

identify the rules, procedures or criteria that should govern. It simply asserts that neither Rule 30 nor Rule 40 may be applied, but does not proffer any alternative set of rules, procedures or criteria to be applied. Second, the District raises this argument for the first time in a reply brief.⁸ It is the only party to take the position that neither Rule 30 nor Rule 40 may be applied. Yet, by raising the issue for the first time in a reply brief, the South Valley Groundwater District has not allowed any other party to respond to this position. For this reason, issues raised for the first time in a reply brief are not addressed by reviewing courts on appeal. *See e.g., State v. Raudenbaugh*, 124 Idaho 758, 763, 864 P.2d 595, 601 (1993) (raising an issue for the first time in a reply brief “does not allow for full consideration of the issue, and we will not address it”); *Henman v. State*, 132 Idaho 49, 51, 966 P.2d 49, 51 (Ct. App. 1998) (“Issues raised for the first time in a reply brief will not be addressed on appeal”). The Court therefore rejects the South Valley Groundwater District’s argument and holds that the procedures set forth in Rule 30 govern the Association’s calls.

E. The Court does not reach issues concerning the propriety of the Director’s request for staff memoranda or his decision to conduct a site visit.

Sun Valley raises issues concerning the propriety of the Director’s requests for the preparation of certain staff memoranda in this matter, as well as his decision to conduct a site visit of certain property. The Court need not reach these issues. For the reasons set forth above, the Director’s decision to deny Sun Valley’s motion to dismiss is reversed and remanded. The issues are therefore moot. The Court also finds that the issues regarding the propriety of the Director’s requests for staff memoranda are not properly before the Court. The Director issued a *Request for Staff Memoranda* in the underlying administrative proceedings on June 12, 2015. R., pp.334-344. Various parties moved the Director to modify and/or withdraw the *Request*. *Id.* at 435-451; 616-635. The Director entered *Orders* denying those motions on July 22, 2015. *Id.* at 870-879; 899-908. Unlike his *Final Order*, the Director has not designated his *Orders* denying the parties’ motions to modify and/or withdraw his *Request for Staff Memoranda* as final orders subject to judicial review. Therefore, those *Orders*, and the issues addressed therein, are not properly before the Court in this proceeding. I.C. §§ 67-5270(3) and 67-5271.

⁸ The South Valley Ground Water District did not file an opening brief in support of the appeal raised by the Petitioner.

F. Sun Valley is not entitled to an award of attorney fees on judicial review.

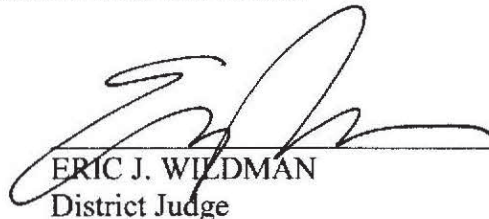
Sun Valley seeks an award of attorney fees under Idaho Code § 12-117. The decision to grant or deny a request for attorney fees under Idaho Code § 12-117 is left to the sound discretion of the court. *City of Osburn v. Randel*, 152 Idaho 906, 908, 277 P.3d 353, 355 (2012). The Idaho Supreme Court has instructed that attorney fees under Idaho Code § 12-117 will not be awarded against a party that presents a “legitimate question for this Court to address.” *Kepler-Fleenor v. Fremont County*, 152 Idaho 207, 213, 268 P.3d 1159, 1165 (2012). In this case, the Court holds that the Respondents have presented legitimate questions for this Court to address regarding the *Final Order*. These include, but are not limited to, whether the delivery calls at issue should be governed by the procedures set forth in Rule 30 or Rule 40 of the CM Rules. The circumstances surrounding the Association’s calls present issues of first impression under the CM Rules. In light of that, the Court does not find the Respondents’ arguments to be frivolous or unreasonable. Therefore, the Court in an exercise of its discretion denies Sun Valley’s request for attorney fees.

IV.

ORDER

Therefore, based on the foregoing, IT IS ORDERED that the Director’s *Order Denying Sun Valley Company’s Motion to Dismiss* issued on July 22, 2015, is hereby set aside and remanded for further proceedings consistent with this *Order*.

Dated April 22, 2016


ERIC J. WILDMAN
District Judge

CERTIFICATE OF MAILING

I certify that a true and correct copy of the MEMORANDUM DECISION AND ORDER was mailed on April 20, 2016, with sufficient first-class postage to the following:

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