



# 2021 Resolution Process

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Voter Pamphlet



## 2021 RESOLUTION PROCESS VOTER PAMPHLET

Dear Idaho Attorney:

Unlike many state bars, the Idaho State Bar cannot take positions on legislative matters, rules of court, substantive rules governing the bar itself at its Annual Meeting or by act of its Bar Commissioners, without first submitting matters to the membership through the resolution process. Enclosed is one resolution proposed for your consideration during the 2021 Idaho State Bar resolution process, aka “The Road Show.”

In addition to the resolution, the meetings include presentations honoring your colleagues receiving the pro bono, retiring judges’ and professionalism awards. There will be a webcast CLE program offered free to all bar members on November 16.

*This year’s resolution meetings are a mix of in-person, hybrid and virtual. The plan for each district (when this pamphlet was printed) is below. The final details for each meeting will be emailed to the district bar members before the meeting.*

The 2021 resolution meetings are scheduled as follows:

District	District Bar President	Meeting Date	Meeting Time	Meeting Location
<i>First District</i>	Rebecca Eyman	Thursday, Nov. 4	12 noon	North Idaho College and virtual
<i>Second District</i>	Adam Green	Thursday, Nov. 4 Friday, Nov. 5	6:00 p.m. 12 noon	Moscow – University Inn Grangeville - TBD
<i>Third District</i>	Ingrid Batey	Monday, Nov. 15	4:30 p.m.	Virtual only
<i>Fourth District</i>	Jim Cook	Tuesday, Nov. 16	12 noon	Virtual only
<i>Fifth District</i>	Katie Franklin	Wed., Nov. 10	6:00 p.m.	Blue Lakes Country Club and virtual
<i>Sixth District</i>	Mary Shea	Wed., Nov. 10	12 noon	Virtual Only
<i>Seventh District</i>	Paul Rogers	Tuesday, Nov. 9	12 noon	Virtual Only

Each judge and active member of the Idaho State Bar in attendance at a resolution meeting is provided a ballot. Members not in attendance will be mailed a ballot after the meeting. Ballots may be completed and submitted at the resolution meetings, or mailed, emailed, or delivered to the Idaho State Bar office. Issues shall be determined by the total ayes and nays cast statewide. **All ballots must be signed and are due in the Idaho State Bar office by the close of business on Monday, December 6, 2021.**

See you at the district bar meetings.

Anne-Marie Fulfer  
President

Diane K. Minnich  
Executive Director



## 2021 RESOLUTION PROCESS

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### 2021 PROPOSED RESOLUTION

- **21-01 – Proposed Amendments to Idaho Rule of Professional Conduct 8.4(g)**  
Additional information regarding the resolution is available on the ISB Website:  
<https://isb.idaho.gov/member-services/practice-sections/pro/>

### RESOLUTION MEETING AGENDA

- Welcome, Announcements and Introductions
  - *ISB President Anne-Marie Fulfer and District Bar President*
- Pro Bono, Retiring Judges and Professionalism Awards
- Presentation of 2021 Resolution
- Local Bar Business

**Ethics CLE – Wednesday, November 16, 10:30 a.m. – 11:30 a.m. MST  
webcast**

“Recent Ethical Issues and ABA Formal Opinions—Election Cases,  
Changing Firms, Virtual and Remote Work”

Bradley G. Andrews, Bar Counsel for Idaho State Bar

## 2021 PROFESSIONALISM, PRO BONO and RETIRING JUDGES AWARD RECIPIENTS

Each year, the Idaho State Bar honors members of the profession for their contributions to their communities and the profession. At least one attorney from each judicial district receives the professionalism award and attorneys from around the state are recognized for their pro bono efforts.

### PROFESSIONALISM AWARDS

First District	Michael T. Howard	Coeur d'Alene
Second District	Sonyalee R. Nutsch	Lewiston
Third District	Kimberlee S. Bratcher	Caldwell
Fourth District	Erika Birch	Boise
	Murray D. Feldman	Boise
	Pamela S. Howland	Boise
Fifth District	Michael H. Felton, Sr.	Buhl
Sixth District	James D. Ruchti	Pocatello
Seventh District	Steven J. Wright	Idaho Falls

### DENISE O'DONNELL DAY PRO BONO AWARDS

First District	Jacob R. Allington	Coeur d'Alene
Second District	Jessica M. Long	Moscow
Third District	Cody H. Specht	Nampa
Fourth District	John M. Cross	Boise
	Christine M. Salmi	Boise
	Teague I. Donahey	Boise
	Bryan W. Hall	Boise
	Susan R. Pierson	Boise
Fifth District	Edward A. Lawson	Ketchum
Sixth District	Thomas D. Smith	Pocatello
Seventh District	Kristopher D. Meek	Idaho Falls

### IDAHO STATE BAR RETIRING JUDGES AWARDS

Idaho Supreme Court	Hon. Roger Burdick	Boise
First District	Hon. Scott Wayman	Wallace
	Hon. Douglas Payne	St. Maries
Second District	Hon. Jeff Brudie	Lewiston
Third District	Hon. Jerrold Lee	Caldwell
	Hon. Christopher Nye	Caldwell
	Hon. Susan Wiebe	Payette
Fourth District	Hon. Deborah Bail	Boise
	Hon. John T. Hawley	Boise
	Hon. Lynette McHenry	Boise
Fifth District	Hon. Mick Hodges	Burley

## IDAHO STATE BAR RESOLUTION PROCESS

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

### Process

The Resolution Process is set forth in Idaho Bar Commission Rule 906. Briefly summarized, the Resolution Process is as follows:

### Submission & Circulation of Resolutions

Resolutions may be submitted by a district bar association, by the Board of Commissioners, the Idaho Supreme Court, by a bar section or committee, or by an individual member of the bar.

Resolutions submitted by a district bar association, Idaho Supreme Court, or the Board of Commissioners are automatically included in the resolution process.

Resolutions submitted from other sources are presented to the first meeting of district bar representatives and the Board of Commissioners for consideration. This body votes on whether to circulate the resolution to the membership. Resolutions that are approved at this meeting are then mailed to each member of the Idaho State Bar. Included in the pamphlet is discussion of the purpose of the resolution and the text of each resolution.

### Resolution Meetings

District bar meetings are held in each of the seven districts.

### Voting

Each judge and active member of the Idaho State Bar shall be entitled to one vote on each question presented. Questions shall be determined by the total ayes and nays cast statewide.

Members in attendance at a resolution meeting will be provided a ballot to vote on the

resolutions. Members not in attendance at the meeting will be mailed a ballot after the resolution meeting in their district. Ballots may be completed and submitted at the resolution meetings, or mailed, faxed or delivered to the Idaho State Bar office. **All ballots must be signed and are due in the Idaho State Bar office by the close of business on Monday, December 6, 2021.**

### Amendments

After voting on a resolution as presented at the resolution meeting, district bar members may vote to offer an amendment to a proposed resolution. Only members attending a resolution meeting will be able to vote on proposed amendments. Thus, a district may instruct its representative to offer an amendment at the second meeting of district bar representatives.

### Conclusion of Process

After all resolution meetings are concluded, the district bar representatives meet again on December 10, 2021. At that meeting, the representatives are to cast their votes in accordance with the votes cast by the members of their district bar association. The district representatives may cast votes on amendments as they see fit.

The final versions of successful resolutions are then forwarded to the appropriate recipients.

As of October 2021, the Idaho State Bar voting membership breakdown is as follows:

District	Eligible voters	% of total eligible
1	461	8.1%
2	232	4.1%
3	313	5.5%
4	2330	40.9%
5	310	5.4%
6	220	3.9%
7	436	7.7%
out of state	1391	24.4%
Total	5693	100.00%

**RESOLUTION 21-01**  
**[Amendment to Idaho Rule of Professional Conduct (I.R.P.C.) 8.4]**

**Presented By:**           **Professionalism and Ethics Section and the Professionalism and Ethics Section Anti-Discrimination Anti-Harassment Committee**

WHEREAS: The Idaho Rules of Professional Conduct are modeled on the American Bar Association (“ABA”) Model Rules of Professional Conduct; and

WHEREAS: From 2014 through 2016, the ABA Standing Committee on Ethics and Professional Responsibility (“SCEPR”) publicly investigated how the Model Rules of Professional Conduct should be amended to reflect changes in the practice of law and proposed amending Model Rule 8.4 to include an anti-discrimination and anti-harassment provision; and

WHEREAS: The ABA House of Delegates voted to amend Model Rule of Professional Conduct 8.4 by adding a new subsection (g) in August 2016; and

WHEREAS: Since ABA approval of Model Rule 8.4, a number of states have since amended their Rules of Professional Conduct to include a prohibition against discrimination and/or harassment; and

WHEREAS: In September 2016, the Board of Commissioners requested the Professionalism and Ethics Section of the Idaho State Bar to study the proposed ABA Model Rule of Professional Conduct 8.4(g) and make a recommendation about that Rule to the Board; and

WHEREAS: The Professionalism and Ethics Section created what is now known as the Anti-Discrimination Anti-Harassment Committee (“Committee”) to study the ABA Model Rule of Professional Conduct 8.4(g) and offer recommendations about a potential rule change; and

WHEREAS: Based on the Committee’s recommendation, the Professionalism and Ethics Section and the Board of Commissioners co-sponsored a proposed Rule 8.4 amendment via Resolution No. 17-01, which passed a vote of the Idaho State Bar membership with 62% approval; and

WHEREAS: The Idaho Supreme Court ultimately rejected Resolution No. 17-01 on September 6, 2018, but encouraged the Idaho State Bar to “revisit this matter in hopes of narrowing the rule to comport with new United States Supreme Court cases”; and

WHEREAS: Since 2018, the Committee, which is now comprised of Committee Chair Catherine Freeman, Former Chair Cathy Silak, Jodi Nafzger, Larry Hunter, Robert Aldridge, Mark Freeman, Benjamin Cover, Laurie Litster Frost, Fafa Alidjani, Edith Pacillo, Greg LeDonne, Erica White, Terry Pickens Manweiler, Abby McCleery, and Alaina Heuring, has continued researching and drafting potential anti-discrimination and anti-harassment rules with the objective of proposing a narrower recommendation that comports with relevant caselaw and advisory opinions; and

WHEREAS: Since September 2018, the 2017 Proposed Rule has undergone several rounds of revision to account for new authority regarding the constitutionality of similar anti-discrimination and anti-harassment rules; and

WHEREAS: Based on the Committee's extensive research on various versions of Rule 8.4, the Committee believes the resulting proposed amendments ("2021 Proposed Rule") appropriately balances preserving First Amendment protections and guarding individuals from discrimination and harassment; and

WHEREAS: On September 22, 2021, the Committee voted to recommend the adoption of the 2021 Proposed Rule, subject to the Professionalism and Ethics Section ratification, which is set to occur October 5, 2021.

NOW, THEREFORE, BE IT RESOLVED THAT the Committee and the Professionalism and Ethics Section recommend that the members of the Idaho State Bar recommend to the Idaho Supreme Court that Idaho Rule of Professional Conduct 8.4, as set forth below, be amended.

**[Current I.R.P.C. 8.4 in black, proposed revisions in red]**

## **RULE 8.4 MISCONDUCT**

**It is professional misconduct for a lawyer to:**

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;**
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;**
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;**
- (d) engage in conduct that is prejudicial to the administration of justice;**
- (e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;~~or~~**
- (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law;or**
- (g) Engage in discrimination or harassment, as follows:
  - (1) in representing a client or operating or managing a law practice or in the course and scope of employment in a law practice, engage in conduct that the lawyer knows or reasonably should know is unlawful discrimination. This subsection does not limit the ability of a lawyer to accept, decline, or withdraw from a representation as otherwise permitted in these Rules or preclude advice or advocacy consistent with these Rules; and****

(2) in representing a client or operating or managing a law practice or in the course and scope of employment in a law practice, engage in conduct that the lawyer knows or reasonably should know is harassment. Harassment is derogatory or demeaning verbal, written, or physical conduct toward a person based upon race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status, or socioeconomic status. To constitute a violation of this subsection, the harassment must be severe or pervasive enough to create an environment that is intimidating or hostile to a reasonable person. This subsection does not limit the ability of a lawyer to accept, decline, or withdraw from a representation as otherwise permitted in these Rules or preclude advice or advocacy consistent with these Rules.

### *Commentary*

...  
[3] Discrimination and harassment by lawyers in violation of paragraph (g) undermine confidence in the legal profession and the legal system. Harassment includes sexual harassment such as unwelcome sexual advances, requests for sexual favors, and other unwelcome verbal, written, or physical conduct of a sexual nature. Factors to be considered to determine whether conduct rises to the level of harassment under paragraph (g)(2) of this Rule include: the frequency of the harassing conduct; its severity; whether it is threatening or humiliating, or a mere offensive utterance; whether it is harmful to another person; or whether it unreasonably interferes with conduct related to the practice of law. Petty slights, annoyances, and isolated incidents, unless extremely serious, will not rise to the level of harassment under paragraph (g)(2). The substantive law of antidiscrimination and anti-harassment statutes and case law may guide application of paragraph (g).

~~A lawyer who, in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates paragraph (d) when such actions are prejudicial to the administration of justice. Legitimate advocacy respecting the foregoing factors does not violate paragraph (d). A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this rule.~~

[4] “In representing a client or operating or managing a law practice or in the course and scope of employment in a law practice” does not include participation in bar association, business, or social activities outside the context of representing a client or operating or managing a law practice or acting in the course and scope of employment in a law practice.

[5] A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this rule. A lawyer does not violate paragraph (g) by limiting the scope or subject matter of the lawyer's practice in accordance with these Rules and other law. A lawyer may charge and collect reasonable fees and expenses for a representation consistent with Rule 1.5(a). Lawyers should be mindful of their professional obligations under Rule 6.1 to provide legal services to those who are unable to pay, and their obligation under Rule 6.2 not to avoid appointments from a tribunal except for good cause. A lawyer's representation of a client does not constitute an endorsement by the lawyer of the client's views or activities. See Rule 1.2(b).



[46] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2(d) concerning a good faith challenge to the validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.

[57] Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.



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