7-29-2013

Ada County v. City of Garden City Respondent'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 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 Ad a County Docket No. 2010-24980

RESPONDENTS' BRIEF

Appeal from the District Court, Fourth Judicial District,
County of Ada, State of Idaho

Judges of the Fourth Judicial District
Sitting *en banc*

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I.
STATEMENT OF THE CASE

This is an appeal from an Order of the *en banc* Panel of the district court judges of the Fourth Judicial District filed May 11, 2012, in an exercise of their inherent judicial power and pursuant to their statutory authority granted in Idaho Code Section 1-2218, declining to vacate an Order issued by the *en banc* Panel of the Fourth District Court Judges in 1994, which required the City of Meridian and Garden City to each furnish magistrate court facilities.

A. Course of Proceedings

Pursuant to Idaho Code section 1-2218, a majority of the district judges of the Fourth Judicial District entered an Order directed towards the City of Meridian City and City of Garden City dated August 12, 1994 (the "1994 Order") which states:

> [P]ursuant to authority provided in Idaho Code 1-2218, provide by October 1, 1994 suitable and adequate quarters for the magistrate's division of the Fourth Judicial District, including the facilities and equipment necessary to make the space provided functional for its intended use, and shall provide for the staff personnel, supplies and other expenses of the magistrate's division. The suitability and adequacy of said quarters, facilities, equipment, staff personnel, supplies and other expenses are subject to final approval by this Court.

(R. pp 362-363).

Neither Appellant City has complied with the 1994 Order.

Following this Court's decision in *City of Boise v. Ada County,* 147 Idaho 794, 215 P.3d 514 (2009), on December 21, 2010, Ada County and the Board of Ada County Commissioners ("Respondents") brought a Complaint for Declaratory Relief against City of Garden City, by and through the Garden City Council and City of Meridian, by and through the Meridian City Council ("Appellants"), (R. pp 5-36), and in a separate declaratory proceeding sought clarification of the *en banc* Panel's Order dated October 9, 1980 which required the City of Boise to furnish magistrate court facilities[1]. More particularly, Respondents requested that the Court hold that: 1) the 1994 Order is in full effect and that the Respondents are required to provide suitable and adequate quarters for the magistrate's division; 2) a clarification on whether the 1994 Order included both criminal and civil magistrate courts or just magistrate criminal courts; and 3) requesting the Appellants be required to provide a plan to comply with the 1994 Order. (R. pp 10-11). Appellants filed Answers to Plaintiffs' Complaint for Declaratory Relief on January 24, 2011. (R. pp 59-69 and R. pp 70-77).

On February 22, 2011, Appellants filed a Joint Motion for Disqualification of the Fourth District Court Judges. (R. pp 80-114). Respondents requested an *en banc* panel hear the matter, and on February 24, 2011, Respondents filed their Memorandum in Opposition to Defendants' Joint Motion for Disqualification and in Favor of Plaintiffs'

[1] The proceedings against the City of Boise have been resolved. Ada County has agreed to fulfill Boise City's magistrate court obligations by contract.

Motion for an *En Banc* Hearing. (R. pp 115-127). The district court judges agreed to proceed *en banc*. On March 15, 2011, Appellants filed an Objection to Assignment of Civil Action *En Banc*. (R. pp 143-154). Also on March 15, 2011, the Appellants filed a Supplemental Brief in Support of Joint Motion for Disqualification. (R. pp 155-160). Respondents filed a Reply Memorandum in Opposition to Defendants' Memorandum in Support of Objection to Assignment of Civil Action *En Banc* and to Defendants' Supplemental Brief in Support of Joint Motion for Disqualification on March 28, 2011. (R. pp 163-170). Appellants filed a Reply Brief in Support of Defendants' Objection to Assignment of Civil Action *En Banc* and in Support of Defendants' Motion for Disqualification on (R. pp 171-182). The Appellants' Motions were heard by the *en banc* 2010 Panel. On July 6, 2011[2], the *en banc* 2010 Panel issued an Order Denying Appellants' Motion to Disqualify *En Banc* Panel for Cause (R. pp 197-201). Each individual judge also determined whether to withdraw from the cause or not.

Both the Appellants and Respondents took full advantage of the opportunity for discovery.

On September 26, 2011, Appellants filed a Motion to Vacate the 1994 Order. (R. pp 262-334). Appellants did not allege material change in circumstances. On February 17, 2012 Respondents filed a Memorandum in Opposition to Defendants'

[2] Judges Wetherell and Norton recused themselves.

Motion to Vacate the 1994 Order. (R. pp 339-394). Appellants filed their Reply Memorandum on February 24, 2012. (R. pp 395-407). Appellants' Motion was heard *en banc* and after evaluating the briefing by both the Appellants and Respondents, Affidavits filed by the Appellants and Respondents, other evidence, and after hearing oral argument, the *en banc* 2010 Panel on May 11, 2012, issued its Memorandum and Decision dismissing the Respondents' Declaratory Judgment action because it was an improper avenue for the relief sought by Ada County[3]. (R. pp 416-419). In a concurrently issued separate decision, the *en banc* 2010 Panel independently reviewed whether or not the 1994 Order was still valid, the Appellants had not introduced evidence of a change in circumstances, and unanimously issued an Order Denying Appellants' Motion to Vacate the 1994 Order, ordered the Trial Court Administrator to update the caseload and revenue statistics, and ordered each of the Appellant cities to prepare a plan and a schedule on how the cities with comply with the 1994 Order. (R. pp 420-429).

On June 21, 2012, the Appellants filed their Notice of Appeal. (R. pp 432-469).

B. Statement of Facts

In 1969, court reform legislation dictated who would be responsible for providing courtroom facilities, support staff, equipment, and supplies. *See* 1969 Sess. Laws ch. 121. This legislation can be found in Idaho Code sections 1-2217 and 1-2218. Under Idaho

[3] Respondents have not appealed the decision of the *en banc* 2010 Panel to dismiss the Complaint for Declaratory Judgment.

Code section 1-2217, the county is responsible for providing magistrate court facilities, unless, as permitted by Idaho Code section 1-2218, a majority of the district judges in the judicial district order a city to provide magistrate court facilities.

On January 11, 1971, the district judges of the Fourth Judicial District entered an order requiring Boise City to provide a magistrate's division of the district court. (R. pp 421-422). That order was subsequently amended on October 9, 1980. (R. p. 422). The Barrister facility handled all misdemeanor and infraction cases for Boise City, Meridian City, Garden City, the Idaho State Police, Idaho Fish and Game, Ada County, Eagle City and Kuna City[4]. (R. p 422). Boise City initially paid for all the personnel, equipment, and supplies at the Barrister facility. (R. p 422). Over time, Ada County began to supplement Barrister personnel with its own employees. *City of Boise*, 147 Idaho at 520, 215 P.3d at 800.

The Fourth District Court Trial Court Administrator began seeking voluntary contributions from other cities within Ada County to help fund the magistrate courts. (R. p 422). When the mayors of Garden City and Meridian City declined to contribute the Trial Court Administrator requested Boise City and Ada County to file a Petition

[4] Star City was not then incorporated.

invoking the authority of the district court judges under Idaho Code section 1-2218[5]. (R. p 422).

Prior to submitting the Petition, it was forwarded to Meridian City and Garden City on June 17, 1994, with a request that the Appellant Cities get in touch with Amanda Horton (Boise City's Attorney) or John Traylor regarding any questions the Appellant Cities might have. (R. p 368). On June 21, 1994, Boise City and Ada County submitted the Petition seeking, *inter alia,* a determination as to whether or not circumstances warranted an order from a majority of the Judges of the Fourth Judicial District requiring Appellants to also furnish magistrate facilities. (R. pp 422, 300-303).

On August 10, 1994, *prior to the entry of the 1994 Order*, Wayne G. Crookston, Jr. (attorney for Meridian City) and Judge Gerald F. Schroeder (Administrative Judge for the Fourth Judicial District) discussed the Petition and whether it would be an administrative or a judicial matter during a telephone conference. (R. p 384).

On August 12, 1994, the district judges of the Fourth Judicial District entered the 1994 Order pursuant to I.C. section 1-2218. (R. pp 362-363). The 1994 Order required the Appellants to "provide [sic] by October 1, 1994, suitable and adequate quarters for the magistrate's division of the Fourth Judicial District. . . ." Compliance with the 1994 Order was made "subject to the final approval by this Court." *Id.*

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[5] Garden City and Meridian City had the second and third highest caseloads in the Barrister facility.

On August 12, 1994, the 1994 Order was personally served on Meridian City and Garden City. (R. pp 364-365).

On August 26, 1994, Appellants filed a Motion For Reconsideration *Or Delay In Execution*. (R. pp 366-378). (*Emphasis Added*). The Memorandum in Support of the Motion to Reconsider or Delay Imposition requests the 1994 Panel reexamine it's decision, or as an alternative, delay implementation of the 1994 Order until October 1, 1995. (R. pp 366-368; see page 377). The reason cited in the Memorandum for seeking a continuance was that the 1994 Order required compliance so close to the beginning of the cities' fiscal year. (R. pp 374-375). The Appellants chose next to contact the Administrative Judge of the Fourth Judicial District directly instead of filing a Notice of Hearing. (R. p 384).

As the informal process continued, Defendant Garden City specifically inquired of the *en banc* 1994 Panel what was expected of them in fulfilling the 1994 Order. In a letter to Jack Britton, dated August 24, 1994, John Traylor responded to questions *previously posed* by Mr. Britton regarding what standards would need to be met in providing the required facilities. (R. pp 379-383).

Thereafter, a letter dated September 1, 1994 from Wayne G. Crookston, Jr. to Judge Gerald F. Schroeder, states:

> Meridian and Garden City submitted a MOTION FOR RECONSIDERATION OR DELAY in the above entitled matter. As you

> and I discussed on the phone approximately August 10, 1994, I am not sure whether we are dealing with a judicial or an administrative matter and therefore, I did not file a Notice of Hearing at the same time I filed our motion.
>
> Neither myself or Jack Britton, Attorney for Garden City, have received notification as to when this matter might be heard and whether or not Meridian and Garden City's positions on this matter will be considered. I hope that our positions are considered and we would appreciate either a hearing or a meeting to discuss this matter.

(R. p 384) (Emphasis added).

Correspondence dated October 19, 1994 from Mr. Crookston to Judge Schroeder confirms that further telephone communication took place between the cities and *the en banc* 1994 Panel. It states:

> It has been approximately twenty (20) days since you and I had the telephone discussion where you told me that the District Judge's [sic] had decided to continue the Court Order that Meridian and Garden City provide Magistrate Court facilities. I have not received the Court's Order continuing this matter and I am just wondering what the status of the matter is. Would you please advise me as to the status?

(R. p 385).

Three days later on October 21, 1994, Judge Schroeder responded to Mr. Crookston stating:

> The district judges determined to extend implementation of the order previously entered for one year. The precise language of the continuance has not been agreed upon, but the continuance has been granted. You should proceed on the basis that the order previously entered will be effective October 1, 1995.

(R. pp 386) (Emphasis added).

On March 8, 1995, John Traylor sent a letter to both Jack Britton and Wayne Crookston indicating the 1994 Order was still in effect and further discussing what standards would need to be met. The letter specifically states:

> On February 27, 1995, the District Judges of the Fourth Judicial District met and confirmed that their previous Order issued August 12, 1994 requiring your client cities to provide suitable quarters, etc., for the magistrate division is still in effect and expected to be complied with, and directed that I contact each of you...

(R. pp 389-390) (Emphasis added).

Discussion continued in 1995 with correspondence from John Traylor to Wayne Crookston. In a letter dated October 10, 1995, to Wayne Crookston, John Traylor invited the Appellants to negotiate with the Respondents to obtain a space allocation in the new courthouse. (R. p 391).

Contrary to the statement of facts in Appellants opening brief, on at least three separate occasions after construction of the new Ada County Courthouse, the record confirms that the discussions were continuing. Ada County and the City of Meridian discussed magistrate courthouse facilities during a Meridian City Pre-Council Meeting on February 24, 2004 and during a Meridian City Council Special Joint Meeting on September 1, 2004. (R. pp 392-393).

The Appellants, the City of Boise, and the Ada County Board of Commissioners came together to discuss courthouse facilities again on August 1, 2008. (R. p 394).

Further discussion has continued after this Court's decision in *City of Boise*. *See, e.g.* (R. pp. 129-136).

II.
ISSUES PRESENTED ON APPEAL

Respondents modified the issues presented by Appellants as follows:

1. Did the *En Banc* 2010 District Court Panel Utilize a Suitable Process?
2. Did the *En Banc* 1994 District Court Panel Utilize a Suitable Process?
3. Does "Due Process" Apply to Exercises of a Court's Inherent Authority Pursuant to Idaho Code Section 1-2218?
4. Are Appellants' Due Process Claims Barred?
5. If Due Process Applies, Were Appellants Afforded Due Process?

III.
ADDITIONAL ISSUES PRESENTED ON APPEAL

A. Whether Ada County is entitled to an award of fees on appeal.

IV.
STANDARD OF REVIEW

The legal authority relied upon by the District Judges in denying Appellants' Motion to Vacate 1994 Order is found in Idaho Code § 1-2218. The proper standard of review regarding the interpretation of a statute is as follows:

> The interpretation of a statute is a question of law over which this Court exercises free review. Interpretation of a statute begins with an examination of the statute's literal words. *Where the language of a statute is plain and unambiguous, courts give effect to the statute as written, without engaging in statutory construction.* In other words, where a statute is clear, legislative history and other extrinsic evidence should not be consulted for the purpose of altering the clearly expressed intent of the Legislature.

Twin Falls County v. City of Twin Falls, 143 Idaho 398, 399 (2007) (emphasis added).

As this Court stated in *City of Boise*, there are at least three general principles governing the review of orders imposing continuing obligations:

> First, the party challenging the order bears the burden of proof. Second, to satisfy its burden, the moving party must demonstrate that the order is no longer justified, due to either a change in the law or a change in the factual circumstances. Third, the reviewing tribunal has broad discretion in deciding whether to grant or deny a party's motion to modify or set aside an existing order.

City of Boise v. Ada Cnty., 147 Idaho at 805, 215 P.3d at 525 (2009).

V.
ARGUMENT OF ISSUES ON APPEAL

1. The *En Banc* 2010 District Court Panel Utilized a Suitable Process.

As noted by this Court in *City of Boise, supra,* Idaho Code section 1-2218 provides no set procedure for the *en banc* 2010 Panel of Fourth District judges (the "*en banc* 2010 Panel") to use. *City of Boise,* 147 Idaho at 524, 215 P.3d at 804. Rather, Idaho Code section 1-1622 only requires that "any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of the

code." *Id.* at 523 and 803. Appellants argue that they were deprived the opportunity to fully develop their Motion to Vacate the 1994 Order. However, this is untrue. No one, including the *en banc* 2010 Panel required or prevented the Appellants from filing their Motion to Vacate the 1994 Order. No one but the Appellants chose the grounds upon which to bring their Motion to Vacate. This was a motion brought entirely by the Appellants and at their own request.

As this Court described in *City of Boise, supra,* the party challenging an order issued pursuant to Idaho Code section 1-2218 bears the burden of proof. To satisfy its burden, the moving party must demonstrate that the order is no longer justified, due to either a change in the law or a change in the factual circumstances. *City of Boise,* 146 Idaho at 525, 215 P.3d at 805. Appellants provided neither[6]. To suggest now that they did not have the opportunity to fully present their facts when they chose the basis upon which to file the Motion to Vacate is unreasonable. To claim that they were not fully heard or that the process utilized by the *en banc* 2010 Panel was unfair is contrary to the record. Appellants engaged in extensive motion practice, discovery, briefing and argument for nearly seventeen months. The Appellants were allowed to file their Motion, brief their position, present evidence, and to engage the *en banc* 2010 Panel during oral

[6] Appellants make reference to a the construction of the new Ada County Courthouse in some of their briefing, which was addressed by this Court in *City of Boise,* 147 Idaho at 530, 215 P.3d at 810.

argument. Appellants had ample opportunity to present evidence regarding a change of circumstances and did not avail themselves of that opportunity. Appellants should not be provided yet another bite at the apple.

The *en banc* 2010 Panel properly understood that the Appellants' Motion to Vacate was a request to modify or vacate the 1994 Order. The *en banc* 2010 Panel understood that it had broad discretion in deciding whether or not to grant or deny Appellants' motion to set aside the 1994 Order. The *en banc* 2010 Panel's discretionary exercise of authority should be affirmed.

2. The *En Banc* 1994 District Court Panel Utilized a Suitable Process.

The *en banc* 1994 Panel of Fourth District judges (the "*en banc* 1994 Panel") established its own process when exercising its jurisdiction to enter an order pursuant to I.C. section 1-2218. The statutory process for a district court to create city magistrate courts in its magistrate division is simply for a majority of its district court judges to issue an order to the city. *Id.* This section does not prescribe a method of how the district court judges must come to issue an order. Specifically, it does not require that an adversarial proceeding, a petition, an administrative proceeding, or a request for a hearing be brought before the district court before it may issue an order requiring a city to provide facilities and equipment for its magistrate division. Neither does it require that it appoint a Special Master to investigate the necessity for a city magistrate court facility. Because

the plain language of section 1-2218 succinctly provides that "upon order of a majority of the district judges," the only process that is required is for an order of a *majority* of judges.

Where section 1-2218 does not create a process for the judges to organize a majority to agree to the order, section 1-1622 grants the *en banc* 1994 Panel authority to employ "any suitable process." Organizing a panel of judges is a suitable process because it complies with section 1-2218's requirement that an order is to be issued by a majority of the district's district court judges.

Furthermore, the Fourth Judicial District Court created the *en banc* 1994 Panel pursuant to its "inherent power to fashion suitable rules." This Court attributed section 1-1622 in *City of Boise v. Ada County* as a memorialization of this inherent power because it articulates a court's power to establish a means to carry out their duties through "any suitable process or mode of procedure." This inherent power enables courts to establish rules and processes to carry out its duties apart from legislative enactment; this inherent power enables courts to act apart from private parties' petition or appeal. Because section 1-2218 grants district courts authority to create magistrate court facilities in its cities, but does not codify a process of doing so, a district court's inherent power to fashion a suitable process of doing so is guided by its own determination of a suitable process or mode of procedure.

Contrary to the assertions of Appellants, a suitable process was in fact, developed by the District Court in 1994. The Trial Court Administrator engaged in conversations with the Mayors of the Appellant cities regarding the need for them to provide magistrate court facilities. (R. p 422). The Mayors declined. (R. p 422). After the Mayors declined to provide funding for magistrate court facilities the Trial Court Administrator requested Boise City and Ada County to start proceedings under Idaho Code section 1-2218. (R. p 422). The fact that a Petition was filed was obviously not a surprise to either city because they were provided copies and because counsel telephoned the Administrative Judge and engaged in discussions about the process and the pending order. (R. p 384). After the 1994 Order was issued the cities sought relief from the requirements of the 1994 Order in the alternative and were granted the alternative relief they sought. (R. pp 366-378, 386). That Appellants had multiple and frequent communications with the Administrative District Judge both before and after the 1994 Order was issued is abundantly demonstrated by the record. (R. pp 384, 385, and 386). As is discussed below the Appellants, for whatever strategic reason they deemed appropriate, chose not to appeal.

Appellants had access to the judiciary, sought alteration of the 1994 Order which was granted, and continued to discuss implementation of the 1994 Order with the Trial

Court Administrator long after it was issued as if the 1994 Order was binding, and chose not to appeal the 1994 Order.

The *en banc* 1994 Panel utilized an appropriate process under the circumstances then existing when exercising their inherent authority in issuing the 1994 Order and in discussing the needs of the Courts for suitable magistrate court facilities with the Appellant cities.

3 Due Process Does Not Apply in This Context.

The Appellants contend that the 1994 Order deprives the Appellants of a right. While Respondents argue that whatever violation there may have been in 1994 was cured by abundant and suitable process in nearly seventeen months of litigation commencing in 2010, to the extent this Court reaches the Appellants "due process" arguments about the 1994 Order, Respondents address that issue in this section.

Appellants would have this Court believe that the *en banc* 2010 Panel is the cities' adversary. Essentially, they argue that the *en banc* 2010 Panel has penalized and deprived them of a right in a process in which they did not have an opportunity to defend themselves[7]. Assuming for purposes of argument that the Appellants were not allowed to "defend themselves", this contention is unfounded because it: 1) presupposes the cities

[7] Respondents argue that the Appellants, contrary to their assertions, in fact successfully defended themselves in 1994 since they invoked the discretion of the Court and were granted the specific relief they sought.

have a "right" to refuse to provide magistrate court facilities; 2) forces the *en banc* 2010 Panel to become the party opposing the Appellants and to defend its own order; and 3) incorrectly states the facts of the last nineteen years of proceedings.

Creating a panel of the district court judges who agree to and sign an order is a suitable process and is a further permissible exercise of the District Court's inherent power. However the Appellants confound the process of creating magistrate courts with "due process." As the Court is aware, the hallmark of due process is notice and an opportunity to be heard. It secures an *individual's* right to defend him or herself before being deprived of a legal right. Appellants have simply misapplied principles of due process in the present case. Appellants do not have a "right" to refuse to provide facilities in direct contravention of a statute. As the 1994 Order was issued in compliance with the statute the cities only have a "right" to file a Motion or Petition to Vacate or Modify the Order. Due process, as governed in rules of criminal and civil procedure, is reserved for cases or controversies between parties with adverse interests. Here, there are no parties with adverse legal interests - there is only an order establishing magistrate courts. As this Court stated section 1-2218 does not create a cause of action. *City of Boise*, 147 Idaho at 802, 215 P.3d at 522.

4. The Appellants' "Due Process" Claims Regarding the 1994 Order Are Barred.

The *en banc* 1994 Panel considered the Appellants' Motion for Reconsideration or Delay in Execution and granted the Appellants the relief they sought in their Motion. (R. p 385). It granted the Appellants leave to delay in complying with the 1994 Order for one year. (R. p 385).

The Appellants were aware that their request to have the 1994 Order amended to allow for a delay in execution was granted as early as October 19, 1994 and no later than March of 1995. (R. pp 385, 389-390). The latest Appellants could claim that the 1994 Order became final was in 1995. However, the Appellants filed no appeal at that time. Correspondence from the Trial Court Administrator dated March 8, 1995, to each of the City Attorneys for Appellants stated that the 1994 Order remained in effect and that the District Judges expected that the cities comply with the 1994 Order. (R. p 389). Specifically it states:

> On February 27, 1995, the District Judges of the Fourth Judicial District met and confirmed that their previous Order issued August 12, 1994 requiring your client cities to provide suitable quarters, etc., for the magistrate division is still in effect and expected to be complied with, and directed that I contact each of you regarding this matter. On August 24, 1994, I directed a letter to Jack Britton [copy enclosed] setting forth some minimum standards which we would accept with regard to that Order. By this letter, I also inform Mr. Crookston and the City of Meridian that the same standards set forth in that letter and this letter will apply to Meridian.

(R. pp 389-390).

At the very latest, upon receiving this letter, the Appellants should have sought appellate review of any issues they had with the 1994 Order. Their failure to timely raise these "due process" issues on appeal in 1994 or 1995, bars their claim.

Respondents further note, however, that Appellants are attempting to have their cake and eat it too. Appellants argue that the 1994 Order from the *en banc* 1994 Panel violated due process and that the decision was "judicial or "quasi-judicial". Appellants then cite to cases supporting the proposition that when a government makes a decision affecting an individual's rights, such as a deprivation of property, the individual is entitled to due process. Appellants then reason that failure to provide them a predetermination formal hearing in 1994 renders void the next nineteen years of effort by the courts to get the Appellants to provide magistrate courts.

Unfortunately for Appellants, as argued below, if the 1994 Order was a judicial or quasi-judicial decision to which principles of due process apply, then Appellants were obligated to raise any concerns they may have had through the appeals process. Failure to appeal an order when it became final deprives the courts of jurisdiction to consider issues not timely raised on appeal. On the other hand, ironically, it is only if the Appellants are not possessed of rights in this context, and consequently due process does not attach, that Appellants are not bound by the consequences of their failure to appeal in 1994 or 1995. While Respondents note above that Appellants have had multiple

opportunities to be heard, present evidence, which process Respondents argue, has more than satisfied any statutory and constitutional requirements that might have attached to the issuance of the 1994 Order, if due process is not required then Appellants have had the "appropriate process" contemplated by this Court's decision in *City of Boise.*

The Appellants did not provide, nor have the Respondents uncovered, any evidence that either Meridian City or Garden City appealed the original 1994 Order or the subsequent grant of the extension with regard to the implementation of the 1994 Order. Because they did not appeal the 1994 Order, it is too late to raise any issue regarding the lack of process. The following cases stand for the proposition that timely appeal is a prerequisite for an appellate court to have jurisdiction to review a case: *Johnson v. Blaine County,* 146 Idaho 916, 204 P.3d 1127 (2009); *State v. Huntsman,* 146 Idaho 580, 199 P.3d 144 (2009) *Castrigno v. McQuade,* 141 Idaho 93, 106 P.3d 419 (2005); *Hoskinson v. Hoskinson,* 130 Idaho 448, 80 P.3d 1049 (2003); *White v. Bannock County Commissioners,* 139 Idaho 396, 80 P.3d 332 (2003).

By not appealing the 1994 Order within the statutory time period, the Appellants abdicated any right to appeal that order. *First Security Bank v. Neibaur*, 98 Idaho 598, 602, 570 P.2d 276, 280 (1977). A timely appeal must be taken from a judgment that is final even when it is followed by a postjudgment order. *Id. See also* Idaho Code

§ 13-201; I.A.R. 14. Appellants should not be allowed to collaterally attack the 1994 Order they chose to let stand.

To summarize, this proceeding is not the kind of "judicial or quasi-judicial" proceeding to which due process attaches. If this Court determines that it is, then the Appellants sought and were granted the relief they requested in their Motion to Reconsider. They did not pursue the matter further. Without belaboring the obvious, the time for Appellants to raise their complaints about the validity of the 1994 Order came and went years ago.

5. If Due Process Applies, Appellants Were Afforded Due Process.

Assuming that the principle of due process applies in this instance, in the 2012 Order the *en banc* 2010 Panel further discussed that the legislative process, "itself is sufficient to comport with minimal federal due process requirements." (R. p 427). It further stated, "[d]ue process does not require the judges engage in some formalized process to come to a conclusion that a city's magistrate division caseload justifies imposing a requirement to provide facilities." (R. p 427).

As Respondents have previously described, Appellants have received process and arguably more process than required.

Prior to the 1994 Order being issued the Appellants had at minimum, conversations with the Fourth District Court Trial Court Administrator and apparently a

telephone conference with the then Administrative District Judge, followed by written confirmation of these communications. (R. p 384). After the 1994 Order was issued, the Appellants filed a Motion for Reconsideration or Delay in Execution. (R. pp 366-378). After further communications with the Administrative District Judge, the *en banc* 1994 Panel had granted the Appellants' request for a continuance in the execution of the 1994 Order to October 1, 1995. (R. p 386). Appellants engaged in further communications with the Court and Trial Court Administrator clear through October of 1995. (*See, e.g.*, R. pp 389-390). No appeal was ever filed.

In addition to the access to the Court the Appellants received in 1994 and 1995, by way of the Declaratory Action filed on December 21, 2010, Appellants were then given further multiple meaningful opportunities to be heard clear through June 21, 2012 when Appellants filed their Notice of Appeal. (R. pp 1-4). The case was before the *en banc* 2010 Panel for nearly seventeen months. During that time, as set forth in the Course of Proceedings, the Appellants filed multiple Motions, Memoranda, and Affidavits. This was Appellants' time to present any and all evidence that they had to the 2010 Panel to receive whatever remedy they desired. Further, the *en banc* 2010 Panel dismissed the Respondents' Declaratory Judgment Action. At that point the *en banc* 2010 Panel had no further procedural duty to allow for additional briefing or evidence on the Appellants Motion to Vacate the 1994 Order. However, the *en banc* 2010 Panel reviewed briefing,

evidence, heard oral argument, and correctly recognized the motion sought review of the 1994 Order and correctly denied the Appellants' Motion to Vacate the 1994 Order. (R. pp 420-429). The Appellants were able to have the *en banc* 2010 Panel assembled for their purposes to argue the merits of their request to have the 1994 Order vacated.

The Appellants' access to the Court continued even after the Declaratory Judgment action was dismissed and their Motion to Vacate the 1994 Order was denied. The *en banc* 2010 Panel required that the Trial Court Administrator, the Administrative District Judge, and representatives of Appellants meet to discuss statistics and meet with appropriate stakeholders. (R. pp 427-428). By doing this, the *en banc* 2010 Panel opened the doors yet again for the Appellants to provide input on magistrate courts. After these meetings, the Appellants were to devise a plan to comply with the 1994 Order and report back to the Administrative District Judge prior to September 4, 2012. (R. p 428).

After receiving: 1) an opportunity to discuss the provision of magistrate courts with the Trial Court Administrator prior to the filing of the Petition, 2) an opportunity to discuss the Petition process with the Administrative Judge prior to the 1994 Order being entered; 3) consideration of their Motion for Reconsideration or Delay in Execution; 4) the alternative relief they sought; 5) specific notice that their Motion was granted yet failing to appeal; 6) continued opportunities for communications with the Court and Trial

Court Administrator for years after the 1994 Order was entered; 7) an open ended opportunity to litigate for nearly two years over the County's 2010 filings; 8) the opportunity to lodge a Motion to Vacate the 1994 Order in the 2010 action based on City of Boise principles; 9) a hearing and argument in front of the *en banc* 2010 Panel; 10) an adverse decision from a majority of the district court judges denying this motion; and 11) yet additional post 2012 Order access to the decision makers on what the minimum requirements would be for complying with the 1994 Order; it is hard to imagine what more process the Appellants could possibly be due.

VI.
ADDITIONAL ISSUE ON REVIEW

A. Whether Ada County is entitled to an award of fees on appeal.

Ada County is entitled to attorney fees on appeal under Idaho Code section 12-117 and 12-121. Idaho Code section 12-121 allows an award of "reasonable attorney's fees to the prevailing party." Idaho Code § 12-121. Attorney fees should be awarded to the prevailing party only if the "Court determines that the action was brought or pursued frivolously, unreasonably, or without foundation." *Baker v. Sullivan*, 132 Idaho 746, 751 (1999). Appellants' arguments were raided in 1994 and not pursued. All of the Fourth Judicial District judges[8] considered the arguments and evidence presented in this case and unanimously determined, in their discretion, that the Motion to Vacate the 1994 Order

[8] Judge Wetherell and Judge Norton did not participate in the case.

should be denied. Appellants have made no substantial showing on appeal that the District Judges misapplied the law or that they met the burden of proof established by *City of Boise* before the *en banc* 2010 Panel. *See, Hutchinson v. State*, 134 Idaho 18 (Ct. App. 1999). As such, an award of attorney fees is proper.

VII.
CONCLUSION

Based on the above arguments, Respondents respectfully requests that this Court affirm the decision of the District Judges of the Fourth Judicial District by finding that the District Judges acted within their authority by denying the Appellants' Motion to Vacate the 1994 Order and award Respondents attorney fees on appeal.

Respectfully submitted this 29th day of July, 2013.

GREG H. BOWER
Ada County Prosecuting Attorney

By: _____
Theodore E. Argyle
Chief Civil Deputy

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of July, 2013, I served a true and correct copy of the foregoing RESPONDENTS' BRIEF to the following persons by the following method:

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