

STATE OF IDAHO }  
COUNTY OF KOOTENAI } SS  
FILED:

2012 OCT 26 PM 1:18

CLERK DISTRICT COURT

*Debra J. Job*  
DEPUTY

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6  
7 **Malcolm Dymkoski**  
8 **Attorney at Law**  
9 **1110 W. Park Place Suite 210**  
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14 **Idaho State Bar No. 3014**

15  
16 **Attorney for the Petitioner**  
17  
18  
19

20 **IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE**  
21 **STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**  
22  
23

24 **CLIFFORD HAYES, Clerk of the District**  
25 **Court of Kootenai County, Idaho.**

26  
27 **Plaintiff,**

28  
29 **v.**

30  
31 **THE HONORABLE JOHN T. MITCHELL,**  
32 **Administrative Judge of the First Judi-**  
33 **cial District of the State of Idaho,**

34  
35 **Defendant.**

**CASE NO. 2012-7855**

**VERIFIED MOTION FOR VOLUNTARY**  
**DISQUALIFICATION (Rule 40(d)(2),**  
**I.R.C.P.)**

36  
37 The Plaintiff asks this Court, pursuant to Rule 40(d)(2), I.R.C.P., to disqualify all  
38 District Court Judges of the First Judicial District from presiding in this matter. The  
39 Honorable John T. Mitchell is the Defendant in this matter and therefore cannot  
40 preside, pursuant to Rule 40(d)(2)(A)(1), I.R.C.P. All of the other District Court Judges  
41 of the First Judicial District are disqualified from presiding pursuant to Rule  
42 40(d)(2)(A)(1), I.R.C.P., as they have an interest in the hiring, firing, and evaluation of  
43 various county employees working within the Court system, who are employees that are  
44 the subject matter of this litigation. In the alternative, all of the other District Court

1 Judges of the First Judicial District are disqualified from presiding pursuant to Rule  
2 40(d)(2)(A)(4), I.R.C.P., as they are biased against either the Plaintiff or the case because  
3 they have an interest in the hiring, firing, and evaluation of various county employees  
4 working within the Court system, who are employees that are the subject matter of this  
5 litigation.

6 Dated 10-26, 2012.

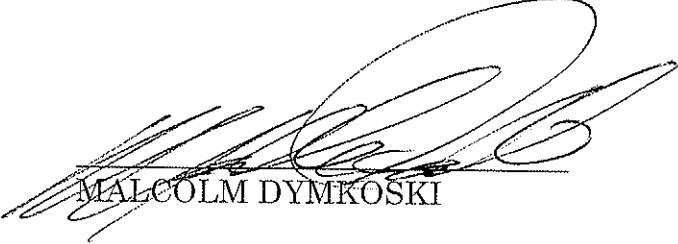
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12 MALCOLM DYMKOŠKI  
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15 STATE OF IDAHO

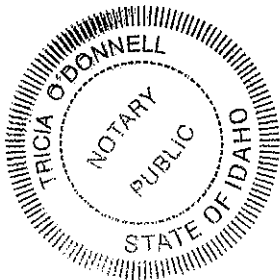
16 ss.


17 County of Kootenai

18  
19 Malcolm, being first sworn on oath, states that he is the attorney of record for  
20 the Plaintiff in this action, has read this document, knows its contents, and states that  
21 the contents are true.

22  
23  
24  
25   
26 MALCOLM DYMKOŠKI  
27

28  
29 Subscribed and sworn to before me on October 26, 2012  
30 12



  
Notary Public: Idaho  
Commission expires: 7/2/13

Malcolm Dymkoski  
Attorney at Law  
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Idaho State Bar No. 3014

Attorney for the Petitioner

STATE OF IDAHO  
COUNTY OF KOOTENAI } SS  
FILED:

2012 OCT 26 PM 1:07

CLERK DISTRICT COURT

*Robbie J. ...*  
DEPUTY

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

CLIFFORD HAYES, Clerk of the District  
Court of Kootenai County, Idaho.

Plaintiff,

v.

THE HONORABLE JOHN T. MITCHELL,  
Administrative Judge of the First Judi-  
cial District of the State of Idaho,

Defendant.

CASE NO. 2012- 17855

SUMMONS

NOTICE: YOU HAVE BEEN SUED BY THE ABOVE-NAMED PLAINTIFF(S). THE COURT MAY ENTER JUDGMENT AGAINST YOU WITHOUT FURTHER NOTICE UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.

TO: The Honorable John T. Mitchell, Administrative Judge of the First Judicial District of the State of Idaho

You are hereby notified that in order to defend this lawsuit, an appropriate written response must be filed with the above designated court at PO Box 9000, 324 W. Garden Avenue, Coeur d'Alene, ID 83816-9000, Tel: (208) 446-1160, within 20 days after service of this Summons on you. If you fail to so respond the court may enter judgment against you as demanded by the plaintiff(s) 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.
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.

WITNESS MY HAND and seal of said District Court on Oct 26, 2012.

**CLIFFORD T. HAYES**

District Court Clerk

BY: Cathy Victoria  
Deputy

Malcolm Dymkoski  
Attorney at Law  
1110 W. Park Place Suite 210  
Coeur d'Alene, ID 83814  
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Attorney for the Petitioner

STATE OF IDAHO  
COUNTY OF KOOTENAI  
FILED: 43495

2012 OCT 26 PM 1:06

CLERK DISTRICT COURT

DEPUTY

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

CLIFFORD HAYES, Clerk of the District  
Court of Kootenai County, Idaho.

Plaintiff,

v.

THE HONORABLE JOHN T. MITCHELL,  
Administrative Judge of the First Judi-  
cial District of the State of Idaho,

Defendant.

CASE NO. 2012-7855

VERIFIED PETITION FOR DECLARA-  
TORY JUDGMENT

The Plaintiff, Clifford Hayes hereby petitions the Court for a declaratory judgment, as follows:

PARTIES

1. Petitioner, Clifford T. Hayes (Clerk Hayes), is the duly elected Clerk of the District Court of Kootenai County, Idaho. As Clerk, he is also the Auditor of Kootenai County.
2. Respondent the Honorable John T. Mitchell ("Judge Mitchell") is a duly elected district judge of the First Judicial District of the State of Idaho, and is the Administrative Judge of that District. Judge Mitchell's chambers are located in Kootenai County, Idaho. Judge Mitchell became the Administrative Judge in 2009. Judge Mitchell is named in this action solely in his capacity as Administrative Judge.

## JURISDICTION

3. ~~This Court has jurisdiction to enter a declaratory judgment pursuant to I.C. § 10-1201, et seq. and Rule 57, I.R.C.P.~~

## FACTS

4. Clerk Hayes was elected to the office of Clerk of Kootenai County in the general election in November, 2010, and took office in January, 2011.

5. On or about September 1, 2011, Karlene Behringer, who was, and remains, the Trial Court Administrator for the First Judicial District, advised Clerk Hayes that she has been responsible for determining increases in compensation for the Court bailiffs, Court security personnel, Judicial Staff Attorneys (Law Clerks), Speciality Court Coordinators, and Ms. Behringer's assistant, Jamie Miller. As a Trial Court Administrator, Ms. Behringer is an employee of the State of Idaho. The Court bailiffs, Court security personnel, judicial staff attorneys (law clerks), speciality court coordinators, and Ms. Behringer's assistant, Jamie Miller are all employees of Kootenai County.

6. On or about September 7, 2011, Clerk Hayes responded to Karlene Behringer, advising her that the Idaho Code does not call for a State employee to supervise County employees, and that he (Clerk Hayes) would meet with Judge Mitchell to discuss his concerns with that matter.

7. On or about September 7, 2011, Judge Mitchell wrote to Clerk Hayes:

The only comment you made at the end of the budget hearing yesterday (September 6, 2011) morning was a clarifying question to the Commissioners. You asked: "You said you didn't want to hold the judges responsible, that they were over budget? Did I hear that right?" Commissioner Green responded "this puts us in an awkward situation.", and you said "But I believe it would be me". Finally you said "Next year we hope that would not occur." I'm not sure what you meant by those comments. I didn't think much about those comments until you sent me a copy this morning of your email response to Karlene Behringer, our First District Trial Court Administrator. That email appears below. In that email, you state: "... my

impression is the State Code does not call for a State employee to 'super-  
vise' County employees". While Karlene is a State employee, all Karlene  
was asking about was how to have input into pay raises, not how to  
"supervise" County employees. There is a big difference between "input"  
and "supervision".

Judge Mitchell further stated in that email to Clerk Hayes:

If by your comment at yesterday's budget hearing you meant that the  
Judiciary has no place in the district court budget process, I would disagree  
with that position. If by your comment at yesterday's budget hearing you  
meant that the Judiciary is not responsible for sticking to the district court  
budget, I would disagree with that position as well. If you claim you have  
sole responsibility for the budget to the exclusion of the judiciary, I  
disagree.

Judge Mitchell then suggested that he and Clerk Hayes meet to discuss those concerns.

8. On or about September 13, 2011, Clerk Hayes emailed to Judge Mitchell:

I think Karlene [Behringer]'s input is valuable, but input into increases is  
very different than responsibility for deciding increases, much less  
managing the budget which those increases impact. Those are responsibili-  
ties which I take very seriously. It appears that every County employee in  
the Courts [sic] is hired by me with the veto power of you and the other  
State Judges as to their assignment to work for a Judge. ... I feel that  
Idaho law requires the County Elected Officials [sic] to be personally  
responsible for money spent over budget. If I am wrong, please correct me.  
I do not feel that Judges are responsible as Commissioner Green had said.

Clerk Hayes further stated that he agreed that he and Judge Mitchell should meet to  
discuss this matter.

9. On or about November 3, 2011, Clerk Hayes stated by memo to Judge Mitchell  
his view that "County employees should only be supervised (which includes hiring, firing  
and evaluating performance) by another County employee, not a State employee." Those  
county employees included bailiffs and security screeners, judicial state attorneys/law  
clerks, and speciality court coordinators and trial court administrative assistants. Clerk  
Hayes further advised Judge Mitchell:

The second area for your consideration is my plan to reallocate the  
District Court operations budget responsibilities. As you know, I am  
charged with overall budget authority as Clerk of the District Court. In  
the future, the Court Services Director will handle day-to-day monitoring

of expenditures, and will have the oversight duties to ensure individual line item expenditures are equal to or below the budgeted amounts. The Court Services Director will approve prepared claims and prepare the annual budget. The Administrative District Judges and Trail Court Administrator are welcome to provide input to the Court Services Director with regard to budget expenditures and preparation.

10. By letter to Clerk Hayes, dated November 30, 2011, Judge Mitchell stated:

I am **ordering** you to not implement any of your proposed changes in your letters, and ordering no person in you department or acting on your direction may do so either. I am further specifically **ordering** that neither Diana Meyer nor anyone in her position shall have any supervisory role over the Bailiffs and Security Screeners, the judges' Law Clerks/Judicial Staff Attorneys, the Speciality Court Coordinators of the Trial Court Administrative Assistant. The position stated in your letters is contrary to the Idaho Statutes and legal authority established by the Idaho Supreme Court in cases and court rules.

[Emphasis in the original.] Judge Mitchell further stated that,

If you disagree with my decision, *Crooks [v. Maynard]*, 112 Idaho 312, 732 P.2d 281 (1987) gives you your remedy. You may go to my boss (and your boss), the Honorable Roger Burdick, Chief Justice of Idaho Supreme Court, and seek a different decision."

11. On December 6, 2011, Judge Mitchell entered the *Order Directing Kootenai County Clerk Clifford Hayes Re: Not To Implement Any Changes Re: Supervision, District Court Budget, and Procedures for District Court*. That *Order* stated: 1). That neither Clerk Hayes nor any person acting at the direction of Clerk Hayes were to implement any of the proposed changes set forth in Clerk Hayes' letters of November 3 and November 22, 2011; 2). That neither Court Services Director Diana Meyer, nor anyone acting at her direction, were to have any supervisory role over the judges' law clerks, Specialty Court Coordinators, or the Trial Court Administrative Assistant, and that only the Trial Court Administrator would supervise those county employees; and 3). That Clerk Hayes could not implement any of the budget changes, nor monitor any budget items, payment approval procedures or payment procedures set forth in Clerk Hayes' letters of November 3 and November 22, 2011. A true and correct copy of that *Order* is attached hereto and is incorporated by reference. That *Order* includes the letter dated November 30, 2011 from Judge Mitchell to Clerk Hayes, the memo of Clerk Hayes to Judge



Mitchell dated November 3, 2011, and the memo from Clerk Hayes to Judge Mitchell, dated November 22, 2011.

12. In about April, 2012, Judge Mitchell hired a Court Assistance Officer. The position of ~~Court Assistance Officer is provided in Rule 53, I.C.A.R. That Court Assistance Officer is an~~ employee of Kootenai County, but the expenditures for the salary, benefits, and expenses of the new Court Assistance Officer are shared by all of the counties in the First Judicial District. Kootenai County's share of the salary, benefits, and expenses for the new Court Assistance Officer are paid from the District Court Fund. Judge Mitchell has advised Clerk Hayes that the Court Assistance Officer reports to the Administrative Judge or the Trial Court Administrator, and has so directed the Court Assistance Officer to do so. Clerk Hayes asserts that, although the Administrative Judge or the Trial Court Administrator is responsible for managing and supervising the day-to-day activities of the Court Assistance Officer, the District Court Clerk has the ultimate authority over the Court Assistance Officer.

13. Although the District Court judges, either individually, or through or in conjunction with the administrative district judge, are responsible for the day-to-day management of judicial staff attorneys/law clerks, speciality court coordinators, the trial court administrative assistant, the court bailiffs/court security personnel, and the Court Assistance Officer, including determination of the educational or experience qualifications of the those personnel assigned to the court, and in determining the particular job assignments of those personnel, Clerk Hayes, as District Court Clerk, has the final authority to hire, terminate the employment of, authorize wage increases, and evaluate the job performance of all county employees working in the Court system in Kootenai County whose wages are paid from Kootenai County funds including, but not limited to, the District Court Fund.

14. At all relevant times, the Board of Commissioners for Kootenai County, Idaho, has provided funding for the Judicial Staff Attorneys/Law Clerks, Speciality Court Coordinators, the Trial Court Administrative Assistant, the court bailiffs and other court security personnel, and the Court Assistance Officer. That funding is designated as the District Court Fund, as provided in I.C. §31-867.

15. Clerk Hayes, as District Court Clerk, is the county official in charge of the District Court Fund and, as such, has the authority and obligation, pursuant to I.C. §31-1602, to prepare and

provide to the county budget officer an itemized estimate showing, among other matters, all expenditures for the District Court, from the District Court Fund.

16. Clerk Hayes, as District Court Clerk, is the county official who has the authority to ~~authorize and supervise the expenditures from District Court Fund and is personally liable for~~ expenditures from the District Court Fund that are in excess of the budgeted expenditures.

17. Clerk Hayes filed his *Verified Petition for Writ of Prohibition and Writ of Mandamus* with the Idaho Supreme Court, alleging substantially these same matters, on or about June 8, 2012. Judge Mitchell filed his *Answer* to that Petition on or about July 6, 2012, and the Supreme Court dismissed the *Petition* without comment.

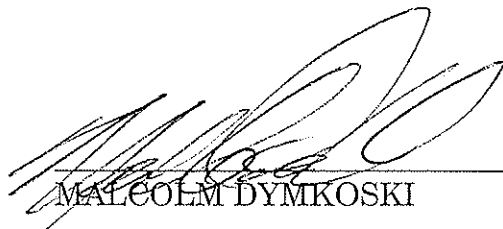
18. This matter is ripe for entry of a declaratory judgment.

#### PRAYER FOR RELIEF

WHEREFORE, the Petitioner requests the following relief:

1. For an order of this Court that the District Court Clerk, and not the Administrative Judge, has the sole authority to hire, terminate the employment of, authorize wage increases, and evaluate all county employees working in the Court system in Kootenai County whose wages are paid from Kootenai County funds.
2. For an order of this Court that the District Court Clerk is responsible for preparing and providing to the county budget officer an itemized estimate showing, among other matters, all expenditures for the District Court, from the District Court Fund.
3. For an order of this Court that the District Court Clerk, and not the Administrative Judge, is personally liable for expenditures from the District Court Fund that are in excess of the budgeted expenditures.
4. For such further relief as this Court deems just and proper.

Dated 10-26, 2012.

  
MALCOLM DYMKOSKI

STATE OF IDAHO

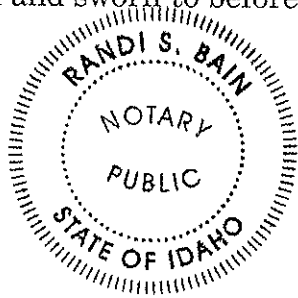
SS.


County of Kootenai

Clifford Hayes, being first sworn on oath, states that he is the Petitioner in this action, has read this document, knows its contents, and states that the contents are true to the best of his information and knowledge.

  
\_\_\_\_\_  
CLIFFORD HAYES

Subscribed and sworn to before me on 23<sup>rd</sup>, October, 2012



  
\_\_\_\_\_  
Notary Public  
Commission expires:

COPY

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

DEC 06 2011

ORDER DIRECTING KOOTENAI )  
COUNTY CLERK CLIFFORD HAYES )  
RE: NOT TO IMPLEMENT ANY )  
CHANGES RE: SUPERVISION, )  
DISTRICT COURT BUDGET, AND )  
PROCEDURES FOR DISTRICT COURT )

H11-KOO.1

KOOTENAI COUNTY CLERK  
9:13 AM

WHEREAS the undersigned Administrative District Judge of the First Judicial District, State of Idaho, in accordance with orders set forth in the November 30, 2011, letter sent by the undersigned to Cliff Hayes, Clerk of the District Court for Kootenai County (attached);

IT IS HEREBY ORDERED that Cliff Hayes, Clerk of the District Court for Kootenai County, not implement any of the proposed changes in a) the letter dated November 3, 2011, from Cliff Hayes to the undersigned Administrative District Judge (attached), or b) the letter dated November 22, 2011, from Cliff Hayes to the undersigned Administrative District Judge (attached).

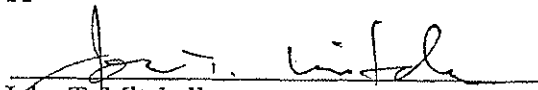
IT IS FURTHER ORDERED that no person acting at the direction of Cliff Hayes, Clerk of the district Court for Kootenai County, may implement any of the proposed changes in a) the letter dated November 3, 2011, from Cliff Hayes to the undersigned Administrative District, or b) the letter dated November 22, 2011, from Cliff Hayes to the undersigned Administrative District Judge.

IT IS FURTHER ORDERD that neither Diana Meyer nor anyone in her position shall have any supervisory role over any of the Bailiffs and Security Screeners, any of the

judges' Law Clerks/Judicial Staff Attorneys, any of the Specialty Court Coordinators, or the Trial Court Administrative Assistant. The Administrative District Judge, through the Trial Court Administrator for the First Judicial District, will supervise these county employees.

**IT IS FURTHER ORDERED** that Cliff Hayes, Clerk of the District Court for Kootenai County, not implement any budget changes, monitoring of budget items, payment approval procedures, payment procedures, proposed in a) the letter dated November 3, 2011, from Cliff Hayes to the undersigned Administrative District Judge, or b) the letter dated November 22, 2011, from Cliff Hayes to the undersigned Administrative District Judge. The system presently in place will remain: the Trial Court Administrator will prepare the budget, of course, with input from appropriate other people; bills, invoices, claims will be input by Patty Dubé into LOGOS and the Trial Court Administrator will review and determine what bills should be paid or denied, and if approved by the Trial Court Administrator, the Trial Court Administrator shall submit such to the Auditor for payment.

DATED this 6<sup>th</sup> day of December, 2011

  
John T. Mitchell  
Administrative District Judge

cc: Cliff Hayes, Clerk of Court, Kootenai County, w/encl.  
Karlene Behringer, Trial Court Administrator, w/encl.  
Chief Justice Roger Burdick, Idaho Supreme Court, w/o encl., via email  
Patti Tobias, Admin. Dir. of the Courts, Idaho Sup. Ct., w/o encl., via email  
Daniel G. Chadwick, Exec. Dir. Idaho Assoc. of Counties, w/o encl., FAX (208) 345-0379  
Diana Meyer, Kootenai County Court Services Director, w/o encl., via email  
Kootenai County Commissioner Jai Nelson, w/o encl., via email  
Kootenai County Commissioner Todd Tondee, w/o encl., via email  
Kootenai County Commissioner Dan Green, w/o encl., via email  
Mary Marano, Kootenai County Mental Health Court Coordinator, w/o encl., via email