EXHIBIT 2
DATE 2/7/2011
HB 371

STATE BAR OF MONTANA
COMMISSION ON UNAUTHORIZED PRACTICE

7 WEST SIXTH AVENUE, SUITE 2B • P.O. BOX 577 • HELENA, MONTANA 59624
(406) 442-7660 Fax (406) 442-7763 Web Site: www.montanabar.org

UPL COMMISSION:

CHAIR

JOHN P. CONNOR, JR.
215 North Sanders
Helena, MT 59620

VICE CHAIR

CAROL A. BRONSON
P.O. Box 3434
Great Falls, MT 59403

MEMBERS

HARRY CHILD
1305 Highway 284
Clancy, MT 59634

PATRICK D. DOUGHERTY
P.O. Box 4747
Missoula, MT 59806

GARY HOWELL
First Security Bank
P.O. Box 730
Malta, MT 59538

MICHAEL K. RAPKOCH
P.O. Box 2558
Billings, MT 59103

LOREN SOLBERG
P.O. Box 486
Choteau, MT 59422

ROBERT R. ZENKER
P.O. Box 73
Virginia City, MT 59755

ANGELA A. ZIELINSKI
P.O. Box 904
Helena, MT 59624

STAFF

MARIE CONNOLLY
P.O. Box 577
Helena, MT 59624
mconnolly@montanabar.org

September 24, 2005

FILED
SEP 30 2005
OFFICE OF
WORKERS' COMPENSATION JUDGE
HELENA, MONTANA

Hon. James Jeremiah Shea
Workers' Compensation Court
P.O. Box 537
Helena, MT 59624-0537

Dear Judge Shea:

Thank you for your letter of inquiry concerning whether certain information being provided to the Workers' Compensation Court constitutes the unauthorized practice of law.

As I indicated during our telephone conversation, I do not believe the situation, as described in your letter, constitutes the unauthorized practice of law. The information being provided is in the nature of factual responses to specific questions relating to insurance practices. I have enclosed a copy of a short memo I generally utilized as a guide to such issues. I thought it might be helpful for future reference, should other questions subsequently arise.

The Commission appreciates your bringing this situation to our attention. If you should have any questions, please feel free to contact me.

Sincerely,

John Connor

JOHN P. CONNOR
Chair

c: State Bar of Montana

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

7 WEST SIXTH AVENUE, SUITE 2B • P.O. BOX 577 • HELENA, MONTANA 59624
(406) 442-7660 Fax (406) 442-7763 Web Site: www.montanabar.org

WHAT IS THE UNAUTHORIZED PRACTICE OF LAW?

UPL COMMISSION:

CHAIR

JOHN P. CONNOR, JR.
215 North Sanders
Helena, MT 59620

VICE CHAIR

CAROL A. BRONSON
P.O. Box 3434
Great Falls, MT 59403

MEMBERS

PATRICK D. DOUGHERTY
P.O. Box 4747
Missoula, MT 59806

LEE BERGER
208 Riverview Drive
Kalispell, MT 59901

MICHAEL K. RAPKOCH
P.O. Box 2558
Billings, MT 59103

LOREN SOLBERG
P.O. Box 486
Choteau, MT 59422

ROBERT R. ZENKER
P.O. Box 73
Virginia City, MT 59755

ANGELA A. ZIELINSKI
P.O. Box 904
Helena, MT 59624

LINDA VAUGHEY
2505 Southridge Dr.
Helena, MT 59601

STAFF

MARIE CONNOLLY
P.O. Box 577
Helena, MT 59624
mconnolly@montanabar.org

This document is provided solely for the purpose of clarifying the authorized and unauthorized practice of law. Any specific questions regarding acts or activities should be addressed to the Commission on the Unauthorized Practice of Law.

1. The following statutes set forth the practice of law statutes in Montana:

37-61-201. Who considered to be practicing law. Any person who shall hold himself out or advertise as an attorney or counselor at law or who shall appear in any court of 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 profession for the purposes of parts 1 through 3 of this chapter shall be deemed practicing law.

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

37-61-402. Production of proof of authority to court. The court or judge, on motion of either party, may require the attorney of the adverse party to produce and prove the authority under which he appears and may stay all proceedings until such is shown and may at any time summarily relieve a party from the consequences of the acts of an unauthorized attorney.

See also the following case law:

Sparks V. Johnson, 252 Mont. 39; 826 P.2d 928 (1992); Ostrovsky V Monroe, Montana; 230 B.R. 426; 1999 Bankr.; Pulse V. North Am. Land Title Co., 218 Mont. 275, 707 P.2d 1105, 1109 (1985); Gregory V. Spannagel, 2002 Mt 297n; 2002 Mont. Lexis 579; Waite V. Holmes, 133 Mont. 512; 327 P.2d 399; 1958

1. The following are definitions common to the State of Montana:

(a) "Attorney" or "lawyer" signifies someone who is an active member of the State Bar of Montana, who has completed the educational requirements of a juris doctorate degree, has passed the Montana Bar Entrance examination or has been admitted on motion before the Montana Supreme Court, who has taken an oath before the Supreme Court of the State of Montana to uphold the Montana Rules of Professional Conduct, and has satisfied all the following requirements:

(i) payment of all dues for active attorney membership;

(ii) completion of all CLE requirements as might be ordered by the Montana Supreme Court and in accord with the Rules of Mandatory Continuing Legal Education;

(iii) payment of all license taxes. *(Attorney Rules from 2004 Deskbook)*

(b) "Paralegal" or "legal assistant" is defined as someone who may perform any task that is properly delegated and supervised by an attorney provided that the attorney maintains responsibility for the work product and maintains a direct relationship with the client. *(Paralegal Rules from 2004 Deskbook)*

(c) "Client" is defined as a person who uses the professional advice or services of another. *(dictionary definition)*

2. The following criteria are an indication that a person may be considered to be practicing law:

(a) Giving advice or counsel to another person or an entity as to their legal rights or responsibilities or the legal rights or responsibility of others, for fees or other consideration;
(b) Selection, drafting or completion of legal papers, pleadings, agreements or other document which affect the legal rights or responsibilities of that person or entity;
(c) Representation of another person or entity in court or in a formal administrative adjudicative proceeding or other formal dispute resolution process; or in an administrative adjudicative proceeding in which legal pleadings are filed, a decision or order is rendered which includes a finding of fact or conclusion of law, or a record is established as the basis for judicial review;
(d) Negotiating legal rights or responsibilities on behalf of another person or entity;
(e) Holding oneself out or advertising oneself as an attorney admitted to practice law in Montana or as a non-attorney entitled to practice law in Montana or otherwise advertising services in any manner that would lead the public to believe that she/he is an attorney or a licensed or certified legal advocate;
(f) Engaging in any act or practice determined by any court of this state to constitute the practice of law.

3. Whether or not they constitute the practice of law, the following are permitted:

(a) Acts or actions performed for and on behalf of him/herself as an individual;
(b) Acting as a lay representative if authorized by administrative agencies or tribunals to do so;
(c) Serving in a neutral capacity as a mediator, arbitrator, conciliator, or facilitator.
(d) Acts or actions performed by a guardian, conservator, guardian ad litem or other lay representative authorized by a court, administrative agency or tribunal;
(e) Acting as a legislative lobbyist; or
(f) Such other activities that the Supreme Court has determined by published opinion do not constitute the unlicensed or unauthorized practice of law.