

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

ALVA V. BRISCOE, SANDRA M.
BRISCOE,

Plaintiff,

v.

BANK OF AMERICA, N.A., ELISA
MAGNUSON, PITE DUNCAN, LLP,

Defendants.

Case No. 4:16-CV-122-BLW

**MEMORANDUM DECISION AND
ORDER**

MEMORANDUM DECISION

The Court has before it an Order and Recommendation from Magistrate Judge Bush recommending that the petitioners' petition to perpetuate testimony under Rule 27 be denied and this case be dismissed. Petitioners filed this action seeking to take the deposition of Elisa Magnuson with Bank of America.

The Court has reviewed the Recommendation and finds it well-reasoned and persuasive. The Court agrees with Judge Bush that the petitioners failed to satisfy Rule 27's requirement that they demonstrate a present inability to bring an action in federal court – indeed the petitioners have filed three other cases in which Elisa Magnuson is a named defendant. The petitioners have also failed to show that Magnuson might flee, die, become incompetent, or do anything else that might require an immediate perpetration of her testimony. Thus, the petition must be denied. Because the petitioners have not filed a complaint but only a petition to perpetuate testimony, this action must be dismissed.

ORDER

In accordance with the Memorandum Decision above,

NOW THEREFORE IT IS HEREBY ORDERED, that the Order and Recommendation (docket no. 8) is ADOPTED as the Order of this Court.

IT IS FURTHER ORDERED, that the petition to perpetuate testimony (docket no. 3) is DENIED, and that this action be DISMISSED. The Clerk shall close this case.



DATED: March 17, 2017

A handwritten signature in black ink, reading "B. Lynn Winmill". The signature is written in a cursive style with a horizontal line underneath.

B. Lynn Winmill
Chief Judge
United States District Court