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CLERK OF THE SUPREME COURT
STATE OF MONTANA

Nos. DA 18-0370 and DA 18-0607

IN THE SUPREME COURT OF THE STATE OF MONTANA

IN RE THE ESTATE OF EDWARD M. BOLAND, Deceased,

PAUL BOLAND AND MARY GETTEL,
as heirs of the Estate of Dixie L. Boland,

Petitioners and Appellants,

v.

CHRIS BOLAND, BARRY BOLAND, ED BOLAND CONSTRUCTION, INC.,
and NORTH PARK INVESTMENTS, LLC,

Respondents and Appellees.

RESPONSE BRIEF OF APPELLEES

ON APPEAL FROM THE MONTANA EIGHTH JUDICIAL
DISTRICT COURT, CASCADE COUNTY, CAUSE NO. ADP-15-125
HONORABLE GREGORY PINSKI, PRESIDING

APPEARANCES

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

MONTANA STATUTES

Montana Rules of Appellate Procedure

Montana Rules of Civil Procedure

Montana Code Annotated

Other Authority

I. STATEMENT OF THE ISSUES

A. Paul and Mary, as Heirs of the Estate of Dixie Boland, Lack Standing to Pursue an Appeal of the Order Denying the Petition.

B. Neither Party Was Entitled to a Hearing on the Petition.

C. The District Court Appropriately Held a Hearing After Paul and Mr. Towe Asserted that in Denying the Petition Judge Pinski made "3 Huge Mistakes" so "Obviously in Error" that his Impartiality was in Question.

D. The District Court's Conclusions of Law are Supported by Evidence.

E. Paul and Mr. Towe Admitted the District Court had Jurisdiction to Impose Sanctions, and the Arguments Regarding Jurisdiction Are Frivolous.

F. Rule 11 Applies in Probate Matters.

G. The Amount of Sanctions Imposed was not an Abuse of Discretion.

H. Chris, Barry, and their Companies should be Awarded their Attorneys' fees and Costs Incurred on Appeal.

II. STATEMENT OF RELATED CASES

Edward and Dixie Boland (Ed and Dixie, respectively) have five children: Paul Boland (Paul), Mary Gettel (Mary), Jacqueline Boland (Jacquie), Chris Boland (Chris), and Barry Boland (Barry). After Ed and Dixie's deaths, the family has splintered, with Paul, Mary, and Jacquie adverse to Chris and Barry. Familial relations since their parents' deaths have devolved to speaking through lawyers in nearly endless litigation. There are currently four pending cases between the siblings, but at one time there were five:

1. *The Estate of Edward M. Boland*. This appeal.

2. *The Estate of Edward M. Boland v. Ed Boland Construction, Inc., Chris Boland, Barry Boland, and North Park Investments, LLC*, BDV-17-0795, Eighth Judicial District Court, Cascade County, consolidated with this appeal under ADP-15-0125. The Complaint, purportedly filed by Paul on behalf of the Estate of Edward M. Boland, makes claims identical to those in the Petition to Recover Assets at issue in this appeal. *Compare* docs. 26 and 27 *with* Complaint in BDV-17-0795 (Appendix).

3. *The Estate of Dixie Boland*, DP-16-0017, Thirteenth Judicial District Court, Yellowstone County (the "Will contest"). In the Will contest, Chris and Barry challenge the Will of Dixie Boland drafted by Mr. Towe roughly two and a half months before her death. Paul and Mary were removed as Co-Personal Representatives of Dixie's estate by District Court Judge Jessica T. Fehr on November 26, 2018 due to their hostility, misuse of estate funds, and "bad conduct" in refusing to respond to discovery "at all" and unilaterally cancelling their own depositions. *See* Exhibit A to Appellees' December 3, 2018 Motion to Dismiss. The Will contest is still pending, and Kevin Gillen has been appointed as the new Personal Representative of Dixie's estate. *Id*., p. 9. Paul and Mary filed a "pro se" appeal (DA 19-0132); however, Mr. Towe's name appears on the Notice of Appeal's Certificate of Service.

4. *The Estate of Dixie Boland v. Boland*, DV-15-1560, Thirteenth Judicial District Court, Yellowstone County (the "Costume Shop matter"). The

Costume Shop matter involves a claim brought by Dixie's Estate (when Paul and Mary were Co-Personal Representatives) against Chris, claiming that he stole "a few dollars" from Dixie's costume shop in Great Falls. *Id*., p. 7. Paul and Mary "spent tens of thousands of dollars"[1] pursuing, *at best*, a claim for a few thousand dollars, provided they have any proof of theft. *Id*., p. 8. This case is still pending.

5. *The Estate of Edward Boland v. Classic Design*, DV-14-852, Thirteenth Judicial District Court, Yellowstone County (the "House matter"). The House matter involved litigation over the construction of a home owned by the Estate of Ed Boland in Billings. This Court previously dismissed with prejudice the appeal taken regarding the House matter. DA 18-0237. Although the litigation is settled and the house is sold, Jacquie has yet to vacate the home. Chris and Barry have contemporaneously filed with this Appeal a Motion to Enforce the Settlement Agreement seeking the removal of Jacquie.

III. STATEMENT OF THE CASE

Since Ed's death on December 26, 2014, Paul and Mary have engaged in what can best be described as serial litigation against their brothers Chris and Barry. Paul and Mary made, and continue to make, claims against Chris and Barry that are both unsupported legally and factually. Docs. 26, 27, 39-43, 48, 54, 58-61, 71, 84, 85, 87, 95-97, 101, 102, 106, 107, 112, 142, 143. Paul made demonstrably false accusations about the District Court in this case. Doc. 96; Appellant's

[1] In June 2018, Mr. Towe filed liens in several cases which total $208,017.97. An astounding $122,781.26 of that total were incurred in the Costume Shop matter.

Opening Brief. Paul made, and continues to make, contradictory statements under oath. Compare docs. 165-166, 180 with Trans. Sept. 6, 2018 27:1-10. Paul and his attorneys file repetitive motions resulting in the same motion being briefed numerous times. See docs. 63, 74, 150, 155, 163, 165-166. Paul and Mr. Towe have been sanctioned once already.

But for Chris and Barry, the worst of this onslaught is being falsely accused by Paul and Mary of killing their own father. Exhibit A to Appellees' December 3, 2018 Motion to Dismiss. Through it all, Chris and Barry have focused on the evidence and relied upon the courts to bear out the truth. They have met each request for production with documents that prove what they assert are the true facts. They respond to allegations with objective evidence that supports their explanations. Now, they seek closure from this Court on at least one of the pieces of litigation that will allow Ed's intent to be fully and finally fulfilled.

On November 30, 2017, in their former capacity as Co-Personal Representatives of the Estate of Dixie Boland, Paul and Mary filed a Petition to Recover Assets (Petition) Docs. 26, 27. They alleged in the Petition that it was supported by "considerable evidence" and included 15 exhibits they claimed supported their specific monetary claims of over 1.1 million dollars. *Id*.

Before the Petition was filed, and as a show of good faith because there was a questionable basis for formal discovery requests in the first instance, Chris provided 230 pages of documents rebutting each and every claim. Doc. 60, Exhibit F, R-T. The documents detailed: (1) years of payments made to Ed Boland, both as

wages and dividends, by Ed Boland Construction; and (2) loan repayments to Ed Boland. Chris' sworn discovery responses explain, in understandable terms, why Ed was owed no money by Chris, Barry, Ed Boland Construction, or North Park Investments. *Id*. Ed Boland Construction's accountant[2] also confirmed with Mr. Towe, via phone and in the company of both the undersigned and mediator Channing Hartelius,[3] the fact that Ed was fully compensated by Ed Boland Construction and was owed no further money. Mr. Mau disagreed with Mr. Towe and unequivocally explained why Mr. Towe's *personal* interpretation of the corporate tax returns is incorrect as a matter of fundamental accounting principles. Other than Mr. Towe's *personal* interpretation, no expert was ever disclosed nor was any expert opinion provided on the corporate tax returns.

Before Paul and Mary's Reply was filed, Chris produced an additional 60 pages of documents further illustrating why the Petition lacked merit. Doc. 60, Exhibit Q; Doc. 71, Exhibits A and B. These documents provided a detailed history of the number of shares in Ed Boland Construction. There were never 500 shares issued. There have only ever been 100 shares issued. This fact was further confirmed by Gary Bjelland, the corporation's attorney, on the phone with Mr. Towe in the company of the undersigned, after the undersigned drove to Billings

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[2] Accountant Bob Mau retired from his accounting practice with Loucks & Glassley, PLLP. He was unavailable for a time because he suffered a life-threatening health issue of which Mr. Towe was aware.

[3] Mont. Code Ann. § 26-1-813(3) provides that "any information and evidence presented to the mediator during the proceedings [is] confidential." Mr. Towe was reminded of this by the undersigned but has disclosed this information anyway in several briefs and his Opening Brief.

on icy roads in mid-January 2018 to personally confer and bring this matter to conclusion. Significantly, *months before the Petition was filed*, Paul and Mary had in their possession the valuation of Ed's shares prepared by expert appraiser Dan Vuckovich (Vuckovich). Doc. 36, Exhibit G. Vuckovich's valuation was not based on a per share value, but Ed's percentage of ownership. The actual number of shares has always been irrelevant given Vuckovich's analysis. *Id*.; Doc. 36, Exhibit G-1. No expert was ever disclosed by Paul or Mary to rebut or even question Vuckovich's conclusions.

On December 22, 2017, Chris and Barry responded to the Petition in detail, refuting each of the claims with over 120 pages of detailed documentary evidence. Doc. 37. The same date, Chris and Barry also filed a Motion to Approve Settlement related to the House Matter, above (docs. 31-33); a Motion to Remove Paul as Co-Personal Representative with over 140 pages of supporting documents (docs. 35, 36);[4] and a Motion for Protective Order with 32 pages of supporting documents (docs. 37-38).

On January 4, 2018, over two-weeks later and, in response to these motions, Paul filed a Petition to Remove Chris as Co-Personal Representative with supporting affidavits. Docs. 39-42. Chris and Barry responded on January 12, 2018 with 42 pages of supporting documents. Doc. 50.

[4]Chris filed his Motion to Remove Paul well in advance of Paul responding and seeking Chris' removal.

On January 22, 2018, Paul and Mary filed their reply brief regarding their Petition, stating the Petition and related lawsuit (number 2, above) were supported by "considerable evidence" and incorrectly asserted that Chris had not responded with documents or evidence. Doc. 57, p. 4. Paul and Mary unilaterally declared that they were not required to respond or refute Chris and Barry's detailed evidence, because their response could "only be considered an answer[.]" *Id*. Despite claiming that they possessed "considerable evidence," at the time they were required to produce it, they refused to provide it to the District Court.

None of the "convincing and overwhelming" evidence they claimed to have has ever been produced. *See* Opening Brief, p. 18. Even now, Paul and Mary claim the evidence they obtained in discovery supports their claims and is "convincing and overwhelming in some areas." *Id*. The only manner in which the evidence produced in discovery is convincing and overwhelming is that it *defeats entirely* all of the claims Paul and Mary filed in their former capacity as Co-Personal Representatives of the Dixie Boland Estate.

Paul and Mary also filed a Motion to Compel the same day (January 22, 2018). Doc. 58, 60. Paul also responded to Chris and Barry's Motion to Remove him as Co-Personal Representative. Doc. 61. They again claimed the Petition and lawsuit were "well supported by documents and evidence" and accused Chris of "deceit" and "fraud on the Court." *Id*., p. 3-5. With Chris and Barry's reply, they supplied additional documentary evidence refuting Paul and Mary's claims. Doc.

64.Chris filed several Notices of Additional Exhibits in support of his Motion to Remove Paul. Docs. 62, 75, 91, 98, 120, 121. Paul also filed two Notices with accompanying documents in support of his Motion to Remove Chris. Docs. 97, 103.

On February 5, 2018, the District Court ordered the parties to file an inventory no later than March 7, 2018. Doc. 70. In that order, the District Court notified the parties it would be "resolving the Petition" and that that the inventory was necessary to do so. *Id*. No objection was raised by Paul or Mary regarding the District Court's instruction or stated intent that the matter would be resolved. Chris filed his inventory on March 2, 2018. Doc. 82. Paul filed his inventory on March 8, 2018. Doc. 86. There is no doubt that Paul's inventory was untimely and there has never been any authority supplied for the proposition that "mailing days" apply to a Court Order setting a date firm for the filing of a document.

The District Court denied the Petition on March 13, 2018 with an extensive analysis of the law and facts as supplied by Chris, Paul and Mary. Doc. 88. The District Court also set a hearing on the remaining motions for April 12, 2018. Doc. 93; Tr. April 12, 2018.

After the Petition was denied, Paul filed a Motion to Set Aside. Docs. 95-96. Paul's brief contained allegations that Judge Pinski made "3 huge mistakes" that "seem so obviously in error" that his impartiality was in question. Doc. 96, p.7-8. He went on to state that he, Paul, "is aware" of "a significant" campaign contribution made by Chris or his corporation to Judge Pinski. Paul also alleged

Judge Pinski, Chris, and Gary Bjelland all go to the same gym, implying Judge Pinski had *ex parte* communications with them about Paul. *Id*.

So there can be no confusion, the following is exactly what Paul and Mr. Towe wrote in his Motion to Set Aside:

> **Is there a question of impartiality on the part of the Judge of this Court?**
>
> Paul Boland has raised the question of whether or not the presiding Judge of this case, Judge Pinski, is or can be totally impartial. He fully understands that decisions of the Court cannot be the basis of a determination of bias or prejudice. Nevertheless, the 3 huge mistakes made by the Judge in this case seem so obviously in error that a further inquiry may be necessary. Paul is aware that Chris Boland or his corporation has made a significant contribution to Judge Pinski's campaign fund during his election bid. In addition, Paul has seen the Judge Pinski at The Peak, a gymnasium which Chris Boland and his previous attorney, Gary Bjelland, often go to exercise. Paul is not aware of any improper communication regarding this case nor any other indication of impartiality apart from the decisions of the Court, but if there is any such matters it would be appropriate for Judge Pinski to disclose those facts so that a reasonable determination of impartiality can be made. Clearly if there are some facts that may indicate a lack of impartiality, Judge Pinski may want to recuse himself from further participation in this case. See the Supreme Court's insistence that a Judge should disclose circumstances that could potentially cause his impartiality to be questioned. *Draggin' Y Cattle Co., Inc. v. Addink,* 2016 MT 98, ¶ 31, 383 Mont. 243, ¶ 31, 371 P.3d 970, ¶ 31 (2016).

Chris and Barry objected to the Motion to Set Aside, and they prepared extensively for the April 12 Hearing, which began as follows:

> All right. This was the time set for hearing on some pending motions in this case, but a very serious matter has come to my attention.

Trans. April 12, 2018, 2:19-21.The District Court then gave Paul and Mr. Towe several options regarding their assertions of bias and prejudice. At the conclusion

of, and following the April 12 hearing, Paul and Mr. Towe refused to withdraw their assertion that Judge Pinski received illegal campaign contributions from Chris, Barry, and/or their corporation.

After additional briefing, multiple hearings, and multiple chances to withdraw these allegations, Paul and his counsel were held in violation of Mont. R. Civ. P. 11 and Mont. Code Ann. § 37-61-421. Docs. 109, 110, 114, 115, 122, 122.1, 127, 130-132, 135-140, 143, 145; Tr. April 12, 2018; Tr. June 21, 2018; Tr. Sept. 6, 2018. After a hearing, Paul and Mr. Towe were sanctioned.

These appeals followed on June 29, 2018 (Petition) and October 24, 2018 (sanctions) and were consolidated by this Court. It should be noted that after both appeals were filed, Paul and Mr. Towe filed numerous additional motions which required unnecessary briefing by Chris and Barry. Docs. 142, 150, 152, 153, 163, 165-171.

IV. STATEMENT OF THE FACTS

Ed Boland died of cancer on December 26, 2014. Paul and Mary accuse Chris and Barry of plotting to kill, and then actually killing, their father. *See* Exhibit A to Appellees' December 3, 2018 Motion to Dismiss. They accuse Chris and Barry of hiding and/or stealing over 1 million dollars from their father. Doc. 26. They allege misconduct by lawyers with whom they disagree. Doc. 28; Doc. 39, Exhibits L and T (misconduct claims against two Great Falls attorneys). They allege the District Court in this matter is biased based upon his rulings. Docs. 96,

Tr. April 12, 2. It has gone so far that Paul has an Order of Protection entered against him by a debtor of Ed's Estate--a cousin.[5]

While this appeal relates to the denial of the Petition and sanctions imposed due to the Motion to Set Aside, Chris and Barry respectfully ask the Court to review the entire record and take judicial notice of the wild allegations made in the Will contest, the Costume Shop matter and the House matter, which reveal Paul and Mary's bombardment of Chris and Barry, their companies, other attorneys, and the courts, with unsubstantiated accusations and ever-changing claims and legal theories. Chris and Barry ask the Court to take judicial notice of the removal of Paul and Mary as Co-Personal Representatives in *The Estate of Dixie Boland*, DP-16-0017, Thirteenth Judicial District Court, Yellowstone County.

A. Petition to Recover Assets.

The Petition, filed by Paul and Mary in their former capacity as Co-Personal Representatives of the Estate of Dixie Boland (doc. 26), sought to recover the following:

1. Any debts owed to Ed Boland by Ed Boland Construction, Inc.;

2. Any dividends, contract payments, salary, or other payments owed to Ed Boland by Ed Boland Construction, Inc.;

3. Any undervaluation of Ed's stock in Ed Boland Construction, Inc.;

[5] Paul physically attacked his cousin Jerry (a debtor of Ed's Estate), and this Court affirmed the entry of an order of protection against Paul. *Boland v. Boland*, 2018 MT 288N, ¶¶ 3-5, 430 P.3d 1014. The attack was apparently related to Paul's disagreement with Jerry's position testimony in the Costume Shop matter.

4. Any debt owed to Ed Boland by Barry Boland individually;

5. Any debt owed to Ed Boland by Chris Boland individually;

6. Any debt owed to Ed Boland by North Park Investments, LLC;

7. Any dividends, contract payments, salary, division of profits, or other payments owed to Ed Boland by North Park Investments, LLC;

8. The proceeds on any life insurance on Ed Boland; and

9. Any shares of stock, LLC ownership interests, personal property, vehicles, equipment, or other property held by Chris, Barry, Ed Boland Construction, Inc. or any other person or entity, belonging to or owned by Ed Boland.

From the day the Petition was filed, the claims have been asserted as belonging to the Estate of Dixie Boland, not Paul, Mary, or any heir individually. Doc. 26.

Chris explained and supplied voluminous evidence showing why each claim should be denied. Doc. 34. Chris demonstrated that the claims asserted in the Petition were time barred by at least two years under the one-year statute of limitation in Mont. Code Ann. § 72-3-803. Chris demonstrated that Ed was paid all wages and that any wage claims made on behalf of Ed were time barred six months prior to his death. Finally, Chris demonstrated with evidence that there was no factual basis supporting any claims. Ed was paid the $140,000 in dividends. Doc. 27, Exhibit O. There is no evidence Ed was owed $400,000 for equipment and buildings. There is no evidence Ed was owed $100,000 for a CD -

in fact, the only evidence showed Ed was paid this $100,000 19 years ago. There is no evidence Ed had any contracts with Ed Boland Construction. The only evidence regarding the value of Ed's shares in Ed Boland Construction unequivocally showed his Estate received more than the value of his shares. Doc. 34, Exhibit G; Doc. 36, Exhibit G-1.[6]

In reply, when required to produce their evidence, Paul and Mary provided none of the "considerable evidence" and "convincing and overwhelming" evidence they repeatedly claimed to possess. They declared they did not have to produce any evidence until some later time. Doc. 57.

In deciding the Petition, the District Court stated that the issue was "whether the asset exists and belongs to the estate." Doc. 88, p. 2. Regarding the buy-out of Ed's shares, the District Court noted that all parties agreed that Ed owned 26.4% of Ed Boland Construction, regardless of the number of shares, and Vuckovich's conclusions proved that Ed's Estate received more than the value of his 26.4% ownership interest. There was nothing to recover. Doc. 88, p. 2-3. The issue of the conscionability of the shareholder's agreement, to which Paul was not a party, failed for the same reason. Doc. 88, p. 3.

[6] According to the Shareholder's Agreement, Ed's shares were valued at $133,917.96 at the time of his death. Doc. 34, Exhibit F. According to Vuckovich's valuation done after his death, they were worth a maximum of $361,129.83. Doc. 34, Exhibit G; Doc. 36, Exhibit G-1. It is undisputed Ed's life insurance guaranteed his Estate would receive $400,000 for his shares, and Chris paid this amount to the Estate in equal shares to Dixie, Paul, Mary, and Jacquie.

The District Court found, on all "the evidence presented," that Ed was paid the $140,000 in dividends for 2014. Doc. 88, p. 4; Doc. 27, Exhibit O (this is an exhibit Paul produced). Again, there was nothing to recover. Doc. 88, p. 4. The District Court found that there was no proof of any outstanding loans to Chris, Barry, or any other entity payable to Ed or the Estate. The District Court noted that Ed's Will stated his agreement with North Park Investments, and there was no evidence the agreement had not and was not being fulfilled. In sum, the District Court found the evidence submitted by Chris refuted each category of items Paul and Mary sought to recover. There were simply "no assets which need to be recovered." Doc. 88, p. 5.

Significantly, in this appeal, Paul and Mary have not contested any of the District Court's factual findings. They have not argued that a single factual finding is wrong. They have not cited any evidence, let alone "overwhelming" evidence, in the record that demonstrates any factual finding is incorrect. Indeed, every objective fact in the hundreds of documents before the District Court disproved the unsubstantiated allegations in the Petition. The only issue Paul and Mary articulate is that a discretionary hearing was not held. However, they have not shown that material fact issues necessitated a hearing.

B. Motion to Set Aside.

After the denial of the Petition, Paul filed a Motion to Set Aside (doc. 96), wherein he made the following accusation:

> Paul Boland has raised the question of whether or not the presiding Judge of this case, Judge Pinski, is or can be totally impartial. He

> fully understands that decisions of the Court cannot be the basis of a determination of bias or prejudice. Nevertheless, the 3 huge mistakes made by the Judge in this case seem so obviously in error that a further inquiry may be necessary. Paul is aware that Chris Boland or his corporation has made a significant contribution to Judge Pinski's campaign fund during his election bid. In addition, Paul has seen the Judge Pinski at The Peak, a gymnasium which Chris Boland and his previous attorney, Gary Bjelland, often go to exercise. Paul is not aware of any improper communication regarding this case nor any other indication of impartiality apart from the decisions of the Court, but if there is any such matters it would be appropriate for Judge Pinski to disclose those facts so that a reasonable determination of impartiality can be made. Clearly if there are some facts that may indicate a lack of impartiality, Judge Pinski may want to recuse himself from further participation in this case.

On appeal, Paul seems to suggest that he "simply asked" if the District Court had anything to disclose. The record proves the opposite. Paul affirmatively alleged he was personally aware of "a significant contribution." Paul went on to affirmatively allege he and his wife saw Judge Pinski at the Peak gymnasium on February 7, 2018 at 7:48 p.m. and he (the Judge) had a "significant" reaction to them (doc. 116) and they felt "as if he had recently been told something about them. There was no greeting." Doc. 114.

Neither of these accusations is true and are demonstrably false. Tr. June 21, 2018, 16:25 to 19:22; Doc. 122.1. After two hearings and on the eve of a third, Mr. Towe admitted he did not verify these allegations before making them. Docs. 136, 137.

Even after being sanctioned, Paul and Mr. Towe appear to be making excuses for their conduct on appeal. Opening Brief, p. 27-28. Paul and Mr. Towe, after apologizing below, now disparage Judge Pinski on appeal, saying he is an

"angry person" who did not "carefully [think] out" his legal conclusions. *Id*., p. 29. They then blame Judge Pinski for the delay in this matter when they "merely [] asked if he had anything to disclose." *Id*. Astoundingly, they state on appeal that whether their allegations are "accurate and substantial or not is irrelevant." Opening Brief, p. 27.

After the June 21, 2018 show cause hearing, the District Court found that both Paul and Mr. Towe violated Rule 11 and Mont. Code Ann. § 37-61-421. Doc. 127, 145. Paul and Mr. Towe were notified in writing of the violations and the potential range of sanctions, which included attorneys' fees, costs, fines, and Paul's removal as Co-Personal Representative. Doc. 127. After another hearing on September 6, 2018 to determine the appropriate sanctions, Judge Pinski ordered Paul and Mr. Towe, jointly and severally, to pay $17,550.55 in monetary sanctions[7] and Paul was immediately removed as Co-Personal Representative of his Father's Estate. Doc. 145. Paul and Mr. Towe filed numerous motions seeking to avoid posting a bond but have now posted bond. Docs. 152, 153, 165-169.

V. STANDARD OF REVIEW

Appellants misstate the standard of review regarding hearings. The proper standard of review of a district court's decision not to hold an evidentiary hearing is for an abuse of discretion. *Brown v. Brown*, 2016 MT 299, ¶ 11, 385 Mont. 369, 384 P.3d 476 (*citing Harrington v. Energy West, Inc.*, 2015 MT 233, ¶ 11, 380

[7] This amount is comprised of $13,240.55 in attorneys' fees to Chris Boland, $2,310.00 to Gary Bjelland, and $2,000 payable to the Cascade County Law Clinic.

Mont. 298, 356 P.3d 441). The district court abuses its discretion if it acts arbitrarily without conscientious judgment or exceeds the bounds of reason, resulting in substantial injustice. *Id*.

This Court reviews de novo a district court's determination that a pleading, motion, or paper violates Mont. R. Civ. P. 11. *Guardianship of A.M.M.*, 2016 MT 213, ¶ 10, 384 Mont. 413, 380 P.3d 736; *Davenport v. Odlin*, 2014 MT 109, ¶ 9, 374 Mont. 503, 327 P.3d 478. The district court's findings of fact underlying that determination are reviewed to determine whether they are clearly erroneous. *Byrum v. Andren*, 2007 MT 107, ¶ 19, 337 Mont. 167, 159 P.3d 1062; *Davenport*, ¶ 9. "A finding of fact is clearly erroneous if it is not supported by substantial evidence, if the court misapprehended the effect of the evidence or if, upon reviewing the record, this Court is left with the definite and firm conviction that the district court made a mistake." *In re S.T.*, 2008 MT 19, ¶ 8, 341 Mont. 176, 176 P.3d 1054 (citation omitted). The choice of sanctions imposed for a violation of Mont. R. Civ. P. 11 is reviewed for an abuse of discretion. *Byrum*, ¶ 19; *Davenport*, ¶ 9.

VI. SUMMARY OF ARGUMENT

The District Court throughly analyzed the evidence in denying the Petition. A hearing was not required. In response, Paul and Mr. Towe improperly accused Judge Pinski of issuing his Order denying the Petition because he was biased against Paul. Paul's allegations were not presented as required under Montana law. Mr. Towe failed in his duty to investigate Paul's allegations before asserting that

Judge Pinski made "3 huge mistakes" that were "so obviously in error" that he had to be biased against Paul. The District Court followed the law and provided Paul and Mr. Towe with Due Process as they continued to assert their false allegations.

The record speaks loud and clear. The serial litigation in this family needs to end. The District Court was correct to remove Paul as Co-Personal Representative of Ed's Estate given the false allegations he lodged upon not only the District Court, but upon his brothers Chris, Barry, and their companies. The District Court imposed a reasonable monetary sanction.

Ultimately, Paul and Mary lack standing to pursue this appeal. The fact that they have been removed as Co-Personal Representatives of their mother's Estate cannot be ignored. Gillen, as Dixie's Personal Representative, is the only person lawfully empowered to speak and act for Dixie's Estate. He has not appealed because, as the record shows, the District Court did not err in denying the Petition.

VII. ARGUMENT

If you say something enough, regardless of whether it is supported by evidence, perhaps someone will believe it. In modern psychology this is known as the "illusory truth effect"--where a party hopes that simply repeating statements will make them true. *See, e.g.,* Hasher, L., Goldstein, D., & Toppino, T., Frequency and the conference of referential validity, Journal of Verbal Learning & Verbal Behavior, 16, 107-112(1977). While this may work for some, this Court requires more than repetitive statements--it requires evidence. Paul and Mary have

none and Chris and Barry provided the District Court with documents which fully explained why the assertions in the Petition were unsupported in fact.

A. Paul and Mary Lack Standing.

It has long been the law in Montana that heirs and beneficiaries have "no standing to bring suit to collect property allegedly belonging to the deceased's estate or to bring any action which affects the estate" absent "special equitable circumstances." *In re Estate of Long*, 225 Mont. 429, 435, 732 P.2d 1347, 1351 (1987). "Absent fraud, collusion, conflict of interest, inability to act, or other special equitable circumstances … the power to maintain such an action to recover property of the estate rests with the duly appointed [ ] personal representative[.]" *Id*. at 437, 732 P.2d at 1352.

After Paul and Mary were removed as Co-Personal Representatives of Dixie Boland's Estate, Judge Fehr appointed attorney Kevin Gillen (Gillen) as the Personal Representative. Gillen has not pursued an appeal of the District Court's Order Denying the Petition. He is right not to appeal Judge Pinski's Order, and he is right not to advance this appeal on behalf of the Estate of Dixie Boland becasue there are no assets to recover. As Personal Representative, Gillen is the only person who can pursue the appeal of Judge Pinski's Order and he has chosen not to. Paul and Mary's appeal on the denial of the Petition should be dismissed.

Significantly, Paul and Mary have not moved to substitute Gillen under Mont. R. App. P. 25 and it is too late for them to do so now. Paul and Mary have not alleged fraud, collusion, conflict of interest, or inability to act on Gillen's part,

and no other special equitable circumstance allows them to pursue this appeal. Rather, they claim their status as heirs conveys standing to pursue the appeal of the Petition. They are wrong.

Paul and Mary cite no authority allowing an "interested person" or an "heir" to pursue claims belonging to an estate. In fact, it is foreclosed by the straightforward application of Montana law--"Absent such special equitable circumstances, the power to maintain an action to recover property of the estate rests with the personal representatives." *Estate of Long*, 225 Mont. at 435, 732 P.2d at 1351.

The reasoning for such a result is exactly what Chris and Barry face in this appeal:

> allowing such intervention would work chaos upon estate proceedings. If the personal representative did not have discretion to determine when or when not to pursue litigation involving alleged estate assets, *then an heir could effectively tie up probate proceedings indefinitely to the prejudice of all other heirs, creditors and persons interested in the estate*. The heir need simply state a claim as a prima facie case and then request the personal representative pursue the claim. As noted by this Court in *Palmer*, *such a result would defeat the entire purpose of representative litigation and would likely result in the affairs of the estate becoming hopelessly entangled*.

Id. (emphasis added). That is precisely what has happened here. Since Ed's death in 2014, there are five cases in four different district courts tying up the proceedings in two estates and wasting valuable court time and resources, not to mention depleting the assets Ed and Dixie worked their lives to build. Judge Pinski correctly described what Paul, Mary, and Mr. Towe have done--they have

made "a mockery of ... the judiciary of the State of Montana[.]" Tr. June 21, 2018, 11:13-16.

This Court's January 2, 2019 Order did not convey standing to Paul and Mary. The Court did not rule that as heirs they have standing. Indeed, anyone can initiate an appeal, but whether that appeal proceeds is an entirely different matter. The issue of standing was not before the Court when the Order was issued. Gillen's decision not to pursue this appeal of the denial of the Petition should not be ignored by this Court.

Paul and Mary will likely rely on two cases--*Stoican v. Wagner* and *Engellant v. Engellant*--to claim they have standing. Both cases are inapplicable and have nothing to do with standing to maintain claims *on behalf of an estate* by an heir or beneficiary. *Stoican* dealt with standing to challenge a will. *Stoican v. Wagner*, 2015 MT 54, 378 Mont. 281, 343 P.3d 577. However, the issue on appeal is *not* a will challenge, but it is a Petition to Recover Assets from the Estate of Ed Boland for the Estate of Dixie Boland.[8] *Engellant* dealt with standing to seek the removal of a conservator. *Engellant v. Engellant*, 2017 MT 100, 387 Mont. 313, 400 P.3d 218. Again, that is simply not the issue on appeal here.

Montana law is clear. Paul and Mary have no standing to pursue this appeal. Their appeal should be dismissed with prejudice to the extent it relates to the Petition (Appellants' Issue 1). *Estate of Long*, 225 Mont. at 435, 732 P.2d at 1351.

[8] No one has challenged the Will of Edward Boland and the time to do so passed over one year ago. Mont. Code Ann. § 72-3-122(1)(c).

Gillen is the only person with authority to pursue an appeal of Judge Pinski's Order denying the Petition, and in his capacity as the Personal Representative for the Estate of Dixie Boland he made the conscious choice not to do so.

B. A Hearing Was Not Required.

Paul and Mary's argument that a hearing was required is based on a fundamental misunderstanding of the law. Whether to hold an evidentiary hearing is reviewed for an abuse of discretion, not de novo as a legal conclusion. *Brown*, ¶ 11; *Harrington v. Energy West, Inc.*, 2015 MT 233, ¶ 11, 380 Mont. 298, 356 P.3d 441.

Due Process requires "(1) notice, and (2) *opportunity* for a hearing *appropriate to the nature of the case*." *Montanans for Justice v. State*, 2006 MT 277, ¶ 30, 334 Mont. 237 (emphasis added). The "process due in any given case varies according to the factual circumstances of the case, the nature of the interests at stake and the risk of making an erroneous decision." *Id*.

Hearings are discretionary and not required in every case, especially when there is "ample evidence, based on the affidavits and other filings of the parties, upon which" to rule. *Marriage of Sampley*, 2015 MT 121, ¶ 9, 379 Mont. 131, 347 P.3d 1281. That is the situation here. Paul and Mary filed the Petition claiming there was "much evidence" and "considerable evidence" supporting it. Doc. 26, p. 1. In fact, they made specific monetary claims detailing over 1.1 million dollars they claim is owed to the Estate of Dixie Boland and supplied 15 exhibits they

claimed supported their specific figures. After receiving discovery, they claimed their evidence was "convincing and overwhelming." Opening Brief, p. 18.

In response, Chris, Barry, and their companies refuted each claim in detail with supporting documentation. Docs. 34, 36. They also notified Paul and Mary that there was no factual or legal basis for their claims given the documents they (Paul and Mary) had possessed for months prior to the filing of the Petition. Doc. 34, Exhibit H. Chris and Barry repeatedly asked for the "considerable evidence" Paul and Mary claimed to possess. *Id*. To date, none has been provided.

Simultaneous with filing their response, Chris, Barry, and their companies filed additional motions with hundreds of pages documentation that refuted each allegation in the Petition. Docs. 35-38. In reply (i.e., their *opportunity* to be heard), Paul and Mary did nothing but declare that they were not required to respond to the evidence that defeated each of their claims until some later time, despite claiming from the outset that their Petition was supported by "considerable evidence." Such a position does not comply with either the letter or the spirit of Montana law. *See* Mont. R. Civ. P. 56(e)(2); *see also Richardson v. State*, 2006 MT 43, 331 Mont. 231, 130 P.3d 634 (one party cannot withhold from the other evidence in its possession).

Paul and Mary were not entitled to a hearing on their conclusory statements and "facts" they "repeatedly failed to assert." *Brown*, ¶ 17. They did not "muster[] a dispute of material fact" that required a hearing. *Id*. Even now on appeal, they have not identified one factual finding that is contradicted by any evidence. They

cannot claim that their Petition is supported by "considerable," "convincing," and "overwhelming" evidence yet fail to produce that evidence when called upon. They cannot do so in their Reply Brief. The District Court had ample evidence, based upon the filings of the parties and the evidence in the record, to deny the Petition and its Order should be affirmed.

Finally, Paul and Mary ignore the fact that there *was a hearing set* for April 12, 2018, at which time the District Court was going to address the pending motions. Docs. 77, 93.Each and every one of the motions set for hearing on April 12 dealt with the allegations in the Petition. See e.g. docs. 35, 36, 41, 42, 50, 61, 64, 75, 91, 97, 98, 103.Paul and Mary's Motion to Set Aside was fully briefed at the time of the April 12 hearing. Docs. 95, 96, 99, 108. Had they filed a proper Rule 60 motion, without falsely accusing the judge of unethical behavior, the motion would have been considered at the April 12 hearing along with all the other pending motions. Had they simply withdrawn the allegations, which Mr. Towe admittedly did not even investigate (Doc. 114), the hearing could have been held. Rather than acknowledge the reality of the situation, Paul and Mr. Towe continued their baseless crusade against Judge Pinski and y continue to do so on appeal. Given these facts, there was no legal *or equitable* reason to hold a hearing on the Petition. The District Court's Order denying the Petition should be affirmed in all respects.

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C. The District Court Was Accused of Wrongdoing and Acted Appropriately in Holding a Hearing after Paul and Mr. Towe Refused to Withdraw Their Allegations.

Paul and Mr. Towe argue that they "merely raised the question" of whether "Judge Pinski had anything he should disclose" under *Draggin' Y Cattle Co. Inc. v, Addink*, 2016 MT 98, 383 Mont. 243, 371 P.3d 970, and claim he overreacted "instead of [providing] a simple response." Opening Brief, p. 12-13. They claim they did not accuse him of bias or prejudice, but only questioned his impartiality.[9] They continue their attack before this Court, saying Judge Pinski "has never acknowledged that his accusation was false or that he was mistaken[.]" *Id*., p. 13, n. 7. This statement should give pause to the Court given the record.

Any reasonable reading of the Brief in Support of the Motion to Set Aside reveals their argument before this Court is not grounded in fact.Paul affirmatively alleged he was personally aware of "a significant contribution" by Chris or his corporation. Doc. 96, p. 8. Paul affirmatively alleged he and his wife personally saw Judge Pinski at the Peak gymnasium on February 7, 2018 at 7:48 p.m. and he (the Judge) had a "significant" reaction to them (doc. 116) and they felt "as if he had recently been told something about them. There was no greeting." Doc. 114. These accusations were stated as facts, these "facts" were tied to Paul and Mr. Towe's assertions that Judge Pinski was so wrong that the only explanation was that Chris, or his corporation, bought and paid for a ruling.

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[9] The very definition of "impartiality" is the "absence of bias or prejudice[.]" *Draggin' Y*, ¶ 28 (citing M. C. Jud. Cond., Terminology, "Impartiality.").

They state that "decisions of the Court cannot be the basis of a determination of *bias or prejudice*" yet go on to state "the decisions of the Court" indicate lack of impartiality. Doc. 96, p. 8 (emphasis added). They claim their allegations of misconduct were authorized by this Court in *Draggin' Y.*

Nowhere in *Draggin' Y* did this Court allow a party, without filing a motion for disqualification under Mont. Code Ann. § 3-1-805, to make accusations of partiality (bias and prejudice) against a judge. *Draggin' Y*, ¶ 22. This Court was very clear--the judge is required to disclose information relevant to a possible motion for disqualification. *Draggin' Y*, ¶ 25. No fair reading of *Draggin' Y* could lead a reasonable attorney or judge to believe that Paul and Mr. Towe's conduct in this case was authorized or the proper procedure. As the District Court stated, "you don't just get to blindly and recklessly assert that the Court has engaged in unethical conduct." Tr. June 21, 2018, 9:19-24.

This Court was also very clear that there is *one* procedure for a party to disqualify a judge--a motion under Mont. Code Ann. § 3-1-805. *Draggin' Y*, ¶ 22. Paul and Mr. Towe admittedly did not do this because they had no facts to support such a motion, and Mr. Towe would have been required to certify that the allegations were "made in good faith." Mont. Code Ann. § 3-1-805(1)(b). He could not do so because he admittedly did not verify them. Doc. 114.

Chris and his companies did not contribute a dime to Judge Pinski's campaign. Doc. 122-1, Exhibit B. Judge Pinski was not even at the Peak on the date Paul claimed he saw him. Doc. 122-1, Exhibit C. Judge Pinski did not

disclose these things *because they never happened* - there was nothing to disclose. Nothing in *Draggin' Y* remotely authorizes what occurred here.

Paul and Mr. Towe were given numerous chances to withdraw their allegations. Judge Pinski gave them the opportunity to withdraw the brief on or before April 26, 2018. Doc. 110. They did not. Doc. 114. Instead, they reiterated their accusations. Doc. 114. Paul went so far as to then provide a sworn affidavit restating and expanding on his allegations, and said they were made because of Judge Pinski's rulings. Doc. 116. At the June 21, 2018 hearing, Paul and Mr. Towe continued to advance their assertions. Not until September 2018 did Mr. Towe admit he had not verified the allegations. Doc. 140. To this day, they still claim there is factual support for their demonstrably false allegations. Opening Brief, p. 28 n. 8.

Given the facts and the law, the District Court made no error and should be affirmed in all respects.

D. The District Court's Conclusions of Law are Amply Supported by the Record.

The attack on Judge Pinski continues into this argument. Appellants again claim that they only asked a question. The record speaks for itself. They call Judge Pinski an "angry person" who did not make "carefully thought out conclusion[s] of law." Opening Brief, p. 29. They then blame Judge Pinski for the delay in this matter--first for dealing with their accusations and second for not ruling on the pending motions. *Id*.

The characterization of their accusations as a mere question is unsupported by law or fact. Judge Pinski has not ruled on the pending motions because *Paul and Mr. Towe filed this appeal*. They argue in the Opening Brief that the District Court has no authority to make substantive rulings while their appeal is pending yet blame Judge Pinski for the delay in ruling upon substantive motions. *Compare* Opening Brief pp. 28-31 *with* 31-32.

As the record makes abundantly clear, any alleged delay was due to the accusations of misconduct leveled at the District Court, and Paul and Mr. Towe's insistence in maintaining those accusations rather than simply withdrawing them before April 26, 2018 and before any additional hearings or briefings were required.

Sanctions under Mont. Code Ann. § 37-61-421 have been upheld for "blatant lack of candor and [counsel's] disrespectful conduct toward the Court and the legal process and his egregious abuses of the legal rights of the Defendants." *Serrania v. LPH, Inc.*, 2015 MT 113, ¶ 36, 379 Mont. 17, 347 P.3d 1237. They have been upheld for conduct which requires the Court to hold additional hearings. *Cross Guns v. Eighth Judicial Dist. Court*, 2017 MT 144, ¶ 14, 387 Mont. 525, 396 P.3d 133. They have been imposed for "an unjustified vehement tirade" and "personal attack" on a judge. *Lewistown Propane Co. v. Moncur*, 2003 MT 368, 319 Mont. 105, 82 P.3d 896. They have been upheld and imposed on appeal for failure to candidly respond, resulting in "numerous briefs, hearings and

legal proceedings which ensued due to [counsel's] recalcitrance." *Estate of Bayers*, 2001 MT 49, ¶ 16, 304 Mont. 296, 21 P.3d 3.

Each example is present and supported by the facts here--lack of candor, disrespectful conduct toward the District Court and the legal process, and the requirement of unnecessary briefs, hearings, and proceedings due to both Paul and Mr. Towe's recalcitrance. Docs. 96, 108, 114, 116, 122, 122.1, 127, 145; Tr. April 12, 2018; Tr. June 21, 2018; Tr. Sept. 6, 2018. The District Court's imposition of sanctions under Mont. Code Ann. § 37-61-421 should be upheld.

E. Paul and Mr. Towe Admitted the District Court Had Jurisdiction to Impose Sanctions, and the Appeal of this Issue Is Frivolous.

This Court has repeatedly held that it will not consider changes in legal theories or issues raised for the first time on appeal. *Unified Indus., Inc. v. Easley*, 1998 MT 145, ¶ 15, 289 Mont. 255, 961 P.2d 100; *Schlemmer v. N. Cent. Life Ins. Co.*, 2001 MT 256, ¶ 22, 307 Mont. 203, 37 P.3d 63; *Park County Stockgrowers Assoc. v. Mont. Dept. of Livestock*, 2014 MT 64, ¶ 10, 374 Mont. 199, 320 P.3d 467. The reason for such a rule is "because of the fundamental unfairness of faulting a district court for failing to rule correctly on an issue it was never given the opportunity to consider." *Schlemmer*, ¶ 22.

Paul and Mr. Towe argue the District Court lost jurisdiction on June 29, 2018, when their first Notice of Appeal was filed. They never once made this argument to the District Court. Tr. April 12, 2018; Tr. June 21, 2018; Tr. Sept. 6, 2018; Docs. 136-138, 143. The District Court noted it retained jurisdiction in its July 17, 2018 Order. Doc. 127. Appellants did not object or otherwise raise this

argument. In fact, at the September 6, 2018 sanctions hearing, Mr. Towe stated "I have not objected to the continuation of this--the hearing on the violations [of Rule 11]--because *I think it is ancillary or corollary, and it doesn't remove the Court's jurisdiction. I haven't argued that at all, and I certainly accept that*." Tr. Sept. 6, 2018, 11:7-17 (emphasis added).

Mr. Towe also conceded that removal of the Co-Personal Representative, Paul, was an available sanction. The District Court stated:

> But the issue of the removal of the personal representative is, one, not before the Supreme Court; two, I specifically notified the parties that that would be an available sanction that I would consider to protect the parties' due process rights. Notified you of that in my Rule 11 order. And, three, that's not an issue that is even remotely before the Supreme Court. *But it is part of the panoply of sanctions that are available to the Court to consider*.

Id., 12:12-18. In response, Mr. Towe said "I would agree with your last statement. I can't argue with that. That's what the law says. I agree." *Id*., 12:19-20.

Paul and Mr. Towe cannot claim error in a ruling or procedure to which they acquiesced. *Marriage of Axelberg*, 2015 MT 110, ¶ 23, 378 Mont. 528, 347 P.3d 1225. In any event, the District Court retained jurisdiction to issue sanctions and impose attorneys' fees, including Paul's removal, and Mr. Towe admitted so on the record. *Estate of Pruyn v. Axmen Propane, Inc.*, 2008 MT 329, 346 Mont. 162, 194 P.3d 650 (district courts retain jurisdiction over ancillary matters); *Cooter & Gell v. Harmarx Corp.*, 496 U.S. 384, 395-96 (1990); *Masalosalo v. Stonewall Ins. Co.*, 718 F.2d 955, 956-57 (9th Cir. 1983). The filing of an appeal does not deprive the court of jurisdiction over the question of whether sanctions are

appropriate. The appeal of this issue is frivolous. The District Court should be affirmed.

F. Rule 11 Undoubtedly Applied in this Matter.

This Court has repeatedly held that it will not consider changes in legal theories or issues raised for the first time on appeal. *Easley*, ¶ 15; *Schlemmer*, ¶ 22; *Park County Stockgrowers*, ¶ 10.

Neither Paul nor Mr. Towe argued to the District Court that Rule 11 did not apply to this case, despite filing several documents related to the sanctions issue. Doc. 136-138, 143. In fact, they stated they did not "intend[] to request reconsideration or otherwise question in any way" the District Court's July 17, 2018 Order finding them in violation of Rule 11. Doc. 136. Further, Mr. Towe stated "I fully accept what the Court has done ... I fully acknowledge that we could have and should have investigated those matters ... I recognize that was an error[.]" Tr. Sept. 6, 2018, 3:21 to 4:1.

Rule 11 most certainly applies to this case. Mont. Code Ann. § 72-1-207 (the Rules of Civil Procedure apply in probate matters). Paul and Mr. Towe argue a brief is not a motion. Rule 11, by its plain language, applies to "a pleading, written motion, or other paper." Mont. R. Civ. P. 11(b). Further, as discussed above, they did not "simply ask" if Judge Pinski had anything to disclose, they accused him of being biased and prejudiced against them based upon allegations that were demonstrably false and into which Mr. Towe made no inquiry. Doc. 136, 137. Their accusations fit squarely within the Rule 11 framework, and this

argument is further evidence of their frivolous claims and legal positions. It should be rejected and the District Court affirmed in all respects.

G. The Amount of Sanctions Imposed Was Not an Abuse of Discretion.

Paul and Mr. Towe argue that the $15,550.55 in attorneys' fees and costs awarded to Chris are inappropriate and excessive. Paul and Mr. Towe did not challenge a single time entry or charge submitted by Chris. Their only argument was that, if and when the undersigned must again prepare for the April 12, 2018 hearing that was cancelled, it should not take the same amount of time and therefore they should not have to pay the full amount incurred by Chris.

The April 12, 2018 hearing was to consider six pending motions: Chris' Motion to Remove Paul (doc. 35); Chris' Motion for Protective Order (doc. 37); Paul's Petition to Remove Chris (doc. 41); Chris Boland's Motion to Stay (doc. 51); Paul's Motion for an Order Compelling Discovery (doc. 58); and Paul's Motion for Reimbursement (doc. 63). The heart of the hearing focused on the assertions raised in the Petition. The time to prepare was substantial, and no objection was made to the expenses actually incurred by Chris. Rather, the objection was made regarding future fees and costs that may be incurred by Chris. Puzzlingly, Appellants admit Judge Pinski took "into consideration" their argument and "reduced the numbers by 20%." Opening Brief, p. 37.

Paul and Mr. Towe fail to acknowledge that the April 12, 2018 hearing was cancelled because of the accusations they chose to make. They further fail to acknowledge that the sanctions issue extended almost five months because they

refused to concede. Paul and Mr. Towe persisted in their attacks on Judge Pinski even though Paul apparently wanted to "apologize and be done with this thing" and Mr. Towe *knew from day one* that he did not verify the allegations. Tr. Sept. 6, 2018, 37:10 to 38:13; Docs. 136, 137. If anyone should bear the costs of the cancelled hearing, it is Paul and Mr. Towe, not Chris or the Estate. Moreover, the attacks on appeal here show that there is little remorse for the conduct before the District Court.

The imposition of sanctions has nothing to do with future fees and costs that might be incurred someday--it is about the fees and costs incurred due to the sanctionable conduct. Chris submitted the amounts he incurred--$19,438.19. Docs. 130-132, 135. The District Court considered Appellants' arguments and reduced the amounts by 20%. The District Court's Orders (docs. 127, 145) contain detailed factual findings regarding the conduct of Paul and Mr. Towe and thoroughly analyzed the law. Appellants' contention otherwise is belied by the record. The District Court should be affirmed.

H. Chris, Barry, and Their Companies Should be Awarded Their Attorneys' Fees and Costs Incurred on Appeal.

Mont. R. App. P. 19(5) allows sanctions for filing a motion "for purposes of harassment or delay or taken without substantial or reasonable grounds." "When an appeal is entirely unfounded and causes delay, the respondent is entitled to reasonable costs and attorneys' fees." *Federated Mutual Ins. Co. v. Anderson*, 277 Mont. 134, 145 920 P.2d 97, 104 (1996).

Paul and Mary lack standing to pursue this appeal related to the Petition. The law is clear on this point and it should not be lost on this Court that Paul was not only removed in Cascade County by Judge Pinski, but he, along with his sister, were removed in Yellowstone County by a different District Court Judge.

Paul and Mr. Towe's appeal regarding sanctions is specious. Having never objected below, they present new arguments on appeal and continue in their disparagement of the District Court.

Appellees respectfully request the Court award them reasonable attorneys' fees and costs against Appellants in responding to this appeal. *Snow v. Snow*, 2002 MT 143, ¶ 32, 310 Mont. 260, 49 P.3d 610.

VIII. CONCLUSION

Without the finality of a decision that only this Court can issue, Chris and Barry cannot bring peace to the memory of their father, Ed. Time will heal the wounds that this litigation has inflicted upon them, but that healing cannot begin until this Court brings this matter to an end. Chris and Barry respectfully request the Court affirm the District Court in all respects.

RESPECTFULLY SUBMITTED this 27th day of March, 2019.

/s/ Jason T. Holden
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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this Response Brief of Appellee is printed with a proportionately spaced Times New Roman non-script text typeface of 14 points; is double spaced except for footnotes and for quoted and indented material; and the word count calculated by WordPerfect X5 for Windows does not exceed 10,000 words, i.e., is 9,264 words, excluding table of contents, table of authorities, appendix, certificate of service and certificate of compliance.

DATED this 27th day of March, 2019.

/s/ Jason T. Holden
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