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 XII
Lawyer Assistance Program

RULE 1200. 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) Board or Board of Commissioners. "Board" or Board of Commissioners means the duly elected governing body of the Idaho State Bar.

(b) Committee or LAP Committee. "Committee" or "LAP Committee" means the Lawyer Assistance Program Committee, as appointed by the Board of Commissioners to oversee the Lawyer Assistance Program.

(c) Executive Director. "Executive Director" means the chief administrative officer of the Idaho State Bar.

(d) Lawyer Assistance Program or LAP Program. "Lawyer Assistance Program" or "LAP Program" means the program established to pursue the objectives set forth in Rule 1201 of these Rules.

(e) Rules or These Rules. "Rules" or "These Rules" means Rules 1200 through 1206 of the Idaho Bar Commission Rules.

RULE 1201. Purpose.

(a) **Purpose**. Impairment of a lawyer's performance may result from physical, mental or emotional illness, including addiction. 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;

(4) provide assistance to impaired lawyers in a manner that is separate and distinct from attorney discipline proceedings and to maintain that distinction.

RULE 1202. Lawyer Assistance Program Committee

(a) Members. The Board of Commissioners shall appoint a Lawyer Assistance Program Committee to oversee the LAP. The Commissioners shall appoint a Chair annually with input from the LAP Committee.

(b) Composition. The Committee shall consist of no more than twenty-five members, with consideration given to geographic representation. The members shall have diverse experience, knowledge and demonstrated competence in the problems of addiction and other common difficulties that impair lawyers. Non-lawyers are eligible to be appointed as members of the LAP Committee.

(c) Terms. Committee members shall be appointed for a three-year term. Appointments shall be on a staggered basis, so that the number of terms expiring shall be approximately the same each year.

(d) Duties. The Committee shall have the following duties:

(1) Exercise general oversight responsibility to ensure that the program achieves its purposes and goals.

(2) As needed, recommend LAP rules, procedures and policies to the Board of Commissioners for its approval and/or submission to the Idaho Supreme Court.

(3) Carry out the duties listed under Rule 1203, in the absence of a Coordinator of the program.

(e) Meetings. The Committee generally shall meet on a quarterly basis or upon call of the chair with adequate notice to all members. The actions of the Committee are governed by these rules and procedures, the Idaho Bar Commission Rules and the Idaho Rules of Professional Conduct.

(f) Quorum. There shall be no quorum requirement for the transaction of LAP Committee business, provided that proper notice of the meeting is given.

RULE 1203. Program Coordinator.

(a) Appointment of Program Coordinator. With the approval of the Board of Commissioners, the Executive Director may hire a Program Coordinator, with input from the LAP Committee.

(b) Qualifications. The Program Coordinator should be either a person with experience in recovery or a qualified mental health professional with addiction treatment experience. The Program Coordinator shall have sufficient experience and training to enable him/her to identify and assist impaired lawyers.

(c) Responsibilities. The Program Coordinator's job responsibilities shall as determined by the Executive Director, in consultation with the LAP Committee and the Board of Commissioners.

Rule 1204. Eligibility; Scope of Program.

Subject to available resources, the LAP Program is available to provide assistance to lawyers and judges for the following problems:

(a) Addictive diseases and mental health issues, including but not limited to alcoholism and chemical dependency.

(b) Co-dependency and interpersonal relationship problems arising from addiction related or other dysfunctions.

Rule 1205. Confidentiality and Immunity; Records.

(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.

(b) **Immunity.**

(1) **Absolute**. Such appointee or appointees shall be immune from civil liability for acts and omissions in the performance of duties under this Rule, except for demonstrated fraudulent or malicious conduct, so long as he or she or they are acting:

(A) Pursuant to any order made under or pursuant to these Rules; or

(B) Pursuant to any like or similar order directing or providing for legal assistance to clients or of persons adversely affected by the lawyer; or

(C) Pursuant to this particular Rule or any similar request or direction by the Idaho State Bar of an appointed or acting lawyer to so act in the public interest or for the protection of any member of the public.

(2) **No Immunity**. The provisions of this Rule shall not, however, provide immunity to any lawyer, whether or not appointed and whether or not originally concerned with the matter by reason of any appointment, order or relationship of the kinds enumerated above, if it be legal work which he or she has agreed to do for a fee which has been privately negotiated with, and agreed to by, the client.

(3) **Qualified Immunity**. Notwithstanding the provisions of subsection (2) of this Rule, to the extent that a lawyer provides services under this Rule, which work or services reasonably and equitably justifies the charging or reserving of a fee for legal services, qualified immunity shall apply even though such fee be fixed and charged if the same is pursuant to the appointing or authorizing authority or the Supreme Court and is not pursuant to a negotiated private fee arrangement with such client.

(A) **Fees Allowed by Court.** This Rule shall not be construed to limit or preclude the Supreme Court or appointing authority from allowing reasonable fees in proper cases for work done pursuant to any directive, order or authorization in keeping with these Rules, which fees may be accepted without waiver of or prejudice to the qualified immunity herein above provided so long as the fees are not privately negotiated.

(c) **Referrals.** Any attorney member of the Idaho State Bar may contact the LAP seeking assistance or may be referred by any other source.

(d) **Location of Facility.** The LAP office should be located outside the Idaho State Bar office and maintain an "800" confidential hotline number. Only the LAP staff should have access to receiving calls on the "800" hotline number.

Rule 1206. Miscellaneous.

(a) Finance. All funds of the Lawyer Assistance Program shall be funds of the Idaho State Bar. The LAP program funding shall be determined each year dependent on available resources.

(b) Compensation and Expenses. The members of the LAP 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. All expenses claimed shall be submitted to the Executive Director, who shall promptly pay all appropriate expenses. Committee members shall abide by the expense policy approved by the Commissioners concerning travel, meals, mileage and other expenses.

(IBCR Section XII added 5-28-02 – effective 7-1-02)