



Representative Hart to be absent from his legislative duties on the previously scheduled date.” Amended Notice of Hearing on Motion for Reconsideration, p. 1. No affidavit by Hart was filed supporting his counsel’s claim that Hart would be absent from his legislative duties in order to attend the hearing. No reason has been stated by Hart’s counsel as to why Hart would be required to be present for a purely legal [i.e., non factual, non testimonial] oral argument by Hart’s attorney. On March 10, 2011, counsel for IBTA filed an “Objection to Appellant’s Amended Notice of Hearing”, claiming Hart “...is simply attempting to delay the entry of a final decision and judgment in this matter and that Appellant’s [Hart] behavior is consistent with delay tactics used when this matter was before the Idaho State Tax Commission and before the state Board of Tax Appeals.” Objection to Appellant’s Amended Notice of Hearing, pp. 1-2. The IBTA’s objection continues:

There is no reason why respondent [IBTA] should have to wait nearly 6 months after the entry of the original Order to learn whether that Order is final.

If Appellant [Hart] is not satisfied with simply having his counsel represent him before the court, there are certainly alternatives, such as allowing Appellant [Hart] to be present at the hearing via telephone. Respondent [IBTA] notes that the March 16, 2011, hearing will commence at 5:00 p.m. MDT which should accommodate Appellant’s [Hart] participation by telephone.

*Id.*, p. 2. IBTA cites no rule or case law for its argument in its objection.

Hart misunderstands the Idaho Rules of Civil Procedure. By filing his Motion for Reconsideration, and Notice of Hearing on such motion, Hart has placed that matter before the Court and on the Court’s calendar for a hearing on March 16, 2011. Moving that hearing is a *procedural* matter which is now largely, if not completely, out of Hart’s control. Even if the IBTA stipulated to a rescheduled hearing date, such a stipulation would not be binding on the Court. In other words, the Court has to agree. Idaho Rule

of Civil Procedure 6(e)(3) reads in pertinent part:

**Stipulations not binding on court – Continuance of trial or hearing.**

The parties to any action may present to the court a stipulation as to any procedural matter involved in any proceeding, including a stipulation to vacate or continue a hearing or trial, but such stipulation shall be considered as a joint motion by the parties to the court for its consideration, and shall not be binding upon the court.

In the present case, Hart has neither the stipulation from IBTA, nor the approval of the Court. Indeed, the Court at any time up to the day before any scheduled hearing, may decide a motion *without any oral argument at all*. I.R.C.P. 7(b)(3)(D). Hart's unilateral rescheduling of the March 16, 2011, is without validity. The March 16, 2011, hearing will continue as scheduled.

**IT IS HEREBY ORDERED** IBTA's Objection to Appellant's Amended Notice of Hearing is SUSTAINED, Hart's Amended Notice of Hearing filed March 8, 2011, is of no effect, there will be no hearing on May 31, 2011, in this case, and the hearing scheduled for March 16, 2011, at 4:00 p.m. PST will remain as scheduled. Should Hart wish to listen to the hearing telephonically, he may do so, provided his counsel make arrangements with the Clerk of the Court.

Entered this 11<sup>th</sup> day of March, 2011.

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John T. Mitchell, District Judge

**Certificate of Service**

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

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Jeanne Clausen, Deputy Clerk

