

# DISTRICT MAGISTRATES COMMISSION MANUAL



IDAHO SUPREME COURT  
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A LETTER TO DISTRICT MAGISTRATE COMMISSIONERS  
FROM THE IDAHO SUPREME COURT

As a member of a District Magistrates Commission, you have a serious responsibility to the citizens of your judicial district and of the state to exert your best efforts in finding the most qualified individuals to select for judicial office.

Your duty involves not only consideration of the qualifications of individuals who apply, but also the active solicitation and encouragement of those who are eminently qualified to submit their names as applicants.

You should become familiar with the necessary qualities for judicial office and should conscientiously measure each applicant with reference to these qualities.

You should also recognize that the character and caliber of the judiciary of this state will depend upon the effective performance by the district magistrates commissions of their duties and responsibilities.

This is a public duty which is an honor to perform. The only compensation for the time expended is the satisfaction which you will receive in knowing that you have faithfully and competently performed your duties in the interest of improving the caliber of judicial service in the state.

Finally, please remember that the records of the magistrates commission are confidential, as are communications between a member of a magistrates commission and any other member of the commission, or any applicant for judicial office, with the exception of those communications made during public hearings.

Thank you for accepting your appointment to the Magistrates Commission of your judicial district.

## **PART I. INTRODUCTION**

The District Magistrates Commissions serve the critical function of selecting new members of the Idaho judiciary - magistrate judges - whose decisions will profoundly affect the well-being of the individuals, families, agencies, organizations and communities that come before the court during the magistrate judge's career. Service on a District Magistrates Commission is, therefore, a serious undertaking. It requires a willingness to devote the time and energy to select the applicant who will most effectively enhance the quality of the bench. It requires the commitment to proceed through the various steps of the judicial selection process expeditiously, but with diligence, care, and integrity. While the work of a District Magistrates Commission is both concentrated and time consuming, participants will find satisfaction in the knowledge that their work directly improves the quality of Idaho's judicial system.

Throughout their thoughtful and impartial deliberations, the Magistrate Commissioners must hold the public interest foremost in the decision making process. This manual was developed to assist the District Magistrates Commission members by providing a common background of information and by establishing guidelines both for commission procedures and the applicant evaluation process. Its goal is to enhance the efficiency of each Magistrates Commission by resolving procedural and administrative issues and preserving the time of the commissioners for a more thorough investigation and evaluation of the candidates. It also describes the qualifications and some of the more important qualities for judicial office, thus providing practical guidelines for the evaluation process both before selection and during the first eighteen months of the new judge's appointment

## **PART II. CODE OF CONDUCT FOR MAGISTRATE COMMISSIONERS.**

### **§ 1. ABUSE OF POSITION**

**A.** No magistrate commissioner shall use or attempt to use his or her official position to secure privileges or exemptions for the magistrate commissioner or others.

**B.** No magistrate commissioner shall attempt, solicit, or agree to accept any gift, favor or anything of value based upon any understanding, either explicit or implicit, that the official actions, decisions or judgment of any magistrate commissioner would be influenced thereby. Nothing in this section shall prohibit a magistrate commissioner from accepting a public award presented in recognition of public service.

**C.** No magistrate commissioner shall request or accept any fee or compensation, on commission related matters, other than reimbursement from the appropriate governmental entity for authorized expenditures.

**D.** Each magistrate commissioner shall use District Magistrates Commission resources, property and funds under the magistrate commissioner's official control judiciously and solely in accordance with prescribed statutory and regulatory procedures.

**E.** Each magistrate commissioner shall immediately report to the Chair of the District Magistrate Commission (that is, the Administrative Judge or designee judge) any attempt to induce the magistrate commissioner to violate any of the standards set out herein.

**F.** Any member of the Magistrate Commission who seeks appointment as a magistrate judge within the district must resign from the Magistrate Commission prior to the date of the application.

**G.** Magistrate commission members shall attend all regular meetings of the Commission unless excused by the chair for good cause. If a member is absent without good cause for two consecutive meetings, the chair may formally request the resignation of that member.

### **§ 2. CONFIDENTIALITY**

**A.** Under Idaho Court Administrative Rule 32, the District Magistrates Commissions' proceedings are exempt from disclosure. Except for the identity of the applicants for judicial office, all records and proceedings of the District Magistrates Commissions regarding the appointment, performance, removal, or disciplining of magistrate judges are confidential and should not be discussed outside commission meetings, except among commission members.

**B.** Any communications between magistrate commissioners, between a magistrate commissioner and an applicant, or between a magistrate commissioner and any other person or organization with respect to the judicial qualifications of an applicant shall be kept confidential and discussed only among commission members. A magistrate commissioner, or former

magistrate commissioner, shall not disclose confidential information, except as provided in these rules.

### **§ 3. EX PARTE COMMUNICATIONS**

**A.** Magistrate Commissioners should avoid *ex parte* (unofficial and one-sided) communications on matters relating to the Magistrate Commission's proceedings, or to applicant qualifications, or the performance of any judicial officer subject to Magistrate Commission supervision from persons outside of the Magistrate Commission, including the applicant. Persons who seek to communicate such matters to an individual Magistrate Commissioner should be encouraged to submit their comments in writing to the Commission as a whole. Failing that, the Magistrate Commissioner should transmit the substance of the communication to the Commission at the earliest opportunity.

**B.** Any written communications (whether solicited or not) that are received by an individual Magistrate Commissioner from any person or organization regarding Magistrate Commission proceedings, the qualifications of any applicant, or the performance of any judicial officer, should be promptly forwarded to the Administrative Judge or the Trial Court Administrator for distribution to all other members. All oral communications regarding such matters should be reduced to writing and similarly shared with other members.

### **§ 4. CONFLICT OF INTEREST**

**A.** Every magistrate commissioner shall avoid conflicts of interest in the performance of magistrate commission duties. Every magistrate commissioner is required to exercise diligence in becoming aware of conflicts of interest and shall disclose any conflicts to their Magistrate Commission. If a magistrate commissioner knows of any personal, business, or legal relationship which the magistrate commissioner had or has with the applicant, the magistrate commissioner must report this fact to the commission. The magistrate commission shall then decide the extent to which the involved magistrate commissioner shall participate in the proceedings concerning said applicant. In the event that a magistrate commissioner does not vote, the fact that a magistrate commissioner did not vote may be announced publicly. The magistrate commission may disclose its decision on this issue.

**B.** If a relationship between a commission member, and an applicant falls into one of the following four categories, the commission member shall recuse himself or herself from the selection process unless such applicant withdraws or is withdrawn from further consideration by the commission.

1. Any relationship to the applicant by blood or marriage by virtue of being the applicant's spouse, child, or spouse of a child. The commission member shall not be related to the applicant under the third degree of relationship test. The third degree of relationship test is defined as being the applicant's or the applicant's spouse's parent, grandparent, aunt, uncle, sibling, nephew, or niece, or spouse of any of these relatives. Additionally, the commission member shall recuse himself or herself in situations where the applicant and commission member are sharing or have shared a residence during the past 5 years.

2. Any arrangement involving the practice of law or an employment relationship including, but not limited to, partnership, professional corporation, or office sharing within the past 5 years; [except that a magistrate commissioner who is on the commission as a representative of a governmental entity which has employed an applicant shall not be disqualified by that relationship, which shall be disclosed to the commission.]

3. Any relationship in which the commission member and applicant are actively engaged in managing a common profit-making business or venture.

4. Any instance in which the member of the commission would cast his or her vote on a basis other than an applicant's qualification for the office.

When an attorney member has recused himself or herself, a temporary attorney member may be appointed by the Idaho State Bar, from candidates nominated by the district bar association, to fill such vacancy.

**C.** No magistrate commissioner shall participate in any disciplinary proceeding regarding a magistrate judge if that magistrate commissioner has a substantive matter pending before that judge.

**D.** A magistrate commissioner shall consider each applicant and petitioner for a judicial office in an impartial, objective manner. No magistrate commissioner shall discriminate, nor manifest by words or conduct, any bias or prejudice based on race, religion, sex, national origin, gender, marital status, sexual orientation or political affiliation in the conduct of the business of the magistrate commission

## **§ 5. MAGISTRATE COMMISSION OATH OF OFFICE**

**A.** Taking of Oath of Office. After accepting a nomination to a District Magistrate Commission, and before undertaking substantive Magistrate Commission business each Magistrate Commissioner shall take the following oath, a copy of which shall be dated and signed by the Magistrate Commissioner, and by the Chair of the District Magistrates Commission, to be retained during the pendency of the Magistrate Commissioners term(s) of office,

**B.** Form of Oath. The oath shall be in the form required in section 59-401, Idaho Code.

*Before any officer elected or appointed to fill any office created by the laws of the state of Idaho enters upon the duties of his office, he must take and subscribe an oath, to be known as the official oath, which is as follows:*

*"I do solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States, and the Constitution of the State of Idaho, and that I will faithfully discharge the duties of (insert office) according to the best of my ability."*

## **PART III. IDAHO COURT STRUCTURE**

### **A. OVERVIEW**

Idaho has what is termed a unified court system, which means that all state courts are administered and supervised by the Idaho Supreme Court. The source of this authority is Article 5, Section 2, of the State Constitution, which states: "The courts shall constitute a unified and integrated judicial system for administration and supervision by the Supreme Court." Idaho unified its court system by ratification of the present constitutional provision in the November 1962 general election.

In many states, trial courts are a mixture of specialized courts with overlapping jurisdictions, one-judge districts, and differing procedures all causing extra expense and confusion to the taxpayers and users of the system. Idaho's court reform efforts of the early 1960's culminated in 1969 when probate courts, police courts, and justice of the peace courts were abolished and replaced with a single, unified trial court in each county. Some 300 part-time, untrained judges were replaced by 60 full-time, lawyer judges, and trained non-lawyer judges. Today, all of Idaho's judges are lawyers. The district court and its magistrate division handle all trials and special proceedings in each of Idaho's 44 counties. Some cases are heard by district judges and some by the magistrate judges.

Magistrate judges in Idaho have particularly wide jurisdiction. They hear juvenile corrections and child protection act cases, domestic violence proceedings, divorces, child custody and support, probate cases, and guardianships and conservatorships. Magistrate judges also hear personal injury, property damage, and contract disputes when the dollar amount of the controversy does not exceed \$10,000; and they preside over Small Claims Court in which citizens represent themselves, without attorneys, in civil cases involving amount of money up to \$5,000. Magistrate judges hear infractions and misdemeanor criminal cases, including DUIs; they hold preliminary hearings in criminal cases to determine whether a defendant charged with a felony should stand trial in the district court. They also issue felony and misdemeanor arrest warrants and search warrants. Magistrate judges may also hear cases otherwise assignable only to district judges when authorized by the Supreme Court.

Because of the geographical differences and population distributions within Idaho, many judges must travel extensively and routinely within and outside of their counties and districts to hear cases.

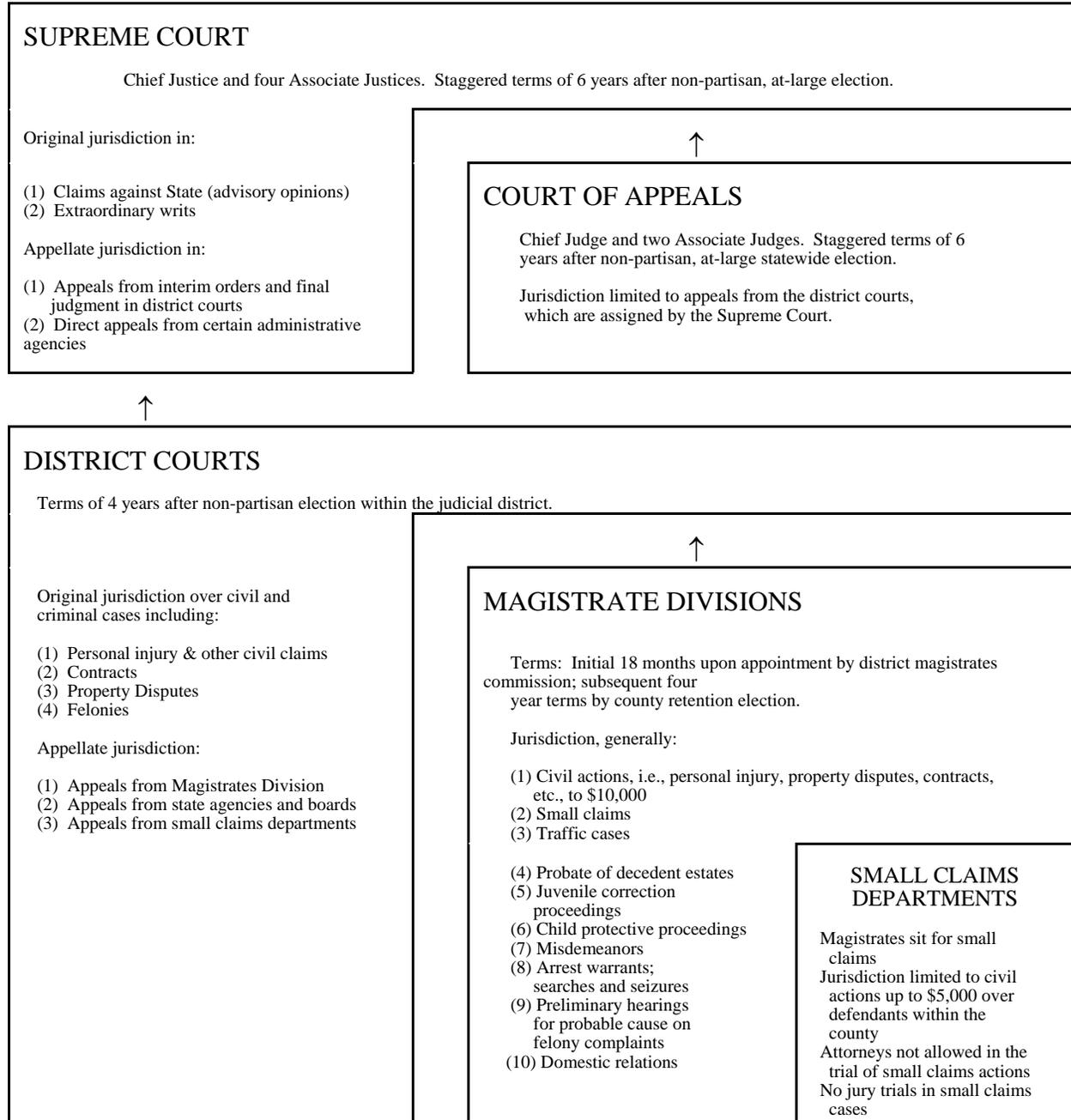
While district judges and magistrate judges decide a different category of cases, they both serve as part of one integrated district court. Consequently, magistrate judges of the district court and district judges of the district court are served by the same clerical staff and are usually in the same court building. Integration of the clerical and support staff and, in most cases, physical court facilities of the trial bench has led to more uniform court procedures statewide and savings for taxpayers.

The state pays the salaries and travel expenses of all judges, court reporters and court administrators, and also supplies computer equipment and software for the judges and for other

court staff, such as the deputy court clerks. The counties and cities furnish the clerical staff, other equipment and supplies, and court facilities.

Members of the District Magistrates Commission are encouraged to attend courtroom proceedings in the Magistrate Division on busy days to get a first hand account of the variety of cases that magistrate judges preside over and decide, and to develop a better sense of the workloads of magistrate judges.

**B. IDAHO'S INTEGRATED COURT STRUCTURE**



↑ Indicates court to which appeals are taken.

## **C. JUDICIAL DISTRICTS**

### Regional Structure

The Supreme Court, as the supervisor of the entire court system, establishes statewide rules and policies for the operation of its functions and that of the district courts.

The state is divided into seven judicial districts, each encompassing four to ten counties. This regional structure is designed to delegate authority to the judicial districts and to insure their participation in policy decisions while maintaining uniform, statewide rules and procedures.

An administrative district judge, chosen by the other district judges in the district, performs a number of administrative duties in addition to handling a judicial caseload. The administrative district judge, assisted by a trial court administrator, manages court operations in the district, assigns judges to cases, and coordinates activities of the clerks of the district courts.

Final recommendations for local court budgets and facilities are made by the administrative judge or designee, as well as personnel decisions for the district. Local rules of practice and procedure are recommended to the Supreme Court by the administrative judge with the concurrence of the other district judges. The administrative judge also jointly supervises the deputy clerks of the district courts.

The administrative judge additionally serves as chair of the district magistrates commission, a representative body of county commissioners, mayors, citizens, and private attorneys which, among other things, appoints magistrate judges to their initial terms of office.

District One. Benewah, Bonner, Boundary, Kootenai, Shoshone

District Two. Clearwater, Idaho, Latah, Lewis, Nez Perce

District Three. Adams, Canyon, Gem, Owyhee, Payette, Washington

District Four. Ada, Boise, Elmore, Valley

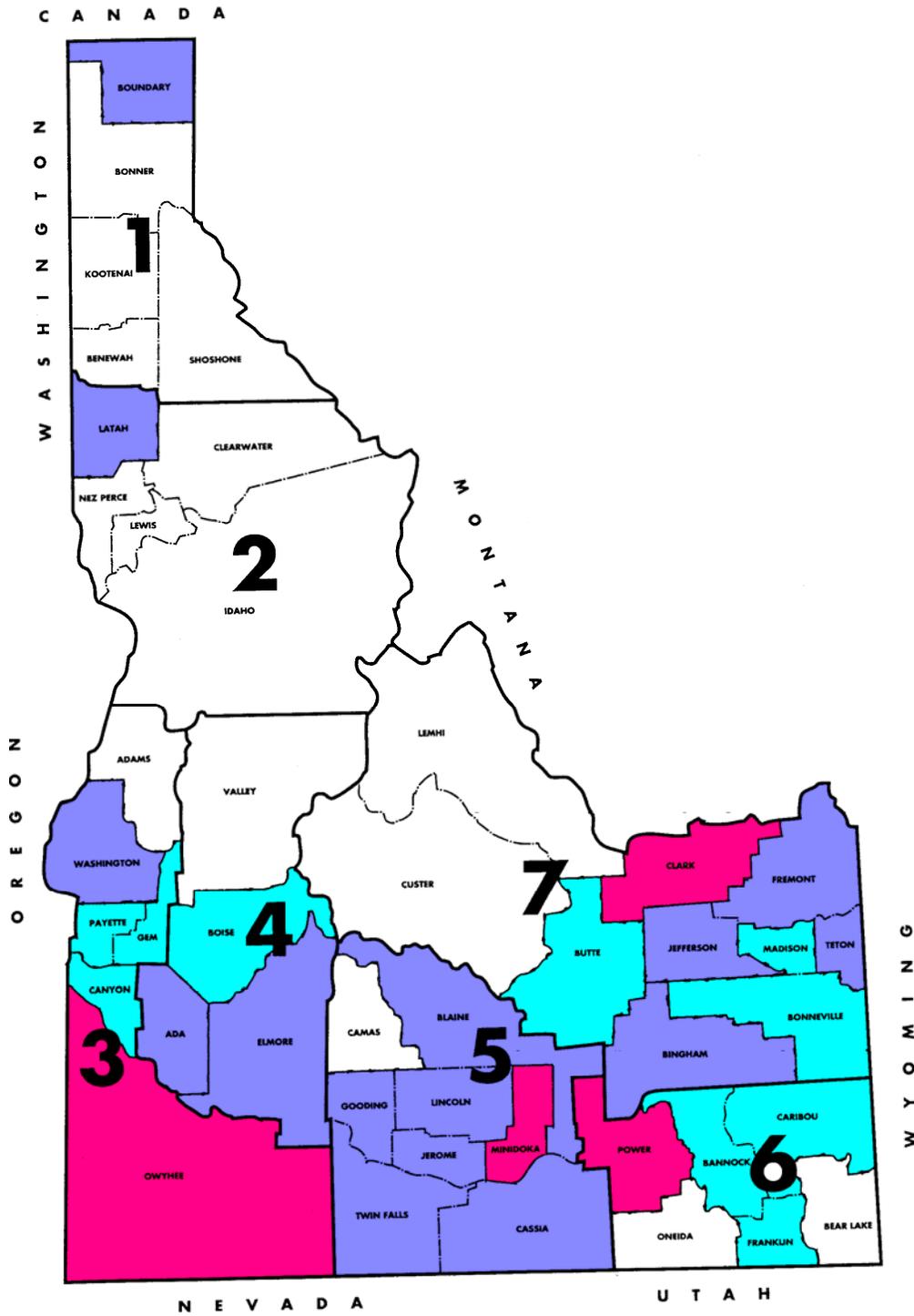
District Five. Blaine, Camas, Cassia, Gooding, Jerome, Lincoln, Minidoka, Twin Falls

District Six. Bannock, Bear Lake, Caribou, Franklin, Oneida, Power,

District Seven. Bingham, Bonneville, Butte, Clark, Custer, Fremont, Jefferson, Lemhi,

Madison, Teton

**D. STATE OF IDAHO JUDICIAL DISTRICTS**



## **PART IV. DISTRICT MAGISTRATES COMMISSIONS**

### **A. COMMISSION MEMBERSHIP**

#### 1. Voting Members:

Administrative District Judge, Chair

Chairs of County Commissioners for each county in judicial district (or another commissioner from that county designated by the chair)

Mayors of 3 municipalities within judicial district (appointed by Governor)  
(One mayor must be from a municipality of over 10,000 population)

Two qualified electors (appointed by Governor)

Two attorneys (appointed by the Idaho State Bar Association)

Magistrate Judge (appointed by Administrative District Judge)

#### 2. Commission Secretary

Trial Court Administrator

### **B. RESPONSIBILITIES**

The magistrates commission has the following responsibilities under the statutes of Idaho:

1. To make recommendations concerning the number and location of magistrate judges within the judicial district (subject to funding appropriations by the legislature);
2. To appoint magistrate judges within the judicial district on a non-partisan, merit basis; and
3. To conduct studies for the improvement of the administration of justice within the district and to make recommendations for improvements to the legislature, the Supreme Court, the district court, and such other governmental agencies as may be interested in the recommendations of the magistrates commission.

The determinations, appointments, and recommendations of the commission made under subsections (1) and (2) above are subject to disapproval by a majority of the district judges in the district within a 30-day period after written notice to the district judges of the commission's actions, unless such time period is extended for good cause by the Supreme Court.

### **C. MEMBERS: APPOINTMENT, QUALIFICATIONS, AND TERMS OF OFFICE**

As general qualifications, each member of a magistrates commission must be over the age of 18, of good moral character, a United States citizen, and a resident of the state of Idaho and the particular judicial district for which the magistrates commission is assigned.

The magistrates commission consists of the following:

1. The administrative district judge of the particular judicial district serves as the chair of the commission and has full voting rights on all matters to come before the commission. The administrative district judge may designate another district judge in the district to serve on the magistrates commission;
2. The chair of the board of the county commissioners for each county in the district (or other member of the board designated by the chair);
3. Mayors of three municipalities within the district. One of the three municipalities must be of a population over 10,000;
4. Two qualified electors appointed by the governor of the state of Idaho;
5. Two attorneys appointed by the Idaho State Bar; and
6. A magistrate judge who serves in a voting capacity appointed by the administrative district judge.

The attorney members of the commission serve two-year terms up to a total of six years. The magistrate judge serves a two year term which may be renewed up to a total of six years. All other members serve six-year terms and may succeed themselves, except that the terms of the county commissioners and mayors end when they cease to be mayors or county commissioners.

### **D. MEETINGS**

1. The magistrates commission meets at the times and places determined by the membership or by the chair of the magistrates commission (administrative district judge) after reasonable notice is provided to all the members. Additionally, a meeting of the commission may be called by any three members of the commission after reasonable notice is provided to all members. A majority of the members of the commission constitutes a quorum. The commission acts by affirmative vote of a majority of the members present.
2. As an organizational matter, the commission elects a vice-chair who serves until a successor is elected.
3. The commission may adopt rules for the administration of its duties so long as the rules are not inconsistent with Idaho statutes or Supreme Court rules..

4. The trial court administrator, acting as staff of the commission, shall maintain official minutes of all meetings or actions taken by the commission.

#### **E. EXPENSES**

Travel expenses to and from magistrates commission meetings are reimbursed by the state of Idaho at the mileage rate set by the Board of Examiners for all state travel. Meals are reimbursed at the rate set by the Board of Examiners for all state travel, and overnight lodging, if necessary, will also be reimbursed.

#### **F. RECORDS OF THE COMMISSION--CONFIDENTIALITY--DESTRUCTION**

1. Records of the magistrates commission pertaining to the appointment, performance, removal, disability, retirement, or discipline of magistrate judges are confidential and not subject to disclosure to the public.

2. Applicants shall be allowed to see their own qualifications questionnaire results, but not the comments received by the commission from the bar or the public.

3. A copy of the application of a successful candidate for magistrate judge shall be forwarded to the Administrative Director of the Courts, Idaho Supreme Court, for inclusion in the candidate's personnel file.

4. All other documents pertaining to the selection process, except commission minutes and notices of appointment but including applications of the unsuccessful applicants and computer tabulation reports of attorney surveys, shall be destroyed.

#### **G. VACANCIES ON THE COMMISSION--HOW CREATED**

1. All voting members: death, resignation, or member moving outside of the county or district, or, for members appointed for a fixed term, the expiration of that term without reappointment.

2. Administrative district judge or district judge member, or magistrate judge: the disqualification of §1 above and loss of official status.

3. County Commission members: the disqualifications in §1 above and loss of official status.

4. Mayor members: the disqualifications in §1 above and loss of official status.

5. Attorney members: the disqualifications in §1 above and suspension or disbarment from the practice of law. A temporary vacancy for an attorney member may be created if the attorney member and an applicant are currently practicing law in the same firm or were engaged in the practice of law as partners within the last five years from the date of the notice of vacancy.

NOTE: Except for resignation, or death, all members continue to serve until their successors are appointed and qualify.

## **H. PROCEDURE FOR REPORTING VACANCIES ON THE COMMISSION**

Idaho Code § 1-2203(5) provides that the magistrates commission chair or secretary shall “report in writing to the appropriate authority, the existence of any vacancy on the commission.”

Idaho Code § 1-2203(2) also provides that:

The respective appointing authorities shall duly certify in writing to the administrative director of the courts and to the secretary of state the following facts with respect to each appointee:

- (a) Full name,
- (b) Age,
- (c) Residence address,
- (d) If employed, the nature of his occupation and business address,
- (e) The name of the district magistrates commission to which appointed,
- (f) The date of expiration of term for which appointed,
- (g) Except for the initial appointees under this act, the name of the person he succeeds on the commission, and,
- (h) If a voting member other than a mayor or district judge, his political party.

The Supreme Court, through the administrative director of the courts, maintains a central record of the members of the several magistrates commissions. To ensure the Court’s records are accurate and current, trial court administrators are asked to promptly report both vacancies and new appointments as they learn of them. For that purpose the following two forms are suggested:

1. Notice of Vacancy on District Magistrates Commission (Appendix C - Form 10)
2. Magistrates Commission Member Data Sheet (Appendix C - Form 11)

The administrative director also coordinates the appointments of mayoral and private elector members of the magistrates commission with the Governor’s Office, as the appointing authority. The Governor’s Office notifies the Supreme Court administrative director and the appropriate administrative district judge when the appointment is made. Upon receiving the Governor’s notice of an appointment, a copy thereof will immediately be sent by the administrative director to the appropriate trial court administrator.

## **PART V. STANDARDS FOR RECRUITMENT AND SELECTION OF MAGISTRATE JUDGES**

### **A. FAIRNESS AND EQUALITY STANDARDS**

On June 21, 1995, the Idaho Supreme Court adopted the following fairness and equality standards in reference to magistrate commission functions:

The magistrates commission shall meet and perform their commission duties without bias or prejudice, to the end that the district magistrate selection process shall be administered in every respect, in a fair, equal, and non-discriminatory manner. While functioning in their official capacity, the magistrates commission members shall not manifest any belief, attitudes or position, by word or act, which causes to embarrass, harass, or discriminate against another person by reason of such person's race, gender, religious preference, national origin, age, disability, sexual orientation, or socioeconomic status.

### **B. RECRUITMENT PROCESS**

1. Upon determining that a vacancy has or will occur, the trial court administrator shall contact the Administrative Office of the Idaho Supreme Court to request that a Notice of Vacancy be sent to each lawyer in the state. The trial court administrator and a designated contact person from the Administrative Office shall establish a workable timeline for the proper recruitment procedures, including the questionnaires of the bar and public, the completion of background checks, and the compilation and distribution of the information to the district magistrate commission.

2. The magistrate judge vacancy is advertised in such a way that all lawyers in the state of Idaho are aware of the opportunity to apply for the vacant position, including:

a. Notices of the vacancy are sent to each lawyer in the state by the Supreme Court. Notices include the legal requirements for the position and an Equal Employment Opportunity ADA Statement.

b. If possible (and depending upon publication schedules), the Administrative Office will submit a notice of the vacancy to be published in at least one issue of *The Advocate* (the monthly publication of the Idaho State Bar Association). Additional notices, as deemed necessary by the magistrates commission, may also be distributed.

c. A news release is made by the trial court administrator to newspapers of record and broadcast media in the judicial district and, where appropriate, in adjoining districts.

3. Once the deadline for applications has passed, a news release is issued to newspapers of record and broadcast media in the judicial district, and in adjoining districts where appropriate, listing the names of the applicants in order to allow public notice and comment upon the

applicants, and informing the public where and how public comment forms may be obtained and submitted.

### **C. SELECTION PROCESS**

1. After applications are received, the trial court administrator makes an initial determination as to whether each applicant satisfies the minimum statutory qualifications to be a magistrate judge, and submits a report of those determinations to the Administrative District Judge.

2. The statutory qualifications to be a lawyer magistrate are:

- a. That the applicant be a qualified elector of the state of Idaho.
- b. That an applicant shall have attained the age of thirty (30) years prior to taking office.
- c. That an applicant be admitted to the practice of law for at least five (5) years and is currently licensed to practice law in the state of Idaho.

3. There is no requirement that an applicant be a resident of the county at the time of application; however, after appointment, an applicant must reside in the county for which he or she is appointed.

4. The magistrates commission members determine those qualifications which are the most important in selecting a magistrate judge. Commission members apply whatever weight to these individual qualifications they feel is appropriate. A list of the individual qualifications generally examined are:

1. Integrity and moral courage.
2. Legal ability and experience.
3. Wisdom.
4. Intelligence.
5. Capacity to be fair-minded and deliberate.
6. Industriousness and promptness in performing duties.
7. Compatibility of personal habits and outside activities with judicial office.
8. Capacity to be courteous and considerate on the bench.
9. Legal research and writing.
10. Administrative skills.

5. Additional qualifications for magistrate judges may include:

1. Awareness of recent legal developments.
2. Management abilities.
3. Patience and tolerance.
4. Listening skills.
5. Courtesy.
6. Compassion.
7. Independence from public and political influence.

## **D. PRELIMINARY EVALUATIONS**

1. Evaluations are solicited from practicing lawyers about all applicants in the following manner:

a. A standard form questionnaire is made available online by the Administrative Office to each practicing lawyer in the state, seeking an assessment of the applicant's qualifications.

b. Results of the questionnaire are compiled and submitted to the trial court administrator for further distribution to each member of the magistrates commission.

c. A description of the Bar Qualification Questionnaire is attached to the compilation, see page 83.

2. Public comment is solicited through a news release issued by the trial court administrator requesting the public to complete a separate questionnaire available in district court clerk offices and through the office of the District Trial Court Administrator. Such questionnaires are not "ballots" and require a statement of the relationship to the applicant or the basis upon which any public comments are made. All comments must be based on personal experience with the candidate.

3. Background checks: Prior to interviewing any applicants, the following background information is compiled, (a standard waiver statement is included in each signed magistrate applicant form to allow access to the above records) and the results communicated to the trial court administrator who distributes the information to magistrates commission members:

a. State and national records are searched to determine whether any of the applicants have a prior criminal history, or a history of domestic violence.

b. The Idaho State Bar is contacted to obtain the results of any complaints and/or discipline actions against an applicant.

c. The Idaho State Tax Commission is contacted to determine whether each of the applicants has filed all required state tax returns, whether each applicant has timely paid all state tax liabilities and/or whether the State Tax Commission has filed any liens against an applicant.

d. The withheld judgment registry maintained by the Idaho Supreme Court is examined.

e. When desired by the magistrates commission, a copy of university and law school transcripts are provided to the trial court administrator by the applicant for review by the commission.

f. The district trial court administrator will be responsible for contacting an applicant's personal and professional references, however, applicants may be instructed to have all of their references provide written submissions to the Magistrates Commission during the application period. The failure of one or more references to submit requested materials before the application deadline does not make an application untimely.

## **E. MAGISTRATES COMMISSION PROCEEDINGS AND RELATED MATTERS**

1. Persons who may be present: Members of the public, press, and other judges may be present at the interview stage of the selection process, but they may not be present during the commission's deliberations and vote on the applicants. The district trial court administrator may be present at all proceedings of the magistrates commission.

2. Abbreviated list of applicants: Magistrates commissions may adopt a process, subject to standards of fairness, equal opportunity, and merit selection, whereby the total number of applications for a vacant position is reduced to a short list of finalists for purposes of receiving an interview by the magistrates commission.

3. Member contact outside of proceedings: Individual commission members should not entertain individual contacts by applicants in support of their application outside of commission proceedings. (See Part II, §3 Ex Parte Communications, above)

4. Voting: The commission decides the method of voting in advance. Whatever method selected, if no candidate receives a majority on the first ballot, the candidate with the lowest vote total shall be struck and the commission will then choose again between the remaining candidates. If there is still no majority candidate, the candidate with the lowest vote total of those remaining will again be struck and the process repeated until a majority candidate is selected.

## **F. INTERVIEWING TECHNIQUES**

Subject to the fairness and equality standards set out in Part V, A., and the suggested interview questions listed in Part V, H., the following interviewing techniques are suggested for use by magistrates commission members when interviewing applicants:

1. When interviewing applicants, magistrates commission members should seek examples of occasions when particular job qualifications were exhibited by the applicant. Examples of past behavior are the appropriate measure of the applicant's probable future behavior. Questions which ask for "an example of a time when you" are encouraged to provide a basis for evaluating the applicant's probable success as a magistrate judge.

2. Each applicant should be asked the same core group of questions so that the magistrates commission may compare the applicants' qualifications and so that each applicant is given an equal opportunity to respond. Individualized questions may also be asked of a particular applicant in order to solicit further information or to clarify a response to one of the standard questions.

Applicants are briefed at the interview that it is a condition of employment, and should be requested to confirm, that if hired, they will:

- a. Move to and reside in the official county of residence.
- b. Agree to travel throughout their district and the state, as assigned, to hear cases.

**G. INTERVIEW QUESTIONS CONCERNING RACE, COLOR, RELIGION, SEX, DISABILITY STATUS, OR NATIONAL ORIGIN**

There are several state and federal laws that regulate questions that may be asked during interviews. These measures include Title 7 of the Civil Rights Act, Age Discrimination In Employment Act, Immigration Reform and Control Act, and Title I of the Americans With Disabilities Act.

The following list of regulated status subjects, together with appropriate questions or inappropriate questions in respect to each subject, are submitted for the guidance of magistrates commission members.

**INTERVIEW GUIDELINES**

Subject	Acceptable Questions	Questions to Avoid
Race or Color		All Questions
Religion or Creed		All Questions
National Origin		All Questions
Sex		All Questions.
Marital Status		Are you married? Where does your spouse work? What are the ages of your children, if any?
Age	If selected, will you be at least 30 years of age when you assume this office?	How old are you? What is your date of birth?
Health and Disability	This position requires that a person perform the following tasks: <u>Describe</u> - Will you be able to perform these functions with or without a reasonable accommodation? If an applicant indicates that s/he can perform the tasks with an accommodation, s/he may be asked, "How would you perform these tasks and with what accommodation(s)?"	Do you have a disability? Will you require special leave because of disability? Have you ever been treated for any of the following diseases? Has any member of your family ever had any of the following diseases?
Address or Duration of Residence	Applicant's place of residence. How long have you resided at this address?	
Birthplace		All questions
Citizenship	Are you a U.S. citizen?	
Language	What foreign language(s) do you read fluently? Write fluently? Speak fluently?	How applicant acquired ability to read, write, or speak a foreign language.
Education	About the academic, vocational, or professional education of an applicant and the public and private schools	

Subject	Acceptable Questions	Questions to Avoid
	attended.	
Experience	About the applicant's work experience.	
Character	Have you ever been convicted of any crime? If so, when, where, and what was the disposition of offense?	Have you ever been arrested?
Notify in Case of Emergency	Name and address of person to be notified in case of an accident or emergency.	
Military	Questions regarding any military disciplinary proceedings or actions taken against the applicant; did your military experience have any relationship to the position of magistrate judge?	Any questions regarding an applicant's separation or discharge for medical reasons.
Organizations	Describe the professional organizations of which you are a member. (Exclude organizations, the name or character of which indicates race, creed, color, or national origin of members.)	Describe all clubs, societies, and lodges to which you belong.
Personal Matters		Avoid inquiries or references to matters of marital status, pregnancy, and sexual preference.

## **H. APPOINTMENT OF MAGISTRATE JUDGE**

1. The Magistrates Commission appoints the magistrate judge, in writing, using Form 8. See Appendix C, below. The commission may make an appointment conditional upon receipt of further background information or confirmation of information previously submitted.

2. The Magistrates Commission submits the dated, written Notice of Magistrate Commission Action to the district judges in the district. (Magistrate judge appointments are subject to disapproval by a majority of the district judges in the district within thirty (30) days after written notice of the commission's actions unless this period is extended by the Supreme Court for good cause.)

3. Prior to performing any judicial duties, the Magistrate Judge shall take an oath of office in the form prescribed by law (59-401), which oath shall be submitted for recording to the Clerk of the District Court in the county for which the appointment was made. A copy of the Oath showing its recordation shall also be provided to the Supreme Court, which forwards it to the Secretary of State.

## **PART VI. POST APPOINTMENT PERFORMANCE EVALUATION**

### **A. GOALS OF PERFORMANCE APPRAISALS**

Magistrate Commissions should gather and assess reliable information concerning judicial performance:

(1) so that each judge may maximize his or her potential for judicial excellence through self-improvement, thereby enhancing the quality of justice to the public;

(2) to facilitate assignment and use of judges within the judiciary;

(3) to assess educational needs of new judges; and

(4) to measure performance of the newly appointed magistrate judge to allow the commission to make a determination as to whether the magistrate judge should be removed during the initial 18-month appointment.

### **B. APPRAISAL CRITERIA (SAME AS RECRUITMENT AND SELECTION CRITERIA)**

- Integrity and moral courage.
- Legal ability and experience.
- Wisdom.
- Intelligence.
- Capacity to be fair-minded and deliberate.
- Industriousness and promptness in performing duties.
- Compatibility of personal habits and outside activities with judicial office.
- Capacity to be courteous and considerate on the bench.
- Legal research and writing.
- Administrative skills.
- Awareness of recent legal developments.
- Management abilities.
- Patience and tolerance.
- Listening skills.
- Courtesy.
- Compassion.
- Independence from public and political influence.

### **C. PERFORMANCE APPRAISAL PROCEDURES**

1. Once the magistrate judge takes office the magistrate judge must satisfactorily complete an 18-month probationary period prior to standing for election. The magistrates commission conducts at least one appraisal of the magistrate judge's performance prior to the expiration of the probationary period.

2. Observations or recommendations of the magistrates commission as a result of studying the appraisals are communicated to the magistrate judge, prior to the expiration of the probationary period.

3. Data Collection: Information is elicited from a variety of reliable sources, encouraged by assuring confidentiality to respondents, and should be based on first-hand, reasonably current knowledge. It is recommended that data be collected through responses to questionnaires only, and personal interviews with court users not be incorporated into the appraisal process. Appropriately drafted questionnaires are made available online to lawyers within the judicial district, and in some circumstances to neighboring judicial districts, to court and county personnel, and court users. Information concerning a magistrate judge that is received by letter, or other (non-anonymous) writing may be considered by the magistrate commission.

4. Synthesis and Analysis: Results of the questionnaires are tabulated and analyzed by the Administrative Office of the Court and by the trial court administrator. The questionnaire results and any letters received are communicated to the magistrate commission and used to determine whether the commission needs to meet and discuss the evaluation results. The commission may decide not to meet, but to communicate the questionnaire results to the individual judge, through the trial court administrator.

5. Usage: Numerical results of the judicial performance appraisal are communicated by the magistrates commission, through the trial court administrator, to the individual judge, but the comments by the bar or the public are not shown to the judge being evaluated. Results of the judicial performance appraisal remain absolutely confidential. Where however the comments received cause concerns, those concerns may be raised with the magistrate judge through the trial court administrator, the administrative district judge or designee, by means of a meeting with the magistrate commission as a whole, or such other method of communication as is reasonable under the circumstances. Educational needs, if any, shall be communicated to the administrative director of the courts by the trial court administrator.

6. Confidentiality. Because the purpose of the judicial performance appraisal process is to provide an opportunity to each judge for self-improvement, results of the judicial performance appraisal are not published in any fashion, ranked in any way, or made available to anyone except members of the magistrates commission, the trial court administrator, and the magistrate judge whose performance has been appraised.

7. Magistrates commissions may also consider asking judges whose performance is being appraised to complete a self-assessment. The self-assessment is reviewed by the magistrates commission, but it will be for the judge's own use.

## **PART VII. DISCIPLINE AND REMOVAL OF MAGISTRATE JUDGES**

### **A. GENERAL**

1. The method of discipline and removal of magistrate judges depends upon how long the magistrate judge has been in office. During the first 18 months of a magistrate judge's initial appointed term, a magistrate judge may be removed from office with or without a reason or explanation by majority vote of the district magistrates commission. The procedure that must be followed for a removal of this type has been established by the Supreme Court in Rule 2 of the Idaho Court Administrative Rules. (For summary information on removal procedures, see §B immediately below; for full text of this rule see Appendix B.)

2. The Supreme Court also has the authority to discipline or remove magistrate judges for certain causes, i.e., willful misconduct and persistent failure to perform the duties of office, at any time, including the first 18 months of their appointed terms. This process involves an investigation and recommendation by the Idaho Judicial Council, and a review and final decision by the Supreme Court.

### **B. REMOVAL OF MAGISTRATE JUDGES BY THE DISTRICT MAGISTRATES COMMISSION PURSUANT TO IDAHO COURT ADMINISTRATIVE RULE 2**

1. Intent of Rule. ICAR 2 provides that removal proceedings are administrative personnel proceedings and are not adversary or judicial in nature. Formal rules of evidence do not apply and although “no provision of the rule shall be construed to limit the gathering of necessary information by the magistrate commission.”

2. Time, Method and Grounds for Removal. A magistrate judge may be removed by a majority vote of the magistrate commission without cause and without a statement of reason at any time within 18 months of taking office.

#### 3. Procedures for Removal

##### (a) Personnel review meeting:

1. The district magistrates commission shall hold a personnel review meeting, prior to holding a removal hearing. The purpose of the review meeting is to determine if a removal hearing should be held.

2. The personnel review meeting may be called by the district administrative judge, or by three members of the district magistrates commission by writing the administrative judge.

3. A reasonable notice is to be given to all commission members but need not be given to the magistrate.

4. During the review meeting a removal hearing will be scheduled upon the request of three voting members of the commission.

(b) Removal hearing, notice:

1. Action to remove a magistrate judge may be taken at a regular or special meeting of the district magistrates commission after giving fourteen (14) days' written notice to the members of the district magistrates commission and the magistrate judge.

2. The notice informs the magistrate judge that the purpose of the meeting is to consider the magistrate judge's removal, and that the magistrate judge may attend such portion of the meeting as may be permitted by the commission.

3. Notice of the removal hearing shall also be given to each member of the commission, informing the member that the purpose of the meeting will be to consider the removal of the named magistrate judge and that action for removal can be taken only by majority vote of all members of the district magistrates commission. The commission may permit the magistrate judge to testify and produce evidence. The procedural aspects of the meeting are determined by a majority vote of the members present.

(c) Confidentiality, records: All proceedings for the removal of a magistrate judge are closed to the public and confidential, under the provisions of Idaho Court Administrative Rule 32(d)(22).

(d) Removal order: If the commission determines that the magistrate judge should be removed, it shall issue a written order of removal, signed by the chairman of the commission, and personally served on the magistrate judge or mailed to the magistrate judge by certified mail at the magistrate judge's judicial chambers or home address. This order specifies the date of termination and any special conditions of employment prior to termination. This order is filed with the clerk of the district court of the county where the magistrate judge resides and a copy is mailed to the Supreme Court.

(e) Resignation in lieu of removal. Where the interests of justice will be served, a magistrates commission may inform the magistrate judge that an unconditional and appropriate letter of resignation may be accepted by the magistrates commission prior to the issuance of its removal order.

APPENDIX A.

**IDAHO CODE OF JUDICIAL  
CONDUCT**

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**PREAMBLE**

Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

The Code of Judicial Conduct is intended to establish standards for ethical conduct of Idaho judges. It consists of broad statements called Canons, specific rules set forth in Sections under each Canon, a Terminology Section, an Application Section and Commentary. The text of the Canons and the Sections, including the Terminology and Application Sections, is authoritative. The Commentary, by explanation and example, provides guidance with respect to the purpose and meaning of the Canons and Sections. The Commentary is not intended as a statement of additional rules.

## **TERMINOLOGY**

Terms explained below are noted with an asterisk (\*) in the Sections where they appear. In addition, the Sections where terms appear are referred to after the explanation of each term below.

“Candidate.” A candidate is a person seeking selection for or retention in judicial office by election or appointment. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, or authorizes solicitation or acceptance of contributions or support. See Sections 5A, 5B, 5C and 5E.

“Court personnel” does not include the lawyers in a proceeding before a judge. See Sections 3B(7)(c) and 3B(9).

“De minimis” denotes an insignificant interest that could not raise reasonable question as to a judge’s impartiality. See Sections 3E(l)(c) and 3E(l)(d).

“Economic interest” denotes ownership of a more than de minimis legal or equitable interest, or a relationship as officer, director, advisor or other active participant in the affairs of a party, except that:

(i) ownership of an interest in a mutual or common investment fund that holds securities is not an economic interest in such securities unless the judge participates in the management of the fund or a proceeding pending or impending before the judge could substantially affect the value of the interest;

(ii) service by a judge as an officer, director, advisor or other active participant in an educational, religious, charitable, fraternal or civic organization, or service by a judge’s spouse, parent or child as an officer, director, advisor or other active participant in any organization does not create an economic interest in by that organization;

(iii) a deposit in a financial institution, the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association or of a member in a credit union, or a similar proprietary interest, is not an economic interest in the organization unless

a proceeding pending or impending before the judge could substantially affect the value of the interest;

(iv) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the judge could substantially affect the value of the securities.

See Sections 3E(1)(c) and 3E(2).

“Fiduciary” includes such relationships as executor, administrator, trustee, guardian and, such other relationship defined by law as “Fiduciary.” See Sections 3E(1), 3E(2) and 4E.

“Judicial Council” is the Idaho Judicial Council. See Section 3(D)(1).

“Knowingly,” “knowledge,” “known” or “knows” denotes actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances. See Sections 3D, 3E(1), and 5A(3).

“Law” denotes court rules as well as statutes, constitutional provisions and decisional law. See Sections 2A, 3A, 3B(2), 3B(6), 4B, 4C, 4D(5), 4F, 4I, 5A(2), 5A(3), 5B(2), 5C(1), 5C(3) and 5D.

“Member of the candidate’s family” denotes a spouse, child, sibling, grandchild, parent, grandparent or other relative or person with whom the candidate maintains a close familial relationship. See Section 5A(3)(a).

“Member of the judge’s family” denotes a spouse, child, sibling, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. See Sections 4D(3) and 4E.

“Member of the judge’s family residing in the judge’s household” denotes any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge’s family, who resides in the judge’s household. See Sections 3E(1) and 4D(5).

“Nonpublic information” denotes information that, by law or rule, is not available to the public. Nonpublic information may include but is not limited to: information that is sealed by statute, court order, or court administrative rule, impounded or communicated in camera; and information offered in grand jury proceedings, presentencing reports, dependency cases or psychiatric reports. See Section 3B(11).

“Political gathering” is an event sponsored by a “political organization.”

“Political organization” denotes a political party or other group, the principal purpose of which is to further the election or appointment of candidates to political office or the attainment of a specific political goal. See Section 5A(1).

“Pro tempore judge” -- A pro tempore judge is a judge who serves or expects to serve once or only sporadically on a part-time basis under a separate appointment for each period of service or for each case heard. See Application Section E.

“Public election” -- This term includes primary and general elections; it includes partisan elections, nonpartisan elections and retention elections. See Section 5C.

“Require” -- The rules prescribing that a judge “require” certain conduct of others are rules of reason. The use of the term “require” in that context means a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge’s direction and control. See Sections 3B(3), 3B(4), 3B(6), 3B(9) and 3C(2).

“Senior judge” -- A senior judge is a judge designated pursuant to Idaho Code §§ 1-2005 and 1-2221.

“Third degree of relationship” -- The following persons are relatives within the third degree of relationship: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew or niece. See Section 3E(1)(d).

## **CANON 1**

### **A Judge Shall Uphold the Integrity and Independence of the Judiciary**

**A. An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.**

#### **Commentary**

Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depends in turn upon their acting without fear or favor. Although judges should be independent, they must comply with the law, including the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.

## **CANON 2**

### **A Judge Shall Avoid Impropriety and the Appearance of Impropriety in Activities that May Reflect Upon Judicial Conduct**

**A. Judges should respect and comply with the law and should conduct themselves at all times in a manner that does not detract from public confidence in the integrity and impartiality of the judiciary.**

#### **Commentary**

Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code. Actual improprieties under this standard include violations of law, court rules or other specific provisions of this Code. The test for violation of this Canon is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired.

See also Commentary under Section 2C.

**B. A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.**

#### **Commentary**

Maintaining the prestige of judicial office is essential to a system of government in which the judiciary functions independently of the executive and legislative branches. Respect for the judicial office facilitates the orderly conduct of legitimate judicial functions. Judges should distinguish between proper and improper use of the prestige of office in all of their activities. For example, it would be improper for a judge to allude to his or her judgeship to gain a personal advantage such as deferential treatment when

stopped by a police officer for a traffic offense. Similarly, judicial letterhead must not be used for conducting a judge's personal business.

A judge must avoid lending the prestige of judicial office for the advancement of the private interests of others. For example, a judge must not use the judge's judicial position to gain advantage in a civil suit involving a member of the judge's family. In contracts for publication of a judge's writings, a judge should retain control over the advertising to avoid exploitation of the judge's office. As to the acceptance of awards, see Section 4D(5)(a) and Commentary.

Although a judge should be sensitive to possible abuse of the prestige of office, a judge may make a confidential recommendation indicating the background and character of an individual based upon the judge's substantial personal knowledge gathered over a substantial period of time in the following situations:

- (1) A screening committee for judicial appointments;
- (2) The Bar concerning applicants for admission;
- (3) An educational institution concerning someone seeking to further his or her education;
- (4) An employer concerning someone seeking employment;
- (5) Entities which certify or evaluate attorneys, e.g. Martindale Hubbell, concerning attorneys who practice before the judge.

A judge must not testify voluntarily as a character witness because to do so may lend the prestige of the judicial office in support of the party for whom the judge testifies. Moreover, when a judge testifies as a witness, a lawyer who regularly appears before the judge may be placed in the awkward position of cross-examining the judge. A judge may, however, testify when properly summoned. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.

**C. A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion or national origin.**

### **Commentary**

Membership of a judge in an organization that practices invidious discrimination gives rise to perceptions that the judge's impartiality is impaired. Section 2C refers to the current practices of the organization. Whether an organization practices invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls but rather depends on how the organization selects members and other relevant factors, such as that the organization is dedicated to the preservation of religious, ethnic or cultural values of legitimate common interest to its members, or that it is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited. Absent such factors, an

organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, religion, sex or national origin persons who would otherwise meet the organization's qualifications for membership. *See New York State Club Ass'n. Inc. v. City of New York*, 108 S.C. 2225, 101 LED.2d 1 (1988); *Board of Directors of Rotary International v. Rotary Club of Duarte*, 481 U.S. 537, 107 S.C. 1940, 95 LED.2d 474 (1987); *Roberts v. United States Jaycees*, 468 U.S. 609, 104 S.C. 3244, 82 LED.2d 462 (1984).

Although Section 2C relates only to membership in organizations that invidiously discriminate on the basis of race, sex, religion or national origin, a judge's membership in an organization that engages in any discriminatory membership practices prohibited by the law of the jurisdiction may also violate Canon 2 and Section 2A and gives the appearance of impropriety. In addition, it would be a violation of Canon 2 and Section 2A for a judge to arrange a meeting at a club that the judge knows practices invidious discrimination on the basis of race, sex, religion or national origin in its membership or other policies, or for the judge to regularly use such a club. Moreover, public manifestation by a judge of the judge's knowing approval of invidious discrimination on any basis gives the appearance of impropriety under Canon 2 and diminishes public confidence in the integrity and impartiality of the judiciary, in violation of Section 2A.

When a person who is a judge on the date this Code becomes effective learns that an organization to which the judge belongs engages in invidious discrimination that would preclude membership under Section 2C or under Canon 2 and Section 2A, the judge is permitted, in lieu of resigning, to make immediate efforts to have the organization discontinue its invidiously discriminatory practices, but is required to suspend participation in any other activities of the organization. If the organization fails to discontinue its invidiously discriminatory practices as promptly as possible (and in all events within a year of the judge's first learning of the practices), the judge is required to resign immediately from the organization.

## **CANON 3**

### **A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently**

**A. Judicial Duties in General. A judge shall diligently perform judicial duties. The judge's judicial duties include all the duties of the judge's office prescribed by law.\* In the performance of these duties, the following standards apply.**

## **B. Adjudicative Responsibilities.**

**(1) A judge shall hear and decide matters assigned to the judge except those in which an appropriate disqualification is required by these Canons.**

**(2) A judge shall be faithful to the law\* and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism.**

(3) A judge shall maintain professional competence in the performance of judicial duties.

(4) A judge shall require order and decorum in proceedings before the judge.

**(5) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control.**

### **Commentary**

The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.

**(6) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, or national origin, and shall not permit staff, court officials and others subject to the judge's direction and control to do so.**

### **Commentary**

A judge must refrain from speech, gestures or other conduct that could reasonably be perceived as sexual harassment and must require the same standard of conduct of others subject to the judge's direction and control.

A judge must perform judicial duties impartially and fairly. A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expression and body language, in addition to oral communication, can give to parties or lawyers in the proceeding, jurors, the media and others an appearance of judicial bias. A judge must be alert to avoid behavior that may be perceived as prejudicial.

**(7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.\* A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:**

**(a) Where circumstances require, ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication.**

**(b) A judge may obtain the advice of a disinterested expert on the law\* applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.**

**(c) A judge may consult with court personnel\* whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges.**

**(d) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.**

**(e) A judge may initiate or consider any ex parte communications when expressly authorized by law\* to do so.**

## **Commentary**

The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted.

To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.

Whenever presence of a party or notice to a party is required by Section 3B(7), it is the party's lawyer, or if the party is unrepresented the party, who is to be present or to whom notice is to be given.

An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite the expert to file a brief amicus curiae.

Certain ex parte communication is approved by Section 3B(7) to facilitate scheduling and other administrative purposes and to accommodate emergencies. In general, however, a judge must discourage ex parte communication and allow it only if all the criteria stated in Section 3B(7) are clearly met.

A judge must not independently investigate facts in a case and must consider only the evidence presented. This does not preclude a judge from asking questions in court.

A judge must make reasonable efforts, including the provision of appropriate supervision, to ensure that Section 3B(7) is not violated through law clerks or other personnel on the judge's staff.

If communication between the trial judge and the appellate court with respect to a proceeding is permitted, a copy of any written communication or the substance of any oral communication should be provided to all parties.

**(8) A judge shall dispose of all judicial matters promptly, efficiently and fairly and shall comply with all constitutional and statutory provisions and court rules concerning timeliness of decisions and salary affidavits.**

### **Commentary**

In disposing of matters promptly, efficiently and fairly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. Containing costs while preserving fundamental rights of parties also protects the interests of witnesses and the general public. A judge should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays and unnecessary costs. A judge should encourage and seek to facilitate settlement, but parties should not feel coerced into surrendering the right to have their controversy resolved by the courts.

Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants and their lawyers cooperate with the judge to that end. A judge should ordinarily be present during regular business hours.

**(9) A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing. The judge shall require\* similar abstention on the part of court personnel\* subject to the judge's direction and**

**control. This Section does not prohibit judges from making public statement in the course of their official duties or from explaining for public information the procedures of the court. This Section does not apply to proceedings in which the judge is a litigant in a personal capacity.**

### **Commentary**

The requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition. This Section does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity, but in cases such as a writ of mandamus where the judge is a litigant in an official capacity, the judge must not comment publicly. The conduct of lawyers relating to trial publicity is governed by Rule 3.6 of the Idaho Rules of Professional Conduct.

**(10) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.**

### **Commentary**

Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case.

**(11) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information\* acquired in a judicial capacity.**

### **C. Administrative Responsibilities.**

**(1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and shall cooperate with other judges and court officials in the administration of court business.**

**(2) A judge shall require\* staff, court officials and others subject to the judge's direction and control to observe the standards diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.**

**(3) A judge with supervisory authority for the judicial performance of other judges shall take reasonable measures to assure**

**the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.**

**(4) A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair value of services rendered.**

### **Commentary**

Appointees of a judge include assigned counsel, officials such as referees, commissioners, special masters, receivers and guardians and personnel such as clerks, secretaries and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by Section 3C(4).

**D. Disciplinary Responsibilities. Judges are encouraged to bring instances of unprofessional conduct by judges or lawyers to their attention in order to provide them opportunities to correct their errors without disciplinary proceedings; but the judges should file reports thereof with the Commission of the Idaho State Bar or with the Judicial Council, as appropriate, when no such remedial action is promptly undertaken, or if the violations are flagrant or repeated.**

### **Commentary**

Appropriate action may include direct communication with the judge or lawyer who has committed the violation, other direct action if available, and/or reporting the violation to the appropriate authority or other agency or body.

**E. Disqualification.**

**(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:**

**(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or has personal knowledge\* of disputed evidentiary facts that might reasonably affect the judge's impartiality in the proceedings;**

**(b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it;**

## Commentary

Under this rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless whether any of the specific rules in Section 3E(1) apply. For example, if a judge were in the process of negotiating for employment with a law firm, the judge would be disqualified from any matters in which that law firm appeared, unless the disqualifications were waived by the parties after disclosure by the judge.

A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification.

By decisional law, the rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In the latter case, the judge must disclose on the record the basis for possible disqualification and use reasonable efforts to transfer the matter to another judge as soon as practicable.

A lawyer in a government agency does not ordinarily have an association with other lawyers employed by that agency within the meaning of Section 3E(1)(b); a judge formerly employed by a government agency, however, should disqualify himself or herself in a proceeding if the judge's impartiality might reasonably be questioned because of such association.

**(c) the judge knows\* that he or she, individually or as a fiduciary\*, or the judge's spouse, parent or child wherever residing, or any other member of the judge's family residing in the judge's household,\* has an economic interest\* in the subject matter in controversy or in a party to the proceeding or has any other more than de minimis\* interest that could be substantially affected by the proceeding;**

**(d) the judge or the judge's spouse, or a person within the third degree of relationship\* to either of them, or the spouse of such a person:**

**(i) is a party to the proceeding, or an officer, director or trustee of a party;**

**(ii) is acting as a lawyer in the proceeding;**

**(iii) is known\* by the judge to have a more than de minimis\* interest that could be substantially affected by the proceeding;**

**(iv) is to the judge's knowledge\* likely to be a material witness in the proceeding.**

### **Commentary**

The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances, the fact that “the judge’s impartiality might reasonably be questioned” under Section 3E(1), or that the relative is known by the judge to have an interest in the law firm that could be “substantially affected by the outcome of the proceeding” under Section 3E(1)(d)(iii) may require the judge’s disqualification.

**(2) A judge shall keep informed about the judge’s personal and fiduciary\* economic interests,\* and make a reasonable effort to keep informed about the personal economic interests of the judge’s spouse and minor children residing in the judge’s household.**

**F. Remittal of Disqualification. A judge disqualified by the terms of Section 3E(1)(c) or (d) may disclose on the record the basis of the judge’s disqualification and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree that the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.**

### **Commentary**

A remittal procedure provides the parties an opportunity to proceed without delay if they wish to waive the disqualification. To assure that consideration of the question of remittal is made independently of the judge, a judge must not solicit, seek or hear comment on possible remittal or waiver of the disqualification unless the lawyers jointly propose remittal after consultation as provided in the rule. A party may act through counsel if counsel represents on the record that the party has been consulted and consents. As a practical matter, a judge may wish to have all parties and their lawyers sign the remittal agreement.

## **CANON 4**

### **A Judge Shall So Conduct the Judge's Extra-Judicial Activities as to Minimize the Risk of Conflict With Judicial Obligations**

**A. Extra-judicial Activities in General. A judge shall conduct all of the judge's extra-judicial activities so that they do not:**

- (1) cast reasonable doubt on the judge's capacity to act impartially as a judge; or**
- (2) interfere with the proper performance of judicial duties.**

#### **Commentary**

Complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives.

**B. Avocational Activities. A judge may speak, write, lecture, teach and participate in other extra-judicial activities concerning the law,\* the legal system, and the administration of justice, subject to the requirements of this Code.**

#### **Commentary**

As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that time permits, a judge is encouraged to do so, either independently or through a bar association, judicial conference or other organization dedicated to the improvement of the law. Judges may participate in efforts to promote the fair administration of justice, the independence of the judiciary and the integrity of the legal profession and may express opposition to the persecution of lawyers and judges in other countries because of their professional activities.

In this and other Sections of Canon 4, the phrase “subject to the requirements of this Code” is used, notably in connection with a judge’s governmental, civic or charitable activities. This phrase is included to remind judges that the use of permissive language in various Sections of the Code does not relieve a judge from the other requirements of the Code that apply to the specific conduct.

**C. Governmental, Civic or Charitable Activities.**

**(1) A judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law,\* the legal system or the administration of justice or except when acting pro se in a matter involving the judge or the judge’s interests.**

**Commentary**

See Section 2B regarding the obligation to avoid improper influence.

**(2) A judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law,\* the legal system or the administration of justice. A judge may, however, represent a country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities.**

**Commentary**

Section 4C(2) prohibits a judge from accepting any governmental position except one relating to the law, legal system or administration of justice as authorized by Section 4C(3). The appropriateness of accepting extra-judicial assignments must be assessed in light of the demands on judicial resources created by crowded dockets and the need to protect the courts from involvement in extra-judicial matters that may prove to be controversial. Judges should not accept governmental appointments that are likely to interfere with the effectiveness and independence of the judiciary.

Section 4C(2) does not govern a judge’s service in a nongovernmental position. See Section 4C(3) permitting service by a judge with organizations devoted to the improvement of the law, the legal system or the administration of justice and with educational, religious, charitable, fraternal or civic organizations not conducted for profit. For example, service on the board of a public educational institution, unless it were a law school, would be prohibited under Section 4C(2), but service on the board of a public law school or any private educational institution would generally be permitted under Section 4C(3).

**(3) A judge may serve as an officer, director, trustee or non-legal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice or of an educational, religious, charitable, fraternal or civic organization not conducted for profit, subject to the following limitations and the other requirements of this Code.**

### **Commentary**

Section 4C(3) does not apply to a judge's service in a governmental position unconnected with the improvement of the law, the legal system or the administration of justice; see Section 4C(2).

See Commentary to Section 4B regarding use of the phrase "subject to the following limitations and the other requirements of this Code." As an example of the meaning of the phrase, a judge permitted by Section 4C(3) to serve on the board of a fraternal institution may be prohibited from such service by Sections 2C or 4A if the institution practices invidious discrimination or if service on the board otherwise casts reasonable doubt on the judge's capacity to act impartially as a judge.

Service by a judge on behalf of a civic or charitable organization may be governed by other provisions of Canon 4 in addition to Section 4C. For example, a judge is prohibited by Section 4G from serving as a legal advisor to a civic or charitable organization.

**(a) A judge shall not serve as an officer, director, trustee or non-legal advisor if it is likely that the organization**

**(i) will be engaged in proceedings that would ordinarily come before the judge, or**

**(ii) will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.**

### **Commentary**

The changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to reexamine the activities of each organization with which the judge is affiliated to determine if it is proper for the judge to continue the affiliation. For example, in many jurisdictions charitable hospitals are now more frequently in court than in the past. Similarly, the boards of some legal aid organizations now make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication.

**(b) A judge as an officer, director, trustee or non-legal advisor, or as a member or otherwise:**

**(i) may assist such an organization in planning fund raising, may participate in support activities related to the fund raising, may participate in the management and investment of the organization's funds, but shall not personally participate in the solicitation of funds.**

**(ii) may make recommendations to public and private fund-granting organizations on projects and programs concerning the law,\* the legal system or the administration of justice;**

**(iii) shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation.**

### **Commentary**

While a judge may not use the prestige of judicial office for membership solicitation, a judge may solicit membership or endorse or encourage membership efforts for an organization as long as the solicitation cannot reasonably be perceived as coercive and is not essentially a fund-raising mechanism. Solicitation of funds for an organization and solicitation of memberships involve the danger that the person solicited will feel obligated to respond favorably to the solicitor if the solicitor is in a position of influence or control.

Use of an organization letterhead for fund-raising or membership solicitation does not violate Section 4C(3)(b) provided the letterhead lists only the judge's name without judicial designation. In addition, a judge must also make reasonable efforts to ensure that the judge's staff, court officials and others subject to the judge's direction and control do not solicit funds on the judge's behalf for any purpose, charitable or otherwise.

A judge must not be a speaker, master of ceremonies, or guest of honor at an organization's fund-raising event, but mere attendance at such an event is permissible if otherwise consistent with this Code.

### **D. Financial Activities.**

**(1) A judge shall not engage in financial and business dealings that:**

**(a) may reasonably be perceived to exploit the judge's judicial position, or**

**(b) involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.**

### **Commentary**

When a judge acquires, in a judicial capacity, information, such as material contained in filings with the court, that is not yet generally known, the judge must not use the information for private gain. See Section 2B; see also Section 3B(11).

A judge must avoid financial and business dealings that involve the judge in frequent transactions or continuing business relationships with persons likely to come either before the judge personally or before other judges on the judge's court. In addition, a judge should discourage members of the judge's family from engaging in dealings that would reasonably appear to exploit the judge's judicial position. This rule is necessary to avoid creating an appearance of exploitation of office or favoritism and to minimize the potential for disqualification. With respect to affiliation of relatives of a judge with law firms appearing before the judge, see Commentary to Section 3E(1) relating to disqualification.

Participation by a judge in financial and business dealings is subject to the general prohibitions in Section 4A against activities that tend to reflect adversely on impartiality, demean the judicial office, or interfere with the proper performance of judicial duties. Such participation is also subject to the general prohibition in Canon 2 against activities involving impropriety or the appearance of impropriety and the prohibition in Section 2B against the misuse of the prestige of judicial office. In addition, a judge must maintain high standards of conduct in all of the judge's activities, as set forth in Canon 1. See Commentary for Section 4B regarding use of the phrase "subject to the requirements of this Code."

**(2) A judge may, subject to the requirements of this Code, hold and manage investments of the judge and members of the judge's family,\* including real estate, and engage in other remunerative activity.**

### **Commentary**

This Section provides that, subject to the requirements of this Code, a judge may hold and manage investments owned solely by the judge, investments owned solely by a member or members of the judge's family, and investments owned jointly by the judge and members of the judge's family.

**(3) A judge shall not serve as an officer, director, manager, general partner, advisor or employee of any business entity except that a judge may, subject to the requirements of this Code, manage and participate in:**

**(a) a business closely held by the judge or members of the judge's family,\* or**

**(b) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.**

**(c) for "senior judges," a business entity exclusively engaged in mediation or alternative dispute resolution as permitted by Idaho Code §§1-2005 and 1-2221. Provided, however, that this shall not permit a "senior judge" to be a member of or be "of counsel" to, or share office space with a law firm.**

### **Commentary**

Subject to the requirements of this Code, a judge may participate in a business that is closely held either by the judge alone, by members of the judge's family, or by the judge and members of the judge's family.

Although participation by a judge in a closely-held family business might otherwise be permitted by Section 4D(3), a judge may be prohibited from participation by other provisions of this Code when, for example, the business entity frequently appears before the judge's court or the participation requires significant time away from judicial duties. Similarly, a judge must avoid participating in a closely-held family business if the judge's participation would involve misuse of the prestige of judicial office.

**(4) A judge shall manage the judge's investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge shall divest himself or herself of investments and other financial interests that might require frequent disqualification.**

**(5) A judge shall not accept, and shall urge members of the judge's family residing in the judge's household,\* not to accept, a gift, bequest, favor or loan from anyone except for the following:**

**(a) a gift incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or guest to attend a bar related function or an activity devoted to the improvement of the law,\* the legal system or the administration of justice;**

## Commentary

Section 4D(5) does not apply to contributions to a judge's campaign for judicial office, a matter governed by Canon 5.

Because a gift, bequest, favor or loan to a member of the judge's family residing in the judge's household might be viewed as intended to influence the judge, a judge must inform those family members of the relevant ethical constraints upon the judge in this regard and discourage those family members from violating them. A judge cannot, however, reasonably be expected to know or control all of the financial or business activities of all family members residing in the judge's household.

Acceptance of an invitation to a law-related function is governed by Section 4D(5)(a); acceptance of an invitation paid for by an individual lawyer or group of lawyers is governed by Section 4D(5)(h).

A judge may accept a public testimonial or a gift incident thereto only if the donor organization is not an organization whose members comprise or frequently represent the same side in litigation, and the testimonial and gift are otherwise in compliance with other provisions of this Code. See Sections 4A(1) and 2B.

**(b) a gift, award or benefit incident to the business, profession or other separate activity of a spouse or other family member of a judge residing in the judge's household, including gifts, awards and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;**

**(c) ordinary social hospitality;**

**(d) a gift from a relative or friend, for a special occasion, such as a wedding, anniversary or birthday, if the gift is fairly commensurate with the occasion and the relationship;**

## Commentary

A gift to a judge, or to a member of the judge's family living in the judge's household, that is excessive in value raises questions about the judge's impartiality and the integrity of the judicial office and might require disqualification of the judge where disqualification would not otherwise be required. See, however, Section 4D(5)(e).

**(e) a gift, bequest, favor or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification under Section 3E;**

**(f) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges;**

**(g) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants; or**

**(h) any other gift, bequest, favor or loan, only if: the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge.**

### **Commentary**

Section 4D(5)(h) prohibits judges from accepting gifts, favors, bequests or loans from lawyers or their firms if they have come or are likely to come before the judge; it also prohibits gifts, favors, bequests or loans from clients of lawyers or their firms when the clients' interests have come or are likely to come before the judge.

### **E. Fiduciary Activities.**

**(1) A judge shall not serve as executor, administrator or other personal representative, trustee, guardian, attorney in fact or other fiduciary,\* except for the estate, trust or person of a member of the judge's family,\* and then only if such service will not interfere with the proper performance of judicial duties.**

**(2) A judge shall not serve as a fiduciary\* if it is likely that the judge as a fiduciary will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.**

**(3) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary\* capacity.**

### **Commentary**

The Time for Compliance provision of this Code (Application, Section F) postpones the time for compliance with certain provisions of this Section in some cases.

The restrictions imposed by this Canon may conflict with the judge's obligation as a fiduciary. For example, a judge should resign as trustee if detriment to the trust would result from divestiture of holdings the retention of which would place the judge in violation of Section 4D(4).

**F. Service as Arbitrator or Mediator. A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law.\***

**Commentary**

Section 4F does not prohibit a judge from participating in arbitration, mediation or settlement conferences performed as part of judicial duties or as permitted by Idaho Code §§ 1-2005(7) and 1-2221(7).

**G. Practice of Law. A judge shall not practice law. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family.**

**Commentary**

This prohibition refers to the practice of law in a representative capacity and not in a pro se capacity. A judge may act for himself or herself in legal matters, including matters involving litigation and matters involving appearances before or other dealings with legislative and other governmental bodies. However, in doing so, a judge must not abuse the prestige of office to advance the interests of the judge or the judge's family. See Section 2(B).

The Code allows a judge to give legal advice to and draft legal documents for members of the judge's family, so long as the judge receives no compensation. A judge must not, however, act as an advocate or negotiator for a member of the judge's family in a legal matter.

A "senior judge" may engage in activities permitted by Idaho Code §§ 1-2205(7) and 1-2221(7).

**H. Compensation and Reimbursement.**

**(1) Compensation and Reimbursement. A judge may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety.**

**(a) Compensation shall not exceed a reasonable amount nor shall it exceed what a person who is not a judge would receive for the same activity.**

**(b) Expense reimbursement shall be limited to the actual cost of travel, food and lodging reasonably incurred by**

**the judge and, where appropriate to the occasion, by the judge's spouse or guest. Any payment in excess of such an amount is compensation.**

### **Commentary**

The Code does not prohibit a judge from accepting honoraria or speaking fees provided that the compensation is reasonable and commensurate with the task performed. A judge should ensure, however, that no conflicts are created by the arrangement. A judge must not appear to trade on the judicial position for personal advantage. Nor should a judge spend significant time away from court duties to meet speaking or writing commitments for compensation. In addition, the source of the payment must not raise any question of undue influence or the judge's ability or willingness to be impartial.

## **CANON 5**

### **A Judge or Judicial Candidate Shall Refrain From Inappropriate Political Activity**

#### **A. All Judges and Candidates.**

**(1) Except as authorized in Sections 5B(2) and 5C(1), a judge or a candidate\* for election or appointment of judicial office shall not:**

**(a) act as a leader or hold an office in a political organizations;**

**(b) publicly endorse or publicly oppose another candidate for public office;**

**(c) make speeches on behalf of a political organization\*;**

**(d) publicly endorse or seek the endorsement of a political organization; or**

**(e) solicit funds for, pay an assessment to or make a contribution to a political organization or candidate.**

**(2) A judge may attend political gatherings as long as by doing so the judge is not endorsing or seeking the endorsement of a political organization. A judge may speak at political gatherings concerning matters of law, the legal system or the administration of justice.**

## Commentary

The purpose of the Canon is to prohibit judges from engaging in conduct which promotes partisan political activities. The Canon allows judges to attend and observe significant historical events, to participate in patriotic events and to speak at political gatherings concerning matters of the law, the legal system or the administration of justice .

A judge or candidate for judicial office retains the right to participate in the political process as a voter.

Where false information concerning a judicial candidate is made public, a judge or another judicial candidate having knowledge of the facts is not prohibited by Section 5A(1) from making the facts public.

Section 5A(1)(a) does not prohibit a candidate for elective judicial office from retaining during candidacy a public office such as county prosecutor, which is not “an office in a political organization.”

Section 5A(1)(b) does not prohibit a judge or judicial candidate from privately expressing his or her views on judicial candidates or other candidates for public office.

**(3) A judge shall resign from judicial office upon becoming a candidate for a nonjudicial office either in a primary or in a general election.**

**(4) A candidate\* for a judicial office:**

**(a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary, and shall encourage members of the candidate’s family\* to adhere to the same standards of political conduct in support of the candidate as apply to the candidate;**

## Commentary

Although a judicial candidate must encourage members of his or her family to adhere to the same standards of political conduct in support of the candidate that apply to the candidate, family members are free to participate in other political activity.

**(b) shall prohibit employees and officials who serve at the pleasure of the candidate,\* and shall discourage other employees and officials subject to the candidate’s direction and**

**control from doing on the candidate's behalf what the candidate is prohibited from doing under the Sections of this Canon;**

**(c) except to the extent permitted by Section 5C(2), shall not authorize or knowingly\* permit any other person to do for the candidate\* what the candidate is prohibited from doing under the Sections of this Canon;**

**(d) shall not:**

**(i) make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office;**

**(ii) make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court; or**

**(iii) knowingly\* misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent.**

## **Commentary**

Section 5A(3)(d) prohibits a candidate for judicial office from making statements that appear to commit the candidate regarding cases, controversies or issues likely to come before the court. As a corollary, a candidate should emphasize in any public statement the candidate's duty to uphold the law regardless of his or her personal views. See also Section 3B(9), the general rule on public comment by judges. Nor does this Section prohibit an incumbent judge from making private statements to other judges or court personnel in the performance of judicial duties. This Section applies to any statement made in the process of securing judicial office, such as statements to Judicial Council and Governor. See also Rule 8.2 of the Idaho Rules of Professional Conduct.

**(e) may respond to personal attacks or attacks on the candidate's record as long as the response does not violate Section 5A(3)(d).**

## **B. Candidates Seeking Appointment to Judicial Office.**

**(1) A candidate\* for appointment to judicial office shall not solicit or accept funds, personally or through a committee or otherwise, to support his or her candidacy.**

**(2) A candidate\* for appointment to judicial office or a judge seeking other governmental office shall not engage in any political activity to secure the appointment except that:**

**(a) such persons may:**

**(i) communicate with the appointing authority, including any selection or nominating commission or other agency designated to screen candidates;**

**(ii) seek support or endorsement for the appointment from organizations that regularly make recommendations for appointment to the office, and from individuals; and**

**(iii) provide to those specified in Sections 5B(2)(a)(i) and 5B(2)(a)(ii) information as to his or her qualifications for the office;**

### **Commentary**

Section 5B(2) provides a limited exception to the restrictions imposed by Sections 5A(1) and 5D. Under Section 5B(2), candidates seeking reappointment to the same judicial office or appointment to another judicial office or other governmental office may apply for the appointment and seek appropriate support.

### **C. Judges and Candidates Subject to Public Election.**

**(1) A judge or a candidate\* subject to public election\* may, except as prohibited by law\*:**

**(a) when a candidate for election**

**(i) speak to gatherings on his or her own behalf;**

**(ii) appear in newspaper, television and other media advertisements supporting his or her candidacy;**

**(iii) distribute pamphlets and other promotional campaign literature that do not otherwise violate the provisions of this code supporting his or her candidacy; and**

**(iv) publicly advocate or publicly oppose the election of his or her opponent(s).**

### **Commentary**

Section 5C(1) permits judges subject to election at any time to be involved in limited political activity. Section 5D, applicable solely to incumbent judges, would otherwise bar this activity.

**(2) A candidate\* shall not solicit campaign contributions in person. A candidate may establish committees of responsible persons to conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums and other means not prohibited by law. Such committees may solicit and accept reasonable campaign contributions, manage the expenditure of funds for the candidate's campaign and obtain public statements of support for his or her candidacy. Such committees are not prohibited from soliciting and accepting reasonable campaign contributions and public support from lawyers. A candidate's committees may solicit contributions and public support for the candidate's campaign no earlier than [one year] before election and no later than [90] days after the last election in which the candidate participates during the election year. Except as required by law, a candidate's judicial election committee should not disclose the names of contributors to judicial campaigns and judicial candidates and judges should avoid obtaining the names of contributors to the judicial campaign. A candidate shall not use or permit the use of campaign contributions for the private benefit of the candidate or others.**

### **Commentary**

Section 5C(2) permits a candidate, other than a candidate for appointment, to establish campaign committees to solicit and accept public support and reasonable financial contributions. At the start of the campaign, the candidate must instruct his or her campaign committees to solicit or accept only contributions that are reasonable under the circumstances. Campaign contributions of which a judge has knowledge, made by lawyers or others who appear before the judge, may be relevant to disqualification under Section 3E.

Campaign committees established under Section 5C(2) should manage campaign finances responsibly, avoiding deficits that might necessitate post-election fund-raising, to the extent possible.

**D. Incumbent Judges. A judge shall not engage in any political activity except (i) as authorized under any other Section of this Code, or (ii) on behalf of measures to improve the law,\* the legal system or the administration of justice.**

### **Commentary**

Neither Section 5D nor any other section of the Code prohibits a judge in the exercise of administrative functions from engaging in planning and other official activities with members of the executive and legislative branches of government. With

respect to a judge's activity on behalf of measures to improve the law, the legal system and the administration of justice, see Commentary to Section 4B and Section 4C(1) and its Commentary.

**E. Applicability. Canon 5 generally applies to all incumbent judges and judicial candidates.\* A successful candidate, whether or not an incumbent, is subject to judicial discipline for his or her campaign conduct; an unsuccessful candidate who is a lawyer is subject to lawyer discipline for his or her campaign conduct. A lawyer who is a candidate for judicial office is subject to Rule 8.2(b) of the Idaho Model Rules of Professional Conduct.**

## **APPLICATION OF THE CODE OF JUDICIAL CONDUCT**

Anyone who is an officer of the judicial system and who performs judicial functions, including Plan B Senior judges, and members of the Idaho Industrial Commission, are a judge within the meaning of this Code except judges "pro tempore" as appointed pursuant to Section 12, Article 5 of the Idaho Constitution and Idaho Administrative Rule (4). All judges shall comply with this Code except as provided below.

**(1) Judge Pro Tempore. Attorneys who are appointed to act temporarily as Judges.**

**(2) Retired Judges. Retired judges (Plan A Senior judges and Plan B Senior judges who have completed their five year commitment) and judges who have resigned, who are designated to act temporarily as judges should comply with all the provisions of their Code except Canons 4C(2) and (3), 4D, 4E and 4F, and they shall refrain from the practice of law. Persons who have been recalled to act temporarily as judges should not act as lawyers in proceedings in which they have served as judges or in any other proceeding related thereto.**

**F. Time for Compliance. A person to whom this Code becomes applicable shall comply immediately with all provisions of this Code except Sections 4D(3), 4F, 4G, 5C(1) and 5C(2) and shall comply with these Sections as soon as reasonably possible and shall do so in any event within the period of one year.**

### **Commentary**

If serving as a fiduciary when selected as judge, a new judge may, notwithstanding the prohibitions in Section 4E, continue to serve as fiduciary but only for that period of time necessary to avoid serious adverse consequences to the beneficiary of the fiduciary relationship and in no event longer than one year. Similarly, if engaged at the time of judicial selection in a business activity, a new judge may,

notwithstanding the prohibitions in Section 4D(3), continue in that activity for a reasonable period but in no event longer than one year.

## APPENDIX B

### PERTINENT STATUTES AND SUPREME COURT RULES RELATING TO THE MAGISTRATES COMMISSION AND THE APPOINTMENT AND RETENTION OF MAGISTRATE JUDGES

1-2203. DISTRICT MAGISTRATES COMMISSION--MEMBERS. (1) There is hereby established in each judicial district of the state of Idaho a district magistrates commission to be known as the "district magistrates commission of the . . . judicial district," the members of which shall consist of the chairman of the board of county commissioners of each county in the district or member of such board designated by the chairman, the mayors of three (3) municipalities, one (1) of whom shall be from a city of over ten thousand (10,000) population, in the district to be appointed by the governor, two (2) qualified electors residing within the district to be appointed by the governor, the administrative judge of the district or district judge of the district designated by him, and two (2) attorneys nominated by the district bar associations in each district and appointed by the Idaho state bar, and a magistrate judge in the district, to be appointed by the administrative district judge. Temporary attorney members may be nominated in such number as the bar association in each district deems appropriate at any time by the respective district bar association and appointed by the Idaho state bar to fill any temporary attorney member vacancy on the district magistrates commissions. Each of the members shall be over the age of majority and shall be and remain a citizen of the United States, a bona fide resident of the state and district and of good moral character.

(2) Forthwith after making any appointments to such commissions the respective appointing authorities shall duly certify in writing to the administrative director of the courts and to the secretary of state the following facts with respect to each appointee:

- (a) Full name
- (b) Age,
- (c) Residence address,
- (d) If employed, the nature of the appointee's occupation and business address,
- (e) The name of the district magistrates commission to which appointed,
- (f) The date of expiration of term for which appointed,
- (g) Except for the initial appointees under this act, the name of the person the appointee succeeds on the commission, and,
- (h) If a member other than a mayor, magistrate judge or district judge, the appointee's political party.

(3) No member, other than the persons appointed while serving as mayor, county commissioner, magistrate judge or district judge shall hold any city, county or state elective office or be employed by the state or any city or county while a member of the commission.

(4) The two (2) attorney members shall serve for a term of two (2) years and may succeed themselves for two (2) additional terms. The qualified elector member shall serve terms of six (6) years each and may succeed themselves. The mayors shall serve terms of (6) years and may succeed themselves, provided that their terms will end when they cease to hold the office, which entitles them to membership on the commission. The magistrate judge shall serve a two-year term which may be renewed up to a total of six (6) years. Appointments to fill vacancies shall be made by the initial appointing authority for the unexpired term

(5) A vacancy on the commission shall be caused by a voting member dying, resigning,

moving his or her residence outside the district, moving his or her residence to another county and, in the case of mayor, magistrate judge, district judge or county commissioner member, losing his or her status as such official for any reason; Provided, however, that except in the case of death or resignation of a member, the member shall continue to serve until a successor is duly appointed and qualified. A vacancy on the commission shall be caused by an attorney member dying, resigning, moving his or her residence to without the district or being suspended or disbarred from the practice of law. A temporary vacancy shall be caused by an attorney member or a magistrate judge member having been engaged in the practice of law as a partner of an applicant within the last five (5) years or currently practicing law in the same firm as an applicant seeking a magistrate judge's position in the judicial district of the attorney member. It shall be the duty of any member who has become disqualified for any reason promptly to report that fact in writing to the chairman and secretary of the commission. It shall be the duty of the chairman or secretary promptly to report in writing to the appropriate appointing authority, the existence of any vacancy on the commission.

1-2204. DISTRICT MAGISTRATES COMMISSION--MEETINGS--QUORUM--OFFICERS--RULES. The district magistrates commission of each judicial district shall meet initially to organize and transact any necessary business on the second Monday of September, 1977, unless earlier convened, and at such other times as shall be necessary in the discharge of its official duties. The commission shall meet at the times and places determined by the commission or by the chairman after reasonable notice. In addition a meeting may be called by any three (3) of the voting members after reasonable notice. A majority of the voting members of the commission shall constitute a quorum. The commission shall act by affirmative vote of a majority of the voting members present. The commission shall elect a vice-chairman to serve until the 30th day of June of the next succeeding year or until a successor be elected. The trial court administrator shall ordinarily serve as secretary of the commission but a member of the commission may be appointed to do so at the discretion of the administrative district judge, or district judge designee. The commission may adopt rules for the administration of its duties not inconsistent with applicable provisions of law. The secretary shall maintain the official minutes of all meetings of actions taken by the commission.

1-2205. DISTRICT MAGISTRATES COMMISSION--POWERS AND DUTIES. The district magistrates commission shall have the following powers and duties:

(a) To determine the number and location of magistrate judges to be appointed within the judicial district, subject to appropriations by the legislature, pursuant to section 1-2215, Idaho Code; provided, that there shall be at least one (1) resident magistrate judge appointed in each county, except for those counties in which the board of county commissioners, at any time, has adopted by majority vote, without subsequent rescission, a resolution waiving the right to a resident magistrate judge; pursuant to section 31-879, Idaho Code;

(b) To appoint the magistrate judges within the district on a nonpartisan merit basis, except as provided in section 1-2220, Idaho Code;

(c) To conduct studies for the improvement of the administration of justice within the district and to make recommendations for improvements therein to the legislature, the Supreme Court, the district court and such other governmental agencies as may be interested in or affected by such recommendations.

The actions of the commission pursuant to subsections (a) and (b) hereof shall be subject to disapproval by a majority of the district judges in the district within thirty (30) days after written notice to the district judges of the commission's actions, unless such time be extended for good cause by order of the Supreme Court.

1-2206. ~~MAGISTRATES--QUALIFICATIONS--INSTITUTE--EXCEPTIONS--OFFICE APPOINTIVE.~~ (1) A magistrate shall be a qualified elector of the state of Idaho. He shall reside in the county for which he is appointed so long as he serves as magistrate.

(2) No person shall be eligible for appointment to the office of magistrate unless he is a graduate of a high school or has attained the equivalent of a high school education as indicated by the possession of a certificate of equivalency issued by the state department of education based upon the record made on the general education development test and unless he shall have attained the age of thirty (30) years prior to taking office, provided that in addition no person shall be eligible for appointment as an attorney magistrate unless prior to taking office he shall have been admitted to the practice of law for at least five (5) years and is currently licensed to practice law in the state of Idaho.

(3) Magistrates shall not take office for the first time as magistrates until they have attended an institute on the duties and functioning of the magistrate's office to be held under the supervision of the Supreme Court, unless such attendance is waived by the Supreme Court. All magistrates shall be entitled to their actual and necessary expenses while attending institutes. The Supreme Court will establish the institute to which this subsection refers and will provide that the institute be held at such other times and for such other purposes as it deems necessary and may require the attendance of magistrates.

(4) Notwithstanding the provisions of subsection (2) of this section, all magistrates holding office on the effective date [July 1, 1982] of this act shall be eligible for appointment to the office of magistrate and for retention in office pursuant to section 1-2220, Idaho Code.

1-2207. ~~Magistrates--Term--Removal--Vacancies.--~~(1) The term of office of a magistrate shall be four (4) years. The term of office of a magistrate shall begin on the second Monday of January of the odd-numbered year next succeeding his election.

(2) Vacancies in the office of magistrate shall be filled by appointment pursuant to section 1-2205, Idaho Code.

(3) Any magistrate appointed pursuant to section 1-2205, Idaho Code, and subsection (2) of this section, shall exercise the authority of a magistrate from the date of taking office. A magistrate appointed after the effective date of this act may be removed from office within eighteen (18) months of his appointment by majority vote of all the voting members of the district magistrates commission without cause in accordance with procedures to be established by rules of the Supreme Court.

(4) A magistrate may be removed from office before the expiration of the term to which he was appointed or elected as provided by section 1-2103A, Idaho Code.

1-2220. RETENTION OR NONRETENTION OF MAGISTRATE BY VOTE. Any magistrate appointed pursuant to the provisions of section 1-2205, Idaho Code, and section 1-2207(2), Idaho Code, shall stand for office in the first general election next succeeding the expiration of the eighteen (18) month period established pursuant to section 1-2207, Idaho Code. Any magistrate may, not less than sixty (60) days prior to the holding of the general election next

preceding the expiration of his term of office, file in the office of the county clerk of the county for which he is a resident magistrate, accompanied by a filing fee of forty dollars (\$40.00), a declaration of candidacy to succeed himself. If a declaration is not so filed by any magistrate, the vacancy resulting from the expiration of his term of office shall be filled by appointment as herein provided, except that any magistrate who does not file shall be ineligible for appointment within the same judicial district until two (2) years following the expiration of his last term of office have expired. If such a declaration is filed, his name shall be submitted at the next general election to the voters eligible to vote within the county for which he is appointed, on a nonpartisan judicial ballot, without party designation, which shall read:

"Shall Magistrate .... (Here insert the name of the magistrate) of .... (Here insert the name of the county) County of the .... (Here insert the judicial district number) Judicial District be retained in office?" (Here provision is to be made for voting "Yes" or "No.")

The votes shall be canvassed as provided in chapter 12, title 34, Idaho Code.

If a majority of those voting on the question vote against retaining him in office, upon the expiration of his term of office, a vacancy shall exist which shall be filled by appointment as provided in section 1-2205, Idaho Code, except that the magistrate not retained in office shall be ineligible for appointment within the same judicial district until two (2) years following the expiration of his last term of office have expired.

If a majority of those voting on the question vote for retaining him in office, the county clerk shall issue him a certificate of election as provided in section 34-1209, Idaho Code, and said magistrate shall, unless removed for cause, remain in office for an additional term of four (4) years, and at the expiration of each such four (4) year term shall be eligible for retention in office by election in the manner herein prescribed.

#### § 59-401. Loyalty oath -- Form

Before any officer elected or appointed to fill any office created by the laws of the state of Idaho enters upon the duties of his office, he must take and subscribe an oath, to be known as the official oath, which is as follows:

"I do solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States, and the Constitution of the State of Idaho, and that I will faithfully discharge the duties of (insert office) according to the best of my ability."

[59-401, added 1983, ch. 160, sec. 2, p. 463.]

I.C.A.R. 2. Removal of magistrates without cause. (a) Statement of intent. This rule is promulgated by the Idaho Supreme Court pursuant to the authority of section 1-2207(3), Idaho Code, to govern the proceedings for the removal of a magistrate by the magistrates commission during the first eighteen (18) months after the magistrate takes office following appointment. Proceedings for the removal of a magistrate pursuant to this rule are administrative personnel proceedings and shall not be deemed adversary or judicial in nature. Formal rules of evidence shall not apply to any proceeding under this rule. No provision of this rule shall be construed to limit the gathering of necessary information by the district magistrates commission. As used in these rules, "magistrate" refers to the magistrate who is the subject of the personnel review meeting or the removal proceedings.

(b) Time and method of removal. At any time within eighteen (18) months after a magistrate takes office pursuant to appointment, the magistrate may be removed by a majority vote of all of the voting members of the appointing district magistrates commission. A majority vote of a quorum shall not suffice unless it is also a majority of the entire voting membership.

(c) Grounds for removal. A magistrate may be removed pursuant to this rule without cause and without a statement of the reason for removal.

(d) Personnel review meeting. Prior to holding a removal hearing, the district magistrates commission shall hold a personnel review meeting. The purpose of the meeting is to determine if a removal hearing should be held. The personnel review meeting may be called by the district administrative judge, or the judge's designee or by three members of the district magistrates commission upon written application to the administrative judge. Reasonable notice shall be given to all district magistrates commission members but need not be given to the magistrate. The magistrates commission shall set a removal hearing upon demand of three voting members of the commission.

(e) Removal hearing, notice. Action to remove a magistrate may be taken at a regular or special meeting of the district magistrates commission upon no less than fourteen (14) days' written notice to all members of the district magistrates commission and the magistrate. Notice to the magistrate shall be by personal service or in such manner as prescribed by the administrative judge. Proof of service shall be lodged with the administrative judge. Such notice shall inform the magistrate that the purpose of the meeting is to consider the magistrate's removal pursuant to section 1-2207, Idaho Code, and that the magistrate may attend such portion of the meeting as permitted by the commission. Notice to the members of the district magistrates commission shall be given by regular mail or personal delivery and shall inform the member that the purpose of the meeting will be to consider the removal of the named magistrate and that action for removal can be taken only by majority vote of all the voting members of the district magistrates commission. The commission may permit the magistrate to testify and produce evidence. Procedural conduct of the meeting shall be determined by a majority vote of the voting members present.

(f) Confidentiality, records. All proceedings for the removal of a magistrate shall be closed to the public and confidential. The records of any removal proceeding are confidential and exempt from public access as provided in Rule 32(d), I.C.A.R.

(g) Subpoena power. There shall be no subpoena power available for proceedings under this rule.

(h) Order of removal. If the district magistrates commission determines that the magistrate should be removed, it shall issue a written order of removal, signed by the chairman of the commission, and shall have the order personally served on the magistrate or mailed to the magistrate by certified mail at the magistrate's judicial chambers or home address. Such order shall provide that the date of termination is effective immediately. The order shall be filed with the clerk of the district court. The administrative judge shall cause a copy to be mailed to the Administrative Office of the Courts.

(i) Removal for cause. Nothing contained in this rule shall be deemed to limit the authority of the Judicial Council and the Supreme Court to take action to remove a magistrate for cause pursuant to Section 1-2103A, Idaho Code.

I.C.A.R. 3. Discipline and removal of magistrates. The discipline or removal of a magistrate shall be done by the Supreme Court on recommendation of the Judicial Council

pursuant to Section 1-2103A, Idaho Code.

I.C.A.R. 32(g). Court records exempt from disclosure. Except as provided in paragraph (h) of this rule, court records specified below are confidential and are exempt from disclosure:

. . . . (25) All records and records of proceedings, except the identity of applicants for appointment to judicial office, of the Idaho Judicial Council or any District Magistrates Commission pertaining to the appointment, performance, removal, disability, retirement or disciplining of magistrates, judges or justices. Provided, however, that the record of a disciplinary proceeding filed by the Judicial Council in the Supreme Court loses its confidential character upon filing;

## APPENDIX C

### MAGISTRATES COMMISSION FORMS

<b><u>FORM NUMBER:</u></b>		<b><u>PAGE</u></b>
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<b>3</b>	<b>Applicant Reference Verification Letter</b>	<b>81</b>
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<b>11</b>	<b>Magistrates Commission Member Data Sheet</b>	<b>95</b>

**Individual Notice of  
Vacancy to Lawyers**

**MAGISTRATE JUDGE VACANCY  
JUDICIAL DISTRICT, COUNTY**

The Magistrate Commission of the \_\_\_\_\_ Judicial District is seeking applicants for one position of Magistrate Judge for \_\_\_\_\_ County.

An attorney who has attained the age of thirty years, has been admitted to the practice of law at least five years, and is currently licensed to practice law in the State of Idaho is eligible to submit an application for the vacancy. A magistrate judge shall also be a qualified elector of the State of Idaho and, after appointment, reside in the county for which the magistrate judge is appointed. The appointee may be assigned to hear cases throughout the judicial district and may also be assigned outside of the district by the Idaho Supreme Court. Salary is \$\_\_\_\_\_ - \$\_\_\_\_\_ per year, plus State benefits. Application forms are available from:

\_\_\_\_\_, Trial Court Administrator, \_\_\_\_\_ Judicial District  
\_\_\_\_\_, \_\_\_\_\_, Idaho \_\_\_\_\_  
Phone: (208) \_\_\_\_\_-\_\_\_\_\_  
E-mail Address: \_\_\_\_\_  
Court's Web Site: \_\_\_\_\_

All application materials for this position must be received by the Trial Court Administrator of the \_\_\_\_\_ Judicial District at the address listed above no later than 5:00 p.m. \_\_\_\_\_, 20\_\_\_. Do not attach writing samples or any other documents not specifically required by this application.

Late applications will not be accepted. Applications will not be accepted by FAX or e-mail. Please indicate on the top of the application the county for which you are submitting your application.

The State of Idaho is an equal opportunity employer and its employment practices conform to the requirements outlined in Title I and Title II of the Americans with Disabilities Act.



- 5. Telephone Number: Home \_\_\_\_\_ Business \_\_\_\_\_
- 6. If appointed to the magistrate judge position, will you be at least thirty (30) years of age at the time you assume the position? ( ) Yes ( ) No
- 7. Are you a U.S. Citizen? ( ) Yes ( ) No
- 8. Do you have the ability to travel? ( ) Yes ( ) No

**II. EDUCATION**

9. Name of colleges or universities attended:

<u>School and Location</u>	<u>Dates Attended</u>	<u>Degree</u>	<u>Year Degree Rec'd.</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

A. Chief undergraduate college subjects: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

B. Chief graduate college subjects: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

C. State major field of study at highest level of college work: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

D. List other schools or training (for example: trade, vocational, Armed Forces or business) and give for each the name and location of school, dates attended, subjects studied, certificates and any other pertinent date:

- (a) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- (b) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- (c) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- (d) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**III. MILITARY**

10. Are you presently serving or have you ever served in the Armed Forces of the United States? ( ) Yes ( ) No

11. If YES, attach a detailed statement including:

- (a) branch of service;
- (b) serial number;
- (c) rank;
- (d) inclusive dates of your service;
- (e) type of discharge (A less than honorable or general discharge is not an absolute bar to appointment, and other factors will affect a final decision to appoint. A medical discharge will not weigh against applicant.);
- (f) whether or not you were ever convicted by a court-martial or subjected to punishment under article 15 of the Uniform Code of Military Justice (If yes, give complete details.);
- (g) if discharged, attach a copy of your discharge or separation papers. Do not attach a discharge or separation based on medical reasons.

**IV. EMPLOYMENT**

12. What is your present occupation? \_\_\_\_\_

13. List below your complete work history for the past fifteen (15) years, starting with your present position and working backward to your first employment. List any periods of unemployment. All of your time must be accounted for.

A. \_\_\_\_\_

Date of Employment (From/To)	Place of Employment
Exact Title of Position	Type of Business (Mnfg., Acct., Ins., etc.)
Address of Employment	City State ZIP
Phone Number	Type and Number of Employees you Supervised
Name, Title and Address of Immediate Supervisor	
Description of Work: _____	
Reason for Leaving: _____	

B. \_\_\_\_\_

Date of Employment (From/To)	Place of Employment
Exact Title of Position	Type of Business (Mnfg., Acct., Ins., etc.)
Address of Employment	City State ZIP
Phone Number	Type and Number of Employees you Supervised
Name, Title and Address of Immediate Supervisor	
Description of Work: _____	
Reason for Leaving: _____	

C. \_\_\_\_\_  
Date of Employment (From/To) Place of Employment

\_\_\_\_\_

Exact Title of Position Type of Business (Mnfg., Acct., Ins., etc.)

\_\_\_\_\_

Address of Employment City State ZIP

\_\_\_\_\_

Phone Number Type and Number of Employees you Supervised

\_\_\_\_\_

Name, Title and Address of Immediate Supervisor

Description of Work: \_\_\_\_\_

\_\_\_\_\_

Reason for Leaving: \_\_\_\_\_

\_\_\_\_\_

D. \_\_\_\_\_  
Date of Employment (From/To) Place of Employment

\_\_\_\_\_

Exact Title of Position Type of Business (Mnfg., Acct., Ins., etc.)

\_\_\_\_\_

Address of Employment City State ZIP

\_\_\_\_\_

Phone Number Type and Number of Employees you Supervised

\_\_\_\_\_

Name, Title and Address of Immediate Supervisor

Description of Work: \_\_\_\_\_

\_\_\_\_\_

Reason for Leaving: \_\_\_\_\_

\_\_\_\_\_

E. \_\_\_\_\_  
Date of Employment (From/To) Place of Employment

\_\_\_\_\_   
Exact Title of Position Type of Business (Mnfg., Acct., Ins., etc.)

\_\_\_\_\_   
Address of Employment City State ZIP

\_\_\_\_\_   
Phone Number Type and Number of Employees you Supervised

\_\_\_\_\_   
Name, Title and Address of Immediate Supervisor

Description of Work: \_\_\_\_\_  
\_\_\_\_\_

Reason for Leaving: \_\_\_\_\_  
\_\_\_\_\_

F. \_\_\_\_\_  
Date of Employment (From/To) Place of Employment

\_\_\_\_\_   
Exact Title of Position Type of Business (Mnfg., Acct., Ins., etc.)

\_\_\_\_\_   
Address of Employment City State ZIP

\_\_\_\_\_   
Phone Number Type and Number of Employees you Supervised

\_\_\_\_\_   
Name, Title and Address of Immediate Supervisor

Description of Work: \_\_\_\_\_  
\_\_\_\_\_

Reason for Leaving: \_\_\_\_\_  
\_\_\_\_\_

14. Have you ever been discharged (fired) from employment for any reason?  
( ) Yes ( ) No

15. Have you ever resigned after being informed that your employer intended to discharge you for any reason?  
( ) Yes ( ) No

16. Were you ever subjected to disciplinary action in connection with any employment?  
( ) Yes ( ) No

17. If your answer to item 14, 15, or 16 is YES, give details showing the name and address of employment, approximate date, and reasons in such case. This information should agree with statements made regarding experience.

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**V. HEALTH**

18. Does the state of your health permit you to perform job-related functions with or without accommodation? ( ) Yes ( ) No

19. Would you agree to comply with all state, city and county policies regarding smoking? ( ) Yes ( ) No

*I hereby certify that the information given herein is true and complete to the best of my knowledge and belief. I agree that if I am selected for this position, I will authorize any clinic, physician, surgeon, or other practitioner mentioned herein to furnish to the District Magistrates Commission a complete transcript of my medical record for the purpose of evaluating my qualifications for employment within the Idaho Judiciary.*

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Signature

**VI. GENERAL BACKGROUND**

20. Have you ever plead guilty or been found guilty of any federal law, state law, county or municipal law, regulation or ordinance? If so, please give details. Do not include traffic violations for which a fine of \$50.00 or less was imposed.

DATE	LOCATION	VIOLATION (Actual Charge)	COURT DISPOSITION OF SENTENCE	POLICE AGENCY INVOLVED

21. Do you have a valid motor vehicle operator's license?      ( ) Yes    ( ) No

22. If so, list your driver's license number, state, and expiration date: \_\_\_\_\_

\_\_\_\_\_

23. If you are now an officer or director of any business organization or otherwise engaged in the management of any business enterprise, please give details, including the name of the enterprise, the nature of the business, the title of your position, the nature of your duties, and the term of your service. If it is not your intention to resign such positions and give up any other participation in the management of any of the foregoing enterprises, please so state, giving reasons.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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24. Have you ever held judicial office? If so, give the details, including the court involved, whether elected or appointed, and the periods of service.

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25. Have you ever held public office other than a judicial office, or have you ever been a candidate for such an office? If so, give the details, including the office involved, whether elected or appointed, and the length of your service.

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26. List any honors, prizes, or other forms of recognition that you have received.

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27. List all courts in which you are presently admitted to practice, including the dates of admission in each case. Give the same information for administrative bodies having special admission requirements.

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28. Are you actively engaged in the practice of law at the present time? If you are connected with a law firm, corporate law department, or a governmental agency, please state its name and indicate the nature and duration of your relationship.

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29. If in the past you have practiced in other localities or have been connected with other law firms, corporate law departments, or governmental agencies, please give the particulars, including the locations, the names of the firms, corporate law departments, or agencies, and your relationship thereto, and the relevant dates. Also indicate any period in the past during which you practiced alone.

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30. What is the general nature of your practice? Indicate the nature of your typical clients and mention any legal specialties that you possess. If the nature of your practice has been substantially different at any time in the past, give the details, including the nature of such and the periods involved.

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31. What percentage of your practice involves court appearances? \_\_\_\_\_%

32. What percentage of your court appearances in the last five (5) years was in:

(a) Federal Courts \_\_\_\_\_%

(b) State Courts of Record \_\_\_\_\_%

(c) Other Courts \_\_\_\_\_%

33. What percentage of your litigation in the last five (5) years was:

(a) Civil \_\_\_\_\_%      Approximate number of Jury Trials \_\_\_\_\_

(b) Criminal \_\_\_\_\_%      Approximate number of Jury Trials \_\_\_\_\_

34. Have you ever been engaged in any occupation, business, or profession other than the practice of law? If so, please give the details, including dates.

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35. Have you ever been a party or otherwise involved in any other legal proceedings? If so, give the particulars. Do not list proceedings in which you were merely a guardian ad litem, a witness, or stockholder. Include all legal proceedings in which you were a party in interest, were named as a co-conspirator or a co-respondent, and any grand jury investigation in which you figured as a subject.

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36. Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct by, or been the subject of a complaint to, any court, administrative agency, bar association, disciplinary committee, or other professional group? If so, please give the particulars.

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37. Have you ever published any legal books or articles? If so, please list them, giving the citations and dates.

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38. List all bar associations and professional societies of which you are a member, and give the titles and dates of any offices that you have held in such groups. Also list committees in bar associations and professional societies and memberships on any committees that you believe to be of particular significance (i.e., judicial selection committee, committee of censors, grievance committee) or for which you served as the chairperson.

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**VII. REFERENCES**

39. List any persons (at least four (4) of whom are lawyers) living in the United States or territories of the United States who are NOT RELATED TO YOU AND WHO HAVE DEFINITE KNOWLEDGE of your qualifications and fitness for the position for which you are applying. Do not repeat names of supervisors listed under the Employment Section.

A. \_\_\_\_\_  
 Complete Name Occupation Years Known

\_\_\_\_\_ Home Address

\_\_\_\_\_ City State ZIP Phone Number

B. \_\_\_\_\_  
 Complete Name Occupation Years Known

\_\_\_\_\_ Home Address

\_\_\_\_\_ City State ZIP Phone Number

C. \_\_\_\_\_  
 Complete Name Occupation Years Known

\_\_\_\_\_ Home Address

\_\_\_\_\_ City State ZIP Phone Number

D. \_\_\_\_\_  
 Complete Name Occupation Years Known

\_\_\_\_\_ Home Address

\_\_\_\_\_ City State ZIP Phone Number

The applicant, being sworn, having read the foregoing, says that the responses to the foregoing questions, and information contained on any attached materials, are true and complete to the best of my knowledge. I have not withheld any information that would be significant to the Magistrates Commission in evaluating my fitness for the judicial office for which I have applied. I have met, or will timely meet, any residency requirements or other legal requisites for such judicial office. I understand that any misstatement or omission in respect to any material fact which would in any way affect my eligibility for appointment or employment will subject me to immediate disqualification from further processing of this application or, if appointed as a magistrate judge with the state of Idaho, to immediate dismissal. I further expressly authorize the Magistrates Commission to inquire of the Idaho State Bar regarding disciplinary matters involving me, the U.S. Armed Forces or state national guard regarding my general service record, including performance evaluations, and the Idaho State Tax Commission to verify that income tax returns have been filed and the status of any investigations conducted by the Tax Commission. I hereby waive any confidentiality, privilege or other restrictions involving the release of the above information about me by those organizations, and to verify any other statements made in this application or in any examinations or interviews conducted relative to this application, including but not limited to criminal arrest and/or conviction information. I further expressly authorize the release of any university or law school transcripts, and waive any privilege or confidentiality or other restrictions involving the release of such transcripts. By submitting this application, I agree and understand that if I am offered and accept the position of Magistrate Judge, I may be assigned by the Idaho Supreme Court, Administrative District Judge or the Trial Court Administrator of this District to preside over and dispose of cases outside of the county for which I am appointed.

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Signature

STATE OF IDAHO     )  
COUNTY OF \_\_\_\_\_ )

ss.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

Residing at: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**Notice:** If you are offered this magistrate judge position, you may be required to provide information regarding your place of birth, credit history and medical history. Further, a security investigation of you will be made.

**ADDITIONAL PERSONAL DATA**

Note: This information is gathered for the sole purpose of obtaining a criminal history background check, and for identification purposes in conducting complete background checks on the applicant. The information on this page will not be disclosed to the Magistrate Commission.

Your Current Name: \_\_\_\_\_  
(As Listed on Page 1 of Application)

List any other names you have ever used:	Date of Name Change:
_____	_____
_____	_____
_____	_____
_____	_____

Your Date of Birth: \_\_\_\_\_

Your Social Security Number: \_\_\_\_\_

**FORM 3**

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear \_\_\_\_\_:

\_\_\_\_\_(Name) has submitted an application for the position of Attorney Magistrate in \_\_\_\_\_ County, Idaho, and has listed you as a reference.

The Magistrate Commission of the \_\_\_\_\_ Judicial District has requested that I contact you to obtain your opinion concerning his/her qualifications for this office.

I would appreciate having your response no later than \_\_\_\_\_(date)\_\_\_\_\_.

Yours very truly,

District Trial Court Administrator

**ATTORNEY QUESTIONNAIRE ON QUALIFICATION OF  
APPLICANTS FOR APPOINTMENT AS MAGISTRATE OF  
THE \_\_\_\_\_ JUDICIAL DISTRICT**

Pursuant to Idaho Code §1-2205(b), the Magistrates Commission of the \_\_\_\_\_ Judicial District is reviewing applications for appointment to fill the attorney magistrate judge vacancy in the \_\_\_\_\_ Judicial District, with residence in \_\_\_\_\_ County. The Commission requests your assistance in discharging its statutory responsibilities.

In order to assure proper evaluation of your response, please do the following before starting on the questionnaire:

1. Please print your name and address: \_\_\_\_\_

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2. Please sign your name: \_\_\_\_\_

This cover sheet will be detached from the completed questionnaire by court administrative staff. The confidentiality of your response will be protected.

Complete this questionnaire only with respect to individuals whom you know sufficiently well, based upon personal contact and/or professional experience, to render a sound and informed opinion. The pattern of responses for each applicant, rather than the quantity of responses, will be the focus of the Magistrates Commission's review. (If you have additional remarks, write them on the back of the questionnaire. They will be read and discussed.)

The full names and addresses of the applicants are attached to the questionnaire itself. Select those on whom you will respond and then complete the questionnaire. When you are finished, please mail the questionnaire and cover sheet so that it is received no later than \_\_\_\_\_, to:

Magistrate Qualifications Questionnaire  
Idaho Supreme Court  
P. O. Box 83720  
Boise, ID 83720-0101

ATTORNEY’S QUESTIONNAIRE  
REGARDING APPLICANTS FOR THE POSITION OF  
MAGISTRATE JUDGE

FOR \_\_\_\_\_ COUNTY, \_\_\_\_\_ JUDICIAL DISTRICT

INSTRUCTIONS:

Please rank each applicant on a scale of 0 to 4 in each category. a ranking of 4 is highly laudatory; 3 is above average; 2 is average; 1 is below average; and 0 is severely derogatory, requiring further explanation. If you do not know how to respond on a particular point, leave it blank. Lack of response will neither aid nor hinder an applicant. A response of “NO” to the question of whether you consider the applicant qualified for the position also requires a further explanation.

APPLICANT’S NAME	INTEGRITY AND MORAL COURAGE	LEGAL ABILITY AND EXPERIENCE	WISDOM	INTELLIGENCE	CAPACITY TO BE FAIR-MINDED AND DELIBERATE	INDUSTRIOUSNESS & PROMPTNESS IN PERFORMING DUTIES	COMPATIBILITY OF PERSONAL HABITS AND OUTSIDE ACTIVITIES WITH JUDICIAL OFFICES	CAPACITY TO BE COURTEOUS AND CONSIDERATE ON THE BENCH	LEGAL RESEARCH AND WRITING	DO YOU CONSIDER THIS PERSON “QUALIFIED” FOR THE POSITION? INDICATE BY “YES” OR “NO”	
										Yes	No

Explanation or Comments:

# The State of Idaho Supreme Court



P.O. Box

83720-0101

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**TO:** District Magistrate Commission Members

**DATE:** October 31, 2007

**RE:** Summary of Responses Received  
Idaho State Bar Questionnaire

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Pursuant to Idaho Code § 1-2205(b) the District Magistrate Commission reviews applications for appointment to fill magistrate judge vacancies in all counties. Each Commission requests the assistance of all lawyers in discharging its statutory responsibilities. Lawyers statewide are asked to complete a standard questionnaire only with respect to individuals whom they know sufficiently well based upon personal contact and/or professional experience to render a sound and informed opinion. The pattern of responses for each applicant rather than the quantity of responses or a numerical ranking is the focus of the magistrate commission's review. Attorneys are also requested to provide additional remarks. Separate questionnaires are also available from district court clerk offices which allow members of the public who might wish to do so to comment on applicants. Such questionnaires are not "ballots" and require a statement of the relationship to the applicant or the basis upon which any public comments are made. All comments must be based on personal experience with the applicant.

Each member of the Bar is asked to rank each applicant on a scale of 0 to 4 in each category. A ranking of 4 is highly laudatory, 3 is above average, 2 is average and 1 is below average, 0 is severely derogatory, requiring further explanation. If an attorney does not know how to respond on a particular point, he or she leaves it blank. The lack of response neither aids nor hinders an applicant. A response of "no" to the question of whether an applicant is considered qualified for the position also requires an explanation.

Over time, Magistrate Commission Members have determined the qualifications, skills, and experience which are the most important in selecting a magistrate judge. A list of the individual qualifications generally examined are (1) integrity and moral courage; (2) legal ability and experience; (3) wisdom; (4) intelligence; (5) capacity to be fair-minded and deliberate; (6) industriousness and promptness in performing duties; (7) compatibility of personal habits with judicial office; (8) capacity to be courteous and considerate on the bench; and (9) legal research and writing. All members of the Bar are also asked to respond, if they know the applicant, whether they consider the person qualified for this magistrate judge position with a yes or no response.

Additional qualifications for magistrate judges may include awareness of recent legal developments, management abilities, patience and tolerance, listening skills, courtesy, willingness to travel within the district and across the state to hear cases, compassion, independence from public and political influence,

and ability to preside over and interest in problem-solving courts and other innovative court programs.

District Magistrate Commissions may adopt a process, subject to standards of fairness, equal opportunity and merit selection whereby the total number of applicants for a vacant position is reduced to a list of finalists for purposes of receiving an interview by the Magistrate Commission. District Magistrate Commission Members may give whatever weight is appropriate to the summary of responses compiled in the screening for a potential abbreviated list of applicants or during the interview process.

### **Limitations of the Idaho State Bar Questionnaires**

The purpose of the Idaho State Bar questionnaire is to provide all members of the Bar an opportunity to comment on potential applicants for magistrate judge positions and to provide the District Magistrate Commission with those comments for whatever weight the Commission may believe appropriate.

The Bar questionnaire is not intended to represent the views of the entire Bar, nor is it intended to be a valid statistical tool. With the relatively low return rate of responses to the Bar questionnaire, the District Magistrate Commission should not believe that the summary of responses portrays how the entire population (all lawyers in Idaho) evaluate a candidate. The summary of responses is indicative of only those that returned the questionnaire. While it is useful to know, it does not represent what all members of the Bar may think of an individual applicant. The numerical rankings, in particular, only provide an indication of the strength of the response but should not be used to differentiate the candidates. In general, this means that someone who may have received a 3.5 on one of the measures was generally rated higher than someone who scored a 2.5 on the same measure. The use of numbers to differentiate rankings should only be used in a very general way.

We hope this Summary of Responses is helpful to you. The Administrative District Judge, as ex-officio chair of the District Magistrate Commission, and the District Trial Court Administration can provide you additional information about their experience with the standard questionnaires. Thank you so much for your important contributions to the selection of magistrate judges.

PT/st

T:\S\Throop\Letters\CJ-EISMANN\ISB Summary of Responses - ISB Questionnaires - new format.doc

**PUBLIC ANNOUNCEMENT OF MAGISTRATE JUDGE APPLICANTS**

The \_\_\_\_\_ Judicial District Magistrate Commission will meet \_\_\_\_\_ to select an attorney magistrate to replace \_\_\_\_\_ in \_\_\_\_\_ County.

\_\_\_\_\_, who will retire to private practice at the end of \_\_\_\_\_, has served as a magistrate since \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_ applicants are being considered.

From \_\_\_\_\_ are: (Name) \_\_\_\_\_.

From outside of \_\_\_\_\_ are: (Name and place of residence) \_\_\_\_\_.

Evaluation questionnaires on the applicants will be sent to attorneys statewide. Questionnaires for public comment may be obtained from the \_\_\_\_\_ clerk of the district court, (address) \_\_\_\_\_, telephone number \_\_\_\_\_, or at the district trial court administrator's office, (address and telephone number) \_\_\_\_\_.

Evaluations should be returned to the trial court administrator's office no later than \_\_\_\_\_.

**COVER SHEET**  
**PUBLIC QUESTIONNAIRE ON QUALIFICATIONS OF**  
**APPLICANTS FOR APPOINTMENT AS MAGISTRATE JUDGE OF**  
**THE \_\_\_\_\_ JUDICIAL DISTRICT**

Pursuant to Idaho Code Sec. 1-2102(3), the Magistrates Commission is reviewing applicants to fill the position of resident Magistrate Judge for \_\_\_\_\_ County). The Commission requests your assistance in discharging its statutory responsibilities.

In order to assure proper evaluation of your response, please do the following before starting on the questionnaire:

1. Please print your name and address: \_\_\_\_\_

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2. Please sign your name: \_\_\_\_\_

This cover sheet will be detached from the completed questionnaire. The confidentiality of your responses will be protected.

Complete this questionnaire only with respect to individuals whom you know sufficiently well, based upon personal contact and/or professional experience, to render a sound and informed opinion. The pattern of responses for each applicant, rather than the quantity of responses, will be the focus of the Magistrates Commission's review. (If you have additional remarks, write them on the back of the questionnaire. They will be read and discussed.)

The names and occupations of the applicants are attached to the questionnaire itself. Select those on whom you will respond and then complete the questionnaire. When you are finished, please mail the questionnaire and cover sheet to:

Your comments must be received no later than \_\_\_\_\_, in order to be considered. Thank you for your assistance.



## PUBLIC QUESTIONNAIRE

Instructions: For each magistrate judge on whom you wish to comment, please state briefly: (a) in what connection you know the magistrate judge, and (b) information you believe the District Magistrates Commission should have about the magistrate judge's qualifications. The areas most important to the Council are each magistrate judge's integrity and moral courage, legal ability, legal experience, intelligence and wisdom, capacity to be fair-minded and deliberate, industriousness and promptness in performing duties, compatibility of personal habits and outside activities with judicial office, and capacity to be courteous and considerate on the bench. Please continue on the back of this page if you need more space.

LAST NAME OF MAGISTRATE JUDGE ON WHOM YOU ARE COMMENTING	CONNECTION IN WHICH MAGISTRATE JUDGE IS KNOWN	INFORMATION ABOUT QUALIFICATIONS
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	<hr/>	<hr/>
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**QUESTIONNAIRE ON PERFORMANCE OF RECENT APPOINTEES**

**AS MAGISTRATE JUDGE OF THE \_\_\_\_\_ JUDICIAL DISTRICT**

Pursuant to I.C. § 1-2207(3), the Magistrates Commission of the \_\_\_\_\_ Judicial District is reviewing the performance of recent appointees to the position of magistrate judge. The Magistrates Commission requests your assistance in discharging its statutory responsibilities.

In order to assure proper evaluation of your responses, please do the following before starting on the questionnaire:

1. Please print your name and address: \_\_\_\_\_  
\_\_\_\_\_
2. Please sign your name: \_\_\_\_\_

This cover sheet will be detached from the completed questionnaire by the Magistrates Commission staff. The confidentiality of your responses will be protected.

Complete this questionnaire only with respect to judges whom you know sufficiently well, based upon personal contact and/or professional experience, to render a sound and informed opinion. The pattern of responses for each applicant, rather than the quantity of responses, will be the focus of the Magistrates Commission's review. (If you have additional remarks, write them on the back of the questionnaire. They will be read and discussed.)

The names of the judges subject to this evaluation are contained in each of the questionnaires. When you are finished, please mail the questionnaires and the cover sheet to:

Thank you for your assistance.

\_\_\_\_\_  
Trial Court Administrator

\_\_\_\_\_  
\_\_\_\_\_

They must be received by the Trial Court Administrator no later than \_\_\_\_\_.

**MAGISTRATES COMMISSION QUESTIONNAIRE**  
**PERFORMANCE APPRAISAL**

INSTRUCTIONS: Please rank each judge on a scale of 0 to 4 in each category.

- 4 = Highly Laudatory
- 3 = Above Average
- 2 = Average
- 1 = Below Average
- 0 = Severely Derogatory and requires further explanation

If you do not know how to respond to a particular point, leave it blank. Lack of response will neither aid nor hinder the appraisal.

REGARDING MAGISTRATE JUDGE:

- Integrity and moral courage \_\_\_\_\_
- Legal ability and experience \_\_\_\_\_
- Intelligence \_\_\_\_\_
- Wisdom \_\_\_\_\_
- Capacity to be fair-minded and deliberate \_\_\_\_\_
- Industriousness and promptness in performing duties \_\_\_\_\_
- Compatibility of personal habits and outside activities with judicial office \_\_\_\_\_
- Capacity to be courteous and considerate on the bench \_\_\_\_\_
- Legal research and writing \_\_\_\_\_
- Administrative skills \_\_\_\_\_

BEFORE THE DISTRICT MAGISTRATES COMMISSION OF  
THE \_\_\_\_\_ JUDICIAL DISTRICT OF  
THE STATE OF IDAHO

RE: APPOINTMENT OF )  
MAGISTRATE JUDGE ) NOTICE OF APPOINTMENT  
)

Pursuant to Idaho Code §§ 1-2205 and 1-2207;

The District Magistrate Commission of the \_\_\_\_\_ Judicial District hereby appoints:

[Appointee's Name]

to the office of Magistrate Judge for the county of:

[Name of County]

The effective date of this appointment is:

[Starting Date]

DATED:

\_\_\_\_\_  
[Name of Administrative District Judge], Chair  
Administrative District Judge  
for the \_\_\_\_\_ Judicial District

BEFORE THE MAGISTRATE COMMISSION OF THE  
\_\_\_\_\_ JUDICIAL DISTRICT OF  
THE STATE OF IDAHO

RE: APPOINTMENT OF )  
MAGISTRATE JUDGE ) NOTICE OF MAGISTRATE  
 ) COMMISSION ACTION  
 )

TO: THE HONORABLE \_\_\_\_\_, DISTRICT JUDGE OF THE  
\_\_\_\_\_ JUDICIAL DISTRICT OF THE STATE OF IDAHO.

Pursuant to Idaho Code § 1-2205, please take notice that the District Magistrates Commission of the \_\_\_\_\_ Judicial District has appointed \_\_\_\_\_ as magistrate judge for the county of \_\_\_\_\_.

A copy of the Commission's appointment is attached hereto.

Dated: \_\_\_\_\_

\_\_\_\_\_  
[Name of Administrative District Judge], Chair  
Administrative District Judge  
for the \_\_\_\_\_ Judicial District

To: Idaho Supreme Court  
Supreme Court Building  
451 West State Street  
Boise, Idaho 83720  
(208) 334-2246

From: \_\_\_\_\_  
Judicial District  
, Idaho

NOTICE OF VACANCY  
ON DISTRICT MAGISTRATES COMMISSION

The following vacancy has occurred in the \_\_\_\_\_ Judicial District  
Magistrates Commission.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Representing:

- Mayor of city with population over 10,000 (\_\_\_\_\_)
- Mayor of city (\_\_\_\_\_)
- Elector
- Attorney

Reason for vacancy: (Check applicable reason)

- Death
- Resignation
- Moving residence out of district
- Moving residence to another county
- Loss of official status (for county commissioner or mayor)
- Expiration of term--date of expiration \_\_\_\_\_

For attorney member: (Check applicable reason)

- Death
- Resignation
- Moving out of judicial district
- Suspension or disbarment from practice of law
- Expiration of term--date of expiration \_\_\_\_\_

Date of vacancy: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

DATE: \_\_\_\_\_

**MAGISTRATES COMMISSION MEMBER DATA SHEET**

Appointed to \_\_\_\_\_ District Magistrates Commission

Name: \_\_\_\_\_  
(Last) (First) (Middle)

Birth Date: \_\_\_\_\_ Social Security Number: \_\_\_\_\_

Home Address: \_\_\_\_\_  
(Street/P.O. Box) (City) (State) (Zip)

Business Phone: \_\_\_\_\_ Home Phone: \_\_\_\_\_

Email Address \_\_\_\_\_

Term From: \_\_\_\_\_ To: \_\_\_\_\_

Succeeding: \_\_\_\_\_

Member is:

Attorney From: \_\_\_\_\_ County Commissioner From: \_\_\_\_\_  
(County) (County)

Mayor From: \_\_\_\_\_ Private Elector From: \_\_\_\_\_  
(City) (County)

If a voting member (other than a mayor or district judge), member's political party: \_\_\_\_\_

Signed \_\_\_\_\_

Please send a copy of this document to the Administrative Director of the Courts at the Supreme Court building, P.O. Box 83720, Boise, ID 83720-0101. Also, whenever practicable, please attach a copy of the actual appointment document.