

Short Ballot Title

Initiative Abolishing Idaho Judicial Council, Limiting Judicial Immunity And Creating Commission To Review Complaints Of Judicial Misconduct And Providing Sanctions.

Long Ballot Title

An initiative abolishing the Idaho Judicial Council and limiting judicial immunity in most instances, creating a 15 member commission to review complaints of judicial misconduct and granting the commission the power and authority to impose sanctions and setting forth the duties of the commission; establishing criteria for commission membership and selection; establishing criteria for the location of commission offices; establishing compensation of commissioners; authorizing the commission to hire special prosecutors, advisors, investigators and staff; establishing procedures for criminal complaints; establishing statutes of limitations; repealing chapter 21 of title 1, Idaho Code; creating chapter 25 of title 1, Idaho Code entitled the Idaho Judicial Accountability Act; Amending Idaho Code § 19-4201A, Amending Idaho Code § 19-4202; Amending Idaho Code § 19-3945; Amending Idaho Code § 2-215.

Text of Initiative

- 1. Repealing Title 1, Chapter 21, Sections 2101 Thru 2104, concerning the removal, discipline and retirement of Judicial Officers; and**
- 2. Creating a new Title 1, Chapter 25 with new Sections 2501, et. seq., providing for the creation, empowerment and administration of the Idaho Judicial Accountability Commission; To provide that powers and duties of said Commission shall be to receive Complaints and Petitions; investigate and determine the merits of matters relating to the discipline, removal and or retirement of Judicial Officers; Habeas Corpus and other relief, as set forth herein; and declaring an emergency;**
- 3. Amending Title 19, Chapter 42 by adding new Sections 4201A(10), 4202(3), and amending Section 4204 and subsection 4205(1), to the Idaho Habeas Corpus and Institutional Litigation Procedures Act.**
- 4. Amending Title 2, Chapter 2 by adding new Subsection 215(3), and amending Title 19, Chapter 39, Section 3945, regarding payments to Jurors as prescribed herein, the Idaho Judicial Accountability Act of 2004 A.D.**

Be it enacted by the PEOPLE of Idaho: A new Title 1, Chapter 25, Sections, 2501, et. seq. "The Idaho Judicial Accountability Act of 2004 A.D.", a Peoples' Initiative Act.

Section 2501. PREABLE AND PURPOSE. We, the People of the State of Idaho, find that the doctrine of judicial immunity has been greatly abused; that no effective remedy to redress judicial misconduct exists; that the right for the writ of habeas corpus in many cases is effectively suspended; that the Idaho Judicial Council has offered a less than one percent chance of remedy for judicial misconduct to the people of Idaho and many have, and continue to suffer from the results of a judiciary which is not held accountable, therefore, an emergency is hereby declared to exist in fact. We the People of Idaho, in whom all political power is inherent; and for whom government is instituted for our equal protection and benefit; and who have the right to alter, reform or abolish the same whenever we deem it necessary; as declared by Article One, Section Two of the Idaho Constitution; we therefore establish by Initiative the Act for our immediate protection and for the benefit of our posterity so as to insure judicial accountability.

Section 2502. AUTHORITIES. In accordance with Idaho Constitutional provisions, Article 1, Sections 1, 2 and 5; Article V, Sections 7, 27 and 28; Article XVIII, Sections 7 and 8; the 1789 Constitution for the United States of America, including the 1791 Bill of Rights; and in accordance and harmony with the Declaration of Independence; We the People of Idaho hereby act to establish and insure judicial accountability with the provisions herein which shall be known hereafter as "The Idaho Judicial Accountability Act of 2004 A.D.," referred to hereafter as the "Act".

Section 2503. REPEAL OF ACT CREATING IDAHO JUDICIAL COUNCIL. The Act creating the Idaho Judicial Council, relating to removal, discipline and retirement of judicial officers, Idaho Code Title 1, Chapter 21, Sections 2101 – 2104 is hereby repealed in its entirety, as a matter of right and necessity to abolish an entity of government which does not serve the people, nor provide for their equal protection or benefit. Further, all records held by the Idaho Judicial Council, upon passage of the Act, shall be preserved and delivered to the custody of the Idaho Judicial Accountability Commission within thirty (30) days after it is seated; and thereafter said records shall be maintained by the Clerk of the Idaho Judicial Accountability Commission.

Section 2504. DECLARATION OF EMERGENCY. Judicial accountability being nearly nonexistent in the State of Idaho, which has subjected many citizens of Idaho to be deprived of life, liberty and property, without due process of law; and otherwise deprived of their Rights; therefore, an emergency is hereby declared to exist. The Act upon certification of its passage and approval by the voters and electors of Idaho shall immediately be in full force and effect.

Section 2505. DEFINITIONS. All words used herein the Act shall be read, considered and accorded value based upon Webster's Dictionary, 1828 Edition; or Bouvier's Law Dictionary 1914 Edition except as defined in the following subsections:

- (a). **"Idaho Judicial Accountability Commission"** shall be the Idaho Judicial Accountability Commission created by the Act and referred to hereinafter as the IJAC.
- (b). **"Blocking"** shall mean any act that impedes the lawful conclusion of a case, to include unreasonable delay or the willful rendering of a judgment or order that violates the Constitution for Idaho or the United States of America (1789), or denies due process of law to a party in a judicial or administrative hearing action; and
- (c). **"Judicial officer"** shall include, but is not limited to any: Justice, Judge, Magistrate, Judge Pro Tem or Senior Judge; Prosecutor or Deputy Prosecutor; Commissioner, Administrative Hearing Officer, Administrative Law Judge; and/or any person acting in a judicial capacity, exercising judicial authority or claiming a shield of judicial immunity.
- (d). **"Commissioner"** shall mean a member of the Idaho Judicial Accountability Commission;
- (e). **"Seat"** shall mean a primary situs and/or facility where the Idaho Judicial Accountability Commission is located and conducts its hearings, administrative functions and other necessary business of the IJAC;
- (f). **"Strike"** shall mean an adverse decision against a judicial officer, resulting: (1), from a civil proceeding in which the judicial officer has been found liable for act(s) or omission(s) while acting in a judicial capacity; or, (2) from a criminal conviction, including any plea bargain, no contest plea, deferred or withheld judgments of any offense committed while acting in a judicial capacity;
- (g). **"Business"** shall mean any official business conducted by the IJAC;
- (h). **"Chair"** shall mean the Chairman or Chairwoman of the IJAC;
- (i). **"Commissioner Pool"** shall mean the pool of names of all available citizens whom have submitted their names to Secretary of State for the random drawing of Commissioner candidates pursuant to Sections 2510, 2512, 2514 and 2518;
- (j). **"Shall"** means an obligatory command imparting a compulsory or mandatory performance and shall not be construed in a discretionary or permissive sense;
- (k). **"Person"** primarily means any human being; and may include a corporation, partnership, trust or other artificial entity, if said artificial entity has the standing to act with or be acted upon by the IJAC;
- (l). **"Compulsion"** shall mean any act which compels, orders or forces any person's performance of any act or omission;
- (m). **"Idaho Judicial Accountability Rules"** shall mean Rules and Procedures promulgated by the Idaho Judicial Accountability Commission for the public administration of business before the IJAC and may be referred to as IJAR;
- (n). **"Good Behavior"** shall mean the acts or omissions of a judicial officer which are not the behavior specifically mentioned in Section 2506 of the Act as conduct which would deprive the judicial officer of immunity;
- (o). **"Investigator"** shall mean an individual or individuals retained by the IJAC for the purpose of court watching, researching, interviewing of witnesses, or any other task or duty assigned to further the goals of the Idaho Judicial Accountability Act of 2004 A.D.

Section 2506. IMMUNITY PROTECTIONS AND LIMITATIONS. While justice requires the protection of judicial officers from frivolous and harassing actions, no immunity shielding a judicial officer shall extend to any willful, intentional or deliberate act(s) or omission(s) which at the time of their commission or omission: violated the Constitutions or laws of Idaho or the United States of America; perpetrated fraud or perjury; created a conspiracy to deprive any person of life, liberty or property; violated due process of law; denied or deprived discovery in a case; disregarded a material fact or law; denied or deprived access to counsel; was a judicial act exercised without jurisdiction; blocked the lawful conclusion of a case; tampered with a jury; or failed to disclose conflicts of interest.

Section 2507. IDAHO JUDICIAL ACCOUNTABILITY COMMISSION. The Act hereby creates a fifteen (15) member Idaho Judicial Accountability Commission (IJAC) vested with statewide jurisdiction to judge the merits of both laws and facts. The IJAC shall exist pursuant to Article One, Section Two of the Idaho Constitution, as an agency of the people of Idaho, independent of legislative, executive or judicial branches of government, for the purpose of holding the judicial branch accountable to the Constitutions and laws, who thereafter can hold the legislative and executive branches accountable. The IJAC shall be vested with the power and duty to receive, review and investigate, complaints of alleged judicial misconduct, and petitions for relief, and to determine on an objective standard:

- (1) whether a civil suit against a judicial officer would be frivolous and harassing, or fall with the exclusions of immunity as set forth in Section 2506 of the Act; and/or;
- (2) whether a finding of probable cause exists of any criminal conduct alleged against the accused judicial officer, or;
- (3) whether a petition for relief has merit and should be granted. The IJAC shall determine all matters before it by a simple majority vote by recorded ballot with a quorum of at least 9 IJAC Commissioners.

Section 2508. JURISDICTION. With the passage of the Act, the IJAC shall have jurisdiction, power and authority to rule on complaints involving any judicial officer acting within the exterior boundaries of the State of Idaho, without exception.

Section 2509. GENERAL DUTIES OF IJAC. The IJAC is charged with the following general duties:

- (a). Restoring the public's confidence in the judicial officers throughout the State of Idaho;
- (b). Providing public grievance procedure and forum for issues of judicial misconduct, lack of good behavior and/or judicial abuse or malfeasance of office, as is defined herein or by other laws, rules or codes for Idaho, including, but not limited to the Idaho Code of Judicial Conduct and/or Professional Conduct and the Idaho Ethics in Government Act;
- (c). Conducting regular meetings/hearings regarding complaints received against judicial officers or petitions for relief;
- (d). Any other duty provided herein or subsequently established by rule or law which are in accordance to the goals of the Act.

Section 2510. QUALIFICATIONS OF COMMISSIONERS. An IJAC Commissioner shall be at least twenty-one (21) years of age, and shall have been a citizen of Idaho for at least one (1) year, and shall have lived primarily within the exterior boundaries of Idaho for at least one year prior to having his or her name drawn by lot. In the interest of justice and to prevent potential conflicts of interest, people not eligible for IJAC service shall extend to and include all current and prior elected or appointed public officials who have held a state office within the last ten (10) years; any past or present member of the Idaho State Bar; or current law enforcement personnel.

Section 2511. IJAC COMMISSIONER POOL. The IJAC Commissioners shall be drawn from the IJAC Commissioner Pool of names which shall be maintained by the Secretary of State's office for the first two years of its operation, and thereafter by an independent, non-government entity to avoid conflicts of interest. Any man or woman meeting the qualifications of an IJAC Commissioner, and not prevented from serving by the limitations within Section 2509 of the Act, shall be eligible to submit their name to the IJAC Commissioner Pool for consideration to the IJAC Commission, and shall give notice of any change of address. Upon request, any man or woman shall have their name removed from the IJAC Commissioner Pool. The Secretary of State shall develop forms and procedures to administer and maintain the IJAC

Commissioner Pool and shall provide a copy of same to the Clerk of the IJAC, along with a copy of the IJAC Commissioner Pool names, which shall be updated quarterly.

Section 2512. SERVICE OF COMMISSIONERS. There is hereby established a body of fifteen (15) Commissioner positions within the IJAC. Excluding the initial establishment of the IJAC, each Commissioner shall serve in his/her position for one year; shall serve only once in a lifetime; and thereafter be ineligible for further service, except as an advisor, consultant, investigator or other assistant. Yearly service to the IJAC shall be considered to be a full-time position as and when needed.

Section 2513. SELECTION OF COMMISSIONERS. IJAC Commissioners shall serve without compulsion and shall be drawn from the IJAC Commissioner Pool in a manner that is publicly witnessed. The Secretary of State shall draw additional names and follow notification and acceptance procedures mentioned hereafter, whenever any Commissioner selection process fails to fill all fifteen (15) IJAC Commissioner positions.

Section 2514. COMMISSIONER'S OATH OF OFFICE. Before any IJAC Commissioner is seated on the IJAC, he/she shall take the following oath of office, which shall be administered by the Clerk of the IJAC: "I _____ [name of Commissioner] do solemnly swear/affirm, that I will support the original Constitution for the United States of America, and the Idaho Constitution, and that I will faithfully discharge the duties of an Idaho Judicial Accountability Commissioner, to promote justice and accountability for the judiciary to the best of my ability."
Two original written forms of this oath shall be signed by each Commissioner and filed with both the Clerk of the IJAC, who shall retain an original in the IJAC records and transmit the other original to the Secretary of State or other designated entity.

Section 2515. INITIAL SELECTION OF THE IJAC COMMISSIONERS. On the 15th day of November, 2004 A.D., at 12:00 noon, following the enactment of the Act, the Secretary of State shall, on the south steps of the Idaho State Capital building (which event may be televised), draw thirty (30) names of potential IJAC Commissioners, numbering each Commissioner candidate drawn in sequential order. Names shall be drawn from the IJAC Commissioner Pool of names. The Secretary of State shall contact every man or woman drawn by certified mail no later than forty-eight (48) hours after the names have been drawn, notifying each Commissioner candidate that his/her name has been drawn for IJAC service explaining the duties, term of service, compensation for IJAC service, along with a return form provided to accept IJAC duty. All IJAC Commissioners shall serve without compulsion. Potential IJAC Commissioners wishing to serve, shall return the form giving notice of their acceptance of the position of IJAC service to the Secretary of State's office, no later than the 30th day of November, 2004 A.D. On the 6th day of December, 2004 A.D., all returned acceptance notices shall be assembled and the fifteen IJAC Commissioner positions shall be filled by the Commissioner candidates who have returned their acceptance forms, based on the sequential order of the names drawn on the 15th day of November, 2004 A.D. Each IJAC Commissioner selected shall be assigned a IJAC Commissioner number from one to fifteen, based on the sequential order of the names drawn, for each of the fifteen (15) positions on the IJAC. IJAC Commissioner numbers shall reflect the rotation schedule for Commissioners leaving the IJAC. The Secretary of State shall immediately notify those IJAC Commissioners selected, that they have been selected to be seated on the IJAC.

Section 2516. ESTABLISHMENT OF THE IJAC. On the 7th day of December, 2004 A.D., the Secretary of State shall summon the selected IJAC Commissioners to convene on the 17th day of December, 2004 A.D., at a conference location in McCall, Idaho, where the Secretary of State or his designated representative shall administer the oaths of office to the IJAC Commissioners. Said Commissioners shall then elect a chair from among themselves. The chair shall read the Act to the assembled IJAC members. Initial duties of the IJAC shall include: hiring a Clerk of the IJAC and other administrative staff as necessary; establishing a committee to select a seat for the operation of the IJAC; developing rules and internal operations procedures; and developing any positions deemed necessary for the effective operation of the IJAC.

Section 2517. SELECTION OF THE IJAC SEAT. The initial IJAC shall select a seat (location) for its business and administrative operations and which shall be at least one mile from any court building, State Bar Association office or other facility where judicial hearings or business is regularly conducted. The IJAC 'seat' shall be established within 30 days of the initial selection of the IJAC and shall include a suitable administrative office, an official address and/or mailing location for correspondence and mailings, and office furnishings including office equipment and multi-line telephones for 3 administrative assistants and 1 clerk. The IJAC 'seat' shall be centrally located within or around McCall, Idaho. The IJAC may travel to any location in Idaho to conduct hearings or other IJAC duties, and may utilize any facility deemed appropriate to conduct public hearings and/or other IJAC duties.

Section 2518. ROTATION OF COMMISSIONERS. On the first business day of each month, beginning in January, 2006 A.D., Commissioners shall be rotated off the IJAC, according to their Commissioner position number and under the following schedule: January, positions 1 and 2; February, positions 3 and 4; March, positions 5 and 6; April, position 7; May, position 8; June, position 9; July, position 10; August, position 11; September, position 12; October, position 13; November, position 14; and in December, position 15.

Any vacant Commissioner position(s) shall be filled at the next regular monthly rotation. Commissioners filling unscheduled vacancies shall complete only the remaining term of the Commissioner position being filled; however, if serving less than four (4) months, said Commissioner may submit his/her name to the Secretary of State for placement on the IJAC Commissioner Pool, and be eligible for further service. On the first business day of each month at 12:00 noon, beginning in November of 2005 A.D., on the south steps of the Idaho State Capital building, the Secretary of State shall draw names from the IJAC Commissioner Pool, in a number that is at least double the number of IJAC Commissioners which will be rotated off two (2) months following the drawing, plus double the number of any unscheduled vacancies on the IJAC. Each Commissioner candidate drawn shall be numbered in the order in which they were drawn. The Secretary of State shall contact the people drawn by certified mail not later than forty-eight (48) hours after the names have been drawn; notifying each Commissioner candidate that his/her name has been drawn for IJAC service; explaining the duties, term of service, compensation for IJAC service, and shall provide a return form to accept IJAC duty. Those people drawn who wish to serve, shall return the form giving notice of their acceptance of an IJAC Commissioner position to the Secretary of State's office, not later than the 20th day of the month (or the next business day thereafter) said name was drawn. On the 25th day of the month (or the next business day thereafter), all returned acceptance notices shall be assembled, and the IJAC Commissioner positions which will be rotated off in the second month following the month drawn, along with any vacancies, shall be selected, based on the sequential order of the names drawn on the 1st business day of the month. The Secretary of State shall then immediately notify those IJAC Commissioners selected, of their selection to be seated on the IJAC and notify them to appear for IJAC duties on the first business day of the following month.

The Secretary of State shall provide the Clerk of the IJAC a written notice of the names and personal contact information of each IJAC Commissioner selected.

Section 2519. COMMISSIONER'S CONFLICT OF INTEREST. IJAC Commissioners, having a conflict of interest regarding a party to an action before the IJAC shall notify the IJAC and recuse themselves from that case. Any IJAC Commissioner who fails to give notice of a conflict of interest regarding a party before the IJAC shall be subject to disciplinary action, up to and including removal from the IJAC, as will be further provided for in the IJAC Internal Operations Rules.

Section 2520. COMPENSATION OF COMMISSIONERS. IJAC Commissioners shall receive a monthly salary of three-thousand five hundred dollars (\$3,500) in money, plus other necessary and authorized per diem expenses whenever the IJAC conducts business away from its seat.

Section 2521. PROFESSIONAL ASSISTANCE. The IJAC is authorized to employ, retain and consult with advisors, special prosecutor(s) and investigator(s) as needed.

Section 2522. CLERK AND ADMINISTRATIVE ASSISTANTS. The IJAC shall employ a clerk of the IJAC and other clerical administrative assistants, as needed.

Section 2523. CLERK'S OATH OF OFFICE. Before the Clerk of the IJAC assumes office, he/she shall take the following oath of office which shall be administered by the chair of the IJAC:

"I, _____ [name of Clerk] do solemnly swear/affirm, that I will faithfully discharge the duties of the Clerk of the Idaho Judicial Accountability Commission, to promote justice and accountability for the people of Idaho, to the best of my ability."

Two original written forms of this oath shall be signed by the Clerk and filed with both the Clerk of the IJAC, who shall retain an original in the IJAC records and transmit the other original to the Secretary of State.

Section 2524. DUTIES OF CLERK. The Clerk of the IJAC shall have the following duties:

(a). Maintain all records and case files of the IJAC and provide access to copies of the same by any party or Citizen of Idaho requesting access to IJAC documents per the Judicial Accountability Rules; (b). Immediately assign a docket number to each complaint of judicial misconduct brought before it; (c). Administer the budget of the IJAC and account for all expenditures. The Clerk of the IJAC may delegate these duties to a IJAC financial administrator; (d). Publish a summary of the IJAC's findings and dispositions at least monthly. Timely post the same in the seat of the IJAC and make the summary available to those who request it for a reasonable fee; (e). Issue and/or product all documents necessary for the operation of the IJAC; (f). Any other duties that may hereafter be prescribed the Judicial Accountability Rules or other Rules governing the administration of the IJAC; (g). Maintain the official correspondence and communications for the IJAC; (h). Issue subpoenas and summons for IJAC cases; (i). Maintain a record of judicial officers who have received a "strike" or "strikes" against them, including the number and cause of said "strike(s);" (j). Any other needful act(s).

Section 2525. SELF-SUPPORTING FISCAL INTENT OF ACT. It is the intent of the Act to create a IJAC which, as much as is possible, shall be self supporting from fees, deductions from judicial officers salaries, fines and/or forfeitures.

Section 2526. JUDICIAL ACCOUNTABILITY TRUST FUND AND FUNDS TRANSFER.

(a). There is hereby created a Judicial Accountability Trust Fund which shall be to provide the operating revenue for the budget of the IJAC. The Judicial Accountability Trust Fund shall be administered by the Office of the State Controller.

(b). On the 17th day of December, 2004 A.D., the State Controller shall make five hundred thousand dollars (\$500,000) of the Judicial Accountability Trust Fund available to the IJAC for the startup and establishment of the IJAC. Startup funds for the IJAC shall be delivered to and held by the chair of the IJAC until a Clerk of the IJAC has been hired. Thereafter, all IJAC funds shall be managed by the Clerk of the IJAC and shall be deposited in a Business and Operations account for the regular business and other costs associated with the establishment and operation of the IJAC.

(c). On January 3, 2005 A.D., and the 1st business day of each month thereafter, the State Controller shall deliver to the Clerk of the IJAC the sum of one-hundred fifty thousand dollars (\$150,000) and the Clerk of the IJAC shall transfer said funds into the Business and Operations account. Funds may be transferred by direct transfer.

(d). The IJAC Clerk shall account for all monies received by the IJAC from fees, fines and/or forfeitures and shall make monthly deliveries of the same to the State Controller for transfer into the Judicial Accountability Trust Fund.

Section 2527. DEDUCTIONS FROM JUDICIAL OFFICERS' SALARIES. Immediately upon passage of the Act, and any and all times thereafter, the State Controller shall cause to be deducted three percent (3%) from the gross salaries of all State of Idaho Supreme Court Justices, Appeals Court Judges, District Court Judges, Magistrates, Judges Pro Tem and Senior Judges who have not filed a Statement of Waiver to Claims of Immunity; said deductions shall be transferred immediately into the Judicial Accountability Trust Fund. Further, the State Controller shall instruct all county Treasurers and/or other fiscal agent(s) for each county who are responsible for payment of county Prosecutors salaries to deduct three percent (3%) from the gross salaries of all county Prosecutors and Deputy Prosecutors who have not filed a Statement of Waiver of Claims to Immunity, and to transmit said deductions to the State Controller who shall transfer said deductions into the Judicial Accountability Trust Fund. The IJAC Clerk shall keep a

record of all judicial officers who have not filed a Statement of Waiver of Claims to Immunity and shall provide a copy of said record to the Idaho Supreme Court.

Section 2528. WAIVER OF IMMUNITY. Judicial Officers may waive claims to immunity by signing and filing a Statement of Waiver of Claims to Immunity with the Clerk of the IJAC, and in which case no deduction shall be made from his/her salary. By filing the Statement of Waiver of Claims to Immunity, the judicial officer shall declare publicly that he/she agrees not to claim immunity in the even a civil or criminal complaint is filed against them. The Clerk of the IJAC shall keep a record of all judicial officers who have waived their immunity and shall transmit a copy of said waivers to the Clerk of the Idaho Supreme Court.

Section 2529. FILING FEES. A filing fee of \$50.00 shall be submitted with each complaint filed to the IJAC; or, a declaration in lieu of payment may be filed by a complainant who is indigent or objects to payment of such filing fee, stating their reason(s) for the same. Filing fees and other revenue collected shall be transferred monthly into the Judicial Accountability Trust Fund.

Section 2530. ANNUAL BUDGET – REVIEW. The IJAC shall have a beginning minimum annual operational budget of one million, eight hundred thousand dollars (\$1,800,000), which shall be funded from the general fund in the first year of its operation and transferred into the Judicial Accountability Trust Fund immediately after passage of the Act. Six years after the passage of the Act, the legislature shall review the budget, revenues and cost of operations of the IJAC and may thereafter amend the minimum annual operational budget amount to an amount which reflects the actual operational costs incurred in the IJAC's fifth year of operation. A similar review and amendment shall occur every five years thereafter.

Section 2531. SUPPLEMENTAL FUNDING DUTY – NOTICE TO LEGISLATURE. The State Controller shall notify the Legislature to replenish the Judicial Accountability Trust Fund whenever there is less than the annual operational budget amount in said Trust Fund. The Legislature shall provide any additional funding necessary for operational expenses of the IJAC.

Section 2532. RETURN OF EXCESS FUNDS. Should the Judicial Accountability Trust Fund in any subsequent year exceed the minimum annual operational budget amount at the beginning of a new budget year, the State Controller shall return the excess funds to the state general fund.

Section 2533. PROMULGATION AND DISTRIBUTION OF PROCEDURAL RULES. In the interest of justice and in preserving due process of law, the IJAC shall promulgate Idaho Judicial Accountability Rules (IJAR) which shall govern IJAC procedures for filing complaints and petitions; investigating, reviewing, considering and determining the merits of complaints or petitions; authorizing, issuing and/or serving subpoenas to compel the appearance of witnesses or documents as needed; transferring cases to trial court for further civil or criminal actions; reviewing, granting or denying of petitions for: temporary immunity from arrest, forfeiture or confiscation of property, deprivation of Rights of privileges, or habeas corpus. The IJAC shall also establish it's own internal operations and procedures rules. The Rules (IJAR) shall be simple, flexible, accommodating and in accordance with the provisions of the Act and its' intended purpose: to provide an opportunity for remedy to any person who believes they can prove they were wrongly harmed by judicial misconduct and to prevent further harm from occurring. Complaints shall sufficiently articulate the judicial officer's complained of act(s) or omission(s) and the remedies sought by the Complainant. The Idaho Judicial Accountability Rules shall be promulgated in similarity to the Idaho Administrative Procedures Act (IDAPA) (Idaho Code, Title 67, Sections 5240, et. Seq.), and shall include investigative request/order procedure (alcohol/drug screen, etc.). Printed copies shall be made available to the public within 60 days of the Act. Copies shall continuously be available at no cost, at locations including but not limited to: the Office(s) of the IJAC; all county Courthouses; the Office of the Idaho Supreme Court; Idaho State law libraries; state prisons, county jails and other detainment facilities; all State Agency offices which conduct administrative hearings of contested cases; State of Idaho Offices of the Governor, the Secretary of State, the Attorney General; and the State Legislative Services office.

Section 2534. INTERNAL OPERATIONS OF THE IJAC. The IJAC shall establish Internal Operations Rules governing the internal administration of the IJAC, its employees and contractors. Such Internal Operations Rules may include, but not be limited to, the Code of Judicial Conduct; procedures for

processing complaints, petitions and cases, provisions for internal discipline and the removal, recusal, death or resignation of IJAC Commissioners; and other operational matters as deemed necessary and/or appropriate.

Section 2535. COMPLAINT PROCEDURES. Any person may file a civil and/or criminal complaint with the IJAC alleging judicial misconduct, pursuant to the procedures and limitations of the Act and/or the Idaho Judicial Accountability Rules. The IJAC shall serve a copy of the filed complaint upon the complained of judicial officer and notice to the complainant of such service within five (5) days of receiving the complaint. A complaint served upon any judicial officer shall not on its own act as a recusal/disqualification order and this may be sought separately, acted upon voluntarily by the judicial officer, or ordered by the IJAC as they deem appropriate and necessary to the complaint filed. A judicial officer shall have twenty days to serve and file an answer to the complaint. The complainant shall thereafter have fifteen days to file an optional reply to the judicial officer's answer. The IJAC shall determine the causes properly before it with its reasoned findings in a written decision within one hundred twenty (120) calendar days after the last complaint, answer or reply is filed, and serve upon all parties its decision to grant or deny immunity as a defense in any civil action that may thereafter be pursued against the judicial officer, and/or whether or not probable cause is found of criminal activity by any judicial officer, as alleged. Prosecution of any civil case, in which the IJAC's decision has denied a judicial officer an immunity defense, shall be the responsibility of the complainant, in any court of Idaho.

There shall be an additional three (3) days allowed for the mailing of any answer or reply. Upon timely request, the IJAC may provide for reasonable extensions of time, for good cause. Copies of all records and proceedings of the IJAC shall be available and open to the public. The IJAC shall have the power to subpoena and examine persons under oath and request further information from any party.

All complaint allegations shall be liberally construed in the favor of the complainant as a preliminary hearing to determine the merits of the case before the IJAC, which shall be further subject to being proven in a separate tribunal. A simple majority of the IJAC votes shall determine any matter. The IJAC shall be empowered to accept and submit stipulations in order to effect a timely, cost effective remedy in any matter at any time before the IJAC renders its final decision.

Section 2536. FRIVOLOUS OR HARASSING FILINGS. Any Complainant found by the IJAC to have filed a frivolous or harassing action against any judicial officers may be subject to an order or decision against the complainant by the IJAC which may include a fine up to one thousand dollars (\$1,000). Any judicial officer who is exonerated by an IJAC investigation may request the complainant reimburse the judicial officer's expenses that were actually incurred in their defense, not to exceed one-thousand dollars (\$1,000). This section shall not be a bar to any suit filed by a judicial officer against a complainant for harassment.

Section 2537. CORRECTIVE ACTION – REMOVAL – LOSS OF BENEFITS. The IJAC is hereby vested with power and authority to assess "strikes" against any judicial officer as defined in subsection 2505(f) of the Act. The IJAC shall issue an Order removing any judicial officer, immediately and permanently, from office, when said judicial officer has received three strikes against him/her. Whenever the IJAC becomes aware that a judicial officer has had an adverse civil or criminal decision against them, the IJAC shall review the decision to determine if it constitutes a "strike" and whether there have been three "strikes" against that judicial officer. "Strikes" shall be assessed by a simple majority vote of the IJAC.

Thereafter, that judicial officer shall be ineligible to serve/hold in any State judicial office, including that of pro tem or senior judge. Retirement benefits for any removed judicial officer shall not exceed one-half of the benefits that such person would have otherwise been entitled. One-half of any judicial officer's retirement benefits shall be forfeited to the Judicial Accountability Trust Fund, with an equal payment made to the Clerk of the IJAC not later than ten (10) business days after the judicial officer is sent a retirement benefit payment. Early retirement shall not avert a third-strike penalty. The IJAC shall provide reports of IJAC activity to the Office of the Governor and Supreme Court yearly to include the names of judicial officers whom have received one or more strikes against them. The Clerk of the IJAC shall maintain a record of judicial officers who have received a "strike" or "strikes" against them, including the number and cause of said "strike(s)." The IJAC shall notify the Office of the Governor and Supreme Court within five (5) days after any judicial officer has been ordered removed from office and may submit names of individuals the IJAC deems qualified to replace the removed judicial officer.

Section 2538. CRIMINAL COMPLAINT PROCEDURES. In addition to any other provision of the Act, a complaint for criminal conduct of a judicial officer may be brought directly to the IJAC upon all the following prerequisites: (1) a criminal complaint has been lodged with the appropriate prosecutorial entity or court, for the alleged misconduct; (2) the prosecutor declines to prosecute, or one hundred twenty (120) days has passed following the lodging of such complaint and prosecutions has not commenced; and (3) an indictment, if sought, has not been specifically declined on the merits by a regular Grand Jury.

Section 2539. CRIMINAL CAUSES. Should the IJAC find probable cause of criminal conduct on the part of any judicial officer against whom a complaint is docketed, it shall have the power to forward the complaint to a special trial court, except where double jeopardy protections apply. Further, the IJAC shall select a special prosecutor and a judge from a county other than that of the defendant judicial officer. The special trial court shall have the power to call special trial jurors to be empanelled from the county in which the offense occurred; or, if a change of venue is approved by the trial judge, jurors shall be empanelled from the county where the case is to be tried. The special trial jurors, plus alternates, shall be chosen, without peremptory challenges, and with *voir dire* limited to challenges for a personal relationship with any party in the case. Special trial jurors shall be selected from the same pool of jury candidates as any regular jury, and the trial jurors shall be instructed that they have power to judge both law and fact. Further, no person shall be compelled to serve as a special trial juror. Jurors shall be compensated pursuant to Idaho Code 2-215 (3) or Idaho Code 19-3945, whichever is applicable, plus any reasonable per diem costs and/or transportation costs. The special prosecutor shall prosecute the cause to a conclusion, having all the powers of any other prosecutor within this State. Upon conviction, the special trial jury shall have exclusive power of sentencing, limited to incarcerations, fines and/or community service. Each trial juror shall determine the sentence they would impose, but no sentence imposed by any special trial juror shall exceed the statutory maximum allowed for the crime(s) for which the judicial officer was convicted. The actual sentence imposed on the defendant judicial officer shall be derived by an average of the sentences imposed by each juror.

Section 2540. STATUTE OF LIMITATIONS. Except as provided in this section, complaints for judicial misconduct shall have six (6) months from the date of conclusion of the case in which the alleged judicial misconduct occurred, to file a complaint with the IJAC. No complaint shall be considered by the IJAC unless the complainant shall have first attempted to remedy the conduct complained of in the forum where it occurred. Should a complainant opt to proceed to a higher court, the six-month period shall begin to run upon disposition of the proceeding by that court. Attempts to remedy judicial misconduct shall include but not be limited to motions or petitions for relief, appeals and habeas corpus petitions.

In a six-month period, which shall begin to run immediately upon the initial seating of the IJAC, a complainant may file a complaint for judicial misconduct which occurred prior to the enactment of the Act, however, no complaint for judicial misconduct shall be brought for act(s) or omission(s) that were not illegal or contrary to the mandates of the Constitution(s) at the time they occurred.

A party filing a document in a court previous to the enactment of the Act, which states with particular reason(s) why they will not be seeking further relief and/or why they have no confidence in any further proceedings to obtain any just remedy, shall be deemed as an attempt to obtain remedy for the purposes of this section.

Within 180 days from receiving notice of the IJAC's final decision, a Complainant who filed a civil case with the IJAC must either begin or continue prosecution of his or her civil case. Failure to comply with these statutes of limitations, shall be grounds for dismissal of a case, unless: a petition is filed for an extension of time; and good cause is shown why the statute of limitations should be extended, and the IJAC, after consideration, votes to extend it.

Section 2541. PUBLIC INDEMNIFICATION. No judicial officer complained of, or sued civilly by a complainant pursuant to the Act shall be defended at public expense; or from any publicly funded indemnity or insurance fund; or by any elected or appointed public counsel in any proceeding before the IJAC; nor shall any judicial officer be reimbursed from public funds for any losses sustained under the Act.

Section 2542. JUDICIAL NOTICE OF THE ACT. Every judicial officer after passage of the Act, shall provide a notice which shall appear at the end of every judicial 'Order, Decision, Judgment or Sentence', which clearly states that "any party who believes a judicial officer has committed an act of judicial misconduct may file a complaint pursuant to the Judicial Accountability Act of 2004 A.D., (Idaho Code, Title 1, Sections 2501 et. seq.)" Said notice shall also include the phone number and address of the IJAC office.

Section 2543. QUALIFIED IMMUNITY OF IJAC ACTIONS. Persons carrying out duties under this Act, and/or at the direction of the IJAC, shall receive immunity from all liability, civilly or criminally, nor be held in contempt by any court authority, except for intentional violations of clearly established law.

Section 2544. OTHER REDRESS. The provisions of the Act are in addition to other redress that may exist and are not mutually exclusive, except where double jeopardy protections apply.

Section 2545. TEMPORARY IMMUNITY. The IJAC shall be vested with power and authority, in the interest of justice, to grant or deny temporary immunity from arrest, prosecution, forfeiture or confiscation of property or the deprivation of Rights and/or privileges to any complainant or defendant, except in cases of: conviction for violent felony involving actual injury to another person; or a felony act of fraud, theft or property damage, exceeding three-thousand dollars (\$3,000). Any complainant who files a complaint with the IJAC may petition for such relief. Temporary immunity may be granted to a complainant after the IJAC reviews the case and determines by simple majority vote that there is probable cause to believe the complainant's conviction, forfeiture, confiscation or deprivation of Rights or privileges resulted from judicial misconduct or abuse of authority as documented in complainant's complaint. Defendant judicial officers may also petition for and be granted such relief after the IJAC reviews the case and determines by simple majority vote that the complaint does not involve a violent felony involving actual injury to another person; or a felony act of fraud, theft or property damage, exceeding three-thousand dollars (\$3,000) and substantial irreparable harm to the judicial officer would result if the relief were not granted. Such temporary immunity may be granted while the case before the IJAC is pending and during any subsequent civil or criminal case related directly thereto.

The IJAC is empowered to grant or deny temporary immunity from arrest to any fugitive who is scheduled to appear before the IJAC. Said immunity shall consist of a period of at least 24 hours prior to the scheduled appearance and ending not less than 24 hours upon conclusion of the IJAC hearing.

Section 2546. EXECUTION AND ENFORCEMENT. An Order for investigation compliance, discipline or removal from office concerning any judicial officer, duly executed by the IJAC and served, shall be enforced immediately and with the assistance of local law enforcement if necessary. The Sheriff of the county where said judicial officer presides, shall assign an officer to execute the Order, according to the specific terms therein, and which may include escorting the individual (judicial officer) from the court or other official property. Any judicial officer refusing the leave the property accordingly shall be promptly arrested for disturbing the peace and may be charged also with impersonating a judicial officer if deemed appropriate and under the terms of the order of the IJAC.

Section 2547. JURISDICTION TO CONSIDER FOR WRIT OF HABEAS CORPUS. The IJAC shall have original jurisdiction, concurrent with the Idaho Supreme and District Courts, to consider petitions for writs of habeas corpus, and may grant and/or order relief under the provisions of Title 19, Chapter 42, Idaho Code (Idaho Habeas Corpus And Institutional Litigation Procedures Act).

Section 2548. CHALLENGES TO THE ACT. To prevent conflicts of interest with challenges to the Act, no judicial officer brought under the jurisdiction of the IJAC by a complaint filed therewith, shall have jurisdiction to sit in judgment of any challenge to the Act. Any adjudication, by a judicial officer who is a party to an action pending before the IJAC or a subsequent and pending civil or criminal proceeding authorized to proceed by the IJAC, which seeks to modify or annul any portion of the Act shall be null and void for all purposes and shall be considered grounds for bringing a complaint of a judicial act committed without jurisdiction, by any adversely affected party.

Section 2549. PREEMINENCE. Preeminence shall be given to the Act, as an Initiative of the people, in any case of conflict with Idaho statute, case law, or doctrine(s). Any Idaho law found inconsistent with or contrary to the Act shall be and is hereby deemed void, to the extent that said law is inconsistent with or contrary to the Act. The Act shall be subject to amendment or repeal only by an Initiative passed by the people of Idaho, except as otherwise provided herein.

Section 2550. SEVERANCE. Should any part of the Act be determined unconstitutional, the remainder shall remain in full force and effect as though no challenge thereto existed.

AMENDMENTS TO HABEAS CORPUS AND INSTITUTIONAL LITIGATION PROCEDURES ACT. Title 19, Chapter 42, Idaho Code the Idaho Habeas Corpus And Institutional Litigation Procedures Act is hereby amended by:

(1) adding the following subsections:

19-4201A (10) "court" includes the Idaho Judicial Accountability Commission created by the Judicial Accountability Act of 2004 A.D. as provided in Idaho Code Title 1, Chapter 25.

19-4202 (3) The Idaho Judicial Accountability Commission created by the Judicial Accountability Act of 2004 A.D. as provided in Idaho Code Title 1, Chapter 25. And;

(2) amending Idaho Code Subsection 19-4204(1) to read as follows:

19-4204. Application for writ of habeas corpus by a person not a prisoner. - (1) Application for a writ of habeas corpus by a person not a prisoner shall be made by filing a petition for writ of habeas corpus in the district court of the county in which the person is restrained, or with the Idaho Judicial Accountability Commission created by the Judicial Accountability Act of 2004 A.D. as provided in Idaho Code Title 1, Chapter 25. And;

(3) amending Idaho Code Subsection 19-4205(1) to read as follows:

19-4205. Application for writ of habeas corpus by a prisoner. - (1) Application for a writ of habeas corpus by a prisoner shall be made by filing a petition for a writ of habeas corpus in the district court of the county in which the prisoner claims his confinement or aspects of his confinement violate provisions of the state or federal constitutions, or with the Idaho Judicial Accountability Commission created by the Judicial Accountability Act of 2004 A.D. as provided in Idaho Code Title 1, Chapter 25.

AMENDMENTS TO PAYMENT TO JURORS. Title 2, Chapter 2 of the Idaho Code is hereby amended by adding a New Subsection 2-215(3) to read as follows:

(3) Jurors serving on a civil or criminal case which is proceeding pursuant to a decision of the Idaho Judicial Accountability Commission created under Title 1, Chapter 25 of Idaho Code shall receive fifty dollars (\$50.00) for jury service for each one-half (1/2) day, or portion thereof; or seventy dollars (\$70.00) for each full-day of required court attendance of more than one-half (1/2) day. And; that,

Title 19, Chapter 39, Section 3945, is hereby amended as follows:

19-3945. Jurors and Witnesses -- Fees and Mileage -- Application for Subpoenas. Witnesses before examining magistrates and in criminal cases in the probate and justice courts, and jurors and witnesses in a coroner's inquest, are entitled to ten dollars (\$10.00) per day for each day actually engaged in the trial of a case, except that jurors who are serving on a civil or criminal case, which is proceeding pursuant to a decision of the Idaho Judicial Accountability Commission created under Title 1, Chapter 25 of Idaho Code shall receive fifty dollars (\$50.00) for each one-half (1/2) day, or portion thereof; or seventy dollars (\$70.00) for each full-day (or more than ½ day) of required jury service ; any juror traveling more than thirty (30) miles from his residence shall be compensated an additional twenty-five (25) cents per mile, one way, which must be paid out of the county treasury; provided, however, that when the state or the defendant requires the attendance of more than three (3) witnesses in its or his behalf, before such witnesses shall be subpoenaed at the county expense, or their fees and mileages be a charge against the county, the county attorney or defendant must make affidavit setting forth that they are witnesses whose evidence is material for the state or the defense, and the facts showing such materiality, and that it or he can not safely go to trial without them. In such case or cases, the court or judge thereof, at the time the application is made therefor, shall order a subpoena to issue to such of said witnesses as the court or judge thereof may deem material for the state or defendant, and the costs incurred by the process, and the fees and mileage of such witnesses, shall be paid in the same manner that the costs and fees of other witnesses are paid.

