

# Montana State Legislature

**Exhibit Number: 2**

**This exhibit is in regards to HB804 , It contains several different types of materials to numerous to scan. Therefore only 10 pages have been scanned to aid in your research.**

**You may view the original it is on file at the Montana Historical Society and may be observed there.**

EXHIBIT 2  
DATE 3-7-07  
NO. 804

Daniel J. Shea  
Pro Se  
800 Broadway  
Helena, Montana 59601  
Ph # 1-406-449-0585

MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY  
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MARCIA DIAS, )  
Plaintiff ) NO. ~~BDV-95-018~~  
vs. ) AFFIDAVIT OF DANIEL J. SHEA  
HEATHY MOTHERS, HEATHY )  
BABIES, Inc., a Montana )  
Corporation, et al, )  
Defendants )

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AFFIDAVIT IN SUPPORT OF MOTION TO INTERVENE AND IN SUPPORT OF  
ALLEGATIONS MADE CONCERNING FRAUD COMMITTED BY ATTORNEY ENGEL  
IN OBTAINING THE MARCH 1, 2004 ORDER AFFECTING MY RIGHTS AND  
FRAUD WHICH INHERES IN THE JUDGMENT.  
\*\*\*\*\*

State of Montana )  
County of Lewis and Clark ) ss.

Daniel J. Shea, upon being first duly sworn, deposes and says:  
I am the petitioner seeking to intervene in this case to  
protect my rights. I make and file this affidavit to show that  
Engel has committed serious fraud in this deception in this case,  
This fraud and deception includes fraud against me and fraud  
against his former client. The fraud is such that if the Court does

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not take action to protect my rights there will be little likelihood that I will ever realize a judgment against Engel upon which I can recover. The fraud against Engel's client is based on his claims made in his memorandum of costs and in the judgment which as entered on August 3, 2004, a judgment which Engel prepared. Because of Engel's fraud and deceit, he obtained a judgment for many, many thousands of dollars beyond that which he was entitled to receive.

Further, in executing against the judgment amount on the bank deposit at Wells Fargo, Engel committed serious attorney misconduct by filing certain documents with the clerk of court before the Court ruled on the Dias Motion for a stay of execution. These documents included a proposed order denying the motion for a stay, and a writ of execution. Engel requested the clerk of court to immediately issue the writ of execution if the court denied the motion for a stay. The Court signed Engel's proposed order denying a stay, , the clerk of court issued a writ of execution, and Engel immediately executed. Engel failed to inform counsel for Dias that he had mailed these documents with the clerk of court in advance of the court's ruling and requested the clerk of court to immediately issue a writ of execution if the motion for a stay was denied. The relevant documents are already on file as part of the record of this case.

During the course of Engel's representation of Marcia Dias and most especially after the Supreme Court decision on December 19, 2002, attorney Engel committed a continuing series of serious

misconduct against her, such that she wrote to him and told him she had been advised to file a complaint against him for attorney misconduct.

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During this process I did what Could to protect Marcia Dias from Engel and I made sure that a paper trail was laid down as to the many problems ad issues which existed between Engel and Marcia Dias. Engel had turned into a monster.

**ATTORNEY ENGEL PREPARED A FRAUDULENT JUDGMENT, THAT JUDGMENT WAS THEN ENTERED BY THE COURT. AND AFTER THE COURT DENIED A MOTION FOR STAY OF EXECUTION, ENGEL THEN EXECUTED ON THAT FRAUDULENT JUDGMENT. ENGEL IS GUILTY OF FRAUD.**

I start here with the Court's summary judgment order entered on July 12, 2004 and its directive language concerning the distribution of the total funds on deposit at the Wells Fargo Bank in the joint names of Marcia Dias and Joseph C. Engel III.

**THE SUMMARY JUDGMENT ORDER GRANTED BY THE DISTRICT COURT ON JULY 12, 2004 DECLARED THAT ENGEL WAS ENTITLED TO ONE HALF OF THE DEPOSIT AT WELLS FARGO BANK, PLUS HIS EXPENSES, LESS THE STATUTORY FEE AWARD OF \$28,250.00.**

In granting summary judgment is GRANTED. Dias IS HEREBY ordered to pay Engel according to the Engel-Dias contingent fee agreement signed April 4, 1999.

In declaring the rights of the parties as to the funds on deposit at the Wells Fargo bank, the Court stated:

...Therefore, the Court grants Engel's petition to foreclose on the attorney's lien in the amount he is owed pursuant to the Engel-Dias contingent fee agreement while taking into account the \$28,250 in statutory fees awarded to Engel that will be discussed subsequently. However, this grant of lien foreclosure should in no way provide Engel with a double recovery by an attempted collection on the fee contract as well.

The \$28,250 that has been awarded as statutory fees shall become the property of Dias. Fifty percent of the balance of the funds on deposit in the joint Engel/Dias account at Wells Fargo Bank shall be awarded to Engel. In addition to that amount, Engel is entitled to his costs as per the attorney fee agreement. (Order granting Summary Judgment, July 12, 2004, pages 6-7)

**THE COURT DIRECTED ATTORNEY ENGEL TO PREPARE THE JUDGMENT**

In granting summary judgment to Engel on July 12, 2004, The court directed Engel to prepare the judgment: " **Engel is DIRECTED TO prepare a judgment in conformity herewith.**" ( page 12, line 20) (Emphasis added)

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**PART I.**

**THE FIRST GRIEVOUS MISCONDUCT OF ENGEL IS THAT HE DID NOT PREPARE THE JUDGMENT IN COMPLIANCE WITH THE COURT'S ORDER.**

Right or wrong, the Court, in its summary judgment order, declared that Engel was entitled to 50% of the total amount on deposit at Wells Fargo, less \$28,250.00 for statutory attorney's fees, which was awarded to Marcia Dias. In addition to this 50%, Engel was entitled to his outlay of expenses incurred during his representation of Marcia Dias. ( Summary Judgment order, at pages 6-7). However, Engel did not prepare the judgment in compliance with this order.

My purpose here is not to focus on whether the Court was right or Engel was right. Rather, my purpose is to show that the judgment figure used by Engel which he divided in half for his 50% contingency fee, was not in compliance with the Court's order. If Engel disagreed with the Court's order, it was his duty, before

using a different method for determining the figure to be divided 50/50. Engel had not only the right but the duty to seek a clarification from the Court by filing a proper motion. This course, is one of the purposes of the civil procedure rules which allow an order to be corrected. But Engel was not at liberty to prepare the judgment using a different formula for arriving at his 50% contingency fee.

The figure Engel used as the starting point to divide the proceeds 50/50 gave him at least \$3,870.83, more than what he would have obtained if he had complied with the court's order.

**USING THE DIVISION OF PROCEEDS AS DIRECTED BY THE COURT, ENGEL'S FEE BASED ON A 50% CONTINGENCY FEE, WOULD HAVE BEEN \$108,068.14, RATHER THAN THE \$111,938.97 WHICH ENGEL CALCULATED AND OBTAINED IN THE JUDGMENT**

By the above terms of the court's summary judgment order, the first question to determine is the amount which was on deposit at Wells Fargo. The information in the Court records shows that as of June 30, 2004, the amount on deposit was \$244,386.25. See affidavit of Marcia Dias filed July 20, 2004, in which she attached a bank statement setting forth the amount on deposit. She filed this affidavit in support of a motion for stay of execution on the judgment. Engel had equal access to this information because he was a joint owner of the accounts.

Based on the Court's order, Engel was entitled to one half of \$244,386.25, less the \$28,250 awarded to Marcia Dias for statutory attorney's fees. In addition, Engel was entitled to his expenses incurred during the representation of Marcia Dias. With all adjustments being made based on the court's order, Engel would be entitled for his 50% contingency fee, to \$108,068.14. The amount of \$244,386.25 minus \$28,250.00 = \$216,136.25 X 50% = \$108,068.12.

**THE ENGEL MEMORANDUM OF COSTS AND JUDGMENT AS IT RELATES TO THE 50% CONTINGENCY FEE BASIS USES THE FIGURE OF \$223,877.84 TO BE DIVIDED ON A 50/50 BASIS.**

Engel presented a Memorandum of Costs on July 21, 2004. His memorandum sets forth the amount which he claimed for a 50%

contingency fee and his claim to prejudgment interest on the fee. He declares first in the memorandum of costs and then later in the judgment entered by the Court, that the total amount of the judgment entered on August 21, 2003 was \$223,877.84. He does not state how he arrived at this amount. The judgment entered on August 21, 2003 states the total amount as \$225,518.73.

The reason Engel reduced the total amount of the judgment from \$225,518.73 to \$223,877.84 cannot easily be determined. The difference between the two amounts is **\$1,640.79**. I do not intend to dwell on this except to state that it does demonstrate how deceptive and slippery Engel is. Suffice to say that I doubt he ever explained this reduction to opposing counsel. Engel is slippery.

The first reference to the \$223,877.84 figure appears in Engel's memorandum of costs submitted on July 21, 2004. In stating that he calculated prejudgment interest on the attorney's fees, he set forth his formula:

**The interest on the attorney fee award is calculated as follows:**

Amount of award: 50% of \$223,877.84 = \$111,938.73 x 10% = \$11,193.90, divided by 365 (number of days in year) = \$30.67 per day. (Page 2, [10-12]) (Emphasis added)

In the judgment which Engel prepared and the Court entered, Engel declares that the division of the proceeds 50/50 was based on the judgment amount of \$223,877.84. The language in the Engel-prepared judgment states in the opening paragraph:

On July 12, 2004, the Court entered an Order on the Motion, upholding the Dias Engel contingent fee agreement, and awarding Petitioner Engel his attorney fees of 50 percent on the judgment recovered, exclusive of \$28,25000 previously awarded as statutory attorney fees which the Court awards to Dias as her separate property. Based on the court's Order;

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED**

1. That the judgment award for Dias dated August 21, 2003 is the amount of **\$223,877.94**, exclusive of costs. Engel is hereby awarded 50% of his amount, which is the sum of \$111,938.97.

\*\*\*\*\*

Not only did Engel not accurately state the judgment amount but he also directly violated the Court' order in preparing the judgment. The Court did not order Engel to prepare the judgment based on the judgment entered on August 21, 2003. Rather, the Court ordered Engel directed that Engel was entitled to 50% of the amount on deposit, less the \$28,250.00 award for statutory attorney's fees.

If Engel disagreed with the Courts order, it was his obligation as an attorney to seek clarification and amendment. Further, Engel, in taking this action against ~~his client~~, most certainly violated his duty to deal with her in the highest of good faith when seeking fees and expenses. By preparing the judgment in violation of the court's order, Engel obtained an extra \$3,870.73 in fees. If Engel thought the Court's order was in error it was his duty to seek a clarification and correction before preparing the judgment. In failing to do so he also violated his duties toward Marcia Dias. After his discharge and withdrawal, in seeking fees and expenses from her he had at least the minimum duty to act with the highest of good faith.

I proceed next to explain another part of the first paragraph of the judgment. The \$223,877.94 judgment entered on August 21, 2004, in fact includes two costs incorporated into the \$223,877.94. Incorporated in the judgment are the costs awarded at trial from March 21, 2000, together with accrued interest. Also incorporated in the judgment are \$436.20 with accrued interest starting on February 18, 2003. As I will explain in another part of this affidavit, Engel committed fraud and deceit by the manner in which he claimed for himself these two cost items. However, in preparing the memorandum of costs and the judgment, Engel committed much more serious violations in terms of money that he extracted from his client. **I begin with the award of statutory attorney's fees at trial.**

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PART II.

IN PREPARING THE MEMORANDUM OD COSTS IN WHICH HE CLAIMED ATTORNEYS FEES AND IN PREPARING AND PRESENTING THE JUDGMENT, ENGEL, ALTHOUGH NOT STATED IN THESE DOCUMENTS, ILLEGALLY OBTAINED AN INTEREST INTHE STATUTORY FEES AWARDED AT TRIAL BY HIDING THE FACT THAT \$5,850.40 HAD BEEN AWARDED AS STATUTORY FEES AT TRIAL. AS A RESULT OF HIS DECEIT, ENGEL INCREASED HIS FEES BY CLAIMING HALF OF THIS FEE--\$2,925.20.

As stated above, the Court's order declared that the statutory fees awarded in this case went to Marcia Dias. Unfortunately, neither the Court nor Engel nor counsel for Dias mentioned the statutory fees awarded at trial. These also should have been awarded to Marcia Dias in Engel's August 3, 2004 judgment, just ad the statutory fees awarded on appeal were awarded to Marcia Dias. The legal principle is exactly the same.

The oversight by counsel for Dias is perhaps understandable. They never understood this case nor made any effort to understand it. Their oversight can be attributed to negligence. They had the information. However, for Engel, he knew that statutory fees had been awarded at trial but he chose to remain silent. By remaining silent in a situation where he had a duty to speak out and do the right thing, Engel instead, by his deception, increased his fees by one half of the statutory fees awarded at trial. Engel practiced deceit on his former client. Engel knew he was pulling a fast one.

The August 21, 2003 judgment set out the statutory attorney's fees for wage and hour violations at trial as follows:

4. For attorney fees on the wage and hour claims, the sum of \$5,850.40, together with interest at the rate of 10 percent provided by law from the date of judgment of March 21, 2000, until the date of the judgment computed at the rate of \$1.60 per day in the amount of \$7,845.60. Interest shall accrue at the rate of \$1.60 per day from and after August 21, 2003 until paid in full. ( Emphasis added)

Important here is the fact that for attorney's fees at trial, Engel was awarded fees based on a 40% contingency fee retainer. ( It was only on appeal where Engel claimed attorney's fees based

on an hourly rate.) Therefore, the \$5,850.40 attorney's fee awarded was based on the 40% contingency fee retainer. I request this Court to take **judicial notice** of the Engel-Dias retainer agreement in the court file. It provides for a 40% contingency fee at trial.

In the summary judgment order-opinion dated July 12, 2004, the Court specifically referred to Engel's claim that he was entitled to 50% of the entire recovery including a division of the statutory fees and rejected Engel's claim. There can be no question that he was seeking part of the statutory fees awarded on appeal also. In his brief filed on March 8, 2004, there can be no doubt that he was seeking 50% of everything. He stated:

...At the very least, the undersigned is entitled to 50% percentage called for in the agreement, plus costs incurred.."  
( Engel's filing on March 8, 2004, page 2 [23-24].

In the same brief Engel denied that Marcia Dias is entitled to an offset of the fees for the statutory fees awarded in this case and asserts that he is entitled to 50% of the entire recovery. (page 9 [17-28], page 10[1-10], and page 12 [11-18].

Further, in his brief filed on March 24, 2004, Engel unequivocally declared he was seeking 50% of the entire recovery in the case:

Marcia Dias gave 50% of the amount to be recovered in this case to Engel, and was never entitled to any part of it, in exchange for engel's services at the time she executed the agreement with Engel, April 4, 1999.

Since that time, engel has rendered his services to dias, and is entitled to the proceeds of this unambiguous agreement calling for 50% of the amount recovered. dias may not now engage in discovery and other tactics designed to thwart Engel's right to this contingency fee.... (page 7 [23-26])

Finally, n his reply Brief filed on April 14, 2004 relating to the motions of Dias, Engel again asserts that he is entitled to 50% of the entire recovery. Page 6 [17-20]; page 7 [22-28]. Engel's Reply Brief is incorporated her by reference.

In the summary judgment order-opinion, this Court expressly

rejected Engel's contention. The summary judgment order, incorporated here by reference, analyzed the law and then concluded that to allow engelk a recovery on his contingency fee and also recovery of the statutory fees, would be an unwarranted windfall. (Pages 10 [24-25], page 11 [1-4].

There is no distinction between statutory fees awarded at trial and those awarded on appeal. Engel had a 50% retainer for recovery at the appellate level. He had a 40% contingency fee for recovery at the trial level. trial level. (Engel's retainer agreement, on file with this Court, is incorporated here by reference.) If he received all or any part of the statutory fees at trial, he likewise would be receiving an unwarranted windfall.

Dias contended that the statutory fees should be awarded to her. Unfortunately, neither Engel nor Dias' attorneys submitted a brief on the issues--a rather bizarre procedure for a summary judgment proceeding where all the marbles are on the table.

In preparing his memorandum of costs and his judgment, Engel knew that buried within the final figure, he had appropriated half of the statutory fees at trial and the accumulated interest. Based on a 40% contingency fee retainer for trial, the statutory fees at trial were **\$5,850.40**. (I ask this Court to take judicial notice of the fact that the contingency fee retainer on file in this case was for a 40% contingency through trial.)

Though Engel was arguably entitled to one half of the interest earned on the statutory fees awarded at trial as the case wound its way through the court system, he was not entitled to one half of the statutory fee. Engel knew he was not entitled to any part of the statutory fee awarded at trial, just as he was not entitled to any part of the statutory fee awarded on appeal. Notwithstanding this fact, Engel, fraudulently and deceitfully, increased his fee he calculated in the August 4, 2004 judgment by burying in that judgment the fact that his fee included 50% of the attorney's fee awarded at trial. By his fraud and deceit, Engel appropriated one half of it for himself by burying the attorney's fee at trial in the overall August 3, 2004 judgment.

# Montana State Legislature

2009 Session

## **Exhibit 2**

**[This exhibit was appended on  
May 7, 2009 per request of  
Representative Scott Sales for Dan  
Shea.]**

**This exhibit originally was scanned  
with only 10 pages per scanning rule  
in 2007 the additional pages were sent  
to Montana Historical Society and  
archived. Per the request Dan Shea  
who wanted the entire exhibit placed  
into the electronic document.  
Permission granted by Senate  
Secretary Marilyn Miller and  
President of Senate Senator Story. The  
original exhibit is on file at the  
Montana Historical Society and may be  
viewed there.**

**Montana Historical Society  
Archives, 225 N. Roberts, Helena,  
MT 59620-1201  
Phone (406) 444-4774.**

Scanning by: Susie Hamilton

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PART II.

IN PREPARING THE MEMORANDUM OD COSTS IN WHICH HE CLAIMED ATTORNEYS FEES AND IN PREPARING AND PRESENTING THE JUDGMENT, ENGEL, ALTHOUGH NOT STATED IN THESE DOCUMENTS, ILLEGALLY OBTAINED AN INTEREST IN THE STATUTORY FEES AWARDED AT TRIAL BY HIDING THE FACT THAT \$5,850.40 HAD BEEN AWARDED AS STATUTORY FEES AT TRIAL. AS A RESULT OF HIS DECEIT, ENGEL INCREASED HIS FEES BY CLAIMING HALF OF THIS FEE--\$2,925.20.

As stated above, the Court's order declared that the statutory fees awarded in this case went to Marcia Dias. Unfortunately, neither the Court nor Engel nor counsel for Dias mentioned the statutory fees awarded at trial. These also should have been awarded to Marcia Dias in Engel's August 3, 2004 judgment, just as the statutory fees awarded on appeal were awarded to Marcia Dias. The legal principle is exactly the same.

The oversight by counsel for Dias is perhaps understandable. They never understood this case nor made any effort to understand it. Their oversight can be attributed to negligence. They had the information. However, for Engel, he knew that statutory fees had been awarded at trial but he chose to remain silent. By remaining silent in a situation where he had a duty to speak out and do the right thing, Engel instead, by his deception, increased his fees by one half of the statutory fees awarded at trial. Engel practiced deceit on his former client. Engel knew he was pulling a fast one.

The August 21, 2003 judgment set out the statutory attorney's fees for wage and hour violations at trial as follows:

4. For attorney fees on the wage and hour claims, the sum of \$5,850.40, together with interest at the rate of 10 percent provided by law from the date of judgment of March 21, 2000, until the date of the judgment computed at the rate of \$1.60 per day in the amount of \$7,845.60. Interest shall accrue at the rate of \$1.60 per day from and after August 21, 2003 until paid in full. ( Emphasis added)

Important here is the fact that for attorney's fees at trial, Engel was awarded fees based on a 40% contingency fee retainer.

( It was only on appeal where Engel claimed attorney's fees based

on an hourly rate.) Therefore, the \$5,850.40 attorney's fee awarded was based on the 40% contingency fee retainer. I request this Court to take **judicial notice** of the Engel-Dias retainer agreement in the court file. It provides for a 40% contingency fee at trial.

In the summary judgment order-opinion dated July 12, 2004, the Court specifically referred to Engel's claim that he was entitled to 50% of the entire recovery including a division of the statutory fees and rejected Engel's claim. There can be no question that he was seeking part of the statutory fees awarded on appeal also. In his brief filed on March 8, 2004, there can be no doubt that he was seeking 50% of everything. He stated:

...At the very least, the undersigned is entitled to 50% percentage called for in the agreement, plus costs incurred.."  
( Engel's filing on March 8, 2004, page 2 [23-24].

In the same brief Engel denied that Marcia Dias is entitled to an offset of the fees for the statutory fees awarded in this case and asserts that he is entitled to 50% of the entire recovery. (page 9 [17-28], page 10[1-10], and page 12 [11-18].

Further, in his brief filed on March 24, 2004, Engel unequivocally declared he was seeking 50% of the entire recovery in the case:

Marcia Dias gave 50% of the amount to be recovered in this case to Engel, and was never entitled to any part of it, in exchange for engel's services at the time she executed the agreement with Engel, April 4, 1999.

Since that time, engel has rendered his services to dias, and is entitled to the proceeds of this unambiguous agreement calling for 50% of the amount recovered. dias may not now engage in discovery and other tactics designed to thwart Engel's right to this contingency fee.... (page 7 [23-26])

Finally, n his reply Brief filed on April 14, 2004 relating to the motions of Dias, Engel again asserts that he is entitled to 50% of the entire recovery. Page 6 [17-20]; page 7 [22-28]. Engel's Reply Brief is incorporated her by reference.

In the summary judgment order-opinion, this Court expressly

rejected Engel's contention. The summary judgment order, incorporated here by reference, analyzed the law and then concluded that to allow engelk a recovery on his contingency fee and also recovery of the statutory fees, would be an unwarranted windfall. (Pages 10 [24-25], page 11 [1-4].

There is no distinction between statutory fees awarded at trial and those awarded on appeal. Engel had a 50% retainer for recovery at the appellate level. He had a 40% contingency fee for recovery at the trial level. trial level. (Engel's retainer agreement, on file with this Court, is incorporated here by reference.) If he received all or any part of the statutory fees at trial, he likewise would be receiving an unwarranted windfall.

Dias contended that the statutory fees should be awarded to her. Unfortunately, neither Engel nor Dias' attorneys submitted a brief on the issues--a rather bizarre procedure for a summary judgment proceeding where all the marbles are on the table.

In preparing his memorandum of costs and his judgment, Engel knew that buried within the final figure, he had appropriated half of the statutory fees at trial and the accumulated interest. Based on a 40% contingency fee retainer for trial, the statutory fees at trial were **\$5,850.40**. (I ask this Court to take judicial notice of the fact that the contingency fee retainer on file in this case was for a 40% contingency through trial.)

Though Engel was arguably entitled to one half of the interest earned on the statutory fees awarded at trial as the case wound its way through the court system, he was not entitled to one half of the statutory fee. Engel knew he was not entitled to any part of the statutory fee awarded at trial, just as he was not entitled to any part of the statutory fee awarded on appeal. Notwithstanding this fact, Engel, fraudulently and deceitfully, increased his fee he calculated in the August 4, 2004 judgment by burying in that judgment the fact that his fee included 50% of the attorney's fee awarded at trial. By his fraud and deceit, Engel appropriated one half of it for himself by burying the attorney's fee at trial in the overall August 3, 2004 judgment.

Engel violated his duty in seeking fees and expenses from Marcia Dias, to proceed with the highest of good faith. Instead, Engel acted with the lowest of bad faith. Engel's deceit netted him another \$2,925.20.

In a previous filing with this Court I have stated that I had written to Engel and requested that he step forward into court and admit his misconduct by claiming the statutory fees awarded at trial to which he was not entitled. Obviously, Engel has not done so.

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PART III.

**ENGEL FRAUDULENTLY OBTAINED PREJUDGMENT INTEREST  
ON ATTORNEY'S FEES AND OTHER ITEMS**

As I will explain in detail, the core language of the statute which determines whether or not prejudgment interest is recoverable as damages is the limiting language which states "...except during such time as the debtor is prevented by law, or by the act of the creditor, from paying the debt." (Section 27-1-211 MCA)

The emphasized language s precisely the language which Engel omitted when he filed his July 21, 2004 memorandum of costs claiming his entitlement to prejudgment interest. The full language of the statute states:

Every person who is entitled to recover damages certain or capable of being made certain by calculation and the right to recover is vested in him upon a particular day is entitled to recover interest from that day, except during such time as the debtor is prevented bylaw, or by the at of the creditor, from paying his debt." (Section 27-1-211 MCA).

In addition to the clear language of the statute itself, it is obvious that the act of creditor Joseph C. Engel III, prevented Marcia Dias from paying the debt because of the demands he made on her for payment. If she did not choose to litigate, the only choice she had was to capitulate to Engel.

**MANY ISSUES EXISTED WHICH REQUIRED A DETERMINATION ON THE  
MERITS BEFORE THE AMOUNT OF FEES OWED TO ENGEL COULD BE**

**DETERMINED.**

Many issues existed which would require a determination that prejudgment interest is now allowed. Engel did not file a brief in support of his position, and this did not surprise me at all. But neither did counsel for Dias file a brief in support of their position. I must say, that I was truly shocked that they did not do so. Several months before I had provided a computer disk to them setting forth the law on each of the issues. In my efforts to prevent Engel from running over the top of Marcia Dias like a bulldozer, I did the research on each of the issues.

Until all these issues were decided, it could not be determined what was owed to Engel for fees and expenses. Engel knew this. By filing his lawsuit seeking fees and expenses, Engel himself was the party who prevented any payment by seeking far beyond what he was entitled to receive. However, the Engel drafted judgment has punished Marcia Dias because in daring to challenge the demands of Engel, she has now been compelled to pay prejudgment interest on the fees ultimately awarded to Engel. In fact, Marcia Dias prevailed on several issues, and it is not her fault that several issues were not decided in the summary judgment order.

Concerning Engel's claim of expenses, nowhere in the court proceedings did Engel ever represent what he claimed for expenses, and he did not file any statement his claimed expenses. Further, he did not even state the total expenses he was claiming. In claiming his expenses, Engel kept his cards very close to his chest.

**ENGEL'S MEMORANDUM OF COSTS FILED ON JULY 21, 2004  
CLAIMED AN ENTITLEMENT TO PREJUDGMENT INTEREST ON  
SEVERAL ITEMS.**

Engel's memorandum of costs filed on July 21, 2004, his proposed judgment, and later his amended judgment, are incorporated here by reference. In his memorandum of costs Engel claimed prejudgment interest on several items, including prejudgment interest for attorney's fees.

In calculating the amount of his fee and the prejudgment interest on this fee, Engel's memorandum of costs contained the following figures and calculations:

Interest on these fees as follows: follows:

Amount of award: 50% of \$223,877.84=\$111,938.73 x 10% =  
\$111,193.90, divided by 365 (number of days in year) =  
\$30.67 per day. (Memorandum of costs, page 2, [10-12].

In the judgement prepared by Engel and entered as a judgment on August 3, 2004, the attorney's fees and prejudgment interest on attorney's fees are set forth as follows (page 2, paragraphs 1 and 2)

1. That the judgment award for Dias dated August 21, 2003 is the amount of \$223,877.94, exclusive of costs. Engel is hereby awarded 50% of this amount, the sum of \$111,938.97.

2. The court has determined that Engel is the prevailing party on the Petition to Foreclose Attorney Fees. That pursuant to Section 27-1-211 M.C.A., Engel is entitled to prejudgment interest at the rate of 10 per cent per annum as provided bylaw from the date of judgment of august 21, 2003, which is the date that judgment was entered for dias, until the date of this judgment, computed at the rate of \$30.67 per day, which is the amount of \$10,642.49, until paid in full.

In calculating the prejudgment interest on what he claims to be previously awarded costs, Engel's memorandum of costs states:

The interest on the court award of costs is calculated as follows:

Amount of costs approved and awarded by court: \$1,540.79  
x 10%==\$154.08, divided by 365 = \$.42 per day.  
(Engel's memorandum, page 1 [13-15].

The judgment prepared by Engel and entered by the Court on August 3, 2004 as to this previous court award of costs, provides at page 2, paragraph 3:

That Engel is awarded costs as follows:

3. The amount of \$1,540.79 previously awarded on trial and appeal. As per the court's judgment of August 21, 2003, interest has accumulated on these costs at the combined rate of .42 per day, from the date of that judgment until the date of this judgment, in the amount of \$145.24..

The memorandum of costs submitted by attorney Engel in relation to the expert witness expenses of Gale Gustafson, states:

The interest on the award of expert fees for Gale Gustafson

Amount of award:  $\$1,250.00 \times 10\% = \$125$ , divided by 365, =  $\$.34$  per day. Additionally, the difference between what the court awarded and what Gale Gustafson is billing for his services is the sum of  $\$166.40$  ( See Exhibit 1, attached.)  $\times 10\% = \$16.64$  divided by 365 =  $\$.05$  per day for a combined total of  $\$.39$  per day. ( Engel's Memorandum of Costs, filed July 21, 2004, page 2 [16-20]

The judgment prepared by Engel and entered by the Court on August 3, 2004 as to this the expenses relating to Gale Gustafson, states at page 2, paragraphs 4 and 5:

That Engel is awarded costs as follows:

\* \* \*

4. On August 21, 2003, the Court awarded Expert Witness fees of Gale Gustafson, in the amount of  $\$1,250.00$ ...

5. Interest on the Gustafson fee since that date of that judgment until the date of this judgment has accumulated at the rate of  $\$.34$  per day, is th amount of  $\$117.98$  until paid in full.

The total prejudgment interest received by Engel as part of the judgment is  $\$10,905.71$  (  $\$10,642.49$  for attorney fees;  $\$145.24$  for his claimed costs awarded at trial on appeal; and  $\$117.98$  for expenses of expert witness Gale Gustafson). Engel obtained this prejudgment as a result of his fraud in misrepresenting the contents of the prejudgment statute and the law applicable to this statute. Engel obtained  $\$10,905.71$  based on his fraudulent misrepresentations.

**TO OBTAIN PREJUDGMENT INTEREST ENGEL MADE FRAUDULENT STATEMENT IN HIS MEMORANDUM ON COSTS.**

How did Engel legally justify the award of interest on attorney fees? He did it by fraudulently misrepresenting and omitting the most important language in the statute covering prejudgment interest.

Specifically, in his memorandum of costs, attorney Engel represented the contents of Section 27-1-211 MCA, as follows:

**2. Interest Calculations on fees and costs.**

The underlying judgment for Marcia Dias was entered August 21, 2003. The amount of attorney fees were calculable from that time. Under the authority of section 27-1-211 M.C.A., "Every person who is entitled to recover damages

certain or capable of being made certain by calculation and the right to recover which is vested in him upon a particular day is entitled also to recover interest thereon from that day..."

Attorneys are entitled to prejudgment interest on their contingent fee awards. see: **Kelleher Law Office v. State Comp, Ins. Fund**, 213 Mont. 412, 691 P.2d 823 (1984), where the court held that the attorney fees could be computed to a certain amount upon issuance of a judgment establishing the specific amount of the attorney's client's damages. Just because the amount is disputed does not make it uncertain. **Safeco Inc. Co. v. Lovely Agency**, 215 Mont. 420, 697 P.2d 1354 (1985).

Engel deliberately and with fraudulent intent, omitted key language of the statute on prejudgment interest which applies to the facts of this case. **Section 27-1-211 MCA** is the general prejudgment interest, enacted and in effect since 1895 without change. This statute applies to all forms of prejudgment interest. To obtain prejudgment interest the requirement specified in the last clause of the statute must be satisfied. Engel deliberately omitted this part of the statute. . Precisely, section 27-1-211 MCA provides in its entirety:

Every person who is entitled to recover damages certain or capable of being made certain by calculation and the right to recover which is vested in him upon a particular day is entitled also to recover interest thereon from that day except during such time as the debtor is prevented by law or by the act of the creditor from paying the debt. (Emphasis added)

In his memorandum on costs, Engel omitted the most important limiting language of the statute, underlined above. If a plaintiff claims as to amounts owed are disputed on a sufficient legal and factual basis, prejudgment interest is not allowed. That is the case here.

**THE JUDGMENT FOR ENGEL ALSO INCLUDED A FRAUDULENT CLAIM FOR PREJUDGMENT INTEREST--FOR ATTORNEY'S FEES ENGEL FRAUDULENTLY OBTAINED \$10,\_\_\_\_\_ IN PREJUDGMENT INTEREST.**

Based on his claim that his 50 percent share entitled him to \$111,937,73, Engel then set out his interest formula in his memorandum of costs but did not set out the amount of interest

claimed. Engel set out his formula as follows:

The interest on the attorney fee award is calculated as follows:

Amount of award: 50% of \$223,877,84=\$111,938.73 x 10% = \$11,193.90, divided by 365 (number of days in year) = \$30.67 per day. (Memorandum of costs, page 2, [10-12].

The actual amount of prejudgment Engel obtained on attorney's fees is set out in the August 4, 2004 judgment:

1. That the judgment award for dias dated August 21, 2003, is the amount of 4223,877.94, exclusive of costs. Engel is hereby awarded 50% of this amount which is the sum of \$111,938.97.

2. the court has determined that engel is the prevailing party on the Petition to Foreclose Attorney Fees. That pursuant to section 27-1-211 M.c.A., **Engel is entitled to prejudgment interest** at the rate of 10 percent per annum as provided by law from the date of judgment of August 4, 2003, which is the date that judgment was entered for dias, until the date of this judgment, computed at the rate of \$30.67 per day, which is **the amount of \$10,642.49**, until paid in full. (Page 2 of judgment)

Before judgment was entered, Engel committed an attempted fraud and deceit by misrepresenting the contents of section 37-1-211 MCA. When judgment was entered awarding prejudgment interest, based on Engel's misrepresentations of section 17-1-211, Engel committed fraud and deceit and by his conduct obtained \$10,642.49 to which he was not entitled.

Engel's misrepresentation constituted deceit and fraud against the court, against his former client, and against opposing counsel. The real victim of Engel's fraud and deceit was Marcia Dias.

**CONTENTS OF THE MARCIA DIAS AFFIDAVIT NOT  
CONTESTED BY ENGEL THROUGH OPPOSING AFFIDAVIT**

Concerning Engel's claim that he was entitled to 50 percent of the judgment proceeds in addition to his claimed expenses and his attempt to impose the burden on Marcia dias to pay certain expenses, the Affidavit of Marcia Dias filed on May 13, 2004 stated:

At first [I] was not opposed to 50% split in attorney fees.

However, Mr. Engel would not agree to a 50% split. Instead he wanted me to pay for a several different costs. the bottom line is that Mr. Engel proposed that I receive approximately \$40,000 of the \$252,000 judgment. I was dumbfounded when I realized that Mr.Engel proposed that I assume expenses that he should have assumed. ( Paragraph 3, pages 1-2)

It was Engel who forced Marcia Dias into litigation by asserting he was entitled to one half of the statutory fees awarded on appeal as part of the 50% contingency fee he was claiming. Marcia Dias stated in her affidavit filed on May 13, 2004:

The contingency fee agreement provides for an increase in fees paid on appeal. In the underlying case there was also an award for statutory attorney fees on appeal. Mr. Engel claims entitlement to both the agreement increase and the statutory attorney fees. This amounts to double payment. I am entitled to offset the award of statutory fees against the contingency fee. The fee agreement is silent a to court awarded attorney fees. (Page 3, paragraph 6)

It was Engel who forced Marcia Dias into litigation by contending that she had no right to deduct her directly paid litigation expenses from the gross recovery before calculation of the contingency fee amount. Marcia Dias stated in her affidavit filed on May 13, 2004:

Mr. Engel claims that I am not entitled to deduct litigation expenses paid by me before the contingency fee is calculated. In June, 2003, I wrote to Mr. engel about this issue. **I incurred close to \$7,000 in expenses for trial. I believe I should be allowed to deduct these expenses before the contingency fee percentage is calculated.** The contingency fee agreement is silent as to whether expenses should be deducted from either the gross or net recovery. **Mr. Engel did not finance this case--I did.** Since I paid the expenses up front, I am entitled to deduct them from the gross recovery. ( Paragraph 7, pages 2-3) (Emphasis added)

In its summary judgment order entered on June 12, 2004, the Court failed to decide this issue. In facts, this issue was not mentioned in the order-opinion. That is not the fault of Marcia Dias.

And it was also Engel who forced Marcia Dias into litigation by claiming that he was entitled to her personal expenses incurred

on top of the 50% contingency retainer fee. Marcia Dias stated in her affidavit filed on May 13, 2004:

Mr. Engel did incur some expenses in this case. I believe his expenses to be approximately \$1,500. I believe these expenses should also be deducted from the gross recovery.

In its summary judgment order entered on June 12, 2004, the court decided this issue without reference to the contents of the retainer agreement and without reference to the contention of Marcia Dias. The Court did not discuss this issue raised by Marcia Dias in her affidavit. Rather the court simply declared that Engel was entitled to a 50% fee plus his expenses, even though Engel had never presented his expenses to the Court. ( Opinion-order, page ).

It was Engel who forced Marcia Dias into litigation concerning the issue of who was responsible to me for the extensive services I rendered in this case. Marcia Dias directly stated in her affidavit that Engel contended she was responsible to pay me. April 7, 2004 affidavit of Marcia Dias). Engel did not dispute that he insisted she must pay me. It was Engel who tried to foist the duty on Marcia Dias to pay me. Despite this dispute this Court did not decide the issue and left it in the air. Marcia Dias had a right to have this Court decide this issue.

In its summary judgment order of July 12, 2004, the Court did not determine the issue of who was responsible to pay me. Before paying engel, Marcia Dias had a right to a ruling from this Court. The Court did not rule on this issue. That is not the fault of Marcia Dias.

It was Engel who forced Marcia Dias into litigation because of his demand that she pay him more than \$11,000.00 extra fees defense against the Sisler attorney lien claim. Marcia Dias raised this issue in her affidavit filed on May 13, 2004:

Mr. Engel has demanded that he be paid an additional \$11,000 to defend against the attorney's lien filed by Mr. Sisler. when I refused to pay the addition money, Mr. engel accused me of deceit and attempted to intimidate me into paying him. I asked him to explain this to me but he refused. I believe it was Mr. Engel's duty to defend the Sisler lien. ( Paragraph

5, page 3)

In the summary judgment order-opinion the issue of Engel's claim for extra fees was not decided. In fact it was not mentioned. That is not the fault of Marcia Dias. Engel forced her to litigate.

It was Engel who forced Marcia Dias to litigate the issue of who was responsible to pay the Engel demanded that Marcia Dias pay the \$12,500 awarded to Matthew Sisler. Marcia Dias believed it was Engel's duty to pay the award from his fee received in the case. She stated in her Affidavit filed on May 13, 2004:

Mr. Engel is insisting that I pay the attorney fee awarded to Matthew Sisler. It is Mr. Engel's responsibility to stipulate who should pay this type of fee in the contingent fee agreement. The fee agreement I signed with Mr. Engel does not discuss this issue. I asked Mr. Engel to explain why he should not pay Sisler's fee. He refused to do so. I believe that whatever fees are ultimately determined to exist in this cause must be reduced by the \$12,500 that has already been paid to Mr. Sisler by the clerk of court. ( Paragraph 5, page 3)

In its summary judgment order the Court ruled that the payment must come from the Marcia Dias share of the judgment proceeds. (Order-opinion, pages). I can assure this Court that the prevailing law is that the successor attorney must pay the lien claim of a prior attorney on the case. In fact, if the Montana cases are studied closely, this is also the rule in Montana.

The end result is that although Engel forced Marcia Dias into litigation unless she agreed to let him run right over the top of her, and Marcia Dias had abundant and successful reasons to refuse Engel's demands, Engel, by fraud and deceit in his memorandum on costs, has unlawfully obtained \$10,642.49 in prejudgment interest on attorney's fees.

**THE REMAINING ITEMS ON WHICH ENGEL OBTAINED PREJUDGMENT INTEREST ARE ALSO BASED ON ENGEL'S FRAUDULENT OMISSION OF THE KEY LANGUAGE IN SECTION 27-1-211 MCA.**

Further, all of the remaining items for which prejudgment interest was awarded in the judgment, are based on Engel's omission from the statute of the very language which would have denied him the right to prejudgment interest. Engel obtained a higher judgment

that that to which he was entitled by fraud. Those items are as follows:

Engel obtained prejudgment interest on the following items:

For prejudgment interest on the on costs awarded by the court:

The interest on the court award of costs is calculated as follows:

Amount of costs approved and awarded by court: 41,540.79  
x 10%==\$154.08, divided by 365 = \$.42 per day.  
(Engel's memorandum, page 1 [13-15]).

**The interest on the award of expert fees for Gale Gustafson**

Amount of award: \$1,250.00 x 10%=\$125, divided by 365, = \$.34 per day. Additionally, the difference between what the court awarded and what Gale Gustafson is billing for his services is the sum of \$166.40 ( See Exhibit 1, attached.) x 10%==\$16.64 divided by 365=\$.05 per day for a combined total of \$.39 per day. ( Engel's Memorandum of Costs, filed July 21, 2004, page 2 [16-20]

In addition to illegally obtaining prejudgment interest on attorney fees, the above prejudgment interest cannot be allowed on the above items because of section 27-1-211, which provides in its last key language that prejudgment interest cannot be obtained: ... during such time as the debtor is prevented by law or by the act of the creditor from paying the debt. (Emphasis added)

Engel has committed an enormous fraud in this case. It is fraud against the court, fraud against his former client, and fraud against opposing counsel. Again, the real **victim** of this fraud is Marcia Dias.

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PART IV.

I proceed next to explain another part of the first paragraph of the judgment. The \$223,877.94 judgment entered on August 21, 2004, in fact includes two costs imbedded in the \$223,877.94--the costs awarded at trial plus accrued interest, and the costs on

appeal plus accrued interest. By his financial machinations relating to these two cost items Engel has committed fraud. I will discuss each of these cost items separately.

**IN CLAIMING EXPENSES IN THE JUDGMENT, ENGEL ILLEGALLY AND FRAUDULENTLY SWITCHED EXPENSES TO CLAIM COURT AWARDED EXPENSES, MOST OF WHICH HAD BEEN PAID BY MARCIA DIAS.**

I focus here on paragraph 1 of the judgment as it relates to Engel's reference to what he refers to as "costs." Engel states that the \$223,877.94 judgment figure is "exclusive of costs." Engel purposely confuses two terms. The terms costs and expenses are often used interchangeably. But in legal terminology there is a difference in costs and expenses if reference is made to recovered costs as part of the judgment, and an attorney's expenses which are not recovered as costs as part of the judgment. As I will explain, Engel committed fraud in claiming for himself the costs which were part of the judgment, and then adding them again to his costs, and on top of this, he did not personally pay most of the costs in any event.

**ATTORNEY ENGEL ILLEGALLY AND FRAUDULENTLY SWITCHED EXPENSES IN CLAIMING CERTAIN PERSONAL OUTLAYS THAT HE WAS ENTITLED TO IN ADDITION TO THE 50% CONTINGENCY FEE.**

In his Memorandum of Costs filed on July 21, 2004, attorney engel fraudulently claimed personal expense outlays which he did not in fact incur. He claimed these costs for himself on top of the fee he claimed. In this Memorandum and in the judgement he prepared which was entered on August 2, 2004, Engel combined the costs awarded at trial and th costs awarded on appeal, and appropriated them to himself as additional costs which Marcia Dias was required to pay.

For purposes of analysis, I separate these court awarded costs awarded for trial from those awarded on appeal.

**FRAUD COMMITTED BY ENGEL IN MANIPULATING THE COURT AWARDED COSTS AT TRIAL--\$808.37.**

In the March 21, 2000 judgment, there is incorporated within a judgment for court awarded fees and court awarded costs. Engel

prepared the judgment, and therefore the fees and items are not separated. Therefore, it cannot be determined what the fee is and it cannot be determined what the costs are. This is the way Engel operates.

Before the August 21, 2003 judgment was entered for Marcia dias, I closely examined the cost bill and the order taxing costs and concluded that the costs awarded at trial were \$808.37. Therefore, Marcia dias insisted that in the judgment Engel presented, that the costs awarded at trial be stated separately from those awarded at trial for statutory attorney's fees.

Interest ran on these court awarded trial costs from March 21, 2000 up to and including the entry of judgment on August 21, 2003, and then until HMHB paid the entire judgment by tendering it to the Clerk of court registry in late August, 2003.

After the Supreme Court decision December 19, 2002, and the remand to district court, a final judgment a entered on august 21, 2003. In this judgment, the costs awarded at trial and the accumulated interest on this figure are set out in the judgment. The judgment states:

5. For costs of trial, Marcia Dias shall recover \$808.37, together with interest at the rate of 10 percent as provided by law from the date of judgment of March 21, 2000, until the date of the judgment, computed at the rate of \$.22 per cay in the amount of \$1,082. 69. Interest shall accurate at the rate of \$.22 per day from and after August 21, 2003, until paid in full. (Page 3, paragraph 5) (Emphasis added).

Starting with the total for this item entered in the judgment, \$1,082.69, and deducting the costs from this sum, \$808.37, it is clear that up to August 21, 2003, the accumulated interest for this cost item was \$274.32.

With the exception of statutory attorney fees on appeal ( paid separately by HMHB based on court order, Engel declared that the total judgment was \$223,877.84. Of necessity, the court awarded costs of trial, plus accumulated interest were both incorporated into and became part of the total judgment.

I next proceed to trace this cost item into Engel's Memorandum

of costs presented on July 21, 2004 and his judgment entered on August 3, 2004.

IN HIS MEMORANDUM OF COSTS ATTORNEY ENGEL CLAIMED THAT HE WAS ENTITLED TO THE AWARD OF COSTS AT TRIAL IN ADDITION TO HIS CONTINGENCY RETAINER FEE. ENGEL'S CLAIM THEN BECAME PART OF THE AUGUST 3, 2004 JUDGMENT. ENGEL'S CLAIM WAS FRAUDULENT.

In his memorandum of costs filed on July 21, 2004, Engel claimed trial costs as his own to be added to his judgment for fees.

**2. Interest Calculations on fees and costs:**

\* \* \* \*

~~The interest on the court award of costs is calculated as follows:~~

Amount of costs approved and awarded by the Court: \$1,540.79  
X 10%=\$154.08, divided by 365 =\$ .42 per day. ( page 2)

I emphasize here that although Engel does not say so, the figure of \$1,540.79 also includes costs awarded on appeal (\$436.20) and the interest which had accumulated on both these items.

The August 21, 2003 judgment contained the following language as to costs on appeal:

6. For costs of appeal not including attorney fees, on the sum of \$436.20, together with interest thereon at 10 percent from the date that Defendant accepted the cost bill, calculated at the rate of \$.12 per day from February 18, 2003, until the date of this judgment in the amount of \$458.28. Interest shall accrue at the rate of 4.12 per day from and after August 21, 2003, until paid in full. (Emphasis added)

As I stated earlier, I will discuss the court costs awarded on appeal as a separate item because they go down a separate track than the costs awarded at trial. Marcia Dias paid the costs awarded on trial. Engel paid the costs awarded on appeal.

The judgment which Engel prepared and which was entered by the Court, does not state the separate figures for each cost item, but it does state that the figures are for costs awarded at trial and costs awarded on appeal. It provides:

**That Engel is awarded costs as follows:**

**3. The amount of \$1,540.79 previously awarded on trial and**

appeal. As per the Court's judgment of August 21, 2003, interest has accumulated on these costs at the combined rate of \$.42 per day, from the date of that judgment until the date of this judgment, in the amount of \$ 145.74. (Emphasis added)

I note here that when expenses are combined such as what Engel did, is a slippery method because the separate costs are more difficult to tract as to amount and as to interest accumulated. Engel's slipperiness, that is, deceit, takes on even higher ethical dimensions because he practiced his deceit against his own client.

I have isolated the expense item of costs awarded on trial, and have calculated the interest that this item ( \$808.37 ) would have earned from March 21, 2000, the date of entry of judgment after the jury trial, until the judgment was entered for Engel on August 3, 2004. The total interest, based on a daily interest rate of \$.22 cents, is \$344.30.

Therefore, when Engel stated in his memorandum of costs and judgment, that the total fee to be divided was \$ 223,877.94, this amount included the award of costs for trial and the accumulated interest. Engel apportioned the total amount of \$223,877.94 was apportioned 50/50 between engelnk and Marcia Dias. Of necessity, so were the court awarded costs for trial were also apportioned 50/50 as part of this division. Based on the \$808.37 costs and the accumulated interest on this amount, Engel received \$576.33 and Marcia Dias paid \$576.33.

But the application of this cost item did not stop there. Engel then used this same cost item as his own to include the entire award of costs at trial and accumulated interest, on top of this split. He claimed it as part of the personal expenses according to the retainer agreement. By doing this, Engel collected as costs, the entire \$808.37 in principal plus accumulated interest on this amount from March 21, 2000. My calculation of the interest earned on \$808.37 from March 21, 2000 to August 3, 2004, is approximately \$344.40. The amount of interest be off by overstating or understating the accumulated interest

by five or so days either way. The result is that Engel received from the award of costs a trial, a total of \$ 1,152.77, plus the \$576.33 which had been incorporated into the judgment entered on August 21, 2004.

But now for the kicker. Not only did Engel engage in this flim-flam to increase the total judgment amount to himself, the fact is that Engel did not pay those costs awarded at trial. Marcia Dias did.

I am personally familiar with the situation with who paid the expenses. i gathered together the costs for Engel which were presented in the cost bill. Of this \$808.37 is true that Engel did make an outlay of some of these expenses, no more than \$300.00. However, when he did make this outlay, Engel required Marcia Dias to reimburse him. And she did so. Therefore, Engel had no outstanding expenses not paid which are represented in the trial court award of costs.

The end result is that Engel ripped off his own client. He successfully accomplished an act of fraud and deceit against his client.

In summary, the result of Engel's deceit is: Marcia Dias received back from her \$808.37 expense outlay, only \$576.33. Engel also received the other half of this--\$576.33. In addition, Engel received, based on his fraudulent claim of costs, another \$808.37 plus the accumulated interest on this amount--\$344.30. Total for Engel, \$1,729.00. And who paid the expenses? Marcia Dias did. This is blatant fraud and deceit-- directed at Engel's client.

THE DECEIT OF ENGEL IN APPROPRIATING THE COSTS ON APPEAL IS BASED ON THE FACT THAT THE COSTS WERE RECOVERED A PART OF THE JUDGMENT AND ENGEL WAS THEREFORE ENTITLED TO ONLY ONE HALF OF THE REMAINING COSTS. ENGEL PAID \$436.37 COSTS ON APPEAL. HE RECOVERED APPROXIMATELY \$749.44.

BACKGROUND OF THE COSTS INCURRED ON THE APPEAL, FOR PRINTING OF APPEAL BRIEF, ETC.

Attorney Engel submitted his cost bill for the appeal to HMHB

and the court on february 18, 2003. HMHB immediately accepted the cost bill. Later, when a final judgment was entered on August 21, 2004, the costs on appeal were included as part of the judgment. The judgment for costs on appeal states:

6. For costs of appeal not including attorney fees, on the sum of \$436.20, together with interest thereon at 10 percent from the date that Defendant accepted the cost bill, calculated at the rate of \$.12 per day from February 18, 2003, until the date of this judgment in the amount of \$458.28. Interest shall accrue at the rate of \$.12 per day from and after august 21, 2003, until paid in full.

Engel paid these costs and course his client would be responsible to reimburse him. The costs of appeal were incorporated into the judgment. Engel declared that the total judgment was \$223,877.97 and he divided this amount by half to allow for a 50/50 split between himself and his client. Therefore, of necessity, when the judgment was divided, the costs on appeal and the accrued interest also were divided 50/50. Engel received one half of the \$436.20 ( that is, \$218.20) and one half of the accumulated interest on this amount. Marcia Dias also received one half of the \$436.20 ( that is, \$218.20), plus one half of the accumulated interest on this amount. The accumulated interest on \$436.20 from February 18, 2003 to August 3, 2004 is approximately \$63.36, with one half allocated to Engel and one half allocated to Marcia Dias. Therefore, each received **\$249.88**.

Based on this allocation, to fully compensate Engel for costs on appeal, Marcia Dias owed the difference between \$436.20 and \$249.88, which is \$186.22. Based on the district court order stating that Engel must be compensated for his personal expenses incurred during the course of litigation, it was of course proper that Marcia Dias pay this \$186.22 to Engel. But Engel was not satisfied with receiving the additional \$186.22. Instead, he prepared his memorandum of costs and judgment so that Marcia Dias was required to pay him the total \$436.20 costs of appeal on top of the \$249.88 which he had already been paid. In addition, Engel received the interest on this \$436.20 from February 18, 2003 until

August 3, 2003, or an approximately an additional \$ \$63.36.

The result of Engel's deception is that he paid \$436.20 for costs on appeal, but he was reimbursed a total of \$749.44. This is deception. This is fraud.

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PART V:

**ATTORNEY ENGEL IMPROPERLY CLAIMED THE EXPERT WITNESS FEES AWARDED AS PART OF THE STATUTORY FEES ON APPEAL AND IMPROPERLY CLAIMED THE PREJUDGMENT INTEREST ACCRUED FROM AUGUST 21, 2003 TO AUGUST 3, 2004.**

The summary judgement order entered on July 12, 2004, does not mention which party was entitled to the award of expert witness fees relating to award of statutory attorney's fees on appeal. It does not appear that it was an issue raised by either Engel or Dias. But the fact that it was not raised as an issue does not mean that Engel was entitled to claim those fees in the judgment.

The only expenses referred to in the summary judgment order is relates to those personal expenses which Engel incurred during the course of representing Marcia Dias. ( Order-opinion, page 7 ).

Engel did not claim the fees awarded to Marcia Dias for the expert witness testimony in his memorandum of costs. And most clearly, Engel had not in fact paid those costs. Any payment owed to Gustafson was still outstanding. Nonetheless, the Engel prepared judgment signed and entered by the Court on August 3, 2004, the Gustafson expenses, plus interest on those expenses, plus an additional \$166.40 are added to the judgment in favor of Engel.

The Engel prepared judgment on the expenses relating to gustafson provides:

That Engel is awarded costs as follows

\* \* \*

4. On August 21, 2003, the Court awarded Expert Witness Fees of Gale Gustafson, in the amount of \$1,250.00.

5. Interest on the Gustafson fee since the date of that judgment until the date of this judgment has accumulated has accumulated at the rate of \$.34 per day, in

the amount of \$117.98 until paid in full.

The expenses awarded to cover the fees of Gustafson should have been awarded to Marcia Dias for the simple reason that the statutory attorney fees were awarded to Marcia Dias rather than to you. Further, Engel was not entitled to interest earned on this \$1,250.00 from August 21, 2003.

It cannot be doubted that Engel deliberately attempted to and did take financial advantage of Marcia Dias by soaking her for as much as you possibly could get from her, by hook or by crook. Engel acted with the lowest of bad faith.

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**PART Vi:**

**ENGEL ILLEGALLY CLAIMED IN HIS MEMORANDUM OF COSTS AND OBTAINED IN THE JUDGMENT AN ADDITIONAL \$166.40 WHICH GUSTAFSON HAD CHARGED FOR HIS TESTIMONY AT THE MAY 10, 2003 HEARING ON STATUTORY ATTORNEY'S FEES ON APPEAL.**

On July 12, 2004, the district court judge entered an order granting summary judgment to in favor of attorney Engel concerning his claimed fees and expenses. Engel then prepared his memorandum of costs. One of those costs concerned an additional \$166.40 which attorney engel Gustafson had charged him for his expert witness testimony on May 9, 2003 in relation to statutory attorney fees on appeal.

The additional \$166.40 was based on a bill which Gustafson submitted to Engel in December, 2003. Engel represented this bill in his memorandum of costs as follows:

**The interest on the recent costs incurred by Engel:**

Amount of costs: \$587.40 X 10%=\$58.74 divided by  
365,-\$.16 per day. ( Page 2, lines 20-22) (Underlining added)

The actual bill involved, which included the additional \$166.40, was presented to the Court before the Court ruled on Engel's application for statutory attorney's fees. The Court awarded \$1,250.00 in fees or expenses, but did not approve the

additional \$166.40. It must be assumed that the Court rejected the additional cost because it was not awarded. Clearly then, Engel acted with the lowest of bad faith in then presenting it as a cost as part of his application for fees and expenses. The Court had already rejected the additional charge submitted by Gustafson.

Any legitimate costs incurred by you for which you could claim costs as part of a memorandum of costs, of necessity must relate to those costs you incurred in seeking foreclosure of your so-called attorney's lien. I fail to understand how a cost incurred for testimony in May of 2003, is a recoverable cost relating to your action filed on January 27, 2003 to foreclose your so-called attorney's lien.

As an attorney Engel had a duty to now that to compel one to pay a cost bill it must not only be a recoverable cost but it must have been incurred in the proceeding involved.

Engel had a duty to act towards his former client with the highest of good faith. Instead, he took the low road. He acted with the lowest of bad faith by trying to collect as a court awarded cost for an item which had already been rejected in an earlier proceeding.

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PART VII.

**ENGEL IMPROPERLY CLAIMED COSTS AGAINST HIS FORMER CLIENT  
FOR THE DEPOSITION OF ERIC RASMUSSEN EVEN THOUGH THAT  
DEPOSITION NOT USED AT TRIAL.**

On July 12, 2004, the district court judge entered an order granting summary judgment to you in Lewis and Clark County Cause No. CDV 95-018, relating to your action to foreclose on a claimed attorney's lien.

In engel's memorandum of costs dated July 21, 2004, he claimed the expense of taking the deposition of Eric Rasmusson--\$421.00. Dias' counsel did not object to this cost claim. Therefore, Engel placed this sum in his judgment and it became part of the judgment

entered on which a writ of execution was issued. Regardless of the failure of Dias' counsel to object, it was improper of Engel to make this claim for costs. The law does not permit it. In seeking fees and expense against his former client, Engel had the duty to act with the highest of good faith in those efforts. Instead, he acted with the lowest of bad faith.

**The Engel Memorandum of Costs relating to claiming the Rasmusson deposition as a cost, states:**

2. The amount of \$421.00 for the deposition expenses of Eric Rasmusson, which deposition was used by the undersigned at the hearing held May 18, 2004, on the Motion; for Summary Judgment, to respond to inquiries by the Court regarding issues with respect to compensation for Mr. Daniel Shea raised by Ms. Dias counsel, as reflected in Exhibit 2. ( Page 1)

Engel ignored the fact that to claim a deposition as a taxable cost, it must be used at trial. Morrison-Maierle, Inc., v. Selsco (Mont. 1980, 186 Mont. 180, 606 P.2d 1085, 1088, 37 St. Rep. 299, 303; Cash v. Otis Elevator, Co. ( 1984, Mont.) 684 P.2d 1041, 210 Mont. 319; Sage v. Rogers (1993 Mont.) 848 P.2d 1034

Engel not only had a duty to know the law, but in particular, in seeking to impose the expense of taking this deposition against his former client, he had the duty to act with the highest of good faith. In claiming costs against her for the Rasmusson deposition, Engel acted with the lowest of bad faith.

In claiming deposition costs Engel said he used it at the hearing on summary judgment. This deposition was not used at trial. Further, Engel's reference to the deposition, without quoting from the deposition, cannot be considered a use of a deposition such as to impose the cost of the deposition against the opposing party. Engel violated his duty to Marcia Dias to act with the highest of good faith. Instead, Engel acted with the lowest of bad faith.

Based on this Affidavit, the briefs of petitioner, and the previous filing of the petitioner in this case, and further based on the full record of this case, petitioner requests that he be allowed to intervene in this case and that the Court take action against attorney Engel as requested in the motion for intervention, supporting brief, and attached exhibits. Only then is it possible that justice may still be achieved.

Dated this 12 day of October,

Daniel J. Shea  
Daniel J. Shea

Subscribed and sworn to before me this 12 day of October, 2004.

James P. Dwyer  
Notary Public for the State of  
Montana, residing at HELENA  
My Commission expires 3/17/07.

# State of Montana



First Judicial District Court

Lewis and Clark County

Hon. Thomas C. Honzel

Hon. Dorothy McCarter

RECEIVED

NOV - 8 2004

STATE BAR OF MONTANA  
OFFICE OF DISCIPLINARY  
COUNSEL

NOV 12 2004

Hon. Jeffrey M. Siglock  
RECEIVED

November 5, 2004

COPY

Betsy Brandborg  
Montana State Bar  
PO Box 577  
Helena MT 59624

Dear Betsy:

Enclosed please find my recent order in Lewis and Clark County Cause No. BDV-1995-18 denying the motion of Daniel Shea to intervene in the captioned case. I have also enclosed a copy of an "affidavit" filed by Mr. Shea outlining his concerns.

Of particular interest is the fact that not much in Shea's affidavit supports his request to intervene. Rather, it supports his contention that attorney Joseph Engel has taken too much money from Engel's former client, Marcia Dias - the plaintiff in the case. My concern is that this affidavit indicates to me that Shea is acting as attorney for Ms. Dias.

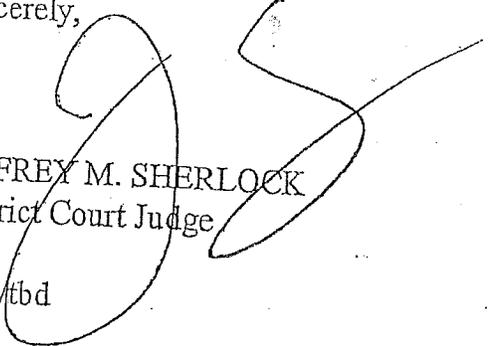
I have not bothered to send you the entire file, as it is quite voluminous. However, it is clear from looking at the entire file that Shea has been involved in this case as Dias' representative for quite some time. Shea admits as much in his affidavit and the other papers filed herewith.

I earlier advised all of the parties that I was going to send all of their pleadings and my final order in this case to the State Bar for examination. I imagine Mr. Shea and Ms. Dias may be filing a complaint about Engel's alleged ethical lapses. However, my particular concern here is Shea's unauthorized practice of law as evidenced by his assertions in the enclosed affidavit. Our file is available for anyone from your office that would want review it.

Betsy Brandborg  
November 5, 2004  
page 2

I would appreciate you referring this matter to the appropriate authorities as soon as possible.

Sincerely,



JEFFREY M. SHERLOCK  
District Court Judge

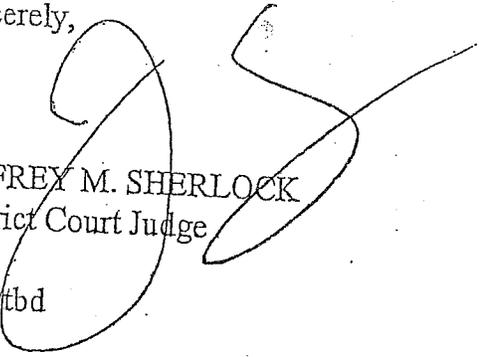
JMS/tbd

Encs.

Betsy Brandborg  
November 5, 2004  
page 2

I would appreciate you referring this matter to the appropriate authorities as soon as possible.

Sincerely,



JEFFREY M. SHERLOCK  
District Court Judge

JMS/tbd

Encs.

Daniel J. Shea  
800 Broadway  
Helena, Montana 59601

April 19, 2005

Office of Disciplinary Counsel  
P.O. Box 203007  
Helena, Montana 59620--3007

State Bar of Montana Commission on  
Unauthorized Practice  
7 West Sixth Avenue, Suite 2B  
P.O. Box 577  
Helena, Montana 59624

State Bar of Montana  
Attention Ms. Betsy Brandborg  
Staff Counsel to State Bar of Montana  
7 West Sixth Avenue Suite 2B,  
P.O. Box 577  
Helena, Montana 59624

Whom it may concern:

I respond to the accusations of district judge Jeffrey M. Sherlock against me as they are contained in a letter addressed to Betsy Brandborg, staff counsel of the State Bar of Montana. Mr. Brandborg in turn, provided the complaint of judge Sherlock to the Office of Disciplinary Counsel and apparently to the State Bar of Montana, Commission on Unauthorized Practice.

In my response I refer here to the Office of Disciplinary Counsel as the ODC. I refer here to the Commission on Unauthorized Practice as COUP. Any references to the State Bar of Montana, where Betsy Brandborg is employed as counsel to the State Bar, will be referred to as the SBOM.

I have many, many concerns with the procedures of the ODC, COUP, and the SBOM. Through sad experience, I have also found that the SBOM has very few internal operating rules and minimum accountability. However, in my response, I have chosen not to deal with these very serious problems which are inherent in the internal structures of ODC, COUP, and SBOM.

To start, because the basis of the complaint is a letter written by district judge Jeffrey M. Sherlock to Betsy Brandborg of the State Bar of Montana (SBOM), and to make for ease of reference, I quote the entire letter in full. Further note that the bold face

Daniel J. Shea  
800 Broadway  
Helena, Montana 59601

April 19, 2005

Office of Disciplinary Counsel  
P.O. Box 203007  
Helena, Montana 59620--3007

State Bar of Montana Commission on  
Unauthorized Practice  
7 West Sixth Avenue, Suite 2B  
P.O. Box 577  
Helena, Montana 59624

State Bar of Montana  
Attention Ms. Betsy Brandborg  
Staff Counsel to State Bar of Montana  
7 West Sixth Avenue Suite 2B,  
P.O. Box 577  
Helena, Montana 59624

To whom it may concern:

I respond to the accusations of district judge Jeffrey M. Sherlock against me as they are contained in a letter addressed to Betsy Brandborg, staff counsel of the State Bar of Montana. Mr. Brandborg in turn, provided the complaint of judge Sherlock to the Office of Disciplinary Counsel and apparently to the State Bar of Montana, Commission on Unauthorized Practice.

In my response I refer here to the Office of Disciplinary Counsel as the ODC. I refer here to the Commission on Unauthorized Practice as COUP. Any references to the State Bar of Montana, where Betsy Brandborg is employed as counsel to the State Bar, will be referred to as the SBOM.

I have many, many concerns with the procedures of the ODC, employed, and the apparent lack of internal operating rules both for the ODC and the COUP. Through sad experience, I have also found that the SBOM has very few internal operating procedures. A lack of internal operating rules allows for maximum flexibility and minimum accountability. However, in my response, I have chosen not to deal with these very serious problems which are inherent in the internal structures of ODC, COUP, and SBOM.

To start, because the basis of the complaint is a letter written by district judge Jeffrey M. Sherlock to Betsy Brandborg of the State Bar of Montana (SBOM), and to make for ease of reference, quote the entire letter in full. Further note that the bold face

or underlining in the letter is my own emphasis.

FULL TEXT OF THE NOVEMBER 5, 2004 LETTER FROM  
DISTRICT JUDGE JEFFREY M. SHERLOCK TO BETSY  
BRANDBORG.

November 5, 2004  
Betsy Brandborg  
Montana State Bar  
PO Box 577  
Helena, MT 59624

Dear Betsy:

Enclosed please find my recent order in Lewis and Clark County Cause No. BDV-95-018, denying the motion of Daniel Shea to intervene in the above captioned case. I have also enclosed a copy of an 'affidavit' filed by Mr. Shea outlining his concerns.

Of particular interest is the fact that not much in Shea's affidavit supports his request to intervene. Rather, it supports his contention that attorney Joseph Engel has taken too much money from Engel's former client, Marcia Dias--the plaintiff in the case. My concern is that this affidavit indicates to me that Shea is acting as attorney for Ms. Dias.

I have not bothered to send you the entire file, as it is quite voluminous. However, it is clear from looking at the entire file that Shea has been involved in this case as Dias' representative for quite some time. Shea admits as much in his affidavit and the other papers filed herewith.

I have not bothered to send you the entire file, as it is quite voluminous. However, it is clear from looking at the entire file that Shea has been involved in this case as Dias' representative for quite some time. Shea admits as much in his affidavit and the other papers filed herewith. (Emphasis added)

I earlier advised all of the parties that I was going to send all of their pleadings and my final order in this case to the State Bar for examination. I imagine Mr. Shea and Ms. Dias may be filing a complaint about Engel's alleged ethical lapses. However, my particular concern here is Shea's unauthorized practice of law as evidence by his assertions in the enclosed affidavit. Our file is available for anyone from your office that would want to review it.

I would appreciate your referring this matter to the appropriate authorities as soon as possible. (Emphasis added)

s/Jeffrey M. Sherlock  
District Court Judge

I have several concerns relating to the Judge Sherlock letter to Betsy Brandborg of the State Bar of Montana.

\*\*\*\*\*  
ITEM 1. DISTRICT JUDGE SHERLOCK FALSELY STATED IN HIS NOVEMBER 5, 2004 Letter TO BETSY BRANDBORG THAT HE HAD EARLIER TOLD "ALL THE PARTIES" THAT HE WOULD SEND THEIR PLEADINGS TO THE STATE BAR FOR EXAMINATION. JUDGE SHERLOCK MADE NO SUCH STATEMENT. JUDGE SHERLOCK MADE A FALSE REPRESENTATION OF FACT.

In his November 5 letter addressed to Betsy Brandborg, district judge sherlock falsely represented what he had told the parties he intended to do in relation to their pleadings filed in this case. Judge Sherlock stated:

I earlier advised all of the parties that I was going to send all of their pleadings and my final order in this case to the State Bar for examination. I imagine Mr. Shea and Ms. Dias may be filing a complaint about Engel's alleged ethical lapses. However, my particular concern here is Shea's unauthorized practice of law as evidenced by his assertions in the enclosed affidavit. Our file is available for anyone from your office that would want to review it.

The emphasized language in this quote is absolutely false. When or where or why the district judge claims to have made this declaration I have no idea. The judge made no such statement either with regard to the parties pleadings or with regard to his final order.

At no time did I appear at any hearing before Judge Sherlock. In my motion to intervene I requested a hearing, but I did not get one. Judge Sherlock seems to have reserved hearings only if Engel made requests for hearings, and then they were put on the fast track. The November 4, 2004 order in which the judge denied my request to intervene, was made without benefit of hearing, even though I had requested one.

After I sought intervention, and before his November 4, 2004 order denying my request to intervene, district judge Sherlock entered only one order. On October 5, 2004, the court entered an order allowing counsel for Dias to withdraw. This order also required that Engel and myself were required to serve Marcia Dias with all future pleadings and papers filed in the case. I had nothing to do with that order and first learned of it when I received it in the mail.

I am amazed that a district judge can so easily make false:

statements of fact without blinking an eye. In this case the judge used his representation of fact as the background for why he was sending his complaint to Betsy Brandborg. Why should a judge be allowed get away with false representations such as this? Stated in layman's language--district judge Sherlock lied.

I assume that whomever read the judge's order believed that the judge was telling the truth and that the judge as simply doing what he stated he would do. But the judge was not telling the truth. Rather than admit he lied, perhaps the district court judge will attribute his misrepresentation to temporary judicial amnesia.

Item 2. AS TO THE ENCLOSURES OF DISTRICT JUDGE SHERLOCK I ASK THE DOC AND COUP TO TAKE OFFICIAL NOTICE OF THE ENTIRE FILE IN CDV-95-018, AND IN PARTICULAR AS THEY RELATE TO THE ACCUSATIONS OF THE JUDGE, TO ALL FILINGS STARTING WITH JANUARY, 2004.

As to the paragraph in the letter by which district judge Sherlock ends by stating "...My concern is that this affidavit indicates to me that Shea is acting as attorney for Ms. Dias." I confine myself to the following comments.

First, my affidavit does not state that I was representing Marcia Dias. Second, I filed my affidavit in response to Engel's brief filed on September 23, 2004, and I stated so in my filings at the time I filed the affidavit and in later filings with the district court. Third, and most important, I was not representing Marcia Dias. I had an independent right and I believe, a duty, to bring to the attention of district judge Sherlock the fact that Engel had committed fraud in the judgment. Of course district judge Sherlock was not interested in the fraud which Engel committed. Engel's fraud affected me as well as Marcia Dias. Engel had two objectives: First, to financially prey on his former client, and thereby maximize his fees. Second, to financially prey on me by seeking by all devious means possible, to avoid his duty to pay me for services rendered to Engel in this case. With the help of district judge Sherlock all the way down the line, Engel succeeded.

When I set forth in my affidavit and in my pleadings and briefs, just where and how Engel pulled the fraud against Dias in the judgment, district judge Sherlock did nothing. The judge was interested not in administering even handed justice as a court of equity should, but in ruling for Engel all the way. And he did.

Without any doubt, the fact that Engel had worked a fraud against his former client was relevant to the fact that Engel was attempting to and had also worked a fraud against me by avoiding payment to me for services rendered. These were not separate cases. As much as district judge Sherlock would conveniently like to keep

the fraud on Dias separate from the fraud Engel committed on me, the undeniable fact is that Engel's fraud against both of us was pulled in one case. Most surely the fraud Engel pulled against his former client, to whom he owed an absolute duty of loyalty and fidelity, was also relevant to the fraud he pulled on me.

Thanks to the rulings of the district judge, Engel was able to pull off his fraud against his former client and against me. Engel successfully preyed on his former client and on me. And then, with the help of the judge leading the way through granting an ex parte order to Engel (prepared by Engel) denying a stay of execution on the judgment, Engel made off like a bandit in broad daylight. The judge's orders provided safe passage for Engel's exit from the scene with the money in his saddle bags and green greedy poison emitting from every pore in his poisonous soul.

The record in this case makes demonstrably clear that district judge Sherlock did not care one whit that Engel had worked a fraud, not only against Marcia Dias, and one me, but on the Court itself. Rather, the response of the Court as I read it from his November 4, 2004 order, can be summarized as follows:

So what if Engel pulled all this fraud. It is not my responsibility to right these wrongs. If Dias wants to file a complaint with the Commission on Practice, or if Shea wants to file a complaint with the Commission on Practice, they are free to do so. But I will do nothing.

There can be no doubt that the rulings of district judge Sherlock have permanently damaged and probably destroyed any reasonable chance of either Dias or myself recovering from Engel. With the huge albatross of the Kloss case which Engel must now account for, and the huge ethical and legal violations he committed in that case, Engel most surely will be without assets or he will have secreted them to the extent they can never be found to satisfy any judgment. I have no doubt that Engel has now safely secreted the proceeds from his ill-begotten judgment and execution handed by the orders the unethical and corrupt actions of district judge Sherlock. The actions of district judge Sherlock demonstrate a horrendous demonstration of an abuse of judicial power used to allow a scoundrel take advantage of his former client and of the person who did all the work on the case. I am unaware of any worse abuse of judicial power in the history of the district courts of the State of Montana.

In my additional filings after the November 4 order, I set forth in detail just how district judge Sherlock had finessed the summary judgment order in favor of Engel. I further showed that a motion was pending by Dias counsel for a stay of execution on the judgment. But Engel and the district judge made short shrift of that motion. I ask the ODC and the COUP to take official notice of these filings.

For example, Engel obtained a writ of execution from the clerk of the Lewis and Clark County in the following manner. On August 4, 2004, Engel mailed a letter to the clerk of court and enclosed three documents: (1) A brief opposing the Dias motion for a stay; (2) a proposed order for district judge sherlock to sign denying the motion for a stay; and (3) a writ of execution for the clerk of court to issue as soon as the judge signed the Engel prepared order denying the stay. Engel did not copy this letter or the proposed order or the writ of execution to Dias' counsel. Engel copied Dias' counsel only with his brief opposing the motion for a stay.

As soon as the judge received the brief of Dias counsel replying to the Engel brief, the judge signed the order prepared by Engel, which in one short sentence, denied the motion for a stay. The order denying the motion for a stay was filed on November 16, 2004. On the same day the clerk of court immediately issued a writ of execution to Engel and sent it to him in Great Falls. The clerk of court did not retain or make a copy of Engel's writ of execution. It would appear that at least within five days after the writ of execution was issued, Engel executed on the joint bank account at Wells Fargo.

To this day there is nothing on file with the clerk of court as to the writ of execution except the November 4, 2004 letter from Engel to the clerk of district court. As I stated, the clerk of court did not keep a copy for its own records. And Engel then failed to comply with his statutory duty to file a proper return after he caused the levy on the bank account. According to his brief filed on September 23, 2004, Engel had sometime before that date executed on the bank account and he claims, satisfied the judgment.

In previous filings I asked district judge sherlock to order that Engel file a return to the writ of execution. Predictably, my request was ignored without mention. Nor has the clerk of court taken action against Engel to file a proper return to his writ of execution, even though it is clearly the duty of the clerk of court to see to it that a return is filed on a writ of execution after a levy. I am convinced that there is even more fraud committed by Engel in relation to the writ of execution, both as to the amount of the judgment on which he executed, and with relation to procedures he invoked to execute and levy on the bank account.

The ex-parte submissions by Engel were unethical and illegal. But more important to the interests of justice, it was even more unethical and illegal for the district judge to accept, act upon, and sign the ex-parte order submitted by Engel. By doing so, the district judge accomplished exactly what Engel intended and of course, what the district court intended--the judge plunged a knife right through the heart of the Dias' to take a meaningful appeal. Her right to an effective appeal against the scoundrel Engel was permanently decapitated.

The judge's unethical and corrupt actions affected not only the rights of Dias, they affected my rights. An issue was pending as part of the summary judgment proceedings as to whether I should be joined as a party. In that summary judgment order preceding the order denying the stay, the judge adopted the Engel position that I had no right to be joined as a party. As a result, the judge made it a clean sweep for Engel. And, by allowing Engel to execute, the district judge made the clean sweep final.

You will see by examining the documents on file with the district court, that Engel indeed did commit fraud in the judgment and district judge Sherlock used his awesome judicial powers to protect Engel rather than to take action against Engel's fraud. Such are the ways of injustice from the mighty pen of district judge Sherlock.

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I PROCEED NEXT TO THE ACCUSATION OF DISTRICT JUDGE SHERLOCK IN WHICH HE DECLARES THAT THE DISTRICT COURT FILE WILL REVEAL THAT I HAVE BEEN REPRESENTING MARCIA DIAS AND THEREFORE ENGAGING IN THE UNAUTHORIZED PRACTICE OF LAW.

Without a reference to anything specific, district Judge accuses me of illegally representing Marcia Dias, based on his statement in his letter to Betsy Brandborg, in which he states:

I have not bothered to send you the entire file, as it is quite voluminous. However, it is clear from looking at the entire file that Shea has been involved in this case as Dias' representative for quite some time. Shea admits as much in his affidavit and the other papers filed herewith.

The fact is that I have never been involved in this case as Dias's representative. I have, however, been involved in this case from the very beginning. I did work for Matthew Sisler for which I have never been paid, of course. The representation by Matthew Sisler of the original five plaintiffs in this case is also a sad chapter in this case, but I will not discuss it here.

Later, after Eric Rasmusson succeeded Sisler, I did extensive work for Eric Rasmusson after he succeeded Sisler, and did not expect to be paid because Rasmusson withdrew from the case. The Rasmusson representation of four of the plaintiffs in this case is another sad chapter of this case, but I will not discuss it here. And finally, I worked for Engel all the way through while he represented Dias, Old Elk, Goodleft, and Zimmer. And even though I did all the work for Engel while he was representing all of these plaintiffs, and I mean all of the work, the real work, Engel has now managed, with the blessings of Judge Sherlock, to avoid his

duty to pay me.

Insofar as the origins of the case, I will say that I helped all five plaintiffs prepare a joint pro se complaint and later a joint pro-se amended complaint. They were strapped for time, they could not find any lawyer to take their case, and a complaint had to be filed to satisfy the statute of limitations. I received no compensation for helping them and did not expect to be compensated. I certainly am not going to apologize for the helping hand I gave them so that their complaint could be timely filed to beat the running of the statute of limitations. And if the ODC or the COUP sees otherwise, after a complete hearing on the case, so be it. From my essence, I do not regard this as practicing law. Therefore, I surely would never apologize to anyone or any entity for this activity in helping these people. It would violate my essence to do so.

Whatever services I provided in this case were provided to the various attorneys on this case at various stages of the proceedings. These services were provided to Matthew Sisler, to Eric Rasmusson, and finally, Joseph C. Engel III. It is fair to say that I know more about this case than does anyone else and also that I spent several times minimally on this case that the other attorneys combined. Because of the most unusual circumstances surrounding this case, and various turns it has taken over the years, I was compelled to know this case inside and out, backwards and forward, upside down and downside up. You would not believe the twists and turns this case took. My knowledge of this case is the only thing that kept it on track.

If you want to know the work I did in this case for Engel when he was representing Dias, please refer to a 42 page which I sent to Gale Gustafson on November 22, 2004. Gustafson was then representing Engel. There I set out the detail of the work I did for Engel. You will also find in that letter the detail of what I did in this case after the Supreme Court decision in December, 2003. There is a copy of this letter on file with the SBOM, and with ODC. Engel also has a copy of this letter.

**AFTER THE SUPREME COURT DECISION IN DECEMBER, 2003,  
THE JUDGMENT TO BE ENTERED BECAME A STALKING FUND FOR  
PREDATORY ATTORNEYS--MATTHEW SISLER, AND OF COURSE,  
JOSEPH C. ENGEL III.**

A fair statement of the situation is that after the Supreme Court opinion on December 19, 2003, the judgment fund for Dias became a stalking fund for predatory attorneys. The two primary predators were Matthew Sisler, and even more so, Joseph C. Engel III. Like a preying mantis, both of them started moving in for the kill. And thanks to the rulings of district judge Sherlock, both Sisler and Engel achieved their goals.

Unfortunately, Dias did not have an attorney representing her who was loyal to her cause and who would thereby a true adversary on her behalf against the claims of Sisler who was seeking to obtain as much as possible from the judgment proceeds. Because of this situation, my role did change by necessity after the Supreme Court decision in December, 2003.

Engel was then trying to put the financial screws to Marcia Dias and to me. Dias refused to discharge Engel even though she had abundant good cause to do so. For example, he was demanding extra fees to defend against the Sisler lien claim, and he falsely accused Dias and myself of deceit in relation to the Sisler lien claim, he tried to intimidate Dias into agreeing to pay extra fees, and he had provided false expense statements to her. The details are set forth in the November 2004 letter to Gustafson.

Because Dias refused to discharge Engel for fear she could not obtain or pay another attorney, I was placed in a terrible dilemma. I had the choice of either letting Engel take advantage of Dias and running right over the top of her, or helping her to the extent I could. I played a major role in developing a written record and paper trial between Engel and Dias that would be available for future use. I do not apologize one bit for this activity and role in seeking to help Dias. Any red blooded person with a conscience would have done the same thing.

#### THE ATTORNEY LIEN CLAIM OF MATTHEW SISLER POSED YET ANOTHER DILEMMA FOR ME.

The other side of the dilemma for me precisely that there was another predator lurking out there and also preying on the judgment received by Marcia Dias. This predator was Matthew Sisler. I was also trying, to the extent I could, to protect her from the financial predations of Matthew Sisler. I provided significant information to attorney Engel in relation to Sisler's phoney claim for attorney's fees. Sisler's claim and his conduct and Engel's conduct at the hearing for fees, constitute yet another sad sordid chapter in this case. (Most of the essential details are contained in my November 22, 2004 letter to Gale Gustafson (the SBOM and ODC already have copies). I will not repeat them here. However, one factor that I did not discuss in that letter is the unethical conduct of district judge Sherlock.

Much of the order awarding fees to Sisler is based on the unsworn testimony of Sisler's so called expert witness in support of his fee request. District judge Sherlock, however, made things easy. The judge did not swear the expert witnesses. Rather, the judge declared that the oath that the expert witness had taken as an attorney was quite good enough for the judge. Of course, district judge Sherlock violated the law and the canons of judicial ethics by not requiring that the expert witness be sworn as a witness. The details of the real relationship between Sisler and

the attorney who provided unsworn expert witness testimony can be left for another day. Of course, Engel knew them, but he failed to bring them out at the hearing. Engel did not want to jeopardize his relationship with this attorney to compelling him to disclose his true relationship to Sisler. The details of the relationship between Engel and Sisler's expert witness attorney can also be left for another day. Suffice to say here that in examining this attorney, Engel did not want to jeopardize that relationship. As he result, he violated his fiduciary duty owed to his client, Marcia Dias.

There is much more to this sad and sordid story concerning Sisler's attorney fee claim, Sisler's misconduct, Engel's misconduct, as well as others, but I will say no more for now.

**ANOTHER EXAMPLE OF THE UNETHICAL JUDICIAL CONDUCT OF DISTRICT JUDGE SHERLOCK RELATES TO HIS RESPONSE TO MOTIONS FILED BY HMHB BEFORE ENTRY OF JUDGMENT AND WHICH MOTIONS SOUGHT, IN EFFECT, TO SUBSTANTIALLY LOWER THE AMOUNT OF THE JUDGMENT.**

In the summer of 2003, before the entry of the final judgment for Marcia Dias after remittitur from the Montana Supreme Court, HMHB tried to reduce the amount of the judgment by filing three motions which, if successful, would have that effect. Engel as incapable or responding to these motions. Therefore, it fell on me to prepare the responses, and it took an entire weekend to do so.

There wa a hearing on these motions on August 18, 2003. Then, on August 21, 2004, district judge Sherlock entered an order and a judgment. In his order he declared that as to the HMHB motions he had consulted the IRS, and certain unnamed accountants to determine whether or not there was merit to the HMHB motions. The judge did not consult ahead of time with Dias or Engel as his counsel. I assume also that HMHB and its counsel had not been informed or consulted ahead of time. But of course, I do not know this. This conduct on the part of district judge Sherlock was totally unethical and prohibited by the judicial standards of conduct. Nonetheless, the judicial standards did not serve as a deterrent to district judge Sherlock.

The November 21, 2003 order to which I refer is part of the district court files. I request ODC and COUP to take official notice of this order and its contents.

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**I NEXT PROCEED TO ANOTHER STATEMENT OF DISTRICT JUDGE SHERLOCK SUGGESTING THAT I HAVE ADMITTED TO REPRESENTING MARCIA DIAS. WHAT 'OTHER PAPERS FILED HEREWITH " IS DISTRICT JUDGE SHERLOCK REFERRING TO?**

I received from the ODC its own letter, a copy of the letter from district judge Sherlock to Betsy Brandborg, a copy of the

judge's November 4, 2004 order, and a copy of my October 12, 2004 affidavit.  
I received from the COUP only its letter signed by NC on behalf of the chair. The COUP provided me with nothing else.

In his letter to Betsy Brandborg district judge Sherlock declares that in my affidavit and in "the other papers filed herewith", that I have admitted to representing Dias. I have fully set forth my position concerning the affidavit and concerning what district judge sherlock suggests is in the district court file, although he refers to no documents. However, he also says that my admission is contained in the "other papers filed herewith."

As far as I am aware, the only submission from district judge Sherlock to Betsy Brandborg were two documents: a copy of my affidavit and a copy of his November 4, 2004 order. I have already covered my affidavit.

As to his November 4, 2004 order, the district judge refers nowhere in his order to any documents by which I have admitted that I was representing Marcia Dias. The order itself does not quote from any so-called admissions by me that I am representing Marcia Dias. The only reference to a specific document in his November 4, 2004 order is a reference to my October 12, 2004 affidavit. And I have responded to the judge's accusation as to what he perceives to be in my affidavit.

If district judge Sherlock sent "other papers" to Betsy Brandborg in addition to a copy of his November 4, 2004 order and my October 12, 2004 affidavit, I am certainly not aware of them. They were not provided to me by either the ODC or the COUP.

**REQUEST FOR A FULL, COMPLETE, AND OPEN PUBLIC HEARING IF EITHER THE ODC OR COUP DECIDES TO FILE A COMPLAINT.**

If the ODC or the COUP decides to file a complaint charging me with the unauthorized practice of law, I request that any hearing will be in a public place such as a courtroom, that it will be open to the public, and I would expect that the press would be present to report the proceedings.

I fully expect that I will be given the right to depose and fully examine district judge Sherlock before the hearing. The judicial immunity which district Judge Sherlock has from lawsuits because of his status as a judge, certainly does not or at least should not extend to immunity from being examined by deposition where he has chosen to accuse a person of the unauthorized practice of law.

I would also expect that the charging entity would provide a

court reporter and also make available alternatives means of recording the hearing. If both the ODC and COUP decide to file a complaint, I request that it be a joint hearing. Why should I be compelled to go through two separate hearings? To require me to do so would be onerous, unduly burdensome, and in violation of fundamental notions of due process of law.

Obviously, I do not relish the thoughts of any future proceedings on the complaint of district judge Sherlock. If that is the way things go, then so be it. I will not back down one iota from the misconduct of Engel and the misconduct of district judge Sherlock which has occurred in this case, therefore resulting in a manifest miscarriage of justice, and one, moreover, that cannot be rectified. District judge Sherlock, by his rulings made sure of that.

Sincerely,

  
Daniel J. Shea

## ODC Case Information

Sherlock vs Shea

ODC File Number: D-2004-291

S. Ct. Cause Number:

**Complainant:**

**Respondent:**

Complainant Code: COURT  
Hon. Jeffrey Sherlock  
228 Broadway

Respondent Code: SOLO  
Daniel Shea  
800 Broadway

Helena, MT 59601  
Work: (406) 447-8205  
Home:  
E-Mail:

Helena, MT 59601  
Work:  
Home: (406) 449-0585  
Fax:  
E-Mail:

**Respondent's Counsel**

None

Work:

Fax:

**Case Background:**

ODC Counsel: Strauch, Tim

Investigator: MH

County: Lewis and Clark

Type of Matter: Civil Litigation

Type(s) of Misconduct: 5.5 Unauthorized practice of law 5.4 Professional independence of a lawyer

Allegation: Court referral of suspended attorney practicing law.

**Case Chronology:** ODC Recommendation: Formal Charges

The current stage of this case is: Summary Done - Waiting For Review

Date Docketed: 12/1/2004

90 Day Deadline: 3/1/2005

Last Action Date: 6/30/2005

Summary Date: 6/30/2005

Investigation Date:

Review Panel Date: 7/29/2005

Final Disposition:

Adj. Panel Date:

Date Closed:

S. Ct. Rev Date:

Destroy Date:

Cond. Diver. Date:

Charges Date:

**Notes:**

Judge Jeffery Sherlock (Sherlock) filed his complaint against suspended attorney, Daniel Shea (Shea). Sherlock alleges Shea has engaged in the unauthorized practice of law, in violation of Rule 5.5.

Shea is a former Montana Supreme Court Justice who is currently suspended from the practice of law. On August 3, 1989, Shea was suspended from the practice of law for 15

## ODC Case Information

years (Montana Supreme Court #88-520). He has not been reinstated and remains suspended at this time.

### BACKGROUND

Shea now works for Great Falls attorney Joseph Engel (who is currently the subject of a formal complaint in the Kloss matter, ODC 04-074 and 04-192) and other attorneys as a "paralegal." After Missoula attorneys Matthew Sisler (now suspended) and then Eric Rasmussen withdrew their respective representation of Marcia Dias (Dias) against her former employer for wrongful discharge, Shea convinced Engel to assume the representation of Dias. Shea had been assisting Sisler and then Rasmussen as a paralegal, drafting many of the documents and performing legal research to assist the respective attorneys with this case. Shea had pushed the idea, first with Sisler and then again, with Rasmussen, that since he was doing a majority of the work, they should enter into a fee splitting agreement. Sisler refused, citing such an agreement would be a violation of MRPC 5.4 and 5.5. However, Rasmussen did agree to split his fee with Shea but eventually withdrew from the case when he and Dias got into a dispute over how her case should proceed. Rasmussen was under the mistaken belief that Shea was licensed to practice law when he agreed to enter into a fee splitting arrangement with Shea.

Engel and Dias entered into a contingent fee agreement dated April 4, 1999, for the purpose of representing Dias in the case of *Old Elk, et. al. v. Healthy Mothers, Healthy Babies*, in a suit filed in 1995. Originally, Dias was pro se, then retained Matthew Sisler, then Eric Rasmussen and ultimately Engel. Dias agreed to pay Engel a percentage of all settlement proceeds, judgment damages and other valuable consideration in any recovery from *Healthy Mothers, Healthy Babies (HMHB)* including 40% if a judgment for Dias was obtained after a trial and 50% if the matter was successfully appealed. Dias also agreed to reimburse Engel for all costs and expenses incurred by Engel in his representation of her case. Dias also granted Engel an attorney's lien on any claims that were subject to the representation under the fee contract.

In February 2000, a jury returned a verdict in favor of Dias for \$167,000.

HMHB appealed to the Montana Supreme Court and in December 2002, the Supreme Court affirmed the district court's verdict and remanded the case for a determination of attorney fees.

On August 21, 2003, the district court entered a final judgment of \$225,518 against HMHB and in favor of Dias. She agreed she owed Engel 50% of this sum for attorney's fees. Dias felt Shea was entitled to \$60,000 from the \$120,000 claimed by Engel as his attorney fee. Dias disputed that she owed all of the costs and expenses claimed by Engel, apparently because she was not consulted prior to incurring the "extraordinary expenses."

On January 28, 2004, Engel filed his Petition to Foreclose on his Attorney Lien. On February 25, 2004, Dias, through her new attorney, Mike Alterowitz, moved to dismiss Engel's petition, suggesting that Shea might be a party pursuant to Rule 19, Montana Rules of Civil Procedure.

On March 2, 2004, the Court denied Dias' Motion to Dismiss. The court refused to join Shea as a party, reciting Rule 5.4, which states a lawyer or firm shall not share legal fees

## ODC Case Information

with a non-lawyer.

On March 3, 2004, Engel filed a Motion to Partially Foreclose on his Attorney Fee Lien. On March 16, 2004, Dias filed her Answer to the Petition to Foreclose and asserted affirmative defenses and counterclaims. On March 23, 2004, Engel withdrew his Motion to Partially Foreclose on his Attorney Fee Lien and then filed a motion entitled Combined Motions to Dismiss Counterclaim, to Strike Affirmative Defenses and for Judgment on the Pleadings as an alternative to Summary Judgment. On March 23, 2004, Engel also filed a motion entitled Combined Motions for Protective Order; for Summary Judgment on the Contingent Fee Agreement; Withdrawal of Prior Motion to Partially Foreclose on Attorney Lien; and Brief in Support of Motions. On April 7, 2004, Dias filed a combined response to Engel's March 23, 2004 motions. On April 15, 2004, Engel filed his reply brief on the combined motions.

On July 12, 2004, the Court entered its ruling, noting that Dias was not disputing she owed Engel his fee or that his fees should be calculated according to the terms of their agreement, rather Dias attempted to create factual issues by interjecting a third-party [Shea] into the attorney fee dispute. The Court held Shea had no interest in the matter. The Court noted the Engel-Dias fee agreement is silent regarding Shea's role in Dias' lawsuit. Specifically, the Court's March 2, 2004, Order, states, "Shea is in no way involved in the foreclosure of the attorney's lien. That is a separate matter between Shea and Engel that has nothing to do with this particular dispute." The Court's Order notes that Shea "is in no way involved in the dispute over the contingent fee agreement of April 1999." The Court granted Engel's Motion for Summary Judgment and ordered Dias to pay Engel his fee, according to the April 4, 1999, fee agreement. The Order also noted that \$28,250 in statutory fees that were awarded for the cost of the appeal to the Montana Supreme Court, but that Engel's lien foreclosure should not provide Engel with a double recovery by an attempted collection on the fee contract as well. The Court noted the \$28,250 statutory fees shall become the property of Dias, but directed Dias to pay Engel the difference between the statutory award and the contingent fee.

The Court also denied Dias' request to deduct Sisler's attorney fees from the fees paid to Engel, noting that Dias terminated Sisler in December 1997. Applying quantum meruit principles, the court ordered Sisler to be paid \$12,500 from the bond filed in this matter. The court noted that Dias, not Engel, owed Sisler compensation for the legal services he performed for her and thus the obligation to pay Sisler belonged to Dias, not Engel. The Court indicates that Sisler's attorney fees would not be deducted from the sum Dias owes Engel, in accordance with their contingent fee agreement.

On July 20, 2004, Dias appealed the summary judgment. On July 21, 2004, Engel received judgment for his attorney fees pursuant to the written fee agreement providing an award of 50 percent of attorney fees.

Shea filed an ODC complaint against Engel regarding Diaz, Kloss and one other matter on August 9, 2004 (ODC File No. 04-192). In his complaint against Engel, Shea alleged Engel had an illegal fee split with him in the Dias case. Shea further alleged Engel engaged in various misconduct in his collection of his attorney fee in the Dias case. The COP dismissed all of Shea's claims against Engel but Kloss, which is now the subject of a formal complaint against Engel.

On August 17, 2004, Dias' appeal was dismissed and the case was remanded to District

## ODC Case Information

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Court.

On September 19, 2004, Shea filed his motion to intervene indicating he had an interest in the Dias litigation, that he had an agreement with Engel to share one-half of the attorney fees that Engel might receive.

On October 5, 2004, the Court entered an order allowing Alterowitz to withdraw as counsel for Dias.

On October 13, 2004, Shea filed a 31-page document, purporting to be an affidavit in support of the motion to intervene.

On November 4, 2004, Sherlock denied Shea's motions, finding that Shea could not intervene as a matter of right, citing Rule 24(a) of the Montana Rules of Civil Procedure. Sherlock's order noted that Dias' case involved a wrongful discharge action and a failure to pay wages; the actual subject matter of the case was over, noting the action was never about Engel's attorney fees.

On November 19, 2004, Shea filed a motion to reconsider and request that Sherlock disqualify himself from the case.

On November 20, 2004, Sherlock filed his complaint against Shea with ODC.

On November 30, 2004, Shea filed his supporting brief and brief of Daniel Shea in support of the motion for reconsideration and motion that Sherlock disqualify himself from the case.

On December 13, 2004, Engel filed his combined brief and objections to Shea's motion for reconsideration and disqualification of Sherlock. On December 13, 2004, Shea filed his notice of intent to file a reply brief and notice that Engel failed to serve Dias with Engel's December 10, 2004, brief as required by Sherlock's prior order.

On December 21, 2004, Shea filed his reply brief to Engel's response brief.

On January 19, 2005, Sherlock issued an order denying Shea's motion for reconsideration and disqualification of Sherlock.

On February 17, 2005, Shea filed his notice of appeal.

On May 18, 2005, the Montana Supreme Court issued its order granting Engel's motion to dismiss appeal and dismissed Shea's appeal with prejudice.

### ALLEGATIONS AND ANALYSIS

Sherlock alleges Shea has engaged in the unauthorized practice of law "as evidenced by his assertions" in Shea's October 13, 2004, affidavit, filed with the Court. Sherlock's referral states, "Of particular interest is the fact that not much in Shea's affidavit supports his request to intervene. Rather, it supports his contention that attorney Joseph Engel has taken too much money from Engel's former client, Marcia Dias - the plaintiff in the case. My concern is that this affidavit indicates to me that Shea is acting as attorney for Ms. Dias."

Shea's response indicates his affidavit does not indicate he represented Dias, but that Shea filed his affidavit in response to Engel's September 23, 2004, brief. Shea's response notes he

## ODC Case Information

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did not represent Dias, rather he had an independent right and duty to bring to Sherlock's attention that Engel had engaged in fraud in the judgment against Dias.

Shea's response also indicates "At no time did I appear at any hearing before Judge Sherlock." Shea did request a hearing in his motion to intervene, but Sherlock only scheduled hearings for Engel, not him. After filing his motion for intervention and before Sherlock's November 4, 2004, Order denying intervention by Shea, Sherlock entered one order, on October 5, 2004, which allowed Alterowitz to withdraw from the case. This Order also required Engel and Shea to serve Dias with a copy of all future pleadings regarding Shea's motion to intervene in the case.

In his response, Shea alleges Sherlock did not consider Shea's affidavit, briefs, or pleadings regarding Engel's fee; instead, Sherlock did nothing and was not interested in the administration of justice. Shea alleges Engel "worked a fraud against his former client was relevant to the fact Engel was attempting to and had also worked a fraud against me by avoiding payment to me for services rendered. These were not separate cases." Shea's response also states, "As much as district court judge Sherlock would conveniently like to keep the fraud on Dias separate from the fraud Engel committed on me, the undeniable fact (sic) is that Engel's fraud against both of us was pulled in one case."

ODC reviewed the remaining eight pages of Shea's response, noting that most of it is a diatribe of outrageous allegations against Sherlock, the Lewis & Clark Clerk of Court and, of course, Engel. ODC does not believe a majority of Shea's response needs to be analyzed, since it is very clear that Shea is simply trying to use the judicial system in an attempt to force Engel to share with Shea some of the attorney fees Engel was forced to obtain from Dias via execution on a judgment.

However, a portion of Shea's response accuses Sherlock of lying about reporting Shea to the COP/ODC. It is somewhat fuzzy as to just what Shea believes Sherlock allegedly lied about in Sherlock's report regarding Shea's alleged unauthorized practice of law to Betsy Brandborg, Bar Counsel for the Montana State Bar.

Further, Shea's response rehashes his allegations of misconduct by Engel as set forth in Shea's ODC complaint against Engel (ODC #04-192)(attached). The COP dismissed Shea's allegations against Engel regarding the Dias matter. Shea response is once again alleging that Engel had agreed to share attorney fees in the Dias case, conduct that is prohibited under Rule 5.4.

In his reply, Sherlock notes that Shea was never a party in the Dias case, nor was Shea Dias' attorney. Sherlock's reply states, "...in reading the response he filed with you and the various responses he filed allegedly on his own behalf in the Dias matter, it is clear that he has been advancing the interests of Marcia Dias." Sherlock's reply also notes that the question is not whether Sisler or Engel were unethical or whether Sherlock erred in his decision in the Dias case, the question is whether Shea was practicing law while suspended.

MCA § 37-61-201, states: "Any person who shall hold himself out or advertise as an attorney or counselor at law or who shall appear in any court or record or before a judicial body, referee, commissioner, or other officer appointed to determine any question of law or fact by a court or who shall engage in the business and duties and perform such acts, matters, and things as are usually done or performed by an attorney at law in the practice of his

## ODC Case Information

profession for the purposes of parts 1 through 3 of this chapter shall be deemed practicing law.”

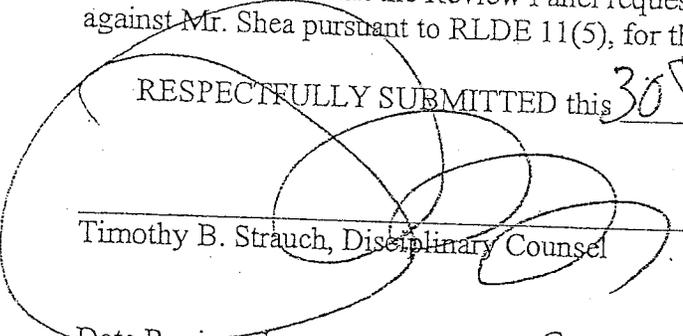
The facts appear to warrant disciplinary action under MRPC 5.5. It appears that Shea practiced law while he was suspended. As summarized above, Shea filed numerous motions and briefs in the Dias matter, ostensibly on his own behalf. However, from a review of Shea's October 12, 2004, affidavit, it is clear Shea is attempting to advance the interests of Dias in this case, in addition to his own interests. In addition to trying to collect his own fee, he attempted to argue (on behalf of Dias after Alterowitz withdrew) that Engel was not entitled to Engel's fee. He attempted to move for a hearing, but the court refused. By attempting to advance the legal interests of another in a court proceeding, Shea was performing services usually performed by an attorney. The fact that he did not enter an appearance for Dias is not dispositive. As noted by the Court in its November 4, 2004, Order, "Indeed, Shea seems to be setting forth Dias' complaints against Engel which would appear to put Shea in a position to be acting as Dias' attorney and not as the pro se litigant that he purports to be."

The facts do not appear to warrant disciplinary action under MRPC 5.4. Clearly, Shea, as a suspended lawyer, is prohibited from entering into an illegal fee split with Engel. The evidence indicates Engel continued to reject Shea's offer to split his attorney fees in this case, and ultimately the court did as well. Shea received no fees so there was no fee split.

### RECOMMENDATION

ODC recommends that the Review Panel request ODC to prepare and file a formal complaint against Mr. Shea pursuant to RLDE 11(5), for the reasons stated above.

RESPECTFULLY SUBMITTED this 30<sup>th</sup> day of June, 2005.

  
\_\_\_\_\_  
Timothy B. Strauch, Disciplinary Counsel

Date Reviewed: \_\_\_\_\_ Initials: PAW Agree with Recommendation: yes

\_\_\_\_\_  
Date of Admission: 10/1/1964

Date of Birth: \_\_\_\_\_



ATTACH TO  
SHEA 04-2-1

[From Engel 11-19-02]

Because the current allegations have already been dismissed in the context of two prior complaints, the facts do not appear to warrant disciplinary action. Shea's allegations of misconduct in the Wagner should be dismissed under the principles of stare decisis.

ODC does not recommend further investigation into these allegations.

### 3. Dias - Fee Issues

Shea alleges Engel had an illegal fee split with him in the Dias case. He says Engel agreed to enter into a fee sharing agreement with him on the Dias case during their initial meeting in December 1998. Shea also alleges Engel agreed to compensate him for the services he provided as a paralegal in the Dias case.

Shea further alleges Engel engaged in various misconduct in his collection of his attorney fee in the Dias case. He alleges Engel filed a false affidavit and invoice to obtain an award of statutory attorney's fees in the Dias matter. Specifically, Shea alleges Engel secured false testimony from an expert witness to support his application for statutory attorney's fees. Shea alleges he did a majority of the legal work that Engel claimed he did in his affidavit and invoice. Shea alleges Engel's use of this false evidence constitutes fraud on the Court, fraud on the opposing party and counsel, fraud on his own client and fraud on Shea.

On December 19, 2002, the Montana Supreme Court affirmed a judgment in favor of Dias and remanded the case for determination of statutory attorney fees to be awarded for wage and hour violations as part of the appeal costs. In February 2003, Shea says Engel submitted to Dias three sets of invoices that consisted of a breakdown of hours Engel claimed he spent on the case plus costs. According to Shea, Engel indicated he was going to use the third invoice as the basis for his claim of statutory attorney fees, which covered the period of March 18, 2000, to January 9, 2003. Dias objected to Engel's charges for time spent and costs to prove his attorney fees. Shea says Engel refused to recognize Shea as the paralegal on the case and by doing so, caused thousands of dollars in additional attorney fees and damaged his client, Dias.

Shea alleges Engel's affidavit and invoice indicate that he had prepared the appeal brief and claimed 80 hours of time and a fee of \$10,000. Shea alleges he wrote the appeal brief "from start to finish," not Engel. Shea acknowledges that Engel had the brief typed for submittal to the Court.

Shea also indicates that Engel retained attorney Gale Gustafson as his expert on his application for statutory attorney fees. Gustafson testified that the time noted in Engel's invoice to write the appeal brief was reasonable, considering the length of the transcript (six days and over 1,400 pages) and the time needed to research the cases to prepare the brief. The Court's Order ultimately reduced Engel's hours to 40 hours, noting that it could not conceive spending two solid weeks writing the brief when the issue on appeal was very straightforward issue of mentioning insurance during voir dire.

Shea also alleges Engel engaged in misconduct through ex parte communications with the State Bar regarding Dias' subsequent fee arbitration petition.

Engel's response indicates that during his initial meeting with Dias and Shea at Jorgensen's Restaurant in Helena in December 1998, "At no time either during that meeting or thereafter, did either Shea or Marcia Dias ever inform me about the pre-existing controversy over his compensation." Engel notes that he was not aware until the Supreme Court remanded the case in 2003, that Sisler had an outstanding lien, or that Dias and Shea expected Engel's attorney fees be subjected to offsets by other attorney's fees or fees for Shea. Engel's expectation was that Dias would pay Shea for his services out of her portion of any settlement or jury award. Engel says he took the case only based on the premise that he would not be advancing costs. Engel says there was no discussion of fees or the terms of Shea's employment for Dias' case nor was there any discussion of an agreement between Engel and Shea.

Engel points out that he wrote Shea on December 8, 1998, as an opportunity for Shea to negotiate his compensation, propose the fee split or disclose to him that Shea was thinking about it. (Engel's response, Exhibit 3.) Engel did not assume the representation of the Dias case until February 19, 1999. (Engel's response, Exhibit 4.)

In Shea's February 15, 1999, letter (Engel's response, Exhibit 5), Shea indicates he misplaced the proposed fee agreement from Engel, sent on December 8, 1999, and noted that all of the plaintiffs agreed to Engel representing them in this case. He promised to return the endorsed retainer fee agreement "as soon as I can..." Shea did not take any further steps to address the attorney fees, did nothing to prepare or reduce the terms of his employment in writing, and based on Shea's "inaction, I therefore once again prepared and mailed out proposed retainer agreements to all the clients." (Engel's response, Exhibits 6(a) (b) (c) and (d), written retainer agreements with Dias, John Old Elk, Dana Zimmer and June Goodleft.) Engel notes that all of these fee agreements were patterned on the fee agreement contained in the Montana Lawyers' Desk Book.

Engel's response notes that at no time did he discuss with his clients or Shea about compensation for Shea's services. Compensation for Shea was not a term of the retainer agreements with Engel's clients. The agreements specifically provide that any costs for "consultants" would be the clients' responsibility, not his. When Shea "later asserted his right to split fees, I replied that any fee to him was the client's responsibility pursuant to this team of the agreement." Engel's response states, "At no time before April, 2001 did I ever have any conversation with Shea about the prospect of splitting of my fees with him."

According to Engel, Shea recently filed a court document claiming the fee splitting agreement took place with Engel during their initial meeting in December 1998, that Dias and Shea disclosed that Rasmussen had filed a lien, and they were unaware if Sisler had filed a lien, but if he did they would deal with it down the road. Shea indicates that during the meeting Shea allegedly told Engel he had a fee splitting arrangement with Rasmussen and that Engel "nodded his head in agreement." Engel's response states, "So

there it is. Shea bases his entire agreement that I agreed to split attorney fees with him, on an alleged "nodding of my head."

In his October 18, 1999, letter to Shea, Engel reminded Shea that he agreed to do all of the work necessary and would be paid for his time upon recovery and that Engel agreed to be involved in the case on that basis. (Engel's response, Exhibit 7.)

On April 18, 2001, Engel had a telephone discussion with Shea, where Shea announced "for the first time" that Shea expected Engel to split the fee with Shea. (Engel's response, Exhibit 8, April 23, 2001 Memo to file.) On April 25, 2001, Engel wrote Shea a letter advising him that Engel would not violate Rule 5.4 and that he was mistaken if Shea thought Engel had agreed to such an arrangement. (Engel's response, Exhibit 9.) On May 8, 2001, Engel again sent Shea a letter recapping his understanding of the situation. (Engel's response.)

Engel's response opines that Shea and Dias "deliberately avoided discussing the attorney fee and his compensation in particular in the period between December, 1998, until April, 1999, when I was considering whether or not to take this case. I now believe that Shea deliberately 'lost' the first proposed agreement I sent because of the problems and arguments which had arisen over his compensation with Sisler, wherein Sisler had pointed out to him that splitting fees was unethical. Shea was more interested in obtaining my services as attorney in the case, than running the risk of alienating me with the types of claims he is now making, claims which surely would have alienated me."

Engel's response opines that after Shea's and Dias' experiences with Sisler then Rasmussen, they knew finding a replacement attorney would be difficult if they disclosed all of the problems they had with the previous attorneys on the case. Engel notes that Shea induced him by his statement that Shea would do all of the legal work, never asked Engel to compensate him or advised Engel that Shea was working for him. Engel again notes that Shea "never suggested that he would expect compensation by splitting fees with me, nor did either he or Dias suggest to me that his compensation would be my responsibility, until April, 2001. He led me to believe that he was simply trying to help his good friend Marcia." If Shea or Dias had advised Engel they expected him to split his fee or pay Shea, Engel says he would not have agreed to become involved in the case. Engel also notes that neither Shea nor Dias alerted him to the issue of Sisler lien and that they expected him to defend against Sisler's lien as part of his services to Dias. Neither Shea nor Dias suggested to Engel that if the Court awarded a fee to Sisler, that it would be expected he deduct Sisler's fee from his fee. All of these surprises arose in April of 2001, while the case was on appeal to the Montana Supreme Court.

Engel's response indicates that Rasmussen indicated to him that neither Shea nor Dias discussed with him their expectation that he pay Sisler's fee from his fee and if such a discussion had taken place, he would "have been interested in entering into a separate agreement on that issue."

Engel's response notes that in a seven-day trial in February-March, 2000 Dias received a jury verdict of \$170,000. Goodleft, Old Elk and Zimmer were dismissed out of the case by HMHB's motions for summary judgment in 1998. After the verdict, HMHB indicated they intended to appeal. The HMHB appeal centered on one issue, the mentioning of the word "insurance" during the voir dire of the jury panel at trial. Sisler and Palmer agreed to settle, reportedly for \$140,000.

According to Engel, Shea convinced Dias not to settle by promising he would draft the appeal brief, and that it would be of assistance to Goodleft, Old Elk and Zimmer. Engel says Shea had insisted on writing the brief in the hopes that the appeal would "bootstrap" the adverse decision regarding Goodleft, Old Elk and Zimmer. Shea then devoted most of the brief discussing the facts of the discharge of the parties. Engel states, "As the district court later observed in a post-appeal hearing, all of the drafting was virtually irrelevant and unnecessary because of the narrow appeal issue." Engel went along with Shea drafting the brief this way, at Dias' insistence, noting that all of the events involving Goodleft, Old Elk and Zimmer occurred before he became involved in the case. Contrary to Shea's description of Engel as being the "secretary," Shea only prepared rough drafts but Engel would finalize the documents. (Engel's response, Exhibits 12 and 13, Montana Supreme Court Opinion in Dias and Cynthia Ford's Outline regarding the Dias Case.)

Contrary to Shea's assertions, Engel says he did the research and drafting on the two main issues of the appeal, the insurance issue and the issue of statutory attorney fees. (Engel's response, Exhibit 14.)

Engel says Shea used antiquated computer equipment, which caused delays, but the final product was drafted on Engel's computer in his office. (Engel's response, Exhibit 15, the Montana Supreme Court Brief.)

Engel says Shea drafted Engel's affidavit as an appendix to the brief, which details the time Engel expended on the appeal. (Engel's response, Exhibit 16.) Engel opines that Shea apparently "now repudiates what he personally proposed should be submitted to the Supreme Court then regarding my efforts."

Ultimately, the district court awarded Dias approximately \$29,500 in attorney fees for the appeal. (Engel's response, Exhibit 17.)

Sisler claimed the right to a fee of one-third of the recovery and Dias first proposed mediating his claim. Later, Dias wanted Engel to represent her regarding Sisler's lien. Engel told Dias this was not covered by their retainer agreement and that he would bill her for these services. There was a hearing and the court awarded Sisler a fee of \$12,500. Dias contended that any fee awarded to Sisler should come out of Engel's fee, not from Dias recovery. The Court disagreed and held that Sisler's fees were entirely Dias' responsibility. (Engel's response, Exhibit 17.)

Engel says Shea now asserts that he was prevented from submitting his itemized time records because Engel submitted an "inaccurate itemization to the Court post-appeal.

This is a contention with no basis in fact." Engel notes he prepared an itemization of his time expended on the appeal and asked for Shea's and Dias' comments, input, etc, months before it was presented to the Court. Engel notes that Shea admits this, but notes that Dias did not have time to inform Engel concerning the disputed items. Engel's response notes that Shea admits he saw errors in the itemization, but did not point them out to Engel. Engel opines that over the course of his involvement in this case, he received over 500 pages in faxes from Shea, which in his estimation, the 60 hours of consultation with Shea is pretty close to the mark. The Court did not award any fees based upon any of his consultations with Shea. (Engel's response, Exhibit 17(b), Court's Order, July 12, 2004.)

Engel says he requested but Shea never submitted an itemization of his time, so HMHB would pay some of the compensation for work performed by the paralegal, i.e. Shea. Engel opines that Shea never submitted his billing statement because he did not want to be "pegged" to an hourly rate and if he submitted a bill based on an hourly rate, Shea would not be able to claim that he was entitled to a split of the fees. Shea's failure to submit an itemized bill cost Dias additional attorney fees.

In his response, Engel also notes that Shea now is asserting that Rule 5.4 would allow Engel to split the attorney fees Engel contracted with Dias because Shea was an employee of Engel's. Shea cites the *Wishnefsky v Riley and Fanelli* decision (Engel's response, Exhibit 18) that allows an attorney or law firm to share fees with non-lawyers. However, Engel notes that this case notes that such an arrangement is set out under a defined benefit plans between an attorney and regular employees. The Court held that the rule allowing employees to share in fees is based on the overall profitability of a law firm, without being linked to a specific fee or specific payment to a non-lawyer. Engel notes that in this case, Shea is an independent contractor and not a regular employee and thus such a split is not allowable in this case. Prior to Shea making this argument, Shea demanded half the fees without regard to or consideration of Rule 5.4. Engel notes he "consistently and repeatedly replied to Shea that I was forbidden from splitting fees with him under Rule 5.4." Engel notes that Shea's complaint against him is "completely a result of the fact that I would not violate Rule 5.4."

After judgment was entered for Dias in August 2003, Shea prevailed upon Dias to file a petition for mediation of Engel's attorney fees with the State Bar. (Engel's response, Exhibit 19.) Dias also filed for mediation of Sisler's attorney fee lien, despite Engel informing them that Sisler's petition with the Court precluded them from doing so. Dias filed a false petition with the State Bar swearing there was no claim pending in court. (Engel's response, Exhibit 20.)

Engel indicates that the State Bar took some "preliminary steps to set up an arbitration panel" but because of funding cutbacks and staffing shortages, arbitration would take months to organize. Engel spoke with the State Bar Counsel Brandborg who investigated the matter. Brandborg indicated that it was clear to her that the main reason arbitration was requested was to address Shea's claim for fees and informed both Engel and Dias the issue was best determined by the district court. (Exhibit 21, Brandborg's letter to Engel

and Dias.) Engel says Shea was angry because he had intended to "circumvent the prohibition about splitting fees through the arbitration process. Judge Sherlock did not let him do so."

Eventually Dias retained new counsel, Mike Alterowitz, who agreed that the matter of attorney fees belonged in district court, not the State Bar arbitration. Engel filed a compliant to foreclose his attorney fee lien in district court and Alterowitz filed a motion to dismiss in which he asserted that Shea was a necessary party. Judge Sherlock ruled not only was Shea not a necessary party, as the dispute over fees was exclusively between Engel and Dias, but that the purported contract to split fees was a violation of Rule 5.4 and the courts were not available to determine any illegal agreements. (Engel's response, Exhibit 22.)

Engel believes Judge Sherlock's Order was correct, stating, "Mr. Shea has no remed, (sic) because he has no enforceable rights. He never had any agreement with me to split fees. His statement to you that I agreed to split fees with him is a bold-faced lie. For a man who brags about the 'paper trail' he has created, Mr. Shea cannot show you one document which supports his claim. But even if there was such an agreement, it is clear that Rule 5.4 would prevent its enforcement, as Judge Sherlock held." Engel also notes that Shea, a former Montana Supreme Court Justice, attempted to get three different attorneys to violate Rule 5.4, to benefit himself. Engel also alleges Shea engaged in the unauthorized practice of law and regularly interfered with the attorney-client relationships with all three attorneys and their clients.

The facts do not appear to warrant disciplinary action regarding the myriad of allegations raised by Shea. This is essentially a fee dispute that has already been resolved by the district court. There is no evidence to support the alleged fee split in violation of MRPC 5.4. Clearly, Shea, as a suspended lawyer, is prohibited from entering into such a contract. The evidence indicates Engel continued to reject Shea's offer to split his attorney fees in this case, as he should have.

#### 4. Dias case -- competence

Shea alleges Engel is incompetent because he failed to first obtain an entry of judgment before dealing with the Sisler and Rasmussen liens. He also alleges Engel engaged in misconduct in the defense of Rasmussen's lien. He alleges Engel engaged in misconduct by failing to respond to three HMHB motions in July 2003, forcing Shea to prepare all of the necessary documents to respond to these motions. Finally, he alleges Engel engaged in misconduct by failing to respond to the Court's August 21 Order of distribution to protect Dias' procedural rights against the liens of Sisler and Rasmussen.

In his response, Engel denies the allegations. Sisler withdrew as Dias' attorney in November 1997. Rasmussen took over as counsel of record sometime in December 1997. On December 17, 1997, Sisler responded to Shea's letter where he threatened to sue Sisler over compensation. Sisler's letter indicates he does not owe Shea compensation and that if Shea files suit Sisler would "expose your actions and inactions

in this matter, file a counterclaim for intentional interference with contract and, to the extent justified, for breach of contract..."

Engel deposed Rasmussen on February 26, 2004, and questioned him regarding the details of his involvement as Dias' attorney. Rasmussen testified he entered into a written attorney-client retainer agreement, based on a form from the Montana Lawyer's Desk Book, represented Dias for a time and was entitled to his fees. Engel indicates he deposed Rasmussen to determine, what, if any, arrangement Rasmussen had for payment of services to Shea.

ODC obtained copies of the Court's August 21, 2003, Order and Judgment, which are attached in the research portion of ODC's file.

The facts do not appear to warrant disciplinary action under MRPC 1.1. Contrary to Shea's assertion, the judgment was entered on August 21, 2003, after a hearing on the motion for entry of judgment and the Court's Order to release the funds from her jury verdict and subsequent appeal. Sisler and Rasmussen were paid, according to case docket, on September 2, 2003, after the entry of judgment. ODC is unsure of what, if anything, Engel could have done to "protect Dias from Sisler and Rasmussen's lien" when the Court ruled that they [Sisler and Rasmussen] were entitled to a fee and allowed both Sisler's and Rasmussen's liens to attach to the Judgment, which was filed with the Clerk of Court. Again, contrary to Shea's allegations, Engel signed and filed the documents purported to have been drafted by Shea in response to the July 2003 motions. Whether Shea or Engel drafted these particular documents is not the question, rather, contrary to Shea's assertions, the question is did Engel file the responses and the answer is yes. Engel can file documents as attorney of record, while Shea, who is a suspended attorney, could not file documents or make an appearance on Dias' behalf.

ODC does not recommend further investigation into these allegations.

#### 5. Dias case -- conflict of interest

Shea alleges Engel engaged in misconduct in his defense of the Sisler lien because of a conflict of interest and the use of an untenable legal theory.

In his response, Engel denies the allegations. When Sisler indicated that he intended to pursue his lien against Dias, Shea, not Dias, wrote Engel and told Engel that Engel was obligated to represent Dias against Sisler to defeat Sisler's claim for attorney fees. Engel responded to Shea and informed him this would "be extraordinary services not covered by my attorney-client agreement with Ms. Dias, and that I would bill Marcia Dias accordingly."

Neither Dias or Shea advised Engel at the time he agreed to undertake representing Dias that Sisler's claim for attorney fees would be something that had to be litigated. Subsequently, Dias and Shea claimed Engel was obligated to represent Dias, free of

charge on Sisler's claim. Further, they claimed that any fee awarded to Sisler would be payable out of Engel's attorney fees.

Sisler claimed the right to a fee on one-third of the recovery. Dias first proposed to mediate the claim, but then asked Engel to contest Sisler's lien. As noted above, Engel agreed to represent Dias against Sisler, and billed her for his services. A hearing was held in district court. The Court awarded Sisler \$12,500 in attorney fees for the services he provided to Dias before he withdrew from the representation. The Court ordered Dias, not Engel, to satisfy Sisler's attorney fees. (Engel's response, Exhibit 17, Court Orders of June 3, 2003 and July 12, 2004.)

The facts do not appear to warrant disciplinary action under MRPC 1.7. There was no conflict in Engel representing Dias in connection with the Sisler lie. In the Order of June 3, 2003, the Court concluded that HMHB was obligated to pay Dias' attorney fees (\$29,500) for the appeal, noting Engel's fees were reasonable and just, particularly after the Court reduced Engel's hours to reflect what the Court believed to be reasonable for the time Engel spent on the appeal of the Dias case. In the Court's Order of July 12, 2004, the Court noted that an obligation to pay attorney's fees arises when a client contracts with an attorney to file suit, citing *Richardson v. Safeco Ins. Co.* 206 Mont. 73,74 (1983). The Court noted that there are no genuine issues of material facts because the parties' agreement "is plain on its face" and Engel is entitled to judgment as a matter of law.

The Court also noted that Dias owed Sisler compensation for legal services he performed for her, noting that the obligation to pay Sisler was hers, not Engel's, and that when a client discharges one attorney and hires another, the client will usually pay more in attorney fees than someone who retained the services of a single attorney. The Court also ordered that Sisler's attorney fees would not be deducted from the sum Dias owes Engel.

The crux of the matter is Dias did not want to pay Sisler his attorney fees and attempted to force Engel to defend Sisler's lien under the April 4, 1999, attorney-client agreement she had with Engel. After some negotiations, Dias hired Engel to represent her in an attempt to prevent Sisler from collecting his attorney fees. Her intent was not to pay Sisler. Her intent was not to pin the expense on Engel. After that failed, she fired Engel, hired new counsel and attempt to reduce Engel's fee, sought to force Engel to split his fee with Shea, and when that did not work, attempted to force the Court to order Engel to pay Sisler's lien from Engel's fee and not from Dias' part of the settlement. It was not until this point that Dias' interest was adverse to Engel, and at this point, Engel no longer represented her. It is reasonably clear that Shea was behind Dias' attempts to reduce Engel's fee as well as the other issues raised in the Court's orders.

ODC does not recommend further investigation into these allegations.

#### 6. Dias case – Improper termination

Shea alleges Engel engaged in misconduct by his failure to withdraw from Dias' case after he acknowledged he would. He also alleges Engel failed to withdraw from the Dias case after Dias had formally discharged him for cause.

In his response, Engel does not specifically respond to these allegations.

ODC obtained a portion of the Court's docket and other documents to evaluate these allegations. Specifically, ODC obtained a November 11, 2003, letter from Engel to Judge Sherlock regarding the ongoing problems he was experiencing with Dias and her failure to provide the Court the satisfaction of judgment. Engel received payment from HMHB's attorney, Throssell, on September 21, 2003, and deposited the funds in a joint account in Helena. On September 24, 2003, Engel then tendered the Satisfaction of Judgment to Dias by way of a letter. Dias apparently did not execute or return the endorsed Satisfaction of Judgment nor did she file it with the Court as suggested by Engel. On October 15, 2003, Engel forwarded to Dias Throssell's Motion and Brief regarding the Satisfaction of Judgment and indicated to her that he had previously sent her the Satisfaction of Judgment and Dias had failed or refused to execute, file or return it.

Engel's November 11, 2003, letter also notes that on October 15, 2003, he sent Throssell notice that he timely sent the Satisfaction of Judgment to Dias but she had not returned it and that he would make an additional request that she do so.

Engel's November 11, 2003 letter also notes that on October 24, 2003, Engel received a request from Dias that he withdraw as his attorney and acknowledged that she refused to sign the Satisfaction of Judgment until Engel withdrew as her attorney. Engel noted to the Court that he had done all he could do in an attempt to have Dias sign the Satisfaction of Judgment, noting that Dias had accepted the money that was tendered to her in accordance to the Satisfaction of Judgment and that only Dias can execute the Satisfaction of Judgment. Accordingly, Engel enclosed his motion to withdraw, Dias' Consent to Withdrawal of Attorney and his attorney's lien. On November 12, 2003, the Court entered its Order for the withdrawal of Engel from his representation of Dias. On November 3, 2003, the Court noticed a hearing on Throssell's Motion for Satisfaction of Judgment for November 12, 2003 at 9:00am. Engel notes in his letter to the Court that since he was no longer the attorney of record, he would not be able to attend the hearing, further indicating that since Dias and no one else can execute the Satisfaction of Judgment, his presence at the hearing was not necessary in any event.

Engel also noted to the Court that Dias had petitioned the State Bar (in August 2003) to have his attorney fee determined "pursuant to fee arbitration mechanisms created by the Bar."

The facts do not appear to warrant disciplinary action under MRPC 1.16(d). The record reflects that Engel withdrew in a reasonable amount of time upon receiving notification of his termination from Dias. The record also reflects that Dias had refused to return or file the Satisfaction of Judgment.

ODC does not recommend further investigation into these allegations.

#### RECOMMENDATION

Pursuant to RLDE 10D(1), ODC recommends that the Review Panel dismiss Shea's complaint in the Dias and Wagner matter under RLDE 11(4). ODC recommends Shea's allegations against Engel in the Kloss case be consolidated with the pending complaint against Engel in ODC File # 04-074.



of the Four Appendixes filed with this opposition, and all of the explanations provided in the explanations provided with the Table Contents to the Four Appendixes.

Shea's Appendix I contains many court orders and two short transcripts. The transcripts are of the hearing on Engel's application for statutory attorney fees in June of 2003, and a transcript of the May 18, 2004 hearing on Engel's motion for summary judgment in relation to his action to foreclose on an attorney's lien.

Shea's Appendix II contains a number of filings which Engel made in relation to his application for statutory fees on appeal, in relation to his lien foreclosure action, and in relation to his opposition to the motion to intervene.

Shea's Appendix III contains a number of filings made by the Alterowitz law firm from Missoula, in relation to the defense of the lien foreclosure action filed by Engel.

Shea's Appendix IV, contains most of the filings made by Shea upon his moving to intervene and the following proceedings.

Shea also suggests it would be very helpful to this Court to obtain the register of actions from the Clerk of the Lewis and Clark county District Court.

**SHEA REQUESTS THAT THIS COURT SUSPEND PROCEEDING UNDER RULE 3 OF THE RULES OF APPELLATE PROCEDURE SO THAT JUSTICE CAN BE DONE IN THIS CASE.**

Daniel J. Shea, as appellant in this case, and as part of his response to the motion of attorney Engel to dismiss the appeal, requests this Court in the interests of justice to suspend the rules of this Court, and grant the special request which Shea makes in the interest of justice. Rule 3 Mont. Rul. App. Pro., expressly provides:

In the interest of expediting decision upon any matter before it, or for other good cause shown, the supreme court may, except as otherwise provided in rule 21(b), suspend the requirements or provisions of these rules on application of a

party or on its own motion and may order proceedings in accordance with its direction. (Emphasis added)

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SHEA, IN BEING REQUIRED TO RESPOND TO ENGEL'S MOTION TO DISMISS, IS ENTITLED TO SANCTIONS AWARDED AGAINST ENGEL, WHICH INCLUDES, COSTS OF PREPARING RESPONSIVE DOCUMENTS, REASONABLE COMPENSATION FOR TIME AND HOURS IT HAS TAKEN TO PUT TOGETHER A RESPONSE, AND OTHER EXPENSES AND COMPENSATION TO BE DETERMINED BY A FAIR AND IMPARTIAL TRIBUNAL.

Shea strong believes that his Court, upon reading, thoroughly reviewing, and digesting the presentation made here that justice can only be accomplished here if this case is remanded to the district court. An evidentiary hearing, before an impartial tribunal and proceedings should be undertaken to determine whether or not attorney Engel has committed fraud in various ways, and if so, what action or actions should be taken as a remedial measure.

PART II. IN DENYING THE MOTION OF DIAS FOR A STAY OF EXECUTION PENDING APPEAL, THE PRESIDING JUDGE, ACCEPTED, ACTED UPON, AND SIGNED AN EX PARTE ORDER PROVIDED TO THE JUDGE BY ATTORNEY ENGEL. IN A ONE SENTENCE ORDER DENYING THE MOTION FOR A STAY, ENGEL WAS ALLOWED IMMEDIATELY TO EXECUTE ON HIS JUDGMENT BASED ON ARRANGEMENTS AND INSTRUCTIONS HE HAD GIVEN TO THE CLERK OF COURT IN A LETTER WRITTEN TWELVE DAYS BEFORE THE CLERK OF COURT ISSUED THE WRIT OF EXECUTION. THE ORDER AND VIRTUALLY IMMEDIATE EXECUTION BY ENGEL EFFECTIVELY DECAPITATED THE RIGHT OF DIAS TO AN EFFECTIVE APPEAL.

All documents referred to here and all documents contained in the Appendices filed by Shea, are incorporated by reference.

Perhaps what is described here will provide this Court with a taste of the immense wrongdoing committed by Engel in this

case, and how he goes about his business as a lawyer. The wrongdoing set forth here has horrible consequences to any litigant, especially a former client, who is forced into litigation by Engel, and horrible consequences to those who have provided services to Engel and has right to be paid for their services.

One must start somewhere and I start with the immediate circumstances leading up to the writ of execution obtained by Engel.

Based on the district court's ruling that Engel was the prevailing party, Engel was directed to prepare the judgment. I will describe later what happened before the amended judgment was finally entered on August 3, 2004. In any event, Engel's amended judgment ( which Shea believes with his heart and soul, based on the evidence is fraudulent), was entered on August 3, 2004, and mailed to the parties. A motion for stay of judgment was already pending before the court. The next day, on August 4, 2003, Engel immediately mailed to the clerk of court Ms. Nancy Sweeney, a letter which included three documents. The first document was Engel's brief opposing the Dias motion for a stay of execution. Only Engel's brief was mailed to opposing counsel.

Engel also included with his letter to the clerk of court, a proposed order provided by Engel to the clerk to give to the judge if he decided to deny the motion for a stay. Engel also enclosed a writ of execution. Engel requested the clerk of court

to issue the writ immediately if the order was signed denying the Dias motion for a stay.

August 4, 2004

Nancy Sweeney  
District Court Clerk  
Lewis & Clark County Courthouse  
228 Broadway  
Helena, MT 59601

Re: Dias v. HMHB NO. BDV 95-018

Enclosed are an original and two copies of Petitioner's **Objections to Stay Pending Appeal**, and a proposed **Order Denying Stay** together with two copies. Also enclosed is a Writ of Execution together with a copy to be conformed.

Please conform and return a copy of the **Objections to Stay Pending Appeal** in one of the enclosed-self-addressed, stamped envelopes. I have provided additional envelopes for service of the **Order Denying Stay**, upon both counsel, in the event the Judge signs the Order.

If Judge Sherlock grants the **Order Denying Stay**, please issue the Writ of Execution and return it to this office, together with the conformed copy.

If you have any questions, please advise.

Sincerely,  
s/  
Joseph C. Engel III

Enclosures

This letter is on file with the district court and constitutes the only evidence that a writ of execution was issued to Engel on August 16, 2004. A copy of this letter is also contained in Shea's Appendix.

Engel served opposing counsel with his brief opposing the Dias application for a stay, but he did not serve opposing counsel with a copy of this letter mailed to the clerk of court,

nor with the contents of that letter.

On August 12, the district judge received the brief of Dias counsel replying to Engel's objections to a stay of execution. The same day, August 12, 2004, the district judge signed the one sentence order prepared by Engel and provided to the district judge ex parte. The order was not filed on Friday. Rather, it was held until Monday, August 16, 2004, when it was filed. Immediately upon filing the order, the clerk of court issued the writ of execution for Engel and sent it to him in Great Falls.

The clerk of court did not keep or make a copy of the writ of execution issued to Engel. It appears that before the week was out, Engel accessed the joint accounts in Wells Fargo bank in Helena by way of execution and levy and obtained whatever he obtained.

Although the execution took place at least by August 20, 2004, to this date, Engel has not filed a return on the execution. Shea has twice written to Engel requested that he file a return. Shea also requested the district court to require Engel to file a return on the execution and levy. The district court did nothing, and in his January 19, 2005 order did not even mention Shea's request.

At the present time, Shea has requests outstanding to the clerk of court to require Engel to file a return the execution. ( All this nformation is set out in the appendixes. And, after attorney Bartlett entered the case for Engel in filing the

motion to dismiss with this Court, Shea has written and requested attorney Bartlett to advise Engel and to make sure that a return on the execution was filed. (See Shea's Appendix IV-). Attorney Bartlett has not responded. When Shea checked with the clerk of court on Monday, May 2, 2005, no return had been filed.

As it stands now, Engel has never filed a satisfaction of judgment. And, as this Court is well aware, a judgment constitutes a lien on real estate. If Dias has an interest in real estate, Engel's judgment is an outstanding lien on her property interest. This is but another example of Engel not caring at all about the welfare of his former client, through whom Engel was paid an amount in the judgment grossly in excess of the work Engel did on the case. Shea did virtually all of the work on the case.

As part of the proceedings up to that time, counsel for Dias had earlier sought to obtain joinder of Shea as a party, which was denied. And the Notice of Appeal filed by Dias, specified that appeal was from the Court's order on March 2, 2004 refusing to join Shea as a party, and from the Summary judgment itself. Needless to say, the denial of the motion for a stay and the immediate execution by Engel, totally torpedoed any hopes Dias had of taking an appeal that would be effective. Even if she prevailed the victory would be for naught. Engel already got the money through an improper ex parte communication process leading to the entry of the order denying the motion for a stay of

execution.

Shea is convinced of two things. First, the Engel may have obtained more money than what was already provided for in the fraudulent judgment he prepared. Second, that Engel used improper and perhaps even illegal means to access, execute on and levy against the bank accounts? Why else would Engel fail and refuse to file a return to the clerk of court as required by law?

These decisions obviously also affected Shea. When Dias decided not to pursue the matter there was nothing Shea was compelled to take action by filing a motion to intervene. By examining the summary judgment order, the documents filed by Engel after entry of the summary judgment order, including the final judgment, Shea knew that Engel had committed fraud in the judgment. Shea believed that this fraud should be brought to the attention of the district court. Shea further believed that the only chance of obtaining an order allowing intervention would be that the judge would not tolerate the fraud committed by Engel in the judgment.

It turned out that the district judge was not interested in whether or not Engel committed fraud in the judgment. The district judge, did not appear interested in whether or not Engel committed fraud against his former client. The judge declared:

If Dias had complaints about Engel's behavior, she was certainly free to continue with her appeal or, she is certainly free to contact the commission on Practice. If Shea feels that Engel owes him money he has been perfectly

free for quite some time ow to file a civil action against Engel. However, this Court finds that thee has been no showing that would support Shea's contention that he shold be allowed to intervene in this case. ( See Engel's Appendix 3, page 5)

It would appear that as to Dias, the district judge was not mindful of the fact that he had virtually destroyed her right to a meaningful appeal by signing the ex part order submitted to him by Engel denying the Dias application for a stay of execution.

Shea knew that the district judge was decidedly and manifestly and palpably prejudiced, not only against Shea and against Dias, but in favor of attorney Engel. Nonetheless, Shea was compelled to take action. As a matter of conscience, Shea did not want to let that matter rest without requesting the court to inquire into the actions of Engel which were so manifest in the record. Shea tried and Shea failed. The district court refused to take any action.

The district judge not only refused to take any action against Engel, but also denied Shea's motion seeking intervention but of course declared that Shea was free to pursue a civil action against Engel.

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**PART III. A TASTE OF HOW ENGEL TREATS HIS CLIENTS AND THOSE WHO HAVE LABORED LONG, HARD, AND SUCCESSFULLY FOR HIM.**

All documents referred to here are incorporated by reference.

In Part II, Shea believes he has sufficiently demonstrated how effective Engel is with his ex parte

communications. He gets the job done. Here, in Part III, Shea seeks to provide this Court with a taste how Engel treats his clients and those who have labored long, hard and successfully for him.

Shea refers to a May 10, 2003 letter from Engel to his client. Just the day before there had been a hearing on Sisler's claim for attorney's fees. Engel's claim for statutory attorney's fees. Engel wrote several page letter to his client telling her how he believed the entire judgment funds should be distributed, all to Engel's benefit. Shea filed a copy of this letter with one of his filings. (Appendix IV--).

Among many other topics, Engel falsely accused his client and Shea of deceit, claiming that he was not informed at Jorgenson's that Sisler claimed an attorney's lien. (Page 2, fourth paragraph).

With regard to the Sisler lien claim Engel asserts that any award to sisler must come from the Dias share of the judgment funds, and further, that Dias owes him extra for representing her with regard to the Sisler attorney lien claim. (Page 3, third paragraph), and that Dias was responsible for more fees to Engel in defending Sisler's attorney lien claim. (page 4, top of page).

As to payment of Shea, Engel asserts that Shea deserves to pay but that Dias must pay him. Engel denies any responsibility, and denies any agreement with Shea. (page 2)

Then Engel proposes a scheme for distribution of the judgment proceeds whereby he stands to benefit by as to any award of statutory attorney fees on appeal to Engel. Engel proposes that he will agree to a 40% distribution of the judgment proceeds rather than 50% distribution provided that the award of fees plus the 40% fee is equal to or greater than what a 50% distribution would be. In other words, Engel was hoping that the award of fees would be substantially higher than what he would receive by a 50% distribution, and that by his proposal, he would receive more than Dias. Although not mentioned, presumably Engel was also seeking the award of statutory fees at trial for himself also.

Insofar as any payment to Shea, Engel claims that she originally was willing to accept \$ 10,000 when Sisler was on the case. Engel asserted that if Dias and Shea were to split her share, that she would still net to herself several times more than the \$10,000 she allegedly was willing to accept when Sisler was on the case. In other words, Engel proposed to leave Dias with a net of \$40,000 or \$50,000. Engel would get the rest. (page 3, second paragraph). Applied here, from a judgment in excess of \$250,000, Dias would net about \$40,000 or \$50,000. Engel would net over \$130,000.

Here, Engel would also be obtaining unjust enrichment. It was Shea who did all the work on the case, as agreed.

And now to update this Court on Engel's conduct. Shea filed the affidavit of Marcia Dias setting out her

understanding of the agreement at Jorgenson's and further declaring that in fact the attorney lien situation in relation to Rasmusson and Sisler was discussed. Appendix IV--.

Responding to this affidavit in his December 13, 2004 brief objecting to Shea's petition for reconsideration, Engel made the following accusation of both Dias and Shea:

The entire scenario as described by shea to this Court of the Jorgenson agreement based on a 'nodding of the head" is a complete fabrication. Shea has attempted to bolster his fabrication by a suborned false statement from Dias which he has attached as an exhibit. But even this additional false statement does not support Shea's assertion that Engel and Shea agreed to split fees at Jorgenson's. (Underlining is Engel's emphasis; bold emphasis is Shea's). (See Engel's Appendix 7, page 13).

In his January 19, 2005 order denying Shea's petition for reconsideration, there was no mention of Engel's accusation.

Shea hopes that this Court has been awakened to just what Engel's client was confronted with, as well as what Shea was confronted with. Basically, they were dealing with a person who they discovered, had absolutely no conscience.

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ENGEL'S FRAUD INHERES IN THE DISTRICT COURT JUDGMENT ENTERED ON AUGUST 3, 2004. THAT FRAUD EXISTS CANNOT BE DOUBTED. IT IS A MATTER OF DETERMINING HOW MUCH FRAUD. ONLY AN EVIDENTIARY HEARING CAN COME TO THE PROPER CONCLUSIONS.

Shea alleged in his motion to intervene that Engel had prepared a fraudulent judgment which was then entered on August 3, 2004. ( Shea's Motin to Intervent filed September 12, 2004, pages to , Appendix IV- . By reference, Shea incorporates his motion to intervene in this response to

Engel's motion to dismiss. Shea supported his motion relating to allegations of Engel's fraud, with letters which Shea had written to letter setting out the fraud he had committed and requesting Engel to come into court and admit that he had committed fraud in the judgment. Needless to say, Shea got no response from those letters. These letters are part of the district court record in this case. Shea asks this Court to take judicial notice of those letters.

In his response brief Engel made a general and short statement denying Shea's allegations. Engel's September 23 response brief,

Appendix II--. In his reply brief Shea answered he many objections engelk made to themotin to intervene. Shea also attached by refernece and also filed a 31 page Affidavit in which he set out the specific instances of fraud whcih result in a very sizeable increase in the jugment for Engel. My intent was to memorialize the ways in which Engel had committed fraud in the judgment. By reference, Shea incorporates his reply brief and affidvitg into his response to Engel's motion to dismiss.

In this 31 affidavit, Shea set out several ways in which Enegel committed fraud in the judgment. Shea also incorporates by reference all documents filed by Engel ultijately leading to the

August 3, 2004 amended judgment. This includes the Memorandum of Costs filed by Engel (Appendix II--); the first judgment

sent to the district judge by Engel and signed by the judge over Engel's signature but turned out not to actually be the intended judgment ( Appendix II-- ), and the Amended Judgment entered on August 3, 2004. ( Appendix II-- ).

This case cannot be compartmentalized into the wrongdoing of Engel against Marcia Dias and the wrongdoing of Engel against Shea. It is one case. Engel was trying to obtain as much as possible from his client by hook or by crook, and he was trying to prevent payment to me for all the services I rendered in this case. Shea was entitled to show the entirety of Engel's wrongdoing, and not just the wrongdoing Engel committed against Shea. Shea believes that he had not only a right but also a duty to bring this wrongdoing to the attention of the district judge. That the district judge turned a blind eye to Engel's wrongdoing is not Shea's fault. Specifically, in his Affidavit, Appendix IV-- ), Shea set out the following ways in which Engel committed fraud in the judgment

First, Engel did not comply with the order of the district court as to the sum to be used as the starting point to determine the 50% figure. (Shea's affidavit, pages IV-- , pages 4-7).

Second, in preparing the judgment, Engel improperly and illegally packed in the judgment, a claim to at least one half of the statutory attorney's fees awarded at trial. ( Appendix IV-- , pp8-11 ).

Third, Engel illegally claimed prejudgment interest

attorney's fees and other items as well. Note in particular how, in his memorandum of costs, Engel deleted the controlling language which determines whether and when the prejudgment interest is allowed. Engel obtained almost \$11,000 in prejudgment interest by claiming such interest where he was not entitled to claim because of the legal and factual issues existing between himself and his former client. Shea's affidavit sets out with particularity why Engel is not entitled to prejudgment interest. ( Appendix IV-- pp 21--27 ).

Fourth, Engel imposed a cost on his client to pay certain expenses of Gale Gustafson, when it was not a recoverable cost. ( Appendix IV, 27-28 ).

Third, in claiming certain costs, Engel illegally switched expenses. Shea explains the situation existing in which Engel illegally switched expenses in his cost bill. Engel also improperly claimed prejudgment interest on these items when they were already built into the judgment. (Shea's Affidavit, Appendix IV-- , pp ).

Fourth, Engel claimed the cost of the Eric Rasmusson deposition, in a situation where he had no right to do so. Shea's Affidavit, Appendix IV-- , pp ).

Fifth,

Engel

\*\*\*\*\*  
THE ENGEL APPLICATION FOR STATUTORY FEES SHOWS THAT NEITHER HIS AFFIDAVIT, NOR HIS INVOICE, NOR THE INFORMATION WHICH HE GAVE TO THE EXPERT WITNESS COULD POSSIBLY BE TRUTHFUL.

In Appendix II, Shea has set forth the affidavit he filed together with his invoice. In Appendix I, there is contained the testimony of attorney Gale Gustafson, who, there is no doubt, that Engel sadly misinformed concerning who did the work in this case. It was Shea who did the work, period. Engel acted primarily as a secretary to the work product which

Shea gave to him.

Shea asks this Court to take judicial notice of all the activity, motions, briefs, etc, that took place in relation to the Dias case on appeal and the Old Elk case on appeal. It was Shea who wrote the motions. It was Shea who wrote the appeal brief. And in fact, it was Shea who wrote the motions and briefs. It was Shea who did the thinking behind the motions and briefs.

Shea also asks this Court to take judicial notice of Shea's motion to intervene and his allegations and assertions as to the work done in this case. In his response brief Engel did not deny, nor could he truthfully deny the assertions which Shea made.

Therefore, the fundamental question is: If Shea did all the work, is the affidavit of attorney Engel false; is the invoice of attorney Engel false; did attorney Engel practice deceit on attorney Gustafson by providing him false information concerning the work Engelk aid and the work Shea did?

Only an evidentiary hearing can determine these facts. And Engel should no able to avoid such a hearing, as he appears to have avoided up to this time.

Shea is also concerned that the presiding district judge who denied my motion to intervene, also presided over Engel's application for statutory attorney's fees on appeal. I alleged I wrote the appeal brief. Engel did not deny, nor

could he deny that this is so. Would not the district judge be concerned as to whether or not Engel told the truth in his application for statutory fees?

The fact is that the presiding judge wanted to keep me out of the case precisely because I could reveal the truth about Engel.

\*\*\*\*\*

ANSWERING ENGEL'S CONTENTION THAT MY ATTEMPT TO SEEK COMPENSATION IS ILLEGAL AS A MATTER OF LAW. ENGEL HAS MISREPRESENTED THE LAW AND HE HAS MISREPRESENTED THE DISTRICT COURT RULING AS TO SHEA'S RIGHT TO SEEK COMPENSATION.,

In his motion seeking dismissal of Shea's appeal, Engel deliberately misinterprets the district court holdings and the conclusions which the district judge reached concerning the basic issue. If in fact, it is a basic violation of public policy for Shea to seek compensating from Engel for the work he did on this case because alleged Engel did agree to share the fees with him, then the district court would have held that Shea had no remedy. But the district judge held in his November 4, 2004 order, and his January 19, 2005 order that Shea was free to Sue Engel.

In Shea's pleadings seeking intervention, Shea not only pleaded an agreement to share fees, Shea also pleaded a right to recover based on quantum meruit, and alleged that such recovery would be or at least should be much higher than receiving half of the fees because it was Shea who did all the work. The

district judge ignored Shea's pleadings.

Nonetheless, in the November 4, 2004 order the court declared as to Shea's right to seek compensation from Engel for services rendered:

In Shea's pleading, shea has alleged serious wrongdoing on the part of Engel. This may or may not be true, and engel may or may not owe one half of his attorney fees to Shea. Shea is perfectly free to file a suit seeking damages from engel. Shea may also, if he feels Engel is about to dissipate his assets, file a request for restraining order or a request for an attachment.

Clearly, Engel has misrepresented the law to this Court as to the holdings of the district court. Shea has thoroughly brief the law and presented it to the district court, and he incorporates by reference the basis upon which he sought compensation. This research also involves the law as it applies to fee sharing agreements and the right to seek compensation. In short, the law does not allow an attorney to hide behind the rules of professional conduct. But the harm done to Shea in this case is even more grievous, because share was not a runner for Engel. Shea did virtually all of the work on both the Dias case and the Old Elk case.

The real problem here is that the district court was adamant about protecting Engel and his previous rulings in the Engel lien foreclosure action demonstrate a decided prejudice in favor of Engel and against Shea. Dias tried to have Shea joined as a party but the district court was adamant that Shea would not be joined. See March 2, 2004 order. Also read the transcript

of the May 18, 2004 arguments relating to Engel's summary judgment argument

At that hearing attorney Alterowitz brought to the district court's attention the serious trouble Engel is in and the fact that it may end up bankrupting him, leaving him with no assets.

Shea asked the district court to take judicial notice of the pending matters in the Kloss case, and Shea asks this Court to take judicial notice of its own decision in Kloss, and of the acts filed by the Office of Disciplinary Counsel against Engel in relation to the Kloss case. In addition the original order in the Kloss case from the Cascade County District Court came out in early April, 2004. Shea asks this Court to also take judicial notice of this order.

The fact is that if Engel has any assets he has surely hidden them very well and they are not subject to attachment. What good is a restraining order if the assets are secreted?

Engel deliberately misinterpreted the district court's orders relating to Shea's right to seek compensation.

\*\*\*\*\*

**ANSWERING ENGEL'S USE OF THE RASMUSSEN DEPOSITION AND EXHIBITS IN AN ATTEMPT TO BOLSTER HIS ARGUMENT.**

Engel has gone at great lengths to drag the Rasmusson depositions and exhibits introduced at that deposition into his brief, just as he in the district court. The fact is that Engel did not join me in the action and as a result, when he took the Rasmusson deposition in February, 2004, as well as the deposition

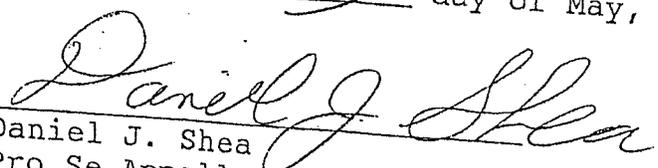
of another person, Amy Palmer, Shea had no right to participate in those depositions. Shea has set out his contentions in his pleadings filed in district court and in his briefs, and he asks this Court to take judicial notice of them. They are contained in Appendix IV..

Further as to Shea's right to intervene under Rule 24 (a), his position has been fully set forth in his pleadings and in his briefs filed with the district court. Shea asks this Court to take judicial notice of them. They are contained in the Appendices filed as part of this response.

**BASED ON THE PRESENTATION MADE IN THIS RESPONSE, SHEA ASKS THIS COURT TO:**

1. To deny Engel's motion to dismiss.
2. Suspend the requirements of its rules under Rule 3 and grant Shea the relief to which he is entitled and further, to take action by remanding the case to district court for a full evidentiary hearing. Shea has made some very serious allegations here, and he supports them.
3. To enter an order imposing sanctions against Engel for filing a spurious motion to dismiss and for misrepresenting the law to this Court in relation to the rulings of the district court, and also misrepresenting the law as to Shea's right to still seek compensation based on a fee sharing agreement.
4. To award to Shea all of his costs incurred in making this response.
3. For such other further relief as may be just and required under the circumstances.

Dated this 5 day of May, 2004.

  
Daniel J. Shea  
Pro Se Appellant

State of Montana



RECEIVED

NOV - 8 2004

STATE BAR OF MONTANA  
OFFICE OF DISCIPLINARY  
COUNSEL

NOV 12 2004

First Judicial District Court

Lewis and Clark County

Hon. Thomas C. Honzel

Hon. Dorothy McCarter

RECEIVED  
Hon. Jeffrey M. Sherlock

November 5, 2004

Betsy Brandborg  
Montana State Bar  
PO Box 577  
Helena MT 59624

COPY

Dear Betsy:

Enclosed please find my recent order in Lewis and Clark County Cause No. BDV-1995-18 denying the motion of Daniel Shea to intervene in the captioned case. I have also enclosed a copy of an "affidavit" filed by Mr. Shea outlining his concerns.

Of particular interest is the fact that not much in Shea's affidavit supports his request to intervene. Rather, it supports his contention that attorney Joseph Engel has taken too much money from Engel's former client, Marcia Dias - the plaintiff in the case. My concern is that this affidavit indicates to me that Shea is acting as attorney for Ms. Dias.

I have not bothered to send you the entire file, as it is quite voluminous. However, it is clear from looking at the entire file that Shea has been involved in this case as Dias' representative for quite some time. Shea admits as much in his affidavit and the other papers filed herewith.

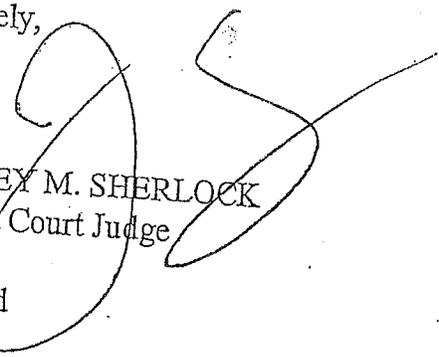
I earlier advised all of the parties that I was going to send all of their pleadings and my final order in this case to the State Bar for examination. I imagine Mr. Shea and Ms. Dias may be filing a complaint about Engel's alleged ethical lapses. However, my particular concern here is Shea's unauthorized practice of law as evidenced by his assertions in the enclosed affidavit. Our file is available for anyone from your office that would want review it.

Exhibit 5A

Betsy Brandborg  
November 5, 2004  
page 2

I would appreciate you referring this matter to the appropriate authorities as soon as possible.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to be 'JMS', is written over the typed name and title.

JEFFREY M. SHERLOCK  
District Court Judge

JMS/tbd

Encs.

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. 05-240

MARCIA DIAS,

Plaintiff,

v.

HEALTHY MOTHER, HEALTHY BABIES, INC.,  
a Montana corporation, et. al.,

Defendants.

DANIEL J. SHEA,

Appellant,

v.

JOSEPH C. ENGEL,

Respondent.

ORDER

FILED

MAY 18 2005

Ed Smith  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Daniel J. Shea, appearing *pro se*, has appealed from the order of the District Court denying him the right to intervene in this cause. Joseph C. Engel, who is designated in the caption as the Respondent to Shea's appeal, has filed a motion to dismiss Shea's appeal. Shea has filed a response, together with four voluminous appendices.

In his motion to dismiss, Engel argues that Shea's appeal should be dismissed because its ultimate objective is to seek enforcement of an alleged agreement to split attorney fees with Engel. Because Shea is not licensed to practice law, Engel argues that such an agreement, if it existed, is illegal, and a court is not available to enforce illegal agreements.

It should be noted that the *Dias v. Healthy Mothers, Healthy Babies* (HMHB) cause of action was filed in 1995. A jury verdict was returned in favor of Dias in February of

Exhibit C

2000, more than five years ago. Neither Shea or Engel were parties to this proceeding until Shea attempted to intervene as a party in order to enforce what he contended was a fee agreement between himself and Engel, one of Dias' attorneys. The District Court denied his motion to intervene as a matter of right; thus, although Shea styles himself as the Appellant and a party to this proceeding, since his motion to intervene was denied, he is not actually a party to this cause of action. The only way he could achieve standing to participate in this case is if the District Court erred in denying his motion to intervene as a matter of right. Although Shea attempts to raise multiple issues of fraud and deceit in his memorandum in opposition to the motion to dismiss his appeal, only one issue need be addressed: Did the District Court err in denying Shea's motion to intervene as a matter of right? If so, Shea is properly in the case; if not, then he has no standing to assert his many substantive arguments.

In *Matter of Adoption of C.C.L.B.*, 2001 MT 66, 305 Mont. 22, 22 P.3d 1046, we noted that a party seeking intervention as a matter of right must make a prima facie showing of a direct, substantial, and legally protectable interest in the proceedings. *Matter of C.C.L.B.*, ¶ 16. We further said that a district court's determination regarding whether a party has made such a showing is a conclusion of law which we review for correctness. *Matter of C.C.L.B.*, ¶ 16. We therefore determine whether the district court's determination that Shea not be allowed to intervene in these proceedings was correct.

In its order denying Shea's motion to intervene as a matter of right, the District Court concluded that Shea's motion did not meet the requisites of Rule 24(a), M.R.Civ.P., in light of the fact that the underlying case had been concluded more than four years earlier. The District Court cited persuasive authority for the proposition that absent extraordinary and unusual circumstances, intervention by a party who did not participate in the litigation giving rise to the judgment should not be permitted. To that end, the court also pointed out that the underlying action was never about Engel's attorney fees, but rather was a wrongful discharge action between Dias and HMHB. The court further stated that if Shea felt he was wronged by Engel, he was perfectly free to file a separate independent suit against Engel.

In his memorandum in opposition to Engel's motion to dismiss his appeal, Shea alleges all sorts of fraud and wrongdoing on the part of Engel, both against him and Dias. He asks that we suspend the requirements of our Rules of Appellate Procedure and enter an order imposing sanctions against Engel for filing a spurious motion to dismiss. He further seeks remand to the District Court for a full evidentiary hearing. We decline to do so.

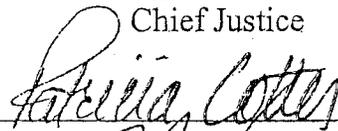
Applying the criteria set forth above from *Matter of C.C.L.B.*, we conclude that the District Court's denial of Shea's motion for intervention as a matter of right was well supported under the law and legally correct. Shea has no legally protectable interest in this long-since resolved wrongful discharge case. His dispute is with Engel, and may be pursued separately. Because the District Court did not err in denying Shea's motion to intervene in these proceedings, Shea has no standing to present in this matter his arguments concerning Engel's alleged fraud and deceit. Accordingly,

IT IS HEREBY ORDERED that the Engel's Motion to Dismiss Appeal is GRANTED. Shea's appeal herein is DISMISSED WITH PREJUDICE.

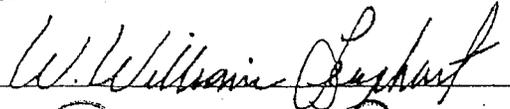
IT IS FURTHER ORDERED that the Clerk of this Court give notice of this Order by mail to Shea at his last known address, to all counsel or record, and to the Honorable Jeffrey Sherlock.

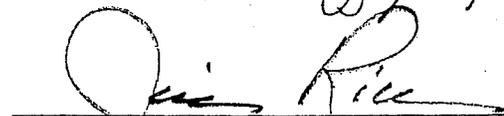
DATED this 18<sup>th</sup> day of May, 2005.

Chief Justice









Justices

ORIGINAL

Daniel J. Shea  
Appearing Pro Se  
800 Broadway  
Helena, Mont. 59601

BEFORE THE COMMISSION ON PRACTICE OF THE SUPREME  
COURT OF THE STATE OF MONTANA

IN THE MATTER OF DANIEL J. SHEA )  
a Suspended Attorney at Law, )

Supreme Court Cause  
No. 05--606

Respondent )

ODC No.

FILED

JUN 09 2006

Ed Smith  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

SHEA'S REPLY BRIEF TO SHEA'S MOTION TO RECONSIDER  
BLANKET ORDER FILED ON MAY 8, 2006, WHICH, WITHOUT  
EXPLANATION, DENIED ALL, OR ATTEMPTED TO DENY ALL OF  
SHEA'S PENDING MOTIONS.

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PART I. INTRODUCTION--SCOPE OF SHEA'S REPLY BRIEF

The reply brief of the D/C, without saying anything else, asks the COP to deny Shea's motion on the ground that Shea's motions have no basis in law or in fact and have already been ruled upon. And yet this case gets deeper and deeper and murkier and murkier. The approach of the COP leadership of the inner circle, can be summed up as follows:

Cover up as much as possible by saying as little as possible, and above all, admit to nothing. Stonewall all the way. Who, in the public, will know the difference? Remember, these are secret proceedings. We can do what we like. The people be damned. We are officers and agents of the Montana Supreme Court. We are protected by a grant of immunity emanating from the Supreme Court itself. In short, we are not governed by the law. We are the law.

Recently, Shea has filed an extensive brief in response to the motion of the D/C to seal records so that the people of Montana will be denied access to the real way in which the COP and D/C conduct the business of he Supreme Court as its disciplinary arm. Shea's brief sets out without doubt that the former D/C was guilty

of massive deceit and fraud in obtaining a dismissal of Shea's complaint filed against Engel. And there can be no doubt that the COP itself was complicity involved with this massive misconduct. **There was, let us say, a joint venture between the COP and the D/C.**

And now Shea files here another branch of the massive deceit and fraud of former D/C Strauch in relation to his so called Investigative Report submitted to a five member review panel with the objective of obtaining a charge against Shea. This misconduct could not have been accomplished unless the COP itself was complicity involved with the misconduct of the ODC under Strauch, and also actively engaged in misconduct.

Shea files here an analysis of the so called Investigative Report which former D/C Strauch provided to a five member review panel on or about July 29, 2005. Based on this report, Strauch obtained authorization to file a charge against Shea for the unauthorized practice of law. Shea reminds the COP membership that it was chairman Warren who appointed the review panel involved. And further, two of those lawyer members also sat on the review panel which had illegally dismissed the complaint which Shea had filed against Engel.

What Shea files here establishes that not only was there huge misconduct on the part of former D/C Strauch, but also that this misconduct would not have occurred unless the COP members, or at least certain COP members were complicity involved with the misconduct. In essence, there was a cross-organizational conspiracy. This case clearly establishes that there is no real independence between the two Supreme Court created entities: And when the COP and ODC conspire together, the result can only be harm to the cause of justice. The Supreme Court has created a monster.

There is absolutely no way that Shea could ever have a fair hearing or fair decisions and rulings as long as John Warren remains as chairman of the adjudicatory panel and as long as he remains a member of the adjudicatory panel. Further, there is absolutely no way that Shea could ever have a fair hearing or fair

decisions as long as Vice Chairman Gary Davis remains as a member of the adjudicatory panel. Nor is there any way that Shea could ever have a fair hearing or fair rulings and decisions long as Helena lawyer Michael Lamb remains on the adjudicatory. The cards were stacked by Chairman in relation to the two review panels who considered matters relating to Shea, and the cards are now stacked on the membership of the adjudicatory panel. And it was Chairman Warren, in concert with Vice Chairman Davis, who did the stacking. And it is clear that Shea was and is the intended victim of the panel stacking.

It is abundantly clear that the COP is an autocratic and authoritarian entity, run almost entirely by Chairman Warren and Vice chairman Davis. The decisions are made by Warren and Davis. Further, it cannot be doubted that Warren and Davis do not supply the other COP members with copies of the filings made in cases in which COP members sit on adjudicatory panels. In other words, all decisions preceding an actual hearing, are made by Warren, or Warren and Davis, and the other members have little or no say. They in fact are kept pretty much in the dark as to what is going on. The members of COP are told only what Warren and Davis want to tell them. No more and no less. At bottom it is the secret nature of the Commission on Practice which allows these shameful and shameless practices to continue and flourish, all in the name of justice.

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**PART II. THE DISCIPLINARY COUNSEL STRAUCH FAILED TO PROVIDE THE REVIEW PANEL WITH THE REQUIRED DOCUMENTS BY WHICH IT WAS REQUIRED TO EXAMINE BEFORE MAKING A DECISION. AND THE REVIEW PANEL FAILED IN ITS DUTIES TO EXAMINE THE MATERIAL BEFORE MAKING A DECISION. THESE FAILURES WERE THE RESULT OF A CROSS-ORGANIZATIONAL CONSPIRACY BETWEEN STRAUCH AND THOSE IN CONTROL OF THE REVIEW PANEL.**

Shea emphasizes once again that former D/C Strauch failed to provide the review panel with the actual complaint filed by district Judge Sherlock; he failed to provide the review panel with

the 31 page affidavit filed by Shea which formed the basis of Sherlock's complaint; he failed to provide the review panel with Shea's response to Sherlock's complaint; and he failed to provide the review panel with Sherlock's reply. \*

\*Please note that former D/C Strauch was guilty of the same kind of omissions and violations when he obtained a dismissal of the complaint which Shea had filed against Engel. Strauch did not provide the necessary materials to the review panel. And of course, it is obvious the review panel did not ask for them.

These documents were in the control of the D/C. It was his duty to provide them to the review panel. D/C Strauch deliberately chose not to do so. And even more sadly, the review panel violated its own duty to review these documents before making a decision on any investigative report and recommendation; made by D/C Strauch. Membership on the review panel consisted of three lawyers and two nonlawyers: The lawyers were Carey Matovich; Tracy Axelberg; and Jon Oldenberg. The nonlawyers were Arthur Noonan and Patricia DeVries. These failures lead to the inevitable conclusion that a cross-organizational conspiracy existed between the COP and the D/C.

As a result of the misconduct of both the D/C and the Review Panel, the only document before the review panel was a fraudulent investigative report prepared by former D/C Strauch. In summary, the investigative report was rigged. It was fraudulent. And it was done with the full cooperation of the Commission, or at least those who actually control the internal operations of the Commission. Without doubt, a conspiratorial cross organizational cabal existed between the Commission and the ODC.

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**Part III--A: IN HIS INVESTIGATIVE REPORT TO THE REVIEW PANEL D/C STRAUCH DELIBERATELY OMITTED CERTAIN DISTRICT COURT FILINGS WHICH WERE MADE IN RELATION TO ENGEL'S MOTIONS FOR SUMMARY JUDGMENT, ETC. THIS IS DECEIT BY OMISSION. THIS IS FRAUD BY OMISSION.**

Shea adopts and incorporates by reference, the entire District

Court register for BDV 95-018. He filed this register on April 25, 2006 as part of his supplementation of the record. For references here, Shea specifically adopts and incorporates by references pages 42-46 of that register. This register establishes beyond doubt that D/C Strauch omitted several very important filings with relation to Engel's petition to foreclose on an attorney's lien filed on January 28, 2004.

Shea sets out here also several false and misleading statements made by D/C Strauch in his so-called Investigative Report to the Review Panel.

1. Concerning the Alterowitz motion to dismiss filed on February 25, 2004, D/C Strauch states that Alterowitz moved to dismiss "suggesting that Shea might be a party pursuant to Rule 19, Rules of Civil Procedure." (Page 2 paragraph F).

**1-a: Shea's comment:** The motion to dismiss was based on the claim that Engel was required as a matter of law to join Shea as a party and had failed to do so. The motion and brief specifically pointed out that Engel's petition to foreclose on an attorney's lien was seeking relief against Shea. D/C Strauch deliberately changed the nature of the motion filed by the Alterowitz law firm by using the term "might". This is deceit. The D/C intended to deceive the review panel.

2. The D/C stated that the district judge (Sherlock) ruled on this motion on March 2, 2004 and denied the motion to dismiss and ruled that Shea could not be joined as a party.

**2-a: Shea's Comment:** The D/C, of course, omitted the fact that the district judge received Engel's brief in the mail on March 2, 2004, and before the ink was dry on Engel's brief, ruled in Engel's favor. The D/C also failed to mention that in ruling sua sponte the district judge failed to allow Alterowitz the right to file a reply brief. This right is required by district court rules. This is but another example of the misconduct of district judge Sherlock.

3. D/C Strauch then purports to set out the various filings starting with **March 3, 2004**, (Engel's motion to partially foreclose) and ending with **April 15, 2004** (Engel's Reply brief on his combined motions (including a motion for summary judgment). (Page 3, Paragraph A of report to review panel)

**3-a: Shea's comment:** D/C Strauch fails to set out many more filings by the parties which took place during this time

bracket. Among many other items, one of those items was an affidavit of Marcia Dias, prepared by the Alterowitz law firm and filed on April 7, 2004. See District Court Register, pages 43-44 Items 629 through 658; the affidavit is listed on page 44 as item 651.)

4. The next paragraph of D/C Strauch/s report to the review panel, jumps from April 15, 2004 to July 12, 2004. (Page 3, paragraph B) In this paragraph D/C Strauch proceeded to set out his analysis of the July 12, 2004 order granting summary judgment to Engel.

**4-a. Shea's Comment:** D/C/s Strauch's jump from April 15, 2004 to July 12, 2004, skipped several important filings, Items 660 through 666. These included the following:

**No. 660. April 19, 2004.** Notice of deposition of Daniel J. Shea April 19, 2004 [to be taken by Alterowitz for Dias]

**No. 661 April 20, 2004.** Notice of Issue (Fax: Joseph C. Engel III)

**No. 662 April 20, 2004.** Motion to Continue and Brief in Support (Filed by Alterowitz for Dias)

**No. 663. April 20, 2004 Order.** The Court's scheduling order is canceled in its entirety. No further discovery shall take place until the court rules on the pending motions. A hearing on the pending motions is set for 5/18, 2004 at 9:00 AM.

**No. 664. May 13, 2004.** Supplemental Affidavit of Marcia Dias, Plaintiff. (Prepared and filed by Alterowitz law firm)

**No. 665. May 18, 2004.** Minute Entry (5/18/2004) Hearing on combined motions held. The Court deemed the matter submitted.

**No. 665.5 June 14, 2004.** Advice to Court of Pertinent Legal authority-Petitioner. [Note: The case register shows this document was not filed until August 2, 2004.]

**No. 665. July 12, 2004.** Order-Engel's Motion for Summary Judgment is granted. Engel's petition to foreclose on attorney lien is granted. Engel's motion to withdraw prior motion to partially foreclose on attorney lien is granted. Dias' counterclaims are dismissed. Darlene Wagner's motion to intervene is denied. **Engel is directed to prepare a judgment in conformity.** (Emphasis added)

Without doubt, former D/C Strauch prepared his investigative report with the intent of omitting certain important filings and proceedings. Why did D/C Strauch omit these proceedings from his listing of docket entries? As a result of these omissions, certain more specific questions arise:

Why did he omit the docket entry on **April 20, 2004** which set a hearing for **May 18, 2004** on Engel's motion for summary judgment? The D/C knew why he omitted this entry.

And why did the D/C omit a reference to the supplemental affidavit of Dias filed on **May 13, 2004** in opposition to Engel's motion for summary judgment? The D/C knew why he omitted this entry.

And why did the D/C omit a reference to the docket entry for **May 18, 2004**, showing that a hearing did take place on that date and that the court deemed the matter submitted. The D/C knew the reason. D/C Strauch knew that a transcript of that proceeding was either available or that he could obtain one. But he chose to ignore the fact that there had even been a hearing. And the D/C preferred to leave the impression that the matter had been submitted after Engel filed his combined brief on April 15, 2004.

\*\*\*\*\*

**Part III--B: The D/C DELIBERATELY OMITTED THE DIAS AFFIDAVITS FROM HIS REPORT RELATING TO THE GRANT OF SUMMARY JUDGMENT BY DISTRICT JUDGE SHERLOCK.**

In his report to the review panel, the D/C deliberately omitted the affidavits filed by Marcia Dias setting forth certain factual and legal issues that had to be decided. As stated above, Dias filed affidavits on April 7, 2004 and a supplemental affidavit on May 13, 2004. They were filed in opposition to Engel's motion for summary judgment. And, as set forth above, D/C Strauch deliberately omitted from his report the docket entries showing that an order was issued for a hearing on Engel's motion for summary judgment, and that there was a hearing on May 18, 2004, at which time the matter was deemed submitted.

Instead, Strauch's report was intended to leave the impression that the last filing before the issuance of the summary judgment ruling on July 12, 2004, was Engel's combined brief filed on April

15, 2004. This is deceit. The D/C intended to deceive the review panel. D/C Strauch conveniently left out all that took place between April 15, 2004 and July 12, 2004

Based on his deceitful omissions, D/C Strauch then proceeded to give his special spin to the summary judgment order entered on July 12, 2004. Strauch did not have to deal with the embarrassing baggage what had been filed between April 15, 2004 and July 12, 2004. By omitting these important filings, Strauch was then able to give his glowing support to the summary judgment order entered on July 12, 2004.

The most important evidence he did not have to deal with was the affidavit of Dias filed on May 13, 2004. She set out several factual and legal issues in opposition to Engel's motion for summary judgment.

In his summary judgment order district judge Sherlock corruptly swept all of these issues under his judicial rug and did not even mention them in his order. And then Strauch, in his report to the review panel, took the same approach, giving a glowing report of the propriety of the summary judgment order in favor of Engel. Further, D/C Strauch did not mention any details of the fraud which Engel committed in the judgment, or the fact that the ex parte submissions by Engel to the judge led to Engel's immediate execution on the judgment funds and the virtual decapitation of Dias' right of appeal.

In his so-called Investigative Report (page 3, paragraph B) D/C Strauch proceeded with his tainted analysis of the summary judgment order and gave, let us say, a thumbs up to the district judge. The D/C did exactly what the district judge did: The D/C swept the Dias affidavit (prepared by the Alterowitz law firm) under his Disciplinary Counsel rug.

\*\*\* The district judge swept several issues under his judicial rug in granting summary judgment to Engel;

\*\*\* And D/C Strauch, desirous of making his analysis go hand in hand with that of the district judge, also swept several issues under his Disciplinary Counsel rug when he

provided his report to the review panel. He did not reveal to the panel the issues which had been raised by Dias in her affidavit.

Further, in his investigative report, D/C Strauch referred to a Montana Supreme Court order issued on May 18, 2005, which dismissed Shea's appeal. Of course, as the victim of this dismissal order, Shea is very much aware that it was a fraudulent order having no basis in fact or in law. Rather, it was entered as part of the Suupreme Court's contribution to justice Montana style by covering up the horrendous judicial wrongdoing of district judge Sherlock. If the Court had not dismissed Shea's apepal it would have been confronted face tofce with the horredous judicial miscojnduct of of district jude Sherlock. So it was easier to sacrificie the rights of a litigant and dismiss the appeal.

Nonetheless, if D/C Strauch had bothered to examine the appendixes which Shea had filed in opposing Engel's motion to dismiss, he would have found a transcript of the May 18, 2004 summary judgment hearing. This transcript is quite revealing, to say he least.

Shea incorporates and adopts by reference the Dias affidavits that were filed in opposition to the Engel motion for summary judgment. They are set forth as part of Shea's March 14, 2006 filings in his **Appendix**, as **Exhibits 19 and 20**. Shea also adopts and incorporates by reference his brief filed on May 30, 2006, opposing the motion of D/C Thompson to seal the records. The contents of the Dias affidavit filed on May 13, 2004, are discussed at length in Shea's brief.

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**PART V.**

**SINCE FORMER D/C STRAUCH DID NOT PRESENT THE CONTENTS OF SHEA'S AFFIDAVIT IN HIS INVESTIGATIVE REPORT TO THE REVIEW PANEL, AND DID NOT PROVIDE THE REVIEW PANEL WITH A COPY OF SHEA'S AFFIDAVIT, WHAT WAS THE D/C ATTEMPTING TO HIDE FROM THE REVIEW PANEL? WHY DIDN'T THE DISCIPLINARY COUNSEL SET FORTH THE HORRENDOUS MISCONDUCT OF DISTRICT JUDGE SHERLOCK?**

Shea has filed a copy of his affidavit with his motions, brief

and appendix filed on March 14, 2004. Shea adopts and incorporates by reference his affidavit filed as one of the documents in the Appendix--Exhibit 13.

The complaint filed by district judge Sherlock against Shea alleged that Shea was engaged in the unauthorized practice of law by representing or attempting to represent Dias. He included with his complaint, a copy of Shea's 31 page affidavit filed on October 13, 2004. The filings with the D/C after this complaint included Shea's response to the district judge, and the district judge's reply to Shea's response. Shea does not have a copy of the district judge's reply.

The review panel met on July 29, 2005, just two days before two days before Strauch left his position as D/C to take a legal position with the Alterowitz law firm in Missoula. Presumably Strauch provided the review panel with a copy of his report. This report did not inform the panel of the contents of Shea's affidavit. Nonetheless, based on the conclusions of D/C Strauch and his recommendation, the review panel authorized a complaint to be filed against Shea charging him with the unauthorized practice of law.

Two of the five members on the review panel (Matovich and Axelberg) had been members of the review panel which dismissed Shea's complaint that he had filed against Engel. (Shea adopts by reference and incorporates here his entire brief filed on May 30, 2006, in which he sets out in detail the fraud perpetrated by D/C Strauch in his Investigative Report submitted to the review panel which dismissed Shea's complaint against Engel.

Shea's affidavit was quite explicit in setting out the fraud which Engel committed in the judgment, and the horrendous misconduct of district judge Sherlock which enabled Engel to execute on his ill-begotten judgment, and thereby effectively decapitate the right of Dias to appeal.

So, the fact is that even though D/C Strauch recommended that a charge be filed based on Shea's 31 page affidavit filed on October 13, 2004, he never did inform the review panel of the

contents of this affidavit. Such are the strange ways of the ODC and the Commission on Practice.

THE BACKGROUND LEADING TO THE FILING BY SHEA OF HIS  
31 PAGE AFFIDAVIT ON OCTOBER 13, 2004.

By the time Shea filed his affidavit in district court all the damage by Engel and by the district judge. The district court judge had granted summary judgment to Engel by finessing all the issues and sweeping them under his judicial rug. The judge declared Engel the prevailing party and directed him to prepare the judgment in conformity with the summary judgment order. Engel then proceeded to prepare and submit fraudulent judgment to the district judge. Without blinking an eye, or at least turning a blind eye, the district judge signed the judgment.

Then, as part of post judgment proceedings, Engel made his ex parte submissions, which included a writ of execution and an order denying an application by Dias' counsel (the Alterowitz law firm) for a stay pending appeal. The judge signed Engel's ex parte order, the clerk of court issued the writ of execution, and Engel then illegally executed on the Helena bank accounts electronically from Cascade County. Further, beyond the fraudulent judgment itself, it is quite possible tht Engel obtained even more from his execution than was named in the writ of execution.

Of course, anyone familiar with the law knows that ex parte communications do not corrupt justice unless the receiving party acts to complete the purpose of the ex parte communications. Until the receiving person **receives and acts** on the ex parte communication, communication constitutes an illegal attempt at influence. But Engel had chosen his recipient well. District judge Sherlock proved ready, willing, and most certainly able to exercise his awesome judicial power to help Engel. And, of course, he did. Therefore, at the time Shea decided he must file a motion to intervene, Engel had already worked his ex parte influence with district jude Sherlock. Shea filed his motion to intervene when he

learned that Dias had decided not to appeal because Engel had already executed on the judgment funds. One of the issues on appeal stated in the notice of appeal was the refusal of the district judge to join Shea as a party defendant. But since Engel had already gotten the judgment money by his illegal execution procedures, it would be useless to appeal. Engel had already executed on his ill-begotten judgment, and to later obtain a reversal and a judgment against Engel would be an exercise in futility. Engel prevailed, and district judge Sherlock was the means and the power by which Engel prevailed. .

Shea's affidavit was 31 pages long. Shea filed this affidavit because in previous filings Shea had set out certain allegation of fraud committed by Engel. Shea knew it was important to file an affidavit to memorialize the ways in which Engel had committed fraud in his judgment against his former client. Shea also believed it was the only chance to let justice intervene before it was too late. But justice refused to intervene. The reason: the district judge was Sherlock.

Shea's purpose in preparing and executing the affidavit was to methodically out and memorialize how Engel had committed the fraud in the judgment. Shea here summarizes the various parts of his affidavit setting out the various items on which Engel committed fraud in the judgment.

**A SUMMARY OF THE CONTENTS OF SHEA'S 31 PAGE AFFIDAVIT  
FILED ON OCTOBER 13, 2004.**

\*\*\* Pages 1-3 Shea set out a summary of the horrible misconduct of Engel in moving against his client to take financial advantage of her in every way possible. This included, of course, his illegally obtaining an order denying a motion for stay of execution which allowed Engel to immediately execute on the judgment based on documents he had already provided ex parte to the clerk of court in preparation for the court issuing the go ahead order by denying the motion for a stay.

Shea also stressed that if the Court did not take action to stop Engel in his tracks there would be little Shea could ever do to obtain payment from Engel. Moreover, Engel would get away with the fraud he had committed against his former client. Shea stressed what Engel had done to his client after

the Supreme Court decision and that Engel had literally turned into a monster.

And in the last paragraph of this affidavit, Shea stressed the absolute need of the district court to take action against Engel. Of course, the court was not about to do anything. The court had actively engaged in illegal and reprehensible judicial misconduct in turning a blind eye to Engel's fraud. The result is that Engel was able to financially harm his former client and the judge refused to do anything about it. But for the illegal conduct of district judge Sherlock, it could not have happened.

**CONCERNING THE FRAUD COMMITTED BY ENGEL IN THE JUDGMENT TO INCREASE THE AMOUNT OF THE JUDGMENT AT THE EXPENSE OF HIS FORMER CLIENT, SHEA'S AFFIDAVIT COVERED THE FOLLOWING AREAS IN WHICH INCREASED HIS TAKE.**

\*\*\*In Part I (pages 4-7) Shea set out the details of how Engel did not prepare the judgment in conformity with the summary judgment order. This had the effect of increasing Engel's judgment because Engel started his calculations with a larger total figure than that allowed by the judge's order.

\*\*\*In Part II, (pages 8-11) Shea set out how Engel had illegally obtained at least an extra \$2,925.00 by claiming at least one half of the statutory fees awarded at trial. (The entire amount of statutory fees at trial should have gone to Engel's client.) This had the effect of increasing Engel's judgment.

\*\*\*In Part III (pages 11-19) Shea set out the process and procedures by which Engel illegally obtained prejudgment interest on the award of attorney's fees based on his foreclosure action. This had the effect of increasing Engel's judgment.

\*\*\* In part IV (pages 20-27) Shea set out how Engel had illegally and fraudulently switched expenses to claim as his own the costs awarded at trial and awarded on appeal, which had already been incorporated into the judgment. Engel had not in fact paid most of these costs. His client did. Shea explained how this process also had the effect of increasing Engel's judgment.

\*\*\* In Part V (pages 28-29) Shea set out how Engel had improperly claimed the expert witness fees on statutory fees as part of his own judgment. This had the effect of increasing Engel's judgment.

\*\*\* In Part VI, (pages 28-29 ) Shea set out the fraudulent additional expenses which Engel claimed based on expert witness costs. This had the effect of increasing Engel's judgment.

\*\*\* In Part VII (pages 29-30) Shea set out Engel's fraud in claiming and receiving his costs for taking the deposition of Eric Rasmusson.

Although Shea does not have precise figures, it is fair to assume that based on Engel's fraud, he added anywhere from \$15,000 to \$20,000 additional to the judgment. Another problem is that Engel has never filed a return on his writ of execution, and so it is impossible to determine how much Engel obtained from the two bank accounts. Shea does not have access to this information.

Despite this affidavit, the district judge refused to do anything. And, realistically, Shea was probably wrong in thinking that Sherlock would do anything. After all, it was Sherlock who illegally granted summary judgment to Engel by sweeping he issues under his judicial rug so they didnot ave to be discussed in his summary judgment order. It was Sherlock who signed the fraudulent judgment submitted to him by Engel without batting an eye. And it was Sherlock who decapitated the right of Dias to appeal by allowing Engel to immediately execute by signing the ex parte order submitted to him by Engel. So, hope most certainly did not spring eternal in this case.

Nowhere in his investigative report to the review panel did D/C Strauch describe the contents of Shea's affidavit. In his investigative report to the review panel, the D/C completely whitewashed the horrendous misconduct of Engel and the district judge.

Shea next proceeds to the failure of D/C Strauch to provide a copy of Shea's response to the review panel. And on top of this failure, the D/C failed to set out in his investigative report a fair summary of Shea's response to the Sherlock complaint. And for good reason, an honest report would have disclosed the horrendous misconduct of both Engel and district judge Sherlock.

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PART V.

SINCE FORMER D/C STRAUCH DID NOT PRESENT THE CONTENTS OF SHEA'S RESPONSE TO HE SHERLOCK COMPLAINT IN HIS INVESTIGATIVE REPORT TO THE REVIEW PANEL, AND DID NOT PROVIDE THE REVIEW PANEL WITH A COPY OF SHEA'S RESPONSE, WHAT WAS THE D/C ATTEMPTING TO HIDE FROM THE REVIEW PANEL? WHY DIDN'T THE DISCIPLINARY COUNSEL SET FORTH THE HORRENDOUS MISCONDUCT OF DISTRICT JUDGE SHERLOCK AS WELL AS THE HORRENDOUS MISCONDUCT OF ENGEL? WHO WAS THE D/C TRYING TO PROTECT?.

Shea's response to the D/C in relation to the complaint of district judge Sherlock, is set forth as part of Shea's Motions, brief and Appendix filed on March 14, 2006. See Appendix, Exhibit 4. By reference, Shea adopts and incorporates here his entire response.

The D/C deliberately failed to provide a copy of Shea's response to the review panel. This of course is a violation of the D/C's duties and a violation of the duties of the review panel. And, as set forth in PART III, the D/C failed to provide a copy of Shea's affidavit to the review panel and the review panel failed to obtain a copy. This, also is a violation of the D/C's duties and a violation of the duties of the review panel.

And so what did the D/C investigative report say concerning Shea's response? He is very, very selective about what he refers to in Shea's response, and even then takes the response out of context and gives it the special spin in an overall mission to cover up the wrongdoing of district judge Sherlock, of attorney Engel, and even of the clerk of court.

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**PART V--A: BASED ON HIS SO-CALLED INVESTIGATIVE REPORT PROVIDED TO THE ILLEGALLY COMPOSED REVIEW PANEL, WHAT DID THE FORMER D/C STRAUCH RECOMMEND IN RELATION TO THE COMPLAINT OF DISTRICT JUDGE SHERLOCK FILED AGIASNT SHEA?**

The conclusions and recommendation of D/C Strauch's so-called investigative report, are conained on page 6, paragraphs A,B, and C.

First, D/C Strauch concludes that the facts warrant disciplinary action against Shea based on MRPC 5.5. Strauch

declares:

The facts appear to warrant disciplinary action under MRPC 5.5. It appears that Shea practiced law while he was suspended. (Page 6, paragraph A).

Second, D/C Strauch concludes that the evidence to support the charge is contained in **Shea's affidavit dated October 12, 2004.** Strauch concludes that Shea was attempting to advance the interests of Dias. Strauch declares:

As summarized above Shea filed numerous motions and briefs in the Dias matter ostensibly on his own behalf. **However, from a review of Shea's October 12, 2004, affidavit, it is clear that Shea is attempting to advance the interests of Dias in this case, in addition to his own interests. (Emphasis added) (Page 6, paragraph A). (See Shea's comments, infra, in Part IV--B.)**

Third, D/C Strauch based his conclusion on his assumption that after attorney Alterowitz ( counsel for Dias) withdrew from the case) that Shea was then took over representing the interests of Dias. Strauch concludes:

In addition to trying to collect his own fee, he attempted to argue ( on behalf of Dias after Alterowitz withdrew) that Engel was not entitled to Engel's fee. He attempted to move for a hearing, but the court refused. (Page 6, paragraph A) **(See Shea's comments infra, in Part IV-B)**

Fourth, Strauch then states why he believed that this constituted the unauthorized practice of law:

By attempting to advance the interests of another in a court proceeding, Shea was performing services usually performed by an attorney. The fact that he did not enter an appearance for Dias is not dispositive. As noted by the Court [district judge Sherlock] in its November 4, 2004 Order, 'Indeed, Shea seems to be setting forth Dias' complaint against Engel which would appear to put Shea in a position to be acting as Dias's attorney and not as the pro se litigant that he purports to be.' **( See Shea's comments below in Part IV-B)**

Concerning his so-called investigation as to whether or not Shea was in violation of Rule 5.4 MRPC, (the rule relating to fee sharing between a lawyer and nonlawyer) D/C Strauch declares:

The facts do not appear to warrant disciplinary action under MRPC 5.4. Clearly, Shea, as a suspended lawyer, is prohibited from entering into an illegal fee split with Engel. The

evidence indicates Engel continued to reject Shea's offer to split his attorney fees in this case, and ultimately the court Dias as well. Shea received no fees so there was no fee split. (Page 6, paragraph B) ( See Shea's comments, infra, Part IV B).

And what was the concluding recommendation of D/C Strauch as to any charge to be filed against Shea? Strauch stated:

ODC recommends that the Review Panel request ODC to prepare and file a formal complaint against Mr. Shea pursuant to RLDE 11(5), for the reasons stated above. (Page 6, paragraph C)

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**PART V B. SHEA'S COMMENTS ON THE CONCLUSIONS REACHED BY D/C STRAUCH CONAINED IN HIS SO-CALLED INVESTIGATIVE REPORT TO THE ILLEGALLY CONSTITUTED REVIEW PANEL**

**PART V B (1) IF D/C STRAUCH HAD PROVIDED SHEA'S AFFIDAVIT TO THE REVIEW PANEL, AND IF D/C STRAUCH HAD PROVIDED SHEA'S RESPONSE TO SHERLOCK'S COMPLAINT TO THE REVIEW PANEL, THE REVIEW PANEL WOULD HAVE HAD BEFORE IT**

**EVIDENCE THAT ENGEL COMMITTED FRAUD IN THE JUDGMENT AND THAT THE DISTRICT JUDGE FACILITATED THAT FRAUD. THIS FRAUD ENDED WITH THE JUDGE'S FINAL SOLUTION AIMED AT LETTING ENGEL GET AWAY WITH HIS FRAUD: BY GRANTING AN EX PARTE APPLICATION OF ENGEL, THE JUDGE DECAPITATED THE RIGHT OF DIAS TO AN APPEAL, AND THEREBY ASSURED THT ENGEL WOULD**

**EFFECTIVE  
KEEP HIS**

**FRAUDULENTLY OBTAINED MONEY. BY ALLOWING ENGEL TO EXECUTE ENGEL HAD ALREADY OBTAINED THE RESULTS OF HIS FRAUDULENT CONDUCT AND EX PARTE COMMUNICATIONS WITH THE DISTRICT JUDGE.**

D/C Strauch hid the real facts from the review panel as to the contents of Shea's affidavit. He told the panel that Shea was attempting to prevent Engel from collecting his fee from Dias. This is deceit. This is fraud. This is corruption.

In fact, Shea's affidavit was filed to show that Engel, with the help of district judge Sherlock, had committed fraud in the judgment he obtained against his former client. By this fraud, Engel collected at least another \$15,000 to which he was not entitled.

But of course, the D/C was not interested in the fraud of an attorney if that fraud also implicates a district judge who enabled and facilitated the fraud to take place. In other words, do not prosecute the attorney if in doing so it will also expose the horrendous wrongdoing of a judge. This appears to be an unwritten rule existing within the power structure of those who really control the legal establishment at all levels.

Furthermore, Shea's affidavit and further filings in district court set out the horrendous wrongdoing of district judge Sherlock. Why didn't the D/C provide this information to the review panel? To ask the question is to answer it. The only reasonable answer can be that D/C was attempting to cover up the wrongdoing of the district judge. And he could do so only by also covering up the wrongdoing of the attorney who benefitted from the wrongdoing of the judge. Such are the ways of justice currently extant in Montana:

Shea's affidavit and additional filings established the horrible wrongdoing of district judge Sherlock. And Shea's response filed with the ODC, the Commission on Unauthorized Practice of Law, and with State Bar counsel Betsy Brandborg, also set forth this wrongdoing. But ever so conveniently, D/C Strauch decided it was best not to provide the review panel with a copy of Shea's response, even though the rules require the review panel to read the response.

And it is also the reason that D/C Strauch did not provide a copy of Shea's response to the Sherlock complaint to the review panel. In his response, Shea set out horrendous wrongdoing of Engel as well as the district judge. And the D/C did not want the review panel to have that information.

Such are the ways of justice within the Commission on Practice and the Office of Disciplinary Counsel.

\*\*\*\*\*

PART V--B (2) HOW, IN HIS SO CALLED INVESTIGATIVE REPORT TO THE REVIEW PANEL, DID D/C STRAUCH COVER SHEA'S RESPONSE TO THE COMPLAINT OF DISTRICT JUDGE SHERLOCK?

These were indeed strange proceedings in relation to the review panel. They followed the same pattern that D/C Strauch used in his conspiratorial approach to obtaining a dismissal of the complaint which Shea had filed against Engel. The rules require that the review panels read the following: the complaint filed by the complaining party; the response filed by the accused; the reply filed by the complaining party; and all of the documentary evidence supplied to support the complaint or the response. The D/C did not provide this information to the review panel. Nor did the review panel obtain them.

So the result is that all the review panel had to go on is what was contained in the so-called investigative report filed by D/C Strauch. What did the D/C tell review panel about the nature of Shea's response? Well, for the most part he lied. He deceived the review panel as to the contents of Shea's response.

Shea's response to the complaint of district judge Sherlock was 12 pages long. But D/C Strauch summed up the final eight pages in his report to the review panel by stating:

ODC reviewed the remaining eight pages of Shea's response, noting that **most of it is a diatribe of outrageous allegations against Sherlock, the Lewis and Clark Clerk of Court, and, of course, Engel.** ODC does not believe a majority of Shea's responses needs to be analyzed, since it is very clear that Shea is simply trying to use the judicial system in an attempt to force Engel to share with Shea some of the attorney fees Engel was forced to obtain from Dias via execution on a judgment. (Page 5 Paragraph C of Strauch's so-called investigative report (Emphasis added))

By this simple device of attacking Shea and of attacking Dias, the D/C covered up all the evil wrongdoing of both district judge Sherlock (that great example of the highest judicial rectitude to which all judges should aspire), of attorney Engel, and yes, also of the clerk of court. In other words, D/C Strauch relieved himself of the duty to provide a copy of Shea's response to the panel by telling the panel that it consisted of nothing but a diatribe of outrageous allegations.

Because D/C Strauch chose to characterize the last eight pages

of Shea's response as a "diatribe of outrageous allegations" directed against district judge Sherlock, attorney Engel, and the clerk of court, as not worthy of mention, Shea feels it would be helpful to set out here the substance of his allegations--which are supported by the district court record. This is the material which the D/C in his passion for justice, did not want the panel to read.

Shea summarizes here the last nine pages (pages 4-12) of his response to the judge Sherlock complaint:

Summary of page 4:

\*\*\* Shea stated that Engel had committed fraud in the judgment and that the district court was not interested in Engel's fraud;

\*\*\* Shea stated that his affidavit and pleadings set out the nature and extent of Engel's fraud;

\*\*\* Shea stated that the fraud Engel worked against his client was also relevant to the fraud he worked against Shea, all occurring in one case.

Summary of page 5:

\*\*\* Shea stated that the district judge led the way for Engel to work his fraud against his client and against Shea, and then decapitated the right of Dias to an effective appeal by signing an ex parte order allowing Engel to immediately execute on the judgment funds;

\*\*\* Shea stated that the ruling of the district judge had "permanently damaged and probably destroyed any reasonable chances of either Dias or myself recovering from Engel":

\*\*\* Shea stated that he was "unaware of any worse abuse of judicial power in the history of the district courts of the State of Montana":

\*\*\* Shea stated that his filings in district court established how district judge Sherlock had finessed the summary judgment order in favor of Engel.

Summary of page 6:

\*\*\* Shea set forth how Engel's ex parte machinations with the clerk of court and district judge Sherlock had allowed Engel to execute on the judgment;

\*\*\* Shea set forth how the clerk of court was involved by assuring

the writ of execution, by not retaining a copy of the writ, and then by not requiring Engel to file a return on his writ of execution, and that to this date Engel had not filed a satisfaction of judgment;

\*\*\*Shea stated that the district court had ignored Shea's request to order Engel to file a return on the writ of execution;

\*\*\*Shea stated that however unethical the actions of Engel were, the unethical actions of the district judge were even worse because they brought Engel's unethical conduct to fruition, that is, without the help of district judge Sherlock, Engel's unethical conduct would have accomplished nothing.

#### Summary of page 7

\*\*\*Shea stated how the unethical and corrupt actions of district judge Sherlock affected not only the rights of Dias, they also affected the rights of Shea;

\*\*\*Shea stated that an examination of all the documents on file would indeed reveal that Engel committed fraud in the judgment and that "district judge Sherlock used his awesome judicial powers to protect Engel rather than to take action against Engel's fraud. Such are the ways of injustice from the mighty pen of district judge Sherlock."

\*\*\*Shea stated he had not been involved in this case as the representative of Dias, and explained his involvement in the case when Sisler and Rasmusson were on the case, and then Engel.

#### Summary of page 8

\*\*\*Shea explained his involvement with this case from the very beginning;

\*\*\*Shea stated that he provided services to Sisler, to Rasmusson, and to Engel;

\*\*\*Shea stated that all the work he did on this case while he was involved with it while working for Engel, are set forth in a 42 page letter to attorney Gustafson, copies of which were on file with the ODC and the State Bar of Montana;

\*\*\*Shea stated that after the Supreme Court decision in December of 2003 [2002], the judgment to be entered in for of Dias became a **stalking fund for predatory attorneys**--namely, Matthew Sisler and Joseph C. Engel III.

#### Summary of page 9:

\*\*\*Shea stated that as to the lien claim of Sisler, Engel was not truly loyal to the cause of Dias;

\*\*\* Shea stated that Engel was also trying to put the financial screws to his own client, Dias, and to Shea, and that Engel had falsely accused Dias and Shea of deceit in relation to the Sisler lien claim, and that the details could be found in Shea's letter to Gustafson;

\*\*\*Shea stated tht he was placed in a dilemma because Dias refused to discharge Engel even though she knew he was trying to put the financial screw to her, and therefore that Shea tried to develop a written record of Engel's unethical conduct in relation to Dias;

\*\*\*Shea stated that he had a dilemma as to the Sisler lien claim because Sisler was also a predator and therefore Shea provided information to Engel in relation to defense against the Sisler lien claim;

\*\*\*Shea stated that unethical conduct of district Judge Sherlock revealed itself as to the Sisler lien claim. The judge, among other things, allowed Sisler's so-called expert witness on attorney fees to testify without requiring him to be sworn as a witness, and that there was much more to this sad, sordid story.

Summary of page 10:

\*\*\*Shea stated that another example of the unethical conduct of district judge Sherlock revealed itself when, in an August 21, 2003 order, the judge disclosed that he had made ex parte contacts with certain people to obtain advice as to certain legal issues pending. The judge had not disclosed to the parties (at least not to Dias) what he was going to do. This is a violation of the judicial code of conduct, but this nonetheless did not deter district judge Sherlock.

Summary of page 11:

\*\*\*Shea stated that the district judge was wrong in referring to other papers filed herewith, when the judge did not in fact file additional papers beyond a copy of Shea's affidavit.

\*\*\*Shea stated that the judge was mistaken in declaring that Shea had as much as admitted that he was representing Dias.

\*\*\*And Shea requested, among other things, that if a complaint is filed, that he have the right to take the deposition of district judge Sherlock. Sherlock should not have the right to hide behind his judicial immunity.

Summary of page 12:

\*\*\* Shea stated concerning any future proceedings if a complaint is filed against him:

"Obviously, I do not relish the thoughts of any future proceedings on the complaint of district judge Sherlock. If that is the way things go, then so be it. I will not back down one iota from the misconduct of Engel and the misconduct of district judge Sherlock which has occurred in this case, therefore resulting in a manifest miscarriage of justice, and one, moreover, that cannot be rectified. District judge Sherlock, by his rulings made sure of that."

\*\*\*\*\*

**Part V--C: FOLLOWING ARE THE ISSUES OF FACT AND LAW RAISED BY THE DIAS AFFIDAVITS WHICH WERE PREPARED AND FILED BY THE ALTEROWITZ LAW FIRM.**

Shea adopts and incorporates by reference the Dias affidavits that were filed in opposition to the Engel motion for summary judgment. They are set forth as part of Shea's March 14, 2006 filings in his Appendix, as Exhibits 19 and 20. So there can be doubt as to the issues raised by Dias in her affidavit filed on May 13, 2004 which both the district judge and D/C Strauch conveniently swept under their official rugs, Shea sets them out here.

**DIAS RAISED TWO EXPENSE DEDUCTIBILITY ISSUES IN HER AFFIDAVIT FILED IN OPPOSITION TO ENGEL'S MOTION FOR SUMMARY JUDGMENT.**

Dias raised two issues concerning the deductibility of expenses in relation to whether they are deduced before or after the calculation of the attorney's contingency fee percentage. These two expense deduction issues were set out in her May 13, 2004 affidavit, prepared and filed by the Alterowitz law firm. Shea has filed a copy of this affidavit with his March 14, 2006 Motions and Supporting Brief and Appendix, Exhibit 20).

1. Dias had incurred at least \$7,000 in directly paid expenses and this item was not referred to in the retainer agreement. Dias contended tht she had a right to deduct these expenses before calculation of the attorney fee percentage. ( Affidavit, paragraph 7)

1-a: Shea's comment: This presented two questions. First

did Dias have the right to deduct her directly incurred expenses before calculation of the contingency fee? Second, if she was allowed to do so, then a factual determination was required (absent an agreement between the parties ) as to the amount of expenses Dias had incurred.

2. Engel had incurred certain expenses that he had directly paid. The retainer agreement did not state whether these expenses would be paid before or after calculation of the attorney fee percentage Dias contended tht because of this ambiguity the expenses must be deducted before calculating of the attorney fee percentage. ( Affidavit, paragraph 8)

**2-a: Shea's comment:** This issue also presented two questions. First, did Dias have the right to insist that Engel's expenses be deducted before calculating of the contingency fee percentage? Second, regardless of he court's ruling on this issue, what were Engel's expenses that he was claiming? One way or the other, a factual determination was required concerning the amount of recoverable expenses.

Engel apparently asserted tht he had incurred approximately \$1,500.00 in expenses. However, in the course of his petition to foreclose on hils lien, he has never presented an expense breakdown to his client nor filed one in court. If Engel and hils former client could not agree to Engel's allowable expenses, the court would have to make a factual determination of the amount to which Engel was entitled.

How did the district court deal with these issues in his summary judgment order? He didn't. He swept them under his judicial rug. The judge, did however, declare that Engel has entitled to his fees and expenses. But this of course did not decide any factual issue of what Engel's expenses were. He had never presented them to the Court. So, the factual issue still remained outstanding.

So how did Engel collect on his expenses? Well he committed some fraud. In his judgment he claimed expenses that had already been incorporated into a judgment entered after trial on March, 2000, and then the final judgment entered on August 21, 2003. But Engel had never paid those expenses in the first place. His client had paid virtually all of them, except for the expenses relating tothe briefs on appeal.

**DIAS ALSO PRESENTED THREE ATTORNEY'S FEES ISSUES IN HER AFFIDAVIT:**

The three attorney fees issues were set out in her May 13, 2004 affidavit, prepared and filed by the Alterowitz law firm. Shea has filed this affidavit with his March 14, 2006 Motions and Supporting Brief and Appendix, Exhibit 20).

First, Engel was claiming extra fees for defending against the Matthew Sisler attorney lien claim for fees as a prior attorney on the case. Dias claimed that Engel was not entitled to extra fees. Further, there was no provision in the retainer agreement for extra fees. In conjunction; with this Dias asserted that when she refused to pay the extra fees Engel accused her of deceit and attempted to intimidate her into paying these extra fees of \$11,000. ( **Affidavit, Paragraph 5**)

Second, Engel and Dias were in dispute as to who was obligated to pay the attorney lien fee awarded to Sisler. Is it the obligation of the client to pay from her share of the recovery, or was it the obligation of the successor attorney on the case to pay it from the fee he received? Dias had asked Engel to explain to her why he was trying to shift the burden to her to pay Sisler, and he refused to do so. ( **Affidavit, paragraph 4**). \*

\* **Note:** The issue of who was to pay the fee awarded to Sisler was inextricably bound up with Engel's demand for extra fees, his accusation of deceit, and his intimidating threats seeking to get Dias to pay him.

Third, an issue existed as to who was entitled to the statutory fees awarded on appeal. Engel claimed he was entitled to all of them or to at least half of the statutory fees. Dias claimed that she was entitled to the statutory fees to be offset against any contingency fee awarded, and that it was totally unfair for Engel to increase his fees on appeal to 50% and also to demand a share in the statutory attorney fees. ( **Paragraph 6**)

\* Note should be taken here as to the ruling on statutory fees on appeal. They were awarded to Dias. However, statutory fees were also awarded at trial, and the same law would also govern their disposition. However, Engel, in the judgment took half of those fees for himself. This is only part of the enormous fraud he pulled in the judgment. By this act of fraud alone, Engel increased his

judgment by over \$2,500. Of course, district judge Sherlock didn't care about such mundane and trivial matters.

**DIAS ALSO PRESENTED IN HER AFFIDAVIT THE ISSUE  
OF WHO WAS OBLIGATED TO PAY SHEA.**

May 13, 2004 affidavit Dias set forth the issue of who did the work on the case, Shea or Engel. She believed tht Engel had actually done very little on the case, that is, that it was Shea who did the work on the case. (Affidavit, Paragraph 10)

Further, Dias in her April 7, 2004 affidavit (prepared and filed by the Alterowitz law firm) declared specifically that she was shocked when she learned that Engel expected that she would have to pay Shea for the work he did on the case. The entire affidavit is devoted to the huge problem which Engel dumped on her by suddenly contending that it was her obligation to pay Shea. And she believed that Shea and Engel had worked out an agreement for payment. And this of course is true.

But now the fact is that Shea by the corrupt rulings of district judge Sherlock will never get paid from Engel. And even worse, Engel, through the awesome corrupt judicial power of district judge Sherlock, has financially raped his own client. Sherlock allowed and caused the financial rape to occur and then, to assure that the financial rape would be final, plunged his judicial sworn through Dias' legal rights by signing an ex parte order which Engel had submitted to him. This order, once filed allowed Engel to immediately execute on the judgment and he did. This corrupt process effectively decapitated the Dias right of appeal, and this is precisely what the district judge intended.

And now the entire powers that be in the legal community and judicial community, have covered up the misdeeds of Engel and district judge Sherlock. Such is the present way of justice in Montana.

It makes one wonder why former D/C Strauch committed massive fraud in preparing his so-called investigative report for the review panel. It makes one wonder why the review panel let him get

away with it. And it certainly makes one wonder who all was involved in contributing to this massive injustice and corruption of the judicial system?

No doubt the powers that be will still be working behind the scenes to prevent an exposure of how justice really works in Montana's courts. And sadly, the Montana Supreme Court itself has already contributed to that process and no doubt will continue to do so. Such are the powers of the powers that be.

\*\*\*\*\*

For all of the foregoing reasons, Shea renews his motions seeking the disqualification from the adjudicatory panel of Chairman Warren, Vice chairman Davis, and panel member Michael Lamb. These members cannot possibly be fair to Shea and what is more, will do their level best to prevent an exposure of the corruption that exists within the judicial system, the Commission On Practice, and the Office of Disciplinary Counsel. In particular, Chairman Warren and Vice Chairman Davis are not part of the solution. Rather, they are a huge part of the problem. Both members should resign from the Board, effective immediately.

Dated this 9, day of June, 2006

Daniel J. Shea

Daniel J. Shea

CERTIFICATE OF SERVICE

I certify that on June 9, 2006, I served a copy of the foregoing brief on the Office of Disciplinary Counsel.

Daniel J. Shea

Daniel J. Shea

**ATTEST: A true copy**

Ed Smith

ED SMITH  
CLERK OF SUPREME COURT  
STATE OF MONTANA

ORIGINAL

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BEFORE THE COMMISSION ON PRACTICE OF THE SUPREME  
COURT OF THE STATE OF MONTANA

IN THE MATTER OF DANIEL J. SHEA  
a Suspended Attorney at Law,

) Supreme Court Cause  
) No. 05-606  
)  
) ODC NO.  
)

FILED

MAY 30 2006

Ed Smith  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Respondent

RESPONSE BRIEF OF RESPONDENT SHEA TO MOTION OF DISCIPLINARY  
COUNSEL TO TAKE THE PROCEEDINGS UNDERGROUND BY SEALING THE  
RECORDS

\*\*\*\*\*

**PART I. INTRODUCTORY COMMENTS OF SHEA RELATING TO THE MOTION OF  
THE DISCIPLINARY COUNSEL TO SEAL THE RECORDS, WHICH,  
IF GRANTED, WILL TAKE THIS CASE INTO THE PITS OF  
DARKNESS, IN VIOLATION OF THE RIGHT TO KNOW AND INSPECT  
PROVISION OF MONTANA CONSTITUTION; ARTICLE I, SECTION 9.**

As part of his response to the motion and brief of the D/C to seal the records identified in his motion, Shea incorporates by reference all of his previous filings in this case as though fully set out in his response. In particular, Shea relies on the manifold and extremely serious rule violations which have been committed by the Commission as an entity, by Chairman Warren as the Chairman of two review panels which have been involved on cases involving Shea, and the misconduct of other panel members on those two panels.

Further, Shea relies on the many rule violations committed by former D/C Strauch, and ethical misconduct, which will be set forth in this brief.

The rule violations and grievous misconduct is so manifest and extensive within the Commission membership and the Office of Disciplinary Counsel when headed by former D/C Strauch,

Exhibit 8

that they could not have taken place unless there was a wholesale violation of the prohibition against ex parte communications as set forth in Rule 15 RLDE (2002).

It was all part of a conspiracy to dismiss the complaint which Shea had filed against Engel. It further demonstrates that there is no true independence between the Commission and the Office of Disciplinary Counsel. The Supreme Court has made a huge mistake in creating a commission form of discipline for lawyers, as well as a huge mistake in its creation of the Office of Disciplinary Counsel. As presently constituted, they simply do not work. And most assuredly they do not serve the public interest.

This is a classic case in how ex parte communications can undermine and indeed destroy any concept of fair play and due process of law. And the difficulty is that no one will ever admit to the ex parte communications and everyone proceeds as though everything was conducted in perfect conformity to the law and to the rules. Ex parte communications can be and is one of the deadliest instruments used to undermine due process of law and the cause of justice. It is pernicious. When it happens, there is no way to defend against it. And there is no smoking gun. All that is seen is its deadly results.

Further, the wrongdoing does not exist solely within the Commission itself. The wrongdoing extends to the Office of Disciplinary Counsel while it was headed by Tim Strauch. There is no doubt that the conspiracy to dismiss Shea's complaint filed against Engel was part of a grand conspiracy which crossed organizational borders. It existed within the Office of Disciplinary Counsel and within the Commission. And it also gives pause to legitimately question whether there was also external ex parte communications from outside the membership of the Commission and the Office of Disciplinary Counsel.

Up to this point in his filings, Shea has focused primarily on the huge wrong doing and ethical violations of the Commission. In his response here, Shea will show that the former D/C, Tim Strauch, is guilty of enormous wrongdoing in so-called investigative reports provided to the illegally composed three lawyer review panel which dismissed Shea's complaint against Engel. **His report is absolutely fraudulent.**

To grant the D/C/s motion would be a travesty of justice of huge proportions. It would take all of Shea's filing back into the dark pits of secrecy so that both the Commission and the Office of Disciplinary Counsel can shield their illegal conduct from public view. The public is entitled to know how the Commission and the Office of Disciplinary Counsel conducted their business in this case. Article I, section 9 of Montana's Constitution must prevail over the wish and attempt of the D/C and the wishes of any of the Adjudicatory Panel Commission members to shield this case from the public's view. The public is entitled to inspect the records. The public is entitled to observe the workings of the

Commission on Practice and the Office of Disciplinary Counsel.

It is true that it is Shea who has been personally damaged by the illegal and massive misconduct of the entire disciplinary machinery and apparatus created by the Supreme Court. Shea finds himself facing disciplinary proceedings before an adjudicatory panel comprised of a membership where one or more of its members have already violated their own rules in matters relating to Shea. There is no legitimate reason why these members should not disqualify themselves from the adjudicatory panel. If they do not remove themselves from the case, there must be remedy which their removal can be compelled.

However, it is not just Shea who has been harmed by the misconduct of the Commission. The public has also been harmed.

Can it be denied that one of the primary purposes of the Commission on Practice and the Office of Disciplinary Counsel is for protection of the public? And is the public protected when the Commission and the Disciplinary Counsel are guilty of massive misconduct in the same case, in effect acting as a cabalistic conspiracy to achieve an illegal result by illegal means? We all know the answer to this question.

Surely the public is entitled to know what has taken place. And the right to know provision of Montana's Constitution (Article II, Section 9) overrides any interest which the Commission and the Office of Disciplinary Counsel have in keeping this information from the public. No legitimate interest here can override the right of the public to know how the Commission and the Office of Disciplinary Counsel have conducted their business in this case.

Once again, Shea asks that Commission Chairman Warren and Vice chairman Davis disqualify themselves from this case and of course, from acting on the ODC's motion. And any other Commission members should examine their consciences closely to determine whether or not they should take part in voting on the D/C's motion to seal records.

\*\*\*\*\*

**PART II. THERE ARE NO SUBSTANTIAL AND COMPELLING REASONS WHY THE DOCUMENTS SHOULD BE PLACED UNDER LOCK AND KEY BY CONCEALING THEM FROM THE RIGHT OF PUBLIC INSPECTION.**

**II A. THE EXCEPTIONS PROVIDED ALSO IN RULE 20 A APPEAR TO ALLOW THE DISCIPLINARY COUNSEL TO CALL ALL THE SHOTS AS TO RELEASE OF INFORMATION UNDER THE VARIOUS SITUATIONS DESCRIBED. BUT THE EXCEPTIONS SHOULD NOT BE USED TO SHIELD THE ILLEGAL CONDUCT OF THE COMMISSION OR THE OFFICE OF DISCIPLINARY COUNSEL**

Rule 20A contains four exceptions which allow only the Disciplinary Counsel to release information about a case before a formal complaint is filed. It also appears that the release of information must relate to the charges against the accused before a formal complaint is filed. And even assuming application of an exception, the information released could only inform an inquiring person, that an informal complaint is pending, what the subject matter is of the complaint, and information as to the status of the investigation.

Nonetheless, Shea suggests that some of the language of the exceptions is helpful to obtaining a general feeling for citations when the D/C should consider revealing the information.

That is, the exceptions show that the first part of Rule 20A is not an iron clad rule.

It appears that **Rule 20A** is designed to protect an accused attorney. It is also clear that the Rule can be used to shield the COP and the Disciplinary Counsel from public view of their own activities which **can be** absolutely contrary to the public interest, which may **be** absolutely contrary to the public interest, **and those activities which are in fact absolutely contrary to the public interest.**

This last situation is precisely that which exists in this case, **now.**

**II. C. THE DISCIPLINARY COUNSEL AND THE COMMISSION ON PRACTICE HAVE WAIVED ANY CLAIM THAT THE DOCUMENTS MUST BE SEALED BY USING THE REPORT OF THE D/C FROM ONE REVIEW PANEL ALONG WITH THE REPORT OF THE D/C BEFORE ANOTHER PANEL. THEREFORE, BOTH ARE ESTOPPED TO CLAIM A RIGHT TO SEAL THE DOCUMENTS. AND SHEA WOULD BE PREJUDICED BY NOT BEING ABLE TO USE AND REFER TO THE ACTUAL COMPLAINT HE FILED AGAINST ENGEL SO THAT THE TRUTH CAN BE REVEALED.**

Disciplinary Counsel Strauch presented his report on Shea's complaint against Engel to a review panel composed of three lawyers: Matovich, Axelberg, and Hubble. Chairman Warren failed to appoint any nonlawyers to this panel. This appointment process directly violated **Rule 3 A and 3 B RLDE (2002)**, which requires at least one nonlawyer to constitute a quorum for a review panel.

The action taken by the review panel was illegal because the three member quorum did not include a least one nonlawyer.

The review panel also violated its own rules as to what it must review other than the report and recommendation of the Disciplinary Counsel. Rule 3 B. (1) provides that "**a review panel shall: (1) review the complaint, the response from the lawyer against whom the complaint was made and any reply from the complainant together with other relevant documents and Disciplinary Counsel's intake**

summary, investigative report, and recommendations.

Other than having the intake summary, investigative report, and recommendations, the review panel failed to review Shea's complaint and his supporting exhibits, failed to read Engel's response and exhibits, and failed to read Shea's reply. Nonetheless, the illegally composed review panel took action to dismiss Shea's complaint that he had filed against attorney Engel. Therefore, the action of the review panel was illegal.

After the dismissal of Shea's complaint, the COP review panel failed to give Shea the required notice of dismissal as provided in **Rule 3B(10), and Rule 14**. The rule expressly imposes this duty on the review panel.

Four months after this dismissal, D/C Strauch, presented this same investigative report as part of another review panel report. He attached it to his second investigative report covering the complaint of district judge Sherlock against Shea. He used this attachment, among other reasons, as a means of attacking Shea. The attachment expressly stated on its first page that it should be attached to the investigative report regarding the complaint by Sherlock against Shea. **Essentially, both documents were considered as one investigative report.**

Based on the combined investigative report of former D/C Strauch, the review panel authorized a complaint to be filed against Shea based on an affidavit he had filed on October 13, 2004. This review panel had also been appointed by Chairman Warren. The review panel was composed of three attorneys and two non lawyers. Two of the attorneys (Matovich and Axelberg) had also been on the review panel which dismissed the complaint which Shea had filed against Engel. The third lawyer, Jon Oldenberg, came onto the Commission on May 31, 2005 to replace attorney Hubble. The two nonlawyers were Art Noonan, and Pat DeVries. DeVries, from Polson, had been on the COP since 1995.

D/C Strauch, on July 29, 2005, presented both investigative reports to the second review panel. Presumably the review panel took action on July 29, 2005, and authorized that a complaint be filed against Shea. A complaint was filed by D/C Thompson on October 17, 2005.

The sequence of the events leading up to the filing of the complaint is as follows: Former D/C Strauch apparently had drafted the report for the second review panel close to the end of June, 2005. He attached the report from the first review panel to be considered as part of his report drafted for the second review panel. In mid June Strauch announced his resignation as Disciplinary Counsel, and his last day as Disciplinary Counsel was July 31, 2005. He announced in an interview with a newspaper reporter that he had taken a job with the Alterowitz law firm in Missoula.

On June 29, 2005, two days before Strauch's final day as Disciplinary Counsel, a review panel met to consider the complaint filed against Shea by district judge Sherlock. The review panel had both panel reports before it. Based on the report and recommendation of D/C Strauch, the panel authorized Strauch to file a complaint against Shea.

Shea does not know when D/C Thompson assumed his position. In any event, after D/C Thompson took over, and based on the July 29, 2005 authorization of the review panel, he drafted and filed a complaint against Shea. This complaint was filed with the Clerk of the Supreme Court on October 17, 2005. But in any event, based on the July 29, 2005 authorization of the review panel, he drafted and filed a complaint and filed it with the Clerk of Supreme Court on October 17, 2005. Shea assumes that at approximately the same time that D/C Thompson, or someone on his behalf, filed the two reports with Shea's public file kept in the Justice Building by the Commission on Practice.

The fundamental and undeniable fact is that the D/C filed both review panel reports as part of Shea's public file. Equally fundamental and undeniable is that the two reports for panel review were presented to the second review panel as one document or one filing. These reports were filed as a public record.

By taking this action the Disciplinary Counsel has waived any right to claim that the documents are not public documents. The D/C made them so. Both reports should remain as a public record. By his own actions the D/C has waived any right to claim the documents must now be taken out of the public domain and placed under lock and key. And by his own conduct the D/C is now estopped to now claim that the first review panel report must lose its status as a public document.

Further, the Commission itself has waived its right to now claim confidentiality, and therefore is also estopped from claiming confidentiality of the report to the first panel. In fact the review panel meeting on July 29, 2005 had both panel review reports presented to them by the D/C for their consideration. It is now a little late for either the D/C or the Commission to invoke the general rule stated in the first part of Rule 20A in an effort to now claim confidentiality.

Shea has alleged massive wrongdoing on the part of the former Disciplinary Counsel and by the Commission, although he does not extend his allegation to every member of the Commission. Shea has learned that the COP is tightly controlled by Chairman Warren and Vice chairman Davis. Basically, other than votes of members on a review panel or adjudicatory panel, they seem to call all the shots. Shea would be extremely prejudiced if he were not entitled to rely on his documents which he had filed to establish the misconduct of the former disciplinary counsel and certain member of the Commission.

Shea has filed the documents he has to defend himself against the illegal actions which the former Disciplinary Counsel and the current Commission (not including all members) have taken against him. By massive misconduct, the dismissal of Shea's complaint against Engel was manipulated

by both the former disciplinary counsel and by the review panels, or those on the review panels who control the shots. Shea can only protect himself and defend himself by making a public record of his filings against Engel. His complaint was illegally dismissed. The former D/C Strauch had filed a totally fraudulent report to the review panel as part of his unlawful efforts achieves a dismissal of the complaint. He was successful.

**II.D. THE OFFICE OF DISCIPLINARY COUNSEL AS WELL AS THE COMMISSION ITSELF MUST RECOGNIZE THE OVERRIDING RIGHT TO KNOW PROVISION IN ARTICLE I, Section 9 OF MONTANA'S CONSTITUTION. THIS OVERRIDING RIGHT, COMBINED WITH THE CONDUCT OF THE ODC AND THE COMMISSION RESULTING IN A WAIVER ESTOPPEL, REQUIRES THAT THE MOTION OF THE DISCIPLINARY COUNSEL TO SEAL THE RECORDS MUST BE DENIED. ONLY THEN CAN THE PUBLIC INTEREST BE PROTECTED.**

In addition to the many exceptions provided in Rule 20A itself, Shea argues that the Office of Disciplinary Counsel and COP have waived any claims to secrecy and they are now estopped to rely on any such claims. The COP must proceed by application of the Montana Rules of Civil Procedure as the Montana Rules of Evidence. Application of these rules here shows that the ODC and COP have waived any requirements relating to confidentiality, and they are now estopped from claiming they are entitled to take all of these proceedings and all the records underground, sealed from public scrutiny and public exposure.

In this case, insofar as the conduct of former D/C Strauch, the conduct of COP, and the conduct of D/C Thompson, the damage has already been done. The entire disciplinary apparatus and machinery applicable for enforcement of the disciplinary rules, is itself guilty of massive misconduct, something that must be seen, that is read, to be believed. It is absolutely mind boggling.

It is not just Shea who is entitled to the information. It is true that he is the person who has been personally damaged by the illegal and massive misconduct by the entire disciplinary machinery and apparatus created by the Montana Supreme Court. Even now, Shea is facing proceedings before an adjudicatory panel in which one or more of its members have violated the rules in matters relating to Shea. However, it is not just Shea who has been harmed by this massive misconduct.

The public also has been harmed. Can it be denied that one of the primary purposes of the Commission on Practice and the Office of Disciplinary Counsel is for protection of the public? Is the public protected when the COP and Disciplinary Counsel are guilty of massive misconduct? We all know the answer to this question. Surely, the public is entitled to know what has taken place. And the right to know provision of Montana's Constitution (Article II, Section 9), overrides any interest that the

Commission and Office of Disciplinary Counsel have in keeping his information from the public. The public is entitled to know how their business is conducted in reality. No legitimate interest can override the right of the public, that is, the people, to have this information.

Shea is entitled to keep all of the information and documents as part of the public record. For his own defense he is entitled to rely on these documents to establish the illegal conduct of COP as an entity, the illegal conduct of its officers, the illegal conduct of its review panel members, and the illegal conduct of former D/C Strauch. But just as surely, the public is entitled to have access to this information.

Only the actual contents of Shea's complaint against Engel together with his exhibits, can establish the full measure of the nature and extent of the massive ethical violations committed by Engel. And the enormity of the violations committed by Engel is directly connected to the enormity of the misconduct by the COP and the Disciplinary Counsel in dismissing the complaint. What and whose interests were being served by this dismissal? Was the dismissal related to the cover-up of misconduct of any person or public official related to this case? Surely the Disciplinary Counsel and COP had motives for seeking the dismissal in the face of the enormous wrongdoing which Shea had shown in his complaint filed against Engel. What were their motivations? Whatever their motives, they were not legitimate.

And only by keeping the information public can the public know the appalling misconduct of the Commission, its officers, and the Office of Disciplinary Counsel acting through former D/C Strauch.

Concerning the misconduct of former D/C Strauch, acting as a public officer and governmental officials appointed by the Montana Supreme court to carry out the duties entrusted to the Court by the Montana Constitution:

Only by keeping the documents and information in the public domain, then can the public makes its own determination of whether former D/C Strauch submitted a fraudulent report to the review panel in seeking a dismissal of the complaint which Shea had filed against attorney Engel.

Only then can the public make its own determination of whether or not it was proper for former D/C Strauch to use his review panel report in another proceeding by attaching it to and relying on it as part of the report he made recommending that a charge be filed against Shea based on the complaint of district judge Sherlock.

Only then will the enormous wrongdoing of former D/C Strauch be exposed. And this, the public has the right to know. He was acting as an employee and officer and agent of the

Montana Supreme Court in preparing his review panel reports and in requesting the review panels to act on and adopt his recommendations.

And all members of the Commission on Practice have been appointed by the Montana Supreme Court as its officers and agents to carry out the duties of disciplinary enforcement. These duties have been entrusted to and imposed on the Supreme Court by the Montana Constitution. Presumably, the ultimate beneficiary of a proper and faithful adherence to these duties is the public. And if there has been a betrayal of that public trust, not just Shea, but the public is entitled to know.

Only then will the public know whether or not the Commission itself has violated the rules promulgated by the Supreme Court for application to disciplinary enforcement proceedings.

Only then will the public know whether or not the Commission Chairman himself, has violated the rules promulgated by the Supreme Court for application to disciplinary enforcement proceedings.

Only then will the public know whether or not the review panels involved in Shea's case have violated the rules promulgated by the Supreme Court for application to disciplinary enforcement proceedings.

Both review panel reports are now part of the public record. Shea found them as part of the public record in his file at the COP office in the Justice Building. Most certainly Shea had the right to file those documents which would expose both documents as being false representations of the facts. Former D/C Strauch wrote these reports intending that the review panels act on the content of his reports and on his recommendations. Most certainly the public has a right to know the documents on which Shea relies to establish that the panel reports are deliberately false representations of the facts.

The public is also entitled to know the process of appointing the two review panels in this case and the roles of the review panels in dismissing the complaint which Shea had filed against Engel and then in approving the request of former D/C Strauch that a complaint be filed against Shea based on the complaint of district judge Sherlock. **For example, the public is entitled to know:**

\*\*\*Whether Chairman Warren acted alone in appointing the members of each review panel, and if not, with whom did he consult?

\*\*\*Whether or not any rules were violated in appointing the membership to each of the review panels.

\*\*\*Whether or not either review panel violated any rules in performing its functions as a review panel.

\*\*\*Why the COP deliberately chose to violate its rules by not giving Shea the required notice that his complaint against Engel had been dismissed.

\*\*\*Why, when Chairman Warren was most certainly aware that Shea had not been given the required notices, the COP still failed to give any notices so that the review process could be started concerning the dismissal.

\*\*\*The nature and extent of any violation of Rule 15 RLDE (2002), which is a strict rule against ex parte communications, except for certain limited purposes. Former D/C Strauch could not have done what and the Commission could not have done what it did without a wholesale violation this rule.

\*\*\*Any other rule violations by COP in relation to its dismissal of the complaint filed by Shea against Engel and in relation to the formal complaint now filed against Shea based on the complaint of District judge Sherlock.

As a complainant and as an accused, Shea most certainly has a right to know the answers to these questions. Furthermore, if the right to know provision of Montana Constitution Article II, Section 9, has any meaning at all, any teeth at all, the public has an even broader right to this information.

\*\*\* Ostensibly the Supreme Court promulgated these rules for the protection of the public.

\*\*\*The public is entitled to know whether or not its governmental institutions are following the rules. Only in this way can the public know that these governmental entities are performing to the standards required for good government.

\*\*\*How possibly can the public know if its interests are being protected by the disciplinary system if the Commission and Office of Disciplinary Counsel can hide behind the screen of privacy so that their operations are not subject to public scrutiny?

There is an overriding public interest under Article I Section 9 of the public's right to know the truth about how the Commission on Practice and Office of Disciplinary Counsel operate in reality. This right of the public, when combined with the waiver clearly manifested by the conduct of the ODC and the Commission, results in an estoppel against both entities to claim that the records involved must be sealed. Only Shea and the public would be harmed by sealing the records. There are no legitimate rights of privacy attaching to anyone else which would require a draconian sealing of the records. This would arouse only more suspicion on the part of the public as to how our government really operates as opposed to the common perception which these governmental entities like to give to the public. The

Commission on Practice and the Office of Disciplinary Counsel are no exceptions.

The constitutional right of the public to know, when combined with the conduct of the Office of Disciplinary Counsel and that of the Commission on Practice, requires recognition and a ruling that they have waived any right to lock up these records to shield them from public view. They are now estopped by their own conduct from relying on a claim of confidentiality. Moreover, the overriding right of the public to know what is going on in their governmental institutions, dictates that all of the records Shea has filed are and should remain as public documents for the public to inspect.

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**PART III. THE STRAUCH REPORT TO THE REVIEW PANEL TOTALLY OMITTED ANY FACTUAL ASSERTIONS MADE BY SHEA. IT CONSISTS ENTIRELY OF ENGEL'S FACTUAL ASSERTIONS. SHEA ILLUSTRATES HIS CONTENTION BY A TABLE WHICH CONTRASTS THE FACTUAL ASSERTIONS OF SHEA CONTAINED IN THE INVESTIGATIVE REPORT AS CONTRASTED WITH THE FACTUAL ASSERTIONS OF ENGEL CONTAINED IN THE INVESTIGATIVE REPORT.**

The report of D/C Strauch to the review panel totally fails to set out the factual assertions of Shea, but relied entirely on Engel's factual versions. The investigative report provided to Shea by the COP personnel **consists of 10 pages**. Shea has numbered each page at the bottom because the report did not number the pages. Also, Shea has given each paragraph on each page a letter designation for reference purposes.

To start, Shea emphasizes that in D/C Strauch's entire report of 10 pages, he never once used a factual assertion of Shea as to the various matters which the D/C selectively covered in his investigative report. However, it is an entirely different matter for Engel's factual assertions. Every one of the factual assertions contained in Strauch's so-called investigative report is one which Engel has made. Therefore, anyone who read the investigative report with any sense of fairness and curiosity would at once wonder why he or she is reading only Engel's version of the facts.

It is also very clear that the D/C did not provide the review panel with anything other than his investigative report. Rule 3 B(1) RLDE (2002) requires that a review panel before it takes action on a complaint must review the complaint, the response of the attorney, and the reply of the complaint, together with all relevant documents which were also supplied to the D/C. It is more than abundantly clear that the illegally selected panel, consisting entirely of three lawyers, based its decision on the so-called investigative report submitted by D/C Strauch.

**In the table immediately below**, for each of the 10 pages of the report, Shea demonstrates the failure of D/C Strauch to set out any of the factual assertions of Shea, and contrasts it with the

factual assertions listed for Engel on each page on a paragraph by paragraph basis.

FACTUAL ASSERTIONS OF SHEA COVERED IN THE REPORT

Page 1	None	None
Page 2	None	Entire page A,B,C,D,E,F
Page 3	None	Entire page A,B,C,D,E
Page 4	None	Entire page A,B,C,D,E
Page 5	None	Entire page A,B,C,D,E
Page 6	None	Paragraphs A,B,E
Page 7	None	Paragraphs A,F,G
Page 8	None	Paragraph A
Page 9	None	Paragraph B
Page 10	None	None

\*\*\*\*\*

This table demonstrates that those three lawyers who comprised the review panel appointed by Chairman Warner (**Matovich, Axelerg, and Hubble**) were reading only Engel's factual assertions. D/C Strauch totally eliminated from his report any factual assertions made by Shea. So, let us say, and to put it mildly, D/C Strauch rigged his investigative report to assure that it was on a one way track headed for a decision of the review panel to dismiss Shea's complaint.

Based on the mission directed investigative report of D/C Strauch, is there any wonder then why those also in the COP organizational structure, failed to give Shea the required notice that his complaint had been dismissed and failed to provide written notice to Shea that he had a right to seek reconsideration as well as Supreme Court review if the request for reconsideration was denied.

There can be no doubt by nature of D/C Strauch's investigative report, that his mission was directed solely to obtaining a dismissal of Shea's complaint. And to do so he filed a fraudulent investigative report. And it is equally clear that Strauch could not provide such a fraudulent report and then provide the panel with the totality of Shea's complaint against Engel. It consisted of 23 separate charges, and was 401 pages long, all drafted by Shea. In addition, Shea provided a 33 page letter summarizing each of the 23 separate charges. In addition, this letter provided the D/C with some necessary background.

The ODC provided Engel with complete copies of this information so that he could write his response. Engel's response, less than 30 pages, avoided and evaded almost every charge. Shea replied as best he could to Engel's response and also in his reply told D/C Strauch tht Engel had evaded an

answer for most of the charges set forth in the complaint.

Following is a verbatim rendering of the caption headings for each of the twenty three professional misconduct charges which Shea filed against Engel. Shea also sets out the number of pages for each part of the complaint.

PART IIIA.

THE CAPTION HEADINGS USED BY SHEA FOR THE  
COMPLAINING HE FILED AGAINST ATTORNEY JOSEPH C.  
ENGEL III.

PART I.

REQUEST THAT THIS COURT TAKE JUDICIAL NOTICE OF AN ORDER ENTERED BY THE CASCADE COUNTY DISTRICT COURT IN CAUSE WHICH FOUND THE NEED TO APPOINT A CONSERVATOR FOR THE ESTATE OF ALICE P. KLOSS, AGED 97. THE VALUE OF HER ESTATE HAD DISSIPATED FROM APPROXIMATELY \$900,000 IN 2000 TO AS LITTLE AS \$5,000 AT THE PRESENT TIME.

PART II.

REQUEST IS HEREBY MADE THAT THE DECEIT OF ATTORNEY ENGEL IN THE CASE OF ENGEL V. WAGNER BE CONSIDERED, AND FURTHER, THAT JUDICIAL NOTICE BE TAKEN OF THIS CASE BECAUSE IT TIES DIRECTLY INTO A PATTERN OF CONDUCT ENGAGED IN BY ATTORNEY ENGEL. THIS PATTERN OF CONDUCT, STARTED IN AT LEAST 1992, CONTINUES IN THE CASCADE COUNTY COURT CASE OF THE CONSERVATORSHIP OF ALICE KLOSS, AND IN THE PRESENT CASE OF ENGEL V. DIAS.

PART III.

ATTORNEY ENGEL HAS COMMITTED ACTS OF GRIEVOUS MISCONDUCT IN THE PROCESS OF SEEKING STATUTORY ATTORNEY FEES ON APPEAL. ATTORNEY ENGEL PREPARED AND PRESENTED FALSE EVIDENCE.

PART IV.

THE EXPENSE STATEMENTS SUBMITTED BY ATTORNEY ENGEL ARE FALSE AND UNACCEPTABLE.

PART V.

CONTRARY TO THE RULES OF PROFESSIONAL CONDUCT, ATTORNEY ENGEL'S RETAINER AGREEMENT FAILS TO CONTAIN A PROVISION STATING WHETHER EXPENSES ARE TO BE DEDUCTED FROM THE GROSS RECOVERY. ENGEL DID NOT FINANCE THE CASE; MARCIA DIAS FINANCED THE

CASE. NOT WITHSTANDING THESE FACTS, ATTORNEY ENGEL NOT ONLY REFUSED TO ALLOW HER TO DEDUCT ALL OF THE EXPENSES INCURRED IN LITIGATION IN THE CASE BEFORE COMPUTING THEA CONTINGENCY FEE PERCENTAGE.

FURTHER, IN CORRESPONDENCE WITH HIS CLIENT ON THIS SUBJECT HE MISPRESENTED THE CONTENTS OF THE RETAINER AGREEMENT BY TELLING HER IT CONTAINED A PROVISION THAT THE CONTINGENCY FEE PERCENTATE MUST BE COMPUTED ON THE GROSS RECOVERY.

(Six pages of complaint facts)

PART VI.

MARCIA DIAS IS ALSO ENTITLED TO DEDUCT THE ENGEL EXPENSES FROM THE GROSS RECOVERY BEFORE CALCULATION OF THE CONTINGENCY FEE PERCENTAGE.

(Four pages of complaint facts)

PART VII.

BECAUSE ATTORNEY ENGEL DID NOT DO THE WORK ON THE APPEAL, THE 50% CONTINGENCY FEE WHICH HE IS CLAIMING IS UNREASONABLE FOR THIS REASON ALONE. THERE ARE ADDITIONAL REASONS WHY ENGEL IS NOT ENTITLED TO A 50% FEE.

(Nine pages of complaint facts)

PART VIII.

ATTORNEY ENGEL FAILED AND REFUSED TO ANSWER THE LETTER OF HIS CLIENT ASKING WHETHER OR NOT SHE IS ENTITLED TO OFFSET THE STATUTORY FEES AWARDED IN THIS CASE AGAINST THE CONTINGENCY FEE PERCENTAGE TO BE APPLIED.

(Eleven pages of complaint facts)

PART IX.

ATTORNEY ENGEL HAS IMPROPERLY CHARGED ADDITIONAL FEES TO HIS CLIENT TO DEFEND AGAINST THE ATTORNEY LIEN CLAIM OF MATTHEW SISSLER.

(thirteen pages of complaint facts)

PART X

ATTORNEY ENGEL, IN HIS DESIRE TO OBTAIN ADDITIONAL FEES FOR DEFENDING AGAINST THE MATTHEW SISLER ATTORNEY LIEN CLAIM, FALSELY, REPEATEDLY, AND MALICIOUSLY ACCUSED MARCIA DIAS AND MYSELF OF DECEIT IN RELATION TO THE SISLER ATTORNEY LIEN.

(Fifteen pages of complaint facts.)

PART XI. THE CONTROLLING LAW HOLDS THAT THE SECOND ATTORNEY ON THE CASE MUST PAY FROM HIS FEE THAT FEE AWARDED TO THE FIRST ATTORNEY ON THE CASE. THEREFORE, ATTORNEY ENGEL MUST PAY FROM HIS FEE THE FEE AWARDED TO MATTHEW SISLER.

IN CLAIMING THAT MARCIA DIAS MUST PAY THE FEE AWARDED TO SISLER AS A PRIOR ATTORNEY ON THE CASE, ENGEL RESORTED TO ACCUSATIONS OF DECEIT AGAINST MARCIA DIAS AND MYSELF. ENGEL IS GUILTY OF GRIEVOUS MISCONDUCT.

(Nineteen pages of complaint facts.)

PART XII. ATTORNEY ENGEL COMMITTED DECEIT AND FRAUD ON HIS CLIENT, ON ME, AND ON THE COURT BY HIS CONDUCT AND STATEMENTS IN DENYING THAT HE HAD A DUTY TO PAY ME AND BY HIS CONDUCT IN DENYING THAT WE HAD A FEE SHARING AGREEMENT.

(32 pages of complaint facts)

PART XIII. ATTORNEY ENGEL FAILED TO PROPERLY REPRESENT HIS CLIENT BY NOT OBTAINING ENTRY OF JUDGMENT BEFORE DEALING WITH THE ATTORNEY LIEN CLAIMS OF MATTHEW SISLER AND ERIC RASMUSSEN. ATTORNEY ENGEL ALSO PROVIDED FALSE INFORMATION TO HIS CLIENT.

(9 pages of complaint facts)

PART XIV. ATTORNEY ENGLE FAILED TO PROPERLY REPRESENT HIS CLIENT IN DEFENDING AGAINST THE ATTORNEY LIEN CLAIM OF MATTHEW SISLER AND HE HAD AN OVERRIDING CONFLICT OF INTEREST WHICH PREVENTED THE FAITHFUL DISCHARGE OF HIS DUTIES AND CONSTITUTED A BREACH OF FIDUCIARY DUTY.

(28 pages of complaint facts)

PART XV. ATTORNEY ENGEL VIOLATED THE FIDUCIARY DUTIES OWED TO HIS CLIENT IN FAILING TO DEFEND AGAINST THE ATTORNEY'S LIEN NOTICE OF ERIC RASMUSSEN FOR COSTS. ENGEL DID NOTHING AND LET THE ENTIRE MATTER GO BY DEFAULT. IN FACT MARCIA DIAS OWED APPROXIMATELY \$70.00, BUT ENGEL ALLOWED PAYMENT OF THE ENTIRE CLAIM BY FAILING TO DEFEND HER.

ENGEL ADDS FURTHER INSULT TO INJURY BY INSISTING THAT HIS CLIENT MUST PAY THE RASMUSSEN CLAIM FROM HER SHARE OF THE RECOVERY.

(6 pages of complaint facts.)

PART XVI. ATTORNEY ENGEL FAILED IN HIS DUTIES TO PROPERLY REPRESENT HIS CLIENT BY DEMONSTRATING HIS INABILITY TO DEFEND AGAINST THREE MOTIONS OF THE OPPOSING PARTY DESIGNED TO STALL ENTRY OF JUDGMENT AND REDUCE THE AMOUNT OF THE JUDGMENT. (7 pages of complaint facts)

PART XVII. ATTORNEY ENGEL FAILED TO PROTECT THE INTERESTS OF HIS CLIENT FROM THE ERRONEOUS COURT ORDER ENTERED ON AUGUST 21, 2003 RELATING TO THE PAYMENT OF MATTHEW SISLER AND ERIC RASMUSSEN. (10 pages of complaint facts)

PART XVIII. BETWEEN EARLY AUGUST AND NOVEMBER 11, 2003, WHEN ENGEL FORMALLY WITHDREW FROM THE CASE AND FILED HIS NOTICE OF CHARGING LIEN, MARCIA DIAS EFFECTIVELY WAS WITHOUT REPRESENTATION. ENGEL HAD REFUSED TO REPRESENT HER, AND EVEN AFTER HIS DISCHARGE HE FAILED AND REFUSED TO TAKE ACTION UNTIL NOVEMBER 11, 2003. ENGEL ABANDONED HIS CLIENT.  
(14 pages of complaint facts)

PART XIX. ATTORNEY ENGEL ABUSED HIS ATTORNEY'S PRIVILEGE AND IS GUILTY OF ABUSE OF PROCESS AGAINST MARCIA DIAS. HE FILED A NOTICE OF CHARGING LIEN WHEN HIS RIGHT TO A CHARGING LIEN NO LONGER EXISTED BECAUSE THE FUNDS HAD ALREADY BEEN DISBURSED TO ENGEL AND HIS CLIENT.

ALMOST TWO MONTHS AFTER THE FUNDS HAD BEEN DISBURSED BY THE CLERK OF COURT TO ENGEL AND HIS CLIENT AND DEPOSITED IN BOTH THEIR NAMES ATTORNEY ENGEL FILED A NOTICE OF ATTORNEY LIEN IN DISTRICT COURT. THIS FILING IS AN ABUSE OF PROCESS. ENGEL NO LONGER HAD A CHARGING LIEN. ENGEL FILED HIS NOTICE OF LIEN TO HARASS, EMBARRASS, AND INTIMIDATE MARCIA DIAS.

(13 pages of complaint facts)

PART XX. AFTER HE SIGNED THE ARBITRATION AGREEMENT ATTORNEY ENGEL ILLEGALLY INCLUDED THE STATE BAR STAFF BY HIS EX PARTE CONTACTS, OTHERWISE CONDUCTED HIMSELF IN BAD FAITH, INTIMIDATED AND THREATENED HIS FORMER

CLIENT, PROVIDED FALSE AND MISLEADING INFORMATION TO THE STATE BAR, AND ILLEGALLY FILED A PETITION IN DISTRICT COURT TO ENFORCE A CLAIMED ATTORNEY'S LIEN WHEN THE STATE BAR STILL HAD JURISDICTION.  
(33 pages of complaint facts)

PART XXI ATTORNEY ENGEL FILED HIS PETITION TO ENFORCE HIS CLAIMED ATTORNEY'S LIEN IN DISTRICT COURT IN VIOLATION OF THE JURISDICTION OF THE STATE BAR OF MONTANA WHERE PROCEEDINGS WERE PENDING IN ARBITRATION.  
(21 pages of complaint facts)

PART XXII BY HIS PETITION DIRECTLY SEEKING RELIEF AGAINST ME BUT NOT JOINING ME AS A PARTY, ENGEL INTENDED WITH ALL POSSIBLE MEANS, TO DENY ME OF DUE PROCESS OF LAW. ENGEL WAS SEEKING AN ADJUDICATION OF MY RIGHTS WITHOUT MY PRESENCE TO DEFEND AND ASSERT MY RIGHT TO COMPENSATION. ATTORNEY ENGEL INTENDED TO AND DID DEPRIVE MARCIA DIAS OF DUE PROCESS RIGHTS BY FAILING TO JOIN ME AND BY RESISTING MY JOINDER AS A PARTY TO THE ACTION.  
(38 pages of complaint facts)

PART XXIII BETWEEN EARLY AUGUST AND NOVEMBER 11, 2003 WHEN ENGEL FORMALLY WITHDREW FROM THE CASE AND FILED HIS NOTICE OF CHARGING LIEN, MARCIA DIAS EFFECTIVELY WAS WITHOUT REPRESENTATION. ENGEL HAD REFUSED TO REPRESENT HER, AND EVEN AFTER HIS DISCHARGE HE FAILED AND REFUSED TO TAKE ACTION UNTIL NOVEMBER 11, 2003. ENGEL ABANDONED HIS CLIENT.  
(14 pages of complaint facts)

PART XIX ATTORNEY ENGEL ABUSED HIS ATTORNEY'S PRIVILEGE AND IS GUILTY OF ABUSE OF PROCESS AGAINST MARCIA DIAS. HE FILED A NOTICE OF CHARGING LIEN WHEN HIS RIGHT TO A CHARGING LIEN NO LONGER EXISTED BECAUSE THE FUNDS HAD ALREADY BEEN DISBURSED TO ENGEL AND HIS CLIENT.

ALMOST TWO MONTHS AFTER THE FUNDS HAD BEEN DISPERSED BY THE CLERK OF COURT TO ENGEL AND HIS CLIENT AND DEPOSITED IN BOTH THEIR NAMES, ATTORNEY

ENGEL FILED A NOTICE OF ATTORNEY LIEN IN DISTRICT COURT. THIS FILING IS AN ABUSE OF PROCESS. ENGEL NO LONGER HAD A CHARGING LIEN. ENGEL FILED HIS NOTICE OF LIEN TO HARASS, EMBARRASS, AND INTIMIDATE MARCIA DIAS. (13 pages of complaint facts)

PART XX AFTER HE SIGNED THE ARBITRATION AGREEMENT ATTORNEY ENGEL ILLEGALLY INCLUDED THE STATE BAR STAFF BY HIS EX PAETE CONTACTS, OTHERWISE CONDUCTED HIMSELF IN BAD FAITH, INTIMIDATED AND THREATENED HIS FORMER CLIENT, PROVIDED FALSE AND MISLEADING INFORMATION TO THE STATE BAR, AND ILLEGALLY FILED A PETITION IN DISTRICT COURT TO ENFORCE A CLAIMED ATTORNEY'S LIEN WHEN THE STATE BAR STILL HAD JURISDICTION. (33 pages of complaint facts)

PART XXI ATTORNEY ENGEL FILED HIS PETITION TO ENFORCE HIS CLAIMED ATTORNEY'S LIEN IN DISTRICT COURT IN VIOLATION OF THE JURISDICTION OF THE STATE BAR OF MONTANA WHERE PROCEEDINGS WERE PENDING IN ARBITRATION. (21 pages of complaint facts)

PART XXII BY HIS PETITION DIRECTLY SEEKING RELIEF AGAINST ME BUT NOT JOINING ME AS A PARTY, ENGEL INTENDED WITH ALL POSSIBLE MEANS, TO DENY ME OF DUE PROCESS OF LAW. ENGEL WAS SEEKING AN ADJUDICATION OF MY RIGHTS WITHOUT MY PRESENCE TO DEFEND AND ASSERT MY RIGHT TO COMPENSATION. ATTORNEY ENGEL INTENDED TO AND DID DEPRIVE MARCIA DIAS OF DUE PROCESS RIGHTS BY FAILING TO JOIN ME AND BY RESISTING MY JOINDER AS A PARTY TO THE ACTION. (38 pages of complaint facts)

PART XXIII ON MARACH 4, 2004, IN ARGUING THAT HE WAS NOT REQUIRED TO JOIN ME AS A PARTY IN HIS ACTION FOR FEES EXPENSES, ENGEL FILED A BRIEF ON WHICH THE DISTRICT COURT RELIED IN RULING THAT ENGEL WAS NOT REQUIRED TO JOIN ME AS A PARTY TO THE ACTION. THE ORDER ENTERED ON MARCH 2, 2004 RELIED ON THE REPRESENTATIONS MADE BY ATTORNEY ENGEL IN HIS BRIEF. THOSE REPRESENTATIONS WERE FALSE. ENGEL OBTAINED AN ORDER OF THE COURT BY FALSE REPRESENTATIONS. (25 pages of complaint facts)

**PART IV. SHEA SETS OUT HERE THE NATURE OF EACH CHARGE HE FILED AGAINST ENGEL BY QUOTING THE CAPTION USED FOR THE HEADING OF EACH SEPARATE CHARGE USED IN THE COMPLAINT. THEN SHEA SETS OUT THE BASIC ALLEGATIONS AND HOW THE DICIPLINARY COUNSEL HANDLED THE RESPONSES OF ENGEL AS WELL AS SHEA'S STATEMENT OF THE ALLEGATIONS AND OF THE FACTS.**

To support his contentions here Shea adopts by reference his entire complaint filings on April 9, 2004 as though it were fully set out in this **Part IV**. This includes Shea's complaint, his summary letter filed with his complaint and the exhibits filed in support of his complaint. And if the present D/C wants to supplement these with the exhibits filed by Engel when he filed with his response, Shea has no objection.

Please note that Shea has changed the numbers for each part of his complaint from Roman Numerals to Arabic Numbers so that the numbers are less confusing from the Roman Numerals used for each division of this brief. However, so there is no confusion in referencing, Shea has also listed the Roman numeral as the last item after the caption.

**A SUMMARY OF THE NUMBER OF CHARGES TO WHICH ENGEL FILED A RESPONSE. SHEA HAD FILED TWENTY THREE SEPARATE CHARGES:**

It was extremely difficult to go through Engel's response because of its lack of organization, and lack of identification of the subject matter when making a transition from one subject to another. In fact, Shea makes this same criticism of the investigative report filed by former D/C Strauch. Clearly, his report must have been intended to confuse and frustrate the review panel. The summary follows:

1. Shea filed twenty three (23) separate charges against Engel.
2. Engel filed a response to only eight of them. One of these eight related to the **Kloss** case charge (**Part I of the complaint**). The second of the eight responses related to the Charge in the **Wagner** case (**Part II of the Complaint**)
3. The remaining **twenty one charges** related to alleged ethical violations in the **Dias** case in relation to the case of **Dias v. HMHB. BDV 95-018**)
  - a. **HMHB et al, BDV 95-018**). Of these twenty one (21) charges, Engel filed a response in only **six of them**.
  - b. **Therefore, Engel failed to file a response to fifteen (15) of the twenty one charges, relating to his ethics violations in the Dias case.** However, former D/C Strauch in his investigative report except, for at most two instances, did not indicate that Engel had not filed a response. He misled the review panel.

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Part 1 of Complaint:

REQUEST THAT THIS COURT TAKE JUDICIAL NOTICE OF AN ORDER ENTERED BY THE CASCADE COUNTY DISTRICT COURT IN CAUSE WHICH FOUND THE NEED TO APPOINT A CONSERVATOR FOR THE ESTATE OF ALICE P. KLOSS, AGED 97. THE VALUE OF HER ESTATE HAD DISSIPATED FROM APPROXIMATELY \$900,000 IN 2000 TO AS LITTLE AS \$5,000 AT THE PRESENT TIME.

(14 pages of complaint facts) (PART I)

D/C Strauch reported to the review panel that he had incorporated this part of the charges into a larger complaint that had been authorized in relation to Engel's misconduct in the Kloss case. Shea learned after he filed the complaint that a much larger and more complete complaint had been filed by a law firm in Great Falls. When Shea filed his complaint against Engel on this charge he relied entirely on an order that had been issued by the Cascade County District Court which had determined the need for the appointment of a conservator for the Alice Kloss estate.

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PART 2 OF COMPLAINT:

REQUEST IS HEREBY MADE THAT THE DECEIT OF ATTORNEY ENGEL IN THE CASE OF ENGEL V. WAGNER BE CONSIDERED, AND FURTHER, THAT JUDICIAL NOTICE BE TAKEN OF THIS CASE BECAUSE IT TIES DIRECTLY INTO A PATTERN OF CONDUCT ENGAGED IN BY ATTORNEY ENGEL. HIS PATTERN STARTED IN AT LEAST 1992, CONTINUES IN CASCADE COUNTY COURT CASE OF THE CONSERVATORSHIP OF ALICE KLOSS, AND IN THE PRESENT CASE OF ENGEL V. DIAS. (PART II)

( 8 pages of complaint facts)

D/C Strauch failed to set out the issues in this part of the complaint and failed to set out the facts. He represented in his report to the review panel that he had decided to recommend charges. He justified this on his statement that two previous complaints had been filed in relation to this case.

Essentially, in this case, Engel had a fiduciary relationship with a woman in which she was either a client or at least one who had a legitimate claim to receiving part of the settlement of the case involved. Engel settled the case and did not tell her. He kept some of the proceeds for himself. The rest he had not yet received. This woman learned of the settlement when she called Engel inquiring about the case. From there the proceedings began in district court and apparently are still there, with the absolute assurance that this woman will never recover a dime from Engel.

Shea believes that the previous complaints were not dismissed on the merits. Rather, they were dismissed because there was a civil proceeding pending at the same time. When the complaints were filed the Commission on Practice had a rule or practice that no complaints could be filed with regard to a civil proceeding that concerned the subject matter involved. Since that time the rules have been changed to allow such complaints even though there is a civil matter pending also concerning the same subject matter.

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**Part 3 of Complaint:**

**ATTORNEY ENGEL HAS COMMITTED ACTS OF GRIEVOUS MISCONDUCT IN THE PROCESS OF SEEKING STATUTORY ATTORNEY FEES ON APPEAL. ATTORNEY ENGEL PREPARED AND PRESENTED FALSE EVIDENCE. (PART III)**

( 45 pages of complaint facts )

In the part of the complaint Shea set out in detail the specifics of the massive fraud and perjury of Engel as set forth in Engel's affidavit and supporting invoice seeking statutory attorney's fees on appeal. Shea adopts and incorporates by reference all of his complaint and material relating to Charge III.

**Did Engel file a response?** Engel did file some kind of a response, if you can call it that. Most of it was devoted to launching a personal attack against Shea? He really did not respond to the specifics of the complaint?

**Did D/C Strauch set this out as an issue?** If D/C Strauch set this out as an issue, it was bunched with several other issues.

**Did D/C Strauch set forth Shea's factual assertions?** No. D/C Strauch did not cover the specifics of Shea's factual assertions. He omitted Shea's factual assertions. This is fraud by omission. .

**Did D/C Strauch set forth Engel's factual assertions?** Yes. D/C Strauch, to the extent that Engel answered this charge, set forth Engel's factual assertions. Strauch combined this with other factual assertions Engel made throughout his entire response.

In recommending a dismissal, Strauch did not specify this issue. He just more or less lumped the issues together.

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**Part 4 of Complaint:**

**THE EXPENSE STATEMENTS SUBMITTED BY ATTORNEY ENGEL ARE FALSE AND UNACCEPTABLE. (PART IV)**

( 21 pages of complaint facts )

In his Complaint Part IV (22 pages) Shea set out very specifically the areas and ways in which Engel's expense statements were false, in whole or in part.

Did Engel file a response to the ODC? The answer is NO. Engel completely avoided filing a response to Part IV of Shea's complaint. This constitutes an admission.

Did D/C Strauch set out as an issue the allegation that Engel had filed false expense statements to his client? The answer is yes and No. (Page 2, paragraph E) Strauch finessed the issue by falsely stating that the issue was whether Engel had filed false **expense and hourly time charge invoices?** In other words, Strauch changed the subject by essentially saying that Shea was questioning Engel's hourly charges provide to Dias for a four year period. While it is true that Engel's hourly charges were false in many respects, the Charge in Part IV was confined to demonstrating that Engel's expense statements to his client were false.

Did D/C Strauch set out Shea's factual assertions in support of the charge in Part IV? **The answer is NO.** Strauch omitted entirely any specifics of the very detailed analysis by Shea of his false expense reports. This is fraud by omission. Strauch deceived the review panel by not informing him of and setting forth the factual assertions of Shea relating to Engel's expense invoices. This is fraud by omission.

Did D/C Strauch set out Engel's factual assertions denying Shea's charge? No. Strauch could not do so because Engel failed to respond to this charge. But Strauch failed to directly inform the panel that Engel had not filed a response. **This is fraud by omission.** Strauch deceived the review panel.

Strauch did not specify this issue as part of his recommendation for dismissal. Shea can find no place in the investigative report where Strauch analyzed the expense issue and recommended dismissal. Nonetheless, it is abundantly clear that Shea's complaint was dismissed. Strauch's failure to analyze the expense issue and separately set forth a recommendation constitutes deceit. **Strauch deceived the review panel by his intentional obfuscation.** He got away without discussing the expense issue.

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**Part 5 of the Complaint:**

**CONTRARY TO THE RULES OF PROFESSIONAL CONDUCT,  
ATTORNEY ENGEL'S RETAINER AGREEMENT FAILS TO CONTAIN A  
PROVISION STATING WHETHER EXPENSES ARE TO BE DEDUCTED  
FROM THE GROSS RECOVERY OR NET RECOVERY.**

**ENGEL DID NOT FINANCE THE CASE; MARCIA DIAS FINANCED THE  
CASE. NOTWITHSTANDING THESE FACTS, ATTORNEY ENGEL REFUSED TO  
ALLOW HER TO DEDUCT ALL HER EXPENSES INCURRED IN LITIGATION IN  
THE CASE BEFORE COMPUTING THE CONTINGENCY FEE PERCENTAGE.**

FURTHER, IN CORRESPONDENCE WITH HIS CLIENT ON THIS SUBJECT, HE MISREPRESENTED THE CONTENTS OF THE RETAINER AGREEMENT BY TELLING HER IT CONTAINED A PROVISION THAT THE CONTINGENCY FEE PERCENTAGE MUST BE COMPUTED ON THE GROSS RECOVERY.

(Part V) (Six pages of complaint facts)

In Shea's complaint Part V (six pages) Shea was quite specific in his charge. Further, this same issue (in addition to others) was relied on by Dias in her May 13, 2004 affidavit opposing Engel's motion for summary judgment. Shea emphasizes here also that in his July 12, 2004 summary judgment order, the district judge swept this issue under his judicial rug. It did not appear in his summary judgment order. Dias declared:

7. Mr. Engel claims that I am not entitled to deduct litigation expenses paid by me before the contingency fee is calculated. In June, 2003 I wrote to Mr. Engel about this issue. I incurred close to \$7,000 in expenses for trial. I believe I should be allowed to deduct these expenses before the contingency fee is calculated. The contingency fee agreement is silent as to whether expenses should be deducted from either the gross or net recovery. Mr. Engel did not finance this case. I did. Since I paid the expenses up front, I am entitled to deduct them from the gross recovery.

(Affidavit prepared by the Alterowitz law firm in Missoula.)

**Did Engel file a response to Charge V in his response to the ODC? The answer is no.** Shea carefully examined Engel's response. There is no response to this charge. This constitutes an admission.

**Did D/C Strauch set out this issue and the underlying facts in his report to the review panel? The answer is no.** Strauch entirely omitted mention of this issue in his report. He swept it under his Disciplinary Counsel rug. **This is fraud by omission.** The D/C deceived the review panel by omitting this issue.

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**Part 6 of Complaint:**

**MARCIA DIAS IS ALSO ENTITLED TO DEDUCT THE ENGEL EXPENSES FROM THE GROSS RECOVERY BEFORE CALCULATION OF THE CONTINGENCY FEE PERCENTAGE. (PART VI)**

In his complaint in Part VI, Shea set out the facts and the law applicable. In essence, the factual circumstances and the law required the contingency fee calculation to be made after deduction of the proven and allowable expenses of Engel.

Shea was quite specific in Charge VI. Further, this same issue in addition to others was relied on by Dias in her May 13, 2004 affidavit opposing Engel's motion for summary judgment. She stated in

her affidavit:

8. Mr. Engel did incur some expenses in this case. I believe his expenses to be approximately \$1,500. I believe those expenses should also be deducted from the gross recovery. (Affidavit prepared by the Alterowitz law firm in Missoula.)

Shea emphasizes here also that the judge did not directly rule on this issue. In his July 12, 2004 summary judgment order for Engel, the judge combined a statement that Engel was entitled to his expenses with a statement that Engel was entitled to his fees as ruled by the Court. Shea emphasizes that Engel had never presented his expenses in court on this issue. In a normal court of law this would mean that Engel would first have to present his expenses, give Dias a chance to question them and then have the judge rule on them. But, of course, that did not occur in this case.

**Did Engel file a response to Charge VI in his filing with the ODC?** The answer is no. Shea carefully examined Engel's response. There is no response to this charge. This constitutes an admission.

**Did D/C Strauch set out this issue and the underlying facts in his report to the review panel?** The answer is no. Strauch entirely omitted this issue and the underlying facts in his report. He swept it under his Disciplinary Counsel Rug. **This is fraud by omission.** Strauch deceived the review panel.

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**Part 7 of Complaint:**

**BECAUSE ATTORNEY ENGEL DID NOT DO THE WORK ON THE APPEAL, THE 50% CONTINGENCY FEE WHICH HE IS CLAIMING, IS UNREASONABLE FOR THIS REASON ALONE. THERE ARE ADDITIONAL REASONS WHY ENGEL IS NOT ENTITLED TO A 50% FEE. (PART VI)**

**(Nine pages of complaint facts)**

In his complaint, **Part VI (9 pages)** Shea set out the facts and the law applicable. Essentially, Dias was entitled to a factual determination of whether or not Engel's contingency fee of 50% for appeal was reasonable or unreasonable in light of the fact that Shea did virtually all of the work on appeal. In essence, the factual circumstances and the law required the contingency fee calculation to be made after deduction of the proven and allowable expenses of Engel.

The work which Shea did on the appeal is set forth in great deal in Part III of the complaint and in Shea's 42 page letter to attorney Gustafson on November 22, 2003. Shea incorporated and adopted by reference all parts of his complaint and his exhibits into all other parts.

Dias questioned the reasonableness of Engel's claimed 50% fee. She stated in her May 13,

2004 affidavit filed in opposition to Engel's motion for summary judgment:

"I believe that Engel did little actual work in this case. I believe most of the work was done by a paralegal. For example, the paralegal drafted my appeal brief and asked me to forward it to Mr. Engle via email from my home computer. I also provided the paralegal with rides to the post office so he could mail the work he had done to Mr. Engel." (Affidavit prepared by the Alterowitz law firm of Missoula)

The district judge conveniently swept this issue under his judicial rug just as he did for all of the issues which he believed stood in the way of granting summary judgment to Engel. The judge did not mention this issue in his summary judgment ruling. The D/C Strauch was very much aware of the judge's summary judgment ruling when he wrote his report to the review panel.

**Did Engel file a response to Charge VII in his filing with the ODC? The answer is no.** Shea carefully examined Engel's response. There is no response to this charge. This constitutes an admission.

**Did D/C Strauch set out this issue and the underlying facts in his report to the review panel? The answer is no.** Strauch entirely omitted this issue and the underlying facts in his report. He swept it under his Disciplinary Counsel Rug. **This is fraud by omission.** Strauch deceived the review panel.

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**Part 8 of Complaint:**

**ATTORNEY ENGEL FAILED AND REFUSED TO ANSWER THE LETTER OF HIS CLIENT ASKING WHETHER OR NOT SHE IS ENTITLED TO OFFSET THE STATUTORY FEES AWARDED IN THIS CASE AGAINST THE CONTINGENCY FEE PERCENTAGE TO BE APPLIED. ( Part VIII )**  
**( Eleven pages of complaint facts )**

In his complaint Part VIII (11 pages) Shea set out the facts and the law, and the vital fact that when Dias requested an answer from Engel as to his claiming any part of the statutory fees on appeal, and whether this was his claim, Engel failed and refused to answer.

In her May 13, 2004 affidavit filed in opposition to Engel's motion for summary judgment, Dias raised the issue of whether she had a right to offset the statutory attorney's fees against Engel's contingency fee. She stated:

6. The contingency fee agreement provides for an increase in fees paid on appeal. In the underlying case there was an award for statutory attorney fees on appeal. **Engel claims entitlement to both the fee agreement increase and the statutory attorney fees.** This amounts to double payment. I am entitled to offset the award of statutory fees against the contingency fee. The fee agreement is silent as to the court awarded

attorney fees. (Emphasis added.)

(Affidavit prepared by the Alterowitz law firm of Missoula.)

Did Engel file a response to Charge VIII in his filing with the ODC? The answer is no. Shea carefully examined Engel's response. There is no response to this charge Engel knew that he had failed and refused to answer when he had a duty to do so.

Did D/C Strauch set out this issue and the underlying facts in his report to the review panel? The answer is no. Strauch conveniently omitted this issue and the underlying facts by sweeping them under his Disciplinary Rug. **This is fraud by omission.** Strauch deceived the review panel.

The D/C report discusses the award of statutory fees to Dias as a result of the summary judgment ruling. But the D/C report does not set out that Dias had raised it as an issue in opposition to Engel's motion for summary judgment. Nor does the D/C report mention that Engel claimed he was entitled to an increase of fees on appeal from 40% to 50% in addition to the statutory fees awarded on appeal. This was one of several issues on which Engel had forced her into litigation unless she was to capitulate to his exorbitant and extortionate demands. Engel was out to financially rape his client. Sadly, so sadly, with the help of the awesome power residing in district judges who have abdicated their judicial duties and judicial oath, Engel succeeded.

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**Part 9 of Complaint:**

**ATTORNEY ENGEL HAS IMPROPERLY CHARGED ADDITIONAL ATTORNEY FEES TO HIS CLIENT TO DEFEND AGAINST THE ATTORNEY LIEN CLAIM OF MATTHEW SISLER. (Part IX.)**

**(Thirteen pages of complaint facts.)**

In **Part IX of the complaint (13 pages)**, Shea charged that Engel had improperly tried to impose extra attorney fees to his client to defend against the attorney fee lien claim of Matthew Sisler. Parts X and XI are also related to Engel's ethical violations committed while he was in the process of trying to impose these fees on his client. In part IX, however, Shea focused on the law itself. Essentially, the issue was as follows:

Does an attorney with a contingency fee agreement, and no provision in the agreement for extra fees for discharge of liens, have the right to charge a client for extra fees in defending against attorney fee liens or other charges against the recovery fund? **The answer is no.**

Did Engel file a response to Charge IX in his filing with the ODC? The answer is no. Shea carefully examined Engel's response. There is no response to this charge Engel knew that he had failed and refused to answer when he had a duty to do so. Clearly, this is an admission that he had no right to charge extra fees in the circumstances of this case.

**Did D/C Strauch set out this issue and the underlying facts in his report to the review**

panel? The answer is no. D/C Strauch conveniently omitted his issue and the underlying facts by sweeping them under his Disciplinary Counsel rug. This is fraud by omission. Strauch deceived the review panel.

However, D/C did discuss the problem between Engel and Dias relating to Engel's charging of extra fees. But he did not relate it to a complaint charge filed by Shea. In the process of discussing the charging of extra fees, D/C Strauch took the opportunity to attack Dias in several places of his investigative report.

Finally, D/C Strauch made a false representation to the review panel as part of his discussion of the dispute relating to the extra fees issue. He falsely represented to the review panel that the problem had been resolved and they had negotiated agreement as to payment of those fees. Strauch stated:

"As noted above, Engel agreed to represent Dias against Sisler and billed her for her services."  
(Page 8, Paragraph A).

And then D/C Strauch declared on the same page:

... After some negotiations, Dias hired Engel to represent her in an attempt to prevent Sisler from collecting his attorney fees....(Page 8, Paragraph D.) This is an absolute fraudulent misrepresentation.

In fact, D/C Strauch knew that Dias and Engel had never come to an agreement on this issue. D/C Strauch had available to him the May 13, 2004 affidavit filed by Dias which she filed in opposing Engel's motion for summary judgment. She stated:

5. Mr. Engel has demanded that he be paid an additional \$11,000 to defend against the attorney's lien filed by Mr. Sisler. **When I refused to agree to pay the additional money, Mr. Engel accused me of deceit and attempted to intimidate me into paying him.** I asked him to explain this to me but he refused. I believed it was Mr. Engel's duty to defend the Sisler lien. (Emphasis added) (Affidavit prepared by the Alterowitz law firm of Missoula).

So, we have a situation not only where Engel demanded extra fees, we have a situation where she would not agree to payment of these fees and he resorted to **accusing her of deceit and attempted to intimidate her into paying the fees.** Without doubt, D/C Strauch carefully avoided reporting to the review panel that Engel had also accused his client of deceit and attempted to intimidate her into paying him.

In light of the Dias affidavit, it is instructive to see how district judge Sherlock handled this issue of extra fees in his summary judgment order. He didn't. He swept the issue under his judicial rug.

Nowhere in his summary judgment order will you find that Engel was trying to collect extra fees. And this is how the judge avoided the misconduct of Engel manifested by his accusations of deceit and attempted intimidation of his client in trying to force him to agree to pay the extra fees. Nowhere will you find in this summary judgment order that Engel tried to extract extra fees by accusing his client of deceit and applying intimidating threats to enforce his demand for payment. Such is the awesome power of corrupt district judges. They have the power to sweep these bothersome

issues under their judicial rugs and proceed as though these issues were not part of the case.

And this gets us to **Part X** of Shea's complaint. It is directly connected to **Part IX**, and also to **Part XI**. The issues are intertwined and cannot be artificially separated. They are all part of one huge ethical problem created by attorney Engel's misconduct.

**Part X** of the complaint charges Engel with ethical misconduct in accusing his client of deceit, and with accusing Shea with deceit in relation to the Sisler attorney lien claim.

And **Part XI** charges Engel with ethical misconduct with relation to the Sisler attorney lien claim. In **Part XI (page 15)** the complaint Shea quotes **Engel's threatening and intimidating letter to his client**. Engel wrote this letter to his client when he was seeking to intimidate her into accepting his offer of settlement rather than go to an arbitration hearing before the State Bar. This intimidating letter relates to Engel's demand for extra fees.

Before proceeding however, Shea believes this is as good a time as ever to set the record straight. Throughout his so-called investigative report to the review panel D/C Strauch constantly attacked Engel's client, Marcia Dias. And in doing so, he constantly referred to Engel's assertions that he never discussed the attorney liens with Dias and Shea when they first met at Jorgensen's. Not only is Engel lying, Marcia Dias's statements are in letters to Engel are quoted in Shea's complaint, **Part X**.

In addition, when Shea filed his complaint he included an affidavit executed by Marcia Dias which directly refutes Engel's constant lies as to the first meeting at Jorgenson's. One of the paragraphs is particularly relevant to the Sisler lien claim and the other is directly relevant to the discussion with Engel of Shea's payment. The Dias affidavit, Exhibit 11 of Shea's complaint, executed on April 10, 2004, states in concerning the lien claims:

We met over dinner. The case was described to Mr. Engel and he asked me several questions. Some questions and, then pursuing discussion, related to previous legal representation. Mr. Engel asked if there were any liens by the previous attorneys. He was told that there was small lien by Mr. Rasmusson for copying expenses. He was also told that Mr. Sisler had not filed a lien. Whether Mr. Sisler would file a lien was unknown, however, it was discussed that if so, it would have to be dealt with along the line.

Obviously Engel did not refer to this affidavit in his response. And the D/C Strauch conveniently omitted reference to the Dias affidavit in his investigative report. **This is fraud by omission. Strauch deceived the review panel.**

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**Part 10 of Complaint:**

**ATTORNEY ENGEL, IN HIS DESIRE TO OBTAIN ADDITIONAL FEES FOR DEFENDING AGAINST THE MATTHEW SISLER ATTORNEY LIEN CLAIM, FALSELY, REPEATEDLY, AND MALICIOUSLY**

**ACCUSED MARCIA DIAS AND MYSELF OF DECEIT IN RELATION TO THE SISLER ATTORNEY LIEN. (PART X)**

**(Fifteen pages of complaint facts.)**

In Part X of his Complaint (15 pages), Shea set out the evidence (quoting letters from Engel to his client) in which Engel accused her of deceit and Shea of deceit by not informing him that Engel claimed an attorney's lien. In a nutshell, the question of whether Sisler or Rasmusson claimed an attorney's lien was discussed at our first meeting at Jorgensen's. Engel himself asked the questions. Both Dias and Shea explained that Rasmussen had filed an attorney's lien for copying costs, a relatively small amount. And we explained that as of that time Sisler had not filed an attorney's lien. We all agreed that if it happened some time in the future it was something that had to be handled.

**Did Engel file a response to Charge X in his filing with the ODC? The answer is no.** Shea carefully examined Engel's response. There is no response to this charge. Engel knew that he had accused us of deceit. He had a duty to answer this charge of the complaint and he failed to do so. Again, this is an admission that he had wrongfully accused his client and Shea with deceit.

**Did D/C Strauch set out this issue and the underlying facts in his report to the review panel? The answer is no.** D/C Strauch conveniently omitted his issue and the underlying facts by sweeping them under his Disciplinary Rug. **This is fraud by omission.**

There can be no doubt that D/C's Strauch's objective was to file a false report to the review panel by omitting Shea's charge that Engel had accused his client and Shea of deceit in relation to whether or not Sisler had claimed an attorney's lien. This of course, was fraud by omission. It was a deliberate attempt to mislead the review panel by not reporting this charge and not reporting the evidence in support of this charge.

And of course, Strauch's fraud by omission here is tied directly to Strauch's fraud by omission in his report to the review panel as to Engel's demand for extra fees. (See Part IX, above.) D/C Strauch deliberately and falsely reported that Engel and his client had negotiated an agreement as to payment of extra fees.

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**Part 11 of Complaint:**

**THE CONTROLLING LAW HOLDS THAT THE SECOND ATTORNEY ON THE CASE MUST PAY FROM HIS FEE THAT FEE AWARDED TO THE FIRST ATTORNEY ON THE CASE. THEREFORE, ATTORNEY ENGEL MUST PAY FROM HIS FEE THE FEE AWARDED TO MATTHEW SISLER.**

**IN CLAIMING THAT MARCIA DIAS MUST PAY THE FEE AWARDED TO SISLER AS A PRIOR ATTORNEY ON THE CASE, ENGEL RESORTED TO ACCUSATIONS OF DECEIT AGAINST MARCIA DIAS AND MYSELF. ENGEL IS GUILTY OF GRIEVOUS MISCONDUCT. (PART XI)**

**(Nineteen pages of complaint facts.)**

In Part XI of the complaint (19 pages), Shea charged that Engel was trying to impose the duty on his client to pay any award of attorney fees to Sisler because the law is that it was Engel's duty to pay any such award from his own fees. Engel was trying to impose this duty of payment on Dias. Essentially the legal issue was:

If a first attorney on the case in a contingency fee agreement, who is no longer on the case, claims an attorney lien, and if there is a recovery while a second attorney is on the case, is it the duty of the client, or is it the duty of the second attorney to pay the first attorney from the recovery? The law is: unless there are provisions to the contrary in the contingency fee agreement, the payment must come from the second attorney's fee.

In his complaint Shea provided the background of how this issue arose and he provided the law which clearly imposed the duty on Engel to pay Sisler from any fees Engel recovered. But Engel tried to impose this duty on Dias. And part of his scheme for getting the job done was to accuse her deceit and then by attempting to intimidate her into an agreement for payment of extra fees.

**Did Engel file a response to Charge XI in his filing with the ODC?** The answer is no. Shea carefully examined Engel's response. There is no response to this charge. Engel's failure to answer the complaint was clearly an admission that the charge in the complaint was correct.

**Did D/C Strauch set out this issue and the underlying facts in his report to the review panel?** The answer is no. However, D/C Strauch became an advocate for Engel and did discuss the overall question relating to who was obligated to pay the fee awarded to Sisler. The D/C did not set out charge itself. Rather, the D/C discussed the fact that the judge in his summary judgment ruling for Engel, ruled that it was Dias who must pay the fees.

However, the D/C, in discussing the ruling of the judge, is guilty of fraud by omission. He did not want the review panel to know that the question of who must pay Sisler was inextricably connected to Engel's misconduct in seeking to collect extra fees. The D/C knew that Engel had accused his client of deceit in relation to the existence of the Sisler lien, and that Engel had demanded extra fees from his client and in an attempt to extract those fees, attempted to intimidate her into paying him. The D/C carefully avoided these issues in his report the review panel. He purposely misled the review panel. Therefore, the D/C is guilty of **fraud by omission**.

In his motion for summary judgment Engel did not mention this as an issue that must be resolved. But D/C Strauch had available to him the Dias affidavit filed on May 13, 200. She expressly raised the issue of who is responsible to pay the fee awarded to Sisler.

4. Mr. Engel is insisting that I pay the attorney fee awarded to Matthew Sisler. It is Mr. Engel's responsibility to stipulate who should pay this type of fee in the contingent fee agreement. The fee agreement I signed with Mr. Engel does not discuss this issue. I asked Mr. Engel to explain why he should not pay Sisler's fee. He refused to do so. I believe that whatever fees are ultimately determined to exist in this case must be reduced by the \$12,500

which has already been paid to Mr. Sisler by the clerk of court.  
(Affidavit prepared by the Alterowitz law firm of Missoula.)

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Part 12 of Complaint:

**ATTORNEY ENGEL COMMITTED DECEIT AND FRAUD ON HIS CLIENT, ON ME, AND ON THE COURT BY HIS CONDUCT AND STATEMENTS IN DENYING THAT HE HAD A DUTY TO PAY ME AND BY HIS CONDUCT IN DENYING THAT WE HAD A FEE SHARING AGREEMENT. (PART XII)**  
**( 32 pages of complaint facts)**

In Part XII of the Complaint (32 pages) Shea carefully sets out the way in which Engel committed deceit on his client, on Shea, and on the Court in contending that he had no duty to pay Shea for the services rendered and in contending that the obligation to pay Shea was on his client. In other words, Engel had the benefit of all the work which Shea did on the case, which was the lion's share by far of all legal work done on the case, but he was trying to foist the obligation on his client to pay Shea.

**Did Engel file a response to Charge XI in his filing with the ODC? The answer is yes-- BUT.** In his response Engel was extremely evasive and it was difficult to pin down what he actually was saying, except that he did not want to pay Shea.

**Did D/C Strauch set out this issue and the underlying facts in his report to the review panel? The answer is no.** D/C Strauch conveniently omitted his issue and the underlying factual assertions of Shea by sweeping them under his Disciplinary Counsel rug. Nowhere does Strauch set out the factual assertions of Shea concerning his claim that Engel must pay him for services rendered. **This is fraud by omission.**

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Part 13 of Complaint:

**ATTORNEY ENGEL FAILED TO PROPERLY REPRESENT HIS CLIENT BY NOT OBTAINING ENTRY OF JUDGMENT BEFORE DEALING WITH THE ATTORNEY LIEN CLAIMS OF MATTHEW SISLER AND ERIC RASMUSSEN. ATTORNEY ENGEL ALSO PROVIDED FALSE INFORMATION TO HIS CLIENT. (PART XIII)**  
**(9 pages of complaint facts)**

In Part XIII of his Complaint (9 pages), Shea set out in detail the reasons it was financially advantageous to Engel's client to have judgment against HMHB entered first before Engel handled any hearing on either Sisler's or Rasmusson's claimed attorney liens. One of the strongest reasons is that if a judgment was entered and paid, she could have access to part of those funds immediately and still leave the remaining funds in the control of the court to satisfy the demands of Sisler, of Rasmussen, and also

of Engel. Shea also set out the facts as to how Engel had failed to advise his client of the proceedings and to discuss the proper order of proceeding not only from a legal standpoint, but from what might be more advantageous for his client. Engel had a duty to do this but failed to do it.

And legally, Engel should have immediately advised his client that his client had a right to seek arbitration as to Sisler's claim. Engel failed to do so. Further, when Engel responded to his letter as to why he did not seek entry of judgment first, he gave her false information by telling her that she could not spend any money from the judgment until all the liens were satisfied.

**Did Engel file a response to Charge XII in his filing with the ODC? The answer is NO.** Engel provided no explanation in his response. He did not respond at all to the primary issue or the factual assertions in support of this issue. This constitutes an admission.

**Did D/C Strauch set out this charge and the underlying factual assertions in support of this charge? The answer is that he did set out the charge? But the answer is also that he did not set out the underlying factual assertions in support of this charge.** Nowhere does D/C Strauch set out Shea's factual assertions.

Well, then, how did D/C Strauch dispose of this charge? He became Engel's advocate. He set out certain factors totally unrelated to the factual assertions of Shea, and misstated the procedural sequence in the process, and misstated the nature of the issue, and concluded that judgment had been entered before Sisler and Rasmussen were paid. In this process he totally misstated the nature of the charge.

Shea's charge was that final judgment against HMHB should have been entered before there were any hearings on Sisler's claim to attorney's fees or Rasmussen's claim to costs. If this had been done, Dias could have petitioned the court for a partial distribution of funds to her. Sisler's hearing was in April, 2003 and the judgment was not entered until August 21, 2003. As to Rasmussen, there was never a hearing. Engel let that matter go by default (and this default is part of the subject matter of Charge XV, that Engel was guilty of ethical misconduct in his handling of (or shall we say nonhandling) of the Rasmussen lien claim for costs. **D/C Strauch is guilty of fraud by omission, and by misstating the nature of Shea's charge as set out in Part XIII.**

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**Part 14 of Complaint:**

**ATTORNEY ENGEL FAILED TO PROPERLY REPRESENT HIS CLIENT  
IN DEFENDING AGAINST THE ATTORNEY LIEN CLAIM OF MATTHEW  
SISLER AND HE HAD AN OVERRIDING CONFLICT OF INTEREST  
WHICH PREVENTED THE FAITHFUL DISCHARGE OF HIS DUTIES AND  
CONSTITUTED A BREACH OF FIDUCIARY DUTY. (PART XIV)  
(28 pages of complaint facts)**

In Part XIV of the Complaint ( 28 pages) Shea went into great detail to show that Engel failed to properly represent his client in defending against the attorney lien claim of Matthew Sisler, and

that Engel had an overriding conflict of interest which prevented the faithful discharge of his duties, and which constituted a breach of fiduciary duty. The primary conflict of interest was that in defending against Sisler's attorney lien claim for fees, Engel used a great percentage of his time seeking discovery information from Sisler which would help Engel defend against Shea's claim to payment from Engel.

This discovery did not help at all to defend against Sisler's attorney lien claim. Further, Engel was then charging Dias at an hourly rate for his so-called defense, and he was therefore compelling Dias to pay for hours spent by Engel on a totally unrelated issue. Engel was then pursuing his own financial interest without regard to the rights and interests of his client.

Further, Shea contended that in his defense against the Sisler lien claim, Engel had used an untenable legal theory. He claimed that after he took over the case, there was not a scrap of useful information which he obtained during Sisler's representation that was useful in Engel's proceeding with the case after he took over. Therefore, Engel claimed that Sisler was entitled to nothing. This theory was untenable in fact as well as in theory.

**Did Engel file a response to Charge XIII in his filing with the ODC? The answer is NO.** Engel provided absolutely no response to the charges made by Shea. This constitutes an admission.

Did D/C Strauch set out the nature of the charge in Part XIII, and the factual assertions of Shea in support of his charge. The answers are yes and no. The entire issue was stated by Strauch as follows:

Shea alleges Engel engaged in misconduct in his defense of the Sisler lien because of a conflict of interest and the use of an untenable legal theory. (Page 7, paragraph E).

If D/C Strauch had then set out the basis of Shea's contentions that Engel had a conflict of interest, and that basis of his contention that Engel had used an untenable legal theory to defend against the lien claim, then there would be not much of an objection to this statement of the issues. However, that is the end of the story in so far as Strauch setting out the basis of these claims. From there D/C Strauch's investigative report proceeded to mislead the review panel:

**Conflict of interest:** D/C Strauch did not set out the factual basis for Shea's claim that Engel had a conflict of interest. Nowhere in his report does he set out Shea's factual assertions to the effect that Engel was pursuing his own personal financial interests and using the Sisler lien proceedings to further those interests. Failure to set out these factual assertions is fraud by omission. **Through this fraud by omission, D/C Strauch misled the review panel.**

**Use of an untenable legal theory:** Further, D/C Strauch did not set out the factual basis for Shea's claim that Engel had used an untenable legal theory in his defense against the Sisler lien claim to the effect that Engel claimed Sisler had not done anything on the case which proved useful to Engel to pursue Dias's case against HMHB. **This is fraud by omission. Through his fraud by omission, D/C Strauch misled the review panel.**

Further, D/C Strauch totally misled the review panel by stating that he had examined the record and determined that Engel did not have a conflict of interest during the process of

the the Sisler fee litigation. Strauch could only make this assertion by omitting from his report all the information provided by Shea which demonstrated that Engel had a huge conflict of interest. Strauch was able to do this by totally omitting Shea's factual assertions in his complaint, set forth by proper references to the actual evidence. Strauch's so called analysis (report page 7, page 8) contains no reference to Shea's factual assertions that clearly established a huge conflict of interest on the part of Engel.

All of this was a smokescreen, behind which the truth was avoided. The D/C avoided setting forth the basis for Shea's contentions that Engel had a conflict of interest. And the D/C avoided setting forth the basis for Shea's contention that Engel had used an untenable legal theory in defending against the Sisler lien claim. **This is fraud by omission.** Through his fraud by omission the D/C misled the review panel.

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Part 15 of Complaint:

**ATTORNEY ENGEL VIOLATED THE FIDUCIARY DUTIES OWED TO HIS CLIENT IN FAILING TO DEFEND AGAINST THE ATTORNEY'S LIEN NOTICE OF ERIC RASMUSSEN FOR COSTS. ENGEL DID NOTHING AND LET THE ENTIRE MATTER GO BY DEFAULT. IN FACT MARACIA DIAS OWED APPROXIMATELY \$70.00, BUT ENGEL ALLOWED PAYMENT OF THE ENTIRE CLAIM BY FAILING TO DEFEND HER.**

**ENGEL ADDS FURTHER INSULT TO INJURY BY INSISTING THAT HIS CLIENT MUST PAY THE RASMUSSEN CLAIM FROM HER SHARE OF THE RECOVERY. (PART XV)**

**(6 pages of complaint facts)**

In Part XV of his Complaint, (6 pages) Shea set forth not only the basic issues, but the facts behind his contentions that Engel engaged in violations of ethical standards in his defense of, or shall we say, no defense of the Rasmussen attorney lien for costs. Shea set out facts which clearly established Engel's deliberate indifference to defending against the Rasmussen lien claim. He just didn't care, period. The result of Engel's deliberate indifference is that his client was compelled to pay to Rasmussen approximately \$453.00, while in fact she still owed no more than \$50.00.

**Did Engel file a response to Charge XV in his filing with the ODC? The answer is NO.** Shea carefully examined Engel's response. Engel provided absolutely no response to the charges made by Shea. This, by itself constitutes an admission.

Did D/C Strauch set out the precise nature of the allegation as to Engel's violation of ethical standards in defense of the Rasmussen lien claim for costs? **The answer is NO.** Did D/C Strauch set out the assertions of facts made by Shea to support his allegations? **Again, the answer is NO.**

How did D/C Strauch set out Shea's allegation? D/C Strauch states:

"He (Shea) also alleges Engel engaged in misconduct in the defense of Rasmusson's lien.... (Page 6, paragraph D)

This issue is buried in the D/C's statement of issues which relate to the D/C's classifications of allegations of competence. So what happens to this issue and the factual assertions after this? The D/C never refers to this issue again, or to the underlying facts which formed the basis for the allegations of misconduct in the defense against the Rasmusson lien claim. This little burial trick is yet another example of the practice of fraud by omission.

Engel's misconduct, his deliberate indifference to the rights of his client, demonstrated a reckless disregard for the rights of his client. A simple letter to Rasmusson most likely would have resolved the problem, and Dias would have ended up paying approximately \$50.00 to Rasmusson rather than \$453.00. But D/C Strauch accomplished the job for Engel. He deliberately buried the issue in his investigative report.

Shea set out six pages of how Engel had harmed his client by his conduct in the defense against the Sisler lien claim. In essence, Engel let Rasmusson's lien claim go by default. The total claim was for about \$453.00. But of this amount Dias owed at most \$50.00. The rest of the lien claim was for costs expended by Rasmusson for the three other plaintiffs he had represented. Three of the plaintiffs did not recover. They owed the rest of the money, not Dias. But Rasmusson's lien was no good against them because they did not recover. As a result of Engel's reckless indifference to the rights of his client, she ended up paying the entire claim.

Engel later attempted to justify his failure to do anything with relation to the Rasmusson lien claim by telling his client that he would do nothing because she refused to pay him. (See Part XV of Complaint, page 5) As stated before in Part IX, the law imposes a duty on an attorney under a contingency fee contract, as part of his duties, to see to that all liens against the total recoveries are resolved.

No wonder that D/C Strauch, in his efforts to secure a dismissal, did not want to report Engel's misconduct in his investigative report.

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**Part 16 of Complaint:**

**ATTORNEY ENGLE FAILED IN HIS DUTIES TO PROPERLY REPRESENT HIS CLIENT BY DEMONSTRATING HIS INABILITY TO DEFEND AGAINST THREE MOTIONS OF THE OPPOSING PARTY DESIGNED TO STALL ENTRY OF JUDGMENT AND REDUCE THE AMOUNT OF THE JUDGMENT.**

**(PART XVI) (7 pages of complaint facts)**

In Part XVI of the Complaint (7 pages), Shea demonstrated what he had done on the case to protect Dias because Engel utterly did not know how or what to do in filing a response to three motions of HMHB directed at stalling entry of judgment and reducing the amount of the judgment. Because Engel utterly did not know how or what to do in response to three HMHB motions to stall entry of judgment and to reduce the amount of the judgment to be entered, Engel contacted his client

and she contacted Shea.

As a result, Shea was compelled to work an entire weekend to do the work and then to send it from the Ms Dias' computer to Engel in Great Falls, so it could be downloaded and put out on Engel's printer. Shea alleged that this demonstrated Engel's incompetence and the fact that he totally relied on Shea throughout the case, but at the same time had the grand design at the end to deny any payment to Shea and seek to impose the duty on his own client.

If Shea had not done the work it would not have been done. D/C Strauch takes the position that it does not matter as long as someone did it. D/C Strauch therefore justified Engel's incompetence by stating that it was not incompetence because someone else got the job done for Engel. The important thing was to get the job done.

**Did Engel file a response to Charge XVI in his filing with the ODC? The answer is NO.** Shea carefully examined Engel's response. Engel provided absolutely no response to the charges made by Shea. This, by itself, constitutes an admission.

Engel knew that he didn't do what he had a duty to do, and by his default he compelled Shea to do the work so that Dias' interests would be projected with regard to the pending motions of HMHB.

**Did D/C Strauch set out the precise nature of the allegation** and set out the factual assertions in support of the allegation. **The answer is NO.** Nor did D/C Strauch not mention that Engel had failed to respond to Shea's allegations and supporting facts. The D/C just went right ahead and went to bat for Engel. The D/C supplied his own answer to Shea's allegations.

The D/C reasoned that it did not matter who did the work as long as it was done. And the work was done. Engel filed the responses based on the work done by Shea. From a legal standpoint in court what D/C Strauch says is correct. However, he totally missed the point. It was Shea who was compelled to do the work because Engel was incompetent to do it himself. That was the issue.

So once again D/C Strauch demonstrated his one directional mission to achieve a dismissal of the complaint. (See **investigative report, page 7, paragraph C**). In this lengthy paragraph covering other matters, D/C Strauch falsely implies that Shea asserted that he prepared, signed and filed these documents himself.

"...Again, contrary to Shea's allegations, Engel signed and filed the documents purported to have been drafted by Shea in response to the July 2003 motions...." (Page 7, paragraph C)

What does he mean contrary to Shea's allegations? Shea did not suggest that Shea had signed and filed the documents. (See Shea's **Complaint, Charge XVI, page 4**). The D/C deliberately provided a wrong impression in his investigative report. Yet at the same time he had never either set out the issue or reported Shea's assertions of fact in his report to the review panel. This is deceit on the part of the D/C. This is a deliberate misrepresentation of fact.

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Part 17 of Complaint:

**ATTORNEY ENGEL FAILED TO PROTECT THE INTERESTS OF HIS CLIENT FROM THE ERRONEOUS COURT ORDER ENTERED ON AUGUST 21, 2003 RELATING TO THE PAYMENT OF MATTHEW SISLER AND ERIC RASMUSSEN. (PART XVII)**  
(10 pages of complaint facts)

D/C Strauch failed to set forth the facts asserted by Shea to support his charge that Engel had failed to protect the interest of his client from the erroneous court order entered on August 21, 2003 relating to the payment of Matthew Sisler and Eric Rasmussen. Shea had set out ten pages of facts and legal actions which Engel could have undertaken in order to protect his client from both of these erroneous orders. The failure of D/C Strauch to provide this information to the review panel is fraud by omission.

**Did Engel file a response to Charge XVII in his filing with the ODC?** The answer is NO. Shea carefully examined Engel's response. Engel provided absolutely no response to the charges made by Shea. This constitutes an admission. But sadly, the D/C did not report to the review panel that Engel had failed to file a response.

Did D/C Strauch set out the precise nature of the allegation as to Engel's violations in failing to protect the interests of Dias when the orders for payment to Sisler and Rasmusson were entered on August 21, 2004? The answer is NO. Did D/C Strauch set out the assertions of facts made by Shea to support his allegations? Again, the answer is NO. And in fact, the D/C failed to report that Engel had not filed a response.

But again D/C Strauch once again came to the aid of Engel by stating there was really nothing Engel could do when the orders were entered. But in fact, Shea's Charge in Part XVII contains what Engel could have done if he was at all interested in protecting his client. (See Shea's Complaint Part XVII, pages 3-6). And Shea also pointed out the personal financial conflicts of interest which Engel had which at least in part motivated his failure to take any action to protect the interests of his client. (See Complaint, Part XVII, pages 6-8.)

Once again, the D/C finessed this issue to help Engel and he swept it under the Disciplinary Counsel rug.

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Part 18 of Complaint:

**BETWEEN EARLY AUGUST AND NOVEMBER 11, 2003, WHEN ENGEL FORMALLY WITHDREW THE CASE AND FILED HIS NOTICE OF CHARGING LIEN, MARCIA DIAS EFFECTIVELY WAS WITHOUT REPRESENTATION. ENGEL HAD REFUSED TO REPRESENT HER, AND EVEN AFTER HIS DISCHARGE HE FAILED AND REFUSED TO TAKE ACTION UNTIL**

NOVEMBER 11, 2003. ENGEL ABANDONED HIS CLIENT. (PART XVIII)  
(14 pages of complaint facts)

D/C Strauch failed to set forth the issues which Shea raised concerning Engel's failure to withdraw from the case in a timely fashion. This is fraud by omission. Shea set out the procedural facts and the many failures of Engel to take any action to protect the interests of his client. In sum, during this crucial procedural time period, Engel had abandoned his client but he still refused to get off the case. D/C Strauch failed to set forth the basic factual assertions Shea made as to what Engel did and did not do during this vital time period. This is fraud by omission.

**Did Engel file a response to Charge XVIII in his filing with the ODC? The answer is NO.** Shea carefully examined Engel's response. Engel provided absolutely no response to the charges made by Shea. This, by itself, constitutes an admission. Here, for the first time, D/C Strauch acknowledged that Engel had not filed a response.

And then, of course, he D/C proceeded to become Engel's advocate and filed his own view of the proceedings which justified the delay in Engel not immediately withdrawing from the case. In doing so, D/C Strauch failed to set out the proceedings which had taken place up to the time Engel was discharged and it was this situation which compelled the paramount need for Engel to withdraw immediately. But Engel failed to do so. He took no action to withdraw for almost three weeks after he was officially discharged for cause.

Did D/C Strauch set out the precise nature of the allegation as to Engel's violations in failing to timely withdraw from the case after he was discharged for cause? **The answer is NO.** Did D/C Strauch set out the assertions of facts made by Shea to support his allegations? **Again, the answer is NO.**

In his complaint, **Part XVIII, pages 2-12**, Shea set out the huge problems Engel created for his client after entry of the final judgment on August 21, 2003 and the August 21, 2003 order relating to payment of statutory fees of appeal and disbursement of part of the judgment funds to Sisler and Rasmusson. Engel had done nothing to protect his client's interests. And, after he was given notice of discharge on October 24, 2003, he still did nothing until he wrote the letter to the Court on November 11, 2003, to assure that a satisfaction of judgment would be entered.

Of course, the satisfaction of judgment, entered by the Court, on the Court's own motion, was just what Engel wanted. He was off the case then, had illegally filed his charging lien with the Court along with the satisfaction of judgment, and by that time it was, practically speaking, too late for Dias to take any action in relation to the payments made to Sisler and Rasmusson. And she had no lawyer.

In becoming Engel's advocate in spite of the fact that Engel had not filed a response to the charge in Part XVIII, D/C Strauch totally omitted the compelling circumstances which required an immediate withdrawal by Engel. This is misrepresentation by omission. This is fraud by omission.

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Part 19 of Complaint:

ATTORNEY ENGEL ABUSED HIS ATTORNEY'S PRIVILEGE AND IS GUILTY OF ABUSE OF PROCESS AGAINST MARCIA DIAS. HE FILED A NOTICE OF CHARGING LIEN WHEN HIS RIGHT TO A CHARGING LIEN NO LONGER EXISTED BECAUSE THE FUNDS HAD ALREADY BEEN DISBURSED TO ENGEL AND HIS CLIENT. (PART XIX)

ALMOST TWO MONTHS AFTER THE FUNDS HAD BEEN DISBURSED BY THE CLERK OF COURT TO ENGEL AND HIS CLIENT AND DEPOSITED IN BOTH THEIR NAMES, ATTORNEY ENGEL FILED A NOTICE OF ATTORNEY LIEN IN DISTRICT COURT. THIS FILING IS AN ABUSE OF PROCESS. ENGEL NO LONGER HAD A CHARGING LIEN. ENGEL FILED HIS NOTICE OF LIEN TO HARASS, EMBARRASS, AND INTIMIDATE MARCIA DIAS. (PART XIX) (13 pages of complaint facts)

In Part XX his Complaint (13 pages) Shea charged that Engel was guilty of ethical misconduct because he abused his rights as an attorney to file a charging lien when he no longer had a charging lien. In his March 11, 2003 letter to district judge Sherlock, Engel also advised the judge that he was filling a charging lien. Engel told the court that there was an arbitration proceeding pending but he attacked his client and her motivations, suggesting that she did not really want to go through with arbitration.

Shea's charge was that Engel no longer had a charging lien at that time because the judgment funds and attorney fee funds had already been disbursed and in fact they were in a joint account in a bank in the joint names of Engel and his client. Therefore, Engel no longer had a charging lien. The lien has served its functional purpose. The funds were in two bank accounts over which Engel had joint control. Shea charged that in filing the charging lien after his right to a charging lien had expired; Engel was guilty of abuse of process.

Did Engel file a response to Charge XIX (13 pages) in his filing with the ODC? The answer is NO. Shea carefully examined Engel's response. Engel provided absolutely no response to the charges made by Shea. This constitutes an admission.

And then we come to the investigative report of D/C Strauch? Did D/C Strauch bring this charge to the attention of the review panel? The answer is NO. The D/C totally omitted any mention of this charge in his investigative report to the review panel. In this situation the review panel did not even know of the existence of this charge. This is fraud by omission.

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Part 20 of Complaint:

AFTER HE SIGNED THE ARBITRATION AGREEMENT, ATTORNEY ENGEL ILLEGALLY INCLUDED THE STATE BAR STAFF BY HIS EX PARTE CONTACTS, OTHERWISE CONDUCTED HIMSELF IN BAD FAITH, INTIMIDATED AND

**THREATENED HIS FORMER CLIENT, PROVIDED FALSE AND MISLEADING INFORMATION TO THE STATE BAR, AND ILLEGALLY FILED A PETITION IN DISTRICT COURT TO ENFORCE A CLAIMED ATTORNEY'S LIEN WHEN THE STATE BAR STILL HAD JURISDICTION. (PART XX)**

**(33 pages of complaint facts)**

D/C Strauch failed to set out the issues stated by Shea. This is fraud by omission. And D/C Strauch failed to set out the facts which Shea had supplied in support of his statement of the misconduct ethical issues created by Engel's contacts with the State Bar of Montana.

In Part XX of the complaint (33 pages) Shea set out the issues as stated in the heading here, and he set out the facts to support his assertions. Engel's illegal ex parte influence on personnel at the State bar is mind boggling. And the State Bar acquiesced in this ex parte influence and essentially acted on Engel's behalf. Shea set out the facts in some detail.

**Did Engel file a response to Charge XX (33 pages) in his filing with the ODC? The answer is NO.** Shea carefully examined Engel's response. Engel provided absolutely no response to the charges made by Shea. This, by itself, constitutes an admission.

And then we come to the investigative report of D/C Strauch? **Did D/C Strauch bring this charge to the attention of the review panel? The answer is JUST BARELY.** The D/C totally distorted the issues and allegations and of course, failed to set out any of the factual assertions of Shea, 33 pages of facts showing the totally destructive activity of Engel in his ex parte communications with staff of the State Bar of Montana. But D/C Strauch totally finessed the issue and the facts.

And how did D/C Strauch handle the ex parte influence used by Engel on staff members of the State Bar of Montana? He hardly mentioned the issue. D/C Strauch finesses the issue by limiting it to the following statement:

"Shea also alleges Engel engaged in misconduct through ex parte communications with the State Bar regarding Dias' subsequent fee arbitration petition." (Top of page 2, paragraph A)

This was certainly one of the issues which Shea alleged, but the D/C ignored the 33 pages of facts which Shea provided to him which proved that Engel was guilty of the most egregious ex parte violations in his contacts with the State Bar of Montana.

Then, three pages later, D/C Strauch slips in a statement of Engel that has some reference to the arbitration with the State bar of Montana. Strauch quotes or paraphrases Engel as saying:

"Engel indicates that the State Bar took some preliminary steps to get an arbitration panel but because of budget cutbacks and staff shortages, arbitration would take months to organize." Engel spoke with the State Bar Counsel Brandborg who investigated the matter. Brandborg indicated that it was clear to her that the main reason arbitration was requested was to address Shea's claim for fees and informed both Engel and Dias the issue was best determined by the District Court. (Exhibit 21 -Brandborg's letter to Engel and Dias)."

Engel says Shea was angry because he had intended to "circumvent the prohibition about splitting fees through the arbitration process. Judge Sherlock did not let him do so."  
(Page 5 paragraph E and top of page 6)

As one can see, D/C Strauch relied entirely on Engel's factual assertions. Not once does D/C Strauch refer to the 33 pages Shea set out concerning the illegal contacts Engel made with the State Bar and the influence had on them.

Shea's complaint containing the facts, including letters from Engel, letters authorized by the State Bar Counsel, and letters authored by Engel's client, Dias, shows Engel's conduct to be absolutely disgusting and reprehensible. Further, the conduct of Betsy Bradborg was also disgusting. Anyone who read these 33 pages of complaints would be totally disgusted at Engel, at Betsy Brandborg, and at the State Bar--and no less, at our so called vaunted justice system.

The D/C Strauch totally distorted the issues and allegations and of course, failed to set out any of the factual assertions of Shea, 33 pages of facts showing the totally destructive activity of Engel in his ex parte communications with staff of the State Bar of Montana. But D/C Strauch totally finessed the issue and the facts.

D/C Strauch had an interest, not only in protecting Engel, but also in protecting the State Bar. In not setting out the true facts here Strauch not only protected Engel but also the unethical conduct of State Bar Counsel, Betsy Brandborg. She willingly received, acquiesced in, and acted upon Engel's ex parte contacts and influences to the detriment of Marcia Dias.

By not reporting the true facts of Engel's illegal and successful ex parte influence on the State Bar of Montana, D/C Strauch turned a sow's ear into a silk purse. In his reporting of this issue and in his report of the facts relating to the issue in his investigative D/C Strauch was guilty yet of another act of **fraud by omission**.

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**Part 21 of Complaint:**

**ATTORNEY ENGEL FILED HIS PETITION TO ENFORCE HIS CLAIMED  
ATTORNEY'S LIEN IN DISTRICT COURT IN VIOLATION OF THE  
JURISDICTION OF THE STATE BAR OF MONTANA WHERE PROCEEDINGS  
WERE PENDING IN ARBITRATION. (PART XXI)**

**( 21 pages of complaint facts)**

D/C Strauch failed to present this as an issue to the review panel. He omitted it. This is fraud by omission.

In the **Complaint Part XXI (21 pages)** Shea set out all the facts to justify a charge that when Engel filed his petition in district court for enforcement of a claimed attorney's lien, the State Bar of

Montana still had jurisdiction. The Supreme Court promulgated rules requiring that to leave arbitration both parties must sign an agreement. In this case Engel had agreed to leave arbitration, but Dias did not sign the agreement and would not sign the agreement. Engel filed his petition in district court anyway, in violation of the Supreme Court rules. There is no doubt that Engel violated rules of ethical conduct in filing his petition for foreclosure.

**Did Engel file a response to Charge XXI (21 pages) in his filing with the ODC? The answer is NO.** Shea carefully examined Engel's response. Engel provided absolutely no response to the charges made by Shea. This constitutes an admission.

And then we come to the investigative report of D/C Strauch? **Did D/C Strauch bring this charge to the attention of the review panel? The answer is NO.** Strauch omitted this issue entirely. Strauch is once again guilty of fraud by omission. By his deceit, the review panel was not aware of the existence of this charge.

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**Part 22 of Complaint:**

**BY HIS PETITION DIRECTLY SEEKNG RELIEF AGAINST ME BUT NOT JOINING ME AS A PARTY ENGEL INTENDED WITH ALL POSSIBLE MEANS, TO DENY ME OF DUE PROCESS OF LAW. ENGEL WAS SEEKING AN ADJUDICATION OF MY RIGHTS WITHOUT MY PRESENCE TO DEFEND AND ASSERT MY RIGHT TO COMPENSATION. ATTORNEY ENGEL INTENDED TO AND DID DEPRIVE MARCIA DIAS OF DUE PROCESS RIGHTS BY FAILING TO JOIN ME AND BY RESISTING MY JOINDER AS A PARTY TO THE ACTION. (PART XXII)**

**( 38 pages of complaint facts)**

In his **Complaint Part XXII (38) pages**, Shea set forth with great detail the violations committed by Engel against Shea and against his own client when he sought relief against Shea in his petition to foreclose his claimed attorney's lien but did not join Shea as a party and resisted the motion of Dias' attorney to have Shea joined as a party. Shea was very careful in setting out the facts as they relate to Shea's involvement in this case; Shea was very careful in setting out the procedural facts as they relate to this case; and Shea was very careful in setting out the facts as they relate to Engel violating his own client's rights by not requesting a full adjudication with Shea joined as a party. Engel's actions resulted in very serious ethical violations.

**Did Engel file a response to Charge XXII (38 pages) in his filing with the ODC? The answer is NO.** Shea carefully examined Engel's response. Engel provided absolutely no response to the charges made by Shea. This constitutes an admission.

And then we come to the investigative report of D/C Strauch. **Did D/C Strauch bring this charge to the attention of the review panel? The answer is NO.** Strauch omitted this issue entirely. Strauch is once again guilty of fraud by omission. By his deceit, the review panel was not aware of the existence of this charge.

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Part 23 of Complaint:

ON MARCH 2 2004, IN ARGUING THAT HE WAS NOT REQUIRED TO JOIN ME AS A PARTY, IN HIS ACTION FOR FEES AND EXPENSES, ENGEL FILED A BRIEF ON WHICH THE DISRICT COURT RELIED IN RULING THAT ENGEL WAS NOT REQUIRED TO JOIN ME AS A PARTY TO THE ACTION. THE ORDER ENTERED ON MARCH 2, 2004, RELIED ON THE REPRESENTATIONS MADE BY ATTORNEY ENGEL IN HIS BRIEF. THOSE REPRESENTATIONS WERE FALSE. ENGEL OBTAINED AN ORDER OF THE COURT BY FALSE REPRESENTATIONS. (PART XXIII)

(2 5 pages of complaint facts)

In his **Complaint, Part XXIII (25 pages)** which was the last part of his complaint, Shea charged that Engel filed a brief on March 2, 2004, directed against Shea, in which he made false representations of the law. On the very day that Engel filed the brief the district judge entered an order, based on the brief, which relied on Engel's representations, and vitally harmed the rights of Shea, who had not been joined as a party in order to represent his interests. As a result of his brief misrepresenting the law, Engel obtained an order of the court by false representations. Shea was very precise in showing the false representations of law which Engel had made in his brief.

**Did Engel file a response to Charge XXIII (25 pages) in his filing with the ODC? The answer is NO.** Shea carefully examined Engel's response. Engel provided absolutely no response to the charges made by Shea. This constitutes an admission.

And how did the D/C Strauch represent this charge in his investigative report to the review panel? **The answer is: he didn't.** Strauch omitted any reference to this charge in his investigative report. By Strauch's deceit, the review panel was not aware of the existence of this charge. **This is fraud by omission.**

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**PART V. SUMMARY AND CONCLUSION**

The motion of the D/C to put virtually all of the filings under lock and key should be denied. A long time ago the former D/C took the genie out of the bottle and it is far too late to put the genie back in the bottle. D/C Strauch deliberately used his so-called investigative report with relation to Shea's complaint against Engel and attached it to and offered it as part of the entire investigative report filed by D/C Strauch before another review panel to bolster his recommendation to the review panel. Therefore, this first investigative report officially became part of the second investigatory report. By this act and conduct D/C Strauch waived any right to claim that the contents of the report and the documents relating to that report must not be revealed as public documents.

Further, the review panel acted on this combined report in adopting D/C Strauch's

recommendation to file a complaint against Shea based on the judge Sherlock referral. By this action of the review board the Commission itself waived any right to claim that the material must not be revealed as public documents. And then the action and conduct of the present D/C completed the loop. D/C Thompson, based on the action of the review panel on July 29, 2005, filed a formal complaint against Shea on October 17, 2005. Two reports were placed in Shea's public file at the Commission office. Shea found them there about the last week of March, 2006, and ordered and paid for a copy of each report. Therefore, D/C Thompson also waived any right to claim that the documents were not public documents. He, or someone on his behalf, placed them there. Based on this conduct, there has been a waiver, and the D/C as well as the Commission are estopped from claiming that these documents and the related documents which Shea filed, must be placed back into the genie's bottle.

Furthermore, Shea argues that waiver and estoppel principles must be more liberally applied in situations where there is a deep and abiding public interest in the subject matter because it affects the public's right to know. If there is a strong public interest to be protected and vindicated by making the documents public, then there is also a stronger reason to hold that the governmental agencies, no matter what branch, have waived the right to keep the material under lock and key. In this situation, there is a required tilt in favor of the public's right to know.

In promulgating and enforcing its rules, both the Supreme Court and the Commission on Practice, must be forever mindful that in interpreting the rules of the Montana Supreme Court, there must be forever paramount the recognition of the right to know guaranteed to the people as a Montana Constitutional right. Article I, Section 9. Right to Know, provides:

No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of State government and its subdivisions, except in cases in which the demand of privacy clearly exceeds the merits of public disclosure.

Here, there truly is not a legitimate interest in protecting an individual person who would be wrongfully harmed by any disclosure of the material. As to Engel, he has received a tremendous amount of publicity because of proceedings filed against him. On the other hand, there is tremendous value in keeping all of these proceedings public including the challenged documents. Only then can the public, better described in more personal terms as "we the people", know how the Commission and the Office of Disciplinary Counsel is conducting the public's business as charged by the Montana Supreme Court. The Court is charged by Montana's Constitution as the body ultimately responsible for lawyer discipline. Further, the Supreme Court itself, in whatever method it chooses to handle the problems of lawyer discipline in this state, cannot in that process ignore Article I, Section 9.

Here there is a vital public interest to be served so that "we the people" can determine for itself whether those officers, agents, and employees of the Montana Supreme Court, charged with the duties of lawyer discipline, have truly acted in the public interest. The people have the right to know if the Commission is adhering to all its rules, and if not, why not. And the people have the right to know if the Office of Disciplinary Counsel is adhering to all its rules, and if not, why not.

In this case there is a clearly manifested right of the people to know if the Commission and the Disciplinary Counsel have violated any rights owed to Shea and duties owed to Shea and this can be

accomplished only if the challenged documents remain in the public domain for public inspection.

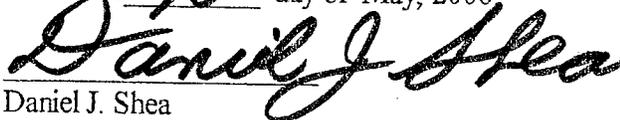
There are huge and fully documented violations that have taken place in this case with regard to Shea. He has been adversely affected by the Rules violations committed by the Commission and its members, and he has been adversely affected by the Rule violations committed by the former Disciplinary Counsel. The Commission, at least its key members, the Chairman and Vice Chairman, are most surely fully aware of this. As officers and agents of the Montana Supreme Court it would be contrary to sound public policy for the Commission, in light of the problems existing in this case, to change this part of the Commission's proceedings into secret proceedings so that the people cannot judge for themselves what has happened, what is happening, and what may happen. Therefore, Shea asks the Commission, in the public interest, to deny the motion of Disciplinary Counsel. The people must be allowed to examine the documents placed in issue by the motion of the Disciplinary Counsel.

The motion must be denied.

#### REQUEST FOR RELIEF

- (1). Shea asks that Chairman Warren and Vice Chairman Davis remove themselves from this case, and that they do not sit on any of the rulings to be made.
- (2). Shea asks that Commission member Lamb remove himself from the case and that he does not sit on any of the rulings to be made.
- (3). Shea asks that any other members on the Adjudicatory Panel who had knowledge, directly or indirectly of the Rule violations in this case before Shea brought them to the panel's attention, disqualify themselves from this case, and that they do not sit on any of the rulings to be made.
- (4). Shea asks that the Commission provide to Shea all of its internal operating rules and procedures so that Shea will know how the Commission goes about conducting its business as agents and officers of the Montana Supreme Court.
- (5). Shea requests for a time and place to be set in Helena for oral argument on the motion of the Disciplinary Counsel and that such hearing be open to the people.
- (6). Ultimately for the reasons stated Shea requests that a properly constituted adjudicatory panel deny the motion of the Disciplinary Counsel to seal the records.
- (7). For all additional and proper relief.

Dated this 30 day of May, 2006.



Daniel J. Shea  
Respondent

CERTIFICATE OF SERVICE

I certify that on May 30, 2006, I personally served a copy of this Response Brief on the Office of Disciplinary Counsel.

*Daniel J. Shea*  
Daniel J. Shea

ATTEST: A true copy

*Ed Smith*

ED SMITH  
CLERK OF SUPREME COURT  
STATE OF MONTANA

\*

Daniel J. Shea  
Acting pro se  
800 Broadway,  
Helena, Montana 59601

**FILED**

JUL 21 2006

Commission on Practice  
of the Supreme Court  
State of Montana

OFFICE OF DISCIPLINARY  
COUNSEL

JUL 21 2006

**RECEIVED**

IN THE SUPREME COURT OF THE STATE OF MONTANA

STATE OF MONTANA EX REL DANIEL J. SHEA,  
Petitioner and Applicant

No.

vs.

The Commission on Practice of the Supreme  
Court of Montana, acting as agents and  
officers of the Supreme Court; and  
the Office of Disciplinary Counsel, acting  
as agents and officers of the Supreme Court,  
and the Disciplinary Counsel also acting as  
an employee of the Supreme Court.

VERIFIED PETITION

**FILED**

JUL 21 2006

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Respondents

\*\*\*\*\*

PETITION SEEKING SUPREME COURT REVIEW OF ACTIONS TAKEN BY  
THE COMMISSION ON PRACTICE AND THE OFFICE OF DISCIPLINARY  
COUNSEL WITH JURISDICTION RESIDING ORIGINALLY AND  
EXCLUSIVELY IN THE SUPREME COURT.

By Verified Petition and Application, Daniel J. Shea, appearing pro se, represents  
to this Court:

I. INTRODUCTION-NATURE OF APPLICATION AND LEGAL BASIS FOR

*Exhibit 9*

## JURISDICTION.

Petitioner (Shea) files this petition before this Court based on this Court's original and exclusive jurisdiction. He seeks review of the outrageous actions and conduct of the Commission on Practice (COP) and the Office of Disciplinary Counsel (ODC). Shea has been affected and harmed in the highest degree by their actions, and this harm continues unabated. In the matters which Shea brings before this Court, Shea has absolutely no hesitation in declaring that both COP and the ODC have not only acted illegally, they have acted corruptly. Shea is involved in two matters with COP and the ODC. In one case Shea is the complainant to a huge complaint he filed against attorney Joseph C. Engel III. This case was corruptly dismissed by the collaboration and joint conspiracy between COP and the ODC. Shea is also involved as an accused, charged with engaging in the unauthorized practice of law complaint based on a referral complaint originating with district judge Jeffrey M. Sherlock. Both cases are inseparably related, not only factually, but COP and the ODC, by their actions, have made them inseparably related.

By Montana Constitution Article VII, Section 2(3), the people of this State have vested and entrusted original and exclusive jurisdiction to the Supreme Court over lawyer discipline. **Matter of Wyse** (1984) 212 Mont. 339, 6898 P.2d 758; and **Goldstein and Albers v. Commission on Practice** (2000) 297 Mont. 493, 995 P.2d 923.

Invoking Article VII, Section 2(3) as its authority, this Court created a newly reconstituted Commission on Practice and added the Office of Disciplinary Counsel. This provision, of necessity, vests in this Court the inherent power to review the conduct and actions of the very entities which the Court has created. And that is what Shea's petition asks this Court to do.

The actions of COP and the ODC, acting with conspiratorial intent, have deprived Shea as a complainant in one case and as an accused in another, of due process of law and equal protection of the law as guaranteed by both the Montana and United States Constitutions.

Shea has filed an **Appendix of exhibits** which contain all the required material for preliminary review. Further, he asks this Court to take judicial notice of the files with COP, which includes a copy of the original complaint which Shea filed against attorney Engel and the supporting exhibits.

In the processing of Shea's complaint against Engel, both ODC and COP placed the complaint on a one way track to a predetermined destination of dismissal. The kindest word that can be used for this process is that it was shocking. If a complainant has due process rights and equal protection rights when filing a complaint with the ODC, then all of these rights were thrown out the window in this case. And if a complainant does not have due process rights and equal protection rights, then this Court may as well shut down its lawyer disciplinary functions, for they would be meaningless. Shea's due process rights and equal protection rights were brutally thrashed and trashed.

And Shea's due process rights and equal protection rights were brutally thrashed and trashed once again in the processes which led up to the filing of a complaint against Shea by the ODC. **Both of the cases are related, factually and procedurally, and**

based on the actions of former D/C Strauch of using one investigative report to bolster another when presented to a review panel.

In all of the preliminary proceedings leading up to the filing of the complaint, and even after, the ODC and COP have likewise placed this case on a one way track to a predetermined destination. As the accused Shea must face the very entity (the ODC) which acted to corruptly recommend dismissal of the case Shea had filed against Engel, and which acted corruptly again to secure charges against Shea. Further, Shea's fate as an accused has been placed in the hands of the very entity, the COP, which acted corruptly to dismiss the charges Shea filed against Engel, and then corruptly acted again in the process of assuring and securing a charge against Shea.

In processing both of these cases the ODC and COP, acting with a conspiratorial cross-entity joint venture of cooperation and collaboration, flagrantly and consistently violated the very disciplinary rules they were sworn to enforce and uphold. Shea can point to no other cases in which a **complainant and accused** has been treated with such flagrant disregard of the law and the facts. And if there are such cases, neither the ODC nor COP would be inclined to disclose them.

Only governmental secrecy, sanctioned and enforced by the Supreme Court by its own rules, has allowed these officers and agents of the Court to proceed without detection to flaunt the law and facts whenever there is a need for the selective enforcement of the rules in order to achieve a predetermined result. This court-sanctioned secrecy has allowed COP and the ODC to proceed with impunity and unfortunately, virtual immunity.

#### DISMISSAL OF THE COMPLAINT SHEA FILED AGAINST ENGEL

**In time sequence, the first case involves Shea's rights as the complainant to a complaint he filed against attorney Joseph C. Engel III. Shea filed the complaint on**

August 9, 2004. This Complaint, in the Dias case, contained 21 separate charges. This part of the complaint was well over 350 pages (double spaced). It was documented internally with quotations of Engel's violations from records in the case, and also supported by at least 35 exhibits. Engel's response and Shea's reply were completed by the end of October, 2004. Shea heard nothing from COP or the ODC until he inquired and he learned that the complaint had been dismissed. Shea was shocked. Since then, after he became an accused, Shea obtained information on the background of the dismissal of the complaint.

RULE VIOLATIONS AND OTHER MISCONDUCT OF ODC AND COP  
IN RELATION TO THE COMPLAINT DISMISSAL

The violations committed by COP in dismissing the complaint Shea filed against Engel, include the following:

\*\*\*1, Chairman Warren appointed an illegal panel. First, he was required to appoint a five member panel two of whom were nonlawyers. He appointed three members to the panel and all were lawyers: Carey Matovich, Tracey Axelberg, and Tom Hubble. Second, the three member panel had no authority to act as a quorum in any event because it did not have a nonlawyer member. Warren's appointments violated **Rule 3A and 3C**.

\*\*\*2. The panel failed to review Shea's complaint and exhibits and Shea's reply. Nor did the panel review Engel's response and exhibits. The panel had no authority to dismiss without review of these documents. Failure to review the required documents violated **Rule 3B(1)**.

\*\*\*3. The review panel knew and D/C Strauch knew that it was illegal to act without reviewing the required documents, but the panel took action anyway.

\*\*\*4. The only document presented to the review panel was the **investigative report** of former D/C Timothy Strauch. Strauch also knew that the panel would not be reviewing

the required documents. Strauch's report was fraudulent and the review panel should have known it was fraudulent and would have known if they had reviewed the required documents. Among many, many acts of fraud Strauch omitted 10 of the 21 charges from his report. (Shea's Brief of May 30, 2006. Appendix I.) (See Part II of this petition for a partial summary of Strauch's fraud in his report.)

\*\*\*5. As the custodian of the records, Strauch had a duty to provide the required documents to the review panel and failed to do so. Knowing that his report was fraudulent, and knowing that he would not be providing the required documents to the review panel, Strauch is guilty of the most grievous misconduct in recommending dismissal of the complaint. And the review panel is likewise guilty of the most grievous misconduct in dismissing the complaint.

\*\*\*6. After the dismissal the review panel failed to give Shea written notice of the dismissal and of his right to seek reconsideration. The panel knew it had this duty and deliberately violated this duty owed to Shea. The panel and COP violated Rule 3(7), Rule 3(10), and Rule 14. The review panel again is guilty of the most grievous misconduct.

\*\*\*7. Chairman Warren failed to respond to Shea's inquiry when Shea finally learned that the complaint had been dismissed. Neither Warren nor anyone else from COP responded. Warren himself had a duty to respond or to have someone respond on his behalf. He deliberately chose not to respond. Warren himself was part of the conspiracy to dismiss. There existed a joint venture cross-entity conspiracy between COP and the ODC to bring about the dismissal of the complaint. Chairman Warren himself is guilty of grievous misconduct.

\*\*\*8. The dismissal could not have taken place without cross-collaboration and cooperation between ODC and COP. This was a huge conspiracy and Warren as Chairman knew of this conspiracy and took part in the conspiracy. This result could not have been reached without massive violations of Rule 15, prohibiting certain ex parte communications. This rule was honored in this case only by its continued and flagrant violation. Both the ODC and COP are guilty of the most grievous misconduct.

RULE VIOLATIONS AND OTHER MISCONDUCT OF ODC AND COP  
IN RELATION TO THE FILING OF THE COMPLAINT AGAINST SHEA

The misconduct of Strauch and the review panel which dismissed Shea's

complaint against Engel was carried over to the review panel appointed by Chairman Warren to review the complaint of judge Sherlock. This was the second prong of the conspiracy in operation. Shea was faced with a prosecutor who had already acted illegally in recommending and obtaining a dismissal of Shea's complaint against Engel. And Shea was faced with a review panel of which two members were influential lawyers who had already acted illegally in dismissing Shea's complaint against Engel and failing to give Shea notice of the dismissal. Obviously, the Warren panel selections flowed over, infected, poisoned, and contaminated the proceedings in relation to the Sherlock complaint. Shea did not stand a chance against the combined onslaught of the ODC and COP.

In the process and procedures resulting in the authorization of a complaint on July 29, 2005, D/C Strauch and the review panel committed the following flagrant rule violations and unethical conduct:

\*\*\*1. Chairman Warren appointed a five member review panel: Lawyers Carey Matovich; Tracey Axelberg, Jon Oldenburg, and nonlawyers Arthur Noonan and Patricia DeVries. Matovich and Axelberg had been on the review panel which illegally dismissed Shea's complaint against Engel. By this action, Warren appointed a contaminated review panel. He assured that Shea would have a poisoned panel to take action against him, and as members, had already demonstrated a willingness to violate the rules. Chairman Warren, by this conduct alone, is guilty of grievous misconduct.

\*\*\*2. The panel failed to review the required documents. The panel did not review Sherlock's complaint and Shea's affidavit which formed the basis of the complaint. The panel did not review Shea's response. The panel did not review Sherlock's reply. Without this review the panel had no authority to take action. The panel violated **Rule 3B(1)**.

\*\*\*3. The only document presented to the review panel was the investigative report of former D/C Strauch. Strauch also knew that the panel did not receive or review the

required documents. Both Strauch and the panel knew that they were acting illegally.

\*\*\*4. The investigative report was inaccurate and misleading; it failed to internally provide an evidentiary basis for filing a charge. And most important, in many respects, it was **fraudulent**. (See Shea's Brief filed on June 9, 2006, **Appendix I**. The review panel would know of these deficiencies if they themselves had reviewed (read and studied) the required documents. (See **Part II of this Petition which sets out a partial summary of Strauch's fraud and provides a sufficient basis for the Court to understand the nature and scope of the wrongdoing.**)

\*\*\*5. D/C Strauch illegally and unethically attached to his report his earlier report that he had filed with the review panel which dismissed Shea's complaint against Engel. Matovich and Axelberg had been on that panel. By his process Strauch further sought to poison the review panel against Shea. In essence, the review panel had for guidance and reliance two fraudulent investigative reports.

\*\*\*6. The processes used to bring about the complaint filed against Shea could not have taken place without cross-collaboration and cooperation between ODC and COP. This was the second prong of the conspiracy between ODC and COP. It could not have taken place without the knowledge, acquiescence, and agreement of Chairman Warren and probably at least one more of those who comprise the inner circle of control on COP. As in the dismissal of Shea's complaint against Engel, this result could not have been reached without continuous and wholesale violations of the rule prohibiting ex parte communications. Rule 15. But this rule again was honored only by its flagrant and repeated violation. This was a full fledged conspiracy if ever there was one.

#### CONTINUING VIOLATIONS AFTER THE REVIEW PANEL ACTED ON JULY 29, 2005 TO AUTHORIZE A COMPLAINT

After D/C-Thompson took over as the new D/C, he filed a formal complaint against Shea on October 17, 2005. He included in the complaint four charges that had not been presented to or acted on by a COP review panel.

\*\*\*1. The charges contained in **Paragraphs VI, VII, VIII, and part of paragraph IX** were not authorized by the review panel. Shea was given no opportunity to respond.

The supporting documents were not presented to a review panel, and an investigative report was not presented to the review panel. (See complaint, Appendix I.)

\*\*\*2. It would appear that the D/C had gotten together with district judge Sherlock sometime after July 29, 2005. They joined forces to come up with these additional charges to be included in the complaint.

\*\*\*3. The D/C had no right to include these new charges without first going through the required probable cause review procedures. They must be dismissed.

Failure to personally serve Shea with process according to his right of election.

At the request of the D/C, the Clerk of the Supreme Court sent to Shea by certified mail a copy of the complaint, a citation, and a notice and acknowledgment form which conformed with Form 18A set forth in the Montana Rules of Civil Rules of Procedure. Based on this notice Shea did not file an appearance but was waiting to be personally served, as was his right. Shea was never personally served.

Shea was hailed before COP at a hearing on March 17, 2006 and he filed motions to dismiss which included, among other matters, that he had not been personally serviced and therefore his time to appear had not begun to run. Both the ODC and COP ignored Shea's motion and until this day COP has failed and refused to give a direct ruling. The issue is very simple: either Shea had a right to rely on his notice or he didn't. If he didn't, why not? On the basis of due process, Shea is entitled to a definitive ruling.

OTHER MOTIONS OF SHEA DENIED BY CHAIRMAN WARREN

Shea also had continuing motion for Chairman Warren and vice chairman Davis to remove themselves from the adjudicatory panel, and that three more panel members, all from Helena, remove themselves from the panel. Attorneys Davis and Lamb should remove themselves because of their close relationship with district judge Sherlock and

the fact that they have practiced in front of Sherlock for years. Chairman Warren, with no explanation, denied these motions. It is unfathomable that Warren could continue on his case in light of his illegal activities relating to the dismissal of the complaint Shea filed against Engel and his further improper activities in aiding of the processing of the judge Sherlock's complaint against Shea.

**IT IS UNFAIR AND A DENIAL OF DUE PROCESS TO COMPEL  
SHEA TO GO TO GREAT FALLS TO DEFEND AGAINST THE  
CHARGES.**

And now Shea has received an order issued by vice chairman Davis to appear in Great Falls on July 28, 2006 for a formal hearing on the charges. (Appendix I, orders) Shea should not be required to appear in Great Falls in any circumstance. All the witnesses are in Helena, all the evidence is in Helena, Helena is the headquarter of COP, and COP holds most of its meetings in Helena. Shea lives in Helena and is not going anywhere. It is unduly burdensome and oppressive to require Shea to go to Great Falls to defend against these charges. Shea cannot possibly present an adequate defense in Great Falls. Further, it is unconscionable that either Warren or Davis remain on this case.

**IN BOTH CASES, AS A COMPLAINANT, AND AS AN ACCUSED  
SHEA HAS BEEN DENIED DUE PROCESS OF LAW AND EQUAL  
PROTECTION OF THE LAW.**

Both the ODC and COP have violated Shea's rights to due process of law and equal protection of the law. The due process violations are clear. They cannot be denied. And, as far as Shea is aware, no complainant has ever been treated the same way by the ODC and by COP both as a complainant and as an accused. This unequal treatment with Shea on the receiving end has resulted in a denial of equal protection of

the law. Only proper action taken by this Court will ever get to the bottom of who both the ODC and COP, acting as cross-entity co-conspirators, chose to throw all the rule books out the window in dismissing the complaint Shea filed against Engel and in the procedures leading up to the filing of the complaint against Shea.

### REMEDIAL REVIEW POWER OF THE SUPREME COURT BASED ON ITS ORIGINAL AND EXCLUSIVE JURISDICTION

Based on its original and exclusive jurisdiction, this Court may use its own remedial power to issue those orders and take such action to rectify as best that can be done, the unspeakable harm that has taken place as a result of the actions of both the ODC and COP. They acted together, as a full blown conspiracy to deprive Shea of his rights.

What are the standards to be used by this Court in reviewing the conduct of its officers and agents, and the D/C as an employee? In 2002 this Court, invoked its original and exclusive jurisdictional power under Article VII, Section 2(3), promulgated its Rules for Lawyer Disciplinary Enforcement. These rules reconstituted the Commission on Practice, and create a new Office of Disciplinary Counsel. The Disciplinary Counsel is **directly hired** by the Supreme Court. **Rule 5A**. Further, **Rule 17**, in granting immunity (except for bad faith conduct) to all COP members and its staff, and to the Disciplinary Counsel and staff, the Court expressly declares that they "...are deemed officers and/or agents of the Court for all purposes mentioned in these rules." (Rule 17).

Unfortunately, the Court did not create or refer to any ethical standards by which COP and the ODC must conduct the business entrusted to the Court by the constitution. Only Rule 15, which prohibits certain exparte communications, is an ethical requirement. However, if this case is any measure of adherence to Rule 15, it must be

concluded that the rule has been honored more in its breach than in its observance. What has taken place in this case could not have occurred without wholesale violations of Rule 15.

These deficiencies notwithstanding, Shea nonetheless asserts that to fulfill its obligation to the people under Article VII, Section 2(3), the Supreme Court must expect and hold its officers and agents to the highest standards of conduct. To this end, it must review allegations of misconduct by a standard of the highest possible strict scrutiny. The Court must strictly scrutinize the acts, omissions, and conduct of its agents and officers. To do otherwise, would constitute a violation of the duties entrusted to the Supreme Court by the people, and indirectly render Article VII, 2(3) an illusion at best.

The COP has set a formal hearing in Great Falls on July 28, 2006 based on the complaint filed by D/C Thompson on October 17, 2005. Shea will be denied due process of law and equal protection of the law if he is compelled to go to Great Falls to present a defense of the charges, and further, there are good and sufficient reasons to put a stop to the prosecution because of the massive misconduct of the Commission on Practice and the Office of Disciplinary Counsel.

Both the COP and the ODC have compromised and denied to Shea in both cases his right to due process of law and equal protection of the law. Both entities have committed manifest and manifold violations of the very rules to which they were sworn to uphold and enforce.

Shea has no plain, speedy, and adequate remedy other than to seek extraordinary relief. He is at the mercy of a patently corrupt disciplinary system as applied in his case. Both COP and the ODC have stomped on and stamped out any rights that Shea should have as both a complainant and as an accused. And they have done so while acting under the authority of the Supreme Court, as its officers and agents.

To facilitate this review, and for this Court to fulfill its obligations to the people under Article VII section 2(3), Shea asks this Court to issue an order to COP and to ODC, directing them to grant the relief requested by Shea or show cause why they refuse to do so, or alternatively to show cause why the relief should not be granted.

Further, this Court has additional vast and inherent remedial powers which can be invoked to reach the horrendous violations that have occurred in this case. Shea has not obtained and cannot obtain justice from either the ODC or COP. While acting as officers and agents of this Court the ODC and COP have joined forces as conspirators to deny to Shea the very rights which they are sworn to enforce, protect, and uphold. Shea asks this Court to determine not only what went wrong, but why? A public investigation and public hearings are in order.

**PART II. SHEA PROVIDES HERE A SUMMARY OF THE FRAUD EXISTING IN BOTH INVESTIGATIVE REPORTS SUBMITTED BY D/C STRAUCH TO THE TWO COMMISSION REVIEW PANELS.**

**II.A. D/C-STRAUCH'S FRAUD CONTAINED IN INVESTIGATIVE REPORT IN WHICH HE RECOMMENDED DISMISSAL OF SHEA'S COMPLAINT FILED AGAINST ENGEL.**

On August 9, 2004 Shea filed a huge complaint against attorney Engel. The entire complaint, not including a summary explanation letter, was a total of 401 pages. Shea also provided a summary of his charges. There were a total of twenty-three charges. Twenty one charges involved the horrible conduct of Engel in the Dias case. Most of the misconduct was directed by Engel to his own client, and some of it was directed toward Shea. Over 370 pages of the complaint (double spaced) were devoted to these charges. Shea also filed approximately 35 supporting exhibits.

Engel filed a response of less than thirty pages and submitted many exhibits.

About five of the pages in his response related to two cases not involving the complaint in the Dias case. Shea filed a reply of approximately 30 pages. Shea stated, among other things, that Engel had actually evaded an answer to Shea's complaint for virtually every charge, and that this made it extremely difficult to file a meaningful reply.

Shea, in April 2005 had heard nothing more about this complaint until, upon his inquiry, he learned that COP had dismissed his complaint. And, after writing to Chairman Warren and requesting a response, Warren failed and refused to respond. This clearly constitutes an admission of wrongdoing by the Chairman himself.

As stated earlier, Strauch did not present this material to the review panel, nor did the review panel request these documents. After the ODC filed charges against Shea, Shea filed two briefs with COP which expressly set out the fraud of D/C Strauch in both of the investigative reports he presented to the two review panels. Chairman Warren, wielding his enormous and unchecked powers as chairman, ignored these briefs. See Appendix I

Shea summarizes here his allegations that D/C Strauch committed fraud in his investigative report. Shea's June 9, 2006 brief explicitly details how Strauch handled each of the charges that Shea alleged in his complaint against Engel.

\*\*\*1. **Engel's Response:** Of the 21 charges Engel did not directly respond to any of them. That is, Shea could not fathom Engel's answer.

\*\*\*2. **Omission of charges:** Of the 21 charges in Shea's complaint, D/C Strauch omitted 10 of them from his investigative report. He swept them under his official rug.

\*\*\*3. Of the remaining 11 charges which Strauch mentioned in one way or the other in the report, Strauch falsely implied that Engel had responded in all but one of them. On the one that Strauch stated Engel did not respond to, Strauch responded for Engel. Strauch falsely set out the nature of the issue or charge, and then he provided a false version of the facts in order to justify Engel's conduct. Strauch omitted all of Shea's

factual assertions.

\*\*\*4. For the 10 remaining charges Strauch falsely implied that Engel had filed a response. Engel had not filed a response. However, in each of these 10 instances Strauch answered for Engel. He justified Engel's conduct in two ways. First, he falsely stated the nature of the issue which formed the basis for Shea's charge. Second, Strauch then falsely stated the facts. And he failed to refer to any factual assertions which Shea had made in support of each of these charges.

\*\*\*5. **Reference to factual assertions of Shea and Engel:** In the entire investigative report Strauch did not state one factual assertion made by Shea. By contrast, Shea counted 35 paragraphs which Strauch represented to be factual assertions of Engel.

\*\*\*6. **Reference to exhibits:** In those issued covered by Strauch's report, Strauch did not once refer to any exhibits which Shea had submitted. Shea submitted at least 35 documents in support of the complaint. By contrast, Strauch referred 21 times in his report to exhibits submitted by Engel. Of these 21 references, 15 referred to the pay dispute between Shea and Engel; 2 referred to the issue of who pays Sisler, Dias or Engel; 1 referred to the issue of who pays Sisler; and 1 referred to an arbitration matter involving Sisler and Dias.

Shea next provides a more specific and detailed example of how Strauch's fraud worked by changing the nature of the issue and then by failing to set forth Shea's factual assertions in support of the charge. In Part IX of his Complaint, Shea first stated the nature of the charge in the caption, and then provided 13 pages of facts and quotations to back up this charge, plus exhibits. Strauch disposed of the issue by a huge lie. He fraudulently stated that the issue was resolved and Dias agreed to pay Engel the additional fees for his representation of Dias against the lien claim of Sisler. In his Complaint, Shea set out the issue as follows:

PART IX. ATTORNEY ENGEL HAS IMPROPERLY CHARGED  
ADDITIONAL FEES TO DEFEND AGAINST THE ATTORNEY LIEN  
CLAIM OF MATTHEW SISLER

Strauch resolves the problem by not stating the issue which Shea raised, by not setting forth any of Shea's factual assertions, and then capped by Strauch's fraudulent statements of fact. Strauch declares:

As noted above, Engel agreed to represent Dias against Sisler and billed her for his services. (Page 8, paragraph A of report.)

And then also on page 8, Strauch repeats his false declaration and makes it even stronger, by stating:

After some negotiations, Dias hired Engel to represent her in an attempt to prevent Sisler from collecting his attorney fees. (Page 8, Paragraph D of Strauch's report)

Shea filed a lengthy brief before COP on May 30, 2006 and set out Strauch's fraud in considerable detail. Shea commented on Strauch's fraudulent statements as follows:

This is an absolute fraudulent misrepresentation. In fact, D/C Strauch knew that Dias and Engel had never come to an agreement on this issue. D/C Strauch had available to him the May 13, 2004 affidavit filed by Dias which she filed in opposing Engel's motion for summary judgment. She stated:

"5. Mr. Engel has demanded that he be paid an additional \$11,000 to defend against the attorney's lien filed by Mr. Sisler. When I refused to pay the additional money, Mr. Engel accused me of deceit and attempted to intimidate me into paying him. I asked him to explain to me but he refused. I believed it was Mr. Engel's duty to defend the Sisler lien. (Emphasis added) (Affidavit prepared by the Alterowitz law firm of Missoula.)

So, contrary to Strauch's statement, the issue was not resolved between the parties. And it was one of several issues existing at the time of the summary judgment

hearing on May 18, 2004. Further, note that Dias expressly declared in her affidavit that when demanding extra fees Engel had accused her of deceit and tried to intimidate her into paying him. Sadly, in granting summary judgment to Engel, district judge Sherlock, did not mention this issue. As he did with all the factual issues and legal issues presented by Dias in her affidavits, the judge swept all of them under his judicial rug.

Shea next provides a specific example of how Strauch committed fraud by the device of omitting 10 of the charges from his report. Strauch fraudulently declares that Dias and Engel had come to an agreement as to extra fees because he was on a mission to dismiss the complaint regardless of the facts, regardless of the law, and regardless of who got hurt in the process. The next issue which Shea had set forth in his complaint filed against Engel explains very well the device of fraud by omission. In Part X of his complaint (supported by 15 pages of complaint facts, quotations from Engel, and by exhibits) Shea stated the ethical violation as follows:

PART X. ATTORNEY ENGEL, IN HIS DESIRE TO OBTAIN ADDITIONAL FEES FOR DEFENDING AGAINST THE MATTHEW SISLER ATTORNEY LIEN CLAIM, FALSELY, REPEATEDLY, AND MALICIOUSLY ACCUSED MARCIA DIAS AND MYSELF OF DECEIT IN RELATION TO THE SISLER ATTORNEY LIEN CLAIM.

So how did Strauch handle this issue in his report? Well, he failed to mention it. He made it disappear. Such is the power of people in power. Strauch knew he could not mention this issue and deal with it properly and fairly when he had already fraudulently reported that Engel and Dias had reached an agreement as to extra fees?

**II. B. D/C-STRAUCH'S FRAUD COMMITTED IN THE INVESTIGATIVE REPORT IN WHICH HE RECOMMENDED THAT A COMPLAINT BE FILED AGAINST SHEA BASED ON THE**

## REFERRAL COMPLAINT OF JUDGE SHERLOCK.

Strauch also filed a fraudulent investigative report with the review panel deciding whether or not to authorize a complaint against Shea based on the referral complaint of judge Shelock.

As part of the prearranged and conspiratorial arrangement with COP, Strauch failed to provide the review panel the documents which the panel was required to review under Rule 3B(1). Shea is aware of only four documents filed with the ODC in relation to judge Sherlock's complaint. (1) Sherlock's complaint consisting of a one page letter; (2) Shea's October 13, 2004 affidavit submitted with Sherlock's letter; (3) Shea's 12 page response to Sherlock's complaint; and (4) Sherlock's reply, which Shea has never seen. By obvious prearrangement with the review panel, Strauch did not provide these documents to the panel, and of course, the panel did not require that he produce them.

Strauch provided only his investigative report to the review panel. Shea asserts the following facts which justify the conclusion that Strauch presented a fraudulent report to the review panel.

**\*\*\*1. Failure to set out Shea's assertions of Engel's fraud committed in the judgment:** In his October 13, 2004 affidavit Shea set forth the details of how Engel committed fraud against his former client in the judgment which Engel prepared and judge Sherlock signed without batting an eye. Strauch omitted all of this entirely from his report.

**\*\*\*2. Failure to set out the misconduct of district judge Sherlock set forth in Shea's affidavit:** Strauch's report totally ignores the substance of Shea's affidavit. Shea's affidavit also pointed out extremely flagrant misconduct on the part of the district judge. One example is that Shea, in his October 13, 2004 affidavit stated that district judge Sherlock had allowed Engel immediate access to the judgment funds by way of execution on the joint bank accounts in the name of his former client and Engel. The

judge accomplished this by signing an ex parte order submitted by Engel denying the Dias motion for a stay of execution pending appeal. Strauch omitted all of this entirely from his report.

**\*\*\*3. Failure to summarize Shea's factual assertion explaining his denial that he was representing Dias.** Sherlock's complaint alleged that Shea's affidavit indicated that Shea was representing Dias. D/C Strauch did not begin to fairly summarize the factual assertions which Shea made in his affidavit. A review panel could not fairly conclude that Shea was representing Dias unless the investigative report itself laid a factual basis for this conclusion based on the actual content of Shea's affidavit.

**\*\*\*4. Selective Omission of Docket Entries:** The D/C report, in summarizing the meaning of certain docket entries, omitted several important entries and district court proceedings that had taken place. (Shea's Brief, pages 4-7)

**\*\*\*5. Sweeping certain issues under the rug in summarizing the summary judgment order of Sherlock.** D/C-Strauch purported to discuss and analyze the summary judgment order against Dias. Strauch selectively omitted any mention of the fact that Dias had filed affidavits which set out the factual and legal disputes existing between herself and Engel and which stood as a bar to Sherlock granting summary judgment for Engel. And of course, the district judge in granting summary judgment to Engel, did the same thing. So both the judge and D/C-Strauch swept the issues under their official rugs. (Shea's Brief pages 7-9)

**\*\*\*6. Failure to place in the investigative report fair summary of Shea's response to Sherlock's complaint.** Strauch referred to Shea's response only by stating that Shea denied he was representing Dias. (Shea's Brief, pages 19-23)

As stated in his summary and conclusion, Shea not only asks this Court to assume full and complete jurisdiction over these matters, but also that this Court conduct a public investigation and public hearings so that the public may have all the unvarnished facts concerning the horrendous misconduct of the ODC and COP. It is the only way by which eternal vigilance can be exercised over those who have been entrusted as public officials with preserving a true democracy rather than one that is more illusion than fact.

## SUMMARY AND CONCLUSION

Both COP and ODC have repeatedly, blatantly, and flagrantly, denied Shea's right to due process of law and equal protection of the law. And they have also done tremendous public harm. Unfortunately, the public does not know of this harm because of the very special governmental secrecy attaching to lawyer disciplinary proceedings. Secrecy in government is, for the most part, "the Devil's Workshop." The harm to the public cannot be calculated simply because of the governmental secrecy.

Both COP and ODC have committed wholesale violations of the very Rules they are sworn to uphold and enforce as officers and agents of this Court. They acted as officers and agents of this Court when they joined in a cross-entity conspiracy to violate Shea's rights. They could do this only because of the secret nature of their proceedings. They placed both cases on a one way track with a predetermined destination. And to achieve this predetermined destination no holds were barred.

How deep, and how wide was this conspiracy between the two entities? Who was involved in spawning the conspiracy and helping to execute it? Who agreed to its execution? Was there outside influence? The evidence does not permit an assumption it was entirely an inside job. Outside influence is more than a probability. If so, there has been an even more serious and sinister breakdown of the disciplinary system.

Only this Court has the power and authority to act and to right the wrongs which COP and ODC have committed against Shea.

This Court has the constitutional authority to exercise its "original and exclusive" jurisdiction over lawyer disciplinary matters also invoking its corresponding duty to exercise its power where its agents, officers, and employees (the D/C) blatantly and flagrantly acted to undermine and demean the integrity of the entire disciplinary system. This Court should take complete control over both these cases and enter such orders

proper to the effectuation of justice.

A complete public investigation is needed, together with public hearings. Governmental secrecy as practiced within COP and ODC not only flies in the face of the public's right to know but undermines democracy itself. Under the blanket of secrecy now allowed and practiced by the COP and the ODC, the damage is done before anyone knows about it. Individuals suffer but they can do nothing about it. The "we the people" suffer because they know nothing about it. The result is the payment by those persons immediately affected and also by the people at large. This is a huge and unacceptable price.

PART IV. REQUEST FOR RELIEF:

Shea requests this Court to grant the following relief:

- (1) To immediately issue an order vacating the hearing set for Shea in Great Falls on July 28, 2006; that no further dates be set until further order from this Court; and that if any further hearings are set, they must take place in Helena unless Shea, the COP, and the ODC unanimously agree to a different location.
- (2) To issue an order to COP and the ODC Counsel directing each entity to fully answer Shea's petition for extraordinary relief, and unless an allegation is admitted, to answer each allegation with an answer which informs this Court precisely what their position is.
- (3) To show cause why Chairman Warren and vice chairman Davis and panel member Lamb should not be disqualified from sitting on the adjudicatory panel.
- (4) To show cause why the charges against Shea should not be dismissed because of the consistent, manifold, and flagrant pattern he has alleged and the resulting due process violations and equal protection violations that inevitably result.
- (5).To show cause why the complaint should not be dismissed for failure to personally serve Shea as required by his election to require personal service based on the papers he

received by certified mail.

- (6). To show cause why the charges contained in paragraphs VI, VII, VIII and part of IX should not be dismissed.
- (7) To show cause why the complaint which Shea filed against Engel should not be reinstated, and if either entity agrees that the complaint should be reinstated, to suggest methods to this Court setting forth how this Court will be assured that the complaint will be thoroughly and fairly evaluated on its merits, and how each entity will provide assurance to this Court that Shea's rights as a complainant will be fully respected and protected.
- (8) To show cause why the COP and ODC took the actions they did in processing Shea's complaint as a complainant and in processing the complaint that was filed against him.
- (9) To show cause why Shea should not be awarded all costs and expenses reasonably incurred in filing the complainant as a complainant, and those reasonably incurred in order to bring this matter to the attention of this Court.
- (10). To show cause why Shea should not be awarded all costs and expenses reasonable incurred a result of having to defend against the charges filed against him.
- (11) To show cause why Shea should not be entitled to reasonable compensation as a remedial measure to compensate him for the undoubted immense number of hours he has been compelled to expend in each of the cases.
- (12)). To show cause why his court should not conduct a full, open, and public investigation and hearings to determine how COP and the ODC conduct their business as officers and agents of this Court; how and why the ODC and COP conducted their business in relation to the dismissal of the complaint Shea had filed; and how and why COP conducted the business of this Court in relation to the charge filed against Shea.
- (13). To grant additional relief proper in the circumstances based on the full remedial powers vested in this Court under Article VII 2(3), Montana Constitution.

Daniel J. Shea

STATE OF MONTANA )

) ss.

COUNTY OF LEWIS AND CLARK )

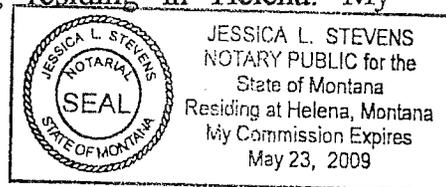
Daniel J. Shea, being first duly sworn, deposes and says that he is the petitioner in the above-entitled case; that he has read the above and foregoing petition by him subscribed, knows the contents of the petition, and that the matters and facts stated in such petition are true.

*Daniel J. Shea*  
Daniel J. Shea

SUBSCRIBED and sworn to before me this 20 day of July, 2006.

*Jessica L. Stevens*  
Notary public for the State of Montana, residing in Helena. My  
commission expires on May 23, 2009

CERTIFICATE OF COMPLIANCE



Petitioner, Daniel J. Shea certifies that this application complies with the requirements of Rule 17 and Rule 27, Montana rules of Appellate Procedure. It complies with paper size 8.5 X 11; it complies with top and bottom margins and left and right margins, no less than 1 inch; it contains 7,000 words or less. Print font style is Roman; and proportional spacing with 14 points. The paper is standard quality, opaque, unglazed, acid free, recycled paper, 25% cotton fiber content of 50% recycled content, of which 10% is post-consumer waste.

*Daniel J. Shea*  
Daniel J. Shea

CERTIFICATE OF PERSONAL SERVICE

I certify that on July 21, 2006, I personally served a copy of the foregoing petition and a copy of Shea's appendix on the Commission of Practice at their official address and on the Office of Disciplinary Counsel at its official office.

  
Daniel J. Shea

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. OP 06-0524

STATE OF MONTANA EX REL DANIEL J. SHEA,

Petitioner and Applicant,

v.

The Commission on Practice of the Supreme Court of Montana, acting as agents and officers of the Supreme Court; and the Office of Disciplinary Counsel, acting as agents and officers of the Supreme Court, and the Disciplinary Counsel also acting as an employee of the Supreme Court,

Respondents.

ORDER  
FILED

JUL 24 2006

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Daniel J. Shea (Shea) is the respondent in one lawyer discipline proceeding and the complainant against an attorney in Great Falls, Montana, in another. The first proceeding is still pending before this Court's Commission on Practice (COP) and the second has been dismissed. He filed a Verified Petition for Extraordinary Relief with the Clerk of this Court on July 21, 2006.

Shea's Petition seeks the exercise of our original jurisdiction to intervene in ongoing proceedings before the COP. He asserts violations of the Rules of Lawyer Disciplinary Enforcement against the COP and various members of the COP, as well as other misconduct by the COP and the Office of Disciplinary Counsel (ODC). He also asserts violations of his rights to due process of law—the most immediate concern being that he, a Helena resident, currently is required to attend a COP hearing in Great Falls on Friday, July 28, 2006—and to equal protection of the law. Finally, Shea asserts fraud, conspiracy and other misconduct by the COP and the ODC. Large portions of his Petition raise factual issues which this Court—which determines only legal issues—cannot resolve. Shea prays for various relief, including an immediate order from this Court vacating the July 28, 2006, hearing in Great Falls.

We observe that, except for references to this Court's constitutional authority to

*Exhibit 10*

exercise original jurisdiction where warranted and our exclusive jurisdiction over matters involving lawyer discipline, Shea advances scant, if any, legal authority to support his positions. Moreover, with regard to Shea's assertion that his due process rights will be violated if he is required to attend the hearing in Great Falls, we note that Exhibit 2-H in his Appendix of Exhibits in Support of the Petition is the Notice of Hearing for the July 28, 2006, Great Falls hearing, which was filed on June 16, 2006, over a month ago. In addition, we take judicial notice of the fact that Great Falls is approximately 90 miles from Helena.

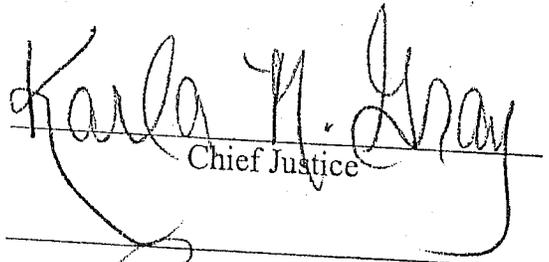
The Court having fully considered the matters presented in Shea's Petition,

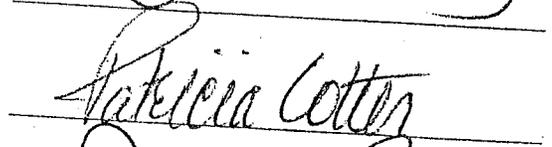
IT IS ORDERED that this Court declines to exercise original jurisdiction in this cause number.

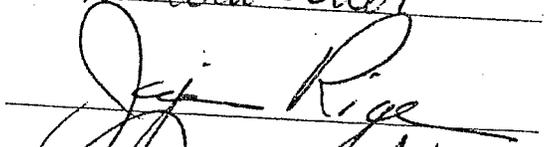
IT IS FURTHER ORDERED that remittitur shall issue forthwith.

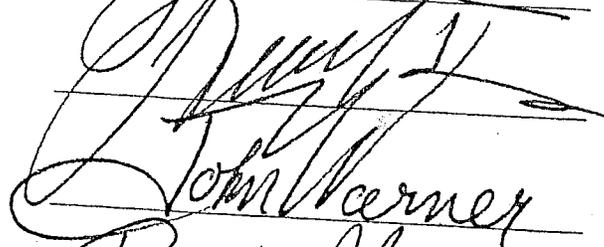
The Clerk is directed to give electronic notice of this Order to petitioner Shea, Shauna Ryan, COP Chair John Warren, COP Co-Chair Gary Davis, and the Office of Disciplinary Counsel. The electronic notice shall be followed by notice by mail.

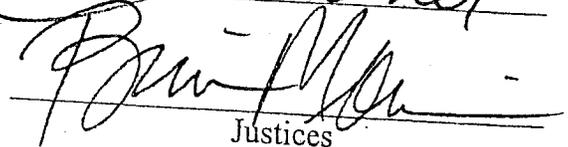
DATED this 24<sup>th</sup> day of July, 2006.

  
Chief Justice







  
Justices

ATTEST: A true copy



ED SMITH  
CLERK OF SUPREME COURT  
STATE OF MONTANA

ORIGINAL

1 Shaun R. Thompson  
Office of Disciplinary Counsel  
2 P.O. Box 203007  
Helena, MT 59620-3007  
3 Tele.: (406) 841-2980  
4 Chief Disciplinary Counsel

FILED

OCT 17 2005

Ed Smith  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

BEFORE THE COMMISSION ON PRACTICE OF THE  
SUPREME COURT OF THE STATE OF MONTANA

\*\*\*\*\*

11 IN THE MATTER OF DANIEL SHEA,  
12 A Suspended Attorney at Law,  
13 Respondent.

) Supreme Court Cause No. 05606  
)  
) ODC File No. 04-291  
) COMPLAINT  
)  
)  
)

15 By request of a Review Panel of the Commission on Practice, the Office of Disciplinary  
16 Counsel of the State of Montana (ODC), hereby charges Daniel Shea, a suspended attorney at  
17 law admitted to practice before the courts of Montana, with professional misconduct as follows:  
18

I

19 Daniel Shea, hereinafter referred to as Respondent, was admitted to the practice of law in  
20 the State of Montana in 1964, at which time he took the oath required for admission, wherein he  
21 agreed to abide by the Rules of Professional Conduct, the Disciplinary Rules adopted by the  
22 Supreme Court, and the highest standards of honesty, justice and morality, including but not  
23 limited to, those outlined in parts 3 and 4 of Chapter 61, Title 37, Montana Code Annotated.  
24  
25

Exhibit 11

EXHIBIT

1 II

2 By Order dated August 3, 1989, the Montana Supreme Court indefinitely suspended  
3 Respondent from the practice of law. (Supreme Court No. 88-520.) He has not petitioned for  
4 reinstatement and remains suspended at this time.

5 III

6 The Montana Supreme Court has approved and adopted the *Montana Rules of*  
7 *Professional Conduct* (MRPC), governing the ethical conduct of attorneys licensed to practice in  
8 the State of Montana, which Rules were in effect at all times mentioned in this Complaint.

9 IV

10 Pursuant to Rule 11(5) of the *Rules for Lawyer Disciplinary Enforcement* (RLDE 2002),  
11 a Review Panel of the Commission on Practice has requested Disciplinary Counsel to prepare  
12 and file this formal complaint against Respondent.

13 V

14 On or about January 3, 1995, John Old Elk, June Good Left, Amy Palmer, Marcia Dias  
15 and Dana Zimmer filed suit against Healthy Mothers, Healthy Babies, Inc., a Montana  
16 corporation and others. The case, *Old Elk v. Healthy Mothers, Healthy Babies, Inc.*, was filed in  
17 Montana First Judicial District Court in Lewis and Clark County—Cause No. BDV-1995-18.  
18

19 VI

20 Respondent prepared the complaint and amended complaint filed by the Plaintiffs in the  
21 aforementioned case.

22 VII

23 In addition to the pleadings, Respondent prepared numerous other documents that were  
24 filed on behalf of the Plaintiffs in the aforementioned case.  
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VIII

During the course of the litigation, Respondent either entered into, or attempted to enter into, a fee-splitting arrangement with various attorneys who represented the Plaintiffs in the aforementioned case.

IX

During the trial in the aforementioned case, Respondent actively participated in the jury instruction process.

X

In September 2005, Respondent filed in the aforementioned case motions for leave to intervene, to vacate the Court's Order of March 2, 2004, and to vacate the Court's Judgment of August 3, 2004. Respondent subsequently filed other documents in support of his motions including an affidavit dated October 12, 2004. Through said documents, Respondent acted as an advocate not only for himself, but also for Plaintiff Dias.

XI

Respondent's conduct, as described herein, constitutes unauthorized practice of law in violation of MRPC 5.5.

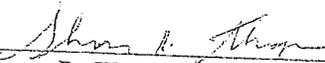
WHEREFORE Chief Disciplinary Counsel hereby prays as follows:

- A. That a Citation be issued to the Respondent, to which shall be attached a copy of the complaint, requiring Respondent, within twenty (20) days after service thereof, to file a written answer to the complaint;
- B. That a formal hearing be had on the allegations of this complaint before an Adjudicatory Panel of the Commission;
- C. That the Adjudicatory Panel of the Commission make a report of its findings and recommendations after a formal hearing to the Montana Supreme Court of

1 the State of Montana, and, in the event the Adjudicatory Panel finds the facts  
2 warrant disciplinary action and recommends discipline, that the Commission  
3 also recommend the nature and extent of appropriate disciplinary action,  
4 including an award of costs and expenses incurred in investigating and  
5 prosecuting this matter; and  
6

7 D. For such other and further relief is deemed necessary and proper.

8 RESPECTFULLY SUBMITTED this 14<sup>th</sup> day of October, 2005.  
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11   
Shaun R. Thompson  
12 Chief Disciplinary Counsel  
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ATTEST: A true copy

  
ED SMITH  
CLERK OF SUPREME COURT  
STATE OF MONTANA



Montana House of Representatives  
Visitors Register

APPROPRIATIONS COMMITTEE

Date 3/7/07

Bill No. HB 804 Sponsor(s) Taylor

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

Name and Address	Representing	Support	Oppose	Inf.
Daniel J. Shea	Self	yes no	yes no	yes
MARK Simonich	Secretary of State	X		
LOIS MENZIES	OFFICE OF COURT ADMINISTRATION			X
JANET R KELLY	Dept. of Admin		X	
Dorothy McCarter	District Judge			X
Jim Lynch	MDT		X	
Santa Cruz	NCM		X	

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.