

APPENDIX

A - P

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 47559

**In the Matter of the Estate of:
Erline Hall Phillips, an Incapacitated and
Protected Person.**) Filed: July 22, 2020
)
)
)
CHERIE PHILLIPS,)
)
)
Petitioner-Appellant.) THIS IS AN UNPUBLISHED
) OPINION AND SHALL NOT
) BE CITED AS AUTHORITY
)

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Gerald F. Schroeder, District Judge. Hon. Christopher Bieter, Magistrate.

Decision of the district court, on intermediate appeal from the magistrate division, affirming order requiring payment of visitor fee in guardianship case, affirmed.

Cheri Phillips, Waukesha, Wisconsin, pro se appellant.

LORELLO, Judge

Cherie Phillips appeals from the decision of the district court, on appeal from the magistrate division, affirming an order requiring payment of a visitor fee in a guardianship case. We affirm.

1

FACTUAL AND PROCEDURAL BACKGROUND

Phillips petitioned for guardianship over her mother who suffered from late-stage Alzheimer's disease. The magistrate court appointed a court visitor who prepared and filed a report as required by I.C. § 15-5-303. On the same day the visitor's report was filed, the magistrate court issued a letter of temporary guardianship.¹ Phillips' mother died a few weeks

¹ Although the register of actions from the guardianship proceeding contains entries for both the visitor's report and the letter of temporary guardianship, the two documents are absent from the record on appeal. Consequently, it is unclear who was named the temporary guardian of

App. A

later--apparently sometime after social workers and physicians from a local hospital had assumed control over medical decision-making for Phillips' mother. Four months after the death of Phillips' mother, Phillips filed a pro se motion seeking disallowance of the visitor's fee. Phillips' motion alleged, among other things, that the visitor had falsified her report and that social workers and physicians had conspired to "forcibly euthanize" Phillips' mother.

Phillips did not request a hearing and no action was taken on the motion. Two years later, the magistrate court received a letter from Phillips inquiring about the status of her motion.² The magistrate court subsequently held a telephonic hearing, during which Phillips requested additional time to file evidence that her mother had been "murdered." The magistrate court denied Phillips' request for additional time and ordered payment of the visitor's fee from the estate of Phillips' mother, concluding that the visitor was entitled to the fee by statute.

Phillips filed a pro se appeal to the district court, challenging the denial of her requests for additional time and disallowance of the court visitor's fee. The district court affirmed, and Phillips again appeals.

II.

STANDARD OF REVIEW

For an appeal from the district court, sitting in its appellate capacity over a case from the magistrate division, this Court's standard of review is the same as expressed by the Idaho Supreme Court. The Supreme Court reviews the magistrate record to determine whether there is substantial and competent evidence to support the magistrate court's findings of fact and whether the magistrate court's conclusions of law follow from those findings. *Pelayo v. Pelayo*, 154 Idaho 855, 858-59, 303 P.3d 214, 217-18 (2013). If those findings are so supported and the conclusions follow therefrom, and if the district court affirmed the magistrate court's decision, we affirm the district court's decision as a matter of procedure. *Id.* Thus, the appellate courts do not affirm or reverse the decision of the magistrate court. *Bailey v. Bailey*, 153 Idaho 526, 529, 284 P.3d 970,

Phillips' mother. However, a document purporting to be a copy of the court visitor's report is attached as an exhibit to Phillips' motion seeking review of the visitor's fee.

² Phillips' letter is also absent from the record on appeal. The letter is, however, referenced in the district court's decision on intermediate appeal.

973 (2012). Rather, we are procedurally bound to affirm or reverse the decision of the district court. *Id.*

III.

ANALYSIS

Phillips argues the magistrate court erred by denying her request for additional time, applying civil statutes to a case “governed under Criminal Law, Civil Law, and U.S. Constitutional Law,” and ordering payment of the visitor’s fee despite alleged misconduct by the court visitor.³ Assuming without deciding that the order to pay the visitor’s fee was appealable and Phillips has standing to appeal,⁴ we conclude that Phillips has failed to show that it was error to order the payment of the visitor’s fee.

The magistrate court denied Phillips’ request for disallowance of the visitor’s fee based on the conclusion that the court visitor was entitled to the fee she requested under I.C. § 15-5-314.⁵ Phillips fails to present any cogent arguments supported by relevant legal authority that this conclusion was error. Rather, Phillips devotes her pro se brief to making unsupported and implausible accusations that the court visitor “hallucinated” her report to the magistrate court and that social workers and physicians conspired to place her mother into an opioid-induced coma and starved her to death. Phillips’ legal arguments and citations to authority focus on whether the

³ Phillips’ brief also seeks review of “such other issues applicable to [her motion to review the court visitor’s fee].” This Court will not search the record for error. If an issue is not argued and supported as required by the Idaho Appellate Rules, the issue is deemed waived. I.A.R. 35(a)(6); *see also Liponis v. Bach*, 149 Idaho 372, 375, 234 P.3d 696, 699 (2010).

⁴ It is unclear whether the order for payment of the visitor’s fee is an appealable order under I.A.R. 11 or that Phillips is a party aggrieved by the order such that she is entitled to appeal under I.A.R. 4. However, because we dispose of Phillips’ appeal without reaching the merits, we need not resolve these issues.

⁵ Idaho Code Section 15-5-314(1) provides, in pertinent part:

If not otherwise compensated for services rendered or expenses incurred, any visitor, guardian ad litem, physician, guardian, or temporary guardian appointed in a protective proceeding is entitled to reasonable compensation from the estate for services rendered and expenses incurred in such status, including for services rendered and expenses incurred prior to the actual appointment of said guardian or temporary guardian which were reasonably related to the proceedings.

social worker's and physician's alleged conduct constituted a criminal act or a human rights violation. However, none of Phillips' arguments nor any of her cited legal authorities support the conclusion that the magistrate court erred in denying her an extension of time or in applying LC. § 15-5-314 or that the district court erred in affirming the magistrate court's decision.

Pro se litigants, like Phillips, are held to the same standard as those represented by counsel. *See Michalk v. Michalk*, 148 Idaho 224, 229, 220 P.3d 580, 585 (2009). We will not entertain issues unsupported by cogent argument and legal authority. *Bach v Bagley*, 148 Idaho 784, 790, 229 P.3d 1146, 1152 (2010). Because Phillips' brief is devoid of cogent argument or citations to relevant authority supporting her issues on appeal, we need not address the merits of Phillips' appeal.

IV.

CONCLUSION

Phillips has not presented cogent argument or citations to relevant legal authority that it was error to deny her an extension of time or to order payment of the visitor's fee. Thus, we will not consider these issues on appeal. Accordingly, the district court's appellate decision affirming the magistrate court's order requiring payment of the court-appointed visitor's fee is affirmed.

Judge GRATTON and Judge BRAILSFORD, CONCUR.

IN THE SUPREME COURT OF THE STATE OF IDAHO

In the Matter of the Estate of:
Erlene Hall Phillips, an Incapacitated
and Protected Person.

CHERIE PHILLIPS,

Petitioner-Appellant.

Order Denying Petition for Review

Docket No. 47559-2019

Ada County Magistrate Court No.
CV01-16-19924

The Appellant having filed a Petition for Review and Brief in Support of Petition on August 06, 2020, seeking review of the Unpublished Opinion of the Court of Appeals released July 22, 2020; therefore, after due consideration,

IT IS HEREBY ORDERED that Appellant's Petition for Review be, and is hereby, denied.

Dated February 2, 2021

By Order of the Supreme Court


Melanie Gagnepain
Melanie Gagnepain
Clerk of the Courts

App. B

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

IN THE MATTER OF THE
ESTATE OF
ERLINE HALL PHILLIPS,

Deceased.

Case No. CV01-16-19924

OPINION ON APPEAL

I. NATURE OF THE CASE

Cherie Phillips, proceeding pro se,¹ appeals from the order of the magistrate requiring her mother's estate to pay the fees and expenses of a visitor² appointed by the Court in a guardianship proceeding initiated by the appellant. The motion to reopen case states the amount to be \$425.00.

II. FACTUAL AND PROCEDURAL BACKGROUND

On October 25, 2016, the appellant, through counsel, filed a petition pursuant to I.C. § 15-5-303, seeking to be appointed the guardian of her then 88 year old mother, who was said to be incapacitated and hospitalized at St. Luke's Hospital in Boise, suffering from various ailments including Alzheimer's. That same date, an acceptance of appointment was filed by the appellant. Also on that date, an order was filed by the magistrate requiring the appellant to complete guardianship training.

¹In Idaho, "[p]ro se litigants are held to the same standards and rules as those represented by an attorney." *Golay v. Loomis*, 118 Idaho 387, 393, 797 P.2d 95, 101 (1990). See also *State v. Sima*, 98 Idaho 643, 644, 570 P.2d 1333, 1334 (1977) ("A litigant appearing pro se is held to the same standards and rules as those appearing with counsel.").

²Said to be in the sum of \$425.00. See Motion to Reopen Case at 33.

On October 26, 2016, an "order authorizing attorney, physician and appointing visitor for alleged incapacitated person" was filed. Reports from the guardian ad litem were filed on November 10, 2016.

A decree appointing the appellant as the temporary guardian of her mother was filed on November 14, 2016. That same day, a status report from the visitor was filed. Letters of temporary guardianship were issued on November 15, 2016.

On December 12, 2016, a notice of death of the appellant's mother was filed.

On April 17, 2017, the appellant filed a "motion to reopen case and motion to review court visitor's report and fees." Among other things, the appellant asserted she was curing her mother of Alzheimer's. The visitor's status report noted the conflict between the appellant and medical providers over the course of her mother's treatment, and the appellant's motion elaborates on this conflict from her perspective. No other significant action was taken in the case until April 9, 2019, when the appellant submitted a letter inquiring about the status of her motion.

On June 6, 2019, after a telephonic hearing, the magistrate denied the appellant's motion and ordered her mother's estate to pay the visitor reasonable compensation. The appellant then filed this appeal of that order.

The Court subsequently entered an order governing procedure on appeal setting forth the standard briefing schedule for an appeal to the district court from the magistrate's division. However, since there is no "respondent" in this appeal (mail previously sent by the clerk's office to the visitor's last known address has been returned as undeliverable), the Court vacates that order and will issue this decision based upon the appellant's brief. The

Court also finds that oral argument is not necessary. See I.R.C.P. 83(p) (noting that appellate argument is discretionary with the Court).

III. ISSUES ON APPEAL

The appellant asserts the following issues: (1) "whether my requests on May 15, 2019, and June 5, 2019, for an extension of time to submit a pleading with evidence in support of my Motions and Responses (Motion/Responses) dated April 17, 2017, and to properly prepare for the hearing scheduled on short notice should have been granted within reason in the interest of Wisdom Justice[;]" (2) "whether the statutes cited in the Honorable Court's Order apply in cases governed exclusively under Civil Law; however, all of the evidence in this case is now governed under Criminal Law, Civil Law, and US Constitutional Law, and, cannot be separated therefrom[;]" (3) "whether Ms. Charo Rowley's illegal use of her Court Visitor's Report to deny my guardianship rights and to grant St. Luke's Hospital (SLH) a Shadow Guardianship, being illegal under Federal and State and County laws, precludes its enforcement for payment to Ms. Charo Rowley[;]" (4) "whether the violation and noncompliance with Statutory Legal Authority preclude its enforcement for payment to the Respondent, Ms. Charo Rowley (aka Ms. Charo Webster), for services that she did 'not' legally render and her statutory duties that she breached[;]" (5) "And, further, such other issues applicable to my said Motion/Responses." Brief of Appellant at 2.

IV. STANDARD OF REVIEW

When a district judge considers an appeal from a magistrate judge (not involving a trial de novo), the district judge is acting as an appellate court, not as a trial court. *State v. Kenner*, 121 Idaho 594, 596, 826 P.2d 1306, 1308 (1992). The interpretation of law or

statute is a question of law over which the Court has free review. *State v. Miller*, 134 Idaho 458, 462, 4 P.3d 570, 574 (Ct. App. 2000).

The district court is required to determine whether there is substantial evidence to support the magistrate's findings of fact. *Hentges v. Hentges*, 115 Idaho 192, 194, 765 P.2d 1094, 1096 (Ct. App. 1988). If those findings are so supported, and if the conclusions of law demonstrate proper application of legal principles to the facts found, then the district court will affirm the magistrate's judgment. *Id.*

Substantial evidence is, "such relevant evidence as a reasonable mind might accept to support a conclusion; it is more than a scintilla, but less than a preponderance." *Clear Springs Foods, Inc. v. Clear Lakes Trout Co.*, 136 Idaho 761, 764, 40 P.3d 119, 122 (2002).

V. ANALYSIS

Assuming that this is an appealable order,³ the appellant has provided nothing showing that she asserted and obtained a ruling from the magistrate on the issues she seeks to assert in this appeal (except as noted hereinafter):

The longstanding rule of this Court is that we will not consider issues that are presented for the first time on appeal.

It is for the protection of inferior courts. It is manifestly unfair for a party to go into court and slumber, as it were, on a defense, take no exception to the ruling, present no point for the attention for the court, and seek to present the defense, that was never mooted before, to the judgment of the appellate court. Such a practice would destroy the purpose of an appeal and make the supreme court one for deciding questions of law in the first instance. *Fernandez v. Aevermann*, 2008 WL 9468649, *3 (Id. Ct. App.) (citing *Sanchez v. Arave*, 120 Idaho 321, 322, 815

³See, e.g., I.C. § 17-201 ("Appealable Judgments and Orders. An appeal may be taken to the district court of the county from a judgment, or order of the magistrates division of the district court in probate matters: . . . 6. Settling an account of an executor, administrator or guardian.")

P.2d 1061, 1062 (1991); *Smith v. Sterling*, 1 Idaho 128, 131 (1867). See also *State v. Fry*, 128 Idaho 50, 54-55, 910 P.2d 164, 168-69 (1994) ("The long standing rule in Idaho is that an appellate court will not consider issues . . . that are presented for the first time on appeal.").

"Review on appeal is limited to the issues raised before the lower tribunal, and an appellate court will not decide issues presented for the first time on appeal." *Knight v. Idaho Department of Insurance*, 124 Idaho 645, 649, 862 P.2d 337, 341 (1993). "This rule applies to procedural errors and encourages litigants to raise the issue below, to give the lower tribunal an opportunity to correct errors before harm occurs or becomes incurable." *Id.* "The rule applies equally to contested cases in administrative settings as well as proceedings before the courts." *Id.* "It also applies to preclude consideration of constitutional issues raised for the first time on appeal." *Id.* See also *State v. Fry*, 128 Idaho 50, 54-55, 910 P.2d 164, 168-69 (1994) ("The long standing rule in Idaho is that an appellate court will not consider issues, including constitutional issues, that are presented for the first time on appeal.").

This Court does not assume error on appeal; rather, the party assigning error must affirmatively show it. *Jones v. Jones*, 117 Idaho 621, 625, 790 P.2d 914, 918 (1990) (citing *Weaver v. Sibbett*, 87 Idaho 387, 392-93, 393 P.2d 601, 604 (1964)). The appellant has the responsibility to include exhibits and transcripts of hearings in the record before the appellate court. *Id.* (citing *Dawson v. Eldredge*, 89 Idaho 402, 405 P.2d 754 (1965)). When the record on appeal does not contain the evidence taken into account by the district court, 'we must necessarily presume that the evidence justifies the decision and that the findings are supported by substantial evidence.' *Id.* (quoting *Nash v. Hope Silver-Lead Mines*, 79 Idaho 137, 142, 314 P.2d 681, 683 (1957)). *Student Loan Fund of Idaho, Inc. v. Duemer*, 131 Idaho 45, 54, 951 P.2d 1272, 1281 (1997).

"Generally, where it is not shown that an issue was raised in the trial court, an appellate court should not consider the issue for the first time on appeal." *Seitz v. Stecklein*, 111 Idaho 364, 367, 723 P.2d 908, 911 (Ct. App. 1986). See also *International Business*

Machines Corp. v. Lawhorn, 106 Idaho 194, 197, 677 P.2d 507, 510 (Ct. App. 1984) ("Although these issues arguably were raised below—if the pleadings are generously interpreted—they were not supported by any factual showing or by the submission of legal authority. In short, they were not presented for decision. An appellate court is a forum of review; ordinarily, it does not adjudicate issues in the first instance. Accordingly, in this case we decline to consider the issues Lawhorn failed to present for determination at the district court level.").

An issue that was not presented to the court may not be raised for the first time on appeal. *Bank of Commerce v. Jefferson Enterprises, LLC*, 154 Idaho 824, 828–29, 303 P.3d 183, 187–88 (2013); *Garner v. Bartschi*, 139 Idaho 430, 436, 80 P.3d 1031, 1037 (2003). It is well established that in order for an issue to be raised on appeal the record must reveal an adverse ruling which forms the basis for an assignment of error. *Idaho Power Co. v. Idaho Dep't of Water Res.*, 151 Idaho 266, 279, 255 P.3d 1152, 1165 (2011); *Montalbano v. Saint Alphonsus Reg'l Med. Ctr.*, 151 Idaho 837, 843, 264 P.3d 944, 950 (2011); *Krempasky v. Nez Perce Cnty. Planning & Zoning*, 150 Idaho 231, 236, 245 P.3d 983, 988 (2010); *State v. Barnes*, 133 Idaho 378, 384, 987 P.2d 290, 296 (1999). The record brought before this Court does not include any motions raising any of these issues or any district court orders addressing any of these issues. If motions or objections were made and ruled upon at a hearing, the record on appeal contains no transcripts of any hearing in the time frame involved. It is the responsibility of the appellant to provide a sufficient record to substantiate his or her claims on appeal. In the absence of an adequate record on appeal to support the appellant's claims, we will not presume error. *Belk v. Martin*, 136 Idaho 652, 660, 39 P.3d 592, 600 (2001); *State v. Murphy*, 133 Idaho 489, 491, 988 P.2d 715, 717 (Ct.App.1999). Absent an adequate record, Kugler has neither shown that the issues were raised below or that the district court erred in addressing them. *Kugler v. Nelson*, 2014 WL 4197547, *3 (Id. Ct. App. 2014) (emphasis added).

Even if the appellant had obtained such a ruling or rulings from the magistrate, the Court is not persuaded that the appellant has suffered any prejudice to her substantial rights, as a result of the magistrate's decision concerning reasonable compensation for the visitor's fees.

"A party alleging error on appeal must also show that the alleged errors were prejudicial. Alleged errors not affecting substantial rights will be disregarded.' Because [the appellant] [has] not presented any argument showing that the alleged errors affected their substantial rights, we will not address this alleged error." *Baughman v. Wells Fargo Bank, N.A.*, 162 Idaho 174, 179, 395 P.3d 393, 398 (2017); I.R.C.P. 61.

In addition, the appellant has generally cited no authority, except in a conclusory manner, in support of her assertions on appeal. The Court does not consider issues that are not properly supported by citations to authority. See *Bach v. Bagley*, 148 Idaho 784, 790, 229 P.3d 1146, 1152 (2010) ("The argument shall contain the [party's] contentions with respect to the issues presented . . . the reasons therefor, *with citations to authorities, statutes and parts of the transcript and the record relied upon.*"); I.A.R. 35(a)(6); *City of Boise v. Bench Sewer District*, 116 Idaho 25, 26 n.1, 773 P.2d 642, 643 n.1 (1988) (issue not fully briefed or argued is deemed abandoned) (emphasis added). See, e.g., *Boren v. Reinke*, 2013 WL 6506200, *2 (Id. Ct. App.) ("Merely mentioning a constitutional principle is insufficient to trigger review. See *Highland Enterprises, Inc. v. Barker*, 133 Idaho 330, 349–50, 986 P.2d 996, 1015–16 (1999) ("A one sentence statement regarding whether the award violates due process is hardly sufficient to constitute argument and, in addition, the appellants cite no authority. Thus, the appellants have left this Court with no ability to address (the appellant's claim."); *Idaho State Ins. Fund v. Van Tine*, 132 Idaho 902, 909, 980 P.2d 566, 573 (1999) (declining to consider a claim where the appellant's due process claim had insufficient argument and authority). Accordingly, Boren's mere conclusory assertion of a due process violation does not present a claim of error that this Court can address.").

The appellant has also failed to set forth any standard of review. The failure to cite the applicable standard of review and offering only conclusory supportive arguments is insufficient ("fatally deficient") for a proper appeal. See *Estate of Ekin v. Geico Indemnity Company*, 163 Idaho 895, 899, 422 P.3d 1101, 1105 (2018).

The appellant stated during the hearing that she wanted to contest the visitor's fees because her mother was "murdered" and she wanted to postpone the hearing to provide evidence of this. See June 5, 2019 Hearing Transcript at 4. Again, the appellant has cited no authority holding that the visitor's fees, incurred as part of a guardianship proceeding she initiated, are invalid if the subject of the guardianship is later "murdered." Visitors are "personally immune from any liability for acts, omissions or errors in the same manner as if such visitor were a volunteer or director under the provisions of section 6-1605, Idaho Code." I.C. § 15-5-308(3).

The appellant did not state during the hearing who she thinks murdered her mother, and her mother died well after the visitor's report was filed.

The appellant also asserted that the visitor did not perform the requisite services (*id.* at 5) but the magistrate's implicit finding that she performed her statutory duties is supported by the presence in the record of the visitor's report, detailing that she did. See Visitor's Status Report.

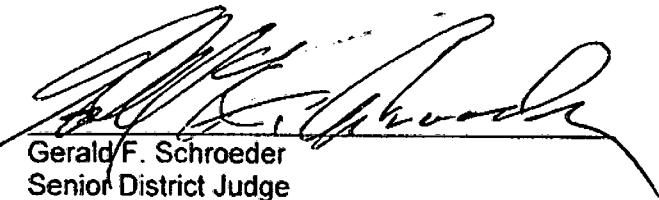
The magistrate correctly ruled that the visitor was entitled to reasonable compensation for her fees as mandated by the relevant statutes. See I.C. §§ 15-5-303, 15-5-308,⁴ 15-5-314.⁵

⁴15-5-308. VISITOR IN GUARDIANSHIP PROCEEDING. (1) A visitor is, with respect to guardianship proceedings, an individual with no personal interest in the proceedings and who meets the qualifications identified in Idaho supreme court rule. A visitor may either be an employee of or appointed by the court. If appointed, a visitor becomes an officer of the court. (2) A visitor *must report to the court on the status*

VI. CONCLUSION

The magistrate's order is affirmed.

Dated this 29 day of October 2019.



Gerald F. Schroeder
Senior District Judge

of the person proposed to be under guardianship. All reports must be under oath or affirmation and must comply with Idaho supreme court rules. (3) A visitor shall be personally immune from any liability for acts, omissions or errors in the same manner as if such visitor were a volunteer or director under the provisions of section 6-1605, Idaho Code. (4) A visitor cannot serve as guardian ad litem. The visitor and the guardian ad litem for the person proposed to be under guardianship may not be members or employees of the same entity. (5) The visitor may request to order a criminal history and background check at the proposed guardian's expense on any individual who resides in or may frequent the residence of the person proposed to be under guardianship. Any such check shall be conducted pursuant to section 56-1004A(2) and (3), Idaho Code.

§15-5-314. COMPENSATION AND EXPENSES. (1) If not otherwise compensated for services rendered or expenses incurred, *any visitor, guardian ad litem, physician, guardian, or temporary guardian appointed in a protective proceeding is entitled to reasonable compensation from the estate for services rendered and expenses incurred in such status*, including for services rendered and expenses incurred prior to the actual appointment of said guardian or temporary guardian which were reasonably related to the proceedings. If any person brings or defends any guardianship proceeding in good faith, whether successful or not, he or she is entitled to receive from the estate his or her necessary expenses and disbursements including reasonable attorney's fees incurred in such proceeding. If the estate is inadequate to bear any of the reasonable compensation, fees, and/or costs referenced in this section, the court may apportion the reasonable compensation, fees, and/or costs to any party, or among the parties, as the court deems reasonable. (2) If court visitor services are provided by court personnel, any moneys recovered shall be collected through the clerk of the district court of the county in which the appointment was made and the clerk shall pay the moneys to the state treasurer for deposit in the guardianship and conservatorship project fund established by section 31-3201G, Idaho Code. (emphasis added).

CERTIFICATE OF MAILING

I hereby certify that on October 24, 2019, I served a true and correct copy of the foregoing document as notice pursuant to the Idaho Rules to each of the parties of record as follows:

CHERIE PHILLIPS
1926 MADERA ST., APT. 209
WAUKESHA, WI 53189

HON. CHRISTOPHER M. BIETER
MAGISTRATE JUDGE
VIA INTERDEPARTMENTAL MAIL

PHIL MCGRANE
Clerk of the District Court
Ada County, Idaho

By *Shane Lyle*
Deputy Clerk



AMERICAN LAW ATTORNEY'S ASSOCIATION

OPINION ON APPEAL – PAGE 10

**Additional material
from this filing is
available in the
Clerk's Office.**