

IDAHO STATE BAR
TAXATION, PROBATE & TRUST LAW SECTION
AGENDA
April 14, 2015

1. **Call to Order / Attendance.**

2. **Approval of Prior Meeting Minutes.**

3. **General Business.**

a. 2015 Look ahead

1. Dinner with U.S. Tax Court Judge Joseph W. Nega

Monday, April 20, 2015 (RSVP Required)

6:00 p.m. (MT) - No Host Social; 6:30 p.m. (MT) - Dinner

Berryhill & Co., 121 N. 9th Street – Boise

The cost for dinner will be \$32 per person and will include salad, entree (ordered from limited menu), dessert and a non-alcoholic beverage.

Judge Nega will provide brief comments to attendees. To attend, RSVP to Josh Dages prior to Wednesday, April 15th. A completed RSVP form and payment must be received in advance of the dinner.

2. Estate Planning Basics CLE – May 18 (See flyer)

3. ISB Annual Meeting Sun Valley – July 22-24

4. Next Meeting – July 22-24 at ISB Annual Meeting (Date and Time TBA)

5. Annual Advanced EP Sun Valley Conference – September 17-19

6. October Advocate Issue – Section Sponsor

7. Living Trusts 101 CLE???

b. Present Financial Report for March 31, 2015 – Chelsea Kidney

c. Wills Clinic – Request from Idaho Legal Aid partnership for volunteer based will clinic.

Several members have expressed some interest. I have contacted ILA to see if there is still interest for this and to work on next steps to move this forward.

4. Committee Reports:

Legislative Committee (TEPI): Robert Aldridge.

CLE Committee. David Cooper

Newsletter. Chelsea Kidney

Tax Liaison. John McGown and Robert Aldridge

Probate & Guardianship Form Book Update –Bob Aldridge

5. **CLE:** David Wilson: *Medicaid Planning Update*

6. **Next meeting** – At ISB Annual Meeting -- details TBA.

IDAHO STATE BAR
TAXATION, PROBATE & TRUST LAW SECTION
Minutes of Section Meeting
November 11, 2014

1. **Call to Order / Attendance.** Natasha Hazlett, Chair, called the meeting to order at approximately 12:10 p.m. at the Idaho Law Center, Boise, Idaho. Section members also in attendance were:
 - a. Present in Person and on the Phone: See attached attendance list.
2. **Prior Meeting Minutes.** Meeting minutes for July 17, 2014 and for September 12, 2014 were presented. A motion to approve the minutes as presented was moved and approved.
3. **General Business.**
 - a. **2014 Recap:** Natasha gave a recap of the section activities for 2014. The year started with a survey of the section members' likes, dislikes and ideas. The section wanted more networking opportunities and two socials and a social/CLE were held. The section wanted Listserv archives and the section is working on this and should be completed in 2015. The section also wanted more CLE opportunities and the social/CLE was held in October. The Sun Valley was a big hit, Natasha thanked David Cooper, Ron Caron, Nick Marshall, and Karen Powers for the amazing job they did in organizing it.
 - b. **Report on the October CLE with Young Lawyers Section:** Natasha reported that Hawley Troxell graciously sponsored the social/CLE which had 60 participants, was recorded and will add revenue for the section as it is used in the Bar's CLE library.
 - c. **Present Financial Report for September 2014:** Natasha reported the section is doing much better in 2014 due to new section members and resulting increase in annual dues. Natasha noted that this trend should continue as the section continues to provide exceptional service to its members. The final expenses for the Sun Valley CLE are not in, but it is expected that it should be profitable. Publication sales were down, but hopefully will increase with the publication of the new Guardianship Form Book in 2015. Natasha also pitched the idea of possibility updating the Probate Form Book as a way to add revenue and left that to Kimmer Callahan to address in the future.
 - d. **Access to Justice Request:** The section had a request from Access to Justice Campaign for a donation. Natasha discussed the Campaign's purposes, but did not think that the section finances were such that the section was in a position to make a gift. She hoped that it would be in a position to do so in the future.
 - e. **Wills Clinic:** The section had been approached by Legal Aid to consider putting on a Wills Clinic, similar to the Bankruptcy Clinic that has been held. Natasha had told Legal Aid that it was not in a position to do a clinic this year, but thought that it was a worthy

endeavor. Natasha encouraged any section members that were interested in this to e-mail her so she could pass along additional information.

- f. **Vote on 2015 Slate:** Natasha indicated that nominations will be accepted from the floor on the condition that the person nominated has been contacted and has agreed to serve. Natasha then presented the proposed slate of officers and council members as follows:

Chairman: Kimmer Callahan (Coeur D'Alene)

Vice-Chairman: Eric Olson (Pocatello)

Secretary/Treasurer: Chelsea Kidney (Boise)

Governing Council:

Natasha Hazlett (Past Chairman-Boise)

Chris Moore (Lewiston)

Barbara Locke (Boise)

William Von Tagen (Boise)

Natasha then opened up the floor for additional nominations, but none were forthcoming. A motion to approve the slate as presented was moved upon and approved.

- g. **Probate & Guardianship Form Book Update:** Robert Aldridge indicated that the committee has been meeting every other week to get the formbook ready for publication, hopefully, by the end of January 2015. He believed that the new formbook should be a good improvement and a benefit financially to the section.

4. Committee Reports:

Legislative Committee (TEPI): Robert Aldridge gave his report in the Legislative update CLE that he presented.

CLE Committee. Ron Caron reported he was encouraged by the number of sponsors for the Sun Valley CLE and reported that many of them wanted to participate again. The committee was also looking at the participant reviews for guidance for getting speakers for next year's event.

Newsletter. None.

Tax Liaison. Next meeting is November 25th.

- 5. **CLE:** Robert Aldridge gave presented the 2015 Legislative Wrap-up.
- 6. **Next meeting:** Natasha announced that the next meeting would be held on February 10, 2015 at noon at the Idaho Law Center.
- 7. **Meeting adjourned at approximately 1:15 p.m.**

Respectfully submitted,

Eric L. Olsen, Secretary/Treasurer

IDAHO STATE BAR
TAXATION, PROBATE & TRUST LAW SECTION
Minutes of Section Meeting
February 10, 2015

1. **Call to Order / Attendance.** Kimmer Callahan, Chair, called the meeting to order at approximately 12:05 p.m. at the Idaho Law Center, Boise, Idaho. Section members also in attendance were:
 - a. Present in Person and on the Phone: See attached attendance list.
2. **Prior Meeting Minutes.** Meeting minutes for November 11, 2014 were not presented and will be presented for approval at the April 14, 2015 meeting.
3. **General Business.**
 - a. **2015 Looking Ahead:**
 1. **Reminder of Aril 14, 2015 meeting:** Kimmer reminded those present of the next Tax Section meeting to be held on April 14, 2015 at the Law Center in Boise.
 2. **Estate Planning Basics Course:** Kimmer discussed the Estate Planning Basic CLE to be held on May 18, 2015, in Boise at the Law Center. This is a primer course discussing the client interview process, default planning (intestate succession), wills and trusts, and incapacity issues, among others.
 3. **ISB Annual Meeting:** Kimmer mentioned the ISB Annual Meeting in Sun Valley July 22-24, 2015. Also discussed was whether the section will hold its summer meeting during that time. Kimmer also suggested that those interested in attending the Annual Meeting should contact the resort as soon as possible to take advantage of the block room rates available to attendees.
 4. **Annual Advanced EP Sun Valley Conference – September 18-19, 2015.** Kimmer discussed briefly the Annual Advanced Estate Planning Conference in Sun Valley. New this year will be break-out sessions for new attorneys.
 5. **October Advocate:** The section will be sponsoring the October issue of the Advocate. Those interesting in submitting articles should contact Kimmer soon to discuss topics.
 - b. **Wills Clinic:** The section had been approached by Legal Aid to consider putting on a Wills Clinic, similar to the Bankruptcy Clinic that has been held. Kimmer encouraged any section members that were interested in this to e-mail her so she could pass along additional information.

4. Committee Reports:

Legislative Committee (TEPI): Robert Aldridge gave his report in the Legislative update CLE that he presented.

CLE Committee. The Committee is working on speakers for the Annual meetings.

Newsletter. None.

Tax Liaison. None.

5. CLE: Mark Wight: VA Benefits Overview

6. Next meeting: Kimmer announced that the next meeting would be held on April 14, 2015 at noon at the Idaho Law Center.

7. Meeting adjourned at approximately 1:05 p.m.

Respectfully submitted,

Chelsea Kidney, Secretary/Treasurer

**TAXATION, PROBATE & TRUST LAW SECTION of
IDAHO STATE BAR
As of December 31, 2013, 2014 & 3/31/15**

UNAUDITED

<u>Year Ended 2013</u>	<u>Year Ended 2014</u>		<u>Actual Mar 2015</u>	<u>Budget 2015</u>	<u>Variance-- Favorable (Unfavorable)</u>
<u>INCOME STATEMENT</u>					
REVENUE (NON-CLE)					
7,605	7,905	Dues	10,870	10,500	370
0	0	Donations	0	0	0
540	510	Special event revenue	224	500	(276)
<u>0</u>	<u>0</u>	Other income	<u>0</u>	<u>0</u>	<u>0</u>
8,145	8,415	TOTAL NON-CLE REVENUE	11,094	11,000	94
EXPENSE (NON-CLE)					
2,623	3,276	Administrative fee to ISB	694	3,064	2,370
151	232	Postage	19	230	211
64	86	Copies	18	100	82
14	16	Supplies	0	25	25
1,697	0	Conference travel	0	0	0
1,764	1,440	Governing Board	1,004	4,000	2,996
808	0	Committee	0	100	100
220	100	Dues & publications	0	200	200
383	358	Bank & credit card fees	57	370	313
846	800	Website	250	800	550
743	669	Special event expense	75	1,000	925
2,000	0	Donations	0	0	0
81	0	Sponsorships	0	0	0
38	38	Awards, gifts & scholarships	0	50	50
<u>0</u>	<u>0</u>	Other	<u>0</u>	<u>100</u>	<u>100</u>
11,430	7,015	TOTAL NON-CLE EXPENSE	2,117	10,039	7,922
CLE, RECORDED PROGRAMS & PUBLICATIONS:					
Revenue:					
16,865	24,621	CLE registrations	180	24,000	(23,820)
4,400	7,239	Sponsorships	0	7,000	(7,000)
7,690	3,065	Publications	430	3,000	(2,570)
1,455	3,040	Recorded programs	580	2,500	(1,920)
<u>2,248</u>	<u>3,089</u>	Royalties	<u>71</u>	<u>1,000</u>	<u>(929)</u>
32,658	41,053	CLE Revenue	1,261	37,500	(36,239)
Expense:					
23,850	30,657	CLE seminar expense	0	30,000	30,000
4,091	4,376	CLE administrative fee paid to ISB	136	4,600	4,464
2,757	720	Publication expense	0	1,500	1,500
<u>913</u>	<u>1,148</u>	Recorded program expense	<u>0</u>	<u>1,100</u>	<u>1,100</u>
31,611	36,900	CLE Expense	136	37,200	37,064
1,047	4,153	NET CLE INCOME (LOSS)	1,125	300	825
<u>(2,238)</u>	<u>5,553</u>	NET INCOME (LOSS)	<u>10,102</u>	<u>1,261</u>	<u>8,841</u>

TAXATION, PROBATE & TRUST LAW SECTION of
IDAHO STATE BAR
As of December 31, 2013, 2014 & 3/31/15

UNAUDITED

<u>Year Ended 2013</u>	<u>Year Ended 2014</u>		<u>Actual Mar 2015</u>	<u>Budget 2015</u>	<u>Variance-- Favorable (Unfavorable)</u>
<u>BALANCE SHEET</u>					
ASSETS					
987	4,780	Cash and cash equivalents	18,554		
1,050	1,156	Accounts receivable	0		
3,232	6,103	Due from (to) other funds	1,169		
<u>500</u>	<u>487</u>	Prepaid expenses	<u>0</u>		
<u><u>5,768</u></u>	<u><u>12,526</u></u>	TOTAL ASSETS	<u><u>19,723</u></u>		
LIABILITIES AND FUND BALANCE					
LIABILITIES					
0	10	Accounts payable	0		
389	389	Due to Ada County	389		
<u>1,700</u>	<u>2,895</u>	Deferred revenue	<u>0</u>		
<u>2,089</u>	<u>3,294</u>	TOTAL LIABILITIES	<u>389</u>		
FUND BALANCE					
5,917	3,679	Beginning fund balance	9,232		
<u>(2,238)</u>	<u>5,553</u>	Current year income (loss)	<u>10,102</u>		
<u>3,679</u>	<u>9,232</u>	TOTAL FUND BALANCE	<u>19,334</u>		
<u><u>5,768</u></u>	<u><u>12,526</u></u>	TOTAL LIABILITIES & FUND BALANCE	<u><u>19,723</u></u>		



Update on Medicaid Planning

250 South 5th Street, Suite 660
Boise, ID 83702
Tel: 208-639-7799
www.IdahoElderLaw.com

Estate Recovery – Estate of Perry

- Estate of Perry, 153 Idaho 468, 283 P.3d 785 (2012)
 - Medicaid participant transferred title to house to Community Spouse. Medicaid participant died. Department of Health and Welfare claimed an interest in the house in the estate of the Medicaid participant (even though the Medicaid participant no longer owned the house at death).

Estate Recovery – Estate of Perry

- I.C. §56-218
 - ... medical assistance pursuant to this chapter ... may be recovered from the individual's estate, and the estate of the spouse, if any, for such aid paid to either or both
- IDAPA § 16.03.09.901(04)
 - **Estate.** All real and personal property and other assets including those in which the participant had any legal or beneficial title or interest at the time of death, to the extent of such interest, including such assets conveyed to a survivor, heir, or assignee of the deceased participant through joint tenancy, tenancy in common, survivorship, life estate, living trust, **or other arrangement.**

Estate Recovery – Estate of Perry

- Neither the Department nor the Court relied on the option of voiding the transfer
 - Perhaps the Department wanted to have a broad ruling on the estate claim to attempt to prevent future litigation?
 - Perhaps the Department wanted to be paid immediately rather than have to wait for the participant's death?
- Voidable Transactions: Transfers of real or personal property, on or after the look-back dates defined in 42 U.S.C. 1396p, by recipients of such aid, or their spouses, without adequate consideration are voidable and may be set aside by an action in the district court. I.C. §56-218

Estate Recovery – Estate of Peterson

- Medicaid participant gifted remainder interest in house to daughter, retained a life estate and went on Medicaid within a few months.
- At his death, daughter argued that neither the life estate interest nor the remainder interest could be recovered against by estate recovery.
- The Department of H&W argued that the life estate interest could be recovered against but did not make a claim against the remainder interest.

Estate Recovery – Estate of Peterson

- The District Court held that the life estate interest could not be recovered against because the interest expired at death and so there was no interest to recover. The District Court did find that the remainder interest could be recovered against.
- The Supreme Court held that both could be recovered against

Estate Recovery – Estate of Peterson

- **Extent of Estate Recovery:**
 - Voidable Transactions: Transfers of real or personal property, on or after the look-back dates defined in 42 U.S.C. 1396p, by recipients of such aid, or their spouses, without adequate consideration are voidable and may be set aside by an action in the district court. I.C. §56-218
 - Recovery from Estates: ...Any other real and personal property and other assets in which the individual had any legal title or interest at the time of death, to the extent of such interest, including such assets conveyed to a survivor, heir, or assign of the deceased individual through joint tenancy, tenancy in common, survivorship, life estate, living trust or other arrangement. I.C. §56-218(4)(b)

Estate Recovery – Statistics

- 1993 – start of federally mandated estate recovery
- 2004
 - National Average Recovery: 0.789%
 - Idaho Recovery: 4.5%
 - Trailed only Oregon and Arizona

Private Cause of Action – Exceptional Child Center

- Armstrong v. Exceptional Child Ctr., Inc., 135 S. Ct. 939, 190 L. Ed. 2d 718 (2015)
 - Background: Federal law requires the Idaho Medicaid reimbursement rate to be based in part on provider cost. Idaho Dep. of H&W commissioned a study, which recommended increases in reimbursement rates for home based care. The State Legislature did not appropriate any money for the increased cost, so the Department did not increase the rate. Several providers sued based on the supremacy clause.
 - Holding: No private cause of action under Supremacy Clause (ouch!)

Miscellaneous Developments

- Department changes not contemplated by regulation
- Department position on good faith efforts to sell exception
- Treatment of Roth IRAs

Update on Medicaid Planning

Presented By:

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