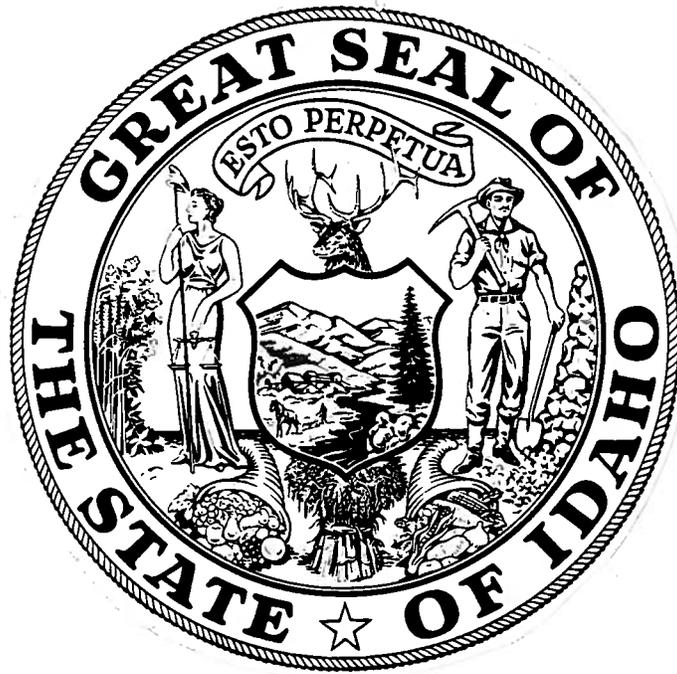


IDAHO JUDICIAL COUNCIL



*REPORT TO THE LEGISLATURE,
GOVERNOR, AND SUPREME COURT*

(YEAR 2000)

IDAHO JUDICIAL COUNCIL

Annual Report to the Legislature, Governor and Supreme Court (Year 2000)

Judicial Council Members and Staff:

Honorable Linda Copple Trout
Chief Justice and Ex-Officio Chairman

G. Nicholas Ifft
Vice-Chairman

Honorable Roger Burdick
District Judge

Alice Hennessey

Darrel W. Aherin

Dennis M. Davis

Sherry Krulitz

Robert G. Hamlin
Executive Director
P.O. Box 16428
Boise, Idaho 83715
(208) 334-5213
e-mail: ijc@micron.net

TABLE OF CONTENTS

	<i>Page</i>
I. Overview of Significant Events of 2000	1
II. Introduction To The Idaho Judicial Council, Its Powers and Duties	2
III. Selection of Judges	5
IV. Disciplinary Activities of the Judicial Council	8
V. Judicial Performance Evaluations	14
VI. Appendix A - Code of Judicial Conduct	15
Appendix B - Complaint Form	24

I.

OVERVIEW OF SIGNIFICANT EVENTS OF 2000

A. **Council Budget.** The Judicial Council accomplished all its statutory duties without salaried employees, and within its budgetary allowance of \$125,100.00.

B. **Judicial Vacancies.** There were five (5) judicial vacancies in the 2000 calendar year. (See page 7).

C. **Discipline.** In calendar year 2000, there were 205 complaints against Idaho judges. (See pages 12-14).

D. **Judicial Performance Evaluation.** The Judicial council has implemented a Judicial Performance Evaluation Pilot Program. (See page 14).

II.

INTRODUCTION TO THE IDAHO JUDICIAL COUNCIL

The concept of a Judicial Council, consisting of a small reform committee, was introduced at Massachusetts in 1919. The Massachusetts Judicature Commission was directed by the state legislature "to investigate the judicature of the commonwealth with a view to ascertaining whether any and what changes...would insure a more prompt, economical and just dispatch of judicial business." In 1929, a similar council was created, and was shortly thereafter allowed to lapse, in Idaho.

Idaho rejoined the reform movement and created the present Judicial Council, by enactment of Title I, Chapter 21, of the Idaho Code, in 1967. Drawing from the experiences of other states, the legislature provided in Idaho Code Section 1-2102 a broad range of functions.

Today the Judicial Council is charged to:

- (1) Conduct studies for the improvement of the administration of justice.
- (2) Make reports to the Supreme Court and Legislature at intervals of not more than two years.
- (3) Submit to the Governor the names of not less than two nor more than four qualified persons for each vacancy in the office of Justice of the Supreme Court, Judge of the Court of Appeals, or District Judge, one of whom shall be appointed by the Governor.
- (4) Recommend the removal, discipline and retirement of judicial officers (including members of the Industrial Commission).
- (5) Perform such other duties as might be assigned by law.

To better enable the Judicial Council to perform its functions effectively, and to enhance public confidence in the Council, the legislature created a geographically and politically balanced structure. Idaho Code Section 1-2101 provides as follows:

1-2101. Judicial council - Creation - Membership -Appointments - Vacancies. - (1) There is hereby created a judicial council which shall consist of seven (7) permanent members, and one (1) adjunct member. Three (3) permanent attorney members, one (1) of whom shall be a district judge, shall be appointed by the board of commissioners of the Idaho state bar with the consent of the senate. Three (3) permanent non-attorney members shall be appointed by the governor with the consent of the senate. If any of the above appointments be made during a recess of the senate, they shall be subject to consent of the senate at its next session. The term of office for a permanent appointed member of the judicial council shall be six (6) years. Vacancies shall be filled for the unexpired term in like manner. Appointments shall be made with due consideration for area representation and not more than three of the permanent appointed members shall be from one (1) political party. The chief justice of the Supreme Court shall be the seventh member and chairman of the judicial council. No permanent member of the judicial council, except a judge or justice, may hold any other office or position of profit under the United States or the state. The judicial council shall act by concurrence of four (4) or more members and according to rules which it adopts.

(2) In addition to the permanent members of the judicial council, whenever there is an issue before the council which involves the removal, discipline or recommendation for retirement of a district court magistrate, the chief justice shall appoint an adjunct member of the judicial council, who shall be a district court magistrate. For all purposes for which the adjunct appointment is made, the adjunct member shall be a full voting member of the judicial council.

Today, the Judicial Council consists of a non-partisan Chief Justice, a non-partisan district judge, an Independent lawyer, a Democratic lawyer, a Democratic county commissioner/business woman, a Republican businessman, and a Republican retired business executive who now directs a non-profit corporation. Two of the members reside

in Boise, one in Coeur d'Alene, one in Pinehurst, one in Twin Falls, one in Lewiston, and one in Pocatello.

Members of the Judicial Council serve without salaried compensation for their services. Members, other than judges, receive only a daily honorarium for each day the Council meets and reimbursement for their actual expenses, pursuant to Idaho Code Section 1-2104. The Judicial Council utilizes the services of a part-time Executive Director, but retains no permanent or full-time staff.

Ordinarily, the Council meets approximately three to four times per year or, as needs arise. In an effort to operate within the Council's budgetary allowance, many matters are disposed of by telephone conference call or by mail and meetings scheduled in conjunction with interviews for judicial vacancies.

III.

SELECTION OF JUDGES

Justice is administered by people, not by systems. The quality of justice turns, in full measure, upon the competence, fairness, and diligence of the human beings in the black robe. Because the judicial system depends heavily on a quality judiciary, we need the best available method for judicial selection. While there is no perfect method, a broad national consensus suggests that the best judges are identified through a merit selection process. Merit selection envisions a commission, composed of judges, lawyers, and laymen, submitting nominations to the Governor for appointment. Idaho law provides such a process. Idaho Code Section 1-2102 provides that the Judicial Council shall:

Submit to the Governor the names of not less than two (2) nor more than four (4) qualified persons for each vacancy in the office of justice of the Supreme Court or district judge, one (1) of whom shall be appointed by the Governor...

This process is followed whenever new positions are created or vacancies occur prior to the expiration of a term. However, once selected, all Idaho judges are subject to a non-partisan competitive election or retention process.

THE SELECTION PROCESS IN DETAIL

The Idaho Judicial Council has a detailed and careful selection procedure. The Council uses a comprehensive application form to elicit detailed information concerning each applicant's professional background and achievements. During personal interviews, which are open to the public, partisan political questions are strictly avoided. Applicants are asked for their thoughtful comments on issues of substantive law and problems of judicial administration. A standard questionnaire is distributed throughout the judicial district or the state, depending on whether the vacancy is on the district bench, the Court of Appeals, or the Supreme Court, asking those members of the practicing bar and of the general public who know the applicant to evaluate the judicial candidate upon the standards recommended by the American Judicature Society. These standards include the following:

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

When all of this information has been received and digested, the Judicial Council analyzes each applicant's fitness to perform the duties of judicial office, including self-discipline, moral courage, sound judgment, ability to weigh impartially the views of others, ability to be decisive when required, capacity for logical reasoning, adequacy of educational background, and excellence of professional achievement. For trial court positions, the Judicial Council also considers knowledge of procedure and evidence and experience as an advocate. For appellate positions, the Council looks for clarity of written and spoken expression. The Council also obtains information from the State Tax Commission, the Idaho State Bar, a credit bureau, and the Department of Law Enforcement in order to verify the integrity of each applicant.

The Judicial Council's process of judicial selection is now being emulated by several district magistrates commissions, the federal bench, and, has been the subject of inquiries from other states.

NOMINATIONS BY THE JUDICIAL COUNCIL

Judicial vacancies usually fill a large part of the Council's activities. There were five judicial vacancies in the 2000 calendar year.

The following table summarizes the screening process in those cases.

VACANCY	NO. OF APPLICANTS	NO. OF NOMINEES	INDIVIDUAL APPOINTED
District Judge Fifth District (Ted V. Wood Vacancy)	6	2	Jon Shindurling
District Judge First District (Gary Haman Vacancy)	9	4	John P. Luster
District Judge Fourth District (D. Duff McKee Vacancy)	11	4	Cheri C. Copsey
District Judge Fourth District (Daniel Eismann Vacancy)	10	4	Darla S. Williamson
District Judge Fifth District (J. William Hart Vacancy)	6	3	John M. Melanson

IV.

DISCIPLINARY ACTIVITIES OF THE JUDICIAL COUNCIL

Judges can and should meet rigorous standards of personal and professional conduct. The role of judicial conduct agencies throughout the country is to help enforce the standards of judicial conduct. These agencies, established by the fifty states and the District of Columbia, play a vital role in maintaining public confidence in the judiciary and preserving the integrity of the judicial process. As a forum for citizens with complaints against judges, the Idaho Judicial Council helps maintain the balance between judicial independence and public accountability. It also serves to improve and strengthen the judiciary by creating a greater awareness of proper judicial conduct on the part of judges themselves, both on and off the bench.

The Idaho Judicial Council generally acts only on verified complaints involving judicial misconduct and disability. Accordingly, it does not address complaints involving a judge's decisions or rulings unless there is an accompanying allegation of fraud, corrupt motive, or other misconduct.

Judicial misconduct, or the inability of a judge to perform judicial functions, represents a greater threat to the public interest than do personnel problems among public officers in general. Most elected officers are subject to the constitutional remedy of recall, but Article 6, Section 6, of the Idaho Constitution specifically exempts judicial officers. Experience in other states has shown that the alternative remedy of impeachment is ineffective except in cases of gross scandal. In any event, as noted by the American Bar Association, the impeachment method can be activated only by preliminary proceedings that approach prejudging the case, and involve methods of determination that are easily politicized.

The problem is underscored by the special role that courts play in our system of government. The courts, in the last analysis, are the protectors of the individual rights which give our society its distinct character. Because the public quite understandably views justice as being no better than the person who dispenses it, the judge who misbehaves or who is unable to perform adequately brings discredit to the entire system. The fact that relatively few judges manifest such problems is small consolation to the public or to the other judges whose images are indirectly tarnished by the acts of a few.

Conversely, the clear need for effective judicial discipline must not obscure the equally important public interest in an independent judiciary. The judge who is different is not for that reason alone, unfit. Nor is a judge incompetent, merely because of the issuance of controversial decisions. The need for balance between judicial accountability and judicial independence puts a premium upon the fairness of disciplinary procedures.

THE JUDICIAL DISCIPLINARY PROCESS IN IDAHO

Idaho Code Section 1-1202 authorizes the Judicial Council to recommend the removal, discipline, and retirement of judicial officers. Section 1-2103, which prescribes the procedures by which this power shall be exercised, refers only to the removal, discipline, or retirement of district judges, court of appeals judges or justices of the Supreme Court. However, Idaho Code Section 1-2103A was added by the 1990 legislature and requires the Judicial Council to investigate and make recommendations to the Supreme Court on the discipline, removal, or retirement of magistrates. The statutory change was effective on July 1, 1990. It did not affect the magistrate selection process or the right of the district magistrate commission to remove a magistrate in the first eighteen (18) months after appointment. All judges are subject to the Idaho Code of Judicial Conduct promulgated by the Supreme Court.

Section 1-2103 provides that the Judicial Council may investigate a complaint against a judge or justice and, may order a formal hearing before it, after such investigation has been conducted. A copy of the complaint form may be found in the Appendix. Following this hearing, the Council may recommend to the Supreme Court the removal, discipline, or retirement of the accused judge or justice. Final disciplinary authority rests with the Supreme Court. Idaho Court Administrative Rule 32 provides that all papers filed with, and proceedings conducted before, the Judicial Council are confidential. These papers and proceedings do not lose their confidential nature unless or until the matter is forwarded to the Supreme Court upon recommendation of the Council. At that point, the proceedings become public.

The rules adopted by the Judicial Council pursuant to this statutory authority provide that when a complaint is received, the Council initially determines whether or not the complaint (a) states facts which constitute possible grounds for removal, discipline or retirement, and (b) is not obviously unfounded or frivolous. This is accomplished through an initial inquiry wherein the Executive Director informally obtains sufficient additional information to allow the Council to determine whether to proceed to a preliminary investigation. The judge is usually notified of the complaint at this stage of the

proceedings. If the complaint passes these tests, then a preliminary investigation must be conducted, and the judge or justice involved must be formally notified. Ordinarily, this investigation is conducted by the Council's Executive Director. The judge or justice is invited to make such statements or submit such materials as may be helpful to the investigation.

When the preliminary investigation has been completed, the Judicial Council determines whether or not the investigation has disclosed sufficient cause to warrant further proceedings. If not, or if the investigation itself has resolved the alleged problem, then the complaint is dismissed with notice to the complainant and the judge or justice. However, if further proceedings are warranted, the judge or justice is then served notice of formal proceedings and given an opportunity to answer.

The hearing may be conducted by the Judicial Council itself, or it may request that the Supreme Court appoint a panel of three special masters to hear and take evidence in such a proceeding and report their findings to the Judicial Council. During the hearing, and at all other stages of the proceeding, the judge or justice is entitled to be represented by counsel. The rules governing evidence and the requirements of due process are observed during the hearing in the same manner as in a civil court case.

Following the hearing, or upon receiving the report of findings by the special masters, the Judicial Council determines whether good cause exists to recommend to the Supreme Court that the judge or justice be removed, disciplined or retired. If the decision is in the affirmative, the record of proceedings is transmitted to the Supreme Court together with the Judicial Council's recommendation. The Court may order the judge or justice removed from office, involuntarily retired from office, or disciplined. Pursuant to Section 1-2103 and the Judicial Council's rules, no judge or justice who is a member of the Council or Supreme Court may participate in any proceedings involving himself or herself, or any judge in his or her own judicial district.

Two especially significant features of the foregoing process are the confidentiality of proceedings before the Judicial Council and the undertaking of a preliminary investigation prior to any formal hearing. The confidentiality provisions serves two purposes: (1) the complainant is not deterred by fear of public embarrassment from bringing a personal grievance to the attention of the Judicial Council; and (2) the reputation of the judge or justice is protected during the period of time when the truth of the complaint is undetermined. Furthermore, confidentiality allows a judge or justice to recognize a mistake, if one has been committed, and rectify it to the satisfaction of the complainant before publicity "freezes" the case into an adversary mold. Similarly, the

preliminary investigation provides a framework in which issues can be defined, and in many cases resolved, before formal proceedings are commenced.

In many cases, the Judicial Council finds that the judge or justice has not engaged in misconduct or failed to perform judicial duties. Even in such cases, the disciplinary process accomplishes a constructive purpose. As noted by the Texas Judicial Qualifications Commission, in its 1974 report:

"Many complainants do not understand law, how the courts operate, the jurisdiction of the judge, their right of appeal, and other aspects of the judicial system. They know only that they are unhappy with the system and want someone to hear their complaint. Usually...letting them have all the time they want, and then explaining to them why the judge acted or ruled is all that is necessary. The tremendous caseload of the court and the demand upon the time of a judge...[do] not permit him to give these people the time they feel they deserve. To the individual, his case is the only one; to the judge it is one among hundreds of similar nature. By serving as an intermediary, taking remedial action when necessary, the Commission feels that it negates much of the animosity toward the judicial system, and provides the lay person a better understanding of the judiciary."

DISCIPLINARY ACTIVITIES BY THE JUDICIAL COUNCIL IN 2000

In calendar year 2000, there were two hundred five (205) complaints or inquiries concerning Idaho judges. Those complaints were made against judges as follows:

TYPE OF JUDGE	NO. OF COMPLAINTS **
Idaho District Judges	47
Idaho Magistrate Judges	125
Idaho Appellate Judges	0
Idaho Supreme Court Justices	1
Retired/Pro Tem Judges	2
Industrial Commission	0
Judges Not Identified or Other Entities Not Under Judicial Council Jurisdiction	34

** Some complaints have more than one judge named.

Of these complaints received in 2000, one hundred forty-five (145) were not verified as required by Idaho law. Of the remaining complaints, twenty-three (23) initial inquiries and three (3) preliminary investigations were conducted. Thirty-five (35) complaints were dismissed as frivolous or were found to not involve matters of judicial discipline.

There were two (2) informal admonishments and no formal charges filed. Eleven (11) of the above mentioned complaints are presently pending.

The primary allegations contained in the complaints against judges were as follows:

** NATURE OF COMPLAINT	OCCURRENCES
Appearance of impropriety	0
Bias/prejudice/discrimination	59
Conduct prejudicial to administration of justice	1
Conflict of interest	3
Conspiracy	2
Erroneous decision/error of law	48
Ex parte communication	10
Excessive use of alcohol	0
Failure to disqualify	9
Failure to perform duties	3
Improper delay	13
Improper sentence	9
Improper use of judicial office	0
Lack of attention at sentencing hearing	0
Obstruction of justice	1
Political activity	2
Refused to hear entire case	10
Rude and discourteous treatment/lack of judicial temperament	21
Violation of Fourth Amendment	1
Violation of ID Code 59-502	1
Unknown or general dissatisfaction	71

** Many complaints have more than one allegation made against the judge or judges.

In all cases, the judges against whom complaints had been filed were cooperative with the Judicial Council in performing its statutory duties.

V.

JUDICIAL PERFORMANCE EVALUATIONS

The Judicial Council has found that when individuals are appointed to the bench, they become somewhat isolated and do not receive feedback on their performance as a judge.

Judicial Performance Evaluations will provide the opportunity to receive feedback on the way judges perform their judicial duties. That information will be provided to the judges in order to assist them in improving their judicial skills and abilities.

The Judicial Council completed the questionnaires which will be used in conducting performance evaluations and initiated a two (2) year Judicial Performance Evaluation Pilot Project. The project consists of five (5) volunteer District judges and six (6) volunteer Magistrate judges. The first set of questionnaires were distributed to attorneys, litigants, court clerks, and jurors in May 2000.

VI.

APPENDIX A

CODE OF JUDICIAL CONDUCT

PREFACE

This Code of Judicial Conduct is adopted and promulgated in order to guide and govern the conduct of judges at all levels of the judicial system in the State of Idaho. In some aspects it substantially parallels portions of the Code of Judicial Conduct adopted by the American Bar Association. In other aspects it differs from that code in specifically defining both prescribed and required judicial conduct. Departure from the ABA Code is deemed desirable since Idaho judges, as contrasted with judges in other jurisdictions, may be subject to discipline, involuntary retirement or removal for violation of these standards. Idaho's non-partisan system of judicial selection also makes portions of the ABA Code inapplicable.

CANON 1

An independent and honorable judiciary is indispensable to justice in our society. Judges should participate in establishing, maintaining, and enforcing, and shall observe high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code shall be construed and applied to further that objective. For the purpose of this Code, the term judge includes Justices of the Supreme Court and Judges of the Court of Appeals, district judges and magistrate judges.

CANON 2

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.

B. Judges should not allow family, social, or other relationships to influence judicial conduct or judgment. Judges shall not lend the prestige of their office to advance the private interest of others; nor should judges convey or permit others to convey the impression that they are in a special position to influence the court. Except in a proceeding

involving the judge personally or in response to an official summons, a judge shall not testify as a witness in any court proceeding.

C. Judges shall perform judicial duties without bias or prejudice, to the end that justice shall be administered, in every respect, in a fair, equal, and nondiscriminatory manner. Judges shall not, by word or act, manifest any belief, attitude or position which has no substantial legitimate purpose, other than 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, nor permit court staff, officers, counsel, or others subject to the judge's direction or control to do so.

D. A judge shall not hold membership in any organization that practices invidious discrimination on any basis, including but not limited to the basis of race, sex, religion, or national origin.

CANON 3

The official duties of a judge take precedence over all other activities. In the performance of these duties, the following standards apply:

A. **Adjudicative Responsibilities.**

1. Judges should be faithful to the law and maintain professional competence in it. Judges should be unswayed by partisan interests, public clamor, or fear of criticism.

2. Judges should maintain order and decorum in proceedings before them.

3. Judges should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom they deal in their official capacity, and should require similar conduct of lawyers, and of their staff, court officials, and others subject to their direction and control.

4. Judges should accord to all persons who are legally interested in a proceeding, or their lawyers, full right to be heard according to law, and except as administrative responsibilities dictate, should not initiate **ex parte** communications concerning a pending or impending proceeding. Judges shall not solicit the advice of any person, except from court or judicial personnel regarding proceedings before them unless the judge gives notice to the parties and affords them an opportunity to respond.

5. Judges should determine expeditiously matters submitted to them and insist that court personnel, litigants and lawyers cooperate with them to that end.

6. Judges should abstain from public comment about a pending or impending proceeding in any court, and should require similar abstention on the part of court personnel subject to their direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. "Court personnel" as used in this Canon does not include the lawyers in a proceeding before a judge.

7. Judges shall comply with any rule promulgated by the Supreme Court regarding the broadcasting, televising, recording or taking photographs in the courtroom or of courtroom proceedings.

B. Administrative Responsibilities.

1. Judges should diligently discharge their administrative responsibilities and facilitate the performance of the administrative responsibilities of other judges and court officials.

2. Judges should require their court personnel subject to their direction and control to observe the standards of fidelity and diligence that apply to them.

3. 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 judges should file reports thereof with the Commissioners 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.

4. Judges should not make unnecessary appointments. Judges should exercise their power of appointment only on the basis of merit, avoiding nepotism and favoritism. Judges should not approve compensation of appointees beyond the fair value of services rendered.

C. Disqualification.

1. Judges should disqualify themselves in proceedings in which their impartiality might reasonably be questioned or where personal knowledge of disputed evidentiary facts might reasonably affect their impartiality in the proceeding.

Judges shall disqualify themselves in instances where:

a. they have a personal bias or prejudice concerning a party, or the party's attorney;

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

c. they know that they, individually or as a fiduciary, or their spouse or minor children residing in their household, have a financial interest in the subject matter in controversy, in a party to the proceeding, or any other interest, that could be substantially affected by the outcome of the proceeding;

d. the judge and 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 an interest that could be substantially affected by the outcome of the proceeding;

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

2. Judges should inform themselves about their personal and fiduciary financial interests, and make a reasonable effort to inform themselves about the personal financial interests of their spouse and minor children residing in their household.

3. For the purpose of this section:

a. the degree of relationship is calculated according to the laws of the State of Idaho;

b. "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

c. "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:

(i) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management field of the fund;

(ii) an office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;

(iii) the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding should substantially affect the value of the interest;

(iv) ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

d. the fact that a lawyer in a proceeding is affiliated with a law firm with which a lawyer-relative of the judge is affiliated does not of itself disqualify the judge.

D. Remittal of Disqualification. Judges disqualified by the terms of Canon 3C 1 c or Canon 3C 1 d may, instead of withdrawing from the proceeding, disclose on the record the basis for their disqualification. If, based on such disclosure, the parties and lawyers, independently of the judge's participation, all agree in writing that the judge's relationship is immaterial or that the judge's financial interest is insubstantial, the judge is no longer disqualified, and may participate in the proceeding. The agreement, signed by all parties and lawyers, shall be incorporated in the record of the proceeding. When a party is not immediately available, the judge without violating this section may proceed on the written assurance of the lawyer that his party's consent will be subsequently filed.

CANON 4

Subject to the proper performance of judicial duties, judges may engage in activities to improve the law, the legal system, and the administration of justice if in doing so the judges do not cast doubt on their capacity to decide impartially any issue that may come before them.

CANON 5

A. Judges should regulate their non-official activities to minimize the risk of conflict with their official duties.

B. **Civic and Charitable Activities.** Judges may participate in civic and charitable activities that do not reflect adversely upon their impartiality or interfere with the performance of official duties. Judges may serve as officers, directors, trustees, or non-legal advisors of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

1. Judges should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court.

2. Judges should not solicit funds for any educational, religious, charitable, fraternal, or civic organizations, or use or permit the use of the prestige of their office for that purpose, but they may be listed as officers, directors, or trustees of such organizations. Judges should not be speakers or guests of honor at an organization's fund raising events, but may attend such events.

3. Judges should not give investment advice to such an organization, but they may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

C. **Financial Activities.**

1. Judges should refrain from financial and business dealings that tend to reflect adversely on their impartiality, interfere with the proper performance of their official duties, exploit their judicial position, or involve them in frequent transactions with lawyers or persons likely to come before the court on which they serve.

2. Subject to the requirements of subsection 1, judges may hold and manage investments, including real estate, and engage in other remunerative activity including the operation of a business, but should not serve as officers, directors, managers, advisors, or employees of any bank, public utility, insurance company, collection agency or title company.

3. Judges should manage their investments and other financial interests to minimize the number of cases in which they are disqualified. As soon as they can do so without serious financial detriment, they should divest themselves of investments and other financial interests that might require frequent disqualification.

4. Judges shall not accept gifts or loans when such are tendered by persons, corporations, organizations or entities of any type which may influence or tend to influence any matter which is or may come before their court, or which would not be tendered except by reason of their official capacity except as provided by law.

5. Information acquired by judges in their judicial capacity, except those matters of public record, should not be used or disclosed by them in financial dealings or for any other purpose not related to their judicial duties.

D. **Fiduciary Activities.** Judges should not serve as executors, administrators, trustees, guardians, or other fiduciaries, except as provided by law, or except for a family member's estate or trust, and then only if such service will not interfere with the proper performance of their judicial duties. "Family members" include spouses, children, grandchildren, parents, grandparents, or other relatives or persons with whom the judge maintains a close familial relationship. As a family fiduciary judges are subject to the following restrictions:

1. Judges should not serve if it is likely that as fiduciaries they will be engaged in proceedings that would ordinarily come before them, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which they serve or one under its appellate jurisdiction.

2. While acting as a fiduciary judges are subject to the same restrictions on financial activities that apply to them in their personal capacity.

E. Judges shall not practice law.

F. Judges should not accept appointment to governmental committees, commissions, or other positions when such appointments could reflect adversely upon their impartiality or interfere with the performance of their judicial duties.

CANON 6

Judges may receive compensation and reimbursement of expenses for the non-official activities permitted by this Code, if the source and amount of such payments does not give the appearance of influencing the judge in judicial duties or otherwise give the appearance of impropriety.

CANON 7

A. Political Conduct in General. Judges, or candidates for election to judicial office, shall refrain from political activities inappropriate to judicial office. Judges, or candidates, shall not act as leaders or office holders in any political organizations or for candidates or publicly endorse candidates for any political office. Judges, or candidates, shall not make speeches for political organizations or candidates or publicly endorse candidates for any political office. Judges, or candidates, shall not either directly or indirectly solicit funds for any political organizations or candidates, except funds for their own judicial campaigns. Any candidate elected to judicial office shall be subject to disciplinary proceedings or removal for violation of this Canon. Judges shall not seek elective office, except when they seek judicial office, without either:

1. resigning their judicial office when they become candidates or;
2. obtaining a leave of absence without pay from their judicial office in accordance with the laws of the State of Idaho.

CANON 8

A. Judges shall upon order of the Supreme Court furnish the Court with such financial information as such order shall require.

B. Judges shall upon order of the Supreme Court furnish the Court with medical reports and information as to their physical or mental condition as such order shall require.

COMPLIANCE WITH THE CODE OF JUDICIAL CONDUCT

All judges shall comply with this Code except as provided below:

A. **Judges Pro Tempore.** Judges **pro tempore** are persons who are appointed to act temporarily as judges.

1. Judges **pro tempore** are not required to comply with Canons 5C 2 and 3, 5D, 5E and 5F.

2. Persons who have been judges **pro tempore** should not act as lawyers in proceedings in which they have served as judges or in any other proceedings related thereto.

B. **Retired Judges.** Retired judges who are recalled to act temporarily as judges should comply with all the provisions of this Code except Canons 5C 2 and 3, 5D, 5E and 5F, but they should refrain from the practice of law during the period of service as judges. 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 proceedings related thereto.

APPENDIX B

STATE OF IDAHO

IDAHO JUDICIAL COUNCIL

P.O. Box 16428
Boise, Idaho 83715
(208) 334-5213

COMPLAINT FORM

No. _____

This form is designed to provide the Judicial Council with information required to make an initial evaluation of your complaint, and to begin an investigation of the allegations you make. Please read the accompanying materials on the Judicial Council's function and procedures before you complete this form.

PLEASE TYPE OR PRINT ALL INFORMATION

Your Name _____

Address _____

Daytime telephone _____

Name of Judge _____ Court _____

Case Name and Docket Number, if applicable _____

Attorneys involved (if you wish to name them) _____

If this complaint relates to a trial or other court proceeding, has it been or will it be appealed?

VERIFICATION

STATE OF IDAHO)
) ss.
County of _____)

_____, being first duly sworn upon oath, deposes and says:

That he/she is the Complainant in the above matter, that he/she has read the foregoing Complaint, knows the contents thereof, and verily believes the facts therein stated to be true.

(Signature)

SUBSCRIBED AND SWORN TO Before me this ____ day of _____, 20__.

Notary Public for Idaho
Residing at _____
Commission Expires: _____

Please return this completed form to:

Robert G. Hamlin
Executive Director
Idaho Judicial Council
P.O. Box 16428
Boise, Idaho 83715