

David R. Paoli
PAOLI LAW FIRM, P.C.
 257 W. Front St., Suite A
 P.O. Box 8131
 Missoula, Montana 59802
 Telephone: (406) 542-3330
DavidPaoli@paoli-law.com

Attorney for John Doe

IN THE SUPREME COURT OF THE STATE OF MONTANA

JON KRAKAUER,)	
)	DA 18-0374
)	
Petitioner, and)	
Appellee)	
)	
vs)	INTERVENOR'S MOTION
)	TO SUPPLEMENT RECORD
)	
STATE OF MONTANA, by and)	
through its COMMISSIONER OF)	
HIGHER EDUCATION, Clayton)	
Christian,)	
)	
Respondent and Appellant)	
)	
vs.)	
)	
JOHN DOE)	
)	
Intervenor, and Appellant)	
)	

Comes Now the Intervenor, by and through counsel, and pursuant to Rule 16 of the Montana Rules of Appellate Procedure moves the Court for its order supplementing the

record in this appeal. Intervenor's Brief to this Court is presently due September 23, 2018.

Intervenor believes that the record transmitted from the District Court is incomplete. On September 6, 2017 the undersigned mailed to the clerk of court for the First Judicial District the following motions, briefs and papers:

1. Intervenor's Motion to Dismiss Petition [Never ruled on];
2. Intervenor's Brief in Support to Dismiss Petition-Unclean Hands [Never ruled on];
3. Intervenor's Brief in Support of Motion to Dismiss Petition-(Futility)-FILED UNDER SEAL [Never ruled on];
4. Exhibits to Motion to Dismiss-FILED UNDER SEAL;
5. Intervenor's Motion for Petitioner to Disgorge Information Held Improperly-[Denied];
6. Intervenor's Brief in Support of Motion to Disgorge[Denied];
7. Intervenor's Motion to File Under Seal [Never ruled on];
8. Proposed Order along with three copies and self-addressed stamped envelopes

From the review of the District Court docket sheet, it is clear that all of the above motions, briefs and papers were filed in the District Court Clerk's office except for Intervenor's Brief in Support of Motion to Dismiss-(Futility)-Filed Under Seal along with proposed order and five exhibits to Intervenor's Brief in Support of Motion to Dismiss Petition-(Futility)-FILED UNDER SEAL.

Pursuant to the Affidavit attached hereto as Exhibit A, the Court can see that Rebecca Murphy of the Paoli Law Firm has investigated the matter and her Affidavit tells the entire situation of the non-filed documents with which Intervenor seeks to have this Court officially supplement the record on appeal.

Ms. Murphy's efforts at investigating this situation uncovered that the documents at issue were delivered to chambers by the clerk's office, but not filed or docketed. Ms. Murphy's continued investigation caused the District Court to send to the Supreme Court a manila envelope containing, we believe, Intervenor's Brief in Support of Motion to Dismiss Petition-(Futility)-FILED UNDER SEAL and five exhibits to be filed under seal. A photocopy of the cover page that Paoli Law Firm placed on the manila envelope is attached as Exhibit B. Attached as Exhibit C is the notations and transmittal information the District Court Clerk's office placed on the manila envelope once it was found in chambers.

Intervenor believes that Ms. Murphy's Affidavit is sufficient to reveal the problem and the easy solution to the problem. It is not known why this particular Brief was not filed with the District Court and then presented to the District Court Judge where it was eventually found in chambers. Nonetheless, Intervenor requests this Court to supplement the record and issue its Order declaring the Brief as well as the Motion to File Under Seal were legitimately filed in the District Court, never Ruled on, but are a part of this appellate record. A proposed order is provided for the Court's convenience.

Counsel for the University System of the State of Montana does not object to this motion. Counsel for Krakauer does object to this motion.

Respectfully submitted this 13th day of September, 2018

BY


David R. Paoli

Attorney for Intervenor & Appellant

CERTIFICATE OF SERVICE

I certify that I have filed a true and correct copy of the foregoing with the Clerk of the Montana Supreme Court and that I have served true and accurate copies upon the Clerk of the District Court, each attorney of record, each court reporter from whom a transcript was ordered, and each party not represented by the following means:

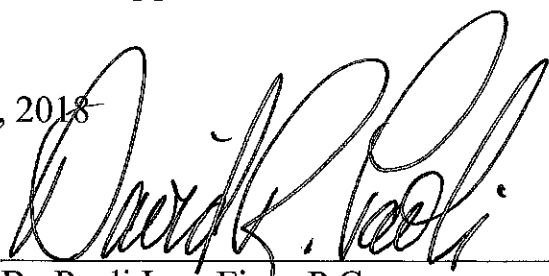
Peter Michael Meloy
Meloy Law Firm
P.O. Box 1241
Helena, MT 59624

☒ U.S. Mail
☐ Express Mail
☐ Hand-Delivery
☐ Fax
☐ Federal Express
☐ E-Mail

Vivian V. Hammill
Jessica M. Brubaker
Office of the Commissioner of Higher
Education
2500 Broadway
Helena, MT 59601

☒ U.S. Mail
☐ Express Mail
☐ Hand-Delivery
☐ Fax
☐ Federal Express
☐ E-Mail

Dated this 13th day of September, 2018


By Paoli Law Firm, P.C.

CERTIFICATE OF SERVICE

I, David Robert Paoli, hereby certify that I have served true and accurate copies of the foregoing Motion - Opposed - Supplement the Record to the following on 09-13-2018:

Timothy Charles Fox (Prosecutor)
Montana Attorney General
215 North Sanders
PO Box 201401
Helena MT 59620
Representing: State of Montana
Service Method: eService

Peter M. Meloy (Attorney)
2601 E. Broadway
2601 E. Broadway, P.O. Box 1241
Helena MT 59624
Representing: Jon Krakauer
Service Method: eService

Vivian V Hammill (Attorney)
560 North Park Ave., 4th Floor
Helena MT 59601
Representing: Higher Education, Office of the Commissioner of
Service Method: Conventional

Helen Clair Thigpen (Attorney)
560 North Park Ave.
P.O. Box 203201
Helena MT 59601
Representing: Higher Education, Office of the Commissioner of
Service Method: Conventional

Electronically Signed By: David Robert Paoli
Dated: 09-13-2018