

Idaho Bar Commission Rules

Governing Admission to Practice and Membership in the Idaho State Bar

*As promulgated by the Board of Commissioners of the Idaho State Bar
and adopted by Order of the Supreme Court of the State of Idaho.*

SECTION VIII

Unauthorized Practice of Law

RULE 800. Purpose - Jurisdiction - Effective Date

- (a) **Statement of Purpose.** The public interest requires that in securing professional advice and assistance upon matter affecting one's legal rights one should have assurance of the competence and integrity of his or her representative and should enjoy freedom of full disclosure under a recognized privilege of confidentiality. To protect this public interest it is deemed necessary to establish guidelines for the investigation of complaints, and the procedures to be followed to eliminate the unauthorized practice of law as provided by *Idaho Code* Secs. 3-401 and 3-420.
- (b) **Jurisdiction.** Pursuant to the provisions of Article II, Section 1, of the Constitution of the State of Idaho, the Idaho Supreme Court has inherent jurisdiction to prohibit the unauthorized practice of law. Nothing contained herein is intended to limit the inherent authority of the Idaho Supreme Court or the authority of any other Idaho court to regulate the matters coming before it, including attempts to practice law by persons not licensed to practice law before said courts. All Idaho courts have inherent judicial powers to prohibit and to punish the unauthorized practice of law before them, and the Idaho State Bar encourages the use of such direct power to eliminate the unauthorized practice of law whenever necessary or appropriate.
- (c) **Authority to Promulgate Rules.** Pursuant to the authority granted in *Idaho Code* Sec. 3-408, and subject to approval of the Idaho Supreme Court, the Board of Commissioners of the Idaho State Bar, as an official arm of the Supreme Court, hereby promulgates the following rules for the conduct of proceedings relating to the unauthorized practice of law.
- (d) **Effective Date.** These rules shall become effective on July 1, 1986. Any formal proceeding then pending shall be concluded under the procedure existing prior to the effective date of these Rules.

RULE 801. Definitions. As used in these Rules, the following terms have the following meanings, unless expressly otherwise provided, or as may result from necessary implications.

- (a) **Bar Counsel.** "Bar Counsel" means the general legal counsel for the Board of Commissioners of the Idaho State Bar.
- (b) **Board or Board of Commissioners.** "Board" or Board of Commissioners means the duly elected governing body of the Idaho State Bar.
- (c) **Complaint.** "Complaint" means a written statement which an individual or entity files in the office of Bar Counsel, alleging that a person or entity has engaged in the unauthorized practice of law.
- (d) **Committee or Standing Committee.** "Committee" or "Standing Committee" means the Standing Committee on Unauthorized Practice of Law appointed by the Board of Commissioners.
- (e) **Court or Supreme Court.** "Court" or "Supreme Court" means the Supreme Court of the State of Idaho.
- (f) **Respondent.** "Respondent" means an individual alleged to have engaged in the unauthorized practice of law.

- (g) **Rules or These Rules.** "Rules" or "These Rules" means Rules 800 through 809 of the Bar Commission Rules.
- (h) **State.** "State" means the State of Idaho.
- (i) **Unauthorized Practice of Law.** "Unauthorized Practice of Law (UPL)" means the practice of law without being duly qualified to do so, as prohibited by statute, court rule, or case law of the state.

RULE 802. Standing Committee on Unauthorized Practice of Law

- (a) **Membership.** The Board of Commissioners shall appoint a three (3) member committee to be known as the "Standing Committee on Unauthorized Practice of Law of the Idaho State Bar" which shall be composed of members of the Idaho State Bar, in good standing appointed to staggered terms of three (3) years each.
- (b) **Subsequent Terms.** Subsequent terms of all members shall be for three (3) years.
- (c) **Officers.** The Board shall designate one (1) member of the Committee as Chairman and one (1) member as Vice-chairman. The chairman, and in his or her absence the vice-chairman, shall be responsible for calling and presiding over meetings of the Committee and for certifying to the Board all recommendations concerning matters which come before the Committee.
- (d) **Quorum.** Two (2) members of the Committee shall constitute a quorum. All decisions of the Committee must be by majority vote of those present.
- (e) **Duties and Powers.** The Standing Committee shall have the following powers, duties and responsibilities:
 - (1) To receive complaints of unauthorized practice of law;
 - (2) To refer complaints which appear to have merit to Bar Counsel for investigation and to supervise and direct such investigations by Bar Counsel;
 - (3) To review the results of Bar Counsel investigations of allegations of unauthorized practice of law;
 - (4) To cause cease and desist letters to be issued seeking voluntary compliance by a respondent with unauthorized practice of law statutes, rules or case law;
 - (5) To make and submit reports and/or recommendations for the institution of judicial action to enjoin or punish the unauthorized practice of law to the Board of Commissioners.
 - (6) To adopt additional rules of procedure subject to approval of the Board of Commissioners.
 - (7) To cause subpoenas to be issued upon request of Bar Counsel to compel attendance and production of evidence necessary or convenient to the investigation of a complaint of the unauthorized practice of law.
- (f) **Restrictions on Issuance of Subpoenas.** No subpoena shall be issued under this Rule unless a majority of the Committee shall determine, in writing, that probable cause exists to believe:
 - (1) that a respondent is engaged in the unauthorized practice of law; and

- (2) the person to whom the subpoena is directed may have evidence relevant to the investigation of such matter. Each subpoena so issued shall indicate with specificity the documents sought to be produced and the matters on which the person to whom it is directed shall be asked to produce evidence. No such subpoena shall be issued in blank. A copy of each subpoena issued, together with the return thereon, shall be retained in Bar Counsel's investigative file.
- (g) **Service of Subpoenas.** Subpoenas issued under this Rule shall be served pursuant to Rule 45(c)(2), Idaho Rules of Civil Procedure.
- (h) **Failure to Comply with Subpoena.** Failure of any person subpoenaed in accordance with this Rule shall subject that person to all penalties and procedures provided by law, including but not limited to those specified in Idaho Code Section 3-414, Rule 45(f), Idaho Rules of Civil Procedure and Title 7 Chapter 6, Idaho Code. The district court of the judicial district in which attendance or production is required, upon the petition of Bar Counsel, shall enforce the attendance and testimony of any witness and the production of any documents so subpoenaed. Witness fees and mileage shall be paid in the same manner as in the district court.
- (i) **Conflicts.** Members of the Standing Committee shall refrain from taking part in any proceedings in which a judge, similarly situated, would be required to abstain. If, in any given case, the number of Committee members who may properly render a decision falls below a quorum, the Board of Commissioners may appoint, for that case only, the number of *ad hoc* members necessary to restore the Standing Committee to full membership. Each *ad hoc* member shall fulfill all the responsibilities of the member whom he or she replaces.
- (j) **Compensation and Expenses.** The members of the Standing Committee shall receive no compensation for their services but may be reimbursed for their travel and other expenses incidental to the performance of their duties under these Rules.
- (k) **Vacancies.** Vacancies during a term shall be filled by the Board of Commissioners for the remainder of the unexpired term.

RULE 803. District Committees

- (a) **Ad Hoc District Committees.** The Board of Commissioners, on its own initiative or at the request of the Standing Committee, may appoint one or more *ad hoc* committees on unauthorized practice in one or more judicial districts, composed of such number of persons who shall serve for the terms, and shall have only the powers and duties, as may be set forth by the Board in the resolution creating and appointing such *ad hoc* committee. No such *ad hoc* committee, however, shall have or exercise any power given to the Standing Committee.
- (b) **Other District Committees.** Nothing contained herein shall be construed to limit the power of a district bar association to establish a district committee having responsibility for monitoring and reporting on unauthorized practice of law within the district's geographical boundaries.

RULE 804. Bar Counsel. Bar Counsel shall have the following powers and duties with respect to matters involving allegations of unauthorized practice of law:

- (a) To appoint such staff, and to incur such expenses as may be necessary to the performance of his or her duties, subject to budgetary considerations and to the approval of the Board of Commissioners.
- (b) To advise the Standing Committee regularly of all complaints submitted to Bar Counsel involving the unauthorized practice of law for their consideration.
- (c) To investigate complaints of unauthorized practice of law under the direction of the Standing Committee, in any way deemed

necessary and proper by the Committee, and to report the results of such investigation to the Standing Committee on a regular basis.

- (d) To issue cease and desist letters seeking voluntary compliance by a respondent with unauthorized practice of law statutes, rules or case law.
- (e) To act as counsel for the Idaho State Bar in all judicial proceedings initiated by it involving allegations of unauthorized practice of law.
- (f) To maintain permanent records of unauthorized practice of law matters and compile statistics to aid in the administration of the system.
- (g) To perform all other duties and functions as may be required of him or her by the Standing Committee or the Board of Commissioners with regard to the enforcement of unauthorized practice of law statutes, rules or case law.

RULE 805. Investigation and Preliminary Proceedings

- (a) **Investigation.** All investigations shall be conducted by Bar Counsel under the authority and direction of the Standing Committee.
- (b) **Action by Standing Committee.** The Standing Committee shall review each complaint of unauthorized practice and the report of any investigation by Bar Counsel and may, in its discretion, without Board approval:
- (1) close the matter without taking further action;
 - (2) cause to be issued a cease and desist letter seeking voluntary compliance with unauthorized practice laws from the respondent;
 - (3) refer the matter to the appropriate county prosecutor for action under *Idaho Code* § 3-420; or
 - (4) recommend to the Board that the Idaho State Bar initiate judicial action against the respondent seeking such remedies as may be provided by law.
- (c) **Board Action.** Upon receipt of the Standing Committee's recommendations, the Board shall review the matter and upon such review, the Board may:
- (1) Adopt, modify or reject the recommendations of the Standing Committee.
 - (2) Remand the matter to the Standing Committee for further investigation.
 - (3) Seek assurance of voluntary compliance.
 - (4) Approve the initiation of any appropriate judicial action, whether civil or criminal, in any court of competent jurisdiction, to enforce the state's unauthorized practice statutes, rules and case law, including, for example, referring the matter to a county prosecutor for action under *Idaho Code* § 3-420.

RULE 806. Voluntary Compliance

- (a) **Acceptance of Assurance of Voluntary Compliance.** The Board or Standing Committee may accept a written assurance of voluntary compliance that respondent will not continue the unauthorized practice of law, a copy of which shall be maintained in the permanent unauthorized practice files of Bar Counsel.
- (b) **Effect of Giving Assurance of Voluntary Compliance.** The act by a respondent of giving assurance of voluntary compliance shall not be considered an admission of violation for any purpose. Any subsequent act by the respondent in violation of such assurance of compliance shall *prima facie* establish that the person subject thereto knows, or in the exercise of due care should know, that Idaho law prohibits the unauthorized practice of law by persons not licensed to do so in Idaho, that the Idaho State Bar has determined in the past that the respondent's activities were in violation of such laws, and that further action by the Idaho State Bar to stop such activities was halted based on respondent's assurance that he or she would no

longer engage in the unauthorized practice of law, and that he or she has in the past violated, the law.

RULE 807. Judicial Proceedings. Civil judicial proceedings shall be initiated and prosecuted by Bar Counsel, after approval by the Board and under its direction, in accordance with the Rules of Civil Procedure applicable to the type of proceeding authorized by the Board. The Board shall have full authority in any such action to conduct such lawsuit, whether to seek enforcement of the state's unauthorized practice laws to their fullest extent or to compromise, settle or dismiss same, as it may in its discretion from time to time determine. Criminal judicial proceedings shall be referred to the appropriate county or state prosecutor, and the Bar's involvement therein shall be directed by the Board. The Board may also delegate its authority to direct the course of any such lawsuit to the Standing Committee or to Bar Counsel, as it may from time to time determine.

RULE 808. Immunity. Members of the Standing Committee, members of any *ad hoc* district committee, Bar Counsel, members of the Board of Commissioners, and members of their respective staffs shall be immune from civil suit and damages for any conduct or occurrence in the course of or arising out of performance of any official duties in connection with these Rules.

RULE 809. Confidentiality. The identity of all complainants, respondents and witnesses in cases involving allegations of the unauthorized practice of law shall be kept confidential until and unless:

- (a) a complaint has been filed in the district court in the judicial district where the alleged unauthorized practice of law occurred; or
- (b) the person has waived the right to confidentiality either by written waiver or by conduct.