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Attorney for the Petitioner

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED:

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 Judicial
District of the State of Idaho,

Defendant.

CASE NO. 2012-7855

VERIFIED PETITION FOR DECLARATORY
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.

ASSIGNED TO
JUDGE LUSTER

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.

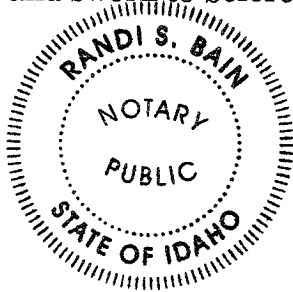
County of Kootenai


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 23rd 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
JA 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).

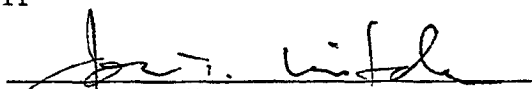
IT IS FURTHER ORDERED that no person acting at the direction of Cliff Hayes, Clerk of the district Court for Kootenai County, may implement any of the proposed changes in a) the letter dated November 3, 2011, from Cliff Hayes to the undersigned Administrative District, or b) the letter dated November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

IT IS FURTHER ORDERED 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 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 6th 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

Rita Wickham, Kootenai County DUI Court Coordinator, w/o encl., via email
Tanya Reynolds, Kootenai County Drug Court Coordinator, w/o encl., via email
Jamie Johnson, Admin. Assistant to Trial Court Administrator, w/o encl., via email
Pete Barnes, Jury Commissioner and Chief Bailiff, w/o encl., via email
Rocky Watson, Kootenai County Sheriff, w/o encl., via email
Barry McHugh, Kootenai County Prosecuting Attorney, w/o encl., via email
Jamila Holmes, Law Clerk to District Judge John Mitchell, w/o encl., via email
Heather DeBlieck , Law Clerk to District Judge Benjamin Simpson, w/o encl., via email
Buck Pennington, Law Clerk to District Judge Lansing Haynes, w/o encl., via email
Courtney Beebe, Law Clerk to District Judge John Luster, w/o encl., via email
Honorable John Luster, w/o encl., via email
Honorable Lansing Haynes, w/o encl., via email
Honorable Benjamin Simpson, w/o encl., via email
Honorable Scott Wayman, w/o encl., via email
Honorable James Stow, w/o encl., via email
Honorable Robert Caldwell, w/o encl., via email
Honorable Penny Friedlander, w/o encl., via email
Honorable Barry Watson, w/o encl., via email
Honorable Clark Peterson, w/o encl., via email

DISTRICT COURT
FIRST JUDICIAL DISTRICT
STATE OF IDAHO



JOHN T. MITCHELL
DISTRICT JUDGE
PHONE: (208) 446-1103
FAX: (208) 446-1132

November 30, 2011

RESIDENT CHAMBERS
KOOTENAI COUNTY JUSTICE BUILDING
324 W. GARDEN AVENUE
P.O. BOX 9000
COEUR D'ALENE, IDAHO 83816-9000
EMAIL: JMITCHELL@CO.KOOTENAI.ID.US

Cliff Hayes

Clerk of the District Court, Kootenai County
P. O. Box 9000
Coeur d'Alene, ID 83816-9000

Hand delivered 11/30/11 JTM

This letter is in response to your November 3, 2011 (attached), letter to me, and your November 22, 2011 (attached), letter to me.

Without ever being mentioned in either of your two letters, your letters concern the concept of "shared employees." The concept of "shared employee" requires cooperation. Your letters to me have little in the way of cooperation. While you wrote in your November 3, 2011, letter that you "welcome my thoughts", your November 22, 2011, letter simply told me what you are going to do and imposed a deadline upon which you will implement those changes. In your November 22, 2011, letter you write:

I intend to implement the District Court system adjustments I outlined in the November 3, 2011 memo, with the refinements for Judicial Staff Attorneys/Law Clerks as detailed above, on Monday, December 5, 2011. Thank you.

I am **ordering** you to not implement any of your proposed changes in your letters, and ordering no person in your 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 Specialty Court Coordinators or 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.

Please understand that, as evidenced by the Idaho Supreme Court decision you quoted to me (*Blankenship v. Kootenai County*, 125 Idaho 101, 867 P.2d 975 (1994)), eighteen years ago in Kootenai County, the Administrative District Judge at that time (and prior to that time) exercised supervisory control over the evidence officer, the bailiffs, Diana Meyer the court services director and the district court clerks. That supervisory control in the Administrative District Judge has remained for the past eighteen years, and it will remain in the future. This is the same administrative structure which you now propose to turn on its head. Further, the Idaho Supreme Court agreed with this administrative structure that we have had for the past eighteen years and we will continue to have in the future. I am simply unwilling be willing to abdicate my role as Administrative District Judge and follow your proposal.

It saddens me that the spirit of cooperation envisioned in *Crooks v. Maynard*, 112 Idaho 312, 732 P.2d 281 (1987), seems to have evaporated in your letters. I note that 43 other counties are able to work together in this area without these problems. Putting aside the legal issues, there is a long and appropriate history of cooperation in Idaho and in Kootenai County, which you are, in

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my view, disregarding. I remain hopeful that continued communication will be beneficial, though in my view these matters raised in your two letters should now be considered finally resolved.

If you have other concerns in the future, please feel free to contact me. If you have other questions regarding how these issues are being handled successfully across the state as we are handling them here, please feel free to contact me and I can put you in touch with the appropriate persons and resources.

I respect your passion and commitment to change and advancement; however, in this instance the changes you propose are unwanted, unneeded and unlawful. I have to do my job as Administrative District Judge, and I will not allow your proposals to be implemented. I hope you similarly respect my position.

The remainder of this letter sets forth the reasons for this order.

In order to make clear your authority and responsibility (as district court clerk, not as ex officio auditor and recorder), as well as my responsibility as Administrative District Judge, I will discuss the applicable Idaho Statutes, Idaho Court Rules, and Idaho case law from the Idaho Supreme Court (the cases you cited to me and some others).

First, your authority as the Elected Clerk of Court. Your duties are defined in Idaho Code § 1-1001, which reads in its entirety:

Duties of clerk – The clerk of the district court must perform such duties as are prescribed in the Code of Civil Procedure [titles 1-13 of the Idaho Code] and in the Penal Code [titles 18-20 of the Idaho Code], and such duties as may be required of him by the rules and practice of the court.

You, or a deputy clerk, must be at every session of court. Idaho Code § 1-1002. You shall be empowered by the board of county commissioners to appoint deputies and clerical assistants. Idaho Code § 31-3107.

Second, the authority of the Administrative District Judge. There are seven judicial districts in the State of Idaho. Kootenai County is in the First Judicial District and is composed of the five northern counties. "In each judicial district there shall be an administrative judge elected by a majority of the district judges within the district to serve for a period of time as provided by rules of the Idaho supreme court." Idaho Code § 1-703. I was elected to be the Administrative District Judge by the other five District Judges in the First Judicial District in October, 2009. That statute continues: "The administrative judge is hereby granted all powers and duties heretofore or hereafter granted to the senior district judge, and the administrative judge shall apportion the business of such district among such judges as equally as may be..." Idaho Court Administrative Rule 42(a) tracks Idaho Code § 1-703. Idaho Court Administrative Rule 42(b) provides the administrative district judge shall be elected for a term of three years, subject to reelection. Idaho Court Administrative Rule 42(d) provides the administrative district judge may be removed by a majority of the district judges of the district. ~~Idaho Court Administrative Rule 42(e) provides:~~
"The powers and duties of the administrative judge include all those powers and duties as established by the Idaho Supreme Court." Idaho Code § 1-907 reads in pertinent part:

Administrative judge – Administrative powers and duties. The administrative judge or acting administrative judge in each judicial district, subject to the rules of the Supreme Court, shall have administrative supervision and authority over the operation of the district courts and magistrates in the district. These powers and duties include, but are not limited to, the following:

* * *

(c) supervising the clerks of the district courts in the discharge of the clerical functions of the district court.

On February 7, 2011, in Boise, at the Idaho Supreme Court building, you were given material entitled: "Clerks and Judges Leadership Conference and New Clerk of the District Court Orientation." You and I attended this conference. These materials were prepared by the Idaho Supreme Court. At page 105 of that material, The Idaho Supreme Court wrote:

Elected Clerks of the District Court As an elected county official, the clerk of the district court serves as a pivotal link between the state judiciary and county government. In addition to the responsibilities in the court, the elected clerk of the district court also serves as ex officio auditor and recorder. The elected clerks and their deputies provide crucial services to the district judges and the magistrates, including but not limited to the receipt and filing of all court documents, calendaring of cases, the receipt and accounting of all fees and fines, taking in-court minutes of court hearings, and day-to-day management of court records, both hard-copy and computer maintained. The elected clerk of the district court is the hiring authority for deputy court clerks. In addition the clerks' offices are the first point of contact for citizens seeking access to court services. As a result, the elected clerk of the district court and their deputies greatly influence the perception of many people regarding Idaho's court system.

Pages 171-196 of that material contain the statutes that pertain to the clerk of the district court in the clerk's collections of court funds, fees and fines. Pages 35-61 of that material contain other statutes and Idaho Supreme Court Rules that pertain to the clerks of the district courts.

You made it clear in your November 3, 2011, letter that you have the opinion that all County employees are "...to only be supervised (which includes hiring, firing and evaluating performance) by another County employee, not a State employee." Others who read my response to your letter need to know that the only "State" employees involved in our judicial system in Kootenai County are: a) the eleven State Judges who are chambered here in Kootenai County within the First Judicial District, b) the four District Judges' Court Reporters, and c) Karlene Behringer, the Trial Court Administrator. The rest of the people involved in making the justice system work here in Kootenai County are Kootenai County employees.

Your November 3, 2011, letter to me reads in part:

You know I believe County employees should only be supervised (which includes hiring, firing and evaluating performance) by another County employee, not a State employee. I am hoping to adjust parts of the County's District Court operations, and this first series of

changes relates to personnel:

1. Bailiffs & Security Screeners

Bailiffs & Security Screeners will be under the general supervision of the Court Services Director (Diana Meyer), and under the direct supervision of the Chief Bailiff/Jury Commissioner (Pete Barnes). The Chief Bailiff will assign individual Bailiffs to each Judge's courtroom as needed. If an individual Judge prefers not to work with a specific Bailiff or the Court Services Director, who will make accommodations for the Judge's preference.

2. Judicial Staff Attorneys/Law Clerks

Judicial Staff Attorneys/Law Clerks will be supervised by the Court Services Director, and will continue to receive daily direction from Judges. Judges are welcome to provide input to the Court Services Director for the performance evaluations of the Judicial Staff Attorneys/Law Clerks. The Administrative District Judge is invited to participate in the hiring process for every Judicial Staff Attorney/Law Clerk. Individual judges will consent to the hiring of their individual Judicial Staff Attorneys/Law Clerks.

3. Specialty Court Coordinators & Trial Court Administrative Assistant

Specialty Court Coordinators & the Trial Court Administrative Assistant will be supervised by the Court Services Director. The Specialty Court Coordinators and the Trial Court Administrative Assistant will continue to get day-to-day task direction from the Administrative District Judge and the Trial Court Administrator. The Administrative District Judge and the Trial Court Administrator are welcome to participate in the hiring process and to provide input to the Court Services Director on performance evaluations for the Specialty Court Coordinators and the Trial Court Administrative Assistant.

Clifford Hayes' Letter, November 3, 2011. Your suggestions began with the predicate that:

Prosecutor Barry McHugh and I reviewed three court cases (Blankenship v. Kootenai County; Estep v. Boundary County; and Crooks v. Maynard) and I believe the suggestions in this memo are consistent with the laws and precedents in these cases.

Id. I will address each of these cases, and more. I could not disagree with you more when you make the conclusion: "...I believe the suggestions in this memo are consistent with the laws and precedents in these cases." You include our Kootenai County Prosecuting Attorney in that sentence, that he was involved in your review of these three cases, but then you say "I believe the suggestions in this memo are consistent with the laws and precedents in these cases." I hope that by including Barry McHugh's name in that sentence, you are not ascribing your analysis to our Prosecuting Attorney, but rather as you indicate, these are "your" beliefs.

In your letter dated November 22, 2011, you changed your position set forth in your November 3, 2011, letter, regarding the law clerks, based on a conversation you had with Judge Haynes. You wrote:

Without comments from you or Judge Haynes regarding my planned changes to

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supervision of Bailiffs & Security Screeners, Specialty Court Coordinators & Trial Court Administrative Assistant, or to reallocation of District Court budget responsibilities, I presume my proposed adjustments as outlined in the November 3, 2011 memo are appropriate.

You then told me in that November 22, 2011, letter that "I intend to implement the District Court system adjustments I outlined in the November 3, 2011 memo...on Monday, December 5, 2011." While I understand your impatience in it taking me three weeks to respond to your first letter, due to the large number of judicial employees impacted by that letter, before responding, I felt it was important to get the input of those people, all judges, the Idaho Supreme Court Administrative Director of the Courts, the Idaho Supreme Court Staff Attorney to the Administrative Director, the Idaho Supreme Court personnel specialists. I now have that input.

First of all, let me state **my decision** is made as Administrative District Judge for the First Judicial District of the State of Idaho, and as designee for the Honorable Roger Burdick, Chief Justice of the State of Idaho Supreme Court. **My decision** is that your three methods of how you are "...hoping to adjust parts of the County's District Court operations", are entirely unacceptable, and I am **ordering** you not to implement any part of your trifold proposal. I am **ordering** Diana Meyer to have **no** supervisory role over the Bailiffs and Security Screeners, the judges' Law Clerks/Judicial Staff Attorneys, the Specialty Court Coordinators and the Trial Court Administrative Assistant. The status quo will remain. The Administrative District Judge, through Karlene Behringer, Trial Court Administrator, will supervise these county employees.

If you disagree with my decision, *Crooks* gives you your remedy. You may go to my boss (and your boss), the Honorable Roger Burdick, Chief Justice of the Idaho Supreme Court, and seek a different decision. Since you have read *Crooks v. Maynard*, 112 Idaho 312, 732 P.2d 281 (1987), you know that Chief Justice Burdick is my boss, and he is your boss, also. The Idaho Supreme Court in *Crooks v. Maynard* wrote:

In turn, to further the interests of a unified and integrated judicial system, the Supreme Court through the chief justice has delegated some management authority to the administrative director of the courts to oversee the whole court system, and to the administrative judge of each district to oversee the management of the court system in his district. When administrative disputes arise between judges within a judicial district, the Supreme Court has delegated decision-making power to the administrative district judge to settle those disputes. Basically, the Supreme Court, acting through the chief justice is the supervisor for all judicial personnel. The clerk of the district Court, a position created in art. 5, falls within this supervisory control of the Supreme Court and any supervisory control passed down to the administrative director, administrative judge and district judge.

* * *

Further, I.C. § 1-907, addressing the power of the administrative district judge, provides in part:

"The administrative judge or acting administrative judge in each judicial district, subject to the rules of the supreme court, shall have administrative supervision

and authority over the operation of the district courts and magistrates in the district. These powers and duties include, but are not limited to, the following:

“... ”

“(c) Supervising the clerks of the district courts and the discharge of the clerical functions of the district courts;”

See also, I.C. §§ 1-601 (clerks of the district courts are officers of courts); and 1-614 (record keeping duties confirmed of judges, clerks, and other officers). In essence, the legislature with these enactments has acknowledged that the clerk of the district court is subject to the control and direction of the judiciary. The constitution itself and the above legislative statutes make it abundantly clear—the clerk of the district court is a judicial officer, subject to the administrative power of the Supreme Court.

112 Idaho 312, 316, 732 P.2d 281, 285. Since you have read *Crooks v. Maynard*, you know that the Honorable John H. Maynard, Administrative District Judge for the Second Judicial District, in Lewiston, Idaho, in 1985, found his elected Clerk of Court (Donna Crooks) in contempt of court, and jailed both Crooks and her chief deputy clerk (Brenda Holmes) for contempt of court. The contempt occurred because Judge Maynard had ordered that Holmes “shall perform no duties connected with the operation of the courts nor shall she interfere with the manner that the deputies perform their duties.” 112 Idaho 312, 313, 732 P.2d 281, 282. Judge Maynard imposed that order because Crooks had hired Holmes to be her chief deputy clerk, “...without the knowledge of the administrative district judge and without the opportunity for any judge to apprise her qualifications and integrity.”

Understandably, Crooks and Holmes did not like being jailed for contempt, so the elected District Court Clerk Crooks sued Judge Maynard for a Writ of Prohibition, asking the Idaho Supreme Court to prohibit Judge Maynard from taking such action again. The Idaho Supreme Court refused to issue a writ of prohibition in its 1987 decision. Crooks then went to the Federal District Court, suing Judge Maynard again, this time in a civil lawsuit for money damages alleging her constitutional rights under 42 U.S.C. § 1983 were violated by being jailed for contempt. The Federal District Court, Honorable Harold Ryan, dismissed Crooks’ case on summary judgment holding Judge Maynard had absolute judicial immunity from the lawsuit. Crooks appealed to the Ninth Circuit Court of Appeals, which affirmed Judge Ryan. *Crooks v. Maynard*, 820 F.2d 329 (9th Cir. 1987). Crooks appealed to the United States Supreme Court, which vacated the Ninth Circuit opinion and remanded for reconsideration in light of *Forrester v. White*, 484 U.S. 219, 108 S.Ct. 538, 98 L.Ed. 2d 555 (1988). The Ninth Circuit remanded back to Judge Ryan who heard the case in light of *Forrester*. Judge Ryan again dismissed Crooks’ case on summary judgment, finding that Judge Maynard’s actions related to *functions*, not *personnel*, because Judge Maynard restricted *what* Holmes could do, not *who* could perform that job, and thus, Judge Maynard had judicial immunity, even after the *Forrester* decision. 718 F.Supp 1460 (D.Idaho 1989). Crooks appealed again to the Ninth Circuit Court of Appeals, which affirmed Judge Ryan’s decision. *Crooks v. Maynard*, 913 F.2d 699 (9th Cir. 1990).

In the “first” *Crooks v. Maynard* decision (112 Idaho 312, 732 P.2d 281 (1987)), the Idaho Supreme Court made it clear that the elected clerk can hire whoever he or she wants, but if the Administrative District Judge does not want the person hired by the clerk to perform a court

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function, the Administrative District Judge's decision is the final word. That first *Crooks* decision makes it clear that the deputy clerks of the court are supervised in their clerical functions of the district court by the Administrative District Judge. That conclusion by the Idaho Supreme Court was based on Idaho Code § 1-907, which directly states one of the duties of the Administrative District Judge is "Supervising the clerks of the district courts and the discharge of the clerical functions of the district courts." I.C. § 1-907(c).

The first *Crooks* decision makes it clear that even with regard to deputy clerks of court who are the alter ego of the elected clerk, the "Court" (via the Chief Justice and the Administrative District Judge) controls the deputy clerks actions when they are performing court functions. It is thus logical that you, as the elected clerk, have even less control over those who are not your alter ego. The Trial Court Administrative Assistant is not your alter ego, the three Specialty Court Coordinators are not your alter ego, the Bailiffs and Security Screeners are not your alter ego, and the District Judges' Law Clerks are not your alter ego. These county employees perform nothing but court functions directly related to the judges and the judges alone. You have nothing to do with these county employees. Accordingly, you presently have no supervisory capacity at all over these county employees, and you will have no supervisory capacity over these county employees in the future.

Stated another way, since Idaho Code § 1-907(c) makes it clear that the Administrative District Judge "supervises the clerks of the district courts and the discharge of the clerical functions of the district courts", and those clerks are your alter ego, then the supervisory role the Administrative District Judge has over these other county employees (law clerks, bailiffs, specialty court coordinators and trial court administrative assistant...all people who perform other than clerical functions of the district court) is even greater, and yours, non-existent.

Looking at the Idaho Statutes which empower you, none give you the authority to supervise the law clerks, bailiffs, specialty court coordinators and the trial court administrative assistant. Idaho Code § 1-1001, which specifies your "duties", does not give you that power. Nothing I can find in Titles 1-13 and 18-20 of the Idaho Code gives you that power. Idaho Code § 1-1002 does not give you that power. Idaho Code § 31-3107 does not give you that power.

I have discussed the various iterations of *Crooks*. I will now discuss the other cases you discussed with Kootenai County's Prosecuting Attorney, Barry McHugh.

In *Estep v. Commissioners of Boundary County*, 122 Idaho 345, 834 P.2d 962 (1992), the Idaho Supreme Court reiterated its earlier holding from *Crooks* that the elected clerk of court, when exercising a judicial function, is an arm of the judicial branch. 122 Idaho 345, 346, 834 P.2d 962, 963. In the very next sentence, the Idaho Supreme Court stated that the elected clerk of court, "...when wearing a judicial hat can only be supervised by an official judicial officer." *Id. Crooks* makes it clear that the elected clerk of court is to be supervised by the Chief Justice of the Idaho Supreme Court, through his or her designee, the Administrative District Judge. *Estep* makes it clear you are a "judicial official" (122 Idaho 345, 347, 834 P.2d 962, 964), and as such the county commissioners cannot control the elected clerk of court, but *Estep* also reaffirms who *does* control the elected clerk of court: the Chief Justice of the Idaho Supreme Court, through his

or her designee, the Administrative District Judge: "...when wearing a judicial hat, [the elected clerk] can only be supervised by an official judicial officer." 122 Idaho 345, 346, 834 P.2d 962, 963.

Blankenship v. Kootenai County, 125 Idaho 101, 867 P.2d 975 (1994) involved Diana Meyer, (the same Diana Meyer who you now tell me you are giving broad control over these non-clerical judicial Kootenai County employees), who, as the court services director at the time, along with the county bailiffs, were responsible for evidence (personal mementoes of Blankenship's son, a decedent in a wrongful death trial) inadvertently being destroyed. The Blankenships sued Kootenai County. The First District Judge granted summary judgment in favor of Kootenai County because, as a matter of law, Kootenai County could not be responsible for the alleged negligent acts of the deputy county clerks and bailiffs, because the deputy county clerks or bailiffs were *under the control of the District Court Administrative Judge* (a State of Idaho employee) while destroying the exhibits. 125 Idaho 101, 102, 867 P.2d 975, 976. The Idaho Supreme Court affirmed the District Judge, and specifically held Diana Meyer and the bailiffs were "...State employees for the purpose of imposing liability for the alleged negligent destruction of evidence under the Idaho Tort Claims Act." 125 Idaho 101, 104, 867 P.2d 975, 978. In reaching this conclusion, the Idaho Supreme Court wrote:

An employee is a person employed to perform services in the affairs of another and who with respect to the physical conduct in the performance of the service is subject to the other's control. *Jones v. Idaho Lumber, Inc.*, 81 Idaho 460, 469, 346 P.2d 1057, 1062 (1959); *Cloughley v. Orange Transportation Co.*, 80 Idaho 226, 235, 327 P.2d 369, 375 (1958). "Control" is the key to determining whether an actor is an "employee," given the work the actor is performing. *Van Vranken v. Fence-Craft*, 91 Idaho 742, 430 P.2d 488 (1967).

The administrative judge's duty is to supervise the clerks and bailiffs in their performance of clerical functions performed for the court. I.C. § 1-907. The clerk of the district court is a judicial officer while performing judicial clerical duties for the court. *Estep v. Comm'rs of Boundary County*, 122 Idaho 345, 834 P.2d 862 (1992); *Crooks v. Maynard*, 112 Idaho 312, 732 P.2d 281 (1987). While performing clerical judicial functions for the court, the deputy clerks and bailiffs are subject to the control and direction of the administrative court judge. *Id.*, 112 Idaho at 317, 732 P.2d at 286. The destruction of evidence is a clerical function of the court and must be performed by order of the administrative court judge. I.C.A.R. 37.

The evidence officer stated in his affidavit that he was directed by the administrative judge to organize evidence in the civil division and part of the organization effort involved destruction of evidence. The administrative judge directed his duties as evidence officer and told him how to perform those duties. Further, his job performance was reviewed by the administrative judge. Similarly, the court services director stated in her affidavit that the administrative judge exercised supervisory control over the district court clerks regarding the clerical functions of the court. She stated that the destruction of evidence is a clerical duty of the court supervised, directed, and controlled by the administrative judge. In addition, the deputy clerk stated in her affidavit that she reviewed the list of inventoried exhibits and wrote the notice of intent to destroy the

exhibits to the Blankenships. She stated that her actions were part of her clerical duties supervised, directed, and controlled by the administrative judge.

Bearing in mind the proper standard of review, the uncontroverted evidence as established by the affidavits leads to the inescapable conclusion that the administrative judge of the district court, rather than any county official, was the supervisor and controlled the deputy clerks of the court, evidence officer, and bailiffs while performing their judicial clerical functions in the handling and destruction of exhibits. There are no genuine issues of material fact left as to who controlled the clerks' and bailiffs' actions while destroying exhibits. Therefore, they met the definition of employees of the State of Idaho for the purposes of the Tort Claims Act with respect to the destruction of the exhibits in question. We affirm the district court's decision on summary judgment.

125 Idaho 101, 103-104, 867 P.2d 975, 977-978. I wasn't there when you and Barry McHugh reviewed *Blankenship*, but a few things leap out at me when I read *Blankenship*. **First, eighteen years ago** in Kootenai County, the Administrative District Judge "exercised supervisory control" over the evidence officer, the bailiffs, Diana Meyer the court services director and the district court clerks...not the elected clerk of court. That supervisory control of the Administrative District Judge has *remained* for the past eighteen years, and it will remain in the future. This is the same administrative structure which you now intend to turn on its head. **Second**, the Idaho Supreme Court agreed with this administrative structure that we here in Kootenai County had in place eighteen years ago and have had in place at all times since. We will continue to have that same administrative structure in the future. **Third**, the Idaho Supreme Court in *Blankenship* essentially put the State of Idaho's money where the State of Idaho Legislature said its mouth is. By that I mean that the Idaho Supreme Court said the State of Idaho was financially liable for any judgment resulting from the actions of these Kootenai County employees, because they were being supervised by...the Administrative District Judge, a State of Idaho employee, as mandated by Idaho Code § 1-907. **Fourth**, should I be willing to abdicate my role as Administrative District Judge and follow your proposal, **in the future Kootenai County would be liable for all lawsuits arising out of any actions of these county employees performing judicial functions.** Have you run your proposal (which you say will take effect on December 5, 2011), by any one of the Kootenai County Board of Commissioners? Have you run your proposal by the Idaho Counties Risk Management Program (ICRMP)?

After I administered the oath to you as elected clerk on January 10, 2011, the first words you ever spoke to me a month later in Boise, were: "We need to get the bailiffs out from under the court's supervision and under the Sheriff's supervision." That was at the February 7, 2011, meeting of the elected clerks of court at the Idaho Administrative Conference (the seven Administrative District Judges, Chief Justice and Administrative Director of the Idaho Supreme Court). I asked you why you felt that way, and you responded "Because I am liable for the actions of my employees." *Blankenship* shows how unfounded your concerns were. If I were to disregard the statutory mandate of Idaho Code § 1-907 and *Crooks*, and agree to your proposal, then in the future all of the liability of the judiciary now attaches to Kootenai County, and not the State of Idaho. Have you run your proposal by the Kootenai County taxpayers?

Obviously you support Sheriff Rocky Watson in his quest to have the bailiffs come under his

control. As the Administrative District Judge, I am adamantly opposed to that proposal for a variety of reasons. My predecessor Administrative District Judges have been opposed to such for the past twenty-plus years. I have made clear my reasons for my opposition to this proposal to both Sheriff Watson and the Kootenai County Commissioners. *Blankenship* demonstrates one of many reasons I oppose Sheriff Watson's proposal, which you support. That reason is the unfortunate liability attendant directly to Kootenai County were I to agree to such a proposal. Not only would I be abdicating my duties under Idaho Code § 1-907 and *Crooks* if I were to agree to Sheriff Watson's and your desires, but I would be placing Kootenai County taxpayers at greater risk without asking their vote, consent or even their input.

I would point you, and the Sheriff, to *Supreme Court of New Hampshire, Petition of Michael Mone and others*, 143 N.H. 128, 719 A.2d 626 (N.H. 1998). In *Mone*, the Supreme Court of New Hampshire was faced with a statutory change passed by the New Hampshire legislature "that county sheriff departments will be responsible for providing security in all State courts" 143 N.H. 128, 130, 719 A.2d 626, 629. The existing court security officers (bailiffs) filed a petition for a writ of prohibition with the New Hampshire Supreme Court, requesting the State administrative office from enforcing the provisions of that new statute. The New Hampshire Supreme Court unanimously held such statute violates the Separation of Powers Clause of the New Hampshire Constitution. *Id.* Because you wish to have control over the bailiffs and court security effective December 5, 2011, I am going to provide you with the following reasoning of the New Hampshire Supreme Court:

Separation of the three co-equal branches of government is essential to protect against a seizure of control by one branch that would threaten the ability of our citizens to remain a free and sovereign people. *See State v. LaFrance*, 124 N.H. 171, 176, 471 A.2d 340, 342 (1983). Thus, each branch is prohibited by the Separation of Powers Clause from encroaching on the powers and functions of another branch. *Opinion of the Justices*, 116 N.H. 406, 413, 360 A.2d 116, 122 (1976). The drafters of Part I, Article 37 recognized, however, that a complete separation of powers would disrupt the efficient operation of government, *see Opinion of the Justices*, 121 N.H. 552, 556, 431 A.2d 783, 785-86 (1981), and thus, "[i]n the nature of things there must be some overlapping" of powers, *Opinion of the Justices*, 85 N.H. 562, 567, 154 A. 217, 223 (1931). "[P]art I, article 37 of the New Hampshire Constitution does not require the erection of impenetrable barriers between the branches of our government. On the contrary, the three departments must move in concert without improper encroachments by one branch upon the functions of another." *Opinion of the Justices*, 113 N.H. 287, 290, 306 A.2d 55, 57 (1973). The doctrine is thus violated when one branch usurps an essential power of another. *See Opinion of the Justices*, 121 N.H. at 556, 431 A.2d at 786; *Opinion of the Justices*, 110 N.H. 359, 363, 266 A.2d 823, 826 (1970). Accordingly, we must consider whether chapter 297 prevents the judiciary from performing an essential judicial function. *See Opinion of the Justices*, 86 N.H. 597, 601, 166 A. 640, 646 (1933) (legislative branch prohibited from seizing any of the judiciary's "essential attributes").

The petitioners assert that chapter 297 violates the Separation of Powers Clause because, by removing authority over court security officers from the courts, it encroaches on the judiciary's power to control courtroom functions. **Although not specifically set**

forth in the constitution, powers reserved for the judiciary arise from its most fundamental duty to interpret and administer the law. *See Merrill*, 1 N.H. at 203. Thus, it is beyond dispute that the judiciary has the power to control its courtrooms. *LaFrance*, 124 N.H. at 179, 471 A.2d at 344. “The power of the judiciary to control its own proceedings, the conduct of participants, the actions of officers of the court and the environment of the court is a power absolutely necessary for a court to function effectively and do its job of administering justice.” *Id.* at 179-80, 471 A.2d at 344-45.

The sheriff's association recognizes that one branch of government violates the Separation of Powers Clause when it “manifestly and materially interferes with the capacity of another branch to do its job.” The sheriff's association argues, however, that court security is not an essential attribute of the adjudicatory function of the court system because “[s]ecurity ... is no more essential to the functioning of a Court than are a building, tables and chairs, utilities, [and] paper.” We disagree.

An integral part of any court's duty to administer justice and fairly adjudicate disputes is to ensure that all parties have the opportunity to advance their cause in an atmosphere of safety, decorum, and fairness. *See State v. Hartzog*, 96 Wash.2d 383, 635 P.2d 694, 701 (1981); *see also Kersevich v. Jaffrey Dist. Ct.*, 114 N.H. 790, 791, 330 A.2d 446, 447 (1974); *cf. Illinois v. Allen*, 397 U.S. 337, 343, 90 S.Ct. 1057, 25 L.Ed.2d 353 (1970). Essential to that function are the court security officers who assist the courts in providing a safe and secure forum for litigants, court staff, witnesses, jurors, and the public. “Without security the public's confidence in the integrity of the judicial system is threatened. The proper administration of justice requires that courts operate in a safe and secure environment.” *Bd. of County Com'rs, Weld Co. v. 19th Jud. Dist.*, 895 P.2d 545, 548-49 (Colo.1995). Thus, because the providers of court security play an integral role in the most fundamental function of any court, the adjudicatory function, it is an improper encroachment on the judiciary's power for the legislature to mandate the provider of court security. *See LaFrance*, 124 N.H. at 181, 471 A.2d at 346 (Separation of Powers Clause “compels limits to encroachments by one branch into the inherent and internal affairs of another branch”).

The sheriff's association also asserts that because certain bailiffs in the superior courts are currently employed by the sheriffs, and not the courts, any argument that chapter 297 violates the Separation of Powers Clause is “meaningless.” We find this argument to be without merit. Under the doctrine of comity, enactments that may encroach on an essential function of the judiciary may be applied where “they are consistent with judicial functions and policies and when no constitutional challenge is made to them.” *Opinion of the Justices (Prior Sexual Assault Evidence)*, 141 N.H. 562, 573-74, 688 A.2d 1006, 1013 (1997). As conceded by the sheriff's association in its brief, although there is substantial cooperation between the judicial branch and executive branch with respect to superior court security under the current system, the implicit understanding is that the presiding judge maintains control of the courtroom. “[F]here is a difference between assisting and intruding. If the coordinated activity of branches of government is voluntary and the activity of one branch does not intrude into the internal function of another,” the Separation of Powers Clause is not violated. *Com. v. Tate*, 34

Mass.App.Ct. 446, 612 N.E.2d 686, 688, *review denied*, 415 Mass. 1106, 616 N.E.2d 809 (1993).

The legislature, in chapter 297, did not make any such accommodation, however. Instead, chapter 297 *requires* that the sheriffs be responsible for courtroom security. See Laws 1998, 297:1, II. Section 297:3, III provides that “[t]he sheriff’s bailiffs *shall* provide adequate security in all state courts.” (Emphasis added.) Section 297:5, II also provides that “[t]he sheriff, through the sheriff’s deputies and bailiffs, *shall be responsible* for court security.” (Emphasis added; bold italics omitted.) It is well-settled that the term “shall” in a statute “requires mandatory enforcement.” *Town of Nottingham v. Harvey*, 120 N.H. 889, 895, 424 A.2d 1125, 1129 (1980). “It is fundamental that a trial court is vested with the discretion to provide for courtroom security in order to ensure the safety of court officers, parties, and the public.” *Hartzog*, 635 P.2d at 701. Chapter 297 removes control of the essential function of court security from the judiciary and places the ultimate responsibility with the executive branch. Thus, chapter 297 directly interferes with the discretion of the courts to control their courtrooms and is constitutionally impermissible. See *Hartzog*, 635 P.2d at 701; *cf. Tate*, 612 N.E.2d at 688 (noting difference between assisting and intruding).

In addition, chapter 297 violates the Separation of Powers Clause because it encroaches on the judiciary’s essential function to ensure the impartial administration of justice. Part I, Article 35 provides, in relevant part, that

[i]t is essential to the preservation of the rights of every individual, his life, liberty, property, and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as impartial as the lot of humanity will admit.

It is the court’s responsibility “to oversee the operations of the judicial branch for the purposes of maintaining public confidence in the administration of justice.” *Opinion of the Justices (Judicial Salary Suspension)*, 140 N.H. 297, 299, 666 A.2d 523, 525 (1995). Furthermore, Part I, Article 35 mandates that there be an independent judiciary so that the adjudication of individual controversies is fair and remains uninfluenced by outside forces. See *LaFrance*, 124 N.H. at 177-78, 471 A.2d at 343-44. In this instance, we are concerned about the effect that executive branch control of court security would have on the ability of the judicial branch to ensure impartiality in the adjudicatory process. For example, it is vital that bailiffs, who guard juries and relay their messages to the presiding judge, be under the direct supervision of the presiding judge to ensure the impartiality of the process. *Cf. State v. Wellman*, 128 N.H. 340, 348, 513 A.2d 944, 949 (1986) (provision for impartial judges extends to jury), *abrogated on other grounds by State v. Hughes*, 135 N.H. 413, 417-20, 605 A.2d 1062, 1065-67 (1992). If judges are unable to effectuate the Part I, Article 35 guarantee that every citizen will receive an impartial hearing both in theory and in practice, faith in the judicial system is diminished. *Cf. Opinion of the Justices (Judicial Salary Suspension)*, 140 N.H. at 299, 666 A.2d at 525. Accordingly, because chapter 297 mandates that the executive branch shall be responsible for security during the adjudicatory process, the law impedes on the court’s constitutional responsibility to ensure the fair adjudication of controversies. *Cf. Opinion of the Justices (Prior Sexual Assault Evidence)*, 141 N.H. at 574, 688 A.2d at

1014 (“The protection of constitutional rights is a core function of the judiciary.”); *In re Mussman*, 112 N.H. 99, 102-03, 289 A.2d 403, 405-06 (1972).

Chapter 297’s statement of intent declares that “[t]he legislature believes that law enforcement and custody issues are an executive branch function and the conduct of trials is clearly the function and responsibility of the judiciary.” Laws 1998, 297:1, III. We recognize that “[t]he separation of powers requirement in the Constitution is violated by an improper imposition upon one branch of constitutional duties belonging to another.” *Opinion of the Justices*, 110 N.H. at 363, 266 A.2d at 826. Where executive functions are so closely related to an integral judicial function, however, the exercise of those powers by the judicial branch does not offend the doctrine of separation of powers. See *Opinions of the Justices to the Senate*, 372 Mass. 883, 363 N.E.2d 652, 659-60 (1977); *Lachapelle v. United Shoe Machinery Corporation*, 318 Mass. 166, 61 N.E.2d 8, 10-11 (1945). “[W]here the power is intimately connected with and incidental or auxiliary to the exercise of strictly judicial powers, or related to officers whose duties are closely connected with the judicial work of the court, it may constitutionally be exercised by the courts.” *Opinion of the Justices*, 102 N.H. 195, 199, 152 A.2d 878, 881 (1959) (*Duncan, J.*) (quotations omitted); cf. *Opinion of the Justices*, 87 N.H. 492, 495, 179 A. 344, 346 (1935) (governmental functions must be viewed in the nature of its application). That the judicial branch has the ultimate authority to control court security is not offensive to Part I, Article 37 because security is an integral part of the essential adjudicatory function of the courts.

Accordingly, to the extent that chapter 297 removes responsibility and control of court security from the judicial branch, it invades the province of the judiciary to (1) control courtroom functions, and (2) ensure the fair adjudication of controversies, and is therefore unconstitutional. Any legislative attempt to control the hiring and supervision of court security in those areas of New Hampshire courthouses where trials or other adjudicatory functions of the court are undertaken, including, but not limited to, courtrooms, jury assembly rooms, deliberation rooms, the judges’ chambers, and court staff facilities, is invalid under Part I, Article 37 of the New Hampshire Constitution.

143 N.H. 128, 134-138, 719 A.2d 626, 631-634. (bold added). The New Hampshire Supreme Court castigated the New Hampshire Legislature for “statutorily” attempting to do what you and Sheriff Watson are proposing to “executively” do to our bailiffs. I will not allow that.

You will not control the bailiffs or court security. They are not “clerical”.

As far as the three specialty court coordinators are concerned, you will have no supervisory or other control over them, nor will any designee of yours. They are not “clerical”. These three individuals coordinate three problem solving courts: Mary Marano, Mental Health Court, Tanya Reynolds, Drug Court, and Rita Wickham, DUI Court. Each of these problem solving courts saves the State of Idaho taxpayer and the Kootenai County taxpayer hundreds of thousands of dollars per year, and we have been doing that for several years; the Drug Court (the first such problem solving court in the State of Idaho) for the past thirteen years, the DUI Court for the past twelve years, and the Mental Health Court for over seven years. Judge Luster presides over the pro tem judges who preside over DUI Court, Judge Friedlander presides over the Drug Court,

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and I preside over the Mental Health Court. The Mental Health Court requires a minimum of six hours a week of my time per week. I don't get paid extra for doing that. I don't get any reduction in my caseload for doing that. I VOLUNTEER to do that. Most of those dedicated citizens involved on the Mental Health Court team volunteer their time. As a result of this volunteer effort, we are able to leverage the one paid positions (our Mental Health Coordinator, Mary Marano) and actually address the problems of about 40 people, who would otherwise be going to prison, at a very reasonable cost compared to the approximately \$50,000.00 per year to house them for one year in prison, where at least their mental illness will be less than optimally managed. We have a better success rate in Mental Health Court than in prison, so we do a better job with much less money. I, along with other creative people in our community, created Mental Health Court. I supervise every aspect of the Mental Health Court. I easily have over 2,000 hours of my own volunteer time invested in it. You know nothing about it. You have never attended a session of Mental Health Court. Diana Meyer knows little about Mental Health Court, and she knows nothing about Mary Marano's responsibilities. I know what Mary Marano does. We speak several times each day, which is part of the six-hours a week I spend on Mental Health Court. I hired Mary Marano three years ago, and I hired her predecessor six years ago. At no time did I consult with the elected clerk of court in any way.

Neither you, nor Diana Meyer, will supervise Mary Marano, the Mental Health Court Coordinator. The same goes for coordinators Tanya Reynolds and Rita Wickham. Judge Luster and Judge Friedlander work just as hard as I do on their problem solving courts. Neither of them get any extra pay and neither get a reduction in their caseload. Judge Luster effectively supervises Rita Wickham, DUI Court Coordinator, and Judge Friedlander effectively supervises Tanya Reynolds, Drug Court Coordinator. Each coordinator receives additional supervision from the Trial Court Administrator (they all share the same office space), and the Idaho Supreme Court Drug and Mental Health Coordinator. None of these three court staff are clerical workers. They will continue to be supervised by the above mentioned judges, the Idaho Supreme Court, through its Drug and Mental Health Court Coordinator, the Trial Court Administrator, and myself as Administrative District Judge. Your supervision is not needed, nor is it legally allowed.

As the First District Trial Court Administrator, Karlene Behringer has an assistant, Jamie Miller. Ms. Miller is a Kootenai County employee. She is a very capable assistant to Ms. Behringer, and she provides all court staff and all judges with excellent support and communication. You know little about what Karlene Behringer does in her job, and you know little of what Jamie Miller does in her job. Diana Meyer knows little of what Ms. Miller does. However, Karlene Behringer knows exactly what Jamie Miller does and how well she does that. Jamie Miller is not a clerical worker. Karlene Behringer will continue to supervise Jamie Miller, not you, not Diana Meyer.

As I mentioned at the outset of this letter, in your letter dated November 22, 2011, you backed off your requirement that you evaluate, hire and fire the Law Clerks which you set forth in your November 3, 2011, letter, based on a conversation you had with Judge Haynes. However, in that November 22, 2011, letter, you still maintain that for the Law Clerks you have the authority to perform "administrative details such as payroll & HR status change forms, timesheets, and pay range tracking"... "sick time & vacation usage" will be provided "...to the Court Services

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Director, I [you] reserve the right to review such data...”, and “I [you] also reserve the right to review all performance evaluations completed by the supervising judges for the Judicial Staff Attorneys/Law Clerks, and to discuss any concerns I may have with them.” That is entirely unacceptable. The Law Clerks are individual attorneys dedicated to a specific District Judge, directly supervised by that District Judge, and generally supervised by the Administrative District Judge and the Trial Court Administrator. None of the four Law Clerks perform any “clerical” tasks which you are authorized by Idaho statute to supervise.

Finally, the last paragraph of your November 3, 2011, letter reads:

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 Judge and Trial Court Administrator are welcome to provide input to the Court Services Director with regard to budget expenditures and preparation.

This is unacceptable and I am ordering you not to make any such change. What is acceptable is the system that is in place now, the same system that has been in place for years.

The First Judicial District was the last district in the State to get a full-time Trial Court Administrator. Before that, Magistrate Judge Swanstrom assumed that task and took a reduced caseload as a result. Since August 1, 2005, Karlene Behringer has been our first, and to this point, only First District Trial Court Administrator. Karlene has professional experience, training and education: an undergraduate Degree in Business and Marketing from Rutgers University; a Juris Doctor Degree from University of Detroit, Mercy; she was a prosecuting attorney in Illinois; she served seventeen years as a Trial Court Administrator in Illinois prior to being hired here in the First Judicial District. She is licensed to practice law and is a certified arbitrator and mediator. All five counties had input into her hiring (county commissioners and elected clerks were involved), as were the judges, the Idaho Supreme Court and the First District Administrative Judge (at the time) Charles Hosack.

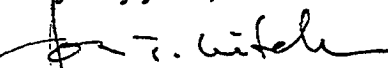
The system now in place is as follows. Our Trial Court Administrator prepares the budget, of course, with input from Diana Meyer, Patti Dube, Pete Barnes, and others, including myself. Before we had a TCA, Judge Swanstrom performed that task, and replicated that task with the other four counties in the First Judicial District. Karlene continues to replicate that task with the other four counties in the First Judicial District. As far as spending funds and monitoring budgets, what presently happens is bills, invoices, claims are loaded by Patty Dube into LOGOS, and then Karlene reviews them and determines if they should be paid or denied. If they are approved by Karlene for payment, they are submitted to the Auditor for payment.

While I am unable to authorize the changes you have suggested, I welcome the opportunity to meet, identify, and discuss other ideas that would accomplish the overall shared goal of

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improving district court operations for Kootenai County and throughout the First Judicial District. There is a standing, open invitation for Daniel G. Chadwick, Executive Director, Idaho Association of Counties ((208) 345-9126) and Patti Tobias, Administrative Director of the Courts for the Idaho Supreme Court ((208) 334-2246), to travel to Kootenai County to discuss their concerns relating to shared employees. They both have many years of experience helping provide solutions in the other counties in the State of Idaho. Also, Chief Justice Burdick and Patti Tobias will both be here on December 6, 2011, to meet with the elected clerks of the five northern counties and the area legislators. I can arrange a time for you to meet specifically with them if you would like.

Very truly yours,



John T. Mitchell
Administrative District Judge, First District

cc: Chief Justice Roger Burdick, Idaho Supreme Court, w/encl. FAX (208) 947-7590
Patti Tobias, Administrative Director of the Courts, Idaho Supreme Court, w/encl. FAX (208) 947-7590
Daniel G. Chadwick, Executive Director, Idaho Association of Counties, w/encl., FAX (208) 345-0379
Karlene Behringer, Trial Court Administrator, w/encl.
Diana Meyer, Kootenai County Court Services Director, w/encl.
Kootenai County Commissioner Jai Nelson, w/encl.
Kootenai County Commissioner Todd Tondee, w/encl.
Kootenai County Commissioner Dan Green, w/encl.
Mary Marano, Kootenai County Mental Health Court Coordinator, w/encl.
Rita Wickham, Kootenai County DUI Court Coordinator, w/encl.
Tanya Reynolds, Kootenai County Drug Court Coordinator, w/encl.
Jamie Miller, Administrative Assistant to Trial Court Administrator, w/encl.
Pete Barnes, Jury Commissioner and Chief Bailiff, w/encl.
Rocky Watson, Kootenai County Sheriff, w/encl.
Barry McHugh, Kootenai County Prosecuting Attorney, w/encl.
Jamilia Holmes, Law Clerk to District Judge John Mitchell, w/encl.
Heather DeBlieck, Law Clerk to District Judge Benjamin Simpson, w/encl.
Buck Pennington, Law Clerk to District Judge Lansing Haynes, w/encl.
Courtney Beebe, Law Clerk to District Judge John Luster, w/encl.
Honorable John Luster, w/encl.
Honorable Lansing Haynes, w/encl.
Honorable Benjamin Simpson, w/encl.
Honorable Scott Wayman, w/encl.
Honorable James Stow, w/encl.
Honorable Robert Caldwell, w/encl.
Honorable Penny Friedlander, w/encl.
Honorable Barry Watson, w/encl.
Honorable Clark Peterson, w/encl.



Kootenai County Clerk Clifford T. Hayes

Auditor · Clerk of the District Court · County Assistance · Elections · Recorder

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Memo To: John Mitchell, Administrative District Judge
From: Cliff Hayes, Clerk of the District Court
Subject: Clarifications in District Court Responsibilities
Date: November 3, 2011

A handwritten signature in cursive script, appearing to read "Cliff Hayes", is written over the "From:" line of the memo header.

Judge Mitchell, I hope you will read this memo and objectively evaluate what I'm outlining to be done. It's my intention for us to stay factual, and to act on our common goal, which I believe is to achieve efficiency and effectiveness for the County employees of the District Court system.

Prosecutor Barry McHugh and I reviewed three court cases (Blankenship v. Kootenai County; Estep v. Boundary County; and Crooks v. Maynard) and I believe the suggestions in this memo are consistent with the laws and precedents in these cases.

You know I believe County employees should only be supervised (which includes hiring, firing and evaluating performance) by another County employee, not a State employee. I am hoping to adjust parts of the County's District Court operations, and this first series of changes relates to personnel:

1. Bailiffs & Security Screeners

Bailiffs & Security Screeners will be under the general supervision of the Court Services Director (Diana Meyer), and under the direct supervision of the Chief Bailiff/Jury Commissioner (Pete Barnes). The Chief Bailiff will assign individual Bailiffs to each Judge's courtroom as needed. If an individual Judge prefers not to work with a specific Bailiff, that Judge can alert either the Chief Bailiff or the Court Services Director, who will make accommodations for the Judge's preference.

2. Judicial Staff Attorneys/Law Clerks

Judicial Staff Attorneys/Law Clerks will be supervised by the Court Services Director, and will continue to receive daily direction from Judges. Judges are welcome to provide input to the Court Services Director for the performance evaluations of the Judicial Staff Attorneys/Law Clerks. The Administrative District Judge is invited to participate in the hiring process for every Judicial Staff Attorney/Law Clerk. Individual Judges will consent to the hiring of their individual Judicial Staff Attorneys/Law Clerks.

3. Specialty Court Coordinators & Trial Court Administrative Assistant

Specialty Court Coordinators & the Trial Court Administrative Assistant will be supervised by the Court Services Director. The Specialty Court Coordinators and the Trial Court Administrative Assistant will continue to get day-to-day task direction from the Administrative District Judge and the Trial Court Administrator. The Administrative District Judge and the Trial Court Administrator are welcome to participate in the hiring process and to provide input to the Court Services Director on performance evaluations for the Specialty Court Coordinators and the Trial Court Administrative Assistant.

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 Judge and Trial Court Administrator are welcome to provide input to the Court Services Director with regard to budget expenditures and preparation.

I welcome your thoughts on these ideas at your earliest convenience. Thank you.



Kootenai County Clerk Clifford T. Hayes

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Memo to: John Mitchell, Administrative District Judge
From: Cliff Hayes, Clerk of the District Court
Subject: Refinements in District Court Responsibilities for Judicial Staff Attorneys/Law Clerks
Date: November 22, 2011

Judge Mitchell, my memo to you dated November 3, 2011 outlined discussion points I am considering related to personnel and budget responsibilities for County employees in the District Court system. While I have not received your response to this memo, I have received a phone call and a copy of a letter to you (dated November 7, 2011) from District Judge Lansing Haynes that references my memo.

Refinements for Judicial Staff Attorneys/Law Clerks

I acknowledge and agree with Judge Haynes' point that only individual supervising judges should have hiring and supervision/evaluation authority over their Judicial Staff Attorneys/Law Clerks. Because his overall concept is rational, I am deleting this hiring & evaluation responsibility from my suggestions.

However, I do want the Court Services Director to maintain the responsibility for administrative details such as payroll & HR status change forms, timesheets, and pay range tracking for the Judicial Staff Attorneys/Law Clerks. This will free up supervising judges' time for more appropriate tasks which only they can handle.

While the supervising judges may track sick time & vacation usage by their Judicial Staff Attorneys/Law Clerks, and provide this information to the Court Services Director, I reserve the right to review such data and discuss any concerning trends with the judges (and you if you wish). I also reserve the right to review all performance evaluations completed by the supervising judges for the Judicial Staff Attorneys/Law Clerks, and to discuss any concerns I may have with them. This is because I have seen some departments where all personnel are rated "perfect", yet it has been my experience that not every single staff member is performing at a level of perfection in any organization.

No Other Changes

Without comments from you or Judge Haynes regarding my planned changes to supervision of Bailiffs & Security Screeners, Specialty Court Coordinators & Trial Court Administrative Assistant, or to reallocation of District Court budget responsibilities, I presume my proposed adjustments as outlined in the November 3, 2011 memo are appropriate.

I intend to implement the District Court system adjustments I outlined in the November 3, 2011 memo, with the refinements for Judicial Staff Attorneys/Law Clerks as detailed above, on Monday, December 5, 2011. Thank you.