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## On the Cover



Titled "Breaking the Gavel Ceiling One Seat at a Time," this issue's Featured Article written by Hailee Elledge and Cathy Silak explores the numerous times Idaho women have "broken the glass ceiling" of the bench with historic firsts. Photo via Adobe Stock, Abstract broken green glass in motion by rost9.

## Featured Article

34 Breaking the Gavel Ceiling One Seat at A Time

Hailee N. Elledge and Cathy R. Silak

## Sponsored Articles

Sponsored by the Diversity Section

12 HB 71: The State's Attempt to Ban Gender Affirming Medical Care for Transgender Minors

Jennifer S. Dempsey

20 The Origin and Evolving Mission of Lawyer Assistance Programs

The Legal and Practical Implications of *Perez* for Youth with Disabilities

Abigael Schulz

## Additional Articles

42 State of the Judiciary Address

Chief Justice G. Richard Bevan

46 Book Review: When Knowing Comes

Jeffrey C. Fereday

## From the Bar

5 From the Editor

Lindsey M. Welfley

8 Commissioner's Message

Jillian H. Caires

10 Department Report: Bar Counsel's Office

Joseph N. Pirtle

28 Love the Law!: A Program Everyone Can Relate To

Anna E. Courtney and Kinzo H. Mihara

# In Every Issue

6	Bar Actions	56	In Memoriam
50	Court Information	58	Around the Bar
52	Cases Pending	62	Upcoming CLEs

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# **An Early Spring?**

Lindsey M. Welfley

Thank you for picking up the March/April issue of *The Advocate* and ushering in spring with us! If Punxsutawney Phil is correct, we should be making our way to a new season! This issue is sponsored by the Diversity Section and includes articles on a wide array of topics.

First, Jennifer Dempsey discusses recent House Bill 71 and *Poe v. Labrador*. Next, Yvette Hourigan, director of the Kentucky Lawyer Assistance Program, explores the importance of lawyer assistance programs nationwide, with particular attention to the interplay of wellness and maintaining your law practice. Following this discussion, Abigael Schulz then unearths the potential legal and practical implications of the United States Supreme Court decision in *Luna Perez v. Sturgis Pub. Schools* for youth with disabilities.

Writing to introduce the *Love the Law!* program, Anna Courtney and Kinzo Mihara provide an overview of the program, outcomes for participants, and how you can get involved. And in this issue's Featured Article, co-authors Hailee Elledge and Cathy Silak dive into Idaho's history of "breaking the gavel ceiling" with women ever increasingly serving on the bench.

This issue also includes Chief Justice Bevan's State of the Judiciary Address, which he gave to the Legislature earlier this year. You can also read Jeff Fereday's book review of an upcoming legal drama titled *When Knowing Comes* by Idaho attorney Kelly Greene McConnell.

We hope you enjoy this issue and find something useful to your practice! Best,

Lindsey M. Welfley

Communications Director

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MARCH/APRIL 2024

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## **BLAKE S. ATKIN** (Public Reprimand)

The Professional Conduct Board has issued a Public Reprimand to Clifton, Idaho attorney Blake S. Atkin, based on professional misconduct. The Professional Conduct Board's Order followed a stipulated resolution of a reciprocal proceeding in Idaho based on a Utah disciplinary proceeding. On November 2, 2023, the Third Judicial District Court for Salt Lake County, Utah issued an Order of Discipline: Public Reprimand finding that Mr. Atkin violated Utah Rule of Professional Conduct ("U.R.P.C.") 8.1(b) [Bar Disciplinary Matter; Failure to Respond to Lawful Demand for Information]. This U.R.P.C. corresponds to the same Idaho Rule of Professional Conduct.

The Public Reprimand relates to the following circumstances. In July 2021, the Utah State Bar Office of Professional Conduct ("OPC") received a trust account overdraft notification from a bank regarding an IOLTA account for Atkin Law Offices PC, and that when a certain check was presented for payment in June 2021, the balance of funds in that account was insufficient to pay the amount for which the check was drawn. The OPC thereafter sent a letter to Mr. Atkin requesting his explanation of why the overdraft occurred and indicated that his explanation should include a copy of the check creating the overdraft, the identity of the client on whose behalf the check was issued, a copy of the client's subsidiary ledger, and a copy of the monthly trust account bank statements for the month in which the overdraft occurred and the two previous months.

Mr. Atkin responded by stating that the check was made to himself for fees charged to one client over several months, that the overdraft occurred because he did not realize the account had been depleted to the point that it did not meet that month's billing, that he withdrew the amount indicated on the check from the account because he had billed his client over a period of months for that amount of work performed and that the money was earned. Mr. Atkin provided a copy of the check causing the overdraft and explained that it was payable to his firm. The check referenced one client's name in the memo line. Mr. Atkin refused to produce the information requested by the OPC, such as monthly bank statements, billing records, ledgers, and accounting records because of his confidentiality obligations to his clients under U.R.P.C. 1.6.

The OPC thereafter sent several letters to Mr. Atkin explaining that certain disclosures of confidential information were permitted under U.R.P.C. 1.6. In these letters, the OPC again requested Mr. Atkin's monthly financial statements and billing records for the client whose fees were involved in the check that created the overdraft. Mr. Atkin responded but continued to object to the OPC's request and refused to provide the requested information. The OPC subpoenaed Mr. Atkin's bank statements but the information was inconclusive without his billing records to determine when the funds connected to the subject client were deposited into his trust account.

Finally, because Mr. Atkin refused to comply with OPC's demands for his billing records, it filed a Complaint against Mr. Atkin in District Court in December 2022, alleging violations of U.R.P.C. 1.5(a), 1.15(a), 1.15(c) and 8.1(b) by knowingly refusing to respond to a lawful demand for information from a disciplinary authority, by obstructing the OPC's investigation of the insufficient funds notice, and by failing to provide documents necessary for OPC's investigation of insufficient funds in his trust account. During the discovery phase of the case, Mr. Atkin still refused to produce the requested documents until the District Court ordered him to and he complied and produced redacted copies.

In October 2023, the OPC and Mr. Atkin entered into a Discipline by Consent and Settlement Agreement whereby Mr. Atkin admitted that he violated U.R.P.C. 8.1(b) in that he knowingly refused to respond to a lawful demand for information from a disciplinary authority based on his reliance on U.R.P.C. 1.6, that he obstructed and delayed the OPC's investigation of the insufficient funds notice, and that Mr. Atkin's failure to provide the documents necessary for OPC's investigation of insufficient funds in his trust account resulted in a District Court case being filed. In recommending that a Public Reprimand be imposed, the parties stipulated that a mitigating circumstance was the absence of a dishonest or selfish motive because Mr. Atkin believed he was protecting his clients.

The Public Reprimand does not limit Mr. Atkin's eligibility to practice law.

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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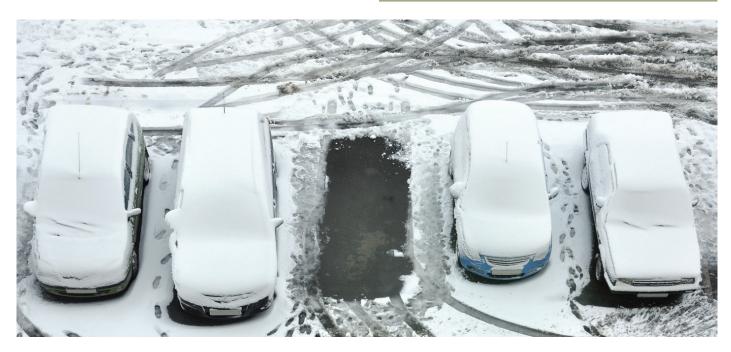
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## Commissioner's Message



# Parking Lots, Magic Wands, and the Practice of Law

Jillian H. Caires

ne recent snowy evening, I made the questionable decision to brave Costco. Like any snowy parking lot in North Idaho, it was a mess. Cars were parked all catawampus, and parking spots were few. Luck was on my side when I pulled down an aisle just as lights came on a car indicating it was about to reverse. I put on my blinker, pulled aside to make room for their departure and waited patiently. The exiting car pulled forward and immediately a third car came speeding through the slush, ignoring my turn signal, and smirking at me as they swept into the parking space. This was no mistake - it was blatant disregard. Naturally, I was frustrated, and in my head, I started to bemoan the loss of civility in society.

Over the past few years, I, like many of us, have watched from the sidelines as high-profile legal proceedings publicly unfolded with attorneys taking center stage – both locally and nationally. I have watched with disappointment as attorneys blindly execute their clients' demands while ignoring ethics and the law, disrespecting the legal process, and publicly insulting the judges, lawyers, and parties involved in the matter. As I thought

about the parking lot event, I realized that it was analogous to those situations.

Watching some of the legal shenanigans play out in recent years has caused me to spend a lot of time reflecting on our role as attorneys. Lawyers play a vital role in the preservation of society. I have a sweatshirt that says, "Do the Next Right Thing." I believe this is a motto we should all live by as attorneys, and it is a concise explanation of the Rules of Professional Conduct. A more long-winded version of that statement can be found in the Preamble to the Idaho Rules of Professional Conduct ("IRPC") which states:

A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. ... A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers, and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

We are all public representatives of our profession; many times, we will be the only attorney an individual interacts with in their life. How we act matters. How we talk to and about other people and the legal system matters. We are constantly being watched to see if our conduct validates the stereotypes of lawyers and aligns with all the lawyer jokes out there (e.g., Why won't snakes bite attorneys? Professional courtesy.). If we don't respect the law and the courts, why would anyone else? This is even more true when we are involved in high profile matters that have real impacts on our communities, and it means that sometimes we must have conversations with our clients that they don't want to hear.

I don't know about the rest of you, but, unfortunately, I received neither a wand nor a rabbit in a hat when I was sworn into the bar (though I am confident after having watched Harry Potter a number of times that I would have excelled at Hogwarts School of Law). Since I can't do magic, I've had to disappoint more than one client by telling them that there was no legal way to accomplish their goals or obtain their desired outcome. Sometimes, we can't get our clients the outcome they desire; this is where our role as advisor comes into play. Under Rule 2.1 of the Idaho Rules of Professional Conduct,

attorneys are obligated to "exercise independent professional judgment and render candid advice." In other words, we must think critically and independently, and sometimes that means we must have hard conversations with our clients. Our duty is not to tell our clients what they want to hear, and sometimes this means telling our clients "no" and "stop." We are obliged to tell clients when the outcome they desire is impossible. We must counsel our clients when the proposed course of action is illegal, violates a court order, or is immoral or unethical.

The greatest lesson I learned from one of my mentors, Peter J. Smith IV, was how to have hard conversations with clients. I sat by Peter in more than one client meeting as he wisely counseled clients that the outcome they wanted could not be accomplished or that what they wanted to do in the name of their principles would

cause them extreme strife and would cost them their time, money, and sometimes their sanity. I learned from watching Peter that a truly skilled attorney more often talks their client out of litigation, not into it. Unfortunately, not every attorney has developed this skill, and some are happier blindly following client demands for their own self-serving purposes - whether it be money, power, or notoriety. When we have hard, honest conversations with our clients, and more importantly when we are forced to stand up to our clients to tell them they cannot take the course of action they propose, we most fully live out our vital role of advisor.

Going back to my Costco story, after I loaded my car full of groceries that evening and proceeded to return my cart to the Costco warehouse, navigating through the slush and ice, a young woman passed by me. She walked a few steps, then turned back and offered to take my cart. In this instant, I was reminded that most people are good. So too, I am reminded daily that most attorneys are good - diligently practicing, skillfully advising, wisely counseling, and doing what they can to preserve society and our legal system. Most attorneys spend every day doing the next right thing.



Jillian H. Caires is an Idaho native and a proud Washington State University Cougar and Gonzaga Bulldog. After clerking for the Honorable

Benjamin Simpson, Jillian spent several years in private practice in Coeur d'Alene before joining the in-house legal team of Avista Corporation. In her free time, Jillian enjoys baking, gardening, walking her standard poodle, and spending time with her family.



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# **Bar Counsel's Office Report**

Joseph N. Pirtle

1023 was quite a busy year for Bar **L**Counsel's Office. Our work was again primarily divided into four categories: (1) investigating and prosecuting alleged violations of the Idaho Rules of Professional Conduct; (2) assisting with claims to the Client Assistance Fund; (3) assisting the Board of Commissioners, the Character and Fitness Committee, and the Reasonable Accommodations Committee in admissions and licensing matters; and (4) answering ethics questions.

## **Grievance Investigations** and Discipline

There were 399 grievances filed in 2023 against attorneys. This is up from 346 grievances filed in 2022 - a 15.3% increase. In 2023, Bar Counsel's Office also closed 368 grievance investigations, up from 322 grievances closed in 2022.

Bar Counsel's Office filed 13 cases with the Professional Conduct Board seeking formal discipline in 2023. Most of those cases resulted in stipulated resolutions with the attorneys.

Alleged violations of the Idaho Rules of Professional Conduct are submitted to our office in the form of a "grievance" and investigated by our office. If our investigation establishes that there were no violations of the Rules or if there is insufficient clear and convincing evidence to prove that a violation has occurred, the grievance is dismissed. If we find clear and convincing evidence of a violation of the Rules, the attorney may receive private discipline in the form of an informal admonition or a private reprimand or, in some cases, formal charges may be filed. If the attorney receives private discipline, the grievant will be informed of the sanction in writing but information concerning an attorney's private discipline is not released to the public by Bar Counsel's Office. Grievances resulting in formal charges can involve sanctions ranging from public reprimand to disbarment.

## **Client Assistance Fund**

In 2023, the Client Assistance Fund received 14 claims, down from the 25 claims filed in 2022.

The Client Assistance Fund is available to compensate clients who have suffered damages due to the "dishonest conduct" of an attorney. The claims usually involve theft, embezzlement, or the attorney's failure to return unearned fees to the client. Bar Counsel's Office assists the Client Assistance Committee in administering claims, attending meetings, and preparing Findings of Fact, Conclusions of Law, and Recommendations regarding Client Assistance Fund claims.

## Admissions and Licensing

Bar Counsel is the lawyer for the Board of Commissioners, the Character and Fitness Committee, and the Reasonable Accommodations Committee. In this role, Bar Counsel's Office assists with admissions and licensing investigations and prepares Findings of Fact, Conclusions of Law, and Recommendations following those investigations. Bar Counsel's Office also represents the Board of Commissioners in admissions and licensing petitions filed with the Idaho Supreme Court, including requests to waive a particular Idaho Bar Commission Rule and review of denied admissions or licensing requests.

The details of those admissions and licensing matters are confidential under the Idaho Bar Commission Rules.

#### **Ethics Questions**

In 2023, Bar Counsel's Office answered 1294 calls or emails seeking guidance on the Idaho Rules of Professional Conduct, up from 1,047 ethics questions answered in 2022. The most common questions in 2023 centered around conflicts of interest and attorney's responsibilities upon termination of the representation.

All three attorneys in Bar Counsel's Office (Joe Pirtle, Julia Crossland, and Caralee Lambert) respond to ethics questions. We prefer assisting attorneys with ethics questions before there is a possible violation or harm to the public. Ethics inquiries remain confidential in the hopes that Bar members will be more comfortable contacting Bar Counsel's Office to ask ethics questions. We do not, however, advise on substantive legal issues.



Joseph N. Pirtle joined Bar Counsel's office in April 2022. Prior to that, Joe was a shareholder and civil litigation attorney with Elam & Burke in Boise. Joe

received his B.S. in business finance from the University of Idaho in 2001 and his J.D. from the University of Idaho College of Law in 2004.

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# HB 71: The State's Attempt to Ban Gender Affirming **Medical Care for Transgender Minors**

Jennifer S. Dempsey

In April 2023, Governor Little signed ■ House Bill 71, the Vulnerable Child Protective Act ("HB 71").1 HB 71 targets the transgender community and those medical providers that treat this community. Specifically, HB 71 bans and criminalizes certain medical treatments and procedures that provide gender affirming medical care for transgender minors.2

Gender affirming care encompasses a range of medical procedures and treatments, including hormone therapy, puberty blockers, and gender confirmation surgeries. For many transgender individuals, these interventions play a crucial role in alleviating gender dysphoria, a psychological distress resulting from the incongruence between one's gender identity and assigned sex at birth.3

HB 71 was set to go into effect on January 1, 2024.

To prevent HB 71 from going into effect and harming transgender youth in Idaho, on May 31, 2023, certain minor plaintiffs and their parents filed suit against state and county defendants in Poe v. Labrador. <sup>4</sup> The Poe plaintiffs also sought a statewide injunction against HB 71.

On December 26, 2023, the United States District Court of Idaho granted the Poe plaintiffs' request for a statewide injunction and enjoined enforcement of any provision of HB 71 during the pendency of the litigation.5 Idaho has joined numerous other courts in doing so.6 Since then, despite various motions filed by Labrador, both the Idaho District Court and the Ninth Circuit have allowed the injunction to remain in place.7 For the moment, Idaho's transgender youth can receive the critical medical care they need.

This article defines (briefly) gender identity and gender dysphoria and how medical professionals treat gender dysphoria through evidence-based guidelines that are widely accepted by all major medical associations in the United States. It then examines the constitutional arguments under the Equal Protection and Due Process clauses of the Fourteenth Amendment for and against HB 71 as stated in briefs of plaintiffs, Labrador, and the United States. Finally, it examines those portions of the recent decision of the Court pertaining to the Equal Protection and Due Process clauses. Finally, this article concludes that HB 71 is unconstitutional.

This article does not address procedural arguments raised by the parties, constitutional issues of standing or injuryin-fact, the relevant factors met by the Poe plaintiffs resulting in the preliminary injunction, or the arguments and outcomes for Jan M. Bennetts, Ada County Prosecuting Attorney ("Bennetts") and Individual Members of the Idaho Code Commission ("Idaho Code Commission"). Those arguments are not necessarily relevant to the constitutional questions under the Fourteenth Amendment, Also, it must be noted that this area of law is fluid. Thus, by the time this article is printed, the Supreme Court may have weighed in.

## **Gender Identity and Gender Dysphoria**

The Poe plaintiffs and Labrador generally agree (at least as asserted in their briefs) on the basic following definitions for "gender identity" and "gender dysphoria." The Poe plaintiffs stated:

> 'Gender identity' refers to a person's core sense of belonging to a particular gender. Everyone has a gender identity, and it is a fundamental aspect of human development for all people.8

## Labrador states:

[A]n individual's 'gender identity' is his or her personal sense of being male or female.9 Both agree that "[g]ender dysphoria" arises "from the incongruence transgender people experience between their gender identity and their assigned sex."10

All parties likewise acknowledge that gender dysphoria "is a specific psychiatric diagnosis defined by diagnostic criteria set out in the Diagnostic and Statistical Manual of Mental Disorders 5-TR ("DSM-5")."11

## HB 71: The Vulnerable Child **Protective Act**

HB 71 states:

"A medical provider shall not engage in any of the following practices upon a child for the purpose of attempting to alter the appearance of or affirm the child's perception of the child's sex if that perception is inconsistent with the child's biological sex:

- (a) Performing surgeries that sterilize or mutilate, or artificially construct tissue with the appearance of genitalia that differs from the child's biological sex...
- (b) Performing a mastectomy;
- Administering or supplying the following medications that induce profound morphologic changes in the genitals of a child or induce transient or permanent infertility:
  - (i) Puberty-blocking medication to stop or delay normal puberty;
  - (ii) Supraphysiological doses of testosterone to a female;
  - (iii) Supraphysiological doses of estrogen to a male; or
- (d) Removing any otherwise healthy or nondiseased body part or tissue."12

Section 4 of HB 71 only bans this type of medical treatment when it is necessary for gender affirming care.13 HB 71 does not ban this very same medical treatment when it is necessary to treat conditions in cisgender minors.14

Section 5 of HB 71 criminalizes gender affirming care for minors: "[a]ny medical professional convicted of a violation of this section shall be guilty of a felony and shall be imprisoned in the state prison for a term of not more than ten (10) years."15 HB 71 also

amended Idaho Code §19-5307 to include a violation of HB 71 to the list of egregious felonies (such as, murder, attempted strangulation, and lewd conduct with a child) for which a fine may be imposed.

## The Poe Lawsuit

The Poe plaintiffs are certain transgender youth who have been treated with gender-affirming care that is banned by HB 71 and their parents. They assert HB 71 is unconstitutional under the Equal Protection and Due Process clauses of the Fourteenth Amendment. Given the pending effective date, the Poe plaintiffs immediately sought a preliminary injunction.

The defendants in *Poe* are Bennetts: Raul Labrador, Attorney General of the State of Idaho; and the Idaho Code Commission.

The United States filed a Statement of Interest pursuant to 28 U.S.C. §517 in support of the preliminary injunction.16 Twenty-three national and state medical and mental health organizations filed a brief of Amici Curiae in support of the Poe plaintiffs' motion for preliminary injunction.<sup>17</sup>

## The Standard of Care to Treat **Gender Dysphoria**

All major medical associations in the United States agree upon the standard of care for treating gender dysphoria: evidence-based clinical guidelines promulgated by 1) the Endocrine Society of Clinical Practice Guideline for Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons, and 2) the World Professional Association for Transgender Health Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People.<sup>18</sup> These guidelines were developed through the same scientifically rigorous process that underpins other medical guidelines,19 and provide that "each patient who receives gender-affirming care should receive only evidence-based, medically necessary, and appropriate interventions that are tailored to the patient's individual needs."20

To set the record straight regarding gender affirming care for transgender youth, in its amici submitted in support of the Poe plaintiffs, the Medical Associations also corrected certain misstatements made by the Idaho Legislature during debate on the bill. The Legislature asserted that "[g]ender dysphoria among children rarely persists into adulthood."21 However, citing to peer-reviewed articles in well-respected publications, the Medical Associations corrected the Legislature and explained that it had improperly conflated prepubertal children (children who have not started puberty) and adolescents. The Medical Associations clarified that prepubertal children are "not eligible" under the guidelines for any of the gender-affirming medical interventions prohibited by HB 71, contrary to the Legislature's statements. Also contrary to the Legislature's statements, the Medical Associations corrected that adolescents with gender dysphoria are not likely to later change their mind and identify with their sex assigned at birth.<sup>22</sup>

The Medical Associations also disputed the Legislature's presumption that the decision to "detransition" (to later identify with their sex assigned at birth) is based on any alleged regret. The Medical Associations again cited to evidence-based peer reviewed studies that show some of the most common reported factors that contribute to a person's choice to detransition are pressure from parents and discrimination.23

Finally, the Medical Associations explain that HB 71 puts minors' lives at risk by banning medically necessary treatment critical to preserving their health.

## Constitutional Arguments Against HB 71

The Poe plaintiffs and the United States assert similar constitutional arguments against HB 71—HB 71 discriminates based on transgender status and sex.

Plaintiffs argue that the plain language of HB 71 classifies based on transgender status: "[i]n banning medical care that affirms a minor's gender only where it is different from their sex assigned at birth—the defining trait of being transgender—the law necessarily classifies based on transgender status."24

Plaintiffs also assert that HB 71 discriminates based on sex and sex stereotypes. Relying on Bostock and other circuit precedent,25 the Poe plaintiffs assert that "[b]ecause it is not possible to determine if a practice is permitted or forbidden under [HB 71] without referring to sex, it draws on a classification based on sex."26 They further assert that HB 71 discriminates based on stereotypes relating to a person's sex because it "penalizes a person identified as male at birth for traits or actions that it tolerates in...people identified as female at birth" but does not penalize that same person if the treatment conforms with that person's sex identified at birth.27 Citing to Bostock, the Poe plaintiffs argue "it is impossible to discriminate against a person for being....transgender without discriminating against transgender persons."28

The parent plaintiffs assert that HB 71 violates their "fundamental right to seek appropriate medical care for their children under the Fourteenth Amendment's substantive due process clause."29 The Poe plaintiffs remind that "[f]undamental liberty interests include parents' right to make decisions concerning the care, custody, and control of their children...and the right of a parent to make important medical decisions for their children, and of children to have those decisions made by their parents rather than the state."30

The United States, who has intervened or otherwise submitted Statements of Interest in other cases involving genderaffirming care, argues that HB 71 discriminates on the basis of sex and transgender status because whether a minor can receive the banned medical treatment depends upon the sex a minor was assigned at birth.<sup>31</sup> Also relying on *Bostock*, the United States asserts that "sex discrimination 'unavoidably' occurs when an individual is treated differently based on transgender status" and conditions the availability of a particular medical procedure on a sex stereotype: "that an individuals' gender identity should match their sex assigned at birth."32

Taking issue with the Supreme Court' holding in *Dobbs* (which overturned *Roe v.* Wade, abandoning almost fifty years of precedent establishing a woman's right to choose to have an abortion) that "regulation of a medical procedure that only one sex can undergo does not trigger heightened constitutional scrutiny' unless the regulation is pretext for discrimination,"33 the United States argues that, because HB 71's definition of "biological sex' ... precisely excludes transgender people[,] [it] is itself a pretextual classification."34

Finally, the Poe plaintiffs and the United States assert that, because HB 71 actually harms minors, as opposed to protecting them, defendants cannot provide any justification, much less an "exceedingly

Finally, the Medical Associations explain that HB 71 puts minors' lives at risk by banning medically necessary treatment critical to preserving their health.

persuasive justification," for HB 71's classifications.35 Citing the Medical Associations' brief, the United States argues that HB 71 achieves the goal of harming transgender minors, who, without gender affirming care, face increased rates of substance abuse, depression, anxiety, and suicide.<sup>36</sup> The United States also cites to statements made by legislators to support its argument that HB 71 is pretextual for the Legislature's moral disapproval of transgenders.<sup>37</sup>

## Labrador's Constitutional **Arguments**

Labrador argues that HB 71 does not discriminate by sex or transgender status because the law targets medical procedures and nothing more.38/39

As to any purported discrimination based on sex. Labrador relies on Dobbs and recent decisions from the Sixth and Eleventh Circuit to assert that, simply because the medical procedures HB 71 seeks to ban acknowledge biological distinctions between sexes ("how could it not?"),40 it does not mean there is evidence of "invidious discrimination against members of one sex or the other," thereby triggering heightened scrutiny.41

Labrador next asserts that "the diagnosis of gender dysphoria turns expressly on sex stereotypes."42 Thus, Labrador argues, HB 71 "does not further any particular gender stereotype....it simply regulates particular interventions for a diagnosis that turns on gender stereotypes."43 Finally, Labrador asserts that HB 71 does not discriminate based on sex because it only bans the procedures to treat psychological distress (gender dysphoria) and not physical conditions.44

As to the parent plaintiffs, Labrador argues that they have no constitutional right to make these particular medical decisions about their children because. contrary to the opinion of all major medical associations in the United States, the gender affirming care banned is "experimental" and "harmful" and not "deeply rooted in our history and traditions."45

Finally, Labrador urges that HB 71 satisfies all levels of scrutiny, even heightened scrutiny, because HB 71's "ban is

The Court agreed with the Poe plaintiffs and the Medical Associations that because HB 71 bans certain safe, effective, and medically necessary treatment from certain transgender minors, it is harmful.

necessary to adequately serve the compelling interest of protecting children and adolescents."46 In support of this argument, Labrador focusses on detransitioners and those portions of certain plaintiffs' expert testimony which acknowledge some uncertainty around medical outcomes uncertainty that is common for anyone receiving medical treatment, not just the transgender community.

## The Court's Order

On December 26, 2023, just days before HB 71 was set to go into effect, the Court issued its decision on plaintiffs' motion for preliminary injunction. The Court granted plaintiffs' motion and issued a statewide injunction that prohibits enforcement of HB 71 during the pendency of the litigation.

The Court identified that two constitutional questions at issue: (1) "[D]oes the State of Idaho violate the Equal Protection clause of the Fourteenth Amendment when it bars certain medical procedures to treat gender dysphoria, while those same procedures are left freely available for the treatment of other medical conditions?"; and (2) "[D]oes the Due Process Clause of the Fourteenth Amendment prohibit the State from interfering with the decision of parents to obtain a particular type of medical care for their transgender children—care that has been broadly endorsed as both appropriate and necessary by the American medical community?"47

The Court then addressed the factual disputes and constitutional arguments of the parties.

As to the key factual issue—"whether medical interventions allowed under the [guidelines] are safe, effective, and medically necessary for some adolescents suffering from gender dysphoria" —the Court held that the "weight of the evidence" strongly supports the finding that such medical interventions are in fact safe, effective, and medically necessary for some adolescents.48

The Court then found that HB 71 "explicitly classifies on the basis of transgender status" because it only bans medical treatment "if (and only if) those treatments are provided for the purpose of gender-affirming care." In response to Labrador's argument that HB 71 simply regulates treatment for a particular diagnosis, the Court stated that "HB 71 discriminates by proxy, as only transgender people seek treatment for gender dysphoria."49

The Court also found HB 71 discriminates on the basis of sex because, "under HB 71, 'the minor's sex at birth determines whether or not the minor can receive certain types of medical care under the law."50 The Court was not persuaded by Labrador's argument that HB 71 does not discriminate on the basis of sex because it applies equally to boys and girls: "the biological sex of the minor patient is the basis on which the law distinguishes between those who may receive certain types of medical care and those who may not."51

Finally, the Court addressed Labrador's reliance on Dobbs, and the case upon which Dobbs relied, Geduldig.52 The Geduldig court ultimately held that a state disability insurance system that excluded certain pregnancy-related disabilities did not classify on the basis of sex because the benefits of the program accrued to the members of both sexes. Distinguishing the disability program addressed in *Geduldig*, the Court held that the medical treatments HB 71 seeks to ban to differentiate based on sexcisgender minors can receive the medical treatment, but transgender minors cannot.

The Court agreed with the Poe plaintiffs and the Medical Associations that because HB 71 bans certain safe, effective, and medically necessary treatment from certain transgender minors, it is harmful. Because it is harmful, it cannot serve the important governmental objective required to pass heightened scrutiny.

As to the parent plaintiffs, the Court held that the United States has a long history of allowing parents broad control over their children and that, here, "the parent plaintiffs enjoy a fundamental right to seek a specific form of medical treatment for their children, which would include the gender-affirming medical care banned by HB 71."53

## Conclusion

The constitutional issues pertaining to HB 71 are straightforward. HB 71 denies equal protection of the laws and invades the fundamental rights of the people. Therefore, it is unconstitutional.



Jennifer Schrack Dempsey, co-founder of Bjorkman Dempsey Foster, brings an even-keeled approach to the conference and courtroom, where she has served

as litigation counsel to individual clients

and major corporations with equal attention to detail. Jennifer has advised clients and litigated complex matters involving business torts, contract disputes, partnership disputes, employment disputes, construction contract and defect claims, breach of fiduciary duty and catastrophic personal injury, among others. Jennifer has worked closely with both employees and employers in tackling employment and personnel issues on both a local and nationwide basis.

## **Endnotes**

- 1. The Vulnerable Child Protective Act, Idaho House Bill 71H.R. 71, 67th Leg., 1st Sess. § 3(a)-(d) (Idaho 2023).
- $2. \ In another attack on the transgender community, this \\$ legislative session, House Republicans introduced a parallel bill, HB 421. HB 421 would change the legal definition of "sex" under Idaho law to include only "an individual's biological sex, either male and female" and states the term "gender" is a synonym for "sex." H.B. 421 § 1, 67th Leg., 2nd Sess. (Idaho 2024). HB 421 attempts to change that section of HB 71 which defines "sex." Id., p. 3, I. 21-25. On January 31, 2024, despite unanimous testimony against HB 421, the House State Affairs Committee voted to send the bill to the floor of the House of Representatives with a recommendation that it pass. See, Mia Maldonado, Sex definition bill moves to Idaho House floor despite lack of support in public hearing, IDAHO CAPITAL SUN (Jan. 31, 2024), https://idahocapitalsun.com/2024/01/31/sex-definitionbill-moves-to-idaho-house-floor-despite-lack-of-supportin-public-hearing/. In HB 71, "sex" is defined as "the immutable biological and physiological characteristics, specifically the chromosomes and internal and external reproductive anatomy, genetically determined at conception and generally recognizable at birth, that define an individual as male or female." H.B. 71, §2(b).
- 3. See, e.g., Jason Rafferty, Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents, 142(4) PEDIATRICS, e201882162, at 2-3, tb1.1 (2108) (hereinafter "AAP Policy Statement"), https://publications.aap.org/pediatrics/ article/142/4/e20182162/37381/Ensuring-Comprehensive-Care-and-Support-for; see also Simona Martin et al., Criminalization of Gender-Affirming Care—Interfering with Essential Treatment for Transgender Children and Adolescents, 385 NEW ENG. J. MED. 579, at 2 (2021), https://www.nejm.org/doi/full/10.1056/NEJMp2106314.
- 4. Poe v. Labrador, Complaint for Declaratory and Injunctive Relief, May 31, 2023, Case No. 1:23-cv-00269-
- 5. Id., Memorandum Decision and Order, Dec. 26, 2023. The Court's order also addressed defendants' two motions to dismiss under Federal Rule of Civil Procedure 12(b)(1) and (6). Of the fifty-page decision, approximately twenty-six pages analyze and rule upon the defendants' Rule 12(b) motions. This article does not address defendants' Rule 12(b) motions.
- 6. See Brandt v. Rutledge, 121 Fed. R. Evid. Serv. 1768 (E.D. Ark. June 20, 2023) (Arkansas: permanent injunction); Brandt v. Rutledge, 47 F.4th 661, 672 (8th Cir. 2022) (Arkansas: affirming district court's grant of preliminary injunction), reh'g denied, 2022 WL 16957734 (8th Cir. 2022); Eknes-Tucker v. Marshall, 603 F. Supp. 3d 1131, 1151 (M.D. Ala. 2022) (Alabama: preliminary injunction), vacated by Eknes-Tucker v. Governor of Alabama, 80 F.4th 1205 (11th Cir. 2023); Doe v. Ladapo, 2023 WL 3833848, (N.D. Fla. June 6, 2023) (Florida: preliminary injunction); K.C. v. Individual

- Members of the Med. Licensing Bd. Of Ind., 2023 WL 4054086 (S.D. Ind. June 16, 2023) (Indiana: preliminary injunction).
- 7. Poe, Memorandum Decision and Order, Dec. 26, 2023; Poe v. Labrador, Dkt. 24.1, 24-142 (9th Cir. 2024).
- 8. Poe, Memorandum in Support of Plaintiffs' Motion for a Preliminary Injunction (hereinafter "Poe Preliminary Injunction Motion"), p. 2.
- 9. Poe, Combined Memorandum of Law in Opposition to Motion for Preliminary Injunction and in Support of Motion to Dismiss (hereinafter "Labrador Preliminary Injunction Opposition"), p. 3.
- 10. Poe, Poe Preliminary Injunction Motion, p. 2; Labrador Preliminary Injunction Opposition, p. 3.
- 11. Poe, Labrador Preliminary Injunction Opposition, p. 3; in accord, Poe Preliminary Injunction Motion, p. 3.
- 12. H.B. 71, § 3(a)-(d).
- 13. Id. at § 4(a)-(c) ("A surgical operation or medical intervention shall not be a violation of this section if the operation or intervention is: a) "Necessary to the health" of the person "except that a surgical operation or medical intervention is never necessary to the health of the child on whom it is performed if it is for the purpose of attempting to alter the appearance or affirm the child's perception of the child's sex if that perception is inconsistent with the child's biological sex; b) For the treatment of any infection, injury, disease, or disorder that has been caused or exacerbated by the performance of gender transition procedures [...]; or c) Performed in accordance with the good faith medical decision of a parent or guardian of a child born with a medically verifiable genetic disorder development...."
- 14. ld.
- 15. Id. at § 5.
- 16. Poe, Statement of Interest of the United States of America.
- 17. Poe, Poe Preliminary Injunction Motion.
- 18. Poe, Brief of Amici Curiae American Academy of Pediatrics and Additional National and State Medical and Mental Health Organizations in Support of Plaintiffs' Motion for Preliminary Injunction (hereinafter "Medical Association Amici Brief"), p. 6.
- 19. Am. Psychiatric Ass'n, Diagnostic and Statistical Manual of Mental Disorders: DSM-5-TR, 512-13 (5th
- 20. Poe, Medical Association Amici Brief, p. 7.
- 21. Id., p. 16, citing H.R. 71, § (10)(b).
- 22. Id., p. 15-17.
- 23. Id., p. 16-17.
- 24. Id., p. 13 (emphasis in original).
- 25. Bostock v. Clayton Cnty., 140 S. Ct. 1731 (2020); Grabowski v. Arizona Board of Regents, 69 F.4th 1110 (9th Cir. 2023); Whitaker by Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. Of Educ., 858 F.3d 1034, 1049 (7th Cir. 2017), abrogated on other grounds by III. Republican Party v. Pritzker, /who (7th Cir. 2020); Glenn v. Brumby, 663 F.3d 1312 (11th Cir. 2011); Dodds v. U.S. Dep't of Educ. 845 F.3d 217 (6th Cir. 2016).
- 26. Poe, Poe Preliminary Injunction Motion, p. 14.
- 27. Id., p. 14 (internal citations omitted).
- 28. Id., p. 15, citing Bostock, 140 S.Ct. at 1741.
- 29. *Id.*, p. 22.
- 30. Id., p. 22-23, citing Troxel v. Granville 530 U.S. 57, 66, 68 (2000); Halet v. Wend. Inv. Co. 672 F.2d 1305 (9th Cir. 1982); Wallis v. Spencer, 202 F.3d 1126, 1141 (9th
- 31. Poe, Statement of Interest of the United States of America.
- 32 ld p 9

33. ld., p. 12.

34. Id., p. 12, citing Hecox, 79 F.4th at 1011.

35. Poe, Poe Preliminary Injunction Motion, p. 16

36. Id., p. 16-17.

37. Id., p. 19, citing to legislator's statements who refer to certain gender affirming procedures as "Frankenstein procedures" and calling the increase in students who identify as LBGTQ as an "epidemic."

38. Poe, Labrador Preliminary Injunction Opposition.

39. In opposition to plaintiffs' motion for preliminary injunction, Bennett argues that, because plaintiffs have not alleged any specific harm from her or Ada County, suit against her should be dismissed. Because Bennett does not assert any constitutional argument, her brief is not addressed in this article.

40. *Id.*, p. 13, *citing L.W. v. Skremetti*, 73 F.4th 408, 419 (6th Cir. 2023); also citing Eknes-Tucker v. Gov. of Ala., 2023 WL 5344981 (11th Cir. 2023).

41. ld., p. 13, citing, Dobbs v. Jackson Women's Health Org. 142 S. Ct. 228, 2245-46 (2022).

42. Id., p.14, citing to one of plaintiff's expert declarations that identifies the DSM-5 diagnostic criteria for gender dysphoria (emphasis in original).

43. Id., p. 14, citing to Eknes-Tucker, 2023 WL 5344981 at \*17 (emphasis in original).

44. Id., p. 15. (emphasis in original).

45. ld., p. 17-18.

46. ld., p. 19.

47. Poe, Memorandum Decision and Order, p. 1-2.

48. *ld.*, p. 11-12.

49. ld., p. 33

50. ld., p. 34-35 quoting Brandt v. Rutledge, 47 F.4th 661 (8th Cir. 2022).

52. Geduldig v. Aiello, 417 U.S. 484 (1974).

53. It is anticipated that Labrador will appeal to the Ninth Circuit

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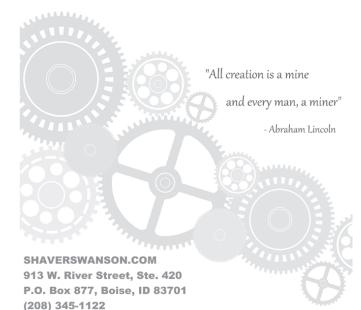
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# 2024 Professional Award Nominations



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

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

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

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

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

**Pro Bono Awards** - Pro bono awards are presented to attorneys from each of the judicial districts that have donated extraordinary time and effort to help clients who are unable to pay for services.

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

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

Recipients of the awards will be announced in May. The Distinguished Lawyer, Distinguished Jurist, Outstanding Young Lawyer, Section of the Year, and Service Awards will be presented at the annual meeting. Professionalism and Pro Bono Awards will be presented during each district's annual resolutions meeting in the fall.

Award nominations should include the following:

- · Name of the award
- · Name, address, phone, and email of the person(s) you are nominating
- A short description of the nominee's activity in your community or in the state, which you believe brings
  credit to the legal profession and qualifies him or her for the award you have indicated
- Any supporting documents or letters you want included with the nomination
- · Your name, along with your address, phone, and email

\*You can nominate a person for more than one award. Nominations are accepted throughout the year. To nominate a persono for a 2024 award, nominations must be received by March 29th.

Submit nominations to: Executive Director, Idaho State Bar, PO Box 895, Boise ID 83701 or email at dminnich@isb.idaho.gov.

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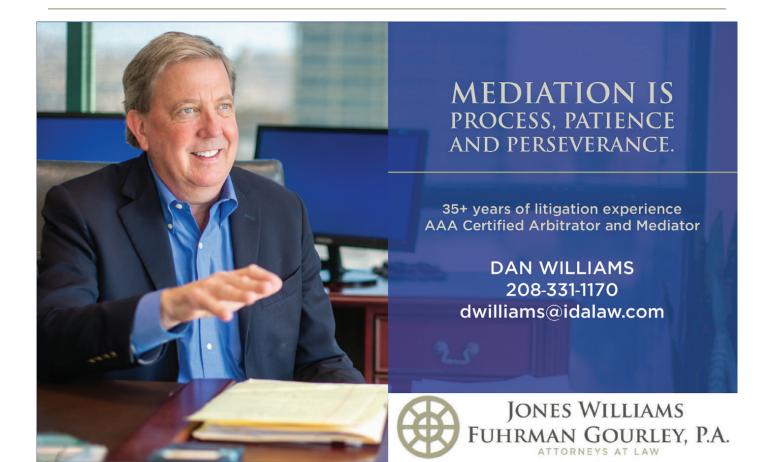
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# The Origin and Evolving Mission of Lawyer Assistance Programs

Yvette Hourigan<sup>1</sup>

"Trying to help other people is never stupid."
—Stephen King, Insomnia

## Introduction

Today nearly every state has a Lawyer Assistance Program ("LAP"). Some are funded through bar dues, some through the Administrative Office of the Courts, and others through the financial contributions of legal malpractice insurance carriers, to name a few. The structure and operating practices of the LAPs can be as wide-ranging as the funding of our programs. But no matter the structure or source of funding, the intention is to help the lawyer who may have issues that impair or could likely impair their ability to practice law. This service is primarily provided free of charge by way of peer-support from lawyers who have recovered from these mental health concerns and providing a connection to professional resources to help the lawyer or judge.

The genesis of lawyer assistance and the history of the national movement has been reported as follows: It is generally accepted [] that the original LAP began as an effort on the part of recovering alcoholic lawyers in the state of Kentucky to help their colleagues get and stay sober. The LAP in Kentucky was begun in the mid-1980s under the aegis of the Kentucky Bar Association and was loosely based on the 12-step program of Alcoholics Anonymous. The organizational structure and operational tenets of that LAP were embraced by the American Bar Association, which in 1988 created what is now known as the Commission on Lawyer Assistance Programs (CoLAP), designed to help member state bar associations address addiction issues among their membership.2

I'm proud to be the Director from the Commonwealth where the national movement of lawyer assistance began. Most LAPs, including Idaho's and Kentucky's, are completely confidential. You can safely call your Lawyer Assistance Program for help for yourself or others, without fear of being "reported" to the Bar, the Courts, your clients, or your mom. In Idaho, Idaho Bar Commission Rule 1205 sets forth the Confidentiality and Immunity of the Idaho Lawyer Assistance Program:

(a) Confidentiality/Records. All records of the LAP Program shall be confidential. The LAP shall not maintain permanent records relating to the names of the participants or the nature of their participation. Each person who is the subject of any form of inquiry under these Rules shall be assigned a number, which shall thereafter be used in any subsequent action taken by the LAP Committee, the LAP Program or the Program Coordinator.

The confidentiality codified in the Idaho rule is not just a suggestion or a good idea. It's a mandate. As such, anyone can seek assistance for themselves or for others without fear of repercussions or the involvement of disciplinary counsel. The Idaho LAP is a safe place for lawyers and judges to find resources and peer support for assistance with all types of mental health issues.

Over the years, the focus of and the services offered by LAPs have expanded. While they initially limited their focus to helping lawyers with substance use disorders (primarily alcohol), they have almost universally evolved into broad-brush programs which offer assistance for a diverse array of mental health concerns including depression and chronic anxiety. In Idaho, the Idaho Lawyer Assistance Program "recognizes that the impairment of a lawyer's performance may result from physical, mental or emotional illness, including addiction."3 The purposes of the LAP Program are as follows:

- (1) Protect the interests of clients from harm caused by impaired lawyers;
- (2) Educate the bench, bar and community to the causes of and remedies for lawyer impairment;
- (3) develop and administer resources to assist lawyers and judges in securing treatment for addictive diseases and mental health issues. including but not limited to alcoholism and chemical dependency, by providing a system which encourages early entry of the impaired attorney, while recognizing the necessity for absolute confidentiality and trust; and
- (4) Provide assistance to impaired lawyers in a manner that is separate and distinct from attorney discipline proceedings and to maintain that distinction.4

## Lawyers and Our Not-So-Good **Mental Health**

Quite frankly, the prevalence of mental health issues among lawyers and judges including depression and substance use disorder should cause each of us to seriously re-assess our own self-care (or lack thereof). With the lawyer population facing depression rates of about 30%, and our rates of alcoholism and other substance use disorders self-reported at 28% (and perhaps as high as 36% depending on the type of diagnostic tool used), we are a profession in despair.5 Indeed, the National Task Force on Lawyer Well-Being found that the prevalence of mental health and addiction issues in the profession are "incompatible with a sustainable legal profession" and argued that:

> [In order] to maintain confidence in the profession, to meet the need for innovation in how we deliver legal services, to increase access to justice, and to reduce the level of toxicity that has allowed mental health and substance use disorders to fester among our colleagues, we have to act now.6

It's fairly easy to appreciate how a substance use disorder could cause impairment and place the lawyer's clients in danger because of the lawyer's lack of competence. But what of mental health issues like depression and anxiety? How can those impact our law practices? The best way to explain this is to consider the symptoms of substance use disorder versus the symptoms of another mental health issue like depression.

## Symptoms of Depression

- Missing work
- Failing to communicate with clients
- · Inability to complete tasks in a timely fashion
- · Last to arrive/first to leave
- Avoiding law partners/clients
- · Unusually thin-skinned/short tempered

## Symptoms of Addiction

- · Missing work
- · Failing to communicate with clients
- · Inability to complete tasks in a timely fashion
- · Last to arrive/first to leave
- · Avoiding law partners/clients
- · Unusually thin-skinned/short tempered

Images provided by author.

The symptoms can be identical, and the outcomes can be identical - harm to a client, and harm to the lawyer.

## The Relationship Between Good **Mental Health and Ethics**

But is there really a relationship between good mental health or "well-being" and an ethical law practice? The answer is yes, and the manifestation is the lawyer's level of competence. In the Preamble to the Idaho Rules of Professional Conduct, lawyer competence is mandated. The first rule of professional conduct is that a lawyer provide competent representation to a client.7 Mental and physical conditions may result in impairments to the lawyer which renders them incapable of providing competent representation. The nexus between a lawyer's mental and physical health and their competence to practice is more fully explained in the directive as to when a lawyer must decline or terminate representation, that situation being when "the lawyer's physical or mental condition materially impairs the lawyers' ability to represent the client."8

There are numerous studies which link impairment to breaches of ethical duties and the resultant disciplinary actions. "It has been estimated that between forty (40%) and seventy-five percent (75%) of the disciplinary actions taken against lawyers involve practitioners who are chemically dependent or mentally ill."9 "Mental illness" or lack of good mental health including chronic anxiety and stress can render a lawyer impaired and possibly incompetent to practice the case at hand.

Mental health issues like stress and anxiety may lead to hopelessness and depression. And profound mental stress, chronic anxiety, and repeatedly long workdays can cause our thinking and our responses to become less sharp and even muddled at times. These stressors will diminish our ability to make good complex decisions which, of course, is at the heart of what we do all day, every day. Further, lack of sleep or "short sleep" as it's called in Dr. Matthew Walker's excellent (and somewhat terrifying) book Why We Sleep, also diminishes our ability to solve complex problems.10 So our well-being is not just tangentially linked to our competence—it's integral. Studies prepared in Oregon and in Louisiana found that 80% of their states' Client Security Fund ("Escrow") cases involved mental health issues, gambling, or chemical dependency.11 In 2005, the Illinois Attorney Registration and Disciplinary Commission reported that impairments accounted for a disproportionate share of program awards.12 And finally, in Illinois, between 1998 and 2005, 28% of all attorneys disciplined were found to be impaired, and 37% of claims against the Illinois Security Fund stemmed from attorneys with impairment.13 Anecdotally, at least in Kentucky, the numbers are much higher. The disciplinary cases our Court considers where unethical conduct is alleged are overwhelmingly related to a mental health compromise or impairment. Lawyers are neither slackers nor thieves by nature, but a mental health crisis can lead to both.

#### Conclusion

Many of us began 2024 making lists of things we wanted to do better this year. They probably included getting more sleep, more exercise, more healthy food, and indulging in less of whatever vice(s) have been causing us trouble in the past; whether that's fatty foods, excessive alcohol or drug use, or even too much social media. Improving these habits will help us feel better, but as lawyers, they can also help us work better. While taking care of our mental and physical health is a good idea, it's so much more than that. It's as important to our competence and performance as staying current on the law and technology. Now as we enter the second quarter of 2024, review your lists. Consider what changes you can resolve to make to improve not only the way you feel, but also the way you perform. Begin thinking about the maintenance of your good mental and physical health as exactly what it is - performance enhancement. Let it fuel the competitive side of you and you may just find that in a couple of months you're feeling better and performing at a higher level. You're going to work hard anyway - you may as well do it better. And if you're a person in recovery from any of the mental health conditions your Idaho LAP provides services for (which is all of them), reach out to Jamie and see if you're eligible to volunteer to help other lawyers. You'll be so glad you did.



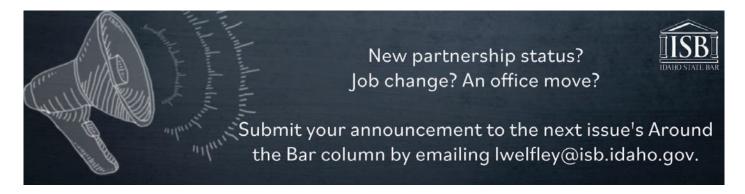
Yvette Hourigan, JD, CEAP, **APSS**, is the director of the Kentucky Lawyer Assistance Program ("KYLAP"). Ms. Hourigan graduated from Murray State University

and the University of Kentucky College of Law. She is a licensed attorney, a Certified Employee Assistance Professional and an Adult Peer Support Specialist. Yvette is the 2023-2024 Chair of the American Bar Association's Commission on Lawyer Assistance Programs, former chair of the ABA/COLAP Diversity, Equity & Inclusion Committee, and a former member of the

National Task Force on Lawyer Well-Being. She speaks locally and nationally on topics impacting lawyer well-being, lawyer impairment, addiction, and suicide prevention.

#### **Endnotes**

- 1. As a long-time Commissioner and Advisory Member, and now as the Chairman of the American Bar Association's Commission on Lawyer Assistance Programs ("COLAP"), I've had the privilege to get to know many state Lawyer Assistance Program directors across the country – including your own outstanding director, Jamie Shropshire. Jamie and I have worked on a number of committees, projects, and problems together over the years. She is a force in Lawyer Assistance and is very well-respected. I personally admire the tireless effort she and the Committee give to help Idaho lawyers and judges. As such, I was honored when she asked me to write an article for your Journal that explains not only the history and current state of Lawyer Assistance Programs, but also to discuss some of the most recent statistics and science linking good mental health to a competent and ethical law practice.
- 2. John W. Clark, Jr., We're From the Bar and We're Here to Help You, GPSolo, 21 No. 7, October/November 2004.
- 3. Idaho State Bar Commission R. 1201.
- 5. Final Report, National Task Force on Lawyer Well-Being, Creating a Movement to Improve Well-Being in the Legal Profession, August 14, 2017, https://perma.cc/ MB95-V6HE.
- 7. Idaho Rules of Prof'l Conduct R. 1.1.
- 8. Id. at R. 1.16.
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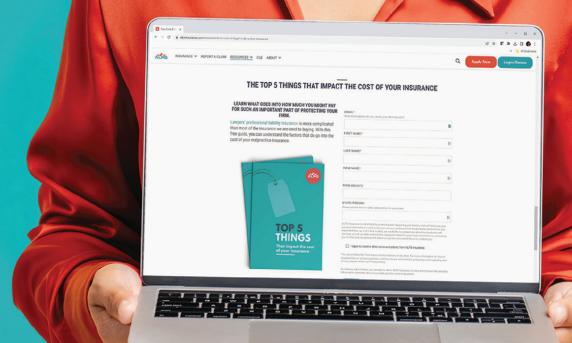
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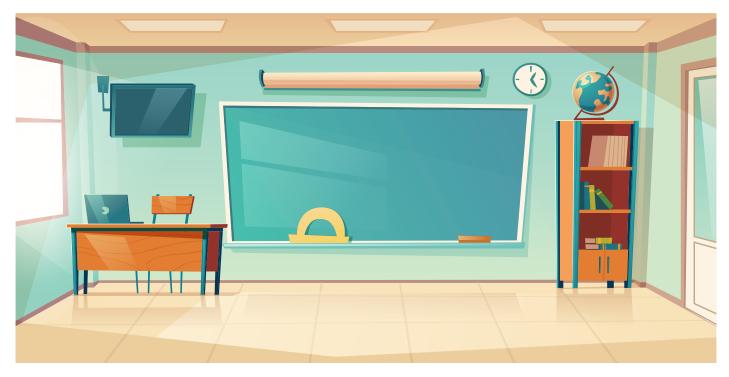
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# The Legal and Practical Implications of *Perez* for Youth with Disabilities

Abigael Schulz

The recent United States Supreme Court decision in *Luna Perez v. Sturgis Pub. Schools* changed how youth with Individualized Educational Plans ("IEP") could sue their school. Until the decision, youth with disabilities receiving special education services under the Individuals with Disabilities Education Act ("IDEA") had to exhaust their administrative remedies before filing a lawsuit against a school district that violated their educational rights.<sup>1</sup>

Generally, before a student on an IEP can file a lawsuit under the IDEA, the student must complete their State Department of Education's due process hearing and receive a written decision from a hearing officer. In Idaho, a hearing officer has 45 calendar days from the beginning of the hearing to issue an opinion.<sup>2</sup>

Now, with the *Perez* decision, students and their families can utilize remedies under federal laws that protect youth with disabilities, including those granted under the Americans with Disabilities Act ("ADA"), when a school district has

violated a student's educational rights without first wading through often lengthy administrative procedures.

But *Perez* did not merely change procedurally how students can protect their rights. The decision also opens the door for students to access broader remedies

and exposes how schools should assess students for special education services to comply with federal guidelines. This article provides the facts of *Perez*, explains the Supreme Court's decision, and explores *Perez's* impact nationally and to Idaho students locally.

The decision also opens the door for students to access broader remedies and exposes how schools should assess students for special education services to comply with federal guidelines.

#### Perez Facts

Miguel Luna Perez, who is deaf, enrolled in the Sturgis Public School ("Sturgis") system in Michigan at age 9 after moving to the United States from Mexico.3 Unbeknownst to his parents at the time, Miguel was assigned paraprofessionals who were either unqualified or were completely absent from the classroom for hours. Miguel received passing grades every year, but when he was ready to graduate, he was only awarded a certificate of completion rather than a high school diploma. Miguel's parents, who spoke only Spanish, were unaware that Miguel did not receive an appropriate education because the district failed to provide Spanish/English language interpreters during parent meetings. Sturgis did not meet the communication needs of either Miguel, or his parents, as mandated by IDEA regulations.4

As a result of Sturgis violating Miguel's and his families' rights under the IDEA, the Perez family filed an administrative complaint ("Complaint") with the Michigan Department of Education. Miguel settled with Sturgis because the district offered to pay for Miguel to attend the Michigan School for the Deaf and provide sign language instruction for Miguel and his family.

However, after this settlement, Miguel filed a lawsuit under the ADA in federal court. He alleged Sturgis discriminated against him for failing to provide him with equal access to education. He sought compensatory damages for emotional distress and projected loss of potential wages.

Sturgis argued that a provision in the IDEA barred Miguel from bringing an ADA claim. The IDEA provision Sturgis relied on provides, in relevant part:

> Nothing in this chapter shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990 [42 U.S.C. 12101 et seg.], . . . or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this subchapter, the procedures . . . shall be exhausted."5

Therefore, Sturgis's argued that before one can file a civil action under another federal law seeking relief that is also available under the IDEA, one must first exhaust their administrative remedies under the IDEA.

## Perez Decision

The Supreme Court, in a unanimous decision, held the IDEA's exhaustion requirement does not prevent a person from filing a lawsuit under other federal laws for remedies that are not provided under the IDEA.6

The only relief IDEA's administrative process can supply to families is relief for a denial of a free appropriate public education ("FAPE") according to a 2017 Supreme Court decision.7 The FAPE provision requires schools to provide special education that meets the unique needs of youth with disabilities. In other words, the district is responsible for creating specially designed instruction for the student. To meet a student's unique needs, a district might also be required to provide related services which help the youth benefit from special education, such as sign language interpretation. As the "F" in FAPE indicates, additional education and services are provided at no cost to the parents, guardians, or students.

Additionally, adhering to the FAPE provision of the IDEA requires the school to create an IEP, outlining the plan for the youth's education and services, and it requires administering the youth's education in the least restrictive environment. The least restrictive environment means youth need to be provided accommodations and modifications to participate in the general education curriculum to the fullest extent possible.

Youth must complete assessments to determine if they qualify for special education. Ultimately this decision is made by the school's multidisciplinary team, which often includes: a general education teacher; a special education teacher or director; the individual providing the related service: a school administrator who can make decisions regarding what services the district can provide; and the student's parents or guardians. The team must determine what assessments the student should complete and then interpret the data from these assessments to create a plan that will enable the student to reach their educational goals. However, since the team is made up of people at each student's school, the system may not be uniform even within the same school district.

When a district fails to provide youth with disabilities a FAPE, according to the statute, the IDEA provides broad discretion to the court or hearing officer to award damages it determines is appropriate based on the preponderance of the evidence.8 However, as the Court in Perez noted, compensatory damages are not a remedy the IDEA can supply.9 As a result, Miguel pursued a claim for services from Sturgis instead of loss of income or recovery of other damages.

## Other examples of remedies available under the IDEA include:

- Compensatory education where a student is provided special education or related services (e.g. speech therapy) for a school's failure to provide the appropriate education or service;
- Orders relating to evaluations, IEPs, or a youth's placement if a parent has refused consent to evaluate the youth for special education or related services or if a school district has not conducted complete evaluations of the student or provided an appropriate IEP;
- Reimbursement for private tuition or other expenses the family incurred for the school district violating the IDEA, which differ from compensatory damages; and
- School district training or changes to the district's policy if a school violated the IDEA in a systemic way that impacted more than just the individual student who filed the complaint.

## **Perez's Impact Nationally**

The decision in Perez provides more avenues for families to hold systems accountable under federal civil rights laws. The decision also allows families to seek more immediate relief rather than having to navigate lengthy IDEA administrative procedures before obtaining appropriate remedies.

The real beneficiaries of this decision, however, are youths with disabilities impacted by unfair treatment in schools that are not receiving a FAPE. The decision highlights the importance of school districts completing comprehensive assessments for youth with disabilities in order for them to obtain a FAPE.

The IDEA states that "A State educational agency, other State agency, or local educational agency shall conduct a full and individual initial evaluation in accordance with this paragraph..."10 Therefore, under the statute, school districts are required to complete full evaluations of students to assess all their needs including communication, assistive technology, related services, etc.

In Perez, Miguel's communication and cultural needs should have been assessed by Sturgis and accommodated in his IEP. More transparency should have been provided to him and his family regarding his educational progress.

The holding in Perez clearly comports with the plain language of the IDEA and further showcases the harmful effects to youth with disabilities if a school district fails to conduct complete assessments. Perez holds that school districts must view students with disabilities for who they are - whole people with entire cultures, languages, and abilities that should be honored and included. This decision demonstrates the holistic approach that should be taken when assessing students with disabilities.

According to the National Center for Education Statistics, in 2021-22, the number of students ages 3-21 who received special education under the IDEA was 7.3 million or 15% of all public-school students.11 With more classrooms emerging that have more youth with varying needs, educators need the skills to ensure their students have what they need to succeed.

Some critics of this opinion worry that it creates a culture of litigation instead of promoting collaboration - which is the goal of the special education process. However, if the current dispute resolution options fail families, then they do not have other recourses available except litigation. This is costly for school districts and families which is why *Perez* is so important.

The Court's decision in Perez depicts how the IEP team is meant to work together

The holding in Perez clearly comports with the plain language of the IDEA and further showcases the harmful effects to youth with disabilities if a school district fails to conduct complete assessments.

for the benefit of the youth to provide them a FAPE. Parents or guardians and the student (whenever appropriate) are legally part of the IEP team, which means they have a seat at the decision-making table regarding the student's education.12

If Miguel and his family had been incorporated in his educational team in a transparent and inclusive way, the *Perez* decision may not have occurred. The FAPE provision of the IDEA requires schools provide services that are reasonably calculated to help a youth make progress, which entails due diligence on the part of the IEP team to create a program for the youth that meets their unique needs. Perez furthers the IDEA's requirements that special education is a collaborative, team effort by showing us the detrimental effects of excluding individuals who need to be teammates in this process.

## Perez's Impact Locally

According to an Idaho Education News report in 2023, there were nearly 37,000 students receiving special education in Idaho which was about 11.6% of the state's total student population.13 This is an increase from the 32,908 students receiving special education services during the 2017-2018 school year.14 This means more students than ever before require special education services in Idaho.

U.S. News in 2018 reported from the Jerome School District's services director that his concern was such a large part of special education costs were the result of litigation.15 This director wondered "when that money will be invested into "human capital" rather than fighting lawsuits."16

Perez paves the path for school districts in Idaho to invest in comprehensive assessments, which will demonstrate the students emotional, physical, communicative, and other needs, and provide solutions on how to meet these needs. If schools are addressing the students' comprehensive needs, then special education costs will not go towards funding litigation.

Instead, the funds can be used towards helping students achieve their goals. This could look like providing a 1:1 aid to manage behavior, an interpreter to provide communication services, or sensory devices to calm a student's anxiety.

In the IDEA, Congress states "Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic selfsufficiency for individuals with disabilities."17

As Perez demonstrates, we cannot improve these results for students unless they are properly assessed and given the opportunity to fulfill their goals with the support they are guaranteed under the law. IEP teams across school districts in Idaho should collaboratively work to have all voices heard to ensure youth such as Miguel Perez have not fallen through the cracks.



Abigael "Abbey" Schulz is a Staff Attorney in the Youth Unit at Disability Rights Idaho. Abbey has been an advocate for the disabled community since

her younger brother was diagnosed with autism. She worked at both the Indiana and Illinois Protection & Advocacy agencies before moving to Idaho. Beyond work, Abbey loves traveling with her husband.

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# Love the Law!: A Program Everyone Can Relate To

Anna E. Courtney Kinzo H. Mihara

**7**ARNING: If you are expecting a deeply thought-provoking and well-cited legal treatise, keep flipping the pages. If you want to feel good about your job - keep reading. We are lawyers, and we love the law. As Idaho lawyers, we practice in the most bountiful areas in the most beautiful and wonderful state in our Union. For the most part, we get to rise every morning and do a job which brings us a sense of purpose, satisfaction, and fulfillment. A couple of times a year, however, our jobs bring us an even greater sense of fulfillment and pride. Those are the days we receive an email from a local government-studies teacher who asks if the Idaho State Bar Diversity Section is willing to do another Love the Law! event.

Love the Law! is a subcommittee and subsection organized under the Idaho State Bar's Diversity Section.

Distilled to its essence, the message of *Love the Law!* is to let every student know that, regardless of their background, if

## Mission Statement

To develop and maintain a pipeline program that exposes Idaho high school, college, and university students from diverse, minority, and low-income backgrounds and underrepresented populations to the legal profession and encourages those students to consider pursuing a career in law. Love the Law! seeks to expand student knowledge about legal careers and pathways to the profession and to provide social support and professional role models. Through these efforts, Love the Law! will promote diversity, equality, and cultural understanding throughout the Idaho State Bar to better serve the State's diverse citizenry.¹

they are interested in a legal profession and willing to work hard, they can achieve their dreams. The message is underscored by the countless judges, lawyers, court support staff, and law enforcement personnel who volunteer their time to one or more of the *Love the Law!* events. These events introduce students, who may not otherwise be exposed to the practice of law, to the legal practice. The goal of *Love the Law!* is to bring new and different voices into the legal profession to the benefit of us all.

We hope this article informs readers about the history of *Love the Law!*, the many reasons why *Love the Law!* matters to the Idaho legal community, and encourages you to host a *Love the Law!* event.

## Founders of Love the Law!

The subcommittee and subsection were founded in the late 2000s under the Diversity Section of the Idaho State Bar by many of our colleagues who are no longer with us, either through retirement, death,

or job relocation. A special note of remembrance and thanks goes out to Judge Sergio Guttierez, Linda Pall, Richard "Dick" Fields, and Jennifer King. These are only some of the people who were instrumental in getting this program off the ground. Without their vision and hope to truly "give back" to our Idaho communities, the Love the Law! events of today would not be what they are. These founding lawyers saw a need for all young students, regardless of background, to have the ability to pursue a legal career.

## Love the Law! Events

Love the Law! events are put on by local attorneys for students in their communities in coordination with the Diversity Section. Any lawyer can spearhead an event; all that is needed is the desire to do so and the cooperation of like-minded volunteers in the bar or on the bench.

Love the Law! primarily works by hosting events that allow diverse groups of students to witness the actual practice of the law. A typical Love the Law! event consists of students, high school, or college level, who come into court and see actual cases litigated. Either criminal or civil cases can be on the agenda; however, students seem to gravitate toward criminal cases. It only makes sense. A good criminal case has a little more pizzaz than a run-of-the-mill property boundary argument. If minor students participate, the event is tailored to exclude cases with salacious criminal charges. Special care is taken to attempt to notify the lawyers involved with the cases so no one is surprised on the day of the event.

After the hearing, the judges, lawyers, court staff, and any involved law enforcement will remain in the courtroom and answer questions (to the extent possible) about the cases the students observed. Each legal professional will also talk about their biography and offer anecdotal stories of how they came to their respective jobs. The judges and lawyers may ask students questions about their class, what they have learned about the law, and what interests them about the law.

These events often have a court tour component, which is the province of the bailiff's offices. The students usually have a good time seeing their teachers put into irons and placed in the Court's holding cells. Again, for obvious reasons, special security considerations apply when allowing students into the areas where criminal defendants may be held. We have found that such tours can only occur if no "in-custody" defendants are awaiting hearing or transport.

Now to the good part: a boatload of pizza and other food. Each Love the Law! event usually ends with judges, lawyers, support staff, and others sharing a meal with the students and teachers involved. The question-and-answer session usually continues during the meal. As one can imagine, some of the questions can be quite colorful. This part of the program is especially rewarding as every conversation is made better over pizza.

## **Diversity in Action**

Love the Law! is a continuous workin-progress to encourage diversity both internally and externally. Some of the inaugural programs were conducted with male-only legal professionals. The male-only aspect was not intentional. It was the practical reality of stumbling through the process of developing a good program for the students. The same was true for the inclusion of court staff and law enforcement personnel.

As time has gone on, Love the Law! has tailored events and participants with the help of student feedback to increase the diversity of legal professional involvement. For example, some of the female students expressed a deep interest in the law but noted that there were no female judges or lawyers to give their perspective. Other students noted that "it's cool" that lawyers and judges presented; however, they would rather be a clerk or policeman or sheriff and were interested in the clerk's and bailiff's perspectives.

Today, judges, lawyers, court staff, and law enforcement of all genders, ages, and other demographic backgrounds are invited to participate in the programs. The more the better. We all have unique paths that we have taken to our respective places in the legal system. Modeling alternative paths encourages people who might not otherwise consider the practice of law to consider it.

## **Events Across the State**

Love the Law! events have taken many shapes across the State. Love the Law! has hosted Boise High School students at the

Love the Law! primarily works by hosting events that allow diverse groups of students to witness the actual practice of the law.

Modeling alternative paths encourages people who might not otherwise consider the practice of law to consider it.

Idaho State Capitol Building, where students attended a Senate Judiciary and Rules Committee meeting. Shoshone Bannock Junior High and High School attended hearings at the Bingham County Courthouse. Lakeland High School attended hearings at the Kootenai County Courthouse. Skyview and Caldwell High School students spent a morning with Judge Dayo Onanubosi in Canyon County.

The U.S. District Court for the District of Idaho has hosted events where students engaged in a panel discussion including Magistrate Judges, Assistant U.S. Attorneys, Probation Officers, the Deputy Chief U.S. Marshall, and the Federal Public Defender. Where an interest is raised, a *Love the Law!* event can be created to meet it.

# Diversity in the Law School Pipeline Still Matters

Many people have asked us why the bench and bar would support such a program. There are many reasons beyond just helping kids who may not otherwise hear the message that they can succeed. Nationally, diversity in law school classes continues to increase. The national incoming class of law students in 2022 was the most racially and ethnically diverse class in history, including 36.6% students of color.<sup>2</sup> This represents a 1.9% increase over 2021 and a 3.5% increase from 2019.<sup>3</sup>

In 2022, 57.7% of matriculants identified as Caucasian, 10.1% identified as two or more races, 9.4% identified as Hispanic/Latinx, 8.9% identified as Asian, and 7.8% identified as Black/African American.<sup>4</sup> For the 2022 class, approximately 14% identified as LGBQ+ and 0.6% self-identified as transgender, gender nonbinary, or genderqueer/gender fluid.<sup>5</sup>

Yet, as of 2021, diversity in law school enrollment still lags behind the minority share of the population and potential law school candidates (college graduates between the ages of 25-34) by roughly 10%.6 The University of Idaho College of Law also lags 2023 national statistics by roughly 7%, with 30% of the 2023 class identifying as a student of color.7 Nationwide, the largest disparity between the general population and law students is among students identifying as Black and Hispanic.8 Further, minority law students continue to graduate from law school at lower levels.9 The data suggests that efforts to increase the diversity of the law school pipeline are still worth our time.

That is not to say that Idaho lacks diversity. Idaho has a strong history of perseverance through adversity that is on-par with any other place on this Earth. Its people are hard-working, generous, and noble – regardless of background. But the value of diversity cannot be over emphasized.

Increased diversity in the legal profession is tied to increased public trust and confidence in the legal system as a whole. <sup>10</sup> There is also a statistically significant correlation between superior performance in the profitability of organizations and the increased diversity in leadership teams for those organizations. <sup>11</sup> It helps participants in both the legal profession and the legal system to know that the judicial branch of government is not controlled by a single race, gender, sexual orientation, or any other social category in which we might put ourselves.

## Consider Supporting an Event

Love the Law! events take both time and money. The typical program will run between three and five hours, inclusive of all the activities noted above. The cost to put on an event runs anywhere between \$200 and \$500 per event depending on the number of students and teachers involved.

Love the Law! events are funded by a variety of sources. They have been funded in the past by grants from the Coeur d'Alene Tribe, as well as by U.S. District Court outreach grants. The events have also been funded by private law firms and their clients who hear about the events and wish to donate. The Diversity Section will also help with financial support for these events.

More important than monetary contributions, however, is the donation of time and effort by the judges, lawyers, and staff that go into these programs. Now that the program has matured, the judges, lawyers, and staff who have previously participated in the events are quick to volunteer for new events. Even judges and lawyers who have not participated in the events to-date have reached out to express an interest in bringing events to new courtrooms around the state. Our profession sees so much contention and adversarial wrangling; many participants find it nice to engage in an aspect of the legal profession that brings amazement and wonder to a young person's life.

We would strongly encourage any of our colleagues to become involved in

a great outreach program! If you or your firm, office, or department are interested in participating in, or contributing financially to, this type of event, the Love the Law! subcommittee is always welcoming new members and unrestricted funds. Please feel free to reach out to either of the authors - or to any of the Idaho State Bar's Diversity Section leadership—if you or your firm are interested in Love the Law! events. Very few things in this profession are as rewarding as telling a kid that they can achieve their dreams... and that they are welcome to have more than one piece of pizza.



Anna E. Courtney is Associate Counsel for St. Luke's Health System. Before joining St. Luke's, she practiced commercial litigation and worked in

diversity and talent management. She currently serves as the Secretary/Treasurer for the Idaho State Bar Diversity Section. A 2013 graduate of Gonzaga University School of Law, she lives and practices in Boise with her husband, 4-year-old son, and two mostly-good dogs.



Kinzo H. Mihara is a solo practitioner in Coeur d'Alene, Idaho. Aside from the myriad of cases he works on, he has twice served as the Chair of the

Idaho State Bar Diversity Section. He is continuously involved in Love the Law! events, and serves on the boards of the Idaho Legal Aid Association, Inc.; the Intermountain Fair Housing Council, Inc.; and, Family Promise of North Idaho, Inc. He is a former U.S. Marine and Carnegie Hero. He is married to his best friend and bride, Jennifer; and, they have four children, Brodey, Lilly, Cora, and Esther.

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# **MEDIATION** - AND — **ARBITRATION**



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# Breaking the Gavel Ceiling One Seat at A Time

Hailee N. Elledge Cathy R. Silak

For the first time in Idaho history, the Idaho Supreme Court bench will be comprised of a majority of women. On November 6, 2023, Governor Brad Little appointed Judge Cynthia Meyer, a Kootenai County District Judge to serve on the Idaho Supreme Court, filling the vacancy left behind by Justice John Stegner. This is particularly remarkable given that as of May 2022, men nationwide held 59 percent of all state supreme court seats.

In 2021, only 11 years ago, Idaho had the lowest percentage of women judges at just 12 percent.<sup>3</sup> In 2016, a study by the National Association of Women Judges found that Idaho was ranked one of two states without a female serving on its highest court.<sup>4</sup> Now only seven years later, Idaho will be just one of fourteen states with a majority of women serving on the State's Supreme Court.<sup>5</sup>

The appointment of most of the female Supreme Court Justices in Idaho reflects a commitment to diversity and excellence in the highest echelons of the judiciary. Arguably, however, this great milestone in history would not have been achieved if it had not been for other female attorneys, breaking down barriers, and paving the way forward. This article explores the history and accomplishments of several remarkable Idaho women who have ascended to the Idaho state benches and federal benches, breaking barriers, and inspiring future generations.

The history of female attorneys reaching the bench is relatively recent when considering the long-standing maledominated legal landscape. The 1970s marked a pivotal era when women began entering law schools in significant numbers, subsequently paving the way for their presence in courtrooms and, eventually, on the bench. Early female judges, such as Sandra Day O'Connor, who became the

first female U.S. Supreme Court Justice in 1981, set the stage for future generations of women in the legal field.

For Idaho, it was no different. In recent years, the legal landscape in Idaho has witnessed a significant and positive transformation with the appointment of accomplished women attorneys to the state bench at all levels. Historically, the judiciary has been predominantly male, but the rise of these talented and dedicated women marks a milestone in the pursuit of gender equality within the legal profession. The inclusion of these women on the bench is not only essential for gender equality but also provides litigants with more diverse perspectives, experiences, and approaches to the interpretation of the law. Female judges contribute to a more well-rounded and comprehensive understanding of legal issues, reflecting the rich tapestry of American society. Their presence ensures that the judiciary remains relevant and responsive to the needs of a diverse citizenry.



It was only 40 short years ago that Idaho's first female district court judge was appointed. In 1983 Deborah Bail was the first woman appointed as a District Court Judge in the state of

Idaho, taking her seat on the bench only eight years after being admitted to the Idaho State Bar.6 At the time Judge Bail was admitted to the bar she was of the first fifty female attorneys in the state of Idaho.7 After law school at Northwestern School of Law, Judge Bail was an Assistant U.S. Attorney for the District of Idaho where she handled civil matters and prosecuted federal cases until she was appointed to the bench by Governor John V. Evans.8 Her appointment marked a significant milestone for women in the legal profession in the state, paving the way for future generations of female judges in Idaho. Today, there are over 30 female magistrate judges and district court judges serving on the bench of Idaho's seven judicial districts.

## 1990: Idaho Appoints First Female **Court of Appeals Judge**



Following Judge Bail, in 1990, Idaho hit another major milestone when Cathy Silak was the first woman appointed to the Idaho Court of Appeals by Governor Cecil D. Andrus.9 At the time of Justice

Silak's appointment, Governor Andrus emphasized the importance of including women on the bench, stating "we must provide more opportunities for women in the judicial branch of government. The overriding consideration must be, in my opinion, the quality and qualification of the nominees. I have selected on that basis."10 As a Judge of the Idaho Court of Appeals, Judge Silak joined Judges Jesse Walters and Roger Swanstrom.11 Before joining the Idaho Court of Appeals, she served as an Assistant United States Attorney and became a partner at the law firm Hawley Troxell Ennis & Hawley.12

## 1992: Idaho's First Female **Supreme Court Justice**



Only two years later, Idaho again created history and took a significant stride towards diversifying the State's highest bench. In 1992 Governor Cecil D. Andrus appointed Idaho's District Court

Judge Linda Copple Trout to the Idaho Supreme Court as the first female Supreme Court Justice for the state of Idaho and the youngest.<sup>13</sup> Trout was one of 13 applicants, four of whom were selected by the Idaho Judicial Council and submitted to Governor Andrus.14 Her appointment marked a historic moment in Idaho's legal history, breaking gender barriers in the judiciary at the highest level. Prior to taking the bench, Idaho native Justice Trout received her Juris Doctor from the

University of Idaho College of Law, and practiced in private practice in Lewiston for six years.15 Thereafter, Justice Trout was appointed as a magistrate judge and was elected a district judge for the Second Judicial District of Idaho eight years later. 16 While serving on the Idaho Supreme Court, Justice Trout was elected by the Idaho Supreme Court to be Chief Justice in 1997 and served as the Chief Justice until 2004.17

#### 1993 to 2015

After being appointed to the Idaho Supreme Court, Justice Trout was joined shortly thereafter by Judge Cathy Silak who was appointed as the second female Idaho Supreme Court Justice in 1993, succeeding Justice Robert Bakes.<sup>18</sup> The following year, in 1994, Justice Silak's seat was up for re-election. Silak retained her seat in a statewide election, defeating Wayne Kidwell.19 Notably, this election was the first time in over 60 years that an Idaho Supreme Court seat had been challenged.20 During her term, Silak became the Court's Vice-Chief Justice in 1997, the first time any female had ever held that position. 21

While Justice Silak retained her seat in 1994, six years later she was unseated by Dan Eismann, marking the first time in 68 years an incumbent seat was defeated.<sup>22</sup> From 2000 through 2007, Justice Trout served as the only female Idaho Supreme Court Justice.<sup>23</sup> In 2007, Justice Trout announced her retirement from the Idaho Supreme Court.<sup>24</sup> While Idaho had made significant strides forward in creating diversity on the Idaho Supreme Court, the Idaho Supreme Court did not have any female justices for another nine years.<sup>25</sup>



However, the Idaho Court of Appeals continued to push forward and encourage the representation of women on the bench. After **Justice Silak left the** Idaho Court of Appeals in 1993, her

seat was filled by another female, Judge Karen Lansing who served until 2015. Prior to her seat on the Idaho Court of Appeals, Judge Lansing worked as an assistant city attorney for the City of Boise, after graduating from the University of Washington's School of Law.26 Thereafter, Judge Lansing went into private practice, joining the law firm Hawley Troxell Ennis & Hawley where she became partner.27 On the bench, Judge Lansing would carefully craft her opinions in order to convey the reasoning for the decision and ensure the result of the case was fair and just.28 While on the Idaho Court of Appeals, Judge Lansing authored more than 2,600 appellate decisions.<sup>29</sup>

## 2015 to Today



Following Judge Lansing's retirement, her seat was filled by another trailblazing female. In 2015, Molly Huskey was appointed to Judge Lansing's seat on the Idaho Court of Appeals by

Governor Butch Otter.30 Prior to her appointment, Judge Huskey served as a public defender and prosecutor in Bonneville County, Idaho and was appointed to serve as the state appellate public defender by Governor Dirk Kempthorne in 2002.31 In 2011, Governor Otter appointed Judge Huskey to the Idaho state district court The Idaho state courts are not the only courts undergoing a positive transformation towards gender equality on the bench.

bench where she served as a district court judge for the Third Judicial District of Idaho.32 Judge Huskey continues to serve on the Idaho Court of Appeals with her current term ending in 2029.33



In November of 2016, Idaho voters elected Robyn Brody to the Idaho Supreme Court, marking the first time a woman was on the state's highest bench since Justice Trout's retirement nine years

prior.34 Unlike her predecessors, Justice Brody was the first woman elected to the Idaho Supreme Court rather than first being appointed by the governor.35 At the time Justice Brody was elected she was one of four candidates on the ballot during the primaries for the vacant position.<sup>36</sup> However, the primaries resulted in a runoff election, with Justice Brody prevailing in the general election.<sup>37</sup> Justice Brody is currently serving a second term after she was re-elected in May of 2022.38 Prior to serving on the Idaho Supreme Court, Justice Brody practiced in private practice in the Magic Valley for over 20 years.<sup>39</sup>

-1895-Helen L. Young becomes the first female admitted to the Idaho State Bar.

-1940-

Mary Elizabeth Schmitt becomes the first female law clerk at the Idaho Supreme Court, clerking for Justice Raymond L. Givens.

Judge Cathy Silak becomes Idaho's first female appellate judge, serving on the Idaho Court of Appeals.

Justice Linda Coppel Trout becomes Idaho's first female Justice on the Idaho Supreme Court.

-1924-

Mazellah McCall becomes the first Idaho female attorney admitted to practice before the Idaho Supreme Court.

<del>-</del>1983-

Judge Deborah Bail, one of Idaho's first 50 female attorneys, becomes Idaho's first female District Judge.

-1993-

Justice Cathy Silak begins serving as the second female justice on the Idaho Supreme Court.

Less than a year later, in 2017, Idaho again created history, when Judge Jessica Lorello was appointed to the Idaho Court of Appeals.40 For the first time in Idaho history, two females served simultaneously on the Idaho Court of





Appeals. In 2021,



In 2018, Justice Joel Horton announced his retirement from the Idaho Supreme Court. As a result of the vacancy, eleven applicants applied for his seat. For the first time in history, six of those applicants were women, three of whom were selected as finalists.<sup>43</sup> While a male was appointed for this vacancy, in 2021, Governor Little appointed Colleen Zahn to the Idaho Supreme Court, filling Chief Justice Roger Burdick's seat on the bench when he retired.44 Justice Zahn's appointment to the Idaho Supreme Court marked the third female to be appointed to serve on the state's highest bench, and the second time in history two female justices served at the same time. It also marked the first time in history the Idaho Judicial Council submitted all female nominees for the Idaho Supreme Court to the governor. 45



Most recently, on November 6, 2023, Governor Little appointed District Court Judge Cynthia Meyer to the Idaho Supreme Court, creating history, as her appointment marked the first time the Idaho

Supreme Court is comprised of mostly women Justices.46 Meyer was one of four finalists recommended to Governor Little by the Idaho Judicial Council. Prior to being appointed to the Idaho Supreme Court, Meyer practiced in private practice in Northern Idaho, served as an adjunct professor at North Idaho College, and was a District Court Judge for the First Judicial District.47

#### **Progress on the Federal Bench**



The Idaho state courts are not the only courts undergoing a positive transformation towards gender equality on the bench. The federal bench has also witnessed the appointment

distinguished female judges. Idaho women like Candy Dale and Debora Grasham have played pivotal roles in shaping legal precedents and influencing the course of American jurisprudence. Their impact extends beyond the courtroom, inspiring future generations and reinforcing the principle that justice knows no gender.



Judge Grasham after being appointed stated "I have known and admired Judge Dale for many years. Hers are big shoes to fill, not only because she has been such an outstanding jurist but

because she has broken the proverbial glass ceiling at our court, allowing people like me to dream that I could someday serve in a similar capacity."48 This comment reinforces the critical role these

-2015-Judge Molly Husky becomes Idaho's third female judge on the Court of Appeals.

Judge Amanda Brailsford joins the Idaho Court of Appeals, and for the first time that court has a majority of female judges. She was appointed as the first District Judge for the District of Idaho in 2023.

Justice Cynthia Meyer becomes the fifth ever female justice on the Idaho Supreme Court, and for the first time both appellate courts in Idaho have a majority of women.

#### -1993-Judge Karen Lansing becomes Idaho's second female judge on the Court of Appeals.

Judge Jessica Lorrelo becomes Idaho's fourth female to serve on the Court of Appeals.

#### -2016-

Justice Robin Brody elected as Idaho's third female justice. Her election ends a nine-year period with no female justice on the Idaho Supreme Court.

Justice Colleen Zahn appointed as the fourth female justice to ever serve on Idaho Supreme Court.

The appointment of these women to the Idaho State bench and federal bench is a testament to the evolving landscape of the legal profession.

females have in our society and their impact on not only female attorneys in the state of Idaho, but also those who have yet to go to law school or take the bar.

President Biden nominated, and the United States Senate confirmed, Idaho Court of Appeals Judge Amanda Brailsford as the first woman United States District Judge for the District of Idaho, another turning point and milestone in the history of women in the Idaho Judiciary.<sup>49</sup>

#### Conclusion

The appointment of these women to the Idaho State bench and federal bench is a testament to the evolving landscape of the legal profession. As these women continue to break barriers and contribute to the pursuit of justice, they pave the way for a more inclusive and diverse judiciary. Their stories serve as a source of inspiration, reminding us of the importance of representation and the need for continued efforts to promote gender equality in the legal field.

Despite their undeniable contributions, female judges in America have faced and continue to face unique challenges. Gender bias, stereotypes, and systemic obstacles have tested the resolve of these trailblazers. Their ability to navigate and overcome these challenges not only demonstrates their individual resilience but also underscores the importance of ongoing efforts to address gender disparities in the legal profession. Professional support is key. The Idaho Women Lawyers has played in an important role in encouraging women to achieve judgeships, and the Judiciary also provide guidance to encourage a diverse judicial candidate pool.<sup>50</sup>

As of March 2023, Wisconsin, Washington and Illinois were the leading states with the highest percentage of women on their states' highest benches.<sup>51</sup> Wisconsin's highest court is currently comprised of one male and six females, making the state's bench comprised of 85.7% female.<sup>52</sup> While Idaho was second to last in the nation in 2016 with respect to women appointed to the Idaho Supreme Court, with the recent appointment of Justice Meyer, Idaho is now one of five other states where the state's highest bench is comprised of three females, two males.<sup>53</sup> As such, Idaho ranks within the top ten states with the most women on the state's highest bench, demonstrating a significant shift towards gender equality on the bench at all levels.

While Idaho and the entire nation are making significant strides forward towards creating a more diverse bench, there is still significant room for improvement. When asked when there would be "enough" women on the Idaho Supreme Court, Justice Brody replied "When it's normal – when this isn't a historic event."<sup>54</sup> Former Justice Trout echoed this sentiment stating "I don't think it's the numerical number that makes a difference. It's the fact that it's routine."<sup>55</sup>



Hailee Elledge is an associate in the firm's insurance and litigation practice groups. Her practice experience includes creditor's rights, insurance defense,

commercial litigation, construction defect, and real estate disputes. While in law school at the University of Idaho College of Law, Hailee served as an Associate Editor and Chief Articles Editor for the Idaho Critical Legal Studies Journal and externed with the U.S. District Court, District of Idaho for the Honorable Ronald E. Bush. Outside of school, Hailee volunteered with the Idaho Trial Lawyers Association Street Law Clinic, where she recognized her passion and enthusiasm for helping others.



Cathy Silak is a member of the firm's appellate and mediation practice groups. She began her career with Hawley Troxell in 1984 and became partner in 1988.

In 1990, Cathy was appointed by Governor Cecil D. Andrus as the first woman judge on the Idaho Court of Appeals. She was appointed in 1993 to the Idaho Supreme Court and served until 2000. In 2001 she resumed her partnership with Hawley Troxell. After serving as the Founding Dean of Concordia University School of Law, Cathy returned to Hawley Troxell once again in 2017 as Of Counsel. Cathy has practiced law in California and Washington, D.C., and was appointed as Assistant United States Attorney for the Southern District of New York. Cathy earned the Idaho State Bar's Distinguished Lawyer Award in 2010.

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# State of JUDICIAL BRANCH

### State of the Judiciary Address

Chief Justice G. Richard Bevan

Delivered to the Idaho Senate and Idaho House of Representatives on January 17, 2024.

#### **Introductory Remarks**

I am honored to stand here before you for a fourth time as chief justice. And really, I don't stand here on my own. Also standing here are our 159 trial and appellate judges — including newly appointed Justice Cynthia K.C. Meyer, who I hope you all get a chance to meet. Welcome, Justice Meyer!

I also represent, as the face of the judiciary, our hundreds of court clerks, our various court administrators, law clerks, court reporters, court assistance officers and all the many others who help us to accomplish the important work of Idaho's Judicial Branch of government.

And I stand here on the foundation built by those who came before us including our recently retired Justice John Stegner. I was honored to work closely with Justice Stegner for his years on the Supreme Court, and I wish him the best in the next stage of his career.

#### The Rule of Law

A couple of months ago I spent an evening in Twin Falls sharing with an audience why I do what I do. These were everyday folks out on a Monday evening on a college campus, eager to learn. This represented the kind of opportunity I always enjoy as a judge — to help people see how Idaho's judges advance our grand civics experiment as part of Idaho's state government.

But there is a gap in the public's understanding, as I suspect you'd tell me of a gap in public understanding of the legislative branch and the executive. People are aware of courts, but they don't necessarily think of what courts mean. And they certainly don't think of what would happen without us.

What is our Judicial Branch? It is fairly simple: Courts provide a fair and peaceful way to resolve disputes, impartially and under an equal rule of law. The law comes from the people in the form of the state and federal constitutions. It comes from those of you in this room, in the form of the laws you write, as well as local ordinances and regulations. Judges apply this wide array of laws to family matters — like adoptions and divorces — to business disputes and property disagreements, to cases for personal injury as well as criminal proceedings. We resolve these cases based on this body of law, together with the facts developed through a trial or discovery process.

That last part is essential to the work we perform. John Adams said that the "very definition of a Republic is 'an Empire of Laws and not of men." Our branch is the embodiment of the American ideal that everyone answers to the law and answers equally. The rule of law is a fundamental cornerstone without which our society would flounder.

There are several ways to describe the rule of law. I have heard it put as the reason we will stop at a red light late in the evening, with no one around. Why do we stop? Because the rule of law is so entrenched in most of us that we don't give it a second thought. The rule of law doesn't mean that the police are in charge; it means that we all answer to the same laws.

The rule of law is visible when we pay our taxes on time or when divorced parents throughout this state shuttle their children across town to fulfill custody arrangements. The people who follow judges' orders in these cases may not agree with them. But they follow those orders anyway because they respect the laws and the courts that enforce them. As Dwight D. Eisenhower said, "[T]he rule of law does more than ensure freedom from high-handed action by rulers. It ensures justice between man and man however humble the one and however powerful the other." Really, the rule of law is the glue that keeps us all functioning as one, that helps us navigate life with our neighbors.

In the Judicial Branch, our patriotic purpose in coming to work each day is to build on the centuries of solid evidence that an independent court system is best equipped to impartially decide questions of law — and then equally apply the law

"without sale, denial, delay, or prejudice," to quote Article I, Section 18 of the Idaho Constitution.

We have seen elsewhere in the world what happens if the rule of law is subverted. U.S. Supreme Court Justice Felix Frankfurter once wrote that "[t]here can be no free society without law administered through an independent judiciary. If one man can be allowed to determine for himself what is law, every man can. That means first chaos, then tyranny."

Each year that I come here, it is to partner with you to uphold and sustain this rule of law. Truly, the fates of our public duties are tied together. If the rule of law falters in our courts, it also falters in this statehouse.

But nothing is simple these days, is it? The people whom we serve and the society in which we operate have become more fractured. People have forgotten the nature of the broad social contract that allowed us to form this state, this nation.

The issues that become high-profile wedges in our society have successfully distracted us from the many things we agree on. My hope, then, is to focus today on our joint obligation to maintain our rule of law.

#### Supporting the Rule of Law in Our Courts

It is an eventful time to work in the judiciary, for many reasons. Just the sheer volume of work can be a challenge to convey.

We've been frank with you in recent years about our case filing trends — both here and nationally, the overall trend is a small decline in civil cases. But we still handle more than 140,000 new court cases a year across one of the most geographically spread-out states in the Union. Those cases are often more complex, and they are drawing more attention — look, for example, at the national followings for some of our recent criminal proceedings.

Even everyday cases require more focus than before. In Idaho, we maintain audio recordings of all court hearings as part of the official court record — the record my colleagues and I rely on when reviewing a case on appeal. That audio is kept in a dedicated system devoted to this purpose. In 2023, that system received nearly 62,000 hours of court audio. That's nearly a 10% increase from the same time period four years before. While Idaho has gained judges in that time, we are also seeing more court filings involving arguments that require more courtroom time to resolve.

Our courts perform this work amid a backdrop of increased agitation toward government institutions. I spoke to you at length last year about the security threats our judges and court staff face. That situation has not improved.

Our courts in 2023 handled 60,000 newly filed criminal cases, 23,000 cases involving family law, 14,000 probate cases, 5,000 juvenile cases, plus those carried over from previous years. Many of these cases resolve quickly with little fanfare. Some become incredibly contentious. Underlying many of these cases are issues of mental health, substance abuse, homelessness, and neglect.

All it takes is one person making a bad choice in one of these situations for the unthinkable to occur. Thank goodness that we are not among states like Maryland or Wisconsin where judges or their family members were murdered in recent years, or Nevada where a judge was violently attacked in the courtroom just this month. But I still fear we are not far from that point.

Even so, we carry on undaunted. Enter one of our courts and you'll find a devoted workforce accomplishing feats I personally find incredible. Our judges must pivot from case to case and issue to issue while remaining fully present in each. Our clerks not only keep the whole system moving, they are our public face, helping users of the court system — and often managing interactions colored by those personal crises I just described.

Supporting these groups behind the scenes is another invaluable team. Here in Boise and across each of our judicial districts, Judicial Branch employees offer technological, financial, and other administrative support to all of our individual courts. Their work isn't always easy to see — but it would be obvious if they were missing. I am endlessly grateful for their own contributions to maintaining our rule of law.

#### Supporting the Rule of Law with Our Partners

By Constitution and statute, counties shoulder much of the burden of maintaining local courts. This constitutional partnership — done for budget savings in 1889 — is somewhat unique among courts nationwide. We take it seriously.

For example, we have relaunched a committee to provide elected clerks with more of a voice on court technology. As we work to better secure our digital systems, we are shaping our approach around the counties, acknowledging their unique processes and needs.

The bulk of our state-employed IT support is centralized in Boise while the counties themselves make their own arrangements for local IT. The counties' needs go beyond just the court system, of course. But starting in the last fiscal year, with your help, we placed an additional court-focused field technician in each judicial district to deploy new technology, solve technical issues and train both county and state employees who provide work for the courts. Feedback to this program across the board has been encouragingly positive and we are working to expand it — it's hard for a single tech to be both in Benewah and Boundary counties at the same time.

We also now offer a jury management system for counties. Again, managing jurors - summoning them, screening them, providing the information necessary for their work — largely happens at the county level. But through offering this state-funded system, we can provide jurors in any county that signs up with flexible, easy-to-use tools and timely information as they fulfill their own obligation to the rule of law: jury service.

We partner in other contexts — for example, to provide state agencies and even this Legislature with data needed to perform other work. Some of that data can be sensitive. Child protection cases, mental commitments, and even people's personal financial records require protection. Recently, we've worked to improve our data comprehension, both expanding the types and functionality of our reports and, in situations where law requires sensitive data be provided to an outside partner, creating a more secure way to deliver that data.

Our statewide IT team supports not only court operations, but also court users. That number encompasses about 2,900 people, including law enforcement and Idaho Department of Correction employees, who use our system daily to access court records they are entitled to as part of their jobs. Another example: our team helped the Nampa Police Department as that department migrated to using the statewide electronic ticketing system for electronic citations. Examples such as these show the courts' willingness to partner with others across government for public service. We look forward to continuing these partnerships in 2024.

that. In the same way that computers allow anyone to watch the full proceedings of this Legislature, both the public and our many court partners expect and rely on the conveniences of our modern times.

Videoconferencing in the courts has been invaluable in terms of the public's access to justice and our ability to quickly coordinate court proceedings and court management across this state. Court hearings of public interest may be livestreamed, allowing anyone to observe them. Administrative meetings held over Zoom encourage statewide participation from court stakeholders. This improves the range of voices who are able to participate in determining how we operate while minimizing travel and related costs.

Electronic filing and digital court recordings create efficiency for both our courts and those who use them. Right now, we are developing a new court records portal — offering access to public court documents right from your computer at home — without the need for a



Justice Bevan addresses the Legislature. Photo credit: Nate Poppino, Idaho Supreme Court Communications Manager.

#### **Digital Access to Justice**

As you've heard in previous years, so much of the fundamental work of the courts now involves computerized records and digital tools — and Idahoans expect

physical trip to a courthouse. This will increase transparency into the workings of our courts for the people of Idaho.

This brings me to my next topic — the sustainability of our systems.

## Preserving and Protecting Court Technology

Judicial Branch technology, including many of the employees who help maintain it, has primarily been supported through the Court Technology Fund. Established by this Legislature, that fund gets its revenue through legislatively established fees imposed in both criminal and civil court cases.

I understand the logic of such a self-funding approach, but in practice this model falls short. Court fine and fee receipts for the fund declined an average of 2.1% per year in the past five years. Meanwhile, overall technology costs rose an average of 7% each year — a cumulative 35%. This ongoing disparity in funding makes our current system unsustainable.

The courts have been thrifty stewards of this resource, leveraging fund reserves to support ongoing operations and deferring expenditures over the past several years. As you'll read in the annual report we provided you, we are below the national average in our spending per user on technology.

But as I explained last year, we have had to make tradeoffs. Last month we passed down to civil court filers a \$5 fee on electronic filing required by our software vendor. We hope that the benefits of having digital court documents sent to you and of filing from the comfort of one's home or office — without the need to run between county courthouses — balances the financial demand of the fee.

In speaking to you about these issues before, I have shared our efforts to build a sustainable future for our modern courts. As I promised last year, after extensive work with an independent consultant who evaluated our systems and staffing, I am pleased to present our solution based on their recommendation.

These steps are twofold. First, technology has substantially changed since we first implemented digital court records, giving us more options to host and secure our systems. The Judicial Branch has begun work to establish a statewide court computer network and to transition most services to a cloud-based network structure rather than traditional, local information hosting.

This move will alter both our costs and staffing needs throughout the state. And

so, the second step will be a request to you to close the gap between our current technology funding and what the courts need for long-term success. I ask that you please give this funding your full support — it will make the difference in what services we can keep available to your constituents.

For these systems are not nice bonuses. They're not bells and whistles. They are what technologically running a third branch of government requires — and what the public expects from a modern court system.

This funding includes recognizing the burgeoning demands of cybersecurity and what a time we live in for that. In just the month of December, our systems blocked 209,000 attacks on our court websites and 57,000 critical and high-security threats to our network firewalls. They also turned aside 124,000 copies of spam emails and messages with malicious intent.

These figures are not unusual. They are the status quo. They are evidence of coordinated efforts calculated to disrupt American governments. In the Judicial Branch, we stay vigilant to prevent their success. But vigilance and protecting the people's records is not an inexpensive endeavor.

#### Support for Idaho's Judges

We come to you this year also hoping to renew the conversation about fair compensation for our judges. This is not just a conversation about pay, it's about retention and recruitment.

I just passed my 20th year as a judge. I'm among a handful of our active judges who have served that long or longer. But our average judge has been on the bench for much less time — roughly 7 ½ years and our experienced judges are increasingly choosing alternate employment or retirement over staying in the judiciary.

A former magistrate judge gave a news interview last month about her departure from the bench that I feel is particularly illuminating. Judge Michelle Mallard gave exemplary service to the state of Idaho for 12 years.

Her comments in the interview reflect concerns we also hear from attorneys. For an experienced attorney in their prime, service as a judge comes with a significant financial sacrifice by way of a pay cut. And judges are never off the clock. A judge must limit friendships, and the job includes a growing amount of harassment and threats directed not just at the judge, but at her family and children.

Former Judge Mallard said her husband would sleep with a gun by their bed following certain cases. No one should have to do this as a result of public service. And it's not an environment conducive to recruiting the best and the brightest to serve as judges.

These concerns reflect even more notably on our district judges, where we especially see recruitment challenges. District judges handle felony criminal cases and high-value civil cases. In 2022, we averaged just five applicants for each of our district court openings, a number I previously described to you as "inadequate" and one which is almost a 50% decrease from just seven years ago.

Last year, that average dropped below five — and for openings in our First and Sixth Judicial Districts, only three attorneys applied, the minimum number the Idaho Judicial Council is now required to provide the Governor for his selection. Once again, with no disrespect to those who applied, this trend is heading in an alarming direction.

Idahoans deserve judges who are at the prime of their careers and at the top of their game. But we don't get there by making judicial service painful and undercompensated. At the very least, let's pay our judges a fairer wage, something that reflects the market value of their education and expertise.

For a full branch of government one of only three branches — our full budget proposal still only touches a little more than 1% of the general fund. Thank you for giving it your consideration.

#### Serving the People of Idaho

By necessity I must focus my remarks on the challenges before us. But make no mistake, Idaho has a strong and accomplished judiciary.

Our work with treatment courts, restoring people to being productive members of society, continues to set national standards. This is deeply meaningful work for our branch. 2,800 people participated in Idaho treatment court programs in fiscal year 2023.

Twenty-one drug-free babies were born to the participants — as a father and grandfather, that is a number that makes me proud.

The Judicial Branch worked this past year to improve our approach to domestic violence courts, which connect victims with advocacy and other services while holding offenders accountable. We maintained a focus on mediation — resolving custody disputes, producing criminal plea deals, and making more courtroom time for the truly intractable disputes that require a judge's in-court focus and management.

In November, courts across our state celebrated the many foster child adoptions that take place year-round in our courtrooms. Adoption hearings are among the most personally meaningful events our judges participate in. These are yet another reminder of the many ways our courts touch people's lives.

And again, in each of these situations we are, piece by piece, keeping the rule of law present in Idahoans' lives.

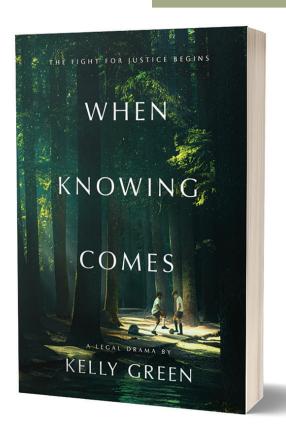
So, it is with a sense of optimism that I leave you today. Each year during these remarks, I have shared my strong belief that working together, our branches can truly improve life for the people of this state. The power to keep Idaho exceptional lies with us — the people our voters have entrusted with our most sacred government systems.

This is a unique state, a state I was born and raised in, a state where I have raised my five children, and a state where I have been proud to serve as a judge for two decades. I am proud of and respect all who labor in Idaho's judiciary. I thank you for working with us to keep it that way.



Chief Justice G. Richard Bevan was appointed to the Idaho Supreme Court in 2017 and became chief justice on January 1, 2021. He is a director on the

board of the National Conference of Chief Justices. Previously, he served a long career as an attorney and later district judge in the Fifth Judicial District. Chief Justice Bevan received his undergraduate and law degrees from Brigham Young University.



### When Knowing Comes, A Legal Drama: A Novel by Kelly Green

Jeffrey C. Fereday

Shame, repressed memories, denial, ruined marital intimacy, courtroom drama, and family tragedy — all arising from childhood sexual abuse occurring decades before — are themes in Kelly Green's gripping first novel, *When Knowing Comes*. The book is an insightful examination of the layered tragedies resulting from the sexual abuse of children. I found the book a compelling read.

The story, which covers 50 years and two generations of victims, unfolds in a seemingly safe and cheery American situation: a youth soccer club and the suburban families deeply invested in it. The legal drama at the center of this story concerns one of these young players who, some twenty-four years after suffering sexual abuse, finds the courage to sue the youth soccer organization that ignored the crimes being committed on its watch.

The author is Boise attorney Kelly Greene McConnell, here writing under a pen name. Her background serves her well, as she serves up vivid descriptions of the personalities, the egos, the tactics, and the tough decisions involved in the litigation process.

In this story, the victim's lawyer is his best friend and former soccer teammate, a man who harbors his own guilt for not coming forward when he witnessed inappropriate behavior by an assistant coach and sensed his friend's pain all those years ago. Well-organized flashbacks put the reader sometimes with the young players and their parents and coaches, sometimes in the present as the litigation is pursued, sometimes observing the perpetrator's past, and sometimes with a long-buried trauma that lurks behind the narrative and finally emerges in its own tragedy.

For years we have witnessed the slow grind of public revelations—and sometimes some level of legal accountability—for sexual abuse occurring in churches, in young people's organizations, and in the sports world. This book is an important contribution to understanding how these crimes often are overlooked or intentionally hidden, how they seem to have their own way

of remaining secret, and how the resulting psychological damage can persist for a lifetime. Putting us in the thoughts of one of the parents who had begun to figure out what was happening, Green writes, "She watched the children laughing and playing as she walked by and pondered the safety of their world. How many of you will grow up battling the hurt of your childhood? Some of you might not survive that battle."

In the book's Author's Notes, Greene lists "inspirations and resources" for this project and provides an invaluable bibliography of studies, news reports, memoirs, film documentaries, sports facts, and literature on this difficult subject.

The author is donating this book's proceeds to non-profits dedicated to preventing child sexual abuse.



Jeffrey "Jeff" C. Fereday is a retired Boise attorney. He was the author's law partner for many years.

# **Book Release & Signing Event**

# When Knowing Comes by Kelly Green

Through vivid scene-craft and vulnerable, relatable characters, Green guides the reader through complex landscapes—both legal and emotional—populated by compelling villains and those determined to resist them. When Knowing Comes will stay with you long after you've read the last page.

—Tomás Hulick Baiza, author of *Delivery* and A Purpose to Our Savagery



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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 2024

3<sup>rd</sup> Amended

Boise	January 10, 12, and 19
Boise	February 5, 7 and 12
U of I, Boise	February 14
Boise	April 5, 17, and 19
Moscow U of I, Lewiston	April 10 and 11
Boise	May 6, 10, 13 and 15
College of Idaho	May 8
Boise	June 3, 10 and 13
Idaho Falls	June 5
Pocatello	June 6

#### By Order of the Court Melanie Gagnepain, Clerk

NOTE: The above is the official notice of the 2024 Spring Term for the Supreme Court of the State of Idaho, and should be preserved. A formal notice of the setting of oral argument in each case will be sent to counsel prior to each term.

#### **OFFICIAL NOTICE COURT OF APPEALS OF IDAHO**

Chief Justice David W. Gratton

Judges Molly J. Huskey Jessica M. Lorello

#### Regular Spring Term for 2024

1st Amended (01/12/24)

Boise	January 9, 11, 16, and 18
	February 6, 8, 13, and 15
Boise	April 9, 11, 16, and 18
Boise	May 7, 9, 14, and 16
Boise	June 4, 6, and 11

#### By Order of the Court Melanie Gagnepain, Clerk

**NOTE:** The above is the official notice of the 2024 Spring Term for Court of Appeals of the State of Idaho, and should be preserved. A formal notice of the setting of oral argument in each case will be sent to counsel prior to each term.

#### Idaho Supreme Court **Oral Arguments for April 2024**

02/09/24

<b>Friday, April 5, 2024 - Boise</b> 8:50 a.m. <i>Murray v. Dalton</i> #51314 10:00 a.m. <i>State v. Roberts</i> #51031	L
11:10 a.m. <i>Lanningham v. Farm Bureau</i> #50441	
Wednesday, April 10, 2024 - Moscow U of I	
8:50 a.m. <i>State v. Karst</i>	)
10:00 a.m. Von Wandruszka v. City of Moscow #50471/50472	)
11:10 a.m. Barton v. Board of Regents#50756	
<b>Thursday, April 11, 2024 - Lewistown</b> 8:50 a.m. <i>White v. IDOT</i>	j
8:50 a.m. <i>Hollis v. State</i>	
10:00 a.m. <i>State v Muthafar</i>	
11:10 a.m. <i>State v. Bujak</i>	
Friday, April 19, 2024 - Boise         8:50 a.m. Severinsen v. Tueller	)

#### **Idaho Court of Appeals Oral Arguments for April 2024**

02/09/24

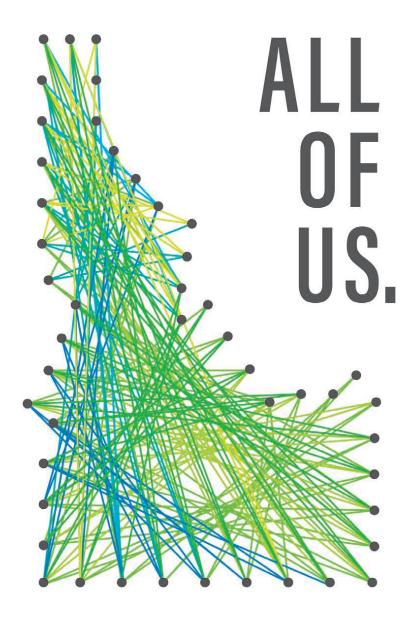
April 16, 2024	
10:30 a.m. State v. Wilson	#50802
1:30 p.m. <i>Lipps v. Nye</i>	#50864
April 18, 2024	
1:30 p.m. Rowett v. Infinity Pools	#50997



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#### CASES IN ALPHABETICAL ORDER BY CATEGORY - JANUARY 2024

#### **CIVIL APPEALS**

#### **Attorney Fees**

Whether the district court abused its discretion by awarding Defendant its attorney fees and costs as a sanction for Plaintiffs' failure to comply with the court's scheduling order.

Hart v. Millennial Devel. Partners, LLC Docket No. 50774 Supreme Court

#### Divorce

Whether the district court erred in affirming the magistrate's determination that Wife's Edward Jones account was not transmuted to community property during the parties' marriage.

> Farnsworth v. Farnsworth Docket No. 50446 Court of Appeals

#### **Easements**

Whether the district court erred in holding that Plaintiffs could not establish the "reasonable necessity" element of their implied easement claim solely because Plaintiffs have an alternative means of egress.

> Lipps v. Nye Docket No. 50864 Court of Appeals

#### **Jurisdiction**

Whether the district court erred by dismissing the intermediate appeal on the grounds that Appellant's arguments did not relate to the only order from which he timely appealed.

> Mendez v. Banner Bank Docket No. 50658 Court of Appeals

Whether the district court erred by dismissing Father's intermediate appeal and concluding that the notice of appeal filed within 42 days of the order denying Father's second motion for reconsideration was not timely from the judgment.

Secola v. Secola Docket No. 50722 Court of Appeals

#### Post-Conviction

Whether the district court abused its discretion by denying Petitioner's I.R.C.P. 60(b) motion for relief from the judgment summarily dismissing his post-conviction petition where Petitioner alleged that his post-conviction counsel completely aban-

> Smith v. State Docket No. 50442 Court of Appeals

#### **Public Records Act**

Whether the district court erred by requiring Respondent to provide Petitioner with a list of the names and mailing addresses of all Ada County property owners because such lists of persons are exempt from public disclosure unless the requestor agrees that the lists will not be used for mailing purposes.

> Sentry Dynamics, Inc. v. Ada County Docket No. 50933 Supreme Court

#### **Statute Of Limitations**

Whether Court should overrule prior precedent and adopt the "repair doctrine" as a form of equitable estoppel to prevent a contractor from asserting a statute of limitations defense when that contractor has made promises that repairs have corrected alleged defects and the homeowners have relied on those promises to their detriment.

> Moyer v. Doug Lasher Constr., Inc. Docket No. 50740 Supreme Court

#### **Summary Judgment**

Whether the district court erred by granting summary judgment in Defendants' favor and dismissing all of Plaintiff's claims without permitting her to amend her Complaint.

Barton v. Bd. Of Regents of the Univ. of Idaho Docket No. 50756 Supreme Court

#### **CRIMINAL APPEALS**

#### **Defenses**

Whether Idaho should recognize a "sentencing entrapment" defense in cases where the evidence shows a defendant, predisposed to sell a lesser amount of controlled substances, is entrapped by law enforcement officers into selling a greater amount, thus subjecting him to a more serious charge and/or harsher penalties.

> State v. Webb Docket No. 50705 Supreme Court

#### **Evidence**

Whether the district court abused its discretion by overruling Defendant's foundation objections and admitting evidence of text messages that were alleged to have been sent by Defendant in the days leading up to the murder.

> State v. Benzo Docket No. 49964 Court of Appeals

State v. Hendricks - Criminal - Evidence Whether the district court erred by excluding evidence of specific instances of the victim's prior violent conduct, which Defendant offered to support a theory of self-defense.

> State v. Hendricks Docket No. 50253 Court of Appeals

#### **Motion To Suppress**

Whether Defendant was subject to a de facto arrest when he was handcuffed, searched, and placed in the back of the patrol vehicle to await evidentiary testing to determine whether he had driven under the influence of alcohol.

> State v. Cenarrusa Docket No. 50355 Court of Appeals

Whether the Idaho Supreme Court should overrule or modify its prior precedent and hold that the protections of Article 1, § 17 of the Idaho Constitution extend to a citizen's trash when it is placed out for collection pursuant to a mandatory trash collection ordinance.

> State v. Pulizzi Docket No. 49710 Supreme Court

Whether the district court erred in concluding that Defendant's confession was voluntarily given and not the product of police coercion.

> State v. McCarroll Docket No. 49950 Court of Appeals

Whether the district court erred in denying the motion to suppress and concluding that, after observing the tires of Defendant's vehicle cross over into the bicycle lane, the officer had reasonable suspicion to stop Defendant for failing to maintain his lane of travel.

> State v. Cohen Docket No. 49865 Court of Appeals

Whether Defendant was subject to a de facto arrest when he was handcuffed and placed in the back of the patrol vehicle to await evidentiary testing to determine whether he had driven under the influence of alcohol.

> State v. Rodriguez Docket No. 50445 Court of Appeals

Whether the district court erred in concluding that the search of Defendant's person was a lawful search incident to arrest because, at the time of the search, the officer had probable cause to arrest Defendant for concealment of evidence.

> State v. Quibal Docket No. 50578 Court of Appeals

#### Restitution

Whether the state presented sufficient evidence to support the district court's order requiring Defendant to pay restitution in the amount of \$500 to the property owner following Defendant's conviction for malicious injury to property.

> State v. Bennett Docket No. 50423 Court of Appeals

#### Sentence Review

Whether the state presented sufficient evidence to support the district court's finding that Defendant violated his probation by failing to obtain the approval of his probation officer before starting new employment.

> State v. Farrell-Quigle Docket No. 50505 Court of Appeals

#### **Statutory Interpretation**

Whether the lower courts erred in concluding that the scope of a city ordinance prohibiting the posting of "any notice, sign, announcement, or other advertising matter" on private or public property without permission is not limited to commercial advertising matter.

> State v. Wilson Docket No. 50802 Court of Appeals

Whether a moving vehicle qualifies as a "premises of any place" within the meaning of Idaho's frequenting statute, I.C. § 37-2732(d).

> State v. Marble Docket No. 50239 Supreme Court

#### **ADMINISTRATIVE APPEALS**

#### **Judicial Review**

Whether the district court's order dismissing Petitioners' petition for judicial review for lack of standing also precludes Petitioners from bringing a civil action for declaratory and injunctive relief.

> McInnes v. Madison Cntv. Docket No. 50669 Supreme Court

Whether the district court erred by affirming the Boise City Council's decision overturning the decision of the Boise City Planning and Zoning Commission to deny an application for a conditional use permit to convert existing buildings into a shelter home.

Veterans Park Neighborhood Ass'n, Inc. v. City of Boise Docket No. 51027 Supreme Court

Whether the district court erred by affirming the Department's decision to deny Petitioner criminal history and background clearance based on its finding that Petitioner's prior conviction disqualified her from receiving clearance, even though the conviction had been dismissed vears earlier.

Roy v. Idaho Dep't of Health and Welfare Docket No. 50830 Supreme Court

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



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#### Rodney R. Saetrum 1952 - 2024

Rodney R. Saetrum of Boise, Idaho, was a beloved husband and lifelong partner to Kerry. Rodney graduated from University of the Pacific,



McGeorge School of Law and was admitted to the Idaho State Bar in 1982.

He was a cherished father to Greg, Adam, and Grant, caring grandfather to Zachary and Madelyn and a dear friend to those that had the pleasure to know him along the way. He was loved and will be dearly missed.

#### Roland D. "Rollie" Watson 1950 - 2024

Rollie was born Roland D. Watson, on July 5, 1950, in Coeur d'Alene, ID to parents Harold E. Watson and Marie E. Watson. He passed away January 6th, 2024, at home.



Rollie grew up in Post Falls, Idaho. He was an Eagle Scout in Post Falls where he and his troop hand-carved a totem pole for the interests of Camp Easton. Rollie went to school in Post Falls until he moved to Rockford Bay with his family in 1964 and graduated from CDA High School in 1968. Rollie was active in his high school debate team. Rollie attended Flathead Valley Community College in 1971 and received an Associate of Arts degree. Rollie entered the Army in April 1971, where he was an Army Specialist, 1st Brigade, as a Social Work Specialist. Rollie received his Bachelor of Arts at the University of Montana in 1976. Rollie was a Revolver Expert, Corporal, Detective, and Sgt. in The Coeur d' Alene Police Department from 1978-1985. He continued his education at Gonzaga University, earning his Doctorate in Law in 1984.

Rollie ran a private practice and was the City Attorney for the City of Rathdrum, Interim Public Defender for the Coeur d'Alene Tribe, Public Defender for Boundary County, and Contract Public Defender for Kootenai County. During his career he was licensed with the Idaho, Washington, Colorado, Montana, Washington D.C., and Alaska Bar Associations.

An avid athlete, Rollie was a marathon runner, a walker, and could often be found hiking Tubbs Hill. He used marathon running as a vehicle to raise money for The Boys and Girls Club.

His hobbies and interests included local indigenous history, riding his motorcycle, traveling, reading, gardening, competitive pistol shooting, playing the guitar, shooting his cannon, spending time with his friends, wiener dogs, and his family.

Survived by Morgan Watson, Coeur d'Alene, ID; Jadrian Watson and granddaughters MayLynn Hammon and Phoenix Hammon, Coeur d'Alene, ID; brother Rocky and sister in-law Mary Watson, Hayden, ID. The Herndon family, Lee Watson, Nathan and Deborah Sylvester, Oscar, Myers, and Cora.

#### Dale G. Higer 1941 - 2023

Dale Gordon Higer died peacefully, amidst his loving family, on December 19th. Dale was born in 1941 in Emmett, Idaho to Jean Wentworth



Higer and Clarence Henry "C.H." Higer, the second of four boys. He attended Emmett schools graduating in 1959 as co-valedictorian of Emmett High. He was also a proud Eagle Scout. He went on to the University of Washington, where he pledged Alpha Delta Phi. He was inducted into the school's Hall of Fame and graduated cum laude and Phi Beta Kappa with a degree in history. At the time he enrolled at UW, all men were required to take ROTC, and at graduation he received his commission as a Second Lieutenant in the U.S. Army.

Dale then set his sights on law school, and after a suggestion from his friend Sandy Sanders, applied to Harvard Law School. When his Harvard classmates asked if he shopped in Des Moines, he responded that his family routinely made the 2300-mile round trip, in a covered wagon. Even though he was a native Idahoan, Dale didn't learn to ski until he went East to school. He loved skiing, favorite slopes included Bogus, Baldy and most of all, Cortina. It may be that learning to carve on the concrete slopes of the East explained his effortless grace as he slalomed down runs on his 210 K2s.

After graduating law school, Dale began a tour of duty with the Army. He was assigned to the 1st Battalion, 35th Armor in Erlangen, Germany where he made lifelong friends and purchased his dream car, a shiny red Porsche 911. It was the 151st production model in the teardrop style. He was promoted to Captain and awarded the Army Commendation Medal, the highest peacetime award that the Army can award an officer of his rank and time in service.

Dale returned to Idaho to practice law as the Chief Deputy Prosecutor of Canyon County. He then went into private practice with the firm Eberle Berlin, and later Stoel Rives. Dale practiced law for 40 years, retiring in 2006. Dale, a true Westerner, was equally at ease in New York or D. C. Wall Street lawyers once peaked outside their office doors to see "what a lawyer from Idaho looked like." And found he looked just like them.

He earned his pilot's license and had many adventures, some hair raising, in flight. He was also a skilled woodworker and gardener.

Dale was always involved in his community and served as the President and Trustee of the Boise Art Museum, Boise City Planning & Zoning Commissioner, Boise Greenbelt Committee, Founding Member and President, with Chris Davidson, of the Idaho Botanical Garden, Director of the Idaho Humanities Council, and many others. In life Dale aspired to follow the Athenian oath to "transmit this City not only, not less, but greater and more beautiful than it was transmitted to us." And he did.

He was admitted to the Idaho State Bar in 1966 and was a member of the

American Bar, a Charter Member of the American College of Real Estate Lawyers, and an appointed member of the Uniform Law Commission where he was made a Life Member after more than twenty years of pro bono service. He was selected as Idaho Statesman Distinguished Citizen in 1987 and in 2016 he received the Distinguished Lawyer Award from the Idaho State Bar. Dale was a Kingfish of the Arid Club and met with his Wednesday Lunch group for 40 years.

But where he really excelled was as a husband, father, and grandfather. Dale married his true partner in life, Ramona Garro, in 1973. They celebrated their 50th wedding anniversary in June 2023. Dale and Ramona shared a love of history, gardening, architecture and traveling and especially enjoyed being with family and friends at their place in McCall. Dale was a wonderful father to his daughters, Sarah, and Allegra. And always taking a phone call, ready to listen and if needed, offer advice, and to rejoice (or sorrow) over the day's sporting events. He was an adoring grandfather.

Dale is survived by his wife of 50 years, Ramona, daughters Sarah and Allegra (Thompson), son in law Michael Thompson and former son in law Shawn Wilkerson, grandchildren Devon, Jet and Beckett, brothers Ralph (Yvonne), Nathan (Kay) and Warren (Connie), sisters in law Adelia Simplot and Susan (Wayne) Meuleman and numerous loved nieces, nephews and dear friends. Donations in Dale's memory can be made to the Idaho Botanical Garden online or at 2355 N. Old Penitentiary Rd, Boise, ID 83712.

#### James M. Kearney 1968 - 2023

James M. Kearney beloved husband and father. adored little brother, cherished uncle, dear friend, generous mentor - died suddenly on Monday, Nov. 27, 2023.



He was only 55 years old. His wife Devani and their children Finn, Wheaton, and Rossi, along with many people, really, mourn Jim deeply and will remember him with sorrow and delight.

He is sorely, grievously, earnestly, lovingly, missed. Jim was born on Sept. 7, 1968, and grew up in Moscow, Idaho. In a family of enthusiastic, if unevenly gifted, athletes Jim was accomplished and eclectic. He ran track and cross country, played basketball, cycled, climbed, camped, hiked; he walked on stilts, juggled, unicycled, and juggled while unicycling. And he skied. Boy, did he ski. He taught his wife, kids, and really, he taught anyone else to ski who expressed even the slightest interest.

Jim attended Claremont McKenna College, where he majored in international relations. Studying abroad in Freiburg, Germany, he met Devani Scheidler, the love of his life. After graduation, the couple moved to Washington, D.C., where Jim worked as a Senate Budget Committee analyst before returning to Germany on a Fulbright Scholarship. He and Devani married in 1995. In Iowa, in January. That's how much he loved her. Eschewing a career in politics, Jim earned his juris doctor degree from the University of Washington Law School and went on to work for Stoel Rives LLP in Portland. He was admitted to the Idaho State Bar in 1999.

He worked hard at embarrassing his three kids and endured an uneasy truce with countless chickens and a few cats. He was also a confirmed do-it-yourselfer, amateur contractor and cheapskate. Jim built chicken coops and waged inconclusive war on blackberry bushes, climbed and felled trees and then milled them with a chainsaw, generally consternating his family.

#### **Jack W. Smith** 1950 - 2024

Jack W. Smith of Chugiak, Arkansas passed away on February 4, 2024. Jack graduated from University of Idaho College of Law and was admitted to the Idaho State Bar in 1979.



#### Nominations for the 2024 ISB **Commissioner Election Due** April 2, 2024

SIXTH & SEVENTH DISTRICTS -Attorneys in the Sixth and Seventh districts will be electing a new representative to the Idaho State Bar Board of Commissioners this spring. The new commissioner will replace Gary Cooper of Pocatello. Pursuant to Idaho Bar Commission Rule 900, the new commissioner representing the Sixth and Seventh districts must reside or maintain an office in the Seventh district. Commissioners of the Idaho State Bar - the elected governing body of the Bar - serve for three (3) years, beginning on the last day of the ISB Annual Meeting following their elections. The Board of Commissioners is charged with administering the regulation of the legal profession in Idaho, which includes the testing, admission, and licensing of attorneys, overseeing disciplinary functions and mandatory continuing legal education requirements.

Nominations must be in writing and signed by at least five (5) members of the ISB in good standing, and eligible to vote in the districts. The Executive Director must receive nominations no later than the close of business on Tuesday, April 2, 2024. A nominating petition form may be obtained by calling the office of the Executive Director at (208) 334-4500 or on the ISB website at www.isb.idaho.gov. Ballots will be distributed electronically to all members eligible to vote in the Sixth and Seventh districts on Monday, April 15, 2024. All ballots properly cast and returned to the ISB office will be counted by a Board of Canvassers at the close of business on Tuesday, May 7, 2024.

#### 2024 Annual Meeting Scholarships Available - Deadline June 3

STATEWIDE - The Idaho State Bar is offering a limited number of scholarships to the 2024 Annual Meeting, July 17 - 19, at Jack's Urban Meeting Place ("JUMP") in Boise. The scholarships will include full registration, tickets to social events, and per diem up to \$100 per day for travel and lodging. The scholarships are designed to aid those attorneys who, due to financial or professional circumstances, would otherwise be unable to attend.

To apply for a scholarship, please fill out the Annual Meeting Scholarship Request Form on the Bar's website. If you have any questions, please contact the Idaho State Bar Commissioner who represents your judicial district or the Program and Legal Education Director Teresa Baker at tbaker@isb.idaho.gov.

The deadline for scholarship requests is Monday, June 3, 2024.

#### Idaho Court Data Site Offers **New Functions**

STATEWIDE - The Idaho Court Data website now offers additional ways to filter information on criminal charges and infractions filed in local courts. Through the site, you can examine filing numbers by when or where a charge was filed, the offense involved and whether the charge led to a conviction, acquittal, dismissal or is still pending in the courts.

The site's dashboards on criminal charges and infraction charges are updated twice a year to include data for the most recent calendar and state fiscal years.

Other dashboards on the site cover criminal and civil case numbers and a range of financial information about Idaho's courts. The Court Data website was first launched in 2020 and continues to evolve. Learn more by accessing the site at courtdata.idaho.gov.

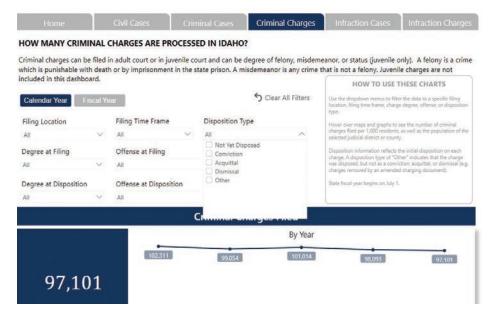
#### **Hepworth Holzer Welcomes Attorney Andrew LaPorta as Newest Partner**

BOISE - Hepworth Holzer, LLP is pleased to welcome Andrew LaPorta as our newest partner. Andy has proven himself as a plaintiff's injury attorney deftly



dealing with complex and unique legal issues in air crash liability and medical negligence cases. A graduate of Brigham Young University-Idaho and the University of Utah College of Law, Andy brings a level of sophisticated legal analysis to the firm's partnership.

Since joining the firm in January 2021, Andrew has established himself as a persuasive advocate in Idaho's courtrooms. His passionate representation of our clients honors the legacy on which the firm was founded. Andy's passion fuels his commitment to excellence. It shows itself in his mastery of heavily regulated legal arenas and a constant focus on trial advocacy skills. Andy is regularly asked to present to fellow lawyers on complex legal topics. In addition to being an



Graphic provided by the Idaho Supreme Court.

active member of the Idaho Trial Lawyers Association, and a board member of the J. Rueben Clark Society, Andy maintains his license in Utah and Arizona to support the firm's expanding multi-state practice.

#### 2024 Access to Justice FUND Run/Walk - Save the Date!

BOISE - Save the date for Saturday, June 1st, at 10:00 a.m. for the Access to Justice FUND Run/Walk benefitting the Access to Justice Idaho campaign! The Access to Justice Idaho campaign raises funds for the three main providers of free civil legal services to poor and vulnerable Idahoans: DisAbility Rights Idaho, Idaho Legal Aid Services, and the Idaho Volunteer Lawyers Program. In 2023, 351 people participated in the event! Since its inaugural year in 2014, the event has raised over \$76,000 for the Access to Justice Idaho Campaign.

The run/walk starts at Fort Boise Park in the Military Reserve area (near the corner of Reserve Street and Mountain Cove Road) and is an out-and-back route along Mountain Cove Road. Prizes will be awarded to the top three finishers in the following categories: Senior, Adult, High School, and 12 and under. Food and beverages will be available for participants at the finish line.

Bring your friends, family, and dogs with you to participate in this event in Idaho's beautiful outdoors. Registration is \$25 for adults and seniors, and \$15 for youth 12 and under. Register as a team and compete for the Learned Foot travelling trophy awarded to the biggest team! Your registration fee gets you an awesome event t-shirt and good vibes knowing you are supporting a good cause.

Register by following the links on the Idaho Law Foundation website for the Access to Justice FUND Run/Walk, or go to https://www.raceentry.com/access-tojustice-fund-runwalk-5k/race-information.

If you are interested in being an event sponsor, contact Maureen Ryan Braley at 208-955-8885 or mryanbraley@isb.idaho.gov. If you are interested in volunteering to help on race day, contact Calle Belodoff at cbelodoff@isb.idaho.gov. See you on Saturday, June 1st!

#### **Attorney Erica Green Joins Foley** Freeman, PLLC

MERIDIAN – Foley Freeman is happy to announce Erica Green is joining the law firm as an associate. Erica Green's practice focuses on family law, civil disputes, and criminal law.



Erica received her Bachelor of Science degree in political science from Boise State University in 2017. She then graduated from the University of Idaho College of Law in 2021. After graduating, Erica clerked for Justice Zahn with the Idaho Supreme Court for two years.

Erica grew up in Mackay, Idaho, and has a unique perspective on what it is like to live in rural Idaho. When not practicing law, she enjoys spending time with her husband and son, playing volleyball, and adding to her vinyl record collection.

#### Introducing the Attorney Well-Being Committee -**ISB's Newest Committee**

STATEWIDE - Over the past several years, different practice sections and committees of the Bar wanted to take on the challenge of helping our members balance the stress of the profession and the realities of everyday life through well-being initiatives. After an extensive member survey and a report of the Attorney Well-Being Task force, the Board of Commissioners appointed a new standing committee to lead the efforts of the Bar.

These members are taking the research and recommendations of the Task Force to the next level and will be working with each District Bar to reach members throughout the state.

Jeff Owens 1st District Kacey Jones 4th District Jamal Lyksett 2nd District Tyler Rands 5th District Hon. Juneal Kerrick 3rd District & Judiciary Carole Wesenberg 6th District Mo Haws 3rd & 4th Districts

Julie Stomper 7th District Nichole Gabriel 4th Distric

Look for events during Well-Being in the Law Week, May 6 through 10th. Attorneys, staff, families, and friends are invited to participate! If you are interested in helping with these events or have ideas, please contact the Well-Being Committee member in your district or Teresa Baker at tbaker@isb.idaho.gov.

#### Judge Tribe Appointed to Idaho **Court of Appeals**

STATEWIDE - Gov. Brad Little has appointed Fifth District Judge Michael Tribe to the vacant seat on the Idaho Court of Appeals created by Amanda Brailsford's appointment to the U.S. District Court.

Judge Tribe has served in his current role since 2017 when Gov. C.L. "Butch" Otter appointed him to the Fifth District. Previously, he was a partner in a private firm in Rupert practicing criminal law, water law, and civil litigation. He also served as a contract prosecuting attorney and was legal counsel for the cities of Rupert and Heyburn and the Minidoka and Cassia County school districts.

#### Idaho State Bar 2023 Year-End **Statistics**

Discipline/E	Ethics	
	2022	2023
Phone requests	908	778
Grievances received/closed	346/322	380/368
Complaints opened/closed	44/37	50/42
Ethics questions	1,047	1,294
Formal charge cases opened	6	13
Formal charge cases closed	7	9

Client Assistance Fund			
	2022	2023	
Claims Opened	25	14	
Claims Closed	28	17	
Claims Paid	14 - \$40,600	7 - \$37,120	

Mandato	ory CLE	
	2022	2023
Applications Received	6,006	5,765
Courses Approved	5,289	4,970



Admissio	ns	100
Year	2022	2023
Bar exam applicants	275	213
Pass Rate	60%	55%
Reciprocal applicants admitted	96	67
UBE applicants admitted	50	48
Total newly admitted	307	242

ISB	Membersh	nip Totals
Dec 2022	Dec 2023	% change
7.143	7.241	1.4%



# Idaho Legal Aid Services would like to say THANK YOU to the following 2023 Donors, Volunteers and Grantors

Your assistance allows us to provide high quality civil legal services to low income Idahoans

\$2,500 and Above	Up to \$99	Grantors	
Brien & Shelly DeAtley	Andrew Dallman	Access to Justice Idaho	INL/Battelle Energy
Family Foundation	Bev Allen	Area 3 Senior Services	Legal Services Corp.
Phil DiDio	Clinton Warren	Agency	Montana Legal Services
Racing for Charity, Inc.	Daniel Rife	Area Agency on Aging	Association
	<b>Edward Cembalisty</b>	of North Idaho	National Health Law
	Emilie Jackson-	City of Idaho Falls	Program
\$1,000 to \$2,499	Edney	College of Southern	Nez Perce Tribe
Anonymous	<b>Gary Hanes</b>	Idaho Office on Aging	<b>Seagraves Foundation</b>
Carolyn Spicer Russ	Jamie Utz	Coeur d'Alene Tribe	Shoshone-Bannock
Jon & Laura Carter	Kroger	<b>Community Action</b>	Tribes
Charitable Gift Found.	Leobardo Ramirez	Partnership	Southeast Idaho
Senior Edge Legal	Lydia Bassett	Eastern Idaho	Council of
	Mary Gehrke	Community Action	Governments
		Partnership	United Way of Idaho
\$500 to \$999		Goodwill Industries-	Falls & Bonneville
National Philanthropic	Volunteers, In-Kind	Inland Northwest	County
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Peterson Donor Advised Fund	Alan Wasserman Ashley Nielsen Boise State University	Foundation Idaho Commission on Aging Idaho Community	Treasure Valley US Depart. of Housing & Urban Develop. US Depart. of Justice
Peterson Donor Advised Fund \$250 to \$499	Alan Wasserman Ashley Nielsen Boise State University Boyd Peterson	Foundation Idaho Commission on Aging Idaho Community Foundation	Treasure Valley US Depart. of Housing & Urban Develop. US Depart. of Justice Women's & Children's
Peterson Donor Advised Fund  \$250 to \$499 Boyd & Lauri Peterson	Alan Wasserman Ashley Nielsen Boise State University Boyd Peterson Brooke Redmond	Foundation Idaho Commission on Aging Idaho Community Foundation Idaho Council Against	Treasure Valley US Depart. of Housing & Urban Develop. US Depart. of Justice
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Peterson Donor Advised Fund  \$250 to \$499 Boyd & Lauri Peterson Joel Horton Randy Robinson	Alan Wasserman Ashley Nielsen Boise State University Boyd Peterson Brooke Redmond Cathy Beck Erin Poppenga Karen McCarthy John Hoffman	Foundation Idaho Commission on Aging Idaho Community Foundation Idaho Council Against Domestic Violence & Victim Assistance Idaho Law Foundation/ IOLTA Program	Treasure Valley US Depart. of Housing & Urban Develop. US Depart. of Justice Women's & Children's
Peterson Donor Advised Fund  \$250 to \$499 Boyd & Lauri Peterson Joel Horton Randy Robinson  \$100 - \$249	Alan Wasserman Ashley Nielsen Boise State University Boyd Peterson Brooke Redmond Cathy Beck Erin Poppenga Karen McCarthy John Hoffman Lynn Brooks	Foundation Idaho Commission on Aging Idaho Community Foundation Idaho Council Against Domestic Violence & Victim Assistance Idaho Law Foundation/ IOLTA Program Idaho State Police	Treasure Valley US Depart. of Housing & Urban Develop. US Depart. of Justice Women's & Children's
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Hollil Feichko

Linda Hedtrick

Pamela Lassahn

Kim Veach

Renae Hoff Sally Snow

Sunrise Ayers

Nina Marcello

Renae Hoff

Sean Walsh

**Seth Platts** 





#### March

Batter Up: Balancing Ethics & Expertise 11-15 in the Law Phoenix, Arizona 7.0 CLE credit including 2.5 Ethics



12 Handling Your First or Next Immigration Case The Law Center, Boise 2.0 CLE Credits



13 2024 Americans with Disabilities Act Update Live Audio Stream 1.0 CLE credit **(**(







25 Lawyer Ethics When Storing Files in the Cloud Live Audio Stream 1.0 Ethics credit



#### April

- 3 Real Property Section Annual CLE
- 5 Workers Compensation Section Annual CLE

19

Indian Child Welfare Act - Child Protection and Indian Law Sections Joint CLE

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

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