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JAN 10 2005

STATE BAR OF MONTANA

1 HON. DEBORAH KIM CHRISTOPHER  
2 20<sup>th</sup> Judicial District Court  
3 Lake County Courthouse  
4 106 Fourth Avenue E  
5 Polson, MT 59860  
6 (406) 883-7360

7 MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

8 COMMISSION ON THE UNAUTHORIZED  
9 PRACTICE OF LAW,

Cause No. DV 02-378B

10 Petitioner,

11 vs.

JUDGMENT AND  
PERMANENT INJUNCTION

12 JERRY O'NEIL, ON BEHALF OF HIMSELF,  
13 HIS CLIENTS AND HIS CONSTITUENTS,

14 Respondent.

15 The above-entitled cause came on regularly for trial on November 29, 2004 before the  
16 Honorable Deborah Kim Christopher presiding without a jury and was tried. Special Deputy  
17 County Attorney David A. Hawkins appeared on behalf of the Petitioner, the Commission on  
18 Unauthorized Practice of Law (hereinafter referred to as UPL), and Respondent Jerry O'Neil  
19 (hereinafter referred to as O'Neil) appeared pro se.

20 Before trial the court issued partial summary judgment on Respondent's Counterclaims.  
21 Those findings and order are incorporated by this reference.

22 Oral and documentary evidence was introduced on behalf of the respective parties and the  
23 cause was argued and submitted. The Court, having considered the evidence and heard  
24 argument, issued a Bench Ruling finding O'Neil in contempt and finding a permanent injunction  
25 appropriate. This judgment and injunction follows in accord with that ruling.  
26



1 represent his interests. O'Neil was solicited to provide these services by the incapacitated  
2 person's wife against whom there was a restraining order preventing her from having contact  
3 with the incapacitated person.

4 7. O'Neil drafts pleadings and other legal documents for others. He prepares these  
5 documents with the intent that they be filed in court. It is intended that the court take action  
6 through these pleadings.

7 8. Specifically, O'Neil routinely prepares pleadings for the dissolution of marriage.  
8 On numerous occasions when O'Neil was approached by persons interested in obtaining a  
9 dissolution of marriage, he interviewed them. As a result of his interview, he determined the  
10 appropriate legal forms he believed were necessary for their particular dissolution, and prepared  
11 those forms. He testified clients might be offered choices from various selections of language he  
12 had created to deal with various aspects of their lives. O'Neil drafted those selections and the  
13 forms he used.

14 9. O'Neil also prepares testamentary wills.

15 10. O'Neil prepares pleadings without identifying himself as the responsible party and  
16 designates his customer as *pro se*.

17 11. O'Neil attempts to appear on behalf of others in court by written and verbal motions  
18 to the court. Through those motions and pleadings he asserts that he is entitled or authorized to  
19 appear.

20 12. O'Neil has appeared at counsel table, or in the courtroom, and advised others during  
21 court proceedings.

22 13. O'Neil charges a fee commensurate with the fees charges by area attorneys for  
23 similar services. O'Neil's fees are significantly in excess of that of a typing service or of local  
24 paralegals. Dean Knapton testified that as an experienced attorney in the local area that his  
25 hourly rate for services is \$95 per hour. O'Neil charges \$90 per hour. O'Neil defended that he  
26 provided a typing service. Knapton testified that when he last used a typing service in about

1 1998 he paid \$5.00 per page. O'Neil charges \$500 to \$600 to prepare the pleadings for a  
2 dissolution which may or may not include mediation.

3 14. O'Neil advertises his services in the "Attorneys" section of the Yellow Pages<sup>®</sup> of the  
4 phone book.

5 15. O'Neil's advertisement promotes that he is a member of the Montana State Bar's  
6 Section on Family Law, he practiced law in the tribal courts of the Confederated Salish and  
7 Kootenai Tribes, and he is an advocate and counselor in the tribal court of the Blackfeet Tribe.  
8 He testified that the only reason for these qualifications was to reassure customers that he would  
9 not take the money they paid for his typing. But he does not advertise he is a Montana State  
10 Senator as reassurance that he is honest. And he is fighting to be able to advertise in the  
11 "attorney" section. The Court finds that O'Neil has used his memberships to imply that he is  
12 qualified to provide the legal advice necessary to assure the documents he prepares are legally  
13 correct and individually appropriate for the customer. O'Neil's implications are false and lead a  
14 customer to believe that O'Neil is a licensed attorney.

15 From the foregoing Findings of Fact, the Court draws the following:

16 **CONCLUSIONS OF LAW**

17 **O'Neil is engaged in the practice of law.**

18 1. MCA § 37-61-201 defines who is considered to be practicing law.

19 (1) Any person who shall hold himself out or advertise as an attorney or  
20 counselor at law; or,

21 (2) Who shall appear in any court of record or before a judicial body, referee,  
22 commissioner, or other officer appointed to determine any question of law or fact  
23 by a court; or,

24 (3) Who shall engage in the business and duties and perform such acts, matters,  
25 and things as are usually done or performed by an attorney at law in the practice of  
26 his profession ... shall be deemed practicing law. § 37-61-201.

27 2. Missoula attorney Michael Alterowitz appeared and testified on behalf of Petitioner.

28 His testimony is accepted as expert testimony and is credible. Alterowitz opined that the practice  
29 of law may be defined as providing legal advice to an unrelated third party with or without

1 consideration. He reviewed the exhibits submitted at trial. He reviewed the exhibits offered as  
2 an exemplar of O'Neil's dissolution pleadings. Alterowitz opined that according to the statutory  
3 definition of the practice of law and his own understanding of that definition, O'Neil's activities  
4 constituted the practice of law.

5 3. State District Court Judge Loren Tucker appeared and testified on behalf of  
6 Petitioner. His testimony is accepted as expert testimony and is credible. Tucker opined that the  
7 practice of law may be defined as providing legal advice. He defined providing legal advice as  
8 assessing and evaluating facts; ascertaining what law may be applicable to those facts; offering  
9 advice about, or acting upon the determinations made about what law is applicable to the facts;  
10 and assisting others in achieving a desired goal in that context. He reviewed the exhibits  
11 submitted at trial. He reviewed the exhibits offered as an exemplar of O'Neil's dissolution  
12 pleadings. Judge Tucker opined that according to the statutory definition of the practice of law  
13 and his understanding of that definition that O'Neil's activities constituted the practice of law.

14 4. The court finds the following to be indicia that a person is engaged in the practice of  
15 law:

16 a. The giving of advice or counsel to others as to their legal rights or  
17 responsibilities or the legal rights or responsibility of others.

18 b. Selecting, drafting and completing legal papers, pleadings, agreements and  
19 other documents which affect the legal rights or responsibilities of others.

20 c. Appearing, or attempting to appear, as a legal representative or advocate for  
21 others in a court or tribunal of this state.

22 d. Negotiating the legal rights or responsibilities of others.

23 e. Holding one's self out or advertising one's self as an attorney admitted to  
24 practice law in Montana; or, holding one's self out as a non-attorney entitled to practice law  
25 in Montana; or otherwise advertising services in a manner that would reasonably mislead the  
26 public to believe that one is an attorney, or otherwise licensed or certified legal advocate in

1 the courts of the State of Montana.

2 5. O'Neil consults with others about legal issues and provides legal advice. In  
3 consulting with others, O'Neil determines the salient facts and pertinent law. O'Neil analyzes  
4 the facts and the law. O'Neil advises on legal rights and responsibilities.

5 6. O'Neil holds himself out, and falsely implies by his advertising, that he is an  
6 attorney or an authorized legal representative or advocate in the courts of the State of Montana  
7 through the following acts:

8 a. O'Neil advertises his services in the "Attorneys" section of the Yellow  
9 Pages<sup>®</sup> of the phone book.

10 b. O'Neil promotes himself as a member of the State Bar's Section on Family  
11 Law without clarifying that he is a non-attorney member.

12 c. O'Neil advertises his practice of law in the Blackfeet tribal court, falsely  
13 implying that he is a licensed attorney in the courts of the State of Montana.

14 7. O'Neil attempts to appear in court on behalf of his customers or counsels his  
15 customers with legal advice during court proceedings.

16 8. O'Neil advises customers as to their legal rights and responsibilities.

17 9. O'Neil drafts pleadings and other legal documents. He prepares these documents  
18 with the intent that they be filed in court. He intends that the court take action on behalf of third  
19 persons through these pleadings. O'Neil prepares pleadings without identifying himself as the  
20 responsible party and designates his customer as *pro se*.

21 10. Based on the whole of O'Neil's actions it is obvious that he is engaged in the  
22 practice of law.

23 O'Neil is not authorized to practice law.

24 1. O'Neil admits that he is not authorized to practice law in the courts of the State of  
25 Montana.

26 2. The Rules for Admission to the State Bar of Montana require that a candidate for

1 admission:

2 a. Be a graduate of a law school accredited by the American Bar Association

3 b. Apply for and receive a favorable decision from the Commission on

4 Character and Fitness.

5 c. Successfully complete the Bar examinations.

6 d. Sign the roll of attorneys kept by the Clerk of the Supreme Court, sign the  
7 attorney ethics oath, and recite an oath prescribed by the Supreme Court.

8 Rules for Admission to the State Bar of Montana.

9 3. O'Neil has not satisfied any of these prerequisites for admission.

10 4. The "Unauthorized Practice of Law" is defined as the practice of law without being  
11 first duly qualified, as prohibited by statute, court rule, or case law of the state. Mont. Comm.  
12 Unauth. Prac. Law Rule 2 (2003).

13 5. O'Neil is not duly qualified or admitted to practice and therefore his practice of law  
14 is unauthorized.

15 A finding of contempt is appropriate.

16 1. If any person practices law in any court, except a justice's court or a city court,  
17 without having received a license as attorney and counselor, he is guilty of a contempt of court.  
18 § 37-61-210.

19 2. A finding of contempt is also appropriate under § 3-1-501. This section provides  
20 that assuming to be an officer, attorney, or counsel of a court and acting as that individual  
21 without authority is contempt of the authority of the court. § 3-1-501; *In re Phillips*, (1922) 64  
22 Mont. 492, 210 P. 89; *Huffine v. Montana Sixth Judicial Dist. Court*, (1997) 285 Mont. 104, 945  
23 P2d 927, 54 Mont. St. Rep. 1065.

24 3. O'Neil is found to be in contempt.

25 Issuing an Injunction is a proper remedy.

26 1. An injunction is an order requiring a person to refrain from a particular act. The

1 order may be granted by the court in which the action is brought or by a judge thereof and, when  
2 made by a judge, be enforced as the order of the court. § 27-19-101.

3 2. A final injunction may be granted to prevent the breach of an obligation existing in  
4 favor of the applicant where:

- 5 a. Pecuniary compensation would not afford adequate relief;  
6 b. It would be extremely difficult to ascertain the amount of compensation  
7 which would afford adequate relief;  
8 c. The restraint is necessary to prevent a multiplicity of judicial proceedings; or  
9 d. The obligation arises from a trust.

10 3. The rules on the unauthorized practice of law specifically provide for the issuance of  
11 an injunction to preclude the continued unauthorized practice. State. Mont. Comm. Unauth.  
12 Prac. Law Rule 8 (2003).

13 4. The long-standing nature of O'Neil's business and his resistance to this action  
14 implies he intends to continue with these activities unless otherwise precluded.

15 5. Pecuniary compensation will not restore the harm done to the judicial and legal  
16 systems, or the harm potentially done to others. Ascertaining the amount of compensation would  
17 be impossible. Bringing individual actions to preclude O'Neil's business activities would be  
18 extremely difficult and result in a multiplicity of judicial proceedings. An injunction would  
19 enforce the responsibility of the Supreme Court to maintain the professionalism of the practice of  
20 law.

21 From the foregoing Findings of Fact and Conclusions of Law, the Court enters the  
22 following:

23 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that:

- 24 1. This court has proper jurisdiction over this matter and these parties.  
25 2. Respondent, Jerry O'Neil, engages in the practice of law and is not authorized to do  
26 so.

- 1           3. Respondent is found to be in contempt for his unauthorized practice of law.
- 2           4. Respondent is hereby permanently enjoined from engaging in the practice of law
- 3 until such time as he becomes duly authorized.

**INJUNCTION**

5           RESPONDENT IS HEREBY ENJOINED AND RESTRAINED from performing,  
6 directly or indirectly, and of the following acts within the State of Montana or with an effect  
7 upon the people of the state:

- 8           1. Respondent may not engage in the practice of law.
- 9           2. Engaging in the practice of law is defined by MCA § 37-61-201.
- 10          3. The court shall consider the following as indicia of the practice of law:
  - 11           a. The giving of advice or counsel to others as to their legal rights or
  - 12 responsibilities or the legal rights or responsibility of others.
  - 13           b. Selecting, drafting and completing legal papers, pleadings, agreements and
  - 14 other documents which affect the legal rights or responsibilities of others.
  - 15           c. Appearing, or attempting to appear, as a legal representative or advocate for
  - 16 others in a court of this state.
  - 17           d. Negotiating the legal rights or responsibilities of others.
  - 18           e. Holding one's self out or advertising one's self as an attorney admitted to
  - 19 practice law in Montana; or, holding one's self out as a non-attorney entitled to practice law
  - 20 in Montana; or, advertising services in a manner that would reasonably mislead the public to
  - 21 believe that one is an attorney, or otherwise licensed or certified legal advocate in the courts
  - 22 of the State of Montana.
- 23          4. These indicia are not all-inclusive, but are factors that the court may consider.
- 24          5. Whether or not they constitute the practice of law, the following are permitted:
  - 25           a. Acts or actions performed for and on behalf of himself as an individual;
  - 26



1 CERTIFICATE OF SERVICE

2 I, the undersigned, hereby certify that on this 7<sup>th</sup> day of January, 2005, I served a true and  
3 complete copy of the foregoing "Judgment and Permanent Injunction" by depositing the same in  
4 the United States Mail, postage prepaid thereon, addressed as follows:

5  
6 David A. Hawkins  
7 Special Deputy County Attorney  
8 Commission on Unauthorized Practice of Law  
9 PO Box 577  
10 Helena, MT 59624

11 **Attorney for Petitioner and Counter  
12 Defendant Commission on Unauthorized  
13 Practice of Law**

14 Jerry O'Neil  
15 985 Walsh Road  
16 Columbia Falls, MT 59912  
17 **Pro Se Respondent and Counter-Plaintiff**

18 Stephen C. Berg  
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20 PO Box 3038  
21 Kalispell, MT 59903

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25 Helena, MT 59624  
26 **Attorneys for Counter Defendant State Bar  
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