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JUN 28 2018

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The Board of Commissioners of the Idaho State Bar's Report in Response to Executive Order No. 2017-06

The Board of Commissioners of the Idaho State Bar ("Idaho State Bar"), a self-governing agency with statutory and regulatory authority to issue licenses to practice law in Idaho, respectfully submits this report.

1.a. the timeframe for final action either approving or denying a complete application for issuance of an Idaho law license.

Most applicants for an Idaho law license are required to take the Idaho bar exam. The Idaho bar exam is administered during the final week of February and July each year. Approval means once a completed application is received, applicants are advised of their eligibility to sit for the Idaho bar exam. That approval averages 30 days from submission of a completed application. That approval process includes the character and fitness review discussed further below. It takes approximately 60 to 90 days to process reciprocal applications for admission from attorneys licensed in other states who are not required to take the Idaho bar exam.

The bar exams are graded and results are released within six weeks of administration of the exams. Idaho administers the Uniform Bar Examination, which has been adopted by 32 states and tests fundamental legal principles.

1.b. review of requirements that are prerequisites for the issuance of an Idaho law license and suggestions on requirements that can be eliminated.

Idaho Code §§ 3-101 and 3-408 provide the statutory authority for the Board of Commissioners of the Idaho State Bar to determine the qualifications and requirements for admission to practice law in Idaho, including conducting an investigation and examination of each applicant. Idaho Bar Commission Rule (I.B.C.R.) 202 sets forth the qualifications for admission to practice law in Idaho. An applicant for an Idaho law license must: 1) be at least 18 years of age; 2) be lawfully admitted to this country; 3) have earned a juris doctorate degree from a law school approved or provisionally approved by the American Bar Association; 4) possess the essential eligibility requirements to practice law set forth in I.B.C.R. 201 and meet all requirements of the admissions rules; and 5) be a person of good moral character.

To be issued an active license to practice law, the applicant must pass the bar exam and must pass the character and fitness review, which is further addressed in part 1.d. below.

The Idaho Bar Commission Rules governing admission to practice law in Idaho are reviewed annually. Consideration is given to model rules adopted by the American Bar Association and best practices encouraged by the National Conference of Bar Examiners, as well

as criticism and feedback from Idaho State Bar membership. Changes are made to individual rules pursuant to the resolution process, which involves voting on any proposed rule changes by members of the Idaho State Bar under I.B.C.R. 906, and upon approval by the membership, adoption by order of the Idaho Supreme Court. At this time, the Idaho State Bar does not believe that any of these requirements should be eliminated, but an applicant may petition the Idaho Supreme Court to waive any of the requirements for admission. The most common requirement that is the subject of such petitions is the requirement that an applicant earn a juris doctorate degree from a law school approved or provisionally approved by the American Bar Association, which is further addressed in part 1.d below.

1.c. review of renewal requirements and suggestions on requirements that can be eliminated.

Idaho Code § 3-409 sets forth the license fees required to renew a license to practice law in Idaho. Additional licensing requirements are set forth in I.B.C.R. 302. In addition to annual license fees, active attorneys are required to comply with trust account requirements; comply with the applicable mandatory continuing legal education (MCLE) requirements under I.B.C.R. 402; verify membership information under I.B.C.R. 303; and certify whether the attorney represents private clients, and if so, provide proof of professional liability insurance coverage at the minimum limit of \$100,000 per occurrence/\$300,000 annual aggregate.

Recommendations to increase license fees are submitted to the membership, and if approved, to the Legislature and then the Idaho Supreme Court. There was a license fee increase in 2000 and a two-year phased-in increase in 2010/2011.

The Idaho Bar Commission Rules governing licensing are periodically reviewed. Changes are made to individual rules pursuant to the resolution process, which involves voting on any proposed rule changes by members of the Idaho State Bar under I.B.C.R. 906, and upon approval by the membership, adoption by order of the Idaho Supreme Court. At this time, the Idaho State Bar does not believe any of the license renewal requirements should be eliminated.

1.d. statutory or regulatory prohibitions that require the Idaho State Bar to deny either the acceptance of an application for a license or the denial of the issuance or renewal of a license, together with a report of the number of applicants denied licensure, or whose applications were not accepted for consideration by the Idaho State Bar or were refused renewal of a license for the one-year period immediately following or preceding May 19, 2017 and the factual basis for each such denial.

Idaho Code §§ 3-101 and 3-408 provide the statutory authority to determine the qualifications and requirements for admission to practice law in Idaho. Applications for an Idaho law license are denied for failure to meet the requirements of I.B.C.R. 202 (Qualifications for

Admission). (Please also see 1.b. above.) Regarding character and fitness determinations, there are no automatic disqualifiers in the Idaho Bar Commission Rules. Rather, each applicant is investigated on an individual basis with respect to the character and fitness standards set forth in the Rules. Those standards for disqualification of an applicant on character and fitness grounds are set forth in I.B.C.R. 210.

Approximately two to three applications are not accepted each year for failure to meet the requirements of I.B.C.R. 202. Approximately one application is denied each year for character and fitness reasons. An applicant whose application is not accepted or is denied may appeal to the Idaho Supreme Court.

Applicants may also be conditionally admitted to practice law under I.B.C.R. 212. To qualify for conditional admission, an applicant must satisfy the other admission requirements and possess the requisite character for admission, but have a condition that has resulted in conduct or behavior that otherwise would have rendered the applicant currently unfit to practice law. Conditional admission means the applicant's admission is conditioned on compliance with requirements that are designed to detect such behavior and that could render the applicant unfit to practice law, and to protect the clients and public.

From May 19, 2017 to May 19, 2018, three applications were not accepted from applicants who failed to meet the requirement that an applicant be a graduate of a law school approved or provisionally approved by the American Bar Association under I.B.C.R. 202(a)(3). All three of those individuals appealed to the Idaho Supreme Court. The Court granted each of those petitions, making those applicants eligible to apply for an Idaho law license. From May 19, 2017 to May 19, 2018, no applicants were denied admission for character and fitness reasons. During that same timeframe, four applicants were granted conditional licenses, one for financial issues, one for behavioral issues, and two for substance abuse issues.

The statutory authority for licensing lawyers is Idaho Code § 3-409. The regulatory authority for annual licensing requirements for lawyers is set forth in I.B.C.R. 302. (Please also see 1.c. above.)

The grounds for refusal of a renewal of a license are generally a lawyer's failure to pay the annual licensing fee or failure to complete the mandatory continuing legal education (MCLE) requirements under I.B.C.R. 402. I.B.C.R. 402 requires completion of a minimum of 30 credit hours of accredited MCLE activities with at least 3 credits on legal ethics or professional responsibility, every 3-year reporting period.

There were 38 attorneys' licenses canceled for nonpayment of licensing fees in 2017. There were 49 attorneys' licenses canceled for nonpayment of licensing fees in 2018. When a lawyer's license is canceled for nonpayment of licensing fees, the license is canceled by an order

of the Idaho Supreme Court. A canceled license may be administratively reinstated within one year of the order canceling the license by complying with any of these, as applicable: compliance with the licensing requirements of I.B.C.R. 302; paying the applicable fees due at cancellation; completing the MCLE credits due at cancellation; provision of a certificate of good standing and discipline report from other jurisdictions in which the lawyer is licensed; certification the lawyer has not been convicted of a felony or serious crime as defined in I.B.C.R. 501; and petition to the Idaho Supreme Court for reinstatement.

Of the 38 lawyers whose licenses were canceled in 2017, 13 reinstated their licenses and thus far in 2018, 6 of the 49 lawyers whose licenses were canceled have reinstated their licenses.

1.e. statutory or regulatory authority for the suspension, revocation or other disciplinary action relating to professional, technical, or occupational licenses issued by such agency, together with a report of the number of such disciplinary actions and the factual or statutory basis for such action.

Idaho Code §§ 3-301, 3-303, 3-401, 3-408, 3-412 and 3-415 provide the statutory authority for disciplinary action for attorneys. Consistent with that statutory authority, the Idaho Bar Commission Rules also address the bases for attorney disciplinary action. The Idaho Bar Commission Rules are rules promulgated by the Board of Commissioners of the Idaho State Bar through the resolution process, which involves voting on resolutions by members of the Idaho State Bar under I.B.C.R. 906, and adopted by an order of the Idaho Supreme Court. Thus, they are considered rules of the Idaho Supreme Court. I.B.C.R. 500-525 constitute the regulatory authority for lawyer discipline.

Disciplinary action includes the following public sanctions: disbarment, resignation in lieu of disciplinary proceedings, suspension, withheld suspension, probation, public censure, and public reprimand. A lawyer can also be transferred to disability inactive status. Non-public sanctions are private reprimand and informal admonition.

The factual grounds for lawyer discipline are set forth in I.B.C.R. 505. The factual grounds include: violation of the Idaho Rules of Professional Conduct; conviction of a serious crime; reciprocal sanctions based upon sanctions imposed in another jurisdiction in which the Idaho lawyer is licensed; a violation of any rule or order imposed as a result of a review of a lawyer's professional conduct; and failure, without justifiable grounds, to cooperate with or respond to a request from the Idaho Supreme Court, the Professional Conduct Board, a Hearing Committee or Bar Counsel.

The current cumulative number of disciplinary actions that have resulted in a loss of a license to practice law in Idaho is 90 lawyers. For comparison purposes, there are 5,064 actively licensed Idaho lawyers. 25 Idaho lawyers were suspended, disbarred, resigned in lieu of

disciplinary proceedings, or placed on disability inactive status from 2015-2017. During that same timeframe, six lawyers were publicly reprimanded and five lawyers received a combination of a withheld suspension and probation.

Under the applicable regulatory authority, lawyers do not lose their licenses forever. Lawyers who are suspended are eligible to reinstate their licenses to active status and practice law. At the conclusion of the period of suspension, the lawyer must follow the reinstatement procedures in I.B.C.R. 518. A lawyer placed on disability inactive status may request reinstatement by filing a petition for transfer to active status with the Idaho Supreme Court and showing by clear and convincing evidence that the disability has been removed. If a lawyer is disbarred or resigns in lieu of disciplinary proceedings and desires to again be admitted to practice law, the lawyer must, in essence, start over, i.e., apply to take the Idaho bar exam, pass the character and fitness review, and take and pass the Idaho bar exam. In addition, those lawyers have the burden of overcoming a rebuttable presumption of the "unfitness to practice law." The remaining sanctions do not result in the loss of one's license.

1.f. the cost of administering the licensing process on a per applicant basis, and the fee charged to each applicant for issuance or renewal of an Idaho law license.

The cost of the Idaho State Bar admissions process varies on an annual basis. 358 people applied for an Idaho law license in 2017. The Idaho State Bar admissions process cost \$316,886 in 2017. This equates to a per applicant cost of \$885.16 in 2017.

The per applicant costs for 2013-2016 were:

2013 - \$801.31 (345 applicants)

2014 - \$893.45 (326 applicants)

2015 - \$974.44 (301 applicants)

2016 - \$867.85 (368 applicants)

Thus, the average per applicant cost for the five years ending 2017 was \$884.44.

The fees charged to each applicant for an Idaho law license vary depending on whether the applicant is required to take the Idaho bar exam and whether the applicant is licensed as an attorney in another state. Application fees range from \$600 to \$1,000 per applicant. Under I.B.C.R. 203, specifically, those fees are:

Student applicant for the Idaho bar exam - \$600

Attorney (i.e., attorney licensed in another state) applicant for the Idaho bar exam - \$800

House Counsel License applicant - \$800

UBE Score Transfer applicant not licensed in another state - \$600

UBE Score Transfer applicant licensed in another state - \$800
Reciprocal applicant - \$1,000
Late fees, if applicable - \$200
Unsuccessful former bar exam applicant - \$200 (first 3 exams); \$300 thereafter
Deferred bar exam applicant - \$100

The license fees charged to attorneys renewing their Idaho law licenses each year under I.B.C.R. 304 are:

In the Calendar Year of Admission:

If admitted prior to July 1 of the calendar year - \$175
If admitted on or after July 1 of the calendar year - \$115

Active and House Counsel Members:

In the first, second and third full calendar years after admission - \$320
In the fourth full calendar year after admission and each year thereafter - \$425

Inactive and Emeritus Members:

In each full calendar year after admission - \$150

Senior Members - \$70

Members Aged Seventy-Two (72) Years or Older:

For the first full calendar year following an attorney's seventy-second birthday and every year thereafter - \$70.

License fees fund the mandated statutory and regulatory functions of the Board of Commissioners of the Idaho State Bar, many of which are addressed in this report.

1.g. in recognition of the work by board members to address these issues, list the laws and rule changes enacted in the past five years to eliminate barriers.

Each year resolutions may be considered by the voting members of the Idaho State Bar. Resolutions of proposed rule changes approved by the membership are then submitted to the Idaho Supreme Court for its adoption as part of the Idaho Bar Commission Rules or Idaho Rules of Professional Conduct. Through this process, the following rule changes responsive to this request were adopted during the last five years:

- 2014 – The admission rules were amended to allow attorneys licensed as house counsel to do pro bono work.
- 2015 – The admission rules were amended to reduce the requirements for emeritus attorneys so they are able to more easily do pro bono work.
- 2015 – The licensing rules were amended to reduce the age at which an attorney can transfer to senior status from 72 to 65, thereby reducing the attorney’s license fees.
- 2016 – The MCLE rules were amended to allow an exemption from continuing legal education requirements for active military members not practicing law in Idaho.

Thus, the potential barriers eliminated in the past five years were essentially elimination of a continuing legal education barrier for active military members of the Idaho State Bar and elimination of barriers to allow more lawyers to serve the public through increased pro bono opportunities. Additionally, the Idaho State Bar adopted a rule in 2012 allowing military spouses to obtain a provisional Idaho law license. I.B.C.R. 229.

2.a. provide an assessment or statement as to whether the licensure, or requirements relating thereto, are in the public interest, together with the reasons for such assessment or opinion.

The Idaho State Bar admissions process and licensure requirements are in the public interest because they ensure that Idaho attorneys possess the character and fitness and doctrinal competence to effectively and ethically represent their Idaho clients. The Idaho bar exam is instrumental in assessing an attorney’s knowledge of the fundamental legal principles and thus the attorney’s competence to practice law in Idaho. The character and fitness investigation reveals important information about prospective attorneys, such as prior criminal convictions, financial irresponsibility and dishonest behavior. I.B.C.R. 210. This information, if undiscovered and, consequently, not acted upon, could result in harm to members of the public who become clients of attorneys who have either not demonstrated adequate knowledge of the law or the requisite character and fitness to be licensed attorneys.

Likewise, the licensing requirements are in the public interest because they require and help assure Idaho lawyers comply with trust account requirements, complete continuing legal education, and if applicable, are covered by professional liability insurance.

2.b. provide recommendations for improvement, modification or elimination of licensure requirements within the Idaho State Bar’s jurisdiction.

Please also see Section 1.b., above. The Idaho Bar Commission Rules governing admission to practice law in Idaho are reviewed annually. Consideration is given to model rules

adopted by the American Bar Association and best practices encouraged by the National Conference of Bar Examiners, as well as criticism and feedback from the Idaho State Bar membership. Changes are made to individual rules pursuant to the resolution process, which involves voting on proposed rule changes by members of the Idaho State Bar and upon approval by the membership, adoption by order of the Idaho Supreme Court. Members of the Idaho State Bar may also propose such resolutions

The Board of Commissioners of the Idaho State Bar has no current recommendations for changes to improve, modify or eliminate admission or licensure requirements of attorneys. The application and licensing processes have worked well and achieved their purposes. In addition, we did not receive any comments suggesting any such improvement, modification or elimination in response to posting this Executive Order on the Idaho State Bar public website.

2.c. within thirty (30) days following the effective date of this Executive Order, adopt a process or procedure affording interested persons reasonable opportunity to submit to the department, bureau or self-governing agency, or to the Governor's office or the office of the Lieutenant Governor if the person chooses, data, views, opinions or arguments concerning any matter which is the subject of this Executive Order. Such information may be submitted either in writing or electronically. The process or procedure may provide a closing date for the submission of such information, which, for the purpose of this Executive Order, shall not be earlier than May 1, 2018.

The Idaho State Bar posted this Executive Order on its public website and provided the manner in which anyone could provide data, views, opinions or arguments concerning any matter which is the subject of this Executive Order, in writing or electronically. The Idaho State Bar did not receive any comments to that posting.

Respectfully submitted on behalf of the Board of Commissioners of the Idaho State Bar on June 28, 2018.



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