifestyle sounds appealing to you, please consider applying for a Referee's position with the Idaho Industrial Commission, now or in the future, as openings occur. While the Commission is always looking for that right person, so too, I want to make sure the right person knows about the Commission. Thank you.

INDUSTRIAL COMMISSION



Brian Harper, Referee



How to advertise in The Advocate



The Idaho Prosecuting Attorneys Association wishes to provide the following notice to Defense Counsel who have handled any criminal case(s) that included evidentiary DNA analysis by the Idaho State Police Forensics Lab between February 2024 and December 2025. Further inquiry should be directed to the County Prosecutor's Office in which the charges were originally filed.



Colonel Bill Gardiner
Director

Idaho State Police

Service Since 1939



Brad Little
Governor

To: Idaho Prosecutors

From: Matthew Gamette, ISP Forensic Services Laboratory System Director

Subject: DNA Reagent Notification

Date: August 10, 2026

As part of its ongoing quality assurance efforts, Idaho State Police Forensic Services (ISPFS) is providing notice regarding an issue identified during an internal quality review involving DNA testing performed between February 2024 and December 2025.

During the quality review, ISPFS determined that a reagent prepared on October 5, 2023, by a biology/DNA analyst contained a slightly different acid than the one specified in laboratory procedures. That reagent was later used to prepare three separate lots of a secondary reagent, known as TE buffer. Following the laboratory's normal preparation, validation, and deployment process, those lots were placed into service and used in casework between February 2024 and December 2025. Upon discovery of the issue, the affected reagents were immediately removed from service, and a review was initiated.

TE buffer is used during several stages of DNA analysis, including DNA quantitation, amplification, and sample normalization, when necessary. ISPFS conducted extensive research and testing to evaluate the potential effect of this substitution on DNA casework. The results demonstrated that the effect of the acid substitution on the amplification process was minimal and did not lead to incorrect DNA profiles. The review further determined that the issue did not result in contamination, incorrect allele calls, or erroneous DNA profiles.

The greatest potential effect would involve reduced signal strength in samples containing very small amounts of DNA. In practical terms, this could affect the ability to include or exclude a low-level contributor within a mixed DNA profile, causing the low-level contributor to potentially be deemed uninterpretable. However, the laboratory's review did not identify any such instances in the cases evaluated.

ISPFS completed a root cause analysis and implemented corrective actions immediately after the issue was discovered. In most cases, sufficient DNA material remains available to repeat the testing process, if necessary. Although no impacted cases have been identified, ISPFS believes it is important to provide this information so that prosecutors, as well as defense counsel, have complete and accurate information when reviewing potentially affected cases. ISPFS is prepared to review or retest any case for which additional evaluation is requested.

Please contact Matthew Gamette matthew.gamette@isp.idaho.gov or Rylene Nowlin at rylene.nowlin@isp.idaho.gov with any questions regarding specific cases or requests for additional review or retesting.

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EQUAL OPPORTUNITY EMPLOYER

Jackrabbits, Legal Deserts, and the Ghost of Julia Staab

Leslie Hayes

The Jackrabbit¹ Bar Conference

The Jackrabbit Bar Conference is an annual conference of camaraderie and interactions between bar leaders from Idaho, Montana, Nevada, New Mexico, North Dakota, South Dakota, Utah, and Wyoming. The states rotate as host each year and the group gathers to network and discuss issues specific to small, rural, and mandatory bars. This year's host was New Mexico where we were able to convene in Santa Fe to learn about the history and heritage of the black presence in the legal profession in New Mexico, Land Grants in New Mexico, and how New Mexico's Supreme Court is working to modernize the legal profession. Beyond the learning, professional relationships were formed, and, most importantly, Team Alexander Hamiltater² took home the scavenger hunt grand prize after completing a thorough walking tour of Santa Fe's sites!³ This article will focus on the New Mexico Supreme Court's attempt to address legal deserts in its state and will conclude with a fun story about New Mexico's famous friendly ghost.

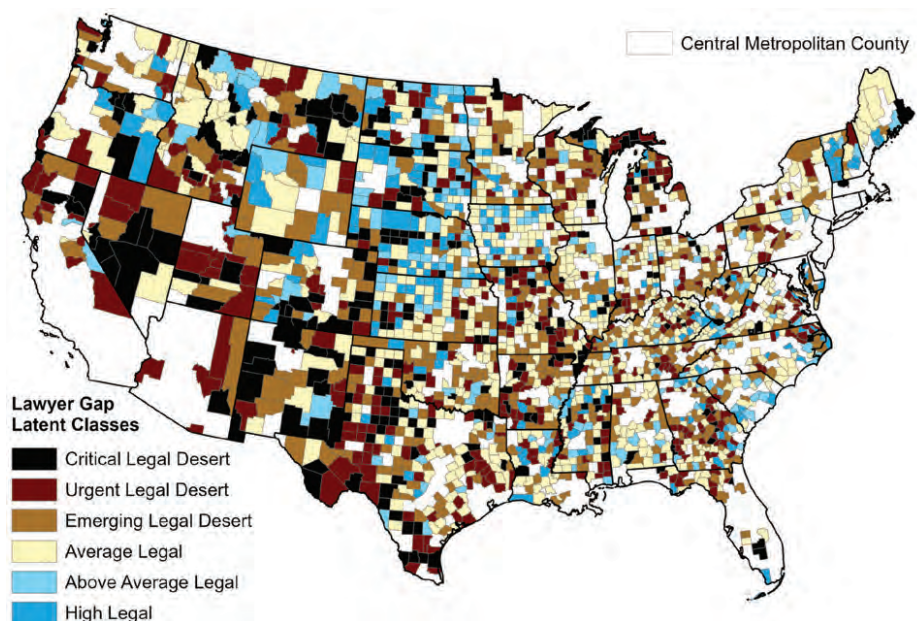
Modernizing the Practice of Law in New Mexico

One of the presentations at the Jackrabbit was how New Mexico is addressing legal deserts and alternative paths to

licensure.⁴ New Mexico has formed two different committees to study avenues to address legal deserts: one that will look specifically at the licensure process and barriers to licensure in rural areas and one that will examine new categories of legal service providers (i.e., community justice providers). The presentation and resulting questions led to a good discussion amongst attendees on how their own states are attempting to address similar problems and conversations they are having around identifying what the access to

justice problem is and what precise problem the state is trying to solve.

Through my work on the Commission, I have also been involved in conversations surrounding legal deserts and issues specific to access to justice in Idaho. "Everyone agrees that there are areas of high legal need . . . But many disagree on how exactly to calculate that need."⁵ As noted by my fellow Commissioner, FJ Hahn, the ABA has taken the definition of "less than one lawyer per 1,000 people," which based on numbers, renders the entire state of Idaho



Lawyer gap classification for non-metropolitan counties. Reproduced with permission from Peters from "Understanding Rural Legal Deserts to Inform Public Policy."



Conference Attendees from Idaho.



New Mexico Supreme Court's golden doors.



The "ghost" of Julia Staab.

a legal desert. However, the problem is more complex than that. "If a community has no one to do wills and estates or family law, but the single lawyer for 60 miles is doing mostly real estate, then legal needs are left on the table."⁶ The National Center for State Courts has been studying data beyond just the number of people and the number of lawyers, it is looking to "ages, as well as other characteristics about the area, including common language proficiency, internet access, distance to a courthouse, income distribution, and more."⁷

Legal deserts are complicated because "how do you measure the presence of legal services, and where do you get the data?"⁸ Finally, as FJ's article demonstrates, not every state agrees on the same solution and not every solution is achievable or viable. I challenge you to think about legal deserts, your own practice, and how you might help solve the problem of affordable access to legal services within our state.⁹

Julia Staab: Santa Fe's most famous friendly ghost

Finally, I would be remiss to not mention that the conference was hosted at a haunted hotel. So, I will conclude with the story of Abraham and Julia Staab and how Julia became Santa Fe's most famous ghost.

Julia was born in 1844 in Germany and married a Santa Fe merchant, Abraham Staab in 1865.¹⁰ In 1865, Santa Fe was an outpost in the American West that pre-dated statehood by forty-seven

years.¹¹ Abraham built what is now La Posada de Santa Fe in 1882—a three-story mini palace in the French Second Empire style.¹² The Staab house still stands today in the main entrance of the hotel with the house now hosting the hotel lounge. One can still see where the main entrance to the house was and the hotel has preserved the family mezuzah in the entry way.

It is said that Julia had a troubled life and an early death in 1896 at the age of 52. After losing a child (her eighth live birth), her mental health declined significantly and it is rumored that she locked herself in her room for two weeks, emerging with snow white hair that had previously been dark.¹³

Julia's first sighting was by a janitor in the 1970's when he saw a translucent white-haired woman standing next to the fireplace in a Victorian-era gown.¹⁴ She is described as a benevolent spirit, "who simply appears to continue to enjoy her grand Santa Fe mansion."¹⁵ Her presence is so regular and popular, that one can even book the Julia Staab Ghost Package at La Posada de Santa Fe.¹⁶

During the conference, we attempted our own Julia siting. Alas, this is as close as we got. Enjoy!



Leslie Hayes is one of two commissioners representing the Fourth Judicial District. She has served on the Board of Commissioners for the Idaho State Bar since 2025.

The thoughts and opinions in this article are Leslie's alone.

Endnotes

1. And, yes, there is a stuffed jackrabbit that travels with the location of the conference every year.
2. The team's name clearly being a nod to one of our revolutionary spuds.
3. Including, the New Mexico Supreme Court's golden doors, the Loretto Chapel spiral staircase, and the San Miguel Mission, which was constructed in 1610 and believed to be the oldest church building in the continental United States.
4. This presentation was conducted by Chief Justice Julie Vargas and Justice C. Shannon Bacon, both of whom I had the pleasure of meeting at the National Judicial College's Harvard Judicial Executive Leadership course.
5. <https://clp.law.harvard.edu/knowledge-hub/magazine/issues/legal-deserts/mapping-legal-deserts/>
6. *Id.*
7. *Id.*
8. <https://red.library.usd.edu/cgi/viewcontent.cgi?article=1255&context=sdlrev>, p. 4.
9. Ideas include, volunteering with the Idaho Volunteer Lawyers Program, which could be as simple as a shift at the Lawyer in the Library program, or donating money to access to justice, which funds Idaho Legal Aid.
10. <https://www.discoversantafe.us/blog/the-ghost-of-julia-staab/>
11. https://en.wikipedia.org/wiki/Santa_Fe,_New_Mexico
12. <https://www.discoversantafe.us/blog/the-ghost-of-julia-staab/>
13. <https://www.santafediscoverywalkingtours.com/blog/the-ghost-of-julia-staab>
14. *Id.*
15. <https://www.laposadadesantafe.com/blog/julia-staab-ghost-package/>
16. *Id.*



Department Report: MCLE & Licensing

Kim Wilson
Annette Strauser

MCLE Department Report

The Idaho State Bar Mandatory Continuing Legal Education (“MCLE”) Department administers the rules governing accreditation of CLE programming in Idaho and monitors Idaho attorneys’ compliance with MCLE requirements.

Course Accreditation

A program must meet the accreditation standards in the Idaho Bar Commission Rules. The MCLE Department receives

over 6,000 accreditation applications annually. Individual Idaho lawyers do not pay application fees. National course providers pay a \$75 application fee.

Compliance

Idaho attorneys must complete at least 30 Idaho-accredited CLE credits every three-year reporting period, including at least three ethics credits. No more than 15 of the 30 credits can be “self-study,” which refers to an attorney watching a recorded program. Live CLE programs include in-person classes, as well as live webcasts. Attorneys can earn three hours of CLE credit for each hour spent teaching a CLE.

Attorneys can also earn up to six CLE credits per reporting period for published legal writing.

Every year, approximately 1,900 Idaho attorneys (one-third of the Active members of the Idaho State Bar) are required to report their MCLE compliance to the Idaho State Bar. The MCLE Department verifies Idaho attorneys’ compliance with the MCLE requirements.

Ongoing Work to Review MCLE Compliance Requirements

The Board of Commissioners of the Idaho State Bar approved the creation of a Mandatory Continuing Legal Education

Task Force, whose goal is to review Section IV of the Idaho Bar Commission Rules. In reviewing Section IV, the Task Force is contemplating several topics, including changes in credit hour requirements to place Idaho on parity with other states and allowing mandatory continuing legal education credit for activities other than those listed in Bar Commission Rule 404. The MCLE Task Force researched MCLE credit requirements in other states and recommended proposed rule changes to the Board. Members of the Bar will be voting on resolutions this fall which may result in changes to the current MCLE rules under Section IV.

Spotlight on MCLE Department Staff

The Idaho State Bar is fortunate to have Abby Hammett and Karen Carlisle skillfully handling thousands of CLE applications and attendance submissions, field inquiries from course providers and attorneys, and helping attorneys navigate the MCLE compliance process.



Kim Wilson is the MCLE Administrator of the Idaho State Bar. She directly oversees the MCLE accreditation and compliance processes for attorneys in Idaho. She was born and raised in Idaho, graduated from Boise State University and has been with the Idaho State Bar for nearly 15 years. She enjoys spending her free time with her family doing all the fun outdoor activities that Idaho offers.

Licensing Department Report

All Idaho State Bar members must comply with the annual licensing requirements of Section III of the Idaho Bar Commission Rules. The Licensing Department administers these rules and assists members with compliance.

Annual Licensing Renewal

The 2027 annual licensing renewal will begin in late November/early December

when the online licensing portal is opened. The deadline for paying the 2027 license fee and completing the required forms is February 1, 2027. Licensing not received by February 1 will be subject to the licensing late fee. The final deadline is March 1, 2027. The names of attorneys who do not submit their licensing by March 1 will be given to the Idaho Supreme Court for cancelation of their licenses.

License Fees for 2027:

- Active or House Counsel Member, starting with fourth full year of admission (\$485)
- Active or House Counsel in the first, second, or third full year of admission (\$350)
- Inactive or Emeritus Members (\$170)
- Senior Members (\$80)
- Members age 72 years or older, regardless of status (\$80)

Client Assistance Fund Assessment

There will be a \$20 Client Assistance Fund (“CAF”) assessment included with the 2027 licensing. The purpose of the CAF is to reimburse members of the public for all or part of any losses caused by the dishonest conduct of a lawyer admitted to practice law in Idaho. For the past ten years, the CAF has been fully funded, and no annual assessment was necessary. However, recent claims have decreased the fund balance, and the assessment is once again needed.

Idaho Code §3-409 and Idaho Bar Commission Rule 602(a) state that the CAF shall be funded by an assessment of all licensed members of the Idaho State Bar in an amount not to exceed \$20 per member. Each licensed member of the Idaho State Bar, regardless of membership category or type of practice, is required to pay the CAF assessment listed on the License Fee Notice. Failure to pay the assessment will be considered failure to complete the licensing requirements.

All Licensing will be Online

Beginning with the 2027 licensing, all renewals will be completed online. Paper

licensing packets will not be mailed. Individual attorneys and firms can submit licensing online and payments can be made by credit card or electronic check. In addition, firms can submit the licensing online and pay with a paper check by using the voucher option.

The online licensing portal will close beginning on March 2, 2027, and will not reopen until the 2028 licensing renewal period begins. All firm renewal attorney rosters from the past year will be cleared out before the next renewal period begins.

Membership Information

All members are required to provide the following membership information, which shall be considered public information:

- Full name
- Name of employer or firm (if applicable)
- Mailing address
- Phone number
- Email address
- eService Email address (active and house counsel members only)

Please remember:

- Keep the Bar informed of all changes to your membership information.
- Any changes to the above information must be submitted within thirty days – except for changes to the eService address which must be submitted within seven days.
- Address changes can be submitted online at <https://laserfiche.isb.idaho.gov/forms/addressupdate>.
- The mailing address, phone and email are required, but do not use your personal information unless you are okay with having it in the public records.
- Changes to your eService (“iCourt”) email need to be submitted to the Bar first so it can be passed to the Idaho Supreme Court.

New membership cards will be mailed in mid-March 2027 following the final licensing deadline.

Licensing and Status Changes

In addition to changes to membership information, licensing and status changes occur throughout the year. Attorneys whose trust account or professional liability insurance changes need to update their records with the Bar. New trust account and professional liability insurance certificates can be requested at any time.

Attorneys interested in changing status should review Section III of the Idaho

Bar Commission Rules and contact Annette Strauser (208-334-4500 or astrausers@isb.idaho.gov). Please note that most transfers to inactive or senior status can be made with annual licensing. All other changes need to be made through the Licensing Department.

Questions?

Please feel free to contact the Bar if you have any questions about the licensing requirements (208-334-4500 or

licensing@isb.idaho.gov). We are here to assist you with your licensing needs.



Annette Strauser is the Licensing/IT Administrator responsible for licensing, membership and IT services. She was born and raised in Idaho, graduated from Boise State University and has been with the Idaho State Bar for 43 years.



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State Public Defender Eric Fredericksen introduces the Idaho's seven District Public Defenders at the SPD's first annual conference at Boise State University in May 2025. The DPDs are from left to right, Tony Geddes, Isaiah Govia, Joanna McFarland, Ben Andersen, Jordan Crane, and David Martinez.

Transforming Indigent Defense in Idaho: Entering Year Three of the State Public Defender System

Eric Fredericksen

In 2022, Governor Brad Little signed House Bill 735, shifting all legal and financial responsibility for indigent criminal defense away from the counties and to the State.¹

The State Public Defender was slated to begin work on July 1, 2023, but I wasn't appointed to the position until late September and started working on building the agency immediately. Contracts had to be written, policies and processes needed

to be developed, a new case management system had to be built and hiring had to happen, all within a few short months.

The State Public Defender Office (SPD) emerged from the Public Defense Commission as a free-standing, independent agency on October 1, 2024.²

We faced a daunting task: How to take 44 different county systems, each with their own identity and ways of doing things and unite them as a single agency.

Why the urgency? The State of Idaho identified deficiencies in the county-based criminal justice system for indigent

defendants. This determination led Governor Little and the Idaho Legislature to create the SPD with a mandate: improve public defense for all of Idaho—no matter where people live—and get started right away.

One thing was clear, we are all passionate about our duty to protect the Constitutional rights of those who cannot afford representation regardless of what county they reside or work in. Every day we work diligently for our clients. I am so proud to lead this dedicated group of 300+ employees and 200+ contract attorneys



who believe in zealously protecting the Constitutional rights of everyone in the great State of Idaho.

The State Public Defender has institutional offices in 18 of Idaho's 44 counties, covering most of the major population centers in the state. Each of Idaho's seven judicial districts has a District Public Defender to help manage public defense work and ensure local needs are met.

Each office is staffed with attorneys and support staff and has a managing or lead attorney to ensure all SPD policies and procedures are followed and the work is being done to the highest standards. Many offices also have in-house social workers and investigators who support the indigent clients.

In parts of the state that do not have an institutional office, the SPD has contract

attorneys who serve the remaining 26 rural and remote counties. The Alternate Counsel Division (ACD) of the SPD manages a statewide network of contract attorneys who represent clients in conflict and Child Protective Act cases across Idaho. The ACD is ethically walled off from the SPD and has its own division director. Conflict cases are assigned and overseen exclusively by the ACD.

Resourcing the Agency

One of my biggest priorities since I was appointed has been ensuring the agency has the resources needed to provide the level of representation that is constitutionally required. I worked closely with Governor Little's staff and the Idaho Legislature to increase our budget from \$54 million in

fiscal year 2025 (year one of our existence) to approximately \$85 million for fiscal year 2026.³

This money allowed us to staff cases appropriately, hire experts when needed, create new positions, and develop and improve attorney training. It has allowed the SPD to pay for certain types of evaluations, transcript costs and other expenses that have been shifted from the counties onto the State.

That money also went toward increasing salaries for our staff attorneys and made us more competitive. SPD salaries are now similar to what county prosecutors and other state agencies pay their attorneys.

It also went toward raising contractor rates from \$100 to \$125 an hour. The rate increase brought new contract attorneys into the agency, which has made it

easier to assign cases. It has also reduced contractor caseloads in many parts of the state. Despite the rate increase, contractor shortages remain in certain counties.

We also created and staffed four new institutional offices in Jerome, Elmore, Benewah, and Shoshone counties. These new offices allow us to provide consistent service to areas with growing populations in a more cost-effective way. It also reduced the need to rely on contract attorneys who already have full case-loads. This year, we hope to add institutional offices to serve Latah and Nez Perce counties which will result in agency cost savings.

Like most Idaho agencies and departments, the Idaho Legislature reduced our budget by 5% in fiscal 2027 to deal with projected revenue shortfalls, but through responsible management of resources, we were still able to add six new attorney positions in offices where more attorneys were needed. While budget constraints are challenging, I am committed to making cuts in ways that will not impact the quality of the representation the SPD provides to our clients.

Overcoming Challenges

One of the biggest challenges we faced during the transition was having a handful of contract attorneys across the state that withdrew from over 1,300 public

defense cases on day one. That was a surprise, and it presented a significant problem. Those clients needed immediate representation in a state that needs more lawyers in general.

But our district public defenders, managing attorneys, staff and contractors across Idaho stepped up. It was all hands-on-deck. I was in court on day one handling cases. We could not have gotten through those early chaotic days without the incredible dedication of everyone in this new agency. This commitment to the clients—and the SPD—in the first six months of our existence allowed us to catch up, hire more attorneys, and recruit new contractors. It was a crisis averted.

We lost 28 attorneys after we took over on October 1, 2024 and the months that followed. That was difficult. We didn't want to lose a single member of our staff. But since then, we've hired 63 new or returning attorneys. We've added three new social workers and three new investigators to our institutional offices, a priority for our agency we plan to expand.

Hiring public defenders is a challenge, especially in a state like Idaho, which needs more lawyers in general. An American Bar Association survey from 2024 revealed Idaho has the second lowest number of attorneys per-capita in the U.S., at about 2.07 per 1,000 residents, just 1-100th of a percentage point better than South Carolina, which is dead last at 2.06 per 1,000 residents.⁴

So while we have made gains, we are still working hard on recruitment because we continue to have openings in some of our offices, especially those in the Fifth Judicial District.

We are in close contact with the Idaho State Bar and other local bar associations about job openings. We work closely with the University of Idaho College of Law, and other regional law schools who regularly funnel qualified applicants our way.

We have created legal intern and extern programs in our institutional offices to help create an attorney talent pipeline, introducing some of Idaho's brightest legal minds to the world of public defense. We had 28 internships/externships completed by summer 2026—and expect more in 2027. Many of our former interns/externs accepted full-time attorney positions with the SPD after they graduated and passed the Bar Exam.

We are now developing a similar intern/extern program for social work students. Having more social workers and social work students in our offices to support our clients will improve outcomes in their cases. We know clients who have housing, employment, access to medical care and addiction treatment, have better results in their criminal cases, helping prevent recidivism and relieve the burden on the Idaho Department of Corrections and the system as a whole.⁵



State Public Defender Eric Fredericksen shares a moment with his executive staff at the SPD's annual conference in Boise this summer. From left to right, Litigation Director Doug Nelson, Seventh District Public Defender (DPD) Jordan Crane, Sixth DPD David Martinez, SPD Deputy Director Brady King, Alternate Counsel Division Director Shannon Romero, Second DPD Joanna McFarland, State Public Defender Eric Fredericksen, Fourth DPD Tony Geddes, Fifth DPD Ben Andersen, First DPD Jay Logsdon, and Third DPD Isaiah Govia.

Improving attorney efficiency and reducing attorney and staff workload are also top priorities.

We recently hired two mitigation specialists who will work on capital cases statewide. One will be based in Boise and another one in Coeur d'Alene, with the goal of adding more to other parts of the state in the future. Previously, the SPD had to pay contract mitigation specialists to do this work, often at great expense. Bringing them in-house saves money and improves collaboration between the mitigation specialist and our attorneys. Initially, these positions will focus on capital cases but we hope to expand this mitigation work to serious felonies as more positions are added. Developing robust mitigation also improves outcomes at sentencing.

All of this heavy lifting was done in less than two years. Our LegalServer Case Management system, which tracks all active SPD cases, shows our attorneys handled about 79,000 active cases in 2025. The latest count shows the SPD had 56,000 active cases between January 1 to September 1, so we are trending toward a similar total in 2026.

Ongoing Projects and Goals

Attorney training and mentorship remain a focus of mine. SPD staff put on two annual conferences and curated more than 50 unique Continuing Legal Education (CLE) sessions specific to public defense. We had presenters from

across the state and country speak on current topics relevant to public defense, including Fourth Amendment issues, social media and cell phone evidence, handling challenging clients, probation violations and DUI defense. These training sessions are archived for our employees and contractors who couldn't attend.

Improving attorney efficiency and reducing attorney and staff workload are also top priorities. We just rolled out LexisNexis Protégé to all our institutional employees. Protégé is an AI assistant embedded across the LexisNexis research platform. For public defenders juggling caseloads and deadlines, Protégé accelerates research, summarizes documents, drafts motions, and analyzes discovery materials. Incorporating the use of cutting-edge AI into the work of the agency should improve efficiency and reduce support staff workload.

Another ongoing project is establishing an Idaho specific workload standard. We are finally getting the timekeeping information we need to develop this. It's taken some time for attorneys to learn the ins-and-outs of the SPD's LegalServer case management system. That was a heavy lift for our staff, but we are starting to collect useful, case-specific data. This data will allow us to monitor workload in real time, to review the work being done in the cases and ensure that attorneys are not being overloaded.

That takes us to our second birthday. I am very proud of everyone at the SPD. Our institutional attorneys, staff, and contract attorneys from across the state have come together and worked tirelessly for our clients over the past two years. They exemplify client-centered representation and our clients are better off because of it.

Idaho has a rich history of supporting public defense, and the SPD is honored to be part of that ongoing story. Please stay tuned as our agency continues to grow and evolve into a national model for a statewide public defense office. It's been quite a ride, with many lessons learned along the way and I'm sure there's more to be learned in the future. There is no better education and training in criminal law than to be a public defender. I am always working to find new and better ways to meet our constitutional obligation to provide indigent defense.

If you are interested in joining us, please let us know. I think it's the most rewarding job an attorney can have.



Eric Fredericksen is Idaho's State Public Defender, where he oversees the state's indigent criminal defense system. Eric grew up in Jerome and earned his law degree from

the University of Idaho in 2002. Eric spent much of his career working for Idaho's State Public Appellate Defender Office before being appointed to run the SPD in September 2023.

Endnotes

1. Text of House Bill 735 <https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2022/legislation/H0735.pdf>
2. Text of State Public Defender Act <https://legislature.idaho.gov/statutesrules/idstat/title19/t19ch60/>
3. SPD budget documents for fiscal 2025 and 2026 <https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2025/legislation/S1202SOP.pdf>
<https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2025/legislation/S1202SOP.pdf>
4. American Bar Association attorney per capita study. <https://www.americanbar.org/news/profile-legal-profession/demographics/>
5. Idaho Center for Fiscal Policy, "The Importance of Strong Public Defense in Idaho," Oct. 2025 <https://idahofiscal.org/the-importance-of-strong-public-defense-in-idaho/>



The State Public Defender and the Right to Counsel

Anthony Geddes

The constitutional right to counsel in a criminal case is one of the foundations of a properly functioning criminal justice system. The fair administration of justice requires both the government and defense to have properly trained and equally skilled advocates who have the resources they need to ensure that our adversarial system functions properly.

Idaho can take pride in the fact that it recognized the right to counsel before it even became a state, and nearly a century before the United States Supreme Court recognized the Sixth Amendment right to counsel in *Gideon v. Wainwright*.¹ Idaho's 2nd Territorial Legislature met in Lewiston in November of 1864, approximately six months after the end of the American Civil War and is likely more famous for the fight over whether Idaho's Territorial capital should be Lewiston or Boise, rather than any recognition of the right to counsel. However, while they didn't mandate that an accused be provided with an attorney at public expense, as *Gideon* later required, they did articulate the right to be represented by an attorney at trial.²

Later, in 1923, Idaho further enhanced this principle when Idaho's Supreme Court stated, "It is the public policy of this state, disclosed by constitutional guaranties as well as by numerous provisions of the statutes, to accord to every person accused of crime, not only a fair and impartial trial, but every reasonable opportunity to prepare his defense and to vindicate his innocence upon a trial. In the case of indigent persons accused of crime the court must assign counsel to the defense at public expense and, upon proper showing, the mileage and fees of the defendant's witnesses must be ordered paid by the county in all cases."³

While Idaho has a rich history of articulating and protecting the right of the accused to counsel, and the State Public Defender (SPD) takes this right to counsel and the right to conflict-free counsel seriously, this right is not without limit.

The Sixth Amendment to the United States Constitution guarantees that "[i]n all criminal prosecutions, the accused shall enjoy the right to...have the Assistance of Counsel for his defence."⁴ The Idaho Constitution similarly guarantees that "[i]n all criminal prosecutions, the party

accused shall have the right...to appear and defend in person and with counsel."⁵ The right to counsel in criminal cases prevents indigent individuals from being subjected to potential or actual incarceration by the government unless they receive or are offered—or knowingly and intelligently waive—appointed counsel.⁶ The Sixth Amendment right to counsel within the U.S. Constitution is coextensive with the right to counsel guaranteed by Section 13, Article I of the Idaho Constitution.⁷

The SPD—which was established by the Idaho Legislature in 2023—manages all public defense across the state of Idaho. When the SPD is appointed to represent a client but has a conflict, the SPD sends the client's case (or cases) to the Alternate Counsel Division (ACD). The ACD is managed by its own director, has its own staff, and is ethically walled off from the SPD. The ACD finds and assigns private attorneys to represent clients in cases where the SPD has a conflict. Once a case is assigned by the ACD, the assigned attorney takes over representation of the client.

The most common reason for an SPD conflict is when there are co-defendants charged with the same or similar criminal

conduct in a case. Because the SPD can only represent one person who was charged, any remaining clients are sent to the ACD for the assignment of qualified counsel. Another common reason for a conflict is when the SPD currently represents a complaining witness. These two types of conflicts are the most obvious and common conflicts the SPD encounters, but others arise periodically. Evaluation of whether a conflict prevents the SPD from representing a client is statutorily vested with the SPD,⁸ but because the right to counsel is also constitutionally guaranteed, trial courts may also have an independent obligation to assess potential conflicts.

Right to Conflict-Free Appointed Counsel, but not Counsel of Choice

In cases where there is a clear conflict of interest that prevents the SPD from representing a client, the SPD sends the case to the ACD to find and assign conflict-free counsel. The ACD is mindful of and evaluates potential conflicts much the same way as the SPD to ensure that counsel assigned to represent a client does not have a conflict of interest. In cases where the SPD or the ACD has evaluated a client's case and determined there is not conflict with the assigned attorney, neither the SPD nor the ACD will assign substitute counsel. However, because the right to conflict-free counsel is constitutionally guaranteed, the trial court may still be asked to conduct its own conflict inquiry in situations where a client maintains a conflict exists.

It is important to remember that while the constitutional right to counsel includes the right to conflict-free counsel,⁹ it does not entitle a client to counsel of their choosing or give the client the right to "fire" assigned counsel.¹⁰ Though a client generally has the right to discharge or fire privately retained counsel at any time, a client does not have the same right with respect to appointed counsel.¹¹

When a trial court knows or reasonably should know that a potential conflict exists, it must inquire into the potential conflict and ensure a client receives conflict-free counsel.¹² Potential conflicts are usually brought to the court's attention by the client, though sometimes they are raised by

assigned counsel filing a motion to withdraw. The court engaging in a conflict inquiry can rely on counsel's representations regarding the potential conflict but may also conduct its own inquiry to decide whether a conflict exists, relying on the standards contained in Idaho Rules of Professional Conduct (IRPC).¹³

A conflict of interest that would preclude representation under the Sixth Amendment includes situations where: counsel's representation of one client is directly adverse to another client; where counsel's representation will be materially limited by counsel's responsibility to a former client, third person(s), or counsel's own personal interests; or where counsel's conflict adversely affects his or her performance.¹⁴

It is not unusual for clients to confuse the right to counsel with the right to counsel of their choosing, believing dissatisfaction with assigned counsel is a conflict that entitles them to a different attorney. While the Sixth Amendment guarantees the right to conflict-free counsel, it does not "guarantee" a 'meaningful relationship' between an accused and his counsel."¹⁵ Sometimes clients refuse to cooperate with their assigned counsel for a variety of reasons unrelated to the attorney's qualifications or competency. Idaho and federal courts have made it clear that a client cannot "manufacture good cause by abusive or uncooperative behavior."¹⁶ A client's lack of confidence in an otherwise competent attorney is not grounds for a trial court to assign a new attorney unless extraordinary circumstances require a new attorney be assigned.¹⁷

Prior to June 30, 2013, indigent clients in criminal cases had a statutory right to ask for substitute counsel under Idaho Code § 19-856. Under that provision, the court could, in its discretion, grant a defendant's request for substitute counsel if the defendant could show good cause to support the request.¹⁸ The court had to "afford a defendant a full and fair opportunity to present the facts and reasons in support of a motion for substitution of counsel after having been made aware of the problems involved."¹⁹ Good cause was a high burden to meet and included "an actual conflict of interest; a complete, irrevocable breakdown of communication; or an irreconcilable conflict which leads to

an apparently unjust verdict."²⁰ When the alleged conflict involved a breakdown in communication, trial courts had to examine certain facts to determine if a client was entitled to substitute counsel.

Factors to be used in examining constitutional implications of a total breakdown in communication included: (1) whether the defendant's motion for new counsel was timely; (2) whether the trial court adequately inquired into defendant's reasons for making the motion; (3) whether the defendant-attorney conflict was so great that it led to a total lack of communication precluding an adequate defense; and (4) whether the defendant substantially and unreasonably contributed to the communication breakdown.²¹

Although the Idaho Legislature repealed Idaho Code § 19-856 in 2013, the Idaho Court of Appeals acknowledged just this year, that a client may still ask the trial court to appoint substitute counsel in a criminal case.²² In *Reeder*, the Court of Appeals held that a trial court cannot grant a request for substitute counsel unless it finds good cause supports the request. The *Reeder* Court's good cause analysis is the same as what was considered in Idaho Code § 19-856, and includes actual conflicts of interest, a complete and irrevocable breakdown of communication, or an irreconcilable conflict which leads to an apparently unjust verdict.²³ The *Reeder* court confirmed good cause could not be manufactured by a client's engagement in abusive or noncooperative behavior, and a client's lack of confidence in an otherwise competent attorney is not good cause to appoint new counsel absent extraordinary circumstances.²⁴ Even when a rift between counsel and the client is intense, if it does not result in lack of communication preventing an adequate defense, good cause to appoint substitute counsel does not exist.²⁵ The *Reeder* Court also recognizes that whether to grant or deny a client's request for substitute counsel is a discretionary decision that must be supported by the record.²⁶

If a trial court conducts a conflict inquiry and decides a conflict exists that prevents the assigned attorney from representing the client, the trial court will issue an order removing prior counsel or permitting prior counsel to withdraw

and order the appointment of counsel. The SPD and ACD follow the court's orders even if they disagree with the court's analysis or decision and assign new counsel to represent the client.

Allocation of Decision-Making Authority in Criminal Cases

In addition to misunderstandings about the right to choose counsel, clients sometimes do not understand the decisions an attorney makes in a criminal case and the decisions that are reserved for the client. Often, clients believe they are not being zealously represented if their attorney declines to pursue the client's preferred defense, call certain witnesses to testify, or consult with or retain certain experts. The IRPC explain the allocation of decision-making authority between a client and counsel in a criminal case. While the client decides the objectives or goals of representation (i.e., whether to go to trial, and to testify, or seek a plea agreement, etc.²⁷), the client does not control the means—or how—those goals or objectives are achieved.²⁸ Instead, strategy decisions about how the goals of representation are achieved are made by counsel.

Unfortunately, the only way a client can control the strategy and means of achieving his or her objectives in a criminal case

is through self-representation. Neither the SPD nor the ACD believe a client should opt for self-representation over representation by counsel. However, if a client insists on pursuing their chosen strategies and rejecting the advice of counsel, the client runs the risk that self-representation may be the only option.

Hybrid Representation/Waiver or Forfeiture of Counsel

Sometimes a client's wishes regarding representation are unclear. Late last year, the Idaho Supreme Court found itself addressing this very circumstance where the trial court was faced with a client whose desire for appointed counsel or self-representation varied depending on the hearing. In *State v. Knight*,²⁹ the defendant was charged with three counts of unlawful possession of a firearm. He repeatedly told the trial court that he could not afford to hire counsel, he did not want to be represented by a lawyer but wanted the assistance of counsel. At the same time, the defendant rejected the trial court's characterization that he was representing himself. The defendant was unrepresented throughout the pretrial stages of the case, but right before trial, the court appointed a public defender to act as "shadow counsel" to assist the defendant

during jury selection and at trial. At trial the public defender's involvement was limited to explaining some of the court's statements to the defendant, showing the defendant the State's exhibits on his laptop, clarifying the defendant's concerns about jury instruction, clarifying the scope of the defendant's witness's testimony, and orally moving to dismiss at the close of the State's case-in-chief.

The defendant was convicted of all three counts of unlawful possession of a firearm and argued on appeal that the trial court violated his Sixth Amendment right to counsel by failing to address whether he knowingly, intelligently, and voluntarily waived his right to counsel. The Idaho Supreme Court agreed that while a defendant has a constitutional right to counsel and a constitutional right to proceed pro se, the defendant can only proceed pro se if he does so knowingly, voluntarily, and intelligently, with awareness of the risks and problems inherent in self-representation.³⁰ To that end, a trial judge must engage a defendant in a colloquy ensuring the defendant understands what self-representation means, applying the standards for waiver of the Sixth Amendment right to counsel established by the United States Supreme Court in *Faretta v. California*, 422 U.S. 806 (1975).

The Court also clarified that the Sixth Amendment right to representation by counsel "means representation by an attorney" but not "a right to 'shadow counsel' who does as little or as much as the defendant wishes."³¹ The Court reduced a defendant's Sixth Amendment right to a binary choice; a defendant may either "apply for a public defender and be appointed an attorney who would manage his defense, or he could represent himself."³² A client does "not have a right to the services of an attorney who would do 'as little or as much' as [the client] want[s]. That is not how attorneys represent clients."³³ Essentially, a client is "not entitled to invoke a right to counsel and yet call the shots at trial."³⁴ The Court also acknowledged that in certain circumstances, a waiver of counsel is not required because a defendant, by his or her conduct, has either impliedly waived or forfeited the right to counsel.³⁵

Chief Justice Bevan addressed waiver and forfeiture of counsel, recognizing that a defendant who is given clear warnings



Fourth District Public Defender Anthony Geddes speaks to law students at the University of Idaho College of Law. He is flanked by Third District Public Defender Isaiah Govia (left) and Twin Falls office Assistant Managing Attorney Preston Franzen (right).

about the consequences of failing to cooperate with counsel, or the consequences of engaging in obstructive or dilatory conduct and refusal to cooperate with counsel, may impliedly or functionally waive the right to counsel.³⁶ Before reaching that conclusion, however, “the trial court *must* take an active role in clarifying expectations when a defendant persistently refuses to give a straight answer about the right to be represented by counsel. In my view, trial courts can and should pause the proceeding, clarify the binary choice between representation and self-representation, and document on the record that the defendant understands that no third option exists.”³⁷

Conclusion

Trial judges should evaluate any requests for the withdrawal of counsel or for substitute counsel by applying the good cause standard, and advise indigent clients that they are not entitled to a choice of counsel, to “fire” assigned counsel, or demand the withdrawal of assigned counsel. Judges should also explain the allocation of decision-making authority in criminal cases and advise clients seeking new counsel that the alternative to their assigned counsel’s representation may be self-representation, not the appointment of new counsel.

The creation of Idaho’s State Public Defender and its Alternate Counsel Division has centralized the delivery of indigent defense while providing a structured mechanism for addressing genuine conflicts of interest. That system, however, depends upon courts carefully applying the constitutional and ethical standards governing substitution of counsel. Allowing defendants to demand the withdrawal of their conflict counsel without finding good cause places significant strain on the limited pool of qualified private attorneys willing to accept conflict appointments, increases costs to the State Public Defender, delays criminal proceedings, burdens the court and consumes scarce resources. Ultimately, unnecessary substitutions can undermine the very interests the Sixth Amendment seeks to protect by delaying the prompt and effective resolution of criminal cases.

Courts should also advise defendants that appointed counsel cannot be discharged at will and that, absent good cause

for substitution, the practical alternative may be continued representation by exiting counsel, or if the constitutional requirements are satisfied, self-representation. By consistently applying these principles, Idaho court can safeguard the constitutional right to conflict-free counsel while preserving the integrity, efficiency, and sustainability of the system.



Anthony Geddes is the District Public Defender for the Fourth Judicial District for the State Public Defender's Office. Tony is a trial attorney with three decades of experience in public defense. He joined the Ada County Public Defender's Office in 1995 as an investigator. He became an attorney with the office in 1997 and became Ada's Chief Public Defender in 2016. Tony was appointed to his current position in the fall of 2024. Tony received his Bachelor of Science from Andrews University and later earned a Juris Doctor from Vermont Law School. Tony is qualified as lead counsel in Death Penalty cases and has been lead counsel or co-counsel in numerous high profile criminal trials, including 19 homicide cases.

Endnotes

1. *Gideon v. Wainwright*, 372 U.S. 335 (1963).
2. Idaho Terr. Stat. 1887, Tit. VI, Ch. 1, § 7721.
3. *State v. Montroy*, 37 Idaho 684, 690 (1923).
4. U.S. CONST. amend. VI.
5. IDAHO CONST. art. I, § 13.
6. *Alabama v. Shelton*, 535 U.S. 654, 657 (2002) (holding the right to counsel attaches where an indigent defendant in a criminal case faces a potential jail or prison sentence, even if not initially imposed); see also *Iowa v. Tovar*, 541 U.S. 77, 78 (2004) (recognizing that an indigent defendant who faces incarceration is entitled to counsel under the Sixth Amendment at all critical stages of the criminal process); *Gideon*, 372 U.S. 335.
7. *Creech v. State*, 543 P.3d 494, 500 (2024) (“[T]his Court has never varied from equating the rights preserved under the Idaho Constitution with the rights guaranteed under the Sixth Amendment.”)
8. Idaho Code § 19-6020
9. *Wood v. Georgia*, 450 U.S. 261, 271 (1981); *State v. Severson*, 147 Idaho 694, 703 (2009).
10. See, e.g., *Wheat v. United States*, 486 U.S. 153, 159 (1988) (“[A] defendant may not insist on representation by an attorney he cannot afford or who for other reasons declines to represent the defendant.”); *State v. Clayton*, 100 Idaho 896, 897 (1980) (“The right to counsel includes the right to effective assistance of counsel. It does not necessarily include the right to counsel of one’s own choosing.” (citations omitted)); *State v. Peck* 130 Idaho

711, 712-13 (Ct. App. 1997) (“The right to counsel does not necessarily mean a right to the attorney of one’s choice.”).

11. See IDAHO RULE OF PROFESSIONAL CONDUCT 1.16 cmt. 3 (When a lawyer has been appointed to represent a client, withdrawal ordinarily requires approval of the appointing authority.”) I.R.P.C. 1.16 cmt. 5 (“Whether a client can discharge appointed counsel may depend on applicable law. A client seeking to do so should be given a full explanation of the consequences. These consequences may include a decision by the appointing authority that appointment of successor counsel is unjustified, thus requiring self-representation by the client.”).
12. *State v. Severson*, 147 Idaho 694, 703-04 (2009).
13. *Id.* at 704.
14. *Burger v. Kemp*, 483 U.S. 776, 783 (1987); *Holloway v. Arkansas*, 435 U.S. 475, 484-83 (1978); see also I.R.P.C. 1.7(a).
15. *Morris v. Slappy*, 461 U.S. 1, 22 (1983).
16. *State v. Lippert*, 152 Idaho at 887 (2012); *United States v. Moore*, 159 F.3d 1154, 1158 (9th Cir. 1995) (“Although a [malpractice] lawsuit between defendant and counsel can potentially create an actual conflict of interest...find an actual conflict from a mere threat would allow defendants to manufacture a conflict in any case.”).
17. *State v. McCabe*, 101 Idaho 727, 729 (1980); *Peck*, 130 Idaho at 713.
18. *State v. Nath*, 137 Idaho 712, 715 (2002).
19. *Id.*
20. *Lippert*, 152 Idaho at 887 (citations omitted); Idaho Criminal Rule 44.1(a) contains a similar right and provides that an attorney may move to withdraw from representation in a criminal case if counsel claims—and the court finds—good cause for the withdrawal.
21. *Id.* (citations omitted).
22. *State v. Reeder*, Docket No. 52288 (Idaho Ct. App. May 28, 2026) (Slip opinion).
23. *Id.* at 5.
24. *Id.* at 2, 5; *Lippert*, 152 Idaho at 887.
25. *Lippert*, 152 Idaho at 887-88.
26. *Reeder*, Docket No. 52288, slip op. at 2.
27. I.R.P.C. 1.2 (1).
28. See I.R.P.C. 1.2 (a); IRPC 1.4 (a).
29. *State v. Knight*, No. 52929, 2025 Ida. LEXIS 132 (Idaho Supreme Court Nov. 25, 2025).
30. *Id.* At *26-*27.
31. *Id.* at *29.
32. *Id.* at *32-*33.
33. *Id.*
34. *Id.* at *33.
35. *Id.* at *35, *44-45 (Bevan, C.J., specially concurring); see also *United States v. Kronick*, 2024 U.S. Dist. LEXIS 113737 *15-18 (D. Ct. J.J. June 27, 2024) (finding defendant waived his right to counsel by his conduct, or alternatively, forfeited his Sixth Amendment right to counsel by confronting and threatening counsel with physical violence, refusing to share discovery with him, directing him not to contact witnesses, verbally abusing him, obstructing him at hearings, intentionally or recklessly failing to communicate with him, threatening to file complaints against him, and routinely representing he would replace him with private counsel, which was the same conduct the defendant engaged in with prior counsel).
36. *Knight*, 2025 Ida. LEXIS 132, *40-*46 (Bevan, C.J., specially concurring).
37. *Id.* at *45-*46 (emphasis in original); see also, Carolyn T. A. Hartwick, *Losing the Right to Counsel: Exploring and Reforming Waiver by Conduct and Forfeiture in State Courts*, 172 UNIV. OF PENN. L. REV. 1401 (2024).

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Have Fourth Amendment Protections Been Diminished?

Dawn Trivolis

The work of criminal defense attorneys necessarily involves some type of analysis of whether the government's action in a case complies with constitutional requirements, including applicability of the Fourth Amendment.¹ The Fourth Amendment to the United States Constitution protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures."² The Fourth Amendment has been incorporated and applies to the States through the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution.³

The purpose of the Fourth Amendment is to "impose a standard of 'reasonableness' upon the exercise of discretion by government officials, including law enforcement agents, in order to 'safeguard the privacy and security of individuals against arbitrary invasions'"⁴ This right only extends to conduct by the government or an agent of the government. The majority of situations public defenders look at are those where clients interact with police

officers. In that situation, a public defender evaluates the conduct of a bona fide government agent. There may be instances, however, when an *individual* acts at the direction of the government. For example, a police officer may instruct a Walmart Loss Prevention employee to hold someone suspected of theft until the officer gets there. In that case, any action taken by the employee may be scrutinized as "governmental."⁵

Although the U.S. Supreme Court has stated that it is a "usual requirement" that a warrant be obtained prior to a search or seizure, most searches and seizures are warrantless ones.⁶ If a search or seizure happens without a warrant, it is presumed unreasonable under the Fourth Amendment.⁷ Despite this presumption, courts have articulated guidelines for what is or is not reasonable. These guidelines include what is considered a "reasonable exception."⁸ In some situations, courts have said, that there is not enough time for police to obtain a warrant, the person is not truly seized, the person consented to the search or seizure, *etc.* These "reasonable exception" situations have grown considerably over the years.

This article discusses two well-recognized exceptions to the warrant requirement and suggestions for discussing with clients that their Fourth Amendment rights may be diminished in their particular case.

Consent

Police do not need a warrant or probable cause if they get consent to search something. If a person consents to an officer's actions, the waiver has to be voluntary. Courts have said that the waiver does not have to be knowing *and* voluntary—which *is* required when pleading guilty. The waiver of one's Fourth Amendment right to be free from unreasonable searches and seizures based on consent just has to be voluntary. On the other hand, consent that is given under threats of harm or compulsion does not constitute consent. Consent is evaluated under the totality of the circumstances. Finally, it is the State's burden to show that consent was freely and voluntarily given.

Schneekloth v. Bustamonte is the seminal case on consent. In that case, the Supreme Court grappled with "what must the

prosecution prove to demonstrate that a consent was ‘voluntarily’ given.”⁹ “[N]either linguistics nor epistemology will provide a ready definition of the meaning of ‘voluntariness.’”¹⁰ After a further discussion about whether a defendant’s will was overborne, the Court stated that analyzing the totality of the circumstances would lead to a determination if consent was given voluntarily.¹¹ The Court also stated that proof of knowledge of the right to refuse to give consent is not a prerequisite.¹² The Court ultimately held that when a person who is not in custody is searched, the State can justify the search based on consent if it can demonstrate that the consent was voluntarily given, and not the result of duress or coercion, express or implied.¹³

Idaho courts have also examined consent. Consent has to be voluntary, and coercive actions by an officer may lead to a finding that consent was involuntary.¹⁴ “A voluntary decision is one that is ‘the product of an essentially free and unconstrained choice by its maker.’”¹⁵ Factors that control the determination of voluntariness include: the number of officers involved; the location and conditions of the consent (including if it is nighttime); if the police hold on to someone’s identification, if the person is free to leave; and if the person knows of his or her right to refuse consent.¹⁶ Even a defendant saying, “That’s fine” to an officer’s action may not be voluntary.¹⁷

The scope of consent may be limited. In *State v. Greub*, the defendant tried to take her purse with her when she exited the vehicle.¹⁸ Although the defendant consented to an officer searching her car, the court found that a search of her purse was unlawful because the defendant tried to limit the area to which her consent applied.¹⁹

In *State v. Jaborra*²⁰ and *State v. Zapp*²¹, the Idaho Court of Appeals looked at whether an individual’s action displayed consent. A head nod or a shrug of the shoulders is not enough to imply consent. A “minimal affirmative gesture” may not equal consent, but rather mere acquiescence.²² The individual’s response may be dispositive to the officer’s question of “Is it okay if I take a quick peek in [insert the name of any a number of places officers try to search].”

In reality, individuals consent to police officers’ questions more often than they

realize. Individuals may not want to frustrate an officer and end up voluntarily giving the officer permission to search their car or bag. Being compliant with an officer sometimes has the unintended effect of diminishing one’s Fourth Amendment rights.

Plain View

Another well-recognized exception to the warrant requirement is the plain view doctrine. An item that is in public view may be seized without a warrant because there is not a reasonable expectation of privacy in things that are exposed to the public.²³ This applies to physical characteristics, vehicle identification numbers, or items in open fields. Items in private view, though, may have a reasonable expectation of privacy. In those situations, a police officer may still seize an item that is plain view of the officer if certain circumstances exist.

In *Horton v. California*²⁴, the U.S. Supreme Court clarified guidelines about “plain view” seizures that were articulated in *Coolidge v. New Hampshire*, 403 U.S. 443 (1971). Plain view requires: (1) an officer to be lawfully located at a particular place; (2) the incriminating character of the item must be “immediately apparent,” and (3) the officer has lawful access to the item.²⁵

Idaho has adopted the same criteria for plain view seizures: “(1) An officer must legitimately be in a position to view the object. (2) It must be immediately apparent to the officer that the object may be evidence of a crime. (3) The officer must not have known previously that the object was located where he seized it.”²⁶ It is not required that an object’s connection to criminal activity is “immediately apparent,” or that an officer has “absolute certainty.”²⁷ In *State v. Tamez*, the court held that it is enough for an officer to have a probable basis that it is contraband or connected to criminal activity.²⁸ The officer can rely on his training and experience to determine that.²⁹ As defense attorneys understand, a “probable basis” may lead to the wrong conclusion on the part of an arresting officer.

Conversations with Clients

A common situation that an attorney may encounter is meeting with a client in preparation for an upcoming hearing but prior to receiving discovery, hearing that “the cops violated my rights!”, later receiving and reviewing discovery, and concluding that the client, in fact, consented to the police officer searching the vehicle, bag, coat, or other item where contraband was found or the contraband itself was in plain view of the officer.

That may lead to a conversation where the attorney has to explain that the client gave permission for the officer to search whatever was searched or the item was covered by the plain view doctrine. Some clients readily acknowledge they gave the officer a “sure, go ahead” and consented to a search. Other clients may realize the pipe or baggie was right there on the center console of their vehicle. Some clients may not remember the circumstances surrounding the police interaction. That client may benefit from going over specifics in the discovery.

If a client denies consenting to the search, or that plain view does not apply, the attorney may find some help in the rules governing discovery. Idaho Criminal Rule 16(b)(9)(A)(ii), (B) provides that defense counsel may show the defendant unredacted digital video with the prior consent of the prosecutor or “may allow the defendant to view and retain a copy of any media that is redacted by the prosecuting attorney.” Although it can take time for the prosecutor to redact on-body video or get the go-ahead from the prosecutor to show the client unredacted on-body video, sometimes the client needs to see the moment in question. In other situations, the client may need to be walked through how consent or plain view works in Idaho, highlighting relevant facts from his or her case. Simply because “my buddy got out of his charge,” does not mean those same facts exist in the present case. If all else fails, an attorney may find success by agreeing with the client that consent may be involuntary in some situations and you wish that was true here, but it is not. Clients typically appreciate an honest assessment of their case.

Clients have many emotions when coming to terms with their situation. Clients may be facing a long period of incarceration. Others may be losing relationships with family and friends due to their pending charges. Some may lose current or prospective jobs. And others may lose their driving privileges. Attorneys have a difficult task of helping clients walk through criminal cases. It can be even harder when the attorney realizes that a motion to suppress is not viable because of these (or other) exceptions to the warrant requirement. In those moments, regroup and change direction. Clients who lose at trial or end up pleading guilty are sometimes the most thankful for the efforts of attorneys who “work the case.”



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Honorable Derrick O'Neill in Ada County and has been a public defender since December 2022. She is an active member of the Idaho State Bar where she is a volunteer bar exam grader. She enjoys spending time with her children and dog.

Endnotes

1. Part of the work of criminal defense attorneys is also helping clients understand that “no, in fact, the police did not violate your rights.”
2. U.S. CONST. Amend. IV.
3. *Mapp v. Ohio*, 367 U.S. 643, 654–55 (1961).
4. *Delaware v. Prouse*, 440 U.S. 648, 653–54 (1979) (citation omitted).
5. Further discussion about acts by a private person directed by the government are outside the scope of this article.
6. *Birchfield v. North Dakota*, 579 U.S. 438, 456 (2016) (citing *Kentucky v. King*, 563 U.S. 452, 459 (2011)).
7. *State v. Wulff*, 157 Idaho 416, 419, 337 P.3d 575, 578 (2014).
8. *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006).
9. *Schneckloth v. Bustamonte*, 412 U.S. 218, 223 (1973).
10. *Schneckloth*, 412 U.S. at 224.
11. *Schneckloth*, 412 U.S. at 233.
12. *Schneckloth*, 412 U.S. at 234.

13. *Schneckloth v. Bustamonte*, 412 U.S. 218, 248 (1973).
14. *State v. Rector*, 144 Idaho 643, 646, 167 P.3d 780, 783 (Ct. App. 2006).
15. *Rector*, 144 Idaho at 645, 167 P.3d at 782.
16. *Id.*
17. *State v. Sarah Ann Ayers*, CR01-25-27251 (Ada Cty. Dist. Ct. Dec. 30, 2025).
18. *State v. Greub*, 162 Idaho 581, 587, 401 P.3d 581, 587 (Ct. App. 2017).
19. *Id.*
20. *State v. Jaborra*, 143 Idaho 94, 97–98, 137 P.3d 481, 484–485 (Ct. App. 2006).
21. *State v. Zapp*, 108 Idaho 723, 726, 701 P.2d 671, 674 (Ct. App. 1985).
22. *Jaborra*, 143 Idaho at 98, 137 P.3d at 485 (Ct. App. 2006).
23. *Arizona v. Hicks*, 480 U.S. 321, 325 (1987).
24. 496 U.S. 128 (1990).
25. *Horton*, 496 U.S. at 137.
26. *State v. Caldero*, 109 Idaho 80, 84, 705 P.2d 85, 89 (Ct. App. 1985).
27. *State v. Tamez*, 116 Idaho 945, 946, 782 P.2d 353, 354 (Ct. App. 1989).
28. *Tamez*, 116 Idaho at 946, 782 P.2d at 354.
29. *Id.*

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Proof under the Influence: The Suspiciously Confident DRE

David Delyea

Alcohol and drug-based DUI prosecutions ask juries to answer the same ultimate question: whether the defendant drove while under the influence of an intoxicating substance. The difficulty arises in determining what evidence is relevant, admissible, and sufficient to prove that charge. Alcohol prosecutions often revolve around a breath or blood test that produces a numerical result. Further, alcohol DUIs often include discussion of the standardized field sobriety tests (SFST): the horizontal gaze nystagmus test, which observes eye movement for nystagmus or lack of smooth pursuit; the walk-and-turn, which requires a person to walk heel-to-toe, turn, and return; and the one-leg stand, which requires balancing on one leg.

Prosecution based on drug use, as opposed to alcohol use, frequently relies on law enforcement observations and a

battery of procedures known as a Drug Recognition Evaluation, performed by a trained Drug Recognition Evaluator (DRE), who may conclude that the observed signs are consistent with one or more drug categories. The jury then may use this information to determine if someone was under the influence of any combination of drugs in their system. As with any evidence, however, the structure and apparent seal of approval of the DRE protocol can make its conclusions appear more certain than the governing law or underlying science supports.

The central question under Idaho DUI law is not whether DRE evidence can be useful, it can, but what the evidence actually proves. A properly performed evaluation may help a jury consider alternative explanations, understand the signs associated with various drug categories, and assess whether those signs are consistent with the defendant's observed condition.

But the evaluation does not necessarily establish drug presence, correctly identify a drug category, prove impairment, or connect any impairment to an intoxicant at the time of driving. Idaho's developing DRE caselaw, therefore, presents a causal-bridge problem: admissible observations and toxicology evidence must still be connected to the statutory element of impairment caused by alcohol, drugs, or another intoxicating substance at the relevant time.

Decoding the Origin: Drug Recognition Evaluation

Officers trained to evaluate whether a person exhibits signs associated with one or more of seven drug categories (central nervous system depressants, central nervous system stimulants, hallucinogens, dissociative anesthetics, narcotic analgesics, inhalants, and cannabis), are commonly

called Drug Recognition Evaluators, or DREs. Although the terms “evaluator” and “expert” are sometimes used interchangeably, they serve different functions. “Evaluator” describes the officer’s certification and role in administering the protocol; “expert” describes the evidentiary capacity in which the witness offers opinion testimony.

Idaho law requires prospective disclosure of DRE opinion testimony under Idaho Criminal Rule 16(b)(7), but the jury remains the sole judge of credibility and the weight of the testimony.¹ The evaluation itself consists of interviews, physical measurements, divided-attention tests, clinical observations, and other steps that are compared with expected findings summarized in the DRE matrix.²

The Drug Evaluation and Classification program originated within the Los Angeles Police Department in the 1970s, and was later developed into a national curriculum in collaboration with the National Highway Traffic Safety Administration (NHTSA); it was not originally developed by some scientific organization.³ Three early studies are frequently cited as foundational validation studies for the DRE process. Greg Kane has argued that significant methodological limitations in those studies undermine broad claims about the protocol’s reported accuracy.⁴ Likewise, the principal validation studies underlying the standardized three-test SFST battery measured the tests’ ability to discriminate based on blood-alcohol concentration; they did not validate the battery as a diagnostic test for impairment caused by cannabis or drugs generally.⁵ Even so, the tests and observations became embedded in impaired-driving investigations nationwide. Their methodological limitations do not render the observations irrelevant; rather, those limitations become important when the evidence is used to support conclusions broader than the underlying research can reliably establish.

Same Evidence, Different Question

There are two primary ways for the State to prove DUI. The first is per se DUI, based on a valid alcohol test showing a BAC of .08 or higher, together with

evidence that the defendant has previously driven a motor vehicle. The second is impairment DUI, which requires proof that drugs, or a combination of drugs and/or alcohol impaired the defendant’s ability to operate a motor vehicle. Idaho has developed a substantial body of caselaw addressing relevance in per se DUI prosecutions, although those decisions are not always applied carefully outside that context. In *State v. Robinett*, the Idaho Supreme Court held that the defendant’s blood-alcohol level was only relevant based on the charged theory, impairment or per se theory.⁶ In *Elias-Cruz v. Idaho Dep’t. of Transportation*, the Court explained that, in an administrative per se suspension proceeding, the statutory inquiry centered on the test result obtained and that the driver’s actual blood alcohol content was irrelevant to the charge.⁷

State v. Tomlinson later treated certain evidence offered to contradict a per se test result as irrelevant, such as retrograde extrapolation evidence.⁸ Retrograde extrapolation, otherwise known as the “rising BAC” defense, is a calculation estimating the defendant’s BAC at the time of driving as opposed to when the test was taken. In 2018, however, *State v. Austin* rejected *Tomlinson*’s overly restrictive reasoning and held that a defendant may offer relevant evidence challenging the reliability or meaning of the State’s test result, including appropriate retrograde-extrapolation evidence.⁹ This opened the door for defense attorneys to attack the reliability of the specific machine used through various means.

Those per se decisions do not resolve the evidentiary questions presented by an impairment-based DUI. In a drug-impairment case, a toxicology report is not a verdict form, and a DRE matrix is not a statutory element. A positive toxicology result may establish exposure, use, the presence of a parent drug or metabolite, or some combination of those facts but does not prove impairment. Likewise, poor performance on a field sobriety test may be consistent with impairment, but it may also have non-intoxicant explanations such as age, injury, fatigue, anxiety, medical conditions, neurologic symptoms, poor instructions, environmental conditions, or ordinary balance and coordination

differences. Evidence relevant to one DUI theory is not necessarily relevant to another.¹⁰ A per se prosecution focuses on the statutorily specified test result, while an impairment prosecution focuses on the defendant’s condition and the cause of any impairment at the time of driving.¹¹

The Missing Link: Causation

Idaho law does not require the State to prove a particular degree or label of intoxication, but the second sentence of Idaho Criminal Jury Instruction 1006 is sometimes overlooked: “Rather, the state must show that the defendant [had consumed sufficient alcohol] [and/or] [had used enough of (any drug(s)) (or) (intoxicating substance(s)) to influence or affect the defendant’s ability to drive the motor vehicle.” *Stark* states the corresponding causation requirement plainly:

To prove that a person is guilty of driving under the influence, the State must prove more than a driving impairment. The State must also present evidence, besides the impairment itself, to prove that the impairment was caused by alcohol, drugs, or intoxicating substances. Proving an impairment does not prove the cause of the impairment.¹²

Thus, in an impairment prosecution, relevance extends beyond whether a test was administered or a substance was detected. The evidence must support a logical connection among the defendant’s condition, the intoxicating substance, and the time of driving. *State v. Morin* illustrates the point: evidence of carboxy-THC, an inactive metabolite, did not by itself establish intoxication or impairment, and expert testimony was necessary to explain whether the toxicology evidence supported an inference of impairment.¹³

Toxicology ordinarily answers a limited question about what was detected in a specimen collected at a particular time. Driving behavior may support an inference of impairment but does not, standing alone, identify its cause. Field sobriety performance likewise is evidence to be interpreted, not conclusive proof. To support conviction, the evidence must permit a

rational factfinder to connect the alleged impairment to an intoxicant at the relevant time.

A Budding Problem

Cannabis evidence is a useful pressure test for current DRE practices because its pharmacology and observable effects do not track alcohol in a simple or predictable way. The DRE matrix itself reflects that limitation. Several expected findings for cannabis remain within normal ranges; for example, cannabis is not ordinarily associated with horizontal gaze nystagmus, elevated body temperature, or altered muscle tone. Other findings, such as increased pulse, elevated blood pressure, pupil size changes, or lack of convergence, are neither universal nor unique to cannabis. The matrix therefore identifies patterns that may be consistent with a drug category; it does not independently establish ingestion, impairment, causation, or the defendant's ability to drive safely.

National public health and forensic sources likewise caution that blood THC concentration does not correlate with impairment as predictably as blood-alcohol concentration.¹⁴ The National Academies has similarly concluded that blood THC levels are not well correlated with impairment or recent use.¹⁵ This creates a double-edged evidentiary problem. The DRE protocol may gather observations that provide context beyond a toxicology result. At the same time, an evaluator's categorical conclusion may be overstated if it does not account for timing, alternative explanations, toxicological limitations, and the distinction between signs consistent with cannabis use and proof of cannabis-caused impairment. Without careful handling or with a tad too much zealous prosecution, this could increase the risk of wrongful convictions.

An End to Expert-ish Testimony: The Dacey-Hinkel Boundary

Attorneys sometimes use labels such as "pseudo-expert" or "hybrid witness" to describe an officer who recounts observations while also drawing on specialized training. Idaho's recent cases provide a



David Delyea, a trial attorney for the State Public Defender's Canyon office, updates attorneys on Idaho's current DUI laws during the National College of DUI Defense seminar in July at the Idaho Water Center in Boise.

more useful rule: the classification turns on the nature of the testimony, not the witness' job title. In *Dacey*, the Idaho Supreme Court announced a brightline rule: "Moving forward, a drug recognition expert must be disclosed as an expert witness under Idaho Criminal Rule 16(b)(7)."¹⁶ An officer may ordinarily describe personal observations and the standardized administration of SFSTs without offering an expert opinion due to the fact it is standardized and leaves little room for interpretation.

But in *State v. Hinkel*, when the officer applies specialized training and knowledge to interpret the totality of the circumstances and form an independent opinion, on any subject, the testimony falls within Idaho Rule of Evidence 702.¹⁷ *Dacey* and *Hinkel* therefore require practitioners and courts to identify, before trial, which portions of an officer's proposed testimony are factual observations, which are lay opinions, and which are expert interpretations requiring disclosure and a proper foundation.

The Evidence Minefield

Several practical evidentiary issues follow. SFST observations may be relevant in

a suspected drug-impaired-driving case, but the proponent should not import alcohol-validation statistics or characterize the standardized battery as independently validated to diagnose impairment from cannabis or drugs generally. Therefore, there should be significant limitations to their use in an impairment only DUI. A DRE evaluation may add specialized observations and interpretation, but its conclusions are not self-proving, particularly in a cannabis case.

Toxicology testimony should be carefully limited to prevent vocabulary drift, such as treating use, presence, intoxication, and impairment as interchangeable concepts. Expert disclosure should identify the opinions the DRE will offer, the facts and data considered, the bases and reasons for those opinions, the report or evaluation, relevant training and certification information, and any additional material discoverable under the governing rules or necessary to litigate reliability and foundation.

Courts and practitioners should also be prepared to address questions that Idaho appellate decisions have not fully resolved. What foundation permits a DRE to opine about a defendant's actual ability to operate

a motor vehicle, rather than merely identifying signs consistent with a drug category? When no DRE evaluation was completed, what inferences may properly be drawn from SFST observations alone? What training or scientific basis qualifies an evaluator to connect a detected substance to impairment at the time of driving? *Stark, Morin, Dacey*, and *Hinkel* require careful separation of observation from interpretation, drug presence from impairment, and impairment from causation.

The Final Evaluation

DRE evidence can be useful in an impairment-based DUI prosecution by organizing observations and identifying a possible drug category, but it does not necessarily answer every question required to carry the State's burden. The remaining gap is the causal bridge connecting the observed condition, the intoxicating substance, and the time of driving.

The soundest approach is disciplined admissibility analysis: identify the charged theory; separate factual observations and lay testimony from expert interpretation; require meaningful expert disclosures;

limit each item of evidence to the proposition it can reliably support; and insist that every element be proved beyond a reasonable doubt. Under that framework, DRE testimony may assist the factfinder without being given more certainty or scope than the law and science justify. That approach is not inherently pro-defense or pro-prosecution; it is the application of ordinary evidentiary principles to an unusually complex category of DUI evidence.



David Delyea graduated from the University of Idaho College of Law in 2018 and began working as a public defender in 2019. Throughout his career, he has represented clients in cases ranging from misdemeanors to serious felonies, developed a particular interest in DUI litigation and evidence, and has argued before the Idaho Supreme Court.

Endnotes

1. See *State v. Dacey*, 169 Idaho 102, 111–12, 491 P.3d 1205, 1214–15 (2021).
2. See DWI Detection and Standardized Field Sobriety Test (SFST) Resources, Nat'l Highway Traffic Safety Admin., <https://www.nhtsa.gov/dwi-detection-and-standardized-field-sobriety-test-sfst-resources>.

3. See Drug Recognition Expert (DRE) Classroom Course, Cal. Highway Patrol, <https://www.chp.ca.gov/programs-services/for-law-enforcement/drug-recognition-evaluator-program/schedule-of-classes/dre/>.
4. Greg Kane, *The Methodological Quality of Three Foundational Law Enforcement Drug Influence Evaluation Validation Studies*, 12 J. Negative Results BioMed. 16 (2013), <https://link.springer.com/article/10.1186/1477-5751-12-16>.
5. See DWI Detection and Standardized Field Sobriety Test (SFST) Resources, Nat'l Highway Traffic Safety Admin., <https://www.nhtsa.gov/dwi-detection-and-standardized-field-sobriety-test-sfst-resources>.
6. 141 Idaho 110, 113–15, 106 P.3d 436, 439–41 (2005).
7. 153 Idaho 200, 204–06, 280 P.3d 703, 707–09 (2012).
8. 159 Idaho 112, 119–23, 357 P.3d 238, 245–49 (Ct. App. 2015).
9. 163 Idaho 378, 381–84, 413 P.3d 778, 781–84 (2018).
10. *Tomlinson*, 159 Idaho at 119, 357 P.3d at 245.
11. *State v. Stark*, 157 Idaho 29, 31, 333 P.3d 844, 846 (Ct. App. 2013).
12. 157 Idaho at 31, 333 P.3d at 846.
13. 158 Idaho 622, 626–29, 349 P.3d 1213, 1217–20 (Ct. App. 2015).
14. See Field Sobriety Tests and THC Levels Unreliable Indicators of Marijuana Intoxication, Nat'l Inst. of Just. (Apr. 5, 2021), <https://nij.ojp.gov/topics/articles/field-sobriety-tests-and-thc-levels-unreliable-indicators-marijuana-intoxication>.
15. Nat'l Acad. of Scis., Eng'g & Med., Overview of Cannabis Policy, in Cannabis Policy Impacts Public Health and Health Equity 63, 83 (2024), <https://www.nationalacademies.org/read/27766/chapter/4#83>.
16. 169 Idaho 102, 111, 491 P.3d 1205 (2021).
17. *State v. Hinkel*, Docket No. 51754, 2026 Ida. App. LEXIS 23 (Ct. App. May 18, 2026).



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The ABA House of Delegates met to conclude the association's 2026 Annual Conference in Chicago. Photo courtesy of American Bar Association.

2026 ABA Annual Meeting in Chicago

Kendall Bjornsen

This year's American Bar Association (ABA) Annual Meeting was held in Chicago, Illinois, the primary headquarters of the ABA. I have the privilege of serving in several capacities and representing Idaho with the ABA. I am Idaho's Young Lawyer Delegate to the ABA's House of Delegates as well as Idaho's Delegate to the Young Lawyers Division of the ABA and a member of the Young Lawyers Division (YLD) Council representing Idaho and Montana (District 30) for the Young Lawyers Assembly. In my roles, I attend the Young Lawyers Assembly as well as the House of Delegates Assembly over the weeklong conference. This year's conference focused on celebrating and reflecting on the 250th anniversary signing of the Declaration of Independence. In particular, the conference focused on honoring the profound legacy of the lawyers who helped build America and inspired countless movements for freedom and justice throughout the world.

As I waited for the YLD Assembly to begin, I looked around the room at hundreds of young lawyers representing every corner of the country. It struck me that each person had traveled a different path to get there, yet we all shared the same responsibility: helping to shape the future of our profession. This Assembly featured some of the most robust debate and overall engagement from state delegates of any assembly I have attended. The YLD Assembly considered and adopted several resolutions addressing issues affecting law students, the legal profession, access to justice, and the administration of the bar examination. Some of the notable resolutions debated and adopted were:

26-12YL - Law Student Well-Being Under HOD 18M105¹

This resolution seeks to build upon American Bar Association Resolution 105 by encouraging greater transparency, accountability, and institutional

engagement in promoting law student well-being. Specifically, it aims to address the current lack of structured mechanisms to assess how law schools are implementing the principles of Resolution 105 and to promote measurable, institution-wide efforts that support the development of emotionally competent and professionally resilient lawyers.

25-6YL (REV) - Legal Resource Hubs²

Encourages public libraries and library systems, legal aid and legal services organizations, bar associations, law schools, community organizations, pro bono networks, and other qualified entities to provide foundational legal resources and improve community legal literacy, including through Legal Resource Hubs and digital legal resource infrastructure ("Digital Law Libraries") in public libraries.

HOD Resolution 509 - Higher Education for Tribal Nations³

Urges federal, state, and private institutions of higher education to recognize that delivering educational and support services to Tribal citizens, a status determined by Tribal nations, is aligned with the United States' trust responsibility and reflects the nation-to-nation relationship between the United States and Tribal nation.

HOD Resolution 510 - Professional Conduct for DOJ Attorneys⁴

Affirms support for state, territorial, and tribal lawyer disciplinary authorities' continued work, consistent with the McDade Amendment (28 U.S.C. § 530B), to enforce applicable rules of professional conduct by investigating and adjudicating complaints against attorneys employed by the Department of Justice under applicable laws and rules to the same extent and in the same manner as applicable to all attorneys within their jurisdiction.

HOD Resolution 606 - Full Firm Membership⁵

Recognizes organization-sponsored membership models with program-based pricing (such as the Full Firm Membership Program and Full Faculty Membership Program) as participation pathways within Special Membership Programs under the Association's policy framework. There were also several resolutions on the YLD Consent Calendar including three that dealt with the bar exam. They are as follows:

26-6YL - Increased Bar Passage Rates⁶

Urges all ABA-accredited law schools to adopt and implement comprehensive, evidence-based programs designed to improve bar examination passage rates among graduates.

26-10YL - LSAC and Bar Exam Accountability⁷

Remote testing has greatly expanded opportunities for many test-takers,

especially those who cannot travel easily, have job or family obligations, or require disability accommodations that work better in controlled environments. However, challenges remain with both remote proctoring and traditional in-person testing, including technical issues, ignored medical emergencies, a lack of effective proctors, uneven support for accommodations, and security measures that can feel excessive or arbitrary. This resolution focuses on solving the operational mechanics causing the harm, without ending remote exams, by requiring technology controls that protect examinee time, accessibility-first design, standardized proctor conduct, transparent metrics, and meaningful remedies.

26-13YL - Report to The House of Delegates⁸

This resolution urges the highest court or bar admissions authority of a jurisdiction that adopts the NextGen Uniform Bar Exam ("NextGen UBE") or other bar exam format that requires an Internet connection to collaborate with each testing facility, all software providers, and other vendors.

Beyond the substance of the individual resolutions, what stood out to me most was the level of engagement and thoughtful debate throughout the Assembly. Each resolution reflected a different challenge facing our profession, but the discussion surrounding them highlighted the important role that the YLD can play in identifying emerging issues and bringing the perspectives of newer lawyers to the broader ABA.

Serving as a state delegate also reinforced for me the importance of having Idaho represented in these conversations. Our participation allows us not only to bring Idaho's perspectives to the national level, but also to bring ideas and resources back to our state and our own legal community. I know many Idaho communities who would benefit from legal resources hubs and access to legal resources. As someone who survived and, at times, did not necessarily thrive during law school, I know I support greater transparency, accountability, and institutional engagement in promoting law student well-being. These resolutions and conversations

matter. They matter on a macro scale of the ABA but they also matter when I bring these discussions back to our Board of Commissioners for review and discussion on how we may implement them into our Bar and with our members. These Resolutions have the ability to impact our day-to-day experiences as Idaho attorneys, but the conversations also have the ability to impact the future successes and well-being of future attorneys.

I left the Assembly reminded that the direction of our profession is shaped not only by the decisions made by our courts and legislatures, but also by the conversations we have as lawyers and the organizations in which we choose to participate.

The YLD Assembly was just one part of the larger ABA Annual Meeting. Following the YLD Assembly, the focus shifted to the House of Delegates, where many of these issues—and others affecting the profession and the public—were considered on a broader scale.

The House of Delegates addressed more than 40 policy matters on a wide variety of issues including the independence of the legal profession and judiciary, warrantless immigration searches and arrests, law enforcement protocols, law student recruitment, funding for Historically Black Colleges and University law schools as well as several lawyer ethics and model rules.⁹ As a reminder, the House encompasses nearly 600 delegates from ABA entities and state, local and specialty bar associations. House proposals do not become ABA policy until they are approved by the House, which meets twice annually (mid-year and annual meetings).

Some of the resolutions adopted were:

Resolution 400: Adopts the Pledge to Preserve the Independence of the Legal Profession and the Judicial System as an affirmation of the legal profession's commitment to the rule of law, the independence of the profession, the Constitution and our legal system.¹⁰

Resolution 515: Encourages all entities that provide educational opportunities to lawyers to implement "Practice Readiness Programs" in order to equip newly licensed lawyers with practical skills and competencies essential to the transition from law school to the practice of law.¹¹

Resolution 405: Urges the bar admissions authority of a jurisdiction that adopts the NextGen Uniform Bar Exam or other bar exam format that requires an Internet connection to collaborate with each testing facility, all software providers and other vendors to sufficiently ensure that all technology is in good shape in advance of the examination date.¹²

Resolution 516: Urges bar admissions authorities to develop and publish policies with clear deadlines governing the portability of Uniform Bar Examination and NextGen Bar Exam scores.¹³

Resolution 511: Urges federal, state, local, territorial and tribal law enforcement agencies to prohibit the routine use of face coverings, masks or other identity concealing gear absent narrowly defined and documented situations where temporary anonymity is essential to officer or public, safety and to ensure that whenever face coverings are used under such circumstances, law enforcement officers and agents must display clearly visible, unique and verifiable identification throughout the encounter.¹⁴

The breadth of these resolutions reflects the unique role of the House of Delegates in setting policy for the ABA and addressing issues that affect both the legal profession and the public we serve. What I found particularly valuable was seeing how these issues were considered from a national perspective, with delegates bringing different experiences and priorities to the discussion. The House also provided an opportunity to look beyond individual policy matters and consider the broader direction of the Association as it begins a new year of leadership.

Another important part of the Annual Meeting was the transition to a new ABA President, which marked an opportunity to reflect on the Association's priorities and the role the ABA can play in responding to the challenges facing the profession.

Outgoing ABA President Michelle A. Behnke of Wisconsin and incoming ABA President Barbara J. Howard of Ohio delivered remarks to the House. Howard has long been active in bar association leadership since her involvement in the ABA Young Lawyers Division. She has been a member of the ABA's



Barbara J. Howard, ABA President, 2026-2027. Photo courtesy of American Bar Association.

policymaking House of Delegates since 1986 and served as chair of the House from 2020 to 2022. She also served on the ABA Board of Governors, the ABA Journal Board of Editors and the board of the American Bar Foundation.

In the ABA House of Delegates, she served on the Nominating Committee from 2002-2005 and again from 2010-2020, then as Ohio's State Delegate. Howard has served on the House Committees on Rules and Calendar, Resolution Impact, Technology and Communications, Issues of Concern to the Profession, Select, Credentials and Admissions, Drafting and Steering Committee of the Nominating Committee.¹⁵ These contributions exemplify her strong dedication to the ABA and to the legal community as a whole. I am very excited to see where Howard takes the ABA and to have a seat at the table with her.

One quote that particularly stuck with me was when Howard said, "When lawyers act together, we are truly a formidable force for democracy."¹⁶ This quote reminds me that while the issues before us were varied, they were all connected by a common purpose: strengthening our profession and the justice system we serve. That sentiment captured what I saw throughout

both the YLD Assembly and the House of Delegates. While nearly 600 delegates may bring different experiences, perspectives, and priorities to the table, the power of the ABA comes from our willingness to engage in difficult conversations, find common ground, and act collectively.

It also brought me back to the thought I had at the beginning of the YLD Assembly—that each person had traveled a different path to get there, yet we all shared the same responsibility: helping shape the future of our profession. Whether through a resolution adopted by the YLD, a policy decision of the House of Delegates, or the leadership of a new ABA President, the Annual Meeting demonstrated the impact that lawyers can have when we come together with a shared commitment to the profession, the rule of law, and the communities we serve.

I am honored to serve in my roles with the ABA and to be part of that collective effort—representing Idaho, contributing to the conversations that shape our profession, and helping demonstrate just how formidable we can be when we act together. The next meeting will be held during the ABA Midyear Meeting, Jan. 27-Feb. 1, 2027, in Chicago.¹⁷



Kendall Bjornsen serves as General Counsel and Corporate Secretary at Idaho Trust Bancorp and its subsidiaries. Kendall manages corporate legal matters and coordinates

outside legal counsel. She holds a Bachelor of Art's degree in Peace and Conflict Studies from the University of California at Berkeley and a Juris Doctorate degree from the University of Idaho College of Law. When she is not working at Idaho Trust or volunteering, you will likely find her somewhere in the North End of Boise with her dog Wally and husband Ethan.

Endnotes

1. https://www.americanbar.org/groups/young_lawyers/events/annual/assembly/
2. Id.
3. Id.
4. https://www.americanbar.org/groups/young_lawyers/events/annual/assembly/
5. Id.
6. Id.
7. Id.
8. https://www.americanbar.org/groups/young_lawyers/events/annual/assembly/
9. https://www.americanbar.org/news/abanews/aba-news-archives/2026/08/aba-hod-actions-annual-conference/?utm_source=sfmc&utm_medium=email&utm_campaign=&promo=&RefId=&utm_id=1242754&sfmc_id=52274524
10. <https://www.americanbar.org/news/abanews/aba-news-archives/2026/08/aba-hod-actions-annual-conference/>

?utm_source=sfmc&utm_medium=email&utm_campaign=&promo=&RefId=&utm_id=1242754&sfmc_id=52274524

11. Id.

12. Id.

13. Id.

14. Id.

15. <https://www.americanbar.org/news/abanews/aba-news-archives/2026/08/barbara-howard-becomes-aba-president/>

16. Id.

17. https://www.americanbar.org/news/abanews/aba-news-archives/2026/08/aba-hod-actions-annual-conference/?utm_source=sfmc&utm_medium=email&utm_campaign=&promo=&RefId=&utm_id=1242754&sfmc_id=52274524



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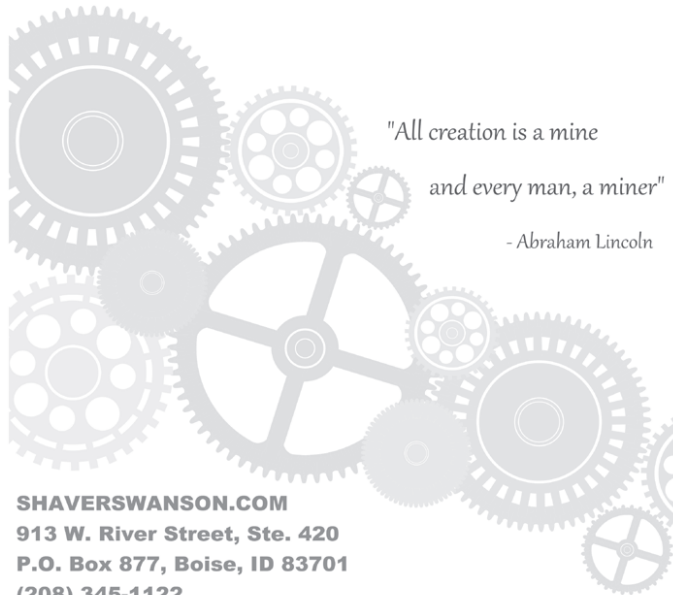


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Regular Fall Term for 2026 *5th Amended September 4, 2026*

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

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Chief Judge
Michael P. Tribe

Judges
Jessica M. Lorello
Theodore Fleming
Gene A. Petty

Regular Fall Term for 2026 *1st Amended September 11, 2026*

Boise September 22 and 24
Boise October 6, 20, and 22
Boise November 5 and 17
Boise December 3, 15, and 17

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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 2027 *1st Amended August 31, 2026*

Boise January 8, 13, 15, and 22
Boise February 5, 8, 12, and 17
Boise (University of Idaho) February 10
Boise April 2, 14, and 16
Moscow (University of Idaho) April 7
Lewiston April 8
Boise May 5, 7, 10, 12, and 14
Boise June 2, 4, 7, 9, and 11

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Hawley Troxell is pleased to announce that Alyxis Cederstrom has joined the firm as an Associate in the Litigation and Insurance practice groups.

Alyxis received her J.D. from the University of Idaho College of Law in 2026. During law school, she served as a judicial extern in Idaho's Third Judicial District and completed Hawley Troxell's 2025 Summer Associate Program.

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Idaho Supreme Court
Oral Arguments for October 2026
 9/15/2026

Wednesday, October 7, 2026 - Boise

8:45 a.m. *Triplett v. Grey* #53831
 10:00 a.m. *State v. Abraham* #52256
 11:15 a.m. *State v. Dalfi* #51699

Friday, October 9, 2026 - Boise

8:45 a.m. *Wright Brothers v. Diddle* #52848/53268
 10:00 a.m. *High Kelvin Prop. v. Beckenhauer Prop* #52878

Wednesday, October 14, 2026 - Idaho Falls

8:45 a.m. *Robinson v. IDOL/WMG* #53282
 10:00 a.m. *Layton v. Shepley* #52947
 11:15 a.m. *McKinney v. ID Falls, LLC* #53181

Thursday, October 15, 2026 - Pocatello

8:45 a.m. *Ray v. Ray* #53255/53262
 10:00 a.m. *Kollmann v. Soda Springs Joint Sch. Dist* #53530

Idaho Court of Appeals
Oral Arguments for October 2026
 9/15/2026

Tuesday, October 6, 2026 - Boise

10:30 a.m. *State v. Collinson* #52368
 1:30 p.m. *Kim v. Aslett* #54147

Tuesday, October 20, 2026 - Boise

10:30 a.m. *State v. Holmes* #52913
 1:30 p.m. *Doe I v. Doe* #53428

Thursday, October 22, 2026 - Boise

10:30 a.m. *State v. Ortiz* #52467
 1:30 p.m. *State v. Hansen* #53212



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Cases Pending

CASES IN ALPHABETICAL ORDER BY CATEGORY – AUGUST 2026

CIVIL APPEALS

Arbitration

Whether the district court erred in denying Defendant's motion to compel arbitration where the parties' agreement required arbitration upon either party's demand but stated the financial institution would not initiate arbitration to collect a consumer debt.

Wells Fargo Bank, N.A. v. Crowe
Docket No. 53840
Court of Appeals

Contract

Whether the district court erred by concluding that a breach of contract claim, alleging a breach of a stock-redemption agreement, was a direct claim and not a derivative claim belonging to the corporation.

Montgomery v. Montgomery
Docket No. 52803
Supreme Court

Public Records Act

Whether the district court erred by concluding that an I.D.O.C. investigative report concerning alleged misconduct by a probation and parole officer was entirely exempt from disclosure as a personnel record and therefore not subject to segregation and redaction under I.C. § 74-112.

Sheliga-Topchain v. IDOC
Docket No. 53971
Court of Appeals

Rule 11 Sanctions

Whether the district court abused its discretion by imposing Rule 11 sanctions and finding that counsel moved to withdraw from representing Defendants in post-judgment proceedings for the improper purpose of delaying Plaintiff's collection efforts.

Idaho Pacific Lumber Co., Inc. v. Donoval
Docket No. 53346
Supreme Court

CRIMINAL APPEALS

Jury Instructions

Whether the district court erred by removing the "without justification or excuse" language from the first-degree murder jury instruction on the basis that the evidence did not support it.

State v. Grimm
Docket No. 52375
Court of Appeals

Probation Revocation

Whether the district court abused its discretion by revoking Defendant's probation following his termination from Wood Court and whether the Wood Court proceedings violated Defendant's right to a neutral and detached factfinder.

State v. Thomas
Docket No. 52459
Court of Appeals

Restitution

Whether the district court abused its discretion in determining the amount of restitution for the victim's vehicle and whether that award complied with the terms of Defendant's binding plea agreement.

State v. Archuleta
Docket No. 52550
Court of Appeals

Search And Seizure

Whether the district court erred by refusing to consider arguments in support of Defendant's motion to suppress because the Defendant failed to provide adequate notice of those arguments before the deadline to file motions to suppress under I.C.R. 12.

State v. Pettigrew
Docket No. 51997
Court of Appeals

Whether evidence obtained during execution of a search warrant should have been suppressed because the officers who executed the warrant did not adequately knock and announce their presence and authority to search prior to entering Defendant's home.

State v. Lewis
Docket No. 52400
Court of Appeals

Whether the district court erred in denying Defendant's motion to suppress because the text message underlying the telephone harassment charge was protected speech under the First Amendment and therefore did not provide probable cause for the arrest warrant.

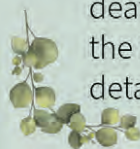
State v. St. Louis
Docket No. 52340
Court of Appeals

Summarized by:

Lori Fleming
Supreme Court Staff Attorney
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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 Sally Boylan with the information at sboylan@isb.idaho.gov. This will allow us to honor the individual with details in "In Memoriam."





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Paine Hamblen mourns the loss of its friend and colleague Daniel J. Gibbons.

Since 2002, Dan has been a fixture in Spokane's bankruptcy and municipal legal community. He dedicated his practice to helping individuals, companies, and cities navigate legal challenges; he was a dedicated and passionate champion for his clients.

Dan met his wife Carey while they were students in the Greek system at WSU. Dan was a life-long supporter and fan of WSU, its Greek system, and its athletics.

Dan graduated from the University of Oregon School of Law in 2000 and was admitted to the Washington State Bar in 2002. He was also admitted in the states of Idaho and Oregon.

During his career, Dan served as the President of the Federal Bar Association for the Eastern District of Washington, an advisory member of the Downtown Spokane Partnership Board, the President and Secretary of Spokane Youth Lacrosse, and a member of the Board of Directors for Children FIRST.

Dan was a committed husband and father. He is survived by his wife (Carey) and his two children (Andrew & Reagan).

Rjay Lloyd 1936–2026



Rjay Lloyd passed peacefully at his home on Friday, August 28, 2026. He is survived by his wife Sara Ann Mickelson, his four daughters Amy (Eric Faas), Allison (Richard Smith), MaryAnn (James Bria) Holly (Gary Tanner), nephew Brian Lloyd (Kerri Case), 15 grandchildren and 13 great-grandchildren. He is survived by his sister Caroline Lloyd Carpenter. He was preceded in death by his and Ann's identical twin daughters Janet and Jane who passed in infancy, his parents Mary Lakey and William Herman Lloyd and his brother Harold Lakey Lloyd. His reunion with them is undoubtedly joyous.

Rjay Lloyd lived a life that was big in accomplishment, rich in experience, and most importantly, deeply rooted in family and faith. He was a successful attorney and tax professional, a businessman, trusted advisor, world traveler, storyteller with a quick wit, loyal friend, devoted husband, and a father and Papa whose magnetic personality and presence made his family feel safe, supported and incredibly proud to belong to him.

Rjay was born August 23, 1936, in Soda Springs, Idaho, where he was raised on a ranch. Those Idaho beginnings shaped much of the man he would become—hardworking, determined, practical, resourceful, and deeply connected to his roots. He graduated from high school in 1955, serving as senior class president.

Rjay attended Utah State University and Brigham Young University before transferring to the University of Utah, where he earned a Bachelor of Science degree in Accounting and his Juris Doctor. He continued his education in taxation, including advanced study at New York University. Upon returning to Idaho, he held the unusual distinction of being the only person in the state at the time to simultaneously hold CPA, JD and LL.M distinctions.

His career began as a tax manager with Ernst & Ernst before he opened Rjay Lloyd Chartered in downtown Boise in 1970. Over the years, he became a trusted attorney, CPA, tax expert, counselor, and advisor to individuals and businesses throughout Idaho and beyond. His clients included some of Idaho's most recognizable businesses and professional organizations, and his work eventually expanded to Arizona and internationally.

For more than 30 years, Rjay and Ann made their home in Paradise Valley, Arizona, but Idaho never stopped being part of who he was. Soda Springs was where his story began, and those roots remained important throughout his life.

For his children, Rjay was the dad who made them believe things could be figured out. He was strong and capable, intelligent and resourceful. He could be counted on. His children grew up knowing their father would work hard, show up, find an answer, and do everything within his power to take care of the people he loved.

His family grew to include 15 grandchildren and a growing generation of great-grandchildren. They knew a different side of the accomplished professional others saw—the Papa with the humor, the stories, the teasing and tickling, the family trips, the traditions, and the unmistakable joy he found in having his family together.

Peter C. Erbland 1952–2026



Peter "Pete" Charles Erbland, 73, passed away on August 2, 2026, with his devoted wife by his side. Pete was born the fourth of eight children

on November 20, 1952, in Canandaigua, New York, to Robert Merritt and Mary Frances (Carroll) Erbland. He graduated from St. Bonaventure University and earned his law degree from Gonzaga University School of Law.

Pete's early legal career included serving as Chief Deputy Prosecutor for Kootenai County and Chief of the Criminal Justice Division for the Office of the Idaho Attorney General. The duration of his career was in private practice in Coeur d'Alene, handling complex civil litigation, personal injury, and insurance defense, among many other matters. He served as a mediator and arbitrator whose extensive knowledge, experience, and intuitive and respectful manner enabled the settlement of thousands of disputes. Pete was a superb courtroom advocate and had a statewide reputation as a man of the highest character with the respect of colleagues, clients, staff, and opposing council. Pete's decency and professionalism defined his legal career resulting in the Idaho State Bar's 2016 Professionalism award and the 2018 Distinguished Lawyer award. He was also honored to be a Fellow of the American College of Trial Lawyers.

More recently, he was a founding member of the North Idaho Republicans as he was passionate about restoring civility, honesty, and integrity to local politics. As a highly respected Republican Precinct Committeeman, his leadership, demeanor, and wisdom provided a model to which many aspired.

Among his personal passions and endeavors, Pete was an excellent snow skier, having learned while living in Italy with his family during his teen years. In his mid-life he became an accomplished mountaineer, training with the Spokane Mountaineers and summiting many of the regional mountains in addition to some of the world's tallest: Aconcagua, Kilimanjaro, and Denali. His attempt at Mt. Everest was halted by the tragic events of the 2014 climbing season. Coeur d'Alene's Canfield Mountain held a special place in his heart of which he likely hiked thousands of times.

With all of Pete's success in his career and personal pursuits, it was in his role as a beloved husband, father, grandfather, brother and uncle where he found his

greatest joy as he spent time with family. He especially enjoyed sharing his love of the outdoors with his wife, children, and grandchildren, and spent many happy weekends on the ski slopes with them. "Papa Pete" adored and was dedicated to spending time with his grandchildren, who will always cherish their time together including their "Explorer's Club" and his playing any game they asked of him. Their home was often filled with dear friends and family, especially during football season to cheer on his favorite Green Bay Packers. His 2026 trips to Italy and learning to speak Italian with his instructor and new Italian friends were recent bright spots for Pete. His loyal devotion to his wife was steadfast and unparalleled.

Pete is survived by his wife, Tiffany Erbland; his children Sarah Stuart (William) and Robert Erbland (Meagin); his grandchildren, Wyatt, Daniel and Avery Erbland; his step-children, Kayla Womeldorff (Matthew) and their children, Henry and Ella, Lauren Smith (William) and their children, Thomas and Bennett, and Mitchell Leitzke; his siblings, Christopher Erbland (Linda), Catherine Harris, John Erbland (Debra), Janet Carpenter, Mary Elizabeth Tegtmeier (Mark), Daniel Erbland (Margaret), and Teresa Roenigk; along with many nieces, nephews and cousins; and dear friends. He was preceded in death by his parents, Robert and Mary Erbland.

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Green Evans-Schroeder Welcomes Attorney Maria Andrade as Removal Defense Practice Group Head



BOISE—Green Evans-Schroeder is pleased to announce that veteran immigration attorney Maria Andrade has joined the firm as Removal Defense Practice Group Head.

Andrade earned her Juris Doctor from the University of Notre Dame and her Bachelor of Arts from Loyola Marymount University. Andrade brings more than 25 years of immigration law experience and is widely recognized for her work in deportation defense, federal litigation, criminal-immigration law, and complex immigration matters. She founded Andrade Legal in Boise, Idaho, in 2001 and grew the firm into one of the state's leading immigration practices. She later founded Idaho's first statewide nonprofit dedicated to providing free and low-cost deportation defense services before returning to private practice.

Throughout her career, Andrade has represented clients before immigration courts, federal district courts, the Board of Immigration Appeals, and the United States Courts of Appeals. She has served in national leadership roles with several immigration advocacy and professional organizations and is a frequent author and presenter on immigration litigation, removal defense, appellate advocacy, and criminal-immigration law.

At Green Evans-Schroeder, located in Tucson and Phoenix, Arizona, Andrade works closely with attorneys throughout

the firm's removal defense practice on litigation strategy, legal analysis, legal writing, trial advocacy, and complex case development. Her appointment reflects the firm's commitment to providing clients with the collective experience of a nationally recognized team focused on deportation defense, federal litigation, and the intersection of criminal and immigration law.

Based in Boise, Idaho, Andrade will continue serving clients and referral sources throughout the region while helping strengthen Green Evans-Schroeder's national removal defense practice.

Brody Named Next Idaho Chief Justice



BOISE—Justice Robyn Brody has been selected as the next chief justice of the Idaho Supreme Court, effective October 1, 2026.

Justice Brody is the second woman to lead Idaho's highest court. She succeeds Chief Justice G. Richard Bevan.

Justice Brody was elected to the Supreme Court after a statewide race in 2016 and is now in her second six-year term in elected office. She is currently vice chief of the Court and is actively involved in multiple committees related to Idaho's families and children. She also chairs the Court's Language Access Committee and the state's Pro Bono Commission. She is a board member of the Idaho Law Foundation, which oversees the Idaho Volunteer Lawyers Program and civic education programs like the Idaho High School Mock Trial Competition.

Justice Brody has been an Idaho lawyer for nearly 30 years. Before joining the

Court, she practiced law in the Magic Valley, starting her own law firm in 2010 in Rupert. She is actively involved in continuing education for Idaho attorneys and has been an adjunct professor at the University of Idaho College of Law, where she taught a small law firm management practicum.

Court of Appeals Judge Petty Sworn in



BOISE—Idaho Court of Appeals Judge Gene Petty took office on August 28. The Court of Appeals is made up of four judges who hear appeals as assigned by

the state Supreme Court.

Gov. Brad Little appointed Judge Petty to the Court of Appeals in May. Judge Petty previously served as a district judge in Idaho's Third Judicial District and a deputy county prosecutor focused on civil litigation. He has been deeply involved in efforts to strengthen Idaho's behavioral health system and is a member of the Idaho Behavioral Health Council. Judge Petty succeeds Judge Molly Huskey, who retired from the court in June.

2026 Roadshow: The ISB Resolution Process

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



New partnership status? Job change? An office move?

Submit to Around the Bar!

Submit your announcement to the next issue's Around the Bar section by emailing sboylan@isb.idaho.gov

The Resolution Process is set forth in Idaho Bar Commission Rule 906. Resolutions may be submitted by a District Bar Association, the Board of Commissioners, a Bar committee, or an individual member of the Bar. Resolutions submitted by a District Bar Association, the Board of Commissioners, or the Idaho Supreme Court are automatically included in the resolution process.

Idaho Bar Commission Rule 906 governs the Resolution Process. Resolutions for the 2026 Resolution Process. If you have questions about the process, contact Maureen Ryan Braley at mryanbraley@isb.idaho.gov or (208) 334-4500.

2026 Resolution Meetings Schedule

District	District Bar President	Meeting Date	Meeting Location	Meeting
First District	Makenzie Crawford	Wednesday, Nov. 4	The Coeur d'Alene Resort 115 S. Second St., CDA	11:30 a.m.
Second District	Brennan Wright	Thursday, Nov. 5	ICCU Alumni Center University of Idaho 1601 E Bonneville St., Pocatello	5:30 p.m.
Third District	Tyler Rounds	Tuesday, Nov. 10	Indian Creek Steakhouse 711 Main St., Caldwell	11:30 a.m.
Fourth District	Yecora Daniels	Tuesday, Nov. 10	Jack's Urban Meeting Place 1000 W Myrtle St., Boise	5:30 p.m.
Fifth District	Qiva Dinuri	Wednesday, Nov. 18	Blue Lakes Country Club 1940 Blue Lakes Grade, Jerome	5:30 p.m.
Sixth District	Elisheva Patterson	Wednesday, Nov. 18	Purpose Center 224 N. Main, Pocatello	11:30 a.m.
Seventh District	Benjamin Ritchie (V.P.)	Tuesday, Nov. 17	Hilton Garden Inn 700 Lindsey Blvd., Idaho Falls	5:00 p.m.



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f. Total Distribution (Sum of 15c and 15e)		7371	7614
g. Copies not Distributed (See instructions to Publishers #4 (page #3))		749	720
h. Total (Sum of 15f and g)		8120	8334
i. Percent Paid (15c divided by 15f times 100)		%98.39	%98.42

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October

1 & 2	<i>2026 Estate Planning Conference</i> The Grove Hotel - Boise 11 CLE credits including 0.5 Ethics 	 = In Person  = Live Webcast  = Live Audio Stream
6	<i>2026 Bench & Bar CLE & Reception: Celebrating the Constitution and Honoring Judicial Excellence</i> JUMP - Boise & Webcast 1.5 CLE credits  	
8	<i>2026 Annual Health Law Seminar</i> University of Idaho College of Law - Boise & Webcast 4.0 CLE credits including 1.0 Ethics  	
22	<i>2026 Employment Law Seminar: Employment Law in a Time of Transition</i> University of Idaho College of Law - Boise & Webcast 5.25 CLE credits including 1.0 Ethics  	
23	<i>2026 Fall New Attorney Program</i> Boise Centre - Boise 4.0 CLE credits including 1.0 Ethics 	
		26 <i>Communicating in Opposing Counsel & the Courts: Professionalism and Ethics</i> 1.0 Ethics credit 
		26 <i>Annual Bellwood Lecture</i> University of Idaho College of Law - Moscow & Webcast  
		29 <i>Joint Representations, Part 1: Civil Litigation Focus</i> Audio Stream 1.0 Ethics credit 
		30 <i>Joint Representations, Part 2: Civil Litigation Focus</i> Audio Stream 1.0 Ethics credit 

November

2, 9, 16 & 23	<i>Mobile Monday CLE Series</i>	17	<i>Seventh District Bar Roadshow CLE</i>
4	<i>First District Bar Roadshow CLE</i>	18	<i>Sixth District Bar Roadshow CLE</i>
5	<i>Second District Bar Roadshow CLE</i>	18	<i>Fifth District Bar Roadshow CLE</i>
10	<i>Third District Bar Roadshow CLE</i>	19	<i>The Retiring Lawyer: Client Transition Ethics and File Preservation Duties</i>
10	<i>Fourth District Bar Roadshow CLE</i>	20	<i>Negotiation Ethics: Balancing Boasts and Integrity</i>
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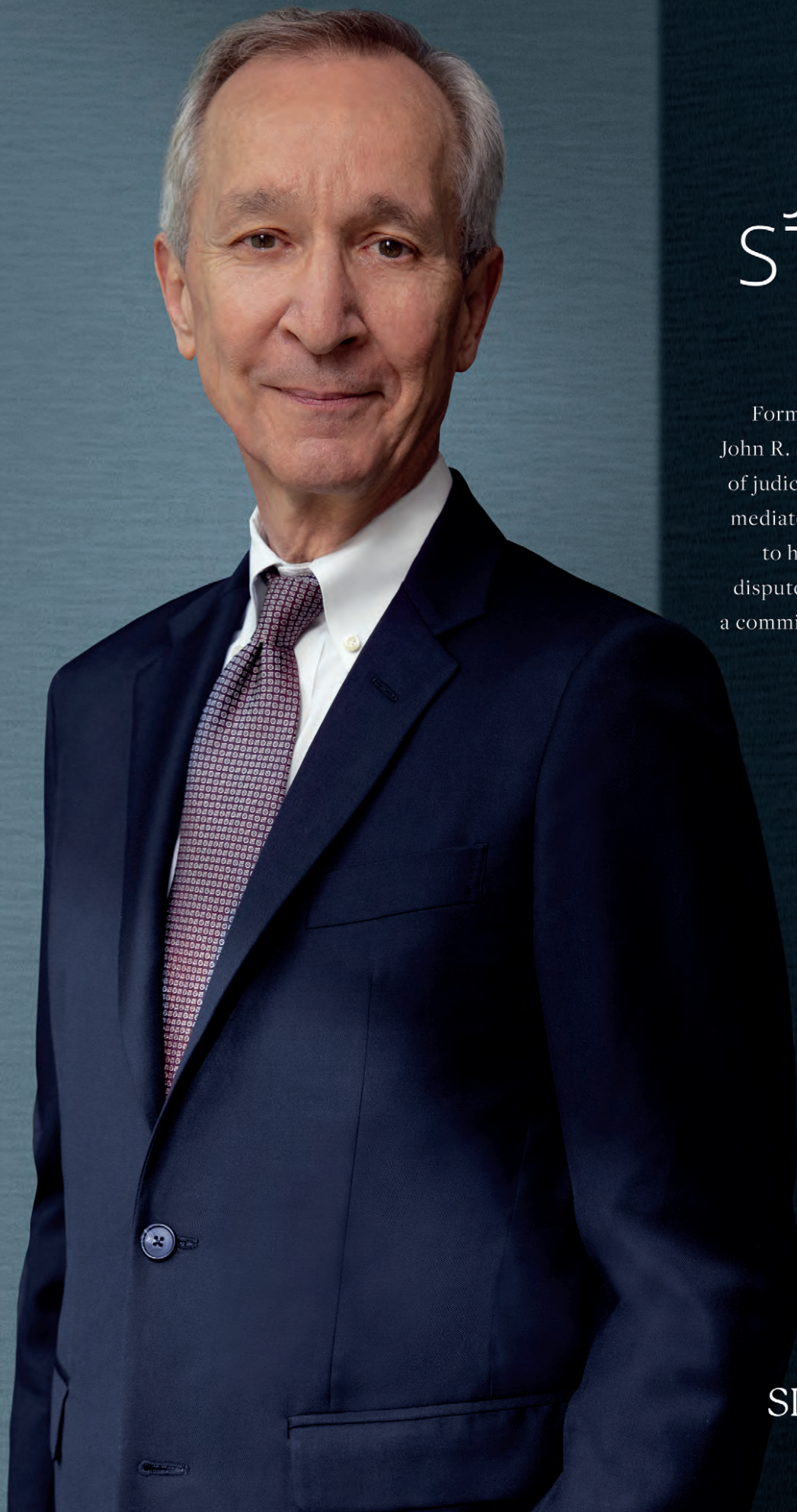
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