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Evans v. Burnham Respondent's Brief Dckt. 41254

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IN THE SUPREME COURT OF THE STATE OF IDAHO

LAUREL EVANS,

Plaintiff/Appellant

vs.

WALTER BURNHAM,

Defendant/Respondent

Supreme Court Docket No. 41254

Bonner County Docket No. CV 2010-001560

RESPONDENT'S BRIEF

APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT FOR BONNER COUNTY
HONORABLE JOHN T. MITCHELL PRESIDING

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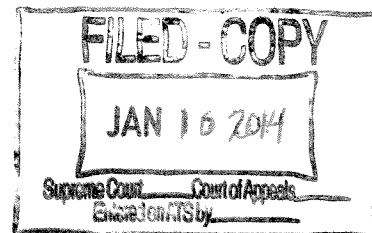


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II. STATEMENT OF THE CASE

A. Nature of Case.

Appellant challenges the denial of her motion to vacate judgment. She argues that Idaho Code § 1-2311, Idaho Code § 1-2312 and I.R.C.P. 81 grant the magistrate division exclusive appellate jurisdiction over small claims appeals.

A jurisdictional analysis is only necessary if this Court looks past the fact that Appellant moved to transfer the trial de novo to district court. By doing so, she took advantage of the district court's higher jurisdictional limits on damages. Appellant now claims this very action to be illegal. Similarly, Appellant negotiated and satisfied the judgment entered against her. This was done prior to the motion to vacate judgment. For this reason, her appeal is moot.

If this Court chooses not to apply the doctrines of judicial estoppel, invited error and satisfaction, then Appellant's theory still fails. When Ms. Evans amended her complaint seeking damages in excess of \$10,000, she caused the magistrate division to lose subject matter jurisdiction over her claim. Trial de novo was proper in district court. Even if the district court sat in an appellate capacity, it was permitted to hear the appeal de novo pursuant to Idaho Code § 2213. Respondent requests an award of attorney's fees pursuant Idaho Code §§ 12-120(3) and 12-121.

B. The Course of the Proceedings.

Ms. Evans filed her small claim action in 2010. Judgment was entered in her favor on October 6, 2010 (R., Vol I, Bates 034). The Defendant, Mr. Burnham, timely appealed the small claims judgment (R, Vol. I, Bates 35-36). On December 1, 2010, Ms. Evans, by and through her

attorney, moved to amend the complaint seeking damages greater than \$10,000. (R, Vol. I, Bates 41-55). The motion was accompanied by a motion to transfer the claim to district court (R, Vol. I, Bates 56-57). Mr. Burnham did not object to either motion. On December 23, 2010, the magistrate granted leave to amend the complaint and ordered transfer to district court (R, Vol. I, Bates 71-72).

Trial before the district court occurred on June 26, 2012. The court's decision was entered on July 25, 2012 (R, Vol. II, Bates 284-288). On October 23, 2012, the court granted Mr. Burnham attorney's fees pursuant to I.C. § 12-120(3) in the amount of \$11,885.50 (R, Vol. II, Bates 309-315). Judgment was entered on October 31, 2012. (R, Vol. II, Bates 316-317). In February 2013, the parties stipulated to payment of \$10,000 as full satisfaction of the judgment. (R, Vol. II, Bates 318-319). Ms. Evans paid \$10,000 to the trust account of Berg & McLaughlin. (R, Vol. II, Bates 380-384) Mr. Burnham filed a notice of satisfaction on March 15, 2013 (R, Vol. II, Bates 323-324).

Ms. Evans' motion to vacate the judgment was filed on April 5, 2013. (R, Vol. II, Bates 325) The decision by Honorable John T. Mitchell was entered on the record on May 28, 2013. (R, Vol. II, Bates 418). The district court denied the motion to vacate judgment finding that (1) the district court had subject matter jurisdiction; (2) Ms. Evans was judicially estopped from challenging the transfer; (3) Ms. Evans had invited the error; and (4) the appeal was moot due to satisfaction of the judgment. (Appeal Transcript, p. 8-11)

III. ADDITIONAL ISSUES PRESENTED ON APPEAL

1. **Respondent:** Whether Respondent is entitled to attorney's fees on appeal pursuant to Idaho Code §§ 12-120(3) and 12-121.

IV. ARGUMENT

A. Standard of Review.

In determining the appropriate standard of review for a motion for relief under Idaho Civil Rule 60(b), the Court must consider what subsection of the rule is being invoked. “Where discretionary grounds are invoked, the standard of review is abuse of discretion. . . . However, where nondiscretionary grounds are asserted, the question presented is one of law, upon which the Court exercises free review.” *Berg v. Kendall*, 147 Idaho 571, 576, 212 P.3d 1001, 1006 (2009)(internal citations and punctuation omitted).

B. The District Court Had Subject Matter Jurisdiction.

Appellant argues that the district court lacks subject matter jurisdiction to hear small claims appeals. (Appellant’s Brief on Appeal, p. 10-15.) “In order for a judgment to be void, there must generally be some jurisdictional defect in the court’s authority to enter the judgment, either because the court lacks personal jurisdiction or because it lacks jurisdiction over the subject matter of the suit.” *Hartman v. United Heritage Property and Cas. Co.*, 141 Idaho 193, 197, 108 P.3d 340, 344 (2005) (citations omitted).

1. Appellant caused the magistrate division to lose jurisdiction.

Appellant casts her case as a trial de novo hijacked by the district court. However, Appellant amended her complaint prior to the magistrate’s judgment and altered the nature of her case. (R, Vol. I, Bates 41-55) While the district court has original jurisdiction over all claims in

the magistrate division, the magistrate's authority is limited. *See I.C. § 1-2208*. Multiple rules make it clear that when a claim exceeds \$10,000 the magistrate court loses jurisdiction to hear the claim.

IRCP 8(a)(2): "*Transfer*. In an action brought in the magistrate division of the district court, in the event the claim, counterclaim, cross-claim or third-party claim tendered for filing is in excess of the jurisdictional amount or otherwise beyond the jurisdiction of said court, upon the payment of any fees required by statute, or rule, the action shall be transferred to the district court of the county in which pending to be there considered and tried as if the same had been there originally filed." (emphasis added).

IRCP 82(e): "If a counterclaim or cross-claim filed in the magistrate's division exceeds the jurisdiction of the magistrate, the original action and the counterclaim or cross-claim shall be transferred to a magistrate or judge having such jurisdiction."

In this case, the Appellant moved to amend her complaint while the claim was in the magistrate division. (R, Vol. I, Bates 41-55). The amended complaint demanded damages in excess of the magistrate court's jurisdiction. Once amended, the magistrate was required to transfer the claim to district court pursuant to I.R.C.P. 8 and 82. Appellant contends it was error for the magistrate division to transfer her case. However, Appellant caused the magistrate court to lose jurisdiction by amending her claim for damages and motioning the court for a transfer to district court. After amending her complaint, the district court gained exclusive subject matter jurisdiction over Appellant's claim.

2. The district court was not acting in an appellate capacity.

Appellant assumes that the district court was acting in an appellate capacity. However, in other cases, this Court has confirmed that there must be findings of fact or a judgment in order to

trigger the district court's appellate authority. *See In re Stibor's Estate*, 96 Idaho 162, 525 P.2d 357 (1974)(finding error by the district court in affirming a magistrate decision where there was no findings of fact or conclusions of law.) *Also See State v. Mason*, 102 Idaho 866, 643 P.2d 78 (1982)(holding that where there was no criminal judgment, district court lacked appellate jurisdiction)(distinguished by *State v. Gissel*, 105 Idaho 287, 668 P.2d 1018 (Ct. App. 1983).) Here, there was no judgment by the magistrate and therefore nothing triggered the district court's appellate jurisdiction. Instead, the district court continued to exercise original, concurrent subject matter jurisdiction over the matter.

The district court has original, subject matter jurisdiction over all matters. I.C. § 1-705. "Jurisdiction over the subject matter refers to the authority of the court to exercise judicial power over a particular type of dispute. 'The district court has original jurisdiction...[i]n all cases and proceedings.'" *Bonner Bldg. Supply, Inc. v. Standard Forest Products, Inc.*, 106 Idaho 682, 635, 682 P.2d 635, 638 (Ct. App. 1984) (quoting I.C. § 1-705). Not only does the district court have original jurisdiction over magistrate matters but it also can expand or limit magistrate authority. This suggests that the district court has continuing or "concurrent" jurisdiction over matters in the magistrate division, including the small claims department of the magistrate division. For example, the district court "assigns" certain claims to the magistrate division: "[T]he administrative judge in each judicial district or any district judge in the district designated by him may assign to magistrates, severally, or by designation of office, or by class or category of cases, or in specific instances the following matters" I.C. § 1-2208 (emphasis added). This permissive assignment of claims shows the district court's continuing jurisdiction over magistrate court matters and by incorporation, the small claims department of the magistrate

court.¹ Since the district court has original jurisdiction in all cases and proceedings, the court properly had jurisdiction over the subject matter in this case and the Appellant was free to amend her complaint in order to transfer to district court.

3. The district court has broad authority over magistrate appeals.

The magistrate division does not have exclusive jurisdiction over small claims appeals. Appellant cites Idaho Code §§ 1-2311 and 1-2312 tirelessly for the proposition that the district court lacks appellate jurisdiction over small claims appeals. See *Appellant's Brief on Appeal*, pp. 10-15. Appellant's entire argument rests on a narrow reading of these sections. On the surface, I.C. § 1-2311, I.C. § 1-2312 and I.R.C.P. 81 direct small claims appeals to attorney magistrates:

I.C. § 1-2311: "If either party is dissatisfied he may, within thirty (30) days from the entry of said judgment against him, appeal to a lawyer magistrate . . ."

I.C. § 1-2312: "Such appeal shall be filed with the magistrate's division. . . ."

IRCP 81: "Any appeal of a small claim judgment of the small claims department of the magistrate division shall be conducted as a trial de novo by an attorney magistrate." *I.R.C.P. 81(n)*.

However, there is conflicting language. For example, I.R.C.P. 81 – the same rule cited by Appellant – also discusses appealing small claims matters to the district court.

¹ In fact, it appears that the jurisdiction of the magistrate division may be expanded or limited by the district court: "Jurisdiction when approved by a majority of the district judges in the district may be granted all magistrates pursuant to Idaho Code § 1-2208:" IRCP 82(c)(1)(emphasis added). Also See IRCP 82(c)(4). However, I.R.C.P. 82 specifically states that it is not intended to extend or limit jurisdiction. IRCP 82(a). The District Court of the First Judicial District has not expanded or limited the magistrate division's jurisdiction. Rule 1, *Rules of the District Court and Magistrates Division for the First Judicial District, dated July 19, 2004*. A copy of this order is attached as Exhibit A.

I.R.C.P. 81(k): “Who May Appeal A Small Claim Judgment. Any aggrieved party from a small claim judgment may appeal to the district court as provided in these rules and by law. . .” (emphasis added).

I.R.C.P. 81(l): “Any aggrieved party desiring to appeal the judgment in a small claim proceeding to the district court shall do so by filing a notice of appeal with the magistrates division wherein the small claim proceeding was held . . .” (emphasis added).

A broader reading of the Idaho Rules of Civil Procedure fails to prove exclusive appellate authority by the magistrate division over small claims appeals.

The district court’s broad authority over magistrate matters is in line with its original jurisdiction over those claims. It is also in line with the district court’s authority on appeal which gives the district court broad power over appellate matters from the magistrate division, including the ability to hear an appeal as a trial de novo.

“Unless otherwise provided by law or rule, a district court judge shall review the case on the record on appeal and affirm, reverse, remand, or modify the judgment; provided, that the district judge in his discretion, may remand the case for a new trial with such instructions as he may deem necessary or he may direct that the case be tried de novo before him.” I.C. § 1-2213.

The district court’s original jurisdiction combined with a complete reading of I.C. § 1-2311, 2312 and IRCP 81 show the district court’s concurrent subject matter jurisdiction over small claims appeals.

4. Conclusion on subject matter jurisdiction.

Appellant promotes a narrow reading of I.C. § 1-2311, I.C. § 1-2312 and IRCP 81 for the proposition that the district court lacked authority to hear her case as a trial de novo. The

magistrate division has limited jurisdiction. When Ms. Evans amended her complaint seeking damages in excess of \$10,000, she caused the magistrate division to lose subject matter jurisdiction over her claim. After amendment, the magistrate was required to transfer the claim to district court.

Appellant had the ability to amend her claim due to the district court's original and continuing jurisdiction over matters in the magistrate division. Therefore, Appellant's transfer and district court trial de novo was proper. Even if the district court sat in an appellate capacity, it was permitted to hear the appeal in district court as a trial de novo pursuant to I.C. § 2213.

C. The District Court Did Not Abuse Its Discretion

In addition to finding subject matter jurisdiction, the district court also denied the motion on three alternative grounds: judicial estoppel, invited error, and satisfaction. Where discretionary grounds are invoked, the standard of review is abuse of discretion. *Knight Ins., Inc. v. Knight*, 109 Idaho 56, 59, 704 P.2d 960, 963 (Ct.App.1985). Accordingly, the Court must examine: "(1) whether the trial court correctly perceived the issue as one of discretion; (2) whether the trial court acted within the boundaries of its discretion and consistently with the legal standards applicable to the specific choices available to it; and (3) whether the trial court reached its decision by an exercise of reason." *Berg v. Kendall*, 147 Idaho 571, 576, 212 P.3d 1001, 1006 (2009).

1. Ms. Evans is judicially estopped from setting aside the judgment.

Ms. Evans herself moved to transfer the case to district court based on damages in excess of \$10,000. Her motion stated as follows:

<p>COMES NOW, the above-named plaintiff by and through her attorney of record, Daniel Sheckler, and pursuant to I.R.C.P. 8(a)(2) moves to transfer this matter to the district court.</p> <p>The grounds for the aforesaid motion are that the plaintiff has moved to amend her complaint clarifying a claim for damages in excess of the jurisdiction of the Magistrate's Division, and will tender the required filing fee for a district court case.</p>

(R, Vol. I, Bates 56)

The purpose of this transfer was clearly to seek higher damages against Mr. Burnham than were permitted at the magistrate level. The Idaho Supreme Court described the doctrine of judicial estoppel as follows:

“Judicial estoppel is applied when a litigant obtains a judgment, advantage, or consideration from one party, through means of sworn statements, and subsequently adopts inconsistent and contrary allegations or testimony to obtain a recovery or a right against another party, arising out of the same transaction or subject matter.” *Heinze v. Bauer*, 145 Idaho 232, 240, 178 P.3d 597, 605 (2008).

By her transfer, Ms. Evans received a benefit, namely the possibility of recovering greater damages from the Defendant. At no time prior to the trial, nor during the trial, did Ms. Evans contest jurisdiction. Ms. Evans waited until a determination in the proceeding to assert the court's lack of jurisdiction. This is a contrary allegation. The district court did not abuse its discretion in finding Ms. Evans judicially estopped from invalidating the judgment against her.

2. The doctrine of invited error applies to the instant situation.

Idaho courts have long held that “one may not successfully complain of errors one has consented to or acquiesced in. In other words, invited errors are not reversible.” The doctrine of invited error applies to estop a party from asserting an error when his own conduct induces the commission of the error. *State v. Atkinson*, 124 Idaho 816, 819, 864 P.2d 654, 657 (Ct. App. 1993)(internal citations omitted). Also See *Taylor v. McNichols*, 149 Idaho 826, 835, 243 P.3d 642, 651 (2010).

Ms. Evans moved the court to transfer the matter. She created the error for which she now seeks relief. The doctrine of invited error bars her from seeking relief for any error caused by her own actions.

3. The issue is moot due to satisfaction.

By stipulation entered on February 19, 2013, Ms. Evans agreed to payment of \$10,000 in exchange for full satisfaction of the judgment. This was a compromise of the judgment amount. The negotiated amount was paid, the judgment discharged and a satisfaction filed with the court. When a judgment debtor voluntarily pays the judgment, the debtor's appeal becomes moot, and it will be dismissed. *Quillin v. Quillin*, 141 Idaho 200, 202, 108 P.3d 347, 349 (2005)(citing *Bob Rice Ford, Inc. v. Donnelly*, 98 Idaho 313, 563 P.2d 37 (1977)).

Similarly, Laurel Evans paid the judgment amount voluntarily. The parties agreed that “[u]pon receipt of the funds, the matter shall fully satisfy and discharge the judgment”. (R, Vol. II, Bates 318-319) Where she intended to preserve her rights to challenge the judgment, the proper procedure is to deposit the funds with the court clerk. *Quillin* at 202, 349. Ms. Evans did

not deposit the funds with the court clerk but instead tendered funds to Berg & McLaughlin. In turn, Berg & McLaughlin filed a notice of satisfaction. Based on the holding in *Quillin*, the judgment cannot be attacked and the district court's denial should be upheld.

D. Respondent's Attorney's Fees

Respondent was granted attorney's fees by the district court pursuant to I.C. § 12-120(3) due to the commercial nature of the transaction between the parties. Appellant has not challenged the commercial nature of the transaction. Where a commercial transaction is appealed, the prevailing party is entitled to an award of fees. *See Garner v. Povey*, 151 Idaho 462, 259 P.3d 608 (2011). Respondent requests that this court award costs pursuant to I.A.R. 40 and attorney's fees pursuant to IAR 41 and I.C. § 12-120(3).

If attorney's fees are not granted pursuant to Idaho Code § 12-120(3), the Respondent respectfully requests an award of fees pursuant to I.C. § 12-121. To receive an I.C. § 12-121 award of fees, the entire appeal must have been pursued frivolously, unreasonably, and without foundation. *Carrillo v. Boise Tire Co., Inc.*, 152 Idaho 741, 756, 274 P.3d 1256, 1271 (2012). In this case, Ms. Evans caused the harm that she now appeals. In addition, Ms. Evans settled the claim against her by satisfaction of the judgment. The claim was settled prior to her bringing the motion to vacate judgment. Appellant has pursued her claim frivolously, unreasonably and without foundation.

V. CONCLUSION

For the foregoing reasons, the Respondent respectfully submits that the decision by the district court should be upheld on appeal.

DATED this 14 day of January, 2014.

BERG & McLAUGHLIN, CHTD.


By: 
STEPHEN T. SNEDDEN
Attorneys for Respondent

EXHIBIT A:

Rules of the District Court and Magistrates Division For the First Judicial District

Rules of the District Court and Magistrates Division for the First Judicial District

Covering Benewah, Bonner, Boundary, Kootenai and Shoshone Counties

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO

ORDER RESCINDING LOCAL DISTRICT RULES AND
CREATING LOCAL RULES FOR THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT, IN AND FOR THE COUNTIES OF
BENEWAH, BONNER, BOUNDARY, KOOTENAI AND SHOSHONE.

WHEREAS the Local Rules as they now exist for the First Judicial District in the State of Idaho appear to be in need of amendment: and

WHEREAS a review of those Local Rules has been conducted by the District Judges of the First Judicial District, now, therefore,

IT IS HEREBY ORDERED that the Local Rules of the First Judicial District as they are hereinafter set forth be and are hereby adopted as the Local Rules of the First Judicial District and that they will replace and supersede all prior Local Rules for the counties of Benewah, Bonner, Boundary, Kootenai and Shoshone and are supplemental to the Idaho Rules of Civil Procedure; the Idaho Rules of Evidence; the Idaho Criminal Rules; the Idaho Misdemeanor Criminal Rules; the Idaho Infraction Rules; the Idaho Juvenile Rules; the Idaho Court Administrative Rules; and the Idaho Appellate Rules.

RULE 1: Jurisdiction and Case Assignment

Cases within the jurisdiction of Magistrates will be as established by the Order of the majority of the District Judges. The allocation of caseload assignments by a division of cases among the Magistrates shall be as directed by the order of the Administrative District Judge. If approved by the Administrative District Judge, where there is more than one resident Magistrate, the method of allocating the caseload of that county between Magistrates may be by consensus among resident Magistrates.

All other cases shall be assigned to the District Judges, with the allocation of caseloads by a division of cases between the District Judges to be as directed by the Administrative District Judge.

Assignments upon disqualification of a judge shall be as directed by the Administrative District Judge.

RULE 2: Scheduling

Each District Judge shall control and set his own schedule for civil and criminal trials and for law and motion matters, subject to the authority of the Administrative District Judge pursuant to §1-907.

Cases assigned to Judges of the Magistrate Division shall be scheduled pursuant to the Magistrate Assignment Schedule of the First Judicial District established by the Trial Court Administrator, as directed by the Administrative District Judge.

A rotation schedule within each county consistent with the Magistrate Assignment Schedule of the First Judicial District may be established by the resident Magistrate (if only one) or by a consensus of the resident Magistrates (if two or more), subject to the approval of the Administrative District Judge.

RULE 3: Calendaring

Judges of the District Court: Each District Judge shall establish and control the calendaring of cases to be heard at times set aside for civil, criminal and special proceedings and for Law and Motion matters.

Judges of the Magistrate Division: Each Judge of the Magistrate Division shall control the calendaring of cases to be heard at times set aside for civil, criminal and special proceedings pursuant to the Magistrate Assignment Schedule of the First Judicial District.

RULE 4: Minutes

Minutes of all proceedings in District Court shall consist of the log of electronic recording prepared by the deputy clerk operating the electronic recording device used to record the proceeding. The log shall be in the format prescribed by Idaho Court Administrative Rule 25(c) and shall additionally include the name of any court reporter who is reporting the proceedings. The completed log, which shall be in legible handwriting, shall be placed in the court file.

Minutes of all proceedings in the Magistrate Division of the District Court shall consist of the log of electronic recording prepared by the deputy clerk operating the electronic recording device used to record the proceeding. The log shall be in the format prescribed by Idaho Court Administrative Rule 25(c). The completed log, which shall be in legible handwriting, shall be placed in the court file.

RULE 5: Transcript of Electronically Recorded Proceedings in the Trial Court

APPEALS: Transcripts for appeals from the Magistrate Division to the District Court shall be prepared at the discretion of the District Judge assigned to the appeal in accordance with Idaho Civil Rule 83 and Idaho Criminal Rule 54. Appeals from the District Court shall be governed by I.A.R. 24.

OTHER THAN APPEAL PURPOSES -- Transcripts of proceedings for other than appeals purposes shall be prepared only on order of the Judge conducting the proceeding for which a transcript is being requested.

If an order of a transcript is entered, it will be necessary for the party securing such order to present to the Court, with the original, a copy of the Order for service on the transcriber and a check for the estimated fees for the transcript, unless fees have been waived by court order or the matter is a criminal or special proceedings case involving an indigent.

RULE 6: Notice of Trial Setting

When a case has been assigned a trial date, the Clerk will forthwith prepare a Notice of Trial Setting, and mail copies of the notice to the attorneys involved, or to the parties if not represented by counsel.

RULE 7: Prohibition Against Preparation of Complaints or Pleadings by Judges and/or Clerks

Except as otherwise provided by statute or Supreme Court Rule, judges and/or clerks shall not prepare a criminal, civil or special proceeding complaints or pleadings

RULE 8: Supplemental Order for Custody, etc.

Unless otherwise ordered by the Court, all divorce decrees or temporary orders filed involving child custody, child support or alimony will contain the following paragraph:

"It is Further Ordered, Adjudged and Decreed Appendix A, attached hereto, is by this reference made a part here of as if fully set forth herein."

Upon presentation of the Decree for signature, a copy of Appendix A will be attached to said Decree. The form of Appendix A is as follows:

Supplemental Order for Parental and Child Support Responsibilities

Best Interests of Children: Divorce is an unfortunate part of modern life and is particularly difficult for children. The jurisdiction of the Court to control custody and child support is intended to allow the Court to make rulings in the best interests of the children and to minimize the negative impact of divorce or separation upon children. You and your former spouse have divorced or separated; that is your right. However, you cannot divorce your children. You both have continuing duties and responsibilities as parents to your children. No matter how carefully the Court crafts custody and child support orders, the success of the order and the well-being of your children will be limited unless both parents make a firm commitment to serve the best interests of their children. Please commit yourself to working with your former spouse to promote the well-being of your children.

Mediation: If you are unable to agree upon parenting issues between yourselves, the Court strongly recommends that you consider mediation before resorting to Court intervention. Mediation is a problem-solving process in which you can discuss alternatives and assess options with the assistance of an independent, neutral and qualified mediator.

On-Duty/Off-Duty Parent: A parent is "on duty" when the child(ren) are in his or her care pursuant to agreement of the parents or any court order, including: a parenting plan; custody or residential schedule; or visitation schedule. A parent is "off duty" when the other parent is "on duty."

You have the following rights and responsibilities regarding the child(ren) of your marriage unless the court orders otherwise:

1. **Affirmative Basic Duties:** When "on duty" each parent shall provide the child(ren) with: (a) regular and nutritious food; (b) clean and appropriate clothing; (c) reasonably private living and sleeping quarters; and (d) appropriate health care.

Both parents shall instruct in and promote: (a) ethical and moral principles; (b) respect for the law and the rights of others; (c) conscientious attendance at all regular sessions of school until graduation, unless excused for medical reasons, by the school, by the Court, or by law.

Neither parent will engage in, permit the child(ren) to engage in, or allow the child(ren) to be present during the use of any illegal drug, excessive alcohol use, violence, or disrespect for law and order. If the "on duty" parent does not prevent the use of illegal drugs, the excessive use of alcohol, violence or disrespect for law and order by other persons in the child(ren)'s presence, then the "on duty" parent shall remove the child(ren) from the environment where that conduct is occurring.

Each parent shall pursue and support the provisions of any Court order including: a parenting plan; custody or residential schedule; or visitation schedule. The "on duty" parent will personally supervise, control, and assume responsibility for the conduct and activities of the child(ren), and will advise the "off duty" parent of: (a) the scheduling of routine medical or dental care appointments; (b) medical emergencies as soon as possible after the child(ren) receive appropriate medical care; (c) all school disciplinary or law enforcement contacts as soon as possible so as to allow the "off duty" parent an opportunity to become involved in the resolution of such contact.

Each parent shall deliver their child(ren)'s clothing, school supplies and other personal belongings at the same time that the children are delivered. All clothing shall be delivered in a clean condition.

2. **Transportation:** The receiving parent shall provide transportation and shall arrive on time (no more than 10 minutes early or late).

3. **Neither parent** shall schedule activities for their child(ren) during the time the other parent is "on duty" without the prior agreement of the other parent.

4. **Address and Telephone Information:** Each parent shall provide to the other his or her current telephone number, Physical and mailing addresses and, if different from parent's, the telephone number, Physical and mailing address of where the child(ren) live.

5. **Move from Current Address:** Each parent shall provide the other not less than 60 days prior written notice of a decision to move. A move requiring more than 2 hours automobile travel between the homes of the parents ("two hour travel zone") will require modification of the parenting plan, custody or residential schedule, or visitation schedule. The moving parent shall not move the child(ren) to a location outside the "two hour travel zone" until a new order is in place.

6. **During "on duty" periods** the child support obligor shall remain liable for child support payments unless the decree or child support order specifically provides otherwise. Child support may not be withheld for failure to comply with any Court order including: a parenting plan; custody or residential schedule; visitation schedule; or for any other reason. Parenting time shall not be withheld for nonpayment of child support or other financial obligations.

7. **Support/Method of Payment:** All child support payments shall be paid to the State of Idaho Child Support Receiving, P.O. Box 7008, Boise, ID 83707. Any amount not paid through the State of Idaho will be considered a gift and will not be credited as child support. The State may report a failure to pay child support to the prosecuting attorney, who may enforce payment. The child support obligee may request forms for entry of a Wage Withholding Order from the Clerk's office.

Payment Due Date: If the decree or child support order is entered on or before the 15th day of the month, child support payments shall be due on or before the last day of the month in which the decree or child support order is entered and on the 10th day of each and every month following. If the decree or child support order is entered after the 15th day of the month, the child support payment shall be due on the 10th day of each calendar month following the month in which the decree of child support order is entered.

8. **Notices: Notice of Automatic and Immediate Income Withholding:** This support order is enforceable by automatic and immediate income withholding as of the effective date of this order under chapter 12, title 32, Idaho Code. This automatic and immediate income withholding order shall be issued by the department of health and welfare or other obligee to you employer or other person who pays your income, without additional notice to you.

Notice of Medical Enforcement: Failure to provide medical insurance coverage may result in the direct enforcement of medical support order by either the obligee or the Department of Health and Welfare. A national medical support notice will be sent to your employer, requiring your employer to enroll the child(ren) in a health benefit plan as provided by Sections 32-1214A through 32-1214K, Idaho Code, and applicable rules of the Department. Any claimed health care expense for the child, whether or not covered by insurance, which would result in a out-of-pocket expense of \$500 or more to the parent who did not incur or consent to the expense, must be approved in advance.

in writing, by both parties or by prior court order. Relief may be granted by the Court for failure to comply under extraordinary circumstances, and the Court may, in its discretion, apportion the incurred expense in some percentage other than the existing support order, and in so doing, may consider whether consent was unreasonably requested or withheld.

Notice of Lien: This support order shall be enforced by the filing of a statewide lien upon all real and personal property of the obligor if the delinquency in the support obligation is equal to \$2,000 or 90 days of support, whichever is less, pursuant to Idaho Code 7-1206 and 45-1901, et seq.

9. **Failure to comply with court orders** may result in civil contempt proceedings pursuant to Idaho Code §7-601 et seq. and/or license suspensions pursuant to Idaho Code §7-1401 et seq. Either parent's willful failure or refusal to return the children to the other parent in accordance with the court ordered parenting plan, custody or residential schedule or visitation schedule may subject that parent to criminal prosecution for custodial interference.

10. **Interference:** Neither parent will intrude on the privacy of the other nor make unkind statements about the other to or in the presence of the children. Neither parent will interfere in any way, or encourage or permit any other person to interfere in any way, with the other parent's rights granted by the decree or other order of the Court.

11. **Injunction:** This order restrains and enjoins both parents from doing, attempting, or threatening to do harm of any kind to the other parent or to the child(ren), or permitting another to so act on their behalf.

By Order of the District Court of the First Judicial District of the State of Idaho
Revised: July 1997; Superseded: March 2005

RULE 9: Excuse From Jury Service

Except for emergency excuses considered by the District Judge or a Magistrate, all requests from jury service or excuse from such services shall initially be referred to the Jury Commissioner for recommendation to the Court.

RULE 10: Appointment of Counsel in Criminal Cases

Unless a Public Defender has been appointment by the Board of County Commissioners, or when the Public Defender cannot act, the District Court, including the Magistrate Division, will appoint attorneys to represent needy persons in all cases required by law in such Court. The clerk shall keep a list of attorneys, in alphabetical order, who are residents within the County and such appointments shall be made from such list in rotation, except those that the Court may appoint an attorney out of regular order, or whose name does not appear on such list, if, in the Court's opinion, the circumstances warrant such action.

When a person contends that he is a "needy person" and requests appointment of counsel, the Court or Clerk thereof will require such a person to fill out in detail a Financial Statement and execute the same before the Clerk of this Court. Based upon such statement and further interrogation of such person, by or under the direction of the Court, the Court will then determine if the Defendant is entitled to counsel and if so, the Order Appointing Counsel will be executed by this Court.

If the Court appointed counsel is demanded by any person during the accusatory state of interrogation, or at any time prior to the filing of a criminal complaint and arraignment, under circumstances were such counsel otherwise would be appointed, the Clerk of this Court may temporarily appoint counsel without such Financial Statement, to act until the Magistrate or District Judge is available to consider this question and the Financial Statement prepared.

Withdrawal of attorney's name: If any attorney does not wish to have his name appear on such list, application in writing, stating his reasons, may be made to the Court, when approval by a majority of the District Judges in this Judicial District, such name shall be deleted.

Compensation: Each month, while the case is pending, the attorney shall submit a written statement, under oath, listing separately the time spent in legal research, investigation, consultation with his client, or in open Court, an itemized statement of out-of-pocket expense, and any other information deemed necessary or helpful by the attorney, together with an original and copy of an Order in the following form:

(Title of the Court and Cause)

IT IS HEREBY ORDERED that in accordance with Idaho Code §19-860, the above named County shall pay to _____, a licensed attorney and practicing attorney of the State of Idaho, the sum of \$ _____, forthwith, and for attorney fees and expenses in the above entitled action for his representation of the defendant, a needy person.

Dated this _____ day of _____, _____.

District /Magistrate Judge

Such Order and Affidavit shall be filed by the Clerk in the Court file, and the copy of such Order shall be attached to the voucher form, which shall be signed by such attorney where required, and processed for payment.

Disqualification of Public Defender: In any county in which a Public Defender has been appointed, and in the event such defender is disqualified to represent a needy person, counsel will be appointed and compensated in the same manner as heretofore set forth.

Evaluation of Evidence: In the event assigned counsel other than a Public Defender deem it necessary to employ an investigator, other professional specialists, or private facilities for the evaluation of evidence, as authorized by Idaho Code §19-861, for which service a charge will be made to the county, such attorney shall first make a written petition to the Court and secure an order from the Judge authorizing such additional help.

DATED this 19th day of July, 2004.

/s/ _____

Charles W. Hosack,
Administrative Judge

/s/ _____

John P. Luster, District Judge

/s/ _____

Fred M. Gibler, District Judge

/s/ _____

John T. Mitchell, District Judge

/s/ _____

Steve Verby, District Judge

CERTIFICATE OF SERVICE

On January 14, 2014, I caused two copies of the foregoing document to be served by the following methods on the parties listed below as follows, which is the last known address for the listed party:

Laurel Evans 46700 Highway 200, Ste 303 Hope, ID 83836	<input type="checkbox"/> By Hand Delivery <input checked="" type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile Transmission <input type="checkbox"/> Other _____
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Stephanie K. Allen