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Newman v. State Appellant's Reply Brief Dckt. 35568

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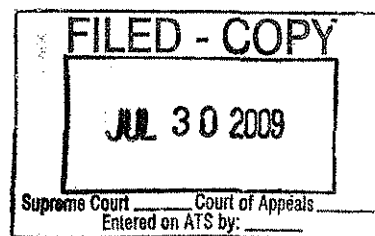
IN THE SUPREME COURT OF THE STATE OF IDAHO

JOSEPH CRAIG NEWMAN,)	
)	
Petitioner-Appellant,)	NO. 35568
)	
v.)	
)	
STATE OF IDAHO,)	REPLY BRIEF
)	
Respondent.)	

REPLY BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE SIXTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF BANNOCK

HONORABLE RONALD BUSH
District Judge



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STATEMENT OF THE CASE

Nature of the Case

Joseph Craig Newman appeals from the district court's Memorandum Decision and Order dismissing his post conviction actions. On appeal, Mr. Newman asserted that the district court committed reversible error by failing to properly take judicial notice of Idaho State Bar Professional Conduct Board proceedings against Mr. Eckert, an Idaho Supreme Court Order related to those proceedings, and case related documents and transcripts as listed in Case No. CR-1998-949-FE, and Case No. CV-2002-5290-PC. In response, the State has argued that it is a discretionary decision on the part of the district court in determining whether to take judicial notice of offered documents from a court case and Mr. Newman failed to show error in the district court's decision.¹ This reply brief is necessary to address the State argument.

Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Newman's Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto.

¹ In addition, The State argued that Mr. Newman failed to show the relevance of the documents and failed to meet the two prong test for taking judicial notice: when the fact the party requests the court to take judicial notice of is not subject to reasonable dispute because it is "(1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources who cannot be reasonably questioned." I.R.E. 201(a). Because those issues are thoroughly addressed in Mr. Newman's Appellant's Brief, they need not be rehashed herein.

ISSUE

Did the district court err when it failed to take judicial notice of the Idaho State Bar Professional Conduct Board's actions against Thomas Eckert and the Idaho Supreme Court's Order addressing the State Bar's proceeding against Mr. Eckert which were submitted to the district court?

ARGUMENT

I.

The District Court Erred When It Failed To Take Judicial Notice Of The Idaho State Bar Professional Conduct Board's Action Against Thomas Eckert And The Idaho Supreme Court's Order Addressing The State Bar's Action Against Mr. Eckert, Which Were Submitted To The District Court

A. Introduction

In the Respondent's Brief, the State argued that whether to take judicial notice of the documents in the instant case, Idaho State Bar Professional Conduct Board's actions against Thomas Eckert and the Idaho Supreme Court's Order addressing the State Bar's proceeding against Mr. Eckert, was a discretionary decision on the part of the district court and Mr. Newman has failed to show error in the district court's decision. The State is incorrect, pursuant to Idaho Rule of Evidence (*hereinafter*, I.R.E.) 201(d), a court *must* take judicial notice of a fact if the requirements of I.R.E. 201(a) are met and judicial notice is requested by the party and the court is supplied the necessary information. *Id.*; *see also State v. Cook*, 143 Idaho 323, 328, 144 P.3d 28, 33 (Ct. App. 2006).

B. The District Court Erred When It Failed To Take Judicial Notice Of The Idaho State Bar Professional Conduct Board's Action Against Thomas Eckert And The Idaho Supreme Court's Order Addressing The State Bar's Action Against Mr. Eckert, Which Were Submitted To The District Court

In its brief, the State argues that "Newman fails to appreciate the court's discretion on matters of judicial notice" and has failed to show error in district court's decision not to take judicial notice of the documents offered by Mr. Newman.

(Respondent's Brief, pp.9-12.) The State is mistaken. Idaho Rule of Evidence 201 provides, in relevant part:

a) Scope of rule. This rule governs only judicial notice of adjudicative facts.

(b) Kinds of facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(c) When discretionary. A court may take judicial notice, whether requested or not. When a court takes judicial notice of records, exhibits, or transcripts from the court file in the same or a separate case, the court shall identify the specific documents or items that were so noticed.

(d) When mandatory. **When a party makes an oral or written request that a court take judicial notice of records, exhibits or transcripts from the court file in the same or a separate case, the party shall identify the specific documents or items for which the judicial notice is requested or shall proffer to the court and serve on all parties copies of such documents or items. A court shall take judicial notice if requested by a party and supplied with the necessary information.**

Id (emphasis added).

It is readily apparent that when a party requests that the district court take judicial notice of documents from a case file and supplies the court with the necessary documents, as defense counsel did here, the district court must take judicial notice of the requested documents. (See Tr., p.27, L.7 – p.28, L.13; Judicial Notice, pp.2-5.);² I.R.E. 201(d). In fact, in *Cook*, the Idaho Court of Appeals had the opportunity to address the application of I.R.E. 201. It stated:

Idaho Rule of Evidence 201(b) provides that a court may take judicial notice of a fact when the fact is capable of accurate determination by resort to sources whose accuracy cannot reasonably be questioned. **A**

² Mr. Newman's Motion For Court to Take Judicial Notice was augmented into the record on 4/14/09 and is cited herein as "Judicial Notice, p" for ease of reference.

court must take judicial notice if requested by a party and supplied with the necessary information. I.R.E. 201(d). A district court may take judicial notice of its own record in the case before it. *Larson v. State*, 91 Idaho 908, 909, 435 P.2d 248, 249 (1967).

Id. 143 Idaho at 328, 144 P.3d at 33.

Alternatively, if even if this Court determines that the Idaho State Bar proceedings against Mr. Eckert, and the Idaho Supreme Court's Order, are not records from the court file in the same or separate, this Court can apply *Matthews v. State*, 122 Idaho 801, 807-808, 839 P.2d 1215-1216 (1992), in determining that the district court's failure to take judicial notice of the requested documents is reversible error. In *Matthews*, the Court stated that:

[w]e hold that prior to dismissing a petition for post-conviction relief, the district court is required to obtain that portion of the trial transcript as is **necessary to a determination 'on the basis of the application, the answer or motion, and the record,'** that there are not material issues of fact and the petitioner is not entitled to post-conviction relief.

Matthews v. State, 122 Idaho 801, 807-808, 839 P.2d 1215-1216 (1992) (emphasis added) (citing I.C. § 19-4906(b)). Certainly, the bar records against Mr. Eckert are "necessary to" determine whether Mr. Eckert rendered ineffective assistance of counsel and was credible in his testimony during the evidentiary hearing, are argued in detail in Mr. Newman's Appellant's Brief.

Accordingly, based on the arguments and authority presented herein and in Mr. Newman's Appellant's Brief, the district court erred in failing to take judicial notice of the Idaho State Bar Professional Conduct Board's actions against Thomas Eckert and the Idaho Supreme Court's Order addressing the State Bar's proceeding against Mr. Eckert, which were derived in part from Mr. Eckert's representation of Mr. Newman and are directly relevant to Mr. Eckert's credibility, a central issue in the evidentiary

hearing. See *In re Visciotti*, 926 P.2d 987 (Cal. 1996) (recognizing that State Bar proceedings against an attorney relevant to credibility). Because the district court failed to follow the mandatory language of I.R.E. 201(d) and take judicial notice of the offered documents, the district court's order dismissing Mr. Newman's post conviction action should be vacated and his case remanded for further proceedings.

CONCLUSION

Mr. Newman respectfully requests that this Court vacate the district court's order dismissing his petition for post-conviction relief.

DATED this 30th day of July, 2009.



ERIC D. FREDERICKSEN
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING


I HEREBY CERTIFY that on this 30th day of July, 2009, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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