6-28-2013

Ada County v. City of Garden City Appellant's Brief Dckt. 40084

IN THE SUPREME COURT OF THE STATE OF IDAHO

ADA COUNTY and THE BOARD OF ADA COUNTY COMMISSIONERS, Plaintiffs/Respondents, vs. CITY OF GARDEN CITY, by and through THE GARDEN CITY COUNCIL; and THE CITY OF MERIDIAN, by and through THE MERIDIAN CITY COUNCIL, Defendants/Appellants.	)	Supreme Court Docket No. 40084-2012 Ada County Docket No. 2010 24980 Supreme Court Docket No. 40106-2012 Ada County Docket No. 2010 24980

APPELLANTS' OPENING BRIEF

Appeal from the District Court of the Fourth Judicial District in and for the County of Ada

Michael W. Moore
Craig Stacey
Moore & Elia, LLP
Post Office Box 6756
Boise, Idaho 83707
Attorneys for Defendants/Appellants City of Meridian

Frank Walker
Charles W. Adams
Garden City Attorney's Office
6015 Glenwood
Garden City, Idaho 83714
Attorneys for Defendants/Appellants City of Garden City

Theodore E. Argyle
Chief Civil Deputy Prosecuting Attorney
Heather M. McCarthy
Deputy Prosecuting Attorney
Civil Division
200 W. Front Street, Room 3191
Boise, ID 83702
Attorneys for Plaintiff/Respondents

TABLE OF CONTENTS

Page(s)

TABLES OF AUTHORITIES

Cases **Page(s)**

STATUTES

I. STATEMENT OF THE CASE

A. NATURE OF THE CASE

This is an appeal by Appellants-Defendants, City of Meridian and City of Garden City (hereafter "Cities"). The Cities appeal from an Order of the Fourth Judicial District Court sitting *en banc*, dismissing an action seeking declaratory relief filed by Plaintiffs, Ada County and the Board of Ada County Commissioners, (hereafter "County") (Ada County Case No. CV-OC-2010-24980). The Cities also appeal from entry of an Order, filed on May 11, 2012, denying the Cities' *Motion to Vacate the 1994 Order* entered by the District Court against the Cities in 1994. This 2012 administrative order was entered and stamped by the Ada County Clerk's Office but does not have a case number. The Order is titled "IN RE: FACILITIES, EQUIPMENT, STAFF, PERSONNEL, SUPPLIES AND OTHER EXPENSES OF THE MAGISTRATE DIVISION." (R. pp 416-431)

B. COURSE OF PROCEEDINGS IN THE DISTRICT COURT.

The 2010 *Complaint for Declaratory Relief* filed by the Respondent County sought an order from the District Court to: (1) confirm the validity of the 1994 Administrative Order requiring the Cities to provide separate magistrate court facilities; (2) expand the scope of the Order to include both civil and criminal magistrate cases; and (3) require the Cities to provide a compliance plan for making the court provisions. (R. Vol. I, pp. 5-36.) Appellants Cities denied the allegations and set forth numerous affirmative defenses, including, that the Cities were denied due process of law in the original entry of the 1994 Order and that the circumstances had

changed significantly since the 1994 Order was entered thereby ending the necessity of the Order. (R. Vol. I, pp. 59-78.)

Initially the Cities filed a *Joint Motion to Disqualify* the judges of the Fourth Judicial District from sitting on the case and requested that a district judge from outside the Fourth Judicial District be assigned to the case. (R. Vol. I, pp. 80-81.) At a scheduling conference before the Honorable Judge Timothy Hansen on February 24, 2011, the parties were informed that the matter would be heard by an *en banc* panel of the Fourth Judicial District. (R. Vol. I, p. 79.) The Cities objected to the *en banc* panel sitting on the case on the basis that the *Complaint for Declaratory Relief* was a civil action and the Idaho Rules of Civil Procedure did not provide for the utilization of an *en banc* panel. (R. Vol. I, pp. 143-144.) The Cities Motion and Objection were heard on September 17, 2011 *en banc* by the Fourth Judicial District.[1] (R. Vol. I, p. 187.) In separate written decisions the judges sitting on the Panel denied the Cities' Motion. (R. Vol. I, pp. 188-248.)

Subsequently, the Cities filed a *Joint Motion to Vacate the 1994 Order* on the specific bases that the judges exceeded their statutory authority pursuant to I.C. §1-1622 and because the Cities had not been afforded due process of law when the 1994 Order was initially issued. (R. Vol. I, pp. 262-265.) The Motion was again heard *en banc* by the Fourth Judicial District. On May 11, 2012 the Panel issued a (1) *Memorandum Decision*, (2) an *Order Denying Motion to*

[1] The Honorable Michael Wetherell did not sit due to his participation, as a Boise City Councilman, in the construction of the present Ada County Courthouse and Administration Building and the closure of the magistrate facility on Barrister Street.

Vacate 1994 Order, and (3) a *Judgment Dismissing Declaratory Judgment Action.* (R. Vol. I, pp. 416-419, 420-429, 430-431.) The *Memorandum Decision* held that the declaratory judgment action was an "inappropriate mechanism" to determine the validity of the 1994 Order and dismissed the County's declaratory judgment lawsuit. In the same decision the Panel, citing to its inherent court powers, chose to convert the Cities *Motion to Vacate the 1994 Order* (filed in the now dismissed declaratory judgment action) into a Petition by the Cities to vacate the 1994 Order. (R. Vol. I, pp. 417-418). In doing so the Panel indicated that it was opening up the 1994 administrative process in which the earlier 1994 Order had been entered.

In the *Order Denying Motion to Vacate the 1994 Order*, the Panel held in relation to the issuance of the 1994 Order that: "Due process does not require the judges to engage in formalized process to come to a conclusion that a city's magistrate division caseload justifies imposing a requirement to provide facilities." (R. Vol. I, p. 427.) The Panel further ordered the Cities to prepare a plan for the Administrative Judge indicating how the Cities intended to comply with the 1994 Order. (*Id.*)

The Panel also stated that the Cities did not challenge the 1994 Order on the grounds of caseload or a substantial and material change in circumstance. This holding was without basis. The Cities initially argued their motion to vacate based on the lack of due process. The Cities did not concede the other issues and did not anticipate that the Cities' motion in the declaratory judgment lawsuit, after oral argument, would lead to a reopening of the administrative process and a administrative order directing compliance with the 1994 Order.

C. STATEMENT OF FACTS

In 1993, then Trial Court Administrator for the Fourth Judicial District, John Traylor, requested that the City of Boise file a petition with the Fourth Judicial District asking the District Judges to:

> [A]ppoint a special master to conduct discovery and hold hearings for the purpose of recommending to the District Judges that the cities of Meridian and Garden City should contribute money to the operation of the Ada County magistrate division located on Barrister Drive in the City of Boise.

(*Affidavit of William L. M. Nary in Support of Garden City and Meridian's Motion to Vacate the 1994 Order* (hereinafter "*Nary Aff.*"), R. Vol. I, p. 266.) Mr. Traylor told the City of Boise that then Administrative Judge of the Fourth Judicial District, Gerald Schroeder, was prepared to appoint W.E. Smith, a retired District Judge, to act as the special master once the petition was filed. (*Nary Aff.*, R. Vol. I, pp. 266-67.)

On June 10, 1994, the City of Boise and Ada County signed an unverified *Petition to the District Judges of the Fourth Judicial District* (hereinafter the "*Petition*") consistent with the petition that Mr. Traylor had requested the City of Boise file. (*Nary Aff.*, Exh. A., R Vol. I, pp. 272-275.) The Petition was signed by then Boise City Attorney Amanda Horton and Ada County Prosecutor Greg H. Bower on behalf of the City of Boise and Ada County respectively. (*Nary Aff.*, Exh. A, R. Vol. I, p.275; *Affidavit of Debbie Allen* (hereafter "*Allen Aff.*", Exh. 1, p. 4., R. Vol. I, p.303). In short, the Petition asked the District Judges to:

> [A]ppoint a Special Master, pursuant to Idaho Rule of Civil Procedure 53 to gather evidence, hold hearings, and report to the District Judges of the Fourth Judicial his/her finding regarding the level of contributions for the operation of the Magistrate Division of the Fourth Judicial District by the Cities of Meridian and Garden City.

(*Nary Aff.*, Exh. A, R. Vol. I, p.274) (emphases added). The Petition also requested that the special master be allowed to "assess the potential of also including the Cities of Kuna and Eagle in this cost-sharing arrangement." (*Id.* at p. 275.)

On June 21, 1994, the City of Boise hand delivered a copy of the Petition to John Traylor. (*Nary Aff.*, R. Vol. I, p. 267.) (noting that the Petition was "filed w/ John Traylor 6/21/94 4:15 p.m.") The Petition was not filed with the Ada County Clerk. (*Nary Aff.*, R. Vol. I, p. 267.) The Petition was not served on the Cities. (*Id.*)

On August 12, 1994, seven District Judges of the Fourth Judicial District signed a document entitled "*Order*" (hereinafter the "1994 Order") in the matter "*In Re: Facilities, Equipment, Staff Personnel, Supplies and Other Expenses of the Magistrate Division.*" (*Nary Aff.*, Exh. B. R. Vol. I, pp. 277-278.) Later that same day, Mr. Traylor personally served the 1994 Order on Meridian and Garden City. (*Nary Aff.*, Exh. C, R. Vol. I, p. 280.)

The 1994 Order required the cities of Meridian and Garden City to "provide by October 1, 1994 suitable and adequate quarters for the magistrate's division of the Fourth Judicial District...." (*Nary Aff.*, Exh. B, R. Vol. I, pp. 277-278.) The text of the 1994 Order reveals that the District Judges signed the document after "[h]aving reviewed the Petition filed by the City of

Boise and Ada County...." (*Id.*) The 1994 Order makes no reference to the District Judges having held any hearings, gathered any evidence, or done anything other than "having reviewed the Petition" before signing the 1994 Order. (*Id.*) Likewise, there is no evidence on the record suggesting that the District Judges held any hearings or considered any testimony or evidence other than the unverified Petition before signing the 1994 Order. (*See, e.g., Nary Aff.*, R. Vol. I, p. 267.)

On August 26, 1994, the City Attorneys for the cities of Meridian and Garden City signed a joint "*Motion for Reconsideration or Delay in Execution*" and a "*Memorandum in Support of Motion to Reconsider or Delay Imposition*". (*Nary Aff.*, ¶ 7, Exh. D, R Vol. I, pp. 283-284.) On that same day, the City of Meridian served the *Motion for Reconsideration* and *Memorandum in Support* on the City of Boise and Ada County. (*Nary Aff.*, Exh. D, R. Vol. I, pp. 285-295; *Allen Aff.*, R. Vol. I, pp. 305-319.) The City of Meridian also filed the motion and supporting briefing with the Ada County Clerk in the matter of "*In Re: Facilities, Equipment Staff Personnel, Supplies and other Expenses of the Magistrate Division.*" (*Allen Aff.*, Exh. 2, R. Vol. I, p. 320). The copy of the *Motion for Reconsideration* in the City of Boise's file bears the date stamp of Ada County Clerk David Navarro.

As set forth in the *Memorandum in Support of Motion to Reconsider or Delay Imposition*, the cities of Meridian and Garden City requested that the District Judges reconsider the 1994 Order primarily on the grounds that it was entered without affording the cities "due process" – *i.e.* notice and the opportunity to be heard. (*Nary Aff.*, Exh. C, R. Vol. I, pp. 285-295.) First, the

cities pointed out that neither Meridian nor Garden City had been served with the Petition or even notified that it had actually been filed with the Fourth Judicial District. (*Id.* at pp. 285-287.) Second, Meridian and Garden City objected to the District Judges signing the 1994 Order "ex-parte" and after considering only the information included in the unverified Petition. (*Id.* at pp. 285-287, 286-287.) Third, the cities challenged the fact that the 1994 Order had been signed without the District Judges holding any hearings at which either Meridian or Garden City were invited to attend or allowed to be heard. (*Id.*) In sum, the cities argued that they "were denied due process in this matter" and requested that the District Judges set the 1994 Order aside. (*Id.* at pp. 289, 290.)

Although the cities of Meridian and Garden City had requested a hearing on their joint *Motion for Reconsideration or Delay in Execution*, the District Judges did not allow the cities a hearing. (*Nary Aff.*, R. Vol. I, p. 268.) Further, it appears that the District Judges never ruled on the motion, as there are no subsequent orders either denying or granting the same. (*Id.*)

By letter dated August 24, 1994 to Garden City, the Trial Court Administrator, John Traylor, set forth what he felt were the minimum requirements for establishing a magistrate facility. He also addressed some logistic and fiscal concerns raised by the Garden City Attorney. (*Affidavit of Heather McCarthy in Opposition to Garden City and Meridian's Motion to Vacate the 1994 Order* (hereinafter "*McCarthy Aff.*"), Exh. G., R. Vol. I, pp. 379-383.) By letter to Judge Schroeder dated September 1, 1994, Meridian's City Attorney, Wayne Crookston, explained his uncertainty as to the nature of the Order, either administrative or judicial, and how

to set the Motion for Reconsideration for hearing. Wayne Crookston further requested that a hearing or meeting be scheduled to consider the Cities' Motion. (*McCarthy Aff.*, Exh. H., R. Vol. I, p. 384.)

By letter dated October 19, 1994, to Judge Schroeder, Mr. Crookston recounted a previous telephone conversation with Judge Schroeder wherein Judge Schroeder informed Mr. Crookston that the District Judges had decided to continue the Order. (The alternate relief requested by the Cities in their Motion.) (*McCarthy Aff.*, Exh. I., R. Vol. I, p. 385.) Judge Schroeder confirmed this decision by letter dated October 21, 1994. The Order was to be continued and effective October 1, 1995. (*McCarthy Aff.*, Exh. J., R. Vol. I, p. 386.) No correspondence was sent until March 8, 1995 when John Traylor wrote the Cities and again detailed the requirements for magistrate court facilities in the respective Cities. (*McCarthy Aff.*, Exh. L., R. Vol. I, p. 389.)

Any effort to enforce the 1994 Order ceased by October, 1995. By letter dated October 10, 1995, John Traylor wrote the following to Wayne Crookston:

> As you know, the Ada County Commissioners are seriously pursuing construction of a new courthouse to be located at the intersection of 3rd and Front Streets. The initial thoughts on design include "twin towers" concept wherein county administration and court functions would be located in opposite ends of the building....It is my hope that each department which will be affected by this building, or who will be located therein, will have a chance to offer input as to needs.
>
> It is also my understanding that your City may wish to negotiate with the county for some space allocation in the new building. I believe that it is none too early for you and your staff to begin formulating ideas and suggestions for what your needs will be in a new courthouse.

(*McCarthy Aff.*, Exh. M., R. Vol. I, p. 391.)

The clear intent for the County to build and fund the new courthouse was stated in the contract executed by Ada County and the City of Boise in 1999. This contract was at issue in *City of Boise v. Ada County*, 147 Idaho 794 (2009). The contract contained a recital which stated:

> WHEREAS, For reasons good and sufficient unto it, the County of Ada has elected to provide at its sole cost and expense a single courthouse complex for both the District Court and Magistrate Division thereof, including the functions of the District Court, both civil and criminal, and probate court, police court and justice as those functions existed prior to judicial reorganization.

(*Complaint for Declaratory Relief*, Exh. E., R. Vol. I, p. 35.)

The 1994 Order was not discussed again until thirteen years later, when, during a 2008 joint meeting including staff from Ada County, and the Cities of Boise, Meridian, and Garden City, the Ada County Commission informed the Cities that the revenue generated by court costs and fines was inadequate to cover the funding of the Magistrate Division of the Ada County District Court. (*McCarthy Aff.*, Exh. P., R. Vol. I, p. 394.) Discussions ensued by the parties, but no agreement could be reached. Ultimately, on July 1, 2010, the County sent an invoice to each City for $660,350.80. (*Complaint for Declaratory Relief*, Exh. B, C., R. Vol. I, pp. 14-28.) Each City refused to pay its respective invoices and this litigation ensued. (*Complaint for Declaratory Relief*, Exhs. D, E., R. Vol. I, pp. 29-35.)

Although this Court noted the 1994 Order in its decision in *City of Boise v. Ada County*, 147 Idaho 794, 799 (2009) and commented that the Cities had not complied with the 1994 Order, it must be noted that there are stark contrasts between the City of Boise's situation and the Appellant Cities. Unlike Boise, the Cities never provided municipal courts; Boise's municipal court was integrated into the unified court system in 1971. The Cities have never had a relationship with Ada County for the provision of court services and the Cities have never signed a contract for such services. Boise City sought the 1980 Order so that it could properly bond for the construction of a court facility. By contrast, the Cities never intended to provide a court facility. The City of Boise complied with its 1980 Order in one fashion or another until 2007 and Boise's 1980 Order remained in full force and effect during that time. *City of Boise v. Ada County*, 147 Idaho 794 (2009). Any effort to seek enforcement of the 1994 Order was abandoned by Ada County and the Fourth District Court in the mid 1990's.

II. ISSUES PRESENTED ON APPEAL

A. Whether the Panel erred in entering its 2012 Order.

B. Whether the Panel erred in denying Appellants' *Motion to Vacate the 1994 Order.*

   a. Whether the Panel erred in ruling that the 1994 Panel had employed a "suitable process" prior to having entered the August 12, 1994 Order.

   b. Whether the Panel erred in ruling that the Appellants were not entitled to any due process prior to the Panel entering the 1994 Order.

III. ARGUMENT

A. The Panel erred in entering its 2012 Order.

The Panel improperly converted Defendants' *Motion to Vacate the 1994 Order*, filed in Plaintiff's Declaratory Judgment action, into a Petition to Vacate the Order, after properly dismissing the declaratory judgment action.

In its Memorandum Decision entered on May 11, 2012, the *en banc* Panel explained the proper method for reviewing an I.C. §1-2218 order.

> In further exercise of its inherent power, the *en banc* Panel finds that the proper method to consider a request to interpret, modify or vacate an existing order issued under I.C. §1-2218, is the same process followed by the City of Boise when it filed its petition to vacate the 1980 Order requiring it to provide suitable and adequate quarters for a magistrate's division of the district court. Any affected city or entity should petition the majority of the Fourth Judicial District district judges, sitting *en banc,* to consider modifying or vacating such an order.

(*Memorandum Decision*, R. Vol 1, p.418.)

In this instance, the Cities did not petition the Court to set aside or vacate the 1994 Order. In fact, the Cities were brought into court as defendants in a declaratory judgment action brought by Ada County, and unlike Ada County in the *City of Boise*, the Cities were never afforded the opportunity to fully develop or defend their cases prior to the Panel's entry of the Order. (R. Vol. I, pp. 05-11).

The Cities' filed a *Motion to Vacate the 1994 Order* in the declaratory judgment action specifically to address the issue of due process. This Motion was not intended to address every issue that defendants anticipated disputing in the declaratory action. (R. Vol. I, pp. 262-63). The

Panel in its *Order Denying Motion to Vacate 1994 Order* converted the Cities' civil motion in the declaratory judgment action into a "petition" stating that the "Cities of Garden City and Meridian (collectively "Cities") petitioned to vacate a prior order...." (R. Vol 1, p.420). This totally mischaracterizes the proceeding as the defendants filed a motion based on the distinct and isolated issue of due process in a civil action; they did not file a petition with the Court.

The Panel then went on to state:

> Unlike the City of Boise, the Cities do not move to vacate the 1994 Order on the basis there has been a "substantial and material change of circumstances that would justify" rescinding the 1994 Order... They do not challenge the caseload and revenue date cited by the City of Boise and Ada County in their 1994 petition which ultimately provided the factual basis for the judges' 1994 Order.

(R. Vol 1, p. 425) (citation omitted). The panel also noted that "there is no evidence that present caseloads generated by either city has gone down." (R. Vol. 1, p.426).

These are improper statements or findings which totally mischaracterize the Cities' position. The Cities did, in their respective answers, raise the issue that there had been a substantial change in circumstances since 1994. Had the Cities been given the opportunity to have a full and fair evidentiary hearing, the Cities would have certainly raised this critical issue. Further, had the Cities been afforded due process in the entry of the Order in 1994, the factual basis for the Order could have been challenged at that time.

The Cities filed a narrow motion in a civil declaratory judgment action. The Panel dismissed that action, but without basis then converted the Cities' motion into an administrative matter. The dismissal was appropriate, but converting the Cities' motion into an administrative

matter in its decision after argument, and making further administrative findings on matters not before the Panel was inappropriate and violated the Cities' right to due process.

B. The Panel erred in denying the Appellants' *Motion to Vacate the 1994 Order.*

Meridian City and Garden City respectfully submit that the *en banc* Panel erred in failing to vacate the 1994 Order because the 1994 Panel did not follow its statutory mandate to follow a suitable process or mode of proceeding which conforms to the spirit of the Idaho Code. *I.C. §1-1622.* Further, the manner in which the 1994 Order was entered denied the Cities their fundamental right to due process.

a. The 2012 Panel erred in ruling that the 1994 Panel had employed a "suitable process" prior to having entered the August 12, 1994 Order.

When the Panel issued the 1994 Order, it relied solely on the unverified Petition filed by the City of Boise and Ada County. (*Order*, p.1) It did not allow the Cities to submit any evidence, to file briefs with the Panel, present oral argument, or present its position in any setting. In short, despite the immediate and significant financial impact it would have on the Cities, the Cities were not afforded any due process in the issuance of the Order.

In the 1994 Petition, the City of Boise and Ada County proposed a procedure that, if it had been followed, may have assisted the District Judges in complying with the requirements of Idaho Code §1-1622 by requesting that a special master be appointed. (*See Nary Aff.*, Exh. A (specifically requesting a special master to gather evidence, hold hearings, and report to the District Judges)). For reasons unexplained, the District Judges did not appoint the requested

special master to conduct discovery and hold hearings. (*Id.* at ¶ 5 and Exh. C.) Nor did the District Judges solicit evidence from the interested cities or hold any hearings at which the Cities were allowed to appear and be heard. *Id.* Instead, the District Judges simply signed the 1994 Order after giving consideration only to the one-sided, unverified allegations contained in the Petition.[2]

In 2009, the Idaho Supreme Court decided *City of Boise v. Ada County*, 147 Idaho 794 (2009). That litigation began when the City of Boise filed a petition asking the District Judges of the Fourth Judicial District to set aside the 1980 Order which had been entered pursuant to Idaho Code §1-2218 and seeking to require the City of Boise to "provide adequate quarters for a Magistrate's Division of the District Court...." 147 Idaho 794, 801. After the City of Boise filed the petition, Ada County filed a motion to intervene in the proceedings, which the District Judges granted over the City of Boise's objection. *Id.* In granting Ada County's motion to intervene, the District Judges relied on Rule 24(a) of the Idaho Rules of Civil Procedure, which they believed authorized intervention as a matter of right. *Id.* After holding a hearing at which attorneys for both the City of Boise and Ada County were present, the District Judges denied the

[2] The 1994 Order began with the panel indicating that based solely on the Petition it had concluded that it was no longer reasonable for the City of Boise and Ada County to bear sole financial responsibility for the processing of citations and complaints issued by other municipalities. *Order, p. 1.* The panel does not have the statutory authority to fin that it is unreasonable for those entities to bear sole financial responsibility. In *Twin Falls County v. Cities of Twin Falls and Filer*, 143 Idaho 398, 400, the Idaho Supreme Court stated that pursuant to I.C. §1-2218, "District Judges have the option to order the Cities to 'provide suitable and adequate quarters for a magistrate's division,' once the district judges decide not to order the Cities to provide facilities, their authority over the matter is at an end." 143 Idaho at 400. Further, "Granting district judges the authority to order a city to make a contribution to the county's courthouse effectively eliminates a city's options...[D]istrict judges are not given the authority to decide on the city's behalf how the city should comply with the statute." *Id.* The Panel's sole authority in this matter is to order the Cities to provide suitable and adequate quarters for a magistrate's division.

City of Boise's petition and upheld the 1980 Order. *Id.* The City of Boise appealed. *Id.*

On appeal, the City of Boise challenged, among other issues, the District Judges' decision to grant Ada County's motion to intervene. 147 Idaho 794, 801. The City of Boise argued that the District Judges erred in applying IRCP 24(a) because intervention is only permissible in a "civil action," and not in proceedings conducted pursuant to Idaho Code §1-2218. *Id.* In other words, the City of Boise argued that the District Judges could not use the Idaho Rules of Civil Procedure in what Boise City asserted was an "administrative proceeding." *Id.* Ada County, on the other hand, argued that the City of Boise's petition initiated a civil action to which the Idaho Rules of Civil Procedure applied. *Id. at 802.*

The Idaho Supreme Court rejected both Ada County's and the City of Boise's characterizations of the underlying proceeding and pointed out that the District Judges have inherent authority to fashion their own "suitable rules" when acting pursuant to Idaho Code §1-2218:

> We need not determine whether the proceeding fits neatly within the category of either a civil action or an administrative proceeding. By the enactment of section 1-2218, the Legislature vested the district judges of a judicial district with the authority to order cities to provide suitable and adequate quarters for a magistrate's division of the district court. The Legislature did not specify the procedures to be used in considering, issuing, modifying, or vacating such orders. However, the Legislature was obviously aware at the time that the courts possess inherent power to fashion suitable rules for carrying out their constitutional and statutory duties. Indeed, Idaho's Territorial Legislature enacted a provision memorializing the courts' power to fashion the procedures necessary to perform their duties, and that provision, in

> its pre-statehood language, is now codified as Idaho Code section 1-1622.

147 Idaho 794, 802.

Entitled "Incidental Means to Exercise Jurisdiction", I. C. §1-1622 reads as follows:

> When jurisdiction is, by this code, or by any other statute, conferred on a court or judicial officer all the means necessary to carry it into effect are also given; and in the exercise of the jurisdiction if the course of proceedings be not specially pointed out by this code, or the statute, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of this code.

(Emphasis added).

The Idaho Supreme Court analyzed whether the procedures used by the District Judges in allowing Ada County to intervene were suitable and in conformance with the spirit of the code. 147 Idaho 794, 803. Although the District Judges were not bound by the Idaho Rules of Civil Procedure, the Supreme Court held that "there is no reason why courts should not look to the procedural rules for guidance...." *Id.* Entitled "Intervention of Right," I.R.C.P. 24(a) reads as follows:

> Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the state of Idaho confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

I.R.C.P. 24(a).

In analyzing Ada County's motion to intervene against the backdrop of I.R.C.P. 24(a), the Idaho Supreme Court directed:

> The County had a substantial financial stake in maintaining the efficacy of the 1980 Order. To deny it the opportunity to appear and be heard would be **repugnant** of our concepts of fairness and due process.

147 Idaho 794, 803 (emphasis added). The Supreme Court further held that in addition to I.R.C.P. 24(a), the District Judges have "inherent power to grant intervention to persons who may be adversely affected by the outcome of a proceeding or when equitable principles otherwise require." *Id.* (citations omitted).

In concluding that the District Judges had acted properly in allowing the County to intervene, the Idaho Supreme Court instructed:

> Surely, allowing a county to intervene in a city's proceeding to set aside a section 1-2218 order is in accordance with the spirit of the Idaho Code. *See In Re the Petition of Idaho State Fed'n of Labor*, 75 Idaho 367, 370, 272 P.2d 707, 708 (1954) (relying on section 1-1622 "to adopt a suitable procedure which will furnish an opportunity for any interested person to appear at the hearing" where the governing statute provides no such process or procedure (quoting *Roche v. Superior Court*, 30 Cal.App. 255, 157 P. 830, 832 (1916)).[3] The Code vests counties with an interest in maintaining the efficacy of section 1-2218 orders. A decision relieving a city of its obligations under a section 1-2218 order has the effect of imposing those same obligations on the county. Because the Code vests counties with an interest in section 1-2218

[3] The holding of *Roche* is on point; that Court instructs, "...it devolves upon the court in such a case to adopt a suitable procedure which will furnish as opportunity for any interested person to appear at the hearing...that body may adopt any mode which preserves to the parties the fundamental essentials of notice and hearing." 30 Cal. App. 255, 260 (1916). In other words, it is the Court's duty to ensure that the mode of proceedings guarantee that an interested party receive fundamental due process.

> orders, giving the counties the opportunity to be heard in proceedings regarding the continuing validity of such orders conforms to the spirit of the code.

147 Idaho 794, 803-804 (emphasis added).

Based on I.C. §1-1622 and the *City of Boise*, a panel must employ a "suitable process or mode of proceeding ... which may appear most conformable to the spirit of this code" when entering Orders pursuant to Idaho Code §1-1822. Due to the lack of any statutory mandated procedures that the District Judges must follow in issuing Orders under I.C. §1-2218, the only limitations are simply that the process to be applied by the District Judges must be "suitable" and "most conformable to the spirit" of the Idaho Code. *I.C.* §1-1622. In order to conform to the spirit of the code, an interested party must receive the most basic fundamental procedural rights which include an opportunity to be heard. *See City of Boise*, 147 Idaho at 794.

The 1994 Panel failed to follow any procedure and issued the Order based solely on the unverified Petition filed by the City of Boise and Ada County. The 2012 Panel erred by not vacating the 1994 Order for a lack of suitable procedures that conformed to the spirit of the Idaho Code.

b. The 2012 Panel erred in holding that the Appellants were not entitled to any due process prior to the 1994 Panel entering the Order.

In *City of Boise*, the Court held that a suitable process was necessary in determining whether to grant an interested party's request to intervene in order to ensure that party's fundamental right to due process. 147 Idaho 794, 803-804 ("To deny [the interested party] the

opportunity to appear and be heard would be repugnant of our concepts of fairness and due process"). However as previously stated, the 1994 Panel did not allow the cities an opportunity to appear, submit briefs, present oral argument, or otherwise present any evidence. The Cities should have been entitled to at least the minimum amount of due process when their substantial financial interests were at stake.

Although the specific issue addressed in *City of Boise v. Ada County* dealt with Ada County's motion to intervene, it would be equally "repugnant of our concepts of fairness and due process" for the District Judges to enter an Order pursuant to Idaho Code §1-2218 without first giving the subject of the order notice and an opportunity to appear and be heard. The fundamental requirement of due process is the right to be heard at a meaningful time and in a meaningful manner. *See, e.g., Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). *See also* U.S. Const. Amends. 5, 14 and Idaho Const., Art. 1, §13 (guaranteeing that no person shall "be deprived of life, liberty or property without due process of law.")

Certainly, any City that is required to "provide suitable and adequate quarters for a magistrate's division of the district court" has a substantial financial stake in such an order. *See, e.g.*, I.C. §1-2218. *See also City of Boise*, 147 Idaho 794, 803 (recognizing that because Ada County had a "substantial financial stake" in the §1-2218 order, that the County must be given the opportunity to appear and be heard in any proceeding to vacate the 1980 Order). Giving the City notice and an opportunity to be heard before issuing an order pursuant to Idaho Code §1-2218 most definitely conforms to the spirit of the code. It goes without saying that notice and

the opportunity to be heard are frequent themes found throughout the Idaho Rules of Civil Procedure and Idaho Code. Further, "[t]imely notice and an opportunity to be heard are of the essence of due process, and are jurisdictional essentials of a valid judgment." *Lawrence Warehouse Company v. Rudio Lumber Company*, 89 Idaho 389, 398 (1965) (emphasis added).

In denying the Cities' request to vacate the 1994 Order, the 2012 Panel instructed that (1) the requisite procedures prior to an injunctive relief action are not warranted for the issuance of an Order pursuant to I.C. §1-2218, and (2) formal process was not required because the legislative process itself is sufficient to comport with minimal federal due process requirements. (*Order*, pp. 6, 8). This holding is in error because the initial entry of the 1994 Order was inconsistent with I.C. §1-1622 and denied the Cities their fundamental right to due process.

In the *City of Boise*, the Supreme Court stated that I.C. §1-2218 does not establish any standards for the review of orders issued pursuant to that section. It instructed that the rules governing the review of permanent injunctions lend themselves to application of review of orders issued pursuant to I.C. §1-2218 due to their similarity in prospective effect of imposing affirmative, continuing obligations on adverse parties. 147 Idaho 794, 804. The Supreme Court in that case focused its opinion on the review of injunctions because the issue in that case was a review of a Petition issued pursuant to I.C. §1-2218. The Supreme Court was not directly addressing the due process required prior to the issuance of an Order or a permanent injunction. 147 Idaho 794, 804.

Since the Supreme Court recognized the similarities between permanent injunctions and Orders issued pursuant to I.C. §1-2218 and then applied the rules governing review of such injunctions for review of the Order at issue in that case, the Cities furthered this analogy in their *Memorandum in Support of Motion to Vacate* and argued that the same due process should be required prior to an issuance of such an order.

The 2012 Panel disagreed and held that the analogy was limited to the review of orders issues pursuant to I.C. §1-2218. The Panel stated, "The Supreme Court's analogy was clearly limited to *post*-decision review of orders issued under section 1-2218 and made clear that while the order, once issued, resembled a permanent injunction, the Supreme Court was not intending to impose all of the procedures attendant to injunctive relief to these I.C. §1-2218 orders." (*Order*, p. 6). The Cities agree that the Supreme Court's analogy in *Boise City* was in regard to a post-decision review but the Cities believe that the application of rules governing review of orders issued pursuant to I.C. §1-2218 and the recognition of similar future obligations and effect on adverse parties warrant similar due process requirements for the initial entry of a permanent injunction and the initial entry of an order issued pursuant to I.C. §1-2218.

It is well established that a permanent injunction may only be entered after a full hearing or a trial on the merits. *See* 43A C.J.S. *Injunctions* §342 (2011) ("A suit for a permanent injunction is to be tried like any other law suit on the merits."). *See also* 43A C.J.S. *Injunctions* §359 (2011) ("A permanent injunction is properly granted only by a final decree rendered after a

hearing on the merits, or after the case has been matured and the defendant has been afforded an opportunity for such a hearing.")

The Idaho Rules of Civil Procedure are very clear that notice is a prerequisite to issuing a preliminary injunction. I.R.C.P. 65(a)(1) instructs, "Notice. No preliminary injunction shall be issued without notice to the adverse party." *See also, e.g.,* I.C. §52-405 (recognizing the right to a trial on the merits before issuance of a permanent injunction). In *Lawrence Warehouse Company v. Rudio Lumber Company*, the Idaho Supreme Court reversed the trial court's order granting a preliminary injunction on the grounds that the defendant had been deprived of due process. 89 Idaho 389, 399 (1965). Specifically, the trial court failed to hold a hearing on the motion for preliminary injunction and the defendants were denied an opportunity to present evidence in opposition to the application. *Id.* at 398. The trial court further failed to make any findings of fact and conclusions of law as required by Rule 52(a) of the Idaho Rules of Civil Procedure. *Id.* I.R.C.P. 52(a) reads in pertinent part as follows:

> In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment; and in granting or refusing interlocutory injunction the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action.

I.R.C.P. 52(a) (emphasis added).

In *Rudio*, the Supreme Court interpreted I.R.C.P. 65(a) by looking to federal case law analyzing its federal counterpart from which it was adopted. 89 Idaho 389, 396. The Supreme

Court communicated the basic understanding of due process in Idaho: "due process of law has been variously held to mean a law which hears before it condemns, which proceeds on inquiry, and renders judgment only after trial. 89 Idaho 389, 394-95, 405 P.2d 634, 637 (1965) (*citing* 16 C.J.S., Constitutional Law §567, b., p. 1143; *Gilbert v. Elder*, 65 Idaho 383, 387 (1943)).

The Supreme Court found guidance in *Sims v. Greene*, 161 F.2d 87 (3rd Cir. Ct. App. 1947), which had set aside a preliminary injunction on the grounds that the trial court had entered it solely upon the pleadings and affidavits filed by the parties and without giving any opportunity to the adverse party to produce oral testimony. *Id.* at 88. In *Sims*, the appellate court wrote persuasively as follows:

> The issuance of a preliminary injunction under such circumstances is contrary not only to the Rules of Civil Procedure but also to the spirit which imbues our judicial tribunals prohibiting decision without hearing. Rule 65(a) provides that no preliminary injunction shall be issued without notice to the adverse party. Notice implies an opportunity to be heard. Hearing requires trial of an issue or issues of fact. Trial of an issue of fact necessitates opportunity to present evidence and not by only one side to the controversy.
>
> ....
>
> If anything was more required to indicate with certainty that a preliminary injunction may not issue without giving the party sought to be enjoined an opportunity to present evidence on his behalf, it is furnished by the provisions of Rule 52(a) which requires the court, in all actions 'tried upon the facts without a jury' to state separately its conclusions of law and 'in granting or refusing interlocutory injunctions' 'similar [to] set forth the findings of fact and conclusions of law which constitute the grounds of its action.' The conclusion is inescapable that since a district court is required by rule to make findings of fact, the

> findings must be based on something more than one-sided presentation of the evidence.'

161 F.2d at 88, 89 (emphases added).

The 2012 Panel alternately supported its holding denying to vacate the 1994 Order by stating,

> To treat the judges' initial assessment that a city's burden on the magistrate division justifies requiring that city to provide facilities as authorized by statute like an injunctive relief proceeding creates the same evils the Supreme Court avoided in *City of Boise*. It would make the judges litigants.

(Order, p. 7). This seems to be based on the Supreme Court's discussion in *City of Boise* that an Order pursuant to I.C. §1-2218, was neither an administrative nor a civil action. The Idaho Supreme Court in *City of Boise* indicated that the proceeding was commenced when the 1980 Order was entered and, therefore, the proceeding could not properly be categorized as an action under the Idaho Rules of Civil Procedure because to do so would "be to treat the judges as litigants, rather than disinterested decision-makers." 147 Idaho 794, 802. The Cities believe that the 2012 Panel erred in reliance on this discussion for its determination that treating the judges' initial assessment like an injunctive relief proceeding essentially makes the judges litigants. The Cities never tried to frame this as a civil action or tried to initiate a proceeding where the Panel was essentially a litigant; The Cities have challenged the process by which the Orders have been entered to ensure that the parties have an opportunity to be heard, that a suitable process is followed, and that the Panel's action prior to issuing an Order is not arbitrary. Essentially, the

Cities are trying to protect their due process rights.

The 2012 Panel also held that due process does not require the judges sitting on the panel to engage in some formalized process to come to a conclusion that a city's magistrate division caseload justifies imposing a requirement to provide facilities. (Order, p. 8). The Panel ruled that the Legislature made the Panel responsible for providing facilities when the Panel determined it was necessary and that the legislative process itself was sufficient to comport with minimal federal due process requirements.[4]

The Panel, in conclusory fashion, cited to five cases to support its holding that the legislative process itself was sufficient to comport with minimal federal due process requirements. Appellants maintain that these cases are completely inapplicable to the instant action because they address due process issues in lawsuits challenging a legislative or Board action rather than in an action where judicial decision-making was challenged.[5] The Idaho Supreme Court has addressed one of the cases (*Bi-Metallic, Inv. Co. v. State Bd. of Equalization,*

---

[4] The Cities maintain that the legislature enacted I.C. §1-1622 so that that Panel would comport with due process by follow a suitable process or mode of proceeding which conforms to the spirit of the code because it was aware that the legislative process itself did not provide due process requirements for proceedings where judicial decision-making was necessary. In *City of Boise*, the Idaho Supreme Court discussed I.C. §1-1622 and stated, "the Legislature was obviously aware...that the courts possess inherent power to fashion suitable rules for carrying out their constitutional and statutory duties." 147 Idaho 794, 802.

[5] *Rea v. Matteucci,* 121 F.3d 483 (1997) (State employee action against the State alleging legislation reclassifying her job deprived her of due process), *Adams v. United States,* 796 F. Supp. 2d 67 (D.D.C. 2011) (Action against the United States challenging provisions of the Fair Treatment for Experienced Pilots Act), *Atkins v. Parker,* 472 U.S.. 115 (1985) (challenge to the notice provided by Massachusetts Department of Public Welfare of a congressional action resulting in a reduction in food stamp benefits), *Bi-Metallic Inv. Co. v. State Bd. of Equalization,* 239 U.S. 441 (1915), and *Decatur Liquors, Inc. v. District of Columbia*, 478 F.3d 360 (D.C.Cir. 2007) (Suit against the District of Columbia claiming that amendment to the liquor code was not passed in accordance with procedural requirements of Home Rule Act.)

239 U.S. 441 (1915)) and issued an opinion that the case does not apply to actions where there was judicial decision-making required. *Bi-Metallic*, involved a suit to enjoin the State Board of Equalization and the Colorado Tax Commission from putting in force an order which would increase the valuation of all taxable property in Denver by forty percent. In that case, the Supreme Court affirmed the Board's action holding that plaintiffs did not have a due process right to challenge the Board's action:

> Where a rule of conduct applies to more than a few people, it is impracticable that everyone should have a direct voice in its adoption. The Constitution does not require all public acts to be done in town meeting or an assembly of the whole. General statutes within the state power are passed that affect the person or property of individuals, sometimes to the point of ruin, without giving them a chance to be heard. Their rights are protected in the only way that they can be in a complex society, by their power, immediate or remote, over those who make the rule.

36 S.Ct. 141, 142 (emphases added). *Bi-Metallic Investment* does not apply in this case because the Panel's action pursuant to I.C. §1-2218 is not a public act or a statute of a general nature; it is judicial in nature. The Idaho Supreme Court in *City of Boise* held, "[A] decision granting or denying a petition to set aside an existing order [under I.C. §1-2218] involves judicial decision-making...." As such, this action is clearly not the type of action contemplated in the above cited cases and the holdings are not applicable to this situation.

Further, in *Snake River Homebuilders Ass'n v. City of Caldwell*, 101 Idaho 47 (1980), the Supreme Court of Idaho instructed that the holding in *Bi-Metallic Investment* does not apply to cases which involve judicial decision-making. In that case, the City of Caldwell passed a

resolution which revised its "Accounting Policy and Procedures Manual" with regard to its "water main extension policy" and included in that revision an increase in the cost of water pipe extensions for residential subdivisions from $2.00 per foot to $5.00 per foot. This action was taken without providing notice to the public or a public hearing. Snake River Homebuilders Association filed a complaint against the City seeking a writ of prohibition against exacting the $5.00 per foot extension charge and for a declaratory judgment that the action of the City in adopting the policy setting forth the increase was unconstitutional. The plaintiffs, in part, claimed the absence of public notice and hearing for the resolution deprived its members of their due process requirements. The Supreme Court disagreed, stating:

> The action taken by the city here was clearly legislative, as opposed to judicial or quasi-judicial, in nature. As such, the reasoning of Mr. Justice Holmes in *Bi-Metallic Investment Co. v. State Board of Equalization of Colo.*, 239 U.S. 441, 36 S.Ct. 141, 60 L.Ed. 372 (1915), is applicable:
>
> "Where a rule of conduct applies to more than a few people it is impracticable that everyone should have a direct voice in its adoption. The Constitution does not require all public acts to be done in town meeting or an assembly of the whole. General statutes within the state power are passed that affect the person or property of individuals, sometimes to the point of ruin, without giving them a chance to be heard. Their rights are protected in the only way that they can be in a complex society, by their power, immediate or remote, over those who make the rule." 239 U.S. at 445, 36 S.Ct. at 142.
>
> ...
>
> Here, the act of the city in raising the extension charge was not one affecting appellant only. Rather, it was a measure of general applicability, affecting all who received the extension service. In the absence of a statutory provision or ordinance requiring it,

> appellant had no right to notice and hearing prior to the city's increasing the extension charge.

101 Idaho 47, 49.

The other four cases cited by the 2012 Panel also involve challenges to congressional or legislative actions which were claimed to infringe plaintiff's due process rights for not affording any process prior to instituting a legislative enactment and do not provide support for the holding that the Cities should be afforded no due process in the context of a judicial decision.

The Idaho Supreme Court in *City of Boise* analyzed the review of an order issued pursuant to I.C. §1-2218 and held that I.C. §1-1622 give the judges the authority and responsibility to use its inherent power to employ a suitable process or mode of proceeding which conforms to the spirit of the code. The Supreme Court in *City of Boise* discussed the fact that the Legislature was obviously aware that the courts possess inherent power to fashion suitable rules for carrying out their constitutional and statutory duties pursuant to I.C. §1-1622. 147 Idaho 794, 802. I.C. §1-2218 is not narrowly applicable to review of an order issued pursuant to I.C. §1-2218, but rather, is broadly applicable where jurisdiction is conferred on a court or judicial officer. I.C. §1-1622; *City of Boise*, 147 Idaho 794, 803 (*citing Fox v. Flynn*, 27 Idaho 580 (1915)). It hardly makes sense that I.C. §1-1622 would apply to the review of an order issued pursuant to I.C. §1-2218, but would not apply to the discrete circumstance of the initial entry of an order issued pursuant to the same statute.

CONCLUSION

It is undisputed that the 1994 Order was entered based solely upon a one-sided presentation of the issues set forth in an unverified Petition. This was not a suitable process under I.C. §1-1622 and *City of Boise*. Further, it denied the interested Cities any due process despite the substantial financial stake they had in an order issued pursuant to I.C. §1-2218.

DATED this 28th day of June, 2013.

MOORE & ELIA, LLP

Michael W. Moore, of the firm
Counsel for Appellant City of Meridian

DATED this 25th day of June, 2013.

GARDEN CITY ATTORNEY'S OFFICE

Frank Walker, of the firm
Counsel for Appellant Garden City

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28 day of June, 2013, I caused to be served a true and correct copy of the foregoing document, by the method indicated below, and addressed to the following:

Theodore E. Argyle
Chief Civil Deputy Prosecuting Attorney
Heather M. McCarthy
Deputy Prosecuting Attorney
Civil Division
200 W. Front Street, Room 3191
Boise, ID 83702

✓ U.S. Mail, postage prepaid
____ Hand Delivered
____ Overnight Mail
____ Facsimile Transmission
____ E-Mail

Michael W. Moore