

11-17-2011

# Brannon v. City of Coeur d'Alene Respondent's Brief 1 Dckt. 38417

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/idaho\\_supreme\\_court\\_record\\_briefs](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs)

---

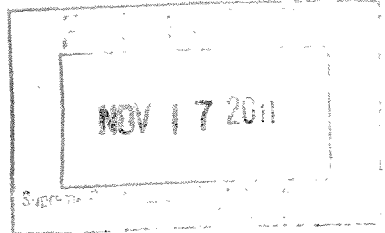
## Recommended Citation

"Brannon v. City of Coeur d'Alene Respondent's Brief 1 Dckt. 38417" (2011). *Idaho Supreme Court Records & Briefs*. 3144.  
[https://digitalcommons.law.uidaho.edu/idaho\\_supreme\\_court\\_record\\_briefs/3144](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/3144)

This Court Document is brought to you for free and open access by Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact [annablaine@uidaho.edu](mailto:annablaine@uidaho.edu).

IN THE SUPREME COURT FOR THE STATE OF IDAHO

JIM BRANNON,	)	DOCKET NO. 38417-2011
	)	
Plaintiff-Appellant,	)	Kootenai County Case
	)	No. CV09-10010
Vs.	)	
	)	
CITY OF COEUR D'ALENE, IDAHO, a	)	
municipal corporation; SUSAN K.	)	
WEATHERS, in her capacity as the	)	
City of Coeur d'Alene City Clerk; and	)	
MIKE KENNEDY, in his capacity as	)	
the incumbent candidate for the City	)	
of Coeur d'Alene Council Seat #2,	)	
	)	
Defendants-Respondents.	)	




---

BRIEF OF RESPONDENT MIKE KENNEDY

---

Appeal from the District Court of the First Judicial District

---

The Honorable Charles W. Hosack, Presiding

---

Starr Kelso  
 Attorney at Law  
 P. O. Box 1312  
 Coeur d'Alene, ID 83816  
 Attorney for Brannon

Michael L. Haman  
 Attorney at Law  
 P. O. Box 2155  
 Coeur d'Alene, ID 83816  
 Attorney for City

Scott W. Reed  
 Attorney at Law  
 P. O. Box A  
 Coeur d'Alene, ID 83816  
 Attorney for Kennedy

.....

## TABLE OF CONTENTS

	<u>Page</u>
<b><u>STATEMENT OF CASE</u></b>	1
i. Nature of Case	1
ii. Course of Proceedings	1
iii. Statement of Facts	3
<b>ISSUES ON APPEAL</b>	6
<b>STANDARD OF REVIEW</b>	7
<b>POINTS AND AUTHORITIES</b>	8
<b>ARGUMENT</b>	8
I. <u>Delegation by the City to Kootenai County to Conduct the City Elections was Entirely Legal.</u>	10
II. <u>Idaho Courts Have Never Annulled an Election</u>	14
III. <u>Kootenai County Properly Counted Votes of Pacquin, Farkes, Fried, Dobsloff and Gagnon</u>	20
IV. <u>County Conducted Election Properly</u>	24
V. <u>Attorney's Fees on Appeal</u>	27
<b>SUMMARY</b>	28

## TABLE OF CASES

	<u>Page</u>
<i>Ball v. Campbell</i> , 6 Idaho 754, 59 P. 559. (1899.)	16, 17
<i>Chamberlain v. Woodin</i> , 2 Idaho 642, 23 Pac. 177 (February 13, 1890.)	15, 16, 19
<i>Flying Elk Investment, LLC v. Cornwall</i> , 149 Idaho 9, 2323 P.3d 330 (2010.)	27
<i>Henley v. Elmore County</i> , 72 Idaho 374, 242 P.2d 855 (1952).	18
<i>Huffaker v. Edgington</i> , 30 Idaho 179, 163 Pac. 763 (1917.)	17, 18
<i>Jaycox v. Varnum</i> , 39 Idaho 78, 266 Pac. 285 (1924.)	18
<i>Noble v. Ada County Elections Board</i> , 135 Idaho 495, 20 P.3d 679 (2001.)	1, 6, 7, 8 15, 20, 25, 28
<i>Read v. Harvey</i> , 147 Idaho 364, 269 P.3d 661, (2009.)	7

## TABLE OF STATUTES AND TEXTS

	<u>Page</u>
Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff) UOCAVA.	23
Idaho Code §12-121	28
Idaho Code §18-101 (3) and §18-102.	26
Idaho Code §34-402.	23
Idaho Code §34-405.	23
Idaho Code §34-410.	11, 24
Idaho Code §34-1401.	10, 11
Idaho Code §34-2001 et seq.	14
Idaho Code §34-1002, §34-1004 and §3-1005.	24
Idaho Code §34-2101.	25, 26, 27
Idaho Code §34-2309.	8
Idaho Code 50-401 et. seq.	23, 24
Idaho Code §50-429	12
Idaho Code §50-402 .	23
Idaho Code §50-404.	13
Idaho Code §50-406.	15
Idaho Code §50-415	23
Idaho Code §50-429	12
Idaho Code §50-443	27
Idaho Code §50-446, §50-447.	24
Idaho Digest chapter on fraud. Vol. 5A.	26
Black's Law Dictionary (7 <sup>th</sup> Ed.)	11
Webster's Third New International Dictionary Unabridged. (G. C. Merriam 1971.)	26

## **STATEMENT OF THE CASE**

### **i. Nature of the Case**

Appellant Jim Brannon filed suit to nullify the city election on November 3, 2009. Counsel for appellant sought a declaration from the Court that the City of Coeur d'Alene could not legally delegate the conduct of the city election to Kootenai County. Counsel for appellant Kelso sought to have this Court reverse its opinion in *Noble v. Ada County Elections Board*, 135 Idaho 495, 20 P.3d 679 (2001.)

### **ii. Course of Proceedings**

Appellant Brannon's 64 page Opening Brief devotes only three sentences to the "Course of Proceedings." p. 1. These are the significant proceedings identified by date of filing with description, from the order of the clerk's "Case History" of this case.(1)

November 30, 2009. Brannon complaint filed naming as defendants Kootenai County and its elective officials County Clerk Dan English and Election Manager Deedie Beard, City of Coeur d'Alene, City Clerk Susan K. Weathers, city council members and candidate Mike Kennedy.

December 10, 2009. Plaintiff Brannon filed Amended Complaint dropping Kootenai County, English and Beard as defendants.

December 16, 2009. City Motion to Dismiss

January 5, 2010. Defendant Kennedy filed Motion for Summary Judgment and supporting affidavits.

---

1 The clerk's record on appeal substantially exceeds 2,200 pages. Respondent Kennedy, being short of time, substitutes by Appendix A the trial court case history identifying pleadings as filed.

January 5, 2010. Plaintiff Brannon sought temporary restraining order against city council. At hearing, District Judge Benjamin R. Simpson denied temporary restraining order.

March 1, 2010. Clerk received in excess of approximately 100 pages of pleadings and data sent by fax by plaintiff's counsel on February 27th and 28<sup>th</sup>, all related to hearing on March 2, 2010.

March 2, 2010. At hearing, Judge Simpson dismissed all defendants except Mike Kennedy.

March 8, 2010. Judge Simpson entered order of reconsideration rejoining City Clerk Susan Weathers as nominal defendant. Plaintiff moved to disqualify Judge Simpson.

March 12, 2010. At hearing, Judge Simpson denied plaintiff's motion to disqualify.

April 1, 2010. Judge Simpson reduced bond to \$5,000.

April 13, 2010. Judge Simpson voluntarily disqualified himself. Judge Hosack appointed as successor.

June 15, 2010. Scheduling Order, Trial Setting and Pre-Trial Order.

June 21, 2010. Order granting ballot recount.

July 6, 2010. Judge Hosack denied plaintiff's motion to reconsider dismissal of misconduct and denied permission for appeal.

July 19, 2010. Affidavit of William L. McCrory containing declared confidentiality report on ballot count.

July 22, 2010. Record of confidentiality agreements for McCrory and others.

August 2, 2010. Kennedy filed motion for summary judgment.

August 5, 2010. Kennedy filed motion to hold McCrory in contempt.

August 16, 2010. Plaintiff filed motion to compel out of state and out of country witnesses to appear in trial.

August 23, 2010. Certification on Starr Kelso's affidavit February 28, 2010 committing to depose Canadian absentee voters.

August 23, 2010. Plaintiff filed 15 affidavits re: absentee voters.

August 31, 2010. At hearing, Judge Hosack denied Kennedy motion for summary judgment and denied plaintiff's motion to file second and third amended complaint.

September 7, 2010. Hearing on contempt.

September 13, 2010. Plaintiff's moved to disqualify Judge Hosack.

September 17 – 21, 2010. Trial.

October 5, 2010. Memorandum Decision.

November 4, 2010. Judgment.

November 8, 2010. Plaintiff motion for new trial.

November 9, 2010. Plaintiff notice of appeal.

December 7, 2010. Hearing on motion for new trial. Denied.

iii. **Statement of Facts**

The voluminous record presented on appeal is replete with reams of irrelevant affidavits and counter affidavits by plaintiff's counsel to which are



attached miscellaneous documents, affidavits from many people having little to do with this case and assorted publications. Unfortunately not untypical were the 100 plus sheets faxed over the weekend to be filed March 1<sup>st</sup>, only one day before the hearing to which this bundle was ostensibly directed.

For simplicity sake, respondent Kennedy submits, as facts, selected findings from the Memorandum Decision of Judge Hosack made October 5, 2010.

**On the issue of illegal votes under Subsection (5), Plaintiff listed, as required by Section 34-2017 (b), twenty-two (22) potential illegal voters. Eleven (11) were qualified voters who were registered to vote and did cast a ballot. Ten (10) of these were absentee voters, and one was registered qualified voter who voted at the polls on election day. Although there are some irregularities as to how nine (9) of the absentee ballots were received or the form of the return envelope, no claim was made at trial that any of these votes were illegal. As to the 10<sup>th</sup> absentee vote (of Patricia Harris), no evidence was presented that the voter voted twice. As to the one election day voter, (Marte Chamness,) the Court has determined Chamness to be a legal voter.**

**Of the remaining eleven (11) individuals listed by Plaintiff pursuant to Section 34-2017, Subsection (b), as allegedly illegal votes, the votes of six (6) voters have been found to be illegal. The votes of Nancy White, Dustin Ainsworth, and Gregory Proft have been deemed illegal and for whom the vote of each was cast was determined by stipulation. Two of those votes were for Kennedy, and one was for Brannon. Therefore, the vote difference between Brannon and Kennedy has been reduced from five to four.**

Memorandum Decision, pp. 1 and 2.

**Regarding the aforementioned three (3) illegal votes in question, the Court finds that two cannot remember how they voted and one voted for Kennedy. This reduces the vote total for Kennedy by one, so the vote difference is now three (3).**

**The above discussion still leaves still five (5) individuals as potential illegal voters pursuant to Subsection (b). These are five (5) UOCAVA voters. (Paquin, Farkes, Friend, Dobsloff, and Gagnon.) The Court**

**has determined Dobsloff to be a legal voter pursuant to the applicable UOCAVA criteria.**

Id., p. 3.

**Therefore, the Court finds that Paquin, Friend, Gagnon, and Farkes, were legal voters.**

Id., p. 5.

**Plaintiff has presented evidence as to certain unknowns regarding in person voting on election day. For example, Plaintiff points out that for fifty-three (53) votes at the polls on election day, no record exists as to whether the voter received a City of County ballot. Plaintiff argues this inadequacy of record keeping is an irregularity which justifies the Court in finding the vote tally untrustworthy.**

**There is no evidence that any of the fifty-three (53) in person votes were unqualified voters.**

Id., p. 6.

**The Court finds Judge Marano's ballot count of 2,051 for physically existing absentee ballots to be accurate. The 2,027 ballots, in boxes 3-1, 3-B, and 4 which were run through the machine, were counted by Judge Marano on June 22, 2010. The seventeen (17) duplicate ballots which were fun through the machine were counted by Judge Marano on July 2, 2010. The seven (7) write-ins were valid ballots which were fun through the machine and were counted by Judge Marano on July 14, 2010. The sum for ballots case is 2,051.**

**Plaintiff's Exhibit No. 85 is a County generated document for the City General Election printed on November 4, 2009. It shows 2,051 absentee ballots case in the city election. The County then prepared a document (Plaintiff's Exhibit No. 86) to present to the City for the purpose of the City Council accepting the election results. Plaintiff's Exhibit No. 86 states the number of absentee ballots is 2,051. The City accepted that number when accepting the results of the election as presented by the County election officials.**

Id., p. 8

**The Court finds that the number of 2,051 is an accurate count of ballots actually ran through the machine (absentee ballots cast.) The evidence at trial was undisputed that there was only one absentee ballot contained within each absentee return envelope received. The**

**dispute is about the number of valid absentee return envelopes that the County actually received from voters.**

**During the litigation, the County produced 2,086 absentee return envelopes, which Judge Marano counted. Four of these, for some reason, could not be determined as City or County. Judge Marano subtracted all four, arriving at a total of 2,082 absentee return envelopes received. At trial, the County presented evidence that thirty-two (32) of the return envelopes presented to Judge Marano were from the County. The Court finds that the County has physical custody of 2,050 valid absentee return envelopes received for the City election.**

Id., p. 10.

**There was no evidence produced at trial showing that the stack of 2,050 returned envelopes does not include all 2,041 valid names on the November 6, 2009, database report. The record contemplated by Section 34-1101 turns out to be the stack of 2,050 absentee return envelopes. The nine (9) names that do not appear on the State's database would be on nine (9) of the return envelopes that physically exist in the custody of the County.**

. . .

**In fact, the 2,050 is the number arrived at during the September trial by subtracting the thirty-two (32) return envelopes identified by the County as being County ballots from the 2,082 figure counted by Judge Marano.**

Id., pp. 12 – 13.

### **ISSUES ON APPEAL**

I.

Was the delegation of the conduct of the city election by the City of Coeur d'Alene to Kootenai County allowable?

II.

In the absence of fraud or intentional misconduct, may the Court set aside, void or annul an election as sought in plaintiff's complaint and prayer?

III.

Will the Court in this case follow its ruling in *Noble v. Ada County Elections Board*, 135 Idaho 495, 20P.3d 679 (2011), that a showing that election officials failed to follow every election procedure precisely without more is insufficient to set aside an election result?

IV.

Is the Memorandum Decision entered by District Judge Charles W. Hosack based upon substantial evidence and not clearly erroneous?

**STANDARD OF REVIEW**

**Review of trial court's decision is limited to ascertaining whether the evidence supports the findings of fact, and whether the findings of fact support the conclusions of law. (Citations.) Since it is the province of the trial court to weigh conflicting evidence and testimony and to judge the credibility of the witnesses, this Court will liberally construe the trial court's findings of fact in favor of the judgment entered. (Citations.) A trial court's findings of fact will not be set aside on appeal unless the findings are clearly erroneous. (Citations.) If the findings of fact are based upon substantial evidence, even if the evidence is conflicting, they will not be overturned on appeal. (Citations.) This Court will not substitute its view of the facts for that of the trial court. (Citations.)**

*Read v. Harvey*, 147 Idaho 364, 366, 269 P.3d 661, \_\_\_\_ (2009.)

**POINTS AND AUTHORITIES**

I.

**The conclusion of the district court is correct. This Court has previously held that “the right of a person having the constitutional qualifications of a voter cannot be impaired, either by the legislature or the malfeasance or misfeasance of a ministerial officer.” *Jaycox*, 39 Idaho at 86, 226 P. at 287 (quoting *Earl v. Lewis*, 28 Utah 116, 77 P. 235, 238 (1904)). Although the original statement related to registration requirements, we find it equally applicable in the current context. The votes that Noble urges this Court to declare illegal are the votes of 189 constitutionally qualified electors. These electors**

**took the time to register, request absentee ballots, vote, and then return those ballots. There was no evidence that any of these ballots were cast after the polls had closed, nor that there was anything improper about the votes themselves. This Court cannot agree with Noble that the intent of the legislature was to disenfranchise these electors.**

*Noble v. Ada County Elections Board*, 135 Idaho 495, 502, 20 P.3d 679,

(2001.)

## II.

**In order to overcome the *prima facie* effect of the returns, it would seem incumbent on appellant to prove not only the illegal votes, but also for whom they were cast. Both these elements of proof were required to show that the illegal votes affected the result, and that, but for them, appellant would have been elected. It would be neither just nor logical to put the contestee at a disadvantage, because contestant was unable to sustain the burden of proof which rested upon him, contestee not being responsible for that fact.**

*Jaycox v. Varnum*, 39 Idaho 78, 92, 266 Pac 285 \_\_\_\_\_ (1924.)

### ARGUMENT

Given the five vote margin, candidate Brannon could have asked for an automatic recount as allowed by Idaho Code §34-2309. That recount would have been the same as sought and finally achieved under the supervision of Magistrate Eugene Marano in late June of 2010. If candidate Brannon had been dissatisfied with the automatic recount, he could have filed suit. The automatic recount would have been paid for by Kootenai County.

Instead, counsel for Brannon filed a complaint on November 30, 2009. Procedurally, the complaint was half right; Kootenai County was named as the lead defendant. However, the relief claimed was not allowable so the complaint procedurally was half wrong.

By the time this appeal is heard and decided probably in 2013, all of the issues will have become moot. Incumbent councilman Mike Kennedy will have exercised his option to either run for re-election or not, leaving an open seat.

On December 10, 2009 before any named defendant had appeared, counsel for plaintiff Brannon filed an amended complaint dropping Kootenai County and its officials as defendants and claiming that the City of Coeur d'Alene was solely and exclusively at fault and liable for all of the alleged errors in the conduct of the election. The amended complaint was now totally in error procedurally and remained such throughout the remainder of the case to final judgment.

On January 5, 2010, respondent Kennedy filed a motion for summary judgment with supporting affidavits asserting these double errors. Hearing was set upon the motion for January 28<sup>th</sup>, but on January 14<sup>th</sup> Judge Simpson issued an ex parte order vacating the January 28<sup>th</sup> hearing.

On March 2, 2010, Judge Simpson ruled that delegation to Kootenai County was proper and dismissed the city and its officials as defendants leaving Mike Kennedy as the only defendant.

City Clerk Susan Weathers was subsequently rejoined as a contingent defendant in the event that plaintiff produced evidence of fraud by the city contributing to the election.

Judge Hosack subsequently denied plaintiff's motion for reconsideration and denied plaintiff's motion for leave to appeal from this ruling. (June 14<sup>th</sup>.)

Counsel for plaintiff Brannon refused to recognize the ruling and declined to amend again to reengage Kootenai County. The case went to trial without the entity responsible for the election being named as a defendant.

The initial error in excessive sweep in trying to set aside the city election was not addressed until in Judge Hosack's Memorandum Decision. Pp. 15 – 17.

I.

**Delegation by the City to Kootenai County to Conduct the City Elections was Entirely Legal.**

The first on plaintiff's list of alleged failures is this:

25. **The Defendants failures include, but are not limited to, the following:**
  - a. **Illegally attempting to delegate the statutory election duties of Weathers, as City Clerk for the City of Coeur d'Alene, and the Mayor and City Counsel to Kootenai County and Daniel J. English and/or Deedie Beard.**

Amended Complaint, p. 11.

The operative paragraph upon which counsel relies in Section 34-1401 is this.

**Section 34-1401 . . .**

**School districts governed by title 33, Idaho Code, and water districts governed by chapter 6, title 42, Idaho Code, irrigation districts governed by titl3 43, Idaho Code, ground water districts governed by chapter 52, title 42, Idaho Code and municipal elections governed by the provisions of chapter 4, title 50, Idaho Code, are exempt from the provisions of this chapter. All municipal elections shall be conducted pursuant to the provisions of Chapter 4, title 50, Idaho Code, except that they shall be governed by the elections dates authorized in section 34-106, Idaho Code, the registration procedures prescribed in section 34-1402, Idaho Code, and the time the polls are open pursuant to section 34-1409, Idaho Code. . . . (Emphasis supplied.)**

The underlined portion of the excerpt to §34-1401 was added as an amendment by House Bill 330 enacted along with House Bill 351 by the 1993 Legislature. Attached as Appendix B are the legislative proceedings attendant to House Bill 330.

The Statement of Purpose recited that the H.B. 330 was intended to make the city election conform to the dates, conform city registration to state registration, give both the county and city clerk registration authority and conform poll openings to state law.

Appellant's counsel misinterpreted "Exempt." The amendment was added because the Municipal Code had special provisions for voters and voting just as do school districts and water districts. "Exempt" is defined in Black's Law Dictionary ( 7<sup>th</sup> Ed) as follows:

**Exempt, adj. Free or released from a duty or liability to which others are held – persons exempt from military service – property exempt from sequestration. . . .**

p. 563

Cities were released from liability in the event that any election did not conform to some provision in Chapter 14 of Title 34. "Exempt" did not mean "prohibited from." Just as anyone who is exempted from military service may voluntarily enlist so may a city choose to abide by any or all of the provisions of Chapter 14, Title 34, particularly including the last paragraph of §34-1401:

**A political subdivision may contract with the county clerk to conduct all or part of the elections for that political subdivision. In the event of such a contract, the county clerk shall perform all necessary duties of the election official of a political subdivision including, but not limited to, notice of the filing deadline, notice of the election, and preparation of the election calendar.**



(Underlined was part of HB330 amendment.)

Rather than barring cities from utilizing county election services, the sponsors of House Bill 330 saw the bill as facilitating county election services. The Statement of Purpose for House Bill 330 identifies at the bottom as "Contact: Shirley Mix, Association of Idaho Cities." In the final page of the legislative record is the Memo on House Bill 330 from Shirley Mix which contains this explanation:

**There is only one change from last year's consolidation bill: city clerks have the option to conduct their city elections or to contract with the county to do so. That's an important option to city clerks, because their limited budgets require them to save taxpayer dollars wherever they can. In most cases, city elections cost less than do elections run by the counties. Many cities use paper ballots, for instance, while counties use more expensive methods. (Emphasis supplied.)**

On November 3, 2009, Kootenai County provided full election services comparable to Coeur d'Alene for Hayden, Huetter, Post Falls, Fernan, Hauser and Rathdrum.

Idaho Code §50-429 provides the following which was new law created in House Bill 330: (2)

**(4) The secretary of state is authorized to provide such assistance as necessary, and to prescribe any needed rules or interpretations for the conduct of elections authorized under the provisions of this section.**

As evident from the letter from Chief Deputy Secretary of State Timothy A. Hurst to Kootenai County clerk Dan English filed with the affidavit of Dan English

---

<sup>2</sup> As currently codified, the black letters following §50-429 read as to be effective January 1, 2010. However, the quoted wording above is part of House Bill 330 and is in §50-429 presently in effect.

on January 5, 2010, the Secretary of State had specifically approved the conduct of the city election on November 3, 2009. See Appendix C.

Finally, under the Idaho Code §50-404, the city clerk is given authority to have anybody to carry out the election:

**50-404. Powers of city clerk. [Effective until January 1, 2011.] (1) the city clerk with consent of the council may employ such persons and procure such equipment, supplies, materials, and facilities of every kind he considers necessary to facilitate and assist in his carrying out his functions in connection with administering the election laws.**

That is exactly what was done for the city council in Resolution No. 09-033 and the contract attached to plaintiff's Amended Complaint as Exhibits A-1 to A-6. The agreement sets forth the authority for the two governments to agree as follows:

**WHEREAS, the City and the County, pursuant to the provisions of Idaho Code §67-2332, may enter into agreements enabling each to cooperate with the other to provide services and facilities for their mutual social, political and economic advantage; and . . .**

In summary, three separate code sections gave the City of Coeur d'Alene full legal authority to delegate the statutory election duties to officials of Kootenai County.

The issue of delegation by the city to the county was raised in the city's motion to dismiss (December 16, 2009) joined by defendant Kennedy. Brief in Support of Motion to Dismiss, February 18, 2010. At the hearing on March 2, 2010, Judge Simpson held that delegation was legal and granted the city's motion to dismiss:

District Judge Simpson:

**However, I am going to find under 34-1401 that the last paragraph, based upon the following language, “A political subdivision may contract with the county clerk to conduct all or part of the elections for that political subdivision. In the event of such a contract, the county clerk shall perform all necessary duties of the election official of a political subdivision including, but not limited to, notice of the filing deadline, notice of the election, and preparation of the election calendar,” et cetera.**

**And I note that under 34-215 exactly the same remedies lie against the county clerk as would lie against the city clerk under the municipal code. I find that the contract entered into with the City of Coeur d’Alene and Kootenai County was authorized under 34-1401. Accordingly, the Court is going to dismiss all claims against the City of Coeur d’Alene clerk and the Coeur d’Alene council members. The sole remaining defendant in the action will be Mr. Kennedy as the contestant or the incumbent whose election is being contested under 34-2008.**

Transcript on Appeal Proceeding. March 2, 2010, pp. 63, L. 9 – 15; p. 64, L. 1 –4.

## II.

### Idaho Courts Have Never Annulled an Election

Idaho Code §§ 34-2001 et seq. provide the basis for challenges in city, county, state and other elections. With the sole exception of Idaho Code § 34-2001 A (bond election), the entire code sections §34-2001 through §34-2027 were enacted by the first Idaho Legislature in 1890 – 1891 and have remained unchanged to this date.

Plaintiff’s amended complaint in Paragraphs 23 through 25 makes various allegations of election errors following which plaintiff states: “Cause of Action to Set Aside, Void All or in Part.”

The labeling on the face of the Amended Complaint is the same: Amended Complaint pursuant to Title 50, Chapter 4, to set aside, void, annul, all or in part, City of Coeur d’Alene, November 3, 2009 General Election.

In Paragraph 23, plaintiff asserts the right to appeal “. . . and obtain an Order of the Court setting aside, voiding, and/or annulling the said election pursuant to Idaho Code §50-406. “ That code section allows for appeal, but says nothing about relief to be awarded by a court on appeal.

Paragraphs 24 and 25 again set forth numerous allegations of legal errors in the conduct of the election. After notations “Injunction” and “Bond,” the amended complaint concludes with this prayer for relief:

**“PRAYER FOR RELIEF”**

“WHEREFORE plaintiff prays for relief from the Court as follows:

1. For Judgment declaring that the 2009 City of Coeur d’Alene municipal election is set aside, void, and annulled in total; and
2. For Judgment declaring the 2009 City of Coeur d’Alene municipal election for Seat 2 is set aside, void, and annulled;”

There has never been an Idaho Supreme Court opinion from the first in 1890 to the most recent, *Noble v. Ada County Elections Board*, 135 Idaho 495, 20 P.3d 679 (2001), in which the Idaho Supreme Court set aside, voided or annulled any election. To the contrary, this Court has continually admonished against any such drastic remedy and, even when ruling in favor of a challenging candidate, carefully limited review of election results to viewing the testimony of alleged illegal voters.

The very first case involved an election found to be entirely illegal, but the judgment was not to set aside, void or annul the election. *Chamberlain v. Woodin*, 2 Idaho 642, 23 Pac. 177 (February 13, 1890), a pre-statehood case.

The case involved the general election for sheriff in territorial Bingham County in 1888. Appellant had the most votes. Respondent sued.

The District Court held that illegal votes had been cast, deducted the same and declared the respondent as elected. The illegal voters were “. . . those persons who claimed to have withdrawn from the Mormon church just prior to the election.” 2 Idaho at 647. The District Court refused to accept the withdrawal and the Idaho Supreme Court affirmed:

**They (Mormon voters) also testified their reason for leaving the church was their desire to vote, and be endowed with all the privileges of American citizenship; that, while they had, two years prior, been denied the privilege of voting for the same reason, they had not until shortly before the last election been impressed with the gravity of the situation, and that the desire to change their *status* came upon them rather suddenly. While claiming they had acted in good faith, most of them admitted they still wore their “endowment garments.” The general explanation of this was, they would wear them until they wore out, but one explained, “they will never wear out.”**

2 Idaho at 649 – 650.

Although the Court recited that “. . .the testimony shows the election was a farce,” it did not annul the election but simply upheld the deduction of illegal votes to declare the non-Mormon candidate the winner. 2 Idaho at 648.

In 1899 in *Ball v. Campell*, 6 Idaho 754, 59 P. 559, the Idaho Supreme Court reviewed on appeal the complaint brought by the losing candidate for the office of clerk of the district court in Bannock County. The complaint alleged “. . .malconduct by the judges of the election in said Pocatello Precinct No. 2 . . .was fraudulent, corrupt, illegal, unlawful, and void, and the same should be set aside and annulled. . .” 6 Idaho at 756.

In that plaintiff Brannon's allegations are primarily directed at absentee votes which were counted as if in a separate precinct, the relief sought is comparable.

The sole question before the Supreme Court was whether the action of the District Court in sustaining the demurrer to the complaint, (i.e., dismissal) was erroneous. 6 Idaho at 756. The Court sustained the demurrer:

**The primary object of our election law is to secure the elector a free, untrammelled expression of his will concerning the matters submitted for decision, unnamed by intimidating influences, uncontrolled by corrupt or fraudulent practices; and, when the will of the elector has been expressed as required by law, such expression must not be set aside or negative for light or trivial causes. Before the court will assume to set aside the expressed will of a majority of the electors of a county or precinct, it should be well satisfied that there has been such a disregard of the provisions of law enacted for the conduct of elections as taints the entire poll with fraud. *It is not every irregularity that will justify the court in invalidating the poll of an entire precinct.* (Emphasis supplied.)**

6 Idaho at 758.

The demurrer to this complaint was sustained, the prayer to annul the election not stating a cause of action. The demurrer meant that the District Court and the Idaho Supreme Court were ruling that a complaint that sought to annul an election did not state a cause of action even though it alleged fraud and corruption. 6 Idaho at 760.

*Huffaker v. Edgington*, 30 Idaho 179, 163 Pac. 763 (1917), was a suit challenging the results of a mayoral election in Idaho Falls where Edgington defeated Clark by nine votes.

Appellant cited a number of errors and sought to throw out all votes in Ward I. The argument was rejected:

**While the vote of a precinct may be rejected in certain instances, it is a drastic measure used only in emergencies, and should not be resorted to whenever it is possible to purge the election irregularities without depriving citizens of their vote. Such action has the effect of punishing and invalidating the votes of loyal citizens in order to prevent the fraud and wrongdoing of dishonest persons seeking to vote illegally, and while in some instances it is justified, in this case the irregularities complained of were not such as to warrant the court in rejecting the vote of the precinct referred to.**

30 Idaho at 186.

Throughout the opinion, the concern of the Court was not upon the illegal voters' votes but upon protecting against the disenfranchisement of innocent voters because of a mistake by election officers:

**It is inevitable that mistakes shall occur in elections because of the inexperience of election officers, and sometimes the law cannot be strictly complied with, but where the will of the citizen legally entitled to vote is apparently correctly expressed, such mistakes or oversights as do not result in making the election uncertain will not be allowed to defeat the choice of the electors.**

. . .

**Hence, as a general rule, statutes prescribing the duties of election officers relative to registering voters should not be so construed as to make the right of citizens to vote depend upon a strict observation of the law by such officers. (10 Citations to seven states).**

30 Idaho at 186.

*Jaycox v. Varnum*, 39 Idaho 78, 266 Pac 285 (1924), involved an election for clerk in Jerome County where the competing candidates were separated by four votes. As here, the District Court deducted votes from both candidates leaving the respondent with a three vote instead of four-vote margin. The Supreme Court conclusion was that there had been three illegal votes unknown as to for which candidate but no fraud or corruption.

That case and conclusion was cited in *Henley v. Elmore County*, 72 Idaho 374, 242 P.2d 855 (1952):

**The burden of proof was on the respondent, as the contestant, to prove two things: Illegal votes, and that these illegal votes changed the result of the election. *Jaycox v. Varnum*, 39 Idaho 78, 226 P. 285.**

72 Idaho at 281.

The most recent election case is *Noble v. Ada County Elections Board*, *supra*, in which the losing primary candidate, plaintiff and appellant, was represented by attorney Starr Kelso. The complaint in the *Noble* case was close to being identical to the complaint in this case. Noble alleged that the Ada County Clerk had erred in handling absentee ballots, had allowed absentee voters to register and vote illegally and that 189 absentee ballots should be thrown out.

The District Court agreed with Noble that the clerk had made a procedural error in failing to stamp the 189 absentee ballots but refused " . . .to disenfranchise 189 electors" 135 Idaho at 501.

As in this case, Noble argued that twenty-one absentee ballots (in this case four) should be thrown out because they were kept in the administrative office instead of being delivered to the respective precinct poll judges for opening. 135 Idaho at 502. The District Court found and the Supreme Court concurred that Ada County had handled absentee ballots received on election day entirely properly. 135 Idaho at 503.

In conclusion the Supreme Court, citing *Chamberlain v. Woodin*, *supra*, held that ten illegal votes, failure to stamp 185 ballot return envelopes and



numerous other procedural errors did not constitute “malconduct” justifying disenfranchising innocent voters:

**A showing that election officials failed to follow every election procedure precisely, without more, is insufficient under I.C. §34-2101 (1). Noble’s evidence does not demonstrate that the election process was unfair or that the results are contrary to the actual will of the electorate. We, therefore, uphold the district court’s finding that Noble failed to meet his burden of proof under I.C. §34-2101 (1).**

135 Idaho at 504.

### III.

#### **Kootenai County Properly Counted Votes of Pacquin , Farkes Fried, Dobsloff and Gagnon**

In this case, appellant Brannon filed a motion seeking an order of the court requiring the four absentee voters in Canada and one absentee voter in California to appear in Court. The motion was denied.

Counsel for appellant raises the issue again on appeal: “Issues on Appeal, No. 3,” pp. 14 to 20. The proposition is ridiculous or contemptible or both. Imagine the requisite warning to be sent out with every absentee ballot to a legal voter as a person in the military or diplomatic service residing out of state.

“Warning: By voting absentee, you are subject to being compelled to appear in court in this county.”

This would be the end of absentee voting by those who could read and understand. Judge Hosack, in denying the motion, was upset:

**MR. KELSO:** . . . **Mr. Reed and Mr. Kennedy shouldn’t be concerned about these people in Canada, they ought to be concerned about the citizens of Coeur d’Alene and that’s what’s lacking here.**

**THE COURT:** Who's sending these people the money to travel here and live in Coeur d'Alene for three or four days during the course of the trial? Is that on your ticket?

Transcript on Appeal, August 31, 2010, p. 50, L. 6 –13;

**MR. KELSO:** I'm just puzzled why Kennedy is so concerned about keeping these five people who voted for him from Canada and California out of the court room.

**THE COURT:** Well, this is civil litigation and it's being approached by this court as civil litigation and if you need to bring witnesses in from out of state, the way you always bring in witnesses out of state, that's not up to the court to issue orders and send airline tickets and make all the arrangements. The court isn't in the business of recruiting and providing witnesses for particular parties. The parties themselves go out and do that. That's the way it's handled in civil litigation. And to devise a different rule for elections just because without any legal authority in the United States Jurisprudence that in elections, courts can require people to pick up their bags from New York and come at their own costs to Coeur d'Alene is just – I – I just kind of – just kind of end of muttering to myself.

So I'm not in a habit of issuing orders for which I have no legal authority, no reason to do, and which I think in my own opinion should be utterly disregarded by the person that receives it. The courts should do what they're empowered to do and not go out and send out unsupported.

So I think it's just – "This is an election contest so you have the powers, Judge." I appreciated the argument, but there's no legal basis for it so the motion to compel witnesses will be denied.

Id., p. 51, L. 4 – 25, p. 52, L. 1 – 6.

At a much earlier time when appellant's counsel was trying to avoid a quick trial, Mr. Kelso filed an affidavit dated February 28<sup>th</sup> in which he stated his clear intention to go to Canada and depose the four absentee voters there.

Clerk's Record, Affidavit in Support of Motion for Extended Time for Discovery and Depositions and To Vacate and Reschedule Trial filed 03/01/2010. See also, Certification on Affidavit of Starr Kelso dated February 28, 2010 filed 08/23/2010.

The relevance of the earlier affidavit was explained at the August 31<sup>st</sup> hearing before Judge Hosack:

**MR. REED:** . . . Attorney Kelso in response to a pending motion to dismiss to be heard on March 2<sup>nd</sup>. On February 28<sup>th</sup> filed an affidavit in support of motion for extended time for discovery and depositions to vacate and reschedule the trial.

**Starts off by saying we'll get subpoenas to Canadian consulate. The three residents that voted absentee would provide affidavits in establishing ineligibility and that they voted for Kennedy. Plaintiff's going to take these depositions of these ineligible voters within two or three months. Plaintiff would depose Secretary of State Tim Hurst and other out-of-state voters and Mike Kennedy and Dan English and Deedie Beard. None of that happened.**

**Affidavit concludes, paragraphs 19 and 20, "With a schedule of the attorneys for the parties hereto and the schedule of witnesses, it's my opinion this process will take two or three months beyond the date of the scheduled trial. In my opinion based on my investigation so far, it's necessary that this discovery be completed prior to trial so the facts regarding the election can be properly represented to the court for a fair and complete evaluation."**

Id., p. 34, L. 9 –25; p. 35, L. 1 – 6.

Appellant's Brief devoted 12 pages at the beginning arguing that Paquin, Farkes, Fried, Dobsloff and Gagnon were not eligible voters. Since there is no admissible evidence as to for whom any of these persons voted for Position No.

2, it is a bootless argument. All five were eligible voters under both the Municipal Code §50-401 et. seq. and the general state code §34-401 et. seq.

Idaho Code §50-402 (c) requires that a qualified elector must have resided in the city for at least 30 days prior to the election. Idaho Code §34-402 imposes the same 30 day residence requirement in the state and county.

In each title, an exception is made for persons such as the five named here who are out of state/out of country:

**Idaho Code 50-415. For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his absence while employed in the service of this state or the United States, while a student of any institution of learning, while kept at any state institution at public expense, nor absent from this state with the intent to have this state remain his residence. If a person is absent from this city but intends to maintain his residence for voting purposes here, he shall not register to vote in any other city during his absence.**

**Idaho Code 34-405. For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his absence while employed in the service of this state or the United States, while a student of any institution of learning, while kept at any state institution at public expense, nor absent from the state with the intent to have this state remain his residence. If a person is absent from this state but intends to maintain his residence for voting purposes here, he shall not register to vote in any other state during his absence.**

Both the Municipal Code Title 50, Chapter 4 and Title 34 recognize and adopt the federal absentee voter laws. The Municipal Code recognized the earlier act while Title 34 adopted, Uniformed and Overseas Citizens Absentee Voting Act” (42 U.S.C. 1973ff) UOCAVA:

**Idaho Code §50-443**

. . .

**A person in the United States service may make application for an absent elector's ballot by use of a properly executed federal postcard application as provided for in the laws of the United States known as "Federal Voting Assistance Act of 1955."**

. . .

**Idaho Code §34-410A**

**Whenever provision is made for absentee voting by a statute of the United States, including the "Uniformed and Overseas Citizens Absentee Voting Act" (42 U.S.C. 1973ff), an application for an absentee ballot made under that law may be given the same effect as an application for an absentee ballot made under Chapter 10, title 34, Idaho Code.**

These five persons made federal postcard applications and otherwise followed the Idaho Code provisions for absentee voters Title 50, Chapter 4 as identical to similar absentee provisions in Title 34.

The testimony and affidavit of Election Manager Deedie Beard, unchallenged in trial, established that Kootenai County followed all the requirements for these absentee electors by Idaho Code §50-446, §50-447, §34-1002, §34-1004 and §34-1005.

Upon each of the returned envelopes each of the five stated under oath that he or she was "A U.S. citizen temporarily residing outside the U.S." and that he or she had not registered or requested a ballot or voted in any other jurisdiction.

Neither appellant nor anyone acting on his behalf challenged any of the five returned envelopes. Challenges to absentee ballots are allowed under Idaho Code §34-1009.

#### IV.

#### County Conducted Election Properly

As of 8:00 o'clock p.m. on November 3, 2009 the Kootenai County Election Office had complied with every federal, state and municipal law relating to absentee votes from persons who had a residence in Coeur d'Alene and who were living out-of-state/out-of-country but with an intention to return.

*Noble v. Ada County Elections Board*, supra, was tried before District Judge Juneal C. Kerrick. One of Judge Kerrick's conclusions disposed of the plaintiff Noble's allegation of irregularities and is even more forceful in this case where there are no identified irregularities:

19. **It should be noted that in listening to testimony and reviewing election records the Court was impressed with the enormity of the task of conducting an election. All witnesses who testified relative to their involvement in the election appeared to be committed to the task and used good faith effort in attempting to comply with all election law requirements. It is difficult for the Court to imagine an election where no mistakes are made. It does not appear to be possible given the task. Having heard and reviewed the evidence, the reasoning of the Idaho Supreme Court in *Jaycox* even though a 1924 case, appears to be sound.**

Judge Hosack dismissed the amended complaint as to any cause of action under Idaho Code §34-2101 (1):

**34-2101 Grounds of contest. – The election of any person to any legislative or state executive office may be contested:**

- 1. For malconduct, fraud or corruption on the part of the judges of election in any precinct, township or ward, or of any board of canvassers, or by any member of either board sufficient to change the result;**

There was not in the amended complaint nor in any of the voluminous pleadings filed by plaintiff prior to trial any allegation nor even inference that any public official, city or county, engaged in malconduct, fraud or corruption. The terms “fraud” and “corruption” are common and well understood, e.g., Idaho Code §18-101 (3) and §18-102 plus the entire Idaho Digest chapter on fraud. Vol. 5 A, pp. 319 – 359.

“Malconduct” is defined as “bad conduct, esp. dishonest in managing public affairs” Webster’s Third New International Dictionary Unabridged. (G.C. Merriam 1971) p. 1366.

The record in this case firmly and absolutely establishes that no one associated with the conduct of the city election acted dishonestly. In every situation the voter and those allowing the vote acted innocently and without the criminal intent required for malconduct, fraud and corruption.

The amended complaint made no reference to Idaho Code §34-2101.

These are the two grounds for contest:

- 5. When illegal votes have been received or legal votes rejected at the polls sufficient to change the result;**
- 6. For any error in any board of canvassers in counting votes or in declaring the result of the election, if the error would change the result;**

The amended complaint alleged that the canvass was in error in reporting 2051 absentee ballots when other reports had numbers of 2049 and 2042.

**The difference in the absentee ballot totals could change the outcome of the election.**

Amended Complaint §23 (h).

The absentee ballots count made at the request of and in the presence of appellant and his attorney and supporters confirmed that the count of 2051 absentee ballots given approval at the city canvass was exactly correct. Affidavit and testimony of Magistrate Judge Eugene Marano. Paragraph 6 of Section 34-2101 is not a viable ground.

V.

#### **Attorney's Fees on Appeal**

Appellant Brannon's appeal, although expanded at great length (as was the record) this case before from beginning to end,) comes down to two complaints.

1. The City of Coeur d'Alene illegally delegated conduct of the election to Kootenai County.
2. The absentee ballot count was wrong.

Beginning with Chief Deputy Secretary of State Tim Hurst and continuing through all of the cited codes delegation is clearly lawful.

In appellant counsel's losing case, *Noble v. Ada County Elections Board*, supra, this Court held that irregularities with 189 absentee ballots did not provide the basis for setting aside the result. 138 Idaho at 501. Further, there is no way to know for whom these absentee electors voted.



Respondent Mike Kennedy is entitled to an award of attorney's fees under §12-121 for the reasons most recently stated in *Flying Elk Investment, LLC v. Cornwall*, 149 Idaho 9, 232 P.3d 330 (2010.)

**Idaho Code §12-121 permits an award for attorney's fees to the prevailing party if "the appeal was brought, pursued, or defended frivolously." *Farrell v. Whiteman*, 146 Idaho 604, 613, 200 P.3d 1153, 1162 (2009). "When an appeal simply disputes the trial court's factual findings, which are supported by substantial although conflicting evidence, the appeal is consider frivolous and an award of attorney fees is proper under I.C. §12-121." *Elec. Wholesale Supply Co., v. Nielson*, 136 Idaho 814, 828, 41 P.2d 242, 256 (2001.)**

**The district court correctly informed a boundary by agreement from the evidence. Flying Elk's appeal essentially asked this Court to second guess that conclusion and therefore was brought frivolously. Attorney fees are awarded to Cornwall.**

149 Idaho at 16.

### SUMMARY

The Amended Complaint should have been dismissed upon Kennedy's first motion for summary judgment as not stating a cause of action upon its face. The claim of illegal delegation was without merit as that Judge Hosack ultimately held.

The Amended Complaint seeking to set aside the entire election or the election for Position No. 2 alleged no grounds for doing so. All Idaho appellate cases on elections have refused to grant the relief sought.

No hearing was held in the first summary judgment. It may be that both judges were simply overwhelmed by the avalanche of papers coming from counsel for appellant. In any event, the case was tried for five days. The

Memorandum Decision of Judge Hosack covered and disposed of every contention made on behalf of appellant Jim Brannon.

The judgment must be affirmed and both respondents should be awarded attorney's fees. In this appeal, this Court is only asked to second guess the Memorandum Decision.

Respectfully submitted, this 15th  
day of November, 2011.

---

Scott W. Reed, Attorney for  
Respondent Mike Kennedy

CERTIFICATE OF SERVICE

I certify that two copies each of the foregoing Respondent's Brief were served this 15<sup>th</sup> day of November, 2011 upon:

STARR KELSO  
ATTORNEY AT LAW  
P.O. BOX 1312  
COEUR D ALENE ID 83816  
FAX (208) 664-6261

MICHAEL L. HAMAN  
HAMAN LAW OFFICE  
P. O. BOX 2155  
COEUR D'ALENE, IDAHO 83816  
FAX (208) 676-1683

---

**APPENDIX A TO BRIEF OF RESPONDENT MIKE KENNEDY**

Kootenai County Clerk Case History, *Brannon v. City of Coeur d'Alene*,

CV-2009-00100-10. November 30, 2009 to August 1, 2011.

**Case History**

**Kootenai**

**1 Cases Found.**

**Jim Brannon vs. City of Coeur d'Alene, etal.**

Case: **CV-2009-0010010** District Filed: **11/30/2009** Subtype: **Other Claims** Judge: **Charles W. Hosack** Status: **Closed pending clerk action 01/04/2011**

Defendants: **Beard, Deedie D Bloem, Sandra L Bruning, John City of Coeur d'Alene Does, Jane A-Z Does, John A-Z Edinger, Loren Ronald English, Daniel J Goodlander, Deanna L Hassell, A "Al" J III Kennedy, Mike Kootenai County McCrory, William L McEvers, Woody Weathers, Susan K**

Plaintiffs: **Brannon, Jim**

Other Parties: **McCrory, Elizabeth D McCrory, William L**

Disposition: Date	Judgment Type	Disposition Date	Disposition Type	Parties	In Favor Of
03/03/2010	Dismissal			City of Coeur d'Alene (Defendant), Weathers, Susan K (Defendant), Edinger, Loren Ronald (Defendant), Goodlander, Deanna L (Defendant), Hassell, A "Al" J III (Defendant), McEvers, Woody (Defendant), Bruning, John (Defendant), Bloem, Sandra L (Defendant), Kootenai County (Defendant), English, Daniel J (Defendant), Beard, Deedie D (Defendant), Does, Jane A-Z (Defendant), Does, John A-Z (Defendant), Brannon, Jim (Plaintiff)	All Parties
11/04/2010	Dismissal	11/04/2010		City of Coeur d'Alene (Defendant), Brannon, Jim (Plaintiff)	Defendant

Register of actions: Date

11/30/2009 New Case Filed - Other Claims

11/30/2009 Filing: A - All initial civil case filings of any type not listed in categories B-H, or the other A listings below Paid by: Kelso, Starr

(attorney for Brannon, Jim) Receipt number: 0877232 Dated: 11/30/2009 Amount: \$88.00 (Check) For: Brannon, Jim (plaintiff)

11/30/2009 Bond Posted - Cash (Receipt 877233 Dated 11/30/2009 for 500.00)

11/30/2009 Summons Issued - Loren Ron Edinger

11/30/2009 Summons Issued - Deedie Beard

11/30/2009 Summons Issued - Kootenai County

11/30/2009 Summons Issued - Daniel J. English

11/30/2009 Summons Issued - Sandi Bloem

11/30/2009 Summons Issued - John Bruning

11/30/2009 Summons Issued - City of Coeur d'Alene

11/30/2009 Summons Issued - Susan K. Weathers

11/30/2009 Summons Issued - Mike Kennedy

11/30/2009 Summons Issued - Deanna Goodlander

11/30/2009 Summons Issued - Woody McEvers

11/30/2009 Summons Issued - AJ "Al" Hassell III

12/04/2009 Order on Disqualification

12/07/2009 Disqualification Of Judge Mitchell - Self

12/07/2009 Order Assigning Judge On Voluntary Disqualification - Charles W. Hosack

12/10/2009 Amended Complaint Filed

12/15/2009 Hearing Scheduled (Motion to Dismiss 03/02/2010 03:30 PM)  
Haman - 30 min

12/16/2009 Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: City of Coeur d'Alene (defendant) Receipt number: 0879278 Dated: 12/16/2009 Amount: \$58.00 (Check) For: City of Coeur d'Alene (defendant)

12/16/2009 Notice Of Hearing

12/16/2009 Defendants' Motion To Dismiss

12/16/2009 Defendants' Answer

12/16/2009 Acceptance Of Service

12/23/2009 Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Kennedy, Mike (defendant) Receipt number: 0880371 Dated: 12/23/2009 Amount: \$58.00 (Check) For: Kennedy, Mike (defendant)

12/23/2009 Answer Of Incumbent Candidate Mike Kennedy

01/05/2010 Administrative assignment of Judge (batch process)

01/05/2010 Brief of Incumbent Candidate Mike Kennedy in Support of Motion for Summary Judgment

01/05/2010 Motion for Summary Judgment of Defendant Incumbent Candidate Mike Kennedy

01/05/2010 Joinder of Defendant Incumbent Candidate Mike Kennedy in the Motion to Dismiss of Defendants Coeur d'Alene, etal

01/05/2010 Affidavit of Deedie Beard in Support of Kennedy Motion for Summary Judgment

01/05/2010 Affidavit of Dan English in Support of Kennedy Motion for Summary Judgment

01/05/2010 Affidavit of Deedie Beard Upon Absentee Voter Records

01/05/2010 Notice of Hearing upon Motion for Summary Judgment of Defendant Incumbent Candidate Mike Kennedy

01/05/2010 Motion for Temporary Restraining Order Pursuant to IRCP Rule 65 (b)

01/05/2010 Memorandum of Law In Support of Motion for Temporary Restraining Order Pursuant to IRCP Rule 65(b)

01/05/2010 Motion for Emergency Hearing On Motion for Temporary Restraining Order Pursuant to IRCP Rule 65(b)

01/05/2010 Hearing Scheduled (Motion for Temporary Orders 01/05/2010 04:00 PM) KELSO-RESTRAINING ORDER

01/05/2010 Hearing result for Motion for Temporary Orders held on 01/05/2010 04:00 PM: Motion Denied Kelso-Restraining Order

01/05/2010 District Court Hearing Held Court Reporter: JoAnn Schaller

01/05/2010 Number of Transcript Pages for this hearing estimated: under 100 pages

01/05/2010 Affidavit Of Starr Kelso

01/05/2010 Order Denying Plaintiff's Motion For Temporary Restraining Order

01/06/2010 Notice of Reassignment of Case to Correct Jurisdiction and Judge

01/08/2010 Hearing Scheduled (Motion for Summary Judgment 01/28/2010 09:00 AM) Reed-1 hour

01/08/2010 Motion of Incumbent Candidate Mike Kennedy to Shorten Time

01/08/2010 Amended Notice Of Hearing

01/08/2010 Amended Notice Of Hearing

01/11/2010 Notice Of Service--Jim Brannon--1/11/10

01/11/2010 Motion For Scheduling Conference

01/11/2010 Objection To Kennedy Motion To Shorten Time

01/11/2010 New File Created \*\*\*\*\*FILE #2\*\*\*\*\*

01/12/2010 Order To Shorten Time

01/12/2010 Affidavit of Scott W. Reed in Support of Motion to Shorten Time

01/12/2010 Memorandum of Defendant Incumbent Candidate Mike Kennedy in Response to Plaintiff's Objection to Motion to Shorten Time

01/12/2010 Defendant Kennedy's Motion to Strike Affidavit of Starr Kelso

01/12/2010 Notice Of Hearing

01/12/2010 Objection to Kennedy Motion to Shorten Time

01/12/2010 Motion for Scheduling Conference Pursuant to IRCP Rules 16(a), (b), and (c)

01/13/2010 Second-Supplemental Affidavit of Starr Kelso in Support of Motion for Reconsideration of Order to Shorten Time for Hearing, Motion for Scheduling Conference and Motion for Continuance of Hearing on Motion for Summary Judgment

01/13/2010 Supplemental Affidavit of Starr Kelso in Support of Motion for Reconsideration of Order to Shorten Time for Hearing, Motion for Scheduling Conference and Motion for Continuance of Hearing on Motion for Summary Judgment

01/13/2010 Motion To Compel a Count of Total Absentee Ballots Received as Through Close of Election on November 3, 2009 and a Count of Total Absentee Ballot Envelopes so Received

01/13/2010 Affidavit Of Starr Kelso In Support Of Motion For Reconsideration Of Order To Shorten Time For Hearing, Motion For Scheduling Conference And Motion For Continuance Of hearing On Motion For Summary Judgment

01/13/2010 Motion For Shortened Time For Hearing Motion For Reconsideration Of Order Shortening Time For Hearing Of Defendant Kennedy's Motion For Summary Judgment Pursuant To IRCP Rule 7(b)(3)

01/13/2010 Motion For Shortened Time for Hearing Renewed Motion For Scheduling Conference Pursuant To IRCP Rule 7(b)(3)

01/13/2010 Motion For Shortened Time For Hearing Motion For Continuation Of Scheduled Hearing On Motion For Summary Judgment

01/13/2010 Affidavit In Support Of Motin for Shortened Time For Hearings On - Motion For Continuance -Renewed Motion for Scheduling

01/13/2010 Motion For Continuance Of The Scheduled Hearing On Defendant Kennedy's Motion For Summary Judgment Pursuant To IRCP Rule 56(F)

01/13/2010 Motion For Reconsideration Of Order To Shorten Time For Hearing Motion For Summary Judgment Pursuant To IRCP Rule 11(a)(2) (B)

01/13/2010 Renewed Motion For Scheduling Conference Pursuant to IRCP Rules 16(a), (b), and (c)

01/13/2010 Response Of Defendant Incumbent Candidate Mike Kennedy To Plaintiff's Motion For Shortened Time For Hearings On Motion For Continuance, Motion For Reconsideration And Renewed Motion For Scheduling

01/14/2010 Order Vacating Summary Judgment Hearing On January 28, 2010 And Setting Status Conference

01/14/2010 Hearing result for Motion for Summary Judgment held on 01/28/2010 09:00 AM: Hearing Vacated Reed-1 hour

01/14/2010 Hearing Scheduled (Status Conference 01/28/2010 09:00 AM)

01/15/2010 Notice of Vacation of Hearing on Defendant Incumbent Candidate Mike Kennedy's Motion to Strike

01/25/2010 Dan English - Subpoena Duces Tecum Returned

01/25/2010 Deedie Beard - Subpoena Duces Tecum Returned

01/25/2010 Request For Production And Examination To City Of Coeur d'Alene And Susan K. Weathers

01/25/2010 Notice Of Service Request For Production And Examination To City Of Coeur d'Alene And Susan K. Weathers

01/26/2010 Defendant Incumbent Candidate Mike Kennedy's Motion For Expedited Trial

01/26/2010 Memorandum In Support Of Defendant Incumbent Candidate Mike Kennedy's Motion For Expedited Trial

01/26/2010 Second Affidavit Of Deedie Beard In Support of Kennedy Motion For Summary Judgment

01/26/2010 Second Affidavit Of Dan English In Support of Kennedy Motion For Summary Judgment

01/26/2010 Notice Of Service of Notices Of Depositions

01/27/2010 Memorandum Of Law In Support Of Plaintiff Brannon's Response to Defendant Kennedy's Motion For And Expedited Trial

01/27/2010 Affidavit Of Starr Kelso In Support Of Plaintiff Brannon's Response to Defendant Kennedy's Motion For Expedited Trial

01/27/2010 Plaintiff Brannon's Response To Defendant Kennedy's Motion For An Expedited Trial

01/28/2010 Hearing result for Status Conference held on 01/28/2010 09:00 AM: Hearing Held

01/28/2010 District Court Hearing Held Court Reporter: JoAnn Schaller

01/28/2010 Number of Transcript Pages for this hearing estimated: under 100 pages

01/28/2010 Hearing Scheduled (Court Trial Scheduled 04/13/2010 09:00 AM) 4 day trial

01/28/2010 Notice of Trial

01/28/2010 Uniform Pretrial Order

01/28/2010 New File Created \*\*\*\*\*FILE #3\*\*\*\*\*

01/29/2010 Notice Of Service

01/29/2010 Response to Objection to Deposition

01/29/2010 Notice of Deposition

01/29/2010 Subpoena Duces Tecum Issued - Susan R. Harris

01/29/2010 Subpoena Duces Tecum Issued - Ronald Prior

01/29/2010 Objection of Defendant Incumbent Candidate Mike Kennedy's to Plaintiffs Notice of Deposition for 5:00 O'clock P.M. on January 29, 2010  
 02/04/2010 Notice Of Filing Original Transcript  
 02/08/2010 Hearing Scheduled (Motion to Compel 02/12/2010 03:00 PM) Kelso-30 min  
 02/09/2010 Affidavit in Support of Motion for Shortened Time for Hearing on Motion to Compel Production  
 02/09/2010 Motion for Shortened Time for Hearing on Motion to Compel Production  
 02/09/2010 Motion to Compel Production  
 02/09/2010 Memorandum in Support of Motion to Compel Production  
 02/09/2010 Notice Of Hearing-2/12/10 3:00 PM  
 02/12/2010 Notice Of Service of Interrogatories & Requests for Production upon Plaintiff Jim Brannon  
 02/12/2010 Hearing result for Motion to Compel held on 02/12/2010 03:00 PM: Motion Denied Kelso-30 min  
 02/12/2010 District Court Hearing Held Court Reporter: JoAnn Schaller  
 02/12/2010 Number of Transcript Pages for this hearing estimated: under 100 pages  
 02/16/2010 Order: Issuance of Subpoena Duces Tecum To Kootenai County, Idaho  
 02/18/2010 Brief Of Defendant Mike Kennedy In Support Of Defendant City Of Coeur d'Alene Motion To Dismiss  
 02/19/2010 Hearing Scheduled (Motion for Protective Order 03/02/2010 03:30 PM) Cafferty-20 min  
 02/19/2010 Motion For Protective Order Pursuant To IRCP 26(c)  
 02/19/2010 Memorandum In Support Of IRCP 26(c) Motion For Protective Order  
 02/19/2010 Motion To Shorten Time  
 02/19/2010 Notice Of Hearing on 03/02/10 at 3:30 pm RE Motions  
 02/22/2010 Memorandum Of Law In Opposition To The 12(b)(6) Motion to Dismiss  
 02/22/2010 Order Denying plaintiff's Motion to Compel  
 02/23/2010 Reply Brief Of Defendant Mike Kennedy In Support Of Defendant City Of Couer d'Alene's Motion to Dismiss  
 02/24/2010 Amended Notice of Hearing  
 02/24/2010 Notice Of Service  
 03/01/2010 Notice Of Hearing  
 03/01/2010 Time Line On City's Motion To Dismiss  
 03/01/2010 Defendant Kennedy's Motion To Strike Plaintiff Brannon's Memorandum Of Law Filed March 1st In Response To The Brief Filed By Defendant Kennedy  
 03/01/2010 Objection by Defendatn Kennedy To Any Hearing Upon Plaintiff brannon's Pleadings Faxed Sunday  
 03/01/2010 Request for Cameras in the Courtroom  
 03/01/2010 Response To Kootenai County's Motion For A Protective Order  
 03/01/2010 Affidavit Of Traci Felton  
 03/01/2010 Motion To Extend Time For Discovery and Depositions and To Vacate and Reschedule Trial  
 03/01/2010 Affidavit In Support of Motion For Extended Time For Discovery and Depositions and To Vacate and Reschedule Trial  
 03/01/2010 Notice Of Hearing on 03/02/10 at 1:30 pm RE Judgment on Pleadings, Extension of Time and Shorten Time



03/01/2010 Motion For Shortened Time For Hearing On Motion To Extend Time For Discovery, Depositions and Vacate and Reschedule Trial

03/01/2010 Motion For Shortened Time For Hearing On Motion For Judgment On The Pleadings Pursuant To IRCP Rule 7(b)(3)

03/01/2010 Affidavit In Support of Motion For Shortened Time For Hearing On Motion For Judgment On The Pleadings Pursuant To IRCP Rule 7(b)(3)

03/01/2010 Motion For Judgment On The Pleadings Pursuant To IRCP Rule 12(c)

03/01/2010 Memorandum Of Law In Response To The Brief Filed By Defendant Kennedy

03/01/2010 Defendants' Motion To Strike Affidavit Of Plaintiff's Counsel Filed In Support Of Motion To Amend Pre-Trial Order and Vacate Trial

03/01/2010 Defendants' Memorandum In Opposition To Plaintiff's Motion To Amend Pre-Trial Order and Vacate Trial

03/01/2010 New File Created--#4--CREATED

03/02/2010 Hearing result for Motion to Dismiss held on 03/02/2010 01:30 PM: Motion Granted Haman - 30 min

03/02/2010 Hearing result for Motion for Protective Order held on 03/02/2010 01:30 PM: Hearing Held Cafferty-20 min

03/02/2010 District Court Hearing Held Court Reporter: JoAnn Schaller

03/02/2010 Number of Transcript Pages for this hearing estimated: under 100 pages

03/03/2010 Civil Disposition entered for: Beard, Deedie D, Defendant; Bloem, Sandi, Defendant; Bruning, John, Defendant; City of Coeur d'Alene, Defendant; Does, Jane A-Z, Defendant; Does, John A-Z, Defendant; Edinger, Loren Ronald, Defendant; English, Daniel J, Defendant; Goodlander, Deanna L, Defendant; Hassell, A "Al" J III, Defendant; Kootenai County, Defendant; McEvers, Woody, Defendant; Weathers, Susan K, Defendant; Brannon, Jim, Plaintiff. Filing date: 3/3/2010

03/03/2010 Order of Dismissal on All but Mike Kennedy

03/04/2010 Hearing Scheduled (Motion 03/31/2010 01:30 PM) Haman 30 min- fees & costs-

03/04/2010 Notice Of Hearing

03/04/2010 Letter From Starr Kelso Re: Kootenai County's Proposed Order

03/04/2010 Order On Bond

03/04/2010 Notice Of Estimate Of Costs

03/08/2010 Order Re: Quashing Subpeona Deces Tecums, Poll Book Copies, Protective Order, Denial Of Request To Count Ballots

03/08/2010 Affidavit Of Starr Kelso

03/08/2010 Affidavit Of Jim Brannon

03/08/2010 Motion For Order Granting Permissive Appeal Pursuant To I.A.R. Rule 12 (b)

03/08/2010 Memorandum Of Law In Support Of Motion For Order Granting Permissive Appeal Pursuant To I.A.R. Rule 12 (b)

03/08/2010 Motion For Reconsideration Of Order To Dismiss Pursuant To I.R.C.P. Rule 11 (a)(2)(B)

03/08/2010 Memorandum Of Law In Support Of Motion For Reconsideration Of Order To Dismiss Pursuant To I.R.C.P. Rule 11 (a)(2)(B)

03/08/2010 Motion For Reconsideration Of Order Setting Bond Pursuant To IRCP Rule 11(a)(2)(B)

03/08/2010 Memorandum Of Law In Support Of Motion To Reconsider Bond

03/08/2010 Supplemental Memorandum On Motion For Reconsideration Of Order Setting Bond Pursuant To IRCP Rule 11(a)(2)(B)

Supplemental Memorandum Of Law In Support Of Motion To

03/08/2010 Vacate And Reschedule Trial And Extend Discovery

03/08/2010 Motion For Reconsideration Of Order Granting In Part, And Denying In Part Kootenai County's Motion For A Protective Order

03/08/2010 Motion To Disqualify Judge Simpson Pursuant To IRCP Rule 40 (d) (2) (4)

03/08/2010 Memorandum Of Law In Support Of Motion To Disqualify Judge Simpson Pursuant To IRCP Rule 40 (d) (2) (4)

03/08/2010 Motion For Shortened Time For Hearing

03/08/2010 Notice Of Filing Original Transcript - Excerpt (1)

03/08/2010 Notice Of Filing Original Transcript - Excerpt (2)

03/09/2010 Hearing Scheduled (Motion 03/12/2010 09:30 AM) Motion to Disqualify

03/09/2010 Notice of Hearing

03/09/2010 Brief of Defendant Mike Kennedy in Opposition to Plaintiff's Motion for Reconsideration of Order Setting Bond

03/09/2010 Memorandum of Defendant Kennedy in Opposition to All Motions of Plaintiff Brannon

03/09/2010 Memorandum in Support of Defendant City of Coeur D'Alene's Motion for Costs & Fees

03/09/2010 Defendant City of Coeur D'Alene's Motion for Costs & Fees

03/09/2010 Affidavit of Michael Haman in Support of Defendant city of Coeur D'alene's Motion for Costs & Fees

03/09/2010 Defendants Memorandum in Opposition to Plaintiffs Motion to Disqualify

03/09/2010 New File Created \*\*\*\*\*File #5\*\*\*\*\*

03/10/2010 Hearing Scheduled (Motion 03/12/2010 09:30 AM) Plaintiff's Motion to Reconsider Bond

03/10/2010 Notice of Hearing

03/10/2010 Affidavit Of Daniel English For Clarification

03/10/2010 AMENDED Notice Of Deposition - Deedie Beard and Dan English are being rescheduled

03/10/2010 Defendants' Memorandum In Opposition To Plaintiff's Motion For Reconsideration

03/11/2010 Defendants' Memorandum In Opposition To Plaintiff's Motion For Permission To Appeal

03/11/2010 Motion For Shortened Time For Hearing, Supplemental Motion For Reconsideration Of Protective Order and Stay Of Any Order On Bond

03/11/2010 SUPPLEMENTAL Motion For Reconsideration Of Protective Order and Stay of Any Order On Bond

03/12/2010 Hearing result for Motion held on 03/12/2010 09:30 AM: Hearing Held Motion to Disqualify

03/12/2010 Hearing result for Motion held on 03/12/2010 09:30 AM: Interim Hearing Held Plaintiff's Motion to Reconsider Bond

03/12/2010 District Court Hearing Held Court Reporter: Anne MacManus

03/12/2010 Number of Transcript Pages for this hearing estimated: under 100 pages

03/12/2010 Memorandum Decision On Plaintiff's Motion To Disqualify Judge Simpson

03/18/2010 Order For Production

03/22/2010 Plaintiffs Compliance with Courts Sua Sponte Order of March 18, 2010

03/22/2010 Motion to Disallow Part or all the Costs Claimed by City of Coeur D'Alene

03/22/2010 Memorandum in support of Motion to Disallow Part or all the Costs

Claimed by City of Coeur D'Alene

03/22/2010 Memorandum of Law Regarding Attorney Fees As "Costs" Under I.C. 34-2020

03/22/2010 Supplemental Memorandum of Law in Support of Motion to Order Regarding Reconsideration of Costs to Kootenai County

03/22/2010 Supplemental Memorandum of Law in Support of Motion for Reconsideration of Order to Dismiss Pursuant to I.R.C.P. Rule 11 (a)(2)(B)

03/22/2010 Affidavit of Chief Deputy Secretary of State Timothy A Hurst

03/22/2010 Motion in Limine of Defendant Mike Kennedy

03/22/2010 Brief of Defendant Mike Kennedy in Support of Motion in Limine

03/23/2010 Hearing result for Motion held on 03/31/2010 01:30 PM: Hearing Vacated per court Haman 30 min-fees & costs-

03/23/2010 Notice to Vacate Hearing

03/25/2010 Motion to Extend Time for Response to Interrogatories

03/26/2010 Brief Of Defendant Incumbent Mike Kennedy Upon Bond To Cover Costs

03/26/2010 Kootenai County's Response to Court Order Re Bond

03/29/2010 Motion To Compel of Defendant Incumbent Mike Kennedy

03/29/2010 Certification on Defendant's Motion to Compel

03/29/2010 Second Supplemental Memorandum of Law in Support of Motion for Reconsideration of Order to Dismiss Pursuant to I.R.C.P. Rule 11 (a) (2) (B)

03/29/2010 Kootenai County's Response to March 18, 2010, Order

03/30/2010 Supplemental Brief In Support Of Motion To Dismiss The Amended Complaint Against Defendant Mike Kennedy

03/30/2010 Order Deeming Matter Submitted For Decision

03/30/2010 \*\*\*\*\*FILE #6 CREATED\*\*\*\*\*

04/01/2010 Order On Plaintiff's Motion For Reconsideration Of Bond Amount

04/01/2010 Order Vacating Trial And Setting Hearing

04/01/2010 Hearing result for Court Trial Scheduled held on 04/13/2010 09:00 AM: Hearing Vacated per court- 4 day trial

04/01/2010 Hearing Scheduled (Motion to Reconsider 04/13/2010 09:00 AM)

04/01/2010 Plt mtn to reconsider order of dismissal, discovery order and order to pay immediate costs

04/01/2010 Hearing Scheduled (Motion 04/13/2010 09:00 AM) Plt mtn for Interlocutory Appeal

04/01/2010 Hearing Scheduled (Motion to Compel 04/13/2010 09:00 AM) Def

04/01/2010 Hearing Scheduled (Motion 04/13/2010 09:00 AM) Plt mtn for extension of time to answer interrogatories

04/01/2010 Notice of Hearing

04/02/2010 Renewed Motion To Dismiss of Defendant Incumbent Mike Kennedy

04/05/2010 Notice Of Hearing on Kennedy Motion to Dismiss

04/06/2010 Bond Posted - Cash (Receipt 15811 Dated 4/6/2010 for 4500.00)

04/06/2010 Subpoena Issued

04/07/2010 Filing: l1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Starr Kelso Receipt number: 0015881 Dated: 4/7/2010 Amount: \$58.00 (Check) For: Brannon, Jim (plaintiff)

04/07/2010 Motion to Intervene Purusant to IRCP Rule 24(a)(b)

04/07/2010 Brief in Support of Renewed Motion to Dismiss of Defendant Incumbent Mike Kennedy

04/07/2010 Notice Of Filing Original Transcript

04/08/2010 Stipulation To Vacate Hearing On April 13, 2010

04/08/2010 Order To Vacate Hearing On April 13, 2010

04/08/2010 Hearing result for Motion held on 04/13/2010 09:00 AM: Hearing Vacated Plt mtn for extension of time to answer interrogatories

04/08/2010 Hearing result for Motion to Compel held on 04/13/2010 09:00 AM: Hearing Vacated Def

04/08/2010 Hearing result for Motion held on 04/13/2010 09:00 AM: Hearing Vacated Plt mtn for Interlocutory Appeal

04/08/2010 Hearing result for Motion to Reconsider held on 04/13/2010 09:00 AM: Hearing Vacated Plt mtn to reconsider order of dismissal, discovery order and order to pay immediate costs

04/09/2010 Notice of Unavailable Dates of Counsel for Defendant Kennedy

04/13/2010 Amended Notice of Unavailable Dates of Counsel for Defendant Kennedy

04/13/2010 Order Of Voluntary Disqualification

04/13/2010 Disqualification Of Judge - Self

04/29/2010 Order Assigning this Matter to Senior Judge Hosack by the Supreme Court of the State of Idaho

04/29/2010 Administrative assignment of Judge

05/04/2010 Objection Of Defendant Kennedy To McCrory's Motion To Intervene

05/07/2010 Hearing Scheduled (Motion 05/14/2010 03:00 PM)

05/07/2010 Amended Notice Of Hearing

05/10/2010 Affidavit oF John A Cafferty

05/10/2010 Plaintiff's Brief In Response To Defendant Kennedy's Renewed Motion To Dismiss

05/10/2010 Plaintiff's Motion To Strike Defendant Kennedy's Reference In His Motion To Dismiss To The Affidavits Of English, Beard And Hurst

05/10/2010 Affidavit In Support Of Motion For Shortened Time For Hearing Motion To Strike

05/10/2010 Motion For Shortened Time For Hearing Motion To Strike

05/10/2010 Notice Of Hearing - 05-14-10 - 3:00 PM

05/11/2010 Response Of Defendant Kennedy To Plaintiff's Motion To Strike Filed May 10, 2010

05/14/2010 Hearing result for Motion held on 05/14/2010 03:00 PM: Hearing Held

05/14/2010 District Court Hearing Held Court Reporter: Ann McManus Number of Transcript Pages for this hearing estimated:

05/25/2010 Hearing Scheduled (Motion 06/10/2010 11:00 AM)

05/25/2010 Objection To Proposed Order

05/25/2010 Motion For Order Granting Permissive Appeal Pursuant To IAR Rule 12(b)

05/25/2010 Motion For Order To File Second Amended Complaint IRCP Rule 15(a)

05/25/2010 Motion For Reconsideration Of Order Dismissing Malconduct Cause Pursuant To IRCP Rule 11(a)(2)(B)

05/25/2010 Memorandum In Support Of Motion For Reconsideration Of Order Dismissing Cause Of Action Based Upon Malconduct

05/25/2010 Order on Motions RE: 5/14/10 Hearings

05/25/2010 Defendants' Request For Trial Setting

05/26/2010 Notice Of Hearings

05/28/2010 Request Of Defenciant Kennedy For Trial Setting

06/01/2010 Hearing result for Motion held on 06/10/2010 11:00 AM: Hearing Vacated

06/01/2010 Hearing Scheduled (Motion 06/14/2010 03:30 PM)

06/01/2010 Notice Of Hearings  
06/01/2010 Amended Notice Of Hearing  
06/01/2010 Affidavit of Michael L Haman  
06/01/2010 Defendant's Motion To Compel  
06/03/2010 Amended Notice Of Hearing  
06/03/2010 \*\*\*\*\*FILE #7 CREATED\*\*\*\*\*  
06/07/2010 Affidavit of Donald Boehm Re: Absentee Ballots in November 3, 2009 City Election  
06/07/2010 Brief of Defendant Kennedy in Opposition to Plaintiff's Motion for Reconsideration of Order Dismissing Malconduct Cause  
06/07/2010 Memorandum of Objection of Defendant Kennedy to Plaintiff's Motion Seeking Permissive Appeal  
06/08/2010 Defendants Memorandum in Opposition to Plaintiffs Motion to File Second Amended Complaint  
06/08/2010 Defendant's Memorandum In Opposition To Plaintiff's Motion For Permission To Appeal  
06/08/2010 Defendan't Memorandum In Opposition to McCrory's Motion To Intervene  
06/08/2010 Defendant's Memorandum In Opposition To Plaintiff's Motion For Reconsideration  
06/10/2010 Reply Memorandum In Support Of Motion For Reconsideration Of Order Dismissing Cause Of Action Based Upon Malconduct  
06/10/2010 Reply Memorandum Regarding Motion For Order Grantin Permissive Appeal  
06/10/2010 Reply Memorandum Regarding Motion To Intervene  
06/10/2010 Objection To And Motion To Strike Affidavit Of Donald Boehm Pursant To IRCP Rule 12 (1) Or In The Alternative To Vacate And Reschedule Hearing After Document Review And Discovery  
06/14/2010 Corrected Amended Notice Of Hearing  
06/14/2010 Hearing result for Motion held on 06/14/2010 03:30 PM: Hearing Held Motions by Starr Kelso and Michael Haman  
06/14/2010 District Court Hearing Held Court Reporter: Byrl Cinnamon Number of Transcript Pages for this hearing estimated:  
06/15/2010 Hearing Scheduled (Motion 08/31/2010 03:00 PM) All pretrial motions  
06/15/2010 Hearing Scheduled (Court Trial Scheduled 09/13/2010 09:00 AM) 4 days  
06/15/2010 Notice of Hearing  
06/15/2010 Scheduling Order, Notice of Trial Setting and Initial Pretrial Order  
06/21/2010 Motion for Ballot Count  
06/21/2010 Order Granting Motion for Ballot Count  
07/06/2010 Order on Motions RE: Reconsideration, Motion to Amend & Motion to Intervene  
07/06/2010 Order on Defendant's Motion to Compel Discovery  
07/06/2010 Order Denying Plaintiff's Motion for Permissive Appeal  
07/09/2010 Notice Of Service  
07/09/2010 Affidavit Of William L McCrory  
07/22/2010 Confidentiality Agreement - William L McCrory  
07/22/2010 Confidentiality Agreement - Starr Kelso  
07/22/2010 Confidentiality Agreement - James C Brannon  
07/22/2010 Confidentiality Agreement - Matthew Roetter  
07/22/2010 Confidentiality Agreement - Matt Kelso  
08/02/2010 Affidavit of Deedie Beard Re: Affidavit of William L McKinley

08/02/2010 Brief in Support of Motion for Summary Judgment of Defendant Mike Kennedy

08/02/2010 Motion to Strike Affidavit of William L. McCrory by Defendant Kennedy

08/02/2010 Motion For Summary Judgment of Defendant Mike Kennedy

08/02/2010 Notice Of Hearing

08/02/2010 \*\*\*\*\*New File Created #8\*\*\*\*\*

08/05/2010 Affidavit of Christa Hazel Re: Affidavit of William L. McCrory

08/05/2010 Defendant Kennedy's Motion for the Court to Hold William L. McCrory in Contempt of Court

08/05/2010 Notice to William L. McCrory to Appear

08/05/2010 Notice Of Hearing

08/09/2010 Hearing Scheduled (Motion for Contempt 08/17/2010 03:00 PM)

08/10/2010 Affidavit Of Dan English

08/10/2010 Notice Of Appearance of Counsel for Non-Party William L McCrory

08/10/2010 Affidavit of Arthur Macomber in Support of Motion for Enlargement of Time in Which to Respond to Defendant Kennedy's Motion for the Court to Hold William McCrory in Contempt of Court and for Continuance of Hearing on Motion

08/10/2010 Motion for Enlargment of Time in which to Respond to Defendant Kennedy's Motion for the Court to Hold William McCrory in Contempt of Court and for Continuance of Hearing on Motion

08/11/2010 Filing: 11 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Arthur B Macomber Receipt number: 0035073 Dated: 8/11/2010 Amount: \$58.00 (Check) For: McCrory, William L (other party)

08/11/2010 Objection Of Defendant Kennedy To McCrory Motion For Enlargement Of Time

08/12/2010 Affidavit Of Service 8/5/10 William McCrory

08/13/2010 Supplementary Affidavit Of Dan English

08/16/2010 Reply To Defendant Kennedy's Objection to McCrory's Motion for Enlargement of Time; Request for Denial of Kennedy's Motion, Vacation of Hearing, or Delay of the Hearing to August 31, 2010; And Request for Fees And Costs

08/16/2010 Affidavit of Starr Kelso Regarding McCrory

08/16/2010 Motion to Refuse the Application of Defendant Kennedy for Summary Judgment Pursuant to IRCP Rule 54(f)

08/16/2010 Renewed Motion for Order to File Second Amended Complaint Pursuant to IRCP Rule 15(a)

08/16/2010 Affidavit of Starr Kelso-Regarding Motion to Refuse Application for Summary Judgment

08/16/2010 Motion to Strike All or Part of Affidavits

08/16/2010 Motion To Compel Witnesses to Attend the Trial

08/16/2010 Plaintiff's Reply to Defendant Kennedy's Motion for Summary Judgment

08/16/2010 Plaintiff's Reply to Defendant Kennedy's Motion to Strike McCrory Affidavit

08/16/2010 Plaintiff's Second Amended Complaint

08/16/2010 Affidavit in Support of Motion to Compel Witnesses to Attend Trial

08/16/2010 Notice Of Hearing

08/17/2010 Affidavit of Erin Jenkins

08/17/2010 Affidavit of Parker Gibson

08/17/2010 Hearing result for Motion for Contempt held on 08/17/2010 03:00 PM: Hearing Held

District Court Hearing Held Court Reporter: Valerie Nunemacher  
08/17/2010 Number of Transcript Pages for this hearing estimated: under 100 pages

08/17/2010 Hearing Scheduled (Court Trial Scheduled 09/07/2010 01:30 PM) Contempt proceedings.

08/17/2010 Order - Allowing Cameras in the Courtroom

08/18/2010 Defendant Kennedy's Statement of Material Facts as to Which There is No Dispute

08/19/2010 Notice of Trial

08/19/2010 Supplemental Memorandum in Support of: Motion to Strike Defendants Affidavits, Motion to Refuse Application for Summary Judgment, Motion to File Second Amended Complaint

08/19/2010 Affidavit of Timothy A Hurst

08/19/2010 Defendant Kennedy's Motion To Strike Affidavits Of Erin Jenkins & Parker Gibson

08/19/2010 Defendant Kennedy's Memorandum in Support Of Motion To Strike Jenkins & Parker Affidavits

08/20/2010 \*\*\*\*\*New File #9 Created\*\*\*\*\*

08/23/2010 Motion For Shortened Time For Hearing On Motion To Strike Dan English Affidavit Pursuant To IRCP Rule 7(b)(3)

08/23/2010 Affidavit In Support of Motion For Shortened Time For Hearing On Motion For Judgment On The Pleadings Pursuant To IRCP Rule 12(c)

08/23/2010 Objection To And Motion To Strike Dan English Affidavit Dated August 13, 2010

08/23/2010 Notice On Hearing On Motion For Shortened Time For Hearing On Motion To Strike Dan English Affidavit Pursuant To IRCP Rule 7(b)(3) and Notice Of Hearing On Motion To Strike Dan English Affidavit of August 13, 2010 on 08/31/10 at 3:00 pm

08/23/2010 Affidavit Of Betsie Kimbrough

08/23/2010 Objection To Defendant Kennedy's "Statement Of Material Facts As To Which There Is No Dispute"

08/23/2010 Defendant Mike Kennedy's Reply Brief In Support Of Motion For Summary Judgment

08/23/2010 Supplemental Affidavit Of Chief Deputy Secretary Of State Timothy A Hurst

08/23/2010 Affidavit Of Scott W Reed In Response To Affidavit Of Starr Kelso Dated August 16, 2010

08/23/2010 Memorandum Of Defendant Kennedy In Response To Plaintiff's Motion To Refuse The Application Of Defendant Kennedy For Summary Judgment Pursuant To IRCP Rule 56(f)

08/23/2010 Notice Of Hearing On August 31, 2010 Upon Multiple Motions

08/23/2010 Certification On Affidavit Of Starr Kelso Dated February 28, 2010

08/23/2010 Certification On Excerpts From Depositions Of Susan Harris and Ronald Prior

08/24/2010 Defendants' Memorandum In Opposition To Plaintiff's "Renewed" Motion To File Second Amended Complaint

08/24/2010 Defendants' Memorandum In Opposition To Plaintiff's Motion To Compel Witnesses To Attend Trial

08/24/2010 Defendants' Motion To Strike Affidavits Of Gibson and Jenkins

08/24/2010 Motion To Dismiss Contempt Proceedings

08/24/2010 Defendants' Memorandum filed in Response to Plaintiff's Reply to Defendant Kennedy's Motion for Summary Judgment

08/24/2010 Defendants' Motion to Strike Affidavit of Starr Kelso Filed in Support of Motion to Compel

08/24/2010 Defendants' Motion to Strike Affidavit of Starr Kelso

08/24/2010 Notice Of Hearing  
08/24/2010 Non-Party Defendant McCrory's Response to contempt Charges with Defenses; and Request for Fees and Costs  
08/24/2010 Amended Notice Of Hearing  
08/27/2010 Preliminary Compliance With IC Section 34-2017(b) and Summary Of Subpoenas  
08/27/2010 Reply To Defendants And Supplemental Brief In Support Of Renewed Motion For Order To File Second Amended Complaint Pursuant To IRCP Rule 15(a)  
08/27/2010 Affidavit Of Timothy A Hurst  
08/27/2010 Affidavit Of Betsie Kimbrough  
08/27/2010 Affidavit Of Lawrence Spencer  
08/27/2010 Affidavit Of Susan Smith  
08/27/2010 Affidavit Of Carrie Phillips  
08/27/2010 Affidavit Of Dan English  
08/27/2010 Affidavit Of Service on 08/12/10 served Nancy White  
08/27/2010 Affidavit Of Service on 08/12/10 served Dustin Ainsworth  
08/27/2010 Affidavit Of Service on 08/12/10 served Ron Prior  
08/27/2010 Affidavit Of Service on 08/13/10 served Susan Harris  
08/27/2010 Affidavit Of NON Service on for Denise Dobsclaff  
08/27/2010 Affidavit Of NON Service on for Monica Paquin  
08/27/2010 Affidavit Of NON Service on for Tammy Farkes  
08/27/2010 Affidavit Of NON Service on for Alan Friend  
08/27/2010 Affidavit Of NON Service on for Kimberly Gagnon  
08/27/2010 Notice Of Service  
08/27/2010 Defendant Kennedy's Motion To Strike Or Disregard Pleadings As Untimely  
08/28/2010 \*\*\*\*\*New File Created #10\*\*\*\*\*  
08/30/2010 Amended Notice Of Hearing on August 31, 2010 Upon Defendant Kennedy's Motion RE Pleadings Received August 23, 2010  
08/30/2010 Certification Upon Confidentiality Agreements  
08/30/2010 Plaintiff's Third Amended Complaint  
08/30/2010 Affidavit in Support of Motion for Shortening Time for Hearing on Motion to File Third Amended Complaint  
08/30/2010 Plaintiff's Motion to File Third Amended Complaint Pursuant to IRCP Rule 15(a)  
08/30/2010 Notice Of Hearing - Motion to Shorten Time and Motion to File Third Amended Complaint  
08/30/2010 Affidavit of Stephanie Gossard  
08/30/2010 Notice Of Hearing  
08/30/2010 Defendants' Motion to Strike Affidavit of Lawrence Spencer  
08/30/2010 Memorandum in Support of Motion to File Third Amended Complaint Alleging Fraud or Corruption  
08/31/2010 Defendants' Witness List  
08/31/2010 Defendants' Exhibit List  
08/31/2010 Defendants' AMENDED Witness List  
08/31/2010 Hearing result for Motion held on 08/31/2010 03:00 PM: Hearing Held All pretrial motions  
08/31/2010 District Court Hearing Held Court Reporter: Valerie Nunemacher Number of Transcript Pages for this hearing estimated:  
08/31/2010 \*\*\*\*\*New File Created #11, expando, for trial exhibits\*\*\*\*\*  
08/31/2010 Request and Order Allowing Cameras in the Courtroom



08/31/2010 Plaintiff's Witness List  
 Objection to Filing Proposed Findings of Fact and Conclusions of  
 08/31/2010 Law and Pretrial Brief and Motion for an Extension of Time to File  
 the Same Pursuant to IRCP Rule 6(b)  
 08/31/2010 Plaintiff's List Of Exhibits - in expando  
 09/01/2010 Defendant Kennedy's Pre-trial Brief  
 09/01/2010 Notice Of Hearing on Defendant Kennedy's Motion in Limine  
 09/01/2010 Defendants' Amended Witness List  
 09/01/2010 Defendant Kennedy's Designation of Witnesses and Exhibits  
 09/01/2010 Defendant Kennedy's Designation of Witnesses and Exhibits  
 09/02/2010 Brief of Defendant Kennedy in Opposition to McCrory Motion to  
 Dismiss Contempt Proceedings  
 09/02/2010 Defendant Kennedy's Proposed Findings of Fact and Conclusions  
 of Law  
 09/03/2010 Defendant's List Of Exhibits  
 09/06/2010 \*\*\*\*\*New File Created #12\*\*\*\*\*  
 09/07/2010 Answer - Reply to Defendant Kennedy's Opposition to McCrory's  
 Motion to Dismiss Contempt Proceedings  
 09/07/2010 Hearing Scheduled (Court Trial Scheduled 09/17/2010 09:00 AM)  
 09/07/2010 Hearing result for Motion to Dismiss Scheduled held on 09/07/2010  
 01:30 PM: Hearing Held Contempt proceedings.  
 09/07/2010 District Court Hearing Held Court Reporter: Keri Veare Number of  
 Transcript Pages for this hearing estimated:  
 09/07/2010 Notice of Trial - (contempt)  
 09/09/2010 Supplemental Brief In Support Of Motion In Limine  
 09/10/2010 Plaintiff's Witness List  
 09/10/2010 Notice Of Testimony  
 09/10/2010 Notice Of Transcript Delivery for Contempt Hearing delivered to  
 Arthur B Macomber and Scott W Reed  
 09/10/2010 Defendant City Of Coeur D'Alene's Motion In Limine  
 09/10/2010 Corrected Supplemental Brief in Support of Motion In Limine  
 September 10, 2010  
 09/13/2010 Memorandum of Law in Support of Motion to Disqualify Judge  
 Hosack Pursuant to IRCP Rule 40(d)(2)(A)(1) and (4)  
 09/13/2010 Affidavit of Starr Kelso in Support of Motion to Disqualify Judge  
 Hosack  
 09/13/2010 Motion to Disqualify Judge Hosack Pursuant to IRCP 40(d)(2)(A)(1)  
 and (4)  
 09/13/2010 Defendants' (from Atty Haman) Findings of Fact and Conclusions  
 of Law  
 09/13/2010 Hearing result for Court Trial Scheduled held on 09/13/2010 09:00  
 AM: Court Trial Started 4 days  
 09/13/2010 Defendant's List Of Exhibits  
 09/17/2010 Hearing result for Court Trial Scheduled held on 09/17/2010 09:00  
 AM: Hearing Vacated contempt  
 District Court Hearing Held Court Reporter: Valerie Nunemacher  
 09/17/2010 Number of Transcript Pages for this hearing estimated: (Sept 13-  
 17) 975  
 District Court Hearing Held Court Reporter: Allison Stovall Number  
 09/18/2010 of Transcript Pages for this hearing estimated: 65 pages (closing  
 argument on Sept 18, 2010)  
 09/21/2010 Hearing Scheduled (Court Trial Scheduled 10/12/2010 04:00 PM)  
 Contempt issue.  
 09/23/2010 Notice of Trial

09/27/2010 Notice of Preparing Original Transcript  
09/27/2010 Notice of Preparing Original Transcript  
09/27/2010 Notice of Preparing Original Transcript  
10/05/2010 Memorandum Decision  
10/08/2010 Motion In Limine Re: Identity of Accuser & Brief in Support Thereof  
10/08/2010 Letter-Scott W Reed  
10/12/2010 Letter from Scott W Reed to Judge Hosack dated 10/09/10  
10/12/2010 Memorandum Of Defendant Kennedy In Response To McCrory Motion in Limine RE Identity Of Accused  
10/12/2010 Hearing result for Court Trial Scheduled held on 10/12/2010 04:00 PM: Hearing Held Contempt issue. - dismissed  
10/12/2010 District Court Hearing Held Court Reporter: Kari Veare Number of Transcript Pages for this hearing estimated:  
10/19/2010 Letter From Attorney Arthur Macomber  
10/20/2010 Affidavit Of Service/Christa Hazel/10-08-10  
10/20/2010 Affidavit Of Service/Starr Kelso/10-08-10  
10/20/2010 Affidavit Of Service/Barry McHugh/10-08-10  
10/20/2010 Affidavit Of Service/Daniel J. English via Tina Wilde/10-08-10  
10/20/2010 Certificate of Service of Affidavits of Service of Subpoenas to Appear and Testify at Trial for the Following Parties: Christa Hazel, Starr Kelso, Barry McHugh, and Daniel J. English  
10/21/2010 Order of Dismissal (of Contempt Proceeding)  
10/28/2010 Coeur d'Alene Reporting - Notice of Preparation of Original Transcript  
10/28/2010 Objection to Defendants' Proposed Judgment Form  
11/01/2010 Hearing Scheduled (Status Conference 11/04/2010 11:00 AM) re: Entry of Judgment  
11/01/2010 Notice of Hearing  
11/04/2010 Hearing result for Status Conference held on 11/04/2010 11:00 AM: Hearing Held re: Entry of Judgment  
11/04/2010 Judgment  
11/04/2010 Case status changed: Closed pending clerk action  
11/04/2010 Civil Disposition entered for: City of Coeur d'Alene, Defendant; Brannon, Jim, Plaintiff. Filing date: 11/4/2010  
11/04/2010 Final Judgement, Order Or Decree Entered  
11/05/2010 \*\*\*\*\*New File #13 Created\*\*\*\*\*  
11/05/2010 Memorandum Of Costs Of Defendant Mike Kennedy  
11/08/2010 Memorandum of Law in Support of Motions for New Trial &/or Amend or Alter Judgment  
11/08/2010 Affidavit of Starr Kelso  
11/08/2010 Motion for a New Trial Pursuant to IRCP Rule 59(a)(6) & (7) or in the Alternative Motion to In the Alternative to Alter or Amend the Judgment Pursuant to IRCP Rule 59(c)  
11/09/2010 Hearing Scheduled (Motion 12/07/2010 02:00 PM) for New Trial/Kelso/30 min  
11/09/2010 Case status changed: Reopened  
11/09/2010 Notice Of Hearing on Plaintiffs Motion for New Trial or in the Alternative Motion to Amend or Alter Judgment  
11/15/2010 Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Kelso, Starr (attorney for Brannon, Jim) Receipt number: 0049232 Dated: 11/15/2010 Amount: \$101.00 (Check) For: Brannon, Jim (plaintiff)  
11/15/2010 Bond Posted - Cash (Receipt 49234 Dated 11/15/2010 for 100.00)

11/15/2010 Bond Posted - Cash (Receipt 49236 Dated 11/15/2010 for 3700.00)  
 11/15/2010 Notice Of Appeal  
 11/16/2010 Defendant City Of Coeur D'Alene's AMENDED Motion For Costs and Fees  
 11/16/2010 AMENDED Memorandum In Support Of Defendant City Of Coeur D'Alene's Motion For Costs and Fees  
 11/16/2010 AMENDED Affidavit Of Michael Haman In Support of Defendant City Of Coeur D'Alene's Motion For Costs and Fees  
 11/16/2010 Notice Of Hearing on 12/07/10 at 2:00 pm  
 11/18/2010 Objection And Motion To Disallow Defendant Kennedy's Claimed Costs Pursuant To IRCP Rule 54(d)(6) In Part  
 Memorandum Supporting Objection And Motion To Disallow  
 11/18/2010 Defendant Kennedy's Claimed Costs In Part Pursuant To IRCP Rule 54(d)(6)  
 11/18/2010 Affidavit Of Kathy Lewis  
 Objection To And Motion To Disallow In Part Defendant  
 11/18/2010 City/Weathers Claimed Costs And All Of Claimed Attorney And Paralegal Fees  
 Memorandum Supporting Objection And Motion To Disallow In Part  
 11/18/2010 Defendants City/Weathers Claimed Costs And Fees Pursuant To IRCP Rule 54(d)(6)  
 11/18/2010 Notice Of Hearing On Plaintiff's Motions on 12/07/10 at 2:00 pm  
 11/18/2010 Motion to Strike Part of Amended Affidavit of Michael Haman  
 11/22/2010 Clerk's Certificate Of Appeal  
 11/23/2010 Affidavit of Kathy Lewis  
 11/26/2010 Supplemental Memorandum in Support of Motion for New Trial or in the Alternative to Alter or Amend the Judgment  
 11/30/2010 Affidavit of Bill Morlin  
 11/30/2010 Opposition of Defendant Kennedy to Plaintiffs Motion for New Trial  
 Response of Defendant Kennedy to Plaintiffs Supplemental  
 11/30/2010 MEMorandum in Support of Motion for New Trial or in the Alternative to Alter to Amend the Judgment  
 12/01/2010 Defendants City/Clerk's Memorandum In Opposition To Plaintiff's Motion For New Trial And/Or Amend Or Alter Judgment  
 12/05/2010 New File Created # 14  
 12/06/2010 Notice Of Filing Of Transcript Of Testimony Of Eugene A Marano  
 12/06/2010 Notice Of Filing Of Transcript Of Testimony Of Timothy Hurst  
 12/06/2010 Supplemental Memorandum Regarding UOCAVA  
 12/07/2010 Hearing result for Motion held on 12/07/2010 02:00 PM: Hearing Held for New Trial/Kelso/30 min Haman: fees/costs 30 min  
 12/07/2010 District Court Hearing Held Court Reporter: Byrl Cinnamon Number of Transcript Pages for this hearing estimated:  
 12/07/2010 Request for Cameras in the Courtroom - granted  
 12/07/2010 Notice Of Withdrawal Of Attorney Of Record For Non-Party William L McCrory  
 12/08/2010 Notice of Lodging Transcript/Cd'A Reporting  
 12/08/2010 Notice of Lodging Transcript/Cd'A Reporting  
 12/28/2010 Appealed To The Supreme Court  
 01/01/2011 \*\*\*\*\*FILE # 15 CREATED\*\*\*\*\*  
 01/04/2011 Order on Application for Costs and Fees  
 01/04/2011 Order Denying Motion for New Trial or to Alter or Amend Judgment  
 01/04/2011 Case status changed: closed pending clerk action  
 01/21/2011 Order Suspending Appeal

01/27/2011 Bond Converted (Transaction number 179 dated 1/27/2011 amount 167.20)  
01/27/2011 Bond Converted (Transaction number 180 dated 1/27/2011 amount 58.00)  
01/27/2011 Bond Converted (Transaction number 181 dated 1/27/2011 amount 500.00)  
01/27/2011 Bond Converted (Transaction number 182 dated 1/27/2011 amount 4,274.80)  
02/01/2011 Amended Notice Of Appeal  
02/02/2011 Amended Clerk's Certificate Of Appeal--Sent Feb 2, 2011 Certified Mail  
02/09/2011 Petitioners' Reply To Objection To Intervene  
03/29/2011 Bond Converted (Transaction number 643 dated 3/29/2011 amount 383.50)  
03/29/2011 Invoice  
03/29/2011 Notice Of Transcript Lodged  
03/31/2011 Notice Of Transcript Lodged  
04/12/2011 Notice Of Transcript Lodged  
04/20/2011 Notice Of Transcript Lodged  
04/20/2011 Notice Of Transcript Lodged  
04/25/2011 Invoice  
05/31/2011 Bond Converted (Transaction number 1220 dated 5/31/2011 amount 3,316.00)  
05/31/2011 Invoice  
05/31/2011 Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Starr Kelso Receipt number: 0022960 Dated: 5/31/2011 Amount: \$1,506.00 (Check)  
05/31/2011 Miscellaneous Payment: Personal Copy Fee Paid by: Starr Kelso Receipt number: 0022960 Dated: 5/31/2011 Amount: \$.80 (Check)  
05/31/2011 Invoice for Clerk's Record  
05/31/2011 Notice of Lodging Transcript  
05/31/2011 Clerk's Certificate of Service of Appeal  
05/31/2011 Invoice  
06/01/2011 Vendor Description  
06/07/2011 Bond Converted (Transaction number 1265 dated 6/7/2011 amount 100.00)  
06/07/2011 Clerks Certificate Of Service of Appeal  
08/01/2011 Bond Converted (Transaction number 1684 dated 8/1/2011 amount 0.50)

*Connection: Public*

**APPENDIX B TO BRIEF OF RESPONDENT MIKE KENNEDY**

1993 Legislative History on House Bill 330 amending Idaho Code Section

34-1401.

STATEMENT OF PURPOSE

RS 02456C2

Relating to city elections, this legislation amends the municipal election statutes and Chapter 14 of Title 34, Idaho Code, to provide that, with the exception of emergency elections, elections may be held only on the four dates during the year that are specified for the state and other political subdivisions. The legislation also conforms municipal election registration procedures to state registration procedures by providing that the county clerk will be the registrar for city elections and will conduct voter registration in accordance with Chapter 14 of Title 34, Idaho Code. This amendment to the city election laws brings those laws into conformance with Section 34-1402, Idaho Code, which provides that each county clerk shall be the registrar and shall appoint each city clerk as an at-large registrar. The third amendment to the city election laws contained in this legislation is an amendment to Section 50-542, Idaho Code, providing that at city elections the polls shall be opened at 8:00 o'clock a.m. and shall remain open until 8:00 o'clock p.m.

FISCAL NOTE

No fiscal impact. This bill confers no additional financial impact upon the state. The one-time appropriation of \$150,000 for the implementation of House Bill 743 (election consolidation) was approved in 1992 and became effective July 1 to cover the period July 1, 1992 to June 30, 1994. The appropriation is being administered by the Office of the Secretary of State for use by the counties in the mapping and tax coding necessary for the implementation of House Bill 743.

Contact: Shirley Mix  
Association of Cities

STATEMENT OF PURPOSE/FISCAL NOTE

(1993)

H 330



1 50-429. GENERAL AND SPECIAL CITY ELECTIONS. (1) A general election shall  
 2 be held in each city governed by this title, for officials as in this title  
 3 provided, on the Tuesday following the first Monday of November in each odd-  
 4 numbered year. All such officials shall be elected and hold their respective  
 5 offices for the term specified and until their successors are elected and  
 6 qualified. All other city elections that may be held under authority of gen-  
 7 eral law shall be known as special city elections.

8 (2) On and after January 1, 1994, notwithstanding any other provisions of  
 9 law to the contrary, there shall be no more than four (4) elections conducted  
 10 in any city in any calendar year, except as provided in this section.

11 (3) The dates on which elections may be conducted are:

12 (a) The first Tuesday in February of each year; and

13 (b) The fourth Tuesday in May of each year; and

14 (c) The first Tuesday in August of each year; and

15 (d) The Tuesday following the first Monday in November of each year.

16 (e) In addition to the elections specified in subsections (a) through (d)  
 17 of this section, an emergency election may be called upon motion of the  
 18 city council of a city. An emergency exists when there is a great public  
 19 calamity, as an extraordinary fire, flood, storm, epidemic or other disas-  
 20 ter, or if it is necessary to do emergency work to prepare for a national  
 21 or local defense, or it is necessary to do emergency work to safeguard  
 22 life, health or property. Such a special election, if conducted by the  
 23 city clerk, shall be conducted at the expense of the political subdivision  
 24 submitting the question.

25 (4) The secretary of state is authorized to provide such assistance as  
 26 necessary, and to prescribe any needed rules or interpretations for the con-  
 27 duct of elections authorized under the provisions of this section.

28 SECTION 3. That Sections 50-414, 50-416 through 50-421, 50-423, 50-424  
 29 and 50-476, Idaho Code, be, and the same are hereby repealed.

30 SECTION 4. That Chapter 4, Title 50, Idaho Code, be, and the same is  
 31 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
 32 ignated as Section 50-414, Idaho Code, and to read as follows:

33 50-414. REGISTRATION OF ELECTORS. All electors must register before being  
 34 able to vote at any municipal election. The county clerk shall be the regis-  
 35 trar for all city elections and shall conduct voter registration for each city  
 36 pursuant to the provisions of section 34-1402, Idaho Code.

37 SECTION 5. That Section 50-453, Idaho Code, be, and the same is hereby  
 38 amended to read as follows:

39 50-453. OPENING AND CLOSING POLLS. (1) At all general and special city  
 40 elections the polls shall be opened at ±2-noon 8:00 a.m. and remain open until  
 41 all registered electors of that precinct have voted or until 8:00 p.m. of the  
 42 same day, whichever comes first. ~~Provided, however, that a city council may by~~  
 43 ~~ordinance require that the polls in the city shall open at 8 a.m.~~

44 (2) Upon opening the polls the precinct judge will make the proclamation  
 45 of the same and thirty (30) minutes before closing the polls a proclamation  
 46 shall be made in the same manner. Any elector who is in line at 8:00 p.m.  
 47 shall be allowed to vote, notwithstanding the pronouncement that the polls are  
 48 closed.

49 SECTION 6. This act shall be in full force and effect on and after Janu-



1 ary 1, 1994.

*i*

HOUSE STATE AFFAIRS COMMITTEE

DATE: March 3, 1993  
TIME: 8:15 A.M.  
PLACE: Statehouse, Room 412  
PRESENT: Chairman Ahrens, Vice Chairman Deal, Representatives Alexander, Berain, Crane, Danielson, Judd, King, Lance, Loertscher, Newcomb, Stennett, Stolcheff, Stone, Sutton Tippets, Vandenberg and Wood  
ABSENT/  
EXCUSED: None  
GUESTS: See Attached Lists

The Chairman called the meeting to order at 8:15 A.M.

MOTION: Rep. Danielson moved, seconded by Rep. Alexander, to accept the minutes from the meeting held March 2, 1993 as written. Motion carries.

RS 02591C2 Rep. Deal said the sub committee has been working hard to put this RS together which will deal with regulation of bingo and raffles. They have had several meetings with input from people who run bingo and raffles and those who play. They have received several ideas. Rep. Deal went through the RS and had several suggestions of changes to the RS from the committee. The bingo sub committee will meet late Thursday afternoon to, hopefully, finalize this RS, so it can be introduced and get some statewide dissemination.

H 330 Pete McDougall, City Clerk Treasurer from Pocatello, said he is in favor of this Bill. He said the intent of this Bill is to remove the cities from Title 34 in the conduct of elections. Under the provisions of Chapter 4 of Title 50, cities have a comprehensive election administration statute. This new Bill will incorporate into that section the elements of the consolidation language.

There was a short discussion.

MOTION: Rep. Alexander moved, seconded by Rep. Newcomb, to send H 330 to the Floor with a DO PASS recommendation. Motion carries. Rep. Alexander is sponsor.

H 352 Ben Yursa, Deputy Attorney General, said this Bill has some sections which are affected by other pieces of legislation in this body. The main purpose of H 352 is to get all these other dates and special election dates (the main ones) on the election consolidation schedule. He urges the committee to pass this Bill.

A discussion ensued.

MOTION: Rep. Danielson moved, seconded by Rep. Judd, to send H 352 to the Floor with a DO PASS recommendation. Motion carries. Rep. Ahrens is sponsor.

H 351 Rep. Ahrens said this Bill is an attempt to continue the orderly transition to consolidated elections and a uniform approach to conducting elections in the state of Idaho. It provides that Trustee elections of school board members be held in the odd number year in the May election. They are currently being held the week before the primary. In many areas you have people running for the school board and there is a great deal

**SUBSTITUTE**

**MOTION** McRoberts made a substitute motion that H 351 be sent to the 14th order for possible amendment. There was some discussion on the motions. A roll call vote was called for. Twiggs, McRoberts, Hartung voted AYE. Ricks, Darrington, Kerrick, Reed, and Davis voted NO. **MOTION FAILED.**

**ORIGINAL**

**MOTION** Ricks, Hartung, Darrington, Kerrick, Reed, and Davis voted AYE. Twiggs, and McRoberts voted No. **MOTION CARRIED.** H 351 will be held in committee.

**H 330** Representative Alexander spoke to this bill that relates to city elections. This legislation amends the municipal election statutes and Chapter 14 of Title 34, *Idaho Code*, to provide that, with the exception of emergency elections, elections may be held only on the four dates during the year that are specified for the state and other political subdivisions. The legislation also conforms municipal election registration procedures to state registration procedures by providing that the county clerk will be the registrar for city elections and will conduct voter registration in accordance with Chapter 14 of Title 34, *Idaho Code*. This amendment to the city election laws brings those laws into conformance with Section 34-1402, *Idaho Code*, which provides that each county clerk shall be the registrar and shall appoint each city clerk as an at-large registrar. The third amendment to the city election laws contained in this legislation is an amendment to Section 50-542, *Idaho Code*, providing that at city elections the polls shall remain open until 8:00 p.m. He answered questions from the committee.

Ben Ysursa commented on the difference of dates in this bill with the election consolidation bill. He said this is an error that will need to be corrected.

**MOTION** Reed **MOVED**, seconded by Davis, that H 330 be sent to the 14th order for possible amendment.

**MOTION DIED** Darrington **MOVED** that H 330 be **HELD** in committee. **MOTION DIED** for lack of second.

**ORIGINAL MOTION**

**MOTION CARRIED** with a voice vote. Darrington and Ricks voted NO. H 330 will be sent to the 14th order for possible amendment.

**H 213** Lynn Melton, of the Idaho Library Association, spoke to this bill. The Election Consolidation law enacted by the 1992 legislature, which will go into effect in 1994, makes several changes necessary in the conduct of elections for Library Districts. The proposed deletions, additions and rewording will bring those laws into conformity with the Idaho election law. Such changes are needed for all

From: Shirley Mix  
Association of Idaho Cities

## Memo on House Bill 330

The purpose of HB330 is to infuse the language of last year's consolidation bill into Title 50 of the Idaho Code, which is the "Bible" of city clerks.

Training manuals, workshops and city elections themselves are conducted from Title 50, and the clerks how it like the backs of their hands. The entire section is updated each year and inserted into their handbooks.

There is only one change from last year's consolidation bill: city clerks have the option to conduct their city elections or to contract with the county to do so. That's an important option to city clerks, because their limited budgets require them to save taxpayer dollars wherever they can. In most cases, city elections cost less than do elections run by the counties. Many cities use paper ballots, for instance, while counties use more expensive methods. Elections cost money.

All other elements of the consolidation of elections bill remain the same: polling places, election dates, filing dates, declarations of candidacy, qualifications of electors, canvassing of election results.

There's a maze of federal, state and local laws. Title 50 is where city clerks look to assure their compliance to state laws. It also contains much more comprehensive information on the mechanics of elections than does the new law. If they must refer back and forth from Title 34 to Title 50, it will be more confusing for them, not to mention unnecessary. Time is money and mistakes are costly.

This bill, quite simply, assures proper administration of city elections.

Attached is a listing of current sections, under Title 50, which address municipal election law.

**APPENDIX C TO BRIEF OF RESPONDENT MIKE KENNEDY**

Affidavit of Chief Deputy Secretary of State Timothy A. Hurst dated  
January 14, 2010 filed March 22, 2010. Clerk's Record.

Peter C. Erbland, ISB #2456  
Paine, Hamblen, Coffin, Brooke & Miller, LLP  
701 Front Avenue, Suite 101  
Post Office Box E  
Coeur d'Alene, Idaho 83816-0328  
Phone (208) 664-8115  
FAX (208) 664-6338

Scott W. Reed, ISB#818  
Attorney at Law  
P. O. Box A  
Coeur d'Alene, ID 83816  
Phone (208) 664-2161  
FAX (208) 765-5117

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

**JIM BRANNON,**

**Case No. CV-09-10010**

**Plaintiff,**

**Vs.**

**CITY OF COEUR D'ALENE, IDAHO, a  
municipal corporation; SUSAN K.  
WEATHERS, in her capacity as the City  
of Coeur d'Alene City Clerk; MIKE  
KENNEDY, in his capacity as the  
incumbent candidate for the City of  
Coeur d'Alene Council Seat #2; LOREN  
RON EDINGER, DEANNA  
GOODLANDER, MIKE KENNEDY, A.J.  
AL HASSELL III, WOODY McEVERS,  
and JOHN BRUNING in their Capacities  
as Members of the City Council of the  
City of Coeur d'Alene; SANDI BLOEM, in  
her capacity as Mayor of the City of  
Coeur d'Alene; and JANE AND JOHN  
DOES A THROUGH Z whose true and  
correct names are unknown,**

**AFFIDAVIT OF CHIEF DEPUTY SECRETARY  
OF STATE TIMOTHY A. HURST**

**Defendants.**

**AFFIDAVIT OF TIMOTHY A. HURST**

STATE OF IDAHO                    )  
  ss.  
COUNTY OF KOOTENAI         )

Timothy A. Hurst, being first duly sworn deposes and says:

I am Chief Deputy for Secretary of State Ben Ysursa and was such during the year 2009. I have personal knowledge of all matters set forth herein.

My professional responsibilities include carrying out the duties and responsibilities of the office of the Idaho Secretary of State related to federal, state and local election. Some of those duties and responsibilities are set forth in the following sections of the Idaho Code:

- §34-201, §34-202
- §34-418, §34-433
- §34-437A, §34-903
- §34-903A, §34-909
- §34-911, §34-1002
- §34-1111, §34-1112
- §34-1203, §34-1207
- §34-1205, §34-1401
- §34-1405, §34-2404
- §34-2405, §34-2409
- §34-2410, §34-2411
- §50-404 and §50-429 (4)

While our office does not supervise or conduct city and county elections, we are authorized and do in fact at frequent occasions provide assistance as necessary and prescribe any needed rules or interpretations for the conduct of city and county elections. See Idaho Code §50-404 (5), §34-1401, §34-202, §34-106 (5).

In carrying out those duties and responsibilities, we monitor registration and elections by visitation to the different counties and cities, by telephonic and e-mail communication with city and county clerks and by observation of the statewide list of registered voters. See Idaho Code §34-437 A.

Cities are allowed to delegate their elections to counties by law in Idaho. See the last paragraph of Idaho Code §34-1401 as in effect in 2009. The code section printed in the 2009

AFFIDAVIT OF TIMOTHY A. HURST

Supplement to be effective January 1, 2011 makes some changes in wording but that section in the bound volume printed in 2008 remains in effect until 2011.

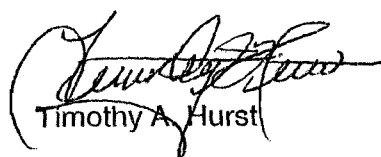
Under Idaho Code §50-404 on elections in municipalities, the city clerk is authorized to employ any persons “. . . to facilitate and assist the city clerk in carrying out his functions in connecting with administering election laws.” Such employment would include the county clerk.

The agreement between the City of Coeur d’Alene and Kootenai County was based on Idaho Code §67-2332 which allows cooperation between local governments for political purposes which includes elections.

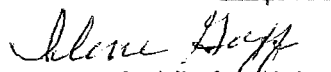
Our office has been aware that by agreement the Kootenai County clerk has been carrying out elections for the City of Coeur d’Alene for many years in the past and in 2009 conducted elections for six other cities in the county.

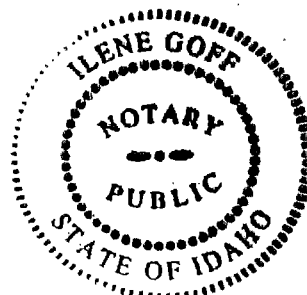
This delegation from the cities to the county is entirely proper and has occurred throughout the state, i.e., Boise to Ada County; Twin Falls to Twin Falls County; Idaho Falls to Bonneville County and Lewiston to Nez Perce County.

Attached hereto is my letter dated December 18, 2009 to Dan English, Kootenai County Clerk. All matters stated therein are true and correct.

  
Timothy A. Hurst

SUBSCRIBED AND SWORN TO BEFORE ME this 14<sup>th</sup> day of January, 2010.

  
Notary Public for Idaho  
Residing in Boise  
Commission Expires



AFFIDAVIT OF TIMOTHY A. HURST





STATE OF IDAHO  
OFFICE OF THE SECRETARY OF STATE  
BEN YSURSA

December 18, 2009

Dan English  
Kootenai County Clerk  
PO Box 9000  
Coeur d'Alene, Idaho 83816

Dear Dan:

I am in receipt of your letter dated December 16, 2009, regarding the eligibility of a certain overseas citizen and military personnel to vote in the City of Coeur d'Alene election.

It appears from the information that was entered into the statewide voter registration system that Tammy Parkes, Monica Pacquin, Gregory Proft and Alan Friend registered to vote in accordance with state law.

A person living outside the state temporarily does not lose his or her right to vote simply by being absent from the state. Article VI, Section 5 of the Idaho Constitution says:

"For purposes of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of this state, or of the United States, nor while engaged in the navigation of the waters of this state or of the United States, nor while a student of any institution of learning, nor while kept at any almshouse or other asylum at the public expense."

Idaho Code Section 34-107(3) also says:

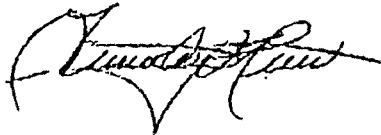
"A qualified elector who has left his home and gone into another state or territory or county of this state for a temporary purpose only shall not be considered to have lost his residence."

Idaho Code Section 34-107(4) also says:

"A qualified elector shall not be considered to have gained a residence in any county or city of this state into which he comes for temporary purposes only, without the intention of making it his home but with the intention of leaving it when he has accomplished the purpose that brought him there."

If a person has gained residency in the State and is registered to vote, that registration is valid as long as the person continues to vote and has the intention of returning to Idaho to make it the persons home as long as the person does not establish another permanent home outside the State (I.C. 34-107(5)).

Sincerely,



TIMOTHY A HURST  
Chief Deputy  
Secretary of State

TAH/bek

TO: SUE FLAMMIA  
 FAX (208) 667-3207

FROM: SCOTT W. REED  
 401 FRONT AVENUE – SUITE 205  
 P. O. BOX A  
 COEUR D'ALENE, IDAHO 83816

FAX (208) 765-5117  
 PHONE (208) 664-2161

This facsimile transmission is intended only for the addressee shown above. It may contain information that is privileged, confidential or otherwise protected from disclosure. Any review, dissemination or use of this transmission or its contents by persons other than the addressee is strictly prohibited.

Reason for error  
 E: 1) Hang up or line fall  
 E: 3) No answer  
 E: 5) Exceeded max. E-mail size  
 E: 2) Busy  
 E: 4) No facsimile connection

8703 Memory TX 6673207 P. 2 OK

---

File No. Mode	Destination	Pg(s)	Result	Page Not Sent
8703 Memory TX	6673207	P. 2	OK	

Date/Time: Nov. 15, 2011 2:05PM

\* \* \* Communication Result Report ( Nov. 15, 2011 2:10PM ) \* \* \*

1) Scott W Reed Attorney At Law