

petition. On that same date Beacon also filed its Motion to Dismiss, Memorandum in Support of Motion to Dismiss, and Affidavit of Robert Williams. Beacon owns the land upon which the asphalt batch plant would be located and the property to which the Special Notice Permit pertains. On February 23, 2011, Coeur d'Alene Paving (CdA Paving) filed its Notice of Special Appearance, and on March 3, 2011, CdA Paving joined in Beacon's motion to dismiss. CdA Paving is the applicant on the Special Notice Permit, and would operate the asphalt batch plant on Beacon's land.

On March 2, 2011, Ciszek filed its "Reply to Beacon West, LLC's Motion to Dismiss." On March 3, 2011, Ciszek moved to strike the Affidavit of Robert Williams. Then, on March 17, 2011, Beacon filed its Notice of Withdrawal of Affidavit of Robert Williams in Support of Motion to Dismiss, which rendered moot Ciszek's motion to strike.

On March 16, 2011, Beacon filed "Beacon West, LLC's Reply in Support of Motion to Dismiss."

On March 18, 2011, Ciszek filed "Ciszek's Reply to CDA Paving's Response to Petitioner's Response to Petitioner's Reply to Motion to Dismiss" and the "Affidavit of Dana L. Rayborn Wetzel in Opposition to Motion to Dismiss."

On March 22, 2011, Beacon filed its Motion to Shorten Time and Motion to Strike, and Affidavit of Michael R. Tucker in Support of Motions to Shorten Time and to Strike. The Motion to Strike is based on the fact that the day before the March 23, 2011, oral argument on its motion to dismiss, counsel for Beacon received three pleadings from Ciszek's counsel. Affidavit of Michael Tucker, p. 2, ¶ 2. Presumably, two of those pleadings were "Ciszek's Reply to CDA Paving's Response to Petitioner's Reply to Motion to Dismiss" and the "Affidavit of Dana L. Rayborn Wetzel in Opposition to Motion to Dismiss", which were filed with the Court on March 18, 2011.

The motion to dismiss is now before the Court. Oral argument on the motion to dismiss was held on March 23, 2011. At oral argument, this Court granted Beacon's Motion to Shorten Time but denied Beacon's Motion to Strike, even though Ciszek failed to comply with I.R.C.P. 7(b)(3)(E), placing counsel for Beacon and the Court in the position of having Ciszek's late filed pleadings available to read for the first time on the day of oral argument.

At oral argument, counsel for the BOCC took no position on Beacon's motion to dismiss, and BOCC has filed no pleadings in response to the motion.

On March 30, 2011, counsel for Ciszek filed a "Certificate of Additional Law", which provided the Idaho Supreme Court opinion in *Giltner Dairy v. Jerome Co.*, 11.7 ISCR 135, 2011 Opinion No. 33 (March 17, 2011). No request was made at oral argument by counsel for Ciszek to file this pleading. No objection has been filed.

Also scheduled for oral argument on March 23, 2011, was Ciszek's motion to consolidate this case with Kootenai County Case No. CV 2009 3290, which was filed on March 3, 2011. On March 11, 2011, counsel for Ciszek sent the Court a letter indicating that the hearing on the motion to

consolidate was being vacated and the motion was withdrawn because Kootenai County Case No. CV 2009 3290 had been dismissed by stipulation.

Memorandum Decision and Order Denying Motion to Dismiss filed by Beacon West LLC, and Joined in by Coeur d'Alene Paving, Inc., and Order Granting Attorney Fees Against Petitioners, pp. 1-3. At the conclusion of that decision, this Court determined dismissal of Ciszek's petition was not an appropriate sanction for the failure to comply with the Rules of Civil Procedure regarding service of a petition for review upon parties to the proceeding. *Id.*, p. 20. The Court did, however, grant attorney fees to Beacon and CdA Paving as a sanction pursuant to I.R.C.P. 84(n). Judgments in favor of CdA Paving and Beacon were entered by the Court on June 20, 2011.

On July 21, 2011, Ciszek filed a motion for partial release of judgment liens, an affidavit of Dana L. Rayborn Wetzel in support of motion for partial release of judgment liens, a motion to shorten time on the hearing, and a notice of hearing scheduling the hearing for July 27, 2011. On July 22, 2011, CdA Paving filed its objection to the motion to shorten time and the motion for partial release of the judgment liens, along with a supporting affidavit of counsel. Beacon filed its "Beacon West, LLC's Response in Opposition to (1) Motion to Shorten Time and (2) Motion for Partial Release of Judgment Liens" and supporting affidavit.

Ciszek's motion to shorten time and motion for partial release of judgment liens, and corresponding objections by Beacon and CdA Paving, are now before the Court. A hearing was held on these motions on July 27, 2011. Counsel for Ciszek appeared, counsel for the County appeared, and counsel for Beacon West appeared. Counsel for CdA Paving did not appear, for reasons which are covered in CdA Paving's objection to

motion to shorten time (counsel out of the area and only six days' notice given by counsel for Ciszek).

On July 1, 2011, Ciszek filed a "Motion to Strike Judgments RE: Costs and Attorney Fees and to Rescind Sanction" along with a memorandum in support thereof. Beacon and CdA Paving both responded in opposition on July 19, 2011. Ciszek's motion to strike and rescind sanction is noticed-up for hearing on August 30, 2011.

II. STANDARD OF REVIEW.

Whether to hear a motion upon shortened time is a matter for the Court's discretion, once the Court has determined good cause for shortening time exists. *Brinkmeyer v. Brinkmeyer*, 135 Idaho 596, 601, 21 P.3d 918, 923 (2001) (citing *Sun Valley Potatoes, Inc. v. Rosholt, Robertson & Tucker*, 133 Idaho 1, 981 P.2d 236 (1999) (determining a motion for summary judgment may be granted pursuant to I.R.C.P. 56(c) on a shortened time where good cause is shown.))

Rule 84(n) provides that a party's failure to comply with a time limit in the process of judicial review, except for the failure to timely file a petition or cross-petition for judicial review, is not jurisdictional, but may be grounds for a sanction as the district court deems appropriate, which may include dismissal of the petition. Whether to impose a sanction, and the choice of sanction, is thus committed to the district court's discretion. *Cf. Day v. CIBA Geigy Corp.*, 115 Idaho 1015, 1017, 772 P.2d 222, 224 (1989) (holding that district court's dismissal under I.R.C.P. 41(b) for plaintiff's delays was reviewed for abuse of discretion).

Aho v. Idaho Transp. Dept., 145 Idaho 192, 194, 177 P.3d 406, 408 (Ct.App. 2008).

It is within the Court's discretion to have a hearing on a motion filed pursuant to I.R.C.P. 84(o). No other legal basis is given by Ciszek for her Motion for Partial Release of Judgment Liens, so this Court assumes it a matter committed to the Court's discretion.

III. ANALYSIS.

A. CISZEK'S MOTION TO SHORTEN TIME.

Ciszek filed her Motion to Shorten time to hear her Motion for Partial Release of the Judgment on July 21, 2011, six days before the July 27, 2011, hearing. In that motion, the only legal basis given is I.R.C.P. 6(b). At the July 27, 2011, hearing, the Court inquired of Ciszek's counsel how that rule could be used when that rule and the cases annotating that rule only speak to *enlargement* of time, not shortening of time. The Court took the matter under advisement until it could review the Federal rule. CdA Paving objects to Ciszek's motion to shorten time, arguing counsel for CdA Paving will be unavailable for the July 27, 2011, hearing time set by Ciszek. Beacon West object to Ciszek's motion to shorten time because there has only been six days notice given by Ciszek, because Ciszek's motion is devoid of any good cause and excuseable neglect, and any urgency was due to Ciszek and/or her attorney's own actions. Beacon West, LLC's Resoponse to Opposition to (1) Motion to Shorten Time and (2) Motion for Partial Release of Judgment, p. 2. Beacon argues:

Any purported urgency implied in Ciszek's briefing related to the sale of Ms. Ciszek's real property was caused by Ciszek and/or her counsel's own actions. The Court entered the underlying Judgments on June 20, 2011. But, inexplicably, Ms. Ciszek was unaware of the Judgments until mid-July, when she was attempting to close a sale of her property.

Id., p. 3.

CdA Paving's counsel, however, is unable to attend any hearing on July 27, 2011, because counsel "will be out of the office on a vacation that has been scheduled since February." CdA Paving's Objection to Shorten Time and Partial Release, p. 1.

The Court has reviewed the corresponding Federal Rule of Civil Procedure, Rule 6. Federal Rule of Civil Procedure 6(b), concerns "extending time", similar to I.R.C.P. 6(b) which deals with "enlargement" of time. Federal Rule of Civil Procedure 6(c)

concerns the minimum time of fourteen days between service of notice and hearing, but specifically states the court may set a different time after a party makes a request.

There is no concomitant counterpart in I.R.C.P. 6(c). Thus, the Court finds Ciszek's Motion to Shorten Time devoid of any legitimate rule basis. The motion is thus, denied.

After the Court was able to complete writing this decision, counsel for Ciszek faxed to the Court a July 27, 2011, letter explaining that *Brinkmeyer v. Brinkmeyer*, 135 Idaho 596, 21 P.3d 918 (2001) provided the appellate authority to support her position that a magistrate judge had authority to entertain a motion upon a shortened time. The Court has read *Brinkmeyer*, and while it does state a magistrate can hear a motion upon shortened time, the basis for that is *not* I.R.C.P. 6(c). While this Court has the discretion to grant a motion to shorten time under *Brinkmeyer*, this Court exercises that discretion and chooses not to, as counsel for Ciszek has shown no good cause.

That denial is academic, as the Court ordered at the July 27, 2011, hearing, that no oral argument would be allowed on Ciszek's Motion for Partial Release of the Judgment, pursuant to this Court's discretion under I.R.C.P. 84(o), and due to Ciszek's failure to comply with that rule.

B. CISZEK'S MOTION FOR PARTIAL RELEASE OF THE JUDGMENT.

Pursuant to I.R.C.P. 84(o), Ciszek moves this Court for a partial release of the judgment liens resulting from Judgments entered on June 20, 2011. Motion for Partial Release of Judgment Liens, p. 1. Ciszek seeks the partial release because she owns a "parcel identified in Exhibit 'A' ...a parcel currently for sale and set for closing at the North Idaho Title pending release of the above identified Judgment Liens." *Id.*, p. 2. Ciszek argues a second parcel subject to the judgment liens, also owned by Ciszek, would adequately secure the liens. *Id.* Ciszek goes on to state, "...the entry of

judgment appears to be in error.” *Id.* And, Ciszek argues it was unreasonable of Beacon and CdA Paving to deny her request for a partial release from the judgment liens “as the remaining portion of the property is sufficiently valuable to adequately secure the mortgage.” *Id.*

In response, CdA Paving “objects to the Motion for Partial Release of Lien because there is no legal basis to support such a motion and counsel for CdA Paving would like to present oral argument regarding the release.” CdA Paving’s Objection to Shorten Time and Partial Release of Lien, p. 1. CdA Paving takes issue with Ciszek’s seeking a hearing on the motion to partially lift judgment liens, in part because Ciszek presently has a motion to strike the judgments noticed-up for August 30, 2011. “[A]ll counsel will be present and can easily argue the Motion for Partial Release at the same time.” *Id.*

Beacon West also objects to the motion for partial release of judgment liens because, “...any purported urgent basis to [shorten time] was exclusively caused by Ciszek’s own actions” and the request for partial lifting of the judgment liens “is without any legal basis and must be denied.” Beacon West, LLC’s Response in Opposition to (1) Motion to Shorten Time and (2) Motion for Partial Release of Judgment Liens, p. 2. It is Beacon’s contention that Ciszek’s motion for partial release of the judgment liens “is wholly without legal basis.” *Id.*, p. 4. Beacon goes on to argue it and CdA Paving have incurred significant fees as a result of Ciszek’s disregard for the Rules of Civil Procedure and requests an award of fees and costs to: (1) make Beacon and CdA Paving whole again and (2) to deter Ciszek’s “frivolous disregard for the Idaho Rules of Civil Procedure. *Id.*,pp. 4-5.

Ciszek seeks relief from the Judgments entered on June 20, 2011, pursuant to I.R.C.P. 84(o). Motion for Partial Release of Judgment Liens, p. 1. However, I.R.C.P. 84(o) provides only procedural guidance regarding motions related to judicial review of agency decisions. The Rule required motions, accompanied by a supporting brief, to be filed and served so that the opposing party has fourteen days to respond. I.R.C.P. 84(o). “The motion shall be determined without oral argument unless ordered by the Court.” *Id.*

Ciszek has again in all respects failed to comply with the Idaho Rules of Civil Procedure, this time, I.R.C.P. 84(o). That Rule states, “[a]ll motions must be accompanied with a supporting memorandum or brief.” I.R.C.P. 84(o). Ciszek’s motion for partial release of judgment, although it is two pages long, was not filed and served with a supporting brief. Additionally, Ciszek in that motion has not provided the Court with *any* authority, rule-based or otherwise, to justify the relief she now seeks. The Court’s determination that sanctions against Ciszek were proper under I.R.C.P. 84(n) was a matter committed to the Court’s discretion, and Ciszek in her motion has not demonstrated any abuse of that discretion.

Idaho Rule of Civil Procedure 84(o) provides an opposing party fourteen days to respond to a motion, but the Rule does not provide for hearings “unless ordered by the Court.” I.R.C.P. 84(o). Here, Ciszek has not moved the Court for an Order permitting oral argument, but rather simply filed a notice of hearing setting oral argument a mere six days after filing of Ciszek’s motion. At the July 27, 2011, hearing, counsel for Ciszek stated she noticed the motion to shorten time and motion for partial release for judgment for hearing because she knew of no other way to get the matter to the Court’s attention. While the Court understands that concern, following the rule would have worked as well. A motion to the Court requesting a hearing, which is what I.R.C.P.

84(o) contemplates, would likely have come to the Court's attention. If counsel for Ciszek was concerned that such a motion might not make it from the clerk's filing desk to the judge's desk, a call to chambers would have certainly caused the file to be given to the Court. Scheduling a hearing to see if the Court wants to have a hearing, as Ciszek did, is more cumbersome, and in the end, more time consuming, than filing a motion requesting a hearing and bringing that to the Court's attention. When in doubt, follow the rule, a task Ciszek has had difficulty doing up to this point.

As an aside, has Ciszek to date not moved the Court for an Order permitting oral argument on her August 30, 2011, motion to strike the Judgments, another motion she has brought under I.R.C.P. 84(o).

In the instant matter, Ciszek has succeeded in failing to comply with both I.R.C.P. 7(b)(3) and 84(o), following on the heels of previous derogation of the Idaho Rules of Civil Procedure in the most recent matters submitted to the Court.

Beacon's and CdA Paving's arguments, that the relief Ciszek seeks (in the form of a partial release of Judgment liens) is without a legal basis, are well-taken. Idaho Code § 10-1115 sets forth the procedure for satisfaction of a judgment (in addition to satisfaction of a judgment as provided by law or rule of the Court).

...[A]ny person, against whom exists a judgment for the payment of money or who is interested in any property upon which any such judgment is a lien, may pay the amount due on such judgment to the clerk of the court in which such judgment was rendered, and such clerk shall thereupon release and satisfy such judgment upon the records of said court and county in which such judgment was rendered...

I.C. § 10-1115. Additionally, "[a] judgment may be satisfied or discharged by the giving of a valid release that is supported by valuable consideration." 47 AM.JUR. 2D

Judgments § 824 (2011). None of the twelve individuals collectively referred to as the Petitioners Ciszek have taken the steps contemplated in I.C. § 10-1115, although the

Judgments were entered jointly and severally. And, Beacon makes mention of Ciszek's denial of two alternative proposals made by Beacon and CdA Paving to release the Judgments and avoid the instant motions. Beacon West, LLC's Response in Opposition to (1) Motion to Shorten Time and (2) Motion for Partial Release of Judgment Liens, p. 3. The Affidavit of Michael Tucker sets forth the valuable consideration sought by Beacon and CdA Paving in return for a release: satisfaction/payment of the Judgments or withdrawal of the petition for review with prejudice. Exhibit B to the Affidavit of Michael Tucker in Opposition to (1) Motion to Shorten Time and (2) Motion for Partial Release of Judgment Liens. Ciszek has not complied with either basis for release of a Judgment listed above.

This Court finds that from a factual standpoint, Ciszek's Motion for Partial Release of Judgment Liens is not well founded. This Court finds that Ciszek's Motion for Partial Release of Judgment Liens was made contrary to the Idaho Rules of Civil Procedure. However, the issue of attorney fees on Ciszek's Motion for Partial Release of Judgment Liens will be taken up at a later time.

IV. CONCLUSION AND ORDER.

For the reasons set forth above, this Court denies Ciszek's motion to shorten time and denies Ciszek's motion for a partial release of the judgment liens for lack of any authority supporting a grant of that relief sought. To the extent Beacon and CdA Paving seek fees incurred in defending the instant motions as sanctions, the Court will take those issue up at a later time.

IT IS HEREBY ORDERED Ciszek's Motion to Shorten time is **DENIED**.

IT IS FURTHER ORDERED Ciszek's Motion for Partial Release of Judgment Liens is **DENIED** without oral argument.

IT IS FURTHER ORDERED the issue of attorney fees in favor of Beacon and CdA Paving against Ciszek for defending against the Motion for Partial Release of Judgment is reserved to a later time; Beacon and CdA Paving are required to notice such claims for a hearing if they intend to pursue attorney fees for defending against this motion.

Entered this 28th day of July, 2011.

John T. Mitchell, District Judge

Certificate of Service

I certify that on the _____ day of July, 2011, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

<u>Lawyer</u>	<u>Fax #</u>	<u>Lawyer</u>	<u>Fax #</u>
Dana Rayborn Wetzel	(208) 664-6741	John Cafferty	(208) 446-1621
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Susan Weeks	(208) 664-1684		

Jeanne Clausen, Deputy Clerk