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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

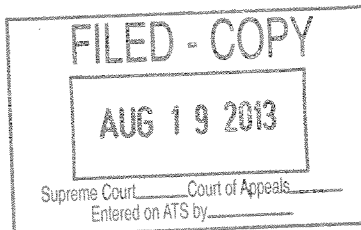
APPELLANTS' REPLY BRIEF

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

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

Frank Walker
Charles Wadams
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 Plaintiffs/Respondents



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ARGUMENTS IN REPLY

The City of Garden City and The City of Meridian (hereinafter "the Cities") submitted *Appellants' Opening Brief* on June 28, 2013. The Cities' central argument on appeal is that the 1994 Order is invalid because the District Judges – prior to issuing the order – failed to employ any "suitable process or mode of proceeding...most conformable to the spirit of [Idaho] code" as the Idaho Legislature required when it enacted Idaho Code § 1-1622. *See, e.g., Appellants' Opening Brief*, pp. 14-29. It is undisputed that the District Judges never made any factual findings or held any hearings or meetings in which the Cities were afforded the opportunity to appear, submit evidence, or present their arguments in opposition to the issuance of the 1994 Order. (R. pp. 267; 285-94) The Cities have illustrated that the District Judges' failure to afford even basic due process or make factual findings before issuing the 1994 Order violated Idaho Code § 1-1622 and the Idaho Supreme Court's holding in *City of Boise v. Ada County*, 147 Idaho 794 (2009). *Appellants' Opening Brief*, pp. 14-29.

On July 29, 2013, Ada County and The Board of Ada County Commissioners (hereinafter "Ada County") filed *Respondents' Brief* in which Ada County advanced three primary arguments: First, Ada County suggests that the District Judges did employ a "suitable process" prior to signing the 1994 Order simply by "organizing a panel of judges" that agreed to sign the order. *Respondents' Brief*, pp. 14, 17. Second, Ada County incorrectly applies Idaho Code § 13-201 and Idaho Appellate Rule 14 in contending that the Cities' positions on appeal are time barred for not having appealed the same in March 1995. *Id.* at pp. 18-21. Third, Ada County argues that the District Judges' decision denying the Cities' *Motion to Vacate the 1994 Order* should be affirmed on appeal because the Cities failed to plead and prove a "change in the factual circumstances." *Id.* at pp. 11-13.

1. Despite Ada County's assertion to the contrary, the District Judges did not employ any "suitable process" prior to signing the 1994 Order in compliance with Idaho Code § 1-1622.

In *Respondents' Brief*, Ada County suggests that the District Judges' sole act of "organizing a panel of judges" which signed the 1994 Order alone amounted to a "suitable process" in compliance with Idaho Code § 1-1622. *See, e.g., Respondents' Brief*, pp. 13-16 and *p. 17* ("Creating a panel of the district court judges who agree to and sign an order is a suitable process...."). Ada County argues that the District Judges were not required to hold hearings, consider evidence, or afford any due process-like protections prior to issuing the 1994 Order. *Id.* at pp. 13-17. Additionally, in an exercise of circular reasoning, Ada County suggests that the District Judges' process in 1994 was suitable simply because the District Judges determined it to be suitable:

> 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.

Respondents' Brief, p. 14 (emphasis added). *See also, Id.* ("Organizing a panel of judges is a suitable process because it complies with section 1-2218's requirement than an order is to be issued by a majority of the district's district court judges.").

Ada County's arguments ignore the plain text of Idaho Code § 1-1622 as well as the Idaho Supreme Court's holding in *City of Boise v. Ada County*, 147 Idaho 794 (2009). While the District Judges do possess inherent authority to fashion their own suitable process in deciding whether to issue an order pursuant to Idaho Code § 1-2218, the process they elect to follow must still be "most conformable to the spirit of [Idaho] code." *See* I.C. § 1-1622 and *City of Boise*, 147 Idaho 794, 802-03.

In *City of Boise*, this Court recognized that in order for the District Judges' process to be "suitable" and in conformance with the spirit of Idaho Code, a governmental entity with a substantial financial interest at stake must first be given the opportunity to appear and be heard before the District Judges take action pursuant to § 1-2218. *See* 174 Idaho 794, 803-804 (citing *In Re the Petition of Idaho State Fed'n of Labor*, 75 Idaho 367, 370 (1954) (process must afford any interested person the opportunity to appear at a hearing) and *Roche v. Superior Court*, 30 Cal. App. 255 (1916) (process must "preserve to the parties the fundamental essentials of notice and hearing.")).

In fact, the Idaho Supreme Court held that to deny a financially-interested entity the opportunity to appear and be heard in a § 1-2218 proceeding "would be repugnant to our concepts of fairness and due process." 147 Idaho at 803 (emphasis added). Surely, it would be equally repugnant to the spirit of Idaho Code for a panel of District Judges to issue a § 1-2218 order based solely upon an *ex parte* review of a one-sided and unverified petition. In addition to ensuring fairness and due process, preventing arbitrary judicial decision-making is a fundamental objective of Idaho Code and Idaho's judicial process. 147 Idaho at 802 (recognizing that issuing, modifying, or vacating a § 1-2218 order "involves judicial decision-making and, as such, is not administrative in nature.") (citations omitted).

In light of this Court's holding in *City of Boise*, it is surprising that Ada County would now argue that the District Judges did not need to afford the Cities with any due process or due process-like protections prior to issuing the 1994 Order. *Respondents' Brief*, pp. 16-17. Issuing a § 1-2218 order requiring a city to provide magistrate facilities undoubtedly imposes substantial financial obligations upon that city. (R. pp. 379-83; 389-90) Ada County's argument is particularly disingenuous considering its prior positions on the matter. In 1994, Ada County

(along with the City of Boise) prepared and submitted the petition which requested that the District Judges appoint a special master to "gather evidence, hold hearings, and report to the District Judges of the Fourth Judicial District his/her findings" as to the "appropriateness of an order" and level of proposed contributions. (R. 358-361) Moreover, it was Ada County who sought to intervene in the City of Boise's petition to vacate the 1980 Order, contending that its financial "interests would be impacted by an adverse decision" and its participation "allowed for a more complete, balanced and thorough review of the issues presented in [the] petition." *City of Boise*, 147 Idaho 794, 802 (2009).

Notwithstanding, it remains undisputed that prior to issuing the 1994 Order neither Garden City nor Meridian were served with the petition or even notified that it had actually been filed with the Fourth Judicial District. (R. pp. 267; 285-94) The Cities were also not afforded any opportunity to appear at a single hearing or meeting, present evidence, or even express their position as to whether issuing an order was warranted. (R. pp. 267; 285-94)[1] Additionally, the record is void of any evidence suggesting that the District Judges held any hearings or meetings, gathered any evidence, made any factual findings, or did anything other than merely review the unverified and one-sided petition before signing the 1994 Order. (R. p. 362) And, despite having expressly requested a hearing or meeting on their *Motion for Reconsideration or Delay in Execution*, the Cities were never afforded such an opportunity. (R. p. 384) Given that the District Judges afforded no due process protections and failed to make any factual findings, it is

[1] Ada County suggests that informal conversations that allegedly took place sometime in 1993 or 1994 between the Trial Court Administrator and the Cities' respective Mayors regarding contributions to the magistrate rendered the District Judges' process in issuing the 1994 Order "suitable". *Respondents' Brief*, p. 15. However, the record is void of any testimony or admissible evidence establishing the nature and content of what was actually discussed. Regardless, arguing that non-specific, off-the-record conversations with the Trial Court Administrator amounted to due process lacks merit.

unreasonable to conclude that the District Judges had employed a process that was "suitable" and "most conformable to the spirit of the code."

2. **The Cities' arguments on appeal are not time barred as Ada County wrongly asserts.**

Ada County argues that the Cities' arguments on appeal are barred because the Cities failed to file a timely notice of appeal. *Respondents' Brief*, pp. 18-21. Ada County contends that Cities were required to appeal the District Judges' purported decision denying the Cities' joint *Motion for Reconsideration or Delay in Execution* no later than March 1995. *Id.* at p. 18. For authority, Ada County cites to Idaho Code § 13-201 and Rule 14(a) of the Idaho Appellate Rules. As set forth below, Ada County's argument fails for at least three reasons:

First, Idaho Code § 13-201 and IAR 14 do not apply because the below proceeding was not a "civil action." Idaho Code § 13-201 applies only to appeals taken from a district court in a civil action. Likewise, IAR 14(a) governs appeals from "any judgment or order of the district court appealable as a matter of right in any civil or criminal action." In *City of Boise*, the Idaho Supreme Court specifically rejected Ada County's attempt to characterize proceedings pursuant to § 1-2218 as civil actions. *See, e.g., City of Boise v. Ada County*, 147 Idaho 794, 802 (2009) ("While this proceeding may bear some similarity to a civil action, we decline to categorize it as such.").

Second, even if § 13-201 and IAR 14 apply to the 1994 proceeding, the District Judges never entered a "final judgment" from which the Cities could have appealed. *See, e.g., Spokane Structures, Inc. v. Equitable Inv., LLC*, 148 Idaho 616, 619 (2010) (clarifying that Idaho's appellate courts lack jurisdiction unless the lower court entered a separate, final judgment pursuant to Rules 54 and 58 of the Idaho Rules of Civil Procedure.). Here, it is undisputed that the District Judges never entered either an order denying the Cities' *Motion for Reconsideration*

or Delay in Execution or a separate final judgment from which an appeal could have been taken. (R. pp. 384, 389-90)

Third, there was never a need for the Cities to file an appeal in 1995 because it soon became clear to all involved that the Fourth Judicial District and Ada County had decided to pursue an alternative option to the 1994 Order – i.e. the construction of a new, centralized county courthouse. In March 1995, it was the Fourth Judicial District's stated intent that the Cities build separate magistrate facilities in their respective city limits subject to various minimum standards. (R. pp. 379-83; 389-90) ("Our minimum standards for a courtroom are at least 700 square feet with a permanent, raised bench, and a permanent six person jury box designed with a full-length vanity shield.")).

However, by October 1995, Ada County and the Fourth Judicial District had decided instead to build a "new courthouse" in Boise. (R. p. 391). Ada County elected to "provide at its sole cost and expense a single courthouse complex for both the District Court and Magistrate Division". (R. p. 35). Neither Ada County nor the Fourth Judicial District discussed the 1994 Order at any time during the next thirteen years, effectively shelving the 1994 Order, if not rescinding it altogether by way of inaction. (R. 394). Building separate magistrate facilities in Garden City and Meridian would have been inconsistent with the plan to build a centralized courthouse in Boise. Accordingly, in 2004, when Meridian offered to provide space for a magistrate court in its new City Hall, Ada County declined. (R. 392-93) Ada County's claim that 1995 was followed by "nineteen years of effort by the courts to get the Appellants to provide magistrate courts" is unsupported by the record and simply not true. (*Respondents' Brief*, p. 19). Rather, all those involved had simply forgotten about the 1994 Order until 2008 when Ada

County located the order in some file and began using it as means of eliciting monetary contributions from the Cities. (R. p. 394).

3. Finally, the Cities are not barred from filing a subsequent petition to vacate the 1994 Order on the grounds that there has been a change in circumstances.

Ada County argues that the Cities failed to meet their burden of showing a change in circumstances and should not be given "yet another bite at the apple." *Respondents' Brief*, p. 13. This argument mischaracterizes the procedural history below as well as the actual scope of the Cities' *Motion to Vacate the 1994 Order*.

The Cities' *Motion to Vacate the 1994 Order* was a narrow motion limited solely to the issue of whether the District Judges employed a "suitable process" prior to issuing the 1994 Order. (R. 320-33) The motion was filed in the declaratory judgment action and before the District Judges unilaterally converted the matter into a § 1-2218 proceeding. (R. 262) As stated on the record during the July 26, 2012 hearing, the Cities intentionally raised no other issues in that motion and anticipated filing additional motions in the future, including a motion to vacate on the grounds that there had been a "change in circumstances." (Tr. March 3, 2012, p. 40, ll. 19-25; p. 41, ll. 1-18). A subsequent motion contending there had been a change in circumstances would have involved considerable factual discovery that would have proved unnecessary had the District Judges agreed in the first instance that the 1994 Order was invalid as having been issued in violation of Idaho Code § 1-1622.

Despite the limited scope of the Cities' *Motion to Vacate the 1994 Order*, it appears the District Judges nonetheless made a factual finding that there had not been any "substantial and material change of circumstances" that would justify rescinding the 1994 Order. (R. 425) In *Appellants' Opening Brief*, the Cities illustrated that this was error on the part of the District Judges because the Cities had neither raised that issue in their motion nor yet been given the

opportunity to engage in the necessary discovery to meet the burden of proof. *Appellants' Opening Brief*, pp. 12-13. Said differently, that issue was not before the District Judges and there was no evidence on the record to support the District Judges' conclusion. The Cities should not be barred from filing a future petition to vacate the 1994 Order on the basis of a "change in circumstances," especially since there is no longer any need or desire for separate magistrate court facilities in Meridian and Garden City.

ATTORNEY'S FEES ON APPEAL

Ada County is not entitled to attorney's fees. Neither Idaho Code § 12-117 or § 12-121 apply because the proceeding below was not a civil action. *See, e.g. City of Boise*, 147 Idaho 794, 802 (2009). Similarly, Ada County is not entitled to attorney's fees pursuant to Idaho Code § 12-121 because this appeal was not brought "frivolously, unreasonably, or without foundation." *See, e.g., Boots ex rel. Boots v. Winters*, 145 Idaho 389, 396 (2008). There is little case law in Idaho interpreting Idaho Code § 1-1622 and this Court's holding in *City of Boise* supports the Cities' position that the District Judges were required to provide the Cities with due process prior to issuing the 1994 Order. Furthermore, Ada County is not entitled to attorney's fees on appeal because Ada County failed to set forth any argument in support of their request. *See, e.g., Evans v. Sayler*, 151 Idaho 223, 228 (2011) (party seeking attorney's fees on appeal must support the claim with argument as well as authority.").

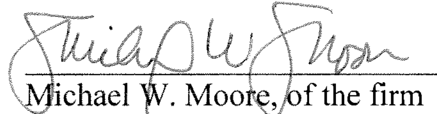
CONCLUSION

For the reasons set forth above and in *Appellants' Opening Brief*, the Cities respectfully submit that the Idaho Supreme Court should void the 1994 Order. No order of any court or judicial body should be held valid where it was issued in clear contravention of due process, fundamental fairness, and basic notions of sound judicial decision making. If Ada County

wishes to pursue a new order, then it can simply file another petition with the District Court pursuant to § 1-2218. Upon the filing of a new petition, the District Judges can then ensure that a "suitable process" is employed by affording Ada County and the Cities equal opportunity to appear, submit evidence, and present arguments for consideration. In doing so, the parties will be afforded due process and the District Judges will be able to make a more complete, balanced, and thorough decision.

DATED this 19 day of August, 2013.

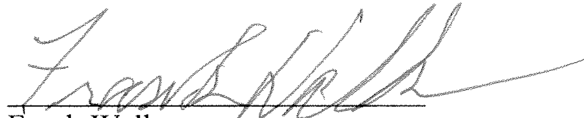
MOORE & ELIA, LLP



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

DATED this 19 day of August, 2013.

GARDEN CITY ATTORNEY'S OFFICE



Frank Walker
Counsel for Appellant City of Garden City