

5-30-2013

Bonner County v. Cunningham Clerk's Record Dckt. 40642

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IN THE SUPREME COURT OF THE STATE OF IDAHO

LAW CLERK

BONNER COUNTY IDAHO,
By and through Louis E. Marshall,
Prosecuting Attorney,

Plaintiff-Respondent,

vs.

MICHAEL C. CUNNINGHAM
Real party interest,

NINE THOUSAND FIFTY DOLLARS
U.S. CURRENCY,

Defendant-Appellant.

Appealed from the District Court of the First Judicial
District of the State of Idaho, in and for Bonner County

HONORABLE JEFF M. BRUDIE
District Judge

MR. LOUIS E. MARSHALL
Attorney for Respondent

MS. VAL THORNTON
Attorney for Appellant

FILED. <i>copy</i>	
MAY 30 2013	
Supreme Court	Court of Appeals
Entered of A. S. by	

406042

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

BONNER COUNTY IDAHO,	)	SUPREME COURT NO. 40642-2013
By and through Louis E. Marshall,)	
Prosecuting Attorney,)	
)	
Plaintiff-Respondent,	)	CLERK'S RECORD ON APPEAL
vs.)	
)	
MICHAEL C. CUNNINGHAM,)	
Real party interest,)	
)	
NINE THOUSAND FIFTY DOLLARS)	
U.S. CURRENCY,)	
)	
Defendant- Appellant.)	
_____)	

2013 MAY 30 P 12:43
CLERK'S RECORD ON APPEAL

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the First Judicial District of the State of Idaho, in and for
the County of Bonner.

HONORABLE JEFF M. BRUDIE
District Judge

MR. LOUIS MARSHALL
127 S. FIRST AVENUE
SANDPOINT, ID 83864

MS. VAL THORNTON
4685 UPPER PACK RIVER ROAD
SANDPOINT, ID 83864

ATTORNEY FOR RESPONDENT

ATTORNEY FOR APPELLANT

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Bonner County Idaho vs. Nine Thousand Fifty Dollars and No Cents, U.S. Cur

Date	Code	User	Judge
5/3/2011	NCOC	BOWERS	New Case Filed - Other Claims Barbara Buchanan
	APER	BOWERS	Plaintiff: Bonner County Idaho Appearance Louis E Marshall Barbara Buchanan
		BOWERS	Filing: A - All initial civil case filings of any type not listed in categories B-H, or the other A listings below Paid by: Bonner County Idaho (plaintiff) Receipt number: 0456140 Dated: 5/3/2011 Amount: \$.00 (Cash) For: Bonner County Idaho (plaintiff) Barbara Buchanan
	COMP	BOWERS	Complaint in REM for Forfeiture Under Idaho Code 37-2744 Barbara Buchanan
	SMIS	BOWERS	Summons Issued Barbara Buchanan
5/19/2011	MISC	JACKSON	Acceptance of Service - Val Thornton accepted service 5-13 for Michael Cunningham, Jr. Barbara Buchanan
6/2/2011		HENDRICKSO	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Cunningham, Michael T Jr (other party) Receipt number: 0457646 Dated: 6/2/2011 Amount: \$58.00 (Cash) For: Cunningham, Michael T Jr (other party) Barbara Buchanan
	APER	BOWERS	Other party: Cunningham, Michael T Jr Appearance Valerie Thornton Barbara Buchanan
	ANSW	BOWERS	Answer Barbara Buchanan
	MDIS	BOWERS	Motion To Dismiss and for IC 12-117 Costs and Attorney Fees Barbara Buchanan
	NOFH	BOWERS	Notice Of Hearing Barbara Buchanan
	HRSC	BOWERS	Hearing Scheduled (Motion to Dismiss 06/20/2011 01:30 PM) and for IC 12-117 Costs and Attorney Fees Barbara Buchanan
6/3/2011	HRSC	MUELLER	Hearing Scheduled (Scheduling Conference 06/20/2011 01:30 PM) Barbara Buchanan
	NOTC	MUELLER	Notice of Scheduling and Planning Conference Barbara Buchanan
6/16/2011	MOTN	BOWERS	Motion to Shorten Time and Affidavit in Support of Mike Cunningham's Motion to Dismiss Barbara Buchanan
	NOTC	BOWERS	Notice of Intent to Present Argument and Evidence in Support of Motion to Dismiss Barbara Buchanan
	NTSD	BOWERS	Notice of Service of Mike Cunningham's First Set of Interrogatories, Requests for Admission, and Requests for Production of Documents Barbara Buchanan
6/17/2011	OBJC	BOWERS	State's Objection to Motion to Dismiss and for I.C. 12-117 Costs and Attorney Fees Barbara Buchanan
	BREF	BOWERS	Brief in Response to Objection to Mike Cunningham's Motion to Dismiss Barbara Buchanan

Bonner County Idaho vs. Nine Thousand Fifty Dollars and No Cents, U.S. Cur

Date	Code	User	Judge
6/20/2011	CMIN	SECK	Court Minutes Hearing type: Motion to Dismiss Hearing date: 6/20/2011 Time: 1:31 pm Courtroom: Court reporter: Minutes Clerk: Melissa Seck Tape Number: crtm 3 Valerie Thonrton Louis Marshall
	HRVC	BOWERS	Hearing result for Scheduling Conference held on 06/20/2011 01:30 PM: Hearing Vacated
	CTLG	BOWERS	Hearing result for Motion to Dismiss held on 06/20/2011 01:30 PM: CTRM 3- and for IC 12-117 Costs and Attorney Fees
	GRNT	BOWERS	Hearing result for Motion to Dismiss held on 06/20/2011 01:30 PM: Motion Granted
6/30/2011	MOTN	BOWERS	Motion for Return of Property Including Cell Phone
	NOFH	BOWERS	Notice Of Hearing
	HRSC	BOWERS	Hearing Scheduled (Motion 08/08/2011 02:00 PM) Motion for Return of Property Including Cell Phone
	NOFH	BOWERS	Amended Notice Of Hearing
	CONT	BOWERS	Continued (Motion 08/10/2011 02:00 PM) Motion for Return of Property Including Cell Phone
7/7/2011	MOTN	BOWERS	Motion for Return of Property
7/28/2011	MOTC	BOWERS	Motion To Compel Discovery and For Requests for Admissions to be Deemed Admitted
	NOFH	BOWERS	Notice Of Hearing - 8/10@1:59 pm
	AFFD	BOWERS	Affidavit in Support of Motion to Compel Discovery and For Requests for Admissions to be Deemed Admitted
	HRSC	BOWERS	Hearing Scheduled (Motion to Compel 08/10/2011 01:59 PM) Motion to Compel Discovery and For Requests For Admissions to Be Deemed Admitted
8/1/2011	BREF	BOWERS	Brief in Support of Motion for Return of Property Including Cell Phone
8/8/2011	ORDR	MUELLER	Order for Return of Property
	HRVC	MUELLER	Hearing result for Motion scheduled on 08/10/2011 02:00 PM: Hearing Vacated Motion for Return of Property Including Cell Phone
	NOTC	MUELLER	Notice Vacating Hearing

Date: 3/4/2013

First Judicial District Court - Bonner County

User: HUMRICH

Time: 10:00 AM

ROA Report

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Case: CV-2011-0000776 Current Judge: Barbara Buchanan

Bonner County Idaho vs. Nine Thousand Fifty Dollars and No Cents, U.S. Cur

Bonner County Idaho vs. Nine Thousand Fifty Dollars and No Cents, U.S. Cur

Date	Code	User	Judge
8/8/2011	HRVC	MUELLER	Hearing result for Motion to Compel scheduled on 08/10/2011 01:59 PM: Hearing Vacated Motion to Compel Discovery and For Requests For Admissions to Be Deemed Admitted
8/10/2011	MOTN	BOWERS	Motion for Entry of Judgment
	SMRT	BOWERS	Summons Returned
8/26/2011	ORDR	JACKSON	Order Dismissing Forfeiture
	CDIS	JACKSON	Civil Disposition entered for: Bonner County Idaho, Plaintiff; Cunningham, Michael T Jr, Other Party. Filing date: 8/26/2011
	STAT	JACKSON	STATUS CHANGED: closed
9/9/2011	MEMO	BOWERS	Memorandum of Costs and Fees and Affidavit of Counsel
	MOTN	BOWERS	Motion for An Award of Attorney Fees
9/12/2011	MEMO	BOWERS	Amended Memorandum of Costs and Fees and Affidavit of Counsel
	MOTN	BOWERS	Amended Motion for An Award of Attorney Fees
9/22/2011	OBJC	BOWERS	Objection to Memorandum of Costs
	OBJC	BOWERS	Objection to Motion for Attorney's Fees
10/17/2011	NOTC	JACKSON	Notice of Hearing (11/23/11 @ 2 pm)
10/20/2011	HRSC	MUELLER	Hearing Scheduled (Motion for Attorney fees and Costs 11/23/2011 02:00 PM)
	STAT	MUELLER	STATUS CHANGED: Closed pending clerk action
		MUELLER	Notice Of Hearing
11/23/2011	HRHD	MUELLER	Hearing result for Motion for Attorney fees and Costs scheduled on 11/23/2011 02:00 PM: Hearing Held
	CMIN	MUELLER	Court Minutes Hearing type: Motion for Attorney fees and Costs Hearing date: 11/23/2011 Time: 2:01 pm Courtroom: Court reporter: Minutes Clerk: Susan MUELLER Tape Number: CTRM 4 Val Thornton Louis Marshall
	BREF	KELSO	Brief in Support of Motion for Attorney Fees
11/28/2011	ORDR	KELSO	Order Denying Claimant's Motion for Attorney Fees
1/9/2012		HENDRICKSO	Filing: L1 - Appeal, Small claims Dept to Magistrate Court Paid by: John Thornton Receipt number: 0467838, Dated: 1/9/2012 Amount: \$53.00 (Check) For: Cunningham, Michael T Jr (other party)

Date: 3/4/2013

First Judicial District Court - Bonner County

User: HUMRICH

Time: 10:00 AM

ROA Report

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Case: CV-2011-0000776 Current Judge: Barbara Buchanan

Bonner County Idaho vs. Nine Thousand Fifty Dollars and No Cents, U.S. Cur

Bonner County Idaho vs. Nine Thousand Fifty Dollars and No Cents, U.S. Cur

Date	Code	User	Judge
1/9/2012	BNDC	HENDRICKSO	Bond Posted - Cash (Receipt 467839 Dated 1/9/2012 for 100.00)
	APDC	DRIVER	Appeal Filed In District Court - transcripts requested for hearing held 11/23/2011
	NTOA	DRIVER	Notice Of Appeal
	CHJG	OPPELT	Change Assigned Judge
1/20/2012	ORDR	OPPELT	Order or Reassignment
	CHJG	OPPELT	Change Assigned Judge
1/23/2012	ORDR	OPPELT	Order Assigning Judge
	CHJG	OPPELT	Change Assigned Judge
1/30/2012	MISC	OPPELT	Document Request from Judge Brudie
2/2/2012	MISC	OPPELT	Documents Requested by Judge Brudie Sent
2/14/2012	MISC	OPPELT	Copy of CD and Copy of Minutes of November 23, 2011 Hearing Sent to Judge Brudie
3/2/2012	MISC	DRIVER	Invoice from LC Reporting for transcript of November 23, 2011 - total \$55.25
	BNDV	DRIVER	Bond Converted (Transaction number 313330 dated 3/2/2012 amount 44.75)
	BNDV	DRIVER	Bond Converted (Transaction number 313331 dated 3/2/2012 amount 55.25)
3/16/2012	MISC	OPPELT	E-mail from Nez Perce County - Original Transcript from the 11-23-11 hearing is in Nez Perce County
3/20/2012	ORDR	DRIVER	Order Scheduling Briefs and Argument: Appellant Brief due 4/24/2012 Respondent Brief due 5/23/2012 Reply Brief due 6/13/2012 Hearing 7/12/2012
	HRSC	DRIVER	Hearing Scheduled (Oral Argument on Appeal 07/12/2012 02:00 PM) The Court Will Initiate the Call. In Nez Perce County.
3/21/2012	OBJC	OPPELT	Objection to Briefing Schedule on Appeal
3/27/2012	OBJC	DRIVER	Amended Objection and Motion to Vacate Briefing Schedule on Appeal
	MOTN	DRIVER	Motion for Preparation of Transcript - June 20, 2011
3/29/2012	ORDR	KELSO	Order for Production of Transcript
	ESTM	DRIVER	Estimate Of Transcript Cost - for hearing June 20, 2011 to be \$100.00; mailed to Val Thornton
4/11/2012	BNDC	DRIVER	Bond Posted - Cash (Receipt 472119 Dated 4/11/2012 for 100.00)
4/16/2012	CINF	OPPELT	CD, Minutes and Order for Production of Transcript Sent to Linda Carlton for Preparation of Transcript
4/23/2012	MOVA	DRIVER	Motion To Vacate Briefing Schedule on Appeal

004

Bonner County Idaho vs. Nine Thousand Fifty Dollars and No Cents, U.S. Cur

Date	Code	User	Judge
5/14/2012	BNDV	DRIVER	Bond Converted (Transaction number 313633 dated 5/14/2012 amount 39.00)
	BNDV	DRIVER	Bond Converted (Transaction number 313634 dated 5/14/2012 amount 61.00)
5/25/2012	ORDR	DRIVER	COPY of Order Vacating Briefing Schedule on Appeal - was signed by Judge Brudie on 5/1/2012
	HRVC	DRIVER	Hearing result for Oral Argument on Appeal scheduled on 07/12/2012 02:00 PM: Hearing Vacated The Court Will Initiate the Call. In Nez Perce County.
6/15/2012	ORDR	DRIVER	Order Scheduling Briefs and Argument - Appellant's brief due 7/30/2012 Respondent's brief due 8/27/2012 Any Reply brief due 9/17/2012
	HRSC	DRIVER	Hearing Scheduled (Oral Argument on Appeal 10/24/2012 03:00 PM) The Court will initiate the call. In Nez Perce County.
7/31/2012	MOTN	DRIVER	Motion for Extension of Time
	BREF	DRIVER	Appellant's Brief
8/2/2012	MOTN	DRIVER	Amended Motion for an Extension of Time and Certification of Counsel in Support
	MISC	DRIVER	Certification of Counsel in Support of Motion for an Extension of Time
8/21/2012	BREF	DRIVER	Respondent's Brief
10/24/2012	HRHD	DRIVER	Hearing result for Oral Argument on Appeal scheduled on 10/24/2012 03:00 PM: Hearing Held The Court will initiate the call. In Nez Perce County.
11/30/2012	OPIN	DRIVER	Opinion and Order on Appeal
	CHJG	DRIVER	Change Assigned Judge
	STAT	DRIVER	STATUS CHANGED: closed
1/11/2013	NOTA	HUMRICH	NOTICE OF APPEAL
		HUMRICH	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Thornton, Valerie (attorney for Cunningham, Michael T Jr) Receipt number: 0484535 Dated: 1/11/2013 Amount: \$109.00 (Credit card) For: Cunningham, Michael T Jr (other party)
		HUMRICH	Filing: Technology Cost - CC Paid by: Thornton, Valerie (attorney for Cunningham, Michael T Jr) Receipt number: 0484535 Dated: 1/11/2013 Amount: \$3.00 (Credit card) For: Cunningham, Michael T Jr (other party)
	BNDV	HUMRICH	Bond Posted - Cash (Receipt 484537 Dated 1/11/2013 for 200.00)
	BNDV	HUMRICH	Bond Posted - Cash (Receipt 484539 Dated 1/11/2013 for 100.00)

Date: 3/4/2013

First Judicial District Court - Bonner County

User: HUMRICH

Time: 10:00 AM

ROA Report

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Case: CV-2011-0000776 Current Judge: Barbara Buchanan

Bonner County Idaho vs. Nine Thousand Fifty Dollars and No Cents, U.S. Cur

Bonner County Idaho vs. Nine Thousand Fifty Dollars and No Cents, U.S. Cur

Date	Code	User	Judge
1/11/2013	APER	HUMRICH	Defendant: Nine Thousand Fifty Dollars and No Cents, U.S. Cur, Appearance Valerie Thornton
	BNVO	HUMRICH	Bond Voided
	BNVO	HUMRICH	Bond Voided
	BNDC	HUMRICH	Bond Posted - Cash (Receipt 484541 Dated 1/11/2013 for 200.00)
	BNDC	HUMRICH	Bond Posted - Cash (Receipt 484542 Dated 1/11/2013 for 100.00)
2/4/2013	CCOA	HUMRICH	Clerk's Certificate Of Appeal - Original mailed to ISC with certified copies of the following; Notice of Appeal, Opinion and Order on Appeal, ROAs, and receipt of civil appeal filing fee.
2/6/2013	MISC	HUMRICH	Clerk's Records due to attorneys 3/6/2013; ISC 4/10/2013.

ORIGINAL

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DISTRICT

2011 MAY -3 A 11: 15

CLERK DISTRICT COURT
DEPUTY

BONNER COUNTY PROSECUTING ATTORNEY

Louis Marshall, ISB#6441
127 S. First Avenue
Sandpoint, ID 83864
(208) 263-6714
Fax: (208) 263-6726

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER
MAGISTRATE COURT

BONNER COUNTY IDAHO,)
by and through Louis E. Marshall,)
Prosecuting Attorney,)
)
Plaintiff,)
vs.)
)
NINE THOUSAND FIFTY DOLLARS)
AND NO CENTS, U. S. CURRENCY,)
)
Defendant.)

Case No. CV-2011- C776

**COMPLAINT IN REM FOR
FORFEITURE UNDER
IDAHO CODE § 37-2744**

For a cause of action against the defendant, Plaintiff avers and alleges as follows:


GENERAL ALLEGATIONS

- I. Plaintiff is the Prosecuting Attorney for Bonner County, Idaho.
- II. Defendant is Nine Thousand Fifty Dollars and No Cents, U. S. Currency.
- III. This Court has jurisdiction in this matter pursuant to Idaho Code § 37-2744(d)(2).
- IV. This Court has venue as the Defendant was seized in Bonner County, Idaho and is now and during the pendency of this action will remain, in Bonner County, Idaho.
- V. That during the warrant search of the residence of **Michael T. Cunningham, Jr.** in Bonner County, Idaho which was conducted by law enforcement officials and disclosed evidence of the manufacture or delivery of marijuana which was seized.
- VI. Defendant Nine Thousand Fifty Dollars and No Cents, U.S. Currency is subject to forfeiture as it was found in close proximity of controlled substances and/or constitutes illicit drug proceeds, in violation of Idaho Code § 37-2744 and the Idaho Controlled Substance Act.

VII. The Defendant property, Nine Thousand Fifty Dollars and No Cents, U. S. Currency, is the property of Michael T. Cunningham, Jr.

WHEREFORE, Plaintiff prays that the Defendant Nine Thousand Fifty Dollars and No Cents, U. S. Currency, be forfeited to the Office of the Prosecuting Attorney of Bonner County, Idaho and that the Plaintiff recovers its costs and disbursements and have such other and further relief as is just and equitable.

DATED this 3 day of May, 2011



LOUIS MARSHALL
Prosecuting Attorney

VERIFICATION

STATE OF IDAHO)
) ss:
County of Bonner)

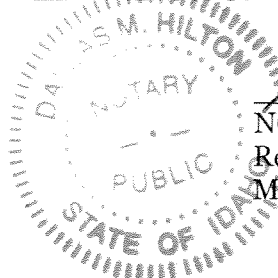

Louis Marshall, Prosecuting Attorney for Bonner County, Idaho, being first duly sworn upon oath, deposes and says:

That I am the Prosecuting Attorney for Bonner County, Idaho, have read the above and foregoing COMPLAINT IN REM FOR FORFEITURE UNDER IDAHO CODE §37-2744, know the contents thereof, and that the statements contained therein are true to the best of my knowledge and belief.



LOUIS MARSHALL
Prosecuting Attorney

SUBSCRIBED AND SWORN to before me this 3 day of May, 2011.

NOTARY PUBLIC FOR STATE OF IDAHO
Residing at Sandpoint
My Commission Expires October 14, 2011

BONNER COUNTY PROSECUTING ATTORNEY

Louis Marshall, ISB#6441
127 S. First Avenue
Sandpoint, ID 83864
(208) 263-6714
Fax: (208) 263-6726

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER
MAGISTRATE COURT

BONNER COUNTY IDAHO,)
by and through Louis E. Marshall,)
Prosecuting Attorney,)
)
Plaintiff,)
vs.)
)
NINE THOUSAND FIFTY DOLLARS)
AND NO CENTS, U. S. CURRENCY,)
)
Defendant.)

Case No. CV-2011- 01716

SUMMONS

TO: MICHAEL T. CUNNINGHAM, 1324 Oak Street, Sandpoint, ID 83864

YOU ARE HEREBY NOTIFIED that in order to defend this lawsuit, an appropriate written response must be filed with the above-designated court within Twenty (20) days after service of this Summons on you, or if by mail, within Twenty (20) days after mailing of this Summons. If you fail to so respond, the Court may enter judgment as demanded by the Plaintiff in the Complaint.

A copy of the Complaint is served with this Summons. If you wish to seek the advice or representation by an attorney in this matter, you should do so promptly so that your written response, if any may be filed in time and other legal rights protected.

An appropriate written response requires compliance with Rule 10(a)(1) and other Idaho Rules of Civil Procedure and shall also include:

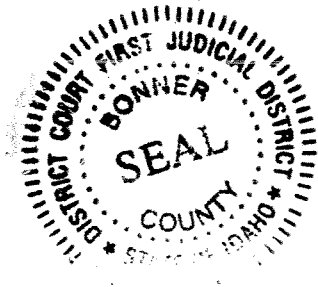
1. The title and number of this case.

2. If your response is an Answer to the Complaint, it must contain admissions or denials of the separate allegations of the Complaint and other defenses you may claim, and must be verified.
3. Your signature, mailing address and telephone number, or the signature, mailing address and telephone number of your attorney.
4. Proof of mailing or delivery of a copy of your response to Plaintiff's attorney, as designated above.

To determine whether you must pay a filing fee with your response, contact the Clerk of the above-named Court.

DATED this 3 day of May, 2011.

CLERK OF THE DISTRICT COURT



By: _____

Deputy Clerk

Gracy B

ORIGINAL

BONNER COUNTY PROSECUTING ATTORNEY

Louis Marshall, ISB#6441
127 S. First Avenue
Sandpoint, ID 83864
(208) 263-6714
Fax: (208) 263-6726

MAY 18 2011
231 MAY 19 P 1:12
MARIE SCOTT
CLERK DISTRICT COURT
DEPUTY *ydy*

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

BONNER COUNTY IDAHO,)
by and through Louis E. Marshall,)
Prosecuting Attorney)

Plaintiff,)

vs.)

NINE THOUSAND FIFTY DOLLARS)
AND NO CENTS, U.S. CURRENCY,)

Defendant.)

Case No. **CV-11-776**

ACCEPTANCE OF SERVICE

STATE OF IDAHO)
):ss
County of Bonner)

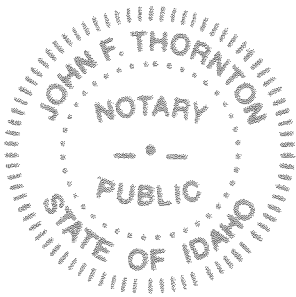
I, Val Thornton, Attorney at Law, attorney for Defendant property owner in this action,
Michael T. Cunningham, Jr., first duly sworn, depose and say that:

1. I acknowledge that I did receive and accept service of the Complaint and Summons of Michael T. Cunningham in the above-named matter effective this 13th day of May, 2011.
2. I further acknowledge that Michael T. Cunningham, Jr. has authorized this acceptance of service.

Val Thornton

VAL THORNTON, Attorney for Defendant Property
Owner, Michael T. Cunningham, Jr.

SUBSCRIBED and **SWORN** to before me, this 13th day of May, 2011.



John F. Thornton
Notary Public for the State of Idaho
Residing at SANDPOINT
My Commission Expires: 6/19/12

VAL THORNTON
Attorney for Defendant
4685 Upper Pack River Rd.
Sandpoint, ID 83864
(208) 263-5017 phone
(208) 255-2327 fax
ISB #6517

2011-2-10 10:07
MARIE SCOTT
CLERK DISTRICT COURT

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

BONNER COUNTY IDAHO,)	
	)	Case No. CV-2011-0776
Plaintiff,)	
v.)	
	)	ANSWER
Nine thousand fifty dollars and no)	
sense, US Currency	)	Fee category: I. 1.
)	
Defendant.	)	Fee: \$58.00

Jury Trial Requested		

Michael T. Cunningham, in Answer to the State's Complaint, demands trial by jury,
and admits, denies, and affirmatively alleges as follows:

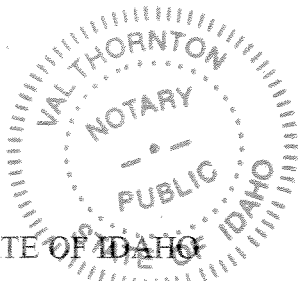
1. Defendant hereby admits paragraph one of Plaintiff's complaint.
2. Defendant hereby admits paragraph two of Plaintiff's complaint.
3. Defendant hereby denies paragraph three of Plaintiff's complaint.
4. Defendant hereby admits paragraph four of Plaintiff's complaint.
5. Defendant hereby denies paragraph five of Plaintiff's complaint.
6. Defendant hereby denies paragraph six of Plaintiff's complaint.
7. Defendant hereby admits paragraph seven of Plaintiff's complaint.

Defendant further affirmatively alleges and defends as follows:

- I That the warrant is void and defective on its face;

- II There was no probable cause for issuance of the warrant;
- III This action is in violation of I.C. § 37-2744 (c)(3).
- IV Defendant further affirmatively alleges defenses of estoppel, laches, waiver, and lack of substantive and procedural due process;
- V. Defendant hereby demands dismissal of the above action pursuant to I.C. 37-2744(c)(3) where proceedings were not instituted within thirty (30) days of the wrongful search and seizure.
- VI. Defendant hereby demands to be awarded statutory costs and attorney fees pursuant to Idaho attorney fee provisions, including but not limited to I.C. § 12-120 and I.C. § 12-121.

DATED this 1st day of June, 2011.



Val Thornton
Val Thornton, Attorney at Law

VERIFICATION

STATE OF IDAHO)
County of Bonner)

I, MIKE CUNNINGHAM, have read the foregoing Answer, and I swear under oath that the allegations contained therein are true and correct to the best of my knowledge and belief.

Mike T. Cunningham
MIKE CUNNINGHAM

SUBSCRIBED AND SWORN TO before me this 1st day of June, 2011.

Val Thornton
Notary Public
Residing in Sandpoint ID
My Commission Expires 6/19/2012

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was delivered as indicated on the 12th day of June, 2011, to:

LOUIS MARSHALL
Courthouse mail
Bonner County Courthouse
127 South First Street
Sandpoint, ID 83864

☒ mailed, postage prepaid,
☐ faxed to (208) 263-6726
☐ hand-delivered

Val Thornton

VAL THORNTON
Attorney for Defendant
4685 Upper Pack River Rd.
Sandpoint, ID 83864
(208) 263-5017 phone
(208) 255-2327 fax
ISB #6517

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2011 JUN -2 A 11: 36

MARIE SCOTT
CLERK DISTRICT COURT

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

BONNER COUNTY IDAHO,)	
	)	Case No. CV-2011-0776
Plaintiff,)	
v.)	
	)	MOTION TO DISMISS,
Nine thousand fifty dollars and no	)	AND FOR I.C. § 12-117
sense, US Currency	)	COSTS AND ATTORNEY FEES
	)	AND NOTICE OF HEARING
Defendant.)	
_____)	

NOTICE OF HEARING

PLEASE TAKE NOTICE that Defendant's Motions to Dismiss is scheduled to be
heard at the Bonner County Courthouse the **20th day of June, 2011, at the hour of**
1:30 o'clock p.m. before the Honorable Barbara Buchanan, Magistrate Judge.

MOTION TO DISMISS

Defendant MIKE CUNNINGHAM hereby demands dismissal of the above action,
as follows:

1. Proceedings were not instituted within thirty (30) days of the wrongful search and seizure, and therefore the court lacks jurisdiction to proceed in forfeiture pursuant to I.C. 37-2744(c)(3).
2. The State does not have basis in fact or in law to prosecute the above entitled forfeiture action.

3. Defendant hereby demands to be awarded statutory costs and attorney fees pursuant to I.C. § 12-117 and Idaho Department of Law Enforcement v. Kluss, 125 Idaho 682, 873 P.2d 1336 (Idaho 1994).

WHEREFORE, IT IS PRAYED,

THAT the court dismiss the above entitled action as untimely; and,

THAT the court award the party in interest, Mike Cunningham, his costs and attorney fees incurred in defending against this action, pursuant to I.C. § 12-117.

DATED this 2nd day of June, 2011.

Val Thornton
Val Thornton, Attorney at Law

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was delivered as indicated on the 2nd day of June, 2011, to:

LOUIS MARSHALL
Courthouse mail
Bonner County Courthouse
127 South First Street
Sandpoint, ID 83864

☐ mailed, postage prepaid,
☒ faxed to (208) 263-6726
☐ hand-delivered

Val Thornton

STATE OF IDAHO
COUNTY OF BONNER
DISTRICT
IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER
MAGISTRATE'S DIVISION

2011 JUN -3 A 9:46

BONNER COUNTY IDAHO, Plaintiff, vs NINE THOUSAND FIFTY DOLLARS, Defendant.	MARIE SCOTT CLERK DISTRICT COURT CASE NO. CV-2011-776 DEPUTY <i>Am</i> NOTICE OF SCHEDULING AND PLANNING CONFERENCE
--	--

NOTICE IS HEREBY GIVEN, that a Scheduling and Planning Conference shall be convened on the 20th of June, 2011 at 1:30 o'clock p. m. in a courtroom of the undersigned Magistrate at the Bonner County Courthouse, Sandpoint, Idaho. Counsel must be present with their calendars and must be prepared to discuss the issues set forth in I.R.C.P. 16(b), which states as follows:

Rule 16(b). Scheduling and planning.

Except in cases exempted by order of the court as inappropriate, the judge or magistrate shall, after consulting with the attorneys for the parties and any unrepresented parties, by a scheduling conference, telephone, mail or other suitable means, enter a scheduling order that limits the time

- (1) to join other parties and to amend the pleadings;
- (2) to file and hear motions; and
- (3) to complete discovery.

The scheduling order also may include


- (4) the date or dates for conferences to review settlement or ADR options;
- (5) the date(s) for other conferences, including a final pretrial conference and trial; and
- (6) any other matters appropriate in the circumstances of the case.

The order shall be issued as soon as practical and, unless it is totally impractical, no more than 180 days after the filing of the complaint. A schedule shall not be modified except by leave of the judge or a magistrate upon a showing of good cause.

The attorneys (or parties not represented by an attorney) shall be in attendance and be prepared to discuss the foregoing. Failure to be available at the time of the conference will result in a scheduling order prepared without consideration for the convenience of the parties or counsel, as well as other sanctions.

The attorneys/parties may not schedule any other hearings or motions on the above-referred date and time.

DATED this 3 day of June 2011.




Barbara A. Buchanan
Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was [] faxed; [X] mailed by me, First Class mail, postage prepaid this 3 day of June, 2011, to:

LOUIS MARSHALL
Bonner County Prosecuting Attorney at Law
Courthouse Mail

VALERIE PARR THORNTON
Attorney at Law
4685 Upper Pack River Rd.
Sandpoint, ID 83864



Deputy Clerk

VAL THORNTON
Attorney for Mike Cunningham
4685 Upper Pack River Rd.
Sandpoint, ID 83864
(208) 263-5017 phone
(208) 255-2327 fax
ISB #6517

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2011 JUN 16 P 4:41

MARIE SCOTT
CLERK DISTRICT COURT

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

BONNER COUNTY IDAHO,)	
	)	Case No. CV-2011-0776
Plaintiff,)	
v.	)	MOTION TO SHORTEN TIME
	)	AND AFFIDAVIT IN SUPPORT
NINE THOUSAND FIFTY DOLLARS	)	OF MIKE CUNNINGHAM'S
U. S. CURRENCY	)	MOTION TO DISMISS
)	
Defendant.)	
_____)	

MIKE CUNNINGHAM, by and through his undersigned counsel, hereby moves the court to shorten time for service of the affidavit in support of his motion to dismiss on the grounds that the State should have the document proving notice of seizure, and the date thereof, filed on the record in the above entitled matter, and the affidavit of counsel is filed concurrently herewith to correct that omission.

AFFIDAVIT

STATE OF IDAHO }
 :SS
County of Bonner }

I, VAL THORNTON, am the attorney for Mike Cunningham, a party in interest in the above entitled matter, and, being first duly sworn upon oath, make the following statements of my own personal knowledge and belief, as follows:

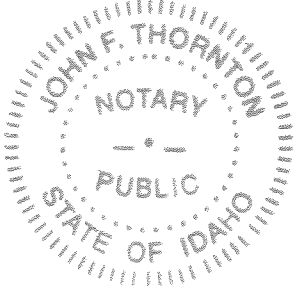
The attached document is a true and correct copy of the Inventory Report of the

Sandpoint Police Department, dated March 30, 2011. Item two of said inventory evidences the seizure of one red Huskey lock box from the floor of the bedroom of said party in interest, which said lock box contained the Defendant Nine Thousand Dollars in U.S. Currency, and which said return constitutes the sole notice provided to the owner and party in interest, Mike Cunningham.

DATED this 16th day of June, 2011.

Val Thornton
Val Thornton, Attorney at Law

SUBSCRIBED AND SWORN TO before me this 16th day of June, 2011.



John F. Thornton
Notary Public
Residing in Sandpoint
My Commission Expires: 6/19/12

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was delivered as indicated on the 16th day of June, 2011, to:

LOUIS MARSHALL
Courthouse mail
Bonner County Courthouse
127 South First Street
Sandpoint, ID 83864

 mailed, postage prepaid,
 faxed to (208) 263-6726
 x hand-delivered

Val Thornton

SANDPOINT POLICE DEPARTMENT

Inventory Report

DATE: 3/30/11

Time: 2130

Case Number 11-004638

Evidence _____

Found Property _____

Safekeeping _____

Cunningham

Michael

Owner Last Name

First Name

Middle

Phone Number

1324 Oak St

Address

From whom seized

Address of seizure

Item	Description	Location Found
001	(2) BROKEN GLASS PIPES	NIGHT STAND BEDROOM
002	RED HUSKEY LOCK BOX	BEDROOM FLOOR
003	LARGE GLASS BOWL	BEDRM CLOSET
	Pill bottle w/ pipe - Danner shoe box	Bedrm Closet
	Multi colored pipe/bag	behind couch
	Samsung flip phone	Coffee table
	Santa tin w/ M/D	refridgerator
	Glass Mason jar w/ smoke	Kitchen drawer
	Bobo Bowl w/ smoke	Kitchen Cabinet
	Grinder Blue Sharp Shiny	
	3 glass pipes on silver tray	
	Small grinder on silver tray	
	Marijuana on silver tray	
	3 ea bong bowls	
	2 ea Glass bongs	
	Jack Daniels tin w/ seeds & bags	
	Tupperware w/ smoke	
	Small metal tin w/ Marijuana	
	Round tin w/ Knife and resin	
	Used bag w/ Marijuana residue in box	
	juicy fruit jar w/ M/D	

Received by: [Signature]

Page 1 of 2

Witnessed by: [Signature]

022

Inventory Report

Case Number 11-004638

Michael

VAL THORNTON
Attorney for Defendant
4685 Upper Pack River Rd.
Sandpoint, ID 83864
(208) 263-5017 phone
(208) 255-2327 fax
ISB #6517

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2011 JUN 16 P 4: 41

MARIE SCOTT
CLERK DISTRICT COURT
DEPUTY

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

BONNER COUNTY IDAHO,)

Plaintiff,)

v.)

NINE THOUSAND FIFTY DOLLARS)
U. S. CURRENCY)

Defendant.)

Case No. CV-2011-0776

NOTICE OF INTENT TO
PRESENT ARGUMENT AND
EVIDENCE IN SUPPORT OF
MOTION TO DISMISS

To: Bonner County Idaho, Bonner County Prosecuting Attorney Louis E. Marshall, and to the clerk of the above entitled court:

PLEASE TAKE NOTICE that, at the time scheduled for hearing of this matter, Mike Cunningham will present argument and evidence in support of his motion to dismiss the above entitled action.

DATED this 16th day of June, 2011.

Val Thornton
Val Thornton, Attorney at Law

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was delivered as indicated on the 16th day of June, 2011, to:

LOUIS MARSHALL

Courthouse mail

Bonner County Courthouse

127 South First Street

Sandpoint, ID 83864

____ mailed, postage prepaid,
☒ faxed to (208) 263-6726
____ hand-delivered

Val Thornton

VAL THORNTON
Attorney for Defendant
4685 Upper Pack River Rd.
Sandpoint, ID 83864
(208) 263-5017 phone
(208) 255-2327 fax
ISB #6517

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2011 JUN 16 P 4:41

MARIE SCOTT
CLERK DISTRICT COURT

DEPUTY

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

BONNER COUNTY IDAHO,)	
	)	Case No. CV-2011-0776
Plaintiff,)	
v.	)	NOTICE OF SERVICE OF
	)	MIKE CUNNINGHAM'S FIRST
NINE THOUSAND FIFTY DOLLARS	)	SET OF INTERROGATORIES,
U. S. CURRENCY	)	REQUESTS FOR ADMISSION,
	)	AND REQUESTS FOR
Defendant.	)	PRODUCTION OF DOCUMENTS

To: Bonner County Idaho, Bonner County Prosecuting Attorney Louis E. Marshall, and to the clerk of the above entitled court:

PLEASE TAKE NOTICE that Mike Cunningham's first set of interrogatories, requests for admission, and requests for production of documents were served via hand delivery to the office of Louis E. Marshall, 127 South First Street, Sandpoint, ID 83864.

DATED this 16th day of June, 2011.

Val Thornton
Val Thornton, Attorney at Law

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was delivered as indicated on the 16th day of June, 2011, to:

LOUIS MARSHALL

Courthouse mail

Bonner County Courthouse

127 South First Street

Sandpoint, ID 83864

☐ mailed, postage prepaid,

☐ faxed to (208) 263-6726

☒ hand-delivered *Ct house mail*

Val Thornton

ORIGINAL

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2011 JUN 17 P 1:22

MARIE SCOTT
CLERK DISTRICT COURT

DEPUTY

BONNER COUNTY PROSECUTING ATTORNEY

Louis Marshall, ISB#6441
127 S. First Avenue
Sandpoint, ID 83864
(208) 263-6714
Fax: (208) 263-6726

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER
MAGISTRATE COURT

BONNER COUNTY IDAHO,)
by and through Louis E. Marshall,)
Prosecuting Attorney,)
)
Plaintiff,)
vs.)
)
NINE THOUSAND FIFTY DOLLARS)
AND NO CENTS, U. S. CURRENCY,)
)
Defendant.)

Case No. **CV-11-776**

**STATE'S OBJECTION TO MOTION TO
DISMISS AND FOR I.C. § 12-117
COSTS AND ATTORNEY FEES**

COMES NOW, Louis E. Marshall, Prosecuting Attorney for Bonner County, Idaho
and objects to the Defendant's Motion to Dismiss for the following reasons:

1. Owner of the Defendant property, Mike Cunningham, by and through his attorney, Val Thornton, filed a Motion to Dismiss and for I.C. § 12-117 Costs and Attorney Fees.
2. Defendant property owner alleges that the court lacks jurisdiction under I.C. § 37-2744(c)(3) as forfeiture proceedings were not filed within thirty (30) days of "wrongful search and seizure." This code section does not apply as a valid search warrant was obtained by Detective Kit Sanger on March 30, 2011 prior

STATE'S OBJECTION TO MOTION TO DISMISS

to the seizure of the Defendant property on the same day. A copy of the search warrant is attached and incorporated herewith.

3. Pursuant to I.C. § 37-2744(c), forfeiture proceedings against property obtained by valid process of law shall be instituted *promptly*. It is the State's position that the failure to file proceedings within thirty (30) days is not a violation of the requirement of promptness as the Complaint in the above named proceeding was filed on May 3, 2011, thirty-four days after the seizure of the property in furtherance of a valid warrant.
4. Finally, pursuant to I.C. § 12-121, costs and attorney fees may be awarded to a prevailing party, but as the owner of the Defendant property has not shown that he has grounds to prevail on his motion to dismiss the forfeiture of the Defendant property, he is not entitled to costs or attorney fees under this section.

It is therefore respectfully requested that the Court deny the Motion to Dismiss and deny the party in interest, Mike Cunningham's, request for costs and attorney fees.

DATED this 16 day of June 2011.



LOUIS E. MARSHALL
Prosecuting Attorney

CERTIFICATE OF DELIVERY

I hereby certify that on the 16th day of June, 2011, I caused to be delivered a true and correct copy of the foregoing document as addressed to the following:

Val Thornton
Attorney at Law
Fax: (208) 255-2327

Dallas Hilton
Legal Assistant

VAL THORNTON
Attorney for Defendant
4685 Upper Pack River Rd.
Sandpoint, ID 83864
(208) 263-5017 phone
(208) 255-2327 fax
ISB #6517

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2011 JUN 17 P 1:15

MARIE SCOTT
CLERK DISTRICT COURT

DEPUTY

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

BONNER COUNTY IDAHO,)	
	)	Case No. CV-2011-0776
Plaintiff,)	
v.	)	BRIEF IN RESPONSE
	)	TO OBJECTION
NINE THOUSAND FIFTY DOLLARS	)	TO MIKE CUNNINGHAM'S
U. S. CURRENCY	)	MOTION TO DISMISS
)	
Defendant.)	
_____)	

MIKE CUNNINGHAM, by and through his undersigned counsel, hereby responds to the State's Objection to Motion to Dismiss and for I.C. § 12-117 Costs and Attorney Fees, hereinafter referred to as "Objection", and submits his brief, as follows:

ISSUES

1. Is the filing of forfeiture proceeding thirty-four days after the seizure of Nine Thousand Fifty Dollars, U.S. Currency a violation of I.C. § 37-2744 that deprives the magistrate court of subject matter jurisdiction?

Brief Answer: Yes, because subsection I.C. § 37-2744(c)(3) contains mandatory language requiring that forfeiture proceedings *shall* be filed within thirty days.

2. Is Mike Cunningham entitled to attorney fees under I. C. § 12-117 and under I. C. § 12-121 in a forfeiture proceeding?

Brief Answer: Yes. I. C. § 12-121 provides for attorney fees where the prosecutor has

acted without basis in fact or in law, and I. C. § 12-117 provides for attorney fees where the prosecutor has acted unreasonably.

STATEMENT OF FACTS

On March 30, 2011, Sandpoint police officers entered the premises of Mike Cunningham under warrant to search for evidence of marijuana and paraphernalia. In the course of said search, a small safe was discovered. An inventory report was left on the door of the home, listing this item as "Item 002; Red Huskey Lock Box; Bedroom Floor." Other items located in the bedroom consisted of "Item 001; (2) Broken glass pipes; Nightstand Bedroom", "Item 003; Large Glass Bong, Bedroom Closet", and "Pill bottle w/pipe - Danner Shoe Box; Bedroom Closet". Other items listed in the inventory report were found elsewhere in the house, and consisted of small containers, small, unmeasured amounts of marijuana and various items of paraphernalia. The safe ultimately was found to contain cash in the amount of \$9050 in U.S. currency. There is no evidence of contraband substances found in close proximity to the money.

On April 3, 2011, thirty-four days after the seizure, Bonner County Prosecutor Louis Marshall filed a complaint for forfeiture of the above referenced monies. Service was accepted May 3, 2011 by counsel for Mike Cunningham, the owner of the property and the party in interest in this matter. His answer was timely filed, and he has moved to dismiss the forfeiture action.

ARGUMENT AND AUTHORITY

1. Is the filing of forfeiture proceedings thirty-four days after the seizure of Nine Thousand Fifty Dollars, U.S. Currency a violation of I.C. § 37-2744 that deprives the magistrate court of subject matter jurisdiction?

Forfeiture of personal property is authorized by I. C. § 37-2744. Subsection (a) of that statute concerns various types of property that is subject to forfeiture. The relevant portion of that subsection, (a)(6)(A), allows forfeiture of currency, "which is found in close proximity to" controlled substances. The issue of whether this currency is actually subject to forfeiture is not the subject of the motion to dismiss, however it is relevant to an award of attorney fees in regard to the matter of the reasonableness of Bonner County in filing the complaint.

Subsection (b) of the statute authorizes seizure incident to an arrest or a search under a search warrant, or without a warrant under various circumstances that need not concern us here. The property in this case, as asserted in the Objection, was seized incident to a search warrant.

(Objection, p.1, LI 8-9.) The Objection cites I.C. § 37-2744(c)(3), which states as follows:

(c) In the event of seizure pursuant to subsection (b) of this section, proceedings under subsection (d) of this section *shall* be instituted promptly.

(1) When property is seized under this section, the director or the peace officer who seized the property may:

(A) Place the property under seal;

(B) Remove the property to a place designated by it; or

(C) Take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(2) The peace officer who seized the property shall within five (5) days notify the director of such seizure.

(3) In the event of seizure pursuant to subsection (b) of this section, *proceedings under subsection (d) of this section shall be instituted within thirty (30) days* by the director or appropriate prosecuting attorney. [emphasis added].

I.C. § 37-2744(c)(3).

In this case, the seizure was incident to subsection (b), and therefore the provisions of subsection (c) apply, including the clause that defines "promptly" to mean "within 30 days". The complaint in this case was not filed within thirty days of the seizure. We leave to another day the matter of whether the director or appropriate prosecuting attorney was informed of the seizure within five days, or whether the property has been placed under seal, or removed to a designated

location. The point is that the prosecutor cannot ignore any of the subsections of the statute, that dictates the procedure to be followed, especially when the statute contains the word *shall*. This has been held and constructed to mean that the language is mandatory, and not the subject of the discretion of the prosecutor.

Defendant's motion cites the case of Idaho Dept. of Law Enforcement v. Kluss, 125 Idaho 682, 873 p.2d 1336 (Idaho 1994) for his authority. In that case, the property seized was real property, and fell within the purview of I.C. 37-2744A, which dictates that forfeiture proceedings of real property must be initiated within ninety days of the notice of seizure. Kluss at 683. Kluss was the party in interest, and he successfully moved to have the case dismissed because the district court lacked subject matter jurisdiction over the forfeiture action. Id. The district court agreed, because the DLE had failed to initiate forfeiture proceedings within ninety days of the notice of seizure. That case was further complicated by the filing of a second notice of seizure, fortunately not an issue here. The Idaho Supreme Court, *en banc*, upheld the decision of the district court, and that decision has not been overturned by any subsequent case.

In this case, the seizure occurred on March 30, 2011. The inventory report was filled out on March 30, 2011. As admitted by the opposition, the forfeiture proceeding was filed thirty-four days after the seizure. (Objection p. 3, L.7.). The failure to file within thirty days constitutes a jurisdictional defect in the forfeiture action, and therefore the case must be dismissed.

2. Is Mike Cunningham entitled to attorney fees under I. C. § 12-117 and under I. C. § 12-121 in a forfeiture proceeding that was filed after the deadline and seeks forfeiture to which the prosecutor would not in any event be entitled?

On appeal of the *Kluss* case, the Idaho Supreme Court, *en banc*, upheld the decision of the district court to award attorney fees, ruling that the award of attorney fees was mandatory

when the department acted without basis in fact or in law. Kluss at 684. The DLE first asserted that attorney fees were not authorized by I. C. § 12-117 on the grounds that the statute only applies to administrative proceedings, and that otherwise the statute would be duplicative of the civil attorney fee provisions contained in I. C. § 12-121. The Supreme Court held that the two statutes, "...are directed at two separate types of litigation, although there may admittedly be some overlap between the provisions." Kluss, at 684.

Similarly, in this case, the prosecutor argues against an award of attorney fees under I. C. § 12-121, and ignores our argument under I. C. § 12-117. (Objection, p.3, L.9). Under I. C. § 12-121, attorney fees are appropriate in civil litigation when "...parties pursue or defend an action frivolously, maliciously or without foundation." Kluss, at 684.

In this case, after the time to initiate proceedings has run, the filing of a complaint for forfeiture over which the court cannot have subject matter jurisdiction, and where the currency in question was not found in close proximity to controlled substances, but only to a couple of items of paraphernalia, should constitute such an action of malice and frivolity. The Idaho Supreme Court has ruled that close proximity to contraband substances alone is insufficient to establish a forfeiture. State ex rel. Rooney v. One 1977 Subaru Two Door, VIN A26L-910, 450 114 Idaho 43, 753 P.2d 254 (Idaho 1988). In *Rooney*, the trial court entered a judgment forfeiting an automobile and \$10,300 U.S. currency, finding that the auto was used to deliver controlled substances, and that the currency was located in close proximity to contraband controlled substances. Rooney at 45. The trial court held that the close proximity to controlled substances created a presumption that the money was subject to forfeiture. Id. The Supreme Court reversed the forfeiture as to the currency, and remanded the matter back to the district court. Id. at 43. It held that the burden of proof for forfeiture was on the state and that forfeiture required two

separate findings: "First, the money must have been found in close proximity to contraband controlled substances; and second, the court must find that the currency 'was used, or intended for use, in violation of this [the Uniform Controlled Substances] act." Id., at 46.

In this case, the money was found in a locked box on the bedroom floor. Items of paraphernalia were located on the nightstand and in the bedroom closet. There is no evidence that controlled substances themselves were located in the locked box, or in close proximity to the locked box, or even anywhere in the bedroom. The amounts of controlled substances seized are not measured, indicating the lack of any significant quantity seized. The complaint does not allege any facts upon which the court may find that trafficking was taking place at the residence. There is no basis in fact or in law for the forfeiture sought. Therefore, Mike Cunningham is entitled to attorney fees under I. C. § 12-121 to recover the expense of having to hire an attorney and defend his property against baseless charges.

However, the court need not find that the prosecutor acted with malice in order to award attorney fees in this matter. Attorney fees are mandatory under I. C. § 12-117 where the state agency did not act with a reasonable basis in fact or in law. Kluss, at 685. In *Kluss*, the DLE argued that the award of attorney fees was an abuse of discretion, and the Supreme Court held that an award of attorney fees under I. C. § 12-117 is not a discretionary statute. Id. The matter was reviewed to determine whether there was substantial and competent evidence to support the court's finding that the state agency acted without a reasonable basis in fact or in law. Id.

The Supreme Court explained that the policy behind I. C. § 12-117 is: "1) to serve as a deterrent to groundless or arbitrary agency action; and 2) to provide a remedy for persons who have borne unfair and unjustified financial burdens defending against groundless charges or attempting to correct mistakes agencies never should ha[ve] made.", citing *Bogner v State Dep't*

of Revenue & Taxation, and *Mooseman v. Idaho Horse Racing Comm'n.* (citations omitted). Kluss, at 685. The district court found that DLE acted without specific statutory authorization, and the Supreme Court agreed. *Id.* Similarly, in this case, Bonner County has acted without specific statutory authorization, and has filed a bogus claim, forcing Mr. Cunningham to defend against a frivolous matter, to undergo substantial expense in defending against the same, and to be at the same time deprived of his means of doing so, as the property seized constituted his life savings.

CONCLUSION

The case should be dismissed for lack of subject matter jurisdiction because it was filed more than thirty days after the money was seized. Mike Cunningham is entitled to discretionary attorney fees under I.C. § 12-121 where the County acted without basis in fact or in law, since the money was not found in close proximity to contraband substances and where there is no evidence that the money was used or intended to be used in violation of the Controlled Substances Act. He is also entitled to mandatory attorney fees under I. C. § 12-117 where the County acted without a reasonable basis in fact or in law.

DATED this 17th day of June, 2011.

Val Thornton
Val Thornton, Attorney at Law

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was delivered as indicated on the 17th day of June, 2011, to:

LOUIS MARSHALL
Courthouse mail
Bonner County Courthouse
127 South First Street
Sandpoint, ID 83864

☐ mailed, postage prepaid,
☐ faxed to (208) 263-6726
☒ hand-delivered

Val Thornton

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

COURT MINUTES

JUDGE: BARBARA A. BUCHANAN CASE NO. CV-2011-0776
DIVISION: MAGISTRATE DATE: JUNE 20, 2011 TIME: 1:30 PM
CLERK: MISSY SECK COURTROOM # 3

STATE OF IDAHO vs NINE THOUSAND FIFTY DOLLARS NO CENTS

Plaintiff / Petitioner

Defendant / Respondent

Atty: LOUIS MARSHALL

Atty: VALERIE THORNTON

SUBJECT OF PROCEEDINGS

SCHEDULING CONFERENCE

MOTION TO DISMISS & ATTORNEY'S FEES & COSTS

CHARGE

INDEX	SPEAKER	PHASE OF CASE
131	J	Calls Case
		PRESENT: LOUIS MARSHALL; VALERIE THORNTON; MS. THORNTON'S CLIENT MICHAEL CUNNINGHAM
	J	MS. THORNTON FILED THE MOTION; I REVIEWED THE PLEADINGS AND BRIEF; I PULLED THE STATUTE
	LM	ASKING WHAT THE COURT IS TAKING INTO CONSIDERATION. 12B IS QUITE LARGE.
	J	JUST THE TIME LINE. THE 30 DAYS.
	VT	YES.
	J	THE ISSUE BEFORE THE COURT IS IF THE 30 DAYS IS ABSOLUTE. COULDN'T FIND A CASE ON POINT. GO AHEAD MS. THORNTON
133	VT	ARGUMENT. CITES CASE LAW SUPPORTING ARGUMENT. FORFEITURE PROCEEDING WAS NOT INITIATED UNTIL 34 DAYS LATER
	J	MR. MARSHALL
139	LM	ARGUMENT AGAINST MOTION TO DISMISS. COMPLAINT SHOULD NOT BE DISMISSED.
	J	I AM GRANTING THE MOTION TO DISMISS. I AGREE, THIS IS VERY ODD. I LOOKED AT THE CASE LAW. RECITES THE STATUTE IN BRINGING THE CASE. IT DOES REFER BACK TO THE 30 DAYS. THERE IS A 1979 CASE DEPT V WILLEY'S JEEP. AGAIN, THE LANGUAGE AGAIN SUGGESTS THAT YOU HAVE TO HAVE A TRIAL WITHIN 30 DAYS.
	J	A LOT OF THESE ADMINISTRATIVE CASES HAVE TIGHT TIME FRAMES.
	J	GRANT MOTION TO DISMISS. ONLY HAVE 30 DAYS TO FILE, AND WE ARE AT 34 DAYS.
	J	ARE YOU ASKING FOR FEES.
	VT	I KNOW I HAVE A TIME FRAME TO RESPOND. CAN THE COURT ADDRESS THAT NOW
	LM	THE STATE WOULD OBJECT.
	J	YOU WANT HER TO FILE HER MEMORANDUM AND THEN YOU CAN RESPOND.
	LM	YES.
	J	OKAY.
	VT	THANK YOU YOUR HONOR
143		END

VAL THORNTON
Attorney for Defendant
4685 Upper Pack River Rd.
Sandpoint, ID 83864
(208) 263-5017 phone
(208) 255-2327 fax
ISB #6517

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2011 JUN 30 P 2:01

MARIE SCOTT
CLERK DISTRICT COURT

DEPUTY

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

BONNER COUNTY IDAHO,)	
	)	Case No. CV-2011-0776
Plaintiff,)	
v.)	
	)	MOTION FOR RETURN OF
NINE THOUSAND FIFTY DOLLARS	)	PROPERTY
U. S. CURRENCY	)	INCLUDING CELL PHONE
	)	AND NOTICE OF HEARING
Defendant.)	
_____)	

NOTICE OF HEARING

PLEASE TAKE NOTICE that Defendant's Motion For Return of Property is
scheduled to be heard the **8th day of August, 2011, at the hour of 2:00 o'clock p.m.**
before the Honorable Barbara Buchanan, Magistrate Judge.

MOTION FOR RETURN OF PROPERTY

Defendant MIKE CUNNINGHAM, by and through his undersigned counsel,
hereby demands return of his property pursuant to I.C.R. 41(e) and I.C. 37-2744(D)(III),
as follows:

1. Defendant's property was seized incident to a search warrant, which is governed by
I. C. R. 41(e). Defendant maintains and alleges as follows:

A) That the existence and possession of life savings do not prove or tend to make
more or less probable any element of the crimes of possession of marijuana or possession

08/30/2011 10:23 200100101

of paraphernalia for which the warrant was issued.

B) That the existence and possession of a cell phone does not prove or tend to make more or less probable any element of the crime of possession of marijuana or possession of paraphernalia for which the warrant was issued.

C) That the warrant was issued on the word of law enforcement who did not have articulable facts substantiating probable cause to believe a crime was being committed, and that therefore the seizure violated defendant's federal and state constitutional rights.

2. The County filed forfeiture proceedings against the \$9050 life savings in the above entitled action, which forfeiture has been dismissed.

3. I. C. R. 41(e) authorizes a motion for return of property under civil proceedings if no criminal action is pending:

...The motion for the return of the property shall be made only in the criminal action if one is pending, but if no action is pending a civil proceedings may be filed in the county where the proeperty is seized or located. The court shall receive evidence on any issue of fact necessary to the decision on the motion. If the motion is granted the property shall be restored and it shall not be admissible in evidence at any hearing or trial...

4. I.C. 27-2744(d)(3)(D)(III) mandates return of the property if the court finds that the property is not subject to forfeiture under the act.

5. Mike Cunningham will further present evidence and argument in support of this motion at the time scheduled for hearing.

WHEREFORE, IT IS PRAYED,

THAT the court order the return of the money and cell phone to the owner of said property, Mike Cunningham, pursuant to I.C. 37-2744(d)(3)(D)(III), and pursuant to I. C. R. 41(e).

06/30/2011 10:13 100100101

THAT the court award the party in interest, Mike Cunningham, his costs and attorney fees incurred in defending against this action, pursuant to I.C. § 12-117, 12-120, 12-121, or, in the alternative, for an evidentiary hearing and an award of costs and attorney fees pursuant to I.C. § 12-123.

DATED this 30th day of June, 2011.

Val Thornton
Val Thornton, Attorney at Law

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was delivered as indicated on the 30th day of June, 2011, to:

LOUIS MARSHALL
Courthouse mail
Bonner County Courthouse
127 South First Street
Sandpoint, ID 83864

☐ mailed, postage prepaid,
☒ faxed to (208) 263-6726
☐ hand-delivered

Val Thornton

VAL THORNTON
Attorney for Defendant
4685 Upper Pack River Rd.
Sandpoint, ID 83864
(208) 263-5017 phone
(208) 255-2327 fax
ISB #6517

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2011 JUN 30 P 4:00

MARIE SCOTT
CLERK DISTRICT COURT
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER
BONNER COUNTY IDAHO,)
)
) **Case No. CV-2011-0776**
)
) **Plaintiff,**)
)
) **v.**)
)
) **NINE THOUSAND FIFTY DOLLARS**)
) **U. S. CURRENCY**) **AMENDED**
) **NOTICE OF HEARING**
) **Defendant.**)

TO: State of Idaho, Bonner County Prosecutor Louis E. Marshall, Sandpoint City
Prosecutor Lori Meulenberg, and to the clerk of the above entitled court.

PLEASE TAKE NOTICE that Defendant's Motion For Return of Property is
scheduled to be heard the **10th day of August, 2011, at the hour of 2:00 o'clock p.m.**
before the Honorable Barbara Buchanan, Magistrate Judge.

DATED this 30th day of June, 2011.

Val Thornton
Val Thornton, Attorney at Law

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was
delivered as indicated on the 30th day of June, 2011, to:

LOUIS MARSHALL Bonner County Prosecutor
faxed to (208) 263-6726

LORI MEULENBERG Sandpoint City Prosecutor
faxed to (208) 255-1368

Val Thornton

OFFICE OF THE CITY ATTORNEY
Scot R. Campbell (ISBN 4121)
Lori Meulenberg (ISBN 4313)
City of Sandpoint
1123 Lake Street
Sandpoint, Idaho 83864
(208) 263-0534
FAX (208) 255-1368

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DISTRICT

2011 JUL -7 P 3:47

MARIE SCOTT
CLERK DISTRICT COURT

DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER
MAGISTRATE DIVISION

STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CV 11-0776
	)	Citation:
-vs-)	
	)	MOTION FOR RETURN OF
	)	PROPERTY
Nine Thousand Fifty Dollars,)	
U.S. Currency)	
Defendant.)	

COMES NOW, the City Attorney, and moves the Court
pursuant to I.C.R. 41(e) and I.C. 37-2744(D)(III), for an
Order returning to Defendant Mike Cunningham his property
including \$9050.00 currency and the cell phone seized
incident to a search warrant.

DATED this 7th day of July, 2011.

Lori T. Meulenberg
Lori Meulenberg
City Attorney

VAL THORNTON
Attorney for Defendant
4685 Upper Pack River Rd.
Sandpoint, ID 83864
(208) 263-5017 phone
(208) 255-2327 fax
ISB #6517

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2011 JUL 28 P 2:05

MARIE SCOTT
CLERK DISTRICT COURT

DEPUTY

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

BONNER COUNTY IDAHO,)	
	)	Case No. CV-2011-0776
Plaintiff,)	
v.	)	AFFIDAVIT IN SUPPORT
	)	OF MOTION TO COMPEL
NINE THOUSAND FIFTY DOLLARS	)	DISCOVERY AND FOR
U. S. CURRENCY	)	REQUESTS FOR ADMISSIONS
	)	TO BE DEEMED ADMITTED
Defendant.)	
<hr/>		
STATE OF IDAHO	}	
	}	
County of Bonner	}	

I, VAL THORNTON, the attorney of record for Mike Cunningham in the above entitled cause of action, hereby swear under oath and make the following statements in support of Mike Cunningham's motion to compel discovery in the above entitled matter:

1. The attached Exhibit One is a true and correct copy of Mike Cunningham's First Set of Interrogatories, Requests for Admissions and Requests for Production of Documents, served upon the Plaintiff, Bonner County Idaho, by and through Bonner County Prosecuting Attorney Louis E. Marshall on June 16, 2011.
2. Plaintiff, Bonner County Idaho, by and through Bonner County Prosecuting Attorney Louis E. Marshall has failed to respond to Mike Cunningham's requests.
3. Counsel for Mike Cunningham has attempted to obtain responses and admissions

AFFIDAVIT IN SUPPORT OF MOTION TO COMPEL DISCOVERY
AND FOR REQUEST FOR ADMISSIONS TO BE DEEMED ADMITTED

PAGE 1

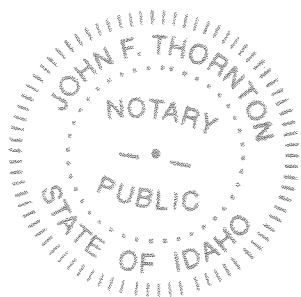
without the need for recourse to the courts, however, Plaintiff, Bonner County Idaho, by and through Bonner County Prosecuting Attorney Louis E. Marshall has also failed to respond to the inquiry of undersigned counsel.

DATED this 27 day of July, 2011.

Val Thornton
VAL THORNTON, Attorney for Plaintiff

SUBSCRIBED and sworn to before me this 27 day of July, 2011.

John F. Thornton
Notary Public for the State of Idaho
Residing in Sandpoint ID
My Commission Expires: 6/19/12



CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was delivered as indicated on the ~~27~~^{28th VT} day of July, 2011, to:

LOUIS MARSHALL

Bonner County Prosecutor
faxed to (208) 263-6726

hand-delivered

LORI MEULENBERG

Sandpoint City Prosecutor
faxed to (208) 255-1368

hand-delivered

Val Thornton

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2011 JUL 28 P 2:05

MARIE SCOTT
CLERK DISTRICT COURT

DEPUTY

Case No. CV-2011-0776

**MOTION TO COMPEL
DISCOVERY AND FOR
REQUESTS FOR ADMISSIONS
TO BE DEEMED ADMITTED
AND NOTICE OF HEARING**

NOTICE OF HEARING

MOTION

PAGE 1

1. Mike Cunningham's motion for return of his property is scheduled to be heard August 10, 2011.

2. Mike Cunningham's First Set of Interrogatories, Requests for Admission, and Requests for Production of Documents, attached to the affidavit filed concurrently herewith in support of this motion and incorporated herein by reference as if set forth in full, were served upon Bonner County Prosecutor Louis E. Marshall, June 16, 2011.

4. State of Idaho, Bonner County Prosecutor Louis E. Marshall, has failed to respond to the above described discovery requests, and Mike Cunningham lacks the information essential to support his motion for return of his property in this case.

5. The affidavit of counsel is filed concurrently herewith in support of this motion.

WHEREFORE, IT IS PRAYED,

1. That the matters contained in Mike Cunningham's requests for admissions be found to have been admitted;

2. That the court Order State of Idaho, Bonner County Prosecutor Louis E. Marshall, to provide true and correct responses to interrogatories and produce evidence as requested;

3. For an award of attorney fees for the cost of bringing this motion, pursuant to I.R.C.P. Rule 37(a)(4);

4. For such other and further relief as the court deems just and proper.

DATED this 28th day of July, 2011.

Val Thornton
Val Thornton, Attorney at Law

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was delivered as indicated on the 27 day of July, 2011, to:

LOUIS MARSHALL

Bonner County Prosecutor
faxed to (208) 263-6726

hand-delivered

LORI MEULENBERG

Sandpoint City Prosecutor
faxed to (208) 255-1368

hand-delivered

Val Thornton

VAL THORNTON
Attorney for Defendant
4685 Upper Pack River Rd.
Sandpoint, ID 83864
(208) 263-5017 phone
(208) 255-2327 fax
ISB #6517

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2011 AUG -1 P 1:14

MARIE SCOTT
CLERK DISTRICT COURT
MS
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER
MAGISTRATE DIVISION

BONNER COUNTY IDAHO,)	
	)	Case No. CV-2011-0776
Plaintiff,)	
v.	)	BRIEF IN SUPPORT OF
	)	MOTION FOR RETURN OF
NINE THOUSAND FIFTY DOLLARS	)	PROPERTY
U. S. CURRENCY	)	INCLUDING CELL PHONE
)	
Defendant.)	
)	

PARTY in interest, Mike Cunningham, by and through his undersigned counsel,
hereby submits his brief in support of his demand for the return of his property pursuant to
I.C.R. 41(e) and I.C. 37-2744(D)(III), as follows:

STATEMENT OF FACTS

Mr. Cunningham's property was seized incident to a search warrant obtained by
Sandpoint City Prosecutor Lori Meulenberg, hereinafter "the City". The warrant states on
its face that the purpose of the search was to discover evidence of possession of marijuana
and of possession of paraphernalia. The search has allegedly resulted in the seizure of
various jars containing negligible amounts of marijuana, and some items of paraphernalia,
including broken pipes and a bong, and a cell phone. Also seized, but not listed in the
warrant, were monies kept in a safe in the amount of \$9,050.00.

To the best of Mr. Cunningham's knowledge and belief, this search warrant was

obtained wrongfully, supported only by an unsubstantiated statement without indicia of reliability. The seizure of the cell phone and Mr. Cunningham's life savings were not supported by the warrant. The issue of the warrant was avoided due to lack of criminal charges that would provide a venue in which to litigate a motion to suppress. Instead, Bonner County Prosecutor Louis E. Marshall, hereinafter "the County", filed forfeiture proceedings against the \$9050 life savings in the above entitled action. The forfeiture proceeding was dismissed, but Mr. Cunningham's property has not been returned, and the County now denies that it is in possession of the monies. The location of the property has not been disclosed, however, it logically follows that the property is in the possession of the Sandpoint Police Department, or of the City. The city also retains possession of the cell phone listed in the warrant. Mr. Cunningham has filed his motion for return of property in the present civil proceeding pursuant to I. C. R. 41(e), and has properly included the City as a party.

ARGUMENT AND AUTHORITY

I. C. R. 41(e) authorizes a motion for return of property under civil proceedings if no criminal action is pending:

A person aggrieved by a search and seizure may move the district court for the return of the property on the ground that the person is entitled to lawful possession of the property and that it was illegally seized. The motion for the return of the property shall be made only in the criminal action if one is pending, but *if no action is pending a civil proceedings may be filed in the county where the property is seized or located*. The court shall receive evidence on any issue of fact necessary to the decision on the motion. If the motion is granted the property shall be restored and it shall not be admissible in evidence at any hearing or trial...

I. C. R. 41(e), emphasis added. In this case, there is no criminal action pending, and the

matter of the monies seized were made the subject of the present forfeiture proceeding, filed by the County pursuant to I. C. § 37-2744.

That statute states, in relevant part:

Property taken or detained under this section shall not be subject to replevin, but is **deemed to be in the custody of the director, or appropriate prosecuting attorney**, subject only to the orders and decrees of the district court, or magistrate's division thereof, having jurisdiction over the forfeiture proceedings...

I. C. § 37-2744(c). By filing a forfeiture proceeding, the County has taken the position that it is the "appropriate prosecuting attorney", therefore the County is the party having custody over the property; however, the County now denies having custody of Mr. Cunningham's monies. In open court at the hearing resulting in the dismissal of the forfeiture proceedings, the County stated that the property was being held as evidence against Mr. Cunningham. However, the monies were never acknowledged to be received by the City, and the warrant only authorized the seizure of property evidencing possession of paraphernalia or marijuana. The existence and possession of life savings, or of a cell phone, do not prove or tend to make more or less probable any element of the crimes of possession of marijuana or possession of paraphernalia for which the warrant was issued. The warrant does not have a case number, and there is no evidence of a warrant return having been filed as required by I. C. § 19-4415:

The officer must forthwith return the warrant to the magistrate, and deliver to him a written inventory of the property taken, ***made publicly or in the presence of the person from whose possession it was taken***, and of the applicant for the warrant, if they are present, verified by the affidavit of the officer at the foot of the inventory, and taken before the magistrate at the time, to the following effect: "I, R.S., the officer by whom this warrant was executed do

swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant."

I. C. § 19-4415. Emphasis added. The warrant receipt further fails to comply with the statute:

When the officer takes property under the warrant, he must give a receipt for the property taken (specifying in detail) to the person from whom it was taken by him, or in whose possession it was found; or in the absence of any person, he must leave it in the place where he found the property.

I. C. § 19-4413. In this case, the warrant receipt lists only a locked safe, without disclosing that the officers broke into the safe and removed the substantial sum of \$9,050.00 U.S. Currency. I. C. § 37-2744, the forfeiture statute under which the County filed, and under which authority the property was required to be placed in the custody of the County, also states:

If the court finds that the property was not used or was not intended to be used in violation of this act, or is not subject to forfeiture under this act, the court shall order the property released to the owner as his right, title, or interest appears on records in the appropriate department as of the seizure.

I. C. § 37-2744(d)(3)(D)(III). In this case, the Court found that the property was not subject to forfeiture because the County failed to file within the required time for filing of forfeiture proceedings. The City and the County are jointly withholding property from Mr. Cunningham that was seized under the guise of the authority granted by the warrant issued by this court March 30, 2011. It is not just or logical to argue that the monies are not in the custody of the "appropriate prosecuting attorney", where the County filed the forfeiture action. Nor is it logical to force Mr. Cunningham to file a separate civil proceeding in order to recover his cell phone from the City, where it is now alleged that

the City is holding the forfeiture Defendant Nine Thousand Fifty Dollars US Currency. Having prevailed in the forfeiture proceeding, Mr. Cunningham is entitled to the return of his property, and neither the City nor the County have grounds to continue to withhold possession from the rightful owner. The City is properly a party where the County now denies having custody of the forfeiture Defendant Nine Thousand Fifty Dollars US Currency, and the issues and factual findings of this court relevant to return of the monies will also determine the issue of the return of the cell phone.

CONCLUSION

Mr. Cunningham's Rule 41(e) motion is proper in this civil proceeding where the Defendant Nine Thousand Fifty Dollars US Currency, is deemed to be in the custody of the County, and the Court has jurisdiction to order the return of the Defendant property. The City is properly a party where the County now states that the City has custody of the forfeiture property, and where the City has always retained custody over the cell phone. The issues determining the right of Mr. Cunningham to possession of his property are identical as regards the cell phone and as regards the forfeiture Defendant Nine Thousand Fifty Dollars US Currency. This Court should find that the seizure was not authorized by the warrant, that the property is not evidence of any criminal act, and that it was and continues to be wrongfully withheld from its rightful owner. The court should hear evidence regarding the current custody of said property, and order the property to be returned by the appropriate prosecuting attorney.

DATED this 15th day of August, 2011.

Val Thornton
Val Thornton, Attorney at Law

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was delivered as indicated on the 3rd day of August, 2011, to:

LOUIS MARSHALL
Bonner County Prosecutor
127 South First Street
Sandpoint, ID 83864

☐ mailed, postage prepaid
☒ faxed to (208) 263-6726
☐ hand-delivered

LORI MEULENBERG
Sandpoint City Prosecutor
1123 Lake Street
Sandpoint, ID 83864

☐ mailed, postage prepaid
☒ faxed to (208) 255-1368
☐ hand-delivered

Val Thornton

OFFICE OF THE CITY ATTORNEY
Lori Meulenberg (ISBN 4313)
Scot Campbell (ISBN 4313)
City of Sandpoint
1123 Lake Street
Sandpoint, Idaho 83864
(208) 263-0534
FAX (208) 255-1368

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DISTRICT

2011 AUG -8 A 9:56

MARIE SCOTT
CLERK DISTRICT COURT

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER
MAGISTRATE DIVISION

STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CV 11-0776
	)	Citation:
-vs-)	
	)	ORDER
Nine Thousand Fifty Dollars)	
US Currency)	
Defendant.)	

A Motion to Return Property in the above matter having
been filed with the Court, and the Court being apprised of
the premises, NOW THEREFORE;

IT IS HEREBY ORDERED that the currency in the amount of
\$9050.00 and cell phone of said owner, Mike Cunningham be
and is hereby released pursuant to I.C.R. 41(e) and
I.C.37-2744(D) (III).

DATED this 8 day of Aug, 2011.

B de Buhl

MAGISTRATE

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing was hand delivered/mailed, postage prepaid, this 8 day of August, 2011, and was addressed to:

Val Thornton
Attorney at Law
4685 Upper Pack River Rd/
Sandpoint, Idaho 83864 *by fax*

Lori Meulenberg
Sandpoint City Attorney
Courthouse Mail
Sandpoint, Idaho 83864 *by fax*

Louis Marshall
Bonner Co. Prosecutor
✓ Courthouse Mail
Sandpoint ID 83864

Susan M. Mueller

VAL THORNTON
Attorney for Defendant
4685 Upper Pack River Rd.
Sandpoint, ID 83864
(208) 263-5017 phone
(208) 255-2327 fax
ISB #6517

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2011 AUG -8 P 2:29

MARIE SCOTT
CLERK DISTRICT COURT
Ann
DEPUTY

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

BONNER COUNTY IDAHO,)	
	)	Case No. CV-2011-0776
Plaintiff,)	
v.	)	NOTICE
)	
NINE THOUSAND FIFTY DOLLARS	)	VACATING HEARING
U. S. CURRENCY)	
)	
Defendant.)	

To: Bonner County Idaho, Prosecuting Attorney Louis Marshall, Sandpoint City Prosecutor Lori Meulenberg, and to the clerk of the above entitled court:

PLEASE TAKE NOTICE that the August 10, 2011, hearings on on Mike Cunningham's motion to compel discovery scheduled to be heard at 1:59 o'clock p.m. and for return of property at 2:00 o'clock p.m., are hereby vacated.

DATED this 8th day of August, 2011.

Val Thornton
Val Thornton, Attorney at Law

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was delivered as indicated on the 8th day of August, 2011, to:

LOUIS MARSHALL
Bonner County Prosecutor
faxed to (208) 263-6726

LORI MEULENBERG
Sandpoint City Prosecutor
faxed to (208) 255-1368

Val Thornton

ORIGINAL

BONNER COUNTY PROSECUTING ATTORNEY

Louis Marshall, ISB#6441
127 S. First Avenue
Sandpoint, ID 83864
(208) 263-6714
Fax: (208) 263-6726

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DISTRICT

2011 AUG 10 P 1:30

MARIE SCOTT
CLERK DISTRICT COURT
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER
MAGISTRATE COURT

BONNER COUNTY IDAHO,
by and through Louis E. Marshall,
Prosecuting Attorney,

Plaintiff,

vs.

**NINE THOUSAND FIFTY DOLLARS
AND NO CENTS, U. S. CURRENCY,**

Defendant.

Case No. **CV-2011-776**

**MOTION FOR ENTRY OF
JUDGMENT**

COMES NOW Plaintiff Bonner County, Idaho, by and through Louis E. Marshall,
Bonner County Prosecuting Attorney, and hereby moves this Court for entry of judgment in
accordance with Idaho Rule of Civil Procedure 54 and Idaho Rule of Civil Procedure 58.

This Court dismissed this case on June 20, 2011, granting a motion to dismiss made by
Claimant Michael Cunningham.

DATED this 7 day of August, 2011.

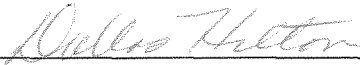


**LOUIS MARSHALL
Prosecuting Attorney**

CERTIFICATE OF DELIVERY

I hereby certify that on the 9th day of August, 2011, I caused to be served a true and correct copy of the foregoing document as addressed by first class mail and facsimile to:

Val Thornton
Attorney at Law
By Facsimile to: 208-255-2327
4685 Upper Pack River Road
Sandpoint, ID 83864



Legal Assistant

ORIGINAL

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DISTRICT
2011 AUG 10 P 1:30

MARIE SCOTT
CLERK DISTRICT COURT
DEPUTY

BONNER COUNTY PROSECUTING ATTORNEY

Louis Marshall, ISB#6441
127 S. First Avenue
Sandpoint, ID 83864
(208) 263-6714
Fax: (208) 263-6726

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER
MAGISTRATE COURT

BONNER COUNTY IDAHO,)
by and through Louis E. Marshall,)
Prosecuting Attorney,)
)
Plaintiff,)
vs.)
)
NINE THOUSAND FIFTY DOLLARS)
AND NO CENTS, U. S. CURRENCY,)
)
Defendant.)

Case No. CV-2011- 0776

SUMMONS

TO: MICHAEL T. CUNNINGHAM, 1324 Oak Street, Sandpoint, ID 83864

YOU ARE HEREBY NOTIFIED that in order to defend this lawsuit, an appropriate written response must be filed with the above-designated court within Twenty (20) days after service of this Summons on you, or if by mail, within Twenty (20) days after mailing of this Summons. If you fail to so respond, the Court may enter judgment as demanded by the Plaintiff in the Complaint.

A copy of the Complaint is served with this Summons. If you wish to seek the advice or representation by an attorney in this matter, you should do so promptly so that your written response, if any may be filed in time and other legal rights protected.

An appropriate written response requires compliance with Rule 10(a)(1) and other Idaho Rules of Civil Procedure and shall also include:

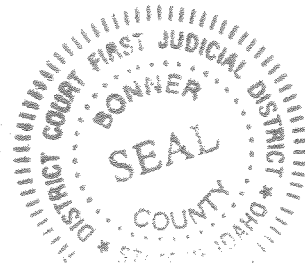
1. The title and number of this case.

2. If your response is an Answer to the Complaint, it must contain admissions or denials of the separate allegations of the Complaint and other defenses you may claim, and must be verified.
3. Your signature, mailing address and telephone number, or the signature, mailing address and telephone number of your attorney.
4. Proof of mailing or delivery of a copy of your response to Plaintiff's attorney, as designated above.

To determine whether you must pay a filing fee with your response, contact the Clerk of the above-named Court.

DATED this 3 day of May, 2011.

CLERK OF THE DISTRICT COURT



By: Gracy B
Deputy Clerk

VAL THORNTON
Attorney for Defendant
4685 Upper Pack River Rd.
Sandpoint, ID 83864
(208) 263-5017 phone
(208) 255-2327 fax
ISB #6517

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DISTRICT

2011 AUG 26 P 2:43

MAINE: 2011
CLERK DISTRICT COURT

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

BONNER COUNTY IDAHO,)

Plaintiff,)

v.)

NINE THOUSAND FIFTY DOLLARS)
U. S. CURRENCY)

Defendant.)

Case No. CV-2011-0776

ORDER DISMISSING
FORFEITURE

AT THE HEARING on Mike Cunningham's motion to dismiss forfeiture, the State of Idaho represented by Louis E. Marshall, Mike Cunningham represented by Val Thornton, the court heard argument and authority, and finds that the forfeiture proceeding was not initiated within thirty days as required by I.C. § 37-2744(c)(3).

NOW THEREFORE, IT IS HEREBY ORDERED,

THAT the above entitled action is hereby dismissed. The matter of costs and attorney fees may be heard upon motion pursuant to the Idaho Rules of Civil Procedure.

DATED this 26 day of August, 2011.



HONORABLE BARBARA BUCHANAN
Magistrate Judge

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was delivered as indicated on the 25 day of August, 2011, to:

LOUIS MARSHALL

Courthouse mail
Bonner County Courthouse
127 South First Street
Sandpoint, ID 83864

☒ mailed, postage prepaid,
☐ faxed to (208) 263-6726
☐ hand-delivered

VAL THORNTON

Attorney at Law
4685 Upper Pack River Rd.
Sandpoint, ID 83864

☒ mailed
☐ faxed to: (208) 255-2327
☐ hand delivered

LORI MEULENBERG

Sandpoint City Prosecutor
1123 Lake Street
Sandpoint, ID 83864

☒ mailed, postage prepaid
☐ faxed to (208) 255-1368
☐ hand-delivered/courthouse mail

Amn

VAL THORNTON
Attorney for Mike Cunningham
4685 Upper Pack River Rd.
Sandpoint, ID 83864
(208) 263-5017 phone
(208) 255-2327 fax
ISB #6517

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2011 SEP -9 P 2:24

MARIE SCOTT
CLERK DISTRICT COURT
MS
DEPUTY

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

BONNER COUNTY IDAHO,)	
	)	Case No. CV-2011-0776
Plaintiff,)	
v.)	
)	
NINE THOUSAND FIFTY DOLLARS	)	MEMORANDUM
U. S. CURRENCY	)	OF COSTS AND FEES
	)	AND AFFIDAVIT OF COUNSEL
Defendant.)	
_____)	

PURSUANT to the court order entered November 12, 2010, to Rule 54(d) and (e)
of the Idaho Rules of Civil Procedure, to Idaho Code §12-121, §12-123, and §12-117,
Defendant submits her memorandum of attorney fees and costs, and affidavit of counsel,
as follows:

STATE OF IDAHO }
 :ss
County of Bonner)

I, Val Thornton, Attorney at Law for Mike Cunningham, interested party in the
above entitled matter, being first duly sworn upon oath, hereby state and make the
following allegations from my own knowledge and belief, as follows:

1. Mike Cunningham has actually and necessarily incurred the following items of
costs defending against forfeiture and obtaining the release of the property in this action,

MEMORANDUM OF COSTS AND ATTORNEY FEES
AND AFFIDAVIT OF COUNSEL

PAGE 1

which items are correct to the best of my knowledge, information and belief, and which are claimed jointly and severally against Defendants Bonner County and City of Sandpoint.

3/31/2011	Documents/printer/copies	\$ 1.40
5/26/2011	Printed case law	\$ 2.60
5/31/2011	Documents/printer/copies	\$.90
6/02/2011	Documents/printer/copies	\$ 1.20
	Filing fee	\$ 52.00
6/15/2011	Documents/printer/copies	\$.80
6/16/2011	Documents/printer/copies	\$ 2.40
6/17/2011	Documents/printer/copies	\$.80
6/21/2011	Documents/printer/copies	\$.20
6/26/2011	Documents/printer/copies	\$.30
7/27/2011	Documents/printer/copies	\$ 5.40
8/01/2011	Documents/printer/copies	\$.60
8/02/2011	Documents/printer/copies	\$.20
8/11/2011	Documents/printer/copies	\$.60
	Envelopes	\$.75
	Postage	\$ 1.32
9/09/2011	Documents/printer/copies	\$ 3.60
<u>TOTAL</u>		<u>\$ 73.17</u>

2. Defendant has actually and necessarily incurred the following reasonable attorney's fees defending against forfeiture and obtaining release of property in this action, which items are correct to the best of my knowledge, information and belief, and which are claimed jointly and severally against Defendants Bonner County and City of Sandpoint:

Date	Description	Time	Fee at \$200/hr
3/21/2011	Client consultation re search and warrant	1.0	\$ 200.00
4/01/2011	Telephone call client	.1	\$ 20.00
	Contract	.1	\$ 20.00
	Authorization to release information	.1	\$ 20.00
	Speak with Lockwood; mail documents	1.5	\$ 300.00
4/05/2011	Courthouse to view file; none filed	1.0	\$ 200.00

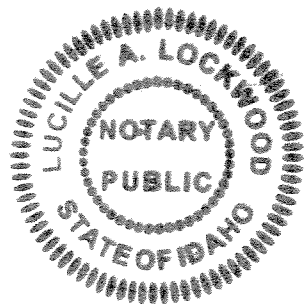
Date	Description	Time	Fee at \$200/hr
4/05/2011	Speak with officer Beers; has money	.2	\$ 40.00
	Telephone call client	.2	\$ 40.00
4/06/2011	Message to client	.1	\$ 20.00
	Telephone call client re wait for filing	.2	\$ 40.00
4/21/2011	Telephone call client	.1	\$ 20.00
5/05/2011	Various calls to and from client	.3	\$ 60.00
	T/c Phyllis Jay re service	.1	\$ 20.00
	T/c Sally Mitchell re service	.1	\$ 20.00
	T/c Phyllis Jay	.1	\$ 20.00
5/06/2011	Telephone call client	.1	\$ 20.00
5/11/2011	Telephone call client; email prosecutor	.2	\$ 40.00
5/26/2011	Forfeiture research	.5	\$ 100.00
5/31/2011	Telephone call client	.1	\$ 20.00
	Draft Answer	.2	\$ 40.00
	Final draft Answer	.2	\$ 40.00
6/01/2011	Client meeting	.3	\$ 60.00
6/02/2011	Motion to Dismiss	1.3	\$ 260.00
	Telephone call clerk; notice hearing; fax	.3	\$ 60.00
6/15/2011	Discovery requests draft	2.0	\$ 400.00
6/16/2011	Discovery final draft; notice; call client	.8	\$ 160.00
	Motion and Affidavit to shorten time	.5	\$ 100.00
	Notice of intent to argue	.2	\$ 40.00
	Received objection to dismiss; research	2.0	\$ 400.00
6/17/2011	Brief in response to objection	4.5	\$ 900.00
	Accounting	.5	\$ 100.00
6/20/2011	Hearing preparation	1.5	\$ 300.00
	Hearing on Motion to Dismiss	1.3	\$ 260.00
6/21/2011	Draft order to Dismiss	.4	\$ 80.00
6/23/2011	Telephone call clerk re hearing date	.1	\$ 20.00
6/29/2011	Received letter Louis Marshall; call client	1.5	\$ 300.00
6/30/2011	Motion return of property; notice hearing	3.0	\$ 600.00
7/05/2011	Telephone call client	.1	\$ 20.00
	Telephone call client	.6	\$ 20.00
	Email Louis Marshall	.7	\$ 140.00
7/26/2011	Case review	.4	\$ 80.00
	Draft affidavit compel discovery	.5	\$ 100.00
7/27/2011	Finished motion to compel	2.5	\$ 500.00
8/01/2011	Brief on motion for return of property	3.0	\$ 600.00
8/08/2011	Received Order to release property	.1	\$ 20.00
	Telephone client	.1	\$ 20.00
8/11/2011	Telephone client received property	.1	\$ 20.00
	Filed proposed Order to Dismiss	.2	\$ 40.00
9/01/2011	Received Order to Dismiss	.1	\$ 20.00

Date	Description	Time	Fee at \$200/hr
9/09/2011	Accounting	1.5	\$ 300.00
	Motion and Memorandum fees and costs	2.6	\$ 520.00
<u>TOTAL</u>			<u>\$ 6,320.00</u>

DATED this 9th day of September, 2011.

Val Thornton
Val Thornton, Attorney at Law

SUBSCRIBED and sworn to before me this 9 day of September, 2011.



Lucille A. Lockwood
Notary Public for the State of Idaho
Residing in Sandpoint
My Commission Expires: 2/12/2016

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was delivered as indicated on the 9th day of September, 2011, to:

LOUIS MARSHALL Bonner County Prosecutor
faxed to (208) 263-6726 - cr. house mail

LORI MEULENBERG Sandpoint City Prosecutor
faxed to (208) 255-1368 - cr. house mail

Val Thornton

VAL THORNTON
 Attorney for Mike Cunningham
 4685 Upper Pack River Rd.
 Sandpoint, ID 83864
 (208) 263-5017 phone
 (208) 255-2327 fax
 ISB #6517

STATE OF IDAHO
 COUNTY OF BONNER
 FIRST JUDICIAL DIST.
 2011 SEP -9 P 2:25
 MARIE SCOTT
 CLERK DISTRICT COURT
 DEPUTY

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

BONNER COUNTY IDAHO,)	
	)	Case No. CV-2011-0776
Plaintiff,)	
v.	)	MOTION
	)	FOR AN AWARD OF
NINE THOUSAND FIFTY DOLLARS	)	ATTORNEY FEES
U. S. CURRENCY)	
)	
Defendant.)	
)	

WHEREAS the Defendant property Nine Thousand Fifty Dollars U.S. Currency, and a certain cell phone also held by the City of Sandpoint, upon motion and hearing was ordered August 8, 2011 to be released to party in interest Mike Cunningham; and whereas judgment was entered dismissing the forfeiture action August 26, 2011; having prevailed in all matters, therefore, party in interest Mike Cunningham, by and through his undersigned counsel, hereby respectfully moves the court pursuant to Rules 54(d) and (e), and Rule 11(a) of the Idaho Rules of Civil Procedure, in accordance with the authority under Idaho Code §12-121, §12-123, and §12-117, for an order awarding him, as the prevailing party in the above entitled action, reasonable costs and attorney fees.

This motion is based upon the documents, affidavits, pleadings and record on file in this matter, as well as the Memorandum of Costs and Fees and Affidavit of Counsel filed concurrently herewith and incorporated by reference herein as if set forth in full.

The party in interest does not request or require to present oral argument unless otherwise necessitated pursuant to Rules 54(d)(6) and 54(d)(6) of the Idaho Rules of Civil Procedure, or if the court schedules an evidentiary hearing pursuant to I.C. §12-123.

WHEREFORE, IT IS PRAYED,

For an award of costs and attorney fees, jointly and severally, against Bonner County and the City of Sandpoint pursuant to Idaho Code §12-121, and §12-117, or, in the alternative, for the court to schedule an evidentiary hearing on attorney fees pursuant to Idaho Code §12-123.

For such other and further relief as the court deems just and proper.

DATED this 9th day of September, 2011.

Val Thornton
Val Thornton, Attorney at Law

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was delivered as indicated on the 9th day of Sept, 2011, to:

LOUIS MARSHALL Bonner County Prosecutor
 Courthouse Mail

LORI MEULENBERG Sandpoint City Prosecutor
 Courthouse Mail

Val Thornton

MARIE SCOTT
CLERK DISTRICT COURT
76
DEPUTY

VAL THORNTON
Attorney for Mike Cunningham
4685 Upper Pack River Rd.
Sandpoint, ID 83864
(208) 263-5017 phone
(208) 255-2327 fax
ISB #6517

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

BONNER COUNTY IDAHO,)	
	)	Case No. CV-2011-0776
Plaintiff,)	
v.)	
	)	AMENDED
NINE THOUSAND FIFTY DOLLARS	)	MEMORANDUM
U. S. CURRENCY	)	OF COSTS AND FEES
	)	AND AFFIDAVIT OF COUNSEL
Defendant.)	
)	

PURSUANT to the court order entered November 12, 2010, to Rule 54(d) and (e) of the Idaho Rules of Civil Procedure, and to Idaho Code §12-121, §12-123, and §12-117, Defendant submits her memorandum of attorney fees and costs, and affidavit of counsel, as follows:

STATE OF IDAHO)
) ss
County of Bonner)

I, Val Thornton, Attorney at Law for Mike Cunningham, interested party in the above entitled matter, being first duly sworn upon oath, hereby state and make the following allegations from my own knowledge and belief, as follows:

1. Mike Cunningham has actually and necessarily incurred the following items of costs defending against forfeiture and obtaining the release of the property in this action,

MEMORANDUM OF COSTS AND ATTORNEY FEES
AND AFFIDAVIT OF COUNSEL

PAGE 1

which items are correct to the best of my knowledge, information and belief, and which are claimed jointly and severally against Defendants Bonner County and City of Sandpoint.

3/31/2011	Documents/printer/copies	\$ 1.40
5/26/2011	Printed case law	\$ 2.60
5/31/2011	Documents/printer/copies	\$.90
6/02/2011	Documents/printer/copies	\$ 1.20
	Filing fee	\$ 52.00
6/15/2011	Documents/printer/copies	\$.80
6/16/2011	Documents/printer/copies	\$ 2.40
6/17/2011	Documents/printer/copies	\$.80
6/21/2011	Documents/printer/copies	\$.20
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7/27/2011	Documents/printer/copies	\$ 5.40
8/01/2011	Documents/printer/copies	\$.60
8/02/2011	Documents/printer/copies	\$.20
8/11/2011	Documents/printer/copies	\$.60
	Envelopes	\$.75
	Postage	\$ 1.32
9/09/2011	Documents/printer/copies	\$ 3.60
<u>TOTAL</u>		<u>\$ 73.17</u>

2. Defendant has actually and necessarily incurred the following reasonable attorney's fees defending against forfeiture and obtaining release of property in this action, which items are correct to the best of my knowledge, information and belief, and which are claimed jointly and severally against Defendants Bonner County and City of Sandpoint:

<u>Date</u>	<u>Description</u>	<u>Time</u>	<u>Fee at \$200/hr</u>
3/21/2011	Client consultation re search and warrant	1.0	\$ 200.00
4/01/2011	Telephone call client	.1	\$ 20.00
	Contract	.1	\$ 20.00
	Authorization to release information	.1	\$ 20.00
	Speak with Lockwood; mail documents	1.5	\$ 300.00
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Date	Description	Time	Fee at \$200/hr
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	T/c Phyllis Jay	.1	\$ 20.00
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5/11/2011	Telephone call client; email prosecutor	.2	\$ 40.00
5/26/2011	Forfeiture research	.5	\$ 100.00
5/31/2011	Telephone call client	.1	\$ 20.00
	Draft Answer	.2	\$ 40.00
	Final draft Answer	.2	\$ 40.00
6/01/2011	Client meeting	.3	\$ 60.00
6/02/2011	Motion to Dismiss	1.3	\$ 260.00
	Telephone call clerk; notice hearing; fax	.3	\$ 60.00
6/15/2011	Discovery requests draft	2.0	\$ 400.00
6/16/2011	Discovery final draft; notice; call client	.8	\$ 160.00
	Motion and Affidavit to shorten time	.5	\$ 100.00
	Notice of intent to argue	.2	\$ 40.00
	Received objection to dismiss; research	2.0	\$ 400.00
6/17/2011	Brief in response to objection	4.5	\$ 900.00
	Accounting	.5	\$ 100.00
6/20/2011	Hearing preparation	1.5	\$ 300.00
	Hearing on Motion to Dismiss	1.3	\$ 260.00
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7/05/2011	Telephone call client	.1	\$ 20.00
	Telephone call client	.6	\$ 20.00
	Email Louis Marshall	.7	\$ 140.00
7/26/2011	Case review	.4	\$ 80.00
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7/27/2011	Finished motion to compel	2.5	\$ 500.00
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	Telephone client	.1	\$ 20.00
8/11/2011	Telephone client received property	.1	\$ 20.00
	Filed proposed Order to Dismiss	.2	\$ 40.00
9/01/2011	Received Order to Dismiss	.1	\$ 20.00

MEMORANDUM OF COSTS AND ATTORNEY FEES
AND AFFIDAVIT OF COUNSEL

PAGE 3

072

Date	Description	Time	Fee at \$200/hr
9/09/2011	Accounting	1.5	\$ 300.00
	Motion and Memorandum fees and costs	2.6	\$ 520.00
TOTAL			\$ 6,820.00

DATED this 12th day of September, 2011.

Val Thornton

Val Thornton, Attorney at Law

SUBSCRIBED and sworn to before me this 12th day of September, 2011.



Elsen M. O'Leary
Notary Public for the State of Idaho

Residing in Bonner County Idaho

My Commission Expires: June 27, 2017

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was delivered as indicated on the 12th day of September, 2011, to:

LOUIS MARSHALL

Bonner County Prosecutor
COURTHOUSE MAIL

LORI MEULENBERG

Sandpoint City Prosecutor
COURTHOUSE MAIL

Val Thornton

VAL THORNTON
Attorney for Mike Cunningham
4685 Upper Pack River Rd.
Sandpoint, ID 83864
(208) 263-5017 phone
(208) 255-2327 fax
ISB #6517

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2011 SEP 12 P 4: 24

MARIE SCOTT
CLERK DISTRICT COURT
MS
DEPUTY

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

BONNER COUNTY IDAHO,)	
	)	Case No. CV-2011-0776
Plaintiff,)	
v.	)	AMENDED
	)	MOTION
NINE THOUSAND FIFTY DOLLARS	)	FOR AN AWARD OF
U. S. CURRENCY	)	ATTORNEY FEES
)	
Defendant.)	
<hr/>		

WHEREAS the Defendant property Nine Thousand Fifty Dollars U.S. Currency, and a certain cell phone also held by the City of Sandpoint, upon motion and hearing was ordered August 8, 2011 to be released to party in interest Mike Cunningham; and whereas judgment was entered dismissing the forfeiture action August 26, 2011; having prevailed in all matters, therefore, party in interest Mike Cunningham, by and through his undersigned counsel, hereby respectfully moves the court pursuant to Rules 54(d) and (e), and Rule 11(a) of the Idaho Rules of Civil Procedure, in accordance with the authority under Idaho Code §12-121, §12-123, and §12-117, for an order awarding him, as the prevailing party in the above entitled action, reasonable costs and attorney fees.

This motion is based upon the documents, affidavits, pleadings and record on file in this matter, as well as the Memorandum of Costs and Fees and Affidavit of Counsel filed concurrently herewith and incorporated by reference herein as if set forth in full.

The party in interest does not request or require to present oral argument unless otherwise necessitated pursuant to Rules 54(d)(6) and 54(e)(6) of the Idaho Rules of Civil Procedure, or if the court schedules an evidentiary hearing pursuant to I.C. §12-123.

WHEREFORE, IT IS PRAYED,

For an award of **\$73.17** costs and **\$6,820.00** attorney fees, jointly and severally, against Bonner County and the City of Sandpoint pursuant to Idaho Code §12-121, and §12-117, or, in the alternative, for the court to schedule an evidentiary hearing on attorney fees pursuant to Idaho Code §12-123.

For such other and further relief as the court deems just and proper.

DATED this 12th day of September, 2011.

Val Thornton
Val Thornton, Attorney at Law

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was delivered as indicated on the 12th day of September, 2011, to:

LOUIS MARSHALL Bonner County Prosecutor
Fax (208) 263-6726

LORI MEULENBERG Sandpoint City Prosecutor
Fax (208) 255-1368

Val Thornton

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2011 SEP 22 P 1:21

MARIE SCOTT
CLERK DISTRICT COURT
DEPUTY

BONNER COUNTY PROSECUTING ATTORNEY

Louis E. Marshall (#6441)

127 S. First Avenue
Sandpoint, ID 83864
(208) 263-6714
Fax: (208) 263-6726

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

BONNER COUNTY, IDAHO, by and through
Louis E. Marshall, Prosecuting Attorney,

Plaintiff,

vs.

**NINE THOUSAND FIFTY DOLLARS AND
NO CENTS, U.S. CURRENCY,**

Defendant.

Case No: **CV-2011-776**

**OBJECTION TO MEMORANDUM OF
COSTS**

COMES NOW Plaintiff, Bonner County, Idaho, by and through Louis E. Marshall, Bonner County Prosecuting Attorney, and hereby objects to attorney's fees and costs submitted by claimant, Mike Cunningham. Said objection is based primarily on the time and labor expended by claimant's counsel for what amounted to be a Rule 12 Motion for failure to file within the applicable time period.

It appears that the claimant is attempting to require Plaintiff to pay for some of the legal defense fees that he has incurred in the underlying criminal case. This, of course, is not proper. Mr. Cunningham has recourse to seek attorney's fees if he is, in fact, acquitted of his criminal charges. Moreover, he also has the ability to file a tort claim and subsequent lawsuit against the City of Sandpoint if he thinks that his rights had been violated or any tort has been committed against him.

OBJECTION TO MEMORANDUM OF COSTS


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The Motion to Dismiss in this matter was granted on June 20, 2011. Counsel for Mr. Cunningham spent considerable time after the Motion had already been granted dealing with discovery issues, telephone calls and other matters. It is unreasonable to expect Bonner County to pay for these services after Mr. Cunningham had already won. Also further bolsters the argument, Mr. Cunningham desires Bonner County to help pay his legal fees in his criminal case.

Wherefore, Plaintiff respectfully requests the Court to disallow a significant amount of attorney's fees and costs generated in defense of the forfeiture action.

DATED this 21 day of September, 2011.



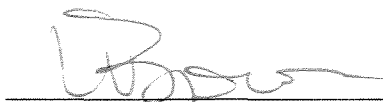
LOUIS E. MARSHALL
Prosecuting Attorney

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was delivered this 21ST day of Sept, 2011, to:

Val Thornton

Attorney at Law
4685 Pack River Road
Sandpoint, ID 83864



Legal Assistant

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2011 SEP 22 P 1:21

MARIE SCOTT
CLERK DISTRICT COURT
DEPUTY

BONNER COUNTY PROSECUTING ATTORNEY

Louis E. Marshall (#6441)

127 S. First Avenue
Sandpoint, ID 83864
(208) 263-6714
Fax: (208) 263-6726

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

BONNER COUNTY, IDAHO, by and through
Louis E. Marshall, Prosecuting Attorney,

Plaintiff,

vs.

**NINE THOUSAND FIFTY DOLLARS AND
NO CENTS, U.S. CURRENCY,**

Defendant.

Case No: **CV-2011-776**

**OBJECTION TO MOTION FOR
ATTORNEY'S FEES**

COMES NOW Bonner County, Idaho, by and through Louis E. Marshall, Bonner County Prosecuting Attorney, and hereby objects to an award of attorney's fees against Plaintiff pursuant to Idaho Code §§12-117 and 12-121.

Idaho Code Sections 12-121 and 12-117 form the basis for an award of attorney fees against a governmental entity. Attorney fees may be awarded under Idaho Code Section 12-121 if the court finds the actions were defended frivolously reasonably or without foundation. In addition, Idaho Code 12-117 provides "unless otherwise provided by statute, in any administrative or civil judicial proceeding involving as adverse parties a state agency, a city, a county, or other taxing district and a person, the court shall award the prevailing party reasonable attorney's fees, witness fees and

OBJECTION TO MOTION FOR ATTORNEY'S FEES

CV-2011-776

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reasonable expenses, if the court finds the party against whom the judgment is rendered acted without some reasonable basis in fact or law.”

The Court has declined to award attorney fees, despite the government's erroneous interpretation of a statute or ordinance. In *Payette River Property Owners Assoc*, the Court stated that the Valley County Board of Commissioners erroneously interpreted its ordinance, but nevertheless “acted in a way that fairly and reasonably addressed the issue.” Further, the Court quoted from the district court's decision, which stated that the “literal language of § 4.02.03(6) (of the Valley County Zoning Ordinance) is unambiguous and does not need interpretation or construction.” *Id.* at 557, 976 P.2d at 483. The Court stated that to adopt the Board's interpretation would require a “stretch of logic unsupported by any section [of] the Ordinance.” *Id.* Despite the Board's erroneous interpretation of its unambiguous ordinance, the Court held “that the district court did not err by denying the Association's request for attorney fees under I.C. § 12-117.” *Id.* at 558, 976 P.2d at 484; *see also Urrutia v. Blaine County*, 134 Idaho 353, 361, 2 P.3d 738, 746(2000) (“Although the Board erred in retroactively applying the 1994 comprehensive plan to the Urrutias [*sic*] subdivision application, the Board did not act without a reasonable basis in fact or law. The Board acted in a way that fairly and reasonably addressed the district judge's instructions on remand.”).

In *Fischer v City of Ketchum*, 141 Idaho 349, 109 P.3d 1091 (2005), this Court overturned the City of Ketchum's approval of a conditional use permit, stating that the city “wholly ignored the provision of its avalanche zone district ordinance requiring the certification by an Idaho licensed engineer ‘prior to the granting of a conditional use permit.’ ” *Fischer*, 141 Idaho at 356, 109 P.3d at 1098. The Court also stated that the city's Planning and Zoning Commission “ignored the plain language of the ordinance” in approving the conditional use permit application. *Id.* Based upon this foundation, the Court ordered the city to pay attorney fees. *See id.* However, the Court found that the

“City wholly ignored the provision of its avalanche zone district ordinance requiring the certification by an Idaho licensed engineer ‘prior to the granting of a conditional use permit’ ” and that the City Planning and Zoning Commission “ignored the plain language of the ordinance.” *Id.*

Additionally, the Court does not order attorney fees when the non-prevailing party's actions, while erroneous, are a reasonable interpretation of an ambiguous statute. For example, in *Idaho Potato Commission v. Russet Valley Produce*, 127 Idaho 654, 659-661, 904 P.2d 566, 571-573 (1995), the Court refused to order the Idaho Potato Commission to pay attorney fees under I.C. § 12-117 even though the Commission's finding that Russet Valley committed two “continuing” violations of rules regarding the use of the “Grown in Idaho” trademark on potatoes was in error. This Court held Russet Valley's interpretation of the relevant statute was the “more reasonable interpretation.” *Id.* at 659, 904 P.2d at 571. The Court refused to order attorney fees because the “Commission's interpretation regarding continuing violations was a ‘reasonable, but erroneous interpretation of an ambiguous statute.’ ” *Id.* at 661, 904 P.2d at 573 (quoting *Cox v. Department of Ins.*, 121 Idaho 143, 148, 823 P.2d 177, 182 (Ct. App. 1991)).

In *Ralph Naylor Farms, LLC v. Latah County*, 144 Idaho 806, 172 P.3d 1081 (2007), the Court looked at an ordinance Latah County had erroneously adopted. The Court reasoned that Latah County's actions, while erroneous, were reasonable because provisions of Local Land Use Planning Act as well as Latah County's Comprehensive Plan gave the county authority over much of the same material that was eventually deemed to be pre-empted by state law.

In the matter at hand, Defendant Nine Thousand Fifty Dollars was seized as part of a valid Search Warrant on March 30, 2011, by law enforcement officers here in Bonner County. At that time the currency was seized as evidence of a criminal act and not seized as part of a forfeiture action. On May 3, 2011, the Office of the Prosecuting Attorney filed a civil forfeiture complaint against the

currency thirty-four (34) days after the seizure of the property pursuant to the Search Warrant. As the court pointed out on the record during the Motion to Dismiss hearing, there is little to no case law in the State of Idaho on this matter concerning interpretation of the relevant statutes. Federal case law is not particularly helpful as well as the statute of limitation for in *rem* Forfeiture proceedings in Federal Court is five (5) years.

Other western States do have case law that is helpful in this matter. In the State of California the statutory scheme governing forfeiture of personal property is substantially similar to Idaho's. In *The People v. Property Listed in Exhibit 1 v. Four Thousand Seven Hundred Three Dollars, U.S. Currency*, 227 Cal.Ct.App.3d 1, 277 Cal.Rep. 672, the Court of Appeals in California addressed this particular issue. In the case the District Attorney's Office failed to comply with the Thirty (30) day time limit on filing Forfeiture Petitions. The lower courts dismissed the Petitions based on the failure to comply with the Thirty (30) day time period for filing. The District Attorney's Office appealed to the Court of Appeals, which reversed the lower court's opinion holding that in determining whether time requirements are intended to divest the court of jurisdiction the courts should focus on the likely consequences of holding the particular time limit to have mandatory instead of directory effect with an eye on whether those consequences would promote or defeat the purpose of the statute.


The California Appeals Court further discussed the purpose of the forfeiture statutes and the legislative intent which is to strip drug dealers of the tools and profits of their illicit trade. The case also discusses a situation where pending criminal proceedings present a similar justification for delay in instituting forfeiture proceedings.

In the case at hand there is a strong argument to be made that there is a distinction between a situation like this where property is taken subject to a Search Warrant and ergo not able to be returned until a judge's order is signed releasing the property; and a situation where civil forfeiture

proceedings are started without property being seized first by Search Warrant. The fact that a civil forfeiture case was initiated against the currency did not prejudice Mr. Cunningham and his potential use of the money because the money was already being lawfully held by the Sandpoint Police Department.

In summary the Court should, in its discretion, deny attorney's fees and costs against Bonner County, as Bonner County did not act without a reasonable basis in law and fact. There is virtually no case law on point here in Idaho and case law in the Federal Courts and other jurisdictions is mixed.

DATED this 21 day of September, 2011.


LOUIS E. MARSHALL
Prosecuting Attorney

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was delivered this 21st day of Sept, 2011, to:

Val Thornton
Attorney at Law
4685 Pack River Road
Sandpoint, ID 83864


Legal Assistant

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C

Court of Appeal, Fifth District, California.
The PEOPLE, Plaintiff and Appellant,

v.

PROPERTY LISTED IN EXHIBIT ONE, Defendant;

Robert Grubb, Defendant and Respondent.
The PEOPLE, Plaintiff and Appellant,

v.

\$4,703.02 U.S. CURRENCY, Defendant;
Kenneth Wayne Reed, Defendant and Respondent.

Nos. F013379, F013805.
Jan. 28, 1991.

Property connected with alleged drug violations was seized by law enforcement officers, notices of nonjudicial forfeiture were served, and claims to the property were filed. After district attorneys filed forfeiture petitions, claimants moved to have petitions dismissed on ground that People failed to comply with 30-day time limit on filing forfeiture petitions. The Superior Courts, Madera and Kern Counties, Edward P. Moffat, II and Lewis E. King, JJ., granted the motions and dismissed petitions. People appealed. The Court of Appeal, Best, P.J., held that State's failure to comply with 30-day time limit for filing petition of forfeiture when claim to property which is subject of nonjudicial forfeiture is timely filed and served did not invalidate subsequent forfeiture proceedings so long as forfeiture petition was filed within one-year statute of limitations.

Reversed.

West Headnotes

[1] Statutes 361 ⚡226

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k226 k. Construction of Statutes Adopted from Other States or Countries. Most Cited Cases

California statute providing for forfeiture of property connected with and proceeds traceable to unlawful drug transactions is patterned after federal statute, and federal case law is accordingly instructive in construing state statute. West's Ann.Cal.Health & Safety Code §§ 11470-11489; Comprehensive Drug Abuse Prevention and Control Act of 1970, § 511, as amended, 21 U.S.C.A. § 881.

[2] Courts 106 ⚡30

106 Courts

106I Nature, Extent, and Exercise of Jurisdiction in General

106k30 k. Loss or Divestiture of Jurisdiction.

Most Cited Cases

Intent to divest court of jurisdiction by time requirements is not read into statute unless that result is expressly provided for or otherwise clearly intended.

[3] Statutes 361 ⚡227

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k227 k. Construction as Mandatory or Directory. Most Cited Cases

In determining whether time requirements are intended to divest court of jurisdiction, court focuses on likely consequences of holding particular time limit to have mandatory instead of directory effect with an eye to whether those consequences would promote or defeat purpose of the statute.

[4] Statutes 361 ⚡227

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k227 k. Construction as Mandatory or Directory. Most Cited Cases

To determine whether time requirement should be given directory or mandatory effect, court must as-

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certain legislative intent.

[5] Statutes 361 ➡ 227

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k227 k. Construction as Mandatory or Directory. Most Cited Cases

In absence of express language, legislative intent with respect to whether time requirement should be given mandatory or directory effect is gathered from terms of statute construed as a whole, from nature and character of act to be done, and from consequences which would follow the doing or failure to do the particular act at the required time; when object is to subserve public purpose, provision may be held directory or mandatory as will best accomplish the purpose.

[6] Forfeitures 180 ➡ 5

180 Forfeitures

180k5 k. Proceedings for Enforcement. Most Cited Cases

State's failure to comply with 30-day time limit for filing petition of forfeiture when claim to property which is subject of nonjudicial forfeiture is timely filed and served did not invalidate subsequent forfeiture proceedings so long as forfeiture petition was filed within one-year statute of limitations. West's Ann.Cal.Health & Safety Code § 11488.4(a, j).

****673 *4** David D. Minier, Dist. Atty., Madera, William F. Mar, Deputy Dist. Atty., John K. Van de Kamp, Atty. Gen., and Gary W. Schons, Deputy Atty. Gen., San Diego, for plaintiff and appellant in No. F013379.

David E. Roberts and Frank Butler, Fresno, for defendant and respondent in No. F013379.

John K. Van de Kamp, Atty. Gen., Gary W. Schons, Deputy Atty. Gen., Edward R. Jagels, Dist. Atty., Kern, and Robin M. Walters, Deputy Dist. Atty., Bakersfield, for plaintiff and appellant in No. F013805.

Chain, Younger, Lemucchi, Cohn & Stiles and Frank

Butkiewicz, Bakersfield, for defendant and respondent in No. F013805.

OPINION

BEST, Presiding Justice.

INTRODUCTION

These consolidated appeals present the novel issue of whether a forfeiture proceeding must be dismissed when the People fail to file a petition of forfeiture within 30 ****674** days after a claim is filed as required by Health and Safety Code section 11488.4, subdivision (j).^{FN1} We conclude the People's failure to comply with subdivision (j)'s 30-day limitation does not invalidate the subsequent proceedings so long as the petition of forfeiture is filed within the 1-year statute of limitations of section 11488.4, subdivision (a).

^{FN1} All statutory references are to the Health and Safety Code unless otherwise indicated.

PROCEDURAL HISTORY

Defendants Reed and Grubb had property connected with alleged drug violations seized by law enforcement officers. Defendants were served with a notice of nonjudicial forfeiture pursuant to section 11488.4, subdivision (j). In response, they filed claims pursuant to section 11488.5, subdivision (a)(1). The district attorneys of the respective counties filed petitions of forfeiture. The petition of forfeiture for Reed's property was filed 37 days after he filed his claim; the petition of forfeiture for Grubb's property was ***5** filed 65 days after he filed his claim. Defendants moved to have the petitions dismissed on the ground the People failed to comply with the 30-day time limitation of section 11488.4, subdivision (j). Neither defendant claimed prejudice as a result of the delay; however, the trial courts granted the motions and dismissed the petitions. The People appeal the dismissals.

DISCUSSION

The Forfeiture Statutes

Sections 11470–11489 set forth a detailed procedure for the seizure of property connected with and proceeds traceable to unlawful drug transactions. Under the statutory scheme, title to the forfeited property vests in the state from the time of the illegal conduct (§ 11470, subd. (h)) subject to the proviso that any person claiming an interest in the property may file a verified claim in superior court within the time

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provided. (§ 11488.5.) (*People v. Fifteen Thousand Two Hundred Seventeen Dollars* (1990) 218 Cal.App.3d 720, 723, 268 Cal.Rptr. 450.)

Section 11488 permits a peace officer, incident or subsequent to making an arrest for specified controlled substance offenses, to seize any item subject to forfeiture.

Section 11488.4 governs the commencement of forfeiture proceedings for moneys or other things of value not automatically made forfeitable under another provision. Subdivisions of that section at issue here provide in pertinent part:

“(a) Except as provided in subdivision (j), if the Department of Justice or the local governmental entity determines that the factual circumstances do warrant that the moneys, ... or other things of value seized or subject to forfeiture come within the provisions of subdivisions (a) to (g), inclusive, of Section 11470, and are not automatically made forfeitable or subject to court order of forfeiture or destruction by another provision of this chapter, the Attorney General or district attorney shall file a petition of forfeiture with the superior court....

“A petition of forfeiture under this subdivision shall be filed within one year of the seizure of the property which is subject to forfeiture....

“...

“(g)(1) No sooner than 10 days after a petition is filed pursuant to Section 11488.4, a claimant, who alleges standing based on an interest in the property*6 which arose prior to the seizure or filing of the petition for forfeiture, whichever occurs first, may move the court for the return of the property named in the claim on the grounds that there is not probable cause to believe that the property is subject to forfeiture pursuant to Section 11470....

“(j) The Attorney General or the district attorney of the county in which the property is subject to forfeiture under Section 11470 may, pursuant to this subdivision, order forfeiture of personal property not exceeding one hundred thousand dollars (\$100,000) in value. The Attorney General or district attorney **675 shall provide notice of pro-

ceedings under this subdivision ... including: ... The instructions for filing a claim with the superior court pursuant to Section 11488.5 and the time limits for filing a claim. If no claims are timely filed, the Attorney General or the district attorney shall prepare a written declaration of forfeiture of the subject property to the state and dispose of the property in accordance with Section 11489....

“If a claim is timely filed and served, then the Attorney General or district attorney shall file a petition of forfeiture pursuant to this section within 30 days of the receipt of the claim. The petition of forfeiture shall then proceed pursuant to other provisions of this chapter, except that no additional notice need be given and no additional claim need be filed.”

Judicial Versus Nonjudicial Forfeiture

[1] Under subdivision (j), if the property is within the jurisdictional amount, the district attorney may declare the property forfeit without a judicial proceeding. This procedure is known as nonjudicial or administrative forfeiture and was enacted to provide forfeiture without court involvement. (Rep. on Assem. Bill No. 4145, Assem. Com. on Pub. Safety, p. 3.) There is a comparable federal procedure. (See e.g., *United States v. United States Currency etc.* (7th Cir.1985) 754 F.2d 208, 211-212.) ^{FN2}

FN2. Because the California forfeiture statute is patterned after the federal statute (21 U.S.C. § 881), federal case law is instructive. (*People v. Fifteen Thousand Two Hundred Seventeen Dollars*, *supra*, 218 Cal.App.3d 720, 724, 268 Cal.Rptr. 450.)

With nonjudicial forfeiture, if the district attorney provides the requisite notice and no claim is filed, the district attorney prepares a written declaration of forfeiture of the subject property to the state and disposes of the property in accordance with section 11489. (§ 11488.4, subd. (j).) The purpose of nonjudicial forfeiture is to save the government the time and expense of a judicial proceeding in cases where the value of the property *7 seized is small. (*United States v. United States Currency etc.*, *supra*, 754 F.2d at p. 211.)

The nonjudicial forfeiture proceeding is terminated, however, if anyone duly submits a claim to the seized property in response to the notice of nonjudicial

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forfeiture. If a claim is filed, the district attorney cannot pursue nonjudicial forfeiture but must initiate a judicial forfeiture proceeding. (Analysis of Assem. Bill No. 4145, Aug. 20, 1986, p. 2; Rep. to Sen. Com. on Judiciary on Assem. Bill No. 4145 as amended Aug. 11, 1986, pp. 3-4; and cf. *United States v. United States Currency etc.*, *supra*, 754 F.2d at p. 212.)

Section 11488.4, subdivision (j) requires the district attorney to file the petition of forfeiture with the court within 30 days of the receipt of the claim. In the cases at bar, the district attorney did not file within the 30-day period.

Effect of Failure to Comply with Subdivision (j)'s Time Limits

In determining the consequences of failure to comply with section 11488.4, subdivision (j)'s time limit, we follow the framework set out by the Supreme Court in *People v. McGee* (1977) 19 Cal.3d 948, 140 Cal.Rptr. 657, 568 P.2d 382.

"Traditionally, the question of whether a public official's failure to comply with a statutory procedure should have the effect of invalidating a subsequent governmental action has been characterized as a question of whether the statute should be accorded 'mandatory' or 'directory' effect. If the failure is determined to have an invalidating effect, the statute is said to be mandatory; if the failure is determined not to invalidate subsequent action, the statute is said to be directory.... [I]n evaluating whether a provision is to be accorded mandatory or directory effect, courts look to the purpose of the procedural requirement to determine whether invalidation is necessary to promote the statutory design." (*Id.* at p. 958, 140 Cal.Rptr. 657, 568 P.2d 382.)

In making the determination, we distinguish between the mandatory versus permissive**676 language analysis and the mandatory versus directive effect analysis. In the former, the term "mandatory" refers to an obligatory procedure which a governmental entity is required to follow as opposed to a permissive procedure which the entity may follow or not as it chooses. By contrast, the "mandatory" or "directory" designation does not refer to whether a particular statutory requirement is "permissive" or "obligatory," but simply denotes whether the failure to comply with the particular procedural step will in-

validate the governmental action at issue. *8 *People v. McGee*, *supra*, 19 Cal.3d at pp. 958-959, 140 Cal.Rptr. 657, 568 P.2d 382.) In this regard, many statutory provisions which are mandatory in the obligatory sense are accorded only directory effect. (*Id.* at p. 959, 140 Cal.Rptr. 657, 568 P.2d 382.)

Thus, the question is not whether the term "shall" in section 11488.4, subdivision (j) is mandatory or permissive, but whether the term "shall" is to be given mandatory or directory effect. If it is directory, the fact that the petition was not filed within 30 days does not invalidate the petition or require dismissal.

[2][3] With respect to time limit statutes, the general rule is that "requirements relating to the time within which an act must be done are directory rather than mandatory or jurisdictional, unless a contrary intent is clearly expressed." (*Edwards v. Steele* (1979) 25 Cal.3d 406, 410, 158 Cal.Rptr. 662, 599 P.2d 1365.) Further, an intent to divest the court of jurisdiction by time requirements is not read into a statute unless that result is expressly provided or otherwise clearly intended. (*Garrison v. Rourke* (1948) 32 Cal.2d 430, 435, 196 P.2d 884.) In making the determination, the court focuses on the likely consequences of holding a particular time limit mandatory, with an eye to whether those consequences would promote or defeat the purpose of the enactment. (*People v. Curtis* (1986) 177 Cal.App.3d 982, 988, 223 Cal.Rptr. 397.)

[4][5] There is no mechanical test for determining whether a provision should be given directory or mandatory effect. However, to make the determination, the court must ascertain the legislative intent. In the absence of express language, the intent is gathered from the terms of the statute construed as a whole, from the nature and character of the act to be done, and from the consequences which would follow the doing or failure to do the particular act at the required time. When the object is to subserve a public purpose, the provision may be held directory or mandatory as will best accomplish the purpose. (*Morris v. County of Marin* (1977) 18 Cal.3d 901, 909-910, 136 Cal.Rptr. 251, 559 P.2d 606.)

[6] Section 11488.4, subdivision (j) is silent on the remedy for violation of its time limits. However, nothing in that subdivision can be read to require, or even suggest, that a timing error must result in the

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dismissal of a forfeiture proceeding.

An analogous forfeiture statute, section 11488.2, which imposes another filing time limit, provides that the seized property is to be returned to the *9 owner if a petition of forfeiture is not filed within 15 days.^{FN3} In *People v. Superior Court (Drummer)* (1988) 200 Cal.App.3d 105, 245 Cal.Rptr. 825, the court rejected an argument, similar to the one made in this case, that failure to file a petition for forfeiture within 15 days of seizure barred the action under section 11488.2. The court noted the statute requires only that the police take prompt steps toward forfeiture if they intend to hold property not needed as evidence. The 15-day period was not a statute of limitations. Rather, the statute of limitations was one year as specified in *Code of Civil Procedure* section 340, subdivision (2) (to enforce a statute prescribing a forfeiture to the state). (*People v. Superior Court (Drummer)*, *supra*, 200 Cal.App.3d at p. 107, 245 Cal.Rptr. 825.) The **677 one-year statute of limitations for filing forfeiture proceedings is now specified in *section 11488.4, subdivision (a)*.

^{FN3} The section provides that within 15 days after the seizure, if the peace officer does not hold the property seized pursuant to section 11488 for evidence or the law enforcement agency which employs the person does not initiate forfeiture proceedings, the officer shall return the property to the owner.

The conclusion that subdivision (j) imposes a 30-day jurisdictional limitation on the filing of a judicial forfeiture proceeding conflicts with subdivision (a)'s 1-year-after-seizure-of-the-property filing period. In construing a statute, "the various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole." (*Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 230, 110 Cal.Rptr. 144, 514 P.2d 1224.) The sections "must be harmonized, both internally and with each other, to the extent possible." (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1387, 241 Cal.Rptr. 67, 743 P.2d 1323.) Therefore, if possible, we must harmonize the one-year and thirty-day time prescriptions of subdivisions (a) and (j).

A conclusion that subdivision (a)'s 1-year filing period provides the jurisdictional time limit does not

render subdivision (j)'s 30-day period meaningless. The effect of the 30-day direction is: if 30 days pass after the filing of a claim and no petition is filed, the nonjudicial forfeiture proceeding terminates. At that time, the owner of the property is entitled to its return because the property is not being held pursuant to a forfeiture proceeding.^{FN4} Further, the time limit can be looked to as providing a starting point for a possible due process inquiry based on delay. (*People v. Echols* (1982) 138 Cal.App.3d 838, 842, 188, Cal.Rptr. 328.)

^{FN4} The fact that an owner is entitled to return of property does not foreclose the initiation of a forfeiture proceeding, however. (*People v. Superior Court (Drummer)* *supra*, 200 Cal.App.3d at pp. 107-108, 245 Cal.Rptr. 825.)

The legislative history of *section 11488.4, subdivision (j)* does not reveal the purpose for the 30-day period. The Attorney General suggests the *10 30-day interval creates a period during which the prosecutor can review the claim and determine whether to proceed with a judicial forfeiture while the property remains in official custody. In this respect, subdivision (j) is the prosecutor's counterpart to section 11488.2 which gives the seizing agency 15 days to refer the matter to the prosecutor for the initiation of forfeiture proceedings. By analogy to the reasoning in *People v. Superior Court (Drummer)*, *supra*, 200 Cal.App.3d 105, 245 Cal.Rptr. 825, subdivision (j) requires only that the prosecutor take prompt steps toward forfeiture if he or she intends to file a judicial forfeiture proceeding after a claim is filed. That construction protects the claimant's due process rights to an expeditious determination of entitlement to the seized property but does not unduly penalize the People for a delay which does not prejudice the claimant.

Both the government and the claimant have an interest in a rule that allows the government some time to investigate the situation to determine whether the facts entitle the government to forfeiture so that, if not, the government can return the property without formal proceedings. (*U.S. v. Eight Thousand Eight Hundred & Fifty Dollars* (1983) 461 U.S. 555, 565, 103 S.Ct. 2005, 2012, 76 L.Ed.2d 143.) Pending criminal proceedings present a similar justification for delay in instituting forfeiture proceedings. A prior or contemporaneous forfeiture proceeding could substantially hamper the criminal proceeding. (*Id.* at p. 567,

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103 S.Ct. at p. 2013; and see § 11488.5, subd. (e) which provides for the continuance of a forfeiture hearing until the related criminal proceeding is resolved.)

Moreover, to construe the 30-day limitation as a mandatory statute of limitations would defeat the legislative intent of the forfeiture statutes which is to strip drug dealers of the tools and profits of their illicit trade. (*People v. Superior Court (Clements)* (1988) 200 Cal.App.3d 491, 499, 246 Cal.Rptr. 122.) The “mandatory” interpretation would permit a drug trafficker to retain his economic base because a prosecutor missed a filing deadline without regard to any prejudice to the trafficker.

In construing another statutory time limitation, the United States Supreme Court recently said:

****678** “There is no presumption or general rule that for every duty imposed upon the court or the government and its prosecutors there must exist some corollary punitive sanction for departures or omissions, even if negligent. [Citation] (‘[M]any statutory requisitions intended for the guide of officers in the conduct of business devolved upon them ... do not limit their power or render its exercise in disregard of the requisitions ineffectual’). In our view, construction of the Act must conform to the ‘“great principle of public policy, applicable to all governments alike, which forbids that the *11 public interests should be prejudiced by the negligence of the officers or agents to whose care they are confided.” ’ [Citations.]” (*U.S. v. Montalvo-Murillo* (1990) — U.S. —, 110 S.Ct. 2072, 2077, 109 L.Ed.2d 720.)

Dwyer v. U.S. (S.D.Cal.1989) 716 F.Supp. 1337, cited by Reed, does not compel a different result. There a car owner moved for return of her vehicle which was seized after her friend used it to transport materials for manufacturing methamphetamine. The applicable statute, entitled “Expedited Procedures For Seized Conveyances,” required the head of the department or agency that seized the car to furnish written notice to the owner of the legal and factual basis of the seizure “[a]t the earliest practical opportunity after determining ownership.” It also required that the government file its forfeiture complaint within 60 days after a claimant has filed his claim and cost bond. If the government does not file its complaint

within the specified time, the conveyance must be returned to the owner and “forfeiture may not take place.” (21 U.S.C. § 881-1(c); *Dwyer v. U.S.*, *supra*, 716 F.Supp. at p. 1339.) The court concluded that it should permanently return the claimant's vehicle in light of the government's unnecessary 62-day delay in sending the seizure notice. (*Id.* at pp. 1339-1340.) *Dwyer* is distinguishable from this case because 21 United States Code section 881-1 specifies that forfeiture is barred if the time limitations are not met; section 11488.4, subdivision (j) does not.

In summary, since nothing in the statute suggests a mandatory effect intent and the likely consequence of holding the time limitation mandatory would defeat rather than promote the purpose of the enactment, section 11488.4, subdivision (j) should be accorded directory rather than mandatory effect. Given this conclusion, the judgments must be reversed.

DISPOSITION

The judgments are reversed.

STONE (Wm. A.) and HARRIS, JJ., concur.

Cal.App. 5 Dist., 1991.
People v. Property Listed In Exhibit One
227 Cal.App.3d 1, 277 Cal.Rptr. 672

END OF DOCUMENT

VAL THORNTON
Attorney for Defendant
4685 Upper Pack River Rd.
Sandpoint, ID 83864
(208) 263-5017 phone
(208) 255-2327 fax
ISB #6517

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2011 OCT 17 A 10:41

NARIE SCOTT
CLERK DISTRICT COURT

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER
MAGISTRATE DIVISION

BONNER COUNTY IDAHO,

Plaintiff,

v.

NINE THOUSAND FIFTY DOLLARS
U. S. CURRENCY

Defendant.

Case No. CV-2011-0776

NOTICE
OF HEARING

To: Bonner County Idaho, Prosecuting Attorney Louis Marshall, Sandpoint City Prosecutor Lori Meulenberg, and to the clerk of the above entitled court:

PLEASE TAKE NOTICE that Mike Cunningham's motion for attorney fees is scheduled to be heard the 23rd day of November, 2011, at the hour of 2:00 o'clock p.m., before the Honorable Barbara Buchanan, Magistrate Judge, at the Bonner County Administration Building.

DATED this 13th day of October, 2011.

Val Thornton
Val Thornton, Attorney at Law

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was delivered as indicated on the 13th day of October, 2011, to:

LOUIS MARSHALL
Bonner County Prosecutor
faxed to (208) 263-6726

LORI MEULENBERG
Sandpoint City Prosecutor
faxed to (208) 255-1368

US mail

Val Thornton

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

COURT MINUTES

JUDGE: BARBARA BUCHANAN
DIVISION: MAGISTRATE
CLERK: SUSAN MUELLER

CASE NO. CV-2011-776
DATE: 11-23-2011 **TIME:** 2:00 PM
CTRM 4

BONNER COUNTY IDAHO

vs NINE THOUSAND FIFTY DOLLARS

Plaintiff / Petitioner

Defendant / Respondent

Atty: LOUIS MARSHALL

Atty: VALERIE THORNTON

**SUBJECT OF PROCEEDINGS
CHARGE**

MOTION FOR ATTORNEY FEES

INDEX	SPEAKER	PHASE OF CASE
2:01	J	Calls Case
		Present: VALERIE THORNTON WITH CLIENT; LOUIS MARSHALL
	J	TIME SCHEDULED FOR MOTION FOR ATTORNEY FEES
	VT	<p>APOLOGIZE TO COURT FOR FILING BRIEF AT NOON TODAY; WISH TO DISPUTE THE PROSECUTION'S OBJECTION TO PAYMENT OF ATTORNEY FEES—GOES OVER HER OBJECTIONS PER CASE LAW AND STATUTE; PROPERTY SHOULD HAVE BEEN RETURNED TO MY CLIENT; CITY SHOULD HAVE TURNED PROPERTY OVER TO COUNTY PROSECUTOR PER STATUTE—AS A RESULT OF THIS PROBLEM BETWEEN CITY AND COUNTY—MY CLIENT INCURRED ADD'L LEGAL FEE AS A RESULT; CITY DID FILE EXPARTE MOTION TO RETURN PROPERTY WHICH I NEVER RECEIVED—NO REASON GIVEN OR WHY IT TOOK SO LONG TO RETURN PROPERTY;</p> <ol style="list-style-type: none"> 1) IDAHO CODE 12-117—WHEN GOVERNMENT AGENCY HAS MADE A MISTAKE-ATTORNEY FEES ARE MANDATORY; 2) NO BASIS FOR COUNTY ACTIONS; IDAHO CODE 12-121 3) ACTIONS OF PROSECUTION —IDAHO CODE 12-123—ASK COURT TO SET ASIDE TIME FOR HEARING-MISCONDUCT OF PROSECUTION
	J	MR MARSHALL?
2:10	LM	<p>NOT AS SIMPLE AS JUST PORTRAYED; THIS MONEY WAS NOT TAKEN AS SEIZURE-RATHER IN A SEARCH WARRANT; WENT BACK TO JURISDICTION WHO TOOK IT-SANDPOINT POLICE DEPARTMENT; NOT MINE TO RETURN; DID QUOTE CASE LAW IN CALIFORNIA WHICH IS SIMILAR TO IDAHO; IF WE HAD GIVEN BACK MONEY IT WOULD HAVE GONE RIGHT BACK INTO SEIZURE; NOT SIMPLE MATTER IN NORMAL TIME STANDARDS; COMPLICATED ISSUE—EXPLAINS; SIGNIFICANT OTHER PROVISIONS 372740-IMMUNITY IN INVESTIGATION OF TORT CLAIMS; BOOT STRAPPING MATTER IN FORFEITURE CASE; CITY OF SANDPOINT IS NOT ENTITY IN THIS MATTER</p> <ol style="list-style-type: none"> 1) ENOUGH GRAY AREA IN IDAHO STATUTE 12-121; CANNOT BRING THOSE FEES INTO THIS CASE; 2) IF COURT DOES GRANT ATTORNEY FEES THEN ASK TO LIMIT FEES TO THIS CASE AND THIS CASE ONLY—NOT CRIMINAL PROCEEDINGS;
	VT	DISAGREE WITH MR MARSHALL'S EXPLANATION OF FORFEITURE PROCEEDING; CALIFORNIA STATUTE IS NOT SIMILAR TO OURS—PAGE 3 OF CALIFORNIA STATUE—READS; EXPLAINS WHY THAT STATUTE IS NOT LIKE

		IDAHO'S AT ALL; SUPREME COURT HAS RULED THAT 30 DAYS IS 30 DAYS; FINALLY HIS BOOTSTRAPPING ARGUMENT DOES NOT APPLY-NOT CONNECTED TO HIS CRIMINAL DEFENSE; TRIED TO SETTLE FOR A SIGNIFICANTLY SMALLER SUM; NOW MY CLIENT HAS INCURRED ATTORNEY FEES ON HIS CRIMINAL CASE WHICH WE ARE NOT ASKING FOR; PURPOSE OF 12-117 STATUTE IS TO PROTECT PEOPLE FROM MISTAKES MADE BY GOVERNMENT ENTITY
2:20	J	BEFORE I MAKE A DECISION I WANT TO REVIEW THE IDAHO STATUTES AGAIN; WILL ISSUE A WRITTEN DECISION WITHIN THE NEXT 30 DAYS;
2:21		END

091

VAL THORNTON
 Attorney for Defendant
 4685 Upper Pack River Rd.
 Sandpoint, ID 83864
 (208) 263-5017 phone
 (208) 255-2327 fax
 ISB #6517

11/23 P 1:43

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER
 MAGISTRATE DIVISION

BONNER COUNTY IDAHO,)	
	)	Case No. CV-2011-0776
Plaintiff,)	
v.	)	BRIEF IN SUPPORT OF
	)	MOTION FOR
NINE THOUSAND FIFTY DOLLARS	)	ATTORNEY FEES
U. S. CURRENCY)	
)	
Defendant.)	
_____)	

STATEMENT OF FACTS

Mr. Cunningham's property was seized incident to a search warrant obtained by Sandpoint City Prosecutor Lori Meulenberg, hereinafter "the City". The warrant states on its face that the purpose of the search was to discover evidence of possession of marijuana and of possession of paraphernalia. The search has allegedly resulted in the seizure of various jars containing negligible amounts of marijuana, and some items of paraphernalia, including broken pipes and a bong, and a cell phone. Also seized, but not listed in the warrant, were monies kept in a safe in the amount of \$9,050.00.

Bonner County Prosecutor Louis E. Marshall, hereinafter "the County", filed forfeiture proceedings against the \$9050 life savings in the above entitled action. The forfeiture proceeding was dismissed, but Mr. Cunningham's property was not returned; the County now denied that it was in possession of the monies, and stated on the record that

the property was being held as evidence by the Sandpoint Police Department, or by the City. The city also retained possession of the cell phone listed in the warrant. Mr. Cunningham was therefore forced to file a second motion for return of property pursuant to I.C.R. 41(e), including the City as a party. Three days prior to the hearing on the matter, and more than four months after Mr. Cunningham's property was first taken from him, the City filed an ex parte motion for release of the property, and the Court entered an Order releasing the property on the grounds stated in Mr. Cunningham's motion.

ISSUES PRESENTED

1. **Mike Cunningham is entitled to an award of attorney fees pursuant to L.C. § 12-117, and under L.C. § 12-121 in a forfeiture proceeding that was filed after the deadline and seeks forfeiture of property of which the prosecutor is not properly in possession, causing the party in interest to litigate further and requiring the participation of two prosecutors in order to get the property back.**
2. **If the court should decline to award attorney fees pursuant to L.C. § 12-121 or pursuant to L.C. § 12-117, a request is made for the court to schedule a time for a hearing on attorney fees under L.C. § 12-123. An evidentiary hearing as contemplated by that statute will reveal information not currently in the court record which will demonstrate that the case was initially filed and thereafter pursued frivolously, unreasonably, and without foundation.**

ARGUMENT AND AUTHORITY

1. **Mike Cunningham is entitled to an award of attorney fees pursuant to L.C. § 12-117, and under L.C. § 12-121 in a forfeiture proceeding that was filed after the deadline and seeks forfeiture of property of which the prosecutor is not properly in**

possession, causing the party in interest to litigate further and requiring the participation of two prosecutors in order to get the property back.

In this case, the forfeiture proceeding was initiated 34 days after the seizure of the subject property, and it was not reasonable for the prosecuting attorney to initiate such proceedings after the time for them had past. The court agreed that the failure to timely initiate proceedings constituted a jurisdictional defect in the forfeiture action, and dismissed the forfeiture. However, the property was not returned.

I. C. § 37-2744, the forfeiture statute under which the County filed, and under which authority the property was required to be placed in the custody of the County, states, in pertinent part:

If the court finds that the property was not used or was not intended to be used in violation of this act, or is not subject to forfeiture under this act, the court shall order the property released to the owner as his right, title, or interest appears on records in the appropriate department as of the seizure.

However, the court was not able to order the return of the property as ordered by the statute, because the County was not in possession of the property. The County stated that the property was being held by the Sandpoint Police Department as evidence. This is in violation of I. C. § 37-2744, which states as follows:

Property taken or detained under this section shall not be subject to replevin, but **is deemed to be in the custody of the director, or appropriate prosecuting attorney**, subject only to the orders and decrees of the district court, or magistrate's division thereof, having jurisdiction over the forfeiture proceedings...

In this case, the prosecuting attorney apparently decided that he was the appropriate prosecuting attorney even though he never received custody of the property for which he sought forfeiture. The City of Sandpoint apparently agreed with the County,

since it failed to file any forfeiture proceedings on its own behalf and apparently authorized the County's action; the City wrongfully retained custody of the property.

Due to the combined actions of the County in filing forfeiture proceedings and of the City in retaining custody of the property sought to be forfeited by the County, Mike Cunningham was forced to endure additional litigation in order to regain possession of his property. He is entitled to an award of attorney fees for all the litigation he was forced to undergo in order to regain custody of his wrongfully withheld property.

The Court should find this case analogous to State ex rel Rooney v. One 1977 Subaru Two Door, VIV A26L-910, 450 114 Idaho 43, 753 P.2d 254 (Idaho 1988). In that case, the trial court entered a judgment forfeiting an automobile and \$10,300 currency, finding that the auto was used to deliver controlled substances, and that the currency was located in close proximity to contraband. Rooney at 45. The Supreme Court reversed; close proximity is insufficient for forfeiture. Id at 46. Here the money was not even close to any contraband, and the court should find that there was no justification for the initiation of forfeiture proceedings. The County acted without any basis in fact or in law, and Mike Cunningham is entitled to attorney fees pursuant to I.C. 12-121 on those grounds.

However, the court need not find that the prosecutors for the County and for the City acted without any basis in order to award attorney fees in this matter. Even if the court believes the prosecutors were acting in good faith, the fact remains that the forfeiture proceeding was not timely, had no legal expectation of success, and therefore was not reasonable, and should never have been initiated. The Idaho Supreme Court, *en banc*, upheld the decision of the district court to award attorney fees, ruling that the award

of attorney fees was mandatory when the department acted without a reasonable basis in fact or in law. Idaho Dept. of Law Enforcement v. Kluss, 125 Idaho 682, 837 p.2d 1336 (Idaho 1994). Similarly, in this case, the department did not have a reasonable basis for its action, yet it retained possession of the property and forced the owner to pursue his remedy in court.

The policy behind I. C. § 12-117 is to "serve as a deterrent to groundless or arbitrary agency action," and to "provide a remedy for persons who have bore unfair and unjustified financial burdens defending against groundless charges or attempting to correct mistakes agencies never should have made." Kluss at 685. It took Mr. Cunningham over four months to regain his money, and he incurred attorney fees of more than six thousand dollars in that effort. He should be compensated for his trouble and the department should be discouraged from litigating unless the proceeding is truly justified.

2. The basis for request for attorney fees under I.C. § 12-123 is that an evidentiary hearing as contemplated by that statute will reveal information not currently in the court record which will demonstrate that the case was initially filed and thereafter pursued frivolously, unreasonably, and without foundation. If the court should decline to award attorney fees pursuant to I.C. § 12-121 or pursuant to I.C. § 12-117, a request is made for the court to schedule a time for a hearing pursuant to I.C. § 12-123.

The basis for a request under I.C. § 12-123 is that an evidentiary hearing will show the court that the prosecutor never had any evidence creating even a rebuttable presumption of forfeiture. The money was found in no proximity to any contraband. There is no evidence of trafficking. Mr. Cunningham will show evidence of coercion,

including threats of criminal prosecution, also unsubstantiated, in the attempt to force Mr. Cunningham to agree to part with at least a portion of his money. The Court should find that the seizure was not authorized by the warrant, that the property is not evidence of any criminal act, and that it was wrongfully withheld from its rightful owner for over four months. The unreasonable conduct of the County in the course of the litigation further justifies an award of attorney fees pursuant to I.C. § 12-123.

CONCLUSION

Mr. Cunningham is entitled to an award of attorney fees pursuant to I.C. § 12-121 where the County and the City both acted jointly, or permitted the County to act, without any basis in fact or in law. Mr. Cunningham is entitled to an award of attorney fees pursuant to I.C. § 12-117 where the County and the City both acted jointly, or permitted the County to act, without a reasonable basis in fact or in law. A motion for attorney fees pursuant to I.C. § 12-123 is proper in this civil proceeding, and the City is properly jointly and severally liable for Mr. Cunningham's attorney fees, where the City retained custody of the forfeiture property.

DATED this 23rd day of November, 2011.

Val Thornton
Val Thornton, Attorney at Law

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was delivered as indicated on the 23rd day of November, 2011, to:

LOUIS MARSHALL
Bonner County Prosecutor
127 South First Street
Sandpoint, ID 83864

☐ mailed, postage prepaid
☒ faxed to (208) 263-6726
☐ hand-delivered

LORI MEULENBERG
Sandpoint City Prosecutor
1123 Lake Street
Sandpoint, ID 83864

☐ mailed, postage prepaid
☒ faxed to (208) 255-1368
☐ hand-delivered

Val Thornton

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER
MAGISTRATE DIVISION

BONNER COUNTY, IDAHO,
by and through Louis E. Marshall,
Prosecuting Attorney

vs.

PLAINTIFF,

NINE THOUSAND FIFTY DOLLARS AND
NO CENTS U.S CURRENCY,

DEFENDANT.

CASE NO. CV-2011-776

ORDER DENYING CLAIMANT'S
MOTION FOR ATTORNEY FEES

THE ABOVE ENTITLED MATTER came on for hearing on the 23rd day of November, 2011 pursuant to claimant Mike Cunningham's motion for an award of attorney fees. Attorney Val Thornton represented Mr. Cunningham. Prosecuting Attorney Louis Marshall represented Bonner County, Idaho. The court heard the arguments of counsel and announced it was taking the matter under advisement to review the authorities cited. The court having reviewed the pleadings, the Idaho forfeiture statute and the legal memoranda filed by counsel, issues the following Order:

I. Statement of Facts

1. This is a forfeiture action initiated under Idaho Code § 37-2744.
2. Bonner County filed this action on May 3, 2011 seeking forfeiture of nine thousand and fifty dollars in cash on the basis that "it was found close proximity of controlled substances and/or constitutes illicit drug proceeds, in violation of Idaho Code § 37-2744 and the Idaho Controlled Substance Act." See Complaint at paragraph VI.
3. The cash was seized on March 30, 2011 during the service of a search warrant.
4. Mr. Cunningham moved to dismiss the forfeiture action on the grounds that it was

ORDER DENYING MOTION FOR ATTORNEY FEES 1

not filed within thirty (30) days of the seizure as required by § 37-2744(c)(3).

5. On August 26, 2011, this court issued a written order granting the motion to dismiss.

6. Thereafter, Cunningham filed the instant motion seeking to recover the costs and attorney fees he expended in securing the dismissal and the return of his funds.

II. Legal Analysis

Cunningham seeks an award of attorney fees under Idaho Code §§ 12-117 and 12-121.

Idaho Code § 12-117 provides for an award of attorney fees against a state agency where a court finds that it “acted without a reasonable basis in fact or law.” Idaho Code § 12-121, as limited by Idaho Rule of Civil Procedure 54(e)(1), allows an award of attorney fees to the prevailing party in a civil case upon a finding that the action was “brought, pursued or defended frivolously, unreasonably or without foundation” I.R.C.P. 54(e)(1).

The court dismissed this action because it interpreted the thirty day language under Idaho Code § 37-2744(c)(3) as mandatory rather than directory. There is no Idaho case law interpreting the section and this appears to be an issue of first impression. The case of *State, Dept. of Law Enforcement v. One Willys Jeep, V.I.N. 573481691*, 100 Idaho 150, 595 P.2d 299 (1979) is instructive on this issue, however, and a careful reading of that decision suggests this court may have erred in dismissing the forfeiture action without first requiring Cunningham to demonstrate substantial prejudice.

The *Willys Jeep* case states that procedural statutes, like I.C. § 37-2744, should be liberally construed to promote a disposition on the merits. 100 Idaho at 154, 595 P.2d at 303. The *Willys Jeep* case involved a provision of I.C. § 37-2744 dealing with the forfeiture of vehicles. The section provides that forfeiture proceedings “shall have priority over other civil

cases.” I.C. §37-2744(d)(1)(D). On appeal, the claimant alleged that the trial court did not set the case ahead of its other civil matters. The Idaho Supreme Court held that the provision was directory not mandatory. “A contrary conclusion would be disruptive to the orderly administration of justice and would impair the flexibility the trial courts must have in setting cases for trial.” *Id.* “Where the prescribed procedure is not the essence of the thing to be accomplished the statute is generally considered directory not mandatory.” *Id.* (citations omitted).

Although this court ultimately ruled that the thirty day limit in I.C. §37-2744 is mandatory, it was not unreasonable for Bonner County to view the provision as directory and to file the forfeiture proceeding 34 days after the seizure. The court could have found the language directory and required a showing of substantial prejudice in order to dismiss the action. The court concludes that Bonner County had a reasonable basis in law to file this action when it did and that it was not brought frivolously, unreasonably or without foundation. Cunningham’s motion for attorney fees under I.C. § 12-117 and 12-121 is denied.

Cunningham requests that if his motion for attorney fees under §§ 12-117 and 12-121 is denied, the court schedule a time for an evidentiary hearing on attorney fees under Idaho Code § 12-123. Idaho Code § 12-123 allows a court to award attorney fees as a sanction in a civil action upon a finding, following an evidentiary hearing, that a party or his counsel has engaged in “frivolous conduct.” Frivolous conduct is defined as conduct that “serves merely to harass or maliciously injure another party” or “is not supported in fact or warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law.” I.C. § 12-123(1)(a).

While there is relatively little case law interpreting Idaho Code § 12-123, the cases that do exist suggest that the standard for awarding fees under the two statutes is similar, if not identical. *See Hanf v. Syringa Realty, Inc.*, 120 Idaho 364, 369, 816 P.2d 320, 325 (1991); *Webster v. Hoopers*, 126 Idaho 96, 99-100, 878 P.2d 795, 799-800 (Ct. App. 1994). The court has already found that there was a legal basis for this action and that Bonner County did not act frivolously. The request for a evidentiary hearing under § 12-123 is denied on the basis that the court has found that the county did not engage in frivolous conduct when it filed this action.

III. Order

NOW THEN IT IS HEREBY ORDERED that claimant's motion for an award of attorney fees is denied for the reasons set forth above.

SO ORDERED this 28 day of November, 2011




Barbara Buchanan
Magistrate Judge

I hereby certify that a true and correct copy of the above was mailed/faxed/hand-delivered to the following this 28 day of Nov, 2011:

Val Thornton
Attorney at Law
4685 Upper Pack River Rd
Sandpoint, ID 83864

Louis Marshall
Prosecuting Attorney
Courthouse Mail
Sandpoint, Idaho 83864


By: Deputy Clerk

ORDER DENYING MOTION FOR ATTORNEY FEES 4

VAL THORNTON
Attorney for Defendant
4685 Upper Pack River Rd.
Sandpoint, ID 83864
(208) 263-5017 phone
(208) 255-2327 fax
ISB #6517

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2012 JAN -9 P 3:57

CLERK DISTRICT COURT
KD
DEPUTY

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

BONNER COUNTY IDAHO,)	
	)	Case No. CV-2011-0776
Plaintiff,)	
v.)	
	)	NOTICE OF APPEAL
Nine thousand fifty dollars and no)	
sense, US Currency	)	Fee category: L. 2.
)	
Defendant.	)	Fee: \$53.00
)	

TO: The State of Idaho, Lewis Marshall, Bonner County Prosecutor and to the Clerk
of the above entitled court:

PLEASE TAKE NOTICE that the party in interest of the above-named defendant
property, hereby appeals against the State of Idaho from the Order Denying Claimant's
Motion for Attorney Fees, entered the 28th day of November, 2011.

The order was received by the undersigned counsel via U.S. mail on December 5,
2011; the appeal is timely and authorized pursuant to Rule 11(c)(3), I.A.R.

This appeal is taken upon both the Findings of Fact and the Conclusions of Law as
set forth in the Order. The preliminary issue on appeal is whether the magistrate erred in
denying Michael C. Cunningham's motion for attorney fees.

The proceedings upon which the Order was based were recorded electronically.
The appellant requests the preparation of the transcript of the hearing on said motion, held
at 2:00 o'clock p.m., November 23, 2011. The recording is in the custody of the court

reporter of the above entitled court.

Appellant requests the usual clerk's record pursuant to Rule 28, and submits his payment of \$100 in lieu of an estimated fee where the clerk has not filed an estimate of the transcript fee.

Service is being made upon all parties required to be served pursuant to Rule 20 I.A.R.

DATED this 9th day of January, 2012.

Val Thornton
Val Thornton, Attorney at Law

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was delivered as indicated on the 9th day of January, 2011, to:

HONORABLE BARBARA BUCHANAN

Magistrate Judge

Courthouse mail

Bonner County Courthouse

127 South First Street

Sandpoint, ID 83864

☐ mailed, postage prepaid,
☐ faxed to (208) 263-6726
☒ hand-delivered

LOUIS MARSHALL

Bonner County Prosecutor

Courthouse mail

Bonner County Courthouse

127 South First Street

Sandpoint, ID 83864

☐ mailed, postage prepaid,
☐ faxed to (208) 263-6726
☒ hand-delivered

CITY OF SANDPOINT

Courthouse mail

Bonner County Courthouse

127 South First Street

Sandpoint, ID 83864

☐ mailed, postage prepaid,
☐ faxed to (208) 263-6726
☒ hand-delivered

Val Thornton

STATE OF IDAHO,
COUNTY OF BONNER,
IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

JAN 20 P 4:16

JANIE SCOTT
CLERK DISTRICT COURT
DEPUTY

BONNER COUNTY IDAHO,

Plaintiff,

vs.

NINE THOUSAND FIFTY DOLLARS
AND NO CENTS, US CURRENCY,


Defendants.

ORDER OF REASSIGNMENT

CV 2011-776

IT IS HEREBY ORDERED that the above matter is reassigned to the Honorable **John R. Stegner**, Administrative District Judge for the Second Judicial District, for the reassignment to a District Judge from the Second Judicial District for all further proceedings. Pursuant to the Idaho Supreme Court Amended Order for Assignment of Judges to the First Judicial District dated November 2, 2011, this reassignment shall be considered an appointment by the Supreme Court pursuant to Idaho Rule of Civil Procedure 40(d)(1)(iii).

DATED this 19th day of January, 2012.


JOHN T. MITCHELL
Administrative District Judge for the
First Judicial District

CERTIFICATE OF MAILING

I hereby certify that on the 20 day of Jan, 2012, a true and correct copy of the foregoing was sent via facsimile, to the following:

Honorable John R. Stegner
Faxed: (208) 883-5719 ✓

Honorable Judge Barbara Buchanan
Faxed: (208) 265-1468 ✓

Louis Marshall
Bonner County Prosecutor
Faxed: (208) 263-6726 ✓

Val Thornton
Faxed: (208) 255-2327 ✓

Judge Verby
208-263-0896

CLIFFORD T. HAYES
CLERK OF THE DISTRICT COURT

By Shirley Clauson
Deputy Clerk

In the Supreme Court of the State of Idaho

ASSIGNMENT OF JUDGES TO THE FIRST
JUDICIAL DISTRICT

)
)
)

AMENDED ORDER

The Court has determined a need for additional judicial assistance in the First Judicial District of the State of Idaho and the assignment of Second Judicial District Judges JEFF BRUDIE, CARL KERRICK, JOHN STEGNER and MICHAEL GRIFFIN is necessary and will promote the efficient administration of justice; therefore,

IT HEREBY IS ORDERED that Judges JEFF BRUDIE, CARL KERRICK, JOHN STEGNER and MICHAEL GRIFFIN be, and hereby are, ASSIGNED to the First Judicial District to preside in any cases as may be assigned to them by the Administrative District Judge with the approval of the Administrative Director of the Courts to conduct all proceedings necessary for their final disposition during the period indicated below:

July 1, 2011 – June 30, 2012


IT FURTHER IS ORDERED that the reporting of any proceeding in the District Court assigned to judges JEFF BRUDIE, CARL KERRICK, JOHN STEGNER and MICHAEL GRIFFIN may be by an electronic recording of the official record in lieu of a court reporter as determined by the Judge.

IT FURTHER IS ORDERED that the assignment of cases in the First Judicial District to Judges JEFF BRUDIE, CARL KERRICK, JOHN STEGNER and MICHAEL GRIFFIN shall be considered appointments by the Supreme Court and that, pursuant to Rule 40(d)(1)(I)(iii) of the Idaho Rules of Civil Procedure, and beginning from the date of this Amended Order, there shall be no right to disqualify these judges without cause in any of the First Judicial District cases to which they are assigned.

IT FURTHER IS ORDERED that a copy of this Order shall be placed in a pro tem judge assignments file to be maintained by the District Court Clerk as a central register of all assignment orders.

DATED this 2nd day of November, 2011.

By Order of the Supreme Court


Roger S. Burdick, Chief Justice

ATTEST:


Stephen W. Kenyon, Clerk

cc: Admin. District Judge Jeff Brudie
Admin. District Judge John Mitchell
Trial Court Administrator Karlene Behringer
~~Hon. Jay Chaskal~~

Hon. Carl Kerrick
Hon. John Stegner
Hon. Michael Griffin
~~Admin. Director of the Courts, Paul Tobias~~

207

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DISTRICT

2012 JAN 23 P 4:37

MARIE SCOTT
CLERK DISTRICT COURT
DEPUTY

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

BONNER COUNTY, IDAHO,

Plaintiff,

vs.

NINE THOUSAND FIFTY DOLLARS
AND NO CENTS, US CURRENCY,

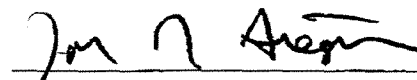
Defendant.

Case No. **CV-2011-776**

ORDER ASSIGNING JUDGE

It is **ORDERED** that Judge Jeff Brudie, whose chambers are located in Lewiston, Idaho, is assigned to preside over all further proceedings in the above-entitled matter.

DATED this 23rd day of January 2012.


John R. Stegner
Administrative District Judge

CERTIFICATE OF SERVICE

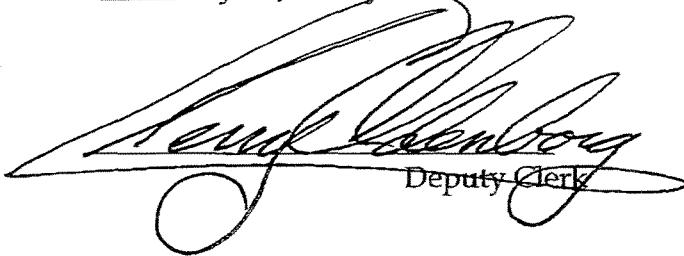
I do hereby certify that a full, true, complete
and correct copy of the foregoing ORDER
ASSIGNING JUDGE was transmitted by facsimile to:

Hon. Jeff Brudie
District Judge
(208) 799-3058

Louis Marshall
Bonner County Prosecutor
(208) 265-1468

Valerie Parr Thornton
Attorney at Law
(208) 355-2327

on this 23rd day of January 2012.


Deputy Clerk

January 30, 2012

Bonner County District Court
Attention: Linda Oppelt

Re: Cases Assigned to Judge Brudie

Linda:

Please send copies of documents in the following cases.

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2012 JAN 30 P 3:08

NAME SUSHI
CLERK DISTRICT COURT

DEPUTY

CV2011-776 Bonner County vs. Nine Thousand Fifty Dollars and No Cents

5-3-2011 Complaint in REM for Forfeiture Under Idaho Code 37-2744
6-2-2011 Answer
8-26-2011 Order Dismissing Forfeiture
11-28-2011 Order Denying Claimant's Motion for Attorney Fees
1-9-2012 Notice of Appeal

CV2010-1534 Frank L. Arnold vs. State of Idaho Transportation Department

8-18-2010 Petition for Review
9-3-2010 Notice of Lodging of Agency Record
9-20-2010 Notice of Filing Agency Record
9-20-2010 Agency Record
10-15-2010 Notice of Filing Supplemental Agency Record
10-15-2010 Transcript Filed – Lifetime CDL Disqualification Hearing of 7-21-10
12-23-2010 Order Staying Appeal
7-15-2011 Order Staying Suspension

****It states documents were sent to Judge Brudie on ROA 10-6-2011 but they were not received****

CV2010-338 Brian Keith Heffling vs. State of Idaho Transportation Department

2-25-2010 Petition for Review
3-1-2010 Order Staying Suspension
3-29-2010 Notice of Filing Agency Record
3-29-2010 Agency Record
6-11-2010 Appeal Brief
7-9-2010 Respondent's Brief

****It states documents were sent to Judge Brudie on ROA 10-6-2011 but they were not received****

Please send documents to: Nez Perce County District Court
Attention: Pam
PO Box 896
Lewiston, ID 83501

Linda Oppelt

From: Pam Schneider [PamSchneider@co.nezperce.id.us]

Sent: Friday, March 16, 2012 1:59 PM

To: Linda Oppelt

Subject: CV11-776 Bonner County vs. Nine Thousand Fifty...

Hi Linda!

STATE OF IDAHO } ss
County of Bonner
FILED 3-16-12
AT 2:00 O'Clock P M
CLERK, DISTRICT COURT
Dept. v

I wanted to let you know that our court reporter Linda Carlton prepared the transcript in this case and we have it here. She said she submitted a bill to Bonner County for payment.

Thanks,

Pam

STATE OF IDAHO
COUNTY OF BONNER
DISTRICT COURT

2012 MAR 20 P 2:58

CLERK OF DISTRICT COURT

FILED 3/20/12 AT
A.M. 2:40 P.M. LEWISTON, IDAHO
BY [Signature]

KD IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

BONNER COUNTY, IDAHO,

Plaintiff,

NINE THOUSAND FIFTY DOLLARS,
AND NO CENTS, US CURRENCY,

Defendant.

CASE NO. CV 11-776

ORDER SCHEDULING BRIEFS
AND ARGUMENT

A transcript of the proceeding from the Magistrate's Division has been filed with this
Court.

THEREFORE, IT IS HEREBY ORDERED:

- 1) Appellant shall file their brief having been filed April 24, 2012.
- 2) Respondent shall file their brief on or before May 23, 2012.
- 3) Reply brief shall be filed on or before June 13, 2012.
- 4) Telephonic Appellate argument shall take place on July 12, 2012, commencing at
the hour of 2:00 p.m. The Court will initiate the call.

DATED this 20 day of March 2012.

[Signature]
JEFF M. BRUDIE - District Judge

ORDER SCHEDULING BRIEFS
AND ARGUMENT

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing ORDER SCHEDULING BRIEFS AND ARGUMENT was

✓ hand delivered via court basket, or faxed ✓

 mailed, postage prepaid, by the undersigned at Lewiston, Idaho, this 20th day of March 2012, to:

Louis Marshall (FAX 208-263-6726)

Valerie Parr Thornton (FAX 208-255-2327)

Clerk of the Court (FAX 208-265-1447)

PATTY O. WEEKS, CLERK

By: [Signature]

Deputy



ORDER SCHEDULING BRIEFS
AND ARGUMENT

VAL THORNTON
 Attorney for Defendant
 4685 Upper Pack River Rd.
 Sandpoint, ID 83864
 (208) 263-5017 phone
 (208) 255-2327 fax
 ISB #6517

STATE OF IDAHO
 COUNTY OF BONNER
 FIRST JUDICIAL DIST.

2012 MAR 21 P 4:46

CLERK DISTRICT COURT

DEPUTY

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

BONNER COUNTY IDAHO,

Plaintiff,

v.

Nine thousand fifty dollars and no
 sense, US Currency

Defendant.

Case No. CV-2011-0776

OBJECTION TO
 BRIEFING SCHEDULE
 ON APPEAL

APPELLANT hereby respectfully objects to the briefing schedule and moves the court to vacate its order pursuant to Rules 83(o) and (p) of the Idaho Rules of Civil Procedure regarding settlement of transcript and record, as follows:

1. Appellant has not received a Notice of Lodging of Transcript.
2. On January 6, 2012, counsel for Appellant received, via U.S. mail, an unsigned copy of a transcript of the proceeding held November 23, 2011. The postmark on the envelope containing the transcript was March 2, 2012.
3. Pursuant to Rule 83(o) of the Idaho Rules of Civil Procedure, Appellant has until 21 days after mailing of the Notice of Lodging of Transcript to object to the content of the transcript. That time has not begun to run, however, Appellant has not had 21 days from the date of receipt of the transcript in which to review the transcript, and was not on notice that time had begun to run in which to file any objection.

4. Pursuant to Rule 83(p) of the Idaho Rules of Civil Procedure, after all parties have had notice and time to object, and the transcript is deemed to be settled, the clerk must file the transcript, the clerks record, and all exhibits with the district court, and give notification to the parties of such filing.

5. Appellant is then permitted 21 days within which to file a motion to augment the record, which Appellant hereby notifies the court that it intends to do, in order for the court to have the benefit of a transcript of the hearing on Defendant's Motion to Dismiss, which was heard at 1:30 o'clock p.m. of June 20, 2011.

WHEREFORE, IT IS PRAYED, THAT the court vacate its order scheduling briefs and argument in order to provide the parties with a meaningful review of the issues involved in this appeal.

DATED this 21st day of March, 2012.

Val Thornton
Val Thornton, Attorney at Law

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was delivered as indicated on the 21st day of March, 2012, to:

HONORABLE JEFF BRUDIE
District Court Judge
Nez Perce County Courthouse
P. O. Box 896
Lewiston, ID 83501

☐ mailed, postage prepaid,
☒ faxed to (208) 799-3058
☐ hand-delivered

LOUIS MARSHALL
Bonner County Prosecutor
Courthouse mail
Bonner County Courthouse
127 South First Street
Sandpoint, ID 83864

☐ mailed, postage prepaid,
☒ faxed to (208) 263-6726
☐ hand-delivered

CITY OF SANDPOINT
Courthouse mail
Bonner County Courthouse
127 South First Street
Sandpoint, ID 83864

☐ mailed, postage prepaid,
☒ faxed to (208) 255-1368
☐ hand-delivered

Val Thornton

VAL THORNTON
Attorney for Defendant
4685 Upper Pack River Rd.
Sandpoint, ID 83864
(208) 263-5017 phone
(208) 255-2327 fax
ISB #6517

STATE OF IDAHO
COUNTY OF BONNER
DIST. 1

2012 MAR 26 P 4:38

CLERK OF DISTRICT COURT

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

BONNER COUNTY IDAHO,)	
	)	Case No. CV-2011-0776
Plaintiff,)	
v.	)	AMENDED OBJECTION
	)	AND MOTION TO VACATE
Nine thousand fifty dollars	)	BRIEFING SCHEDULE
And no cents, US Currency	)	ON APPEAL
)	
<u>Defendant.</u>)	

APPELLANT hereby respectfully objects to the briefing schedule and moves the court to vacate its order pursuant to Rules 83(o) and (p) of the Idaho Rules of Civil Procedure regarding settlement of transcript and record, as follows:

1. Appellant has not received a Notice of Lodging of Transcript.
2. On March 5, 2012, counsel for Appellant received, via U.S. mail, an unsigned copy of a transcript of the proceeding held November 23, 2011. The postmark on the envelope containing the transcript was March 2, 2012. No letter or notification of any kind was included with the transcript.
3. Pursuant to Rule 83(o) of the Idaho Rules of Civil Procedure, Appellant has until 21 days after mailing of the Notice of Lodging of Transcript to object to the content of the transcript.
4. Pursuant to Rule 83(p) of the Idaho Rules of Civil Procedure, after all parties have had notice and time to object, and the transcript is deemed to be settled, the clerk must file

AMENDED OBJECTION TO BRIEFING SCHEDULE

the transcript, the clerks record, and all exhibits with the district court, and give notification to the parties of such filing.

5. Pursuant to Rule 83(q) of the Idaho Rules of Civil Procedure, the parties then have 21 days within which to augment the record.

5. Appellant has requested preparation of the transcript of the hearing on Defendant's motion to dismiss, which was heard at 1:30 o'clock p.m. of June 20, 2011, for the purpose of moving this court to augment the record to include that transcript.

WHEREFORE, IT IS PRAYED, THAT the court vacate its order scheduling briefs and argument in order to provide the parties with the opportunity to augment the record and to properly inform the court of the issues involved in this appeal.

DATED this 26th day of March, 2012.

Val Thornton
Val Thornton, Attorney at Law

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was delivered as indicated on the 26th day of March, 2012, to:

HONORABLE JEFF BRUDIE

District Court Judge

Nez Perce County Courthouse

P. O. Box 896

Lewiston, ID 83501

☐ mailed, postage prepaid,
☒ faxed to (208) 799-3058
☐ hand-delivered

LOUIS MARSHALL

Bonner County Prosecutor

Courthouse mail

Bonner County Courthouse

127 South First Street

Sandpoint, ID 83864

☐ mailed, postage prepaid,
☒ faxed to (208) 263-6726
☐ hand-delivered

CITY OF SANDPOINT

Courthouse mail

Bonner County Courthouse

127 South First Street

Sandpoint, ID 83864

☐ mailed, postage prepaid,
☒ faxed to (208) 255-1368
☐ hand-delivered

Val Thornton

VAL THORNTON
Attorney for Defendant
4685 Upper Pack River Rd.
Sandpoint, ID 83864
(208) 263-5017 phone
(208) 255-2327 fax
ISB #6517

STATE OF IDAHO
COUNTY OF BONNER
JUDICIAL DIST.

2012 MAR 26 P 4:38

CLERK DISTRICT COURT

KD

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

BONNER COUNTY IDAHO,)	
	)	Case No. CV-2011-0776
Plaintiff,)	
v.)	
	)	MOTION FOR
Nine thousand fifty dollars	)	PREPARATION OF TRANSCRIPT
And no cents, US Currency)	
)	
Defendant.)	
_____)	

APPELLANT, by and through undersigned counsel, hereby moves the court for an order directing preparation of the transcript of the hearing on Appellant's motion to dismiss in the above entitled matter, which hearing was held on June 20, 2011, at the hour of 1:31 o'clock p.m. The clerk was Melissa Seck. Counsel will pay the transcript fee upon notification of the amount thereof.

WHEREFORE, IT IS PRAYED, THAT the court order the court clerk to prepare the transcript of the above referenced hearing at Appellant's expense, upon receipt of the estimated fee, and to deliver a copy of said transcript to all parties.

DATED this 26th day of March, 2012.

Val Thornton
Val Thornton, Attorney at Law

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was delivered as indicated on the 26th day of March, 2012, to:

HONORABLE JEFF BRUDIE
District Court Judge
Nez Perce County Courthouse
P. O. Box 896
Lewiston, ID 83501

☐ mailed, postage prepaid,
☒ faxed to (208) 799-3058
☐ hand-delivered

LOUIS MARSHALL
Bonner County Prosecutor
Courthouse mail
Bonner County Courthouse
127 South First Street
Sandpoint, ID 83864

☐ mailed, postage prepaid,
☒ faxed to (208) 263-6726
☐ hand-delivered

CITY OF SANDPOINT
Courthouse mail
Bonner County Courthouse
127 South First Street
Sandpoint, ID 83864

☐ mailed, postage prepaid,
☒ faxed to (208) 255-1368
☐ hand-delivered

Val Thornton

VAL THORNTON
Attorney for Defendant
4685 Upper Pack River Rd.
Sandpoint, ID 83864
(208) 263-5017 phone
(208) 255-2327 fax
ISB #6517

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DISTRICT

2012 MAR 28 A 9:08

MARIE SCOTT
CLERK DISTRICT COURT

DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER
MAGISTRATE DIVISION

BONNER COUNTY IDAHO,)

Case No. CV-2011-0776

Plaintiff,)

v.)

ORDER FOR
PRODUCTION OF TRANSCRIPT

Nine thousand fifty dollars)
And no cents, US Currency)

Defendant.)


APPELLANT, by and through undersigned counsel, having moved the court for an order directing preparation of the transcript of the hearing on Appellant's motion to dismiss in the above entitled matter, the court having considered the matter, and, good cause appearing,

NOW THEREFORE, IT IS HEREBY ORDERED,

THAT, within thirty days of this order, the Clerk of the Court shall cause to be prepared a written transcript of the record of the hearing held on Defendant's motion to dismiss in the above entitled matter, June 20, 2011, at the hour of 1:31 o'clock p.m.;

THAT the cost of the transcript shall be paid by the Defendant and copies of the transcript shall be delivered to Defendant's attorney and to the parties on appeal. Counsel will pay the transcript fee upon notification of the amount thereof.

DATED this 28 day of March, 2012.


Barbara Buchanan, Magistrate Judge

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was delivered as indicated on the 29 day of March, 2012, to:

HONORABLE JEFF BRUDIE

District Court Judge

Nez Perce County Courthouse

P. O. Box 896

Lewiston, ID 83501

☒ mailed, postage prepaid,
☐ faxed to (208) 799-3058
☐ hand-delivered

LOUIS MARSHALL

Bonner County Prosecutor

Courthouse mail

Bonner County Courthouse

127 South First Street

Sandpoint, ID 83864

☐ mailed, postage prepaid,
☐ faxed to (208) 263-6726
☐ hand-delivered

☒ Inter Office Mail

CITY OF SANDPOINT

Courthouse mail

Bonner County Courthouse

127 South First Street

Sandpoint, ID 83864

☐ mailed, postage prepaid,
☐ faxed to (208) 255-1368
☐ hand-delivered

☒ Inter Office Mail

VAL THORNTON

Attorney at Law

4685 Upper Pack River Rd.

Sandpoint, ID 83864

☒ mailed, postage prepaid
☐ faxed to: (208) 255-2327
☐ hand delivered

K. Driver

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

STATE OF IDAHO
COUNTY OF BONNER
JUDICIAL DIST.
7017 MAR 29 A 11:59
CLERK DISTRICT COURT
KO
DEPUTY

BONNER COUNTY IDAHO,)	
	)	CASE NO. CV-2011-0776
Plaintiff,)	
	)	TRANSCRIPT ESTIMATE
vs.)	
)	
NINE THOUSAND FIFTY)	
DOLLARS AND NO CENTS,)	
US CURRENCY)	
)	
Defendant.)	
_____)	

I, Kelsey Driver, Deputy Clerk of the District Court, Bonner County, State of Idaho, do hereby estimate the cost of preparing the transcripts of the testimony taken and argument presented at the Scheduling Conference, Motion to Dismiss & Attorney's Fees & Costs held on June 20, 2011 to be \$100.00.

PLEASE REMIT PAYMENT WITHIN 14 DAYS.

DATED this 29 day of March, 2012.

MARIE SCOTT
Clerk of the District Court

BY: K. Driver
Deputy Clerk

I hereby certify that a true and correct copy of the foregoing was mailed this 29 day
of March 2012, to:

Val Thornton
Attorney at Law
4685 Upper Pack River Rd
Sandpoint, ID 83864

K. Driver
Deputy Clerk

VAL THORNTON
 Attorney for Defendant
 4685 Upper Pack River Rd.
 Sandpoint, ID 83864
 (208) 263-5017 phone
 (208) 255-2327 fax
 ISB #6517

STATE OF IDAHO
 COUNTY OF BONNER
 JUDICIAL DIST.
 MAY 24 A 10:15
 MARIE SCOTT
 CLERK DISTRICT COURT

COPY

FILED 5/1/12
 AM 1:40
 BY [Signature]
 JEFF BRUDIE, CLERK

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

BONNER COUNTY IDAHO,

Plaintiff,

v.

NINE THOUSAND FIFTY DOLLARS
 AND NO CENTS, US CURRENCY

Defendant.

Case No. CV-2011-0776

ORDER VACATING
 BRIEFING SCHEDULE
 ON APPEAL

APPELLANT Mike Cunningham having moved the court to vacate its Order
 Scheduling Briefs and Argument, the court having considered the matter, and, good cause
 appearing,

NOW, THEREFORE, IT IS HEREBY ORDERED,

THAT the Order scheduling briefs and argument is hereby vacated; and

THAT a new Order scheduling briefs and argument will be served upon the
 parties after settlement of all transcripts and the clerk's record is complete.

DATED this 1 day of May, 2012.

[Signature]
 HONORABLE JEFF BRUDIE
 DISTRICT JUDGE

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2012 JUN 15 P 4:29

THANE SCOTT
CLERK DISTRICT COURT
VSD
DEPUTY

FILED

A.M.

3:40

P.M.

KEWISTON, IDAHO

BY

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

BONNER COUNTY IDAHO,

Plaintiff/Respondent,

NINE THOUSAND FIFTY DOLLARS,

Defendant/Appellant.

CASE NO. CV 11-776

ORDER SCHEDULING BRIEFS
AND ARGUMENT

IT IS HEREBY ORDERED:

- 1) Appellant's brief shall be filed by July 30, 2012.
- 2) Respondent's brief shall be filed by August 27, 2012.
- 3) Any reply brief shall be filed by September 17, 2012.
- 4) Telephonic Appellate Argument shall take place on October 24, 2012,
commencing at the hour of 3:00 p.m. The Court will initiate the call.

DATED this 15 day of June 2012.


JEFF M. BRUDIE - District Judge

ORDER SCHEDULING BRIEFS
AND ARGUMENT

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing ORDER SCHEDULING BRIEFS AND ARGUMENT was

✓ hand delivered via court basket, or *faxed ✓*

 mailed, postage prepaid, by the undersigned at Lewiston, Idaho, this 15th day of June 2012, to:

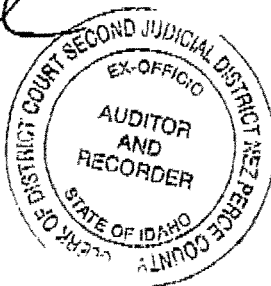
Val Thornton (FAX 208-255-2327)

Louis Marshall (FAX 208-263-6726)

Clerk of the Court (FAX 208-265-1447)

PATTY O. WEEKS, CLERK

By: *[Signature]*
Deputy



ORDER SCHEDULING BRIEFS
AND ARGUMENT

VAL THORNTON
 Attorney for Defendant
 4685 Upper Pack River Rd.
 Sandpoint, ID 83864
 (208) 263-5017 phone
 (208) 255-2327 fax
 ISB #6517

STATE OF IDAHO
 COUNTY OF BONNER
 JUDICIAL DIST.

2012 JUL 31 A 8:00

DAVID SCOTT
 CLERK DISTRICT COURT
 KD
 DEPUTY

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

BONNER COUNTY IDAHO,)	
	)	Case No. CV-2011-0776
Plaintiff,)	
v.)	
)	
Nine thousand fifty dollars and no	)	MOTION FOR
sense, US Currency	)	EXTENSION
	)	OF TIME
Defendant.)	

APPELLANT Mike Cunningham, by and through his attorney of record, hereby moves the court for an extension of time to file his brief on appeal, as follows:

1. Appellant's brief is due July 30, 2012.
2. The court vacated its prior scheduling order where no notice of lodging of transcript had been filed, and a transcript of an earlier hearing was required for the court to be fully informed of the premises.
3. Appellant has not taken any new cases, but has a small practice and has been involved in time-sensitive matters including preparing for two unanticipated child custody trials, a break-down in non-judicial foreclosure settlement negotiations, and suppression issues in two criminal cases.
4. Appellant's brief will be completed and filed tomorrow, July 31, 2012

WHEREFORE, IT IS PRAYED,

THAT the court extend by one day the time for Appellant to file his brief in the
above matter.

DATED this 30th day of July, 2012.

Val Thornton
Val Thornton, Attorney at Law

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was
delivered as indicated on the 30th day of July, 2012, to:

HONORABLE JEFF BRUDIE
District Court Judge
Nez Perce County Courthouse
P. O. Box 896
Lewiston, ID 83501

☐ mailed, postage prepaid,
☒ faxed to (208) 799-3058
☐ hand-delivered

LOUIS MARSHALL
Bonner County Prosecutor
Courthouse mail
Bonner County Courthouse
127 South First Street
Sandpoint, ID 83864

☐ mailed, postage prepaid,
☒ faxed to (208) 263-6726
☐ hand-delivered

Val Thornton

VAL THORNTON
 Attorney for Defendant
 4685 Upper Pack River Rd.
 Sandpoint, ID 83864
 (208) 263-5017 phone
 (208) 255-2327 fax
 ISB #6517

STATE OF IDAHO
 COUNTY OF BONNER
 DISTRICT COURT
 2012 JUL 31 P 3:46
 CLERK DISTRICT COURT
 KD
 CLERK

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

BONNER COUNTY IDAHO,)	
Plaintiff,)	
v.)	
	)	Case No. CV-2011-0776
MICHAEL C. CUNNINGHAM)	
Real party in interest,	)	AMENDED MOTION
	)	FOR AN EXTENSION
v.	)	OF TIME AND
	)	CERTIFICATION OF
NINE THOUSAND FIFTY DOLLARS	)	COUNSEL IN SUPPORT
U. S. CURRENCY)	
Defendant.)	

APPELLANT Mike Cunningham, by and through his attorney of record, hereby amends his motion, as follows:

1. The extension is requested pursuant to Idaho Appellate Rule 34(e).
2. This motion is supported by the certification of counsel filed concurrently herewith.

WHEREFORE, IT IS PRAYED,

THAT the court extend by one day the time for Appellant to file his brief in the above matter.

DATED this 31st day of July, 2012.

Val Thornton
 Val Thornton, Attorney at Law

AMENDED MOTION FOR AN EXTENSION OF TIME

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was delivered as indicated on the 31st day of July, 2012, to:

HONORABLE JEFF BRUDIE

District Court Judge

Nez Perce County Courthouse

P. O. Box 896

Lewiston, ID 83501

 mailed, postage prepaid,

☒ faxed to (208) 799-3058

 hand-delivered

LOUIS MARSHALL

Bonner County Prosecutor

Courthouse mail

Bonner County Courthouse

127 South First Street

Sandpoint, ID 83864

 mailed, postage prepaid,

☒ faxed to (208) 263-6726

 hand-delivered

Val Thornton

VAL THORNTON
 Attorney for Defendant
 4685 Upper Pack River Rd.
 Sandpoint, ID 83864
 (208) 263-5017 phone
 (208) 255-2327 fax
 ISB #6517

STATE OF IDAHO
 COUNTY OF BONNER
 JUDICIAL DIST.
 2012 JUL 31 P 3:46
 CLERK DISTRICT COURT
 KO
 DEPUTY

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

BONNER COUNTY IDAHO,)	
Plaintiff,)	
v.)	
	)	Case No. CV-2011-0776
MICHAEL C. CUNNINGHAM)	
Real party in interest,)	
v.)	
	)	CERTIFICATION OF
NINE THOUSAND FIFTY DOLLARS	)	COUNSEL IN SUPPORT
U. S. CURRENCY	)	OF MOTION FOR AN
Defendant.	)	EXTENSION OF TIME

UNDERSIGNED counsel for Appellant, Val Thornton, hereby certify under oath,
 in support of Appellant's Motion for an extension of time, as follows:

1. Appellant's brief is due July 30, 2012; and Appellant requests to be permitted to timely file the brief the following day, July 31, 2012..
2. Appellant has not previously requested an extension, however Appellant was granted a motion to vacate the prior scheduling request, where no notice of lodging of transcript had been filed, and a transcript of an earlier hearing was required for the court to be fully informed of the premises. Appellant's brief was originally due April 24, 2012. The court's order generously extended the time to file by several weeks after the second transcript was lodged with the court. Appellant anticipated being able to file on time, absent unforeseen circumstances.

AMENDED MOTION FOR AN EXTENSION OF TIME

3. No previous requests for extension have by denied in whole or in part.
4. Counsel for Appellant has a small practice, and has been delayed by several unanticipated developments including two child custody matters that were expected to settle, a break-down in non-judicial foreclosure settlement negotiations requiring pleading for a temporary restraining order, and suppression issues in two criminal cases. The months of June and July have been extraordinarily busy even though counsel has not taken any new cases since February. In addition, the law office was without internet access for a week due to a power outage and subsequent equipment failure.
5. Appellant only requests the extension for one day.
6. The brief will have been filed by the time the Court sees this motion.

DATED this 31st day of July, 2012.

Val Thornton
Val Thornton, Attorney at Law

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was delivered as indicated on the 31st day of July, 2012, to:

HONORABLE JEFF BRUDIE
District Court Judge
Nez Perce County Courthouse
P. O. Box 896
Lewiston, ID 83501

 mailed, postage prepaid,
☒ faxed to (208) 799-3058
 hand-delivered

LOUIS MARSHALL
Bonner County Prosecutor
Courthouse mail
Bonner County Courthouse
127 South First Street
Sandpoint, ID 83864

 mailed, postage prepaid,
☒ faxed to (208) 263-6726
 hand-delivered

Val Thornton

AMENDED MOTION FOR AN EXTENSION OF TIME

ORIGINAL

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

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

MARIE SCOTT
CLERK DISTRICT COURT

KP
DEPUTY

BONNER COUNTY, IDAHO,)

Plaintiff-Respondent,)

v.)

MICHAEL C. CUNNINGHAM)

Real party in interest,)

NINE THOUSAND FIFTY DOLLARS)

U.S. CURRENCY)

Defendant-Appellant)

Case No. CV-2011-0776

RESPONDENT'S BRIEF

**APPEAL FROM THE MAGISTRATE COURT
OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO
IN AND FOR THE COUNTY OF BONNER**

HONORABLE BARBARA BUCHANAN
Magistrate Judge

LOUIS MARSHALL
Bonner County Prosecuting Attorney
127 South First Street
Sandpoint, ID 83864
(208) 263-6726

ATTORNEY FOR RESPONDENT

VAL THORNTON
Thornton Law Office
4685 Upper Pack River Rd.
Sandpoint, ID 83864
(208) 263-5017

ATTORNEY FOR APPELLANT

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STATEMENT OF THE CASE

On March 30, 2011, Sandpoint City Prosecutor Lori Meulenberg obtained a warrant to search the Defendant's residence for evidence of possession of a controlled substance (marijuana) as well as any items used in the potential sale or distribution of a controlled substance including, but not limited to, "scales, ledgers and/or receipts and/or currency." See Search Warrant, 2. When the search warrant was executed on March 30, 2011, several items of marijuana paraphernalia were seized from the bedroom in the Defendant's residence. A locked "Husky" safe box was also found in the bedroom and seized. See Inventory Report. When the box was opened by law enforcement it was found to contain nine-thousand and fifty dollars (\$9,050) in bills which were logged and secured by law enforcement on March 31, 2011. See Cash Report. Bonner County, by and through the Prosecuting Attorney, filed forfeiture proceedings against the \$9,050 on May 3, 2011, thirty-four days after the seizure of the Defendant's money. See Complaint, 2. The forfeiture action was subsequently dismissed by the magistrate who found that the forfeiture proceedings should have been filed with thirty days. See Order Dismissing Forfeiture, 1.

The Defendant filed a motion for award of attorney's fees and costs on September 12, 2011. Amended Motion for Award of Attorney's Fees. The County objected and a hearing was held on November 23, 2011. The magistrate court not only denied the Defendant's request for attorney's fees, but also stated in the Order Denying Claimant's Motion for Attorney Fees that, despite filing forfeiture proceedings four days after the thirty day period prescribed in Idaho Code § 12-2744(c)(3), Bonner County had not acted frivolously, unreasonably, or without foundation and thus attorney fees were improper. Id., 3. The Defendant now appeals the magistrate's denial of attorney fees.

ADDITIONAL ISSUES PRESENTED ON APPEAL

1. Was the magistrate correct in ruling that the Defendant was not entitled to attorney's fees pursuant to I.C. § 12-117?
2. Is Bonner County entitled to attorney's fees on appeal pursuant to I.C. § 12-121?

BRIEF ANSWERS

1. The magistrate was correct in denying the Defendant's motion for attorney's fees as Bonner County did not act without a reasonable basis in fact or law.
2. Bonner County is entitled to attorney's fees on appeal where the Defendant's appeal was brought frivolously, unreasonably, or without foundation.

ARGUMENT

1. Was the magistrate correct in ruling that the Defendant was not entitled to attorney fees pursuant to I.C. § 12-117?

It is a well settled principle that a court may award attorneys fees to a prevailing party in a lawsuit under I.C. § 12-117. However, this principle does contain an important caveat. In order to receive attorney fees, the party must prevail in the lawsuit *and* opposing party must have acted without a reasonable basis in fact or law. Kootenai Medical Center v. Bonner County Com'rs, 141 Idaho 7, 10 (Idaho 2004), *citing* I.C. § 12-117(1). When the error made by the state agency in a case involves a reasonable, but erroneous, interpretation of a statute, attorney fees generally will not be awarded. Cox v. Department of Ins., State of Idaho, 121 Idaho 143, 148 (Ct. App. 1991), *citing* Van Gordon v. Oregon State Board of Dental Examiners, 666 P.2d 276, 282 (Or. App 1983). In Cox, the Department of Insurance filed a complaint against an agent for violating

the anti-rebate statute. After being fined, the defendant appealed. On appeal the court found that Cox had not violated the anti-rebate statute and he requested attorney fees arguing that the complaint should never have been filed and was groundless, thus entitling him to attorney fees under I.C. § 12-117. *Id.* at 148. The court denied the defendant's request holding that, while the claim against Cox was a mistake, it could not find it was groundless and arbitrary. It found that the statute at issue was "ambiguous, or at least confusingly worded" and no case law existed to guide the department to another conclusion. Thus, the court found that the agency's interpretation, while erroneous, was reasonable and not one for which it should be punished. *Id.* The Idaho Supreme Court has also confirmed the sentiment that attorney fees under I.C. § 12-117 are not appropriate where the agency's mistake was an erroneous, but reasonable interpretation of an ambiguous statute. *See Idaho Potato Commission v. Russet Valley Produce*, 127 Idaho 654, 661 (1995).

The statutory situation in the case at bar is very similar to that of the situation in *Cox*. There, the statute was ambiguous, convoluted, and no case law lending to interpretation existed, leading to an incorrect interpretation of the procedure outlined within it. Here, a similar event occurred. I.C. § 37-2744 is confusing and contradictory. Initially under part (c), the statute states that forfeiture proceedings shall be instituted "promptly," lending to the conclusion that the proceedings should be instituted without unnecessary delay and perhaps in similar fashion as I.C. § 37-2744A which allows for a ninety day timeline or any number of other statutes which require "prompt" action on the part of the government. However, the statute goes on to later cite a thirty day timeline for instituting forfeiture proceedings. I.C. § 37-2744. These two provisions, while perhaps not in direct conflict do lead to a confusing directive. Despite the County failing to institute forfeiture proceedings against the Defendant in thirty days, it did initiate within thirty-

four days. While the confusing nature of the statute is not necessarily an appropriate justification for the filing being delayed by four days, it does suggest that the County's interpretation of the statute and its applicable timelines was not wholly unreasonable. Much like the Cox case, this Court should find that the County's interpretation of the statute, while perhaps erroneous, was not unreasonable and thus the County should not be punished through the imposition of attorney fees where it acted incorrectly but not without a reasonable basis in fact or law.

The Defendant attempts to argue that the County acted without a reasonable basis in fact or law by citing case law where courts have awarded attorney fees in cases where actions have been filed after a statutory time period to file has expired. However, the cases cited by the Defendant are not entirely analogous and are distinguishable from the situation at bar. For example, the Defendant relies heavily on Idaho Dept. of Law Enforcement v. Kluss, 125 Idaho 682 (Idaho 1994). There the DLE failed to initiate forfeiture proceedings with ninety days as proscribed by I.C. § 37-2744A and the Court found that the Defendant was entitled to attorney fees as the LE had acted without a reasonable basis in fact or law. Id. at 685; see also I.C. § 37-2744A(c). There the applicable statutory language reads: "In the event of a seizure pursuant to subsection (a) of this section, a complaint instituting forfeiture proceedings under subsection (d) of this section shall be filed in the district court in the county in which the real property is situated within ninety (90) days of the date of seizure." I.C. § 37-2744A. Unlike I.C. 37-2744, 37-2744A contains no other contradictory language nor suggests any other interpretation except a ninety day deadline. Thus, while the DLE may have acted unreasonably in Kluss by making a late filing where the applicable statute left no room for additional interpretation, the case at bar is not as analogous as the Defendant would argue. Additionally, the deadlines for instituting forfeiture proceedings in all other statutes and case law the Defendant cites are considerably

longer than the thirty days suggested in I.C. § 37-2744, which could suggest to the reader that the “instituted promptly” language could mean a time period in excess of thirty days. *See In the Matter of the Estate of Kaminsky*, 111 P.3d 121, 123-124 (Idaho 2005) (petition filed two months after a two year statute of limitations found untimely); *Kluss*, 125 Idaho at 638 (forfeiture proceedings instituted after a ninety day deadline found unreasonable).

Finally, in the magistrate’s Order Denying Attorneys Fees, she discusses the case of *State Dept. of Law Enforcement v. One Willy’s Jeep*, V.I.N. 573481691. 100 Idaho 150 (Idaho 1979). In the analysis the court points out that this particular scenario is one of first impression and thus looks to the holding in *Willy’s Jeep* for guidance on the discretionary versus mandatory argument concerning the thirty day time period in I.C. § 37-2744. *Order Denying Claimant’s Motion for Attorney Fees*, 2. While Defendant correctly observed in his brief to this Court that Willy’s Jeep is not dealing with the same issue as in the case at bar, the magistrate cited to and looked to this case for guidance because there is no case law interpreting this provision of I.C. § 37-2744 directly and *Willy’s Jeep* dealt with another aspect of the same statute where the issue at bar was again whether a provision of the statute was directory or mandatory. Nevertheless, the magistrate was correct in its analysis that the County could reasonably have looked to other provisions in the statute for a determination on whether the thirty days were directory or mandatory and made the erroneous conclusion that it was in fact directory rather than mandatory. Regardless of whether the decision was erroneous on the part of the County, the issue is whether it was reasonable and in this case it was. This Court should determine that the County’s action, while potentially erroneous, were reasonable and thus deny the Appellant’s request for attorney fees pursuant to I.C. § 12-117.

2. Is Bonner County entitled to attorney fees on appeal pursuant to I.C. § 12-121?

Under I.C. § 12-121, attorney fees can be awarded on appeal to any party in a civil action where the court determines that the appeal is brought frivolously, unreasonably, or without foundation. Gustaves v. Gustaves, 138 Idaho 64, 71 (Idaho 2002). When a party fails to present a genuine allegation of factual or legal error on the part of a magistrate judge an award of attorney fees under I.C. § 12-121 is appropriate. Nelson v. Nelson, 144 Idaho 710, 718 (Idaho 2007). The Idaho Supreme Court has held that attorney fees are awardable on appeal if an appeal does no more than invite an appellate court to second-guess the trial court on conflicting evidence. Anderson v. Larsen, 136 Idaho 402, 408 (Idaho 2001).

In the case at bar, the Appellant devotes extensive time in his brief to denoting all of the various reasons why the seizure of his funds was incorrect to begin with. *See Appellant's Brief on Appeal*, 7-9. These are not the issues on appeal. The issue on appeal is whether the trial court was correct in denying the Appellant's motion for attorney fees. The lengthy diatribe embarked on by the Appellant concerning the proximity in which the disputed funds were found to contraband, whether the money was properly seized under the search warrant, and whether other procedural requirements were followed are overall irrelevant to the interpretation and application of the thirty day directive—the issue of the appeal. By presenting these arguments the Appellant is asking this Court to essentially reevaluate and reweigh the evidence brought before the trial court and reassess the veracity of a search warrant or procedural paperwork which, again, is not even the subject of this appeal. Accordingly, this Court should find that this appeal has been brought frivolously, unreasonably, and without foundation and consequently award attorney fees to the County on appeal.

CONCLUSION

Bonner County acted reasonably in filing forfeiture proceedings against property in question. The statute of relevance is both un-interpreted by case law and convoluted. Because the County acted reasonably under the circumstances, this Court should deny the Defendant's request for attorney fees. Additionally, the Court should find that Bonner County is entitled to attorney fees incurred in litigating this appeal as the Defendant's appeal was brought unreasonably and without foundation, raising issues which are not relevant on appeal and asking this Court to second guess the trial court on evidentiary matters and nothing more.

DATED this 20 day of August, 2012.



Louis E. Marshall
Bonner County Prosecuting Attorney

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was delivered as indicated on the 21st day of August, 2012, to:

VAL THORNTON

Attorney at Law
4685 Upper Pack River Rd.
Sandpoint, ID 83864

☒ mailed, postage prepaid
☐ faxed to (208) 263-
☐ hand-delivered

HONORABLE JEFF BRUDIE

District Court Judge
Nez Perce County Courthouse
P.O. Box 896
Lewiston, ID 83501

☒ mailed, postage prepaid
☐ faxed to (208) 799-3058
☐ hand-delivered



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

COURT MINUTES

Presiding Judge
JEFF M. BRUDIE
Reporter
LINDA CARLTON
Date: October 24, 2012
Time: 3:04pm

BONNER COUNTY,

Plaintiff,

vs.

NINE THOUSAND FIFTY DOLLARS
AND NO CENTS, US CURRENCY

Defendant,

Docket No. CV11-00776

APPEARANCES:

LOUIS MARSHALL
For, Bonner County

VAL THORNTON
For, Appellant Michael Cunningham
Jr.

SUBJECT OF PROCEEDINGS: Appellate Argument

BE IT KNOWN, THAT THE FOLLOWING PROCEEDINGS WERE HAD, TO-WIT:
Courtroom #1

3:04:02 Counsel are present on the telephone.

3:04:06 Court reviews case. Court notifies Counsel that this proceeding is being
recorded and reported in courtroom here.

3:05:14 Ms. Thornton presents Appellant's argument. This case has been briefed
rather thoroughly. She presents argument re: word "shall". The statute says "shall". This
is not an ambiguous matter. It is pretty common. The State filed three days late in this
case. In this case is not jurisdictional, it was procedural. Prosecutor should have known
this. Due process was not done here. The statute says Prosecutor shall take possession of
property. That did not happen because County didn't take possession of money. There
was error upon error. The attorney fees were reasonable. Her client should not have had
to spend that much money to get his money back. State was clearly in error and then

prolonged the proceedings. Her client had to spend almost as much money trying to get money back as forfeiture was worth. This is not an ambiguous statute. This is an egregious error. The State continues to be unreasonable and her client should be awarded attorney fees.

3:16:47 Mr. Marshall presents State's argument. It is a difficult statute to get through. Argument is contained in their brief. The lower Court denied attorney fees and that is why here. The lower Court was correct in its finding. There was no frivolous conduct on the part of the State. The lower Court was correct in not awarding attorney fees.

3:18:38 Ms. Thornton responds to State's argument. The case was frivolous to begin with. This was not a reasonable error.

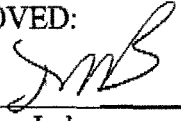
3:20:02 Court responds. Court will take matter under advisement. Court will address in a written ruling.

3:20:28 Court in recess.

Pamela Schneider

Deputy Clerk

APPROVED:



Presiding Judge

STATE OF IDAHO
COUNTY OF BONNER
DISTRICT COURT

NOV 30 4 11:29

DISTRICT COURT

KD

FILED 11/30/12
9:00 A.M. AT
BY [Signature] P.M. LEWISTON, IDAHO

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

BONNER COUNTY, IDAHO

Plaintiff/Respondent,

v.

MICHAEL C. CUNNINGHAM

Real Party in interest,

NINE THOUSAND FIFTY DOLLARS
U.S. CURRENCY,

Defendant/Appellant.

CASE NO. CV2011-00776

OPINION AND ORDER ON
APPEAL

This matter is before the Court on appeal of the magistrate court's denial of Defendant's

Motion for Attorney fees. A hearing on the appeal was held on October 24, 2012.

Defendant/Appellant Cunningham was represented by attorney Val Thornton.

Plaintiff/Respondent Bonner County was represented by Prosecuting Attorney Louis E.

Marshall. The Court, having read the transcripts of the hearing held June 20, 2011 and

November 23, 2011 along with the briefs filed by the parties, having heard oral arguments of
counsel, and being fully advised in the matter, hereby renders its decision.

FACTUAL AND PROCEDURAL BACKGROUND

A search warrant was obtained on March 30, 2011 by the Sandpoint City Prosecutor for execution upon the residence of Defendant Michael Cunningham. The property subject to the search warrant was searched on March 30, 2011, the same day the search warrant was obtained. Subsequent to the search, an inventory report indicated a number of items were seized as evidence of marijuana possession and use. Also seized but not listed on the search warrant inventory was \$9050.00 located in a safe in the residence searched. On May 3, 2011, thirty-four days after the money was seized, the Bonner County Prosecutor filed a forfeiture action against the \$9050.00. The forfeiture action was dismissed on June 26, 2011 after the magistrate court determined that the forfeiture statute required the action be filed within thirty-days of seizure of the subject property.

Despite dismissal of the forfeiture action by the court, the money was not returned to the Defendant. The County informed the magistrate court that the money was in the possession of the City of Sandpoint as it was being held as evidence in the criminal case being prosecuted by the City. Based on the position taken by the Bonner County Prosecutor, Defendant Cunningham filed a second motion for the return of his property including the City of Sandpoint as a party. A hearing was set on the motion but, three days prior to the hearing and four months after the seizure, the magistrate court entered an order releasing the money on *ex parte* motion of the City prosecutor. Defendant Cunningham subsequently filed a motion for attorney fees pursuant to I.C. § 12-117, or in the alternative, for an evidentiary hearing pursuant to I.C. § 12-123. The County objected to the motion and a hearing was held on November 23, 2011. The magistrate court entered an Order dated November 28, 2011 denying the Defendant's request for attorney

fees and denying his request for an evidentiary hearing. Defendant Cunningham filed a Notice of Appeal on January 9, 2012.

STANDARD ON APPEAL

The standard to be applied on appeal of the grant or denial of attorney fees pursuant to I.C. § 12-117 is whether the lower court abused its discretion. *Rammell v. State*, 2012 WL 4055352 (2012); *City of Osburn v. Randel*, 152 Idaho 906, 908, 277 P.3d 353, 355 (2012). Idaho Code § 12-117 reads in relevant part:

Unless otherwise provided by statute, in any proceeding involving as adverse parties a state agency or a political subdivision and a person, the state agency, political subdivision or the court hearing the proceeding, including on appeal, shall award the prevailing party reasonable attorney's fees, witness fees and other reasonable expenses, if it finds that the nonprevailing party acted without a reasonable basis in fact or law.

I.C. § 12-117(1).

The statute [I.C. § 12-117] is not discretionary but provides that the court must award attorney fees where a state agency did not act with a reasonable basis in fact or law in a proceeding involving a person who prevails in the action. *See Dep't of Finance v. Resource Service Co., Inc.*, 134 Idaho 282, 284, 1 P.3d 783, 785 (2000). As previously explained by this Court, one of the purposes of this section is to provide a remedy for persons who have borne unfair and unjustified financial burden attempting to correct mistakes agencies should never have made. *Bogner v. State Dep't of Revenue & Taxation*, 107 Idaho 854, 859, 693 P.2d 1056, 1061 (1984).

Fischer v. City of Ketchum, 141 Idaho 349, 356, 109 P.3d 1091 (2005).

ANALYSIS

In the instant matter, the Court held a hearing in June 2011 on Defendant Cunningham's Motion to Dismiss. At the end of the hearing, the Court found I.C. § 37-2744(c)(3) required the forfeiture to be filed within thirty days of seizure of the property and found the language

mandatory rather than directory as argued by the Bonner County prosecutor. At the request of the parties, the magistrate court took up Defendant's Motion for Attorney Fees and Costs at a later date in order to give the parties time to brief the issue. A hearing on the Motion was held on November 23, 2011 after which the magistrate took the matter under advisement. On November 28, 2011, the lower court issued a written ruling denying the Motion.

In ruling on the motion for fees and costs, the magistrate court determined it had likely erred when it dismissed the forfeiture action as untimely. The magistrate found interpretation of the thirty day language in I.C. § 37-2744(c)(3) was one of first impression and, after carefully reviewing the case of *State, Dept. of Law Enforcement v. One Willys Jeep*, V.I.N. 573481691, 100 Idaho 150, 595 P.2d 299 (1979), found the court had likely erred in dismissing the forfeiture action as untimely, as upon reevaluation the court found the thirty day language directory rather than mandatory. The court then found it was not unreasonable for the Bonner County prosecutor to have believed the thirty day language was directory rather than mandatory, was not unreasonable for the prosecutor to file the action on the thirty-fourth day after seizure of the property, and that it was not unreasonable for the County to oppose dismissal of the forfeiture filing.

On appeal, this Court has been asked to determine whether the magistrate court abused its discretion when it denied the Defendant's Motion for Attorney Fees and Costs. Given the analysis made by the lower court, and the absence of a finding that the County acted without a reasonable basis, this Court is unable to find the magistrate court abused its discretion and erred when it found the Defendant was not entitled to an award of attorney fees and costs under I.C. § 12-117.

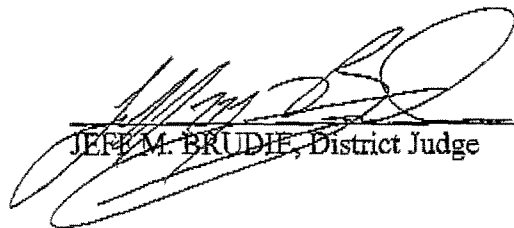
ORDER

The ruling of the magistrate court denying Defendant Cunningham's Motion for Attorney Fees and Costs is hereby AFFIRMED.

Appellant/Defendant Cunningham's request for attorney fees and costs on appeal are hereby DENIED.

Respondent/Plaintiff Bonner County's request for attorney fees and costs on appeal are hereby DENIED.

Dated this 30 day of November 2012.


JEFF M. BRUDIE, District Judge

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing OPINION AND ORDER ON APPEAL was:

1 faxed this 30th day of November, 2012, or

 hand delivered via court basket this day of November, 2012, or

2 mailed, postage prepaid, by the undersigned at Lewiston, Idaho, this 30th day of November, 2012, to:

Louis Marshall
Bonner County Prosecuting Attorney
127 South First Street
Sandpoint, ID 83864

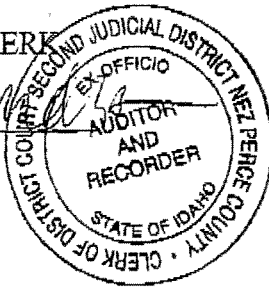
Val Thornton
Thornton Law Office
4685 Upper Pack River Rd.
Sandpoint, ID 83864

Bonner County District Court
FAX: 208-265-1447

PATTY O. WEEKS, CLERK

By: 

Deputy



VAL THORNTON
 Attorney for Defendant
 4685 Upper Pack River Rd.
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 (208) 263-5017 phone
 (208) 255-2327 fax
 ISB #6517

2
 11/11/2012
 P 0337
 COURT

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

BONNER COUNTY IDAHO,)	
	)	Case No. CV-2011-0776
Plaintiff/Respondent,)	
v.)	
)	
MICHAEL C. CUNNINGHAM,)	
Real Party in Interest)	
)	
NINE THOUSAND FIFTY DOLLARS	)	NOTICE OF APPEAL
US Currency)	
)	
Defendant/Appellant.)	

**TO: Bonner County Idaho, Prosecuting Attorney Louis Marshall, and to the clerk
 of the above entitled court:**

NOTICE IS HEREBY GIVEN THAT:

1. The above named appellant, Michael C. Cunningham, appeals against the above named respondent to the Idaho Supreme Court from the Opinion and Order on Appeal, entered in the above entitled action on the 30th day of November, 2012, Honorable Judge Jeff M. Brudie presiding.
2. The appellant has a right to appeal to the Idaho Supreme Court, and the order described above is an appealable order pursuant to I.A.R. 11(a)(2)
3. Issue on appeal is whether the magistrate erred in denying attorney fees incurred in defending against forfeiture action that was untimely filed by the county.

4. No portion of the record has been sealed.
5. Transcripts of the hearings have been prepared on appeal to district court; appellant requests the transcripts to be included in the record on appeal to the Supreme Court.
6. The appellant requests the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R.:

Search warrant

Warrant return

Appellant's motion for return of property

Order returning property

7. I hereby certify that:

- a) No additional transcripts are requested.
- b) All transcripts have been paid for and entered into the record.
- c) The estimated fee for preparation of the clerk's record has been paid.
- d) The appellate filing fee has been paid.
- e) Service has been made upon all parties required to be served, and upon the

attorney general pursuant to Section 67-1401(1), Idaho Code.

DATED this 11th day of January, 2013.

Val Thornton
Val Thornton, Attorney at Law

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was delivered as indicated on the 11th day of January 2013, to:

LOUIS MARSHALL

Bonner County Prosecutor
Bonner County Courthouse
127 South First Street
Sandpoint, ID 83864

☐ mailed, postage prepaid
☒ faxed to (208) 263-6726
☐ hand-delivered

LAWRENCE G. WARDEN

Attorney General
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P. O. Box 83720
Boise, ID 83720-0010

☐ mailed, postage prepaid
☒ faxed to (208) 854-8071
☐ hand-delivered

HONORABLE JEFF BRUDIE

District Court Judge
Nez Perce County Courthouse
P. O. Box 896
Lewiston, ID 83501

☐ mailed, postage prepaid
☒ faxed to (208) 799-3058
☐ hand-delivered

HONORABLE BARBARA BUCHANAN

Magistrate Judge
Bonner County Courthouse
215 S. First Avenue
Sandpoint, ID 83864

☐ mailed, postage prepaid
☒ faxed to (208) 265-1468
☐ hand-delivered

Val Thornton

IN THE SUPREME COURT OF THE STATE OF IDAHO

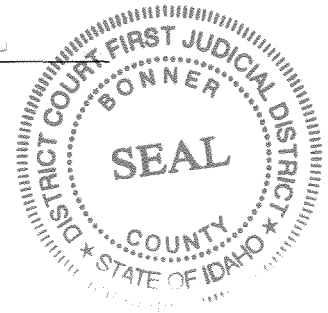
BONNER COUNTY, IDAHO,	)	SUPREME COURT NO. 40642
)	
Plaintiff/ Respondent,	)	CLERKS CERTIFICATE
)	
vs.)	
)	
MICHAEL C. CUNNINGHAM,)	
Real Party in Interest)	
)	
NINE THOUSAND FIFTY DOLLARS)	
US Currency)	
)	
Defendant/ Appellant.)	
_____)	

I, Marie Scott, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Bonner, do certify that the foregoing Record in this cause was compiled and bound under my direction and is a true, correct and complete Record of the pleadings and documents requested by Appellant Rule 28.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 19th day of April, 2013.

MARIE SCOTT
Clerk of the District Court

D. Hummel
Deputy Clerk



Clerk's Certificate

IN THE SUPREME COURT OF THE STATE OF IDAHO

BONNER COUNTY, IDAHO,	)	SUPREME COURT NO. 40642
)	
Plaintiff-Respondent,	)	CLERK'S CERTIFICATE OF EXHIBITS
)	
vs.)	
)	
MICHAEL C. CUNNINGHAM,)	
Real Party in Interest)	
)	
NINE THOUSAND FIFTY DOLLARS)	
US Currency)	
)	
Defendant-Appellant.)	
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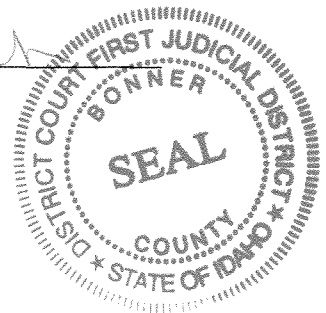
I, Marie Scott, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Bonner, do hereby certify that the following is offered as the Clerk's exhibit on appeal:

NONE

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 19th day of April, 2013.

Marie Scott
Clerk of the District Court

D. W. H. H. H.
Deputy Clerk



IN THE SUPREME COURT OF THE STATE OF IDAHO

BONNER COUNTY, IDAHO,)
)
Plaintiff-Respondent,)
)
)
vs.)
)
MICHAEL C. CUNNINGHAM,)
Real Party in Interest)
)
NINE THOUSAND FIFTY DOLLARS)
US Currency)
)
Defendant- Appellant.)
_____)

SUPREME COURT NO. 40642

CLERK'S CERTIFICATE
OF SERVICE

I, Marie Scott, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Bonner, do hereby certify that I have personally served or mailed, by United Parcel Service, one copy of the CLERK'S RECORD to each of the Attorneys of Record in this cause as follows:

MR. LOUIS MARSHALL
127 S. FIRST AVENUE
SANDPOINT, ID 83864

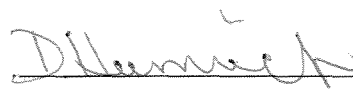
MS. VAL THORNTON
4685 UPPER PACK RIVER ROAD
SANDPOINT, ID 83864

ATTORNEY FOR RESPONDENT

ATTORNEY FOR APPELLANT

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 19th day of April, 2013.

Marie Scott
Clerk of the District Court


Deputy Clerk

Certificate of Service

